

16 July 2020

Dear Councillor,

You are kindly requested to attend the **Ordinary Meeting** of Wingecarribee Shire Council to be held remotely using audio visual link and is open to members of the community via webcast on **Wednesday 22 July 2020** commencing at **3.30pm**.

Yours faithfully

Ann Prendergast
General Manager

SCHEDULE

3.30pm	Council Meeting begins
7.40pm	Closed Council

Business

1. OPENING OF THE MEETING

2. ACKNOWLEDGEMENT OF COUNTRY

3. PRAYER

4. APOLOGIES

Leave of absence for this meeting was previously granted to Councillor G Markwart.

5. ADOPTION OF MINUTES OF PREVIOUS MEETING

Ordinary Meeting of Council held on 8 July 2020

6. DECLARATIONS OF INTEREST 1

7. MAYORAL MINUTES

8. PUBLIC FORUM

9. VISITOR MATTERS

OPERATIONS, FINANCE AND RISK

Nil

CORPORATE, STRATEGY AND DEVELOPMENT SERVICES

Nil

10. EN BLOC MOTION

11. OPERATIONS FINANCE AND RISK

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19.1 Compliance Actions (Notices and Orders) Update (April - June 2020) <i>This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(e) as it contains information that would, if disclosed, prejudice the maintenance of law and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.</i>	
19.2 Legal Report - Closed Council <i>This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.</i>	
20. RESUMPTION OF OPEN COUNCIL	
Resumption of Open Council	
Adoption of Closed Session	
21. 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

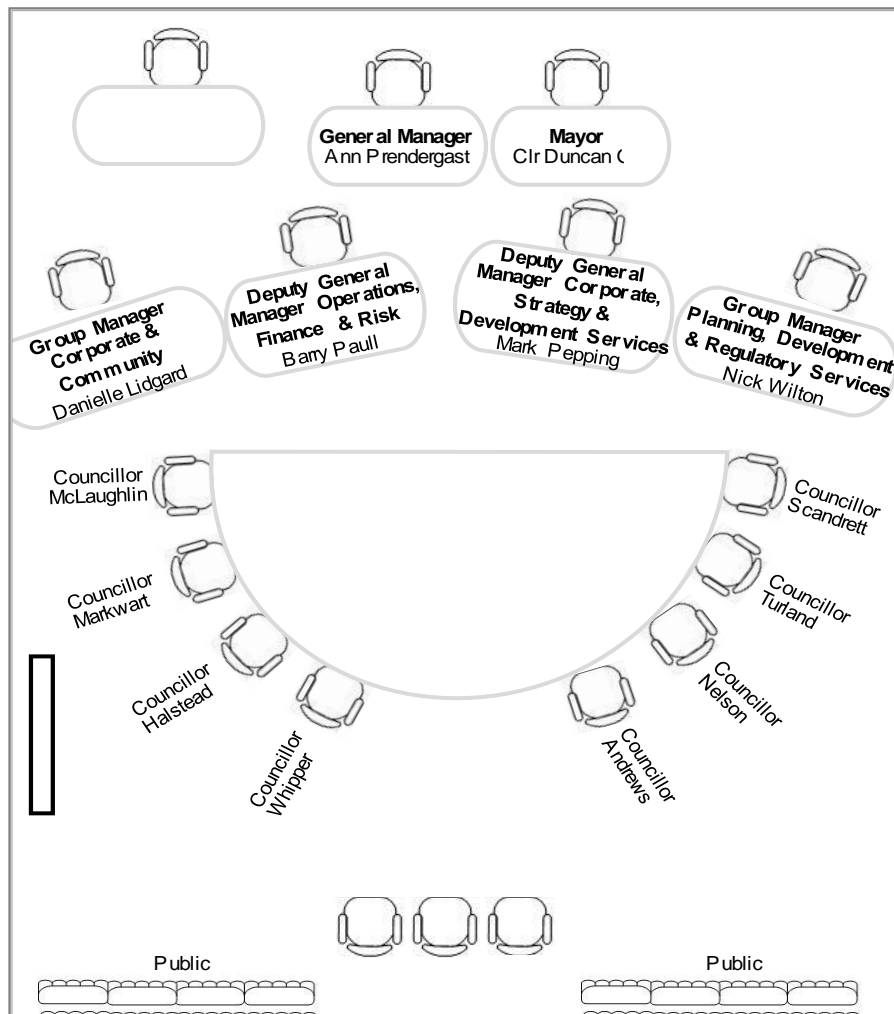
Council Chambers

Recording and Webcasting of Ordinary and Extraordinary Meetings of Council

As required under its Code of Meeting Practice, Wingecarribee Shire Council records and webcasts the proceedings of the Council meetings and Finance Committee meetings for public viewing, with the exception of any part of the meeting that is held in closed session. Members of the public attending and speaking at these meetings will be recorded and publicly broadcast. Council does not accept liability for any defamatory, discriminatory or offensive comments that are made during the course of the meeting.

Sound 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 or live streaming is also not permitted. No member of the public is to live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the meeting without prior permission of the Council.

The Council Chamber now has 24 Hour Video Surveillance.





ACKNOWLEDGEMENT OF COUNTRY

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.

APOLOGIES

Nil at time of print. OR

Request for Leave of Absence – Councillor

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

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

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

DECLARATIONS OF INTEREST

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.

COMMITTEE OF THE WHOLE

11 OPERATIONS FINANCE AND RISK

11.1 Operation of the Shire's Public Swimming Centres for 2020/21 Pool Season

Reference:	6700
Report Author:	Pools and Facilities Supervisor
Authoriser:	Manager Open Space, Recreation and Building Maintenance
Link to Community	
Strategic Plan:	Plan and deliver appropriate and accessible local services for the community

PURPOSE

The purpose of this report is for Council to consider recommendations for the operation of the Shire's public swimming centres for the 2020/2021 pool season.

RECOMMENDATION

1. **THAT Council approve the seasonal duration and operational hours and reasons for variation of those hours as outlined in the report.**
2. **THAT the pool season duration and operational hours will be actively promoted to the community.**
3. **THAT recommendations 1 and 2 be subject to COVID-19 Restrictions in place at the time.**
4. **THAT Council waive fees and charges for a Water Polo Gala Day as outlined in the report.**

REPORT

BACKGROUND

Mittagong, Bowral and Bundanoon Swimming Centres are seasonal pools that will open their doors between October 2020 and March 2021. The Swimming Centre opening dates are staggered due to the availability of temporary staff and to provide the longest possible outdoor pool season for the community.

REPORT

Following circulation of the aquatic usage questionnaire, our customers and user groups provided feedback on the 2019/2020 pool season. The responses have been considered by Council officers and recommendations have been made for Council approval.

Southern Highlands Water Polo Club requested Mittagong pool season to be extended in the 2020/21 season to allow for additional club nights. This would mean Southern Highlands Water Polo Club would not have to relocate to Bowral or Frensham aquatic facilities for their junior competition.

To ensure this request will not impact the season length of other Wingecarribee Shire Council Pools, the Mittagong Swimming Centre can remain open for an additional two days closing on a Tuesday 9 March 2020 instead of a Sunday 7 March 2020. This allows Water Polo to complete an extra Water Polo club meet at Mittagong Swimming Centre.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT GROUP MANAGER INFRASTRUCTURE SERVICES



The Southern Highlands Water Polo Club also seeks Council support for the Southern Highlands Water Polo Gala Day in the second week of February with a full subsidy of all hire fees. The event would be held on a Sunday with estimated hours of 9am – 7pm. This event would promote other clubs to visit the Wingecarribee Shire and stay in local accommodation. Southern Highlands Water Polo has requested the fees and charges be waived for this day. The cost to Council to waive these fees is \$1,715. (\$171.50 per hour for 10 hours)

Several responses received from community members asked Council to consider opening the Mittagong pool on the October long weekend. Unfortunately, the weeks surrounding the long weekend is the first opportunity Council can take to start training for all lifeguard recruits as it is scheduled over the university and school holidays. It is important to provide this high level of training to pool staff to ensure the safety of the community and employees. Given most pool staff are young and considered vulnerable workers by Safe Work Australia, this training is paramount to be completed prior to opening.

Proposed Season Length, Duration and Operating Times

Following is the season length, duration and operating hours of the swimming centres:

- a) Bowral Swimming Centre's season to be 20 weeks commencing on Saturday 7 November 2020 and closing on Sunday 28 March 2021.
- b) Bundanoon Swimming Centre's season to be 16 weeks commencing on Saturday 14 November 2020 and closing on Sunday 7 March 2021.
- c) Mittagong Swimming Centre's season to be 21.5 weeks commencing on Saturday 10 October 2020 and closing on Tuesday 9 March 2021.
- d) Swimming Centres are to be open each day of the swimming season excluding Christmas Day and Boxing Day. Only Mittagong Swimming Centre opens on Boxing Day.

The proposed opening and closing times of each of the centres are:

Bowral:	Standard Hours	Operating	*School Holiday Hours
Monday – Friday	6am to 6pm		6am to 6pm
Saturday	8:30am to 6pm		8:30am to 6pm
Sunday	9:30am to 6pm		9:30am to 6pm
Public Holidays (excl. Christmas and Boxing day)	10am to 5pm		10am to 5pm

Mittagong:	Standard Hours	Operating	*School Holiday Hours
Monday – Friday	6am – 9am / 2pm – 6pm*		6am – 6pm
Saturday	8:30am to 6pm		8:30am to 6pm
Sunday	9:30am to 6pm		9:30am to 6pm

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT GROUP MANAGER INFRASTRUCTURE SERVICES



Mittagong:	Standard Hours	Operating	*School Holiday Hours
Public Holidays (excl. Christmas day)	10am to 5pm		10am to 5pm

Bundanoon:	Standard Hours	Operating	*School Holiday Hours
Monday	6am – 8am / 3pm – 6pm		6am – 6pm
Tuesday	3pm – 6pm		10am – 6pm
Wednesday	6am – 8am / 3pm – 6pm		6am – 6pm
Thursday	3pm – 6pm		10am – 6pm
Friday	3pm – 6pm		10am – 6pm
Saturday	10am to 5pm		10am to 5pm
Sunday	10am to 5pm		10am to 5pm
Public Holidays (excl. Christmas and Boxing day)	10am to 5pm		10am to 5pm

*On evenings that Water Polo runs club nights the Learn to Swim and Splash Pad will remain open until 7pm.

*School Holiday Hours will run from 21 December 2020 to 26 January 2021.

Variations to operating hours:

1. Should patronage be less than 20 people (10 at Bundanoon) and the weather is not conducive to swimming, (rain and cold temp) the Pool Supervisors may close the pools an hour early.
2. On inclement days or where temperatures fall below 18 degrees, two of the three Swimming Centres will be closed from 9:00am. Signage at the pool entrance will provide details of any open pools and advise that the pool has been closed due to inclement weather.
3. The operating hours of Bundanoon and Mittagong Swimming Centre will be extended from Monday to Friday in school holidays and the Centres will remain open when required for functions with significant numbers e.g. School Swimming Carnivals.
4. If the Bowral Swimming Centre is booked due to school programs outside school holiday hours, Council will open the Mittagong Swimming Centre between 9am – 2pm should the centre not be booked, and staff are available to cover the additional hours.
5. If the forecast weather 48 hours prior to the date, predicts the temperature will be 32 degrees or greater at 6pm, Bowral Swimming Centre will remain open until 7pm subject to staff availability and that the pool is not already being utilised by Swim Club or casual booking.

COMMUNICATION AND CONSULTATION

Community Engagement

Council officers have taken on board feedback from pool users and other stakeholders in determining the season length and operating hours for the 2020-2021 pool season.

Internal Communication and Consultation

Staff from the following branches were consulted:

- Infrastructure services – Pools and Facilities

External Communication and Consultation

Council Officers circulated the 2020-21 aquatic usage questionnaire to local representatives from swimming user groups and offered an opportunity for those members to respond or meet to discuss operational aspects of the seasonal swimming centres for the upcoming season.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

Swimming centres play an important role in community life, providing swimming lessons, squad training, social swimming, water polo and swim club meets. The swimming centres are also used widely by the local schools for carnivals and sport programs.

- **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 adopted budget for the pool facilities has been based on the proposed operational strategies for the 2020/21 season and taking into account the Aquatic Facilities Strategy and Works Program for the Shire's public swimming centres.

RELATED COUNCIL POLICY

There is no related policy.

OPTIONS

The options available to Council are:

Option 1

1. THAT Council approve the seasonal duration and operational hours and reasons for variation of those hours as outlined in the report.
2. THAT the pool season duration and operational hours will be actively promoted to the community.
3. THAT Recommendations 1 and 2 be subject to COVID-19 Restrictions in place at the time.
4. THAT Council waive fees and charges for a Water Polo Gala Day as outlined in the report.

Option 2

Council vary the season length, duration and operating hours and variation to those hours.

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

CONCLUSION

It is recommended that Council approve the operation of the Shire's public swimming centres for the 2020/21 season as set out in this report.

ATTACHMENTS

There are no attachments to this report.



11.2 Investment Report - June 2020

Reference:	2104
Report Author:	Accounting Officer (Banking and Investments)
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 30 June 2020.

RECOMMENDATION

THAT the information on Council's Investments as at 30 June 2020 be received and noted.

REPORT

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

This report provides details of Council's Investment Portfolio as at 30 June 2020.

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 \$3,485,229.54 for twelve (12) months to 30 June 2020.

ATTACHMENTS

1. Investment Report Summary as at 30 June 2020

Barry W Paull
Deputy General Manager Operations, Finance and Risk
Friday 17 July 2020



Wingecarribee Shire Council Investment Report Summary

For the period ending 30 June 2020

List of Investments

Council's investment portfolio as at 30 June 2020 consists of the following investments:

INVESTMENT PORTFOLIO AS AT 30 June 2020						
Institution	Type	Amount	Interest Rate	Investment Term - Days	Maturity Date	% Investment Portfolio
ME	Term Deposit	4,000,000	1.55%	182	3/07/2020	2.19%
Macquarie	Term Deposit	5,000,000	1.70%	121	3/07/2020	2.74%
NAB	Term Deposit	5,000,000	1.55%	158	10/07/2020	2.74%
MyState	Term Deposit	5,000,000	1.60%	181	20/07/2020	2.74%
Rural	Term Deposit	6,000,000	1.60%	180	22/07/2020	3.29%
MyState	Term Deposit	5,000,000	1.60%	183	29/07/2020	2.74%
NAB	Term Deposit	5,000,000	1.54%	210	7/08/2020	2.74%
Macquarie	Term Deposit	5,000,000	1.60%	180	26/08/2020	2.74%
NAB	Term Deposit	5,000,000	1.51%	210	28/08/2020	2.74%
WBC	Term Deposit	5,000,000	1.62%	364	4/09/2020	2.74%
ME	Term Deposit	5,000,000	1.63%	364	4/09/2020	2.74%
ME	Term Deposit	5,000,000	1.58%	212	16/09/2020	2.74%
BDCU	Term Deposit	5,000,000	1.65%	365	24/09/2020	2.74%
BDCU	Term Deposit	5,000,000	1.65%	365	26/09/2020	2.74%
NAB	Term Deposit	5,000,000	1.53%	243	7/10/2020	2.74%
MyState	Term Deposit	5,000,000	1.58%	269	23/10/2020	2.74%
WBC	Term Deposit	5,000,000	1.62%	365	3/11/2020	2.74%
AMP	Term Deposit	2,500,000	1.65%	182	23/11/2020	1.37%
AMP	Term Deposit	2,500,000	1.60%	180	24/11/2020	1.37%
Auswide	Term Deposit	4,000,000	1.70%	364	27/11/2020	2.19%
Macquarie	Term Deposit	5,000,000	1.60%	268	27/11/2020	2.74%
Auswide	Term Deposit	5,000,000	1.66%	365	11/12/2020	2.74%
AMP	Term Deposit	5,000,000	1.65%	212	11/12/2020	2.74%
BDCU	Term Deposit	5,000,000	1.25%	240	20/01/2021	2.74%
Auswide	Term Deposit	5,000,000	1.63%	365	19/02/2021	2.74%
ING	Term Deposit	2,000,000	1.60%	365	19/02/2021	1.10%
ING	Term Deposit	5,000,000	1.60%	365	23/02/2021	2.74%
MyState	Term Deposit	5,000,000	1.55%	364	5/03/2021	2.74%
IMB	Term Deposit	4,000,000	1.85%	364	26/03/2021	2.19%
Macquarie	Term Deposit	3,000,000	1.40%	365	29/04/2021	1.64%
BDCU	Term Deposit	5,000,000	1.10%	365	21/05/2021	2.74%
BDCU	Term Deposit	5,000,000	1.30%	365	28/05/2021	2.74%
BOQ	Term Deposit	2,500,000	1.20%	365	28/05/2021	1.37%
NAB	Term Deposit	5,000,000	1.00%	364	4/06/2021	2.74%
NAB	Term Deposit	5,000,000	0.95%	365	15/06/2021	2.74%
NAB	Term Deposit	10,000,000	1.00%	365	23/06/2021	5.48%
Auswide	Term Deposit	5,000,000	1.01%	364	25/06/2021	2.74%
NAB	Call Account	6,268,431	0.25%	NA	NA	3.43%
BDCU	Call Account	750,330	0.50%	NA	NA	0.41%
Total Investments		\$182,518,761				100.00%

Institution Legend		
AMP - AMP Limited	CBA - Commonwealth Bank of Australia	MyState - MyState Bank
ANZ - Australia & New Zealand Banking Group	CUA - Credit Union Australia	NAB - National Australia Bank
Auswide - Auswide Bank	IMB - IMB Bank	Newcastle - Newcastle Permanent Building Society
BOQ - Bank of Queensland	ING - ING Direct	St George - St George Bank
BDCU - BDCU Alliance Bank	Macquarie - Macquarie Bank Limited	WBC - Westpac Banking Corporation
Bendigo - Bendigo & Adelaide Bank	ME - Members Equity Bank	Rural - Rural Bank



Wingecarribee Shire Council Investment Report Summary

For the period ending 30 June 2020

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%	25.35%	46,268,431	YES	YES
WBC	A1+	40%	5.48%	10,000,000	YES	YES
Macquarie	A1	25%	9.86%	18,000,000	YES	YES
ING	A1	25%	3.84%	7,000,000	YES	YES
AMP	A2	15%	5.48%	10,000,000	YES	YES
BOQ	A2	15%	1.37%	2,500,000	NO	YES
BDCU	A2	15%	14.11%	25,750,330	NO	YES
Rural Bank	A2	15%	3.28%	6,000,000	NO	YES
IMB	A2	15%	2.19%	4,000,000	NO	YES
ME	A2	15%	7.67%	14,000,000	NO	YES
MyState	A2	15%	10.96%	20,000,000	NO	YES
Auswide	A2	15%	10.41%	19,000,000	NO	YES
Total			100.00%	182,518,761		

Council resolved that no further investments would be placed with Westpac Bank (WBC) and existing investments would be divested upon maturity (MN 538/19). Council has 2 term deposits totalling \$10 million with WBC. These term deposits will be redeemed upon maturity with the final term deposit maturing on 3 November 2020.

