

16 May 2019

Dear Councillor,

You are kindly requested to attend the **Ordinary Meeting** of Wingecarribee Shire Council to be held in **Council Chambers, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 22 May 2019** commencing at **3.30pm**.

Yours faithfully

Ann Prendergast  
**General Manager**

SCHEDULE

3.30pm	Council Meeting begins
5.30pm	Questions from the Public to be read out
7.40pm	Closed Council

# RUNNING SHEET

## ORDINARY MEETING OF COUNCIL

held in the Council Chambers, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 22 May 2019 at 3.30pm.

Time	Item
3.30pm	<b>Opening of meeting</b> – please remind all present that mobile phones must be switched off before the meeting and that the meeting is tape recorded and the Council Chamber now has 24 Hour Video Surveillance.
	<b>Acknowledgement of Country – Cllr P Nelson</b>
3.32pm	<b>Opening Prayer – Reverend Jeremy Tonks, Anglican Exeter/Bundanoon</b>
3.35pm	<ul style="list-style-type: none"><li>• <b>Apologies</b> Cllr G McLaughlin</li><li>• <b>Adoption of Previous Minutes</b> Ordinary Meeting of Council held on 8 May 2019</li><li>• <b>Business Arising</b></li><li>• <b>Declarations of Interest</b></li><li>• <b>Mayoral Minute</b></li><li>• <b>Public Forum</b></li><li>• <b>Motion to move into Committee of the Whole - Cllr P Nelson</b></li><li>• <b>Visitor Items</b><ul style="list-style-type: none"><li>• Item 10.1- Planning Proposal to amend WLEP 2010 with regard to land at Odessa Street Berrima as supported in the Wingecarribee Local Planning Strategy 2015-2031</li><li>• Item 10.2- Planning Proposal to amend WLEP 2010 with regard to land at Nathan Street Berrima as supported in the Wingecarribee Local Planning Strategy 2015-2031</li><li>• Item 10.3 - Mittagong Development Control Plan - Site Specific Provisions for Affordable Housing Proposal</li></ul></li><li>• <b>Council Reports</b></li></ul>
5.30pm	<b>Motion to move into Council and the Mayor resumes the Chair</b>
5.30pm	<b>Questions from the Public</b> <b>Continuation of Council Reports</b> <b>General Business Questions</b> <b>Questions with Notice</b> <b>Notices of Motion</b>
7.40pm	<b>Closed Council</b>
8.00pm	<b>Meeting Closed</b>

Ann Prendergast  
General Manager



## Business

1. **OPENING OF THE MEETING**
2. **ACKNOWLEDGEMENT OF COUNTRY**
3. **PRAYER**
4. **APOLOGIES**
5. **ADOPTION OF MINUTES OF PREVIOUS MEETING**  
Ordinary Meeting of Council held on 8 May 2019
6. **BUSINESS ARISING FROM THE MINUTES**
7. **DECLARATIONS OF INTEREST** ..... 1
8. **MAYORAL MINUTES**
9. **PUBLIC FORUM**

### **COMMITTEE OF THE WHOLE**

10. **VISITOR MATTERS**  
**OPERATIONS, FINANCE AND RISK**  
Nil  
**CORPORATE, STRATEGY AND DEVELOPMENT SERVICES**
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  - 10.2 Planning Proposal to amend WLEP 2010 with regard to land at Nathan Street Berrima as supported in the Wingecarribee Local Planning Strategy 2015-2031 ..... 24
  - 10.3 Mittagong Development Control Plan - Site Specific Provisions for Affordable Housing Proposal ..... 46
11. **EN BLOC MOTION**
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  - 12.3 Berrima Marketplace All Abilities Playground Upgrade and Draft Masterplan ..... 67
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**Mayor to resume chair at 5.30 pm**

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### **17. CORRESPONDENCE FOR ATTENTION**

Nil

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Nil

### **19. QUESTIONS WITH NOTICE**

Nil

### **20. NOTICES OF MOTION**

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### **21. GENERAL BUSINESS**

Nil

### **22. CLOSED COUNCIL**

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#### **22.1 Request for Refund of Payment under Former Development Servicing Plans**

*This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.*

#### **22.2 Legal Report - Closed Council**

*This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(a) as it contains personnel matters concerning particular individuals (other than councillors), under clause 10A(2)(e) as it contains information that would, if disclosed, prejudice the maintenance of law and under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this*

*information in Open Council.*

**23. RESUMPTION OF OPEN COUNCIL**

Resumption of Open Council

Adoption of Closed Session

**24. ADOPTION OF COMMITTEE OF THE WHOLE**

**25. MEETING CLOSURE**

## Our Mission, Our Vision, Our Values

### OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

### OUR VISION

**Leadership:** *'An innovative and effective organisation with strong leadership'*

**People:** *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

**Places:** *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

**Environment:** *'A community that values and protects the natural environment enhancing its health and diversity'*

**Economy:** *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

### OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

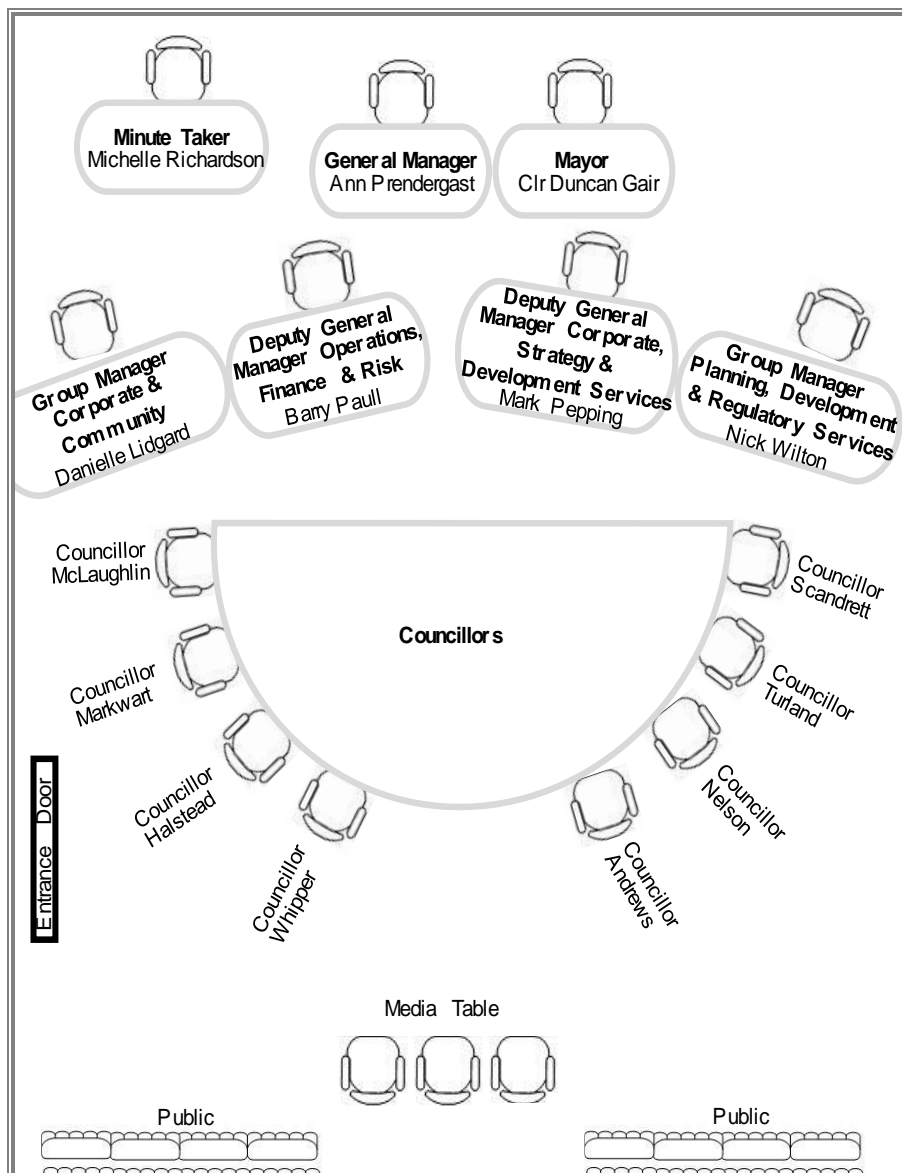
## Council Chambers

### Recording of Ordinary and Extraordinary Meetings of Council

As authorised by the *Local Government Act 1993*, Wingecarribee Shire Council records the proceedings of the Ordinary and Extraordinary Meetings of Council to ensure accurate transcription of resolutions.

Recording of meetings by members of the media is permitted only for the purpose of verifying the accuracy of any report concerning such meeting. Broadcasting of any sound recording is not permitted. Video recording is also not permitted. No member of the public is to use any electronic, visual or vocal recording device or instrument to record the proceedings of Council without prior permission of the Council.

The Council Chamber now has 24 Hour Video Surveillance.



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## ACKNOWLEDGEMENT OF COUNTRY

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I would like to acknowledge the Traditional Custodians of this land and pay my respect to Elders both past and present. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.

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## APOLOGIES

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### **Request for Leave of Absence – Councillor G McLaughlin**

Councillor G McLaughlin intends to be absent from all Council commitments on Wednesday, 22 May 2019, including the Ordinary Meeting of Council and Briefing Sessions that day, for personal reasons.

Under Section 234 of the *Local Government Act 1993* and Clause 235A of the *Local Government Regulations 2005* leave of absence can be granted to a Councillor with Council approval.

Council's consideration of the request for leave of absence is sought.

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## DECLARATIONS OF INTEREST

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101/3, 101/3.1

The provisions of Chapter 14 of the *Local Government Act 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest and the reasons for declaring such interest must be disclosed as soon as practicable after the start of the meeting.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions or voting on that matter and further require that the member vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

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## **COMMITTEE OF THE WHOLE**

### **10 VISITOR MATTERS**

#### **CORPORATE STRATEGY AND DEVELOPMENT SERVICES**

##### **10.1 Planning Proposal to Amend WLEP 2010 With Regard To Land At Odessa Street Berrima As Supported in the Wingecarribee Local Planning Strategy 2015-2031**

<b>Reference:</b>	<b>PN 1700650, 5901/52</b>
<b>Report Author:</b>	<b>Senior Strategic Land Use Planner</b>
<b>Authoriser:</b>	<b>Coordinator Strategic Land Use Planning</b>
<b>Link to Community Strategic Plan:</b>	<b>Provide a mixture of housing types that allow residents to meet their housing needs at different stages of their lives and support affordable living</b>

#### **PURPOSE**

The purpose of this report is to consider the public exhibition of a Planning Proposal to progress amendments to WLEP 2010, including the subject land, as supported by Council in the relevant Precinct Plan of the Wingecarribee Local Planning Strategy 2015-2031.

#### **VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.



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## RECOMMENDATION

1. **THAT** in accordance with s3.36 of the *Environmental Planning & Assessment Act 1979* the proposed amendment to Wingecarribee Local Environmental Plan to include Lots 194-195, 198-200, 202-211, Part 213-214 and Lot 212 DP 751252, being 4-6 Odessa Street Berrima, in Schedule 1 (Additional Permitted Uses) for the purposes of amalgamation into a maximum of four (4) lots with one (1) dwelling house on each lot, be finalised.
  
2. **THAT** the provisions of the Berrima Landscape Conservation Area in the Rural Lands Development Control Plan (DCP) be amended to:
  - (i) Include the proposed building envelope map which forms Attachment 1 to this report as the basis on which any future Development Application for subdivision be considered.
  
  - (ii) Require a Vegetation Management Plan to be prepared and submitted with any future Development Application for subdivision.
  
  - (iii) Require a Heritage Impact Statement to be prepared for any proposed development of a lot resulting from this proposal.
  
3. **THAT** the proponent and submission makers be informed of Council's decisions 1 and 2 above.

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## REPORT

### **BACKGROUND**

During the preparation of the Wingecarribee Local Planning Strategy (WLPS) 2015-2031, submissions were received by Council from owners seeking to amend Wingecarribee Local Environmental Plan LEP (WLEP) 2010 to permit development of their land. The subject site was one of those. The land had previously been considered by Council during drafting of WLEP 2010 at which time it was recommended by Council that the matter be considered during preparation of WLPS 2015-2031.

The land is located to the south of Berrima Village as indicated in **Figure 1** below. The site comprises seventeen (17) individual lots in DP 751252, identified as Lots 194-195, 198-200, 202-211, Part 213-214 and Lot 212, forming 4-6 Odessa Street Berrima.

The land covers a total area of some 13.62 hectares (ha) composed of two (2) approximately equal portions based to either side of Burwan Street, an unmade road which runs through the centre of the land with some 6.83 ha located to the west of Burwan Street and 6.79 ha to the east. The lots do not have individual dwelling entitlements because the minimum lot size of the land under WLEP 2010 is 40 ha, the land being zoned E3 Environmental Management.

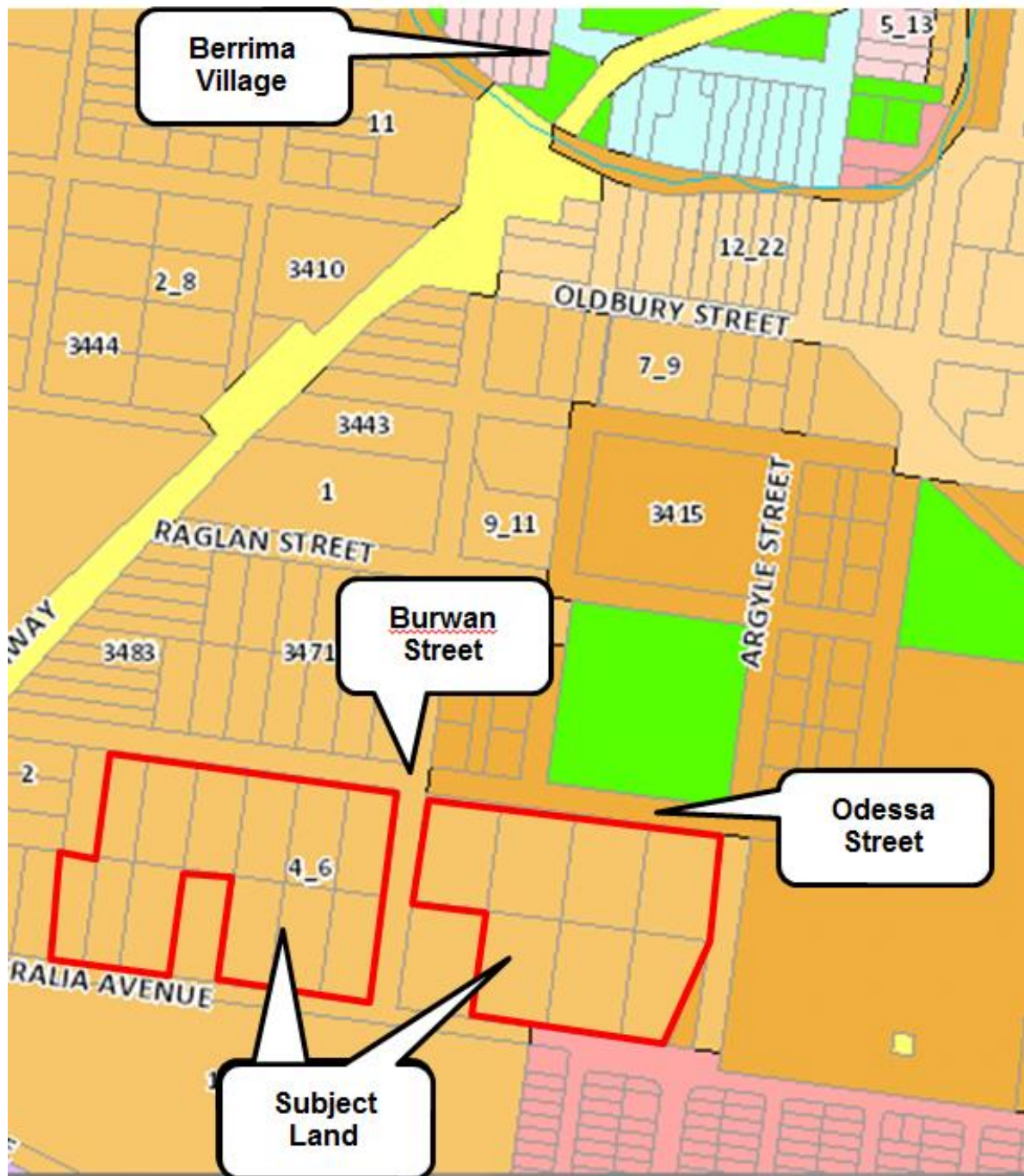


Figure 1 – Location and Configuration of the Subject land

The intent of the proposed amendment to WLEP 2010 is to enable the consolidation of the 17 individual lots into four (4) through the mechanism of Schedule 1 (Additional Permitted Uses). This amendment will allow an application to be considered by Council to create three (3) additional dwelling entitlements, noting that one of the lots already has a dwelling on it. The proposed site amalgamation and dwelling envelope map, as exhibited, is shown at **Figure 2** below (and enlarged as **Attachment 1** to this report.)





Figure 2 – Proposed Lot Amalgamation and Building Envelopes of the Subject Land  
red boundary identifies subject land, blue boundary identifies lot amalgamations.)

(NB:

As **Figure 3** below indicates, the site is located on the south eastern edge of the Berrima Landscape Conservation Area, but is not located within the Berrima Conservation Area which applies only to the village of Berrima itself. The role of the Berrima Landscape Conservation Area (BLCA) is considered later in this report.

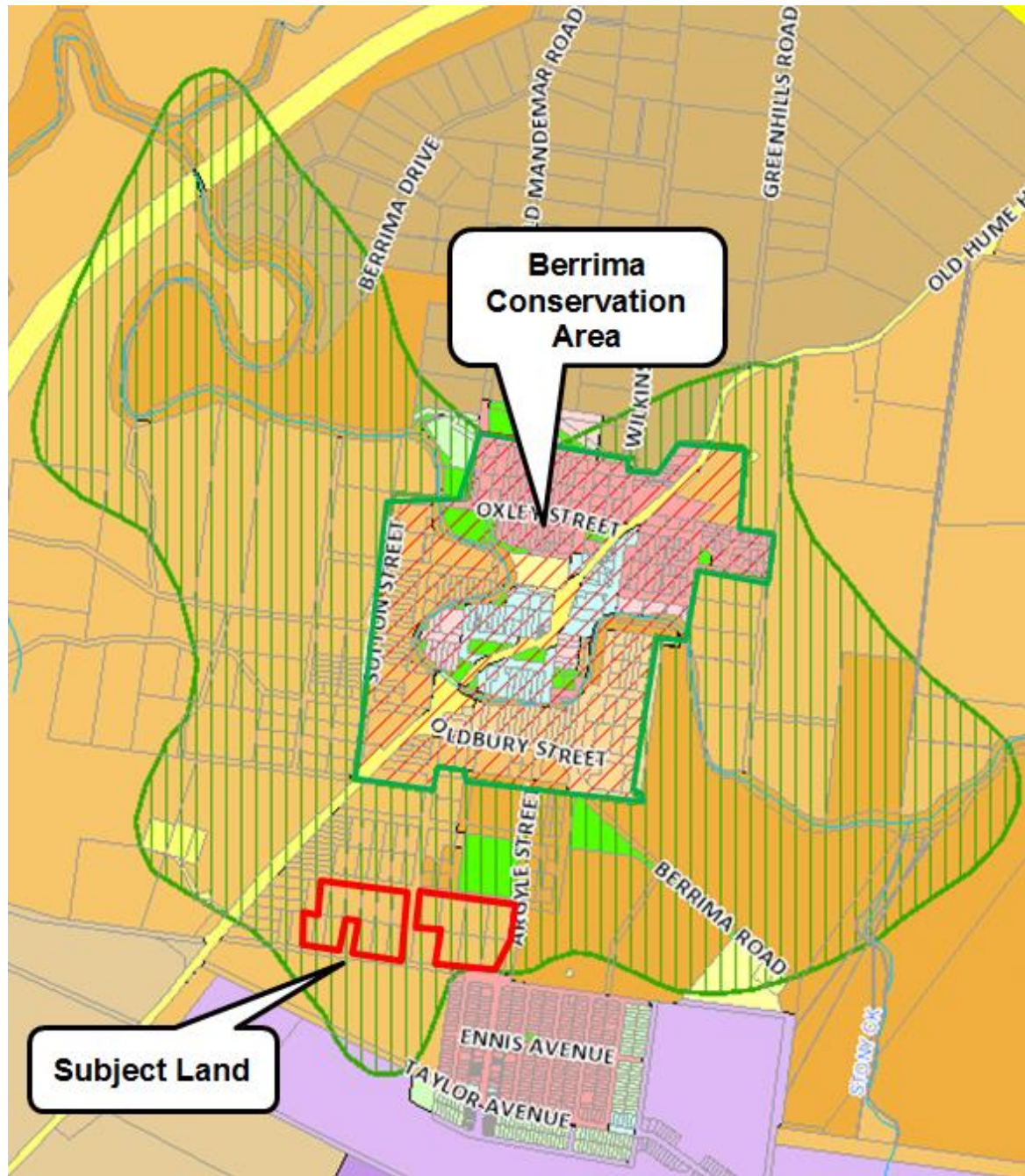


Figure 3 – Location of the Subject land with regard to the Berrima Conservation Area (red hatch) and the Berrima Landscape Conservation Area (green hatch).

The initial application to amend WLEP 2010 as described above was made in 2007 during the drafting of WLEP 2010 at which time Council resolved to not support the application at that time, but to further consider it as part of the Wingecarribee Local Planning Strategy (WLPS). Consequently, during the preparation of WLPS 2015-2031, a Planning Proposal was lodged for Council consideration.

On 24 June 2015 Council unanimously resolved to include the subject site in the Berrima Precinct Plan of Draft WLPS 2015-2031 for community consultation. It is noted that this application to the WLPS was one of some 59 formal requests received by Council for inclusion in the final WLPS. After investigation, assessment and consideration of all sites,



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thirteen (13) sites were supported for inclusion in the relevant draft Precinct Plan of WLPS 2015-2031 for consultation purposes.

Following consultation, which included further inspection and consideration by Council, Council unanimously resolved on 23 March 2016 to include the subject site in the Berrima Precinct Plan of the adopted WLPS 2015-2031.

The adopted WLPS was submitted to the (then) NSW Department of Planning & Environment for endorsement. This process included the inspection and consideration by the Department of all sites including the subject site. On 15 May 2017 the Department conditionally endorsed Council's adopted Strategy, including the Precinct Plans and all of the site specific proposals included within them.

Following Departmental endorsement of the Precinct Plans, proponents lodged Planning Proposals with Council to progress amendments to WLEP 2010. On 12 July 2017, Council resolved unanimously to include eight (8) sites from the endorsed Strategy in a comprehensive Planning Proposal to be lodged with the Department for a Gateway Determination to amend WLEP 2010. This included the subject land. The Gateway Determination was issued on 18 June 2018. The Department also authorised Council as the local plan-making authority for the Planning Proposal.

#### **REPORT**

The Gateway Determination required referral of all sites to Water NSW and the NSW Rural Fire Service (RFS) prior to community consultation occurring. Neither agency had any objection to progression of the Planning Proposal to community consultation with regard to the subject land.

The Gateway Determination also required referral of the subject land to the (then) Office of Environment and Heritage (OEH) and that *"the planning proposal shall be updated prior to community consultation to include assessment of potential visual and heritage impacts on the Heritage Conservation Area and the Landscape Conservation Area of Berrima."*

The Berrima Landscape Conservation Area (BLCA) surrounds Berrima Village and defines its visual catchment. The boundary for the BLCA was identified by the National Trust (NSW) in 1977 when it was concluded that the village's character of open farm land, mixed with natural bush, is crucial to Berrima's setting and its heritage character of an early Australian country town contained within a confined hollow with little development visible from the village itself or its approaches.

The application of the BLCA is described in the Rural Lands Development Control Plan, and has been unchanged since its initial introduction. The relevant controls are:

- a) No building is to be erected that, in the opinion of Council, will be visually prominent when viewed from the village of Berrima, its approaches or any listed heritage item.
- b) No development is to take place on the ridgelines that, in the opinion of Council, will be visually prominent when viewed from the Berrima Conservation Area, its approaches or any listed heritage item.
- c) No development is to take place on the ridgelines that will, in the opinion of Council, have a detrimental impact on the rural bushland setting of Berrima or of any listed heritage item.
- d) All new buildings and alterations to existing buildings shall be in the Georgian architectural style.

These controls emphasise that the principal purpose of the BLCA is to protect the views and vistas from the Berrima Conservation Area of the village. It is, in effect, a form of 'curtilage'

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to the village. This was the National Trust's intent and this is why the boundary of the BLCA reflects surrounding ridge lines. It is noted that these controls do not prohibit development within the BLCA.

One significant feature of the subject land is that it is an historic 'paper subdivision'. The National Trust (NSW), in its submission (reported later), notes that it does not support paper subdivisions. Council does not support paper subdivisions either. However, the reality is that they exist, and one mechanism to address them is to consider appropriate amalgamation.

Council is conscious of the potential for ongoing future development proposals over the subject land. In the past Council has had to act quickly to thwart totally inappropriate proposals. On 18 July 2014, Amendment 21 to WLEP 2010 was made to protect the subject land from its potential development for 17 dwelling houses and dual occupancies.

There is strategic merit in seeking ways to reduce these potential situations. Extensive agriculture is permitted without consent in the E3 zone while various other land uses are permitted with consent such as horticulture and viticulture. It is the nature of privately owned land that its owners want to put it to some use.

It is noted that it is legally permissible, under *Division 3.4 Environmental Planning Instruments – LEPs* of the *Environmental Planning and Assessment Act 1979* to prepare a Planning Proposal to amend WLEP 2010. Supporting the Act are Guidelines and Templates for their preparation and supporting the administration of the Planning Proposal is the Gateway Determination which clearly informs Council of what it must do in order to discharge its governance obligations.

Key to the support of a Planning Proposal, both by Council and by the Department, is the need to establish a strategic justification. No Gateway Determination is ever issued unless the Department is satisfied that these matters have been addressed to its satisfaction. The fact that it took over 12 months for the Department to assess and review all of the sites included in the comprehensive Planning Proposal confirms that careful attention was given to every site.

As stated previously, the BLCA does not prohibit residential development. The scale of the proposed development is consistent with existing development in the vicinity and the proposed dwelling entitlements are located away from identified vegetation communities. The DA process actually allows Council to apply and enforce conditions of consent including those contained in the recommendations to this report which provide a high level of protection.

Council has consistently applied the protective controls of the BCLA since they were introduced. The Wingecarribee Our Future Strategic Plan (2002) sought to constrain the town and village boundaries of the Shire long before the term 'the green between' was coined. The WLPS 2015-2031 continues that policy and this was a key justification for seeking to rely on 'infill' development within existing town and village boundaries when drafting that Strategy.

Protection of the town and village boundaries occurs primarily through the mechanisms of zoning and minimum lot size. Through WLEP 2010, the RU4 Primary Production Small Lots and E4 Environmental Living zones were applied to some of the land on the edges of towns and villages to provide separation between them and between urban and rural locations. The minimum lot size associated with these zones is generally between 2 hectares and 4 hectares.

Council has consistently maintained these controls. Several submissions to the draft WLPS sought to reduce the minimum lot size for certain RU4 and E4 zoned land, including land in

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Berrima, but they were not supported by Council. It is noted that it is a recommendation of WLPS 2015-2031 that the RU4 and E4 zones and some of their associated land uses be reviewed to ensure they remain appropriate to their objectives of protecting town and village boundaries.

Environmental protection of the Shire's natural landscapes, including vegetation within the BLCA itself, is provided through State and Federal legislation and policies as well as zoning provisions within WLEP 2010.

