

ASSESSMENT REPORT

Section 75W Modification Mixed Use Development (MP09_0121 MOD 1) Ettalong Beach

1. INTRODUCTION

This is an assessment of a request to modify Project Approval MP09_0121 for a mixed use development at the corner of Memorial Avenue and the Esplanade at Ettalong Beach.

The request has been lodged by Cirillo Planning Pty Ltd on behalf of Longbeach Living Pty Ltd (the Proponent), pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The request seeks to modify Stage 1 of the approval by reconfiguring the residential component of the development, resulting in 14 additional units.

2. SUBJECT SITE

The site is located on the southern edge of the Ettalong Beach town centre in the local government area of Gosford. The site has frontage to The Esplanade to the south and Memorial Avenue to the west (**Figure 1**).



Figure 1: Location Plan

The site comprises two land holdings known as Stage 1 and Stage 2 (**Figure 2**). The two sites are separated by a six metre wide public laneway owned by Gosford City Council.

The Stage 1 site is the subject of this modification application. The Stage 2 site on the northern side of the laneway remains unaltered from the original approval.



Figure 2: Aerial View of Site (source: Nearmaps)

Immediately to the south of the site is Ettalong Beach fronting Brisbane Waters. To the west of the site is the 'Mantra Resort' building. The 'Mantra Resort' is the largest and tallest building on the Peninsula and has a height of nine storeys. The building is a 'Ziggurat' form resulting in a building that steps away from the beach as the height of the building increases. The 'Mantra Resort' dominates the Peninsula skyline as it is substantially taller than the surrounding one and two storey development within the area.

A modest painted brick and tile two storey motel is located immediately to the east. To the north of the site lies the core commercial area of Ettalong Beach. This area is characterised by one and two storey commercial and retail buildings. A large public car park is located to the north-west of the site and is known as the War-Memorial Club Site.

The four storey 'Ettalong Beach Hotel' building is the only other building in the immediate vicinity of the site that is greater than two storeys in height. The building is located approximately 60 metres to the north-east of the site.

3. APPROVAL HISTORY

On 24 November 2010, the then Minister for Planning granted Project Approval (MP09_0121) for the construction of a Mixed Use Development in two stages including:

- Stage 1 – construction of a 7 storey mixed use residential building; and
- Stage 2 – construction of a 2 storey commercial / retail building.

The approved development is shown in **Figure 3**.



Figure 3: Photomontage of the approved development

4. PROPOSED MODIFICATION

On 25 November 2015, the Proponent lodged a section 75W modification application seeking approval to reconfigure the residential component of the mixed-use building (Stage 1) which includes:

- fourteen additional apartments, including a change in the apartment mix;
- deletion of gym and community room (replaced by additional apartments);
- relocation of the swimming pool from Level 2 to the open terrace area at the south eastern corner of Level 3 (previous spaces on Levels 1 and 2 replaced by apartments);
- rationalisation of basement and ground floor parking level layouts including relocation of waste rooms, plant rooms, and storage areas;
- associated reduction in total parking spaces for Stage 1 from 81 to 78 spaces and increase in bicycle parking from 6 to 20 spaces;
- changes to external design and materials; and
- changes to conditions relating to groundwater and on-site stormwater retention.

The proposed amendments would increase the gross floor area (GFA) of the building by 135m². This would increase the floor space ratio (FSR) from 2.59:1 to 2.65:1. The proposed modifications would reduce the height of the overall development by 0.65 metres.

The proposed modifications are illustrated in **Figures 4 and 5**.



Figure 4: Photomontage of the proposed development (source: Proponent)



Figure 5: Proposed Western Elevation to Memorial Avenue (approved building outline shown in blue)

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former Section 75W of the Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Planning Assessment Commission (PAC) may determine the application under delegation.

6. CONSULTATION

The Department:

- publically exhibited the proposal for 14 days;
- placed an advertisement in The Central Coast Express Advocate;
- made the modification application publicly available on its website;
- consulted with Gosford City Council; and
- wrote to surrounding landowners about the proposed modification.

Submissions were received from Gosford City Council (Council), the Local Member for Gosford Kathy Smith MP, the Umina / Ettalong branch of the Australian Labour Party, The Community Environment Network Group, as well as six submissions from other members of the public.

Council does not object to the proposed modification, noting the proposed floor space, scale, built form and urban design of the modified proposal is generally acceptable and supported. Council however raised the following comments for consideration:

- the northern elevation should be amended to include some landscaping to contribute to the streetscape and soften the appearance of blank walls to the laneway;
- to improve energy efficiency, the proposal should consider incorporation of photovoltaic cells, solar hot water and screening to east and west facing windows;
- improvements to landscaping should be considered including footpath upgrading and incorporation of a different species for street trees; and
- three of the proposed units have poor amenity and should be deleted.