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%	30.83%	56,268,431	YES
A1	80%	13.70%	25,000,000	YES
A2	60%	55.47%	101,250,330	YES
A3	20%	0.00%	0	YES
Govt	25%	0.00%	0	YES
Total		100.00%	182,518,761	

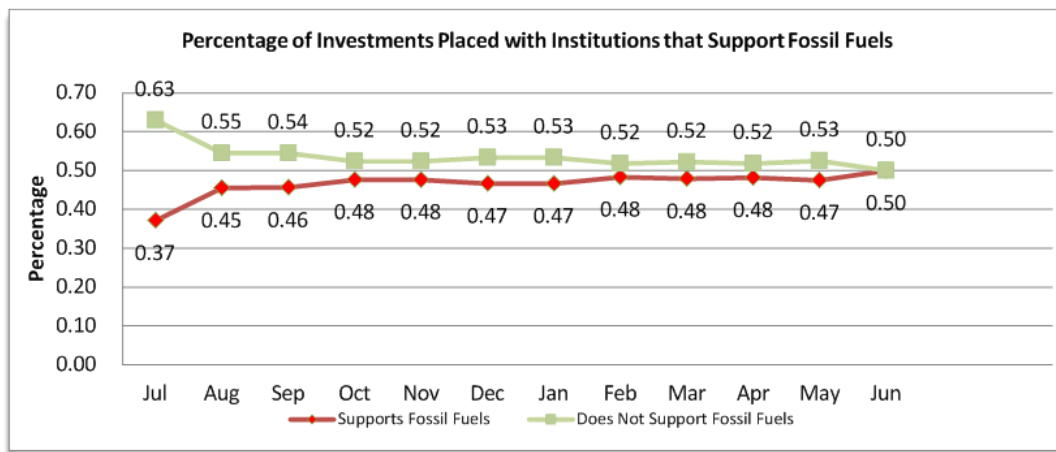


Wingecarribee Shire Council Investment Report Summary For the period ending 30 June 2020

Non-Fossil Fuel Investment Preferencing

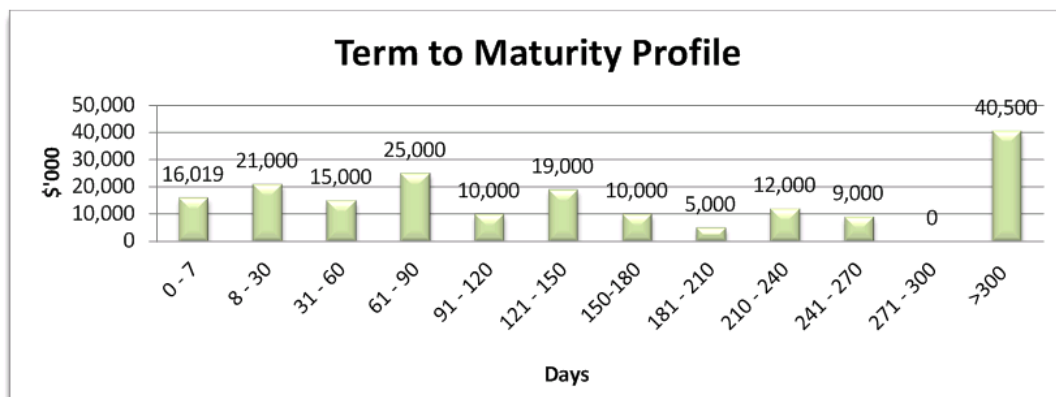
Council's adopted Investment Policy states a preference for placing funds with institutions that do not support the fossil fuel industry. The chart below identifies Council's percentage of investments placed with institutions that do not support the fossil fuel industry.

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.

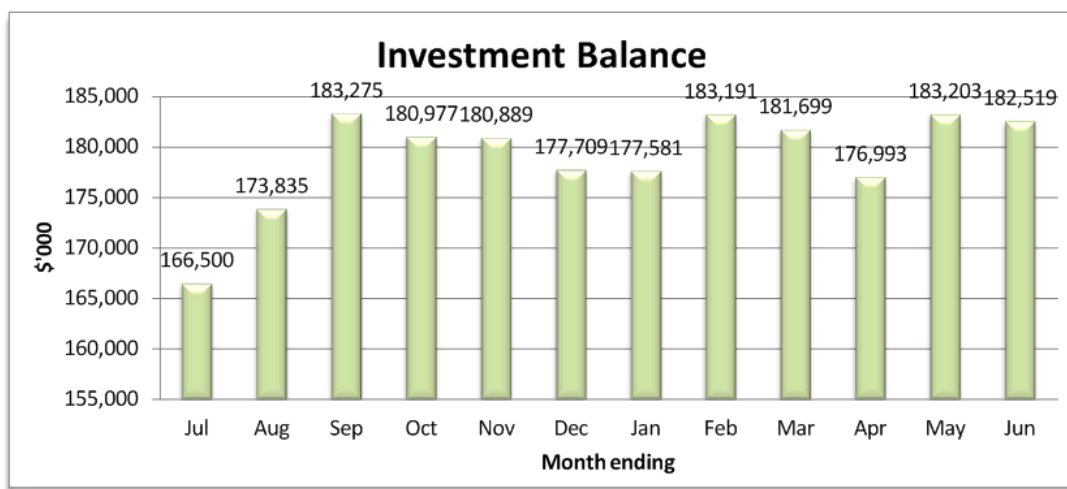




Wingecarribee Shire Council Investment Report Summary For the period ending 30 June 2020

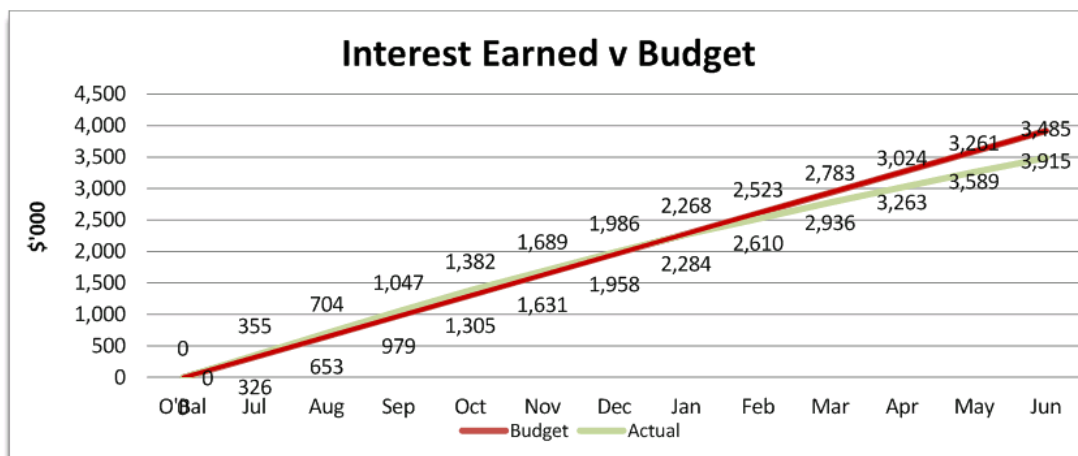
Portfolio Performance

Council's investment balance at the end of June 2020 was \$182.519 million. This has decreased by \$0.684 million since the end of May 2020. The decrease in investments is a result of operational and capital expenditure payments during June and the absence of rates and water instalments during the month.



Interest Revenue

Council is currently not exceeding budget expectations. Council's investment portfolio did not perform above budget due to the decreasing interest rates being offered by financial institutions.





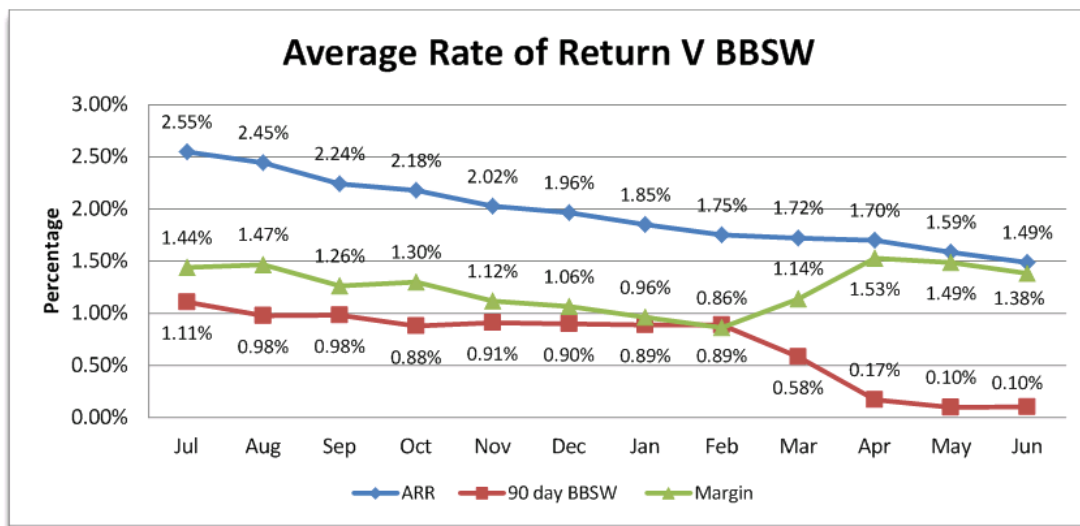
Wingecarribee Shire Council Investment Report Summary For the period ending 30 June 2020

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 June 2020 was 1.49% which is 0.10% lower than May 2020. The BBSW remained steady at 0.10%.

The margin above BBSW was 1.38% for June 2020 which shows Council continues to secure favourable interest rates on term deposits.





12 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

12.1 Submission to Office of Local Government on Councillor Superannuation Discussion Paper

Reference:	101/6
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

In March 2020, the Office of Local Government (OLG) released a discussion paper in relation to superannuation payments for councillors. A draft response to this Paper has been prepared and this report seeks Council's endorsement for its submission.

RECOMMENDATION

THAT Council endorse the draft submission to the Office of Local Government on the Superannuation for Councillors Discussion Paper – refer to Attachment 2 to this report.

REPORT

BACKGROUND

The *Commonwealth Superannuation Guarantee (Administration) Act 1993* (SG Act) enforces an obligation on an employer to pay the superannuation guarantee of 9.5% of an employee's earnings to a complying superannuation fund nominated by the employee. The obligations under the SG Act do not extend to councils with respect to the fees they pay to mayors and councillors because they are not employees of the council for the purposes of that Act. Section 12(9A) of the SG Act states, "a person who holds office as a member of a local government council is not an employee of the council".

Additionally, Section 251 of the *Local Government Act 1993* (the Act) also makes it clear that the payment of a fee to a mayor or councillor does not constitute the payment of a salary and mayors and councillors are not to be taken to be employees of councils because of the payment of the fee. As such, councils are not required to make superannuation payments for councillors in addition to their fees.

The Local Government Remuneration Tribunal independently sets the remuneration for mayors and councillors. As required under section 238 of the Act, the Tribunal is required to determine the categories of councils and mayoral offices and to place each council and

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



mayoral office into one of those categories. The categories are to be determined at least once every 3 years.

Furthermore, under section 241 of the Act, the Tribunal is required to determine, no later than 1 May in each year, the maximum and minimum amount of fees to be paid to mayors and councillors of councils, as well as chairpersons and members of county councils. It should be noted that due to the COVID-19 pandemic the Minister for Local Government made the Local Government (General) Amendment (COVID-19) Regulation 2020 which extended the time for the making of this determination to no later than 1 July 2020. The determination for 2020 was determined at the Ordinary Council meeting 8 July 2020 MN 254/20.

REPORT

The Office of Local Government (OLG) Councillor Superannuation Discussion Paper explores several reasons for mayors and councillors receiving superannuation payments, these are summarised as follows:

- it will ensure that mayors and councillors are adequately remunerated for the performance of their duties
- it will address a historic anomaly that has seen mayors and councillors denied the benefit of superannuation guarantee payments enjoyed by the broader workforce, and
- it is hoped it will encourage more women to stand as candidates for election to councils

Further details are provided in **Attachment 1** to this report.

The Discussion Paper seeks feedback on four (4) options posed by the OLG, these are as follows.

Option 1: Maintaining the status quo

Under this option, councils will continue not to be obliged to make superannuation guarantee payments on behalf of the mayor and councillors. Mayors and councillors who wish to make concessional contributions to their superannuation funds can continue to enter into an arrangement with the council under which they agree to forego part of their fee in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

Option 2: Amending the NSW Local Government Act 1993 to require councils to pay a portion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

Under this option, the Act would be amended to require councils to pay a proportion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

Option 3: Amending the NSW Local Government Act 1993 to require councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the payment of the mayor's and councillors' fees.

Under this option, all councils will be required to pay an amount equivalent to the superannuation guarantee contribution payable with respect to the mayor's and councillors' fees, into a complying superannuation fund nominated by the mayor and councillors. The payment would be made in addition to the payment of the mayor's and councillors' fees. A



supporting amendment would be required to exempt the additional payment from section 242A of the Act.

Option 4: Amend the NSW Local Government Act 1993 to give councils the option to pay an amount equivalent to the superannuation guarantee into a Councillor Superannuation – Discussion Paper 14 complying superannuation fund nominated by the mayor and councillors in addition to the mayor’s and councillors’ fees.

This option is based on the Queensland model. Under this option, the payment of an additional superannuation contribution in addition to the mayor’s and councillors’ fees would be optional for councils. Councils would also have the option to make a superannuation contribution on behalf of the mayor and councillors as a portion of the mayor’s or councillors’ fees. As with option 3, a supporting amendment would be required to exempt the additional payment from section 242A of the Act.

A councillor briefing session was held on 3 June 2020 to provide an overview of the Discussion Paper and the options. Based on feedback provided at this session, a draft submission has been prepared supporting option 3 (see **Attachment 2**).

COMMUNICATION AND CONSULTATION

Community Engagement

N/A

Internal Communication and Consultation

A Councillor Briefing session was held on 3 June 2020.

External Communication and Consultation

N/A

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.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



COUNCIL BUDGET IMPLICATIONS

If the *Local Government Act 1993* were amended to permit the payment of superannuation to Councillors, this would have a direct impact on Council's Budget. Based on the councillor fees (including the Mayoral Allowance) adopted by Council at its meeting 8 July 2020, the additional impact on Council's budget would be approximately \$26,500 per annum.

RELATED COUNCIL POLICY

Nil

OPTIONS

The option available to Council is to endorse the draft submission to the Office of Local Government on Councillor Superannuation Discussion Paper.

CONCLUSION

Council's submission to the Office of Local Government provides a position on superannuation payments for the mayor and councillors.

ATTACHMENTS

1. Councillor Superannuation Discussion Paper
2. Draft Submission



COUNCILLOR SUPERANNUATION

Strengthening local government

Discussion paper

March 2020

12.1 Submission to Office of Local Government on Councillor Superannuation Discussion Paper

ATTACHMENT 1 Councillor Superannuation Discussion-Paper Discussion Paper



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Minister's foreword



Since becoming the Minister for Local Government, I have actively engaged with local councils across New South Wales. I am constantly impressed by the passion held by our mayors and councillors, and frequently find myself commenting on the incredible work ethic of many who continually deliver for their communities.

I am proud to be a part of a Government that is committed to supporting councils to deliver for their local communities. Since 2011 this Government has provided more than \$9 billion to local councils to deliver and improve local infrastructure, services and facilities for their communities. About half of this funding has gone to regional and rural communities which are struggling through one of the worst droughts on record and are recovering and rebuilding after the recent natural disasters. This funding boost has helped local councils provide the very things that make our communities tick – from local infrastructure to essential services and programs that unite local residents.

Under Commonwealth legislation, councils are not required to make superannuation contributions in relation to the fees they pay to mayors and councillors because they are not employees of councils. Recently I was pleased to host a workshop where the obstacles that deter women from nominating to be a councillor or mayor were identified, and the lack of superannuation payments was one of the barriers raised. It can also be said that this goes some way in deterring people under 35 from representing their community on their local council.

As you know, mayors and councillors currently receive a level of remuneration that is independently set by the Local Government Remuneration Tribunal based on the application of a range of criteria. It is currently possible for councils to make superannuation contributions on behalf of mayors and councillors on a pre-tax basis out of the fees they receive from the council as determined by the Tribunal.

However, the Government recognises that not everyone agrees with the current arrangements and acknowledges the calls for councils to be required to make superannuation contributions on behalf of mayors and councillors in addition to the payment of their fees. The purpose of this discussion paper is to encourage further discussion about this issue and assist the Government in better understanding the views of the local government sector and the broader community.

The discussion paper:

- provides information on the current system for setting councillor remuneration and the legislation governing superannuation contributions for elected officials
- sets out the arguments for and against the payment of superannuation contributions for mayors and councillors, and
- provides different options and legislative models.

I welcome your input into this conversation and look forward to hearing your views.

The Hon Shelley Hancock MP
Minister for Local Government



1. Should mayors and councillors in NSW receive superannuation payments in addition to their fees?

Reasons that mayors and councillors should receive superannuation payments in addition to their fees can be summarised as follows:

- it will ensure that mayors and councillors are adequately remunerated for the performance of their duties
- it will address a historic anomaly that has seen mayors and councillors denied the benefit of superannuation guarantee payments enjoyed by the broader workforce, and
- it is hoped it will encourage more women to stand as candidates for election to councils.

Each of these arguments are examined below.

Are NSW mayors and councillors adequately remunerated?

In NSW, the remuneration received by mayors and councillors is independently set by an expert tribunal, the Local Government Remuneration Tribunal.

Under section 239 of the NSW *Local Government Act 1993* (the Act), the Tribunal is required to determine the categories of councils and mayoral offices and to place each council and mayoral office into one of those categories. The categories are to be determined at least once every 3 years.