As **Figure 4** below indicates, apart from a small area along the eastern boundary, there is no mapped vegetation on the subject land. It is surrounded by two (2) identified Ecological Communities - Mittagong Sandstone Woodland (identified as '4' on the map) and Southern Highlands Shale Woodland (identified as '17' on the map).

Southern Highlands Shale Woodland is a Threatened Ecological Community (TEC) listed on both the State and National Registers. The Mittagong Sandstone Woodland community is not threatened or endangered.

The dispersed nature of remnant ecological communities such as these would suggest that they were originally more extensive and cohesive, but that, over time, grazing, and other land uses traditionally associated with the development of Berrima, occurred on the land around the village, damaging and, in some cases, ultimately destroying some of this vegetation. The landscape therefore, is almost certainly not in the same form it was almost 200 years ago, but has become modified during that time, in places, quite significantly.

It is noted that the proposed location of the dwelling envelopes seeks to avoid areas of 'natural bush' and that one recommendation to this report is that a Vegetation Management Plan be prepared to accompany any application to consolidate the lots.



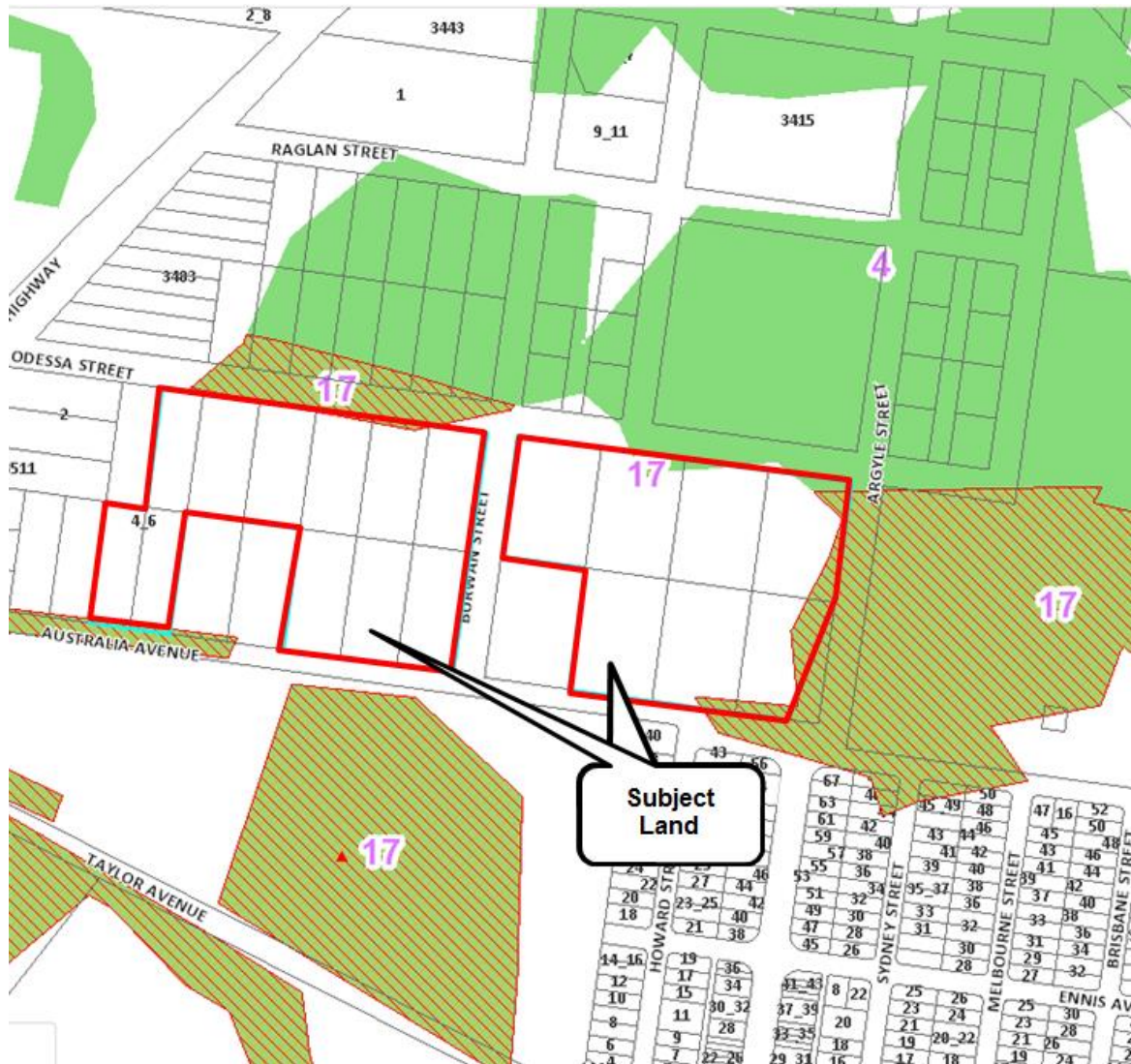


Figure 4 – Location of mapped vegetation (17=Southern Highland Shale Woodland (TEC), 4=Mittagong Sandstone Woodland – not TEC)

As required by the Gateway Determination, a Statement of Landscape Heritage Impact was prepared in October 2018 by Richard Lamb & Associates for both the subject site and a second Berrima site which is the subject of a separate report to Council. The purpose of the report, as stated in the Gateway Determination was to provide “assessment of the potential visual and heritage impacts on the Heritage Conservation Area and the Landscape Conservation Area at Berrima”.

This Statement of Landscape Heritage Impact was supplied to OEH together with other relevant documentation and OEH responded as follows: “We note the conclusions of the Statement of Landscape Heritage Impact report dated October 2018, which concludes that the proposal is unlikely to lead to any significant or new impacts on the heritage values represented by the conservation areas”.

OEH recommended that “a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated”. This recommendation is included in the recommendations to this report.

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With all referral obligations completed, community consultation with regard to the Planning Proposal involved relevant documentation being placed on public exhibition for a period of 31 days from 30 January to 1 March 2019. Exhibition material was available for inspection at Council's Customer Service Counter as well as being available to view on Council's website and at the Bowral, Moss Vale and Mittagong Libraries. Information about the Planning Proposal was also included in Council's e-newsletters which reach over 4,000 recipients.

#### Submissions

Sixty nine (69) submissions were received during the consultation period, addressing both the Odessa Street Planning Proposal and a Planning Proposal seeking site amalgamation of land at Nathan Street Berrima which is the subject of a separate report to Council.

Fifty eight (58) submissions objected to the Planning Proposal and eleven (11) supported it. It is noted that of the submissions of objection 24 specifically identified as being residents of Berrima, 10 identified as residents of Sutton Forest and 11 identified as residents of Bowral/Burradoo. The remainder did not specify an address.

Submissions included four (4) received from organisations – Berrima Residents Association, National Trust (Southern Highlands), National Trust (NSW) and the Australian Garden History Society (Southern Highlands). All objected to the Planning Proposal.

Generally, individual submissions reflect the comments contained within the four organisation submissions, therefore those organisational submissions have been used as the basis for identifying and addressing all key concerns.

It is noted that five (5) submissions specifically supported this Planning Proposal. Submissions in support cited the following reasons.

- The proposal does not constitute suburban development, but is rather a form of low key rural residential development of a type already in the area. The key is to ensure that they are suitably located and designed to minimise any impacts.
- The proposal is not a reduction in existing lot size but an amalgamation of smaller lots into larger ones and provides a small, but positive, growth opportunity in Berrima.

With regard to submissions of objection, ten (10) were from residents of Sutton Forest and expressed concern that this matter would automatically impact on land at Sutton Forest. While several properties in Sutton Forest were considered by Council during the drafting of WLPS following submission from their owners, none of them was supported. No other Planning Proposals for Sutton Forest are currently before Council.

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Key concerns expressed in the four organisation submissions are summarised below together with Council’s response.

<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>Council is required to preserve the Berrima Landscape Conservation Area under WLEP 2010.</p> <p>Just because the land cannot be seen from the main road should not allow it to be rezoned. More attention should be given to the inherent heritage and environmental value of the surrounding landscape.</p> <p>Appreciation of the Cultural Landscape Study should go beyond a visual assessment.</p> <p>To consider the importance of a landscape by sightlines from the main road misses the point of the Landscape Conservation Area.</p>	<p>The purpose of the BLCA is to protect the village of Berrima. The value of the BLCA is in its relationship to the village. Without the village, the BLCA would not exist.</p> <p>The controls for management of the BLCA, as supported by the National Trust, are to protect the views and vistas from the village. If a building cannot be seen from the village it is not a threat to the village and the purpose of the BLCA has been upheld. None of the proposed dwellings will be seen from the village or its approaches.</p> <p>Council has consistently worked to preserve the BLCA and continues to do so. The primary purpose of the BLCA is to protect the visual landscape of the Berrima village. Council’s Heritage Advisor (see later in report) has confirmed that the proposed dwelling sites on the subject land are not visible from the village or from the Old Hume Highway approaches.</p> <p>The Gateway Determination required that an <i>“assessment of the potential visual and heritage impacts on the Heritage Conservation Area and the Landscape Conservation Area at Berrima”</i> be provided to OEH prior to community consultation of the Planning Proposal. OEH did not object to the Planning Proposal proceeding, but did recommend that <i>“a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated”</i>.</p> <p>Recommendation (2) to this report addresses this requirement.</p>

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<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>The subject land is between Berrima and new Berrima and should be retained as a buffer between the two and the E3 Environmental Management zone retained.</p> <p>Housing stock in Berrima is low to protect its heritage and environmental significance.</p> <p>The subject land is adjacent to land zoned E2 Environmental Conservation.</p>	<p>The scale of proposed development is consistent with similar rural residential land between the towns and villages where minimum lot sizes of between 2-4 hectares prevail.</p> <p>It was initially intended to rezone the subject land to E4 Environmental Living with a minimum lot size of 3 hectares, however several submissions expressed concern that the land was being rezoned.</p> <p>Consequently, it is now recommended that the E3 Environmental Management zone be retained, and that Schedule 1 (Additional Permitted uses) be used to achieve site amalgamation to a maximum of four (4) lots with a dwelling entitlement on each. This change will not require re-exhibition of the Planning Proposal as there is no change to the intended outcome of the proposal.</p> <p>The E2 Environmental Conservation zone was used in drafting WLEP 2010 to apply to all non urban land in public ownership and does not necessarily indicate endangered vegetation. In this case the adjoining land is Crown Land and the vegetation within it does not constitute a mapped Threatened Ecological Community.</p>
<p>OEH did not support the Planning Proposals. OEH was not provided with advice from Council’s Heritage Advisor.</p>	<p>Council has complied with the requirements of the Gateway Determination with regard to referral to OEH. Council is satisfied that the response from OEH constitutes support for progressing the Planning Proposal.</p> <p>The Statement of Landscape Heritage Impact required by the Gateway Determination was supplied to OEH together with other relevant documentation and OEH responded as follows: <i>“We note the conclusions of the Statement of Landscape Heritage Impact report dated October 2018, which concludes that the proposal is unlikely to lead to any significant or new impacts on the heritage values represented by the conservation areas”</i>.</p> <p>OEH recommended that <i>“a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated”</i>.</p> <p>Recommendation (2) to this report addresses this concern.</p>

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<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>BRA disagrees with the planning assessment that development will have no adverse impact on heritage. Council has received expert heritage advice to the contrary from several experts.</p>	<p>Apart from the OEH 'advice' reported above, the only other 'expert heritage advice' Council has received has been from its own Heritage Advisor whose comments are provided later in this report under Internal Consultation. It is noted here that he is satisfied that no proposed dwelling site will be visible from Berrima village.</p>



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<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>Development of the land will lead to other land owners seeking similar development to achieve the same financial benefit.</p> <p>The Local Planning Strategy was an inappropriate vehicle to introduce these Planning Proposals. They should not have been supported for Gateway Determination.</p>	<p>More than one submission implies, or explicitly states, that the proponents of this proposal have gained some form of unfair advantage from Council by requesting an amendment to the LEP and, if granted, this will encourage other property owners to make similar requests with the expectation that they too will be granted.</p> <p>The term 'precedent' has been used in this context. It is noted that 'precedent' is found in both common and legal usage. In common usage 'creating a precedent' refers to 'creating an expectation'.</p> <p>Any expectation resulting from this proposal must still meet the strategic justification tests to which the proposal has been subjected and supported, both at the local and state level, regardless of the view that such assessments are 'flawed'.</p> <p>It is noted that other requests to rezone land in Berrima or to reduce the minimum lot size were not supported.</p> <p>As for 'legal' usage, at common law, precedent is a principle or rule established in a previous legal case that is either binding on, or persuasive for, a court or other tribunal when deciding subsequent cases with similar issues or facts. The Department of Planning has confirmed in writing that no legal precedent applies to the strategic assessment of a Planning Proposal. There is no right of appeal to the Land and Environment Court for a Planning Proposal.</p> <p>Should the Planning Proposal not be supported, the proponents, or a future land owner can lodge a Planning Proposal with Council. If Council resolves to not support it, the Planning Proposal can be forwarded to the Department of Planning for consideration by the Joint Regional Planning Panel (JRPP). In both cases, assessment of the Proposal would be based on strategic merit, not legal precedent.</p> <p>BRA's opinion of this strategic planning process is noted.</p>

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<b>National Trust (NSW)</b>	<b>Council Response</b>
<p>Berrima Urban Conservation Area was listed on the National Trust register in May 1976, noting that it is a valid intact historic village of great urban and regional significance the value of which is reinforced by the high quality of the surrounding natural environment.</p>	<p>The heritage value of Berrima is acknowledged by Council, as is the important supporting role of the Landscape Conservation Area. However, there is nothing in the controls for the BLCA that prohibits development.</p> <p>It is not the role of the BLCA to protect the vegetation contained within it. Other controls and legislation address the protection of Threatened Ecological Communities (TECs).</p>
<p>The National Trust does not support paper subdivisions.</p>	<p>Comments on paper subdivisions are contained within the report.</p>
<p>This is a poor location for infill development.</p>	<p>Comments on the scale of development are discussed in the report.</p>
<p>The National Trust agrees with views put to Council by the Environmental Defenders Office which do not support the proposal.</p>	<p>With regard to the Environmental Defenders Office (EDO), Council received correspondence from the EDO, noting “we act for Berrima Residents Association Inc”... and “we are instructed to write to you in relation to two planning proposals...”</p> <p>EDO itself refers to “correspondence”. Council does not consider that this correspondence constitutes independent legal advice, but rather it chronicles the history of the Planning Proposal and the concerns of its clients.</p>

<b>National Trust (Southern Highlands)</b>	<b>Council Response</b>
<p>The Proposal is a radical shift in policy.</p>	<p>Council has always applied the BLCA controls consistently and will continue to do so. The BLCA does not prohibit development, but rather seeks to ensure that any such development does not impact on the Berrima Conservation Area of the village.</p>

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<b>National Trust (Southern Highlands)</b>	<b>Council Response</b>
<p>The current landscape has remained largely undeveloped since Berrima was first established.</p>	<p>The dispersed nature of remnant ecological communities would suggest that they were originally more extensive and cohesive, but that, over time, grazing, and other land uses traditionally associated with the development of Berrima, occurred on the land around the village, damaging and, in some cases, ultimately destroying some of this vegetation.</p> <p>The landscape therefore, is almost certainly not in the same form it was almost 200 years ago, but has become modified during that time, in places, quite significantly.</p>
<p>In 2009 Council staff reiterated that the ‘green belts’ were a major element of the Wingecarribee Our Future Strategic Plan 2002, to minimise the spread of urban areas into rural and native vegetation environments.</p> <p>Not an appropriate location for infill development.</p>	<p>Council has always consistently applied the policy of containment and separation of the town and village boundaries. This policy is stated in the 2002 Strategic Plan and the 2015 Local Planning Strategy and through the application of minimum lot sizes of between 2 and 4 hectares on much of the land between towns and villages and between urban and rural areas.</p> <p>The Proposal is consistent with those development standards.</p>

<b>Australian Garden History Society</b>	<b>Council’s Response</b>
<p>Protection of the Shire’s landscapes is fundamental to the preservation of its heritage values, especially in Berrima.</p> <p>Any proposal to intensify development will be contrary to the E3 Environmental Management zone which should be retained.</p>	<p>The role of the BLCA is to protect the views from the Berrima Village. The proposed developments will not be visible from the village or approaches.</p> <p>Despite the land being zoned E3 Environmental Management, its ‘paper subdivision’ nature would benefit from some action to ensure that any future use minimises environmental degradation while remaining consistent with minimum lot sizes in other locations which support town and village separation.</p>





Comments from Council's Heritage Advisor are contained under Internal Communication and Consultation below.

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**IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

There are no implications for Council's Fit for the Future Improvement Plan resulting from this report.

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**COMMUNICATION AND CONSULTATION**

**Community Engagement**

Community engagement was undertaken as described in the report.

**Internal Communication and Consultation**

In August 2018 Council's Heritage Advisor provided the following advice based on a physical inspection of the subject land. It is noted that these comments also address a second Planning Proposal for land at Nathan Street Berrima which is the subject of a separate report.

<b>Heritage Advisor's Advice</b>	<b>Council Comment</b>
<p>"Having looked at the 8 building footprint sites I am satisfied that none will be visible from the Berrima Conservation Area itself."</p>	<p>The reference to eight (8) building footprint sites addresses the two (2) areas included in the Berrima Precinct Plan of the Wingecarribee Local Planning Strategy. The Odessa Street site is the subject of this report. The Nathan Street site is the subject of a second report to Council.</p> <p>Of the four (4) potential building footprint sites on the Odessa Street site, one (1) dwelling already exists. Therefore only three (3) new building footprint sites are being considered.</p>
<p>"I am also satisfied that all 8 building footprint sites are reasonable from the point of view of local visual impact within the Berrima Landscape Conservation Area provided the final siting, design and landscaping of the 8 dwellings and all ancillary buildings are subject to suitable DA consideration and approval."</p> <p>"Concerns regarding suitable design for dwelling, ancillary structures and landscaping can and should be addressed through the DA process."</p>	<p>Recommendation (2) to this report addresses this comment.</p>

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Heritage Advisor's Advice	Council Comment
<p>"The Planning Proposal does not give any indicative siting of subdivision boundaries for the dwellings."</p>	<p>Recommendation (2) to this report addresses this comment.</p> <p>To require more details as to setbacks and more specific building envelopes would be to pre-empt the outcome and recommendations of the Heritage Impact Statement.</p>
<p>"Because of the concern about further development, any approval on these sites should also make clear that any further subdivision for additional dwellings has been extinguished on this land by the current proposal. Otherwise future owners may well come to Council to re-subdivide".</p>	<p>Recommendation (2) to this report addresses this comment.</p>
<p>"In relation to the Odessa Street site, specific measures need to be taken to retain the current very attractive trees and vegetation within the unmade road reserve for Odessa Street. This may well require a more serpentine rather than straight road pavement."</p>	<p>This comment is noted, although no vegetation is identified as needing removal. However, to ensure protection Recommendation (2) to this report addresses this comment.</p>
<p>"I remain concerned about potential precedent effect of the current proposal. I therefore earnestly request that council use this opportunity to quantify how many more lots without dwelling rights remain in the Berrima Landscape Conservation Area at this time which could conceivably be considered for dwelling entitlement."</p>	<p>The general issue of precedent is considered in the body of the report.</p> <p>With regard to remaining dwelling entitlements, an audit of existing land holdings will not prevent any future sale of land and a rearrangement of those existing holdings. The Planning Proposal process has been documented earlier in this report.</p>

### External Communication and Consultation

External communication and consultation occurred as described in the report.

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### SUSTAINABILITY ASSESSMENT

- **Environment**

A discussion of environmental factors is contained in the report.

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- **Social**

A discussion cultural heritage factors is contained in the report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

A discussion cultural heritage factors is contained in the report.

- **Governance**

All processes associated with this matter, including submissions, have been considered in accordance with the requirements of the Gateway Determination and guidelines provided by the Department of Planning.

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### COUNCIL BUDGET IMPLICATIONS

There are no Council budget implications.

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### RELATED COUNCIL POLICY

There are no other related Council Policies.

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### OPTIONS

The options available to Council are:

#### **Option 1**

Support the recommendations of this report, namely

- 1) ***THAT** in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan to include Lots 194-195, 198-200, 202-211, Part 213-214 and Lot 212 DP 751252, being 4-6 Odessa Street Berrima, in Schedule 1 (Additional Permitted Uses) for the purposes of amalgamation into a maximum of four (4) lots with one dwelling house on each lot, be finalised.*
- 2) ***THAT** the provisions of the Berrima Landscape Conservation Area in the Rural Lands Development Control Plan (DCP) be amended to:*
  - (a) *Include the proposed building envelope map which forms Attachment 1 to this report as the basis on which any future Development Application for subdivision be considered.*
  - (b) *Require a Vegetation Management Plan to be prepared and submitted with any future Development Application for subdivision.*
  - (c) *Require a Heritage Impact Statement to be prepared for any proposed development of a lot resulting from this proposal.*
- 3) ***THAT** the proponent and submission makers be informed of Council's decisions 1 and 2 above.*



## **Option 2**

Not support the recommendation of this report to finalise the Planning Proposal by resolving as follows:

*THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan to include Lots 194-195, 198-200, 202-211, Part 213-214 and Lot 212 DP 751252, being 4-6 Odessa Street Berrima, in Schedule 1 (Additional Permitted Uses) for the purposes of amalgamation into a maximum of four (4) lots with one dwelling house on each lot, not proceed.*

## **Option 3**

Support finalising the Planning Proposal, but remove or vary the recommendations of this report to address any additional specific concerns raised in the meeting.

Option 1 is the recommended option to this report.

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## **CONCLUSION**

The adoption of the Wingecarribee Local Planning Strategy 2015-2031 was preceded by a process which extended over several years and resulted in certain sites being supported within the relevant Precinct Plan of the Strategy. The subject site was included in the Berrima Precinct Plan. Upon endorsement of those Precinct Plans by the Department of Planning, property owners were able to submit Planning Proposals to amend WLEP 2010 to implement their proposal.

The intent of the proposed amendment to WLEP 2010 is to enable the consolidation of the 17 individual lots into four (4) through the mechanism of Schedule 1 (Additional Permitted Uses). This will achieve an additional three (3) dwelling entitlements, noting that one of the lots already has a dwelling on it. It was initially intended to rezone the subject land to E4 Environmental Living with a minimum lot size of 3 hectares, however, in view of submissions seeking to retain the E3 Environmental Management zone, the use of Schedule 1 is now proposed. This change will not require re-exhibition of the Planning Proposal as there is no change to the intended outcome of the proposal.

The land is located within the Berrima Landscape Conservation Area which does not prohibit residential development. The land is also a 'paper subdivision' and as such, the lodgement of a Development Application provides Council with an opportunity to manage the ongoing use of the land. The scale of the proposed development is consistent with existing development in the vicinity and the proposed dwelling entitlements are located away from identified vegetation communities.

Council has consistently applied the protective controls of the BCLA since they were introduced. The WLPS 2015-2031 continues that policy and this was a key justification for seeking to rely on meeting Council's housing obligations through development within existing towns and villages. The original intent of this policy was to protect the existing town and village boundaries, rather than to protect the vegetation between them for which other protective legislation and policies exist.

Protection of the town and village boundaries occurs primarily through the mechanisms of zoning and minimum lot size. Under WLEP 2010 the RU4 Primary Production Small Lots and E4 Environmental Living zones apply to some of the land on the edge of town and village boundaries to provide separation between them and between urban and rural

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locations. The minimum lot size associated with these zones is generally between 2 hectares and 4 hectares. The proposed lot size for the subject land is 3 hectares.

The subject land is surrounded by two (2) identified Ecological Communities - Mittagong Sandstone Woodland and Southern Highlands Shale Woodland. It is noted that Southern Highlands Shale Woodland is a Threatened Ecological Community (TEC) listed on both the State and National Registers. The Mittagong Sandstone Woodland community is not threatened. It is noted that the proposed location of the dwelling envelopes seeks to avoid areas of 'natural bush' and that one recommendation to this report is that a Vegetation Management Plan be prepared to accompany any application to consolidate the lots.

A Statement of Landscape Heritage Impact was supplied to OEH together with other relevant documentation and OEH responded as follows: *"We note the conclusions of the Statement of Landscape Heritage Impact report dated October 2018, which concludes that the proposal is unlikely to lead to any significant or new impacts on the heritage values represented by the conservation areas"*.

OEH also recommended that *"a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated"*. This recommendation is one of five (5) recommendations to this report which seek to progress the proposal while addressing issues raised during the consultation process.

The finalisation of the proposed building envelopes on each amalgamated lot would be the subject of a Heritage Impact Statement as per Recommendation (2) to this report, however it is also a recommendation of this report that the proposed lot amalgamation and building envelope map which forms **Attachment 1** be adopted as the basis for any future subdivision application over the subject land.

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## ATTACHMENTS

1. Proposed Lot Amalgamation and Building Envelope Map





ATTACHMENT 1



Proposed Lot Amalgamation and Dwelling Envelope Map



## 10.2 Planning Proposal to Amend WLEP 2010 With Regard To Land At Nathan Street Berrima As Supported in the Wingecarribee Local Planning Strategy 2015-2031

Reference:	PN 1808020, 5901/52
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Provide a mixture of housing types that allow residents to meet their housing needs at different stages of their lives and support affordable living

### PURPOSE

The purpose of this report is to consider the public exhibition of a Planning Proposal to progress amendments to WLEP 2010, including the subject land, as supported by Council in the relevant Precinct Plan of the Wingecarribee Local Planning Strategy 2015-2031.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATIONS

1. **THAT** in accordance with s.3.36 of the *Environmental Planning & Assessment Act 1979* the proposed amendment to Wingecarribee Local Environmental Plan to include Lots 55-58 DP 751252 in Schedule 1 (Additional Permitted Uses) for the purposes of one (1) dwelling house on the resulting amalgamated lot, and to include Lots 59 and 64 DP 751252 in Schedule 1 (Additional Permitted Uses) for the purposes of one (1) dwelling house on each lot, be finalised.
2. **THAT** the provisions of the Berrima Landscape Conservation Area in the Rural Lands Development Control Plan (DCP) be amended to:
  - (i) Include the proposed lot amalgamation and building envelope map which forms Attachment 1 to this report as the basis on which any future Development Application for subdivision be considered.
  - (ii) Require a Vegetation Management Plan to be prepared and submitted with any future Development Application for subdivision of the subject land and that it specifically address Lot 64 DP 751252.
  - (iii) Require a Heritage Impact Statement to be prepared for any proposed development of a lot resulting from this proposal.
3. **THAT** the proponents and submission makers be informed of Council's decisions 1 and 2 above.



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**REPORT**

**BACKGROUND**

During the preparation of the Wingecarribee Local Planning Strategy (WLPS) 2015-2031, submissions were received by Council from owners seeking to amend Wingecarribee Local Environmental Plan LEP (WLEP) 2010 to permit development of their land. The subject land was one of those.

The subject land is located to the south west of Berrima Village as indicated in **Figure 1** below. The land comprises a total of seven (7) lots. Lots 55-58 front Shelley Street, an unmade road, to the east and cover an area of some 4.5 hectares. Lots 59 and 60 adjoin Lot 58 and front Nathan Street to the north. Lot 59 comprises an area of 1 hectare while Lot 60 comprises an area of 1.5 hectares. Lot 64 DP 751252 is located diagonally opposite Lot 60 and comprises some 3.4 hectares.

Except for Lot 60, where an existing dwelling is located, no lot has an individual dwelling entitlement because they are below the minimum lot size of 40 hectares under WLEP 2010, the land being zoned E3 Environmental Management.



