



planning consultants

28 March 2014  
Our Ref: 5565P.11DK

The Director-General  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY 2001

Attention: Jane Flanagan

**By email: [Jane.Flanagan@planning.nsw.gov.au](mailto:Jane.Flanagan@planning.nsw.gov.au)**

Dear Jane,

**Sandon Point (aka McCauley's Beach)  
Concept Plan and Project Approval Modification No. 4 (MP06\_0094 and MP07\_0032)  
Responses to submissions and Preferred Project Report - Updated**

We refer to the above Section 75W modification currently being assessed by the Department of Planning & Infrastructure (the Department) and the Department's letter of 23 January 2014 and email dated 14 March 2014 including key issues raised by the Department. We also refer to the submissions received to the application following its public notification and exhibition of the application. This letter also provides a response to the issues raised in those letters.

Minor amendments are proposed to be made to the Modification. The Preferred Project report is described in Section 11 of this letter.

**1.0 Department of Planning's Letter**

**1.1 Need for the modification**

The Department has asked for additional justification for the change from apartment to residential lots having regard to the site's proximity to the station and town centre and implications for housing supply and choice.

The subject land is zoned R3 – Medium Density Residential zone under SEPP (Major Development) (MD SEPP) 2005. Dwelling houses are permissible in the R3 – Medium Density Residential zone applying to the land and therefore the MD SEPP did not exclude low density housing on this land. Low density housing was therefore a form and density of residential development contemplated when the land was zoned under the MD SEPP.

Clause 10, Part 24, Schedule 3 of the MD SEPP sets out the zone objectives for the R3 zone. The objectives relevant to housing are:

- (a) *to provide for the housing needs of the community within a medium density residential environment,*
- (b) *to provide a variety of housing types within a medium density residential environment,*

The zone objectives are expressed as providing an opportunity to provide for a variety of housing types. The land use table and objectives are not limiting residential development to apartments or medium density housing forms. The housing needs of the community could include medium density and this could also be achieved through the development of other appropriately zoned land around the Thirroul railway station and town centre. Under Wollongong LEP 2009 there is other R3 zoned land around the Thirroul railway station town

centre and B2 zoned land in the town centre (as illustrated in **Figure 1**) that is not yet fully developed. These zones permit residential flat buildings, multi dwelling housing and shop top housing. Therefore there are other opportunities for increased residential densities in and around the Thirroul town centre and close to public transport.