To ensure that mayors and councillors receive remuneration that is commensurate with, and reflects their workload and responsibilities, the Tribunal is required to consider a range of criteria under section 240 of the Act in determining remuneration categories. These include:

- the size, physical terrain, population and the distribution of the population of each local government area
- the nature and volume of business dealt with by each council
- the nature and extent of the development of each local government area
- the diversity of the communities each council serves
- the regional, national and international significance of the council, and
- any other matters the Tribunal considers relevant to the provision of efficient and effective local government.

The Tribunal last undertook a significant review of the categories and the allocation of councils into each of the categories in 2017. The Tribunal has indicated that it will next consider the model, the criteria applicable to each group and the allocation of councils in detail in 2020.

Under section 241 of the Act, the Tribunal is required to determine, no later than 1 May in each year, for each of the categories determined under section 239, the maximum and minimum amount of fees to be paid to mayors and councillors of councils, as well as chairpersons and members of county councils.

As noted above, in determining the maximum and minimum fees payable in each of the categories, the Tribunal is required under section 242A(1) of the Act, to give effect to the same policies on increases in remuneration as the Industrial Relations Commission.

The current policy on wages is that public sector wages cannot increase by more than 2.5 per cent, and this includes the maximum and minimum fees payable to councillors and mayors and chairpersons and members of county councils.

12.1 Submission to Office of Local Government on Councillor Superannuation Discussion Paper

ATTACHMENT 1 Councillor Superannuation Discussion-Paper Discussion Paper



However, the Tribunal is able to determine that a council can be placed into another existing or a new category with a higher range of fees without breaching the Government’s wage policy pursuant to section 242A(3) of the Act. This means that where, for whatever reason, the workload or responsibilities of the mayor and councillors increase, they may receive an increase in remuneration that reflects their increased workload even if that increase exceeds the 2.5% public sector wages cap.

The current remuneration levels for mayors and councillors in each category are set out below:

Table 1: Minimum and maximum fees for NSW mayors and councillors

Category		Councils in Category	Councillor/Member Annual Fee		Mayor/Chairperson Additional Fee*	
			Minimum	Maximum	Minimum	Maximum
General Purpose Councils – Metropolitan	Principal CBD	1	27,640	40,530	169,100	222,510
	Major CBD	1	18,430	34,140	39,160	110,310
	Metropolitan Large	8	18,430	30,410	39,160	88,600
	Metropolitan Medium	9	13,820	25,790	29,360	68,530
	Metropolitan Small	11	9,190	20,280	19,580	44,230
General Purpose Councils – Non - metropolitan	Regional City	2	18,430	32,040	39,160	99,800
	Regional Strategic Area	2	18,430	30,410	39,160	88,600
	Regional Rural	37	9,190	20,280	19,580	44,250
	Rural	57	9,190	12,160	9,780	26,530
County Councils	Water	4	1,820	10,140	3,920	16,660
	Other	6	1,820	6,060	3,920	11,060

- Mayors and county council chairpersons receive their fee **in addition to** the fee they receive as a councillor/member.

12.1 Submission to Office of Local Government on Councillor Superannuation Discussion Paper

ATTACHMENT 1 Councillor Superannuation Discussion-Paper Discussion Paper



A comparison of average remuneration received by mayors and councillors in NSW with the remuneration received by their counterparts in other jurisdictions indicates that NSW councillors receive similar or higher levels of remuneration than their counterparts in other jurisdictions other than Queensland.

Table 2: Interjurisdictional comparison of councillor remuneration (as paid at March 2020)

Jurisdiction	Average	Lowest Fee	% NSW fee	Highest fee	% NSW fee
NSW	24,860	9,190		40,530	
QLD	141,066	53,049	577%	160,938	397%
VIC	27,999	8,833	96%	47,165	116%
TAS	23,372	9,546	104%	37,198	92%
WA	17,634	3,589	39%	31,678	78%
NT ¹	13,283	4,428	48%	22,137	55%
SA	16,215	6,500	71%	25,930	64%

Table 3: Interjurisdictional comparison of mayors' remuneration (as paid at March 2020)

Jurisdiction	Average	Lowest Fee	% NSW fee	Highest fee	% NSW fee
NSW	141,005	18,970		263,040	
QLD	185,824	106,100	1,030%	265,549	101%
VIC	131,877	62,884	331%	200,870	76%
TAS	58,430	23,863	125%	92,997	35%
WA	94,443	4,102	22%	184,784	70%
NT	73,856	24,619	130%	123,093	47%
SA	101,500	26,000	137%	177,000	67%

¹ NT's councillor and mayoral fees are based on the Councillor Member Allowances for July 2018-2019



Have NSW mayors and councillors been denied a financial benefit received by other members of the workforce through the payment of the superannuation guarantee?

The superannuation guarantee was introduced in 1992-93, with compulsory contributions rising at regular intervals from 3 per cent of wages in that year to 9 per cent in 2002-03 and 9.5 per cent in 2013-14. The superannuation guarantee is scheduled to rise incrementally from 9.5 per cent of wages today to 12 per cent by July 2025.

While superannuation guarantee payments are made in addition to an employee’s wages, as the Grattan Institute has demonstrated², higher compulsory superannuation contributions are ultimately funded by lower wages. When the superannuation guarantee increases, this is wholly or mostly borne by workers who receive smaller pay rises and lower take-home pay. For example, when the superannuation guarantee increased by from 9 per cent to 9.25 per cent in 2013, the Fair Work Commission stated in its minimum wage decision that the proposed minimum wage increase was “*lower than it otherwise would have been in the absence of the Super Guarantee increase*”.

Given the evidence that superannuation guarantee payments are in effect paid for by workers through lower wages, it would be over simplifying the situation to assume that workers are receiving a 9.5% supplementary payment that is being denied to NSW mayors and councillors.

The last increase in the superannuation guarantee came into effect in 2013/14 when the contribution rate increased from 9.25% to 9.5%. A comparison of increases in average weekly earnings with increases in NSW mayors’ and councillors’ remuneration as determined by the Tribunal since then indicates that NSW mayors and councillors have, on average, enjoyed slightly higher increases in remuneration than the rest of the community.

Table 4: Comparison of increases in average weekly earnings with increases in mayors’ and councillors’ remuneration

Financial year	Average weekly ordinary time earnings Aust - annual average increase June to June each year	Councillor remuneration increase 1 July
1 July 2014 – 30 June 2015	2.3%	2.5%
1 July 2015 – 30 June 2016	2.0%	2.5%
1 July 2016 – 30 June 2017	2.2%	2.5%
1 July 2017 – 30 June 2018	1.8%	2.5%
1 July 2018 – 30 June 2019	2.7%	2.5%
1 July 2019 – 30 June 2020	3.1%	2.5%

² See John Daley and Brendan Coates (2018) [Money in retirement: More than enough](#). Grattan Institute. November 2018

12.1 Submission to Office of Local Government on Councillor Superannuation Discussion Paper**ATTACHMENT 1 Councillor Superannuation Discussion-Paper Discussion Paper**

Were councils to be required to make an additional payment on behalf of mayors and councillors equivalent to the superannuation guarantee amount (currently 9.5% of their fees) this would, in effect confer on mayors and councillors a 9.5% increase in their remuneration outside of the normal process for setting mayors' and councillors' remuneration by the Local Government Remuneration Tribunal.

This will not be a one-off increase. With the superannuation guarantee set to increase to 12% in the years up to 2025, this would see further increases to mayors' and councillors' remuneration over and above any increases approved by the Tribunal.

While the receipt of a 9.5% increase in their remuneration through the payment of the superannuation guarantee is likely to be widely supported by mayors and councillors, it is important that the community is consulted and support shown by them before changes are made.

At present it is not clear whether ratepayers would support seeing the revenue they contribute to their local councils being diverted from providing services and infrastructure to fund a 9.5% increase in remuneration for their elected representatives.

Will payment of the superannuation guarantee encourage more women to stand as candidates at council elections?

Payment of the superannuation guarantee for mayors and councillors has been promoted as an equity measure to address disparities in men's and women's superannuation balances.

Research has demonstrated that the principal impediments to more women standing as candidates at local government elections are:

- lack of awareness of local government and the role of councils and councillors
- feeling unqualified
- balancing carer and work commitments
- the investment of time required to be an effective councillor, and
- perceptions of the culture of councils and councillor conduct.³

The payment of the superannuation guarantee would benefit male and female councillors alike. In the short term, male mayors and councillors will be the principal beneficiaries of any increase in remuneration through the receipt of an additional superannuation payment given that they currently comprise 69% of councillors in NSW⁴.

Major stakeholders promoting an increase in the number of females represented on councils including Local Government NSW, Women for Election Australia, Australian Local Government Women's Association and the Country Women's Association of NSW recently noted that *"a key barrier for women standing for election to local government can be the lack of access to superannuation, with women unwilling to take on more work with insufficient remuneration"*. The stakeholders also noted *"women tend to have far lower superannuation balances than men, often due to time out of the workforce caring for family members"*.

³ See Manion, Jo and Sumich, Mark (2013), [Influencing Change – Views of elected representatives on leadership, decision making and challenges for Local Government in NSW](#)

⁴ See Office of Local Government (2019), [NSW Candidate and Councillor Diversity Report 2017](#)



Will payment of the superannuation guarantee encourage younger people to stand as candidates at council elections?

Two separate studies undertaken by the University of Melbourne in 2014⁵ and 2015⁶ found that younger people tend not to be engaged by and are uninterested in superannuation or retirement planning. HECS repayments and saving to purchase a first home tend to be higher financial priorities for younger people than saving for retirement.

The average tenure of councillors is between one to two terms. More than three quarters (77%) of councillors elected at the 2012, 2016 and 2017 elections had served two terms or less. Assuming that councillors were to receive the superannuation guarantee of 9.5% with respect to their fees over one or two terms, as demonstrated by table 5, the value of the capital contributions made to their superannuation funds would, at retirement, represent a small proportion of their accumulated lifetime superannuation capital.

Table 5: Comparison of superannuation contribution amounts that would be made on the maximum annual fee in each category of council at a rate of 9.5% over 1 term (4 years) and 2 terms (8 years).

Category		Number of Councils in Category	Councillor/Member Maximum Annual Fee	4 years at 9.5%	8 years at 9.5%
General Purpose Councils – Metropolitan	Principal CBD	1	40,530	15,401	30,802
	Major CBD	1	34,140	12,973	25,946
	Metropolitan Large	8	30,410	11,556	23,112
	Metropolitan Medium	9	25,790	9,800	19,600
	Metropolitan Small	11	20,280	7,706	15,412
General Purpose Councils – Non-metropolitan	Regional City	2	32,040	12,175	24,350
	Regional Strategic Area	2	30,410	11,556	23,112
	Regional Rural	37	20,280	7,706	15,412
	Rural	57	12,160	4,621	9,242
County Councils	Water	4	10,140	3,853	7,706

⁵ See Ali, Paul and Anderson, Malcolm and Clark, Martin and Ramsey, Ian and Shekhar, Chander (2014), [Superannuation Knowledge, Behaviour and Attitudes in Young Adults in Australia](#). CIFR Paper No. RP002/2014

⁶ See Ali, Paul and Anderson, Malcolm and Clark, Martin and Ramsey, Ian and Shekhar, Chander (2015), [No Thought for Tomorrow: Young Australian Adults' Knowledge, Behaviour and Attitudes About Superannuation](#). Law and Financial Markets Review Vol. 9, No. 2, pages 90-105



	Other	6	6,060	2,303	4,606
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How much will it cost and who will pay?

The cost of paying the superannuation guarantee for mayors and councillors will need to be met by each council out of its existing budget.

This cost will vary from council to council depending on what fees the mayor and councillors receive and how many councillors there are on the council. The table below sets out the average annual cost to councils in each remuneration category of paying the 9.5% superannuation guarantee for the mayor and each councillor based on the maximum annual fee payable in each category.

The total estimated annual cost of paying the 9.5% superannuation guarantee for mayors and councillors for the local government sector as whole is close to \$3 million (\$2,758,739).

Table 6: Average annual cost to councils of making a 9.5% superannuation contribution for mayors and councillors

Category		Councils in Category	Average annual cost of paying 9.5% superannuation contribution for mayors and councillors
General Purpose Councils – Metropolitan	Principal CBD	1	55,792
	Major CBD	1	55,886
	Metropolitan Large	8	45,973
	Metropolitan Medium	9	35,911
	Metropolitan Small	11	21,541
General Purpose Councils – Non-metropolitan	Regional City	2	46,007
	Regional Strategic Area	2	45,973
	Regional Rural	37	21,543
	Rural	57	11,762
County Councils	Water	4	9,289
	Other	6	5,081



2. Why are councils not required to make superannuation guarantee payments to mayors and councillors?

The Commonwealth *Superannuation Guarantee (Administration) Act 1993* (SG Act) imposes an obligation on an employer to pay the superannuation guarantee of 9.5% of an employee's earnings to a complying superannuation fund nominated by the employee.

The obligations under the SG Act do not extend to councils with respect to the fees they pay to mayors and councillors because they are not employees of the council for the purposes of that Act. Mayors and councillors are elected to a civic office in the council and the council is not their employer.

Section 12(9A) of the SG Act expressly excludes mayors and councillors across Australia from the definition of "employee" meaning that councils are not obliged to make superannuation guarantee payments to mayors and councillors under that Act. Section 12(9A) of the SG Act provides that, "*a person who holds office as a member of a local government council is not an employee of the council*".

Section 251 of the NSW Local Government Act also makes it clear that the payment of a fee to a mayor or councillor does not constitute the payment of a salary and mayors and councillors are not to be taken to be employees of councils because of the payment of the fee.

3. Can NSW councils make superannuation contributions on behalf of mayors and councillors as a component of their fees?

There is nothing currently preventing councils from making superannuation contributions on a voluntary basis on behalf of the mayor and councillors.

The Australian Tax Office has made a definitive ruling, (ATO ID 2007/205) that allows for mayors and councillors to redirect their annual fees into superannuation on a pre-tax basis.

In practical terms, there is nothing currently preventing mayors and councillors, who wish to make concessional contributions to their superannuation funds, from entering into an arrangement with their council under which they agree to forego part of their remuneration in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

Councils are also able to determine for themselves, by council resolution and/or within an appropriate council policy, if and how councillors may do this.



4. Can NSW councils make superannuation contributions on behalf of mayors and councillors in addition to the payment of their fee?

It is open to councils under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the Commonwealth *Taxation Administration Act 1953* (TAA) to resolve that mayors and councillors are subject to Pay As You Go withholding. The resolution must be unanimous to be effective.

A resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA operates to take the mayor and councillors out of section 12(9A) of the SG Act, which recognises that they are not employees of the council, and brings them within section 12(10) of the SG Act which states that:

A person covered by paragraph 12-45(1)(e) in Schedule 1 to the Taxation Administration Act 1953 (about members of local governing bodies subject to PAYG withholding) is an employee of the body mentioned in that paragraph.

Section 12(1) effectively deems the mayor and councillors to be employees and the council to be their employer for the purposes of the SG Act. This will mean the council will be obliged to make superannuation guarantee contributions (currently 9.5% of the mayor's and councillors' fees) to complying superannuation funds in respect of fees paid to the mayor and councillors. These contributions would be paid in addition to the fees received by the mayor and councillors.

It should be noted however that a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA will also result in mayors and councillors being treated as employees for a wide range of other taxation purposes. Among other things:

- the council will have to withhold amounts from the payment of fees to the mayor and councillors in accordance with section 12-45(1)(e) of Schedule 1 of the TAA
- the council will be subject to fringe benefits tax under the Commonwealth *Fringe Benefits Tax Assessment Act 1986* on the taxable value of expenses paid to and facilities provided to the mayor and councillors under the council's councillor expenses and facilities policy adopted under section 252 of the LGA, and
- the council will be obliged under Commonwealth *Child Support (Registration and Collection) Act 1988* to withhold payments from fees paid to the mayor and councillors for the purposes of making child support/maintenance/carer payments.

It is unclear however whether a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA is permissible under sections 248(2) and 249(3) of the Act where it would have the consequence of requiring a council to make a superannuation guarantee contribution in respect of the fees paid to councillors and the mayor that, taken together with their fees, exceeds the maximum amount determined by the Local Government Remuneration Tribunal.

It is also unclear what impact section 242A of the Act would have in relation to a council's resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA. Section 242A of the Act places an obligation on the Local Government Remuneration Tribunal when determining the remuneration of mayors and councillors, to apply the same policies on increases in remuneration as those that the Industrial Relations Commission is required to apply under section 146C of the NSW *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.



It is possible that where a council is obliged to make superannuation guarantee contributions on behalf of the mayor and councillors in addition to their fee, the Tribunal may, in turn, be obliged under section 242A to make a determination reducing the mayor's and councillors' fees to ensure that the fee and superannuation contribution do not result in an increase that exceeds the 2.5% public sector wages cap.

5. What is the position in Queensland?

Section 226 of the Queensland *Local Government Act 2009* gives councils the option to pay an amount into a complying superannuation fund on behalf of the mayor and councillors up to an amount payable with respect to employees of the council. The amount paid is in addition to the amount the mayor and councillor receive as a fee. Alternatively, councils may contribute a portion of the mayor's or councillors' fees to complying superannuation fund as is the case in NSW.

6. Options

Option 1: Maintaining the status quo

Under this option, councils will continue not to be obliged to make superannuation guarantee payments on behalf of the mayor and councillors. Mayors and councillors who wish to make concessional contributions to their superannuation funds can continue to enter into an arrangement with the council under which they agree to forego part of their fee in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

Option 2: Amending the NSW *Local Government Act 1993* to require councils to pay a portion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

Under this option, the Act would be amended to require councils to pay a proportion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

Option 3: Amending the NSW *Local Government Act 1993* to require councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the payment of the mayor's and councillors' fees.

Under this option, all councils will be required to pay an amount equivalent to the superannuation guarantee contribution payable with respect to the mayor's and councillors' fees, into a complying superannuation fund nominated by the mayor and councillors. The payment would be made in addition to the payment of the mayor's and councillors' fees.

A supporting amendment would be required to exempt the additional payment from section 242A of the Act.

Option 4: Amend the NSW *Local Government Act 1993* to give councils the option to pay an amount equivalent to the superannuation guarantee into a



complying superannuation fund nominated by the mayor and councillors in addition to the mayor’s and councillors’ fees.

This option is based on the Queensland model. Under this option, the payment of an additional superannuation contribution in addition to the mayor’s and councillors’ fees would be optional for councils. Councils would also have the option to make a superannuation contribution on behalf of the mayor and councillors as a portion of the mayor’s or councillors’ fees.

As with option 3, a supporting amendment would be required to exempt the additional payment from section 242A of the Act.

7. Have Your Say

We now want to hear from you.