Public and Community Group Submissions

Of the nine submissions, eight were in the nature of an objection and one submission was in support of the proposed modification. Key issues raised in the submissions include:

- non-compliance with Council's height and FSR development controls;
- overdevelopment generally;
- overshadowing of The Esplanade and foreshore park;
- wind tunnel impacts;
- insufficient car parking;
- reduction in communal open space and communal facilities resulting in reduced amenity;
- visual impacts;
- view loss impacts;
- the approval has lapsed and an extension to the time for implementation of the approval should not be granted; and
- the application should not be determined and / or the PAC should determine the application as the original Proponent is the subject of an ICAC enquiry into political donations.

Response to Submissions

The Proponent prepared a Response to Submissions, addressing the issues raised in submissions and incorporating a number of design refinements including:

- reducing the size and amending the design of the balcony structures at Levels 4 and 5 to reduce their visual prominence;
- reconfiguration of the floor plans at Levels 1 and 2 to ensure all units have a frontage to the external façade to address amenity concerns; and
- incorporation of additional landscaping to the rear setback area.

7. ASSESSMENT

The Department considers the key issues associated with the proposed modification are:

- FSR and Height;
- Urban Design;
- Internal Residential Amenity; and
- Validity of Approval.

All other issues are considered in **Table 1** below.

7.1 FSR and Height

Public submissions raised concern about overdevelopment of the site and in particular, non-compliances with Council's FSR and height controls. The Department notes Council's new Local Environmental Plan (LEP) 2014 sets a maximum FSR for the site of 1:1 and a maximum height of 11.5 metres.

The approved Stage 1 development has a floor space of 5,797m², resulting in a floor space ratio (FSR) of 2.59:1 and a height of 23.5 metres. The Department's assessment of the original proposal was based on merit and considered against the Peninsular Urban Design Strategy and Council's Draft LEP 2009 which, at the time, envisaged higher density development at the site. The Draft 2009 LEP prescribed an FSR of 2:1 and a maximum height of 17 metres (approximately 5 storeys).

While the original proposal exceeded Council's Draft 2009 LEP controls, the Department's assessment concluded the proposed height and FSR were acceptable given the proposal would not result in any unreasonable amenity impacts and importantly, it would respond to and provide an appropriate height transition from the nine storey Mantra Resort located immediately to the south of the site.

The modified proposal seeks approval to slightly increase the GFA of the approved development by 135m² to 5932m². This would increase the FSR from 2.59:1 to 2.65:1 or by approximately 2%. The overall height of the building would be reduced by 0.65 metres from 23.5 metres to 22.85 metres.

The additional floor space arises from the conversion of the indoor pool area at levels one and two to residential units. The only external change to the apparent scale of the building is associated with increased balcony areas at the upper floor levels. However, to ensure the proposal maintains a similar scale compared to the approved development, the Department requested the Proponent to reduce the visual prominence of the upper level balconies. In response, the Proponent increased the setback and amended the design of the balconies on levels 4 and 5. The Department is satisfied these changes would successfully reduce the prominence of the balconies and the building would retain a similar scale compared to the approved development.

Despite the proposed increase in FSR, the Department is supportive of the proposal given the increase in FSR is minor (approximately 2%), the building height has been marginally reduced and the proposal would retain a similar overall building envelope compared to the approved development. In addition, the proposal is unlikely to result in any additional amenity impacts in terms of overshadowing, view loss or wind impacts (as discussed later in **Section 7.5** of the report). The Department also notes Council does not object to the proposal and considers the density and scale of the modified building provides an appropriate response to its context.

The Department's assessment therefore concludes that the proposed FSR and height is acceptable.

7.2 Urban Design

The proposal makes a number of changes to the external design of the building, including a new palette of materials and finishes to provide a more contemporary design. Changes to façade materials, balconies and balustrading and fenestration can be seen in **Figures 3 and 4**.

Council advised it was supportive of the design, noting a number of desirable attributes, including the active street fronts, parking hidden within the building, use of continuous curved balconies, and creation of a suitably scaled podium.

However, Council raised a concern with the design of the northern elevation facing the laneway which incorporates only blank walls and roller shutters. Council suggested the proposal should be amended to include some areas of landscaping to contribute to the streetscape and to soften the appearance of the blank walls.