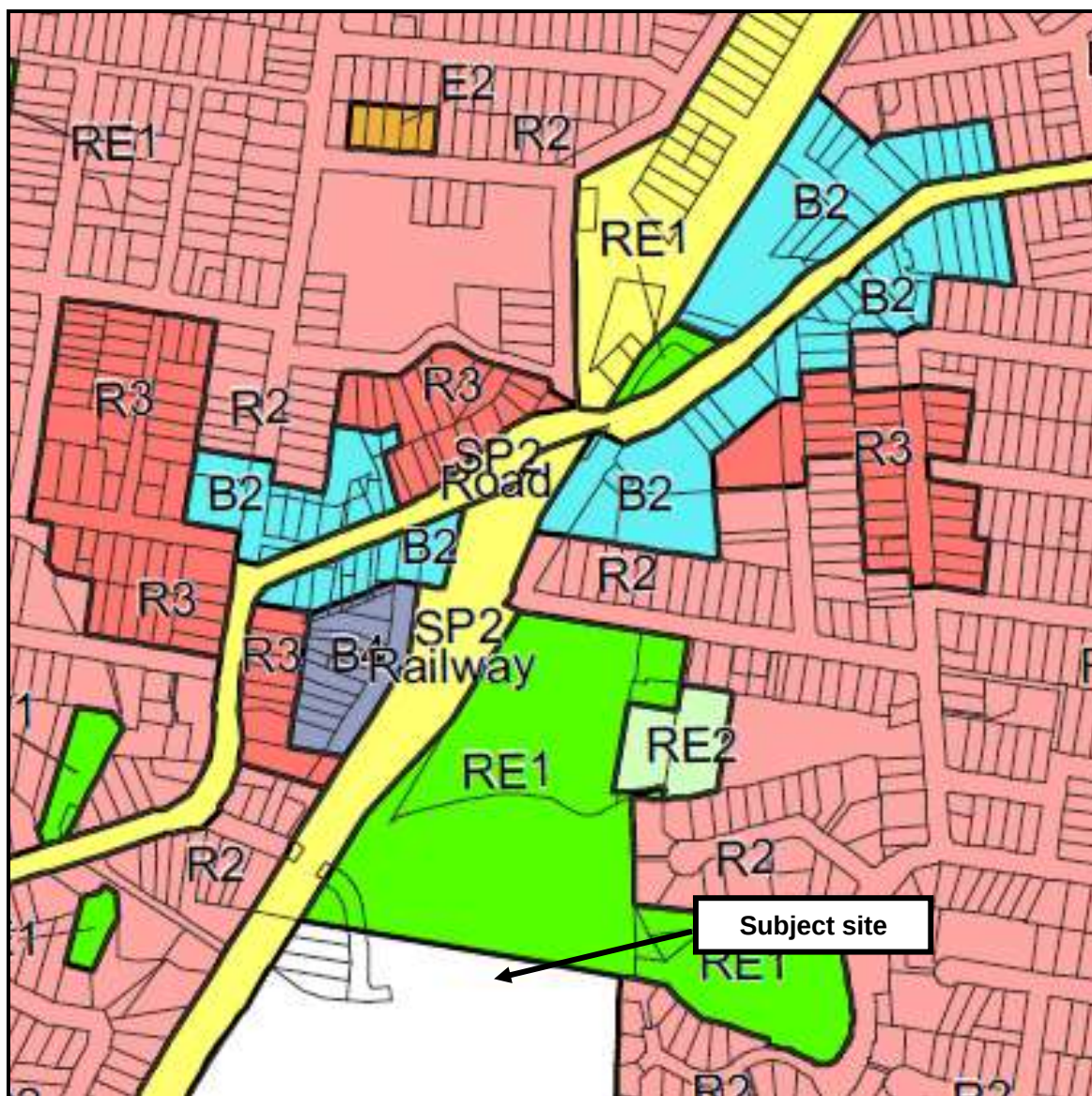


Figure 1: Current Wollongong LEP 2009

Despite the fact that dwelling houses are permissible, Stockland did pursue the development of the site for a residential flat building. In early 2012 Stockland submitted a development application to Wollongong City Council (Council) which took advantage of the height and density controls provided for in the Concept Plan. The design exceeded the number of storeys permitted by the Concept Plan but complied with the overall height control expressed as a RL. That height was necessary to achieve a density that was economically viable. The application was not supported by Council as it was deemed inconsistent with the Concept Plan approval in terms of the number of storeys. Stockland considers that a lower height and therefore lower density is not economically viable.



Stockland also put Lot 607 (the apartment site) to the market however there were no offers that were commercially acceptable to Stockland. Given the above factors Stockland is pursuing a residential subdivision for single lot housing as there is demand in the market for this product.

If a commercially viable development is not possible, then in effect the opportunity for housing choice would not be realised in any event.

## 1.2 Further justification for Lots 619-622 departing from 15m lot width control

Building envelopes have been applied to each of these proposed lots to demonstrate that they are capable of being developed. DFP has been involved with other residential subdivisions in the West Dapto release area of the Wollongong local government area. Narrow lots of 10-11m width have been approved in certain locations and Council has accepted the narrow product lots. In the case of 10m wide lots, a zero lot line was proposed along one boundary in other approved subdivisions. It is proposed that the 10m lot have a zero lot line along the southern side boundary and therefore a 900mm wide easement for access and maintenance on the adjoining allotment will be necessary. The proposed subdivision plans have been amended accordingly and are provided at **Attachment 1**.