<p>Key questions to consider</p>	<ul style="list-style-type: none"> • Should councils be required to make superannuation contributions for the mayor and councillors? • Should contributions be made as a portion of mayors’ and councillors’ fees or in addition to them? • Which is your preferred option? • Do you have an alternative suggested option?
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Submissions may be made in writing by COB Friday 7 August 2020 to the following addresses.

Post
 Locked Bag 3015
 NOWRA NSW 2541

Email:
olg@olg.nsw.gov.au

Submissions should be labelled ‘Councillor Superannuation Consultation’ and marked to the attention of OLG’s Council Governance Team.

Further information

For more information, please contact OLG’s Council Governance Team on (02) 4428 4100 or via email at olg@olg.nsw.gov.au.



Our ref: 1234/56
Contact:

23 July 2020

Attention: OLG Governance Team
Locked Bag 3015
NOWRA NSW 2541
olg@olg.nsw.gov.au



Civic Centre, 68 Elizabeth St,
Moss Vale NSW 2577
PO Box 141, Moss Vale
02 4868 0888
mail@wsc.nsw.gov.au
ABN 49 546 344 354

Dear Sir/Madam

RE: Councillor Superannuation Consultation

Wingecarribee Shire Council appreciates the opportunity to provide comment on the Discussion Paper '*Councillor Superannuation – March 2020*'.

The majority of Wingecarribee Shire Councillors believe that councils should be required to make superannuation contributions for the mayor and councillors. At its meeting on 22 July 2020 Council resolved to support '*Option 3 - Amending the NSW Local Government Act 1993 to require councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the payment of the mayor's and councillors' fees.*'

On behalf of Wingecarribee Shire Council, we present to you this submission and thank you for the ongoing opportunity to provide input and feedback on the future of Local Government in NSW.

Please contact Council's Group Manager Corporate and Community, Danielle Lidgard on (02) 4868 0888 should you require further information.

Yours sincerely

Duncan Gair
Mayor

Working with you

WSC.NSW.GOV.AU

WINGECARRIBEE - A COAL MINING FREE SHIRE

12.2 Planning Proposal to rezone land at Yarrowa Road Moss Vale

Reference:	5901, PN1682400, PN1682500, PN1682600
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Maintain inter-urban breaks (i.e. the green between) and rural landscape between towns

PURPOSE

The purpose of this report is to re-present a Planning Proposal deferred from 10 July 2019 at which time Council resolved to defer a decision pending completion of the Wingecarribee Local Housing Strategy.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

1. **THAT** the Planning Proposal to rezone land at 121 Yarrowa Road Moss Vale (Lot 4 DP706194), 131 Yarrowa Road Moss Vale (Lot 5 DP706194), and 153 Yarrowa Road Moss Vale (Lot 2 DP610352) from RU2 Rural Landscape to primarily R2 Low Density Residential with a minimum lot size of 600m² with a frontage to Yarrowa Road of RE1 Public Recreation **BE SUPPORTED** to progress to a Gateway Determination but that any development of the subject land shall be in accordance with the relevant recommendations of the Wingecarribee Local Housing Strategy adopted by Council on 24 June 2020.
2. **THAT** the Chelsea Gardens Coomungie Precinct of the Moss Vale Township Development Control Plan be amended to include the subject land and the draft amendment be exhibited with the Planning Proposal should it receive a Gateway Determination.

REPORT

BACKGROUND

The subject land is located on the Yarrowa Road boundary of the Chelsea Gardens Coomungie Urban Release Area (URA) as indicated in **Figure 1** below. The land is zoned RU2 Rural Landscape with a minimum lot size of 40ha under the provisions of Wingecarribee Local Environmental Plan (WLEP) 2010. The zoning relationship between the subject land and the URA is indicated in **Figure 2** below.

A Planning Proposal to rezone the subject land to R2 Low Density Residential with a minimum lot size of 600m² was considered by Council at its Ordinary Meeting of 10 July 2019 at which time it was resolved to defer the matter until after completion of the Local Housing Strategy.

The Wingecarribee Local Housing Strategy was adopted by Council at its Ordinary Meeting of 24 June 2020. Therefore, the Planning Proposal is now being reported back to Council. The Report of 10 July 2019 forms **Attachment 3** to this report and the Planning Proposal submitted by the forms **Attachment 4**.



Figure 1 – Location of the Subject Land (enlarged at Attachment 1)

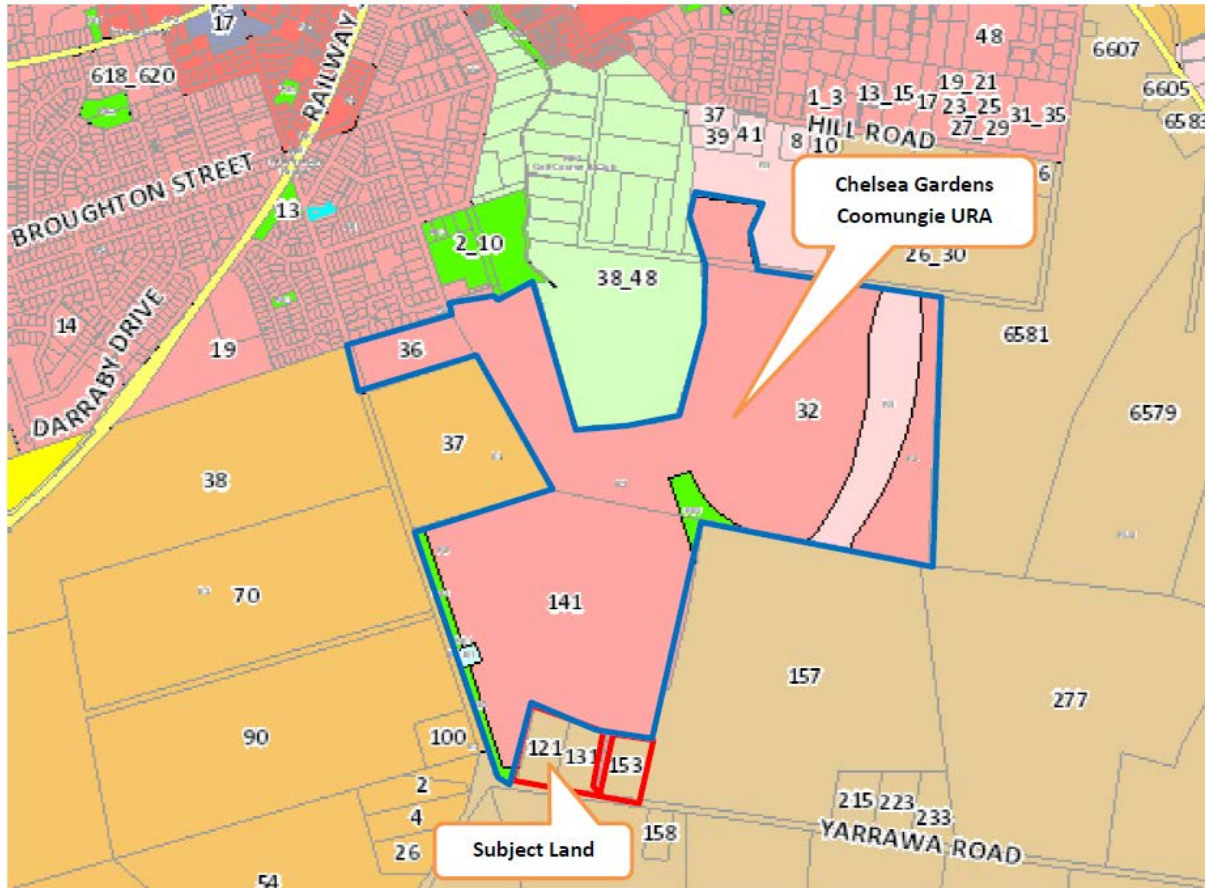


Figure 2 – Location of the Subject Land in relation to Chelsea Gardens Coomungie Urban Release Area (enlarged at Attachment 2)

REPORT

The subject land was considered on page 40 of the Wingecarribee Local Housing Strategy (the Strategy), an extract from which is located below at **Figure 3**.

40 *Wingecarribee Local Housing Strategy – Housing Our Community*

Further investigations prior to rezoning

The proposed new living area is considered suitable for urban development based on the initial constraints analysis that was undertaken to support this Housing Strategy. However, all sites identified within the Strategy as potential new residential living areas will be required to undertake a full environmental assessment in support of any future planning proposal to rezone the land for residential purposes.

Any future planning proposal to rezone the land for residential purposes will need to be supported by:

- An assessment of the capacity of the Moss Vale Sewerage Treatment Plant and water supply
- An assessment of the traffic impacts of the proposed rezoning
- An Aboriginal Cultural Heritage Due Diligence assessment
- A geotechnical assessment of steep lands

Infrastructure Requirements

There are significant limitations in the capacity of the infrastructure networks in Moss Vale, particularly in relation to the local and State road networks and the Moss Vale sewerage treatment plant. Any future planning proposal will need to demonstrate that future development will not create unacceptable impacts on the local and State road network, and can be fully serviced by town water and sewer.

Design Principles

The following design principles are intended to guide the future development of the site to ensure that development will provide a high-quality urban environment in keeping with our communities expectations.

1. The proposed new living areas are to be integrated into the existing Chelsea Gardens Coomungie URA
2. Yarrowa Road will form the long-term southern edge of the Moss Vale township
3. The proposed landscaped buffer on the eastern boundary of the URA will continue along the Yarrowa Road frontage to the south, to provide visual screening and an appropriate interface with the adjoining rural lands
4. The large lot residential area in the northern portion of the site should utilise the topography of the land to maximise views to the rural landscapes for future residents.

Figure 3 – Extract from the Wingecarribee Local Housing Strategy



It is noted that the Strategy supports integration of the subject land into the new Chelsea Gardens Coomungie Urban Release Area, but heavily qualifies the time frame for any future subdivision due to the significant infrastructure constraints identified during the preparation of the Strategy, as noted below:

There are significant limitations in the capacity of the infrastructure networks in Moss Vale, particularly in relation to the local and State road networks and the Moss Vale sewerage treatment plant. Any future planning proposal will need to demonstrate that future development will not create unacceptable impacts on the local and State road network, and can be fully serviced by town water and sewer.

To emphasise this significant limitation to development in Moss Vale in the immediate future, the Strategy states that:

Any future planning proposal to rezone the land for residential purposes will need to be supported by:

- *An assessment of the capacity of the Moss Vale Sewerage Treatment Plant and water supply*
- *An assessment of the traffic impacts of the proposed rezoning*
- *An Aboriginal Cultural Heritage Due Diligence assessment*
- *A geotechnical assessment of steep lands*

The Strategy also provides a set of design principles that are intended to guide the future development of the site, a key component being that

The proposed new living areas are to be integrated into the existing Chelsea Gardens Coomungie URA.

Therefore, with regard to the Planning Proposal under consideration, the Strategy does support rezoning of the subject land as proposed. It is noted however, that the Strategy's requirement that any future planning proposal address the identified traffic and sewer infrastructure limitations within Moss Vale, as well as further site specific assessments, will prevent the progression any subsequent development application for the rezoned land without reference to the existing Chelsea Gardens Coomungie URA. The best way to do this would be to include the subject land within the Chelsea Gardens Coomungie Precinct of the Moss Vale Township Development Control Plan.

Therefore, it is the recommendation of this report, that the Planning Proposal be supported to the extent that the subject land be rezoned to R2 Low Density Residential, except for a corridor along Yarrawa Road which is to be rezoned RE1 Public Open Space, and that a minimum lot size of 600m² be applied to the proposed R2 Low Density Residential area. The intent of the Planning Proposal to apply a minimum lot size is also supported to the extent that it would apply to the proposed R2 Low Density Residential zone.

It is further recommended that the Chelsea Gardens Coomungie Precinct of the Moss Vale Township Development Control Plan be amended to include the subject land so that, subject to a Gateway Determination, this draft DCP amendment could be exhibited with the Planning Proposal.



COMMUNICATION AND CONSULTATION

Community Engagement

The subject land was included in the draft Local Housing Strategy, the community engagement for which has been completed and the Strategy has been adopted. Further consultation would occur as required should the Planning Proposal receive a Gateway Determination.

Internal Communication and Consultation

Consultation with relevant Council staff has occurred with regard to infrastructure and traffic as part of the preparation of the Local Housing Strategy. Further consultation would occur should the Planning Proposal receive a Gateway Determination.

External Communication and Consultation

External referrals and consultation would occur as required should the Planning Proposal receive a Gateway Determination.

SUSTAINABILITY ASSESSMENT

- **Environment**

The inclusion of the subject land within the Local Housing Strategy resulted from extensive Shire-wide constraints analysis which included consideration of potential environmental impacts. Areas where potentially significant environmental impact could occur from future development were excluded from the Strategy.

- **Social**

The inclusion of the subject land within the Local Housing Strategy is the result of the Strategy's key objective of ensuring that adequate housing is provided in a range of locations to meet the varied future needs of the community.

- **Broader Economic Implications**

Consideration of the Planning Proposal within the context of an adopted Local Housing Strategy allows both the community and investors to make sound economic decisions within an endorsed strategic framework.

- **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

There are no budget implications associated with this report.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



RELATED COUNCIL POLICY

There are no related Council policies.

OPTIONS

The options available to Council are:

Option 1

1. THAT the Planning Proposal to rezone land at 121 Yarrowa Road Moss Vale (Lot 4 DP706194), 131 Yarrowa Road Moss Vale (Lot 5 DP706194), and 153 Yarrowa Road Moss Vale (Lot 2 DP610352) from RU2 Rural Landscape to primarily R2 Low Density Residential with a minimum lot size of 600m² with a frontage to Yarrowa Road of RE1 Public Recreation BE SUPPORTED to progress to a Gateway Determination but that any development of the subject land shall be in accordance with the relevant recommendations of the Wingecarribee Local Housing Strategy adopted by Council on 24 June 2020.

2. THAT the Chelsea Gardens Coomungie Precinct of the Moss Vale Township Development Control Plan be amended to include the subject land and the draft amendment be exhibited with the Planning Proposal should it receive a Gateway Determination.

Option 2

Not support the Planning Proposal.

Option 1 is the recommended option to this report.

CONCLUSION

The Planning Proposal was originally deferred pending completion of the Local Housing Strategy. The Wingecarribee Local Housing Strategy was adopted by Council on 24 June 2020 and included the subject land, enabling the Planning Proposal to proceed, subject to certain conditions, and therefore, it is the recommendation of this report that it do so.

ATTACHMENTS

1. Figure 1 - Location of the Subject Land
2. Figure 2 - Location of the Subject Land in relation to Chelsea Gardens Coomungie Urban Release Area
3. Report to Council 10 July 2019 - *circulated under separate cover*
4. Yarrowa Road Planning Proposal - *circulated under separate cover*

ATTACHMENT 1



Figure 1 – Location of the Subject Land

ATTACHMENT 2

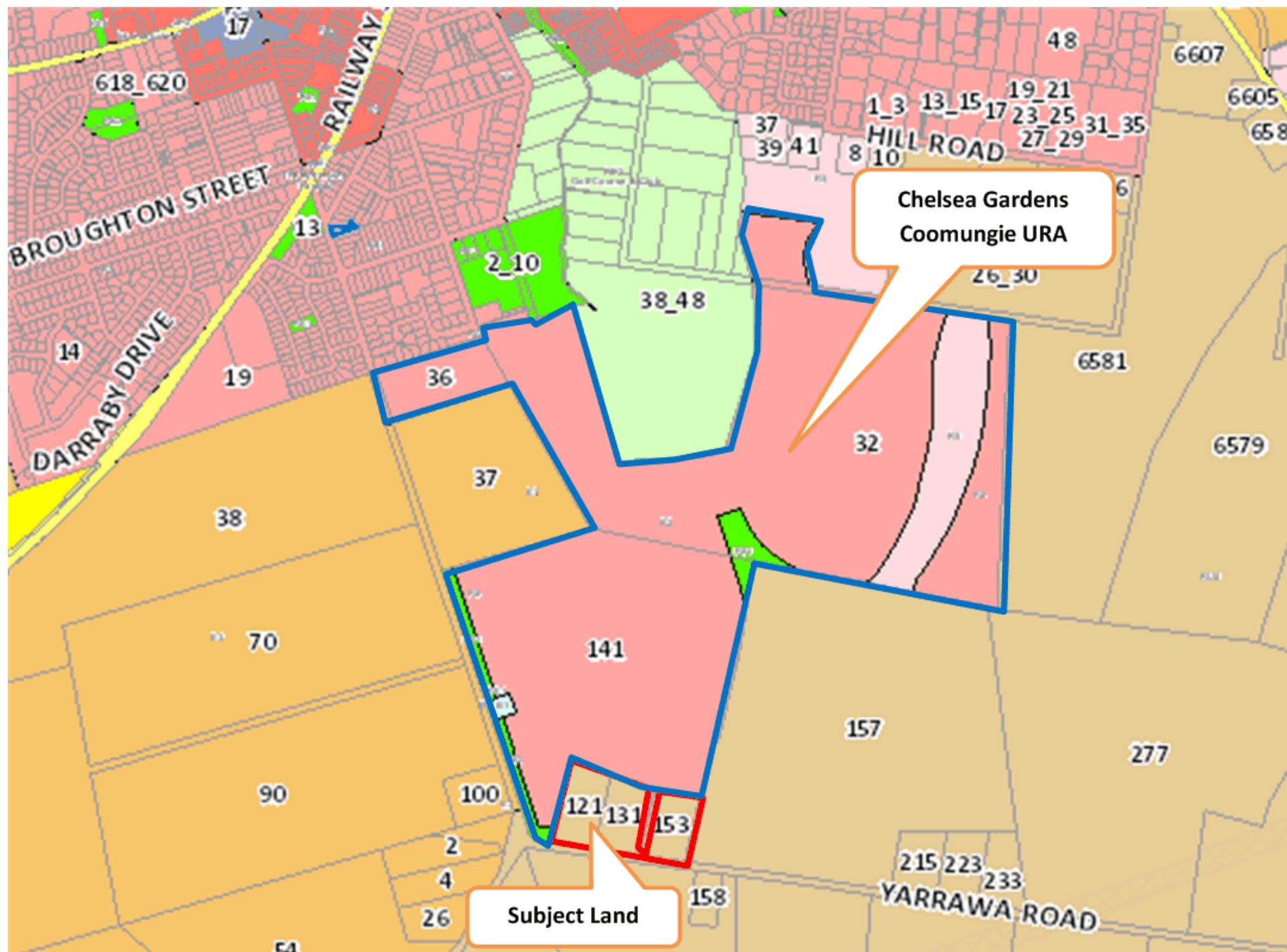


Figure 2 – Zoning of the Subject Land in relation to Chelsea Gardens Coomungie Urban Release Area

12.3 Planning Proposal to Rezone and Amend the Minimum Lot Size for Land at 34 Suttor Road Moss Vale.

Reference:	PN 1417400, 5901
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Maintain inter-urban breaks (i.e. the green between) and rural landscape between towns

PURPOSE

The purpose of this report is to present to Council a Planning Proposal to rezone land at 34 Suttor Road Moss Vale.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

THAT the Planning Proposal not be supported **AND THAT** the applicant be advised of Council's decision.