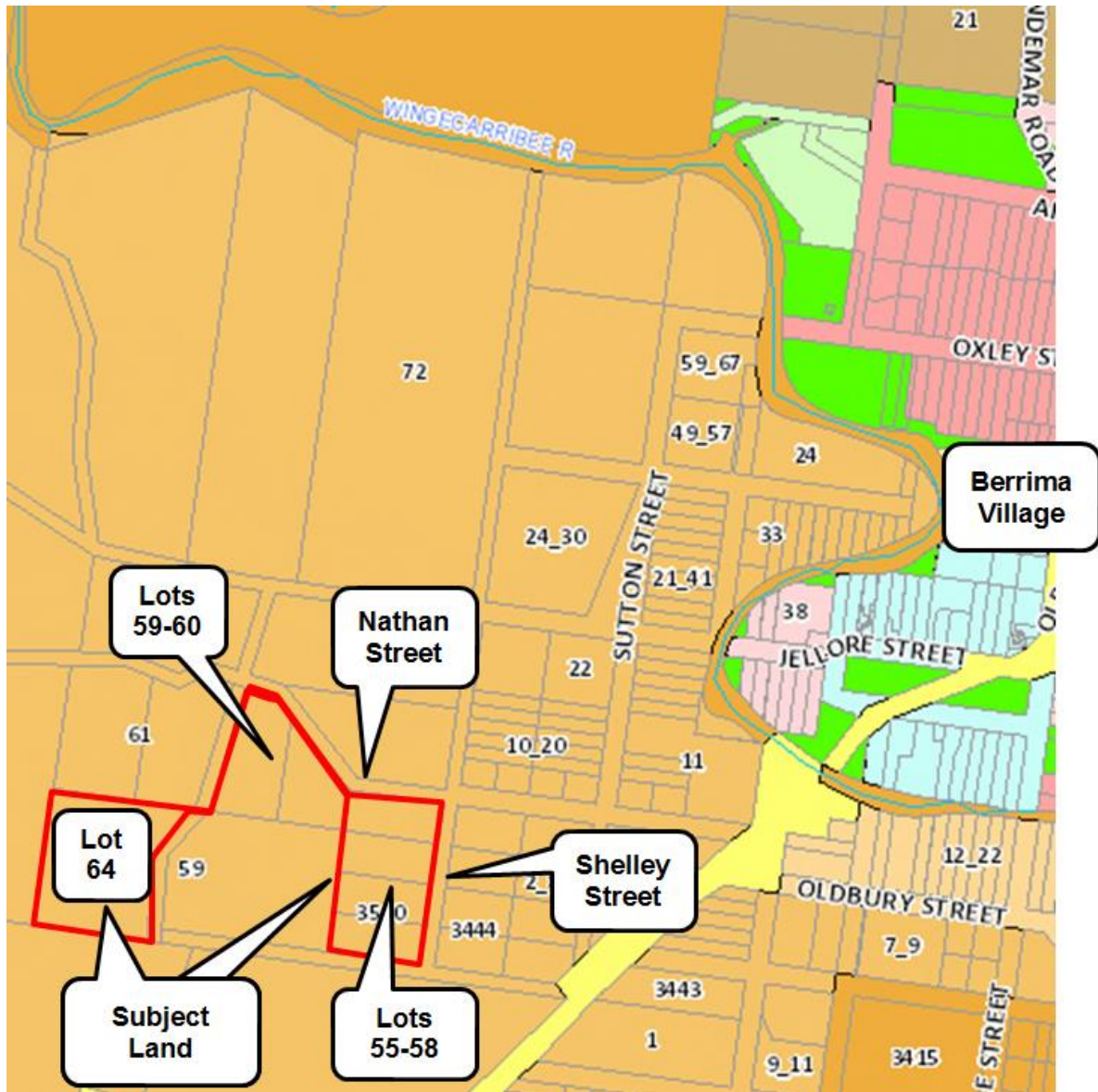


Figure 1 – Location and Configuration of the Subject land

The intent of the proposed amendment to WLEP 2010 is to enable the consolidation of Lots 55-58 into one (1) and the application to that consolidated lot of a dwelling entitlement through the mechanism of Schedule 1 of WLEP 2010. Schedule 1 enables the listing of uses which would not otherwise be permitted in a zone and where rezoning would not be appropriate. It is also the intent of the proposed amendment to use Schedule 1 to provide a dwelling entitlement for Lot 59 and Lot 64.

Therefore, the amendment would result in three (3) additional allotments only, noting that Lot 60 already has a dwelling on it.

The proposed site amalgamation and dwelling envelope map which accompanied public exhibition has been used as the base map for **Figure 2** below. Lot names and sizes have been added.



Figure 2 – Proposed Lot Amalgamation and Building Envelopes of the Subject Land



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It is further noted that the original Planning Proposal provided a different site amalgamation and dwelling envelope map which amalgamated Lots 55 & 56, 57 & 58, and 59 & 60 to create three (3) lots of similar area with Lot 64 remaining unchanged.

In response to this initial lot layout, the owners of the property at 3444 Old Hume Highway which became a Local Item of Heritage under WLEP 2010 subsequent to the Planning Proposal being initially submitted, requested that the proponents of the Planning Proposal consider a dwelling envelope map which relocated any proposed dwelling away from the primary view line of that Heritage Item. The proponents accepted this alternative map which subsequently formed part of the Planning Proposal for further consideration by the Council, the Department of Planning and the community.

The key feature of the revised map is that it would result in only one amalgamation - Lots 55-58. Lots 59, 60 and 64 would thereby remain as they are, with each of Lots 59 and 64 receiving a dwelling entitlement. Lot 60 already has a dwelling located on it. The proposed building envelope map, as exhibited, is discussed further in the body of this report.

The initial application to amend WLEP 2010 as described above was made during the preparation of the Wingecarribee Local Planning Strategy (WLPS) when a Planning Proposal was lodged for Council consideration. On 24 June 2015 Council unanimously resolved to include the subject site in the Berrima Precinct Plan of Draft WLPS 2015-2031 for community consultation. It is noted that this application to the WLPS was one of some 59 formal requests received by Council for inclusion in the final WLPS. After investigation, assessment and consideration of all sites, thirteen (13) sites were supported for inclusion in the relevant draft Precinct Plan of WLPS 2015-2031 for consultation purposes.

Following consultation, which included further inspection and consideration by Council, Council unanimously resolved on 23 March 2016 to include the subject site in the Berrima Precinct Plan of the adopted WLPS 2015-2031.

The adopted WLPS was submitted to the (then) NSW Department of Planning & Environment for endorsement. This process included the inspection and consideration by the Department of all sites including the subject site. On 15 May 2017 the Department conditionally endorsed Council's adopted Strategy, including the Precinct Plans and all of the site specific proposals included within them.

Following Departmental endorsement of the Precinct Plans, proponents lodged Planning Proposals with Council to progress amendments to WLEP 2010. On 12 July 2017, Council resolved unanimously to include eight (8) sites from the endorsed Strategy in a comprehensive Planning Proposal to be lodged with the Department for a Gateway Determination to amend WLEP 2010. This included the subject land. The Gateway Determination was issued on 18 June 2018. The Department also authorised Council as the local plan-making authority for the Planning Proposal.

### **REPORT**

The Gateway Determination required referral of all sites to Water NSW and the NSW Rural Fire Service (RFS) prior to community consultation occurring. Neither agency had any objection to progression of the Planning Proposal to community consultation with regard to the subject land.

The Gateway Determination also required referral of the subject land to the (then) Office of Environment and Heritage (OEH) and that *"the planning proposal shall be updated prior to community consultation to include assessment of potential visual and heritage impacts on the Heritage Conservation Area and the Landscape Conservation Area of Berrima."*

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The Berrima Landscape Conservation Area (BLCA) surrounds Berrima Village and defines its visual catchment. The subject land is not located within the Berrima Conservation Area which applies only to the village of Berrima itself, nor is it visible from the Berrima Conservation Area. Lots 55-60 are located within the BLCA but most of Lot 64 is located beyond the BLCA as indicated in **Figure 3** below.

The boundary for the BLCA was identified by the National Trust (NSW) in 1977 when it was concluded that the village's character of open farm land, mixed with natural bush, is crucial to Berrima's setting and its heritage character of an early Australian country town contained within a confined hollow with little development visible from the village itself or its approaches.

The application of the BLCA is described in the Rural Lands Development Control Plan, and has been unchanged since its initial introduction. The relevant controls are:

- a) No building is to be erected that, in the opinion of Council, will be visually prominent when viewed from the village of Berrima, its approaches or any listed heritage item.
- b) No development is to take place on the ridgelines that, in the opinion of Council, will be visually prominent when viewed from the Berrima Conservation Area, its approaches or any listed heritage item.
- c) No development is to take place on the ridgelines that will, in the opinion of Council, have a detrimental impact on the rural bushland setting of Berrima or of any listed heritage item.
- d) All new buildings and alterations to existing buildings shall be in the Georgian architectural style.

These controls emphasise that the principal purpose of the BLCA is to protect the views and vistas from the Berrima Conservation Area of the village. It is, in effect, a form of 'curtilage' to the village. This was the National Trust's intent and this is why the boundary of the BLCA reflects surrounding ridge lines. It is noted that these controls do not prohibit development within the BLCA.

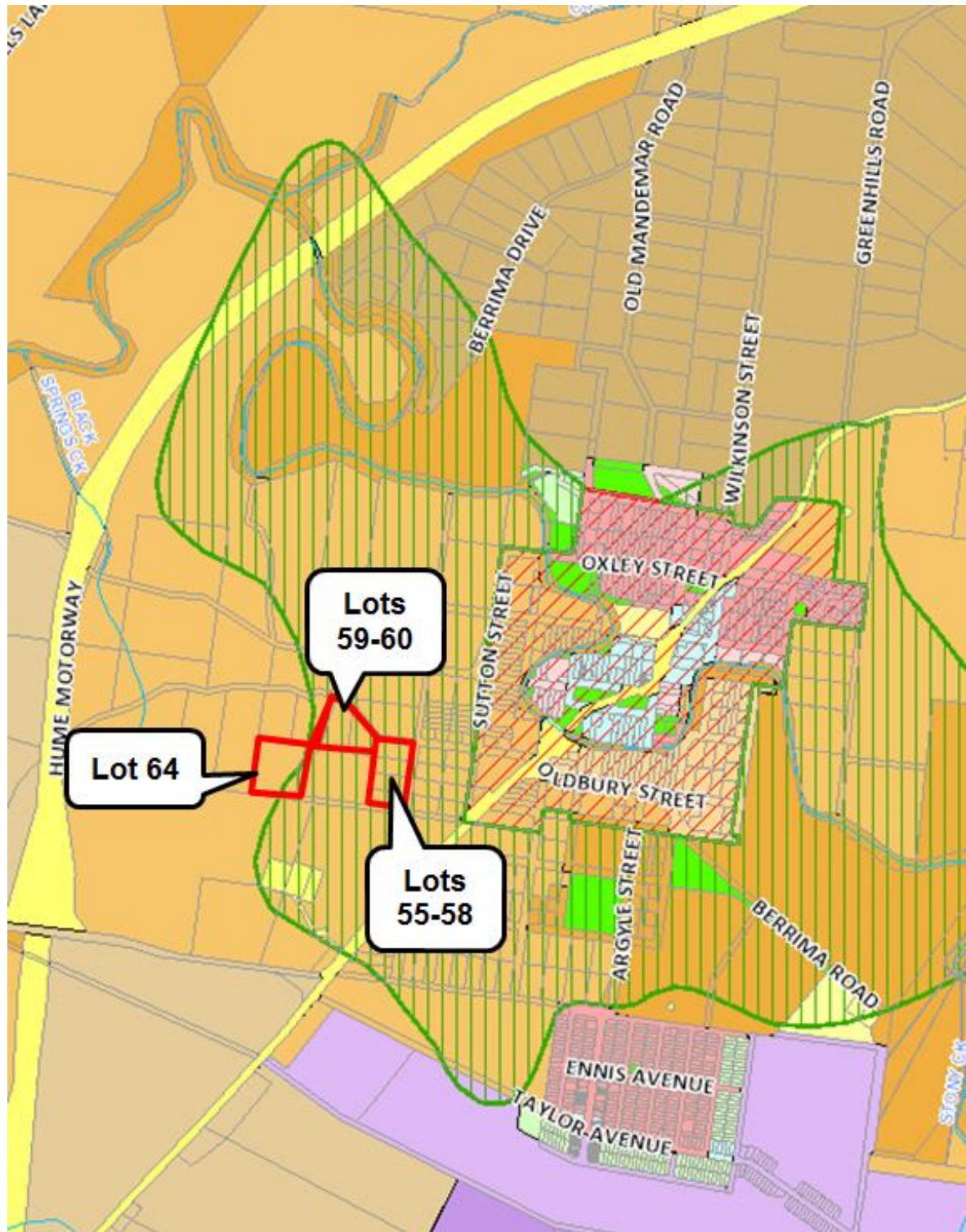


Figure 3 – Location of the Subject land with regard to the Berrima Conservation Area (red hatch) and the Berrima Landscape Conservation Area (green hatch).

As discussed in the background to this report, the original lot amalgamation and dwelling envelope map proposed amalgamating Lots 55-60 into 3 approximately equal lots of some 3 hectares each. Subsequently, the owners of the heritage listed property adjoining Lots 55-56 requested that the proponents amend the lot amalgamation map to protect the direct view line from their property and this was done creating an area of some 4.5 hectares and





providing a generous buffer opposite the heritage listed property at 3444 Old Hume Highway.

This configuration also resulted in the retention of the existing Lot 59 at its current size of one (1) hectare, rather than three (3) and the retention of the adjoining Lot 60, which already has a dwelling on it, at its current size of 1.5 hectares, totalling 2.5 ha instead of the proposed six (6). The benefit is, of course, that the heritage listed property at 3444 Old Hume Highway enjoys a larger lot adjacent to it without any impact to its direct views. It is noted that further protection for the heritage listed property will be provided through the provisions of the Berrima landscape Conservation Area section of the Rural Lands DCP which requires any building adjacent to an Item of Local Heritage to be referred to Council's Heritage Advisor for comment.

The range of lot sizes resulting from this configuration is consistent with surrounding lot sizes which are as low as 2,000m<sup>2</sup> to the north east of the subject land on the eastern side of Sutton Street, and as low as 1.2 ha on the eastern side of the Old Hume Highway, a far more visually prominent location than the subject land. It is noted that the heritage listed property 3444 Old Hume Highway, located opposite Lots 55 and 56, has an area of some 1.2 hectares and that the amalgamation of Lots 55-58 would create a lot almost three times that size.

Therefore, the scale of the proposed residential development across the subject land is entirely consistent with existing housing in the vicinity. The DA process allows Council to apply and enforce all controls applicable to the BLCA within the Rural Lands DCP as the recommendations to this report which in turn reflect the recommendations of OEH and Council's Heritage Advisor.

The proposed amalgamation of Lots 55-58 with a residential envelope located well away from view, together with a rigorous DA process will provide a level of certainty to the heritage listed property which could not be achieved otherwise. It is noted that various land uses are permitted with consent within the current E3 Environmental Management zone, not all of which require Council approval. Extensive agriculture, i.e. the grazing of animals, is permitted without consent in the E3 zone. Other land uses, such as horticulture and viticulture, for example, and associated cellar door premises are permitted with consent. As stated previously, the BLCA does not prohibit development and the existing holding could be suitable for a number of rural agricultural land uses permitted in the E3 zone. It is the nature of privately owned land that its owners want to put it to some use.

It is noted that it is legally permissible, under *Division 3.4 Environmental Planning Instruments – LEPs* of the *Environmental Planning and Assessment Act 1979* to prepare a Planning Proposal to amend WLEP 2010. Supporting the Act are Guidelines and Templates for their preparation and supporting the administration of the Planning Proposal is the Gateway Determination which clearly informs Council of what it must do in order to discharge its governance obligations.

Key to the support of a Planning Proposal, both by Council and by the Department, is the need to establish a strategic justification. No Gateway Determination is ever issued unless the Department is satisfied that these matters have been addressed to its satisfaction. The fact that it took over 12 months for the Department to assess and review all of the sites included in the comprehensive Planning Proposal confirms that careful attention was given to every site.

Council has consistently applied the protective controls of the BCLA since they were introduced. The Wingecarribee Our Future Strategic Plan (2002) sought to constrain the town and village boundaries of the Shire long before the term 'the green between' was coined. The WLPS 2015-2031 continues that policy and this was a key justification for

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seeking to rely on 'infill' development within existing town and village boundaries when drafting that Strategy.

Protection of the town and village boundaries occurs primarily through the mechanisms of zoning and minimum lot size. Through WLEP 2010, the RU4 Primary Production Small Lots and E4 Environmental Living zones were applied to some of the land on the edges of towns and villages to provide separation between them and between urban and rural locations. The minimum lot size associated with these zones is generally between 2 hectares and 4 hectares although a few localities have a minimum lot size of 1 hectare.

Council has consistently maintained these controls. Several submissions to the draft WLPS sought to reduce the current minimum lot size for certain RU4 and E4 zoned land, including land in Berrima, but they were not supported by Council. It is noted that it is a Recommendation of WLPS 2015-2031 that the RU4 and E4 zones and some of their associated land uses be reviewed to ensure they remain appropriate to their objectives of protecting town and village boundaries.

Environmental protection of the Shire's vegetation, including vegetation within the BLCA itself, is provided through State and Federal legislation and policies as well as zoning provisions within WLEP 2010.

As **Figure 4** below indicates, the only area of the subject site which contains mapped vegetation is Lot 64 which contains an extensive cover of Mittagong Sandstone Woodland (identified as '4' on the map) and a small area of Southern Highlands Shale Woodland (identified as '17' on the map) on the southern edge. It is noted that Southern Highlands Shale Woodland is a Threatened Ecological Community (TEC) listed on both the State and National Registers. The Mittagong Sandstone Woodland community is not threatened.



Figure 4 – Location of mapped vegetation  
(17=Southern Highland Shale Woodland (TEC), 4=Mittagong Sandstone Woodland)

It is further noted that the proposed location of the dwelling envelope for Lot 64 is located away from existing mapped vegetation and that Recommendation (3) to this report is *That a vegetation management plan be provided with any future Development Application for subdivision of Lot 64 DP 751252.*

As required by the Gateway Determination, a Statement of Landscape Heritage Impact was prepared in October 2018 by Richard Lamb & Associates for both the subject site and a second Berrima site which is the subject of a separate report to Council. The purpose of the report, as stated in the Gateway Determination was to provide “*assessment of the potential visual and heritage impacts on the Heritage Conservation Area and the Landscape Conservation Area at Berrima*”.

This Statement of Landscape Heritage Impact was supplied to OEH together with other relevant documentation and OEH responded as follows: “*We note the conclusions of the Statement of Landscape Heritage Impact report dated October 2018, which concludes that*



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*the proposal is unlikely to lead to any significant or new impacts on the heritage values represented by the conservation areas”.*

OEH recommended that *“a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated”.* This recommendation is included in the recommendations to this report.

With all referral obligations completed, community consultation with regard to the Planning Proposal involved relevant documentation being placed on public exhibition for a period of 31 days from 30 January to 1 March 2019. Exhibition material was available for inspection at Council’s Customer Service Counter as well as being available to view on Council’s website and at the Bowral, Moss Vale and Mittagong Libraries. Information about the Planning Proposal was also included in Council’s e-newsletters which reach over 4,000 recipients.

#### Submissions

Sixty nine (69) submissions were received during the consultation period, addressing both the Odessa Street Planning Proposal and a Planning Proposal seeking site amalgamation of land at Nathan Street Berrima which is the subject of a separate report to Council.

Fifty eight (58) submissions objected to the Planning Proposal and eleven (11) supported it. It is noted that of the submissions of objection 24 specifically identified as being residents of Berrima, 10 identified as residents of Sutton Forest and 11 identified as residents of Bowral/Burradoo. The remainder did not specify an address.

Submissions included four (4) received from organisations – Berrima Residents Association, National Trust (Southern Highlands), National Trust (NSW) and the Australian Garden History Society (Southern Highlands). All objected to the Planning Proposal.

Generally, individual submissions reflect the comments contained within the four organisation submissions, therefore those organisational submissions have been used as the basis for identifying and addressing all key concerns.

It is noted that eleven (11) submissions supported this Planning Proposal. Of these submissions of support, nine (9) were from Berrima residents. Submissions in support cited the following reasons.

- The proposal does not constitute suburban development but is rather a form of low key rural residential development of a type already in the area. The key is to ensure that they are suitably located and designed to minimise any impacts.
- The proposal is not a reduction in existing lot size but an amalgamation of smaller lots into larger ones and provides a small, but positive, growth opportunity in Berrima.

With regard to submissions of objection, ten (10) were from residents of Sutton Forest and expressed concern that this matter would automatically impact on land at Sutton Forest. While several properties in Sutton Forest were considered by Council during the drafting of WLPS following submission from their owners, none of them was supported. No other Planning Proposals for Sutton Forest are currently before Council.

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Key concerns expressed in the four organisation submissions are summarised below together with Council’s response.

<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>Council is required to preserve the Berrima Landscape Conservation Area under WLEP 2010.</p> <p>Just because the land cannot be seen from the main road should not allow it to be rezoned. More attention should be given to the inherent heritage and environmental value of the surrounding landscape.</p> <p>Appreciation of the Cultural Landscape Study should go beyond a visual assessment.</p> <p>To consider the importance of a landscape by sightlines from the main road misses the point of the Landscape Conservation Area.</p>	<p>The purpose of the BLCA is to protect the village of Berrima. The value of the BLCA is in its relationship to the village. Without the village, the BLCA would not exist.</p> <p>The controls for management of the BLCA, as supported by the National Trust, are to protect the views and vistas from the village. If a building cannot be seen from the village it is not a threat to the village and the purpose of the BLCA has been upheld. None of the proposed dwellings will be seen from the village or its approaches.</p> <p>Council has consistently worked to preserve the BLCA and continues to do so. The primary purpose of the BLCA is to protect the visual landscape of the Berrima village. Council’s Heritage Advisor (see later in report) has confirmed that the proposed dwelling sites on the subject land are not visible from the village or from the Old Hume Highway approaches.</p> <p>The Gateway Determination required that an <i>“assessment of the potential visual and heritage impacts on the Heritage Conservation Area and the Landscape Conservation Area at Berrima”</i> be provided to OEH prior to community consultation of the Planning Proposal. OEH did not object to the Planning Proposal proceeding, but did recommend that <i>“a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated”</i>.</p> <p>Recommendation (2) to this report addresses this requirement.</p>

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<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>The subject land is between Berrima and new Berrima and should be retained as a buffer between the two.</p> <p>Housing stock in Berrima is low to protect its heritage and environmental significance.</p> <p>The subject land is adjacent to land zoned E2 Environmental Conservation.</p>	<p>The scale of proposed development is consistent with similar 'green belt' land between the towns and villages where minimum lot sizes of between 2-4 hectares prevail.</p> <p>The E2 Environmental Conservation zone was used in drafting WLEP 2010 to apply to all non urban land in public ownership and does not necessarily indicate endangered vegetation. In this case the adjoining land is Crown Land and the vegetation within it does not constitute a mapped Threatened Ecological Community.</p>
<p>OEH did not support the Planning Proposals. OEH was not provided with advice from Council's Heritage Advisor.</p>	<p>Council has complied with the requirements of the Gateway Determination with regard to referral to OEH. Council is satisfied that the response from OEH constitutes support for progressing the Planning Proposal.</p> <p>The Statement of Landscape Heritage Impact required by the Gateway Determination was supplied to OEH together with other relevant documentation and OEH responded as follows: <i>"We note the conclusions of the Statement of Landscape Heritage Impact report dated October 2018, which concludes that the proposal is unlikely to lead to any significant or new impacts on the heritage values represented by the conservation areas"</i>.</p> <p>OEH recommended that <i>"a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated"</i>.</p> <p>Recommendation (2) to this report addresses this requirement.</p>
<p>BRA disagrees with the planning assessment that development will have no adverse impact on heritage. Council has received expert heritage advice to the contrary from several experts.</p>	<p>Apart from the OEH 'advice' reported above, the only other 'expert heritage advice' Council has received has been from its own Heritage Advisor whose comments are provided later in this report under Internal Consultation. It is noted here that he is satisfied that no proposed dwelling site is visible from Berrima village.</p>
<p>Development of the land will lead to other land owners seeking similar development to achieve the same financial benefit.</p>	<p>More than one submission implies, or explicitly states, that the proponents of this proposal have gained some form of unfair advantage from Council. by requesting an amendment to the LEP and, if granted, this will encourage other property owners to</p>

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<b>Berrima Residents Association</b>	<b>Council Response</b>
<p>The Local Planning Strategy was an inappropriate vehicle to introduce these Planning Proposals. They should not have been supported for Gateway Determination.</p>	<p>make similar requests with the expectation that they too will be granted.</p> <p>The term 'precedent' has been used in this context. It is noted that 'precedent' is found in both common and legal usage. In common usage 'creating a precedent' refers to 'creating an expectation'. Any expectation resulting from this proposal must still meet the strategic justification tests to which the proposal has been subjected and supported, both at the local and state level, regardless of the view that such assessments are 'flawed'.</p> <p>It is noted that other requests to rezone land in Berrima or to reduce the minimum lot size were not supported.</p> <p>As for 'legal' usage, at common law, precedent is a principle or rule established in a previous legal case that is either binding on, or persuasive for, a court or other tribunal when deciding subsequent cases with similar issues or facts. The Department of Planning has confirmed in writing that no legal precedent applies to the strategic assessment of a Planning Proposal. There is no right of appeal to the Land and Environment Court for a Planning Proposal.</p> <p>Should the Planning Proposal not be supported, the proponents, or a future land owner can lodge a Planning Proposal with Council. If Council resolves to not support it, the Planning Proposal can be forwarded to the Department of Planning for consideration by the Southern Joint Regional Planning Panel (JRPP). In both cases, assessment of the Proposal would be based on strategic merit, not legal precedent.</p> <p>BRA's opinion of this strategic planning process is noted.</p>

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<b>National Trust (NSW)</b>	<b>Council Response</b>
<p>Berrima Urban Conservation Area was listed on the National Trust register in May 1976, noting that it is a valid intact historic village of great urban and regional significance the value of which is reinforced by the high quality of the surrounding natural environment.</p>	<p>The heritage value of Berrima is acknowledged by Council, as is the important supporting role of the Landscape Conservation Area. However, as stated in the report, there is nothing in the controls for the BLCA that prohibits development.</p> <p>It is not the role of the BLCA to protect the vegetation contained within it. Other controls and legislation address the protection of Threatened Ecological Communities (TECs).</p>
<p>The National Trust does not support paper subdivisions.</p>	<p>Comments on paper subdivisions are contained within the report.</p>
<p>This is a poor location for infill development.</p>	<p>Comments on the scale of development are discussed in the report.</p>
<p>The National Trust agrees with views put to Council by the Environmental Defenders Office which do not support the proposal.</p>	<p>With regard to the Environmental Defenders Office (EDO), Council received correspondence from the EDO, noting “we act for Berrima Residents Association Inc”... and “we are instructed to write to you in relation to two planning proposals...”</p> <p>EDO itself refers to “correspondence”. Council does not consider that this correspondence constitutes independent legal advice, but rather it chronicles the history of the Planning Proposal and the concerns of its clients.</p>

<b>National Trust (Southern Highlands)</b>	<b>Council Response</b>
<p>The Proposal is a radical shift in policy.</p>	<p>Council has always applied the BLCA controls consistently and will continue to do so. The BLCA does not prohibit development, but rather seeks to ensure that any such development does not impact on the Berrima Conservation Area of the village.</p>

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<b>National Trust (Southern Highlands)</b>	<b>Council Response</b>
<p>The current landscape has remained largely undeveloped since Berrima was first established.</p>	<p>The dispersed nature of remnant ecological communities would suggest that they were originally more extensive and cohesive, but that, over time, grazing, and other land uses traditionally associated with the development of Berrima, occurred on the land around the village, damaging and, in some cases, ultimately destroying some of this vegetation.</p> <p>The landscape therefore, is almost certainly not in the same form it was almost 200 years ago, but has become modified during that time, in places, quite significantly. The National Trust itself, in defining the BLCA, noted that it comprised “<i>open farm land, mixed with natural bush</i>”.</p>
<p>In 2009 Council staff reiterated that the ‘green belts’ were a major element of the Wingecarribee Our Future Strategic Plan 2002, to minimise the spread of urban areas into rural and native vegetation environments.</p> <p>Not an appropriate location for infill development.</p>	<p>Council has always consistently applied the ‘green belt’ policy by including it in the 2002 Strategic Plan and the 2015 Local Planning Strategy and through the application of minimum lot sizes of between 2 and 4 hectares on much of the land between towns and villages and between urban and rural areas.</p> <p>The Proposal is consistent with those development standards.</p>

<b>Australian Garden History Society</b>	<b>Council’s Response</b>
<p>Protection of the Shire’s landscapes is fundamental to the preservation of its heritage values, especially in Berrima.</p> <p>Any proposal to intensify development will be contrary to the E3 Environmental Management zone.</p>	<p>As stated in response to other organisation comments and in the body of this report, the role of the BLCA is to protect the views from the Berrima Village. The proposed developments will not be visible from the village or approaches.</p> <p>Despite the land being zoned E3 Environmental Management, its ‘paper subdivision’ nature would benefit from some action to ensure that any future use minimises environmental degradation while remaining consistent with minimum lot sizes in other locations which support town and village separation.</p>



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Comments from Council's Heritage Advisor are contained under Internal Communication and Consultation below.