In response to Council's concerns, the Proponent amended the plans to incorporate landscaping to the rear footpath adjacent to the laneway. The Department considers the landscaping results in an improvement to the presentation of the building to the rear laneway. However, the Department also notes that the approved scheme incorporated windows facing onto the laneway from the two retail tenancies at either end of the laneway. The modification seeks to delete the windows, resulting in reduced visual interest and reduced activation and casual surveillance of the laneway. The Department therefore considers that the windows should not be deleted and has recommended a condition requiring the windows to be reinstated.

Subject to the additional landscaping and incorporation of additional windows to the rear laneway, the Department is satisfied that the proposed modifications result in an improved outcome in terms of the design of the building and its presentation to the surrounding streets.

Overall, the Department is satisfied that the changes would result in a more contemporary building with improved architectural merit.

7.3 Internal Residential Amenity

The proposed modifications include internal reconfigurations to the layouts of the residential units at each level. In particular, the communal facilities have been replaced with residential units, and some larger units have been replaced with smaller units. This has resulted in the provision of 14 additional units within the approved building envelope.

The residential amenity of the proposed new units has been assessed considering the provisions of State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development) and the accompanying Apartment Design Guide (ADG).

Following an initial assessment, concerns were raised by Council and the Department with regard to the amenity of some proposed internal units at the lower levels which would have limited outlook, privacy and solar access.

To address these concerns, the Proponent subsequently reconfigured the floor plans so that all units at levels 1 and 2 have a frontage to the external facade of the building, ensuring good levels of solar access, ventilation and reasonable levels of privacy. It is also noted that while concern was raised by Council in relation to a similar unit at level 3, this unit retains a very similar layout to the unit previously approved at this level. Further, the unit is not an 'internal unit' in that it has access to views and outlook over the communal pool area and the waterway, and would retain a similar level of amenity as the previously approved unit at this location.

An assessment of the residential amenity of the updated modification request found that the proposed development generally complies with key design criteria of the ADG in that all units meet minimum unit size, balcony size and dimensions (other than one balcony), ceiling heights, natural cross ventilation, solar access, storage and accessibility requirements.

Areas of non-compliance relate to communal open space; the size of one balcony, room depths, and building separation and visual privacy. These are discussed as follows.

Communal Open Space

The ADG provides that communal open space equivalent to 25% of the site area should be provided. The proposal includes 414m² of communal open space comprising an internal courtyard on Level 1 and external swimming pool and deck area on Level 3. This equates to 18.5% of the site area.

The Department notes this is an improvement on the level of communal open space provided under the original approval which included a 213m² internal courtyard, equivalent to 9.5% of the site area. However, the approved development also included some internal communal areas, including internal pool, gym and common room with total floor areas of 355m² (16% of site area). While not technically communal open space as the spaces are not outdoors, these areas would have provided additional communal facilities for the occupants of the building.

The Department considers that despite the non-compliance with the communal open space requirements, and the deletion of the internal facilities, the modified proposal provides an acceptable level of communal open space to meet the needs of future residents, noting:

- the quantum of outdoor communal space would be improved;
- the amenity of the outdoor open space is significantly improved with the Level 3 terrace and pool area having good levels of solar access and the benefit of panoramic views over the waterway;
- as discussed below, subject to an amendment to one balcony, all units have generous private open spaces; and
- the development benefits from being directly adjacent to the public open space of the beach and foreshore park.

Balcony Size

The modified proposal generally incorporates larger balconies for the residential units compared to the approved development, resulting in improved residential amenity.

Of the 59 proposed units, only one balcony does not meet the minimum size recommendations of the ADG. The three bedroom unit at the north-west corner of Level 5 has a balcony size of 9m², but is otherwise identical in design to the other units at this location on the other floors, which have balconies of 12.6m². The Department considers that it would be reasonable for the fifth floor unit to adopt the same floorplate as the units below, providing a balcony of 12.6m² which would meet the ADG requirements and provide a better level of utility and amenity to serve the needs of a three bedroom unit. With an internal floor area in excess of 98m², the unit would still retain a generous internal area, despite the increased balcony size. A condition is therefore recommended requiring the size of the balcony to be increased. Subject to this modification, the proposal would provide generous levels of private open space for all units.

Room Depths

The ADG provides that in open plan layouts, the maximum habitable room depth should be 8 metres from a window. Although many of the units exceed this requirement, the back of the kitchen in all units is within 9 metres of a window. This minor variation from the ADG design criteria is considered acceptable as the combined living areas all have generous widths (of at least 4 metres) and benefit from large floor to ceiling windows and openings which would provide good levels of natural light and ventilation, despite the depths of the rooms. The

Department further notes that many of the units in the approved development had kitchens in excess of 10 metres from a window. Therefore the proposed modification would result in an improvement to internal amenity compared to the approved development.

