

**RESPONSE TO SUBMISSIONS**

**47-50 THE ESPLANADE, ETTALONG BEACH**

**S4.55(1A) AMENDMENT OF INSTRUMENT OF APPROVAL MP**

**09\_0121**



**Report By: Planning Lab**

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## Summary

This Response to Submissions (RTS) is prepared in support of an application pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The NSW Department of Planning and Environment (DPE) approved Project Application number MP 09\_0121 on 24 November 2010 under Part 3A of the EP&A Act. Consent was given for the development of a 7-storey mixed use residential building with ground floor retail uses. MP 09\_0121 has subsequently been modified to increase the number of apartments within the building and make minor alterations and additions.

The Department received a total of 12 submissions on the modification comprised of comments from Central Coast Council (who did not object) and 11 public submissions in objection. In response to the 11 public submissions, this application is now modified to:

1. delete the proposed alterations to the existing bathroom located within in the residential strata plan in specific response to the 11 objectors' request, and
2. only construct a new public bathroom within the area of the currently approved retail tenancy 6 ('retail 6') on the eastern side of the building (as originally proposed) located wholly within the retail stratum plan. There were no objections to this aspect of the application.

The proposal remains substantially the same development as the approved development and can be assessed under Section 4.55(1A) as the impacts are very minor.

The benefit of the proposal is the provision of an extra public bathroom at ground level to serve the ground floor retail tenancies. The location of the new bathroom is within an active through site link with multiple surrounding tenancies and passive surveillance from The Esplanade making it a safe and practical location.

The proposal results in the provision of additional bathroom facilities and is without any negative environmental impact. The proposed changes are not inconsistent with the Gosford LEP 2014 or Gosford DCP 2013. The proposal is recommended for approval.



## The Site and its Context

As shown on figures 1 and 2, the site is located in the suburb of Ettalong Beach, some 20km south of Gosford, at the southern end of the Woy Woy Peninsula on Brisbane Water. The subject site is legally described as Lot 2 of DP 1249007. The address of the subject site is 47 - 50 The Esplanade, Ettalong Beach. The site fronts The Esplanade and is bounded by Memorial Avenue to the west and an unnamed service road to the north. Ettalong Beach is immediately south of the site.

Construction of the development approved under MP 09\_0121 and its subsequent modifications has been completed. The site is now occupied by a 7-storey apartment building with ground level retail and basement parking. The site is relatively flat, having at most a slight fall south toward Ettalong Beach. The site was previously occupied by a large ground level car park.

Adjacent to the site, on Memorial Avenue, is the Ettalong Diggers Club and Mantra Resort; a mixed-use development offering a combination of hotel accommodation, hospitality and retail activities. East of the site is the Ettalong Beach Motel; a two-storey mixed-use development offering hotel accommodation and hospitality space. Beyond is a variety of uses, including older style low-density local retail and commercial development, as well as long-term vacant land.



*Figure 1: Aerial image of the site taken during construction (Six Maps)*

An extract from the relevant Subdivision Plan is shown below, as follows:

- [illegible]

## Site History

### **MP 09\_0121**

On 24 November 2010 approval was granted for:

*“a mixed use development over two stages. Stage 1 includes a seven storey mixed use residential apartment building with basement parking. Stage 2 includes a two storey retail/commercial building with at grade parking”.*

### **MP 09\_0121 Modification 1**

On 24 March 2016 approval was granted for:

*“Stage 1 of the approved Project Application is to be modified including fourteen (14) additional apartments (increasing from 45 to 59 apartments). The total GFA increases by 271.64m<sup>2</sup> and the FSR increases from 2.5:1 to 2.63:1. The proposed height is reduced in height by 1.1m to 22.4m. The external and internal design of the mixed use building has been amended accordingly”.*

### **MP 09\_0121 Modification 2**

On 4 October 2016 approval was granted to modify a minor transcription error in Schedule 2, Condition A2 of the previous conditions of consent.

### **MP 09\_0121 Modification 3**

On 8 September 2017 approval was granted for:

*“Minor additions and alterations to the approved mixed use development”.*

This included the relocation of an accessible toilet on the Ground Level.