#### **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

There are no implications for Council's Fit for the Future Improvement Plan resulting from this report.

#### **COMMUNICATION AND CONSULTATION**

##### **Community Engagement**

Community engagement was undertaken as described in the report.

##### **Internal Communication and Consultation**

In August 2018 Council's Heritage Advisor provided the following advice based on a physical inspection of the subject land. It is noted that these comments also address a second Planning Proposal for land at Odessa Street Berrima which is the subject of a separate report.

<b>Heritage Advisor's Advice</b>	<b>Council Comment</b>
<p>"Having looked at the 8 building footprint sites I am satisfied that none will be visible from the Berrima Conservation Area itself."</p>	<p>The reference to eight (8) building footprint sites addresses the two (2) areas included in the Berrima Precinct Plan of the Wingecarribee Local Planning Strategy. The Nathan Street site is the subject of this report. The Odessa Street site is the subject of a separate report to Council.</p> <p>Of the four (4) potential building footprint sites on the Nathan Street site, one (1) dwelling already exists on Lot 60. Therefore only three (3) new building footprint sites are being considered.</p>
<p>"I am also satisfied that all 8 building footprint sites are reasonable from the point of view of local visual impact within the Berrima Landscape Conservation Area provided the final siting, design and landscaping of the 8 dwellings and all ancillary buildings are subject to suitable DA consideration and approval."</p> <p>"Concerns regarding suitable design for dwelling, ancillary structures and landscaping can and should be addressed through the DA process."</p>	<p>Recommendation (2) to this report addresses this comment.</p>

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<b>Heritage Advisor's Advice</b>	<b>Council Comment</b>
<p>"The Planning Proposal does not give any indicative siting of subdivision boundaries for the dwellings."</p>	<p>Recommendation (2) to this report addresses this comment.</p> <p>To require more details as to setbacks and more specific building envelopes would be to pre-empt the outcome and recommendations of the Heritage Impact Statement.</p>
<p>"Because of the concern about further development, any approval on these sites should also make clear that any further subdivision for additional dwellings has been extinguished on this land by the current proposal. Otherwise future owners may well come to Council to re-subdivide".</p>	<p>Recommendation (2) to this report addresses this comment.</p>
<p>"I remain concerned about potential precedent effect of the current proposal. I therefore earnestly request that council use this opportunity to quantify how many more lots without dwelling rights remain in the Berrima Landscape Conservation Area at this time which could conceivably be considered for dwelling entitlement."</p>	<p>The general issue of precedent is considered in the body of the report.</p> <p>With regard to remaining dwelling entitlements, an audit of existing land holdings will not prevent any future sale of land and a rearrangement of those existing holdings. The Planning Proposal process has been documented earlier in this report.</p>



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### **External Communication and Consultation**

External communication and consultation occurred as described in the report.

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### **SUSTAINABILITY ASSESSMENT**

- **Environment**

A discussion of environmental factors is contained in the report.

- **Social**

A discussion cultural heritage factors is contained in the report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

A discussion cultural heritage factors is contained in the report.

- **Governance**

All processes associated with this matter, including submissions, have been considered in accordance with the requirements of the Gateway Determination and guidelines provided by the Department of Planning.

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### **COUNCIL BUDGET IMPLICATIONS**

There are no Council budget implications.

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### **RELATED COUNCIL POLICY**

There are no other related Council Policies.

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### **OPTIONS**

The options available to Council are:

#### **Option 1**

Support the recommendations of this report, namely

1. *THAT in accordance with s.3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan to include Lots 55-58 DP 751252 in Schedule 1 (Additional Permitted Uses) for the purposes of one (1) dwelling house on the resulting amalgamated lot, and to include Lots 59 and 64 DP 751252 in Schedule 1 (Additional Permitted Uses) for the purposes of one (1) dwelling house on each lot, be finalised.*
2. *THAT the provisions of the Berrima Landscape Conservation Area in the Rural Lands Development Control Plan (DCP) be amended to:*

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- (i) *Include the proposed lot amalgamation and building envelope map which forms Attachment 1 to this report as the basis on which any future Development Application for subdivision be considered.*
  - (ii) *Require a Vegetation Management Plan to be prepared and submitted with any future Development Application for subdivision of the subject land and that it specifically address Lot 64 DP 751252.*
  - (iii) *Require a Heritage Impact Statement to be prepared for any proposed development of a lot resulting from this proposal.*
3. THAT *the proponent and submission makers be informed of Council's decisions 1 and 2 above.*

#### **Option 2**

Not support the recommendation of this report to finalise the Planning Proposal by resolving as follows:

*THAT in accordance with s.3.35 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan to include Lots 55-58 DP 751252 in Schedule 1 (Additional Permitted Uses) for the purposes of one (1) dwelling house on the resulting amalgamated lot, and to include Lots 59 and 64 DP 751252 in Schedule 1 (Additional Permitted Uses) for the purposes of one (1) dwelling house on each lot not proceed.*

#### **Option 3**

Support finalising the Planning Proposal, but remove or vary the recommendations of this report to address any additional specific concerns raised in the meeting.

Option 1 is the recommended option to this report.

## **CONCLUSION**

The adoption of the Wingecarribee Local Planning Strategy 2015-2031 was preceded by a process which extended over several years and resulted in certain sites being supported within the relevant Precinct Plan of the Strategy. The subject site was included in the Berrima Precinct Plan. Upon endorsement of those Precinct Plans by the Department of Planning, property owners were able to submit Planning Proposals to amend WLEP 2010 to implement their proposal.

The intent of the proposed amendment to WLEP 2010 is to enable the consolidation of the four (4) lots adjacent to the heritage listed property at 3444 Old Hume Highway to create a lot of some 4.5 hectares with one dwelling entitlement. It is also the intent of the Planning Proposal to create a dwelling entitlement on the remaining lot within the area of contiguous lots and to permit a dwelling entitlement on that area of lot 64 free of vegetation. This would achieve a total of three (3) additional dwelling entitlements.

The land is located within the Berrima Landscape Conservation Area, the controls for which do not prohibit residential development. The scale of the proposed development is consistent with existing development in the vicinity, including the area of the heritage listed building at 3444 Old Hume Highway. The amalgamated Lots 55-58 ensure that any resulting dwelling is located well away from direct view lines from the heritage listed property

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and proposed dwelling entitlements are located away from identified vegetation communities.

Council has consistently applied the protective controls of the BCLA since they were introduced. The WLPS 2015-2031 continues that policy and this was a key justification for seeking to rely on meeting Council's housing obligations through development within existing towns and villages. The original intent of this policy was to protect the existing town and village boundaries, rather than to protect the vegetation between them for which other protective legislation and policies exist.

Protection of the town and village boundaries occurs primarily through the mechanisms of zoning and minimum lot size. Under WLEP 2010 the RU4 Primary Production Small Lots and E4 Environmental Living zones apply to some of the land on the edge of town and village boundaries to provide separation between them and between urban and rural locations.

Only Lot 64 contains mapped Ecological Communities - Mittagong Sandstone Woodland and Southern Highlands Shale Woodland. It is noted that Southern Highlands Shale Woodland is a Threatened Ecological Community (TEC) listed on both the State and National Registers. The Mittagong Sandstone Woodland community is not threatened. One Recommendation of this report is that a Vegetation Management Plan be prepared to accompany any dwelling application for Lot 64. It is noted that the proposed location of the dwelling envelope on the amalgamated lot is located to avoid an unmapped area of vegetation.

A Statement of Landscape Heritage Impact was supplied to OEH together with other relevant documentation and OEH responded as follows: "*We note the conclusions of the Statement of Landscape Heritage Impact report dated October 2018, which concludes that the proposal is unlikely to lead to any significant or new impacts on the heritage values represented by the conservation areas*".

OEH also recommended that "*a Heritage Impact Statement be required for any proposed development of these lots to ensure any potential heritage impacts are mitigated*". Recommendation (2) to this report addresses this requirement.

The finalisation of the proposed building envelopes on each amalgamated lot would be the subject of a Heritage Impact Statement as per Recommendation (2) to this report, however it is also a recommendation of this report that the proposed lot amalgamation and building envelope map which forms **Attachment 1** be adopted as the basis for any future subdivision application over the subject land.

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## ATTACHMENTS

1. Proposed Lot Amalgamation and Building Envelope Map





ATTACHMENT 1



Proposed Site Amalgamation and Building Envelope Map



## 10.3 **Mittagong Development Control Plan - Site Specific Provisions for Affordable Housing Proposal**

**Reference:** 5700/69  
**Report Author:** Coordinator Strategic Land Use Planning  
**Authoriser:** Group Manager Planning, Development and Regulatory Services

**Link to Community Strategic Plan:** Provide a mixture of housing types that allow residents to meet their housing needs at different stages of their lives and support affordable living

### **PURPOSE**

The purpose of this report is to enable Council to consider a request to incorporate site specific provisions into the Mittagong Development Control Plan to facilitate a residential development including a mix of affordable housing, seniors living and standard residential apartments.

### **VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.

### **RECOMMENDATION**

1. **THAT** Council give in-principle support for the inclusion of site specific provisions into the Mittagong Town Plan Development Control Plan to facilitate an affordable housing development proposal in the location bound by Rainbow Road, Brewster Street, Old Hume Highway and Mineral Springs Reserve, subject to more detailed design controls being prepared.
2. **THAT** Council support bonus floor space provisions for affordable housing to be incorporated into the 'precinct' controls on a sliding scale; with bonus floor space to be proportionate to the percentage of affordable housing to be provided.
3. **THAT** following the preparation of more detailed design controls, a draft Amendment to the Mittagong Development Control Plan be reported to Council to be endorsed for public exhibition.



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**REPORT**

**BACKGROUND**

Council currently has a separate Development Control Plan (DCP) for each township and village throughout the Shire, to guide future development in line with Council's and the community's expectations. The Mittagong Town Plan DCP applies to all residential and business zoned land within the localities of Mittagong and Welby, and is the primary assessment tool for considering Development Applications (DAs) in these areas.

The Mittagong DCP contains generic residential development controls that apply to all residential development within the DCP area, as well as site specific provisions that apply to five (5) distinct precincts. Council has been approached by a proponent seeking to amend the Mittagong DCP to introduce site specific provisions to facilitate a residential development including a mix of affordable housing, seniors living and standard residential apartments, on land bounded by Rainbow Road, Brewster Street, Old Hume Highway and Mineral Springs Reserve, Mittagong.

The matter was reported to Council on 14 November 2018 seeking in principle support for an indicative development scheme, and it was resolved (MN473/18):

*THAT Council not give in-principle support for the inclusion of site specific provisions into the Mittagong Town Plan Development Control Plan as proposed in the Report to facilitate an affordable housing development proposal in the location bound by Rainbow Road, Brewster Street, Old Hume Highway and Mineral Springs Reserve, and invite the Applicant into Council to discuss a more appropriate scale of development.*

Following the resolution of Council, the proponent has revised the proposed development scheme for the site, and the revised plans were presented to a Councillor Information session. This report is now seeking in principle support for the revised proposal, to allow the proponent to undertake more detailed design work before a formal amendment to the DCP is considered by Council.

**REPORT**

**Subject Land**

The request to amend the DCP relates to land bounded by Old Hume Highway, Rainbow Road, Brewster Street and Mineral Springs Reserve in Mittagong as shown in **Figure 1** below as well as in **Attachment 1**.

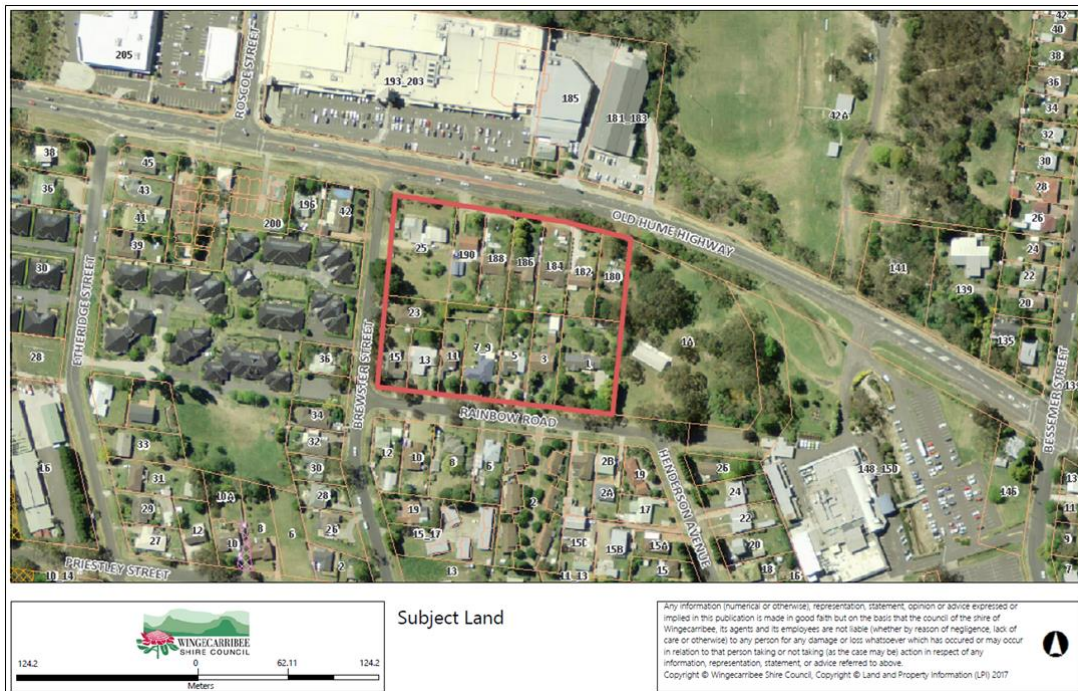


Figure 1 – Site Plan

The subject land consists of fifteen (15) individual lots currently zoned R3 Medium Density Residential under the Wingecarribee Local Environmental Plan 2010, all with existing residential dwellings. The site is located approximately 750 metres west of the Mittagong Town Centre, directly opposite the Mittagong Market Place and within close proximity to the Mittagong RSL Club.

### **Existing DCP Provisions**

The subject land is zoned R3 Medium Density Residential and is subject to the Medium Density Development provisions in the Mittagong DCP which sets a maximum building height of 2 storeys (up to 9 metres) and a maximum floor space ratio (FSR) of 0.5 : 1.

The proponent is seeking an amendment to the DCP to facilitate a residential development including a mix of affordable housing, seniors living and standard residential apartments ranging from two (2) to four (4) storeys across the site (up to 15 metres) and a maximum FSR of 1.6 : 1.

### **Development Proposal**

The proponent is seeking an amendment to the DCP to facilitate a substantial infill residential development including a mix of affordable housing, seniors living and standard residential apartments.

The preferred development outcome for the site is the provision of a range of housing types that will address the housing needs of a broad cross section of the community, including housing for seniors or those with a disability, affordable housing that may include boarding house apartments or affordable rental apartments and residential flat buildings that will be available to the broader community.

The proposal is seeking to facilitate a development up to a maximum of four (4) storeys and a maximum FSR of 1.6 : 1, which is a significant increase in density compared to the existing development on the site and the adjoining residential areas. The concept would rely on an amendment to the Mittagong DCP as well as the bonus floor space provisions in



the Affordable Rental Housing SEPP, which allow up to a maximum bonus FSR of 0.5 : 1 for affordable housing developments (depending on the proportion of affordable housing to be provided). A copy of the development concept, including site plan, 3D perspectives, cross sections and a covering letter are provided as **Attachment 2** to this report.

The concept plan shown in **Attachment 2** would result in the following housing mix across the site, to be undertaken in stages:

- Minimum 80 affordable rental housing dwellings
- Maximum 100 seniors housing dwellings
- Maximum 120 residential flat dwellings

While the proposed development would increase the stock of affordable housing and housing for seniors in the Shire and help meet the housing needs of our community, Council needs to consider the impacts of the proposal on the existing and desired future character of the area. In this regard, it is recommended that more detailed design controls be developed to ensure that any future development of the site is in keeping with Council's and the community's expectations.

### **Proposed DCP Amendment**

The proponent has submitted preliminary site specific development controls for consideration by Council. The draft controls include an increase in building height up to a maximum of four (4) storeys and an increase in FSR from 0.5 : 1 to 1.1 : 1 (plus the bonus floor space provisions under the SEPP allowing up to a maximum of 1.6 : 1), as well as controls relating to access, landscaping, pedestrian connectivity and integration. The preliminary development controls submitted by the proponent are provided as **Attachment 3** to this report.

As outlined above, increasing the development capacity of the site will potentially have a significant impact on the existing and desired future character of the area. The proposed DCP provisions that were provided by the proponent do not include built form controls to manage the bulk and scale of the development to ensure that any future development of the site is sympathetic to its setting, and does not impact on the amenity of the adjoining residential area. It is recommended that more detailed design controls be developed over the site, to provide greater certainty in the built form outcomes, and to mitigate any adverse impacts on adjoining owners such as overshadowing, traffic, and amenity issues.

### **Bonus Floor Space for Affordable Housing**

The proposal is seeking to increase the FSR contained within the Mittagong DCP from 0.5 : 1 to 1.1 : 1, as well as taking advantage of the bonus floor space provisions in the Affordable Rental Housing SEPP which allow up to an extra 0.5 : 1 FSR depending on the amount of affordable housing to be provided.

The SEPP provides for bonus floor space proportionate to the amount of affordable housing provided on site, ranging from 0.2 : 1 where 20% of the floor space is for affordable housing, and up to a maximum of 0.5 : 1 where 50% of the floor space or greater is provided as affordable housing.

The bonus floor space provisions as requested by the proponent are shown in **Table 1** below based on the percentage of affordable housing to be provided in the development.



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 May 2019

### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



Proportion of Gross Floor Area for Affordable Housing	Potential bonus FSR provided by SEPP	Requested increase in FSR through the DCP	Maximum FSR for the development
0-19%	Nil	0.6	1.1 : 1
20%	0.2	0.6	1.3 : 1
30%	0.3	0.6	1.4 : 1
40%	0.4	0.6	1.5 : 1
50% or greater	0.5	0.6	1.6 : 1

**Table 1 – Maximum FSR as requested by the proponent**

As shown in **Table 1**, the proponent has requested an increase in FSR under the DCP, irrespective of the proportion of the development that is to be provided as affordable housing. It is recommended however, that Council adopt a 'sliding scale' similar to that provided for under the SEPP, that provides bonus floor space proportionate to the amount of affordable housing to be provided.

This approach provides a direct incentive to provide a greater amount of affordable housing, as the maximum FSR increases proportionately with the amount of affordable housing provided on site. **Table 2** below shows the recommended approach to providing bonus FSR across the site.

Proportion of Gross Floor Area for Affordable Housing	Potential bonus FSR provided by SEPP	Potential bonus FSR through the DCP	Maximum FSR for the development
0-19%	Nil	Nil	0.5 : 1
20%	0.2	0.2	0.9 : 1
30%	0.3	0.3	1.1 : 1
40%	0.4	0.4	1.3 : 1
50% or greater	0.5	0.5	1.5 : 1

**Table 2 – Maximum FSR based on the proportion of affordable housing.**

### **Recommended Way Forward**

The proposed development provides a unique opportunity to consolidate a large number of sites, and to develop a mixed residential development including affordable housing, seniors living and residential apartments. However, the proposal is seeking a significant increase in density, which has the potential to impact on the character and amenity of the area, if the proposal is not properly considered and assessed at the strategic planning stage.

It is recommended that Council provide in-principle support for the proposal, and that Council staff work with the proponent to prepare detailed design controls that will ensure that any future development of the site is in keeping with Council's and the community's expectations. As a minimum, the detailed design controls should consider setbacks, street wall heights, upper level setbacks, bulk and scale, articulation, materials, presentation to the street and solar access.

Once detailed design controls have been developed, a draft amendment to the Mittagong DCP will be prepared and reported to Council to be endorsed for public exhibition. If the amendment to the DCP is adopted by Council following public exhibition, a Development



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



Application could be lodged for the proposal; and assessed against the detailed design controls outlined above.

It is also recommended that any bonus FSR provisions be proportionate to the amount of affordable housing to be provided on the site, to increase the stock of affordable housing within the locality.

#### IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There are no impacts on Council's Fit for the Future Improvement Plan.

#### COMMUNICATION AND CONSULTATION

##### Community Engagement

This report is seeking in-principle support for preparing an amendment to the Mittagong DCP. Once detailed design controls have been developed, a draft amendment to the Mittagong DCP will be prepared and reported to Council to be endorsed for public exhibition. At that stage, the DCP will be formally exhibited for a minimum period of 28 days in accordance with the requirements of *Environmental Planning and Assessment Act 1979* and its *Regulations*.

##### Internal Communication and Consultation

No internal consultation has occurred to date, however, detailed internal consultation will occur as part of the preparation of detailed design controls for the site.

##### External Communication and Consultation

The proponent has provided two (2) separate information sessions to Councillors on the proposed development scheme. The first information session provided an overview of the initial proposal, and the second session provided an overview on the revised development scheme for the site, as well as potential tenure models for the proposed affordable housing component.

Once further detailed design controls have been developed, a draft amendment to the Mittagong DCP will be prepared and reported to Council. If the draft amendment to the DCP is endorsed by Council it will be formally exhibited for a minimum period of 28 days, including referral to appropriate State Government and non-Government agencies.

#### SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

The development proposal includes a mix of residential housing types including affordable and seniors housing to meet the housing needs of our community.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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### COUNCIL BUDGET IMPLICATIONS

There are no budget implications in relation to this report.

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### RELATED COUNCIL POLICY

There is no relevant Council policy for amending Council's Development Control Plans. Any amendment to the DCP will be undertaken in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and its *Regulations*.

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### OPTIONS

The options available to Council are:

#### **Option 1**

Adopt the recommendations of the report.

#### **Option 2**

THAT Council provide in-principle support for the inclusion of site specific provisions into the Mittagong Town Plan Development Control Plan to facilitate an affordable housing development proposal in the location bound by Rainbow Road, Brewster Street, Old Hume Highway and Mineral Springs Reserve, subject to more detailed design controls being prepared, and

THAT Council support an increase in the floor space ratio provisions to 1.1 : 1 as requested by the proponent.

#### **Option 3**

THAT Council provide in-principle support for the inclusion of site specific provisions into the Mittagong Town Plan Development Control Plan to facilitate an affordable housing development proposal in the location bound by Rainbow Road, Brewster Street, Old Hume Highway and Mineral Springs Reserve, subject to more detailed design controls being prepared, and

THAT Council maintain the existing building heights and floor space ratio provisions of 0.5 : 1, with bonus floor space ratio provisions under the SEPP allowing a maximum floor space ratio of 1 : 1.

#### **Option 4**

THAT Council do not support an amendment to the Mittagong DCP to facilitate the proposed development concept.

Option **No.1** is the recommended option to this report.



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## **CONCLUSION**

The proposed development concept provides a unique opportunity to consolidate a large number of sites, and to develop a mixed residential development including affordable housing, seniors living and residential apartments. The proposal is seeking a significant increase in density, which has the potential to impact on the character and amenity of the area, if the proposal is not properly considered and assessed at the strategic planning stage.

It is recommended that Council provide in-principle support for the proposal, and that Council staff work with the proponent to prepare detailed design controls that will ensure that any future development of the site is in keeping with Council's and the community's expectations.

It is also recommended that any bonus FSR provisions be proportionate to the amount of affordable housing to be provided on the site, to increase the stock of affordable housing within the locality.

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## **ATTACHMENTS**

1. Site Plan - *circulated under separate cover*
2. Concept Development Plans – *under separate cover*
3. Preliminary Controls Provided by Proponent - *circulated under separate cover*

Mark Pepping

**Deputy General Manager Corporate, Strategy and Development Services**

Thursday 16 May 2019



## 12 OPERATIONS FINANCE AND RISK

### 12.1 Investment Report - April 2019

Reference:	2104
Report Author:	Accounting Officer (Banking and Investments)
Authoriser:	Acting Chief Financial Officer
Link to Community	
Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

#### PURPOSE

The purpose of this report is to present Council's Investment Portfolio held at 30 April 2019.

#### RECOMMENDATION

**THAT** the information on Council's Investments as at 30 April 2019 be received and noted.

#### REPORT

In accordance with part 9, Division 5, Section 212 of the *Local Government (General) Regulation 2005*, the Responsible Accounting Officer must provide Council with a written report setting out details of all money that Council has invested under section 625 of the *Local Government Act 1993*.

This report provides details of Council's Investment Portfolio as at 30 April 2019.

**Attachment 1** to this report provides Council's Investment Portfolio, detailing investments held and a summary of the portfolio by the institution invested with and their credit rating.

In accordance with Paragraph 212(1)(b) of the Local Government (General) Regulations, the investments listed in **Attachment 1** have been made in accordance with:

- The *Local Government Act*, 1993
- The *Local Government (General) Regulations 2005*,
- The Ministerial Investment Order 2011, and
- Council's Investment policy.

Interest earned from investments totalled \$3,684,924 for the ten (10) months to 30 April 2019.