Building Separation and Privacy.

To provide adequate levels of privacy, the ADG recommends that habitable rooms and balconies should be separated by 12 metres (for up to 4 storeys) and by 18 metres (for between 5 and 8 storeys)

The proposed modification includes a reduction in the internal separation between the eastern and western wings of the development at levels 1 to 4 by up to 3 metres. Internal building separation at these levels would be between 9 metres (level 4) and 11.5 metres (levels 1 to 3).

Despite the non-compliance, the Department considers that the proposal would provide adequate levels of privacy between the units, noting that:

- tree planting at level 1 would provide landscape screening between the lower level units;
- lower level units are oriented with their primary living areas and balconies to the outer face of the building and incorporate only highlight windows to the bedrooms adjacent to the internal courtyard; and
- upper level units have also been designed to minimise overlooking, orienting living areas and balconies to the south and south-west and otherwise incorporating only highlight windows to the other rooms on the internal facades.

7.4 Validity of Approval

A number of submissions raised concern about the validity of the current approval. Specifically, that the approval had lapsed as more than five years had passed since the application was approved, and as no apparent physical works had commenced on the site.

To address this issue, the Proponent provided copies of legal advice prepared on behalf of the previous owner and a letter from Gosford City Council. The legal advice indicated that some preliminary works had been carried out, including ground water investigation, acid sulphate soil testing, and survey works, which legally constituted 'physical commencement'. Gosford City Council reviewed the legal advice and provided a letter to the then developer that confirmed that the approved development had been physically commenced.

Based on this advice, the Department is satisfied physical commencement has been demonstrated. Therefore the approval remains valid and can be modified as sought.

7.5 Other Issues

Table 1: Assessment of Other Issues

Issue	Consideration	Recommendation
<i>Overshadowing</i>	<ul style="list-style-type: none"> • Concern was raised in public submissions regarding the overshadowing impacts associated with the proposal on The Esplanade and the adjoining foreshore park. • Following the revisions made to the plans reducing the size of the upper level balconies (as discussed in Section 7.1) the overshadowing impacts have now been reduced compared to the approved development. • The modified development now results in an improved outcome for sunlight access to the Esplanade and the adjoining foreshore park and is therefore acceptable. 	No additional conditions or amendments necessary.
<i>View Impacts</i>	<ul style="list-style-type: none"> • Concern was raised in public submissions regarding potential view loss impacts. • The Department acknowledges that the minor changes to the building line and balcony arrangements may encroach into the periphery of some neighbouring views. • However, given the proposed changes are of a minor nature and the 	No additional conditions or amendments necessary.

<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
	<p>development generally retains a similar overall building envelope compared to the approved development, the Department is satisfied that the proposal is unlikely to result in any additional view loss impacts.</p> <ul style="list-style-type: none"> The Department also notes that adjoining sites would continue to enjoy views of the waterway in a southerly direction. 	
<i>Wind Impacts</i>	<ul style="list-style-type: none"> The potential for wind tunnel impacts was raised in public submissions. The Department considers that as the proposal adopts a similar building line to the approved development and retains stepped and articulated façades, the modification is unlikely to result in any additional wind impacts compared to the approved development. 	No additional conditions or amendments necessary.
<i>Parking and Traffic</i>	<ul style="list-style-type: none"> Public submissions raised concern with the lack of parking provided on the site. At the time the original development was approved, under Gosford Councils <i>Development Control Plan (DCP) 111 – Car Parking</i>, the proposal required 111 spaces. 93 spaces were incorporated in the development, equating in a shortfall of 18 spaces (6 space shortfall in Stage 1 and 12 space shortfall in Stage 2). To offset the shortfall of parking spaces, a contribution was levied in accordance with <i>Contributions Plan No 72: Car Parking Ettalong Beach</i> to fund the provision of public car parking in the vicinity of the site. The Department notes that under the Gosford Council's <i>DCP 2013</i>, the proposal would now require less car parking spaces. Under Council's new controls the proposal would require 100 spaces (including 76 parking spaces for Stage 1 and 24 spaces for Stage 2). The modified proposal incorporates 90 spaces (78 in Stage 1 and 12 in Stage 2), resulting in an overall shortfall of 10 spaces (with all shortfall spaces attributable to Stage 2). Having regard to the above, the Department considers that the level of parking proposed is acceptable, noting that: <ul style="list-style-type: none"> The proposal seeks to modify Stage 1 only and sufficient on-site parking is provided within Stage 1 to meet Council's requirements; The proposal does not seek approval to modify Stage 2 and the Department notes the shortfall in car parking spaces for the overall development has been reduced compared to the original approval; The Department also notes the shortfall of car parking spaces for Stage 2 would continue to be offset in accordance with Council's planning controls through payment of contributions towards public parking in the vicinity of the site. In this regard, existing Condition B4 has been updated to reflect the revised shortfall in parking; and The Additional bicycle parking spaces would help reduce the demand for, and provide an alternative to private vehicle use. The Department also notes that Council raised no concerns about car parking. With regards to traffic the proposed modification is likely to result in a net increase of four vehicle trips per hour in peak periods. The Department is satisfied that the surrounding road network has sufficient capacity to accommodate this minor increase in traffic. 	Condition B4, setting out contributions payable for the shortfall is parking recommended to be updated.
<i>Public Domain</i>	<ul style="list-style-type: none"> Council raised concern regarding proposed changes to the approved public domain works including the retention of existing street trees which do not provide adequate visual separation or shade. The Department notes that the approved landscape plans incorporated footpath upgrades and replacement of the street trees with more appropriate species. These requirements are set out in existing Condition B7 of the approval. The Department shares Council's concerns and considers the original public domain improvements should be retained as they would make a positive contribution to the streetscape in keeping with Council's landscape masterplan for Ettalong. The Department therefore recommends that Condition B7 be amended to ensure the original public domain improvements are retained. 	Condition B7 has been amended to ensure the approved public domain improvements are retained.

