

17 April 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 24 April 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, 24 April 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 - Clr T D Gair</b>
3.32pm	<b>Opening Prayer – Pastor Donna Jensen Connect Church Moss Vale</b>
3.35pm	<ul style="list-style-type: none"><li>• <b>Apologies Nil</b></li><li>• <b>Adoption of Previous Minutes</b> Ordinary Meeting of 10 April 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 - Clr T D Gair</b></li><li>• <b>Visitor Items</b><ul style="list-style-type: none"><li>• Item 10.1 - DA18/0643 - Commercial Premises, Restaurant/Cafe and 16 Residential Apartments - 421-425 Bong Bong Street, Bowral</li><li>• Item 10.2 - Section 4.55 (2) Application 03/2011.06 to Modify Development Consent 03/2011 - Bulk Water Extraction and Storage Shed / Staff Amenities, Lot 85 DP751275 &amp; Lot 2 DP531503, Wombeyan Caves Road, High Range</li><li>• Item 10.3 - DA 19/0940.02 - s.8.2A Review of Refused Dual Occupancy development - 12 Solomon Street, Renwick</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 - Nil</b> <b>Questions with Notice - Nil</b> <b>Notices of Motion</b> <ul style="list-style-type: none"><li>• Item 20.1 - Notice of Motion 12/2019 - Abolition of the Office of Environment and Heritage and Office of Local Government</li><li>• Item 20.2 - Notice of Rescission Motion 2/2019 - Berrima Road Deviation Project</li></ul>



# RUNNING SHEET

## ORDINARY MEETING OF COUNCIL

held in the Council Chambers, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 24 April 2019 at 3.30pm.

7.40pm **Closed Council**

8.00pm **Meeting Closed**

Ann Prendergast  
**General Manager**



## Business

1. **OPENING OF THE MEETING**
2. **ACKNOWLEDGEMENT OF COUNTRY**
3. **PRAYER**
4. **APOLOGIES**  
Nil
5. **ADOPTION OF MINUTES OF PREVIOUS MEETING**  
Ordinary Meeting of Council held on 10 April 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**
  - 10.1 DA18/0643 - Commercial Premises, Restaurant/Cafe and 16 Residential Apartments - 421-425 Bong Bong Street, Bowral ..... 2
  - 10.2 Section 4.55 (2) Application 03/2011.06 to Modify Development Consent 03/2011 - Bulk Water Extraction and Storage Shed / Staff Amenities, Lot 85 DP751275 & Lot 2 DP531503, Wombeyan Caves Road, High Range ..... 27
  - 10.3 DA 19/0940.02 - s.8.2A Review of Refused Dual Occupancy development - 12 Solomon Street, Renwick ..... 56
11. **EN BLOC MOTION**
12. **OPERATIONS FINANCE AND RISK**
  - 12.1 Investment Report - March 2019..... 75
  - 12.2 Outcome of Direct Negotiations in Relation to the Renewal of Sewer Pump Station at Lackey Park, Moss Vale ..... 81
  - 12.3 Expressions of Interest for the Moss Vale Civic Centre Refurbishment ..... 84
  - 12.4 Wingecarribee Adult Day Care Centre (WADCC) - Request for Loan Facility ..... 90

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<b>13. CORPORATE STRATEGY AND DEVELOPMENT SERVICES</b>	
13.1 Public Exhibition of the Draft 2019/20 Operational Plan and Budget...	103
13.2 DA 07/1004.01 Section 4.55 Modification - Change of Use From Transitional Group Home to Permanent Group Home - 15 Parmenter Court, Bowral.....	112
13.3 DA19/1311 - Use of Land and Carrying out of Works for the Purpose of a Restaurant or Cafe, lot 2 DP1014065, 61-63 Main Street, Mittagong.....	134
13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential.....	159
13.5 Request for Financial Assistance from Salvation Army Red Shield Appeal .....	189

**Mayor to resume chair at 5.30 pm**

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## **COUNCIL MATTERS**

<b>14. GENERAL MANAGER</b>	
14.1 Legal Report .....	192

### **15. DELEGATE REPORTS**

### **16. PETITIONS**

Nil

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

Nil

### **18. COMMITTEE REPORTS**

Nil

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

Nil

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## **20. NOTICES OF MOTION**

20.1 Notice of Motion 12/2019 - Abolition of the Office of Environment and Heritage and Office of Local Government .....	196
20.2 Notice of Rescission Motion 2/2019 - Berrima Road Deviation Project .....	197

### **21. GENERAL BUSINESS**

Nil

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## **22. CLOSED COUNCIL**

Moving into Closed Session.....	198
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### **22.1 Expressions of Interest for the Moss Vale Civic Centre Refurbishment**

*This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(c) 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 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

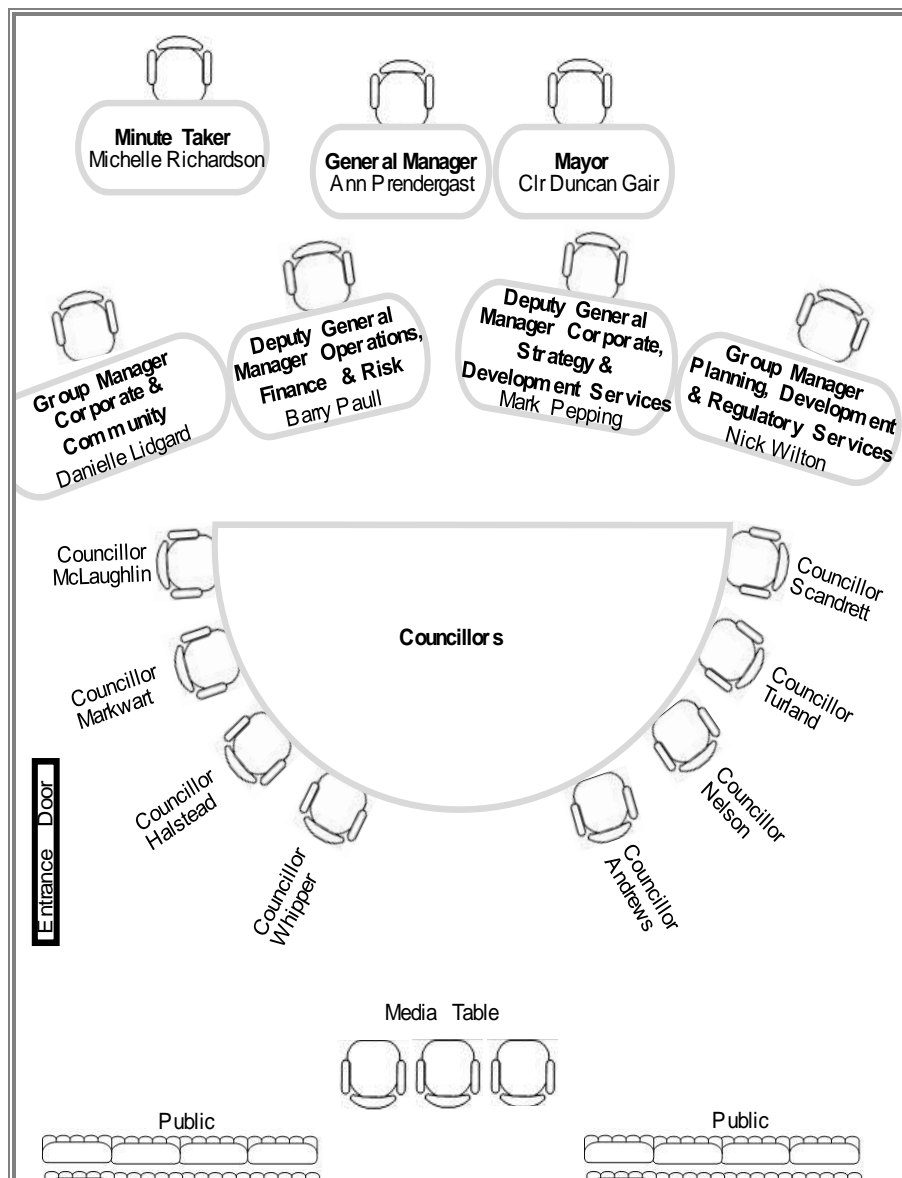
## Council Chambers

### 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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Nil at time of print

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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 DA18/0643 - Commercial Premises, Restaurant/Cafe and 16 Residential Apartments - 421-425 Bong Bong Street, Bowral

Reference:	18/0643
Report Author:	Development Assessment Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
Applicant:	Bowral Garage Development PTY LTD
Owner:	Zlatko Todorcevski
Link to Community Strategic Plan:	Promote building practices and the types of developments that improve resource efficiency

#### PURPOSE

The purpose of this report is to consider development application 18/0643, which seeks consent for a mixed use development at Lot 1 DP744028, 421-425 Bong Bong Street, Bowral consisting of restaurant/café, seven (7) commercial tenancies and 16 residential units. The report is prepared for the Council's determination of the development application, and recommends REFUSAL, subject to reasons contained in **Attachment 1**.

#### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

#### RECOMMENDATION

**THAT** development application DA18/0643 for a proposed mixed use development at Lot 1 DP744028, No 421-425 Bong Bong Street, Bowral be REFUSED subject to reasons as described in Attachment 1 to the report.

**REPORT**

**Subject Site and Locality**

Figures 1 and 2 illustrate the land's location and general layout (see also Attachment 2) being at the southernmost end of the Bowral commercial business district. Opposite the site on the eastern side of Bong Bong Street is the Shell Service Station and on the southern side of Bowral Street is the Lions Park.

The site has frontage to Bong Bong Street of 21metres and frontage to Bowral Street of 66 metres. It has a total site area of 1720 square metres.

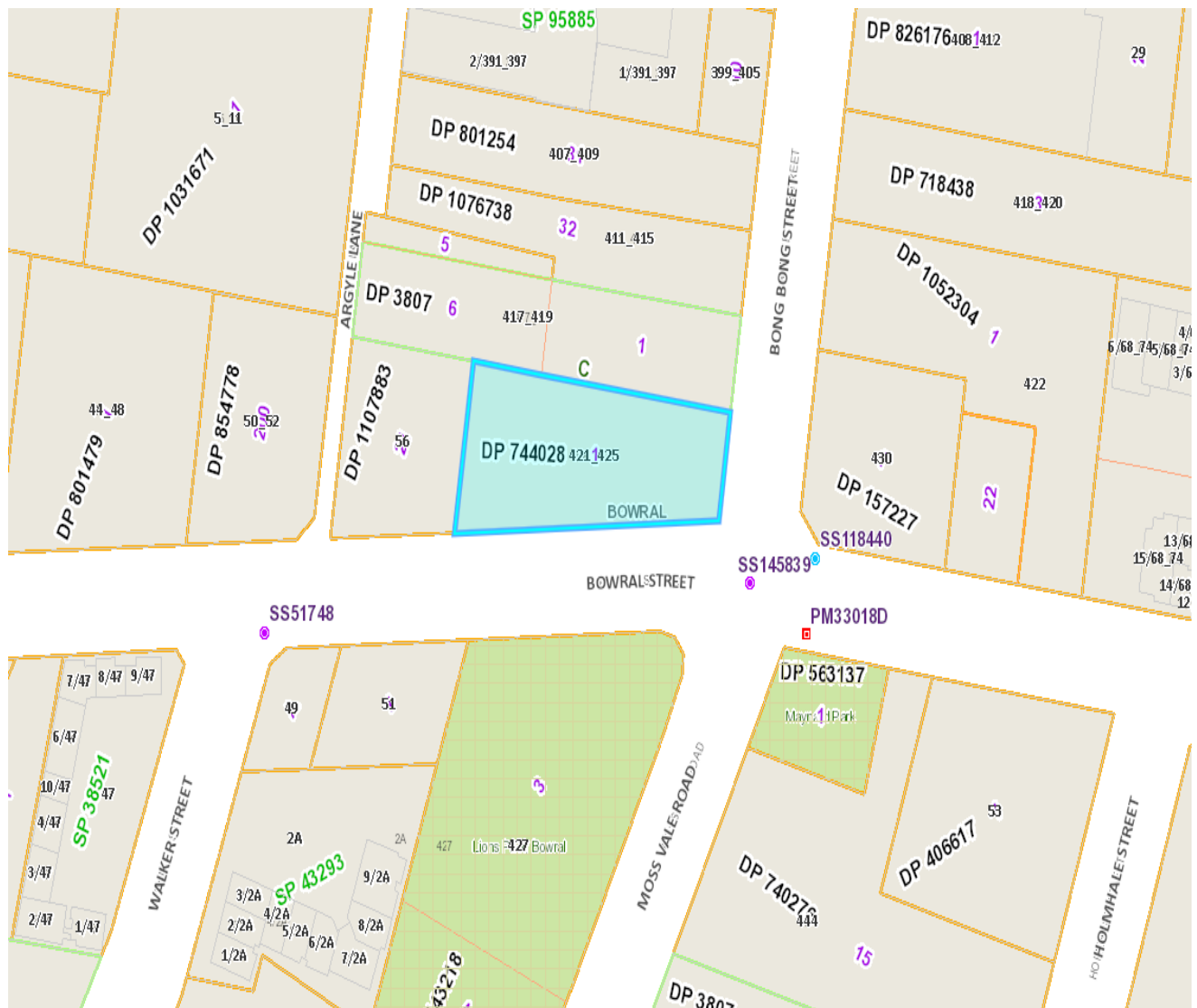


Figure 1: Locality map (see also Attachment 2)



Figure 2: Aerial image (see also Attachment 2)

### **Background**

The site is currently occupied by a vacant single storey building built in the 1920s which was last used for car spare parts. The premises closed approximately 12 years ago.

Under Wingecarribee Local Environmental Plan 2010, the land is zoned B2 Local Centre. Commercial premises, Restaurant/Cafés and Residential Flat Buildings are permitted uses within the zone.

Council records indicates that Development Application 14/0546 was made to Council in June 2014, proposing alterations and additions to the existing building to create a butcher shop and a restaurant/small bar, serviced including onsite car parking area to the rear. On 17 October 2014, Council determined development application 14/0456 by the way of approval.

On 24 June 2014 Development Application 14/0658 was made to Council seeking consent for demolition of an existing dwelling at the western end of the site, excavation and levelling of land, building a retaining wall and fencing. The application was determined by way of approval on 29 July 2014.

A section 96 Modification (now known as Section 4.55) was made on 5 April 2016 for external roof façade and addition of mezzanine level and that application was determined by way of approval on 29 April 2016.



### **Proposed Development**

The proposed site plan drawing is included as **Attachment 3**. The application seeks consent for alterations, refurbishment of the existing commercial building as part of a mixed use building consisting of a restaurant and small bar, commercial tenancies and residential units.

A small portion of the rear of the existing building is proposed to be demolished to facilitate the integration of the new additions.

The proposal seeks development consent for:

- One (1) combined restaurant/cafe and small bar that will occupy approximately 323 square metres of the refurbished existing building and accommodate a maximum of approximately 133 seats.
- Seven (7) ground level commercial tenancies.
- Sixteen (16) residential units over the first, second and third floor levels, with a roof terrace garden on the uppermost level.
- A separate single entry foyer for the residential apartments off Bowral Street, with concierge desk and secure access to the rear courtyard.
- Single level basement parking with 37 spaces which will be accessed via Bowral Street with new driveway crossing at the site's western edge.

## **STATUTORY PROVISIONS**

### **State Environmental Planning Policies**

#### **State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use.

As noted previously, the existing building dates from the 1920s and was used as a motor garage and sales of spare parts. Council's records indicate that approvals were previously granted for servicing and repairs of farms machinery and trucks.

Table 1 of the Contaminated Land Guidelines lists the types of uses that could give rise to the contamination and if these uses have been carried out previously on the land, the likelihood of contamination arises. The site history requires the issue of potential site contamination to be considered as part of the development approval process.

The previous consent issued on the site 14/0546 approved October 2014 included conditions of consent relating to contamination and remediation pertaining to a preliminary site contamination report. If Council is of a mind to approve the proposed development, conditions of consent relating to site contamination would be included.

#### **State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011**

The site is located within the Wingecarribee River Sub-catchment. Compliance with the provisions of the SEPP and associated guidelines is therefore required to consider water quality. The development is a module 5 development under the NorBE Guidelines and therefore Council has assumed concurrence to consider water quality.

Water NSW has provided conditions of consent to be imposed, should the development be approved.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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

With respect to the BASIX SEPP should the development be approved, a condition would be imposed that no construction certificate shall be granted for building work in the development's dwelling house component unless information and drawings accompanying the construction certificate application reflect the requirements prescribed by the BASIX Certificate accompanying the development application.

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

With respect to the SEPP 65 should the development be approved, a condition would be imposed that no construction certificate shall be granted for building work in the development's dwelling house component unless information and drawings accompanying the construction certificate application reflect the requirements prescribed by the BASIX Certificate accompanying the development application.

### **Local Environmental Plans**

#### Wingecarribee Local Environmental Plan 2010

The relevant provisions of the LEP are discussed as follows.

##### Clause 2.3 Zone objectives and land use table

Under Wingecarribee Local Environmental Plan 2010, the land is zoned B2 Local Centre. Commercial premises, Restaurant/Café and Residential flat buildings are permitted uses within the zone. The objectives of the zone are as follows:

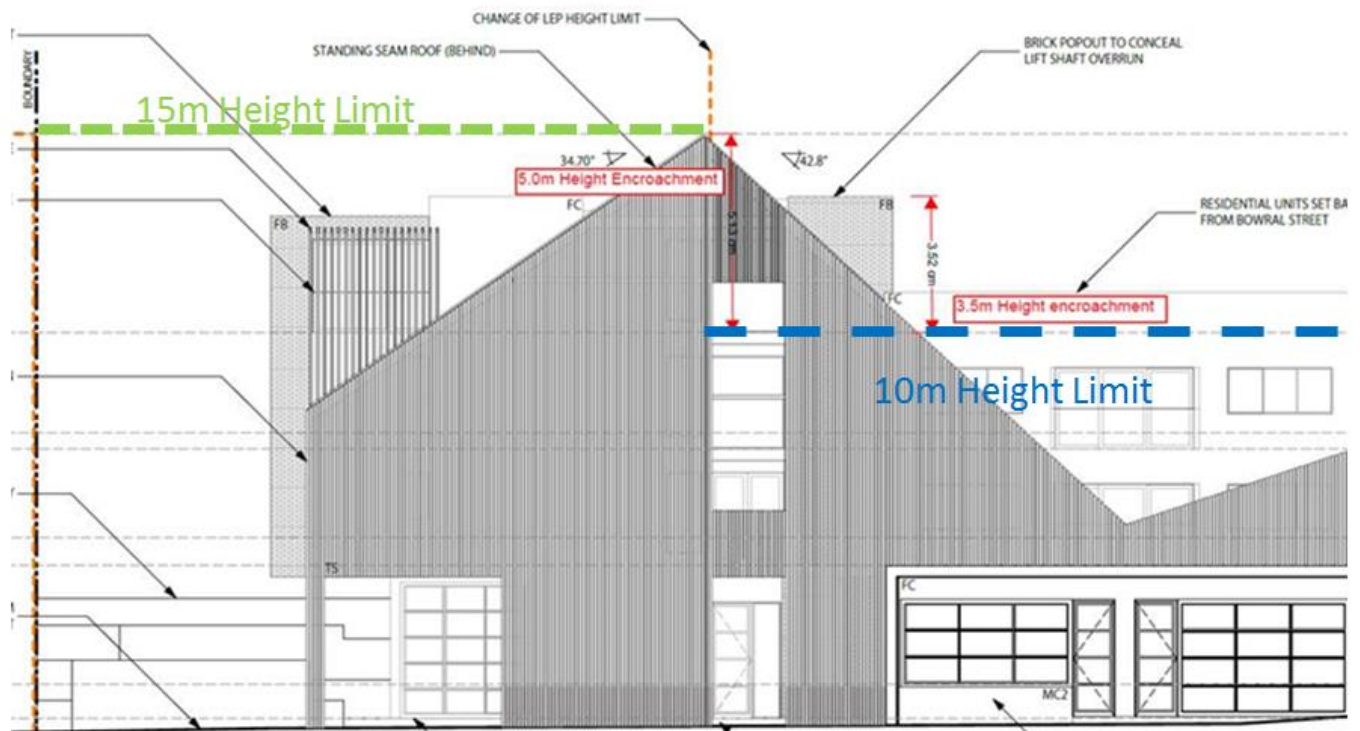
- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To generally conserve and enhance the unique sense of place of business centre precincts by ensuring that new development integrates with the distinct urban scale, character, cultural heritage and landscape setting of those places.*
- *To provide opportunities for a compatible mix of residential living above retail, commercial, recreational, cultural and community activities at street level.*
- *To ensure that adequate provision is made for infrastructure that supports the viability of business centre precincts, including public car parking, traffic management facilities, public transport facilities, cyclist facilities, pedestrian access paths, amenities, facilities for older people and people with disabilities and general public conveniences.*
- *To maximise the efficient use of land in business centre precincts to promote more compact and accessible places.*
- *To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas.*

Clause 4.3 Height of Buildings

The site is mapped as having a development standard for Height of Buildings of 10m in the eastern portion and 15m on the western portion. (Please refer to the building height map in figure 3 below). Where possible the proposal has complied with the maximum building height when measured from existing ground level. There is a height encroachment in the middle section of the building which is within the 10 metre height restriction zone and as such a variation has been sought under clause 4.6. the development standard considered to have merit. Figure 4 below illustrates the variation of the building height permitted and building height proposed.



**Figure 3: Maximum Building Height in Meters**



**Figure 4: Building Height variation showing encroachment in the 10m maximum height limit (Refer to enlarged copy in Attachment 8)**

#### Clause 4.4 Floor Space Ratio

The site is mapped as having a Floor Space Ratio (FSR) of 1.5:1. The proposal's FSR is approximately 1.46:1 and therefore compliance with the LEP has been achieved.

#### Clause 4.6 Exceptions to Development Standard

Clause 4.6 outlines the process under which Council is to consider a request to vary a development standard within the LEP. A written request has been submitted by the applicant seeking to vary the development standard Height of Buildings under clause 4.3. The applicant's request demonstrates that compliance with the development standard is unreasonable and unnecessary as the site dictates two (2) different height limits and as such design elements are compromised. The applicant has also demonstrated that the proportion of the variation is not significant in the overall scale of the development.

In this instance, variation of the development standard is acceptable as being unreasonable and unnecessary in the circumstances, with sufficient planning grounds provided to justify the variation. A variation of building height is considered satisfactory in this instance.

#### Clause 7.3 Earthworks

Clause 7.3 (3) requires that the consent authority consider a range of aspects prior to consent being given to development that includes earthworks. The proposal includes extensive excavations within the site for the establishment of a basement garage area. The proposed works will not have any detrimental impacts on the surrounding properties or impact on the water cycle in the area. The site has in the past been extensively disturbed and it unlikely that any Aboriginal objects or other relics will remain intact on-site. If the



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



development was to be approved, a condition will be included that protocols to be enacted during construction works should any object or relic be uncovered. Further, conditions will be applied so that adequate safety measures are in place during excavation of the site to ensure the stability of surrounding properties. Additionally, conditions will be applied so that adequate site controls are in operation to ensure that no impacts to water quality occur from site run-off.

#### **Development Control Plans**

##### Bowral Town Development Control Plan

The applicable sections of the Bowral Town DCP which apply to the assessment of the application are listed below:

<b>DCP Control</b>	<b>Assessment</b>
<i>Part A – Provisions applicable to all land</i>	
<i>Section A2.2</i>	Objectives of this Plan
<i>Section 3</i>	Biodiversity
<i>Section A4.3</i>	Development in Sydney's Drinking Water Catchment
<i>Section A4.4</i>	Water Cycle Management Study
<i>Section A4.5</i>	Stormwater Management Plans
<i>Section A4.6</i>	Erosion and Sediment Control Plans
<i>Section A4.7</i>	Water Sensitive Urban Design
<i>Section 6</i>	Vegetation management and landscaping
<i>Section A6.2</i>	Private Landscaped Open Space
<i>Section 7</i>	Subdivision, Demolition, Siting and Design
<i>Section A7.2</i>	Demolition
<i>Section A7.3</i>	Site Analysis
<i>Section A7.4</i>	Cut and Fill
<i>Section A7.10</i>	New development with the vicinity of Heritage Item
<i>Section 8</i>	Safer by Design
<i>Section A8.3</i>	Crime Prevention Through Environmental Design
<i>Section A8.4</i>	Specific Design Requirements
<i>Section 9</i>	Construction Standards & Procedures
<i>Section A9.2</i>	Surveys and Reports
<i>Section A9.3</i>	Building near or over Council Mains and Easements
<i>Section A9.8</i>	Stormwater Disposal
<i>Section A9.9</i>	Structures Over Public Areas
<i>Section A9.10</i>	Site Access Standards During Construction

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



DCP Control	Assessment
Section A9.11	Footpath Protection During Construction and Hoardings
Section A9.12	Waste Management and Disposal
Section 10	Signage and Outdoor Advertising
Section 11	Outdoor Lighting

#### Part B – Provisions Applicable to Business – zoned Land

Section 2	Design Considerations
Section B2.2	Height of Buildings
Section B2.3	Floor Space Ratios
Section B2.4	Designing for Pedestrian Access within the Town
Section 4	On-site Car Parking
Section B4.3	Relevant Technical Documents
Section B4.5	Requirements for New Development or Redevelopment
Section B4.6	Requirements for Additions or Alterations to Existing Buildings
Section B4.7	Use of Parking Areas
Section B4.8	Disabled Parking Requirements
Section B4.9	On Site Parking Deficiencies
Section 5	Loading Facilities and Waste & Resource Recovery Storage and Collection
Section 11	Residential Development in Business Areas
Section 12	Late Night Premises
Section 17	Bong Bong Street Precinct

The proposed development satisfies the requirements under each of the sections mentioned above with the exception of sections addressed below where conditions of consent could be imposed should the development be approved or variations considered acceptable.

#### A7.4—Cut and Fill

The proposal includes the provision of a basement car park requiring extensive cutting of the site to be undertaken. The extent of excavations has been minimised to the extent necessary to achieve basement car parking whilst limiting impacts to surrounding properties. Should the development be approved conditions would be included so that appropriate ground stabilisation works are put in place during construction works to ensure no impacts to adjacent property occurs.

#### A9.10—Site access standards during construction

The site fronts Bong Bong Street which is a classified road. Construction works will be required to minimise all impacts to the operation of Bong Bong Street. Should the development be approved a Construction Management Plan would be conditioned to be prepared providing



details of how traffic movements will be managed throughout demolition, excavation and construction works. No vehicles, equipment or materials would be allowed to be located within the Bong Bong Street and Bowral Street road reserves or on the footpath adjacent to the site.

### B2.2—Height of Building

The maximum height is 10m on the eastern portion of the site and 15m on the western portion as illustrated in Figure 3 above. The proposed development does not exceed the height limit over the western portion of the site that allows up to 15 metres in building height, however in the central portion of the development the building height exceeds the 10 metre height limit by between 3.5 and 5 metres as discussed above and illustrated in Figure 4 above.

The application seeks to vary the requirements of Section B2.2 in relation to the proposed encroachment. Section B2.2 reflects to the provisions of the clause 4.3 of the WLEP, as such a variation request has been made under clause 4.6 of WLEP which has been accepted.

### B4— On-site Car Parking

The proposal includes provision for 37 car spaces, including 1 accessible space. These 37 spaces will service the sixteen (16) residential dwellings with six (6) visitor space and seven (7) commercial units, providing 2 spaces for each.

The car parking layout has been reviewed by Council's Development Engineers and Traffic and Transport Planning Engineer. Serious concerns have been raised by Council's Engineering staff over the deficient number of car parking spaces provided on site to service the proposed development. The proposed development is deficient by a total of 34 car parking space.

The table below illustrates the parking requirement for the development proposal:

Land use	Gross Floor Area (GFA) or number of residential units	DCP rate for parking	Required number of spaces (rounded up)
Restaurant	327sqm or	1 per 3 seats or 15 spaces per 100sqm GFA	100 seats = 34 spaces
Commercial tenancies	448sqm GFA	1 space per 30sqm GFA	15 spaces
Residential apartments	16 x 1 or 2 bedroom units	1 space per 1 or 2 bedroom unit 1 visitor space per 3 units	16 resident spaces and 6 visitor spaces = 22 spaces
<b>Total requirement</b>			<b>71 spaces</b>

The applicant has been requested to address the parking shortfall. The following options have been presented to the applicant:

1. Provide second basement parking to provide additional onsite 34 parking spaces.
2. Reduce the GFA (Gross Floor Area) of the development to reduce the parking requirement.
3. Enter into a voluntary planning agreement with Council to provide additional offsite car parking at a rate in the vicinity of \$50,000.00 per car space for 'at grade' parking.



4. Increase the property size by purchasing an adjoining property to provide more parking.
5. Reduce the hours of operation of the restaurant to outside peak demand periods in Bowral CBD (i.e 6pm to 10pm) during week days and weekends.

**B5 — Loading Facilities and Waste & Resource Recovery Storage and Collection**

The proposal **does not** include any provision for onsite loading facilities. The development proposes to rely on street loading/unloading immediately adjacent to the subject site. It is proposed that a loading zone space could be provided suitable for heavy rigid vehicles (12.5 metre length) during early morning (say 6am - 9am) and then at other times it could provide an additional two or three on street car spaces. Council engineers **have not supported** the proposal in its current form as a loading zone approach needs to be addressed to the Traffic Committee.

**Section 4.15 Evaluation**

*(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

It has been demonstrated the DA does not comply with the *Wingecarribee Local Environmental Plan 2010* in terms of building height.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Not applicable.

*(iii) any development control plan, and*

It has been demonstrated the development does not comply with the car parking requirements of the DCP which is not acceptable. The noncompliance of the building height has been accepted for reasons stated in the report.

*(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable.

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Not applicable.

*(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The proposed land use and density is considered to be compatible with its context by providing mixed use development within the commercial core of Bowral and significant public transport infrastructure. The proposed height and density of the development is consistent with the applicable planning controls for the site and the mixed use building typology demonstrates general compatibility with the desired character and development outcomes of the area as indicated by the Bowral Town Plan DCP.

The proposed development responds to its context through the articulation of the built form into distinct roof forms and incorporating a roof top garden. Traditional materials are proposed to fit within the existing built form character of the area. The development maintains scale being three storeys in height. The entry of the residential component of the development directly addresses its street frontage achieving a traditional relationship with the public domain, with the spaces setback to signify their private use. Commercial spaces are located at street level with no setback from the footpath, activating this section of Bong Bong Street and Bowral Street further promoting movement along this section on the roadway.

As such, the proposal is determined to be within keeping with the surrounding character of the site.

- (c) *the suitability of the site for the development,*

The proposed development is deemed appropriate for the locality given the site is located within the B2 Local Centre zone wherein the proposed development is permitted with Council consent.

The proposed development has been carefully designed in order to maximise the use of the available site area for commercial opportunities whilst including a substantial residential component consistent with the planning objectives for the B2 Local Centre zone. Off street car parking is proposed via basement car parking in order to minimise this component from the architectural merit of the proposed new buildings and to maximise the efficient and orderly use of the site for commercial and residential purposes.

There are no constraints posed by adjacent developments that would cause conflict with this proposal. There are adequate utilities and services available to the proposed development where necessary.

The site is not subject to natural hazards including flooding, slip, mass movement or bushfires.

- (d) *any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.

- (e) *the public interest.*

Due to the significant variation in the provision of the site parking, the development is not considered to be in the public interest.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



## CONSULTATION

### Pre-lodgement Meeting

The development was subject to a pre lodgment meeting with Council staff.

### External Referrals

Referrals	Advice/Response/Conditions
Water NSW	No objection to proposed development; recommended conditions of consent specify relevant requirements were provided.

### Internal Referrals

Referrals	Advice/Response/Conditions
Accredited Certifier	No objection to proposed development; recommended conditions of consent specify relevant requirements were provided.
Development Engineer	Development engineering referral, including comments from Council Water and Sewer Engineer, Traffic and Transport Engineer and Drainage Engineer, has determined that the application is not supportable subject to a range of reasons contained within <b>Attachment 1</b> .
Heritage Advisor	No objection to proposed development, as the subject site in not a heritage item.

### Neighbour Notification (or Advertising)/Public Participation

The development application was Neighbour Notified/Advertised for a period of 14 days between 12/06/2018 and 28/06/2018 and Council received 4 submissions. There were three (3) submissions for support with one (1) was an objection. The issues raised in the submissions have been summarised and are considered below:

- - *Incompatible style of building to Bowral*

The subject site is the essence of old Bowral and beautiful representation of the town's value of community. The building being proposed to be altered and added into a new modern design are not only changing the view of the building into a modern aesthetic, but also taking away from the town's beautiful building by urbanisation as the building will be used of apartments, restaurant and modern stores.

Comment – The subject site is located within the Bowral CBD and zoned for commercial and residential development purposes. The concerns raised are largely subjective.

- *Support – Improved Site and Progression*

The subject site had been an eye soar for years and this development will not only improve the site but will also create jobs and provide much needed residential accommodation right in Bowral Town.

Comment – The comment is noted.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

The development's potential environmental impacts are discussed within the report.

- **Social**

The development's potential social impacts are discussed within the report.

- **Broader Economic Implications**

The development would ultimately reactivate the site for commercial and employment opportunities within the township of Bowral.

- **Culture**

The retention of original 1920s building has been a positive attempt to retain the original street character of the southern end of the Bowral town centre.

- **Governance**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

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## **RELATIONSHIP TO CORPORATE PLANS**

Operational Plan 2018 – 2019: OP181 Assess and certify applications related to development.

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## **COUNCIL BUDGET IMPLICATIONS**

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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#### RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010*, applicable *State Environmental Planning Policies* and the Bowral Development Control Plan.

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#### OPTIONS

The options available to Council are:

##### Option 1

Determine development application 18/0643 by refusal as provided in Attachment 1 and any other reasons suggested by Councillors.

##### Option 2

Determine development application 18/0643 by granting consent, subject to conditions of consent.

**Option 1** is the recommended option to this report.

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#### CONCLUSION

The development as currently proposed is considered unsatisfactory with respect to the relevant provisions of applicable environmental planning instruments, development control plans and Council policies, and is expected to have a significant negative impact on the environment or the character and amenity of the locality.

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#### ATTACHMENTS

1. ATTACHMENT 1 Recommended Reasons for Refusal
2. ATTACHMENT 2 Site Location 18.0643
3. ATTACHMENT 3 Zoning 18.0643
4. ATTACHMENT 4 Site Plan 18.0643
5. ATTACHMENT 5 Elevations 18.0643
6. ATTACHMENT 6 Floor Plan 18.0643
7. ATTACHMENT 7 Section Plan 18.0643
8. ATTACHMENT 8 Building Height Variations





**Attachment 1 – Draft Reasons For Refusal**

1. The proposed provision of thirty seven (37) car spaces does not meet the minimum car parking requirement of seventy one (71) spaces. Council is therefore not satisfied by the application or its accompanying information that the development can comply with Part B Section 4- On Site Car Parking of Bowral Town Development Control Plan.

Given the above, Council considers the development unsatisfactory with respect to the following provisions of the Bowral Town Plan Development Control Plan:

- The Urban Function objectives specified at section A2.2.2 (a) and (b):
  - (a) Improvement of traffic and parking management within the town
  - (b) Minimization of vehicular and pedestrian conflicts

(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

2. Council is not satisfied by the application or its accompanying information that the development can comply with the requirement of Part B section 5 - Loading Facilities and Waste & Resource Recovery Storage and Collection, in conjunction, with provision of loading bay facilities on site within the proposed development.

(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

3. Having regard to section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979, Council considers the development not to be in the public interest.

(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

### ATTACHMENT 2 – SITE LOCATION

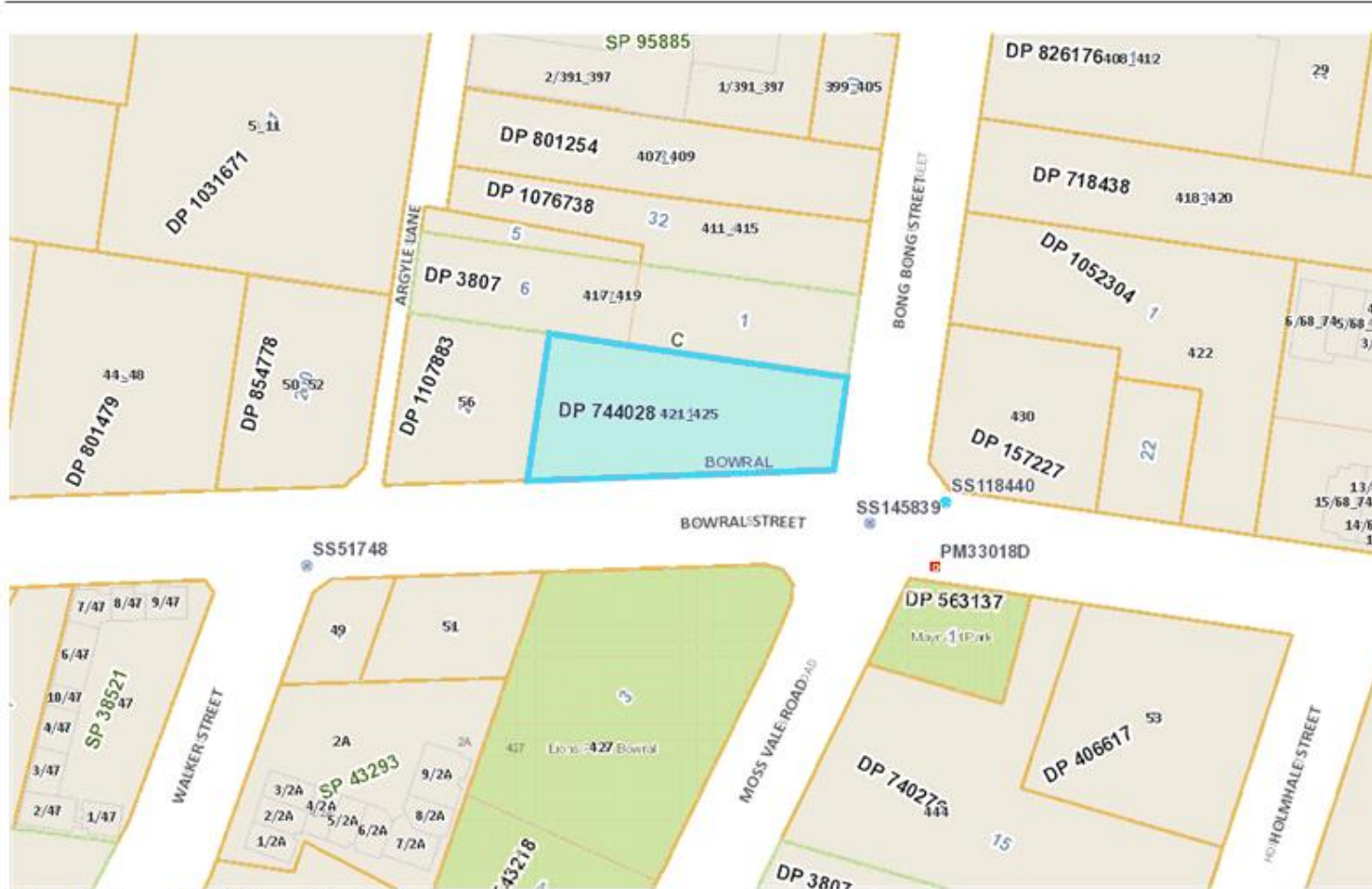


Figure 1: Locality of the subject site



Figure 2: Aerial View of the Subject Site



ATTACHMENT 3 – ZONING

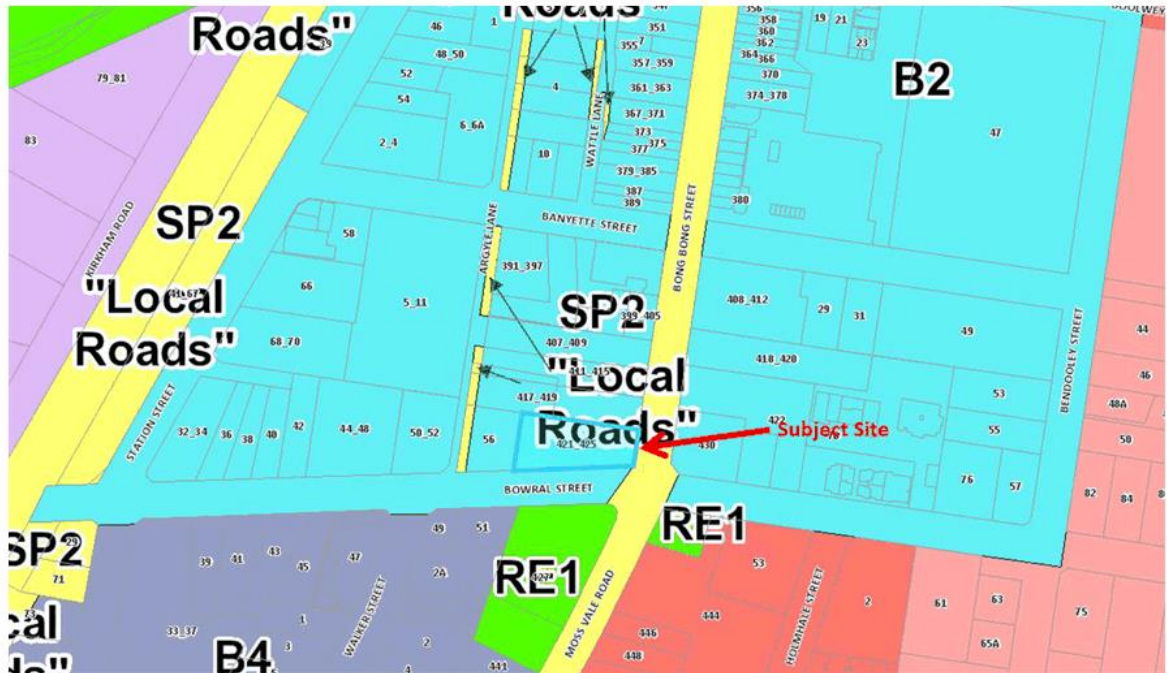
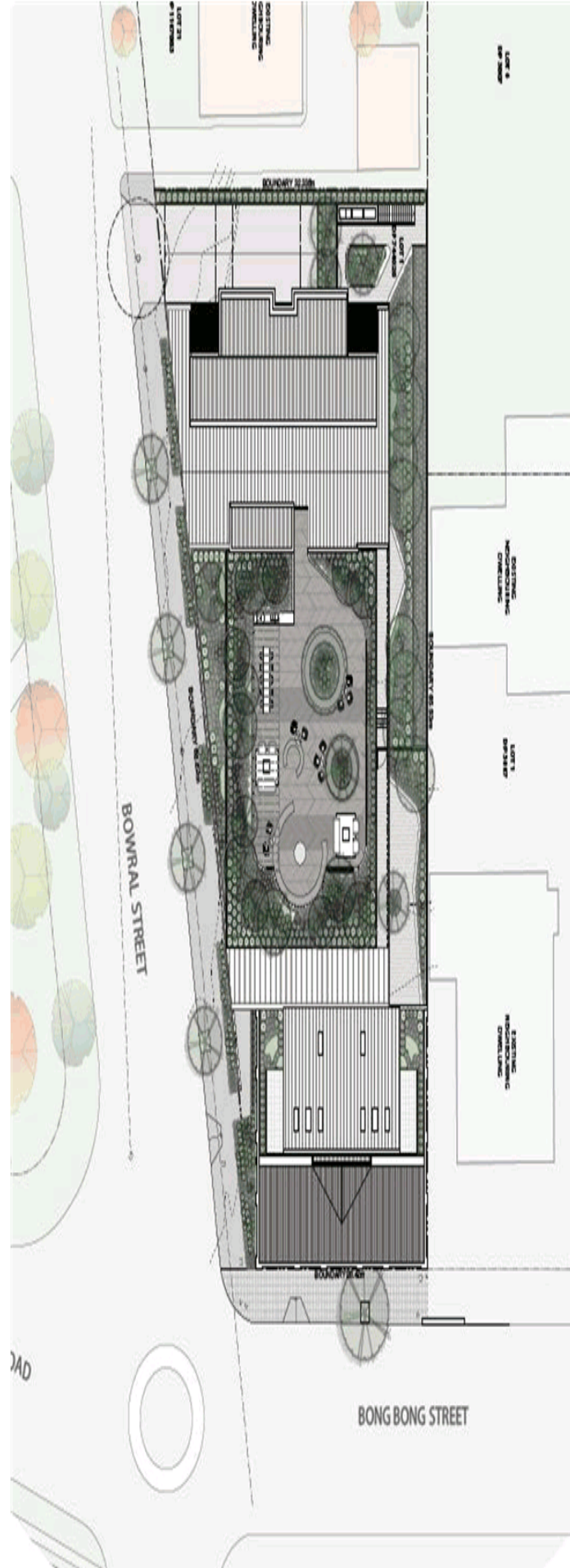