REPORT

BACKGROUND

A Planning Proposal was lodged with Council prior to the completion of the Local Housing Strategy (the Strategy). Following adoption of the Strategy on 24 June 2020, the matter is being reported to Council. The Planning Proposal forms **Attachment 1** to this report.

The subject land comprises two adjoining parcels under the same ownership, legally described as Lots 25A DP5284 and Lot N DP4860, with a total area of some 4.9 hectares, located at 34 Suttor Road, Moss Vale as indicated in **Figure 1** below.

The land is zoned R5 Large Lot Residential with a minimum lot size of 4,000m². The Planning Proposal seeks to rezone the land to R2 Low Density Residential and apply a minimum lot size of 700m². The subject land is currently vacant.

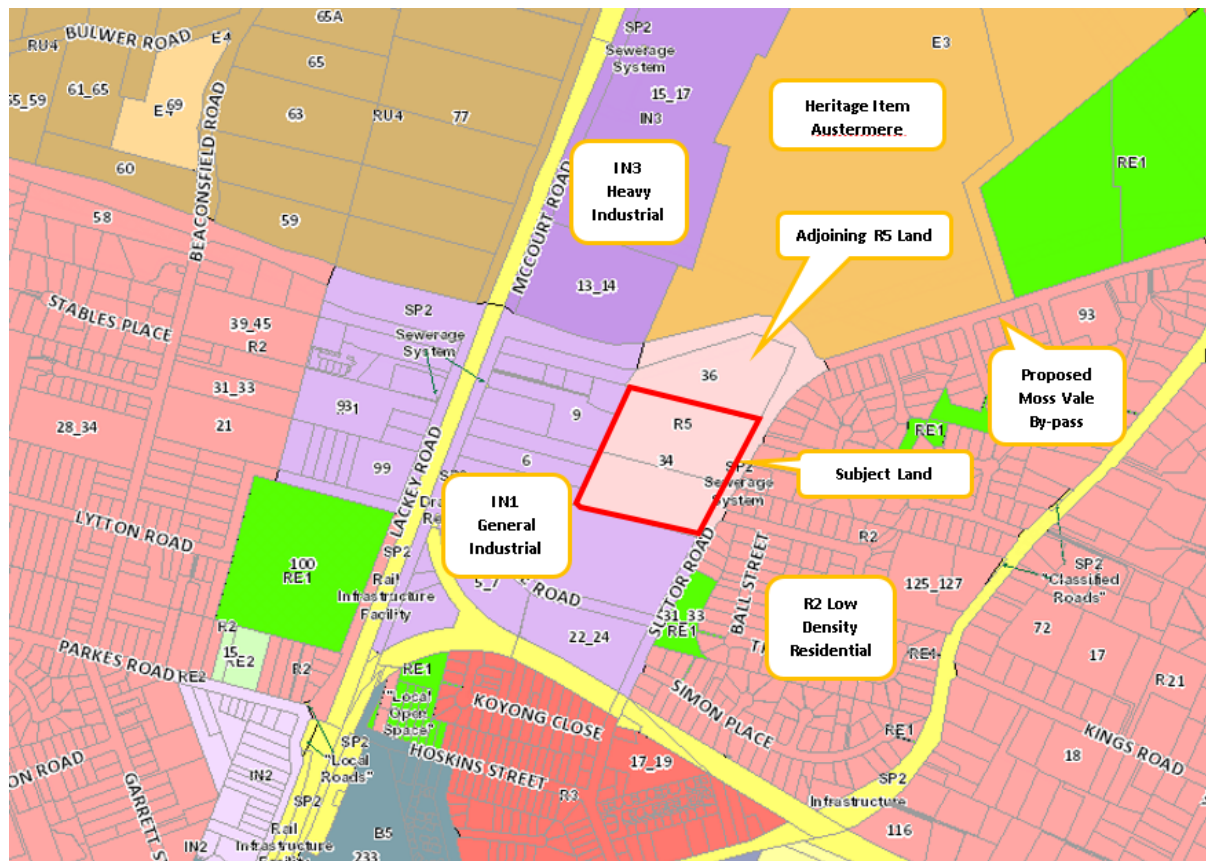


Figure 1 Location & Zoning of the Subject Land & surroundings (enlarged at Attachment 2)

REPORT

As **Figure 1** above indicates, the subject land is bordered to the west and south by land zoned IN1 General Industrial. Adjoining the subject land at its north west corner is an area of land zoned IN3 Heavy Industry. Both of these adjoining industrial zones represent the eastern boundary of the Moss Vale Enterprise Corridor.

These surrounding zonings are significant to the assessment of any potential rezoning of the subject land. It is noted that the Standard Instrument on which WLEP 2010 is based defines Heavy Industry as a building or place used to carry out an industrial activity that requires separation from other development because of the nature of the processes involved, or the materials used, stored or produced, and includes hazardous industry or offensive industry. It may also involve the use of a hazardous storage establishment or offensive storage establishment. The key phrase in this definition is “*that requires separation from other development*” because of the nature of the activities permitted within the zone.

The close proximity of IN3 Heavy Industry zoned land to the subject land, together with a shared boundary to IN1 General Industrial land would mitigate against supporting additional residential development at a higher density than that which is currently permitted on the land through rezoning and a reduction in the minimum lot size.

It is further noted that the subject land adjoins, on its northern boundary, a third lot of approximately 2.5 hectares, also zoned R5 Large Lot Residential with a minimum lot size of 4,000m² which contains a residential dwelling house.

As **Figure 2** below indicates, that land in turn, adjoins the property known as Austermere (formerly SCEGGS), an Item of Local Heritage listed under WLEP 2010 and zoned E3 Environmental Management and beyond it to the north east, the Burradoo Landscape Conservation Area, and to the immediate east an area of Council owned land zoned RE1 Public Recreation.

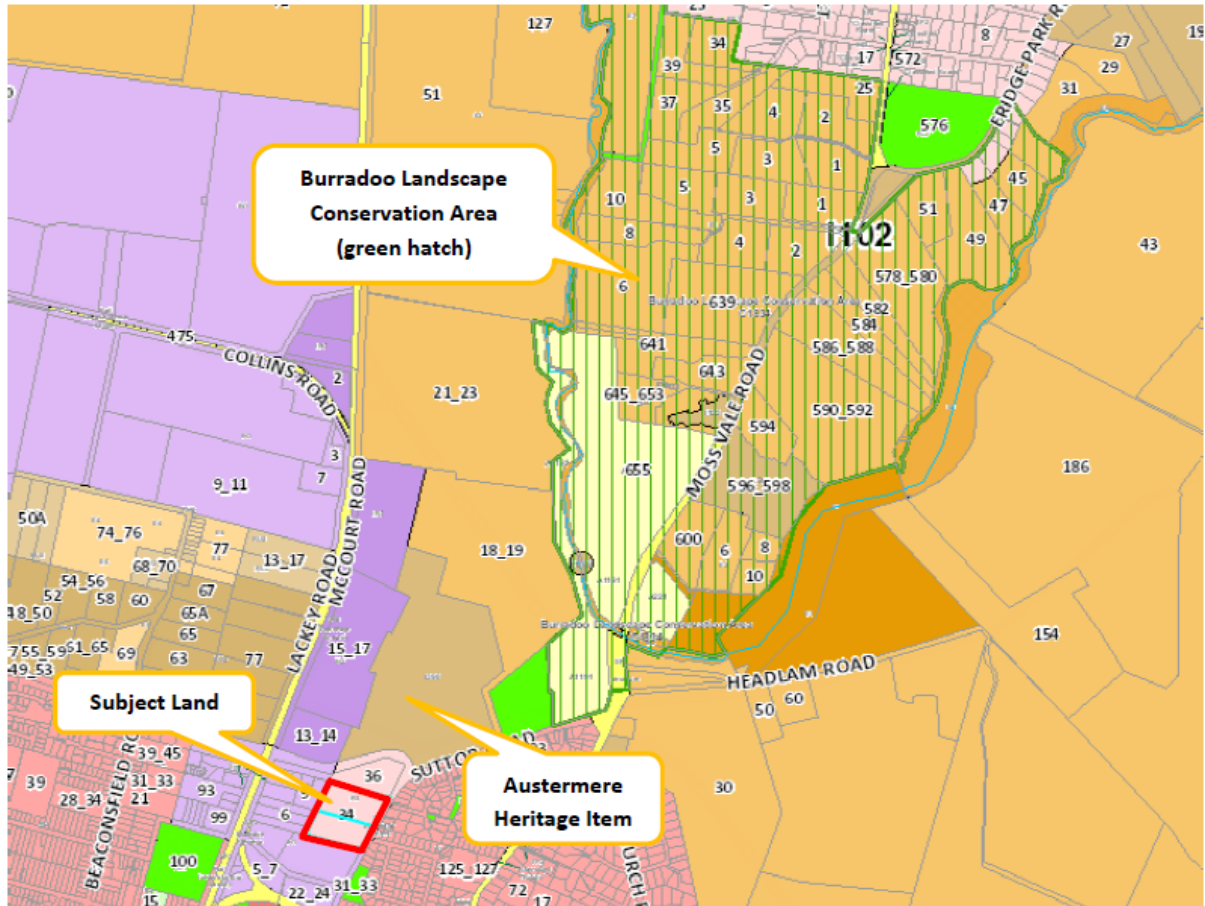


Figure 2 Location of Heritage Item & Burradoo Landscape Conservation Area (enlarged at Attachment 3)

The Planning Proposal submits that the R5 Large Lot Residential zoning of these three lots in total implies Council support for residential development in this location. These lots received dwelling permission at about 1998 under Wingecarribee LEP 1989. The R5 Large Lot Residential zoning and 4,000m² minimum lot size under WLEP2010 merely retain that previous permissibility and in no way imply an intention of further residential development.

The designation of Suttor Road as the proposed Moss Vale by-pass supports the retention of this road as the current northern boundary of the Moss Vale Township. Council's relevant Assets staff have provided the following comment.

This Proposal has the potential to undermine the objectives of the Moss Vale by-pass as the property is in close proximity to the proposed roundabout at the junction of Suttor Rd and the by-pass. Such a significant traffic generator, that would require direct access on to Suttor Rd, could reduce the capacity of the Suttor Rd/by-pass network. The by-pass is essential for meeting future traffic demands to reduce wider network congestion in Moss Vale, as currently experienced, and intensifying, on Argyle Street. Should the

Proposal proceed, significant additional information and modelling would be required to ensure no adverse impacts on either the by-pass or its intended benefits.

As for the site itself, there are further constraints which limit its residential development potential. The land has been identified as lying within the extent of the Wingecarribee River 100-year flood affectation as indicated in **Figure 3** below. It is acknowledged that both the subject land and the adjoining land are within the low fringe affectation category. Rezoning identified flood affected land for residential purposes is an inappropriate action due to the potential impacts on life and property.

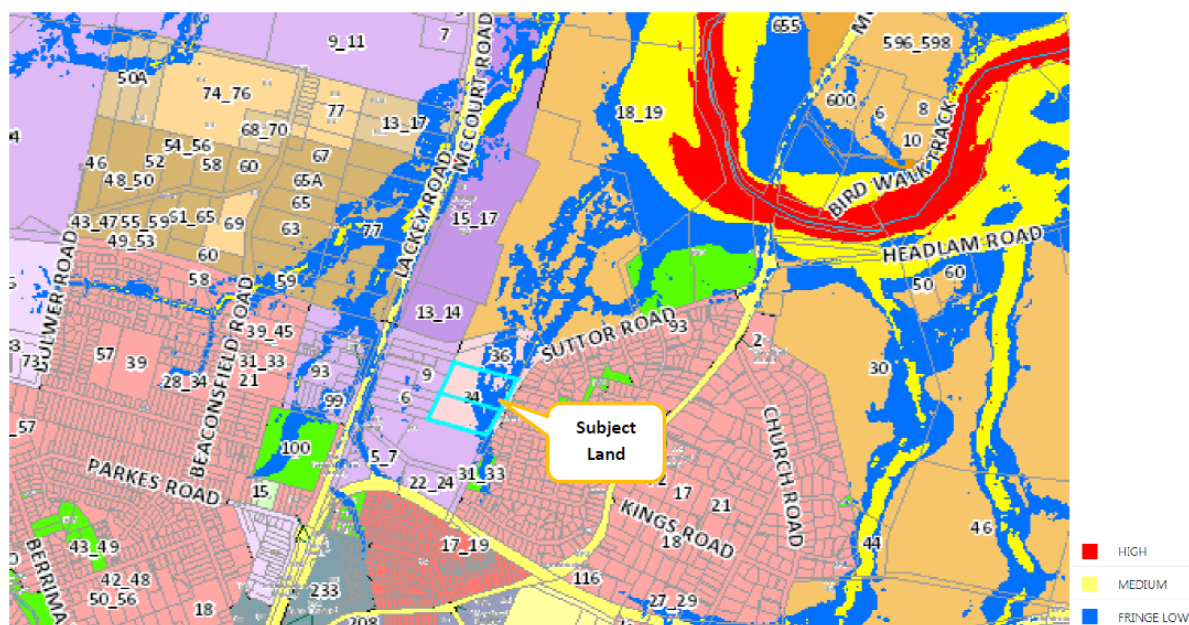


Figure 3 Flood Affectation (enlarged at Attachment 4)

Although no community engagement has occurred with specific regard to this Planning Proposal, in the drafting and exhibition of the Local Housing Strategy and Local Strategic Planning Statement, many submissions offered opinions on future development within the Shire as a whole and these comments are highly relevant to this Planning Proposal and therefore have been considered in the assessment process.

Strong support remains for the retention of open space and the natural environment between the towns and villages. Feedback emphasised that the retention of existing town and village boundaries is key to achieving this outcome, and where urban boundaries cannot be retained, that future development be located where visual and environmental impacts can be minimised.

Suttor Road provides a distinct urban boundary which will be further emphasised with the development as the Moss Vale by-pass. Beyond Suttor Road lies mainly open space which links into the Burradoo Landscape Conservation Area. It is acknowledged that some rural residential development does exist in this area with some additional potential on the eastern side of Moss Vale Road as permitted under existing controls originating from WLEP 1989.

After consideration of all of the above factors, it is concluded that the subject land should remain zoned R5 Large Lot Residential with a minimum lot size of 4,000m² and, therefore,

the Planning Proposal is not supported.

COMMUNICATION AND CONSULTATION

Community Engagement

Relevant community engagement is discussed in the body of the report.

Internal Communication and Consultation

Initial consultation has occurred with the Assets Branch with regard to the proposed Suttor Road bypass and comments included in the report.

External Communication and Consultation

No external consultation has occurred.

SUSTAINABILITY ASSESSMENT

- **Environment**

Potential environmental issues regarding flood affectation are addressed in the 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

There are no budget implications associated with this report.

RELATED COUNCIL POLICY

There are no related Council Policies associated with this report.

OPTIONS

The options available to Council are:

Option 1

THAT the Planning Proposal *not be supported* AND THAT the applicant be advised of Council's decision.



Option 2

THAT Council support progressing the Planning Proposal to a Gateway Determination.

Option 1 is the recommended option to this report.

CONCLUSION

The site is located on the western side of Suttor Road which, being part of the proposed Moss Vale by-pass, provides a clearly defined boundary for the Moss Vale Township. Advice from Council staff is that further residential development than currently permissible could have significant adverse impacts on the proposed by-pass and its intended benefits.

The site adjoins industrial zoned land to the south and west, and in addition IN3 Heavy Industrial zoned land to the north west which, by definition, requires a residential buffer. To the north east, the land is zoned E3 Environmental Management, containing one large Item of Local Heritage (Austermere), Council owned public open space and a significant Landscape Conservation Area. The site itself is flood affected.

As the land provides a buffer to the adjoining industrial lands and the residential areas lying to the east, it would be inappropriate to enable the land to be developed for residential development higher in density than the current permissible 4000m² minimum lot size. For the reasons above, the Planning Proposal is not supported.