**Attachment 2** is a building envelope plan for a single storey dwelling house on each lot. Whilst Wollongong DCP 2009 does not apply to the subject land, DFP is aware that Council uses the DCP as a guide for residential development for housing in Sandon Point. Chapter B2 – Residential Subdivision of the DCP requires (in certain circumstances) a rectangular building envelope with minimum dimensions of 15 metres (depth) x 10 metres (width). The building envelopes illustrated in **Attachment 2** have a width of 10m and a depth of 21m being greater than 15m being required under Council's DCP. The building envelope shows a garage wall on the southern boundary. The zero lot line shown in **Attachment 1** has been applied to the full length of proposed lot 619 to provide flexibility in where the wall on a boundary might occur. The indicative envelope is larger than Council's DCP requirement, to better reflect the footprint of a single storey 3 or 4 bedroom house. If a two storey house was constructed it is likely that the building depth would be less than that shown on these envelopes. The envelopes demonstrate that a rear yard of approximately 12m depth is achievable which is of sufficient proportions to provide functional private open space. The house designs are most likely to have living areas at the rear directly accessible to the open space. The location of the living zones and private open space at the rear will provide the dwellings with an eastern orientation for the main living zones and open space. The open space will have an eastern and northern orientation. Whilst there will always be potential for overshadowing from a neighbouring house to the north, the width of the allotments allow the 6m x 4m private open space to be located on the southern side of each lot away from shadow effects of neighbouring houses and this area will be able to achieve at least 3 hours solar access.

## 1.3 Building Envelope for Lot 610

Lot 610 has a width of over 20m. At least 13m is available clear of the uncontrolled fill. Even taking into account a southern (side) boundary setback of 1m, this leaves an available building area of 12m wide and 24.5m in depth clear of the uncontrolled fill. This is sufficiently large to accommodate the 10m x 15m envelope required under the Chapter B2 of the Wollongong DCP 2009 and provide sufficient flexibility for the siting of a house.

## 1.4 Building Envelope for all lots for other housing forms (e.g. dual occupancy)

The R3 zone includes a wide range of residential accommodation that is permissible in the zone. The types of residential accommodation that are permissible with development consent (i.e. not complying development) includes:

- attached dwellings;



- dual occupancies;
- dwelling houses;
- multi dwelling housing;
- residential flat buildings;
- semi-detached dwellings; and
- shop top housing;

To provide envelopes for this number of housing forms on each lot is an onerous requirement. The Wollongong DCP 2009 only requires building envelopes for detached housing. It does not require envelopes for other forms of residential development. The DCP does however contain controls regarding the minimum lot frontage required for certain residential development other than detached dwelling houses. For instance:

- For dual occupancy development a site width of 15m (for the full length of the site) is required and only 2 lots (609 and 610) satisfy this control.
- For attached dwelling and multi-unit housing a site width of 18m is required and there are no lots that meet this control.
- For residential flat buildings a site width of 24m is required and there are no lots that meet this control.

The application is not seeking approval for these other forms of housing. It would be up to future applicants to demonstrate the suitability of the each lot (or amalgamated lots) for a specific building/housing type.

### **1.5 Findings of Douglas Partners Report regarding Lot 606**

Lot 606 is not part of the subdivision or this s75W application and it is an existing lot that has already been registered. The additional drawing at **Attachment 1** shows Lot 606 for contextual purposes.

### **1.6 Should Lot 606 be included on the plans?**

As noted above lot 606 is an existing registered lot and therefore is not shown on the subdivision plan. The additional drawing at **Attachment 1** shows Lot 606 for contextual purposes.

## **2.0 Wollongong City Council (Council)**

Council agrees with the comments made in the DFP application regarding the application of a 0.5:1 FSR and 9m building height control to be specified on each lot through a S.88B instrument. Council requests that it be nominated as the party to vary, release or modify the instrument. An amendment to Condition C8 is already proposed to reflect this requirement.

In addition Condition C9 requires easements or restrictions required by the approval to nominate Council as the authority to vary, modify or release/extinguish the easements or restrictions. Therefore the approval already addresses Council's comment.

### **2.1 Concern that s.88B might not be applicable and therefore the MD SEPP should be amended**

The application notes that amending the zoning and height controls is preferable, but we understand that the Department does not have an appetite for amendments to the MD SEPP given the forthcoming amendments to the NSW planning legislation.



Clause 26 to Part 24 in Schedule 3 of the MD SEPP relates to suspension of covenants, agreements and instruments. Clause 26 provides that any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose. However, the clause does not apply to a covenant imposed by the Council or that the Council requires to be imposed.