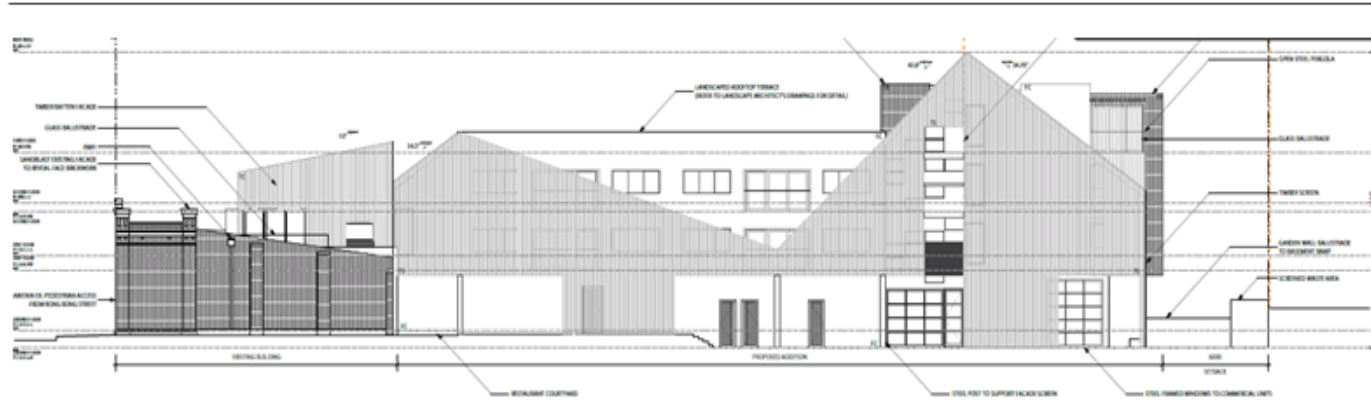
Figure 1: B2 Local Centre



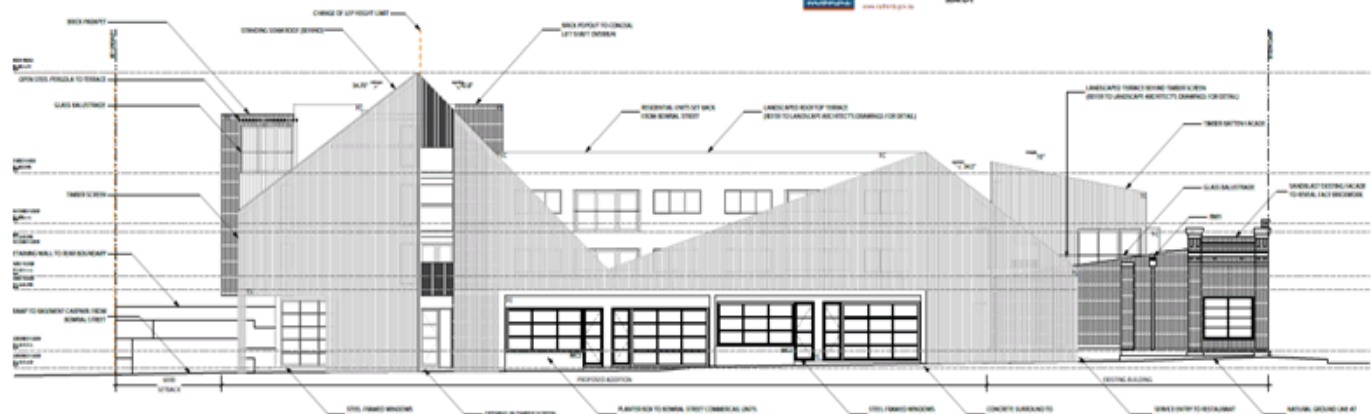
ATTACHMENT 4 – SITE PLAN



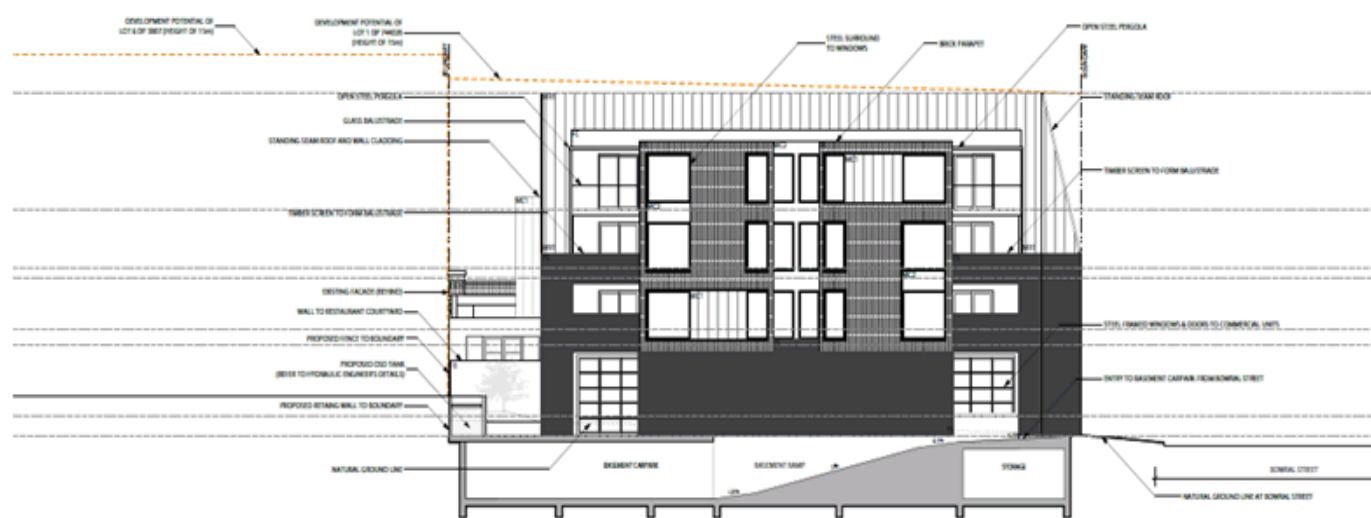
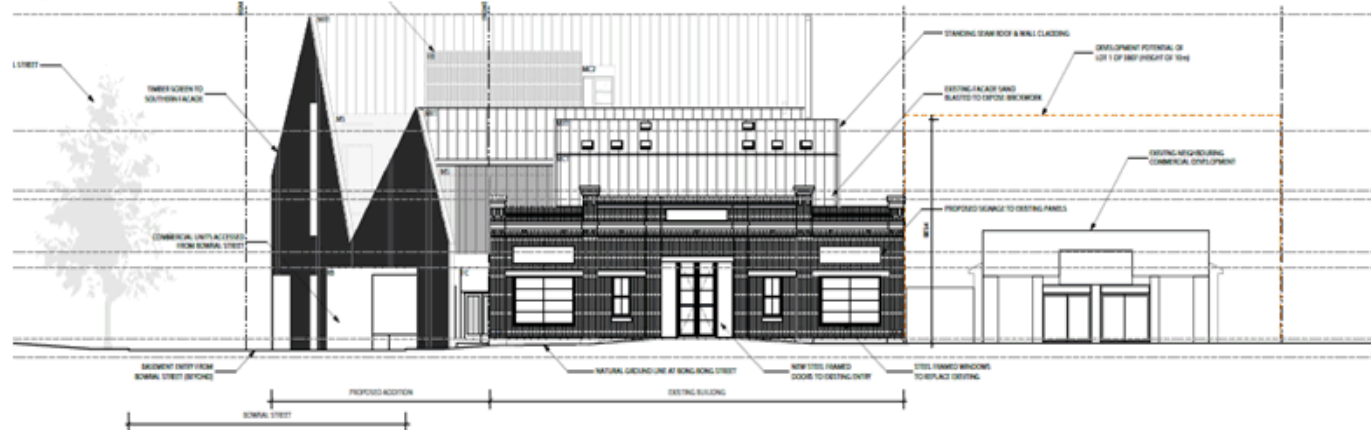
### ATTACHMENT 5 – ELEVATIONS



NORTH ELEVATION



SOUTH ELEVATION



### ATTACHMENT 6 – PROPOSED FLOOR PLAN

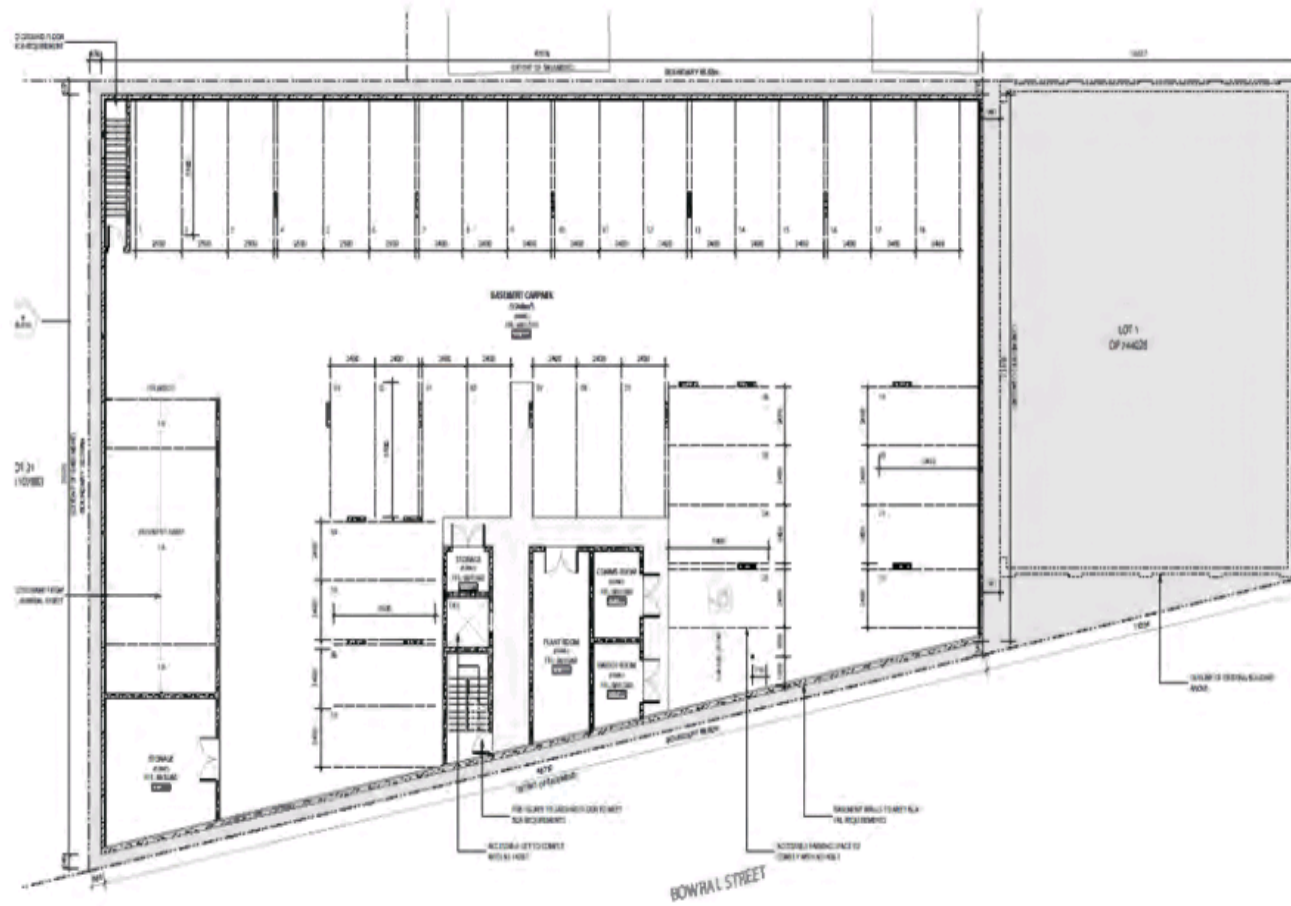


Figure 1: Basement Floor

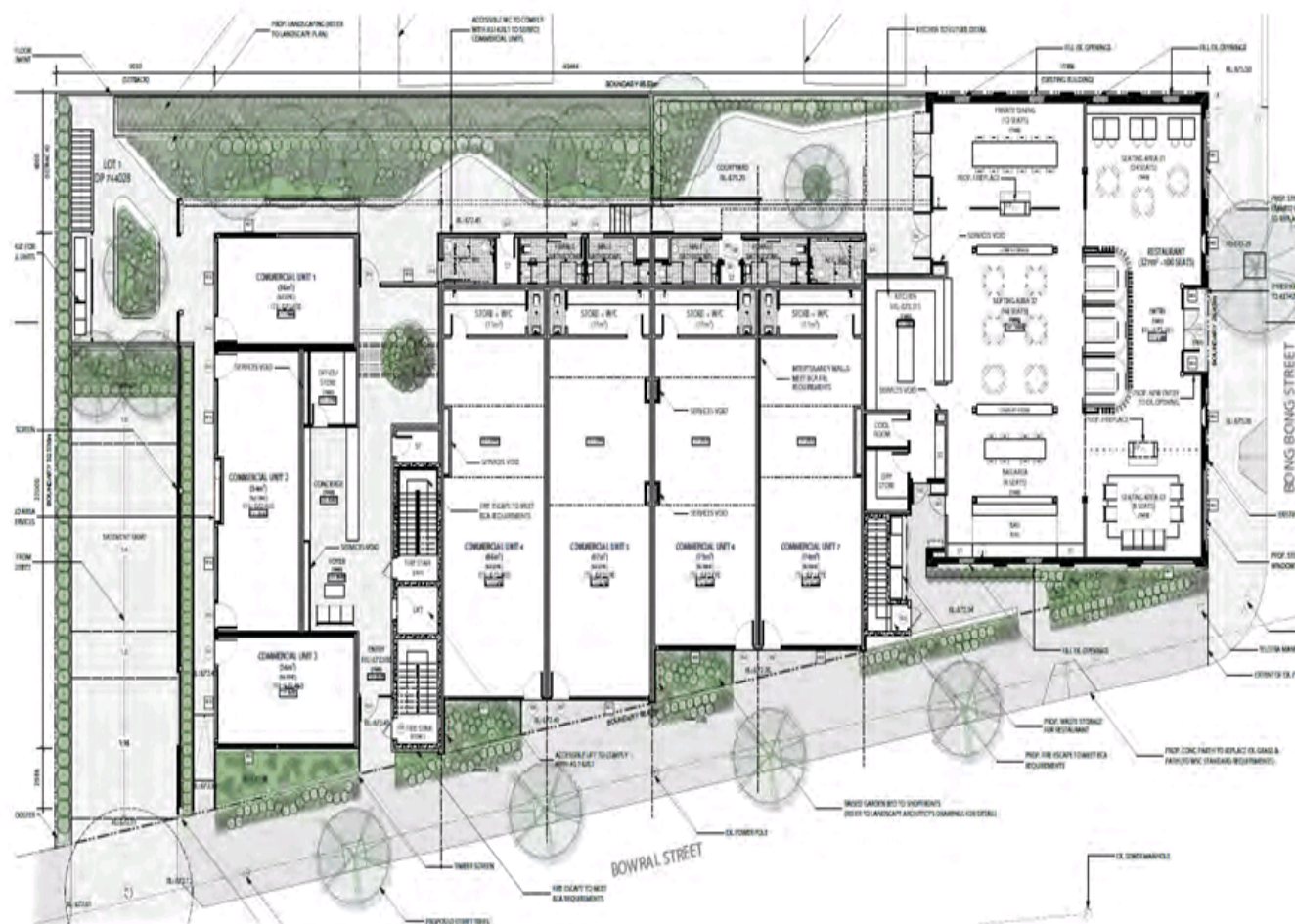


Figure 2: Ground Floor

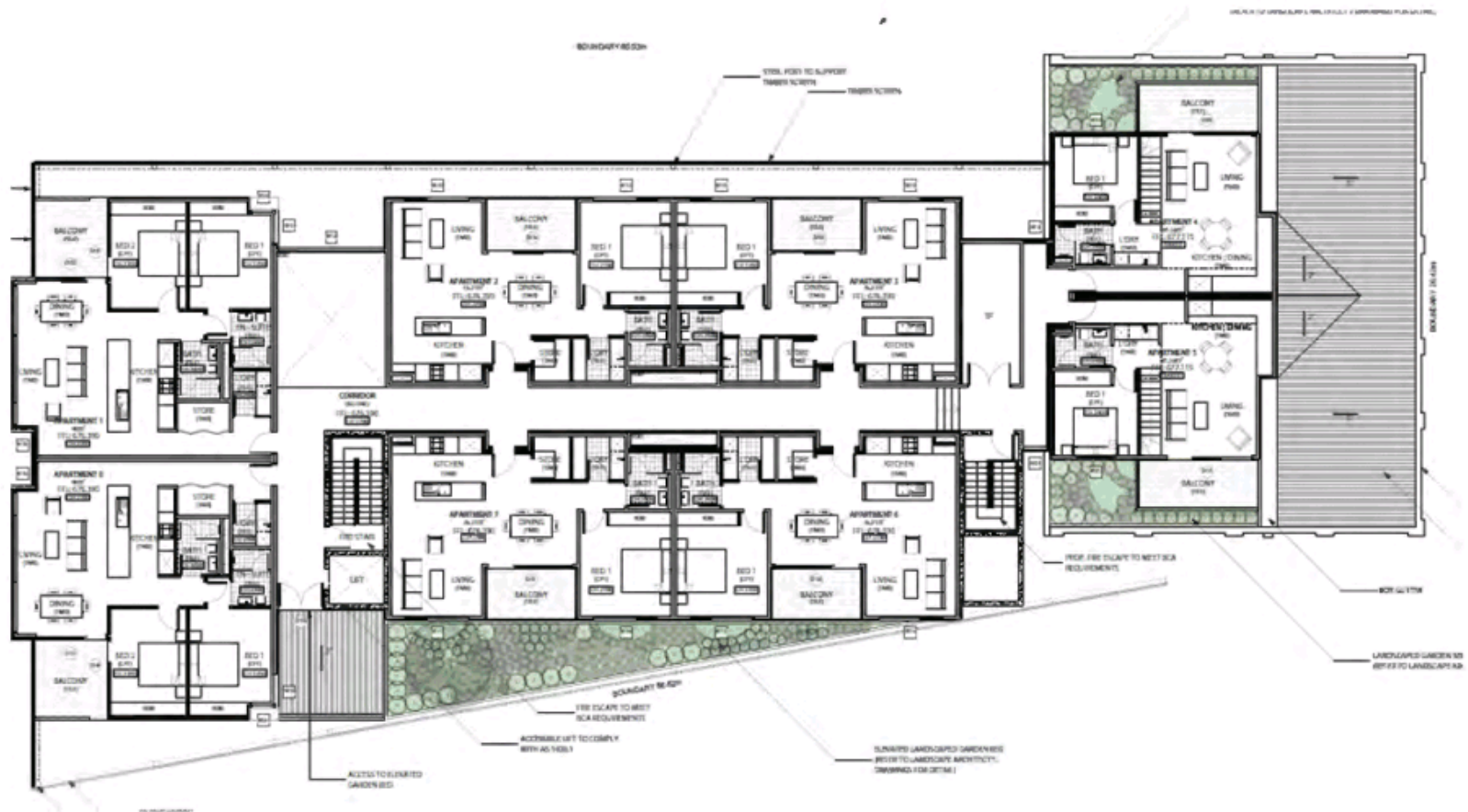


Figure 3: First Floor

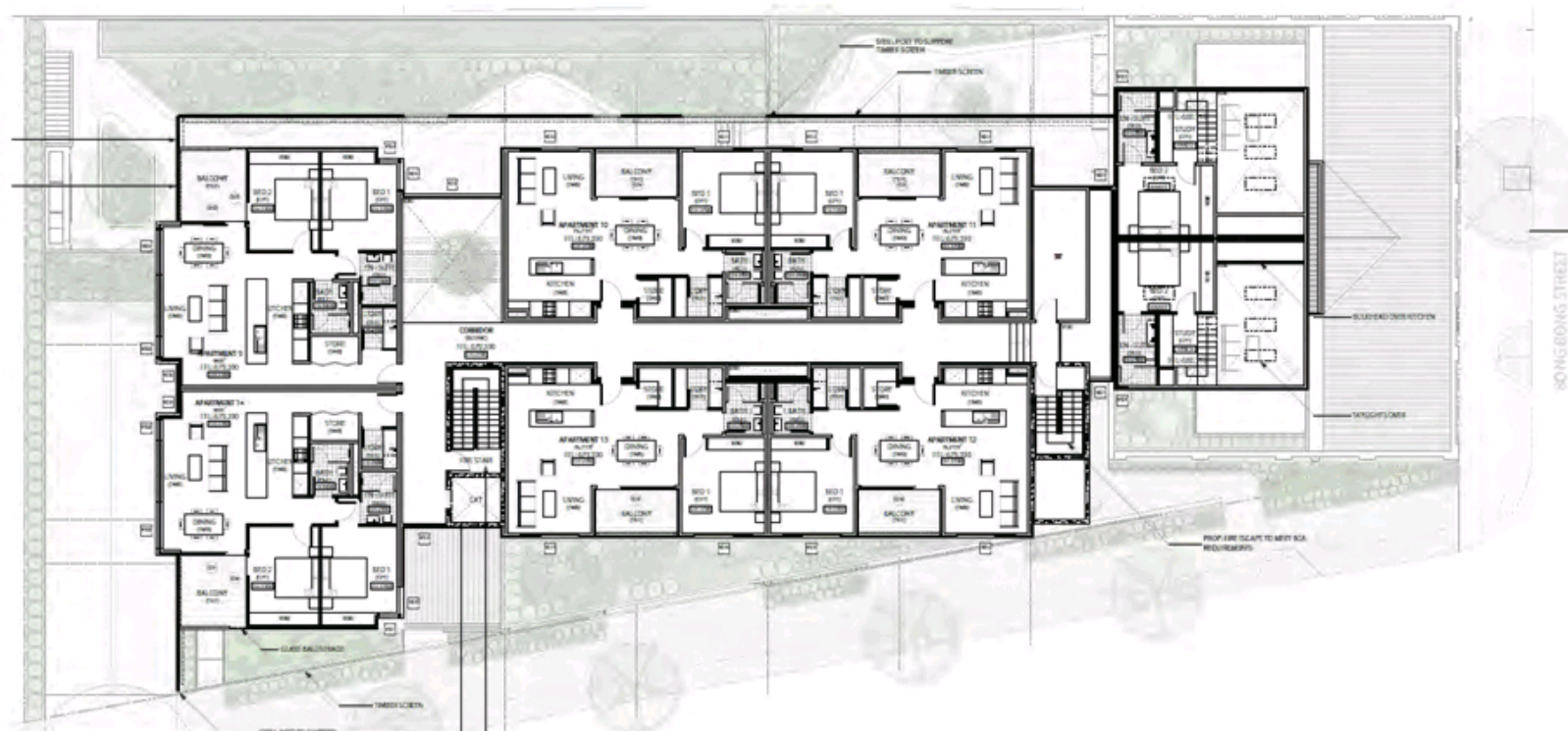
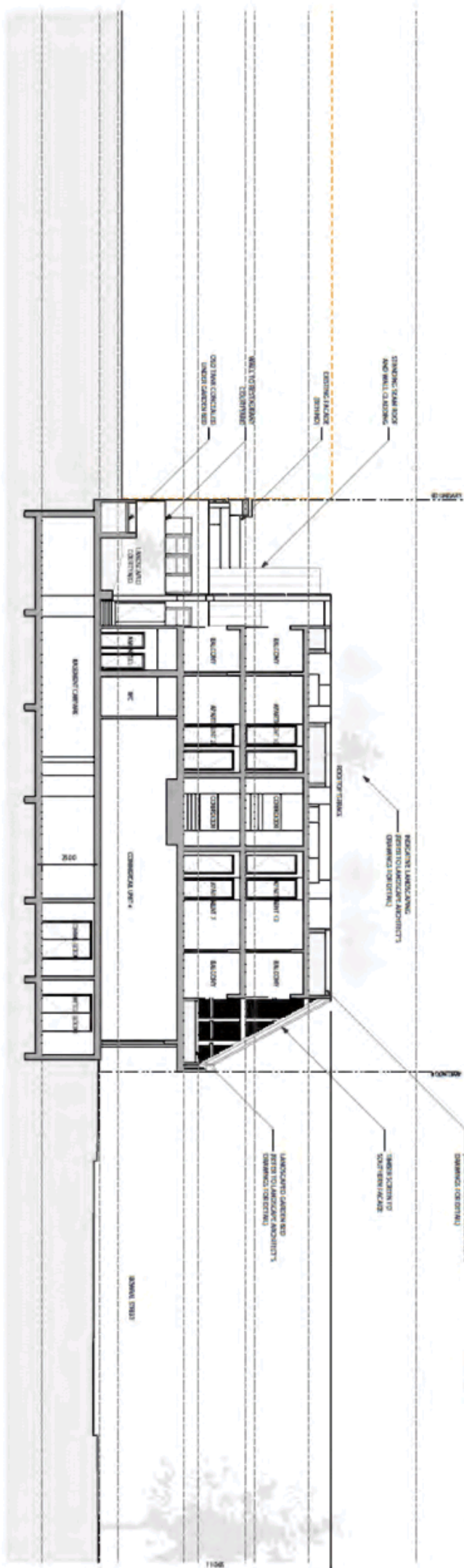


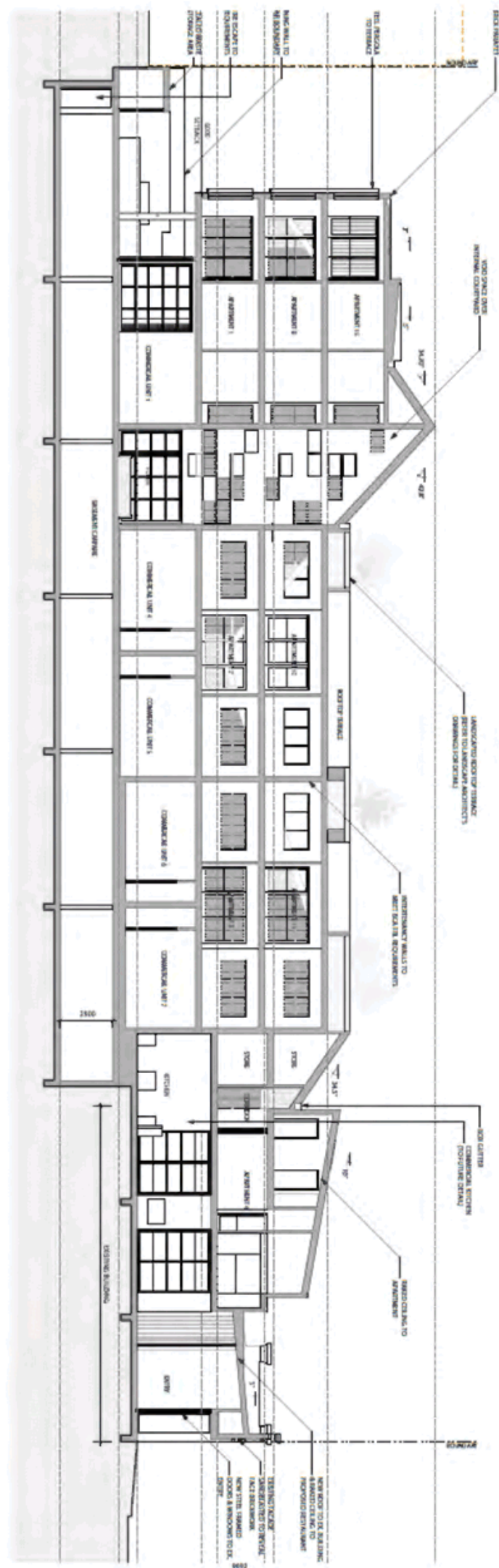
Figure 4: Second Floor







**HOUSE**  
 ARCHITECTURE  
 4.1  
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 BOWRAL, NSW  
 2576  
 Phone: 02 6442 3333  
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 Website: www.housearchitect.com.au







## 10.2 Section 4.55 (2) Application 03/2011.06 to Modify Development Consent 03/2011 - Bulk Water Extraction and Storage Shed / Staff Amenities, Lot 85 DP751275 & Lot 2 DP531503, Wombeyan Caves Road, High Range

Reference:	03/2011.06
Report Author:	Senior Development Assessment Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
Applicant:	Lee Environmental Planning
Owner:	Woodbine Park Nominees Pty Ltd
Link to Community Strategic Plan:	Conserve the key natural resources of the Shire and minimise the impact from development

### PURPOSE

This report details assessment of an application to modify development consent 03/2011. The modification application is to be determined by the Council because the original development application was determined by the Council, as were previous applications to modify the consent. The report recommends APPROVAL of the Modification Application subject to conditions in **Attachment 1**.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

**THAT** Section 4.55 (2) application 03/2011.06 to modify development consent 03/2011 be APPROVED subject to conditions as described in Attachment 1 to the report.

### REPORT

#### Subject Site and Locality

Figures 1 and 2 illustrate the land's location and general layout (see also Attachments 2 and 3). It is an approximately 228ha rural parcel of two lots on the southwestern side of Wombeyan Caves Road at High Range, around 11km northwest of Welby. It is accessible by vehicle from Wombeyan Caves Road.

The land has undulating topography and is traversed by Borehole Creek, along with other unnamed minor watercourses. Vegetation on the land includes grazed pasture and clusters of mature native trees.

Some surrounding properties appear to be used for agricultural purposes; others contain remnant native vegetation.

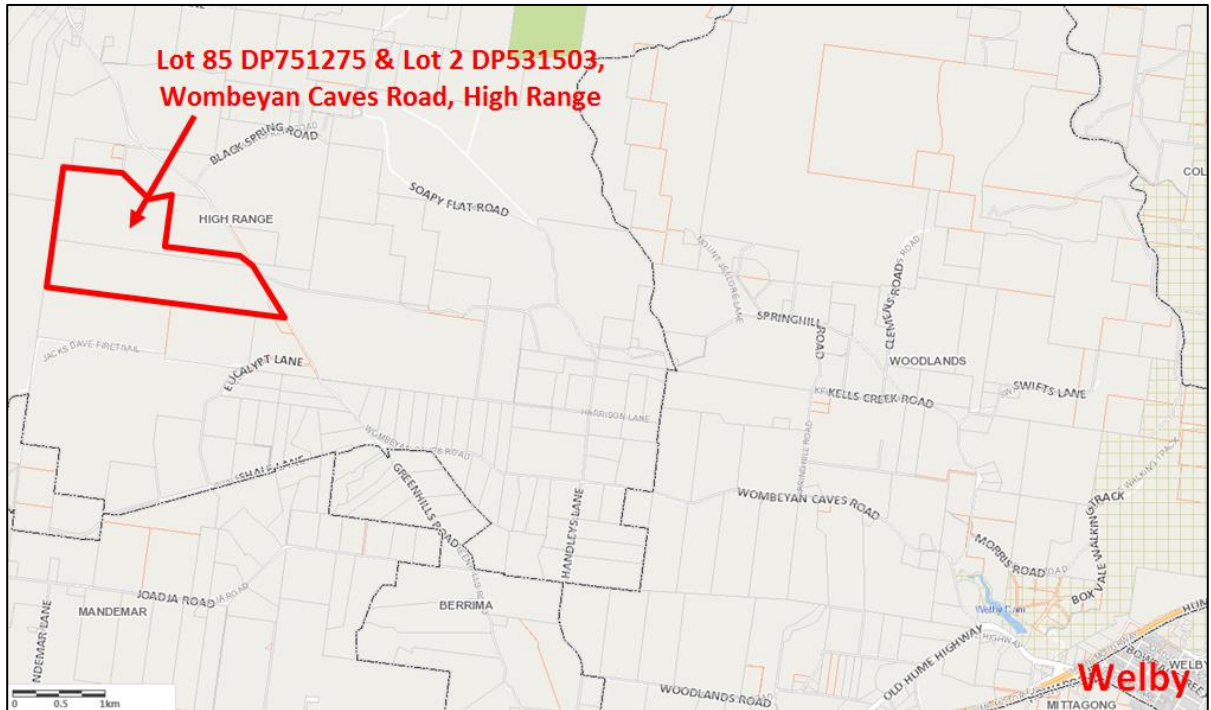


Figure 1: Locality Map (Attachment 2)

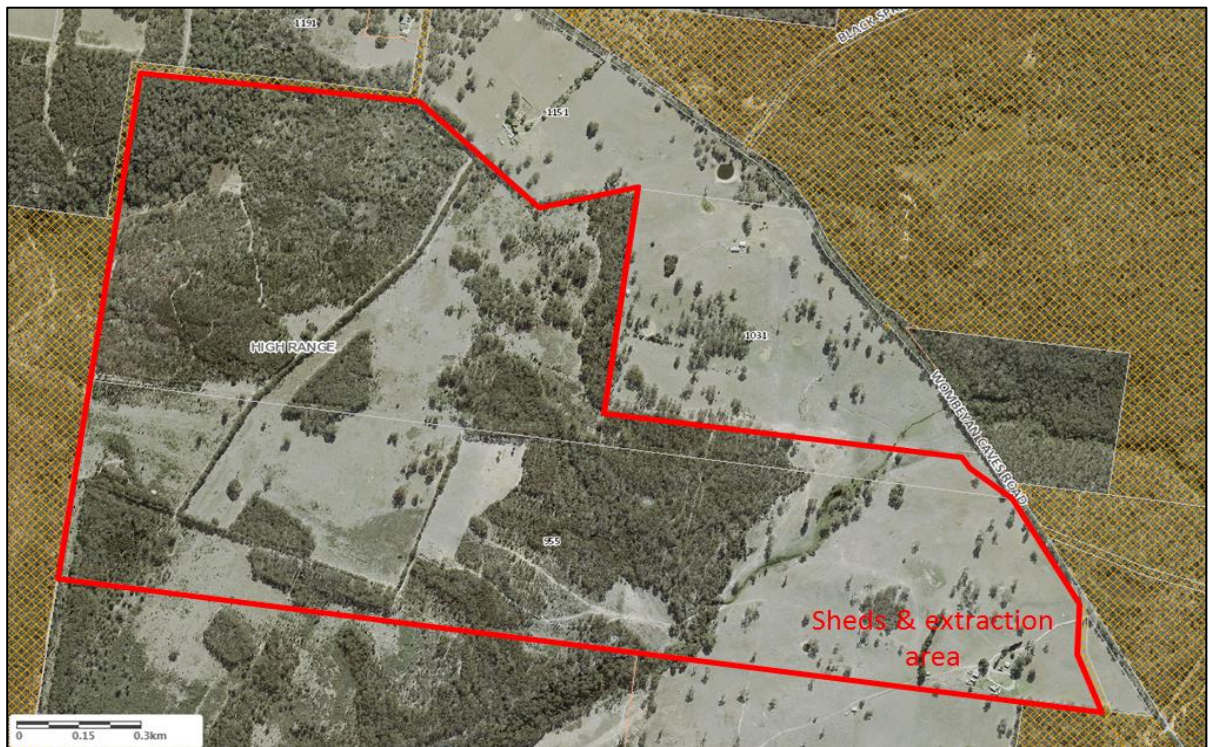


Figure 2: Aerial Image (Attachment 3)



## Background

On 20 July 2005, Council granted development consent 03/2011 for “bulk water extraction and storage shed / staff amenities” on Lot 85 DP751275 and Lot 2 DP531503, 955 Wombeyan Caves Road, High Range. The development involved erection of a rural style metal shed and the pumping of water from an existing licenced bore. Conditions of consent included:

- Condition 5:

### Hours of Operation / Truck Movements

*The hours of operation are limited to between 7:00am and 6:00pm week days only, with no movements Saturday, Sunday and Public Holidays. To assist in monitoring this condition the applicant shall maintain a register of dispatches – date, time, vehicle and volume of water. This register shall be made available to Council or Government Agencies upon request.*

*Truck movements during these hours shall be restricted to a maximum of twelve (12) movements per day.*

Council amended the consent on 18 October 2005, and further modified it on 9 March 2006. Neither the amendment nor modification is considered to be of any consequence to the modification application now under consideration.

On 21 December 2015 Council received an application (03/2011.04) to modify the consent, proposing amendment of condition 5 to entirely remove the restriction on permitted vehicle movement days and times, i.e. to permit vehicle movements 24 hours per day, seven days per week, without increasing the permitted number of daily vehicle movements from 12. The Council considered a report regarding application 03/2011.04 at its Ordinary Meeting of 14 December 2016, and resolved to modify the consent for a 12 month period, amending condition 5 and adding condition 17 as follows:

- Condition 5:

### Hours of Operation / Truck Movements

*The hours of operation are limited to between 7.00 am and 6.00pm week days only, with no movements Saturday, Sunday and Public Holidays.*

***Notwithstanding the above, a 12 month trial period for the 24 hour operation of the use (including vehicular movements) between 12 Midnight Mondays and 12 midnight Fridays, is permitted from 15 December 2016 to 15 December 2017. Should the operator wish to seamlessly continue these hours beyond 15 December 2017, a section 96 modification application shall be lodged and determined prior to this date.***

*To assist in monitoring this condition the applicant shall maintain a register of dispatches – date, time, vehicle and volume of water. This register shall be made available to Council or Government Agencies upon request.*

*Truck movements ~~during these hours~~ **per day (midnight to midnight)** shall be*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



*restricted to a maximum of ~~twelve~~ (12) movements per day.*

***The number of deliveries by truck in any single night period (i.e. 10.00 pm to 7.00 am) shall not exceed four.***

***During night time (i.e. 10.00 pm to 7.00 am), the number of deliveries by truck within any one hour period shall be restricted to two truck movements (i.e. one delivery).***

- Condition 17:

#### **Noise Controls**

***The development shall comply with relevant noise control provisions contained within the Protection of the Environment Operations Act 1997 and Noise Control Regulations and Policies to ensure local amenity is not adversely affected by noise impacts associated with the development.***

On 26 October 2017, a further application (03/2011.05) was made to modify the consent. The applicant proposed amendment of condition 5 of the consent to permit operation of the development, including associated vehicle movements, 24 hours per day, five days per week, on an ongoing basis.

The Council considered application 03/2011.05 at its Ordinary Meeting of 12 September 2018, and resolved:

***THAT** modification application 03/2011.05 under section 4.55 (2) of the Environmental Planning and Assessment Act 1979 be DEFERRED to the Ordinary Meeting of Council to be held on Wednesday, 10 October 2018 to enable Council staff, the Owner/Applicant and the Objectors to meet in an endeavour to resolve the Objectors' concerns.*

Accordingly, Council officers convened a meeting with the applicant and objectors on 24 September 2018. Objectors expressed four main concerns:

- Night time noise emissions from associated heavy vehicle road traffic
- Headlight glare from associated heavy vehicle road traffic
- Potential increase in nocturnal wildlife injuries and deaths
- Road safety on Wombeyan Caves Road.

The applicant and objectors reached agreement that these concerns might be addressed by modifying the consent to permit operation of the development, including associated vehicle movements, 24 hours per day on weekdays only, with no operation or vehicle movements permitted on Saturdays, Sundays or public holidays, for a period of three months, subject to the following:

- All heavy vehicle traffic associated with the development will observe a maximum speed of 60km/h, and will refrain from using high-beam headlights, between 10:00pm and 7:00am on Wombeyan Caves Road, and

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- All heavy vehicles associated with the development will be equipped with operational high frequency wildlife repellent devices (“ShuRoo” or equivalent), and
- The operator of the development will provide written instructions to drivers of all heavy vehicles associated with the development, conveying the above requirements and restrictions, and
- If any objector observes heavy vehicle traffic on Wombeyan Caves Road contravening any of the above requirements and restrictions, and has reason to believe any vehicle concerned is associated with the development, the objector should:
  - Record the date and time of the contravention and, if possible, the identity of the vehicle or vehicles, and
  - Report the contravention to the operator of the development, and
- If the operator of the development receives any report, allegation or complaint that a vehicle or vehicles associated with the development exceeded a speed of 60km/h or used high-beam headlights on Wombeyan Caves Road, the operator will seek to establish, by reference to the development’s register of dispatches, whether the report, allegation or complaint is well founded and, if so, take all reasonable measures to prevent any recurrence, and
- The operator of the development is willing to arrange erection or installation of wildlife safety warning signage on Wombeyan Caves Road at no cost to Council, and
- After three months from the date of the consent’s modification:
  - If it is established that operation in accordance with these terms satisfactorily address the objectors’ concerns, the development may continue to operate in accordance with these terms, or
  - If it is established that operation in accordance with these terms does not satisfactorily address the objectors’ concerns, the development’s operation and associated heavy vehicle traffic movements will be restricted to between 7:00am and 6:00pm weekdays only, as permitted by the original consent.