#### ATTACHMENTS

1. Investment Report Summary as at 30 April 2019



## Wingecarribee Shire Council Investment Report Summary

For the period ending 30 April 2019

### List of Investments

Council's investment portfolio as at 30 April 2019 consists of the following investments:

INVESTMENT PORTFOLIO AS AT 30 April 2019						
Institution	Type	Amount	Interest Rate	Investment Term - Days	Maturity Date	% Investment Portfolio
Bankw est	Term Deposit	3,000,000	2.80%	273	8/05/2019	1.84%
Bankw est	Term Deposit	3,000,000	2.80%	272	13/05/2019	1.84%
Bendigo	Term Deposit	5,000,000	2.80%	365	17/05/2019	3.06%
Bankw est	Term Deposit	5,000,000	2.80%	270	20/05/2019	3.06%
MyState	Term Deposit	5,000,000	2.81%	365	24/05/2019	3.06%
Bankw est	Term Deposit	3,000,000	2.75%	270	24/05/2019	1.84%
Bankw est	Term Deposit	5,000,000	2.75%	272	27/05/2019	3.06%
Bankw est	Term Deposit	5,000,000	2.80%	270	28/05/2019	3.06%
Bankw est	Term Deposit	5,000,000	2.80%	270	28/05/2019	3.06%
Bankw est	Term Deposit	5,000,000	2.75%	273	4/06/2019	3.06%
Ausw ide	Term Deposit	5,000,000	2.92%	365	27/06/2019	3.06%
MyState	Term Deposit	5,000,000	2.90%	365	3/07/2019	3.06%
AMP	Term Deposit	5,000,000	2.91%	365	11/07/2019	3.06%
Bendigo	Term Deposit	5,000,000	2.76%	365	25/07/2019	3.06%
Bendigo	Term Deposit	5,000,000	2.77%	365	2/08/2019	3.06%
ME	Term Deposit	5,000,000	2.75%	365	27/08/2019	3.06%
ME	Term Deposit	5,000,000	2.74%	365	6/09/2019	3.06%
MyState	Term Deposit	5,000,000	2.70%	365	12/09/2019	3.06%
WBC	Term Deposit	2,500,000	2.70%	365	20/09/2019	1.53%
NAB	Term Deposit	5,000,000	2.75%	365	27/09/2019	3.06%
Ausw ide	Term Deposit	5,000,000	2.75%	365	28/09/2019	3.06%
Rural	Term Deposit	5,000,000	2.75%	365	11/10/2019	3.06%
MyState	Term Deposit	5,000,000	2.80%	365	30/10/2019	3.06%
CUA	Term Deposit	3,000,000	2.77%	365	9/11/2019	1.84%
AMP	Term Deposit	5,000,000	2.80%	270	18/11/2019	3.06%
CUA	Term Deposit	5,000,000	2.77%	365	26/11/2019	3.06%
NAB	Term Deposit	5,000,000	2.77%	365	30/11/2019	3.06%
WBC	Term Deposit	4,000,000	2.73%	365	14/12/2019	2.45%
ME	Term Deposit	4,000,000	2.72%	364	3/01/2020	2.45%
CUA	Term Deposit	6,000,000	2.77%	365	24/01/2020	3.68%
WBC	Term Deposit	3,000,000	2.72%	365	31/01/2020	1.84%
NAB	Term Deposit	5,000,000	2.73%	365	7/02/2020	3.06%
NAB	Term Deposit	5,000,000	2.65%	364	28/02/2020	3.06%
NAB	Term Deposit	5,000,000	2.65%	366	4/03/2020	3.06%
New castle	Term Deposit	3,000,000	2.50%	365	29/04/2020	1.84%
NAB	Call Account	3,666,216	1.40%	NA	NA	2.25%
<b>Total Investments</b>		<b>\$163,166,216</b>				<b>100.00%</b>

<b>Institution Legend</b>		
AMP = AMP Limited	CBA = Commonwealth Bank of Australia	NAB = National Australia Bank
ANZ = Australia & New Zealand Banking Group	CUA = Credit Union Australia	Newcastle = Newcastle Permanent
Auswide = Auswide Bank	IMB = IMB Bank	St George = St George Bank
BOQ = Bank of Queensland	ING = ING Direct	WBC = Westpac Banking Corporation
BDCU = Berrima District Credit Union	ME = Members Equity Bank	Rural = Rural Bank
Bendigo = Bendigo & Adelaide Bank	MyState = MyState Bank	





## Wingecarribee Shire Council Investment Report Summary

For the period ending 30 April 2019

### Policy Compliance

Council's Investment Policy provides clear direction for the diversification of Council's investment portfolio. This ensures credit and diversification risk is managed in accordance with the adopted risk management framework, as outlined in Council's Policy.

### Individual Institution Limits

A summary of investments placed by institution is as follows:

Institution	S&P Short Term Rating	Maximum %	Actual %	Invested \$	Supports Fossil Fuels	Policy Compliance
NAB	A1+	40%	17.57%	28,666,216	YES	YES
WBC	A1+	40%	5.82%	9,500,000	YES	YES
Bankwest	A1+	40%	20.84%	34,000,000	YES	YES
AMP	A1	25%	6.13%	10,000,000	YES	YES
Bendigo	A2	15%	9.19%	15,000,000	NO	YES
Rural Bank	A2	15%	3.06%	5,000,000	NO	YES
CUA	A2	15%	8.58%	14,000,000	NO	YES
ME	A2	15%	8.58%	14,000,000	NO	YES
MyState	A2	15%	12.26%	20,000,000	NO	YES
Newcastle	A2	15%	1.84%	3,000,000	NO	YES
Auswide	A3	10%	6.13%	10,000,000	NO	YES
<b>Total</b>			<b>100.00%</b>	<b>163,166,216</b>		

### Portfolio Credit Limits

A summary of investments placed by credit limit is as follows:

S&P Short Term Rating	Maximum %	Actual %	Invested \$	Policy Compliance
A1+	100%	44.23%	72,166,216	YES
A1	80%	6.13%	10,000,000	YES
A2	60%	43.51%	71,000,000	YES
A3	20%	6.13%	10,000,000	YES
Govt	25%	0.00%	0	YES
<b>Total</b>		<b>100.00%</b>	<b>163,166,216</b>	



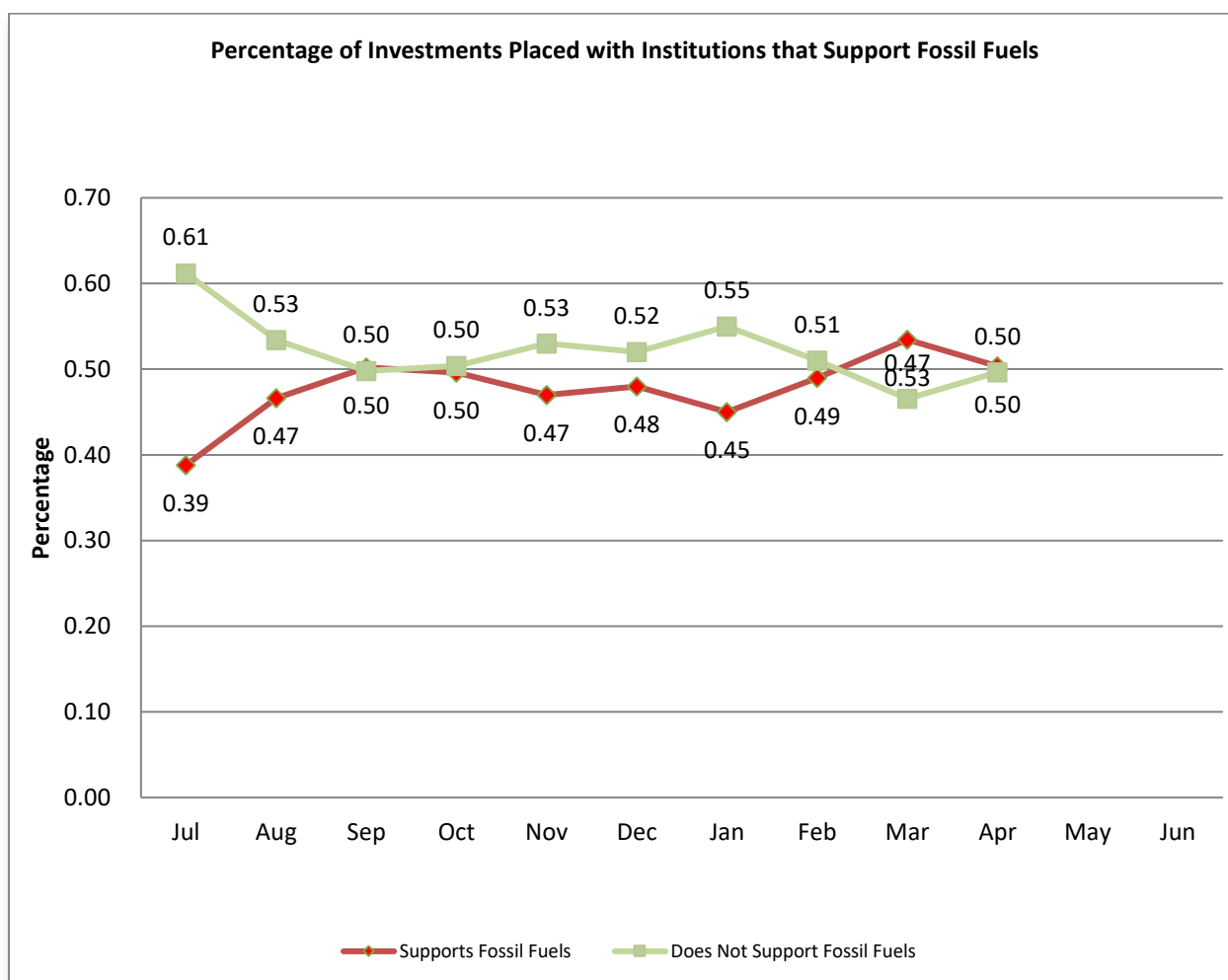
## Wingecarribee Shire Council Investment Report Summary

For the period ending 30 April 2019

### Non-Fossil Fuel Investment Preferecing

Council's adopted Investment Policy states a preference for placing funds with institutions that do not support the fossil fuel industry. The chart below identifies Council's percentage of investments placed with institutions that do not support the fossil fuel industry.

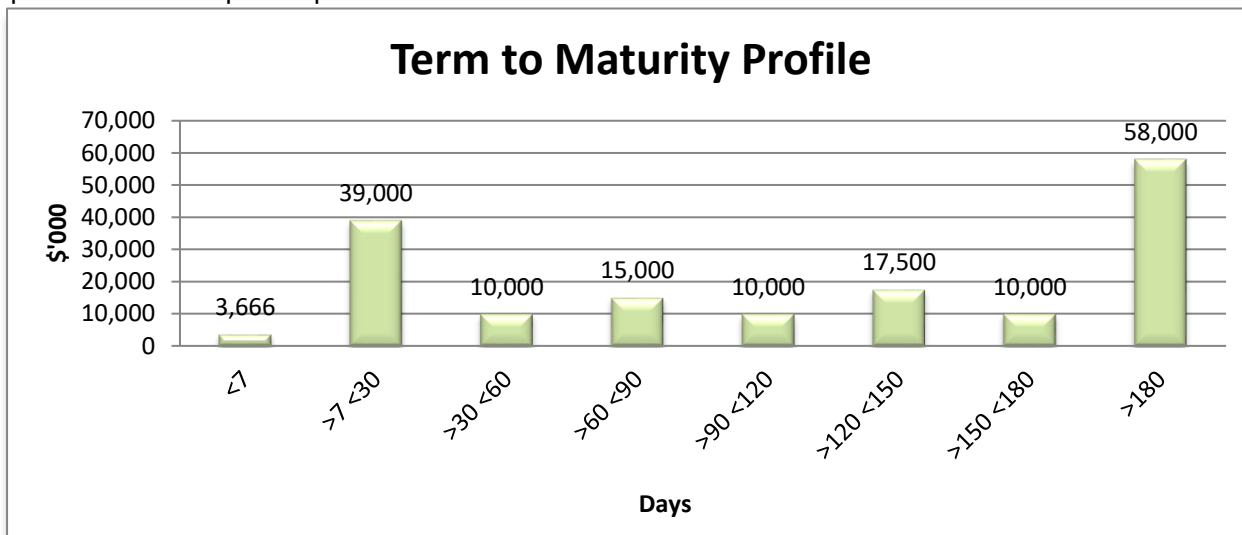
As investments mature Council will actively seek investments with institutions that do not support the fossil fuel industry, on the basis that they offer equivalent returns and are compliant with legislation and the objectives and parameters of the Investment Policy.





### Term to Maturity

Investments have been placed giving due consideration to Council's liquidity requirements. Sufficient Working Capital is available to ensure Council continues to meet its ongoing cash flow requirements for operational and capital expenditure.

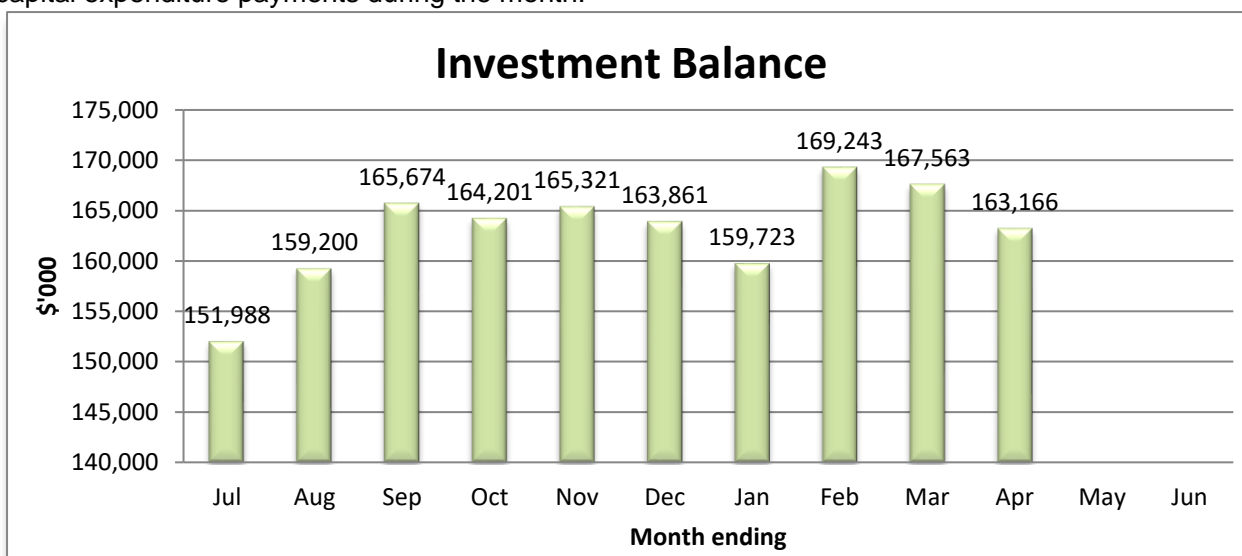


## Wingecarribee Shire Council Investment Report Summary

For the period ending 30 April 2019

### Portfolio Performance

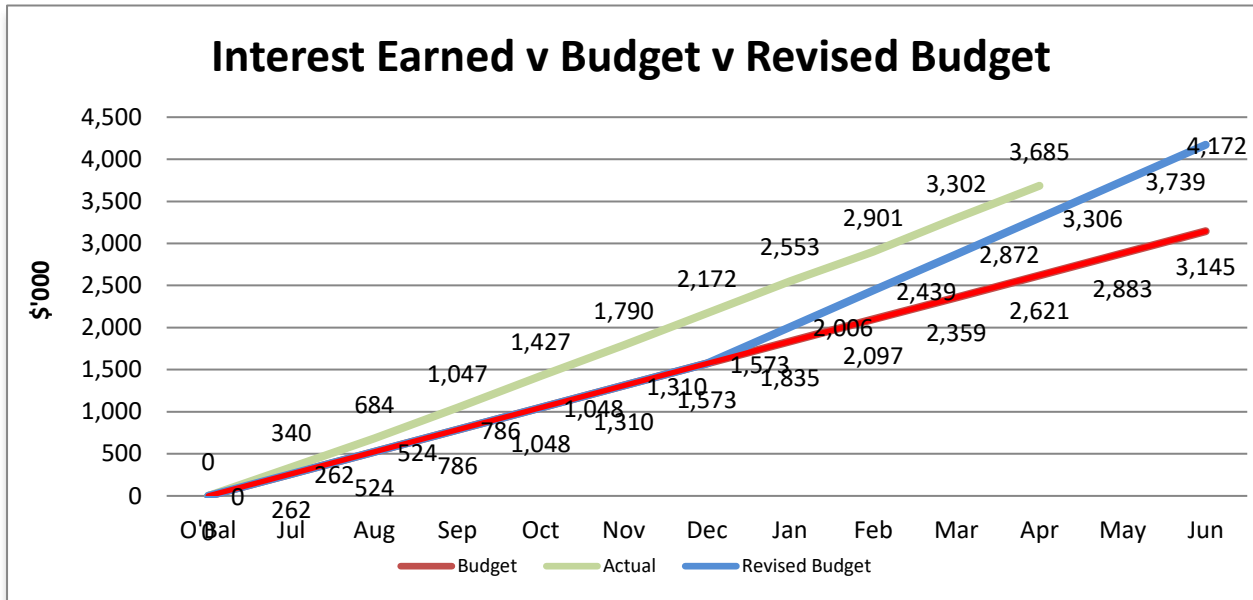
Council's investment balance at the end of April 2019 was \$163.166 million. This has decreased by \$4.397 million since the end of March 2019. The decrease in investments is a result of operational and capital expenditure payments during the month.





**Interest Revenue**

Council is currently exceeding budget expectations. Council's investment portfolio performed above budget due to Council actively seeking the best interest rates available and, high levels of funds to invest.





## Investment Report Summary

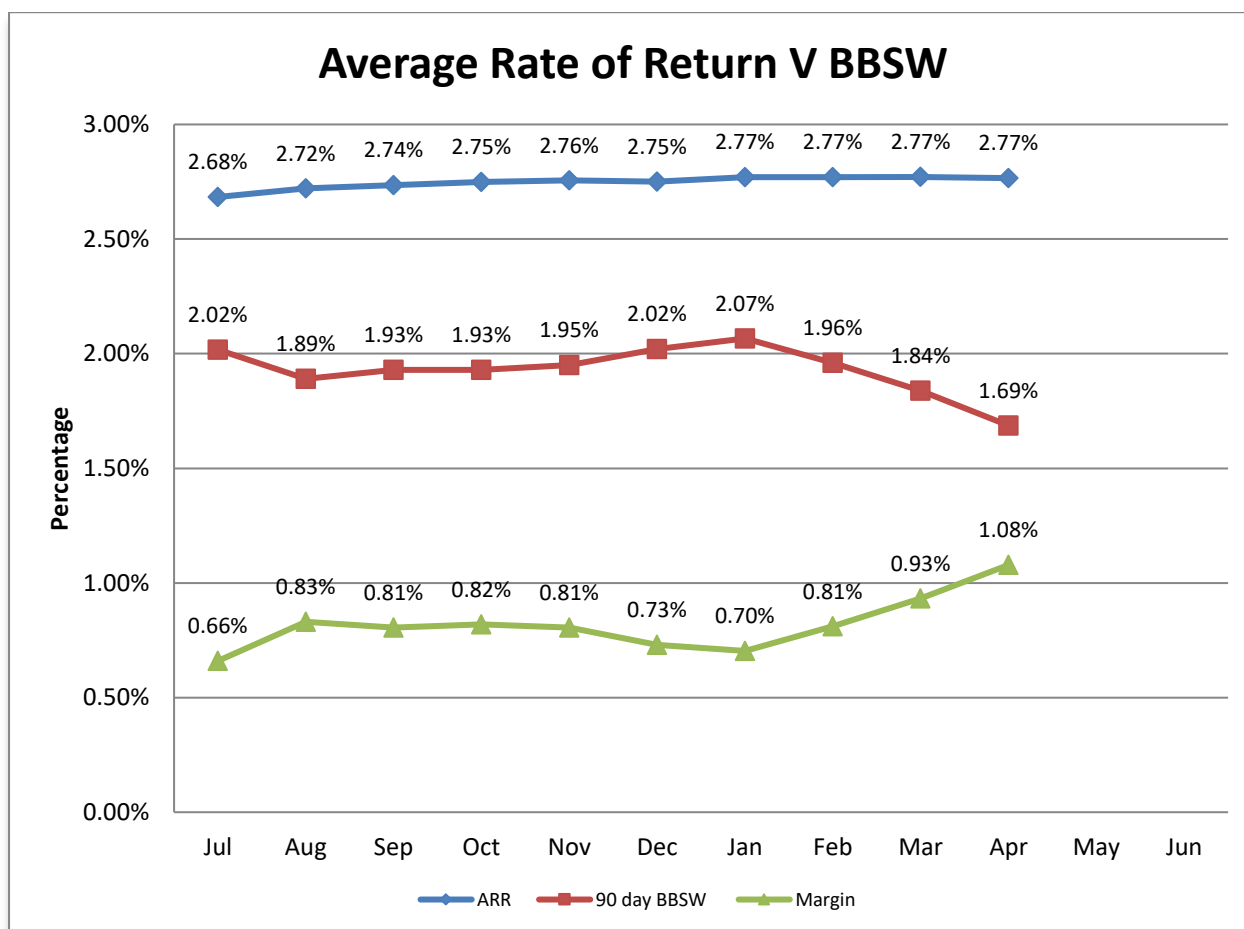
For the period ending 30 April 2019

### Performance against Benchmark

Council's investment portfolio is benchmarked against the 90 day Bank Bill Swap Rate (BBSW).

The average rate of return (ARR) achieved for April 2019 was 2.77% which is the same as March 2019. There was a decrease in the BBSW to 1.69%

The margin above BBSW has increased in April 2019 by 0.15% which shows Council continues to secure favourable interest rates on term deposits.





## 12.2 Proposed Licence Agreement to Highlands Community Centre - Youth Hub, Loseby Park 2A Park Road, Bowral & Stafford Cottage, 22 Bendooley Street, Bowral

Reference:	PN1707738; PN1782100
Report Author:	Property and Project Officer
Authoriser:	Chief Financial Officer
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

### PURPOSE

The purpose of this report is to seek Council approval to place on public exhibition a proposed Licence Agreement to Highlands Community Centre Inc. for the continued occupation of Stafford Cottage at 22 Bendooley Street, Bowral and the Youth Hub located at Loseby Park, 2A Park Road, Bowral.

### RECOMMENDATION

1. **THAT** Council place on public exhibition for a minimum twenty eight (28) days the proposed five (5) year Licence Agreements to Highlands Community Centre for occupation of Stafford Cottage, 22 Bendooley Street, Bowral and the Youth Hub at 2A Loseby Park, Bowral **AND THAT** rental be \$1.00 per annum, if demanded.
2. **THAT**, if any objections are received during the period of public exhibition, a further report be presented to a future Ordinary Meeting of Council.
3. **THAT**, if no objections are received during the period of public exhibition, Council offer a Licence Agreement for the occupation of Stafford Cottage, 22 Bendooley Street, Bowral and Youth Hub at Loseby Park, Bowral to Highlands Community Centre Inc. **AND THAT** the General Manager and Mayor be delegated authority to execute the Licence Agreement under the Common Seal of Council, if required.

### REPORT

#### **BACKGROUND**

Council is the registered proprietor of Stafford Cottage, 22 Bendooley Street, Bowral and Highlands Youth Hub at 2A Park Road, Bowral which are both currently under a Licence Agreement to Highlands Community Centre ("HCC").

The current Licence Agreements expire on 9 July 2019. HCC have requested to enter in to a further term for the Licence Agreement for both Stafford Cottage and the Youth Hub.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 May 2019

### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



## REPORT

HCC is an independent, non-political and non-denominational community organisation. Staff at HCC are funded by the NSW Government. HCC provides a friendly and confidential information and referral services to members of our community and continue to respond to community needs through the provision of programs and services.

At Stafford Cottage, HCC offer the following services:

- Emergency Relief (assistance with advocacy, referrals and food vouchers)
- Interest free Loans
- Tax Help
- Information & Referrals
- Community Development
- Advocacy
- Access to a small meeting room for community groups

The Youth Hub provides services for local youth to learn new skills, access youth services and a range of facilities and attractions, including a media suite and coffee spot in a safe place to meet and have fun.

The new Licence Agreements will be on similar terms and conditions as the existing Licence Agreements. Under the Licence Agreement for Stafford Cottage, Council will be responsible for the following costs associated with the operation of Stafford Cottage:

- Water & Land Rates;
- A donation of \$5,500 towards telephone, facsimile costs, gas, electricity and waste collection reviewed annually as part of Council's budget preparation process;
- Grounds maintenance and security.

Under the Licence Agreement for the Youth Hub, Council will be responsible for the following costs associated with HCC's operation of the Youth Hub:

- Water and Land Rates;
- A donation of \$1,500 toward telephone and facsimile costs, reviewed annually as part of Council's budget;
- A donation of \$1,000 towards electricity costs, reviewed annually as part of Council's budget;
- Cleaning, grounds maintenance and security.

It is recommended that a new Licence Agreement be entered in to for a further five (5) years for both premises.

In accordance with Council's Policy for Lease & Licence of Council Property, the rental charged to the Highlands Community Centre will be \$1 per annum, if demanded.



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## **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

None identified.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Both Stafford Cottage and the Youth Hub are on Community Land. As such, it is a legislative requirement that Council publicly exhibit the proposed Licence Agreement for a minimum twenty eight (28) day period. This will give members of the community an opportunity to review the document(s) and make a written submission if they wish to do so.

### **Internal Communication and Consultation**

Departmental Managers

### **External Communication and Consultation**

Highlands Community Centre Inc.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

Highlands Community Centre Inc. is a not-for-profit organisation that provides community services within the Shire.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## **COUNCIL BUDGET IMPLICATIONS**

Council will be responsible for water & land rates, maintenance and security for both premises as well as making annual donations of \$8,000 for costs towards electricity, gas & telephone and the running of the Youth Hub and Stafford Cottage. Funds will come from the Public Halls budget. These costs are factored into Council's budget process.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 May 2019

### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



#### RELATED COUNCIL POLICY

##### *Lease or Licence of Council Property – Not-For-Profit Organisations*

This Policy was adopted on Wednesday 26 November 2014 (MN326/14). The purpose of this policy is to provide benefits to the Council and its residents by:

- Defining the general terms and conditions of Leases and Licences to Not-For-Profit Organisations in respect of Council Property;
- Ensuring that leasing and licensing of Council Property is consistent, transparent, fair and impartial;
- Ensuring that the lease or licence is in accordance with the Local Government Act 1993, Local Government Regulations and Office of Local Government Guidelines;
- Encouraging sound management of Council Property.