ATTACHMENTS

1. Planning Proposal for 34 Suttor Road Moss Vale - *circulated under separate cover*
2. Figure 1 Location of subject land and surrounding zonings
3. Figure 2 Location of Heritage Item and Burradoo landscape Conservation Area
4. Figure 3 Flood Affectation

ATTACHMENT 2

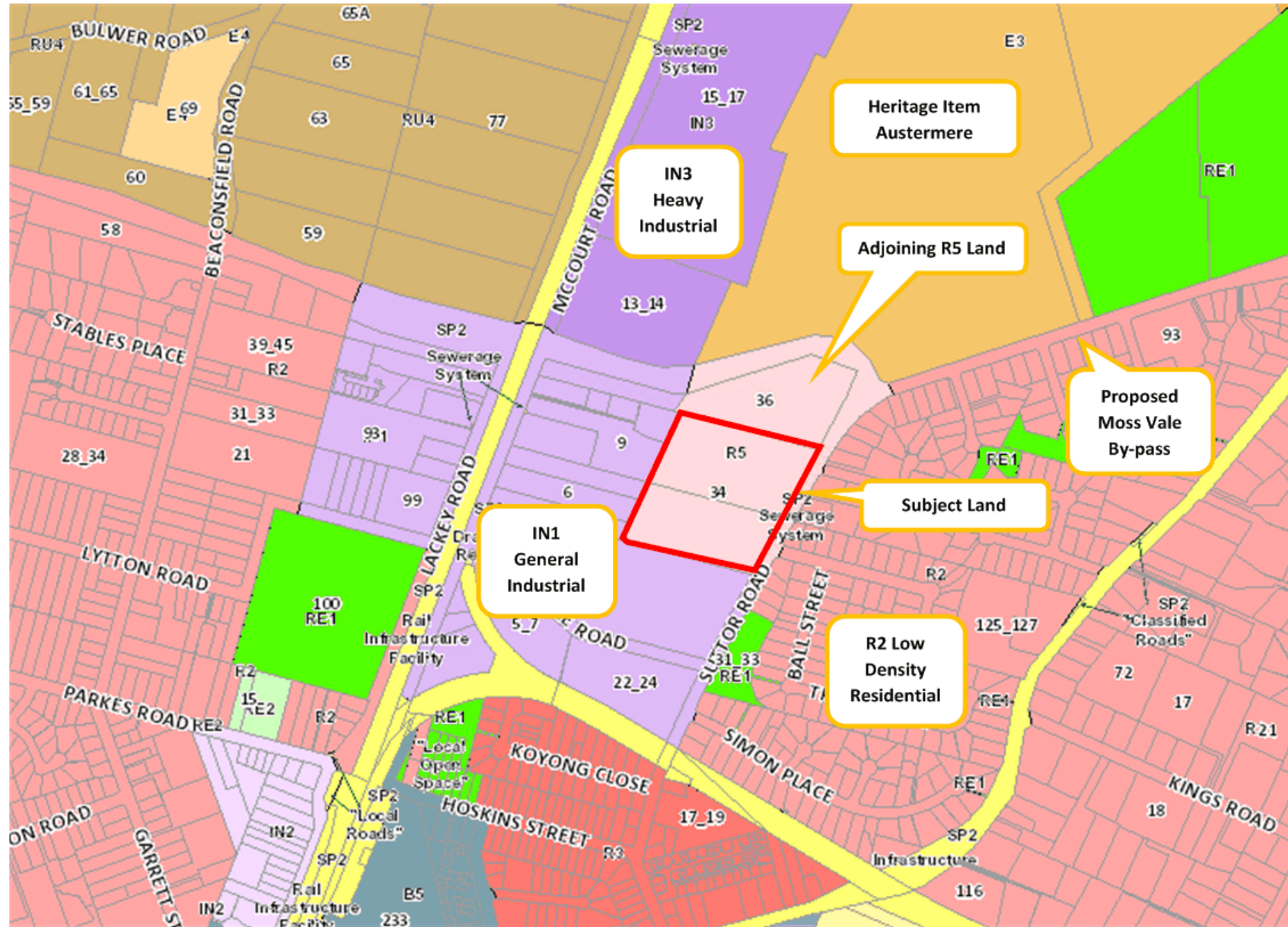


Figure 1 Local of the subject land and surrounding zonings

ATTACHMENT 3

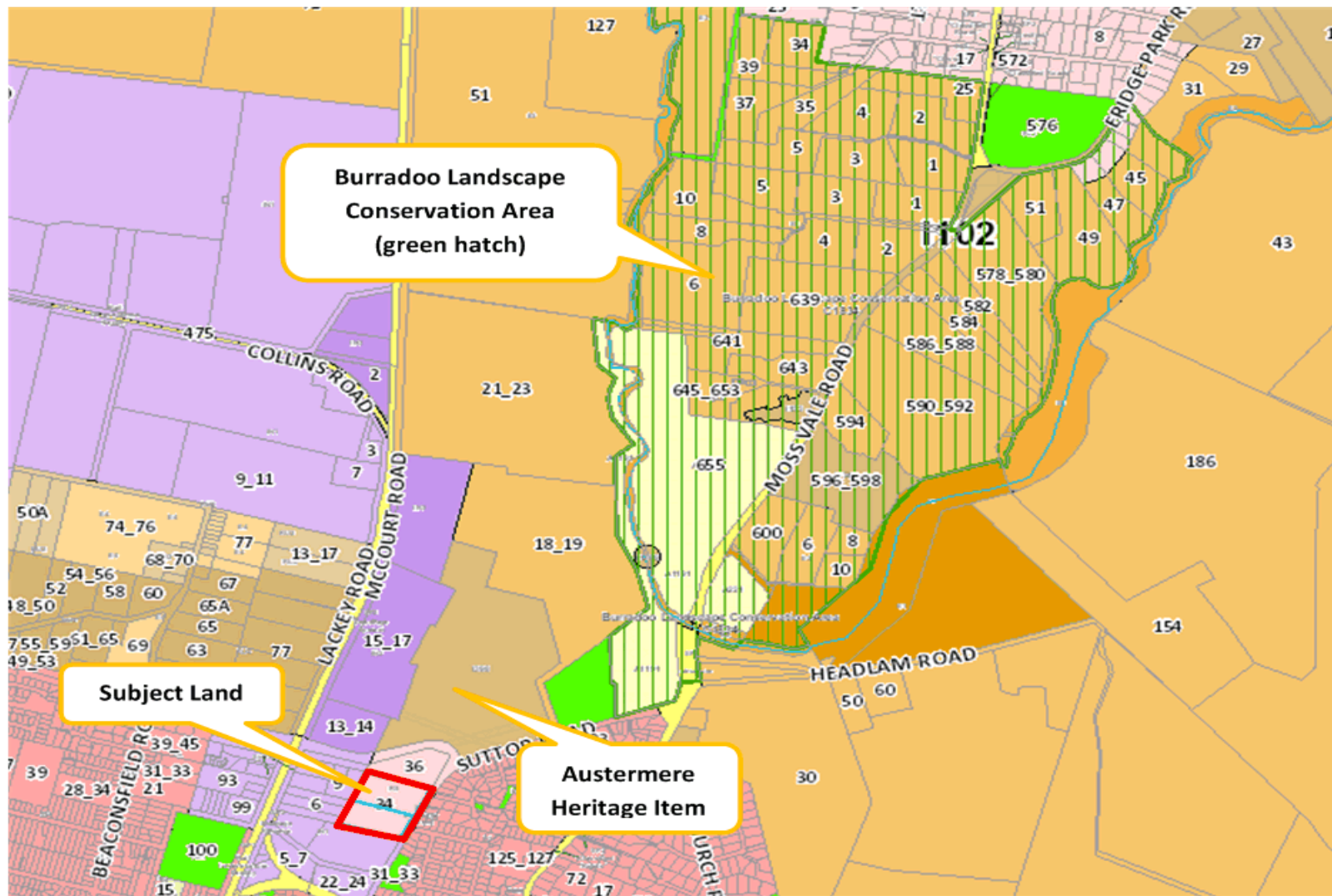


Figure 2 Location of Heritage Item & Burradoo Landscape Conservation Area

ATTACHMENT 4

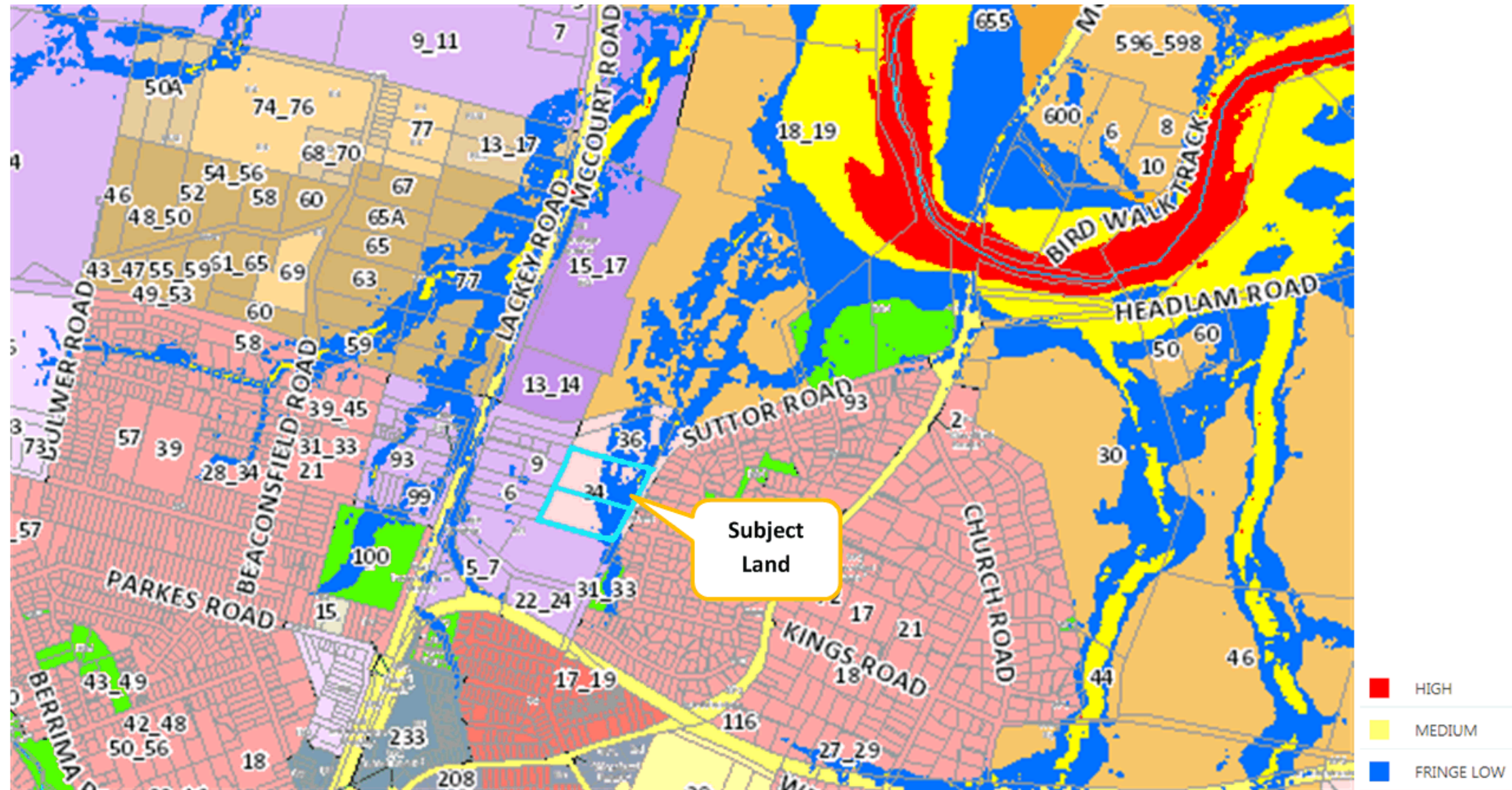


Figure 3 Flood Affection

12.4 Planning Proposal Rezone Land at 252-254 Centennial Road Bowral (Centennial Vineyards) from E3 Environmental Management to SP3 Tourist.

Reference:	PN1702113, PN1702114, PN1702185, 5901
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Ensure tourism balances the economic benefits with impact on environment and community

PURPOSE

To consider a Planning Proposal to amend Wingecarribee Local Environmental Plan (WLEP) 2010 to rezone land at 252-254 Centennial Road Bowral from E3 Environmental Management to SP3 Tourist.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

- 1. THAT the Planning Proposal to rezone land at 252-254 Centennial Road Bowral (Centennial Vineyards) from E3 Environmental Management to SP3 Tourist BE SUPPORTED for progression to a Gateway Determination for the following lots: Lot 1 DP 126196, Lot 1 DP 435373, Lot 5A DP 16192 and part Lot 1 DP 16192 and only AND THAT Lot 1 DP 79802 REMAIN zoned E3 Environmental Management, and**
- 2. THAT any future Development Application for the rezoned portion of the subject land shall provide a Concept Master Plan, as required under the Rural Tourism Policy, and shall demonstrate to Council's satisfaction that no clearing of native vegetation will be required.**

REPORT

BACKGROUND

The Subject Land

The subject land is located at 252-254 Centennial Road Bowral, to the west of Bowral Township, as indicated in **Figure 1** below, and is known as Centennial Vineyards. The land comprises the following lots and covers an area of some 127 hectares. All lots except Lot 1 DP 78902 front the northern side of Centennial Road as indicated in **Figure 2** below.

- Lot 1 DP126196
- Lot 1 DP435373
- Lot 1 DP16192
- Lot 5A DP16192
- Lot 1 DP79802

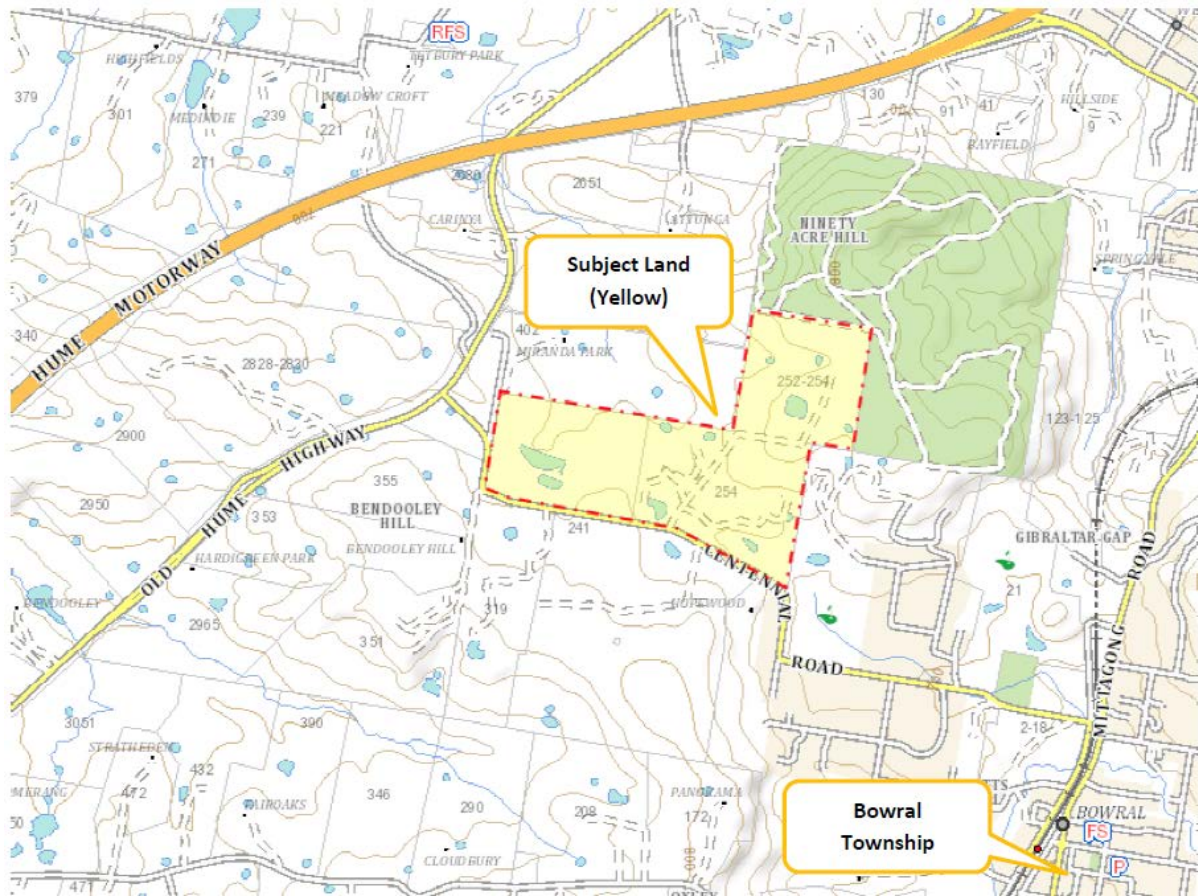


Figure 1 – Location of the Subject Land (enlarged at Attachment 1)

The land is currently zoned E3 Environmental Management under Wingecarribee Local Environmental Plan 2010. It adjoins Crown land zoned E2 Environmental Conservation to the north and north east, with RU4 Primary Production Small Lots zoned land (minimum lot size 2 ha) to the east and south east, and R5 Large Lot Residential zoned land (minimum lot size 4,000m²) further to the east. Further to the east is located land zoned RE1 Public Recreation, being Centennial Golf Course, as indicated in **Figure 2** below.

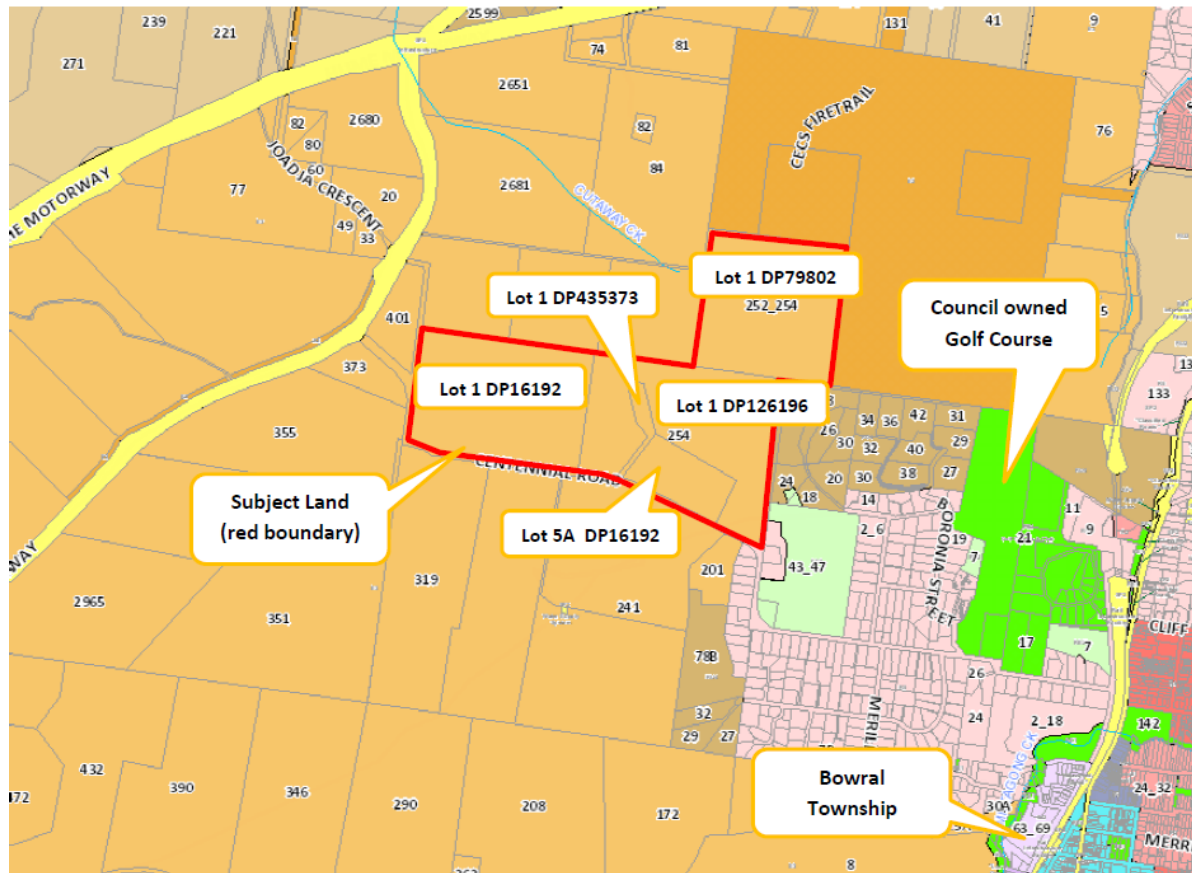


Figure 2 – Lot identification & Zoning (enlarged at Attachment 2)

The SP3 Tourist Zone

The SP3 Tourist zone was introduced into the Shire with the making of WLEP 2010. This zone, as its name suggests, permits, with Council consent, a broad range of tourist related development. The objectives of the SP3 Tourist zone are:

- to provide for a variety of tourist-oriented development and related uses, and
- to ensure that development is sympathetic with the rural setting and landscape features of the site and minimises impact on the scenic values of nearby development and land use activity.