At its Ordinary Meeting of 10 October 2018, the Council resolved as follows regarding application 03/2011.05:

*THAT modification application 03/2011.05 under section 4.55 (2) of the Environmental Planning and Assessment Act 1979 be approved subject to proposed draft conditions of development consent contained in Attachment 1 to the report.*



Development consent 03/2011.05 was thus modified, with amended condition 5 reading as follows:

**5. Hours of Operation / Truck Movements**

*Council's consent permits operation of the development, including associated vehicle movements, between 7:00am and 6:00pm weekdays only, with no associated vehicle movements permitted on Saturdays, Sundays, or public holidays.*

*Notwithstanding the above, a three month trial period for the 24 hour operation of the development, including associated vehicle movements, between 12:00am (midnight) Mondays and 12:00am (midnight) Saturdays, is permitted from 11 October 2018 to 11 January 2019, subject to the following:*

- (a) All heavy vehicle traffic associated with the development shall observe a maximum speed of 60km/h, and shall refrain from using high-beam headlights, between 10:00pm and 7:00am on Wombeyan Caves Road, and*
- (b) All heavy vehicles associated with the development shall be equipped with operational high frequency wildlife repellent devices, e.g. "ShuRoo" or equivalent, and*
- (c) The operator of the development shall provide written instructions to drivers of all heavy vehicles associated with the development, conveying the above restrictions and requirements, and*
- (d) If any person observes heavy vehicle traffic on Wombeyan Caves Road contravening any of the above restrictions and requirements, and has reason to believe any vehicle concerned is associated with the development, the person should:*
  - (i) Record the date and time of the contravention and, if possible, the identity of the vehicle or vehicles, and*
  - (ii) Report the contravention to the operator of the development, and*
- (e) If the operator of the development receives any report, allegation or complaint that a vehicle or vehicles associated with the development contravened any of the above restrictions and requirements, the operator shall seek to establish, by reference to the development's register of dispatches, whether the report, allegation or complaint is well founded and, if so, shall take all reasonable measures to prevent any recurrence.*

*Should it be proposed to continue 24 hour operation beyond 11 January 2019, application shall be made to Council prior to that date to modify Council's consent under section 4.55 of the Environmental Planning and Assessment Act 1979. Any resulting modification of the consent may include addition of a condition of consent requiring the operator of the development to arrange erection or installation of wildlife safety warning signage on Wombeyan Caves, subject to approval by the relevant roads authority and at no cost to Council.*





*To assist in monitoring this condition, the operator of the development shall maintain a register of heavy vehicle dispatches, including dates, times, identification of vehicles and volumes of water. The register shall be made available to Council or Government Agencies upon request.*

*Heavy vehicle traffic movements associated with the development shall be restricted to a maximum of 12 movements per day (midnight to midnight).*

*The number of heavy vehicle deliveries associated with the development shall not exceed four, i.e. eight heavy vehicle movements, in any single period between 10:00pm and 7:00am.*

*The number of heavy vehicle deliveries associated with the development shall not exceed one, i.e. two heavy vehicle movements, within any one hour period between 10:00am and 7:00am.*

### **Proposed Development**

On 17 December 2018, Section 4.55 (2) application 03/2011.06 was made to again modify development consent 03/2011. The proposed modification involves removal of the three month trial period restriction specified by condition 5 of the consent. Essentially, it is proposed to amend condition 5 to read as follows:

#### **5. Hours of Operation / Truck Movements**

*Council's consent permits operation of the development, including associated vehicle movements, between 12:00am Mondays and 11:59pm Fridays, with no associated vehicle movements permitted on Saturdays, Sundays, or public holidays, subject to the following:*

- (a) All heavy vehicle traffic associated with the development shall observe a maximum speed of 60km/h, and shall refrain from using high-beam headlights, between 10:00pm and 7:00am on Wombeyan Caves Road, and*
- (b) All heavy vehicles associated with the development shall be equipped with operational high frequency wildlife repellent devices, e.g. "ShuRoo" or equivalent, and*
- (c) The operator of the development shall provide written instructions to drivers of all heavy vehicles associated with the development, conveying the above restrictions and requirements, and*
- (d) If any person observes heavy vehicle traffic on Wombeyan Caves Road contravening any of the above restrictions and requirements, and has reason to believe any vehicle concerned is associated with the development, the person should:*
  - (i) Record the date and time of the contravention and, if possible, the identity of the vehicle or vehicles, and*
  - (ii) Report the contravention to the operator of the development, and*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- (e) *If the operator of the development receives any report, allegation or complaint that a vehicle or vehicles associated with the development contravened any of the above restrictions and requirements, the operator shall seek to establish, by reference to the development's register of dispatches, whether the report, allegation or complaint is well founded and, if so, shall take all reasonable measures to prevent any recurrence.*

*To assist in monitoring this condition, the operator of the development shall maintain a register of heavy vehicle dispatches, including dates, times, identification of vehicles and volumes of water. The register shall be made available to Council or Government Agencies upon request.*

*Heavy vehicle traffic movements associated with the development shall be restricted to a maximum of 12 movements per day (midnight to midnight).*

*The number of heavy vehicle deliveries associated with the development shall not exceed four, i.e. eight heavy vehicle movements, in any single period between 10:00pm and 7.00am.*

*The number of heavy vehicle deliveries associated with the development shall not exceed one, i.e. two heavy vehicle movements, within any one hour period between 10:00am and 7:00am.*

In addition, information accompanying the application acknowledges the current specification of condition 5 that:

*"...modification of the consent may include addition of a condition of consent requiring the operator of the development to arrange erection or installation of wildlife safety warning signage on Wombeyan Caves, subject to approval by the relevant roads authority and at no cost to Council."*

The applicant undertakes to arrange erection and display of wildlife safety warning signage if required, as currently suggested by condition 5. Recommended modified consent **condition 18** specifies no night time operation of the development, including associated heavy vehicle movements, shall be permitted unless wildlife safety warning signage has been erected on Wombeyan Caves Road in accordance with all necessary approvals by the relevant roads authorities, and at no cost to Council.

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## STATUTORY PROVISIONS

### **Section 4.55 Environmental Planning and Assessment Act 1979**

The application seeks modification of development consent 03/2011 under section 4.55 (2) of the Act. Section 4.55 (2) and (3) is as follows:

(2) ***Other modifications***

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with:*
  - (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The proposed modification is considered satisfactory with respect to section 4.55 (2).

**Conditions 10 and 11** of the original development consent 03/2011 were imposed as a requirement of concurrence by the former Sydney Catchment Authority (Water NSW), and

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



in accordance with general terms of approval under the Water Act 1912 as specified by the former NSW Department of Infrastructure, Planning and Natural Resources (now the NSW Natural Resources Access Regulator (NRAR)). With respect to subsection (2) (b) (and the related clause 120 (1) of the Environmental Planning and Assessment Regulation 2000), Council gave copies of the subject application and accompanying documents to Water NSW and NRAR on 20 December 2018. Water NSW confirmed no objection to the proposed modification and no change to its original concurrence conditions. NRAR did not respond, and is therefore taken to also have no objection to the proposed modification.

With respect to subsection (2) (c) and (d), Council advertised the application and notified it to more than 400 land owners and occupiers, inviting submissions between 2 and 30 January 2019. Advertisement and notification attracted 20 submissions. The issues raised by the submissions are identified and discussed later, under Neighbour Notification and Advertising / Public Participation.

With respect to subsection (3), the proposed modification has been considered with regard to the relevant matters referred to in section 4.15 (1) of the Act, as detailed below.

#### **State Environmental Planning Policies**

No state environmental planning policy provisions are relevant to the proposed modification.

#### **Local Environmental Plans**

##### *Wingecarribee Local Environmental Plan 1989 (WLEP89)*

The original development application 03/2011 was subject to the relevant provisions of the then-applicable Wingecarribee Local Environmental Plan 1989 (WLEP89), which included:

- Clause 2—Aims, objectives etc
- Clause 5—Definitions
- Clause 6—Adoption of Model Provisions
  - Environmental Planning and Assessment Model Provisions 1980
    - Clause 4—Definitions
    - Clause 5—Consideration of certain applications
    - Clause 30—Services
- Clause 9—Zone objectives and development control table
- Clause 14—Development on land which fronts a main or arterial road
- Clause 36—Provision of services.

However, WLEP89 was repealed with the commencement of Wingecarribee Local Environmental Plan 2010, which now applies to the land.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



#### Wingecarribee Local Environmental Plan 2010 (WLEP10)

The modification application has been considered with regard to the relevant provisions of WLEP10, including:

- Clause 1.2—Aims of Plan
- Clause 2.3—Zone objectives and Land Use Table
- Clause 7.5—Natural resources sensitivity—water.

The proposed modification is not considered contrary to the particular aims specified by clause 1.2 (2).

With respect to clause 2.3, the land is in Zone RU2 Rural Landscape, within which development for the purpose of *general industries* is prohibited. However, this prohibition is of no consequence to the proposed modification, due to the development having been lawfully established pursuant to the previously applicable WLEP89 and Council's original development consent 03/2011.

Clause 7.5 (3) and (4) effectively specifies matters to be considered and satisfactorily addressed in order to grant consent to development on the land. It does not apply to an application to modify a consent that has already been granted. It is therefore of no consequence to the subject modification application.

#### Development Control Plans

The original development application 03/2011 was considered with regard to the relevant provisions of applicable DCPs, including:

- DCP 12—Off Street Car Parking, Loading Facilities and Vehicular Access
- DCP 41—Development & Subdivision Engineering Standards & Planning Guidelines.

None of the provisions of DCPs 12 and 41 is considered relevant to the proposed modification now under consideration.

DCP 12 and DCP 41 have been repealed since Council granted the original development consent 03/2011, and the land is now subject to Wingecarribee Shire Rural Lands Development Control Plan.

#### Wingecarribee Shire Rural Lands Development Control Plan (RLDCP)

The modification application has been considered with regard to RLDCP's relevant provisions, including:

- Part A—Managing our rural lands
  - Section A6—Additional controls
    - A6.8—Minimisation of external impacts – noise



- Part B—Development-specific controls
  - Section B6—Other commercial and community development
    - B6.2—Objectives for all commercial development.

With respect to section A6.8, the proposed modification is expected to perpetuate intermittent noise emissions from night time vehicular traffic to and from the land. RLDCP states, “Neighbours need to appreciate that such intermittent noise is part of the fabric of rural life”, but acknowledges that noise abatement measures may be warranted in some cases.

As discussed earlier, in approving the previous modification applications 03/2011.04 and 03/2011.05, Council permitted the development’s 24 hour operation and associated vehicle movements for trial periods of 12 and 3 months. The trial periods facilitated monitoring of any compliance complaints regarding noise emissions from night time vehicular traffic to and from the development. Council has no apparent record of noise complaints regarding the development since Council’s earlier modification of the consent on 14 December 2016. Additionally, noting condition 5 of the consent also provides for noise complaints to be made directly to the operator of the development, information accompanying the application indicates the operator received no such complaints regarding the development.

#### **Section 4.15 Evaluation**

##### *(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

##### *(a) the provisions of:*

##### *(i) any environmental planning instrument, and*

As discussed earlier, the proposed modification is considered satisfactory with respect to the relevant provisions of *Wingecarribee Local Environmental Plan 2010*.

##### *(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Not applicable.

##### *(iii) any development control plan, and*

As discussed earlier, the proposed modification is considered satisfactory with respect to the relevant provisions of *Wingecarribee Shire Rural Lands Development Control Plan*.

##### *(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable.



- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*  
Not applicable.
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*  
Not applicable.
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Access, transport and traffic

The modification application does not propose any increase in the currently permitted number of daily vehicle movements associated with the development's operation. However, Council's Development Engineer and Traffic & Transport Planning Engineer recommend that the land's existing vehicle access be upgraded if night time heavy vehicle movements are permitted on a permanent basis. Whilst this issue has not been raised in consideration of earlier applications to modify development consent 03/2011, it is nonetheless a critical safety consideration.

Recommended modified consent **conditions 5 and 5A** therefore specify no 24 hour operation shall be permitted to commence unless the land's vehicle access has been lawfully upgraded to the applicable standards of the relevant roads authority.

Flora and fauna

The modification application proposes only the removal of the three month trial period constraint from condition 5 of the consent, which was imposed with Council's determination of the previous modification application 03/2011.05. Application 03/2011.05 was determined on the basis of a Noise Impact Assessment report that accompanied the preceding application 03/2011.04 and is considered still relevant to the current modification application.

In assessment of modification application 03/2011.04, Council's Environmental Health Officer reviewed the Noise Impact Assessment report and commented:

*"...The Report concludes that:*

- *"Based on the existing traffic noise levels measured at each location, and the Project related predicted noise levels, there won't be any noticeable relative increase in both night and day time noise level associated with the proposed development (i.e. the predicted increase is extremely low at 0.1-0.2 dB(A)). It is stated that the development "meets the road traffic noise criteria detailed in the NSW EPA RNP at the nearest roadside residential receivers"; and*
- *"The additional project related truck movements during the night time period are unlikely to cause awakening reactions."*

In identifying recommended conditions of consent relating to noise, the Environmental Health Officer considered the following:

- *“With reference to email correspondence with the Applicant’s Consultant on 21/11/16, “the applicant is willing to accept a condition of consent imposing a maximum number of deliveries at night to 4 (out of the total 12 allowable in any 24 hour period)”;* and
- *“The above-mentioned Report recommends that “the night-time operations be restricted to no more than two (2) movements per hour (one delivery) to minimise the peak of truck movements occurring within a small window”.”*

The Environmental Health Officer subsequently recommended the following conditions of consent in relation to noise:

- *“The development is to comply with relevant noise control provisions contained within the Protection of the Environment Operations Act 1997 and Noise Control Regulations and Policies to ensure local amenity is not adversely affected by noise impacts associated with the development (Condition 17);*
- *“A maximum total of twelve (12) deliveries by truck are allowed in any 24 hour period (Condition 5);*
- *“The number of deliveries by truck in any single night period (i.e. 10.00 pm to 7.00 am) is not to exceed four (4) (Condition 5);*
- *“During night time (i.e. 10.00 pm to 7.00 am) the number of deliveries by truck within any one (1) hour period is to be restricted to two (2) truck movements (one delivery) (Condition 5).*

Imposing the conditions recommended above was expected to result in an acceptable level of noise impact to residents along Wombeyan Caves Road, and as discussed earlier, there is no apparent record of noise complaints regarding the development since Council modified the consent on 14 December 2016.

*(c) the suitability of the site for the development,*

Provided the recommended modified consent conditions are complied with, the modification is not expected to render the development incompatible with the character and amenity of the locality, and no site attributes are considered to render the land unsuitable for the development to which the consent as modified would relate.

*(d) any submissions made in accordance with this Act or the regulations,*

Refer to the Neighbour Notification and Advertising / Public Participation section of this report.

*(e) the public interest.*



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Provided recommended modified consent conditions are complied with, there is not considered to be any overriding public interest against modifying development consent 03/2011.

## CONSULTATION

### Pre-lodgement Meeting

No prelodgement meeting was held prior to the modification application being made.

### External Referrals

As discussed earlier, **conditions 10 and 11** of the original development consent 03/2011 were imposed as a requirement of concurrence by the former Sydney Catchment Authority (Water NSW), and in accordance with general terms of approval under the Water Act 1912 as specified by the former NSW Department of Infrastructure, Planning and Natural Resources (now the NSW Natural Resources Access Regulator (NRAR)). Council gave copies of the subject application and accompanying documents to Water NSW and NRAR. Water NSW confirmed no objection to the proposed modification and no change to its original concurrence conditions. NRAR did not respond, and is therefore taken to also have no objection to the proposed modification.

### Internal Referrals

Referrals	Advice/Response/Conditions
Development Engineer and Traffic & Transport Planning Engineer	As discussed earlier, Council's Development Engineer and Traffic & Transport Planning Engineer recommend that the land's existing vehicle access be upgraded if night time heavy vehicle movements are permitted on a permanent basis. Whilst this issue has not been raised in consideration of earlier applications to modify development consent 03/2011, it is nonetheless a critical safety consideration. Recommended modified consent <b>conditions 5 and 5A</b> therefore specify no 24 hour operation shall be permitted to commence unless the land's vehicle access has been lawfully upgraded to the applicable standards of the relevant roads authority.

### Neighbour Notification and Advertising / Public Participation

Council advertised the application and notified it to more than 400 land owners and occupiers, inviting submissions between 2 and 30 January 2019. Advertisement and notification attracted 20 submissions. Valid issues raised by the submissions, where relevant to the proposed modification, are identified and discussed below, in no particular order.

- *Traffic safety*

Wombeyan Caves Road at the land's vehicle access location is deemed suitable for heavy vehicle traffic, as evidenced by its approval by the National Heavy Vehicle Regulator as a B-double route from the Hume Motorway.

The modification application was referred to Council's Traffic and Transport Planning Engineer and Development Engineer, who raise no traffic safety concerns subject to

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



recommended modified consent **conditions 5 and 5A** requiring upgrade of the land's vehicle access.

In addition, the proposed modification will largely retain the requirements of condition 5 of the consent, including:

- All heavy vehicle traffic associated with the development shall observe a maximum speed of 60km/h between 10:00pm and 7:00am on Wombeyan Caves Road
- All heavy vehicles associated with the development shall be equipped with operational high frequency wildlife repellent devices, e.g. "ShuRoo" or equivalent
- Heavy vehicle traffic movements associated with the development shall be restricted to a maximum of 12 movements per day
- The number of heavy vehicle deliveries associated with the development shall not exceed one, i.e. two heavy vehicle movements, within any one hour period between 10:00am and 7:00am.

Additionally, recommended modified consent **conditions 5 and 18** also specify no night time operation of the development, including associated heavy vehicle movements, shall not be permitted unless wildlife safety warning signage has been erected on Wombeyan Caves Road in accordance with all necessary approvals by the relevant roads authorities, and at no cost to Council.

- *Impact on native fauna*

As discussed above, recommended modified consent **conditions 5 and 18** specify no night time heavy vehicle movements associated with the development shall be permitted unless wildlife safety warning signage has been erected on Wombeyan Caves Road.

In addition, it is considered appropriate to reduce the number of heavy vehicle movements permitted between the hours of 10:00pm and 7:00am, without reducing the total permitted number of daily heavy vehicle movements. It is therefore recommended to amend **condition 5** of the consent to specify:

- Heavy vehicle traffic movements associated with the development shall be restricted to a maximum of 12 movements per day (midnight to midnight)
- The number of heavy vehicle deliveries associated with the development shall not exceed two, i.e. four heavy vehicle movements (two truck movements in and two truck movements out), in any single period between 10:00pm and 7:00am.
- The number of heavy vehicle deliveries associated with the development shall not exceed one, i.e. two heavy vehicle movements, within any one hour period between 10:00am and 7:00am.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



This will result in at least the majority of heavy vehicle movements associated with the development being made between 7:00am and 10:00pm, instead of potentially between 10:00pm and 7:00am as currently permitted by condition 5.

Provided recommended modified consent conditions are complied with, the modification is not considered likely to have a significant impact with respect to native fauna.

- *Amenity impact*

Many properties adjoining Wombeyan Caves Road between its intersection with Old Hume Highway and the subject land appear to be used for extensive agricultural purposes. Provided recommended modified consent conditions are complied with (including amendment of **condition 5** to reduce the number of heavy vehicle movements permitted between 10:00pm and 7:00am as discussed above), night time vehicle movements to and from the development are not expected to be so frequent or intrusive as to cause a significant negative impact on the amenity of properties adjacent to Wombeyan Caves Road.

- *Road capacity*

As discussed earlier, Wombeyan Caves Road between the Hume Motorway and the subject land is deemed suitable for heavy vehicle traffic, being approved by the National Heavy Vehicle Regulator as a B-double route.

- *Cumulative impact*

No assumption can be made that the proposed modification will precipitate any increase in the number of heavy vehicle movements on Wombeyan Caves Road associated with the development or the use of other properties.

- *Number/frequency of night time heavy vehicle movements*

Vehicle movement records supplied by the applicant suggest that during the trial period currently specified by condition 5 of development consent 03/2011, the minority of heavy vehicle movements associated with the development – around 27% – were made during night time hours between 10:00pm and 7:00am. Noting the maximum number of heavy vehicle movements associated with the development is currently restricted to 12 per day, this may suggest it is unnecessary to the development's operation to permit up to eight heavy vehicle movements between 10:00pm and 7:00am, and further supports the recommendation discussed above that **condition 5** of the consent be amended to reduce the permitted number of heavy vehicle movements during those night time hours to four.

- *Types of heavy vehicle movements*

As discussed earlier, the National Heavy Vehicle Regulator has approved Wombeyan Caves Road between the subject land and the Hume Motorway as a B-double route. The road is thus considered suitable for heavy vehicle traffic associated with the development.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

Provided recommended modified consent conditions are complied with, the development is not expected to have any significant negative 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**

The modification application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.55 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

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## **RELATIONSHIP TO CORPORATE PLANS**

Operational Plan 2018 – 2019: OP181 Assess and certify applications related to development.

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## **COUNCIL BUDGET IMPLICATIONS**

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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#### RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010* and *Wingecarribee Shire Rural Lands Development Control Plan Development Control Plan*.

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#### OPTIONS

The options available to Council are:

##### Option 1

Approve the section 4.55 (2) application to modify development consent 03/2011 subject to conditions as described in **Attachment 1** to this report.

##### Option 2

Refuse to modify development consent 03/2011 and specify reasons for refusal.

Option 1 is the recommended option to this report.

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#### CONCLUSION

Provided recommended conditions of modified consent are complied with, the proposed modification of development consent 03/2011 is considered satisfactory with respect to the relevant provisions of the Environmental Planning and Assessment Act 1979 and subordinate Regulation, applicable environmental planning instruments, development control plans and Council policies, and is not expected to have any significant negative impact on the environment or the character and amenity of the locality.

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#### ATTACHMENTS

1. Draft Conditions of Modified Consent
2. Locality Map
3. Aerial Image



#### **DRAFT SUMMARY SCHEDULE OF MODIFIED CONDITIONS**

##### **5. Hours of Operation / Truck Movements - Amended by modification of consent on 15 December 2016, 10 October 2018, and 24 April 2019**

- (a) Unless and until conditions 5A and 18 of Council's consent have been satisfied, the consent permits operation of the development, including associated vehicle movements, between 7:00am and 6:00pm weekdays only, with no associated vehicle movements permitted on Saturdays, Sundays, or public holidays.
- (b) Upon satisfaction of conditions 5A and 18 of Council's consent, the consent permits operation of the development, including associated vehicle movements, between 12:00am Mondays and 11:59pm Fridays, with no associated vehicle movements permitted on Saturdays, Sundays, or public holidays, subject to the following:
- (i) All heavy vehicle traffic associated with the development shall observe a maximum speed of 60km/h, and shall refrain from using high-beam headlights, between 10:00pm and 7:00am on Wombeyan Caves Road, and
  - (ii) All heavy vehicles associated with the development shall be equipped with operational high frequency wildlife repellent devices, e.g. "ShuRoo" or equivalent, and
  - (iii) The operator of the development shall provide written instructions to drivers of all heavy vehicles associated with the development, conveying the above restrictions and requirements, and
  - (iv) If any person observes heavy vehicle traffic on Wombeyan Caves Road contravening any of the above restrictions and requirements, and has reason to believe any vehicle concerned is associated with the development, the person should:
    - Record the date and time of the contravention and, if possible, the identity of the vehicle or vehicles, and
    - Report the contravention to the operator of the development, and
  - (v) If the operator of the development receives any report, allegation or complaint that a vehicle or vehicles associated with the development contravened any of the above restrictions and requirements, the operator shall seek to establish, by reference to the development's register of dispatches, whether the report, allegation or complaint is well founded and, if so, shall take all reasonable measures to prevent any recurrence, and
  - (vi) The number of heavy vehicle deliveries associated with the development shall not exceed two, i.e. four heavy vehicle movements, in any single period between 10:00pm and 7:00am, and
  - (vii) The number of heavy vehicle deliveries associated with the development shall not exceed one, i.e. two heavy vehicle movements, within any one hour period between 10:00am and 7:00am.

To assist in monitoring this condition, the operator of the development shall maintain a register of heavy vehicle dispatches, including dates, times, identification of vehicles and volumes of water. The register shall be made available to Council or Government Agencies upon request.

Heavy vehicle traffic movements associated with the development shall be restricted to a

10.2 Section 4.55 (2) Application 03/2011.06 to Modify Development Consent  
 03/2011 - Bulk Water Extraction and Storage Shed / Staff Amenities, Lot 85  
 DP751275 & Lot 2 DP531503, Wombeyan Caves Road, High Range  
 ATTACHMENT 1 Draft Conditions of Modified Consent



maximum of 12 movements per day.

**5A. Access upgrade - Inserted by modification of consent on 24 April 2019**

The development shall not be permitted to operate as specified by item (b) of condition 5 of Council's consent unless:

- (a) Application has been made to NSW Roads and Maritime Services for approval under section 138 of the Roads Act 1993 of an upgrade of the vehicle access from Wombeyan Caves Road to the land, and that application has been favourably determined, and
- (b) The vehicle access from Wombeyan Caves Road to the land has been upgraded in accordance with NSW Roads and Maritime Services' approval.

In this regard, the vehicle access from Wombeyan Caves Road to the land shall be upgraded to comply with Austroads Part 4A BAL standards.

**Reason:** *To provide adequate night time traffic safety on Wombeyan Caves Road.*

**14. Construction of Rural Crossing - Deleted by modification of consent on 24 April 2019**

~~Rural vehicular entrances for access in accordance with Standard Drawing No. SD110 to provide access to the development.~~

**18. Wildlife Safety Warning Signage - Inserted by modification of consent on 24 April 2019**

The development shall not be permitted to operate as specified by item (b) of condition 5 of Council's consent unless wildlife safety warning signage has been erected on Wombeyan Caves Road in accordance with all necessary approvals by relevant roads authorities, and at no cost to Council.

**Reason:** *To promote traffic safety and reduce potential for wildlife injuries and deaths.*



## DRAFT CONDITIONS OF MODIFIED DEVELOPMENT CONSENT

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### ADMINISTRATION AND COMPLIANCE

#### 1. Compliance

Development is to take place in accordance with the approved amended plans and documentation submitted with the application and subject to the conditions below, to ensure the development is consistent with Council's consent. The amended plans provide for the existing shed to be used for storage and staff amenities.

#### 2. Use not to Commence

The approved use is not to commence until the proposed development has been completed in accordance with this consent and any other Council approvals which may be required, and a final inspection carried out and approved by Council staff.

#### 3. Developers Representative during Construction of Works

A minimum of 48 hours prior to commencement of any construction works on site the Developer must nominate to Council in writing their representative (Construction Supervisor) who will be responsible for all aspects of construction and site control, including Traffic Control, Sediment and Erosion Control and liaison with Council Officers and all other Authorities.

Details to be submitted include:-

- Name of Representative:
- Company :
- Position:
- Contact Ph:
- Contact Fax:
- After Hours Contact:
- Signature of Representative:
- Signature & Acceptance of representative by the Developer:
- Council requires that the nominated " Construction Supervisor" either hold qualifications acceptable for Corporate Membership of the Institute of Engineers, Australia, or be Approved by the Director and/or has proven experience and suitable relevant qualifications for the control, supervision and management of civil engineering works as required for carrying land development.

Prior to commencing any works on site the representative shall:-

- Inform Council in writing of their intention 7 days before entering the site.
- Submit to Council a proposed Schedule of Works.

The Applicant may be required to arrange for Council to peruse all other contract documentation **PRIOR TO THE CONTRACTOR ARRIVING ON SITE TO COMMENCE WORK**. (Schedule of Works, Specifications Bill of Quantity, Traffic Control Plan and Soil and Water Management Plan).

Failure to comply with the requirements as set out above will result in an immediate stop work order.



**10.2 Section 4.55 (2) Application 03/2011.06 to Modify Development Consent  
03/2011 - Bulk Water Extraction and Storage Shed / Staff Amenities, Lot 85  
DP751275 & Lot 2 DP531503, Wombeyan Caves Road, High Range  
ATTACHMENT 1 Draft Conditions of Modified Consent**



**4. Hours of Demolition and Construction Works**

In order to minimise impacts upon the locality demolition and construction activities shall be limited to between 7.00am - 5.00pm Monday to Friday and 8.00am to 12.00 midday Saturdays with no work on Sundays and public holidays. Any variation of these hours may only occur with Council's consent.

**5. Hours of Operation / Truck Movements - Amended by modification of consent on 15 December 2016, 10 October 2018, and 24 April 2019**

- (a) Unless and until conditions 5A and 18 of Council's consent have been satisfied, the consent permits operation of the development, including associated vehicle movements, between 7:00am and 6:00pm weekdays only, with no associated vehicle movements permitted on Saturdays, Sundays, or public holidays.
- (b) Upon satisfaction of conditions 5A and 18 of Council's consent, the consent permits operation of the development, including associated vehicle movements, between 12:00am Mondays and 11:59pm Fridays, with no associated vehicle movements permitted on Saturdays, Sundays, or public holidays, subject to the following:
- (i) All heavy vehicle traffic associated with the development shall observe a maximum speed of 60km/h, and shall refrain from using high-beam headlights, between 10:00pm and 7:00am on Wombeyan Caves Road, and
  - (ii) All heavy vehicles associated with the development shall be equipped with operational high frequency wildlife repellent devices, e.g. "ShuRoo" or equivalent, and
  - (iii) The operator of the development shall provide written instructions to drivers of all heavy vehicles associated with the development, conveying the above restrictions and requirements, and
  - (iv) If any person observes heavy vehicle traffic on Wombeyan Caves Road contravening any of the above restrictions and requirements, and has reason to believe any vehicle concerned is associated with the development, the person should:
    - Record the date and time of the contravention and, if possible, the identity of the vehicle or vehicles, and
    - Report the contravention to the operator of the development, and
  - (v) If the operator of the development receives any report, allegation or complaint that a vehicle or vehicles associated with the development contravened any of the above restrictions and requirements, the operator shall seek to establish, by reference to the development's register of dispatches, whether the report, allegation or complaint is well founded and, if so, shall take all reasonable measures to prevent any recurrence, and
  - (vi) The number of heavy vehicle deliveries associated with the development shall not exceed two, i.e. four heavy vehicle movements, in any single period between 10:00pm and 7.00am, and
  - (vii) The number of heavy vehicle deliveries associated with the development shall not exceed one, i.e. two heavy vehicle movements, within any one hour period between 10:00am and 7:00am.

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To assist in monitoring this condition, the operator of the development shall maintain a register of heavy vehicle dispatches, including dates, times, identification of vehicles and volumes of water. The register shall be made available to Council or Government Agencies upon request.

Heavy vehicle traffic movements associated with the development shall be restricted to a maximum of 12 movements per day.

**5A. Access upgrade - Inserted by modification of consent on 24 April 2019**

The development shall not be permitted to operate as specified by item (b) of condition 5 of Council's consent unless:

- (a) Application has been made to NSW Roads and Maritime Services for approval under section 138 of the Roads Act 1993 of an upgrade of the vehicle access from Wombeyan Caves Road to the land, and that application has been favourably determined, and
- (b) The vehicle access from Wombeyan Caves Road to the land has been upgraded in accordance with NSW Roads and Maritime Services' approval.

In this regard, the vehicle access from Wombeyan Caves Road to the land shall be upgraded to comply with Austroads Part 4A BAL standards.

**Reason:** *To provide adequate night time traffic safety on Wombeyan Caves Road.*

**6. Nuisance**

The extraction of bulk water shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood by reason of noise, and waste products or otherwise. In this regard the pump shall be fitted with an acoustic hood.

**7. Construction Certificate**

The building works are not to commence until a Construction Certificate has been issued in accordance with the Environmental Planning and Assessment Act 1979. A Building Code of Australia assessment has not been undertaken on the proposal. For further advice you may contact Council's Building Surveyors.

**8. Other Approvals**

Prior to any work commencing, written approval under Section 68 of the Local Government Act 1993 shall be obtained for septic system for staff, from the Council as the appropriate Water Supply Authority.

**9. Occupation Certificate**

Prior to Occupation Certificate being issued, an inspection by the Principal Certifying Authority shall be undertaken to ensure that all conditions of this development consent have been complied with.

**10.2 Section 4.55 (2) Application 03/2011.06 to Modify Development Consent  
03/2011 - Bulk Water Extraction and Storage Shed / Staff Amenities, Lot 85  
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## GOVERNMENT AGENCIES

### 10. Sydney Catchment Authority

The following are the requirements of the Sydney Catchment Authority with regard to SEPP No 58:

- (i) If a septic tank is installed, the wastewater management system, including the sizing of the sand mound, is to be designed in accordance with the recommendations contained within the site report prepared by Morse McVey & Associates Pty Ltd.
- (ii) If a compost toilet is installed, the compost shall be buried under clean friable soil at a minimum depth of 100mm below finished ground level for a minimum maturation period of three months. The compost maturation area shall be located within the boundaries of the property in a level area that is not subject to erosion or inundation and is not located within 100 metres of any creek or watercourse, whether perennial or intermittent or within 40 metres of a drainage depression.
- (iii) The wastewater management system is to be maintained according to Section 5 of the guidelines 'On-site Sewage Management for Single Households and AS/NZS 1547-2000.
- (iv) All effluent must be assimilated within the boundaries of the property
- (v) No effluent management areas are to be located within 100 metres of any creek or watercourse, whether perennial or intermittent or within 40 metres of a drainage depression.
- (vi) AAA-rated water conservation devices are to be installed in the dwelling to minimise the volume of wastewater produced.
- (vii) All stormwater collected from roofs and other hard surface areas is to be diverted away from any effluent management area, eg by means of a stabilised bund or drain with provision for energy dissipation at the outlet to prevent scouring or erosion.

*Reason for Conditions (i) to (vii) - To ensure that the on-site effluent management system will have a neutral or beneficial effect on water quality and that it will be sustainable over the long term.*

- (viii) Effective erosion and sedimentation controls are to be installed prior to any construction activity to prevent erosion and subsequent pollution of waters by saltation. The controls are to be maintained until the project is completed.

*Reason for Condition (viii) - to manage adverse environmental impacts during the construction stage and to minimise the risk of erosion / sedimentation / pollution within the site during the construction phase of the development.*

### 11. Department of Infrastructure, Planning and Natural Resources

Amended General Terms of Approval dated 13 October 2005 form Attachment 1 of the consent. A Construction Certificate for any works is not to be issued until such time that a Water Licence has been obtained. A copy of the Water Licence is to be provided to Council.



## ENVIRONMENTAL MANAGEMENT

### 12. Erosion and Sediment Control Plan Approval

An Erosion and Sediment Control Plan shall be prepared in accordance with Council's Development Control Plan No 41 by a suitably qualified person, and approved by Council and/or Department of Infrastructure Planning and Natural Resources **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**.

## CIVIL ENGINEERING WORKS AND SERVICES

### 13. Provision of Works and Services

The provision, by the Applicant at their expense, of the following works and services to be documented and constructed in accordance with Council's Development Control Plan Nos 12 and 41, to the satisfaction of the Development Control Engineer. **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE** the Developer must obtain approval for the works to be undertaken by submitting adequate documentation including plans, calculations and specifications, to Council which justify that the proposed works are in accordance with all Council's standards and all other relevant Codes and guidelines.

### 14. Construction of Rural Crossing - Deleted by modification of consent on 24 April 2019

~~Rural vehicular entrances for access in accordance with Standard Drawing No. SD110 to provide access to the development.~~

### 15. Road Safety

Prior to commencement of operations, the following shall be implemented:

- Provision of "Trucks Turning" warning sign on Wombeyan Caves Road approaches to "Woodbine Park".
- Provision of a Stop sign at the exit from "Woodbine Park".

### 16. Integral Energy Requirements

The provision of underground electricity to service the development in accordance with the requirements of Integral Energy. The Applicant prior to release of a Construction Certificate will be required to submit to Council documentary evidence from Integral Energy qualifying that the requirements of Integral energy have been obtained. The requirements of the supply authority will need to be met prior to occupation of the development or the application for a Subdivision Certificate.

### 17. Noise Controls - Inserted by modification of consent on 15 December 2016

The development shall comply with relevant noise control provisions contained within the Protection of the Environment Operations Act 1997 and Noise Control Regulations and Policies to ensure local amenity is not adversely affected by noise impacts associated with the development.

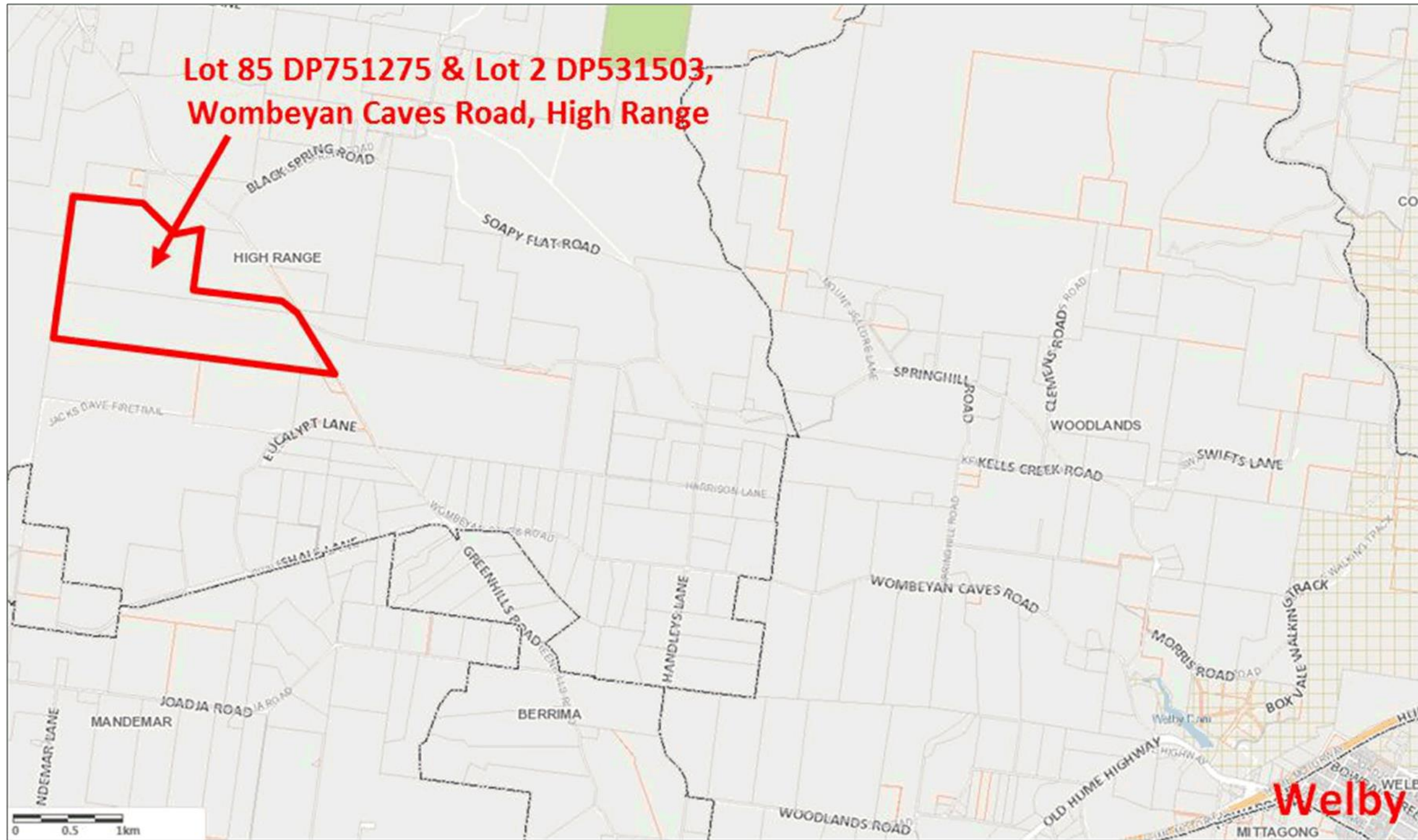


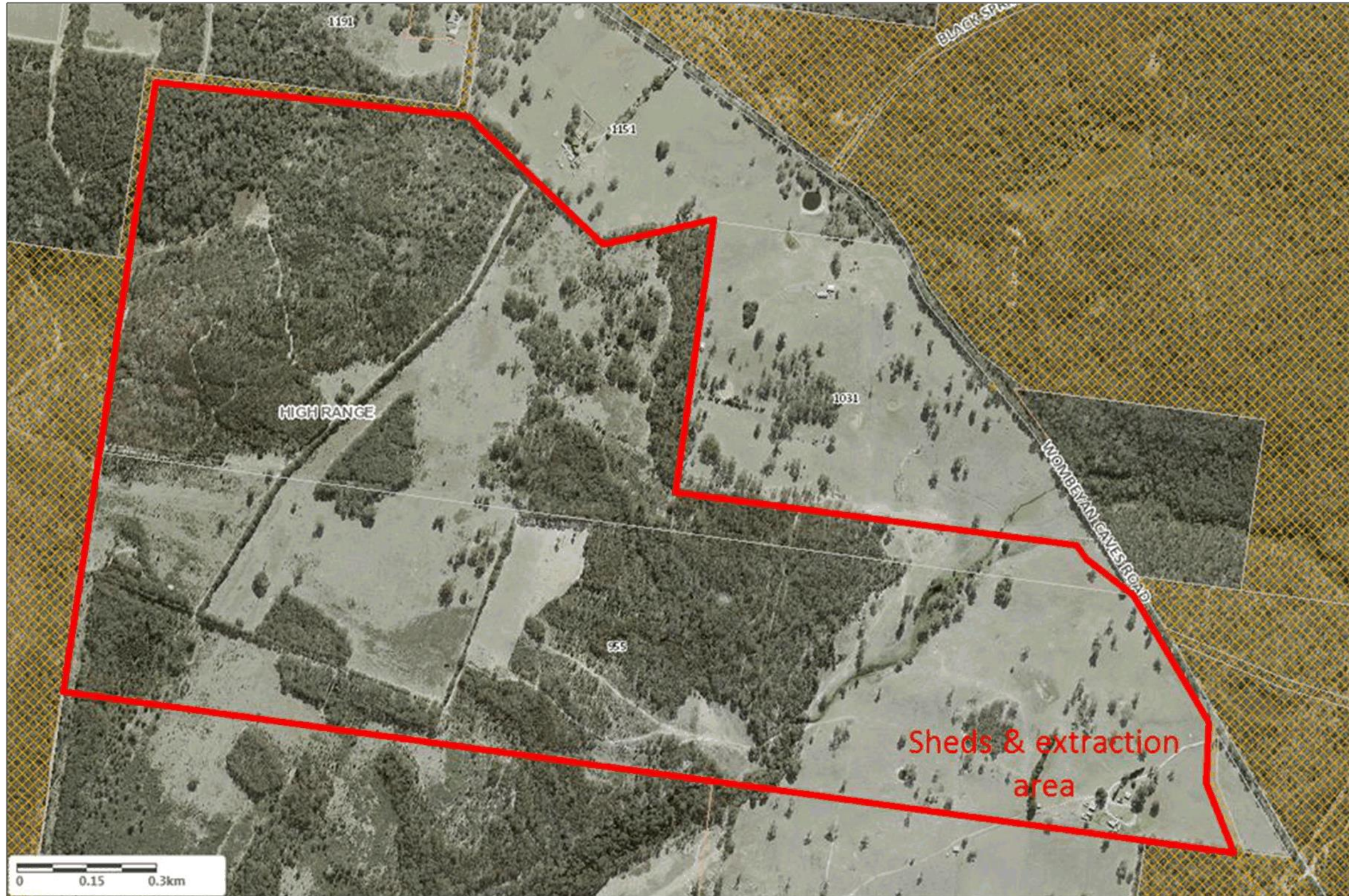
**18. Wildlife Safety Warning Signage - Inserted by modification of consent on 24 April 2019**

The development shall not be permitted to operate as specified by item (b) of condition 5 of Council's consent unless wildlife safety warning signage has been erected on Wombeyan Caves Road in accordance with all necessary approvals by relevant roads authorities, and at no cost to Council.