#### CONCLUSION

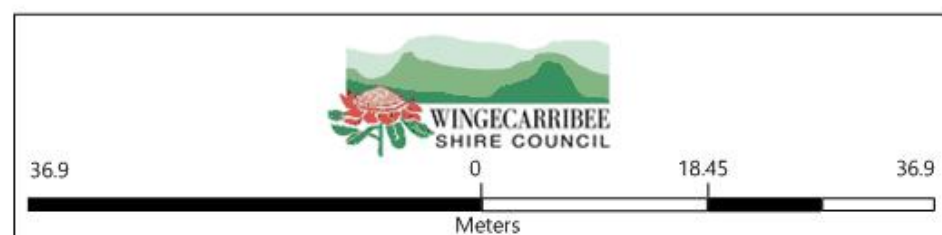
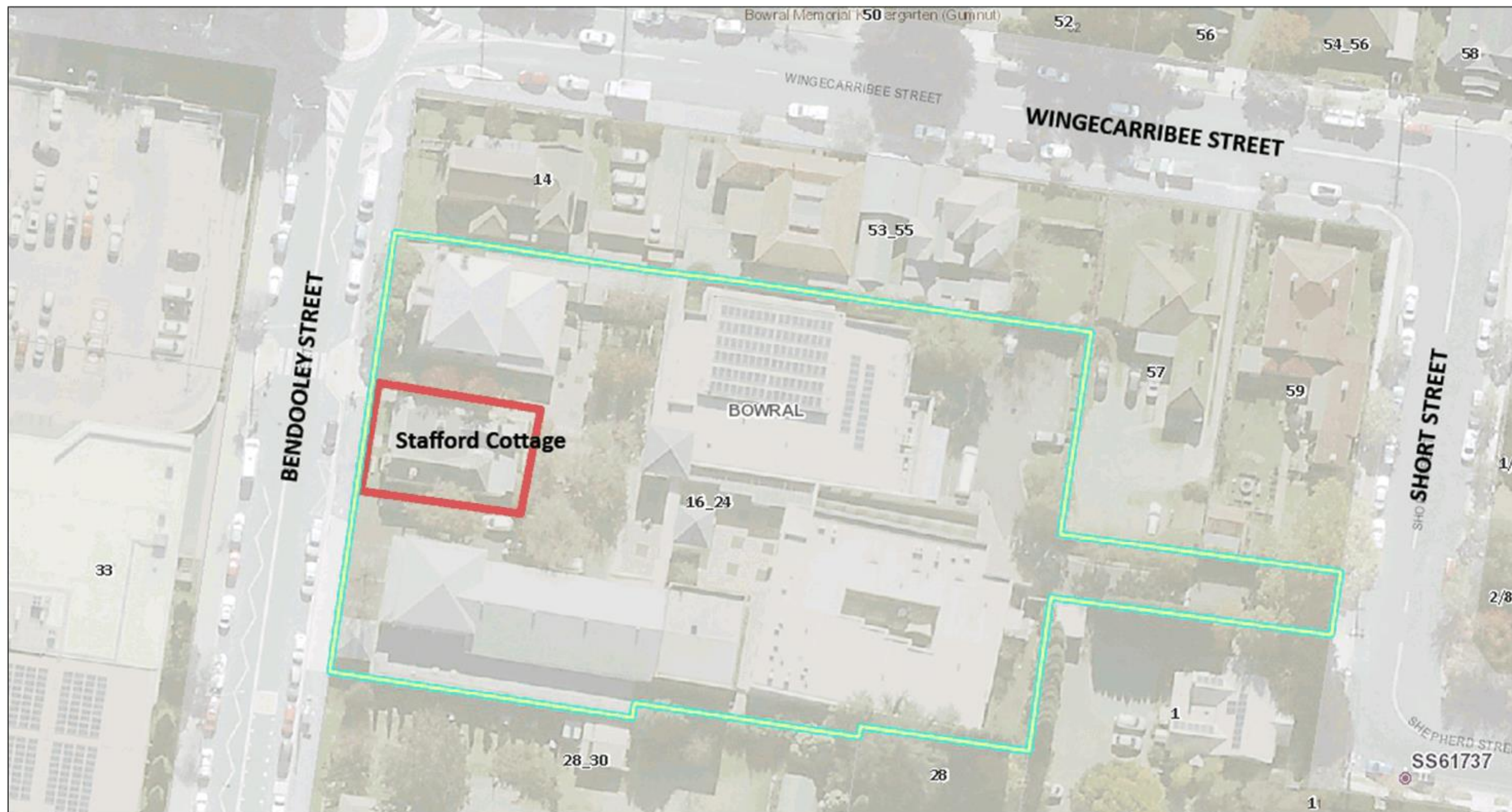
This report recommends that Council offer a Licence Agreement for a period of five (5) years to Highlands Community Centre Inc. for the continued use of the subject Council properties.

It is further recommended that Council give public notice of its intention to enter into the subject Licence Agreements. A further report will be forwarded to a future Ordinary Meeting of Council for determination if any written objections to the Licence Agreement are received during the period of public notice.

#### ATTACHMENTS

1. Aerial Map - Stafford Cottage
2. Aerial Map - Youth Hub



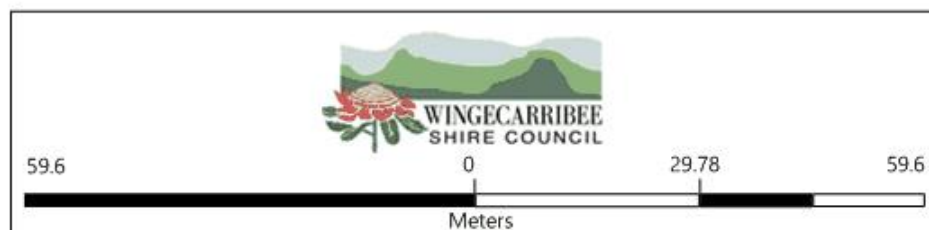


Wingecarribee Shire Council

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Wingecarribee Shire Council

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## 12.3 Berrima Marketplace All Abilities Playground Upgrade and Draft Masterplan

Reference:	6526
Report Author:	Asset Planner - Parks and Buildings
Authoriser:	Asset Coordinator Parks and Buildings
Link to Community	
Strategic Plan:	Plan and deliver appropriate and accessible local services for the community

### PURPOSE

The purpose of the report is to advise Council of a proposed project to upgrade the Berrima Marketplace Playground and to seek approval for the Berrima Marketplace Draft Masterplan to be placed on public exhibition with the community invited to provide feedback and comments.

### RECOMMENDATION

1. **THAT** the Berrima Marketplace Draft Masterplan be placed on public exhibition for a period of twenty eight (28) days.
2. **THAT** the final Berrima Marketplace Masterplan incorporating community submissions be submitted to Council for adoption following the public exhibition.

### REPORT

#### **BACKGROUND**

In 2018 the Rotary Club of Berrima obtained a grant for \$30,200 for accessible play equipment at Berrima Marketplace from the Community Building Partnership. Council determined that the installation of accessible play equipment without an appropriate means of travel such as compliant paths and parking was against best practice. Further, in consideration of the Marketplace's local heritage listing and heritage values in the broader Berrima Heritage Conservation Area, park improvements needed to be well considered in the larger context. Therefore a decision was made to develop a Masterplan.

The Rotary grant required that funds were expended by March 2019. As this deadline could not be met, the funding body agreed to transfer the funds to Council under a Memorandum of Understanding between Council and Rotary, which was executed on 31 January 2019 and effectively acquitted the CBP grant requirements.

Therefore Council successfully sought and obtained additional grant funding of \$239,990 via the Round 2 Stronger Country Communities Fund.

The grant funding together with the annual Berrima Marketplace capital budget of \$10,300 provides a total project budget of \$280,490.



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## **REPORT**

Play By Design were engaged by Council to develop the Berrima Marketplace Masterplan. The brief included the upgrade of the existing playground to include all-abilities play equipment, accessible paths and parking in accordance with Australian Standards for Disability (AS1428). The Draft Masterplan for the Berrima Marketplace covers both sides of the Old Hume Highway and also considers tree management and replacement to ensure that the appropriate species are planted.

The 2007 Berrima Marketplace Conservation Management Strategy was provided to the Consultant as part of the brief. Play By Design has a Heritage Consultant on staff to ensure that the Masterplan and playground upgrade are sympathetic to the heritage requirements.

The grant funding was sought on a concept plan which included all abilities equipment. The Masterplan has further developed this concept to include an improved selection of equipment, disabled parking and accessible pathways.

The Masterplan is visionary and elements of the Masterplan will be delivered over a period of time as budgets or further grant funding allows. Whilst it is intended to tender for the Stage 1 and 2 works, budgetary constraints will determine the extent of the works and whether any reduction in play equipment is required. The desired deliverables of Stage 1 is the All Abilities Playground upgrade, accessible parking and pathways.

The Heritage Impact Statement provided by the Consultant indicates the impact is minimal and no DA is required. However, subject to further consultation internally a Development Application may be required. This would likely however impact on Council's ability to meet grant funding deadlines and an application for an extension would need to be sought.

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## **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

The project will not impact on Council's Fit For the Future Improvement Plan.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Signage has been placed in the Berrima playground and amenities building since 15 January 2019 advising of the proposed upgrade to the playground. Community members have been encouraged to visit the website and provide feedback. During this time 58 people have visited the webpage.

The exhibition of the Berrima Marketplace Masterplan will include newspaper advertisement, social media and other engagement tools on the Wingecarribee Your Say website.

Should the requirement for a DA be determined, this would also allow for further community engagement and comments.



### **Internal Communication and Consultation**

Assets, Heritage, Traffic, Infrastructure Services, Community Engagement, Project Delivery, Ageing and Disability Officer, Council's Access Committee and Executive have been consulted during the development of the Masterplan.

Consultation has also occurred internally in regards to the Berrima Australia Day celebration requirements.

Council's Access Committee was extremely positive about the Draft Masterplan. The allocation of accessible parking spaces, playground and toilet facilities were considered important and necessary. The potential for a footpath linkage between the park and the village was also viewed very favourably.

### **External Communication and Consultation**

The Berrima Rotary Club, Council's External Heritage Adviser and two members of the Berrima Residents Association have been consulted during the development of the Masterplan.

Following approval from Council the Berrima Marketplace Draft Masterplan will be placed on public exhibition for a period of 28 days and members of the public will be invited to provide feedback.

It is suggested that Berrima Public School and local disability service providers be specifically invited to provide feedback during the exhibition period.

Once the exhibition period has closed a report will be submitted to Council for consideration.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

The Berrima Marketplace Masterplan, when adopted, will provide a consistent management framework to enhance the sustainable future of Council's public recreation assets.

- **Social**

The inclusion of all-abilities play equipment and appropriate parking and access paths will enhance the social aspects of the park for people with disabilities and their carers. The Masterplan has been designed to ensure that all visitors to the park can access the amenities, the playground and the bus stop via safe pathways that meet Australian Standards, whilst still complementing the heritage aspects of the Berrima Village.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

The Masterplan provides for acknowledgement of the history of Berrima by incorporating various elements such as sculptures and play equipment to pay tribute to the convict heritage of the area.

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- **Governance**

There are no governance issues in relation to this report.

#### COUNCIL BUDGET IMPLICATIONS

There is no implication on Council's budget as there is funding available to undertake Stage 1 of Masterplan, being the All Abilities Playground Upgrade project that will be one outcome of the Draft Masterplan.

#### RELATED COUNCIL POLICY

- Asset Management Policy

#### OPTIONS

The options available to Council are:

##### Option 1

THAT Council endorse the Berrima Marketplace Draft Masterplan for public exhibition.

##### Option 2

THAT Council does not endorse the Berrima Marketplace Draft Masterplan for public exhibition.

Option No. 1 is the recommended option to this report.

#### CONCLUSION

Placing the Berrima Marketplace Draft Masterplan on public exhibition and providing further opportunity for community feedback will enable the finalised Masterplan to be submitted to Council for adoption and for the Stage 1 All Abilities Playground Upgrade to be planned for implementation.

#### ATTACHMENTS

1. Draft Masterplan Sheet 1 - *circulated under separate cover*
2. Draft Masterplan Playground Concept Plan - *circulated under separate cover*
3. Draft Masterplan Playground Detail Plan - *circulated under separate cover*
4. Draft Masterplan Playground Access Plan - *circulated under separate cover*
5. Draft Masterplan Playground Equipment Plan - *circulated under separate cover*
6. Draft Masterplan West - *circulated under separate cover*
7. Draft Masterplan East - *circulated under separate cover*
8. Draft Masterplan Tree Management Plan West - *circulated under separate cover*
9. Draft Masterplan Tree Management Plan East - *circulated under separate cover*
10. Draft Masterplan Staging Plan - *circulated under separate cover*



## 12.4 Bong Bong Common Masterplan

Reference:	6530/1
Report Author:	Asset Planner - Parks and Buildings
Authoriser:	Asset Coordinator Parks and Buildings
Link to Community Strategic Plan:	Increase promotion of healthy lifestyle choices

### **PURPOSE**

The purpose of this report is to seek Council approval to adopt the Draft Bong Bong Common Masterplan.

### **RECOMMENDATION**

**THAT** the draft Bong Bong Common Masterplan included at Attachment 1 be adopted by Council.

### **REPORT**

#### **BACKGROUND**

The Draft Bong Bong Common Masterplan was presented to Council on 13 March 2019.

As per Council resolution the Draft Masterplan was placed on public exhibition for 28 days, ending on 22 April 2019. During the exhibition period the Masterplan was viewed 666 times online, with 181 downloads and 11 written responses were received. Of the written responses three were received from the Aero Club and two from the Park Run group. Other responses were from interested residents.

#### **REPORT**

The feedback received was generally positive, some of the concerns expressed included:

<b>Feedback</b>	<b>Council Response</b>
The need for toilets was seen as a priority.	An amenity block is proposed in Stage 2. A toilet is presently available in Cecil Hoskins Reserve, managed by National Parks.

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<b>Feedback</b>	<b>Council Response</b>
<p>Three responses were received from the Aero Club.</p> <p>Concerns were expressed regarding the Stage 3 carpark (near the Aero Club building) due to access off Moss Vale Road and the current 90km per hour speed zone.</p> <p>The Aero Club expressed disapproval of the clubhouse being modified and the fact that they would no longer have exclusive use.</p>	<p>A traffic engineer was engaged during the development of the Masterplan and preliminary discussions have taken place with Roads and Martine Services. Prior to any works on Stage 3 of the Masterplan, a full traffic study would be conducted, together with a request for a speed reduction.</p> <p>Any changes to the current user agreement arrangement with the Aero Club would be extensively consulted and will take place when Stage 3 works are being planned.</p>
<p>Two responses were received from the Park Run Group.</p> <p>The Park Run has expressed concern that their activity was not acknowledged or catered for in the Masterplan.</p>	<p>Whilst Council was aware of the park run activity historically, the group has not had a current user agreement with Council since 2016. Council staff met with the Park Run Committee on 10 May 2019 to discuss the activity and use of the site. Council has requested an updated risk assessment and will consider Park Run signage at the relevant stage of works.</p>
<p>Feedback was received on the amount of signage proposed suggesting it was too much and that the design was too modern.</p>	<p>Feedback noted and will be considered when finalising signage designs during Stage 1 detailed planning.</p>
<p>Feedback was received on the likely cost of implementing the Masterplan. The cost estimates were not exhibited with the Masterplan.</p>	<p>The Masterplan is visionary and is proposed to be implemented in three stages. The timing of those stages will be strategically determined against other capital projects as timing and budgets allow. In addition, the Masterplan provides direction to allow Council to develop detailed designs and seek grant funding where appropriate. The stage one works on the eastern side have been identified as the first priority.</p>



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## **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

The project will not impact on Council's Fit For the Future Improvement Plan.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

The Masterplan has been exhibited for 28 days via Council's Your Say website and hard copies were available at Customer Service and the Libraries.

### **Internal Communication and Consultation**

During the development of the Masterplan Assets, Heritage, Traffic, Infrastructure Services, Environment & Sustainability and Executive staff were consulted. Feedback was considered and incorporated into the Draft Masterplan where appropriate.

A Councillor Briefing Session was held on 13 March 2019 prior to the Draft Masterplan being approved for public exhibition.

### **External Communication and Consultation**

The Bong Bong Common Management Committee formed part of the project working group and provided extensive feedback and contribution to the Masterplan. The Aero Club were also represented on the Committee. National Parks & Wildlife Service were consulted and are happy to work with Council to ensure that both reserves provide enjoyment for the community and are preserved in accordance with their purpose.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

The Bong Bong Common Masterplan, when adopted, will provide a consistent management framework to enhance the sustainable future of Council's public recreation assets.

- **Social**

The Bong Bong Common Masterplan, when adopted, will promote Council's capacity to provide improved recreational space and will both protect and enhance the heritage values of the site. • **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

The Masterplan will provide a cultural opportunity with respect to appreciating the area's history for both local residents and visitors.

- **Governance**

There are no governance issues in relation to this report.

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### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



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#### COUNCIL BUDGET IMPLICATIONS

The Draft Masterplan identifies several stages of works. The Masterplan will be a valuable planning tool as an input into Council's 10-year capital works program. The development of detailed designs would afford an opportunity to apply for grant funding.

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#### RELATED COUNCIL POLICY

The Bong Bong Common Draft Masterplan is in line with the following Council policy:

- Asset Management Policy;

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#### OPTIONS

The options available to Council are:

##### Option 1

The Draft Bong Bong Common Masterplan included at Attachment 1 be adopted by Council.

##### Option 2

Council does not adopt the Draft Bong Bong Common Masterplan as exhibited and amends and re-exhibits the Draft Masterplan for a further 28 days.

Option No. 1 is the recommended option to this report.

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#### CONCLUSION

The feedback received on the Draft Bong Bong Common Masterplan is noted, however, does not warrant amendments to the exhibited Masterplan. Therefore, it is recommended that the Draft Masterplan be adopted as the final Bong Bong Common Masterplan.

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#### ATTACHMENTS

1. Bong Bong Common Masterplan - *circulated under separate cover*

Barry W Paull

**Deputy General Manager Operations, Finance and Risk**

Thursday 16 May 2019

## 13 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

### 13.1 Planning Proposal to Rezone and Reclassify Land at Innes Road, Moss Vale

Reference:	5901/46
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

#### PURPOSE

The purpose of this report is to inform Council of the post exhibition outcome of this Planning Proposal to rezone the subject land.

#### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

#### RECOMMENDATION

1. **THAT** in accordance with s3.35 of the *Environmental Planning & Assessment Act 1979* Council resolve to not proceed with the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to rezone Part of Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use and apply a Minimum Lot Size of 700m<sup>2</sup>, and to amend Schedule 4 to reclassify Part of Lot 2 DP 775152 Innes Road Moss Vale from Community to Operational due to the subject land being identified as a significant drainage easement.
2. **THAT** Council liaise with the owner of 173 Lackey Road Moss Vale to explore the option of a lease over the easement to provide rear access to Innes Road.



**REPORT**

**BACKGROUND**

On 24 November 2014 Council received a request from Lee Environmental Planning, representing the owners of 173 Lackey Road, Moss Vale (Lot 8 Section 1 DP 975386) to potentially acquire a section of Council owned land (the subject site) located to the rear of properties in Lackey Road Moss Vale, including 173 Lackey Road. The purpose of seeking to acquire a portion of the subject land is to enable the owners of 173 Lackey Road to gain direct access to the rear of their property via Innes Road. The location of the subject land in relation to both Innes Road and 173 Lackey Road is indicated in **Figure 1** below.



Figure 1: The location of the subject land in relation to 173 Lackey Road

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It is noted that the whole of Lot 2 covers a total area of 1,834 m<sup>2</sup> and comprises two parts as indicated in **Figure 2** below. The northern part (the subject of this Planning Proposal) has an area of 684m<sup>2</sup> and takes the form of a strip of land some 3 metres in width and 228 metres in length. The land is Council owned and zoned RE1 Public Recreation.

It is noted that the subject land connects with the Southern part of Lot 2 which lies on the western bank of Whites Creek. The Planning Proposal does not involve any of the southern part of Lot 2.



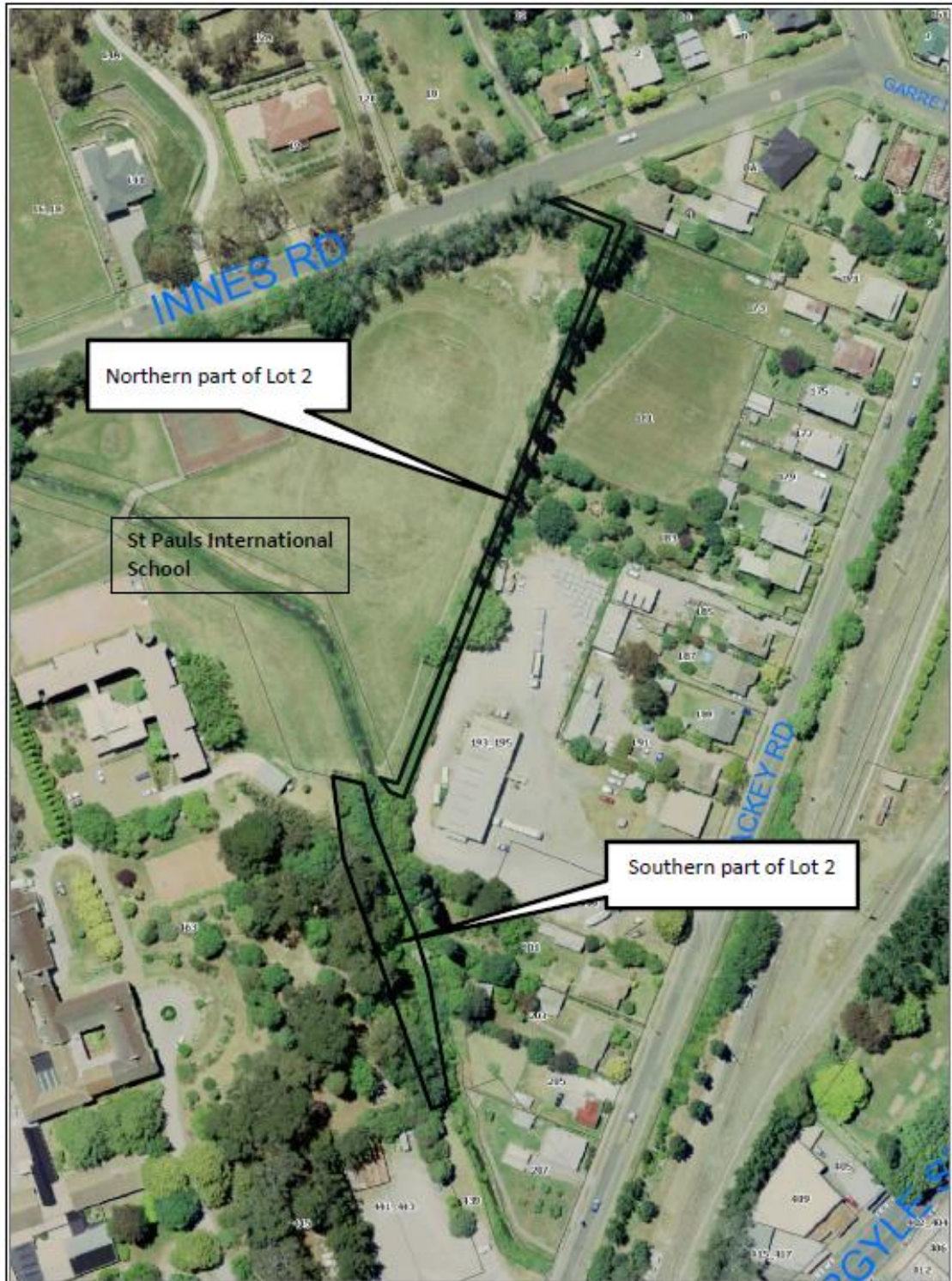


Figure 2: The location of the subject land in relation to 173 Lackey Road

The subject land is zoned RE1 Public Recreation, as is the southern portion of Lot 2 and extensive land along either side of Whites Creek to the south. Zoning details are indicated in **Figure 3** below.

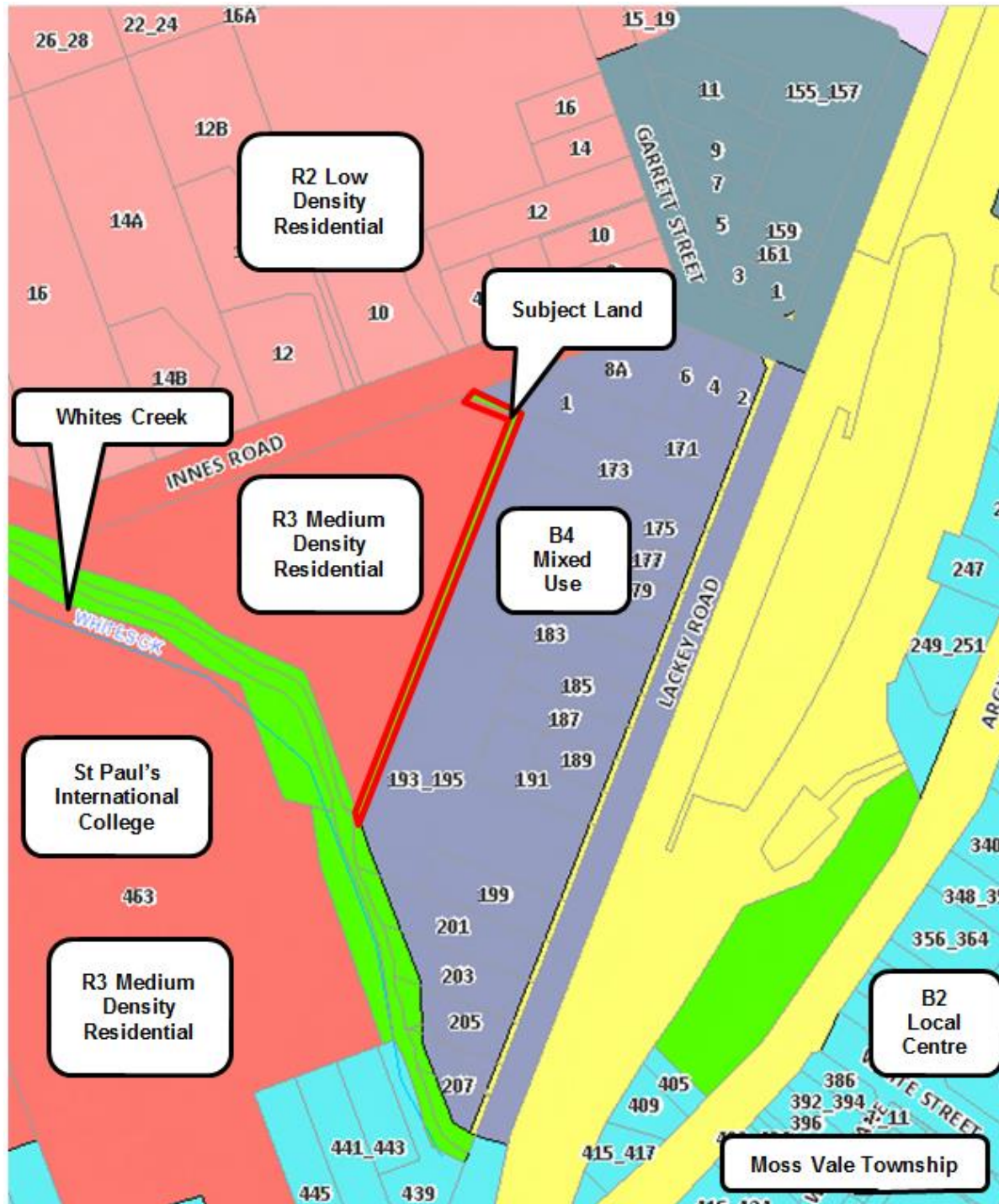


Figure 3: Zoning of the subject land and adjoining properties

The Lackey Road properties are zoned B4 Mixed Use with a minimum lot size of 700m<sup>2</sup>. It is noted that a narrow strip along the frontage to Lackey Road is included on the relevant land reservation acquisition map of WLEP 2010 for road widening. Land between Innes Road and the subject land is zoned R3 Medium Density Residential and is currently used as playing fields for St Paul's International College.

The initial proposal observed the potential advantage of achieving future acquisition of the front portion of the subject site by means of compensation, in whole or part, by acquisition of



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the rear access way. To achieve this outcome, the objective of this Planning Proposal is therefore to rezone the subject land from RE1 Public Recreation to B4 Mixed Use, apply a Minimum Lot Size of 700m<sup>2</sup> to reflect surrounding land, and reclassify the subject land from Community to Operational.

As a result of the initial assessment of the Planning Proposal, Council resolved at its Ordinary Meeting of 10 February 2016 Council as follows:

**MN 21/16**

**MOTION** moved by Cllr T D Gair and seconded by Deputy Mayor I M Scandrett

**THAT** a Planning Proposal be prepared and submitted to the Department of Planning and Environment to amend Wingecarribee Local Environmental Plan 2010 to:

- (a) **Rezone Part of Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use;**
- (b) **Apply a Minimum Lot Size of 'Q' (700sqm) to Part of Lot 2 DP 775152 Innes Road, Moss Vale; and**
- (c) **Reclassify Part of Lot 2 DP 775152 Innes Road, Moss Vale from Community to Operational and amend Schedule 4 of WLEP 2010 accordingly.**

## **REPORT**

In accordance with the above Resolution, a Planning Proposal was subsequently prepared and submitted to the (then) Department of Planning and Environment for a Gateway Determination which was issued on 21 November 2016. Council did not receive permission to use its delegations as they do not extend to matters involving the reclassification of community land.

### **Community Consultation**

The Planning Proposal and supporting documentation were placed on public exhibition for a period of 30 days from Wednesday 15 February to Friday 17 March 2017 and made available to view at the Customer Service Centre and at Moss Vale Library as well as through the 'What's on Exhibition' page on Council's website. The exhibition was advertised in the Southern Highland News during each week of the exhibition period and neighbours were directly notified by mail. Forty six (46) notification letters were sent and two (2) submissions were received. Both submissions addressed the following issues. It is noted that neither submitter was adjacent to the subject land.