We understand from the Department's email of 14<sup>th</sup> March 2014 that the Department is of the view that Council has not imposed or required to be imposed a s.88B instrument. In such a case Clause 26 would operate to the extent that a s88B instrument which restricts FSR, building height or the zero lot line would not apply to future DAs on the proposed lots. Condition C8 of the Project Approval includes a range of s88B and s88E instruments required to be notated on the created titles. This condition (and others) was imposed by the Department not Council. The s.75W Modification application proposes an amendment to Condition C8 to add further restrictions as to user on the title of the proposed lots to set a maximum FSR and building height and we see no reason to doubt that they would be successfully implemented as they have been for all other lots created in the subdivision.

The expansion of Condition C8 to include further s.88B instruments was intended to complement the modification to Condition A4 – Built Form Controls of the Concept Plan approval. The proposed modification to Condition A4 – Built Form Control will introduce a condition to require single housing to be subject to a maximum FSR of 0.5:1 and building height of 9m. Therefore future DAs for a single dwelling on the proposed lots will need to comply with that requirement. Section 149(3) of the EP&A Act allows a Council to include advice in a Planning Certificate to communicate other relevant matters affecting the land of which it may be aware. If the Department does not agree with the expansion of Condition C8 to include further s.88B instruments, then we suggest that the Department also recommend to Council that they include a suitable notation on s149 Planning Certificates for these lots.

In terms of the additional easement relating to the zero lot line, this is not readily addressed through a notation on a s149 Planning Certificate and in our opinion it should be addressed through a s.88B instrument and is in line with condition C8(f) which already exists on the approval. The proposed modification is simply more specific.

This Response to Submissions has not amended the originally proposed modification to Condition C8 and the Department is at liberty to either include or exclude the additional subclauses to Condition C8.

### **3.0 NSW Office of Water**

No comments made.

### **4.0 Fisheries NSW**

No comments made.

### **5.0 EPA**

#### **5.1 Land use conflict**

The use of the land will remain residential and there is no conflict in land uses.

#### **5.2 Water quality (stormwater construction & sewage management)**

No change. The WSUD, stormwater and sewer have all been constructed as part of the subdivision. The only works required will be establishing stormwater connections to the individual lots.



### 5.3 Noise (Road, Rail, Construction)

Road, rail and construction noise have all been addressed in the conditions and commitments of the Project Approval. No changes are necessary to those conditions or commitments as a consequence of this modification.

### 5.4 Contaminated Land

Contaminated land has been addressed in the Project Approval and a site audit statement has been issued as set out in the Modification application.

### 5.5 Waste management

The subdivision works are completed. However, the conditions of Project Approval will continue to apply for any site works that might be required. Future housing will be subject to their own Waste Management Plan.

### 6.0 NSW Trade and Investment (Crown Lands)

No comments made.

### 7.0 NSW Trade and Investment (Mineral Resources)

No comments made.

### 8.0 Office of Environment & Heritage (environment)

No comments made.

### 9.0 RMS

No objection raised.

### 10.0 Jill Walker (2 submissions)

| Issue                                                                            | Response / Action                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Land should be rezoned from R3 to R2, otherwise apartments still permissible     | This has been discussed in the s.75 modification report. DoPI will not entertain a change in zoning.                                                                                                                                                                                                                                                                                                                       |
| Issues of Commission of Inquiry, Charles Hill report & Part 3A approval process. | Past assessments by the Commission of Inquiry and Charles Hill report have determined the suitability of the land for urban development. The state significant listing of the site and the Part 3A applications were all valid planning processes available at that time. The land is zoned to permit urban development and the proposed subdivision into residential lots and the proposal is consistent with the zoning. |
| Withdrawal of apartment DA without notification.                                 | The withdrawing of the DA for the apartment development has no bearing on the s.75W Modification.                                                                                                                                                                                                                                                                                                                          |
| Some of the proposed lots are large enough for apartments                        | The lots on their own are not conducive for apartments. Wollongong DCP 2009 (which is used by Council as a guide for residential flat building development in                                                                                                                                                                                                                                                              |