**Reason:** *To promote traffic safety and reduce potential for wildlife injuries and deaths.*

**END OF CONDITIONS**





## 10.3 DA 19/0940.02 - s.8.2A Review of Refused Dual Occupancy development - 12 Solomon Street, Renwick

Reference:	19/0940.02
Report Author:	Senior Town Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
Applicant:	PS Design & Construction Pty Ltd
Owner:	PS Group of Companies Pty Ltd
Link to Community Strategic Plan:	Identify and protect the unique characteristics of towns and villages to retain a sense of place

### PURPOSE

The purpose of this report is to consider s.8.2A review application 19/0940.02, being a review of Development Application 19/0940 which refused a proposed dual occupancy and subdivision at Lot 1325 DP 1234992, being 12 Solomon Street Renwick. This report is prepared for determination, and recommends **REFUSAL** for reasons contained in Attachment 1.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

1. **THAT s.8.2A review application 19/0940.02, being a review of Development Application 19/0940 which refused a proposed dual occupancy and subdivision at Lot 1325 DP 1234992, being 12 Solomon Street Renwick, be REFUSED for reasons as described in Attachment 1 to the report.**

### REPORT

#### Subject Site and Locality

The subject site, Lot 1325 DP 1234992, being 12 Solomon Street Renwick is a vacant 494.8 square metre site located on the south east corner of the Solomon Street / Maxted Street intersection (**Attachment 2**). 12 Solomon Street is within a more recently released residential portion of the Renwick precinct, and is surrounded by lots of approximately 500 square metres to 600 square metres in area, which are currently being developed with single storey dwellings.

The broader residential locality of Renwick continues to be developed. Of the approximately 400 residential approvals to date, all are single storeys in height, or contain a second level within the roof pitch, with the exception of three examples as detailed further within this report.





## **Refused Development**

Development Application 19/0940 sought approval for the construction of a 2 storey detached dual occupancy development and subsequent subdivision at Lot 1325 DP 1234992, 12 Solomon Street Renwick. Development Application 19/0940 was refused in January 2019 for the following reasons:

1. *Having regard to section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979 and clause 2.3 (2) of Wingecarribee Local Environmental Plan 2010, the development is considered contrary to the objective of Zone R2 Low Density Residential:*

- *To provide for the housing needs of the community within a low density residential environment.*

### ***[Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979]***

2. *Having regard to section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979, the development is contrary to clause 7.2 (2) (a) of Wingecarribee local Environmental Plan 2010 (the LEP). In this regard, it is noted that the application is accompanied by a written request that seeks, pursuant to clause 4.6 of the LEP, to justify contravention of the development standard specified by clause 4.1 (3) of the LEP. However, clause 7.2 (2) (a) of the LEP is exclusively applicable to the proposed subdivision of a lawfully erected dual occupancy, rendering clause 4.1 of the LEP inapplicable to the development.*

### ***[Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979]***

3. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development contrary to the residential amenity objective specified at section A2.2.4 (b) of the Mittagong Town Plan Development Control Plan:*

- (b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character.*

### ***[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]***

4. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development unsatisfactory with respect to the low density housing objectives specified at section C2.2 (b) and (g) of the Mittagong Town Plan Development Control Plan:*

- (b) Ensure that development is of a type, scale, height, bulk and character compatible with existing streetscape characteristics.*

- (g) Ensure that adequate on-site car parking is provided for residents and visitors.*

### ***[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]***

5. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development contrary to the intent of clause 7.2 of Wingecarribee Local Environmental Plan 2010 (the LEP), as specified in section C2.3.4 of the Mittagong Town Plan Development Control Plan:*

*“The intent of [clause 7.2 of the LEP] is to permit infill development within the towns and those villages where necessary infrastructure is available, without creating an adverse impact on existing street patterns street activation and presence.”*

### ***[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]***

6. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development contrary to the development density and scale*



*objectives specified at section C2.4.2 (d) and (f) of the Mittagong Town Plan Development Control Plan:*

*The height, scale and style of development shall:*

- (d) Be compatible with the scale of development of the established built environment and streetscape.*
- (f) Provide sufficient vehicle access and parking in accordance with standards contained within this Plan.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**

7. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 the development is contrary to the garaging and driveways control specified at section C2.12.2 (g) of the Mittagong Town Plan Development Control Plan:*

- (g) New dwellings (including principal, dual occupancy or secondary dwellings) shall provide a minimum of two car spaces behind the building line for each dwelling which may include an access way to the side of the dwelling of a minimum width of 2700mm.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**

8. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, the development's design ignores the building height and mass design guidelines (a) and (c) specified at section C16.5.2 of the Mittagong Town Plan Development Control Plan (the DCP), specifically regarding the Renwick Precinct:*

- (a) Single storey dwelling forms are encouraged.*
- (c) Second storey construction is encouraged to be in the form of an attic style.*

*Consequently, Council considers the development contrary to the building height and mass objectives (a), (b) and (c) specified at section C16.5.2 of the DCP:*

- (a) Maintain a low scale domestic residential character in areas of predominantly detached dwellings.*
- (b) Minimise overshadowing of neighbouring properties by new development.*
- (c) Minimise disruption of view and loss of privacy to existing and future development.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**

9. *Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, the development is contrary to the 4.5m minimum front setback control specified by section C16.5.5 of the Mittagong Town Plan Development Control Plan.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



10. *Having regard to section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979, Council considers the development likely to have significant negative impacts with respect to:*

- (a) The character and amenity of the locality and the streetscape*
- (b) The scale and density of development in the locality*
- (c) Vehicle parking.*

***[Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979]***

11. *Having regard to section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979, Council considers the development incompatible with the desired character and amenity of the locality, therefore Council considers the land unsuitable for the development.*

***[Section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979]***

12. *Having regard to section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979, Council considers it not to be in the public interest to grant consent for the development.*

***[Section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979]***

#### **S. 8.2A Review**

Plans submitted with s.8.2A review application 19/0940.02 comprise substantially the same development as that previously refused by DA 19/0940, with the exception that the proposed subdivision has been deleted, and the front building setback to Solomon Street has been increased.

Plans submitted with s.8.2A review application 19/0940.02 showing the proposed detached dual occupancy development comprising two 2 storey 3 bedroom dwellings with a single garage per dwelling and driveway car space are shown in **Attachments 4 and 5**.



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## **STATUTORY PROVISIONS**

### **State Environmental Planning Policies**

#### **State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. Council is satisfied that the land is not a site of possible contamination and therefore no further assessment of contamination is required.

#### **State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011**

The site is located within the Wingecarribee River Sub-catchment. Compliance with the provisions of the SEPP and associated guidelines is therefore required to consider water quality. The proposed development satisfies the requirements of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

### **Local Environmental Plans**

#### **Wingecarribee Local Environmental Plan 2010**

##### **Clause 2.3 Zone objectives and land use table**

The site is zoned R2 Low Density Residential under the *Wingecarribee Local Environmental Plan 2010* and in this zone, dual occupancy development is permissible with development consent.

The objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

While dual occupancy development is permissible in the R2 Low Density Residential zone, the proposed dual occupancy with its distinct second storey (which is not within the roof space as an attic style design) is not considered to be in character with the Renwick residential precinct.

### **Development Control Plans**

#### **Mittagong Town Plan Development Control Plan**

The Mittagong Town Plan Development Control Plan contains numerous provisions including preferred development outcomes, objectives, and numerical controls for the Renwick precinct.

Mittagong Town Plan Development Control Plan - Section 18 Renwick Precinct - Building Height and Mass Design Guideline (a) and (c) states:

- (a) *Single storey dwelling forms are encouraged.*  
(c) *Second storey construction is encouraged to be in the form of an attic style. See Figure C18.10*

and provides the following figure showing second storey construction in the form of an attic style:



**Figure C18.10 Attic Style Dwelling**

An enlarged copy of the above figure is within **Attachment 6** to this report.

The proposed development does not comply with a number of different provisions within the Mittagong Town Plan Development Control Plan relating to character, streetscape, compatibility, and building height and mass design guidelines, specifically that the proposed second storey is not in the form of an attic style. Within the Renwick precinct, Council has been consistent in requiring second storey components being within the roof space as an attic style design, not a distinct second storey. Therefore the proposed distinct second storey is considered inconsistent with approved development in Renwick, and considered to adversely impact streetscape and character of the Renwick residential precinct. Of the approximately 400 residential approvals to date, all are single storeys in height, or contain a second level within the roof pitch, with the exception of three examples as detailed further within this report.

The proposal also does not comply with the Mittagong Town Plan Development Control Plan section C2.12.2 (g) requirement that new dwellings (including principal, dual occupancy or secondary dwellings) shall provide a minimum of two car spaces behind the building line for each dwelling.

### Section 4.15 Evaluation

#### *(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

Dual occupancy development is permissible within the R2 Low Density Residential zone under *Wingecarribee Local Environmental Plan 2010*. While dual occupancy development is permissible in the R2 Low Density Residential zone, the proposed dual occupancy with its distinct second storey (which is not within the roof space as an attic style design) is not considered to be in character with the Renwick residential precinct.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Not applicable in this instance (no relevant draft plans).

*(iii) any development control plan, and*

The proposed development does not comply with a number of different provisions within the Mittagong Town Plan Development Control Plan relating to character, streetscape, compatibility, and building height and mass design guidelines, specifically that the proposed second storey is not in the form of an attic style.

The proposal also does not comply with the Mittagong Town Plan Development Control Plan section C2.12.2 (g) requirement that new dwellings (including principal, dual occupancy or secondary dwellings) shall provide a minimum of two car spaces behind the building line for each dwelling.

*(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable to s.8.2A review application 19/0940.02.

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Not applicable to s.8.2A review application 19/0940.02.

*(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 April 2019

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES**



- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The impacts of the proposed development are discussed in the Discussions of Key issues section of this report.

- (c) *the suitability of the site for the development,*

The site is considered suitable for a dual occupancy development, however not a dual occupancy development with a distinct second storey (which is not within the roof space as an attic style design) which is not considered to be in character with the Renwick residential precinct, as discussed in the Discussions of Key issues section of this report.

- (d) *any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.

- (e) *the public interest.*

Dual occupancy development at the subject site is not contrary to the public interest, however a dual occupancy development with a distinct second storey (which is not within the roof space as an attic style design) is not considered to be in character with the Renwick residential precinct, and therefore is not considered to be in the public interest, as discussed in the Discussions of Key issues section of this report.

**CONSULTATION**

**Internal Referrals**

The required conditions are incorporated throughout the Draft Conditions of Consent (**Attachment 1**).

Referrals	Advice/Response/Conditions
Accredited Certifier	<p>Council’s Accredited Certifier comments that:</p> <p>“The proposed two storey design of the dual occupancy is largely inconsistent with the style and design of the approved and constructed dwellings within the Renwick Precinct. The bulk and scale of the proposed dual occupancy is not sympathetic with the surrounding low scale single storey dwellings, and will have an adverse impact on the streetscape and character of Renwick Precinct which is also a Heritage Item.</p> <p>Within the second stage of the Renwick land release, Council has been consistent in requiring all distinct two storey dwellings to be redesigned to demonstrate the second storey component is within the roof space as an attic style design. Council has been stringent in ensuring that all second storey components of dwellings in Renwick are only approved as an attic style design. No dwelling which demonstrates a distinct second storey has been approved within this second stage of the Renwick Precinct.”</p>

### **Neighbour Notification (or Advertising)/Public Participation**

The proposed development was Neighbour Notified to surrounding properties. One submission has been received expressing concern about the proposed scale / two storeys of the proposed development. This is discussed in the Discussion of Key Issues section of this report.

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## **DISCUSSION OF KEY ISSUES**

### **Streetscape and character of the Renwick residential precinct**

The primary concern with the proposed dual occupancy development is that the proposed second storey is not in the form of an attic style. The proposed distinct second storey is considered to adversely impact streetscape and character of the Renwick residential precinct.

Mittagong Town Plan Development Control Plan - Section 18 Renwick Precinct - Building Height and Mass Design Guideline (a) and (c) states:

*(b) Single storey dwelling forms are encouraged.*

*(c) Second storey construction is encouraged to be in the form of an attic style. See Figure C18.10*



**Figure C18.10 Attic Style Dwelling**

An enlarged copy of the above figure is within **Attachment 6** to this report.

It should be noted that while the single storey dwelling form and second storey construction in the form of an attic style is “encouraged”, Council has been consistently and effectively encouraging this form of development to the extent that such building form is now considered to be a key character feature of the Renwick residential precinct. Within the Renwick residential precinct, of the approximately 400 residential approvals to date, all are single storeys in height, or contain a second level within the roof pitch, with the exception of three examples being 8 Wallis Avenue, 46 Cupitt Street and 8 De Lauret Street Renwick.

Within the Renwick residential precinct, Council has been consistent in requiring second storey components being within the roof space as an attic style design, not a distinct second storey. The proposed distinct second storey is considered inconsistent with approved development in Renwick, and considered to adversely impact streetscape and character of the Renwick residential precinct.



### **Car parking**

The secondary concern with the proposed dual occupancy development is that two car spaces are not provided behind the building line for each dwelling.

Mittagong Town Plan Development Control Plan section C2.12.2 (g) requires that new dwellings (including principal, dual occupancy or secondary dwellings) shall provide a minimum of two car spaces behind the building line for each dwelling.

While Council has generally required parking to be behind the building line within the Renwick residential precinct, of the approximately 400 residential approvals to date the applicant has cited twelve examples of where two car spaces behind the building line for each dwelling has not been provided. It is accepted that Council has granted approvals within Renwick where two car spaces behind the building line for each dwelling has not been provided, however this should not be repeated.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

Impacts of the proposed development upon the built environment and character of the Renwick residential precinct have been discussed within the body of this report.

- **Social**

There are no broader social implications associated with this report.

- **Broader Economic Implications**

There are no broader economic implications associated with this report.

- **Culture**

The proposed dual occupancy development has no identifiable cultural impacts.

- **Governance**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

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## **RELATIONSHIP TO CORPORATE PLANS**

Operational Plan 2018–19: OP181 Assess and certify applications related to development.



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## **COUNCIL BUDGET IMPLICATIONS**

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

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## **RELATED COUNCIL POLICY**

An assessment of the proposed development has been made against the Wingecarribee Local Environmental Plan 2010, State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, and the Mittagong Town Plan Development Control Plan.

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## **OPTIONS**

The options available to Council are:

### **Option 1**

Refuse the application subject to the attached reasons for refusal

### **Option 2**

Approve the development application in which case Council must nominate reasons for approval.

**Option 1** is recommended.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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## CONCLUSION

It is recommended that s.8.2A review application 19/0940.02, being a review of Development Application 19/0940 which refused a proposed dual occupancy and subdivision at Lot 1325 DP 1234992, being 12 Solomon Street Renwick, be REFUSED for reasons as described in **Attachment 1** to the report.

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## ATTACHMENTS

1. Draft Reasons for Refusal
2. Subject Site
3. Zoning
4. Site Plan
5. Elevations
6. Attic Style Design - Renwick Precinct, Mittagong Town Plan Development Control Plan

Mark Pepping

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

Wednesday 17 April 2019



**ATTACHMENT 1 – DRAFT REASONS FOR REFUSAL**

1. Single storey dwelling form and second storey construction in the form of an attic style is a key character feature of the Renwick residential precinct. The proposed distinct second storey is considered inconsistent with approved development in the Renwick residential precinct, and is considered to adversely impact streetscape and character of the Renwick residential precinct. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development
  - contrary to the residential amenity objective specified at section A2.2.4 (b) of the Mittagong Town Plan Development Control Plan:
    - (b) *Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character.*
  - unsatisfactory with respect to the low density housing objectives specified at section C2.2 (b) of the Mittagong Town Plan Development Control Plan:
    - (b) *Ensure that development is of a type, scale, height, bulk and character compatible with existing streetscape characteristics.*
  - contrary to the development density and scale objectives specified at section C2.4.2 (d) of the Mittagong Town Plan Development Control Plan:
    - The height, scale and style of development shall:*
    - (d) *Be compatible with the scale of development of the established built environment and streetscape.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**

2. Single storey dwelling form and second storey construction in the form of an attic style is a key character feature of the Renwick residential precinct. The proposed distinct second storey is considered inconsistent with approved development in the Renwick residential precinct. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, the development's design ignores the building height and mass design guidelines (a) and (c) specified at section C16.5.2 of the Mittagong Town Plan Development Control Plan (the DCP), specifically regarding the Renwick Precinct:
  - (a) *Single storey dwelling forms are encouraged.*
  - (c) *Second storey construction is encouraged to be in the form of an attic style.*

Consequently, Council considers the development contrary to the building height and mass objectives (a) and (b) specified at section C16.5.2 of the DCP:

  - (a) *Maintain a low scale domestic residential character in areas of predominantly detached dwellings.*
  - (b) *Minimise overshadowing of neighbouring properties by new development.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**



3. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 the development is contrary to the garaging and driveways control specified at section C2.12.2 (g) of the Mittagong Town Plan Development Control Plan:

*(g) New dwellings (including principal, dual occupancy or secondary dwellings) shall provide a minimum of two car spaces behind the building line for each dwelling which may include an access way to the side of the dwelling of a minimum width of 2700mm.*

**[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]**

4. Having regard to section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979, Council considers the development likely to have significant negative impacts with respect to:

- (a) The character and amenity of the locality and the streetscape
- (b) The scale of development in the locality
- (c) Vehicle parking.

**[Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979]**

5. Having regard to section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979, Council considers the development incompatible with the desired character and amenity of the locality, therefore Council considers the land unsuitable for the development.

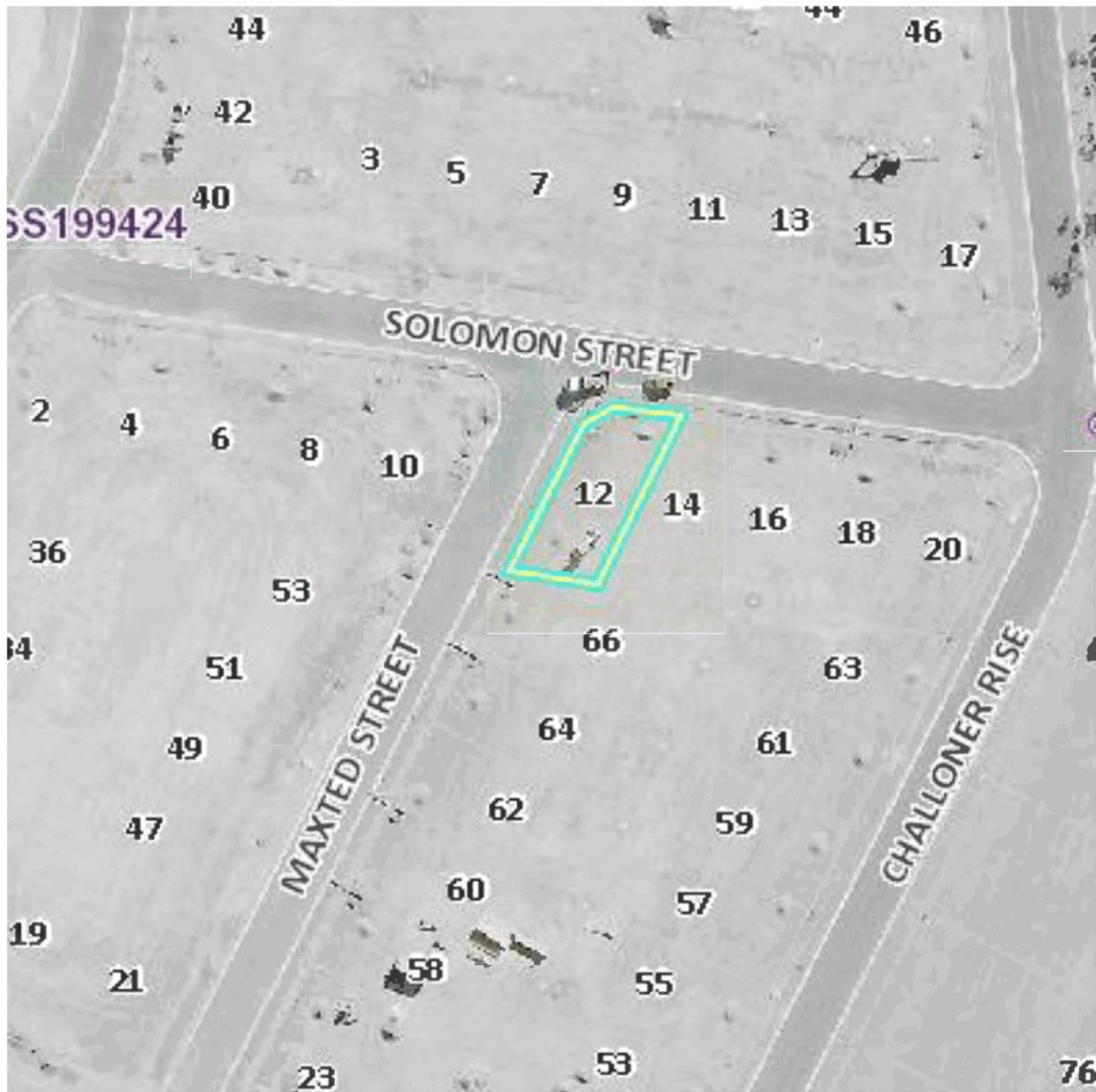
**[Section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979]**

6. Having regard to section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979, Council considers it not to be in the public interest to grant consent for the development.

**[Section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979]**

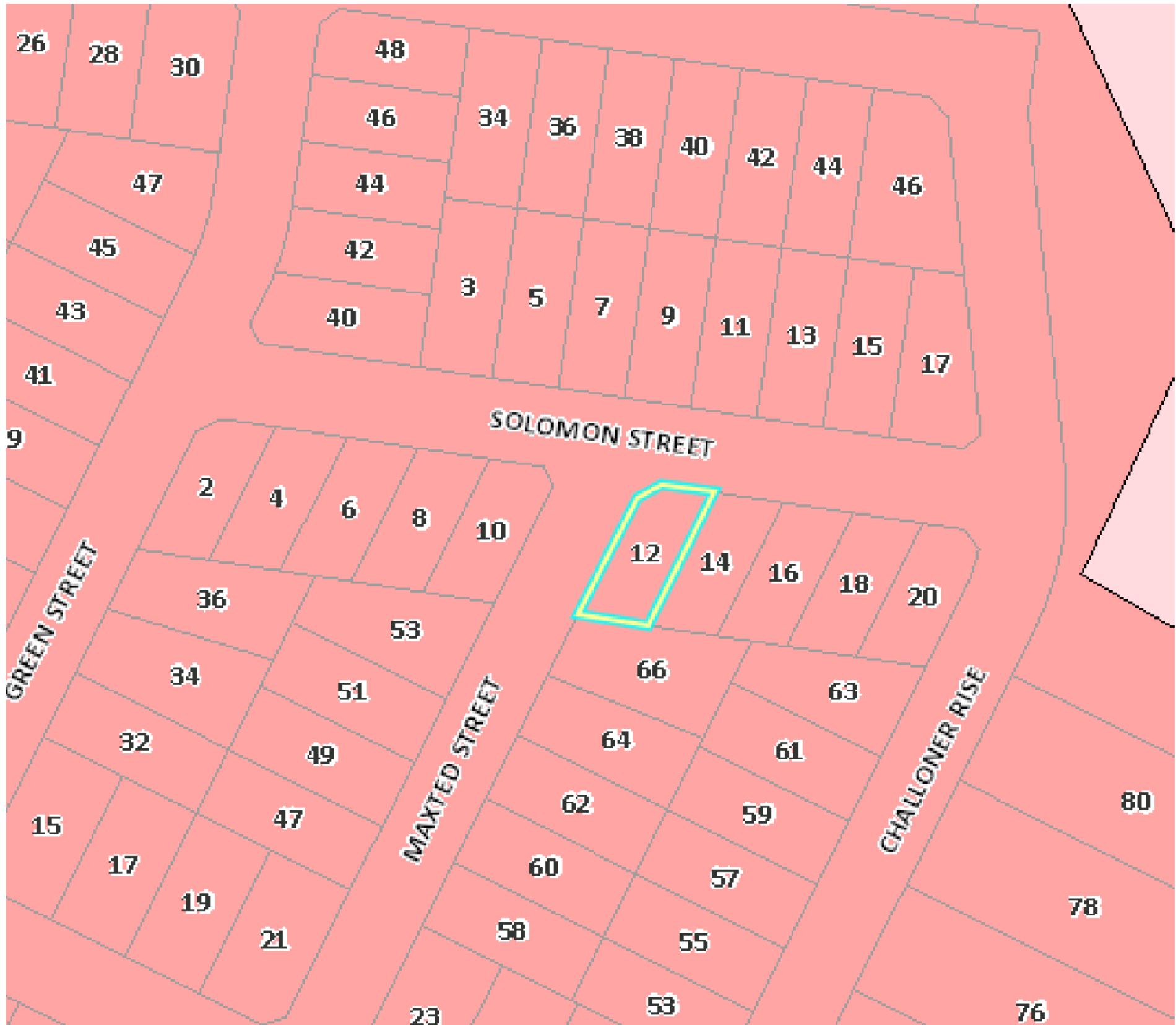


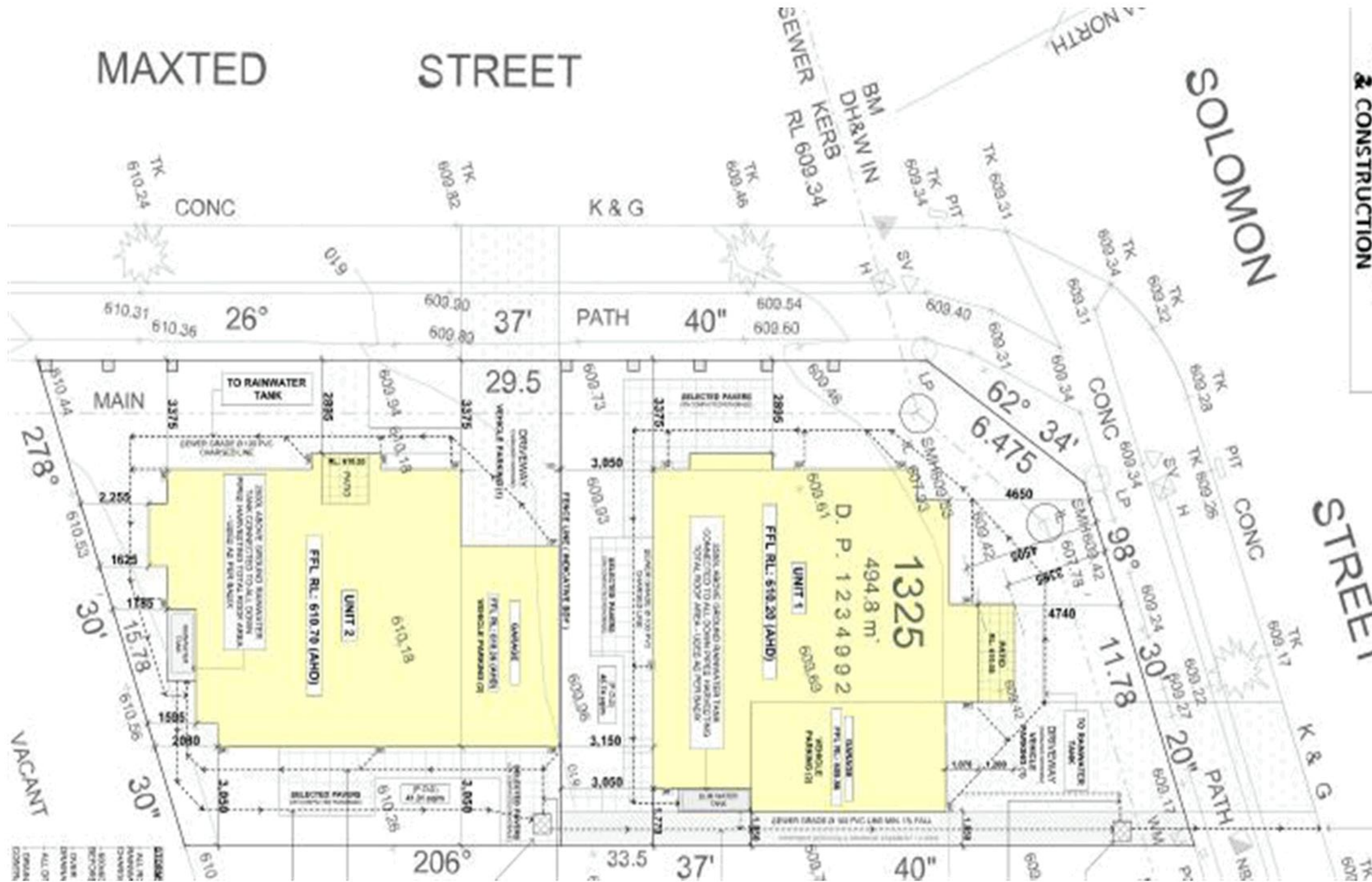
ATTACHMENT 2 – SUBJECT SITE





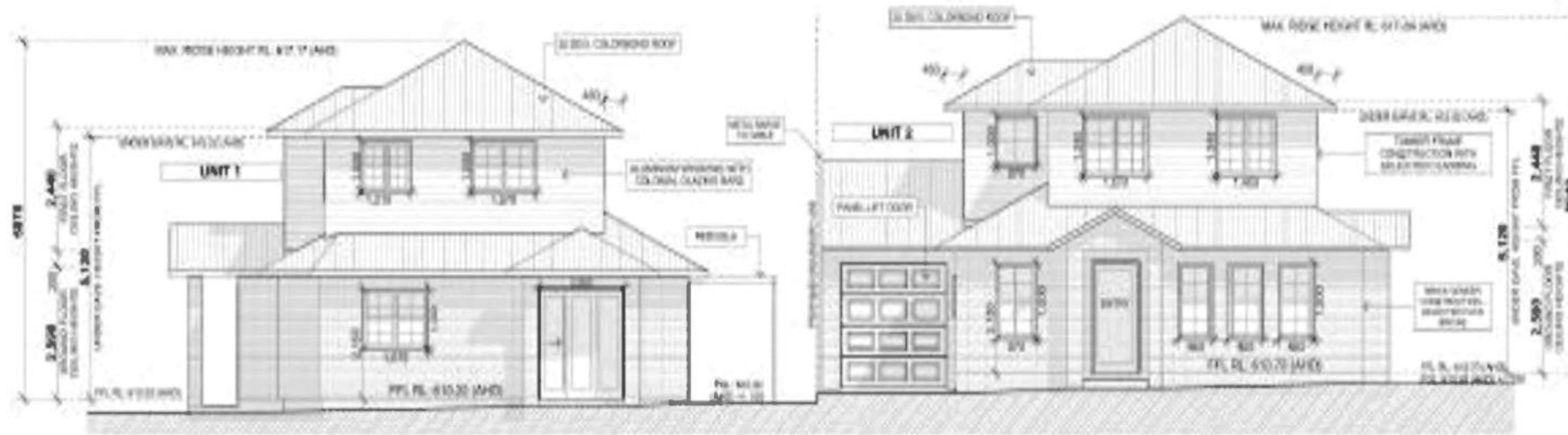
ATTACHMENT 3 – ZONING





ATTACHMENT 4 - SITE PLAN





**NORTH WEST ( MAXTED STREET ) ELEVATION**

1:100 @ A1 - 1:200 @ A2



**NORTH EAST ( SOLOMON STREET ) ELEVATION**

1:100 @ A1 - 1:200 @ A2



**SOUTH ELEVATION**

1:100 @ A1 - 1:200 @ A2

ATTACHMENT 5 - ELEVATIONS



**Figure C18.10 Attic Style Dwelling**

ATTACHMENT 6 - ATTIC STYLE DESIGN



## 12 OPERATIONS FINANCE AND RISK

### 12.1 Investment Report - March 2019

Reference:	2104
Report Author:	Deputy Chief Financial 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 present Council's Investment Portfolio held at 31 March 2019.

#### RECOMMENDATION

**THAT** the information on Council's Investments as at 31 March 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 31 March 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 \$3,302,245 for the nine (9) months to 31 March 2019.

#### ATTACHMENTS

1. Investment Report Summary as at 31 March 2019



## Wingecarribee Shire Council Investment Report Summary

For the period ending 31 March 2019

### List of Investments

Council's investment portfolio as at 31 March 2019 consists of the following investments:

INVESTMENT PORTFOLIO AS AT 31 March 2019						
Institution	Type	Amount	Interest Rate	Investment Term - Days	Maturity Date	% Investment Portfolio
CBA	Term Deposit	3,000,000	2.78%	365	18/04/2019	1.79%
CBA	Term Deposit	2,000,000	2.78%	364	18/04/2019	1.19%
Bankwest	Term Deposit	3,000,000	2.80%	273	8/05/2019	1.79%
Bankwest	Term Deposit	3,000,000	2.80%	272	13/05/2019	1.79%
Bendigo	Term Deposit	5,000,000	2.80%	365	17/05/2019	2.98%
Bankwest	Term Deposit	5,000,000	2.80%	270	20/05/2019	2.98%
MyState	Term Deposit	5,000,000	2.81%	365	24/05/2019	2.98%
Bankwest	Term Deposit	3,000,000	2.75%	270	24/05/2019	1.79%
Bankwest	Term Deposit	5,000,000	2.75%	272	27/05/2019	2.98%
Bankwest	Term Deposit	5,000,000	2.80%	270	28/05/2019	2.98%
Bankwest	Term Deposit	5,000,000	2.80%	270	28/05/2019	2.98%
Bankwest	Term Deposit	5,000,000	2.75%	273	4/06/2019	2.98%
Auswide	Term Deposit	5,000,000	2.92%	365	27/06/2019	2.98%
MyState	Term Deposit	5,000,000	2.90%	365	3/07/2019	2.98%
AMP	Term Deposit	5,000,000	2.91%	365	11/07/2019	2.98%
Bendigo	Term Deposit	5,000,000	2.76%	365	25/07/2019	2.98%
Bendigo	Term Deposit	5,000,000	2.77%	365	2/08/2019	2.98%
ME	Term Deposit	5,000,000	2.75%	365	27/08/2019	2.98%
ME	Term Deposit	5,000,000	2.74%	365	6/09/2019	2.98%
MyState	Term Deposit	5,000,000	2.70%	365	12/09/2019	2.98%
WBC	Term Deposit	2,500,000	2.70%	365	20/09/2019	1.49%
NAB	Term Deposit	5,000,000	2.75%	365	27/09/2019	2.98%
Auswide	Term Deposit	5,000,000	2.75%	365	28/09/2019	2.98%
Rural	Term Deposit	5,000,000	2.75%	365	11/10/2019	2.98%
MyState	Term Deposit	5,000,000	2.80%	365	30/10/2019	2.98%
CUA	Term Deposit	3,000,000	2.77%	365	9/11/2019	1.79%
AMP	Term Deposit	5,000,000	2.80%	270	18/11/2019	2.98%
CUA	Term Deposit	5,000,000	2.77%	365	26/11/2019	2.98%
NAB	Term Deposit	5,000,000	2.77%	365	30/11/2019	2.98%
WBC	Term Deposit	4,000,000	2.73%	365	14/12/2019	2.39%
ME	Term Deposit	4,000,000	2.72%	364	3/01/2020	2.39%
CUA	Term Deposit	6,000,000	2.77%	365	24/01/2020	3.58%
WBC	Term Deposit	3,000,000	2.72%	365	31/01/2020	1.79%
NAB	Term Deposit	5,000,000	2.73%	365	7/02/2020	2.98%
NAB	Term Deposit	5,000,000	2.65%	364	28/02/2020	2.98%
NAB	Term Deposit	5,000,000	2.65%	366	4/03/2020	2.98%
NAB	Call Account	6,062,600	1.40%	NA	NA	3.62%
<b>Total Investments</b>		<b>\$167,562,600</b>				<b>100.00%</b>

Institution Legend		
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	IBB = IBB 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 31 March 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%	18.53%	31,062,600	YES	YES
CBA	A1+	40%	2.98%	5,000,000	YES	YES
WBC	A1+	40%	5.67%	9,500,000	YES	YES
Bankwest	A1+	40%	20.29%	34,000,000	YES	YES
AMP	A1	25%	5.97%	10,000,000	YES	YES
Bendigo	A2	15%	8.95%	15,000,000	NO	YES
Rural Bank	A2	15%	2.98%	5,000,000	NO	YES
CUA	A2	15%	8.36%	14,000,000	NO	YES
ME	A2	15%	8.36%	14,000,000	NO	YES
MyState	A2	15%	11.94%	20,000,000	NO	YES
Auswide	A3	10%	5.97%	10,000,000	NO	YES
<b>Total</b>			<b>100.00%</b>	<b>167,562,600</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%	47.48%	79,562,600	YES
A1	80%	5.97%	10,000,000	YES
A2	60%	40.58%	68,000,000	YES
A3	20%	5.97%	10,000,000	YES
Govt	25%	0.00%	0	YES
<b>Total</b>		<b>100.00%</b>	<b>167,562,600</b>	

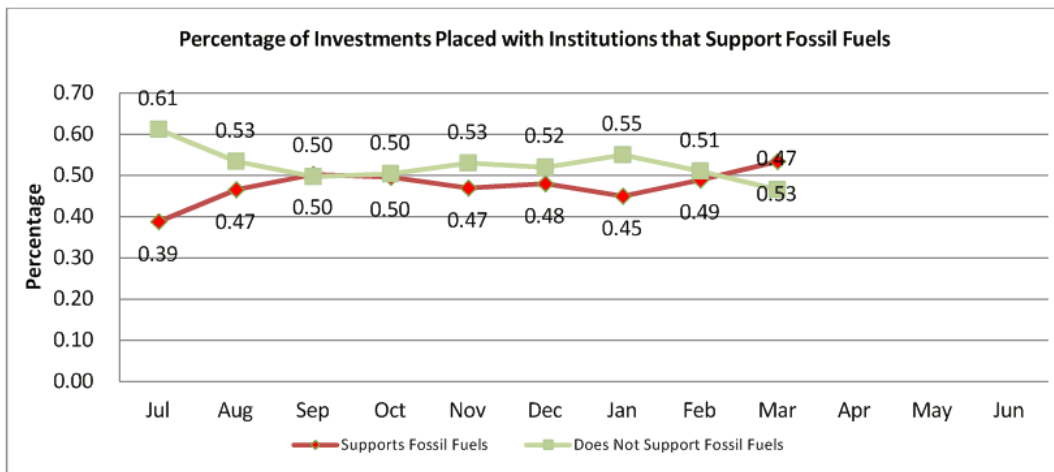


## Wingecarribee Shire Council Investment Report Summary For the period ending 31 March 2019

### Non-Fossil Fuel Investment Preferencing

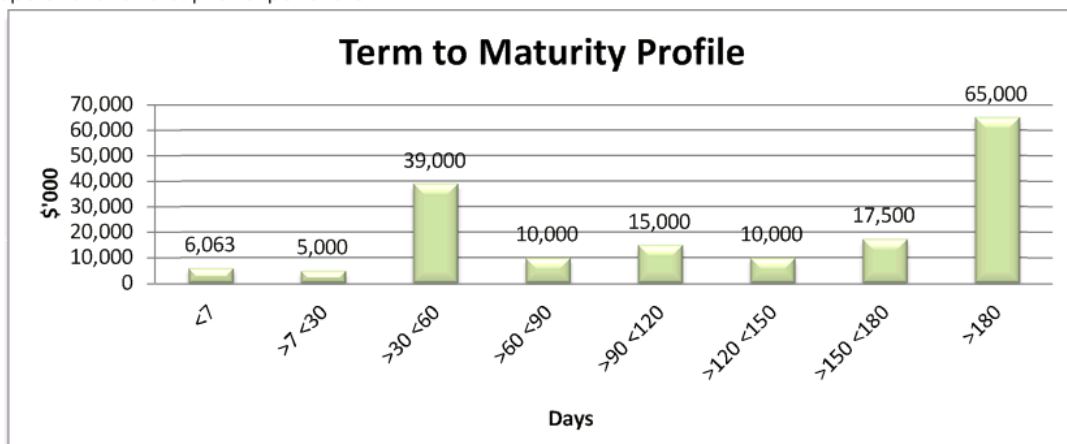
Council's adopted Investment Policy states a preference for placing funds with institutions that do not support the fossil fuel industry. The chart below identifies Council's percentage of investments placed with institutions that do not support the fossil fuel industry.

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.



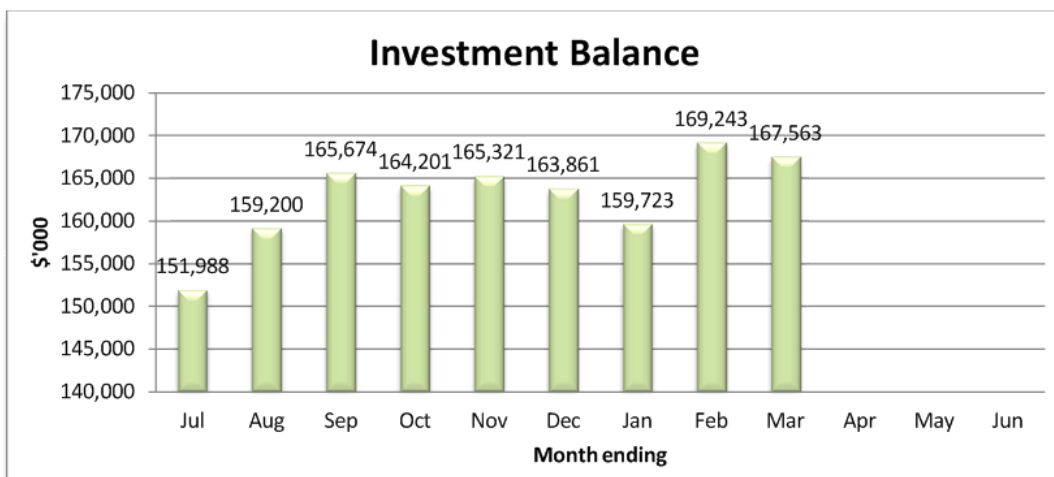


## Wingecarribee Shire Council Investment Report Summary

For the period ending 31 March 2019

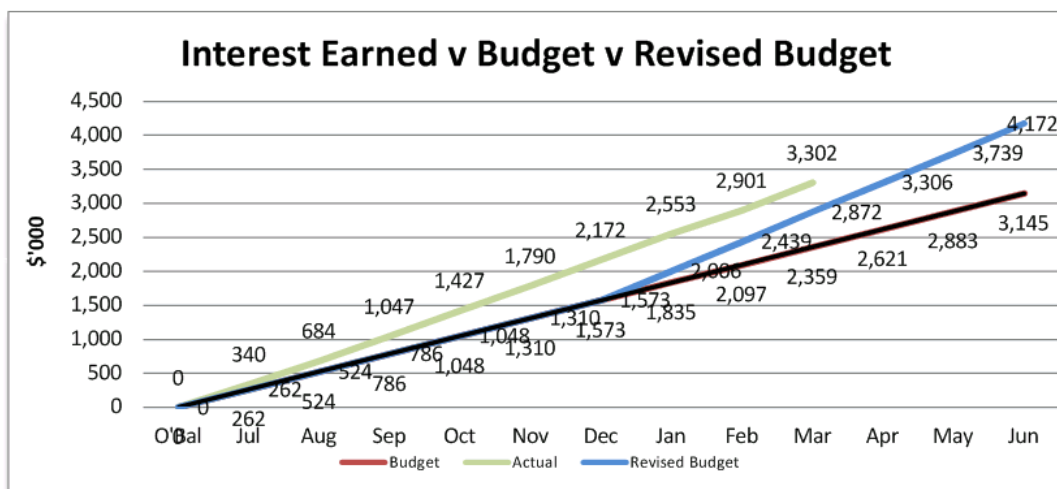
### Portfolio Performance

Council's investment balance at the end of March 2019 was \$167.563 million. This has decreased by \$1.68 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.