Issue	Consideration	Recommendation
<i>Section 94 Contributions</i>	<ul style="list-style-type: none"> The proposed modifications change the contributions payable under Council's Section 94 Contributions plans. The Council has provided an updated calculation of contributions based on the revised number of units and car parking spaces. Conditions B3 and B4 have therefore been updated to reflect the revised calculations in accordance with Council's requirements. 	Conditions B3 and B4 have been updated to reflect the revised calculations.
<i>Energy and Water Efficiency</i>	<ul style="list-style-type: none"> Gosford Council advised that to improve energy efficiency, the Proponent should consider incorporation of photovoltaic cells, solar hot water and screening to east and west facing windows. The modified application is accompanied by an updated BASIX certificate which demonstrates that the proposal would still meet energy efficiency requirements without the need for photovoltaic cells or solar hot water. As such the Department is satisfied the modified proposal does not require photovoltaic cells or solar hot water. The Department notes that the original approval incorporated shading to all east and west facing windows. The Department considers this energy efficiency measure would improve residential amenity and therefore should be retained in the modified scheme. The modification also seeks to delete an existing requirement for the provision of a rainwater tank and on-site stormwater retention system. Given the updated BASIX certificate demonstrates that the proposal would meet water efficiency requirements no objection is raised to the deletion of the condition. 	<p>An additional condition requiring the incorporation of shading devices for east and west facing windows has been recommended.</p> <p>An existing condition requiring provision of on-site retention for re-use is recommended to be deleted.</p>
<i>Groundwater and Climate Change</i>	<ul style="list-style-type: none"> The Proponent has requested that Condition B2 be deleted, which requires further investigation of the impacts of sea level rise on groundwater. The Department considers it is appropriate that the potential impacts of climate change / sea level rise on the proposed development continue to be considered to ensure appropriate mitigation measures are included in the construction design. However, the Department recommends that the requirements of Condition B2 should be incorporated into Condition B14, which also requires further groundwater and geotechnical investigation assessment. 	Condition B2 is recommended to be deleted and condition B14 is recommended to be amended to incorporate consideration of sea level rise impacts on ground water.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate on the basis that:

- the changes to the overall built form are minor and the proposal would retain a similar building envelope compared to the approved development;
- the proposal is unlikely to result in any additional amenity impacts in terms of overshadowing, view loss or wind impacts;
- the proposal allows for more efficient internal layouts with good levels of residential amenity;
- the proposal provides for a more contemporary external design and makes a positive contribution to the streetscape; and
- adequate on-site parking would be provided.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

9. RECOMMENDATION

It is RECOMMENDED that the Planning Assessment Commission as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **approves** the application under section 75W, subject to conditions; and
- **signs** the notice of modification (**Appendix A**).



Anthony Witherdin
Acting Director
Modification Assessments



Anthea Sargeant 18/3/16
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7409

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7409

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7409

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7409