| Issue                                                      | Response / Action                                                                                                                                                                                                         |
|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                            | Sandon Point requires a minimum site width of 24m. Sites would need to be amalgamated to achieve sufficient site area, and this is unlikely to be cost effective.                                                         |
| Contamination                                              | The land has a site audit statement.<br><br>Geotechnical constraints are addressed in Douglas Partners report.                                                                                                            |
| Affordable Housing                                         | Former Housing Department submissions are not relevant to this application. Social Housing such as secondary dwellings, boarding houses would still be permissible and SEPP (Affordable Rental Housing) would also apply. |
| Traffic impacts                                            | Traffic has been addressed in the Concept Plan & Project Applications. There is no increase in traffic impacts.                                                                                                           |
| Access to & from the site – only Wrexham Road is available | Access is available and workable. The north-south link road is not affected by the proposed modification, and traffic demands for detached housing compared to an apartment development will be lower.                    |
| Sewage pumping station                                     | The site is not within the catchment of Tramway lagoon. Any issues relating to the pumping station are not as a consequence of this modification.                                                                         |

### Ms Karen Gough

| Issue                                                                                | Response / Action                                                                                                           |
|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Social impacts (lack of affordable housing, parks, social facilities/infrastructure) | These matters were all addressed in the Concept Plan application. The proposed s75W modification does not increase demands. |
| Site access (Wrexham Road)                                                           | Wrexham Road is the only operational access point. Traffic impacts will be less for 16 lots compared to 80 apartments.      |
| Safe pedestrian/cycle access to McCauleys Beach                                      | This is the subject of a separate DA currently being assessed by Council.                                                   |
| Environmental impacts                                                                | The subdivision works to the creek lines and tree removal has been approved as part of the Project Approval.                |
| Keeping place                                                                        | This is a matter that is outside of the Concept Plan/Project application and subject to separate planning processes.        |
| Concept Plan expires on 19 December 2013                                             | The Concept Plan has been acted upon and does not lapse.                                                                    |
| Community objects to flats                                                           | The proposed subdivision will significantly reduce (if not remove) the possibility of apartments being proposed.            |
| Lot 607 should be revegetated and dedicated as a park.                               | This would be inconsistent with the Concept Plan approval. In the same manner that Council considers the                    |



| Issue | Response / Action                                                                                                         |
|-------|---------------------------------------------------------------------------------------------------------------------------|
|       | residential subdivision inconsistent with the Concept Plan, a park would similarly be inconsistent with the Concept Plan. |

#### **Peter Marsh**

The letter submitted by Mr Marsh contains the same issues raised in Jill Walker's submission and have been addressed above.

#### **Gary Caines**

This submission raised issues of Aboriginal heritage. Aboriginal heritage has been addressed in the previous Concept Plan and Project approval documentation. This modification does not affect the findings of previous reports or the suitability of the land for residential subdivision.

#### **Joseph Davis**

Comments are raised in relation to a "toxic hot spot" on the eastern part of the subject site. A site audit statement has been issued on 12 December 2011 for the land and the land has been vacant since that time. The site audit statement certifies that the land is suitable for "*residential with accessible soil, including gardening (minimal home-grown produce contributing less than 10% fruit and vegetable intake), excluding poultry*". A copy of the site audit statement is attached to the modification application.

#### **Name Withheld # 1**

The writer comments that it is disappointing that a children's playground was not included in the subdivision. Neither the Concept Plan nor the Project application incorporated a children's playground and it is not proposed to incorporate a playground in this part of the subdivision which is immediately adjacent to Thomas Gibson Park.

#### **Name Withheld # 2**

The submission appears to relate to Modification No. 1 which involved the removal of condition B50 and amendment of condition E31 which are not proposed to be amended further by Modification No. 4. The writer also appears to be unaware that the construction works are completed.

### **11.0 Preferred Project**

Arising from the review of the submissions it is proposed to make one minor change to the proposed modification. This is the inclusion of a zero lot line to proposed Lot 620 and the associated designation of an easement on proposed Lot 619 to allow for maintenance access. A copy of the amended plans is included at **Attachment 1**. The details of the s88B instrument will be provided with the subdivision certificate.