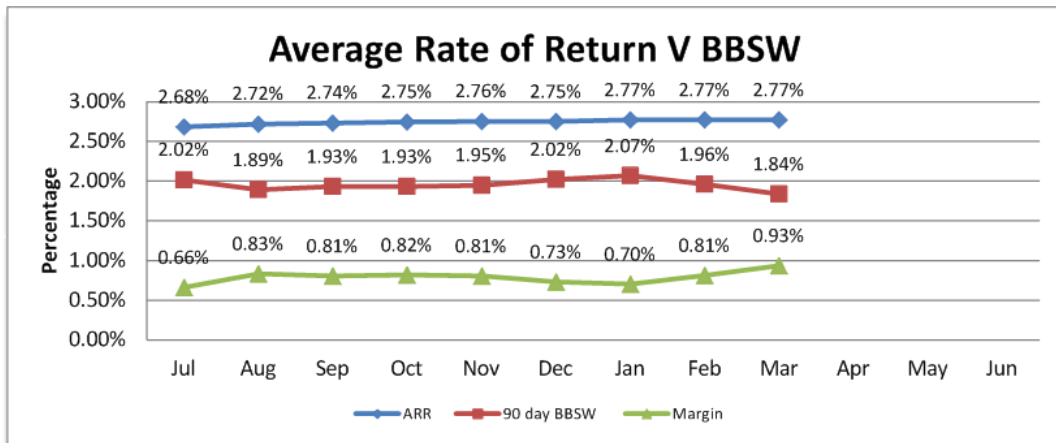
## Wingecarribee Shire Council Investment Report Summary For the period ending 31 March 2019

### 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 February 2019 was 2.77% which is the same as February 2019. There was a decrease in the BBSW to 1.84%

The margin above BBSW has increased in March 2019 by 0.12% as rates available in the fixed interest market remain relatively stable.





## 12.2 Outcome of Direct Negotiations in Relation to the Renewal of Sewer Pump Station at Lackey Park, Moss Vale

Reference:	6330/18.6
Report Author:	Senior Project Manager
Authoriser:	Manager Project Delivery
Link to Community Strategic Plan:	Manage and plan for future water, sewer and stormwater infrastructure needs

### PURPOSE

The purpose of this report is to present the evaluation of the tender negotiations held on 26 July 2018 with Gongues Construction Pty Ltd for the Renewal of the Lackey Park – Moss Vale and Australia Ave – Berrima SPS project.

### RECOMMENDATION

**THAT Council decline the tender of Gongues Construction Pty Ltd for Tender number 6330/18.6 under 178(1)(b) of the Local Government (General) Regulation 2005.**

### REPORT

#### **BACKGROUND**

During the tender evaluation process, the Council decided to cancel the design and construction of the Australia Ave SPS from this tender construction package and consider a review of the operational need to redirect flows as part of the major upgrade of Moss Vale STP. A request for a price for the construction for Lackey Park SPS only, was distributed to all tenderers in order to obtain their confirmation that the price for this SPS would remain the same if the contractors were awarded with this SPS only.

Most of the contractors, with the exception of Gongues Pty Ltd confirmed that the tendered prices for both SPS were not interrelated and consequently confirmed that in the case of their being awarded with the construction of Lackey Park SPS only, the tendered price would remain the same.

Conversely, Gongues Construction Pty Ltd, which offered the most competitive RFT response, advised Council that both prices for the construction of the Lackey Park SPS and Australia Ave SPS were interrelated as a tender package and consequently if awarded with the construction of the Lackey Park SPS only, the price for this project would be different - indicating a higher project price than originally tendered. However, although Gongues

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



Construction Pty Ltd offered the most competitive RFT response, it was still considered to be very high in price.

The Council at its meeting held on 11 July 2018 considered a report in respect of the renewal of the 2 pump stations. At the meeting Council decided:

1. *THAT Council rejects all tenders received for Tender number 6330/18.6 under 178(1)(b) of the Local Government (General) Regulation 2005.*
2. *THAT Council enters into negotiations with Gongues Pty Ltd with a view to entering into a contract for Lackey Park SPS renewal only in relation to the subject matter of the tender, in accordance with clause 178(3)(e) of the Local Government (General) Regulation 2005.*
3. *THAT in accordance with clause 178(4)(a) and (b) of Local Government (General) Regulation 2005, it be noted that Gongues Construction Pty Ltd offered the most competitive RFT response among qualifying contractors, based on the advise that the prices for the Lackey park and Australia Ave sewer pump stations were interrelated as one tender package.*

#### **REPORT**

Negotiations were held with Gongues Constructions Pty Ltd on 26 July 2018 for the renewal of these SPS with an unsatisfactory outcome.

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

N/A

#### **COMMUNICATION AND CONSULTATION**

##### **Community Engagement**

N/A

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

Extensive consultation has taken place between Council's procurement area, the CFO and operational areas. This consultation included scope, technical requirements and evaluation methodologies.

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

Negotiations were held with Gongues Constructions Pty Ltd on 26 July 2018.

#### **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



- **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**

The budgets for the projects are still included as part of Council's Capital Works Program.

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#### **RELATED COUNCIL POLICY**

Council's Procurement Guidelines have been used to inform the tender process.

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#### **OPTIONS**

The options available to Council are:

##### **Option 1**

Direct negotiations no longer represent best value to Council; therefore it is recommended Council decline the tender from Gongues Pty Ltd.

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#### **CONCLUSION**

It is recommended that Council decline the tender of Gongues Construction Pty Ltd since this Contractor did not offer an acceptable price for the completion of this project.

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#### **ATTACHMENTS**

There are no attachments to this report.

## 12.3 Expressions of Interest for the Moss Vale Civic Centre Refurbishment

Reference:	6350/19.1
Report Author:	Senior Project Manager
Authoriser:	Manager Project Delivery
Link to Community	
Strategic Plan:	Create welcoming and accessible community facilities that support opportunities for people to meet and connect with one another

### PURPOSE

The purpose of this report is to present the evaluation of the Expression of Interest (EOI) for the Moss Vale Civic Centre - Refurbishment.

### RECOMMENDATION

1. **THAT** in relation to the report concerning Expression of Interest (EOI) for Moss Vale Civic Centre Refurbishment - Council adopts the recommendations contained within the Closed Council report – Item 22.1.

OR

2. **THAT** the report concerning Expression of Interest (EOI) for Moss Vale Civic Centre Refurbishment - 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 10A(2)(c) 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, 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.

### REPORT

#### **BACKGROUND**

Wingecarribee Shire Council (WSC) sought Expressions of Interest from appropriately qualified and experienced contractors to complete the Moss Vale Civic Centre – Refurbishment in accordance with Clause 168 and 169 of the Local Government (General) Regulation, 2005.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



#### **REPORT**

Council sought Expression of Interest from appropriately qualified and experienced contractors to form a select tender panel of a maximum of five (5) contractors. The select tender panel will participate in a two stage Request for Tender (RFT) which will include an Early Tenderer Involvement (ETI) process followed by a Construct Only Selective RFT.

In accordance with the *Local Government (General) Regulation 2005* part 7, section 163(1), Council is required to invite tenders where estimated expenditure is greater than \$150,000 (GST inclusive).

This report presents the assessment and recommendation relating to the advertised EOI.

#### **ADVERTISING**

The EOI advertising period was from the Tuesday 26 February 2019 to Tuesday 19 March 2019 (21 days).

The EOI was advertised as follows:

<b>Newspaper / Website</b>	<b>Date Advertised</b>
Newspaper – Sydney Morning Herald	Tuesday, 26 February 2019
Newspaper – Southern Highlands News	Wednesday, 27 February 2019
Newspaper – Southern Highlands News	Wednesday, 6 March 2019
Council's Website	For the duration of the advertising period
Council's eTendering Website	For the duration of the advertising period

#### **EOI's RECEIVED**

A total of Sixteen (16) EOI's submissions were received:

<b>Company Name</b>	<b>Location</b>	<b>Postcode</b>
ACH Clifford P/L	Rosebery	2018
Adaptive Pty Ltd ATF Adaptive Trust and T/as Dezign	Wetherill Park	2164
ARA Building Services P/L	Stanmore	2048
Crossgrove P/L	Bowral	2576
Cyclo Group P/L	Unanderra	2526
Degnan Constructions P/L	Mortdale	2223
Dobsonei Construction	Burradoo	2576
Dynamic Projects AUS P/L	Moorebank	2170
Edwards Constructions (NSW) P/L	Nowra	2541
Grindley Interiors P/L	Pymble	2073
Lewis Building Company P/L	Joadja	2575

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



Company Name	Location	Postcode
Matrix Group Co. P/L	Lilyfield	2040
Novati Constructions P/L	Crows Nest	2065
Pacific Services Group Holdings P/L	Botany	2019
Patterson Building Group P/L	Mascot	2020
Petrel Sydney	Kingsgrove	2208

#### **LATE EOIs**

One (1) EOI submission was received late and is therefore non-conforming:

Company Name	Location	Postcode
BY Group P/L	Sydney	2000

#### **EOI EVALUATION**

A Procurement Evaluation Plan was developed which outlined the pre-determined selection criteria, the criteria weightings, and members of the EOI evaluation panel.

Each submission was evaluated against the specified criteria by the EOI evaluation panel with a scoring system based from 0 to 10 and weighted according to the pre-determined criteria.

#### **SELECTION CRITERIA**

The pre-determined criteria used to evaluate the EOI were as follows:

##### **Mandatory Criteria:**

Criteria
Public Liability - \$20 million
Workers Compensation OR [Self Employed] Personal Accident and Illness Insurance or Personal Income Protection
Motor Vehicle – Comprehensive
Compliance with WHS, QMS & Environmental Accreditation
Financial Assessment

Respondents were required to meet the mandatory criteria to be eligible to be shortlisted and progress any further in the evaluation process.



**Non-Cost Selection Criteria & Weighting:**

<b>Criteria</b>	<b>Weighting</b>
<b>Community, Sustainable &amp; Social</b>	10%
<b>Capability &amp; Experience</b> (Capability, Relevant Experience and Key Personnel & Experience)	75%
<b>Quality Assurance &amp; Innovation</b>	5%
<b>Work Health and Safety, Environment &amp; Sustainability</b>	10%
<b>Total</b>	100%

**Summary of Selection Criteria & Weighting:**

<b>Selection Criteria</b>	
<b>Criteria</b>	<b>Weighting</b>
Total Non-Cost Criteria	100%
Total Cost Criteria	0%
<b>Total</b>	<b>100%</b>

A Non-Cost Selection Criteria Threshold of at least 60% was applied to the evaluation of the submissions.

A revised Non-Cost Selection Criteria will be applied with a Cost Criteria in the future Request for Tender (RFT) Process.

**NON-COMPLIANT EOIs**

Upon evaluation a total of five (5) EOI submissions were determined to be non-compliant:

<b>Company Name</b>	<b>Reason for Non-Compliance</b>
ARA Building Services P/L	Did not meet required Threshold
Cyclo Group P/L	Did not submit required schedules – Failed Mandatory Criteria
Dynamic Projects AUS P/L	Did not meet required Threshold
Lewis Building Company P/L	Did not meet required Threshold
Petrel Sydney	Did not submit required schedules – Failed Mandatory Criteria



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

Funding for Moss Vale Civic Centre Refurbishment has been included in Council's adopted Capital Works Program.

Consideration was given to the impact of this project on Council's Improvement Plan at the time of adopting Council's Operational Plan and Budget.

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## **CONSULTATION**

### **Community Engagement**

The Expression of Interest is part of a commercial arrangement process and therefore no community engagement is required.

### **Internal Consultation**

The Deputy General Manager Operations, Finance & Risk, Chief Financial Officer and Manager Project Delivery have been consulted in relation to this proposal.

### **External Consultation**

The EOI is part of a commercial arrangement process and therefore no external consultation is required regarding the tender review and recommendation.

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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**

This EOI has been conducted in accordance with Part 7 of the *Local Government (General) Regulation 2005*.

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## **RELATED COUNCIL POLICY**

Council's Procurement Guidelines have been used to inform the tender process.



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 April 2019

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



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**CONCLUSION**

The tender evaluation summary and recommendation are documented in the report to Council's Closed Committee.

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**ATTACHMENTS**

There are no attachments to this report.



## 12.4 Wingecarribee Adult Day Care Centre (WADCC) - Request for Loan Facility

Reference:	1827/5
Report Author:	Chief Financial Officer
Authoriser:	Deputy General Manager Operations, Finance and Risk
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's direction regarding a request from the Wingecarribee Adult Day Care Centre's (WADCC) Board to amend the terms and conditions of the interest free Loan approved by Council on the 13 February 2019.

### RECOMMENDATION

**THAT Council determine its position in relation to the terms and conditions of the Interest free Loan offered to the Wingecarribee Adult Day Care Centre's (WADCC) to fund the budget shortfall for the Carrabee Centre – Alterations and Additions Project.**

### REPORT

#### BACKGROUND

Wingecarribee Adult Day Care Centre's (WADCC) was successful in securing \$223,000 under the NSW State Government Stronger Country Communities Fund for alterations and extensions to the facility located at 3 Hansen Street Bowral.

At its meeting 24 October 2018, Council was advised of a significant shortfall in the funding of the project which had been based on a review undertaken by staff of pre-tender estimates. It is important to note that Council was not involved in the preparation of the initial estimate submitted as part of the funding application. The funding shortfall was identified at \$270,000.

Council subsequently resolved (MN444/18)

1. *THAT Council confirm its support for the request from the Wingecarribee Adult Day Care Centre (WADCC) for an interest free loan of up to \$270,000 to fund the budget shortfall for The Carrabee Centre – Alterations and Additions project.*
2. *THAT Council urgently write to the Department of Premier and Cabinet requesting that the \$223,000 currently uncommitted from the Stronger Country Communities Fund be allocated as additional funding for Wingecarribee Adult Daycare Project.*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



3. *THAT* should Council's application for the reallocation of \$223,000 from the Stronger Country Communities Fund be successful, the amount of the loan be reduced to \$47,000.
4. *THAT* a further report be presented to a future meeting of Council to confirm the amount of the loan and the terms and conditions.

Following the Council meeting held on the 24 October 2018, Council officers were subsequently advised by the Department of Premier and Cabinet that it was not possible to reallocate the \$223,000 from the Stronger Country Communities Fund to the Wingecarribee Adult Daycare project.

At its meeting 13 February 2019, Council considered the tender report for the construction of the WADCC Alterations and Additions contract. In awarding the tender for the alterations and additions for the Carribee Centre, it was also necessary for Council to determine the terms and conditions of the interest free Loan.

It is again important to note that the terms and conditions of the Loan were discussed with representatives of the WADCC board and were verbally agreed to prior to presentation to Council.

Council subsequently resolved (MN13/19):

1. *THAT* in relation to the report concerning Wingecarribee Adult Day Care Centre – Alterations & Additions - Council adopts the recommendations contained within the Closed Council report – Item 22.1:
  - a. *THAT* Council accepts the tender from Dobsonei Pty Ltd at a Lump Sum of \$635,956 Excluding GST to undertake the construction of the Wingecarribee Adult Day Care Centre – Alterations & Additions.
  - b. *THAT* Council approve the loan of \$270,000 for the Wingecarribee Adult Day Care Centre based on the following terms and conditions:
    - i. That Council provide WADCC with an interest free loan of \$270,000, to be sourced from the Capital Projects Reserve.
    - ii. The terms of the loan be on the basis of a repayment schedule of \$13,500 bi-annually over a period of 10 years, with repayments commencing 30 days after the physical completion of the project.
    - iii. That WADCC provide Council on an annual basis with an independent record of all fundraising revenue relating to the refurbishment project. Additional funds raised beyond the annual repayment of \$27,000 will be paid to Council to further reduce the balance of the loan ahead of the repayment schedule referred to in point two.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



## REPORT

Following the Council meeting held on the 13 February 2019, Council officers prepared a draft Loan Agreement in accordance with the terms and conditions outlined within Council resolution MN13/19. The Loan Agreement also incorporated the standard terms and conditions with respect to default arrangements (missed instalments) which all previous community groups loan agreements have contained.

A copy of the draft loan agreement is provided as **Attachment 1**.

Council received a response from the WADCC Board on the 10 April 2019 rejecting the loan offer on the basis of the terms and conditions of the loan. A summary of the reasons provided are as follows:

- The Board do not believe they can commit to a fixed repayment schedule due to the lack of a recurrent revenue stream outside of the Federal Government funding they receive.
- The Board believes the default interest arrangements are unacceptable and unrealistic.
- The current works underway are ultimately an improvement to a Council asset.
- Concerns regarding potential exposure to liability to existing board members.

The letter concludes with a request for Council to consider converting its loan offer to an offer of grant funding. This would remove the need to have any loan agreement in place.

A copy of the letter is provided as **Attachment 2**.

With respect to the concerns raised by the Board regarding fixed repayments and default interest arrangements, these provisions are an essential component of any formal Loan Agreement. It provides clarity to both parties on cash flow expectations and legally secures the debt.

Given that the project has now commenced, the direction of Council is now sought to ensure the funding for the project (and the formally executed contract) can be secured. The options available to Council are as follows:

1. Confirm that the terms and conditions of the draft Loan Agreement are to remain unchanged. If the Board were unwilling to accept this offer, then Council would need the Board to identify where additional funding could be sourced to ensure the project can be completed. This could result in delays in the project. It is important to note that Council has a legal contract in place with the current contractor to deliver on the scope of works approved in the Tender adopted by Council on the 13 February 2019.
2. Draft a new agreement on the basis that there would be no fixed repayment schedule and default interest arrangements. This would not be a formal Loan Agreement and would not give Council any legal security that the loan would be repaid. If this was Council's direction, then legal advice would be sought on the best legal instrument to facilitate this arrangement.
3. Convert the current Loan offer to a funding grant to WADCC to cover the additional cost associated with the alterations and extension of the WADCC building.



Council has no capacity to fund option 3 from the adopted 2018/19 Budget. The report presented to Council at this meeting in relation to the draft 2019/20 Operational Plan and Budget presents a balanced budget for the 2019/20 financial year and four year forward estimates.

If the direction of Council is to support this option, then the recommendation from Council officers would be that the grant be sourced from the Capital Projects Reserve. This would limit Council's ability to utilise these funds for any unforeseen/emergency works which may arise in the short-medium term future.

The current uncommitted balance of the Capital projects Reserve is \$812,000. Council has a standing resolution which requires a minimum uncommitted balance for the Capital Projects Reserve of \$1 million. This is to ensure that Council can respond to any future unforeseen/emergency works.

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

The options presented in this report are not consistent with Council's Improvement Plan.

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### **COMMUNICATION AND CONSULTATION**

#### **Community Engagement**

There has been no community engagement in relation to this report.

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

Executive

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

Wingecarribee Adult Day Care Centre's Board

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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.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



- **Governance**

There are no governance issues in relation to this report.

#### **COUNCIL BUDGET IMPLICATIONS**

Council has no capacity to fund option 3 from the adopted 2018/19 Budget. The report presented to Council at this meeting in relation to the draft 2019/20 Operational Plan and Budget presents a balanced budget for the 2019/20 financial year and four year forward estimates.

If the direction of Council is to support this option, then the recommendation from Council officers would be that the grant be sourced from the Capital Projects Reserve. This would limit Council's ability to utilise these funds for any unforeseen/emergency works which may arise in the short-medium term future.

The current uncommitted balance of the Capital projects Reserve is \$812,000. Council has a standing resolution which requires a minimum uncommitted balance for the Capital Projects Reserve of \$1 million. This is to ensure that Council can respond to any future unforeseen/emergency works.

#### **RELATED COUNCIL POLICY**

None.

#### **OPTIONS**

The options available to Council are:

##### **Option 1**

Confirm that the terms and conditions of the draft Loan Agreement are to remain unchanged. If the Board were unwilling to accept this offer, then Council would need the Board to identify where additional funding could be sourced to ensure the project can be completed. This could result in delays in the project. It is important to note that Council has a legal contract in place with the current contractor to deliver on the scope of works approved in the Tender adopted by Council on the 13 February 2019.

##### **Option 2**

Draft a new agreement on the basis that there would be no fixed repayment schedule and default interest arrangements. This would not be a formal Loan Agreement and would not give Council any legal security that the loan would be repaid. If this was Council's direction, then legal advice would be sought on the best legal instrument to facilitate this arrangement.

##### **Option 3**

Convert the current Loan offer to a funding grant to WADCC to cover the additional costs associated with the alterations and extension of the WADCC building.

Submitted for Council determination.

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 April 2019

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



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**CONCLUSION**

To provide funding certainty for the WADCC Alterations and Extensions project, the direction of Council is sought on the response to be provided to the WADCC Board as a result of their rejection of the interest free Loan Agreement.

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**ATTACHMENTS**

1. Attachment 1 - Draft Loan Agreement
2. Attachment 2 - Response from WADCC

Barry W Paull  
**Deputy General Manager Operations, Finance and Risk**

Wednesday 17 April 2019



**LOAN AGREEMENT**

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2019

**BETWEEN WINGECARRIBEE SHIRE COUNCIL**  
**ABN 49 546 344 354**  
Civic Centre, Elizabeth Street  
MOSS VALE NSW 2577  
("Council")

**AND WINGECARRIBEE ADULT DAY CARE CENTRES INC**  
**ABN 25 317 050 477**  
3 Hansen Street  
BOWRAL NSW 2576  
("Centre")

**1. RECITALS**

- 1.1. The Centre provides facilities for social groups and respite for frail aged persons and their carers at 3 Hansen Street, Bowral NSW ("Premises").
- 1.2. The Centre wishes to undertake the construction of alterations and additions to the Premises and has approached Council to provide financial assistance for the works.
- 1.3. At its meeting on 13 February 2019, Council resolved to offer an interest free loan to the Centre of \$270,000 for the purpose of funding the Centre's contribution toward the cost of the construction of alterations and additions to the Premises. The loan is to be repaid by bi-annual repayments over 10 years. Repayments are to commence 30 days after physical completion of the construction.
- 1.4. The Centre acknowledges that its contribution toward the cost of the construction of alterations and additions to the Premises does not give rise to an interest in the Premises beyond the existing twenty one year lease agreement between Council and the Centre which commenced on 1 April 2016 and was executed on 14 July 2017.
- 1.5. The parties have agreed that Council will provide an interest free loan to the Centre for the amount of \$270,000 in accordance with Council's resolution MN13/19 on the terms and conditions set out in this Agreement.
- 1.6. As Council will be engaging the works contractor, Council will pay the loan monies to the contractor as part of progress payments which fall due as the works are completed in lieu of paying the loan monies to the Centre.

**2. THE LOAN CONDITIONS**

- 2.1. Council agrees to lend the Centre the sum of \$270,000 ("Loan") provided that the Centre executes this Agreement.





- 2.2. The Centre will repay the Loan in bi-annual instalments of \$13,500 in line with Annexure 1 of this agreement.
  - 2.2.1. The bi-annual instalments will commence 30 days after the physical completion of the construction, which will be taken to be the date of issuance of the occupation certificate.
- 2.3. The Centre will provide Council with an annual record of fundraising revenue relating to the construction project which has been audited in accordance with Subdivision 60-C *Australian Charities and Not-for-profits Commission Act 2012*.
- 2.4. The Centre will pay to Council additional funds raised relating to the construction project beyond the annual repayment of \$27,000, reported to Council in accordance with clause 2.3, to further reduce the balance of the loan ahead of the repayment schedule.
- 2.5. The Centre will repay the Loan to Council in full no later than the day which is 10 years from the day on which the first instalment is due under clause 2.2.1 or on the Business Day immediately following that day.
- 2.6. Subject to clause 2.5, the Centre will repay the Loan in instalments by a direct debit facility to be put in place by the Centre and notified to Council prior to the payment under clause 2.2.1.
- 2.7. Council will recover the instalments due under clause 2.6 by direct debit of an instalment of \$13,500 on the payment due dates in accordance with Annexure 1 and Council will accept each such instalment as a part payment of the obligation in clause 2.5.
- 2.8. If a payment due date falls on a day which is not a Business Day, the direct debit payment will be recovered on the next Business Day.
- 2.9. A Business Day is a day on which Council's Civic Centre is open for customers' business.
- 2.10. Should insufficient funds be available for the scheduled direct debit, interest will be charged on the loan principal outstanding from the date that the direct debit was scheduled until the date the payment is received by Council.
  - 2.10.1. Interest will be calculated using the interest rate payable on overdue rates published by the Office of Local Government which is current at the time of the scheduled payment.
  - 2.10.2. Interest will be calculated daily and compounded monthly.
- 2.11. In the event that interest becomes payable under clause 2.10, Council will issue a tax invoice to the Centre for the amount of interest due.

**3. DEFAULT IN PAYMENT**

- 3.1. If the Centre fails to comply with clause 2.2 of this agreement and Council does not receive the instalment amount due to it within 30 days of the instalment date, then Council may take legal actions against the Centre to recover all amounts remaining due to it from the Centre under this Agreement.



#### 4. CONFIDENTIALITY

- 4.1. Except for the purpose of:
- 4.1.1. obtaining professional advice regarding this Agreement; or
  - 4.1.2. complying with a legal obligation; or
  - 4.1.3. enforcing the terms of this Agreement;
- each party agrees to keep the terms of this Agreement confidential.

#### 5. GENERAL

- 5.1. The parties agree that this Agreement:
- 5.1.1. contains the whole agreement between the parties and supersedes any prior agreement between the parties or understanding of any of them regarding its subject matter; and
  - 5.1.2. can only be amended in writing signed by all the parties.
- 5.2. This Agreement is governed by the laws of the state of New South Wales, Australia and each party agrees to submit to the jurisdiction of the Courts of that state in proceedings arising out of or in connection with this Agreement.
- 5.3. Each party agrees to pay its own costs and expenses incurred in connection with this Agreement and its preparation.



**Annexure 1 – Payment Schedule**

Payment	Instalment due date	Principal Repayment	Interest	Cumulative Principal	Principal outstanding
1	d1*	\$13,500	\$0.00	\$13,500	\$256,500
2	d1 + 6 calendar months	\$13,500	\$0.00	\$27,000	\$243,000
3	d1 + 1 year	\$13,500	\$0.00	\$40,500	\$229,500
4	d1 + 18 calendar months	\$13,500	\$0.00	\$54,000	\$216,000
5	d1 + 2 years	\$13,500	\$0.00	\$67,500	\$202,500
6	d1 + 30 calendar months	\$13,500	\$0.00	\$81,000	\$189,000
7	d1 + 3 years	\$13,500	\$0.00	\$94,500	\$175,500
8	d1 + 42 calendar months	\$13,500	\$0.00	\$108,000	\$162,000
9	d1 + 4 years	\$13,500	\$0.00	\$121,500	\$148,500
10	d1 + 54 calendar months	\$13,500	\$0.00	\$135,000	\$135,000
11	d1 + 5 years	\$13,500	\$0.00	\$148,500	\$121,500
12	d1 + 66 calendar months	\$13,500	\$0.00	\$162,000	\$108,000
13	d1 + 6 years	\$13,500	\$0.00	\$175,500	\$94,500
14	d1 + 78 calendar months	\$13,500	\$0.00	\$189,000	\$81,000
15	d1 + 7 years	\$13,500	\$0.00	\$202,500	\$67,500
16	d1 + 90 calendar months	\$13,500	\$0.00	\$216,000	\$54,000
17	d1 + 8 years	\$13,500	\$0.00	\$229,500	\$40,500
18	d1 + 102 calendar months	\$13,500	\$0.00	\$243,000	\$27,000
19	d1 + 9 years	\$13,500	\$0.00	\$256,500	\$13,500
20	d1 + 114 calendar months	\$13,500	\$0.00	\$270,000	\$0

\* d1 = 30 days after physical completion of the construction project



EXECUTED for WINGECARRIBEE SHIRE COUNCIL by the General Manager,  
its duly authorised delegate, in the presence of:

.....  
Witness Signature

.....  
Ann Prendergast

.....  
Witness Name

EXECUTED for WINGECARRIBEE ADULT DAY CARE CENTRES INC in accordance with  
section 127 of the Corporations Act 2001 in the presence of:

.....  
Witness Signature

.....  
Chairperson

.....  
Witness Name

.....  
Name of Chairperson

.....  
Board Member/Secretary

.....  
Name of Board Member/Secretary



Wingecarribee Adult Day Care Centres ABN 25 317 050 477  
PO Box 1324 Bowral NSW 2576 • P 02 4862 1774  
E mail@wadcc.org.au • W www.wadcc.org.au

Mr Richard Mooney  
Chief Financial Officer  
Wingecarribee Shire Council  
PO Box 141  
Moss Vale  
NSW 2577

10<sup>th</sup> April 2019

Dear Richard,

Since we last talked last week, I have sought legal advice in relation to the loan agreement and following that I submitted the draft Loan Agreement to the WADCC Board which considered it at its last meeting. Following that advice the Board took the view that it cannot sign the Agreement in its present form and indeed two members indicated that they would resign if the Board accepted the draft you sent me.

There are a number of reasons why the Board came to this decision.

They are:

1. As responsible Directors they cannot commit future Boards to fixed annual repayments for 10 years. Given the increasingly difficult fundraising scene and the number of charities competing for the local charity purse it would be wrong for the Board to commit WADCC to a fixed repayment schedule which it could not be sure it could meet. It will also be much more difficult to raise funds once the rebuilding has been finished. The best WADCC can offer is to use its best endeavours to repay the loan in future years.
2. When we discussed the Loan Agreement last week you mentioned that the Bowling Club and Rugby Club had similar provisions in their loan agreements. I suggest that the loan to WADCC comes into an entirely different category. They have a regular income stream through subscriptions, catering and the like whereas the only income we have outside our Federal Funding is what can be raised by a committee of seven volunteer directors.
3. The requirement for WADCC to pay interest if it is unable to keep up the repayments is unacceptable and also unrealistic. If WADCC has no funds to make the repayment it certainly would not have funds to pay interest. WADCC is strictly limited by its funding agreements as to how the funds it receives may be used and interest payments on its loan would not be allowed.
4. The building is a council asset although it has been largely financed and maintained by the support it has received by the local community. The building works currently being undertaken will enhance the value of that asset.
5. Finally, the Directors of WADCC are concerned that they would be open to legal action if they approved and signed Loan Agreement knowing that they could not be certain that WADCC meet its repayment terms.



Wingecarribee Adult Day Care Centres ABN 25 317 050 477  
PO Box 1324 Bowral NSW 2576 • P 02 4862 1774  
E mail@wadcc.org.au • W www.wadcc.org.au

In reaching this decision the Board is fully aware of the Council's responsibility to ensure that its financial resources are well spent and the decision to make the loan to WADCC has been much appreciated. The Board believes that the loan is fully justified by the valuable contribution that WADCC makes to the wellbeing of the less fortunate senior citizens of the Wingecarribee Shire. I hope that in the light of the above comments the Council will find its way to provide an Agreement more in line with the realities of the situation or even better still convert it to a grant.

Yours sincerely,

Bob Constable  
Director – Wingecarribee Adult Day Care Centres



## 13 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

### 13.1 Public Exhibition of the Draft 2019/20 Operational Plan and Budget

Reference:	501/203
Report Author:	Group Manager Corporate and Community
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
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 the draft 2019/20 Operational Plan, Budget, Revenue Policy and Fees and Charges to be endorsed for public exhibition.

#### RECOMMENDATION

**THAT Council endorse the draft 2019/20 Operational Plan, Budget, Revenue Policy and Fees and Charges, as set out in Attachments 1 and 2 for public exhibition from 29 April 2019 to 27 May 2019.**

#### REPORT

##### **BACKGROUND**

Council is required to annually review the Operational Plan, Annual Budget, Revenue Policy and Fees and Charges to meet its responsibilities under the *Local Government Act 1993* and Regulation. The Operational Plan is a sub-plan of the 2017-2021 Delivery Program, and demonstrates Council's approach to achieving the objectives of the Delivery Program.

##### **REPORT**

The draft 2019/20 Operational Plan outlines the projects, programs and activities (annual deliverables) that Council will undertake during the 2019/20 financial year. The annual deliverables are aligned to Council's services and four year actions from the Delivery Program. In addition, the draft Plan demonstrates Council's response and commitment to the delivery of the Community Strategic Plan, Wingecarribee 2031. As such, the Plan is structured around the five themes of Leadership, People, Places, Environment and Economy from Wingecarribee 2031.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



Included in the draft 2019/20 Operational Plan is the draft annual Budget and Capital Works Program. These documents provide an overview of Council's financial estimates and a program of Capital Works for the 2019/20 financial year.

Council's draft Revenue Policy and Fees and Charges for 2019/20 are also included in the draft Operational Plan. These documents outline Council's proposed rating structure and fees and charges for 2019/20 as stipulated by the *Local Government Act 1993*.

As part of the 2017-2021 Delivery Program adopted in June 2017, Council committed to seven strategic priorities to ensure Wingecarribee Shire is a better place to live, work and visit. Council continues its commitment to these priorities which will be delivered over the life of this Delivery Program and are a key driver of decision making during this Council term.

Council's seven strategic priorities are:

1. Responsible financial management
2. Improving our community assets
3. Protecting our natural environment
4. Delivery of significant infrastructure projects
5. Better service alignment and delivery
6. Business transformation
7. Community wellbeing

In accordance with the Integrated Planning and Reporting Guidelines, Council undertook a review of its 2017-2021 Delivery Program as part of its preparation of the draft 2019/20 Operational Plan.

No changes to the Delivery Program actions are proposed for the 2019/20 financial year.

### **2019/20 DRAFT BUDGET**

The draft 2019/20 Budget for Council's Consolidated Fund is presented as a balanced budget. After removing non-cash expenditure and reserve transfers, Council's proposed cash expenditure budget for 2019/20 is \$143.953 million. This represents an increase of 8.71% on the cash expenditure budget for the 2018/19 financial year.

<b>CASH BUDGET</b>	<b>2019/20</b>
Operating Expenditure	\$148,712,000
Capital Expenditure	\$57,377,000
<b>Gross Expenditure</b>	<b>\$206,089,000</b>
Less:	
Transfer to Reserves	\$34,098,000
Non Cash Depreciation	\$28,038,000
<b>Net Cash Expenditure Budget</b>	<b>\$143,953,000</b>



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



#### Regional Art Gallery Contribution

At its meeting 19 September 2018, Council confirmed its *in principle* support for a commitment of \$500,000 per annum as a contribution on behalf of the Wingecarribee Shire Council for a period of five years towards the proposed independent Gallery's operational costs (to be reviewed in the fifth year) (MN 371/18).

As part of the review of the 2019/20 draft Budget (including forward estimates), Council has considered the necessary actions required to ensure this \$2.5 million five year commitment can be accommodated within the recurrent budget. The recommended funding strategy for this contribution is as follows:

	<b>Annual Savings</b>
Environment Levy – Management Allocation	\$94,200
Arts & Culture Program Reduction	\$70,000
RRC Change in Hours of Operations	\$200,000
Program Expenditure Savings	\$135,800
<b>Contribution towards Regional Art Gallery</b>	<b>\$500,000</b>

- **Environment Levy – Management Allocation**  
In May 2016, Council was notified by IPART that the Environment Levy had been approved on a permanent basis. As part of the 2019/20 Budget, a review has been completed of the staffing resources which contribute to the program management of the Environment Levy. It is recommended that the management resources which oversee this important program be reflected in the overall expenditure for the next five years.

It is important to note this will not result in any reduction in baseline expenditure of the Environment Levy and will be funded through unspent cash reserves restricted for the purposes of the levy.

- **Arts & Culture Program**  
It is recommended that Council rationalise its level of expenditure for arts and culture activities over this five year period to ensure there is no duplication of programs between Council and the proposed Regional Art Gallery.
- **RRC Change in Hours of Operations**  
A review has been undertaken of the level of access by the public to the Resource Recovery Centre across the existing hours of operation. At present, the Resource Recovery Centre is open to the public from 7.30am to 4.30pm seven days a week.

This review has demonstrated that there is a minimal level of access by the public during 7.30am-8.00am and 4.00pm-4.30pm and during 1pm-4pm on Sundays. It is proposed that as part of this funding strategy, Council amend its hours of operation at the Resource Recovery Centre to 8am-4pm Monday to Saturday and 8am-1pm on Sundays.

- **Program Expenditure Savings**  
Savings have been identified as part of the 2019/20 Budget through maintaining budget allocations for discretionary expenditure at current 2018/19 funding levels. This review has excluded budget allocations for statutory payments, capital expenditure and infrastructure related expenditure.

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 April 2019

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

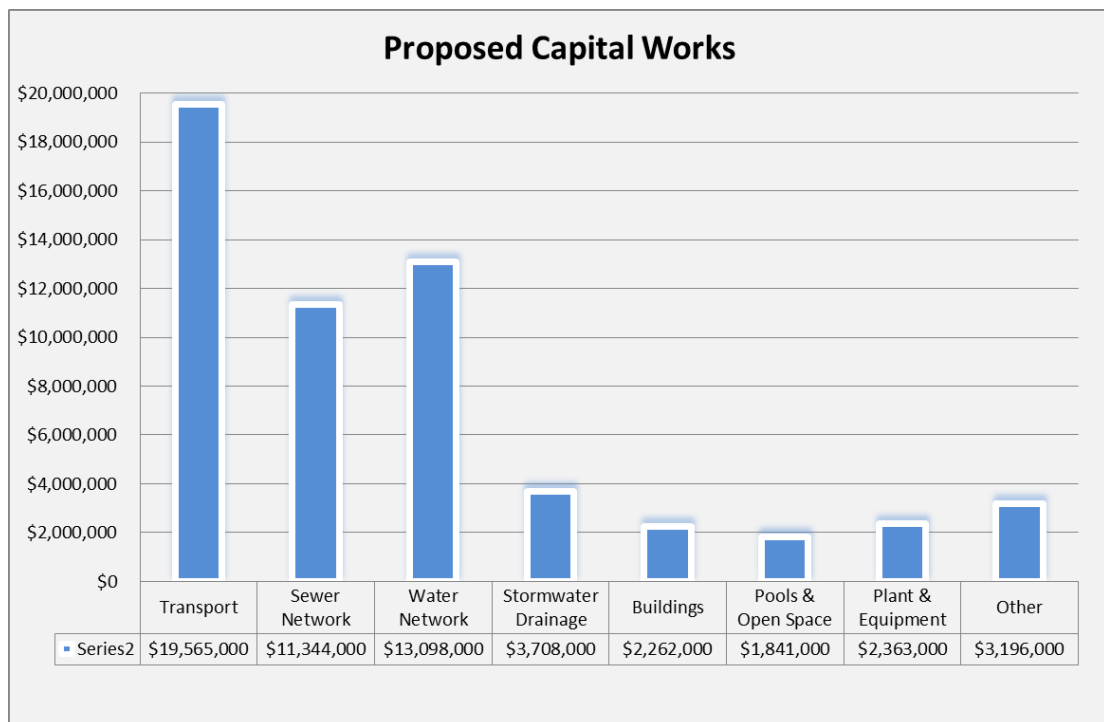


Council will be seeking comments from the public on this funding proposal as part of the draft 2019/20 Operational Plan and Budget.

Capital Works Program

The draft Capital Works proposed for the 2019/20 financial year includes funding for major infrastructure renewal projects and upgrades to essential community infrastructure. The proposed total of Capital Works is \$57.377 million.

A summary of capital expenditure by asset class is provided below:



The proposed schedule of works to be undertaken (by asset class) is included as appendix 1 of the draft 2019/20 Operational Plan.

**2019/20 DRAFT REVENUE POLICY (INCLUDING FEES AND CHARGES)**

**Rate Income**

In accordance with Section 498 of the *Local Government Act 1993*, Council’s ordinary rate levy will be calculated on the basis of an ad valorem rate determined by the amount in the dollar in respect of the relevant rating category and sub category. A minimum rate also applies to each relevant rating category and sub category in accordance with Section 548 of the *Local Government Act 1993*.

The draft 2019/20 Budget has been prepared on the basis of a 12.15% increase in rate income which includes the Independent Pricing and Regulatory Tribunal (IPART) approved increase of 2.70% for General Rates in NSW. This increase is in line with the Special Rate Variation application which was approved by the IPART in May 2016. This increase is the fourth and last year of the approved Special Rate Variation.



When compared to infrastructure funding levels from the 2015/16 financial year, an additional \$10.8 million will be allocated to maintain, renew and improve community assets across the shire during the 2019/20 financial year. Details regarding Council's Special Rate Variation Program can be found in the draft 2019/20 Operational Plan.

It is important to note that the proposed rate increase of 12.15% includes the continuation of the Environment Levy on a permanent basis. When determining the rating structure for the 2019/20 rating year, Council is first required to reduce its rating revenue by the amount of the previous Environment Levy which was approved for the 2012/13 financial year. Council will then reinstate the Environment Levy on a permanent basis. The reinstatement of the Environment Levy represents 2.90% of the overall proposed rate increase of 12.15%.

### **Environment Levy**

In accordance with Section 499 of the *Local Government Act 1993*, Council's Environment Levy will be calculated on the basis of a base amount plus an ad valorem rate determined by the amount in the dollar relevant for this rate. The base amount will be subject to a maximum of 50% of the total revenue raised by the levy in accordance with Section 500 of the *Local Government Act 1993*.

The 2019/20 Budget includes environmental improvement works and projects totalling \$1.4 million. The Environment Levy is used to fund specific environmental projects which aim to address biodiversity conservation, river health, wetland improvements and sustainable living.