### **MP 09\_0121 Modification 4**

On 19 September 2018 approval was granted for:

*“minor additions and alterations to the approved non-trafficable roof area and the approved plant room to create 2 private terraces for apartments 601 and 602”.*

### **MP 09\_0121 Modification 5**

On 6 May 2019 approval was granted for Extensions and additions of apartment balconies, minor internal alterations to the layout of the ground floor and extension and minor reconfiguration of the Level 6 apartment terraces. This application reconfigured the arrangement of the Ground Level accessible bathroom.

This application now seeks only to construct a new public bathroom on the eastern side of the Ground Level with entry through a door on the eastern elevation. The new bathroom is located within the area that is currently designated as Retail 6. This area is within in an activated through site link which has passive surveillance from The Esplanade and the passing trade generated by the surrounding retail tenancies. Locating a public toilet in this area is appropriate as it is accessible for customers of the tenancies located on the eastern side of the building.





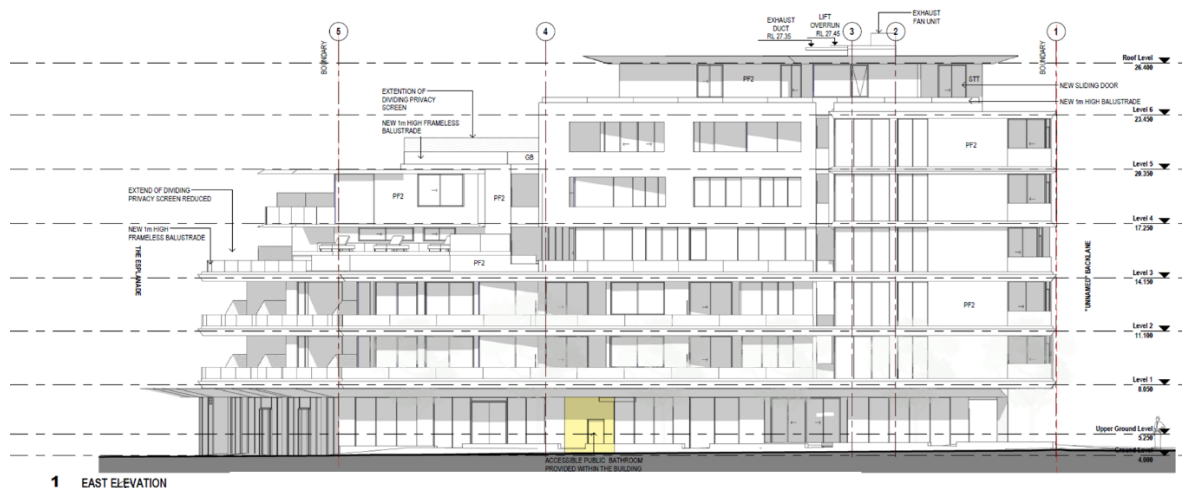


Figure 3 - Proposed change viewed from the eastern elevation

## Section 4.55(1A) of the Environmental Planning and Assessment Act

This application is made in compliance with Part 4 of the EP&A Act which allows for modification of State Significant Developments under Section 4.55(1A). Section 4.55(1A) states:

*(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

The application seeks only to construct an additional public bathroom at the ground level and remains substantially the same. The proposal is of minimal environmental impact and will result only in a minor change to the building's eastern elevation to facilitate the bathroom door.

## State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development

SEPP 65 (as amended on 17 July 2015) applies to residential flat buildings, mixed-use developments with a residential component and shop top housing. This policy applies when these types of development are at least 3-storeys excluding basements and contain at least 4 dwellings.

The aim of the policy is to improve the design quality of residential flat developments and ensure that developments are socially and environmentally sustainable, are a long-term asset to their neighbourhood, achieve the urban planning and design policies for their locality, are better designed to improve their appearance, contribute positively to the streetscapes and public spaces they are near, and provide for demand, resident's needs, amenity, safety and security. SEPP 65 is supported by the Apartment Design Guide (ADG) which must be considered by consent authorities when determining Development Applications.

The proposal does not relate to any residential areas of the building and will have no impact on the amenity of the units. Therefore, the provisions of SEPP 65 and the ADG are not relevant to this application.

## Gosford Local Environmental Plan 2014

As demonstrated in the table below, the proposed modifications are not inconsistent with the Gosford Local Environmental Plan 2014.