Two minor amendments will need to be made to the Project Approval to insert a reference to the plan at Attachment 1 and include a subclause relating to the creation of an easement for access and maintenance. The amendments are set out below.

#### **Schedule 2, Part A – Administrative Conditions**

##### **A3 – Project in Accordance with Plans and Documents**

The Project unless otherwise provided by the conditions of this approval, will be undertaken in accordance with the Environmental Assessment dated September 2007 prepared by Don Fox Planning Pty Ltd and all appendices except where varied by:

- No change
- No change
- No change



- As amended by the following drawings

| Drawings Prepared by Cardno Forbes Rigby Pty Ltd – Stage 06 McCauleys Beach |          |                                               |          |
|-----------------------------------------------------------------------------|----------|-----------------------------------------------|----------|
| Drawing No                                                                  | Revision | Name of Plan                                  | Date     |
| SKO9                                                                        | P5       | Proposed Stage 6 Layout Plan                  | 30/01/14 |
| SK11                                                                        | 1        | Lot 607 Bulk Earthworks and Stormwater Layout | 01/10/13 |
| SK12                                                                        | PO       | Lot 607 Soil and Water Management Plan        | 14/0913  |

## Schedule 2, Part C – Prior to Issue of Subdivision Certificate

### C8 – Section 88B/E Instruments

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

- a) no change
- b) no change
- c) no change
- d) no change
- e) no change
- f) no change
- g) no change
- h) no change
- i) no change
- j) no change
- k) no change
- l) A restriction as to user on the title of proposed lots 607-622 as indicated on Drawing SK11 requiring future dwelling houses to comply with the following built form controls:
  - (i) A maximum floor space ratio of 0.5:1; and
  - (ii) A maximum height of building of 9mThe definitions of floor space ratio and height of building are as per SEPP (Major Development) 2005.
- j) A 900mm wide easement on the title of proposed lot 619 for access and maintenance to benefit proposed lot 620 to allow for a zero lot line along the southern boundary of proposed lot 620.

Should you have any enquiries in relation to this letter please do not hesitate to contact David Kettle on 9908 6933.