<b><i>Submission Comment</i></b>	<b><i>Council Response</i></b>
If the land is rezoned and a minimum lot size of 700m <sup>2</sup> applied, can the land be used for housing?	<i>The area of the land being considered for rezoning has an area well below the 700m<sup>2</sup> minimum and more than half of the land is flood affected so residential development would be prohibited.</i>
The land floods regularly.	<i>The area is mapped as flood liable due to the proximity of Whites Creek. The proposal would neither improve nor adversely impact on the current flood potential.</i>



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<b>Submission Comment</b>	<b>Council Response</b>
The land should be kept for public access and be better maintained. The land is a habitat for snakes and rats.	<i>Most areas near water attract snakes and rats. It is not clear from the submissions, but these issues may relate more to the southern portion of the subject land closer to White's Creek.</i>

#### Public Hearing

The *Local Government Act, 1993* requires that a Public Hearing be held when public land is to be reclassified from Community to Operational land, including as part of a Planning Proposal where other development standards such as zoning and minimum lot size are also being amended. A Public Hearing provides the community with the opportunity to express their views in a public forum and to hear the views of other stakeholders.

The Public Hearing was held in the Council Theatre on 2 May 2017 and was notified in the Southern Highland News for three (3) weeks prior, on 12, 19 and 26 April 2017. Individual notification letters were also sent to adjoining owners and submission makers to the exhibition of the Planning Proposal.

Six (6) people attended the Public Hearing and opinions expressed were both against and in support of the proposal. Those speaking against the proposal reiterated their concerns as expressed in their submissions to the Planning Proposal. Those in favour supported the potential for utilisation of the land for rear access to their properties.

The original focus of the Planning Proposal was on the 'community access' value of the land, due no doubt to its RE1 Public Recreation zoning and the potential for a future exchange of land between the subject land and the land identified for future acquisition fronting Lackey Road. However, in drafting this report, it became apparent that the subject land is central to a stormwater catchment channelling stormwater flows from Lackey Road south west into Whites Creek as indicated at **Figure 4** below.

Overland contours influence the direction of stormwater flow and the location and direction of the stormwater catchment and associated drainage pipes leading into Whites Creek. Council's Drainage Engineer advises that any rezoning and private acquisition of the subject land would be unwise and could adversely impact on Council's stormwater management system.

Furthermore, it is noted that the land, being zoned B4 Mixed Use in an area of currently predominantly low density residential development, has the potential for redevelopment to more intensive land uses which would further reinforce the importance of the easement to manage channel stormwater flows into Whites Creek.

It is therefore now recommended that the Planning Proposal not proceed.

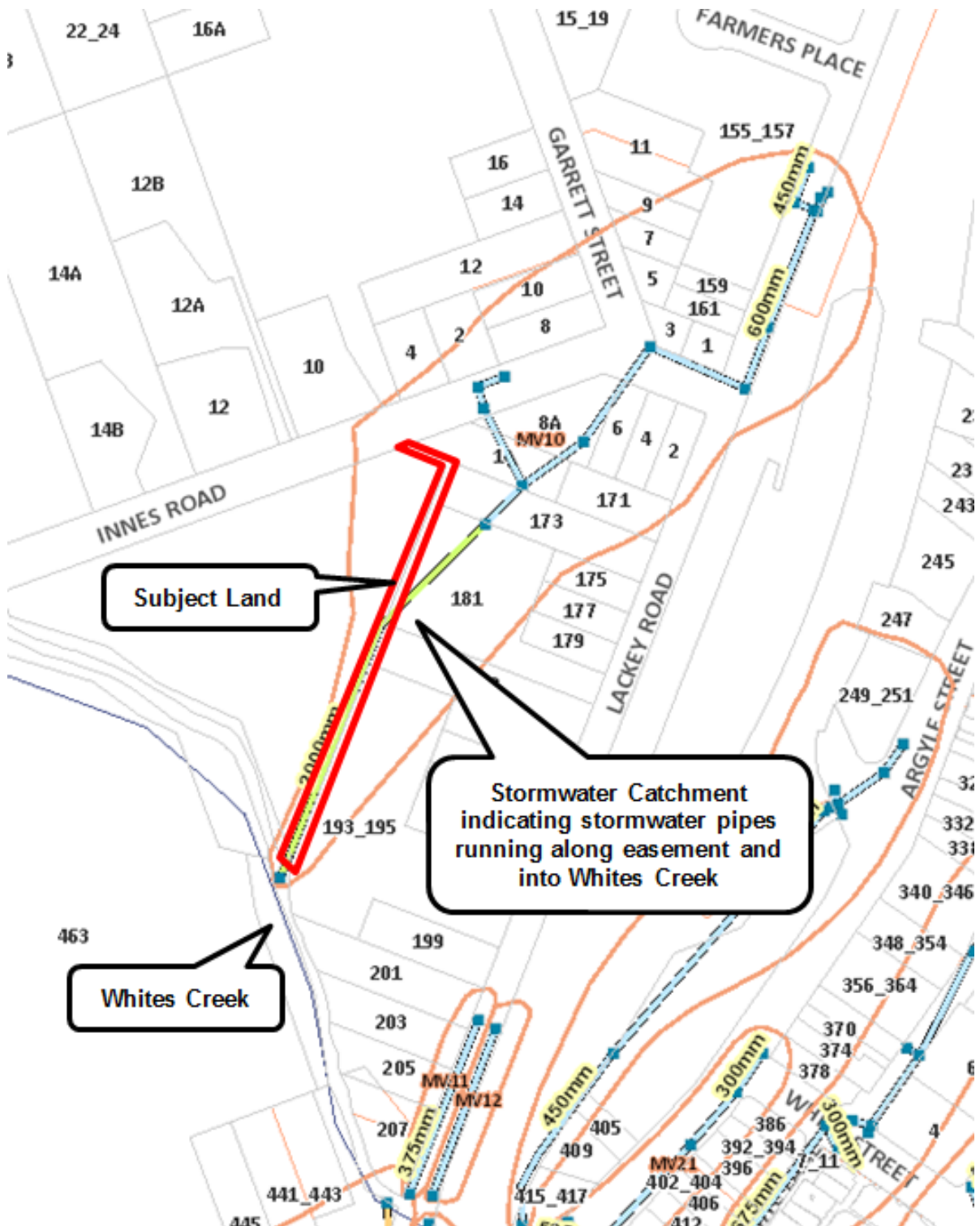


Figure 4: Stormwater Catchment

It is noted that the purpose of the original request was to allow access from 173 Lackey Road across the easement to Innes Road. Therefore, a lease over a portion of the subject land to the rear of 173 Lackey Road for that purpose may still be possible provided no hard paving or other form of development is constructed which might adversely impact on

drainage pipes or overland flows. It is recommended that this option be explored further with the proponent.

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### **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

There are no implications for Council's Fit for the Future Plan resulting from this report.

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### **COMMUNICATION AND CONSULTATION**

#### **Community Engagement**

Community engagement with regard to both the rezoning of the subject land and its reclassification was undertaken as discussed in the body of the report.

#### **Internal Communication and Consultation**

Internal consultation occurred with Council's Property staff and certain Assets and Project Delivery staff. Council's Drainage Engineer identified potential significant stormwater issues should the Planning Proposal proceed.

#### **External Communication and Consultation**

WaterNSW was consulted prior to public exhibition of the Planning Proposal and concluded that water risk was low at the northern end of the subject land, and higher closer to Whites Creek, but did not object to the Planning Proposal proceeding.

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### **SUSTAINABILITY ASSESSMENT**

- **Environment**

The recommendation to not proceed with the Planning Proposal should avoid potential environmental issues resulting from the loss of the drainage easement.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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### **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications in relation to this report.



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## **RELATED COUNCIL POLICY**

There are no other Council policies relevant to this report.

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## **OPTIONS**

The options available to Council are:

### **Option 1**

Support the recommendations of this report, namely;

1. ***THAT** in accordance with s3.35 of the Environmental Planning & Assessment Act 1979 Council resolve to not proceed with the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to rezone Part of Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use and apply a Minimum Lot Size of 700m<sup>2</sup>, and to amend Schedule 4 to reclassify Part of Lot 2 DP 775152 Innes Road Moss Vale from Community to Operational due to the subject land being identified as a significant drainage easement.*
2. ***THAT** Council liaise with the owner of 173 Lackey Road Moss Vale to explore the option of a lease over the easement to provide rear access to Innes Road.*

### **Option 2**

Resolve to continue with the Planning Proposal:

***THAT** in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 Council resolve to proceed with the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to rezone Part of Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use and apply a Minimum Lot Size of 700m<sup>2</sup>, and to amend Schedule 4 to reclassify Part of Lot 2 DP 775152 Innes Road Moss Vale from Community to Operational.*

Option 1 is the recommended option as discussed in the body of this report.

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## **CONCLUSION**

Part of Lot 2 DP 775152 Innes Road, Moss Vale had been identified by an adjoining property owner for purchase in order to gain access to the rear of their land from Innes Road, Moss Vale. The subject site is a narrow strip of Council owned community classified land zoned RE1 Public Recreation.

Initially it was thought that this land could potentially be exchanged for land fronting Lackey Road identified for future acquisition for road widening, but it is now understood that the subject land is a significant stormwater drainage easement. So although the land is of limited recreation value, it is important for stormwater management and it is considered by Council Assets staff that to proceed with the Planning Proposal would be unwise.

It is therefore recommended that the Planning Proposal not proceed any further and that Council liaise with the owner of 173 Lackey Road Moss Vale to explore the option of a lease over the easement to provide rear access to Innes Road provided no further development is proposed.

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**ATTACHMENTS**

There are no attachments to this report.



## 13.2 Planning Proposal to Amend WLEP 2010 for Certain Lands Supported in the Wingecarribee Local Planning Strategy 2015-2031

Reference:	5901/52
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Provide a mixture of housing types that allow residents to meet their housing needs at different stages of their lives and support affordable living

### PURPOSE

The purpose of this report is to consider the public exhibition of Planning Proposals supported by Council in the relevant Precinct Plans of the Wingecarribee Local Planning Strategy 2015-2031.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

1. **THAT** in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to include Lot 109 DP 664112, 2 Wilson Drive Hill Top, in Schedule 1 (Additional Permitted Uses) to permit development for the purposes of a dwelling house **be finalised**.
2. **THAT** in accordance with s3.36 of the Environmental Planning & Assessment Act 1979, the proposed amendment to Wingecarribee Local Environmental Plan 2010 to zone Part of Lot 10 DP 1216346 and Part of Lot 3907 DP 1215684, being that portion of land adjoining Mittagong railway station which is the subject of a lease between ARTC and the proponent, from SP2 Rail Infrastructure to B4 Mixed Use with a maximum height of 10m and a maximum floor space ratio of 0.5:1 **be finalised**.
3. **THAT** in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to include Lot 50 DP556644, 2A Cliff Street Bowral, in Schedule 1 (Additional Permitted Uses) to permit development for the purposes of a two lot residential subdivision **be finalised**.
4. **THAT** in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to rezone land at Wyeera (Bong Bong Racecourse), 460 Kangaloon Road Bowral, from E3 Environmental Management to RE2 Private Recreation **be finalised**.

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## **REPORT**

### **BACKGROUND**

During the preparation of the Wingecarribee Local Planning Strategy (WLPS) 2015-2031, submissions were received by Council from owners seeking to amend Wingecarribee Local Environmental Plan LEP (WLEP) 2010 to permit certain development on their land. On 24 June 2015 Council resolved to include the subject sites in the relevant Precinct Plan of Draft WLPS 2015-2031 for community consultation. It is noted that these applications to the WLPS were among some 59 formal requests received by Council and after investigation, assessment and consideration of all sites, thirteen (13) sites were supported for inclusion in the relevant draft Precinct Plan of WLPS 2015-2031 for consultation purposes. Following consultation, which included further inspection and consideration by Council, Council resolved on 23 March 2016 to include the subject sites in the relevant Precinct Plan of the adopted WLPS 2015-2031.

The adopted WLPS was submitted to the (then) NSW Department of Planning & Environment for endorsement. This process included the inspection and consideration by the Department of all sites including the subject sites. On 15 May 2017 the Department conditionally endorsed Council's adopted Strategy, including the Precinct Plans and all of the site specific proposals included within them. Following Departmental endorsement of the Precinct Plans, proponents lodged Planning Proposals with Council to progress amendments to WLEP 2010. On 12 July 2017, Council resolved to include eight (8) sites from the endorsed Strategy in a comprehensive Planning Proposal to be lodged with the Department for a Gateway Determination to amend WLEP 2010. The subject sites were included. The Gateway Determination was issued on 18 June 2018. The Department also authorised Council as the local plan-making authority for the Planning Proposal.

This report addresses the following sites:

#### **1) No. 2 Wilson Drive Hill Top**

The subject land, Lot 109 DP 664112, 2 Wilson Drive, Hill Top, adjoins the southern urban boundary of Hill Top. The location of the subject land is indicated in **Figure 1** below.

Although the address is Wilson Drive, access to the lot is via the Old Wilson Drive which runs parallel to (the current) Wilson Drive on the approach to the eastern side of the village. The land is zoned E3 Environmental Management with a minimum lot size of 40 hectares. It contains an area of Hawkesbury Sandstone Woodland to the front of the site which is not classified as an Endangered Ecological Community. The subject land was supported for inclusion in the Hill Top Precinct Plan of Wingecarribee Local Planning Strategy (WLPS) 2015-2031 for the purpose of providing a dwelling entitlement.





Figure 2 Location of Leased Railway Land Mittagong

Following receipt and consideration of a Planning Proposal to progress the amendment to WLEP 2010, at its Ordinary Meeting of 12 July 2017 Council unanimously resolved that:

- *Wingecarribee Local Environmental Plan 2010 be amended to zone that portion of land adjoining Mittagong railway station which is the subject of a lease between ARTC and the proponent, from SP2 Rail Infrastructure to B4 Mixed Use with a maximum height of 10m and a maximum floor space ratio of 0.5:1.*

### 3) 2A Cliff Street Bowral

The subject land, Lot 50 DP556644, 2A Cliff Street, Bowral, is zoned R5 Large Lot Residential and adjoins the northern urban boundary of Bowral. The location of the subject land is indicated in **Figure 3** below. The minimum lot size of the R5 zone is 4000m<sup>2</sup> but the area of the subject land is only 700m<sup>2</sup>, the same as the adjoining R3 Medium Density Residential zoned land to the immediate south. Two (2) attached dwellings are located on the site.

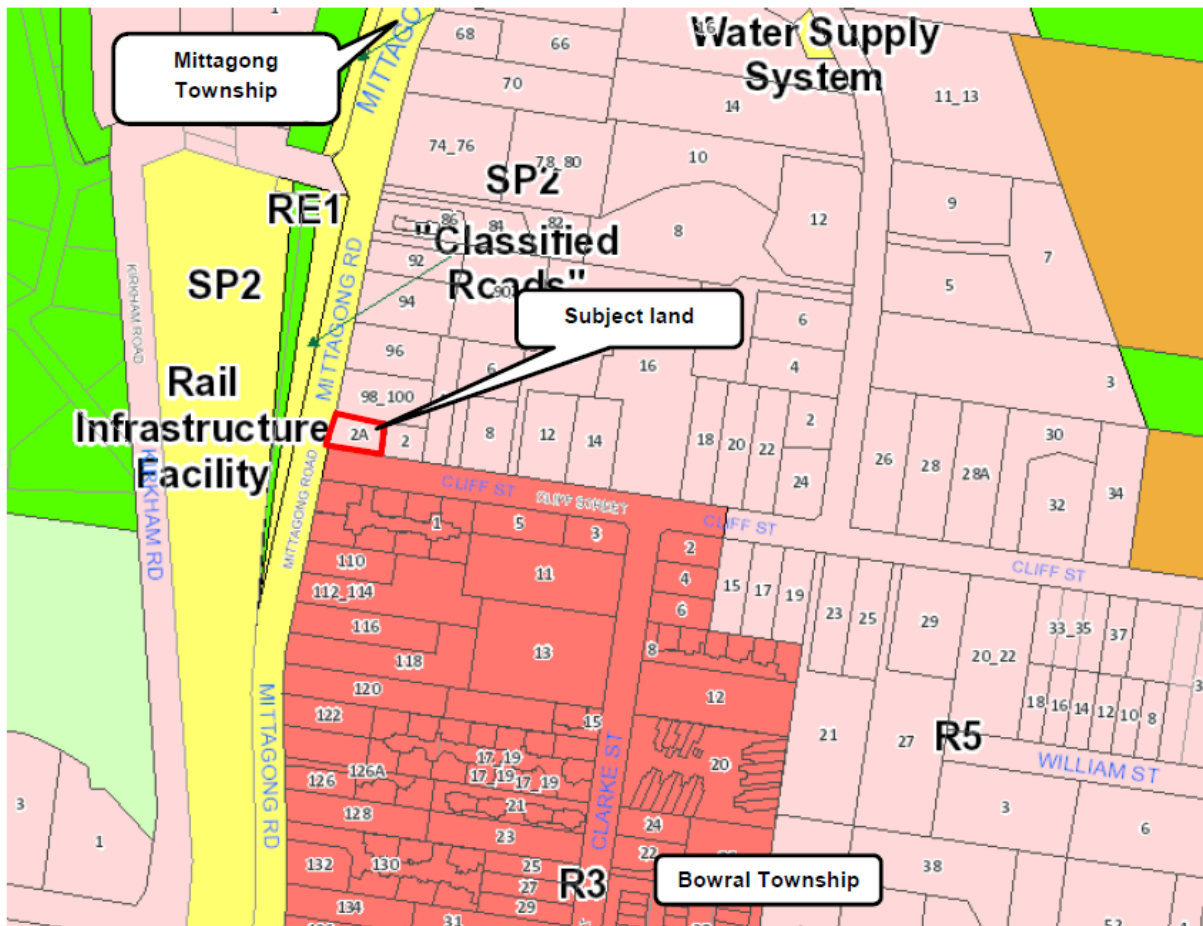


Figure 3 Location of 2A Cliff Street Bowral

The subject land was supported for inclusion in the Bowral Precinct Plan of WLPS for the purpose of enabling subdivision of two existing dwelling houses on the site.

Following receipt and consideration of a Planning Proposal to progress the amendment to WLEP 2010, Council unanimously resolved at its Ordinary Meeting of 12 July 2017 that:

- *Wingecarribee Local Environmental Plan 2010 be amended to include Lot 50 DP556644, 2A Cliff Street Bowral, in Schedule 1 (Additional Permitted uses) to permit development for the purposes of a two lot residential subdivision.*



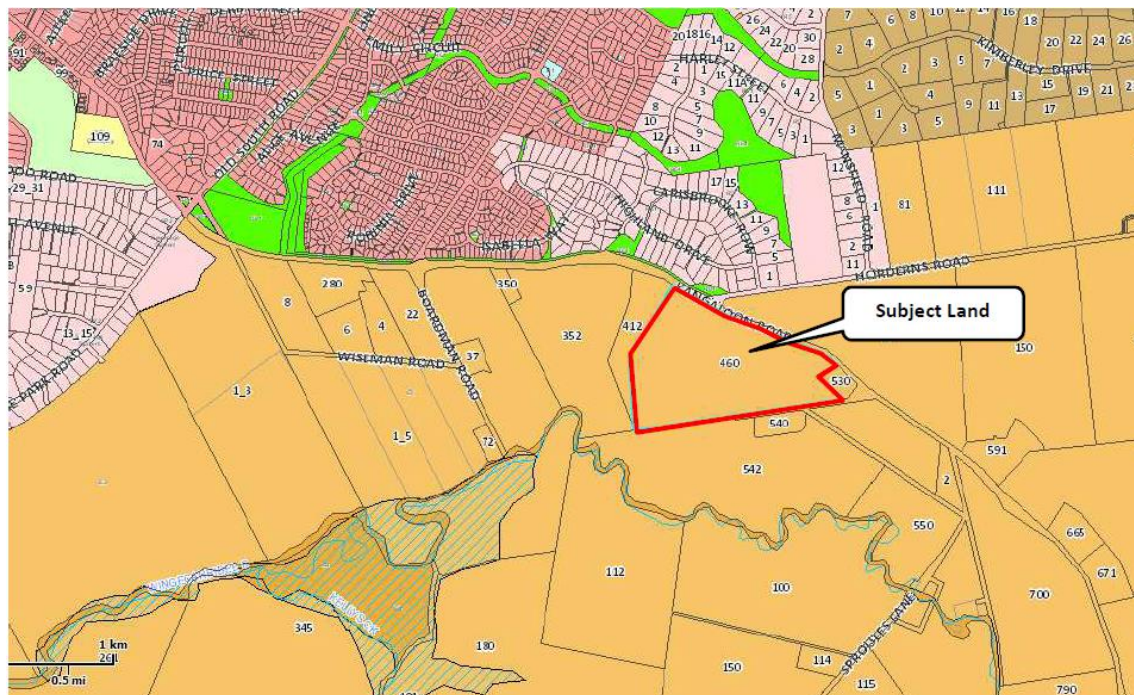
#### 4) Wyeera (Bong Bong racecourse) 480 Kangaloon Road Bowral

The subject land is more commonly known as the Bong Bong Racecourse site and is currently zoned E3 Environmental Management. The land covers an area of some 35 hectares and is located as indicated in **Figure 4** below.

Over the years the site has developed from one which principally held the annual Bong Bong Picnic Races with little other activity to a site accommodating regular equestrian events and related activities including dressage and polocrosse. The Bowral Dressage Club is now based at the site. In addition to these regular activities, the site is also used for events such as concerts and ‘expos’.

Currently, many of these events require individual Development Applications for temporary use which are time consuming for staff and expensive for the applicant. Rezoning the site to RE2 Private Recreation would enable these events to be more efficiently managed through an overarching Development Approval or a range of Approvals depending on the range of proposed uses. Such application for approval would each need to be accompanied by relevant Statements of Environmental Effects addressing specific issues such as acoustic and traffic implications and the specific location on the site of each type of use.

The subject land was supported for inclusion in the Bowral Precinct Plan of WLPS for the purpose of rezoning from E3 Environmental Management to RE2 Private Recreation to enable the ongoing use of a range of public events on the site.



**Figure 4 Location of Wyeera (Bong Bong Racecourse) Kangaloon Road Bowral**

Following receipt and consideration of a Planning Proposal to progress the amendment to WLEP 2010, Council unanimously resolved at its Ordinary Meeting of 11 October 2017 that:

- *The proposal to rezone land at Wyeera, 460 Kangaloon Road Bowral, from E3 Environmental Management to RE2 Private*

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*Recreation as contained in the adopted Local Lanning Strategy 2015-2031, be supported.*

#### **REPORT**

A Gateway Determination to progress these Proposals was issued by the Department of Planning & Environment on 18 June 2018. The Gateway required referral to Water NSW and NSW Rural Fire Service (RFS) for these sites. Water NSW had no objection to these sites progressing. RFS required a Bushfire Assessment Report for the 2 Wilson Drive site and subsequently confirmed that it had no objection to any of the subject sites progressing.

The sites which are the subject of this report to Council were exhibited for a period of 31 days from 30 January to 1 March 2019. The Planning Proposals and associated documentation were available for inspection at Council's Customer Service Counter and exhibition material was also available to view on Council's website as well as at the Bowral, Moss Vale and Mittagong Libraries. The sites were included in Council's e-newsletters which reach over 4,000 recipients.

#### **Submissions**

No submissions were received for either of the Wilson Drive Hill Top (Site 1) or the Cliff Street Bowral (Site 3) properties.

Two (2) submissions were received regarding the Mittagong Railway site (Site 2) which raised the following concerns:

<b>Issue</b>	<b>Council Response</b>
No objection provided adequate car parking around the railway station remained for both current and future commuters.	Car parking requirements will be addressed as part of any future Development Application resulting from this amendment.
Building height should not exceed the height of the current railway station. The proposed 10 metre height would probably exceed that. Proposed development should not impact on the 1867 Fitzroy Road Bridge. Should any residential development result from the proposal it should be restricted in height and style to respect surrounding buildings such as the Iron Workers Cottages in Railway Parade.	A Heritage Impact Statement will need to be included with any future Development Application resulting from this amendment which will address these concerns.

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One (1) submission was received regarding Wyeera (Bong Bong Racecourse) (Site 4) which raised the following concerns:

Issue	Council Response
No group should be able to stage events without specific permission from Council. From past experience music festivals often create noise and behaviour issues.	Although the intent of the amendment is to facilitate consideration of applications, applications will still be required and will be assessed accordingly. It is noted that poor behaviour is a social issue rather than a development matter, but it is nonetheless recognised as an issue of concern to neighbours.
I would object to any permission for a camping and caravan park near the main gate and sheds on visual grounds. The first thing people seem to do when they arrive is their washing and string it up. Everyone travelling along Kangaloon Road, just arriving at the "Welcome to Bowral" sign, gets a good look at the washing.	This concern is noted and would be addressed if any future development application for such a use in that location were submitted.

#### IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There are no implications for Council's Fit for the Future Improvement Plan resulting from this report.

#### COMMUNICATION AND CONSULTATION

##### Community Engagement

Community engagement was undertaken as described in the body of the report.

##### Internal Communication and Consultation

No further internal consultation occurred as extensive internal consultation was undertaken at the strategic assessment stage. This included discussions with town planning staff and with Council's strategic heritage planner regarding the Mittagong railway land proposal.

##### External Communication and Consultation

External communication and consultation occurred as described in the body of the report. Water NSW did not object to any of the sites proceeding to public exhibition. NSW RFS did not object to any of the sites proceeding to public exhibition. Referral to OEH was not required for any site considered in this report.

#### SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

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- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Submissions have been considered in accordance with guidelines provided by the Department of Planning and Environment. No amendment to any of the exhibited Planning Proposals resulted from community consultation.

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### COUNCIL BUDGET IMPLICATIONS

There are no Council budget implications.

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### RELATED COUNCIL POLICY

There are no other related Council Policies.

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### OPTIONS

The options available to Council are:

#### **Option 1**

Support the recommendations of this report, namely:

1. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to include Lot 109 DP 664112, 2 Wilson Drive Hill Top, in Schedule 1 (Additional Permitted Uses) to permit development for the purposes of a dwelling house be finalised.*
2. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979, the proposed amendment to Wingecarribee Local Environmental Plan 2010 to zone Part of Lot 10 DP 1216346 and Part of Lot 3907 DP 1215684, being that portion of land adjoining Mittagong railway station which is the subject of a lease between ARTC and the proponent, from SP2 Rail Infrastructure to B4 Mixed Use with a maximum height of 10m and a maximum floor space ratio of 0.5:1 be finalised.*
3. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to include Lot 50 DP556644, 2A Cliff Street Bowral, in Schedule 1 (Additional Permitted Uses) to permit development for the purposes of a two lot residential subdivision be finalised.*
4. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to rezone land at Wyeera (Bong Bong Racecourse), 460 Kangaloon Road Bowral, from E3 Environmental Management to RE2 Private Recreation, be finalised.*



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#### **Option 2**

Not support progressing any of the subject sites, namely:

1. *THAT in accordance with s3.35 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to include Lot 109 DP 664112, 2 Wilson Drive Hill Top, in Schedule 1 (Additional Permitted Uses) to permit development for the purposes of a dwelling house not proceed.*
2. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979, the proposed amendment to Wingecarribee Local Environmental Plan 2010 to zone Part of Lot 10 DP 1216346 and Part of Lot 3907 DP 1215684, being that portion of land adjoining Mittagong railway station which is the subject of a lease between ARTC and the proponent, from SP2 Rail Infrastructure to B4 Mixed Use with a maximum height of 10m and a maximum floor space ratio of 0.5:1 not proceed.*
3. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to include Lot 50 DP556644, 2A Cliff Street Bowral, in Schedule 1 (Additional Permitted Uses) to permit development for the purposes of a two lot residential subdivision not proceed.*
4. *THAT in accordance with s3.36 of the Environmental Planning & Assessment Act 1979 the proposed amendment to Wingecarribee Local Environmental Plan 2010 to rezone land at Wyeera (Bong Bong Racecourse), 460 Kangaloon Road Bowral, from E3 Environmental Management to RE2 Private Recreation not proceed.*

#### **Option 3**

Support progression of only some of the sites by amending the above recommendations accordingly.