### **Land Valuations**

Rating income for the 2019/20 financial year will be based on the land valuations determined by the Office of the New South Wales Valuer General at a base date of 1 July 2016. Council uses the land value of properties throughout the shire to determine the level of rates each property owner will pay. In other words, land value determines how Council's total rate income will be collected from each property owner.

Updated land valuations will be issued by the Office of the New South Wales Valuer General during the 2019/20 financial year and will be used to determine land rates for the 2020/21 financial year.

### **Waste Management Charges**

In reviewing Domestic Waste Management operations as part of the 2019/20 Budget, it was determined that **no increase** to domestic waste management charges were required. The list of proposed charges relating to Domestic Waste Management can be found in Council's draft Fees and Charges Schedule for 2019/20.

### **Stormwater Management Service Charge**

Council currently levies residential properties which receive a stormwater service a maximum of \$25 per annum charge (Stormwater Management Levy). The draft 2019/20 Revenue Policy includes the continuation of this charge. Funds raised through the Stormwater Management Levy must only be used on stormwater maintenance and improvements.



### Draft 2019/20 Fees and Charges

Proposed fees and charges for 2019/20 have generally been increased by 2.50%, with the exception of those fees which are set by regulation, are prepared on a cost recovery basis or where Council provides the service in a competitive market. A copy of the Draft Fees and Charges for the 2019/20 financial year is included in the draft 2019/20 Operational Plan.

### Water Fund Charges

The draft 2019/20 estimates for the Water Fund have been prepared in accordance with the Fund's 30 year strategic business plan with a forecast balanced budget for the 2019/20 financial year. In reviewing Water Fund operations as part of the 2019/20 Budget, it is recommended that **no increase** be applied to water access or usage charges.

The draft Revenue Policy outlines the following charges for water access and usage:

	2019/20	% Increase
Residential Access Charge	\$158.00	0.00%
Water Usage – Tariff 1 (0-616 Litres Per Day)	\$1.78 per KL	0.00%
Water Usage – Tariff 2 (>616 Litres Per Day)	\$2.67 per KL	0.00%

For a complete list of all water charges for the 2019/20 financial year please refer to the draft Revenue Policy.

### Sewer Fund Charges

The draft 2019/20 estimates for the Sewer Fund have been prepared in accordance with the Fund's 30 year strategic business plan with a forecast balanced budget for the 2019/20 financial year. In reviewing Sewer Fund operations as part of the 2019/20 Budget, it is recommended a 2.95% increase be applied to sewer access charges. This increase is in accordance with the funding strategy for the major upgrades required to the Moss Vale, Bowral and Mittagong Sewer Treatment Plants over the next several years.

The draft Revenue Policy outlines the following increase in Council's sewer charges:

	2018/19	2019/20	% Increase
Residential Access Charge	\$845.00	\$870.00	2.95%

For a complete list of all sewer charges for the 2019/20 financial year please refer to the draft Revenue Policy.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



#### Loan Borrowings

Council is proposing to borrow \$54.460 million over the next four years (2019/20 – 2022/23). Borrowings will be used to fund, or in some cases, part-fund major infrastructure projects which will have significant and demonstrated benefits to the residents of Wingecarribee Shire over the coming decades.

Council has considered the impact of the proposed borrowings, and subsequent debt servicing as part of reviewing its long term financial plan. Council has sufficient financial capacity to fund these loan repayments and is still well within the industry benchmark for debt servicing (known as the debt service ratio).

The proposed borrowings form part of the funding strategies for the following projects:

Description	2019/20	2020/21	2021/22	2022/23
Bowral Sewerage Treatment Plant	-	-	\$11,011,000	\$11,666,900
Moss Vale Sewerage Treatment Plant	-	-	\$12,856,100	-
Mittagong Sewerage Treatment Plant	-	-	-	\$6,925,700
Station Street Upgrade	\$3,884,000	-	-	-
Kirkham Road Pavement Upgrade	\$1,540,000	-	-	-
Civic Centre Rectification Works	\$2,000,000	-	-	-
Strategic Land Acquisitions	\$1,500,000	-	-	-
Bowral Cemetery	\$700,000	-	-	-
Moss Vale Cemetery	-	\$2,376,000	-	-
<b>Total – Proposed Borrowings</b>	<b>\$9,624,000</b>	<b>\$2,376,000</b>	<b>\$23,867,100</b>	<b>\$18,592,600</b>

It is important to note that in the 2019/20 financial year, Council will borrow \$5.740 million for projects which have been carried forward (revoted) from the 2018/19 Budget. These projects include the Civic Centre rectifications works, Kirkham Road pavement upgrade, Bowral cemetery improvements and strategic land acquisitions.

#### **2019/20 UNFUNDED PROJECTS AND SERVICES LIST**

The Unfunded Projects and Services List was introduced by Council as part of the 2016/17 Operational Plan and has been reviewed and readopted on an annual basis. As part of the 2019/20 Operational Plan, it is proposed that Council consider modifying the Unfunded Projects and Services List to only include unfunded infrastructure priorities.

This recommendation is primarily to ensure that the Unfunded Projects and Services List continues to play an important role in identifying funding gaps for infrastructure priorities across the region where a “whole of government approach” is required to provide a funding solution.

The amended list will include infrastructure priorities which have been identified through the Canberra Region Joint Organisation infrastructure working groups and through lobbying of the State and Federal Governments. It will also include the infrastructure priorities identified by Councillors in December 2018 which have not been able to be accommodated in the 2019/20 Budget.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



The Unfunded Infrastructure Priorities list is included as Appendix 4 within the draft 2019/20 Operational Plan.

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

In preparing the draft 2019/20 Operational Plan and Budget, consideration has been given to any changes which may impact Council's ability to meet the seven financial and asset management benchmarks which have been set by the NSW State Government to determine "Fit for the Future" councils.

### COMMUNICATION AND CONSULTATION

#### Community Engagement

The draft 2019/20 Operational Plan and Budget will be placed on public exhibition from 29 April to 27 May 2019.

#### Internal Communication and Consultation

Staff from all Council branches contributed to the development of the Operational Plan and Budget.

#### External Communication and Consultation

Nil

### SUSTAINABILITY ASSESSMENT

- **Environment**

Implementation of Council's Environment Strategy will continue and will target specific environmental improvement programs. The 2019/20 Budget includes environmental improvement works and projects funded through the Environment Levy totalling \$1.4 million. The Environment Levy is used to fund specific environmental projects which aim to address biodiversity conservation, river health, wetland improvements and sustainable living.

- **Social**

This report and the attached documents clearly articulate Council's commitment to working with partner agencies to enhance community wellbeing throughout the Shire.

- **Broader Economic Implications**

Council will continue to maintain its existing funding levels under the new delivery model for tourism and economic development.

- **Culture**

Council continues to fund cultural and indigenous programs. The draft 2019/20 Operational Plan includes Council's \$2.5 million five year commitment towards the proposed Regional Art Gallery.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

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



#### • Governance

The draft Operational Plan and the public exhibition of this draft document are aligned with the Integrated Planning and Reporting legislative framework and a commitment to improved governance.

#### COUNCIL BUDGET IMPLICATIONS

The draft 2019/20 Budget has been presented as a balanced budget. Details regarding the budget, including funding priorities are contained in the main section of this report.

#### RELATED COUNCIL POLICY

Community Engagement Policy

#### OPTIONS

The option available to Council is to endorse the draft 2019/20 Operational Plan and Budget for a 28 day public exhibition period from 29 April to 27 May 2019. This would enable Council to meet its legislative requirements to exhibit the draft Plan for 28 days, as well as allow time for Council to consider community feedback and adopt the final 2019/20 Operational Plan and Budget by 30 June 2019.

It should be noted that any other decision that would delay public exhibition would place Council in a position where it would not be meeting its legislated requirements.

#### CONCLUSION

The draft Operational Plan, Budget, Revenue Policy and Fees and Charges are part of Council's Integrated Planning and Reporting Framework. These documents have been compiled by Council as an annual response to the community's vision as outlined in the Community Strategic Plan, Wingecarribee 2031 and commitments made in the Delivery Program 2017-2021.

The exhibition invites the community to provide feedback on the draft documents. These documents are submitted to Council for approval to exhibit only.

#### ATTACHMENTS

1. Draft 2019-2020 Operational Plan - For Exhibition.pdf - *circulated under separate cover*
2. Draft 2019-2020 Fees and Charges - *circulated under separate cover*

## 13.2 DA 07/1004.01 Section 4.55 Modification - Change of Use From Transitional Group Home to Permanent Group Home - 15 Parmenter Court, Bowral

Reference: 04/1004.01  
Report Author: Development Assessment Planner  
Authoriser: Group Manager Planning, Development and Regulatory  
Services

Link to Community  
Strategic Plan: Empower our community to advance agreed priorities,  
address emerging issues and collaboratively explore new  
ideas to improve the Shire

### PURPOSE

#### **UPDATED ASSESSMENT REPORT**

*This assessment report supersedes the assessment report Agenda Item 13.3 of the Ordinary Council Meeting of 10 April, 2019.*

*This assessment report contains a review and assessment of the submissions made in response to the notification of the modification application. These submissions were not addressed in the previous report.*

The purpose of this report is to consider an application to modify Development Consent 2007/1004 which seeks to change the approved use of the site from a transitional group home to a permanent group home at Lot 109, DP1043085, 15 Parmenter Court, Bowral. This report is prepared for determination and recommends APPROVAL, with no change to the conditions of consent and a change to the description of the development only (**Attachment 1**).

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

1. **THAT** the resolution of Council MN156/19 passed by Council on 10 April 2019 be rescinded.
2. **THAT** the application to modify Development Consent 2007/1004 for a change of use to a permanent group home at Lot 109 DP 1043085, No 15 Parmenter Court, Bowral be APPROVED subject to the attached notice of consent as described in Attachment 1 to the report.



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**REPORT**

**BACKGROUND**

The site has operated as a “transitional group home” in accordance with Development Consent DA 07/1004 since December 2007.

The original Development consent DA 07/1004 was approved by a resolution of Council at the Ordinary Meeting of 7 November 2007 (Agenda Item SI-vEP2). The consent was granted for a “Respite Centre – community Facility” and the assessment report stated the proposal fit the definition of a “transitional group home” within State Environmental Planning Policy No.9 – Group Homes (SEPP 9). SEPP 9 has since been repealed.

The proposal included a plan of the dwelling indicating four bedrooms and a study room. The report indicated 4 on-site parking spaces existed.

There were 17 objections lodged in response to the original development application raising concerns with parking, traffic, noise, waste management and antisocial behaviour. The property history shows further complaints about the operation of the premises have been limited to a single neighbour and that these matters are adequately addressed in existing conditions of consent.

**REPORT**

**Subject Site**

The site is legally described as Lot 109 DP 1043085 with the street address of 15 Parmenter Court, Bowral.

The site area is approximately 855m<sup>2</sup>. The lot is approximately 21m wide. The existing dwelling has been used since 2007 as a ‘transitional group home’ (see ‘Development History’ section of this report).

The existing dwelling is single storey and hard stand parking and vehicle manoeuvring area with capacity for four (4) vehicles and accessible paths of travel are located within the front setback.

The site is flat. Landscaping is limited to small conventional shrubs within the site and small street trees in the footpath reserve. Photos of the site are provided below.

Photographs of the site and surrounds are included in Figures 1 to 4.



**(Attachment 2 – Location Photographs) Figure 1: Aerial photo of site and surrounds - site outlined red (Source: Nearmaps)**



**(Attachment 2) Figure 2: Site as viewed from the north west showing accessible entry porch and doorway**



(Attachment 2) Figure 3: Site as viewed from the south west showing car parking and hard stand areas within the front setback



(Attachment 2) Figure 4: Neighbouring battle-axe driveway adjacent to the northern boundary of the site and electricity sub station

### **Locality**

The site is located in a low density residential area and surrounded by detached dwellings most of which are single storey. The northern corner of the site is adjacent to an electricity substation and the north east boundary is adjacent to the battle-axe driveway of a neighbouring residential property which enhances separation from the dwelling to the north of the site.

### **Proposed Development**

The application seeks to modify the existing consent to change the description of the use of the site from ‘transitional group home’ to ‘permanent group home’. The applicant’s Statement of Environmental Effects notes that the modification does not change the site and dwelling in any way and does not change the number of people present on the site at any time.

The modification will not change the manner in which the site is used other than the overnight stays for people with a disability will be of longer duration rather than short term



respite stays. The Statement of Environmental Effects notes that the change is appropriate in response to changing trends in the demand for services since the introduction of the NDIS whereby demand for respite care has reduced locally and there has been an increased demand for long term supported accommodation.

### **Environmental Planning and Assessment Act, 1979**

The modification is a minor adjustment to the nature of the use of the site.

The previous approved use fitted the definition of a “*transitional group home*” as described above.

The proposed modified use is to fit the description of a “*permanent group home*” which is defined in the Standard Instrument and in State Environmental Planning Policy (Affordable Rental Housing) 2009 as detailed below.

The character and nature of the use and the intensity of the use of the site are fundamentally the same as that approved with the current consent. The proposal remains substantially the same development quantitatively and qualitatively and meets the requirements for a modification as set out in Section 4.55(1A).

### **State Environmental Planning Policies (SEPPs)**

The application has been considered with regard to the relevant provisions of applicable SEPPs, including:

- SEPP 55—Remediation of Land
- SEPP (Sydney Drinking Water Catchment) 2011
- SEPP (Affordable Rental Housing) 2009

### **State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. Council is satisfied that the land is not a site of possible contamination and the continued residential use will not result in risks to human health or the environment. Therefore, no further assessment of contamination is required.

### **State Environmental Planning Policy (Infrastructure) 2007 (“ISEPP”)**

ISEPP clause 57 effectively specifies that development for the purpose of health services facilities, which includes medical centres, is permitted with consent in Zone R2 Low Density Residential. Section 3.28 (1) (a) of the Environmental Planning and Assessment Act 1979 specifies that in the event of an inconsistency between a SEPP and a local environmental plan, there is a general presumption that the SEPP prevails. Permissibility under ISEPP’s provisions thus prevails in the event of a contrary provision of Wingecarribee Local Environmental Plan (WLEP) 2010. In short, the development’s medical centre component is permissible on the land with consent even though the purpose of a Medical Centre is a prohibited use under WLEP 2010.

### **State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)**

The proposed use as a permanent group home is subject to the provisions of the SEPP ARH.

The aims of the SEPP ARH relevant to this application are as follows:

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- “(a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation”*

The proposal is consistent with the aims of the Policy.

In accordance with this SEPP, the Disability Trust fits the definition of a “social housing provider” part (g) of the definition which is as follows:

*“social housing provider means any of the following:*

- (a) the Department of Human Services,*
- (b) the Land and Housing Corporation,*
- (c) a registered community housing provider,*
- (d) the Aboriginal Housing Office,*
- (e) a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998,*
- (f) a local government authority that provides affordable housing,*
- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants.”*

Division 7 to the SEPP ARH applies to Group Homes. The definition of a “permanent group home” is listed in clause 42 as follows:

*“permanent group home means a dwelling:*

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*

*but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.”*

Clause 42 includes Zone R2 Low Density Residential Zone as a prescribed zone.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Clause 43 to the SEPP ARH permits a permanent group home in Zone R2 only with consent. Clause 43 states as follows:

*“43 Development in prescribed zones*

*(1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out:*

*(a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or*

*(b) with consent in any other case.”*

Clause 45 allows a group home to be Complying Development subject to specific criteria including that the development does not result in the group home containing more than 10 bedrooms as well as criteria in Schedule 2 and Clauses 1.18(1)(h) and 1.19(1)(b). Complying development cannot be inconsistent with the requirements of any existing consent applying to the land and therefore this modification application supersedes the requirements of clause 45 and Schedule 2.

Clause 46 to the SEPP ARH states as follows:

*“46 Determination of development applications*

*(1) A consent authority must not:*

*(a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or*

*(b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.*

*(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.*

This report recommends the modification be approved and therefore Clause 46(1) does not apply. A permanent group home is permissible with consent in accordance with the SEPP ARH Clause 43 and therefore satisfies Clause 46(2). No other conditions of the existing consent DA 2007/1004 are recommended to be changed nor sought to be changed in accordance with this application. Therefore, the matter is consistent with clause 46(1)(b).

As the premises do not currently fit the definition of a “low rental building” the provisions of Part 3 to the SEPP ARH do not apply.

#### State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is located within the Warragamba Drinking Water Catchment. Compliance with the provisions of the SEPP and associated guidelines is therefore required to consider water quality. The proposed development satisfies the requirements of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 as there are no works and no activities which would have an impact on water quality and quantity in the catchment.

#### Local Environmental Plans

##### Wingecarribee Local Environmental Plan 2010 (the LEP)

The provisions of the SEPP ARH (detailed above) prevail over the provisions of WLEP 2010 to the extent that there is any inconsistency.

The application has been considered with regard to the LEP’s relevant provisions, including:



- Clause 2.3—Zone objectives and Land Use Table

Clause 2.3 Zone objectives and land use table

WLEP 2010 applies Zone R2 Low density residential to the site. Group homes are permitted with consent in Zone R2.

The objectives for all development in Zone R2 are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents”*

The proposal is consistent with the first objective by providing housing that is compatible with the low density environment and which meets the needs of the community. The second objective is not applicable.

As there are to be no changes to the built structure on the site the development standards for height of buildings and floor space ratio do not apply to the assessment of the application. Notwithstanding the existing building complies with these development standards.

Clause 7.10 applies to development in Zone R2 and states development consent must not be granted unless essential services are available or that adequate arrangements have been made for essential services. No changes are required to the existing essential services currently connected to the site and these are satisfactory to support the proposed use. Therefore, the proposal is consistent with Clause 7.10.

In summary the proposal is consistent with the relevant requirements of WLEP 2010.

**Development Control Plans**

Bowral Town Plan Development Control Plan (the DCP)

The original development application was lodged prior to the adopted version of Bowral Township Development Control Plan. The current DCP was originally adopted 10 March 2010 and became effective from 16 June 2010.

In the interest of abundant caution this assessment report provides the following check with respect to the relevant provisions of the DCP. Objectives and controls that are not relevant to the application have been omitted from this assessment checklist.

The application has been considered with regard to the DCP's applicable provisions, including:

- Part A—Provisions applicable to all land
  - Section 2—General objectives
    - A2.2—Objectives of this Plan
      - A2.2.1 – Economic Function
      - A2.2.4 Residential Amenity
      - A2.2.5 – Residential Diversity
      - A2.2.6 – Visual Amenity
      - A2.2.8 – Environmental Sustainability
      - A2.2.9 – Public Domain

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- Section 8 – Safer by Design
- Part C—Provisions applicable to residential zoned land
  - Section 1.2—Overall objectives
  - Section 4 – Other forms of residential development

The proposed development satisfies the requirements under each of the sections mentioned above. Provided below are comments in relation to certain sections where more detailed assessment comments are provided.

The development site is within the mapped land subject to the Bowral DCP. An assessment of the proposal against the relevant sections of the DCP follows:

#### *Part A Section 2.2 Objectives of the Plan*

The proposal maintains the economic and urban function of the town centre being a residential use of an existing dwelling that will not impact on the surrounding properties and will generate activities that support the local town socially and economically.

#### *Part A Section 2.2.1 Economic Function*

*Objectives:*

- (a) Enhance the role of Bowral within the overall economic structure of Wingecarribee Shire.*
- (b) Recognise and enhance the role of Bowral as an important retail and service centre providing for the needs of the surrounding community and visitors to the region.*
- (c) Recognise and enhance the role of Bowral as an important employment generator*
- (d) Encourage appropriate site amalgamation and redevelopment to provide a range of business and retail opportunities throughout the town.*

The proposal supports residential use of an existing dwelling as well as supportive employment. Residents and staff are expected to patronise local services and facilities in Bowral to support local economic function.

#### *Part A Section 2.2.2 Urban Function*

*Objectives:*

- (a) Improvement of traffic and parking management within the town.*
- (b) Minimisation of vehicular and pedestrian conflicts*
- (c) Provision of a safe and accessible network of pedestrian links throughout the town.*
- (d) Improvement of connections to public transport facilities*

The Statement of Environmental Effects indicates residents will continue to be provided with transport services in the form of a shared 8-seater passenger vehicle for transport to local services and facilities. This shared transport will make efficient use of existing traffic and parking facilities in the local area and result in no change to the pattern of traffic generation currently characteristic of the site. Adequate space is provided within the front setback of the site for parking and manoeuvring to protect the safe movement of vehicles and pedestrians in adjoining road and footpath reserves.





*Part A Section 2.2.4 Residential Amenity*

*Objectives:*

- (a) Conserve the unique characteristics of existing residential areas of the Bowral township*
- (b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character*
- (c) Ensure that residential development includes sustainable principles such as energy and water efficiency, using sustainable building products where ever possible.*
- (d) Contribute to the enhancement of the urban amenity*
- (e) Ensure that there is no light spill from any new development which would adversely impact on surrounding residents, including diminishment of the night sky experience*

The modification will not substantially change the character and nature of the current use which has been previously assessed as compatible with the residential locality. Existing conditions of consent are considered appropriate. There is no substantiated history of use of the site in a manner which has been contrary to the character and amenity of the neighbourhood as recorded in the historic and operational files related to the site. No additional conditions are considered necessary and no conditions can be imposed specific to the use as a group home as determined by clause 46(1)(b) to the SEPP ARH.

*Part A Section 2.2.5 Residential Diversity*

*Objectives:*

- (a) Promote a mix of housing types to increase residential choice within the town, particularly around bus and rail connections.*
- (b) Encourage appropriate site amalgamation and redevelopment to provide a range of residential opportunities throughout the town*

Amalgamation is not required. The proposal maintains diversity of residential accommodation in the locality and meets a social need in the community.

*Part A Section 2.2.6 Visual Amenity*

*Objectives:*

- (a) Demonstrate an appreciation of the existing streetscape*
- (b) Enhance the character of individual streets within the town through appropriate built form design.*
- (c) Provide areas of private open space which can make a positive contribution to the overall visual amenity of the locality*

There will be no change to the external appearance of the site and therefore no change to the visual amenity. The site is not conspicuous by its use and suitably blends with the streetscape.

*Part A Section 3 – Biodiversity*

No works are proposed. No detrimental impacts.

*Part A Section 4 - Water Management*

No works are proposed. No detrimental impacts.



*Part A Section 6 – Vegetation Management and Landscaping*

No works are proposed. No improvements are necessary. No detrimental impacts.

*Part A Section 8 Safer by Design*

The site is to be used for residential purposes. Assistance and care staff will be present on site at all times. The presence of trained staff is considered adequate for the ongoing safe management and operation of the premises in a manner consistent with CPTED Principles. The setout of the space, access and paths of travel for people with a disability and sufficient on-site parking are acceptable.

*Part C Residential Zoned Land*

*Part C 1.2 Overall Objectives*

- (a) Conservation of the unique characteristics of the residential areas of Bowral, particularly in the case of the identified Conservation Areas*
- (b) New residential development which is sympathetic with existing streetscapes and neighbourhood character*
- (c) New residential development that is energy efficient, provides good amenity, and is safe and attractive*
- (d) Residential development which meets the needs of a range of community and demographic types, including smaller households, older people, people with a disability or people requiring group accommodation*

The modification will have no impact on heritage items and heritage conservation areas. The proposal is consistent with Objective (d) in particular by providing a form of residential accommodation which meets the special and diverse needs of the community.

*Section 4 – Other forms of residential development*

*Part C 4.1 Introduction*

The Introduction notes Group Homes are permissible with consent in Zone R2.

*Part C4.2 Objectives*

- (i) To provide a range of housing types throughout Bowral*
- (ii) To provide a greater range of affordable housing options*
- (iii) To ensure the location of affordable accommodation is close to transport, shops and services*
- (iv) To integrate new development into established areas by maintaining streetscape and building quality*
- (v) To ensure new development preserves the quality of the built environment for all existing and future residents*
- (vi) To encourage development of a high standard of architectural merit and design*
- (vii) To ensure that new residential development provides appropriate private open space for residents.*

The modification is consistent with the abovementioned objectives in that it will provide a variety of housing which adds to the diversity of residential accommodation in Bowral. The group home is a form of affordable accommodation and whilst it is not within walking distance to the commercial town centre – the daily operation of the premises includes shared transport with an 8-seater passenger vehicle which is considered highly appropriate to the

circumstances. The group home is compatible with the residential setting and streetscape and the location of private recreational open space is compatible with the pattern of private open space areas and driveway spaces of surrounding residential properties.

Overall the modification is consistent with the relevant objectives and controls to the Bowral DCP.

### **Section 4.15 Evaluation**

#### *(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

The application has been considered with regard to the relevant provisions of applicable environmental planning instruments (SEPPs and the LEP), as discussed above.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Not applicable.

*(iii) any development control plan, and*

The application has been considered with regard to the relevant provisions of the applicable Bowral Town Plan Development Control Plan, as discussed above.

*(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable.

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Not applicable.

*(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

#### **Context and setting**

The modification results in no change to the context and setting of the site and no qualitative or quantitative change to the nature and intensity of the use of the site.



- (c) *the suitability of the site for the development,*

The site is suitable for a permanent group home as discussed above with regard to the provisions of SEPP ARH.

- (d) *any submissions made in accordance with this Act or the regulations,*

No submissions have been received.

- (e) *the public interest.*

On balance, the development is not considered contrary to any known federal, state or local government interests, nor any wider community interests. It is consistent with the relevant adopted planning provisions and therefore is in the public interest. Existing conditions of consent adequately address issues of neighborhood amenity and compatibility.

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

Relationship to Operational Plan 2018–19: OP181 Assess and certify applications related to development.

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### **COMMUNICATION AND CONSULTATION**

#### **Community Engagement**

The development application was Neighbour Notified between 8 June 2018 and 4 July 2018. A total of six (6) submissions were received.

One (1) submission included three (3) signatures of three (3) residents. Two (2) separate submissions were made by the same person. The following is a summary of the issues raised in submissions that are relevant to the assessment of the development application in accordance with the matters for consideration in the EP&A Act, 1979. Each issue is addressed with assessment comments. In consideration of, and responding to, the issues raised it is relevant to note Clause 46(2)(b) to the SEPP ARH which states as follows:

*"46 Determination of development applications*

- (1) *A consent authority must not:*

- (a) *refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or*
- (b) *impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.*

- (2) *This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument."*

*Issue: Historic breaches of existing development consent*

Assessment Comment: This matter has been resolved in previous correspondence with Council.

*Issue: Matters listed in the Environmental Planning and Assessment Act, 1979 (the Act) were not addressed in the development application.*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Assessment Comment: All relevant matters listed in the EP&A Act, 1979 have been addressed in this assessment report.

*Issue: Inconsistent with Objective (b) to Zone Residential "A"*

Assessment Comment: The submissions refer to an objective which no longer applies to the current zoning of the land. The proposal has been assessed as consistent with the relevant objectives of Zone R2 Low Density Residential as detailed above.

*Issue: Antisocial behaviour of residents and staff towards neighbouring residents*

Assessment Comment: Of the issues listed in the submissions, all are civil matters with the exception of concerns regarding the safe movement of vehicles. The driveway crossing, safe sight distances for movement of vehicles to and from the site and the provision of on-site parking and manoeuvring have been assessed with this application. All provisions have been found to be adequate to cater for traffic and parking demands of the proposal and the conditions of the site and the adjoining public road reserve.

*Issue: Residents have moved away from the locality due to the detrimental impacts to quality of life.*

Assessment comment: Noted. Existing conditions of development consent regarding the amenity of the neighbourhood are to remain.

*Issue: Potential confusion as to the nature of the proposed modification and applicant details.*

Assessment Comment: The description of the modification is clarified in this report and is contained in the information lodged with the application including the development application form.

*Issue: The site is not a suitable location for the proposal*

Assessment Comment: This assessment concludes the site is suitable for the proposed use as modified in accordance with the recommended conditions of consent and that the use is compliant with the relevant planning provisions.

*Issue: Concern the intensity of the use will increase in the future*

Assessment Comment: There is no intensification of the current capacity of the facility. The development consent relates specifically to the proposed use and the existing building. A proposed increase in the capacity of the premises would require a future application to modify the consent. This would be subject to a future assessment process.

*Issue: Concern regarding the date of receipt of notification letters being after the commencement of the notification period.*

Assessment Comment: The application was notified in accordance with Council's adopted notification policy and procedures

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

The application did not require internal referral.

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

The application did not require referral to any external authority.



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### **Pre-lodgement Meeting**

The development was not discussed at any formal pre-lodgement meeting with Council officers.

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### **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

The development supports the need for supplying appropriate housing for people in the community with particular needs.

- **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**

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time; standard wording
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.



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## **RELATED COUNCIL POLICY**

An assessment of the proposal has been made against the Wingecarribee Local Environmental Plan 2010, applicable state environmental planning policies, and the Bowral Town Plan Development Control Plan. **OPTIONS**

The options available to Council are:

### **Option 1**

Determine the Modification Application 07/1004.01 to modify Application 07/1004 by granting consent subject to the recommended Conditions of Consent as specified in **Attachment 1**.

### **Option 2**

Refuse the Modification Application 07/1004.01 to modify Application 07/1004 and provide reasons for Council's determination.

Option 1 is the recommended option to this report.

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## **CONCLUSION**

Provided that the description of the approved development is modified to a 'permanent group home', the modification is considered satisfactory with respect to the relevant provisions of applicable environmental planning instruments, development control plans and Council policies, and is not expected to have a significant negative impact on the environment or the character and amenity of the locality.

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## **ATTACHMENTS**

1. 07/1004.01 Draft Recommended Conditions of Consent
2. 07/1004.01 Locality Map & Aerial Image



24 April 2019

The Disability Trust  
PO Box 395  
FAIRY MEADOW NSW 2519

## NOTICE OF DETERMINATION OF A MODIFICATION TO A DEVELOPMENT APPLICATION

Pursuant to section 80(1) and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979

<b>APPLICATION NO:</b>	2007/1004.01
<b>APPLICANT:</b>	The Disability Trust
<b>OWNER:</b>	The Disability Trust
<b>PROPERTY DESCRIPTION:</b>	Lot 109 DP 1043085
<b>PROPERTY ADDRESS:</b>	15 Parmerter Court, BOWRAL NSW 2576
<b>PROPOSED DEVELOPMENT:</b>	Permanent Group Home
<b>DETERMINATION:</b>	Determined by granting of CONSENT.
<b>CONSENT TO OPERATE FROM:</b>	24 April 2019
<b>CONSENT TO LAPSE ON:</b>	24 April 2024 (if use not commenced prior)

### Rights of Appeal

If you are dissatisfied with the determination of Council (including determination of a review under section 82A of the *Environmental Planning and Assessment Act 1979*) you may appeal to the New South Wales Land and Environment Court within 6 months after the date on which you receive the notice of determination or review, if your application was lodged after 27<sup>th</sup> February 2011. Otherwise the appeal period is 12 months after the date in which you receive this notice.

### Review of Determination

You have the right to request a review of determination under section 82A of the *Environmental Planning and Assessment Act 1979*, provided that this determination is not made with respect to an integrated development. The determination cannot be reviewed after the time limit for making an appeal to the Land and Environment Court expires or after an appeal to the is disposed of by the court.

Nicholas Wilton  
Group Manager  
Planning, Development and Regulatory

10 April 2019  
Date of Determination





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Services

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**SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT**

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**ADMINISTRATION CONDITIONS**

**1. Development Description**

Purpose of Development: **Permanent Group Home** - in accordance with plans prepared by Devine Pioneer, Plan Nos 251076 dated 17 September 2002, 1/6 and 251076 dated 21 June 2002, 2/6 except where amended by any conditions below.

The conditions of the consent and reasons for their imposition follow:

**GENERAL - DEVELOPMENT CONSENT CONDITIONS**

**2. Compliance**

The **Permanent Group Home** is to operate in accordance with the approved plans and documentation submitted with the application and subject to the conditions below, to ensure the development is consistent with Council's consent.

**3. Inspections by the Principal Certifying Authority - Mandatory Critical Stage Inspections**

24 hours prior to the covering of the following works, the principal certifying authority appointed pursuant to Section 81(2)(b) of the *Environmental Planning and Assessment Act 1979* shall be notified that works are ready for inspection. (Note that all inspections below must be booked in and those in **bold type** are mandatory critical stage inspections under the Act and must be carried out by the Principal Certifying Authority. If these inspections are not carried out by the Principal Certifying Authority an Occupation Certificate cannot be issued.)

**General compliance with plans and conditions of DA and Construction Certificate (if any) will be checked during each inspection (on-site facilities including builder's toilet, erosion control measures and shoring).**

**(a) Final inspection prior to use of the building;**

The above listed works may not be covered until approval is obtained from the Principal Certifying Authority or his/her duly appointed delegate.

**4. Use not to Commence**

The approved use is not to commence until the proposed development has been completed in accordance with this consent and any other Council approvals which may be required, and a final inspection carried out and approved by Council staff.

**13.2 DA 07/1004.01 Section 4.55 Modification - Change of Use From  
Transitional Group Home to Permanent Group Home - 15  
Parmenter Court, Bowral**  
**ATTACHMENT 1 07/1004.01 Draft Recommended Conditions of  
Consent**



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**5. Building Works**

No building works or structural alterations are approved by this development application.

**6. Number of Residents**

The maximum number of residents on the premises at any one time shall not exceed five (5) persons.

**7. Advertising Structure**

**BEFORE ANY ADVERTISING STRUCTURE IS ERECTED / DISPLAYED** the written approval of Council shall first be obtained. (The form of such application should be discussed with Council staff before it is lodged.)

Council advises that signage shall be assessed against Development Control Plan No 33.

NOTE: No further Council consent is required for a sign located in shop windows or doors that meets Council's "Exempt Development" criteria in Wingecarribee Local Environmental Plan 1989.

**8. Occupation Certificate**

The building, or part of the building, shall not be occupied or used until such time as an Occupation Certificate has been issued in respect of it.

**9. Fire Safety Issues**

- (a) A fire blanket, fire extinguisher and for fire/heat detector shall be installed in the kitchen.
- (b) Deadlocks requiring an internal key release shall not be provided on guests or external doors.
- (c) Smoke Detection and Alarm System - Class 1(b) Dwellings

An approved smoke detection alarm system and evacuation lighting must be installed and maintained in the dwelling in accordance with Part 3.7.2.4 and 3.7.2.5 of the Housing Provisions, Building Code of Australia. For your information the following will satisfy the above:-

- (a) A smoke detector with battery backup and wired to mains power where available, must be located on or near the ceiling:-
  - (i) in every bedroom; and
  - (ii) in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and
  - (iii) on each storey.

**13.2 DA 07/1004.01 Section 4.55 Modification - Change of Use From  
Transitional Group Home to Permanent Group Home - 15  
Parmenter Court, Bowral**  
**ATTACHMENT 1 07/1004.01 Draft Recommended Conditions of  
Consent**



- (b) A system of lighting must be installed to assist evacuation of occupants in the event of a fire; and
  - (i) be activated by the required smoke alarm; and
  - (ii) consist of:-
    - A. a light incorporated within the smoke alarm; or
    - B. the lighting located in the corridor, hallway or area served by the smoke alarm.

**END OF CONDITIONS**

NOTES / ADVISORY MATTERS:

1. The approval granted by the Council does NOT consider nor negate or vary any private easement, covenant or restriction. The owner is advised to investigate any encumbrance or restriction that may be noted on the title to the land.

2. Review of Determination

In accordance with the provisions of section 8.2 to 8.5 inclusive of the *Environmental Planning and Assessment Act 1979* (as amended) the applicant can request Council to review this determination. The request shall be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.

3. Right of Appeal

Sections 8.7 and 8.10 of the *Environmental Planning and Assessment Act 1979* gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Sections 8.7 and 8.10 do not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.



(Attachment 2) Figure 1: Aerial photo of site and surrounds - site outlined red (Source: Nearmaps)



(Attachment 2) Figure 2: Site as viewed from the north west showing accessible entry porch and doorway



Figure 3: Site as viewed from the south west showing car parking and hard stand areas within the front setback



Figure 4: Neighbouring battle-axe driveway adjacent to the northern boundary of the site and electricity sub station

### 13.3 DA19/1311 - Use of Land and Carrying out of Works for the Purpose of a Restaurant or Cafe, lot 2 DP1014065, 61-63 Main Street, Mittagong

Reference:	19/1311
Report Author:	Senior Development Assessment Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
Applicant:	Siam Confort Pty Ltd
Owner:	Southern Highlands Properties Pty Ltd
Link to Community Strategic Plan:	Work collaboratively to improve and revitalise town and village centres throughout the Shire

#### PURPOSE

This report details assessment of development application 19/1311 under section 4.15 (1) of the Environmental Planning and Assessment Act 1979, and recommends the Council determine the application by granting conditional consent. The application is reported to Council for determination as a Councillor is a Director of the Company that owns the property.

#### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

#### RECOMMENDATION

**THAT** development application 19/1311 for a proposed restaurant or café at Lot 2 DP1014065, No 61-63 Main Street, Mittagong be **APPROVED** subject to conditions as described in Attachment 1 to the report.

#### REPORT

##### Subject Site and Locality

**Figures 1 and 2** illustrate the land's location and general layout (see also **Attachments 2 and 3**). It is a developed 1135m<sup>2</sup> commercial lot on the northwestern side of Main Street and the western side of Alice Street in the Mittagong town centre. It is accessible by vehicle from Alice Street, and pedestrian-only access is available from Main Street.



Figure 1: Locality map



Figure 2: Aerial image

The land is occupied by a single storey commercial building and vehicle manoeuvring, parking and loading/unloading facilities located at the rear. The commercial building comprises multiple tenancies, most of which are occupied by various business premises and retail premises. The subject application relates to the vacant easternmost tenancy, adjacent to the intersection of Main and Alice Streets.

Surrounding properties are generally occupied by commercial premises.





### **Proposed Development**

**Attachment 4** illustrates the proposed development plans. The application seeks consent to carry out works and use the easternmost tenancy on the land (tenancy 6) for the purpose of a restaurant or café.

The application is accompanied by a statement of environmental effects that describes the proposed development as a Thai Cuisine Café, and indicates proposed hours of operation from 6:00am to 3:00pm and 5:00pm to 10:00pm, seven days per week.

No indication is given of any proposed signage associated with the proposed development, so recommended consent **condition 33** specifies Council's consent does not permit erection or display of any signage other than specified by an environmental planning instrument as not requiring consent.

## **STATUTORY PROVISIONS**

### **State Environmental Planning Policies**

The application is considered satisfactory with regard to the relevant provisions of applicable SEPPs, including:

- SEPP 55—Remediation of Land
- SEPP (Infrastructure) 2007
- SEPP (Sydney Drinking Water Catchment) 2011.

#### **SEPP 55—Remediation of Land**

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 effectively specifies Council must not grant consent for the proposed development unless it has considered whether the land requires remediation to be rendered suitable for it. The land is considered unlikely to be significantly contaminated and is not considered to require remediation to be made suitable for the proposed development.

#### **SEPP (Infrastructure) 2007 (ISEPP)**

ISEPP aims to facilitate the effective delivery of infrastructure across the State. The land has frontage to Main Street, which at this location is a State classified road. As a result, ISEPP clause 101 (2) effectively specifies Council must not grant consent for the proposed development unless satisfied that:

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) *the design of the vehicular access to the land, or*
  - (ii) *the emission of smoke or dust from the development, or*
  - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Whilst the land has frontage to a classified road, it is accessible by vehicle via an existing access driveway from Alice Street, which is not a classified road. The proposed development is considered satisfactory with respect to ISEPP clause 101.

#### SEPP (Sydney Drinking Water Catchment) 2011 (the Catchment SEPP)

The Catchment SEPP aims to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, require new development to have a neutral or beneficial effect on water quality, and support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.

The proposed development involves no external works. Provided it is carried out in accordance with recommended consent conditions, it is not expected to have any impact on water quality in the Sydney drinking water catchment.

#### Local Environmental Plans

##### Wingecarribee Local Environmental Plan 2010

The application is considered satisfactory with regard to the LEP's relevant provisions, including:

- Clause 1.2—Aims of Plan
- Clause 1.4—Definitions
- Clause 2.3—Zone objectives and Land Use Table
- Clause 5.10—Heritage conservation
- Clause 7.9—Flood planning.

##### Clause 1.2—Aims of Plan

The proposed development is considered satisfactory with respect to the LEP's aims.

##### Clause 1.4—Definitions

The proposed development comprises use of land and carrying out of works for the purpose of a restaurant or café as defined:

***restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.*

##### Clause 2.3—Zone objectives and Land Use Table

The land is in Zone B2 Local Centre, and the Land Use Table specifies development for the purpose of restaurants or cafés is permitted with consent in Zone B2.

##### Clause 5.10—Heritage conservation

The land is in the Mittagong Heritage Conservation Area. With respect to clause 5.10, the proposed development does not involve any external works and is not expected to have any significant heritage impact.

Clause 7.9—Flood planning

The proposed development does not involve any external works and is not expected to have any significant impact with respect to flood planning.

**Development Control Plans**

Mittagong Town Plan Development Control Plan (the DCP)

The application is considered satisfactory with regard to the DCP's relevant provisions.

Importantly, section B8.3 (f), relating to Mittagong's Commercial Core heritage precinct, specifies, "With regard to restaurants fronting Main Street, Council will not require the provision of any car parking because restaurants mainly operate of an evening or weekends when ample car parking in Main Street is available".

Given the size of the premises, it is not expected to generate any excessive parking demands.

**Section 4.15 Evaluation**

(1) *Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

(a) *the provisions of:*

(i) *any environmental planning instrument, and*

*It has been demonstrated the DA complies with the Wingecarribee Local Environmental Plan 2010.*

(ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*Not applicable.*

(iii) *any development control plan, and*

*It has been demonstrated the proposed development satisfactorily complies with the relevant controls.*

(iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

*Not applicable.*

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

*Not applicable.*

(v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*



Not applicable.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The proposed development is not expected to have any significant negative impact on the environment or the character and amenity of the locality.

- (c) *the suitability of the site for the development,*

No site attributes are considered to render the land unsuitable for the proposed development.

- (d) *any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.

- (e) *the public interest.*

There is not considered to be any overriding public interest against granting consent for the proposed development.

## **CONSULTATION**

### **Pre-lodgement Meeting**

No formal pre-lodgement meeting was held with Council officers regarding the proposed development.

### **External Referrals**

No external referrals were necessary for Council's informed determination of the application.

### **Internal Referrals**

<b>Referrals</b>	<b>Advice/Response/Conditions</b>
Accredited Certifiers	No objection, subject to recommended conditions of consent.
Development Engineers	No objection.
Environmental Health Officer	No objection, subject to recommended conditions of consent.
Trade Waste Officer	No objection, subject to recommended conditions of consent.

### **Neighbour Notification (or Advertising)/Public Participation**

The application was not required to be advertised or notified. No submissions were received regarding the application.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

Provided recommended consent conditions are complied with, there are no expected environmental impacts 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**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 79C of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

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## **RELATIONSHIP TO CORPORATE PLANS**

Operational Plan 2018 – 2019: OP181 Assess and certify applications related to development.

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## **COUNCIL BUDGET IMPLICATIONS**

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.