Aspect	Control	Assessment
<b>Zoning</b>	B2 Local Centre	No change is proposed to the approved retail and residential uses.
<b>Height</b>	11.5m	No change to the approved height is proposed.
<b>Floor Space Ratio</b>	1:1	No change to the approved FSR is proposed. The proposal will not modify the building's FSR.
<b>Heritage</b>	Not heritage listed.	Not applicable.
<b>Flood Planning</b>	Site not identified.	Not applicable.
<b>Acid Sulfate Soils</b>	Class 3	This modification will not alter the proposed best practice management for acid sulfate soils being implemented under previous approvals.

## Gosford Development Control Plan 2013

The proposal is shown in the table below to be consistent with the relevant controls and objectives of the Gosford DCP 2013.

Aspect	Detail	Assessment
<b>4.2.6.1 Building Facades</b>	<b>Objectives</b> <ul style="list-style-type: none"> <li><i>To ensure that buildings are of a high architectural quality that contribute to the desired character of the centre.</i></li> <li><i>To ensure that building facades are of an appropriate scale, rhythm and proportion that respond to the desired character of the centre.</i></li> <li><i>To ensure building elements are integrated into the overall building form and design.</i></li> <li><i>To employ a variety of architectural design techniques that disguise the scale and bulk of multi storey buildings.</i></li> </ul>	<b>Complies.</b> <p>The proposed modification represents a continuation of the existing building design. The new eastern bathroom will provide access through a single swinging door which is not inconsistent with the existing rhythm of the façade at ground level.</p>
<b>4.2.6.4 Active Street &amp; Active Laneway Frontages</b>	<b>Objectives</b> <ul style="list-style-type: none"> <li><i>Maintain and enhance the established "main street" retail environment, particularly by concentrating pedestrian activity along existing retail frontages.</i></li> <li><i>Encourage a new secondary retail frontage along "active" laneways in proportion to market demand for retail and business floorspace.</i></li> <li><i>To have ground floor facades that enhance the public domain, amenity and safety.</i></li> <li><i>Co-ordinate the design of shopfronts, business signs and the landscaping of public areas according to "main street" principles.</i></li> <li><i>To have street frontages suitable for active business uses.</i></li> <li><i>To promote pedestrian activity in the public domain.</i></li> <li><i>Conceal on-site parking and services from street frontages.</i></li> </ul>	<b>Complies.</b> <p>The development creates a partial active laneway which has three retail tenancies along its length. The proposed bathroom will be located within this through site link and will support these retail tenancies.</p> <p>The bathroom entrance will be clearly visible from the Esplanade which will ensure that it remains safe for public use even outside of busy times.</p>
<b>4.2.6.7 Materials and Finishes</b>	<b>Objectives</b> <ul style="list-style-type: none"> <li>Buildings that are consistent with the palette of materials and finishes within the area to achieve a coherent streetscape.</li> <li>Use of materials and finishes that contribute to the articulation of overall façade design.</li> </ul>	<b>Complies.</b> <p>The new bathroom will match the materiality of the building.</p>

## Ettalong Beach Village Centre – Desired Character

The development contributes to the desired character of the Ettalong Beach Village Centre by being a mixed-use development providing high levels of amenity to occupants and a high-quality interface with the public domain. This modification will not have a substantive impact on the proposal's fulfilment of the desired future character.

## Environmental Planning and Assessment Act 1979 S4.15 Assessment

### **Section 4.15(A) Relevant Planning Instruments**

The relevant planning instruments are the Gosford LEP 2014 and the Gosford DCP 2013. They have been considered in this SEE.

### **Section 4.15(B) Other Impacts of the Development**

The relevant matters for consideration are addressed throughout this report.

### **Section 4.15(C) Suitability of the Site for the Development**

The modification relates to a building which has been constructed. Residential and retail uses remain appropriate for the site.

### **Section 4.15(E) Public Interest**

The provision of a public bathroom is in the public interest.

## Conclusion

The proposed amendment to the application arising from public submissions is minor and without discernible adverse impact. There is no change to the Gross Floor Area or height of the building and the outer appearance of the building will not be significantly altered.

The development, as amended in this Response to Submissions, is substantially the same development as the approved development and may be determined in accordance with Section 4.55(1A) of the Environmental Planning and Assessment Act. The proposed development remains consistent with provisions and objectives within Gosford Local Environmental Plan 2014 and the Gosford Development Control Plan 2013.

The public bathroom is relocated to the eastern side of the building where it will be adjacent to an activated through site link and can be seen by passing cars and pedestrians on The Esplanade making it a safe and practical location. The proposal is generally in the public interest and has no adverse environmental effects. It is therefore recommended for approval.