Option 1 is the recommended option to this report.

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#### **CONCLUSION**

The adoption of the Wingecarribee Local Planning Strategy 2015-2031 supported several site specific submissions for inclusion in the relevant Precinct Plans. The Planning Proposals considered in this report seek to progress amendments supported in that Strategy.

All relevant requirements of the Gateway Determination issued on 18 June 2018 have been complied with. It is therefore recommended that the matters addressed in this report progress to amendment of WLEP 2010 under s3.36 of the *Environmental Planning & Assessment Act 1979*.

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#### **ATTACHMENTS**

There are no attachments to this report.





### 13.3 Waive Developer Charges Robertson Men's Shed Incorporated

Reference: 19/0955  
Report Author: Development Assessment Planner  
Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Work collaboratively to address social disadvantage

#### PURPOSE

The purpose of this report is to consider a request by the Robertson Men's Shed Incorporated to waive the water, sewerage and stormwater headworks charges levied under Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000*.

The Robertson Men's Shed Incorporated is a not for profit organisation committed to the objectives of the Australian Men's Shed Association to provide for the health and well-being of the men of Robertson, particularly in providing them the ability to recognise and deal with mental health and get them to feel needed and inclusive within the local community.

#### RECOMMENDATION

**THAT Council waive the water, sewerage and stormwater headworks charges levied under Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000* being a total of \$3,315.59 at the request of Robertson Men's Shed Incorporated.**

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## **REPORT**

### **BACKGROUND**

The Robertson Men's Shed Incorporated lodged a Development Application to construct a Men's shed at 58-60 Illawarra Highway Robertson which is Crown Land with the Trustees of the land being Hume Region Scouts NSW. The land will be shared with Robertson CTC and the Diggers Motorcycle Club. The development application was approved on 10 April 2019 with a condition of consent requiring the payment of water, sewerage and stormwater headworks charges totalling \$3,315.59. The Robertson Men's Shed Incorporated have requested Council to waive the payment of the fee.

### **REPORT**

The Robertson Men's Shed Incorporated is a not for profit organisation committed to the objectives of the Australian Men's Shed Association to provide for the health and well-being of the men of Robertson, particularly in providing them the ability to recognise and deal with mental health and get them to feel needed and inclusive within the local community.

On 17 December 2018 The Robertson Men's Shed Incorporated lodged a Development Application (19/0955) for the erection of a men's shed on the land at 58-60 Illawarra Highway Robertson which is Crown Land with the Trustees of the land being Hume Region Scouts NSW. The land will be shared with Robertson CTC and the Diggers Motorcycle Club.

Development Application 19/0955 was approved on 10 April 2019. Condition 13 of the development consent states:

Robertson Men's Shed Inc. has made written request to Council to waive the water, sewerage and stormwater headworks charges levied under Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000* imposed by the development consent in view of the fact that the Robertson Men's Shed Incorporated is a not for profit organisation, soon to be a charity organisation and fully supported by Local, State and Federal Governments. (**Attachment 2**).

The Robertson Men's Shed Incorporated now has its development consent which will allow it to apply for infrastructure grants to build the shed as approved.

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## **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

Nil

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

No community consultation has taken place in relation to this request.

### **Internal Communication and Consultation**

Internal consultation has taken place with the Group Manager planning Development and Regulatory Services.

### **External Communication and Consultation**

No external consultation has taken place in relation to this request.

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## SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## COUNCIL BUDGET IMPLICATIONS

There would be an equivalent shortfall in Council's receipt of Developer Charges.

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## RELATED COUNCIL POLICY

There is no related Council Policy

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## OPTIONS

The options available to Council are:

### **Option 1**

**THAT** Council waive the water, sewerage and stormwater headworks charges levied under Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000* being a total of \$3,315.59 at the request of Robertson Men's Shed Incorporated.

### **Option 2**

**THAT** Council NOT waive the water, sewerage and stormwater headworks charges levied under Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000* being a total of \$3,315.59 and that Robertson Men's Shed Incorporated be required to pay the amount.

Option 1 is the recommended option to this report.

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## CONCLUSION

The request by the Robertson Men's Shed Incorporated to waive the water, sewerage and stormwater headworks charges levied under Section 64 of the *Local Government Act 1993*

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and Section 306 of the *Water Management Act 2000* being a total of \$3,315.59 is submitted to Council for Determination.

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**ATTACHMENTS**

1. Notice of Developer Charges
2. Robertson Men's Shed Incorporated request to waive developer charges



Civic Centre, Elizabeth St. Moss Vale, NSW 2577.  
PO Box 141, Moss Vale. DX: 4961 Bowral.  
Ph: (02) 4868 0888 Fax: (02) 4869 1203  
wscmail@wsc.nsw.gov.au www.wsc.nsw.gov.au  
Office Hours: Mon-Fri 8.30am - 4.30pm

**Notice of Payment – Developer Charges & Section 94**

19/0955

9 April 2019

ROBERTSON MEN'S SHED INC  
17 MAY ST  
ROBERTSON NSW 2577

Re: 19/0955  
Lot 10 Sec 18 DP 758882  
Lot 11 Sec 18 DP 758882  
RESERVE 88235 58-60 ILLAWARRA HIGHWAY ROBERTSON NSW 2577

**Development Description: Community Facility (Mens Shed)**

Water, Sewerage and Stormwater Headworks charges are levied under Section 64 of the Local Government Act and Section 306 of the Water Management Act 2000. Other contributions are levied under Section 94 of the Environmental Planning and Assessment Act 1979 and Council's Section 94 Contributions Plans.

Contributions Levy	Units	Rate	Amount Payable
S64 Sewer Compliance Certificate	1.00	\$250.00	\$250.00
S64 Stormwater Compliance Certificate	1.00	\$250.00	\$250.00
S64 Stormwater (Robertson)	0.50	\$1,661.62	\$830.81
S64 Water Compliance Certificate	1.00	\$250.00	\$250.00
S64 Water (Shirewide)	0.08	\$11,010.50	\$880.84
S64 Sewerage (Shirewide)	0.08	\$10,674.25	\$853.94
<b>Total</b>			<b>\$3,315.59</b>

Payments must be either in the form of cash, bank cheque or credit card (credit cards subject to 1% surcharge. Amex and Diners not accepted).

**IMPORTANT** – The charges shown above are valid for payment until the date given below. After this period the charge will be indexed in accordance with the relevant Plan.

**DATE CHARGES ARE VALID TO – 30 Apr 2019**

Prepared by – Michael Park

Cashier Receipt No: \_\_\_\_\_

Total Paid: \_\_\_\_\_

Date Paid: \_\_\_\_\_

**A COPY OF THIS NOTICE MUST BE PRESENTED WHEN MAKING PAYMENT**



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ROBERTSON MEN'S SHED INC

1701116 TM ABN 61588303602

*"Men's Sheds are not just for fixing furniture and building toys, they are helping men and building communities" (AMSA website)*

The General Manager  
Wingecarribee Shire Council  
PO Box 141  
Moss Vale 2577  
23<sup>rd</sup> April 2019

WINGECARRIBEE SHIRE COUNCIL	
Classification:	MAILINI
Doc No	
File No.	19/0955
26 APR 2019 1	
OFFICER	ACT
R. SANDOZ	✓

**RE: DA consent 19/0955, approved 10<sup>th</sup> April 2019-04-18**

Dear Ms Prendergast,

The Robertson Men's Shed (RMSI) has just received DA consent for the construction of a much-needed community building in Robertson. We are truly grateful to have this consent, as it will now allow us to apply for infrastructure grants to make this community facility a reality. We have collaborated with the newly formed Robertson Women's Shed who will share this facility to assist in the efforts to raise funds for the sheds construction.

We at the RMSI are committed to the objectives of the Australian Men's Shed Association to provide for the health and well being of the men of Robertson, particularly in providing them with the ability to recognise and deal with mental health and get them to feel needed and inclusive within the local community. This is the fore front objective of all men's sheds. We are in collaboration with WHAM, (Wingecarribee health association for men) who provides us with health professionals who present to our members, matters concerning men's health. Our women's shed also provide this for the women of Robertson.

The Australian Government, Department of Health, provides men's sheds with ongoing support as detailed in the attached documentation, as well as providing grant opportunities to further the cause. AMSA (Australian men's Shed Association) have also negotiated with the Australian Government, to allow men's sheds to be given tax-deductible charity status, with which the RMSI is keen to adopt as soon as this becomes available to us in July 2020. (see attached document)

Website : [www.robertsonmensshed.wixsite.com/website](http://www.robertsonmensshed.wixsite.com/website) email: [robertsonmensshed@gmail.com](mailto:robertsonmensshed@gmail.com)  
Find us on Facebook - [www.facebook.com/RobertsonmensshedInc/](http://www.facebook.com/RobertsonmensshedInc/)

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ROBERTSON MEN'S SHED INC

1701116 TM ABN 61588303602

*"Men's Sheds are not just for fixing furniture and building toys, they are helping men and building communities" (AMSA website)*

We are requesting, if it is at all possible, that the Wingecarribee Shire Council waive the section 94 levies imposed by the DA consent in view of the fact that the RMSI is a not for profit organisation, soon to be a charity organisation, and we are fully supported by local, state and Federal governments.

Our new much needed facility is also fully supported by many local community organisations such as the Robertson CTC, The SHAC, (Southern Highlands Artisans Collaborative), The Robertson Garden Club & the Robertson Rural fire service.

I respect the need for section 94 levies, but our facility is to be built upon Crown Land, who are in full support of the project, along with the Aboriginal Land Council, along with the current Trustees of the land, Hume Region Scouts NSW. Our building will be shared with the Robertson CTC and the Diggers Motorcycle club. We are not in the business of creating a commercial operation on the site, as all money raised by the shed will go into the running costs and benefit of the members.

Your consideration of this most valuable request would be appreciated.

Kind Regards  
John Kennis  
President RMSI  
0455 911 980

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## 13.4 Fees Payable to Mayor and Councillors 2019/20

**Reference:** 101/6  
**Report Author:** Group Manager Corporate and Community  
**Authoriser:** Deputy General Manager Corporate, Strategy and Development Services  
**Link to Delivery Program:** Ensure systems and processes are in place to achieve mutual trust and collaboration

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### **PURPOSE**

To advise of the Local Government Tribunal's determination under Section 241 of the *Local Government Act 1993* in respect of the annual fees payable to Mayor and Councillors for the 2019/20 financial year.

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### **RECOMMENDATION**

**THAT Council determine the fees payable to the Mayor and Councillors for the period 1 July 2019 to 30 June 2020.**

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### **REPORT**

#### **BACKGROUND**

The *Local Government Act 1993* (the Act) provides for the Local Government Remuneration Tribunal to determine categories for councils, together with the annual fees payable to Mayors and Councillors. The Tribunal, in accordance with Section 241 of the Act, must determine no later than 1 May each year the minimum/maximum fees payable for Councillors and Mayors for each category.

Council is required under the Act to determine the fee to be paid to the Mayor and Councillors. Section 248 of the Act stipulates that a council must pay each Councillor an annual fee in accordance with the Tribunal's determinations, the annual fee is to be the same for each Councillor and Council is able to pay that fee having regard to the category established by the Tribunal.

In setting the fee Council may fix a fee that is equal to or greater than the minimum but not greater than the maximum for the appropriate category. When Council declines to fix a fee, it must pay the appropriate minimum fees as determined by the Tribunal.

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## **REPORT**

The Tribunal has reviewed key economic indicators, including the Consumer Price Index and Wage Price Index, and had regard to budgetary limitations imposed by the Government's policy of rate pegging and concluded that the full increase of 2.5% in minimum and maximum fees for mayors and councillors is appropriate.

In accordance with Section 239 of the Act the Tribunal is required to determine the categories of councils and mayoral offices at least every three years. The last review was undertaken in 2017 and the following categories were determined:

### **Metropolitan**

- Principal CBD
- Major CBD
- Metropolitan Large
- Metropolitan Medium
- Metropolitan Small

### **Non Metropolitan**

- Regional City
- Regional Strategic Area
- Regional Rural
- Rural

Wingecarribee Shire Council is classified as Regional Rural council. Pursuant to Section 241 of the Act, the annual fees to be paid to Councillors and the Mayor, effective on and from 1 July 2019 are determined as follows:

- Councillors to be within the range of \$9,190 to \$20,280 per annum and must be the same for each Councillor.
- Mayor to be an additional fee above that applicable to Councillors and to be within the range of \$19,580 to \$44,250 per annum.

The 2018/19 Councillor fees were set at the maximum amount of \$19,790 per annum for Councillors and \$43,170 per annum for the Mayor. Based on the current fees a 2.5% increase would amount to an annual \$490.00 increase for Councillors and a \$1,080 increase for the Mayor.

## **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

There is no impact on Council's *Fit for the Future* Improvement Plan.

## **CONSULTATION**

### **Community Engagement**

Nil

### **Internal Consultation**

Nil

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### **External Consultation**

This report has been prepared on the basis of advice received from the Local Government Remuneration Tribunal and in accordance with the *Local Government Act 1993*.

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### **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Pursuant to Section 241 of the *Local Government Act 1993* the Remuneration Tribunal must not later than 1 May in each year determine in each of the categories determined under Section 239 the maximum and minimum amounts of fees to be paid during the following financial year to councillors and mayors.

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### **COUNCIL BUDGET IMPLICATIONS**

An increase in Councillor Fees has been factored into the draft 2019/20 budget.

The draft 2019/20 budget includes an estimate of \$227,000 for Councillor Payments (Including the Mayoral Allowance).

If approved, the proposed increase of 2.50% would result in total payments for the 2019/20 financial year of \$226,812.

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### **RELATED COUNCIL POLICY**

Nil



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#### **OPTIONS**

The options available to Council are:

##### **Option 1**

Council determines to increase the fees paid to Councillors for the period 1 July 2019 to 30 June 2020 by 2.5% in line with the Local Government Remuneration Tribunal determination.

##### **Option 2**

Council determines to increase fees by another amount but less than the 2.5% increase determined by the Local Government Remuneration Tribunal determination for the period 1 July 2019 to 30 June 2020.

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#### **CONCLUSION**

The *Local Government Act 1993* established the Local Government Remuneration Tribunal to set a range of fees payable to mayors and councillors each year.

The range of fees for the 2019/20 financial year has been determined by the Tribunal and Council is required to set the appropriate level of fees applicable for the Mayor and Councillors for the period 1 July 2019 to 30 June 2020.

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#### **ATTACHMENTS**

1. Local Government Remuneration Tribunal - Annual Report and Determination (15 April 2019) - *circulated under separate cover*

## 13.5 Request for Refund of Payment Under Former Development Servicing Plans

Reference:	5701/7
Report Author:	Deputy General Manager Corporate, Strategy and Development Services
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
Link to Community Strategic Plan:	Manage and plan for future water, sewer and stormwater infrastructure needs

### PURPOSE

The purpose of this report is to seek a direction from Council in relation to a request for a refund of Developer Charges levied on a subdivision approved in 2004 in which the NSW Ombudsman has become involved.

### RECOMMENDATION

**THAT** the report concerning a request for refund of payment under former development servicing plans be considered in closed Council – Item 22.2.

This report is confidential in accordance with section 10A(2) of the Local Government Act, 1993, under clause 10(A)(2)(g) as it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

**Note:** In accordance with Council's Code of Meeting Practice, immediately after a motion to close part of a meeting to the public has been moved and seconded, Council may allow members of the public to make representations to the meeting, before any part of the meeting to why the item should not be considered in Closed Council.

### ATTACHMENTS

There are no attachments to this report.

Mark Pepping  
Deputy General Manager Corporate, Strategy and Development Services

Thursday 16 May 2019

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## COUNCIL MATTERS

### 14 GENERAL MANAGER

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#### 14.1 Legal Report

Reference:	107/22
Report Author:	General Counsel
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

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#### **PURPOSE**

The purpose of this report is to update Council on the status of legal proceedings reported at the ordinary meeting of Council on Wednesday 24 April 2019.

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#### **RECOMMENDATION**

1. **THAT the information relating to ongoing legal costs in Attachment 1 to the report be noted.**
2. **THAT the status of the legal proceedings involving Council be considered in Closed Council – Item 22.1.**

**Note:** In accordance with Council's Code of Meeting Practice, immediately after a motion to close part of a meeting to the public has been moved and seconded, debate on the motion should be suspended to allow the public to make representations to Council as to why the item should not be considered in Closed Council.

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#### **REPORT**

##### **BACKGROUND**

This report updates the current status and costs paid during April 2019 for legal proceedings involving Council in the Land and Environment Court, including those matters completed since the last report to Council. Legal proceedings involving Council and legal advice obtained by Council are confidential and attract legal professional privilege. Therefore, their status is reported in a closed report.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 May 2019

### REPORT GENERAL MANAGER



## REPORT

On 17 April 2013, Council resolved:

***THAT** the legal costs as detailed in the Legal Affairs Report be made public in the Business Paper on an ongoing basis.*

The report on the status of legal affairs involving Council contains information and advice that is privileged on the grounds of legal professional privilege and contains information that, if disclosed, could confer a commercial advantage on parties with whom Council is conducting business (including opposing parties in litigation). Therefore, it is recommended that the report be considered by Council in Closed Committee pursuant to sections 10A(2)(c) and 10A(2)(g) of the *Local Government Act 1993*.

For the purpose of preserving privacy, some matters in **Attachment 1** may be described in general terms. **If a Councillor has a specific enquiry regarding the costs reported, they should raise it in Closed Council.**

### Consultants' Fees

At the Council meeting on 8 March 2017, Council resolved that the Legal Affairs Report include a separate column for fees paid to consultants in legal proceedings.

Consultants are engaged in all cases concerning development consents in the Land & Environment Court as the Court requires the parties to provide expert evidence to assist in the determination of the issues in the case.

These consultants prepare reports for the Court and give evidence if the matter goes to hearing on such matters as site density, building layout, traffic, drainage, noise, light and any other relevant issue.

The consultants are always engaged by the external law firm acting for Council.

Usually, their fees are paid by the law firm and recouped from Council through an invoice from the law firm. In that case, the consultants' fees have been included in the monthly Legal Affairs report to Council.

There were consultants' fees for legal proceedings paid in the month April 2019 – refer **Attachment 1**.

## **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

There is no impact on Council's *Fit for the Future* Improvement Plan.

## **CONSULTATION**

### Community Engagement

Nil

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 May 2019

### REPORT GENERAL MANAGER



#### **Internal Consultation**

Staff and management provide information, as required, to assist the progress of the matters reported.

#### **External Consultation**

Solicitors from Council's Legal Panel provide advice and conduct legal proceedings on Council's behalf.

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#### **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report. However, some legal proceedings may deal with unauthorised works or activities which have had or could have an environmental impact.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There is a strong community expectation in relation to enforcement and compliance actions by Council. Actions taken are in line with Council's Compliance and Enforcement Policy.

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#### **COUNCIL BUDGET IMPLICATIONS**

There are ongoing legal expenses incurred by Council relating to legal proceedings involving Council and legal advice obtained by Council.

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#### **RELATED COUNCIL POLICY**

Council's Compliance and Enforcement Policy.

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#### **ATTACHMENTS**

1. Legal Costs - April 2019

Ann Prendergast  
**General Manager**

Thursday 16 May 2019





Legal Costs – April 2019

Attachment 1

Legal Matter	Legal Expenditure	Consultant Expenditure	Legal Expenditure	Consultant Expenditure	Total Expenditure
	Apr-19	Apr-19	YTD	YTD	LTD
Fenwick v Woodside Properties	\$705		\$6,566		\$32,052
Centennial Winery Centennial Road Bowral		\$10,021	\$8,281	\$10,021	\$198,946
Moss Vale Projects (Woolworths) Cnr Argyle Street and Lackey Road			\$114,388	\$63,172	\$270,230
Willow Properties Retford Road Bowral	\$725	\$11,415	\$40,319	\$21,690	\$100,048
RG Capital Erith Street Bundanoon			\$11,349		\$28,536
Blackbrook Nominees 14 Duke Street Mittagong			\$278		\$27,776
Tujilo Pty Ltd Milton Park, Bowral			\$43,350	\$26,889	\$101,678
Turland Mittagong Road Bowral		\$8,984	\$72,911	\$82,390	\$201,935
Malcolm Holdings Exeter Road Exeter			\$11,818		\$29,723
Deluxe Projects Seniors Living Development East Bowral			\$15,406		\$33,577
Baron Corp P/L Farnborough Drive Moss Vale			\$117,416		\$220,091
Reid 21-23 Payten Street Mittagong			\$32,436	\$11,874	\$65,387
Uri T Design Kangaloon Road Bowral			\$77,138		\$103,905
Michael Brown Planning Loftus Street Bowral	\$8,119	\$8,194	\$43,783	\$26,286	\$99,111
Robert Morgan Sutherland Park Drive Bowral			\$15,245	\$8,115	\$23,359
Gary Walker Architect Oxley Drive Mittagong		\$3,450	\$6,901	\$3,450	\$10,351
Maly Foxgrove Road Canyonleigh			\$2,040		\$2,040
Development Implementation Pty Ltd Old Hume Highway Braemar			\$338		\$338
Leighton-Daly Park Street Wingello	\$3,375		\$17,641		\$17,641
Shelley Boyce 10-12 Tyndall Street Mittagong	\$5,407		\$17,474		\$17,474
Strathfield Investments Pty Ltd 5 Alice Street Mittagong		\$3,501	\$5,890	\$35,344	\$41,234
Sitecat Pty Ltd 17 Old Dairy Close Moss Vale			\$1,417		\$1,417
ERF Hospice Pty Ltd 11 Edward Street Bowral		\$6,045	\$1,786	\$6,045	\$7,831
Lend Lease Retirement Living Holdings Aitken Road Bowral	\$1,387		\$2,156		\$2,156
Reulie Land Co Pty Ltd Myra Vale Road Wildes Meadow	\$3,797		\$10,971		\$10,971
Morris 36 Brigadoon Drive Bundanoon	\$2,323		\$2,323		\$2,323
<b>Total Expenditure</b>	<b>\$25,838</b>	<b>\$51,610</b>	<b>\$679,621</b>	<b>\$295,276</b>	<b>\$1,650,130</b>

Note: This report includes proceedings where legal and/or consultancy costs have been incurred in the 2018/19 Financial Year. It is important to note that the figure reported to the Finance Committee on a quarterly basis is projected expenditure for the entire financial year. The figure reported to the Finance Committee also includes non-development related legal expenditure.

Fees Recovered – April 2019

Legal Matter	Fees Recovered	Fees Recovered	Fees Recovered
	Apr-19	YTD	LTD
O'Shanassy	\$250	\$5,210	\$12,728
Willow Properties		\$13,500	\$13,500
Lomman Matter		\$150,000	\$150,000
Malcolm Holdings Pty Ltd		\$3,000	\$3,000
Deluxe Project Group		\$8,200	\$8,200
Michael Brown Planning		\$10,450	\$10,450
Reid		\$20,000	\$20,000
<b>Total recovery</b>	<b>\$250</b>	<b>\$210,360</b>	<b>\$217,878</b>

Notes:

O'Shanassy - \$93,500 penalty (OSR recovery) plus Council has been awarded by the Supreme Court of NSW a costs order of \$379,000 plus \$4,999.23 being Council's costs in order to undertake the costs assessment.





## 16 PETITIONS

### 16.1 Petition 3/2019 - DA 19/0837 - Orchard Road, Colo Vale Development

Reference:	100/8
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### PURPOSE

The purpose of this report is to present Council with a petition received from the residents of the northern villages of the Southern Highlands relating to DA19/0837.

The petition contains over 230 signatures.

#### RECOMMENDATION

**THAT** Petition 3/2019 relating to Orchard Road, Colo Vale be received and noted by Council.

#### ATTACHMENTS

1. Petition Orchard Road, Colo Vale - *circulated under separate cover*



## 20 NOTICES OF MOTION

### 20.1 Notice of Motion 16/2019 - Civic Prayer

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### PURPOSE

Councillor Whipper has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 22 May 2019:

1. THAT Council acknowledge the importance of the opening prayer at each Council meeting and extend sincere thanks to all those Ministers who have provided these blessings upon Council and community over the years.
2. THAT in recognising Australia is predominantly Christian in our belief system THAT we also recognise there are those in our nation and the Shire who acknowledge God through different pathways.
3. THAT in acknowledging this reality Council now consider broadening the representation of those who offer "prayer" at the opening of Council meetings to respect and reflect this fact.
4. THAT Council make formal invitations to local leaders of the Catholic, Buddhist, Hindu, Jewish, Muslim and Bahai faiths to be include in the roster to provide prayer on behalf of this Council and its community at the opening of Council (after Acknowledgement of Country) along with the Minister's Fraternal.
5. THAT in making this invitation, Council acknowledge this is designed to encourage inclusiveness and NOT to denigrate our Christian belief system.

#### RECOMMENDATION

Submitted for determination.



## **22. CLOSED COUNCIL**

### **MOVING INTO CLOSED SESSION**

Section 10A of the *Local Government Act 1993*, empowers Council and Committees of which all the members are Councillors to close a part of a meeting in certain circumstances in accordance with the requirements of the Act, and relevant Regulations and Guidelines.

Subject to the provisions of Section 10 of the Act, so much of a meeting may be closed as comprises certain information as outlined in Section 10A(2).

However, the Act also contains the following provisions qualifying the use of Section 10A(2).

#### Section 10B

1. *[Time spent closed to be minimised] A meeting is not to remain closed during the discussion of anything referred to in section 10A(2):*
  - a. *Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and*
  - b. *If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret-unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.*
2. *[Qualification of 10A(2)(g)] A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A(2)(g) unless the advice concerns legal matters that:*
  - a. *are substantial issues relating to a matter in which the council or committee is involved, and*
  - b. *are clearly identified in the advice, and*
  - d. *are fully discussed in that advice.*
3. *[Qualification of 10A(3)] If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A(3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A(2)).*
4. *[Irrelevant matters] For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:*
  - a. *a person may misinterpret or misunderstand the discussion, or*
  - b. *the discussion of the matter may:*
    - (i) *cause embarrassment to the council or committee concerned, or to Councillors or to employees of the council, or*
    - (ii) *cause a loss of confidence in the council or committee.*

Attention is also drawn to provisions contained in Part 7 of Council's Code of Meeting Practice.

### **Director General's Guidelines**

The Director General of the Department of Local Government has issued guidelines concerning the use of Section 10 of the Act. A copy of the Director General's guidelines has been sent to all Councillors. Section 10B(5) of the Act requires that council have regard to these guidelines when considering resolving into Closed Session.





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**RECOMMENDATION**

1. **THAT Council moves into Closed Council in accordance with the requirements of Section 10A(2) of the *Local Government Act 1993* as addressed below to consider the following reports that are confidential for the reasons specified below:**

**22.1 Request for Refund of Payment under Former Development Servicing Plans**

Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to seek direction from Council in relation to a request for a refund of Developer Charges levied on a subdivision approved in 2004 in which the NSW Ombudsman has become involved.

**22.2 Legal Report - Closed Council**

Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(a) as it contains personnel matters concerning particular individuals (other than councillors), under clause 10A(2)(e) as it contains information that would, if disclosed, prejudice the maintenance of law and under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to update Council on the status of legal proceedings reported to Council at the meeting of 24 April 2019.

2. **THAT the minutes of the Closed Council part of the meeting (being the Council's resolution) be made public.**

Ann Prendergast  
**General Manager**  
Thursday 16 May 2019