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## **RELATED COUNCIL POLICY**

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010* and the Mittagong Town Plan Development Control Plan.

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## **OPTIONS**

The options available to Council are:

### **Option 1**

Determine development application 19/1311 by granting consent, subject to the conditions specified in **Attachment 1**

### **Option 2**

Determine development application 19/1311 by refusing consent, and specify the reasons for refusal.

Option 1 is the recommended option to this report.

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## **CONCLUSION**

Provided recommended conditions of consent are complied with, the proposed development is considered satisfactory with respect to the relevant provisions of applicable environmental planning instruments, development control plans and Council policies, and is not expected to have any significant negative impact on the environment or the character and amenity of the locality.

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## **ATTACHMENTS**

1. Draft Conditions of Development Consent
2. Locality Map
3. Aerial Image
4. Proposed Development Drawings



**DRAFT CONDITIONS OF DEVELOPMENT CONSENT**

**ADMINISTRATION CONDITIONS**

**1. Development Description**

Development consent has been granted in accordance with this notice of determination for development for the purpose of a *restaurant or café* as defined by Wingecarribee Local Environmental Plan 2010:

*restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.*

**Reason:** *To confirm the use of the approved development.*

**2. Development in Accordance with Plans and Documents**

Except where otherwise specified by conditions of consent, the development shall be carried out in accordance with the information accompanying the development application and the stamped consent drawings set out in the following table, including any notations or amendments made by Council in red.

Drawing Title	Reference	Prepared By	Dated
Untitled	WSC01	Unknown	Undated (received by Council 18 March 2019)
Untitled	WSC02	Unknown	Undated
Untitled	A-02	Unknown	Undated (received by Council 18 March 2019)

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation.*

**3. Inconsistency between documents**

In the event of any inconsistency between the conditions of this consent and the drawings/documents referred to above, the conditions of this consent shall prevail to the extent of the inconsistency.

**Reason:** *To ensure that the development is undertaken in accordance with the submitted plans and documents (as amended).*

**4. Compliance with Building Code of Australia**

That the work must be carried out in accordance with the requirements of the National Construction Code.

**Reason:** *The condition is prescribed under clause 98 of the Environmental Planning and Assessment Regulation 2000.*

**5. Compliance with Disability Discrimination Act 1992**

This approval does not protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability Discrimination Act 1992*, and the



applicant/owner is therefore advised to investigate their liability under this Act.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 -As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

**6. Application for a Construction Certificate (Building Works)**

The applicant shall apply to Council or an Accredited Certifier for a Construction Certificate to carry out the relevant building works in accordance with this consent. The details to be included in the application for a Construction Certificate are:

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.
- (b) If Council or a private accredited certifier issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.
- (e) Disabled access provisions to common and public areas in accordance with AS1428 Design for Access and Mobility and the Premises Code.
- (f) If an alternative solution to the “deemed to satisfy” provisions of National Construction Code is proposed, the following details must be lodged:
  - Performance requirements that the alternative solution intends to meet.
  - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
  - A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body

**Reason:** *A requirement under the provisions of the Environmental Planning and Assessment Act 1979.*

**Note:** *Construction work may only commence upon the issue of a Construction*



13.3 DA19/1311 - Use of Land and Carrying out of Works for the Purpose of a Restaurant or Cafe, lot 2 DP1014065, 61-63 Main Street, Mittagong  
 ATTACHMENT 1 Draft Conditions of Development Consent



*Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.*

**Note:** *Please note that if demolition works forms part of the extent of works approved in the same application, then demolition must not commence prior to the issue of a Construction Certificate.*

7. **Appointment of Principal Certifying Authority**

No work shall commence in connection with this Development Consent until:

- (a) A Construction certificate for the building work has been issued by:
  - (i) the consent authority; or
  - (ii) an accredited certifier; and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the Council of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the principal certifying authority of such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Reason:** *To ensure that there is certainty as to the consent applying to the land.*

8. **Access for People with Disabilities**

Access for people with disabilities shall be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the *Disability Discrimination Act 1992*.

Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May*



*2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

**Reason:** *To inform of relevant access requirements for persons with a disability.*

9. **Section 68 Local Government Act 1993 Approvals**

Prior to the issue of a Construction Certificate, application under section 68 of the *Local Government Act 1993* shall be made to, and favourably determined by, Wingecarribee Shire Council, for the following approvals:

- Water plumbing and sanitary drainage
- Dispose of waste into a Council sewer.

**Note:** *Council shall not grant any approval to dispose of waste into Council's sewer unless satisfied, by documents accompanying the application for approval, that:*

- (a) *Waste water from food preparation and cooking areas will pass through the existing 1500L grease arrestor before discharging to the sewer*
- (b) *All sinks and floor wastes in the food preparation and cooking areas will have dry basket arrestors installed*
- (c) *Appropriate backflow prevention device(s) will be installed at the premises' water meter and the tap servicing the grease arrestor.*

**Reason:** *A requirement under the provisions of the Local Government Act 1993.*

10. **Installation Requirements**

All sewer and water plumbing and drainage work shall be carried out by a licensed plumber. A Permit in accordance with the NSW Code of Practice Plumbing and Drainage is to be obtained from Council (as the local Water Supply Authority) for the work to be carried out prior to the issue of the Construction Certificate.

**Reason:** *To comply with legislation.*

11. **Sanitary Facility**

The Construction Certificate plans and specifications required to be submitted to the Certifying Authority pursuant to clause 139 of the *Environmental Planning and Assessment Regulation 2000* shall detail compliance with clause F4.9 of Volume 1 of the National Construction Code (NCC).

The Certifying Authority shall be satisfied that such work is implemented as part of the development prior to the issue of any Occupation Certificate.

**Reason:** *To ensure compliance with statutory requirements and health and amenity of occupants.*



**CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK**

**12. Notice of Commencement**

No work shall commence until a notice of commencement (form will be attached with issue of a Construction Certificate or available from Council's website is submitted) giving Council:

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;
- (b) Details of the appointment of a Principal Certifying Authority (either Wingecarribee Council or another Accredited Certifier)
- (c) Details of the name, address and licence details of the Builder.

**Reason:** *Statutory requirement.*

**Advice:** *Attached Notice of Commencement form to be completed.*

**13. Principal Certifying Authority Sign**

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifying Authority (PCA) by showing the name, address and telephone number of the PCA;
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

**Advice:** *Where Council is the PCA, signage is available from Council.*

**Reason:** *Statutory requirement.*

**14. Construction Certificate**

No work shall commence until a:

- (a) Construction Certificate is obtained from either the Wingecarribee Shire Council or an Accredited Certifier; and
- (b) Construction Certificate lodged with Council obtained from an Accredited Certifier (together with associated plans and documents) - a fee applies for this service.

**Reason** *Statutory requirement.*

**15. Developer to advise of damage to Council property**

The developer must advise Council of any damage to property controlled by Council which adjoins the site including kerbs, gutters, footpaths, walkways, reserves, street trees, drainage

13.3 DA19/1311 - Use of Land and Carrying out of Works for the Purpose of a Restaurant or Cafe, lot 2 DP1014065, 61-63 Main Street, Mittagong  
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pits and the like, prior to commencement of any work on the site. Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the developer/owners/proponents expense.

The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged grass verges, concrete footpath, kerb and gutter, street trees, drainage pits are to be carried out by the contractor/builder to Council's specification and supervision prior to occupation of the development.

**Reason:** *Public safety.*

**CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE**

16. **Prevention of Nuisance**

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris and noise during the carrying out of works in the development.

**Reason:** *Health and amenity.*

17. **Approved hours of Construction/Demolition**

The carrying out of works in the development shall be limited to the following hours:

DAY	HOURS
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil

**Reason:** *To ensure that the amenity of the surrounding area is not compromised as a result of the construction of the proposal.*

18. **Maintenance of the site**

All materials and equipment shall be stored wholly within the work site.

Waste materials generated in the carrying out of works in the development shall be managed on the site and then disposed of at a waste management facility.

At the completion of works, the work site shall be left clear of waste and debris.

**Reason:** *Environmental amenity.*

19. **Storage of Building Materials, Plant and Equipment**

All building materials, plant and equipment are to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and also so that the road reserve is not damaged.

No storage, or placing of any building materials to occur on adjacent public roads or footpath areas in association with the construction, maintenance or use of the development or site.

**Reason:** *To ensure that pedestrian and vehicular access in public places is not*



*restricted and also so that the road reserve is not damaged.*

20. **Protection of Public Places**

No adjoining or adjacent public area shall be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances.

If the carrying out of works in the development is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the closure of a public place, a barrier, fence or hoarding shall be erected prior to the commencement of any work subject to approval of a Section 138 Roads Act 1993 approval (including submission of a Traffic Management Plan).

Where a hoarding is required, an application for hoarding shall also be submitted to and approved by Council prior to commencement of any work. Hoardings shall be erected to comply with the requirements of WorkCover, the Principal Certifying Authority and with relevant Australian Standards.

**Reason:** *Public safety.*

21. **Waste Management**

The provision of a metal waste skip with self-closing lid or secure covering on-site for the duration of the works to ensure that all wastes are contained on the site. The receptacle shall be emptied periodically to reduce the potential for rubbish to leave the site.

Sorting of waste materials shall occur on site in accordance with the approved Waste Management Plan.

**Reason:** *To ensure that all wastes generated from the carrying out of works in the development are contained on the site.*

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN INTERIM OR FINAL OCCUPATION CERTIFICATE**

22. **Occupation Certificate**

In accordance with Section 6.9 of the *Environmental Planning and Assessment Act 1979*, an application for an Occupation Certificate, shall be made on completion of the works and the relevant application fee paid. All works specified in the development consent and approved Construction Certificate plans shall be completed and all development consent conditions complied with prior to the issue of the Occupation Certificate.

The Principal Certifying Authority (PCA) is required to be satisfied, amongst other things, that:

- All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- Any preconditions to the issue of the certificate required by a development consent have been met.

**Reason:** *To comply with the provisions of the Environmental Planning and Assessment Act 1979*

**Note:** *A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a new building (within the*

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 ATTACHMENT 1 Draft Conditions of Development Consent



*meaning of Section 6.10 of the Environmental Planning and Assessment Act 1979 unless an Occupation Certificate has been issued in relation to the building or part.*

23. **Completion Requirements**

All of the conditions of this consent shall be at no cost to Council and shall be completed prior to the issuing of an Occupation Certificate (unless stated otherwise).

**Reason:** *To ensure that the development is completed as per this consent and the approved plans.*

24. **Fire Safety Certificate**

A final Fire Safety Certificate shall be obtained in accordance with Part 9, Division 4 of the *Environmental Planning and Assessment (Amendment) Regulation 2000*, prior to the issue of the Occupation Certificate for the building.

A copy of the Fire Safety Certificate and Fire Safety Schedule shall be:

- Forwarded to Wingecarribee Shire Council;
- Forwarded to the Fire Commissioner; and
- Prominently displayed in the building.

**Reason:** *To ensure the safety of the building.*

25. **Food Shop Requirements**

Prior to the issue of the Occupation Certificate, the premise shall be set up and operated in accordance with the *Food Act*, the *Food Regulations* and the *Food Safety Standards*. The premise shall be fitted out in accordance with the Australian Standard AS4674 - 2004.

**Reason:** *Statutory requirement.*

26. **Food Premises - Final Inspection**

Prior to the issue of an Occupation Certificate, the food premises shall be inspected by Council's Environmental Health Officer to determine compliance with applicable food legislation.

**Reason:** *To ensure registration of the food premises.*

27. **Food Shop Notification Requirement:**

Occupation of the premises shall not occur until a notification form has been submitted to Council for the food business conducted on the premises.

Evidence of compliance of the above shall be submitted to Council prior to the issue of an Interim or Final Occupation Certificate and commencement of business.

**Reason:** *Registration and notification to relevant authorities*



**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

**28. Use not to Commence**

The approved use shall not commence until the proposed development has been completed in accordance with this consent and issue of any other Council approvals which may be required.

*Reason: To ensure that the use of the site is lawful.*

**29. Loading/Servicing**

All vehicular loading and unloading shall be carried out within the site to provide for safe off-street loading and unloading of vehicles servicing the site and to prevent interference with the use of the public road by vehicles and pedestrians.

*Reason: Public safety.*

**30. Noise Control**

The use of the premises shall not give rise to the transmission of offensive noise to any place of different occupancy.

*Reason: To prevent loss of amenity to the area.*

**31. Unobstructed driveways and parking areas**

All driveways and parking areas shall be unobstructed at all times.

Driveways and car spaces:

- (a) shall not be used for the manufacture, storage or display of goods, materials or any other equipment, and
- (b) shall be used solely for vehicular access and for the parking of vehicles associated with the use of the premises.

*Reason: To ensure that access is maintained.*

**32. Annual Fire Safety Statement**

Each year, the owner of a building to which an essential fire safety measure is applicable shall cause the Council to be given an annual fire safety statement for the building. Such a fire safety statement:

- (a) shall deal with each essential fire safety measure in the building premises; and
- (b) shall be given within twelve months after the last such statement was given, or it no such statement was given, within twelve months after a final fire safety certificate was first issued for the building.

As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:-

- (a) shall cause a copy of the certificate (together with a copy of the current fire safety

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Restaurant or Cafe, lot 2 DP1014065, 61-63 Main Street, Mittagong  
ATTACHMENT 1 Draft Conditions of Development Consent



schedule) to be given to the Commissioner of New South Wales Fire Brigades; and

- (b) shall cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be permanently displayed in the building.

**Reason:** *To ensure compliance with fire safety requirements.*

33. **Advertising Signs - Consent required**

Unless Exempt Development, before an advertising signage is erected/displayed development consent is required to be issued by Council.

**Reason:** *To comply with the provisions of the Wingecarribee Local Environmental Plan 2010.*

34. **Food Premises - General**

The construction and operation of the food premises shall comply with all applicable legislation/regulation and standards, including:

- The *Food Act 2003*
- Food Regulation 2004
- Food Standards Australia and New Zealand - Food Standards Code 2001
- Relevant Australian Standards for Design, Construction and Fit out of Food Premises
- Mechanical ventilation - Australian Standard 1668.2-2002

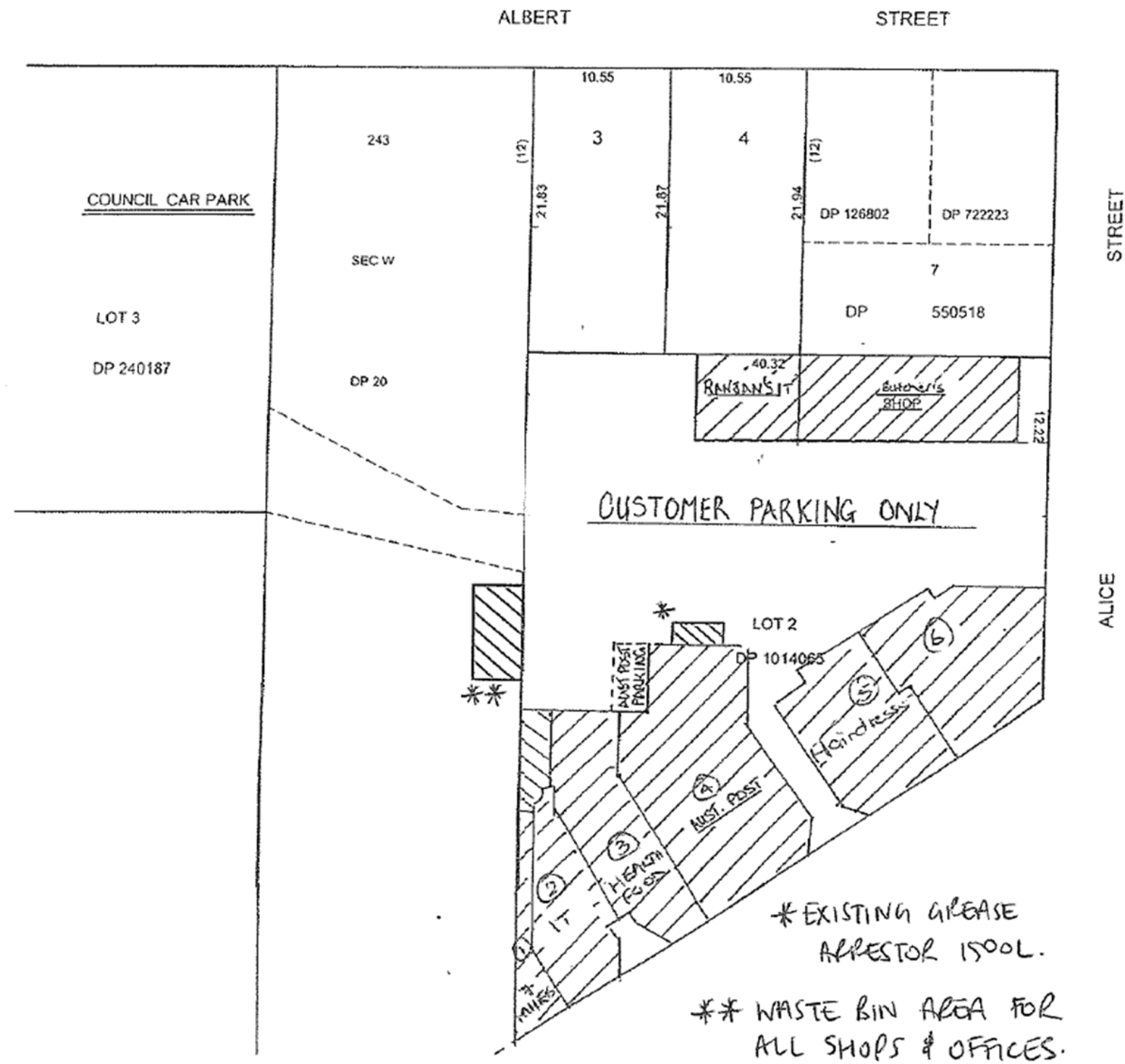
**Reason:** Compliance legislation and standards.

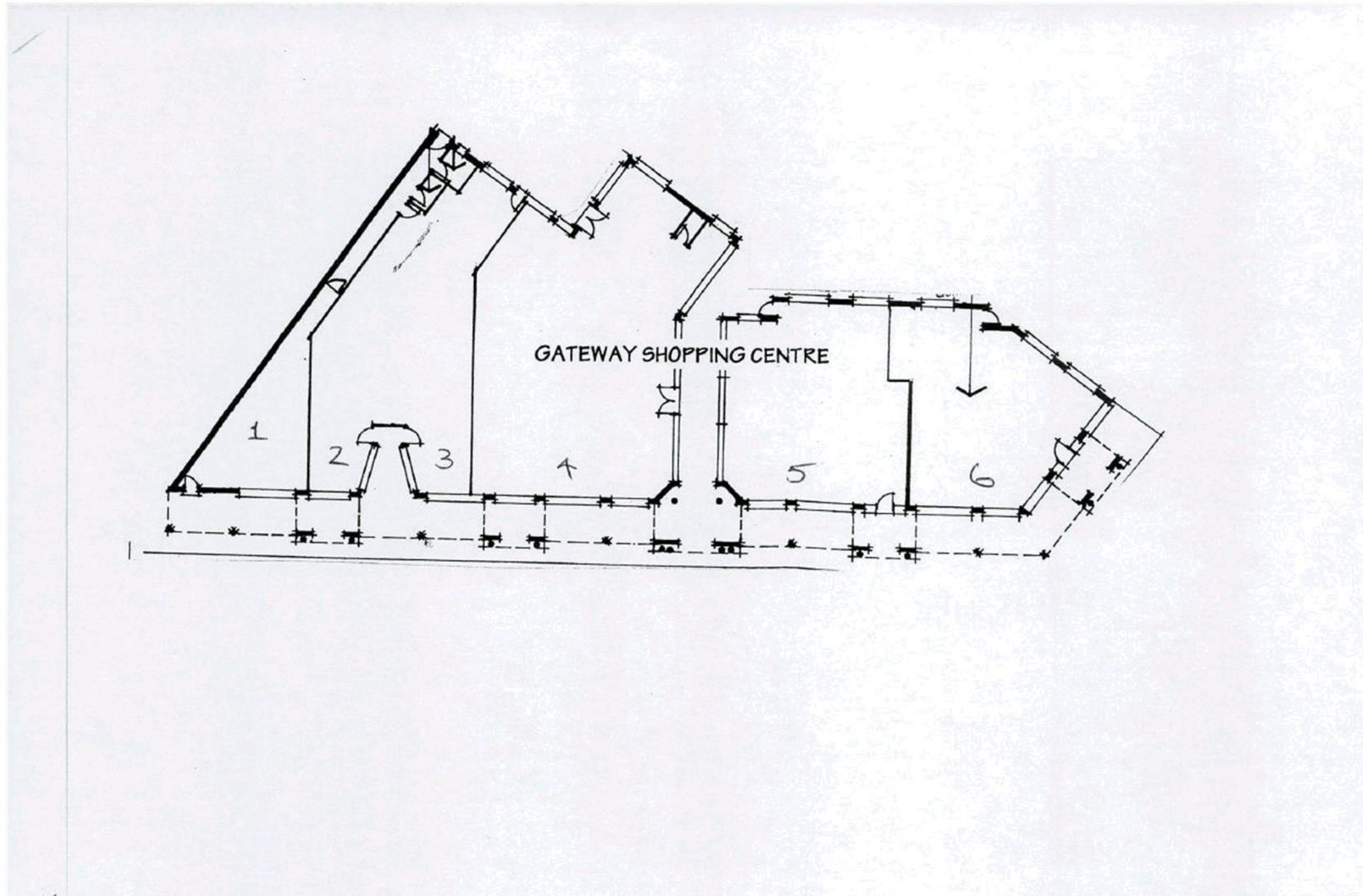
**END OF CONDITIONS**

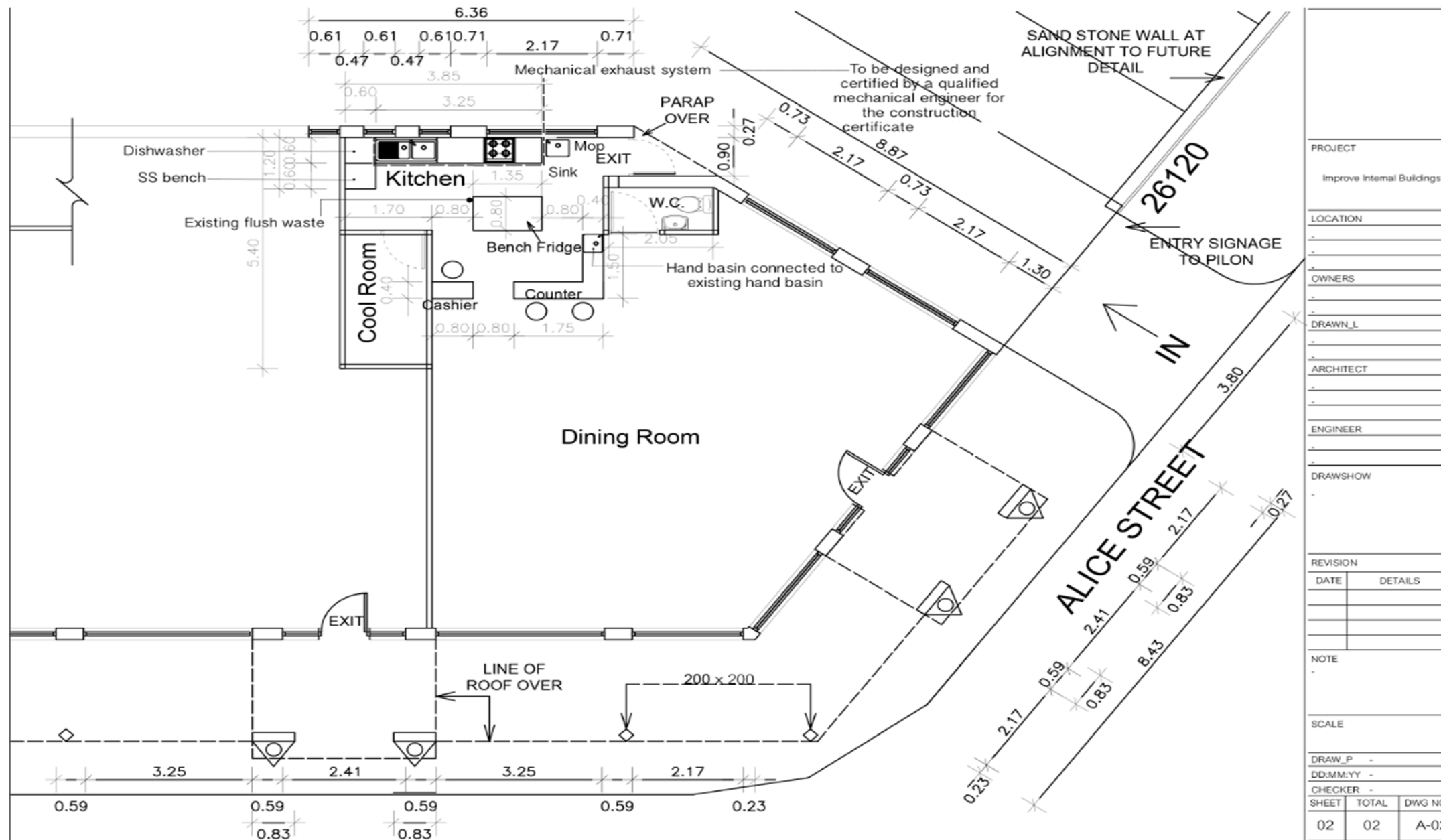












PROJECT		
Improve Internal Buildings		
LOCATION		
OWNERS		
DRAWN_L		
ARCHITECT		
ENGINEER		
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REVISION		
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## 13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

Reference:	PN1153100, 5901
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Identify and protect the unique characteristics of towns and villages to retain a sense of place

### PURPOSE

To consider a Planning Proposal to amend Wingecarribee Local Environmental Plan (WLEP) 2010 to rezone land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential and apply a minimum lot size of 700m<sup>2</sup>.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

1. **THAT the Planning Proposal to rezone land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential and apply a minimum lot size of 700m<sup>2</sup> NOT BE SUPPORTED.**
2. **THAT the proposed Strategic Study of the Garrett Street – Parkes Road - Lackey Road Moss Vale Precinct include the subject land.**

### REPORT

#### **BACKGROUND**

In November 2017 a Planning Proposal was lodged with Council by Lee Environmental Planning requesting that Council consider an amendment to WLEP 2010 to rezone the subject land at 18-20 Parkes Road, Moss Vale (Lots 1 and 2 DP627287) from IN2 Light Industrial to R2 Low Density Residential and apply a minimum lot size of 700m<sup>2</sup>. A copy of the Planning Proposal forms **Attachment 1** to this report.

Subsequently, in December 2017, a second Planning Proposal was lodged with Council by Lee Environmental Planning requesting that Council consider an amendment to WLEP 2010 to rezone 18-20 Parkes Road, Moss Vale to R3 Medium Density Residential, rather than R2

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Low Density Residential as originally requested. The December 2017 Planning Proposal effectively replaced the November 2017 one and it was reported to Council on 9 May 2018 at which time it was resolved as follows, noting that the December 2017 Proposal included three (3) adjoining properties as well as the subject land.

**MN 174/18**

**MOTION** moved by Cllr P W Nelson and seconded by Deputy Mayor I M Scandrett

1. ***THAT the Planning Proposal to rezone land at 18-22 Parkes Road, Moss Vale from IN2 Light Industrial to R3 Medium Density Residential and land at 23 and 31 Garrett Street, Moss Vale from R2 Low Density Residential to R3 Medium Density Residential NOT BE SUPPORTED.***
2. ***THAT a Strategic Study of this Precinct (Garrett Street – Parkes Road - Lackey Road Moss Vale) be included in a future work program by Strategic Planning staff in 2018.***

**PASSED**

In view of that Resolution, the Planning Proposal to rezone the subject land from IN2 Light Industrial to R2 Low Density Residential was not reported to Council, however, for completeness, this is now being done.

## **REPORT**

### **Proposal**

The subject land is located on the western edge of the Moss Vale Light Industrial Area as indicated in **Figure 1** below.

The site is zoned IN2 Light Industrial with an area of approximately 7,000m<sup>2</sup> and a frontage to Parkes Road of 50 metres. Situated upon the land is an older single level weatherboard cottage and builders/plumbers yard.

The site is a long rectangular shape. It is not perpendicular to the street frontage so it has a width of 42 metres and a depth of approximately 133 metres along its eastern boundary and 205 metres on its western boundary. Due to the unusual shape and orientation of the land, it shares a common boundary with nine properties featuring both residential and industrial land uses.

The view of the subject land from Parkes Road is shown below.





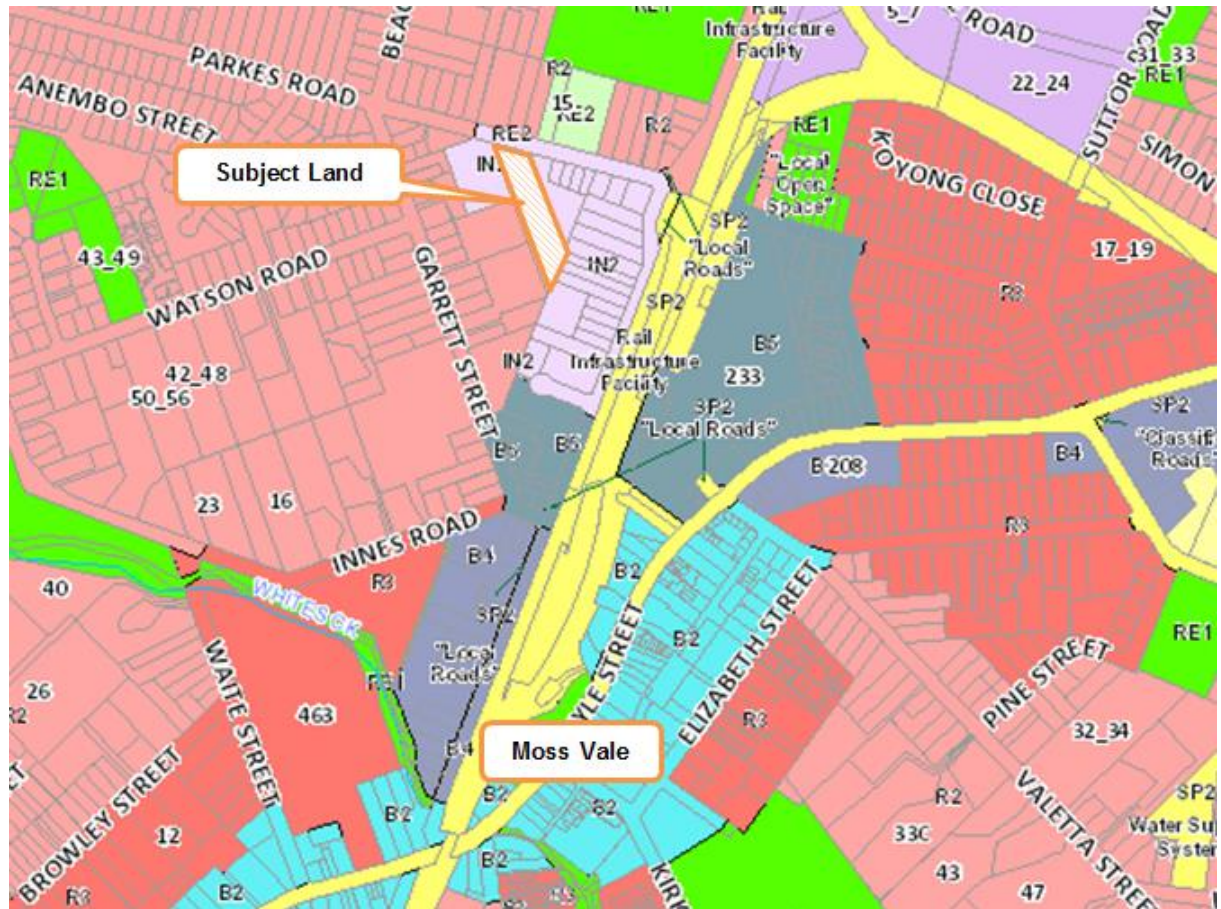


Figure 1 – Location of Subject Land

### Strategic Assessment

The site is located within an area containing a mixture of dwelling houses and small scale local businesses suited to the IN2 Light Industrial zone. The most significant business development in the vicinity is located around Farmers Place off Lackey Road where Harvey Norman is located. Other development includes St Paul's Primary School, located in Garrett Street and the Moss Vale & District Basketball facility on Parkes Road. Moss Vale railway station and the Moss Vale business area are within walking distance of the subject land. The locations of these land uses are indicated on **Figure 2** below.

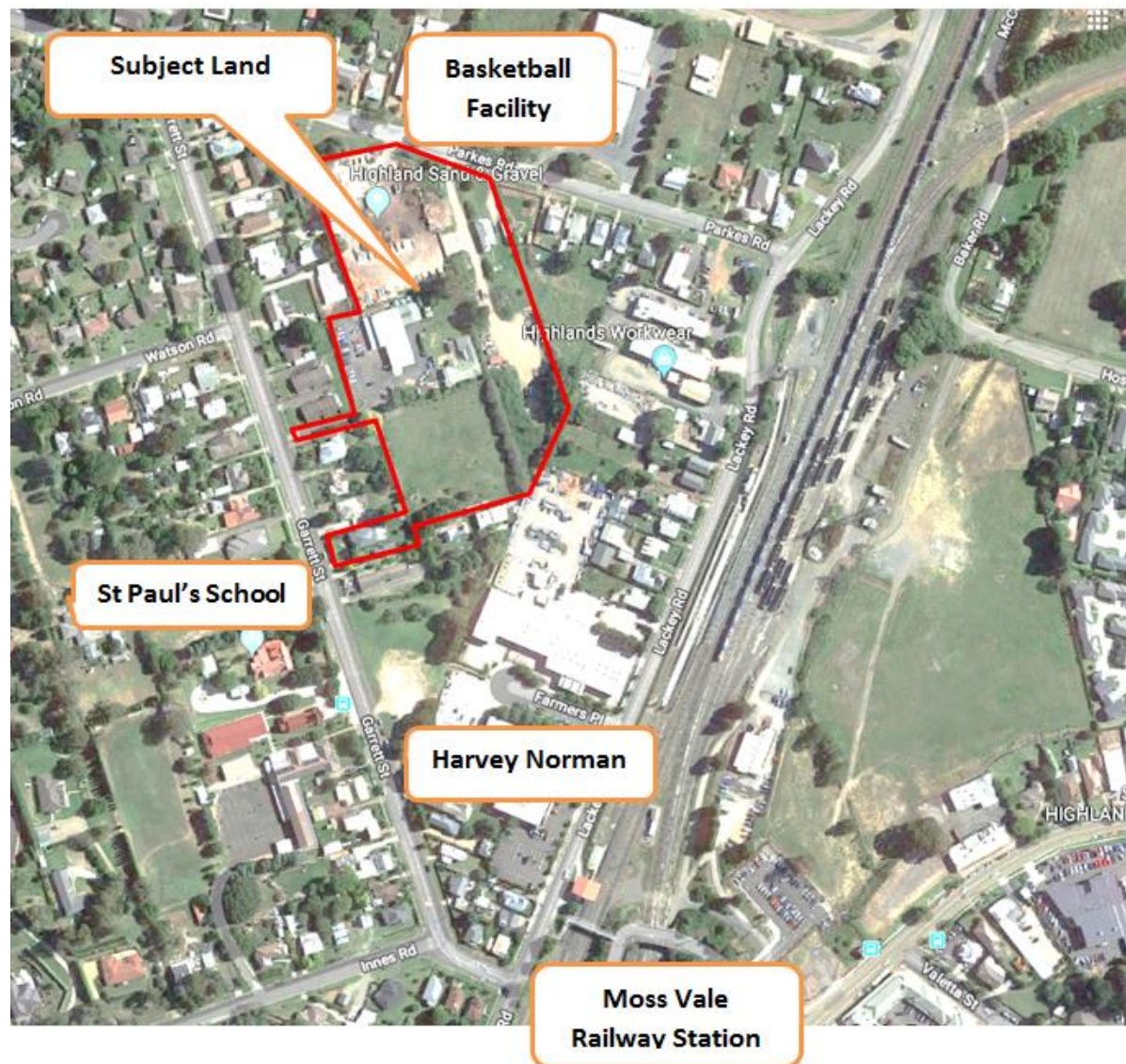


Figure 2 – Neighbouring Land Uses

It is noted that the adjoining property to the immediate west of the subject land, at 22 Parkes Road, is also the subject of a Planning Proposal supported by Council to rezone it from IN2 Light Industrial to R2 Low Density Residential with a minimum lot size of 700m<sup>2</sup>. That Planning Proposal is the subject of Amendment 49 to WLEP 2010 which is currently being finalised. Council's decision to support the rezoning of 22 Parkes Road was based primarily on the fact that the long-time previous use of the site has ceased and the land lies more naturally within the adjacent R2 zone based on current lot boundaries.

However, any further encroachment of residential development into the IN2 Light Industrial zone raises the key strategic question of whether Council wishes to retain this area for light industry or would prefer it to be redeveloped for residential use.

The Department of Planning and Industry would expect Council to provide sufficient justification in order to support the rezoning of employment lands. Ministerial Direction 1 (Employment and Resources) under s.9.1 of the EP&A Act (formerly s.117) specifically requires Council to justify any proposal to rezone business or industrial zoned land.

From a strategic perspective and to minimise potential land use conflicts, Council considers that the entire Garrett Street – Parkes Road – Lackey Road Precinct (identified in **Figure 3** below) should be assessed as a whole in determining whether a residential or industrial use would be more appropriate.

It is therefore recommended that such a strategic review be considered before any decision on future zoning of the subject land is taken. This approach was confirmed by Council in its Resolution of 9 May 2018 when the subject land and certain adjoining lands were considered for rezoning to R3 Medium Density Residential. At that time Council resolved that a *Strategic Study of this Precinct (Garrett Street – Parkes Road - Lackey Road Moss Vale)* be included in a future work program by strategic planning staff in 2018.

With regard to that Resolution, Strategic Planning staff are currently finalising terms of reference for the proposed Study.

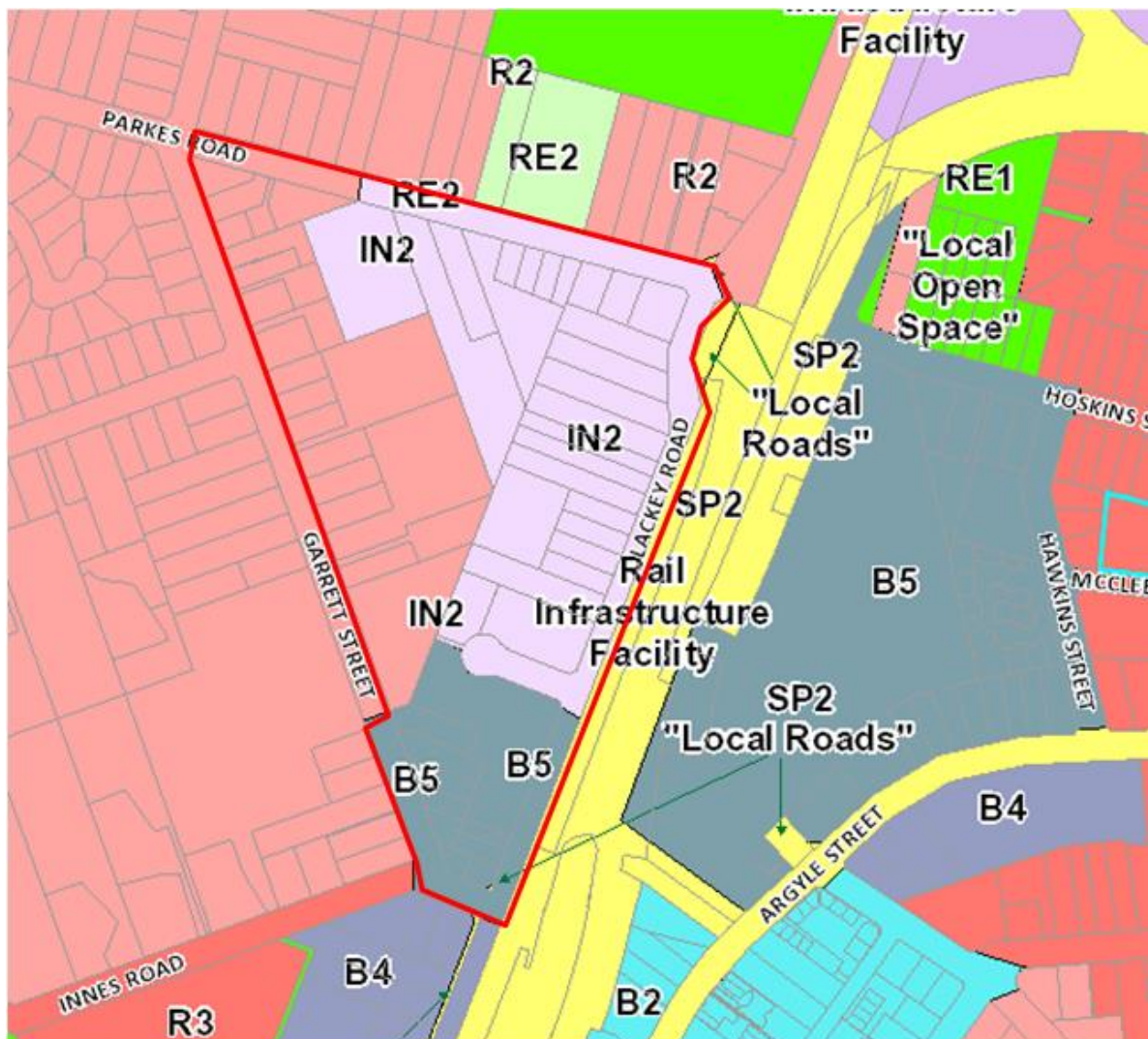


Figure 3 – Proposed Extent of Strategic Precinct Study

### **Recommendation**

In view of the above assessment, it is recommended that the Planning Proposal to rezone 18-20 Parkes Road, Moss Vale (Lots 1 and 2 DP627287) from IN2 Light Industrial to R2 Low Density Residential not be supported.

### **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**

No community engagement would occur if the recommendation to the report is supported. If the Planning Proposal is supported by Council it would be lodged with the Department of Planning & Industry for a Gateway Determination. Community consultation would then occur in accordance with the Gateway requirements. Stakeholder and community consultation will occur during the preparation of the precinct strategic review.

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

Relevant internal consultation will occur during the preparation of the precinct strategic review.

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

Relevant external consultation will occur during the preparation of the precinct strategic review.

### **SUSTAINABILITY ASSESSMENT**

- **Environment**

If the recommendation to the report is supported there are no environmental issues. However, if Council supports the proposal, potential contamination of the land may need to be addressed due to previous land uses.

- **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. Broader economic issues will be addressed during the proposed Strategic Precinct Review.

- **Culture**

There are no cultural issues in relation to this report.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- **Governance**

The Planning Proposal has been considered in accordance with guidelines provided by the Department of Planning & Industry.