The SP3 Tourist zone allows for more intensive land uses that can impact on environmentally sensitive lands and can place unacceptable pressure on the Shire's rural roads network, much of which is unsealed. Council is also mindful that such development has the potential to create land use conflicts across the Shire.

The objectives of the SP3 Tourist zone are:

- to provide for a variety of tourist-oriented development and related uses, and
- to ensure that development is sympathetic with the rural setting and landscape features of the site and minimises impact on the scenic values of nearby development and land use activity.

It is noted that there are currently eight (8) locations zoned SP3 Tourist across the Shire as indicated in **Figure 3** below.

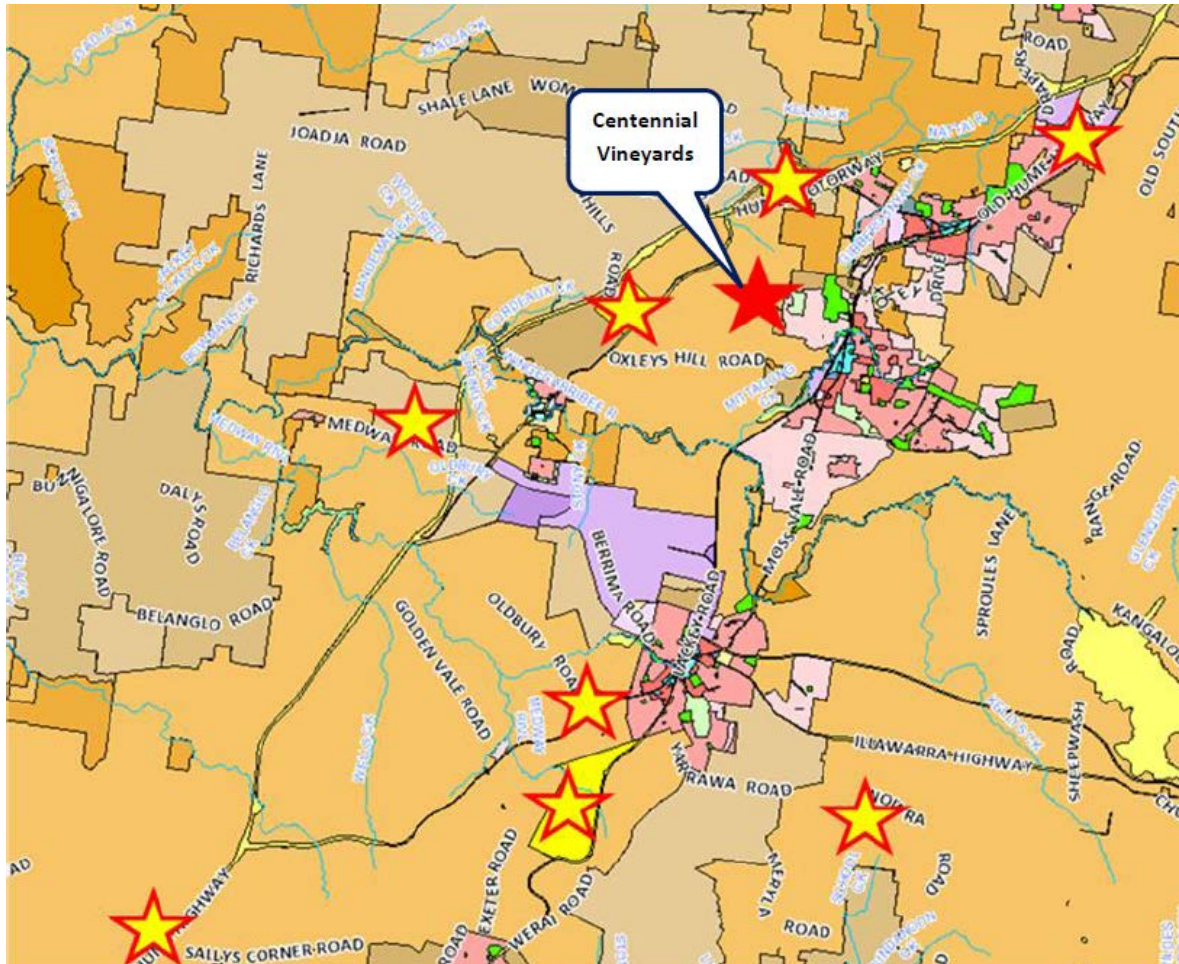


Figure 3 Subject Site in context of existing SP3 Tourist Land (enlarged at Attachment 3)

All of these sites were assessed for rezoning to SP3 Tourist based on the following criteria.

- 1) Covers an area of at least 20 Hectares
- 2) Has been operating as a tourist establishment for three (3) years
- 3) Is within 2km of residential development
- 4) Is adjacent to or near major access road
- 5) Has access to adequate water and sewerage infrastructure (not necessarily reticulated)
- 6) Is free of extensive Endangered Ecological Community (EEC)
- 7) Is free of significant bushfire or flood threat which cannot be addressed through design considerations
- 8) Is free of any other environmentally sensitive constraints.

A Planning Proposal to rezone the subject property was submitted in 2018 and assessed as meeting these criteria. However, Council was concerned that reliance on these criteria alone did not provide a sound strategic framework going forward and the Wingecarribee Planning Strategy 2015-2031 recommended the development of a Rural Tourism Policy.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



The Proposal was reported to Council at its Ordinary Meeting of 9 May 2018 at which time Council resolved to defer a decision pending completion of the Policy and the Wingecarribee Rural Tourism Policy was adopted by Council at its Ordinary Meeting of 13 November 2019.

Rural Tourism Policy

The objectives of the adopted Policy are:

- *to provide a direct 'line of sight' between the South East and Tablelands Regional Plan, the Destination Management Plan, the Community Strategic Plan and Council's planning framework as it relates to rural tourism development*
- *to outline a clear approval pathway for certain rural tourism related developments in the Wingecarribee Shire*
- *to provide greater certainty and consistency in the assessment of rural tourism related development proposals for both the industry and the broader community, and*
- *to set out criteria for determining when Council will consider a Planning Proposal to rezone land to SP3 Tourist.*

Council recognises that tourism is a key economic driver for the Shire. Tourism is a key employer for 'first job' and 'part time' job opportunities for the young and part time as well as full time jobs for men and women across a broad age range and across a broad range of skill sets. It is also recognised that the Shire can provide opportunities for year-round tourism.

Council also recognises the economic challenges that traditionally face rural communities and that rural based tourism provides the potential for a broader economic base in such communities to add diversity to the economy.

The benefits of tourism are acknowledged in the Wingecarribee Shire Community Strategic Plan (CSP) (June 2017), however, the CSP also acknowledges that these goals and strategies need to be balanced against community and environmental impacts which are not always positive (Strategy 5.1.3 - *ensure tourism balances the economic benefits with impact on environment and community*).

The South East and Tablelands Regional Plan (page 66) also acknowledges this need for balance, identifying the highest priorities for the Shire as including:

- *Protect high environmental value lands including regionally significant biodiversity corridors*
- *Protect the Sydney Drinking Water Catchment*
- *Protect important agricultural lands as a resource for food security*
- *Protect the shire's valued heritage assets*

Therefore, the adopted Policy provides a framework for both Council and the tourism industry to consider large scale rural tourism proposals at a strategic level and to ensure that any negative impacts are identified, managed and mitigated appropriately.

REPORT

Strategic Assessment

Following adoption of the Rural Tourism Policy, a new Planning Proposal was submitted in March 2020 and forms **Attachment 4** to this report. The objectives and intended outcomes from this Planning Proposal, as stated within it, are:

- To change the zoning of the land in order to better reflect its current usage as a long established and approved winery, cellar door and restaurant with high tourist visitation,
- To provide a zoning for the land that will better facilitate the long-term usage of the land including the continuance of the winery, cellar door, restaurant and other associated tourist related activities including outdoor concerts for which it has an established track record and a current Development Application to conduct four (4) concerts per season,
- To give effect to Council's stated strategic planning aims of planning for tourism opportunities and building a strong local economy with tourism as a major contributor, and
- To provide a planning regime whereby the land can be developed in an appropriate manner, subject to development approvals, for tourist related activities including food and drink premises, functions, a continuation of outdoor concerts and the potential for tourist style accommodation.

No other immediate development intentions have been provided in the Proposal.

It is acknowledged Centennial Vineyards is a well-established and recognised business. It is well located from a business perspective, with access available via the Old Hume Highway, as well as Centennial Road via Mittagong Road. It is noted that there are large areas under vine occupying an estimated (in the Planning Proposal) 30 hectares of the site, together with a winery, cellar door and restaurant. Other improvements on the site include storage sheds, farm buildings and car park area. The site has access to all utilities including gas, electricity, town water and sewer. An area approved for music concerts is also located on the site. Current approved uses related to the tourist facility are indicated in **Figure 4** below.

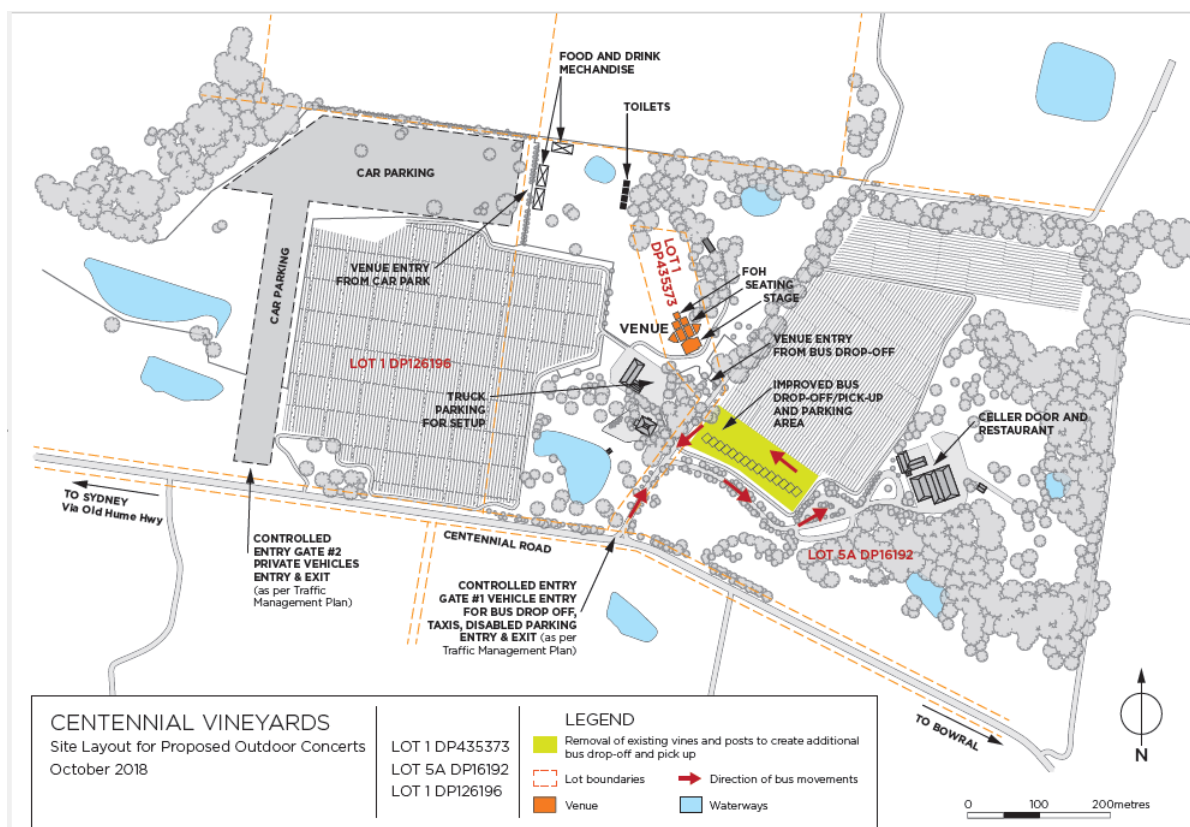


Figure 4 – Current Approved Uses & their location (enlarged at Attachment 5)

It is noted that although the northern-most lot (Lot 1 DP 79802), not included in Figure 4 above, contains established vineyards, its primary use is residential, comprising a primary dwelling house that is not visible from Centennial Road, located north of and separated from the winery and cellar door. There is also a secondary dwelling that is utilised as a farm manager’s residence located towards the main entrance just off Centennial Road.

Figure 5 below identifies the location of areas of native vegetation estimated in the Planning Proposal to cover some 20% of the total site area.

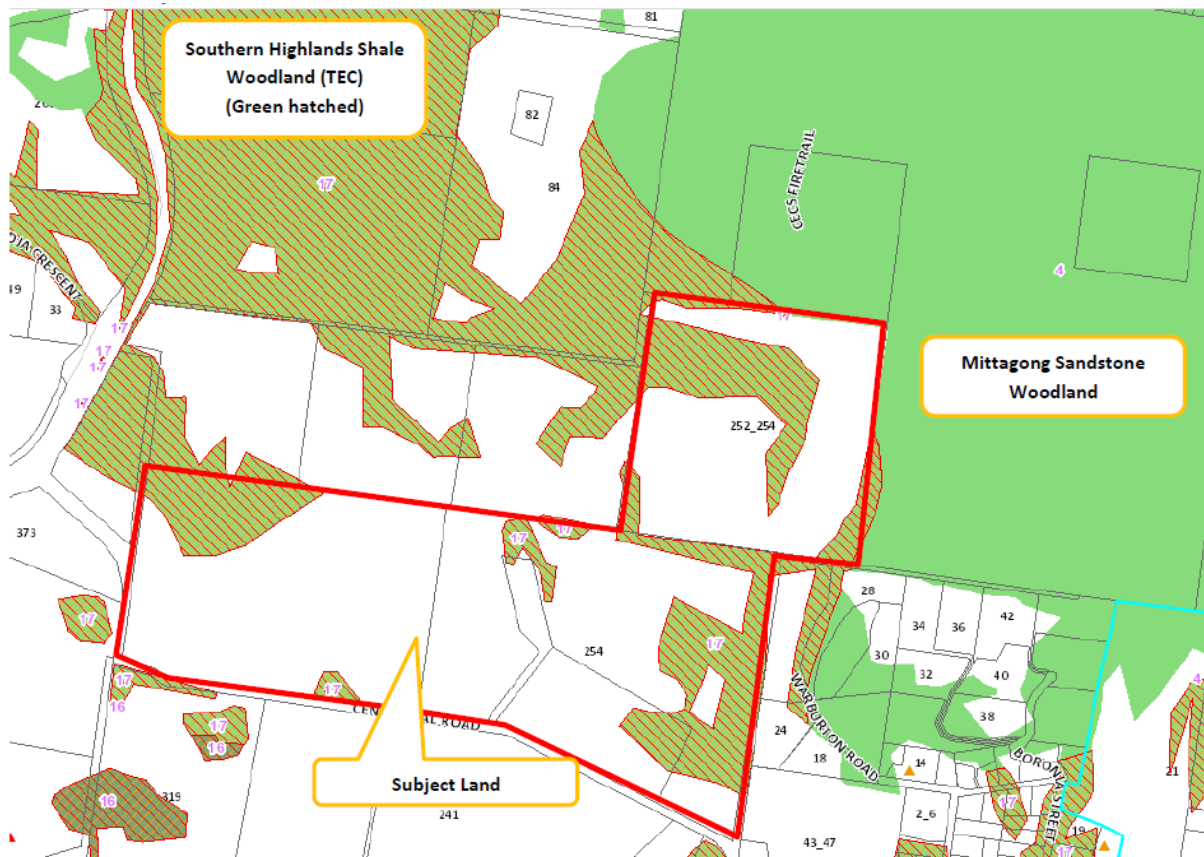


Figure 5 –Vegetation (enlarged at Attachment 6)

One of the specific objectives of the Rural Tourism Policy is to provide a strategic assessment framework for the rezoning of land to SP3 Tourist, in this case from E3 Environmental Management. The E3 Environmental Management zone accounts for some 49% of all land within the Shire.

Development of the rural weddings tourist market, and other large venue activities, is restricted in the E3 Environmental Management zone due to function centres, restaurants and cafes being prohibited in the zone.

As **Figure 5** above indicates, the subject land does contain areas of mapped Threatened Ecological Community (TEC- Southern Highlands Shale Woodland) which is listed on both national and state registers, covering some 20% (as estimated in the Planning Proposal) of the site. More extensive areas of Mittagong Sandstone Woodland adjoin the northern most

lot (Crown Land) within the Gibbergunyah Reserve, but this community is not listed as 'threatened'.

The TEC on the most northern lot of the subject site encroaches into the centre of the lot. Vegetation on the northern lot particularly connects into a much larger area of Southern Highlands Shale Woodland extending west to the Old Hume Highway and Hume Motorway.

The extent of TEC on those lots fronting Centennial Road is located more to the periphery of those lots, specifically on the north west and eastern edges, although it does extend into that area of the site on the east which is already the most developed portion of the site.

Applying the constraints mapping used in the development of the Local Housing Strategy and the Local Strategic Planning Statement, it can be seen from **Figure 6** below that these areas of TEC correlate with High Value Environmental Land.