Yours faithfully

**DFP PLANNING CONSULTANTS**

**DAVID KETTLE**  
**DIRECTOR**

dkettle@dfpplanning.com.au

Reviewed: \_\_\_\_\_

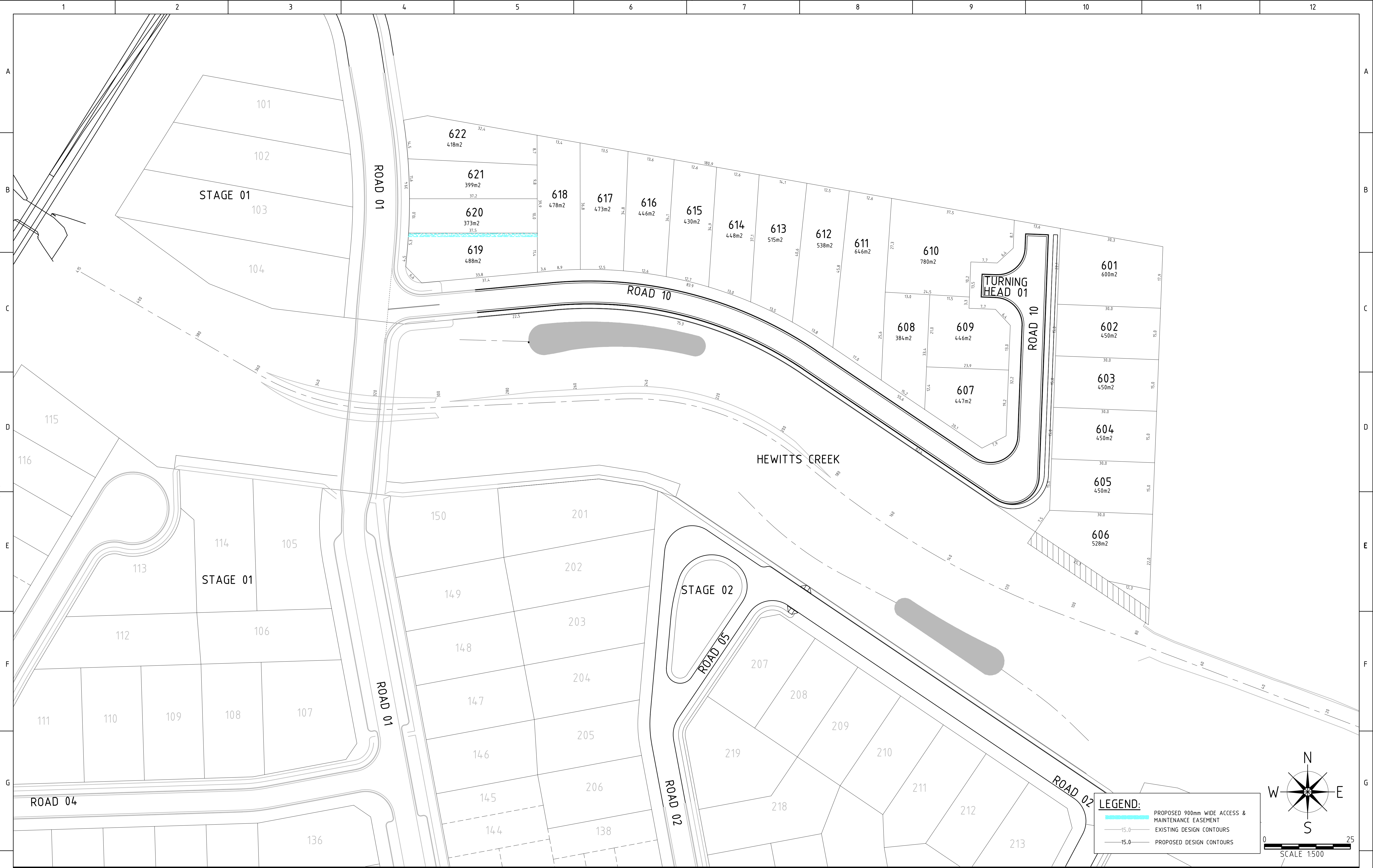
Attachment 1: Proposed Stage 6 layout plan showing zero lot line and easement location.  
Attachment 2: Indicative building envelopes for Lots 619 to 622



planning consultants

# ATTACHMENT I

DO NOT SCALE IF IN DOUBT ASK



| REV |  |  |  |  | DATE     |  |  | BY  |  |  | APP. |  |  | DETAILS             |  |  | DRAWING STATUS              |  |  | SCALE:           |  |  | PROJECT TITLE                 |  |  | DRAWING TITLE    |  |  |
|-----|--|--|--|--|----------|--|--|-----|--|--|------|--|--|---------------------|--|--|-----------------------------|--|--|------------------|--|--|-------------------------------|--|--|------------------|--|--|
| P5  |  |  |  |  | 30/01/14 |  |  | MAH |  |  | KJM  |  |  | EASEMENT LINE ADDED |  |  | DESIGN BY JMA 28/05/12      |  |  | (on A1 Original) |  |  | STAGE 06                      |  |  | PROPOSED STAGE 6 |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  | DRAWN BY JMA 28/05/12       |  |  | 1:500            |  |  | MCCAULEYS BEACH               |  |  | LAYOUT PLAN      |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  | DRAFTING CHECK CJG 28/05/12 |  |  | HEIGHT DATUM     |  |  | for                           |  |  | Project No.      |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  | DESIGN CHECK                |  |  | AHD              |  |  | STOCKLAND DEVELOPMENT PTY LTD |  |  | Com No.          |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  | FINAL APPROVAL              |  |  |                  |  |  |                               |  |  | Drawing No.      |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  |                             |  |  |                  |  |  |                               |  |  | REV              |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  |                             |  |  |                  |  |  |                               |  |  | 106062           |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  |                             |  |  |                  |  |  |                               |  |  | 11               |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  |                             |  |  |                  |  |  |                               |  |  | SK09             |  |  |
|     |  |  |  |  |          |  |  |     |  |  |      |  |  |                     |  |  |                             |  |  |                  |  |  |                               |  |  | P5               |  |  |



planning consultants

# ATTACHMENT 2

# INDICATIVE BUILDING ENVELOPES