#### **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications associated with this report.

#### **RELATED COUNCIL POLICY**

There are no other Council related policies.

#### **OPTIONS**

The options available to Council are:

##### **Option 1**

Support the recommendation to this report to not rezone the land.

##### **Option 2**

Not support the recommendation to this report.

Option 1 is the recommended option to this report.

#### **CONCLUSION**

The Planning Proposal has been assessed and a recommendation made based on its content and intended outcomes. It has been determined that it would be preferable, from a strategic perspective, that this application and any future similar applications for land in the immediate locality, not be supported and that any future Planning Proposal for this land be considered within the context of a comprehensive strategic review of the whole Garrett Street – Parkes Road - Lackey Road Precinct.

#### **ATTACHMENTS**

1. Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



# Planning Proposal

Proponent Initiated

To amend Wingecarribee Local Environmental Plan 2010 to rezone the land from IN2 Light Industrial to R2 Low Density Residential and introduce a minimum lot size to allow subdivision to a minimum of 700 square metres .

Prepared & Submitted by: Lee Environmental Planning

On behalf of: Peter and Pam McGuiness

Version 1 – For Council Assessment & Determination

November 2017



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PO Box 141, Moss Vale. ABN 49 546 344 354  
T. (02) 4868 0888 E. [wscmail@wsc.nsw.gov.au](mailto:wscmail@wsc.nsw.gov.au)

[www.wsc.nsw.gov.au](http://www.wsc.nsw.gov.au)

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**ATTACHMENTS WHICH FORM PART OF THIS PLANNING PROPOSAL**

1	Planning Proposal to amend the Zoning Map and Minimum Lot Size Map for land at Parkes Road, Moss Vale
2	Political Donations Declaration Form

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



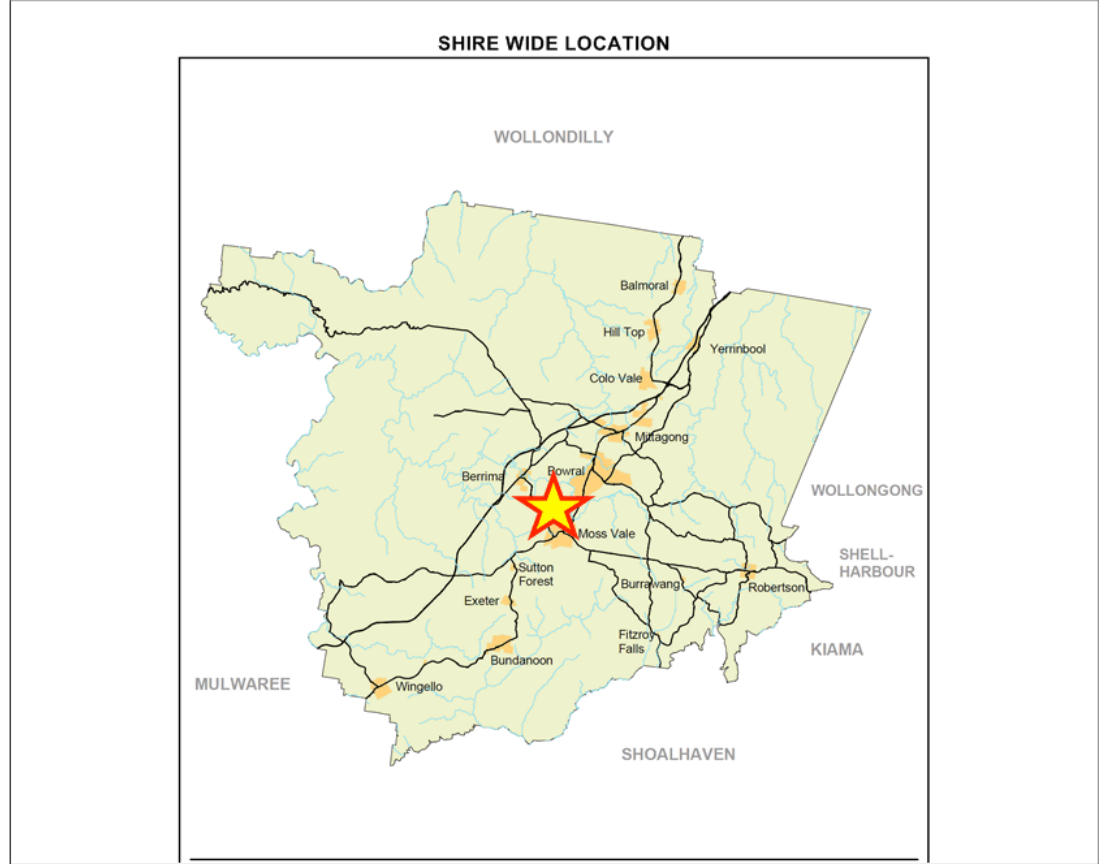
Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

LOCAL GOVERNMENT AREA: WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND: 18-20 Parkes Road, Moss Vale being Lots 1 & 2 DP627287





13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**SITE LOCATION & DESCRIPTION**

The subject site is legally described as Lots 1 and 2 DP627287.

It has a street address of 18-20 Parkes Road, Moss Vale. Situated upon the land is an older single level weatherboard cottage and builders/plumbers yard. Immediately to the west at 22 Parkes Road is the landscape supply business trading as Highland Sand and Gravel. This site has been the subject of a recent Planning Proposal to rezone the land to residential which was supported by Council and is proceeding to gateway approval.

The site has a frontage to Parkes Road of 50 metres and is a long rectangular shape. It is not perpendicular to the street frontage so it has a width of 42 metres and a depth of approximately 133 metres along its eastern boundary and 205 metres on its western boundary. This gives a site area of approximately 7,135 square metres.

The land is on the southern side of Parkes Road approximately 200 metres west from its intersection with Lackey Road and approximately 160 metres east from its intersection with Garrett Street/Beaconsfield Road. It is approximately 1 kilometre from the Moss Vale town centre via Lackey Road and then onto Argyle Street. Pedestrians can utilise the footbridge across the Southern Rail Line just 600 metres from the site to gain access directly into the town centre.

The current zoning of the land under Wingecarribee Local Environmental Plan 2010 is IN2 General Industrial. This is a reflection more of the historical land use pattern than it is a statement of intent for the future. The zoning is not considered to be appropriate for the current circumstance or the future potential of the land.

The locality has a mixed character, alternating between low density residential with many residential properties along Parkes Road and low scale industrial type undertakings on smaller lots, mainly restricted to along Lackey Road following the railway line. Diagonally opposite the site on the northern side of Parkes Road is the Moss Vale & District Basketball centre, a major recreational facility for the Shire.

Due to the unusual shape and orientation of the land, it has a large number (nine) of common boundaries with properties of both residential and industrial type development.

The land immediately to the south west is already within the R2 Low Density Residential zone, with a minimum lot size of 700 square metres. The land opposite on the northern side of Parkes Road is likewise within the R2 Low Density Residential zone with a minimum lot size of 700 square metres. The land immediately to the west, 22 Parkes Road, is, as already noted, in the process of being rezoned to R2 Low Density Residential with the land owners actively pursuing the relocation of the current soil and gravel supply business to a more suitable location. Council took the decision to rezone this property in July 2017 and has just recently forwarded the matter to the Department of Planning for the formal gateway approval. Further west, the land is within the R2 zone and developed with housing on small lots.

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

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Version 1 for Council Assessment & Determination

Only the land to the east is within the IN2 Light Industrial zone, however, the predominant land use of this land along the frontage of Parkes Road is also residential. Six of the adjoining property neighbours to the south east and south west, are already within the R2 Low Density zone.

Sites to the east along Parkes Road are within the IN2 Light Industrial zone, however, they are not utilised for industrial purposes. Immediately adjoining to the east is 14-16 Parkes Road which has a recently renovated residential dwelling fronting Parkes Road and a development approval for self storage units (15/0988) on the remainder of the land. East of that is a run of four residential dwellings towards Lackey Road. In terms of a residential/industrial zone interface, this arrangement would be suitable and manageable. The proposed self storage units could be considered to be a benign neighbour with little traffic generation, no noise impacts and no off site issues such as dust, fumes or vapours.

To the immediate west of the site as well as on the northern side of Parkes Road opposite the site, are residential dwelling houses within the R2 Low Density Residential zone, situated upon lots of various site areas, but generally in the range of 700sqm -1000sqm. To the south west, also within the R2 zone, is an existing motor vehicle service workshop and a large vacant yard at the rear of a residential property fronting Garrett Street. These sites are within the R2 zone.

The locality is clearly in the transition area between residential and industrial. It is a good example of where infill development can be encouraged that would result in a more compatible land use arrangement to take advantage of proximity to services without impacting upon adjoining properties or on any of the urban character of Moss Vale, while also helping to reduce pressure on expanding town boundaries into sensitive landscapes.

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

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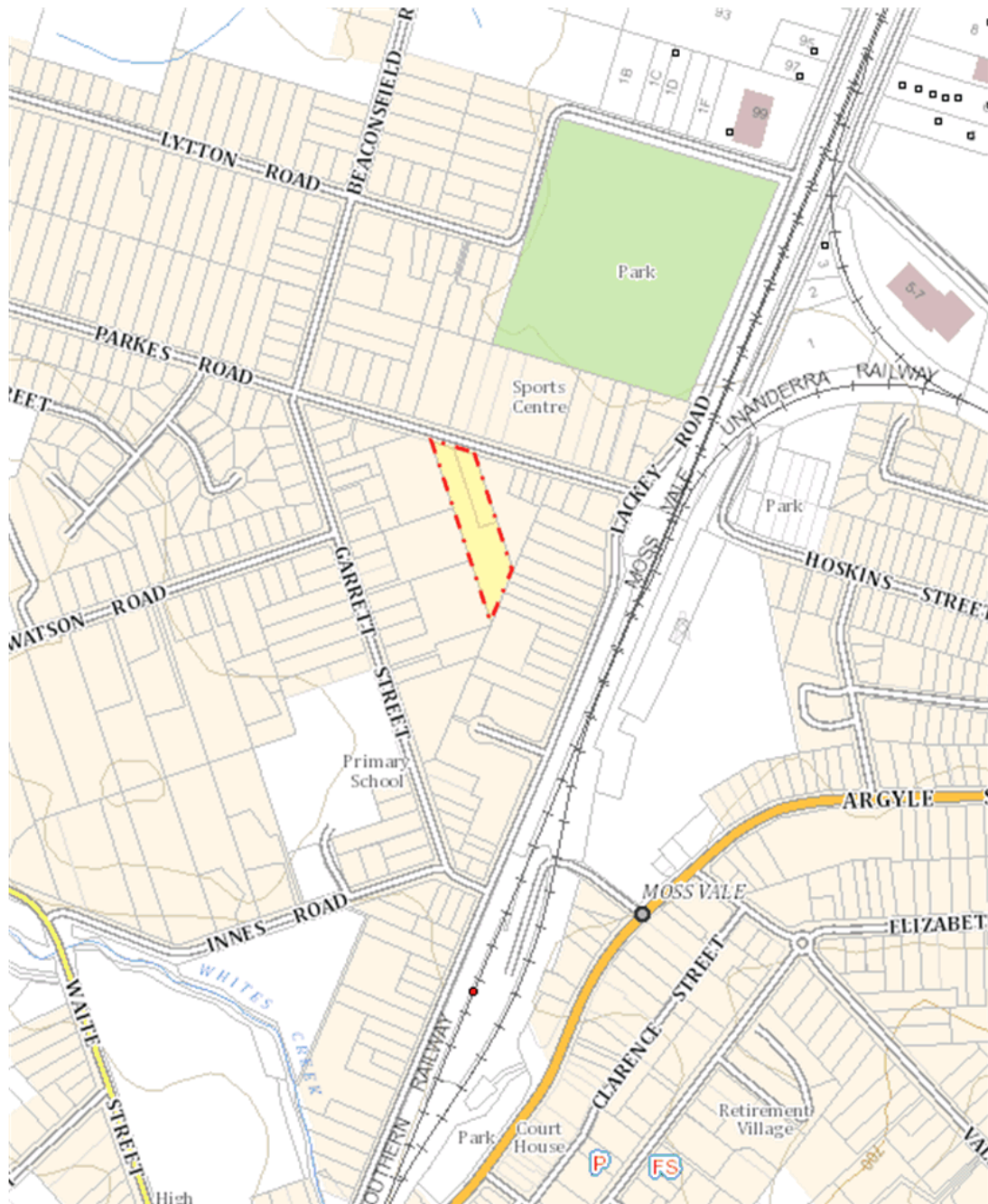


Figure 1: Site locality showing proximity to Moss Vale town centre, school, public recreation and surrounding residential development



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination



*Figure 2: Aerial view of site showing relationship with adjoining land uses being vacant industrial land to the east, residential dwellings to the north and west and existing soil and gravel yard to the west the rezoning of which to residential has been supported by Council.*

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

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Version 1 for Council Assessment & Determination



Figure 3: View of site from Parkes Road

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017

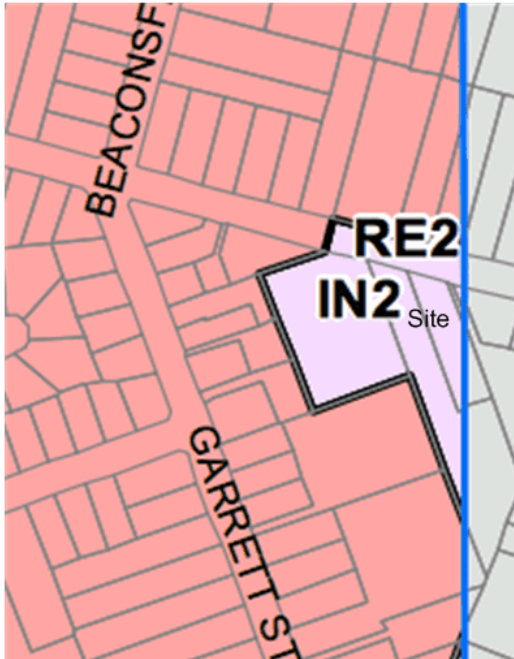



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

The subject land is within WLEP2010 map Land Zoning Map Sheets 007D and 007H. It is not identified on the Lot Size Maps because industrial land does not have a minimum lot size for subdivision development standard.

Land Zoning Map	Lot Size Map
<p data-bbox="242 734 756 936">Extract from WLEP2010 Land Zoning Map Sheet LZN_007D, showing the site extending onto Sheet 007H, identifying the IN2 zone for the subject site and surrounding R2 Low Density Residential zone to the north, south and west. Land to the east is within the IN2 zone.</p> 	<p data-bbox="769 734 1345 795">Extract from WLEP2010 Lot Size Map Sheet LSZ_007D extending on Sheet 007H</p> <p data-bbox="769 824 1345 965">Note that because the subject site is currently within the industrial zone, it is not subject to a minimum lot size for subdivision under WLEP2010. The adjoining residential land is within the area identified as 700 square metres minimum.</p> 

**13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential****ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017**

Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**PART 1 : OBJECTIVES OR INTENDED OUTCOMES**

The objectives of this Planning Proposal are as follows:

- To provide for the future residential development of the land at a density of a minimum 700 square metres per lot
- To provide the appropriate planning mechanism to give effect to the desired development outcome

The intended statutory planning outcome would be that the land (Lots 1 and 2 DP627287) is identified upon the appropriate Zoning Maps of Wingecarribee Local Environmental Plan 2010 as R2 Low Density Residential and upon the appropriate Lot Size Maps of Wingecarribee Local Environmental Plan 2010 so that subdivision of the land is permissible to a minimum lot size of 700sqm.

The intended built form outcome would be, subject to the submission and assessment of Development Applications, the subdivision of the land and the subsequent construction of residential development upon those lots. This process would involve the assessment of the existing land including the opportunities and constraints to create new allotments with a minimum lot size of 700sqm being suitable for the future erection of residential development, most likely dwelling houses. The final phase of development would involve the submission of Development Applications for the construction of the residential development.

Based upon the total site area of approximately 7,135 square metres a maximum number of lots at a minimum lot size of 700sqm would be ten, but more likely a yield of eight or nine would be achieved, with access off Parkes Road.

With the immediately adjoining land to the west at 22 Parkes Road having already been supported for rezoning to residential, there would be opportunity to consolidate or coordinate redevelopment options that would in all likelihood lead to more efficient and desirable development outcomes. This possibility also extends to the two large parcels of land off Garrett Street, being Lot 2 DP38675 and Lot 4 DP560140 that share common boundaries with the site. The rezoning is not contingent upon this however it is important to recognise the possibilities.

It is important from a strategic planning perspective that Council recognise such opportunities to maximise the potential of in fill development sites if they are to successfully give effect to the local planning strategy and evenly distribute the delivery of new housing across existing areas and new green field areas.

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**PART 2 : EXPLANATION OF THE PROVISIONS**

- To achieve the intended outcomes of the Planning Proposal the following amendments to the WLEP 2010 instrument will be required:

The WLEP2010 instrument does not require amendment in order to achieve the intended outcomes of the Planning Proposal. The changes required are map related as described below

- To achieve the intended outcomes of the Planning Proposal the following WLEP 2010 maps will require amendment:

Map to be amended	Detail of Amendment
Land Zoning Map Sheets LZN_007D and Sheet LZN_007H	Amend the WLEP 2010 maps so that the subject land, Lots 1 and 2 DP627287, are within the R2 Low Density Residential zone
Lot Size Map Sheets LSZ_007D and Sheet LSZ_007H	Amend the WLEP 2010 maps so that the subject land, Lots 1 and 2 DP627287, are within the area identified as 700 square metre minimum lot size

**PART 3 : JUSTIFICATION OF OBJECTIVES, OUTCOMES & PROCESS**

**Section A – Need for the Planning Proposal**

**1. Is the Planning Proposal a result of any strategic study or report?**

The Planning Proposal is the logical progression from Council’s resolution of 23 March 2016 in regard to the Wingecarribee Local Planning Strategy 2015-2031, because it presents an excellent opportunity for infill residential development.

The Local Planning Strategy recognises the need to provide more housing opportunities and to do so without compromising the inherent rural character of the Shire. The Planning Proposal is made on the basis of the need for Council to consistently review its position in relation to land availability from a long term strategic perspective.

The Local Planning Strategy needs to be given effect by subsequent planning decisions and this Planning Proposal that requests a rezoning of land, is consistent with the Strategy and will therefore assist in achieving Council’s long term planning objectives.

It is also directly relevant to the work and purpose of the Council’s Demographics and Housing Advisory Committee that has a primary responsibility of ensuring the provision of residential zoned land to best meets the needs of the projected future population.

For Council to be successful in achieving its strategic aims for housing within the Shire that balances ‘green field’ growth opportunities and ‘infill’ development opportunities, there will be a need to recognise those infill opportunities, no matter how small, that can contribute without



**13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential**

**ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017**



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

causing any disruption to existing neighbourhoods or without the need for major infrastructure expenditure. This is one such opportunity.

It is in this context that this Planning Proposal is put forward as a way to address a situation that is of high priority and of important consequence. Therefore while it could be argued that the Proposal is not strictly in accordance with the current Planning Strategy of Council, it is clearly in accordance with the strategic necessity of Council.

**2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

A Planning Proposal is the appropriate way to achieve the desired outcome. It is not possible to move directly to the Development Application phase to subdivide the land into smaller allotments for future housing under the existing industrial zoning of the land.

It should be reasonably assumed that a Planning Proposal pathway will be accepted by Council as the appropriate means of achieving the intended outcomes. The current zoning of the land does not allow for a reasonable redevelopment of the land that would be consistent with the character of the surrounding locality, which is predominately residential in nature despite its current industrial zoning.

Further industrial development in this locality would likely lead to potential conflict with residential amenity and would not be the highest and best use of the land. There is ample alternative industrial land available in locations that are better suited.

**Section B – Relationship to strategic planning framework**

**3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including draft strategies)?**

The Planning Proposal is consistent with the South East and Tablelands Regional Plan that has superseded the Sydney Canberra Corridor Regional Strategy 2006-31.

In broad terms, the Regional Plan, as did its predecessor, seeks to cater for continued growth within the region, without impacting adversely upon the character of the region. This Planning Proposal achieves this by providing an opportunity for residential development upon the land at a density of development achievable upon the subject land, with such development being consistent with the predominant residential character of the locality and within the capacity of the land to accommodate residential development.

Although the existing zoning is an 'employment' zone, there is no shortage of alternative employment generating land in the Shire, with the Moss Vale Enterprise Corridor ready to provide multiple employment generating development options.

The strategies broad aim of protecting the sensitive elements of the natural environment is not endangered by this Planning Proposal.

Chapter 4 of the Strategy is Environmentally sustainable housing choices. This Planning Proposal supports that broad objective.

**13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential**

**ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017**



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

Direction 24 of the Strategy is to deliver greater housing supply and choice, noting that local housing strategies need to consider community aspirations. This Planning Proposal will support this objective and would be consistent with the community aspirations as put forward in previous community workshops that show support for well located housing options and actions that have a positive impact on the issue of housing affordability within the Southern Highlands.

Housing affordability is currently a major and serious issue of concern. There are various issues that play into housing affordability, however the supply of land and housing is critical in that equation. This locality can provide housing that would be well located, easily serviced and offer an affordable price point in the housing market.

Direction 25 of the Strategy Focus is for housing growth in locations that maximise infrastructure and services in particular to achieve sustainable urban outcomes that do not undermine existing strategic and local centres. The sites proximity to the Moss Vale centre is ideal in the opportunity it provides to leverage off infrastructure and services already existing in this locality.

Direction 27 is to deliver more opportunities for affordable housing which this Planning Proposal can achieve.

**4. Is the Planning Proposal consistent with a council’s local strategy or other local strategic plan?**

The Planning Proposal is consistent with the local planning strategy for Wingecarribee Shire.

The relevant local strategy is the recently adopted Wingecarribee Local Planning Strategy 2015 - 2031.

It is noted that Chapter 4 of the adopted Strategy was rejected by the Department of Planning with Council being advised that further work was required in terms of providing for additional housing/residential land opportunities.

The position taken by the Department simply reinforces this particular Planning Proposal and how it fits in with Council’s needs.

Chapter 4 set out to deal with managing housing needs and it clearly identifies the ongoing pressure to ensure a supply of housing opportunities across the Shire for a range of different needs. The establishment of the Demographics and Housing Advisory Committee is part of this work.

This Planning Proposal is consistent with the Objective of Chapter 4 of the Strategy because it will eventually add to the available housing stock in a location that has access to essential services and has good proximity to community services such as schools, parks, shops.

The concept of 'infill' development as described in the Local Strategy, is supported by this Planning Proposal. It is dealing with land within existing zoned areas with good access to services, the development of which will not compromise the rural character of the Shire nor threaten sensitive rural landscapes. In this case it will result in a more compatible land use outcome than the present zoning.



13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The Planning Proposal is not inconsistent with any State Planning Policy.

Due to the nature of previous land uses upon the site, it would be necessary to consider the requirements of *State Environmental Planning Policy No 55—Remediation of Land* before any final decision on rezoning was taken. The preparation of relevant contamination reports and if necessary remediation reports can be a condition of any gateway approval.

State Environmental Planning Policy	Relevance to Planning Proposal
No.1 Development Standards	No longer relevant due to Clause 4.6 of WLEP2010 being the mechanism for the consideration variations to development standards
No.14 Coastal Wetlands	Does not apply to the subject site
No.19 Bushland in Urban Areas	Does not apply to the subject site
No.21 Caravan Parks	Potentially applicable to future development at Development Application stage, however it is noted that caravan parks are not permissible in the proposed R2 Low Density Residential zone
No.26 Littoral Rainforests	Does not apply to the subject site
No.30 Intensive Agriculture	Does not apply to the subject site
No.33 Hazardous and Offensive Development	Potentially applicable to future development at Development Application stage, however it is noted that industries of the type covered by the Policy are not permissible in the proposed R2 Low Density Residential zone
No.36 Manufactured Home Estates	This Policy applies to land within Wingecarribee Shire. However it is noted that caravan parks are not permissible in the proposed R2 Low Density Residential zone and therefore manufactured home estates will not be permissible
No.44 Koala Habitat Protection	This Policy applies to land within the Wingecarribee Shire. However the Policy requires Council to be satisfied of certain matters prior to issuing consent to Development Applications, not Planning Proposals. Clause 16 does allow for the preparation of local environmental studies, which could be required as part of any Gateway determination. However, in this case, the subject land does not contain potential koala habitat and is not core koala habitat so the likely need for such a study is negligible.
No. 47 Moore Park Showground	Does not apply to the subject site

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

No.50 Canal Estate Development	Does not apply to the subject site
No.52 Farm Dams and Other Works in Land and Water Management Plan Areas	Does not apply to the subject site
No.55 Remediation of Land	This Policy applies to land within the Wingecarribee Shire. Clause 6 requires the planning authority to consider whether the land is contaminated and/or whether the land can be made suitable for purpose. The land is not within a class of land identified within Clause 6 subclause (4) however the industrial zoning and previous land use history suggests that land contamination may be present. Initial contamination assessments can be required either as part of a Gateway determination or as part of subsequent Development Applications.
No. 62 Sustainable Aquaculture	Not applicable to the form of development permissible within the proposed zones
No.64 Advertising and Signage	This policy applies to land within the Wingecarribee Shire. However, the provisions relate to the assessment of Development Applications and can be properly administered if relevant applications are made in the future.
No.65 Design Quality of Residential Apartment Development	This Policy applies to land within Wingecarribee Shire. However it is noted that residential flat buildings and other building types covered by the policy are not permissible in the proposed R2 Low Density Residential zone
No.70 Affordable Housing (Revised Schemes)	Does not apply to the subject site
No.71 Coastal Protection	Does not apply to the subject site
Affordable Rental Housing 2009	This Policy applies to land within Wingecarribee Shire. It may have some applicability to the land within the proposed R2 Low Density Residential zone. The PP is not inconsistent with the Policy and any relevant Development Application lodged can be assessed against the Policy if that development seeks to rely upon the Policy
Building Sustainability Index: Basix 2004	Related to the development/building phase
Educational Establishments and Child Care Facilities 2017	This Policy applies to land within Wingecarribee Shire. However, the Policy is focused on the development application process. The proposed R2 Low Density Residential zone is a prescribed zone for the purposes of the Policy which will enable certain development to proceed, with or without consent.

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

Exempt and Complying Development Codes 2008	This Policy applies to land within Wingecarribee Shire and will be applicable in the usual way
Housing for Seniors or People with a Disability 2004	This Policy applies to land within Wingecarribee Shire. The PP is not inconsistent with the Policy. The R2 Low Density zone would be considered as land zoned primarily for urban purposes and seniors housing will be permissible under the Policy, as it is under WLEP2010.
Infrastructure 2007	This Policy applies to land within Wingecarribee Shire. However it is focused upon the development application phase. A subdivision of the land within the proposed R2 Low Density zone would not be of a scale to trigger referral to the RMS as Traffic Generating Development under Clause 104 Schedule 3. A Gateway determination may require more detailed assessment as part of the formal exhibition process or the matter could be dealt with as part of the Development Application process. The PP is not inconsistent with the Policy.
Integration and Reveals 2016	Does not apply to the subject site
Kosciuszko national Park - Alpine Resorts 2007	Does not apply to the subject site
Kurnell Peninsula 1989	Does not apply to the subject site
Mining, Petroleum Production and Extractive Industries 2007	This Policy applies to land within Wingecarribee Shire. However it does not contain provisions that require any specific provisions within PPs. The policy is focused on the Development Application phase
Miscellaneous Consent Provisions 2007	This Policy applies to land within Wingecarribee Shire however has no particular relevance to this PP
Penrith Lakes Scheme 1989	Does not apply to the subject site
Rural Lands 2008	This Policy applies to land within Wingecarribee Shire. The land is not State Significant agricultural land. The Policy is not relevant to this PP.
State and Regional Development 2011	This Policy applies to land within Wingecarribee Shire however the PP does not involve land or a scale of development that is relevant to the Policy
State Significant Precincts 2005	This Policy applies to land within Wingecarribee Shire however the PP does not involve land or a scale of development that is relevant to the Policy

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

Sydney Drinking Water Catchment 2011	The Wingecarribee Shire is within the area covered by the Policy. The key purpose of the Policy is to ensure water quality impacts are properly assessed as part of development proposals. Any Gateway determination could require further more detailed water quality assessment to be part of the formal exhibition process or such assessment could be held over until the development application phase. The PP is not inconsistent with the Policy and there is no reason to suspect that future residential development cannot satisfy the NorBE test under the Policy
Sydney Region Growth Centres 2006	Does not apply to the subject site
Three Ports 2013	Does not apply to the subject site
Urban Renewal 2010	Does not apply to the subject site
Vegetation in Non-Rural Areas 2017	Does not apply to the subject site
Western Sydney Employment Area 2009	Does not apply to the subject site
Western Sydney Parklands	Does not apply to the subject site

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**6. Is the Planning Proposal consistent with applicable Section 117 Directions?**

The following table provides an assessment of the Directions issued by the Minister for Planning under section 117(2) of the *EP&A Act 1979*:

Direction	Assessment
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	The land will reduce the available land that is zoned as employment generating. However, the minor area involved (7000sqm) is not significant in any way and more than compensated for by the availability of land within the Moss Vale Enterprise Corridor. The loss of this industrial land is not critical to the overall employment generating opportunities within the Shire.
1.2 Rural Zones	NA
1.3 Mining, Petroleum Production and Extractive Industries	NA
1.4 Oyster Aquaculture	NA
1.5 Rural Lands	
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	The land is not within an environment protection zone. In any event, the proposed change of zone would not alter the requirement for any development proposal (future dwelling house) to properly consider the appropriate range of environmental issues, in this case, stormwater quality. The PP is not inconsistent with the Direction.
2.2 Coastal Protection	NA
2.3 Heritage Conservation	The land is not within a conservation area under WLEP2010, nor in proximity to any individually listed heritage item.
2.4 Recreation Vehicle Areas	NA
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	The PP is consistent with this Direction because it seeks to introduce additional residential land that has appropriate access to infrastructure and services and would minimise the impact upon the

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

	environment. The PP is not seeking to expand the urban fringe because it is taking advantage of a site within the developed urban area.
3.2 Caravan Parks and Manufactured Home Estates	NA
3.3 Home Occupations	NA
3.4 Integrating Land Use and Transport	The PP is consistent with this Direction because the site is within walking distance of public transport and the full range of services afforded by the Moss Vale town centre.
3.5 Development Near Licensed Aerodromes	NA
3.6 Shooting Ranges	NA
<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	NA
4.2 Mine Subsidence and Unstable Land	NA
4.3 Flood Prone Land	The land is not identified flood prone land
4.4 Planning for Bushfire Protection	The subject land is not mapped as bushfire prone on Council's Bushfire Hazard Maps.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies NB: This Direction has been revised to include previous Directions 5.6 and 5.7.	The South East and Tablelands Regional Plan (previously the Sydney – Canberra Corridor Regional Strategy) is in place and therefore relevant. The PP is not inconsistent with the regional plan that seeks to achieve additional housing opportunities within the Wingecarribee Shire.
5.2 Sydney Drinking Water Catchments	The proposed amendment to WLEP2010 would still require any future development of the land to properly consider the requirements of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. Any development proposal would need to demonstrate a neutral or beneficial effect on water quality as a result of the development. The land is within a developed urban area and does not represent a risk to water quality within the catchment. Residential development of the land represents a much lower risk to water quality than does



13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

	ongoing industrial use. The PP is not inconsistent with the Direction
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	NA
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	NA
5.8 Second Sydney Airport: Badgerys Creek	NA
5.9 North West Rail Link Corridor Strategy	NA
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	A PP that seeks to allow an agreed number of dwelling houses on designated land parcels, is not inconsistent with the Direction.
6.2 Reserving Land for Public Purposes	NA
6.3 Site Specific Provisions	The PP does not propose to have any site specific provisions

**Section C – Environmental, Social & Economic Impacts**

**7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Planning Proposal?**

No. The land is not identified as containing any critical habitat or threatened species, populations or ecological communities or their habitats

**8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

There are no immediate environmental impacts arising from the Planning Proposal.

As a consequence of the PP, there will be a Development Application for subdivision and subsequently, dwelling houses or other permissible residential development upon the land. These Development Applications will provide the appropriate mechanism for the thorough assessment of any potential environmental impacts and these can be managed through the imposition of conditions of development consent as appropriate.

There is no reason to suggest that the subject land is not capable of accommodating additional dwelling houses upon the subject land. The final number of lots created will depend upon a proper

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

assessment process, but working with the minimum lot size of 700 sqm, it is likely that the site will accommodate eight or nine lots.

Taking into account the pattern and usage of adjoining land, it is conceivable that future development could be coordinated between a number of property owners to achieve the optimum yield from the residential zoning. This would be a positive outcome but the Planning Proposal is not contingent upon this.

9. Has the Planning Proposal adequately addressed any social and economic effects?

There are no particular social impacts arising from the Planning Proposal. It is a site specific issue, rather than one that may have broader implications throughout the community. It will eventually provide for additional dwellings, the occupants of which will then contribute to the Moss Vale local community and the Southern Highlands more generally.

From an economic perspective, the PP will provide for the economic and best use of the land.

Section D – State and Commonwealth Interests

10. Is there adequate public infrastructure for the Planning Proposal?

Appropriate and adequate public infrastructure is available to service the resultant development (power, water, sewer). The net increase of eight (8) or nine (9) lots/dwellings will not place any significant burden upon these services. The existing road network is capable of accommodating the minor traffic increase generated by the PP. If additional infrastructure analysis was considered necessary, then this could be a condition of any Gateway approval, to be carried out prior to any formal change to the WLEP2010.

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale - November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

**PART 4 – MAPPING**

The subject land is situated at the intersection of the LEP map tiles, and identified on two separate maps. The following maps require amendment as indicated below:

Map to be amended	Detail of Amendment
Land Zoning Map Sheets LZN_007D and LZN_007H	Amend the WLEP 2010 maps so that the subject land, Lots 1 and 2 DP627287, are within the R2 Low Density Residential zone
Lot Size Map Sheets LSZ_007D and LSZ_007H	Amend the WLEP 2010 maps so that the subject land, Lots 1 and 2 DP627287, are within the area identified as 700 square metre minimum lot size

**PART 5 – COMMUNITY CONSULTATION**

Community consultation will occur as directed in the Gateway Determination and in accordance with the Department’s Guide to preparing LEPPs. It is noted that Council normally provides at least 28 days of public exhibition which includes, as relevant, notification by letter/email to adjoining property owners and weekly advertising in the Southern Highland News for the duration of the exhibition period. Copies of the Planning Proposal and relevant documentation are provided on Council’s website, at the Customer Service Counter at the Civic Centre and at all relevant libraries including Council’s Rural Outreach & Delivery Service (ROADS) Mobile Library.

**PART 6 – TIMELINE**

It is anticipated that the Planning Proposal will progress in accordance with the following key timeline milestones:

MILESTONE	INDICATIVE DATE
Gateway Determination	
Agency Consultation	
Public Exhibition	
Report to Council on exhibition of Planning Proposal.	
S.59 Documents to DP&E & PCO.	
Approximate completion date	

13.4 Planning Proposal to Rezone Land at 18-20 Parkes Road, Moss Vale from  
IN2 Light Industrial to R2 Low Density Residential

ATTACHMENT 1 Planning Proposal - 18-20 Parkes Road Moss Vale -  
November 2017



Planning Proposal – 18-20 Parkes Road Moss Vale

Prepared by Lee Environmental Planning

Version 1 for Council Assessment & Determination

## DELEGATIONS

TO BE COMPLETED BY COUNCIL SHOULD THE PLANNING PROPOSAL PROCEED.

\*\*\*END\*\*\*

## 13.5 Request for Financial Assistance from Salvation Army Red Shield Appeal

Reference:	1850/1
Report Author:	Coordinator Community Development
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	Actively foster a spirit of participation and volunteering by addressing key barriers

### PURPOSE

The purpose to this report is to seek Council's position on a request from the Salvation Army Red Shield Appeal for part sponsorship of the Annual Business Breakfast to be held 9 May 2019 at Bendooley Estate, Berrima.

### RECOMMENDATION

**THAT Council determines its position with regard to the request from Salvation Army Red Shield Appeal for part sponsorship on their Annual Business Breakfast.**

### REPORT

#### **BACKGROUND**

The Salvation Army's Red Shield Appeal is The Salvation Army's major fundraising campaign and funds raised during the appeal enable the Salvos to assist people in the local area every year. The annual Southern Highlands Business Breakfast is organised by a local volunteer committee of leading business people from the local community.

Under the Contingency Fund Guidelines adopted 1 July 2018, this application is being viewed as a 'one-off' submission.

#### **REPORT**

Council has been approached by the Salvation Army Red Shield Appeal to part sponsor their annual Red Shield Appeal Business Breakfast.

The Salvation Army provides a range of integrated services and programs supporting the most disadvantaged to achieve meaningful involvement in the community. Their programs include mental health, suicide and depression, drug dependency, homelessness, families in crisis and community aged care for frail aged people with complex needs.

The Annual Red Shield Appeal Business Breakfast provides the Salvation Army the opportunity (through sponsorship) to raise funds that will ensure their community outreach programs continue to support our local community.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 April 2019

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Council has been a sponsor of this event for the past five consecutive years and has received a request this year for part sponsorship funding in the amount of \$1,500.

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

None

#### COMMUNICATION AND CONSULTATION

##### Community Engagement

There has been no community engagement

##### Internal Communication and Consultation

None

##### External Communication and Consultation

None

#### 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.

#### COUNCIL BUDGET IMPLICATIONS

The current balance in the Council Contingency Fund is \$18,235.

#### RELATED COUNCIL POLICY

Council Contingency Fund Guidelines adopted 1 July 2018.

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 April 2019

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES**



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**OPTIONS**

The options available to Council are:

**Option 1**

Council support the request from the Salvation Army Red Shield Appeal for a contribution of \$1,500 towards its Business Breakfast funded from Council's Contingency Fund.

**Option 2**

Council determine an alternate amount to be funded from Council's Contingency Fund.

**Option 3**

Council not support request for part sponsorship.

Submitted for Determination.

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**ATTACHMENTS**

There are no attachments to this report.

Mark Pepping

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

Wednesday 17 April 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 27 March 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 22.2.**

**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 March 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 24 April 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 March 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 24 April 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 - March 2019

Ann Prendergast  
**General Manager**

Wednesday 17 April 2019



Legal Costs – March 2019

Attachment 1

Legal Matter	Legal Expenditure Mar-19	Consultant Expenditure Mar-19	Legal Expenditure YTD	Consultant Expenditure YTD	Total Expenditure LTD
Fenwick v Woodside Properties	\$4,999		\$5,861		\$31,347
Centennial Winery Centennial Road Bowral			\$8,281		\$188,925
Moss Vale Projects (Woolworths) Cnr Argyle Street and Lackey Road			\$114,388	\$63,172	\$270,230
Willow Properties Retford Road Bowral	\$1,244		\$39,594	\$10,275	\$87,908
RG Capital Erith Street Bundanoon			\$11,349		\$28,536
Blackbrook Nominees 14 Duke Street Mittagong			\$278		\$27,776
Tujilo Pty Ltd Milton Park, Bowral	\$675		\$43,350	\$26,889	\$101,678
Turland Mittagong Road Bowral			\$72,911	\$73,406	\$192,951
Malcolm Holdings Exeter Road Exeter			\$11,818		\$29,723
Deluxe Projects Seniors Living Development East Bowral	\$200		\$15,406		\$33,577
Baron Corp P/L Farnborough Drive Moss Vale	\$1,561		\$117,416		\$220,091
Reid 21-23 Payten Street Mittagong	\$854		\$32,436	\$11,874	\$65,387
Uri T Design Kangaloon Road Bowral			\$77,138		\$103,905
Michael Brown Planning Loftus Street Bowral	\$9,728		\$35,665	\$18,092	\$82,798
Robert Morgan Sutherland Park Drive Bowral			\$15,245	\$8,115	\$23,359
Gary Walker Architect Oxley Drive Mittagong			\$6,901		\$6,901
Maly Foxgrove Road Canyonleigh			\$2,040		\$2,040
Development Implementation Pty Ltd Old Hume Highway Braemar			\$338		\$338
Leighton-Daly Park Street Wingello			\$14,266		\$14,266
Shelley Boyce 10-12 Tyndall Street Mittagong	\$340		\$12,067		\$12,067
Strathfield Investments Pty Ltd 5 Alice Street Mittagong		\$10,150	\$5,890	\$31,844	\$37,733
Sitecat Pty Ltd 17 Old Dairy Close Moss Vale			\$1,417		\$1,417
ERF Hospice Pty Ltd 11 Edward Street Bowral	\$1,786		\$1,786		\$1,786
<b>Total Expenditure</b>	<b>\$21,387</b>	<b>\$10,150</b>	<b>\$645,841</b>	<b>\$243,667</b>	<b>\$1,564,739</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 – March 2019

Legal Matter	Fees Recovered Mar-19	Fees Recovered YTD	Fees Recovered LTD
O'Shanassy	\$500	\$4,960	\$12,478
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>\$500</b>	<b>\$210,110</b>	<b>\$217,628</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.

## 20 NOTICES OF MOTION

### 20.1 Notice of Motion 12/2019 - Abolition of the Office of Environment and Heritage and Office of Local Government

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

Councillors L A C Whipper and G Markwart have given notice that it is their intention to move the following motion at the Ordinary Meeting of Council on 24 April 2019:

1. **THAT** as a matter of priority Council write to the Premier, The Hon Gladys Berejiklian expressing deep concerns about the abolition of the Office of Environment and Heritage and the Office of Local Government as stand alone departments.
2. **THAT** Council request an in-depth explanation in relation to the reasoning behind such an act which could be perceived as a brutal attack upon local autonomy and democracy; and also as an act that exposes our fragile environment to considerable risk.
3. **THAT** Council relay our concerns to the Department of Local Government and ask what action they are taking to advocate for the restoration of these two departments as stand alone representative bodies for Local Government and protection of the Environment.

#### RECOMMENDATION

**Submitted for determination.**

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## 20.2 Notice of Rescission Motion 2/2019 - Berrima Road Deviation Project

Reference:	100/5
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

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### PURPOSE

Councillors G M Turland, K J Halstead and I M Scandrett have given notice that it is their intention to move the following motion at the Ordinary Meeting of Council on 24 April 2019:

**THAT the motion passed by Council on 10 April 2019 being Item number 12.2 MN151/19 be rescinded.**

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### RECOMMENDATION

**Submitted for determination.**

Should the above motion of rescission be carried, we hereby give notice of our intention to move the following motion:

**THAT the Berrima Road Deviation Project be rescinded.**



## **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 Expressions of Interest for the Moss Vale Civic Centre Refurbishment**

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)(c) 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 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 present the evaluation of the Expressions of Interest (EOI) for the Moss Vale Civic Centre - Refurbishment.

**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 27 March 2019.

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

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 April 2019

**CLOSED COUNCIL**



Ann Prendergast  
**General Manager**

Wednesday 17 April 2019