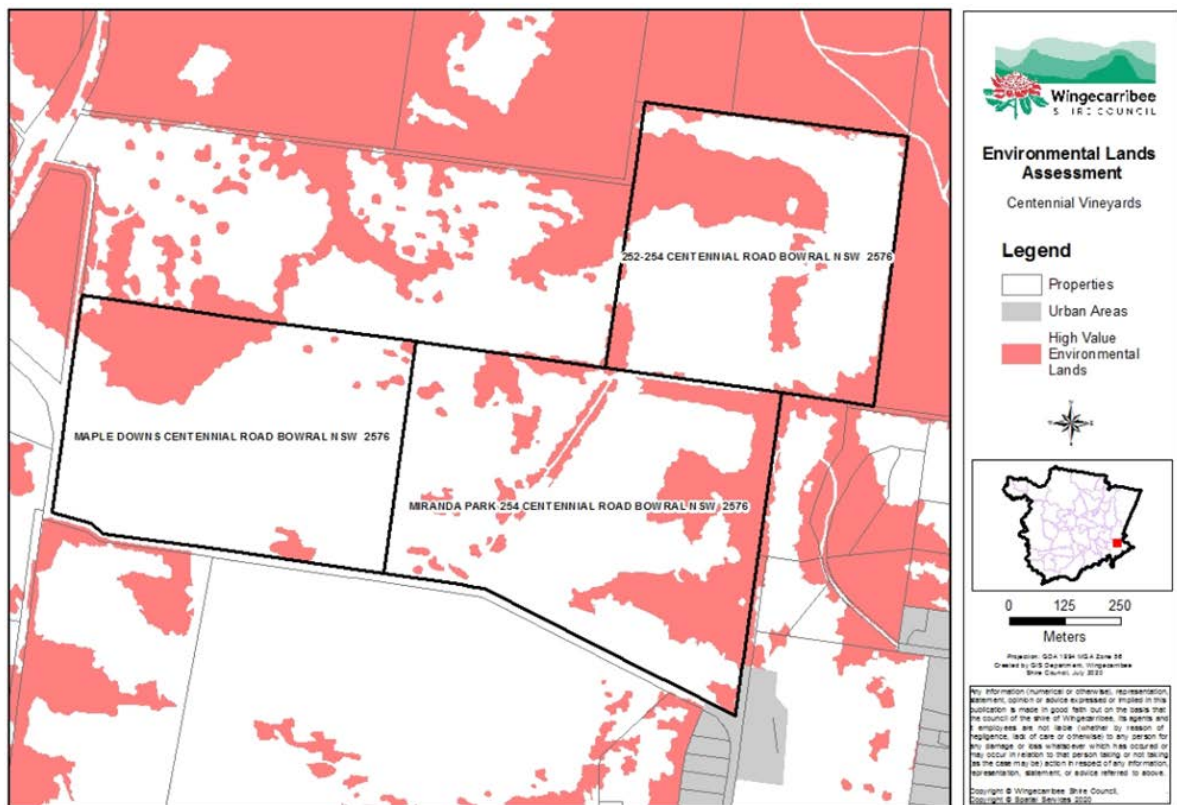


Figure 6 Constraints map for High Value Environmental Land (enlarged as attachment 7)

The Rural Tourism Policy does provide for Council to consider the rezoning of land to SP3 Tourist provided the proponent can demonstrate to the satisfaction of Council that the development will not occur on land that contains any mapped Threatened Ecological Community or will not impact on any mapped Threatened Ecological Community (TEC), or provides a Biodiversity Development Assessment Report (BDAR) to demonstrate to Council's satisfaction how TEC will be avoided.

In the case of the subject land, the northern most lot is the more environmentally sensitive. TEC on this lot extends west across the site to the Old Hume Highway and Hume Motorway in an uninterrupted band. The lot also adjoins the Gibbergunyah Reserve to the east, an extensive area of vegetated Crown land. However, apart from established vineyards, this lot



is also virtually undeveloped as a tourist facility, with most of that development occurring on the southern lots.

Due to these higher environmental sensitivities and its minimal contribution to the tourist development as a whole, it is therefore recommended that this lot be excluded from consideration for rezoning.

The southern lots also contain TEC, but it is located more to the periphery and has already been incorporated into the existing development. In accordance with the Rural Tourism Policy, any future development of these lots, especially the western most one, would need to demonstrate that no TEC will be removed.

It is further noted that during drafting of the Rural Tourism Policy, certain amendments to WLEP2010 were supported by Council, in particular, the introduction of a 'heads of consideration' clause for Function Centres.

The Planning Proposal to introduce this new clause and other draft amendments received a Gateway Determination from the Department of Planning, Industry and Environment on 12 May 2020 and the necessary referrals are currently being completed prior to placing the Planning Proposal on public exhibition.

The draft 'heads of consideration' clause for Function Centres is as follows:

Clause 5.20 Function centres

(1) The Objectives of this clause are as follows:

- (a) To provide appropriate development opportunities for functions and conferences, such as weddings and corporate retreats, and*
- (b) To ensure that function centres are sensitively located and designed so they do not adversely impact on the agricultural production, natural resources, ecological values or visual, scenic, environmental or residential amenity values of the land.*

(2) This clause applies if development for the purposes of a function centre is permitted with development consent under this Plan.

(3) The consent authority must not grant consent under this Plan to carry out development for the purposes of a Function Centre unless it is demonstrated to Council's satisfaction that:

- a) the location of the development does not impact on any environmentally sensitive land identified on the site, and*
- b) the construction of the development will not result in the removal of any native vegetation and will have regard to the management of biodiversity outcomes as set out in a Biodiversity Assessment Report prepared in accordance with the requirements of the Biodiversity Conservation Act 2016.*

(4) The consent authority must not grant consent under this Plan to carry out development for the purposes of a Function Centre unless the consent authority is satisfied that:

- (a) the development will complement the rural or environmental attributes of the land and its surrounds, and*
- (b) the development will not adversely affect the agricultural productivity of adjoining land, and*
- (c) the development will not adversely affect neighbour amenity, and*

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- (d) *the development is, or will be, serviced by adequate access roads taking into account the scale of the development, and*
- (e) *the development has, or will have, access to adequate wastewater systems to service the land without having any adverse impact on the water quality of the area, and*
- (f) *the location of the development does not impact on any environmentally sensitive land identified on the site, and*
- (g) *the construction of the development will not result in the removal of any native vegetation and will have regard to the management of biodiversity outcomes, and*
- (h) *the potential impacts of bushfire and/or flood have been addressed, and*
- (i) *the development will not create a land use conflict due to noise, traffic, privacy, visual and other amenity impacts, and*
- (j) *a management strategy will be prepared to minimise any impact on the natural environment or neighbour amenity which includes but is not limited to:*
 - (i) *measures to remove any threat of serious or irreversible environmental damage, and*
 - (ii) *mechanisms for monitoring and reviewing the effect of the development on the neighbour amenity including noise and traffic impacts, and*
 - (iii) *any other matter deemed relevant by the consent authority.*

The inclusion of this clause into WLEP 2010 would ensure that any development application for a function centre, including any future application for a music event, would need to be assessed against its provisions.

Therefore, it is the recommendation of this report that the land within the southernmost portion of the subject land, being Lot 1 DP 126196, Lot 1 DP 435373, and Lot 5A DP 16192, together with that part of Lot 1 DP 16192 not covered with TEC, be supported for rezoning to SP3 Tourist, with the northern most lot, Lot 1 DP 79802, remaining zoned E3 Environmental Management. The extent of this supported rezoning is indicated in **Figure 7** below.

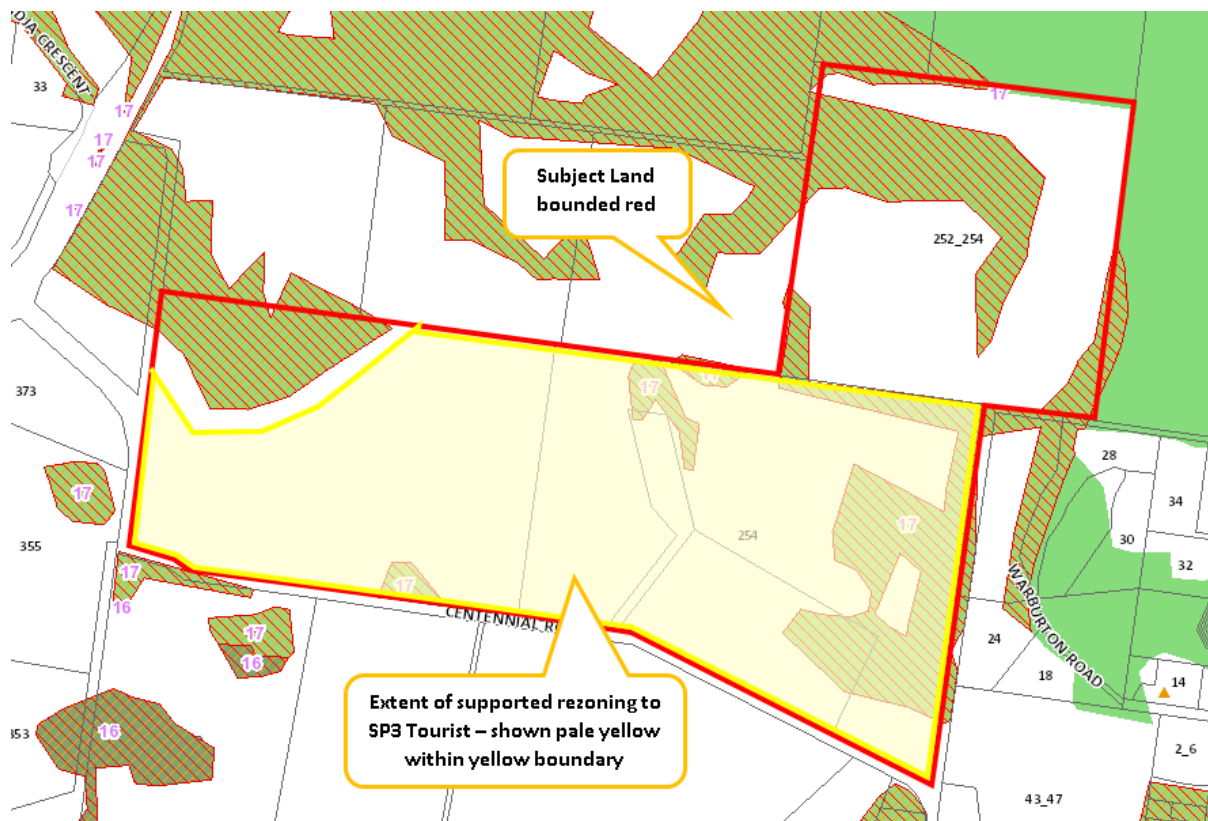


Figure 7 Extent of supported rezoning to SP3 Tourist (enlarged at Attachment 8)

COMMUNICATION AND CONSULTATION

Community Engagement

Should the Planning Proposal be supported community consultation will occur as required by the Gateway Determination. This would include direct correspondence with adjoining and surrounding neighbours, as well broader advertising through Council's website and E-news mail outs.

Internal Communication and Consultation

Should the Planning Proposal be supported internal consultation will occur as relevant.

External Communication and Consultation

Should the Planning Proposal be supported consultation will occur with Water NSW, Rural Fire Service and any other agency nominated in the Gateway Determination.

SUSTAINABILITY ASSESSMENT

- **Environment**

Environmental concerns have been considered and addressed as outlined in the report.

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- **Social**

The report addresses potential community impacts of rural tourism.

- **Broader Economic Implications**

The report addresses the broader economic benefits of tourism.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Planning Proposal has been considered with regard to guidelines for their assessment as provided by the Department of Planning, Industry and Environment.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with this report.

RELATED COUNCIL POLICY

The report has been prepared with reference to the adopted Rural Tourism Policy.

OPTIONS

Option 1

To support the recommendation of the report:

1. THAT the Planning Proposal to rezone land at 252-254 Centennial Road Bowral (Centennial Vineyards) from E3 Environmental Management to SP3 Tourist BE SUPPORTED for progression to a Gateway Determination for the following lots: Lot 1 DP 126196, Lot 1 DP 435373, Lot 5A DP 16192 and part Lot 1 DP 16192 and only AND THAT Lot 1 DP 79802 REMAIN zoned E3 Environmental Management, and
2. THAT any future Development Application for the rezoned portion of the subject land shall provide a Concept Master Plan, as required under the Rural Tourism Policy, and shall demonstrate to Council's satisfaction that no clearing of native vegetation will be required.

Option 2

To support rezoning of all of the subject land,

1. THAT the Planning Proposal to rezone Lot 1 DP 126196, Lot 1 DP 435373, Lot 1 DP 16192, Lot 5A DP 16192 and Lot 1 DP 79802 at 252-254 Centennial Road Bowral (Centennial Vineyards) from E3 Environmental Management to SP3 Tourist BE SUPPORTED for progression to a Gateway Determination, and
2. THAT any future Development Application for the rezoned portion of the subject land shall provide a Concept Master Plan, as required under the Rural Tourism Policy, and shall demonstrate to Council's satisfaction that no clearing of native vegetation will be required.



Option 3

To not support rezoning of any of the subject land,

THAT the Planning Proposal to rezone Lot 1 DP 126196, Lot 1 DP 435373, Lot 1 DP 16192, Lot 5A DP 16192 and Lot 1 DP 79802 at 252-254 Centennial Road Bowral (Centennial Vineyards) from E3 Environmental Management to SP3 Tourist **NOT BE SUPPORTED**.

Option 1 is the recommended option to this report.

CONCLUSION

The Planning Proposal to rezone the property known as Centennial Vineyards Bowral was assessed against the adopted Rural Tourism Policy. Assessment of the subject land indicated that certain areas of the site constitute High Value Environmental Land by virtue of containing the Southern Highlands Shale Woodland ecological community listed as threatened on both state and federal registers. On the basis of extent and connectivity, it was assessed that the northern most lot was most affected by TEC and it is recommended that this site be excluded from any rezoning.

The Rural Tourism Policy provides that High Value Environmental Land can be considered for rezoning to SP3 Tourist provided the proponent can demonstrate that such land won't be included in the development or won't be impacted by the development. In the case of the subject land, which already contains tourist related development, the recommended approach is to exclude from rezoning the most vegetated areas of the site, but support rezoning of those areas of the site already developed for tourist related activity, or where impacts on TEC of future development can be minimised.

It is also a requirement of the Rural Tourism Policy that the proponent provide a Concept Master Plan to accompany any future development application to enable Council to consider the cumulative impacts of development on the site and surrounding locality. Supporting these requirements is a proposed new 'heads of consideration' clause for Function Centres within WLEP 2010 to further strengthen the assessment provisions around this type of development.

ATTACHMENTS

1. Figure 1 Location of the Subject Land
2. Figure 2 Lot Identification & Zoning
3. Figure 3 Subject Site in context of exiting SP3 zoned land
4. Planning Proposal to rezone land at Centennial Vineyards to SP3 Tourist - *circulated under separate cover*
5. Figure 4 Current Approved Uses & their location
6. Figure 5 Vegetation
7. Figure 6 Constraints map for High Value Environmental Land
8. Figure 7 Extent of supported rezoning

ATTACHMENT 1

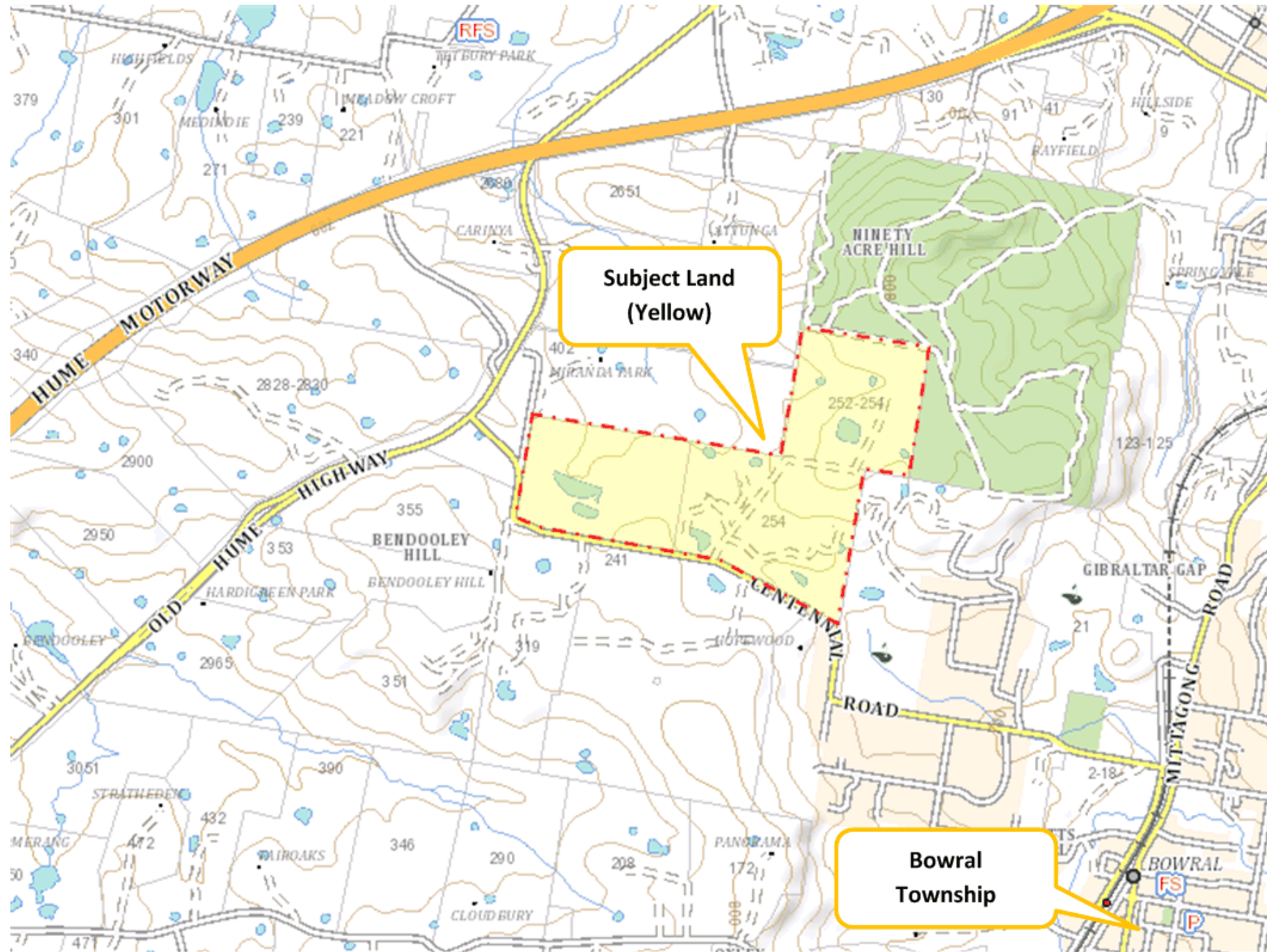


Figure 1 Location of the Subject Land

ATTACHMENT 2

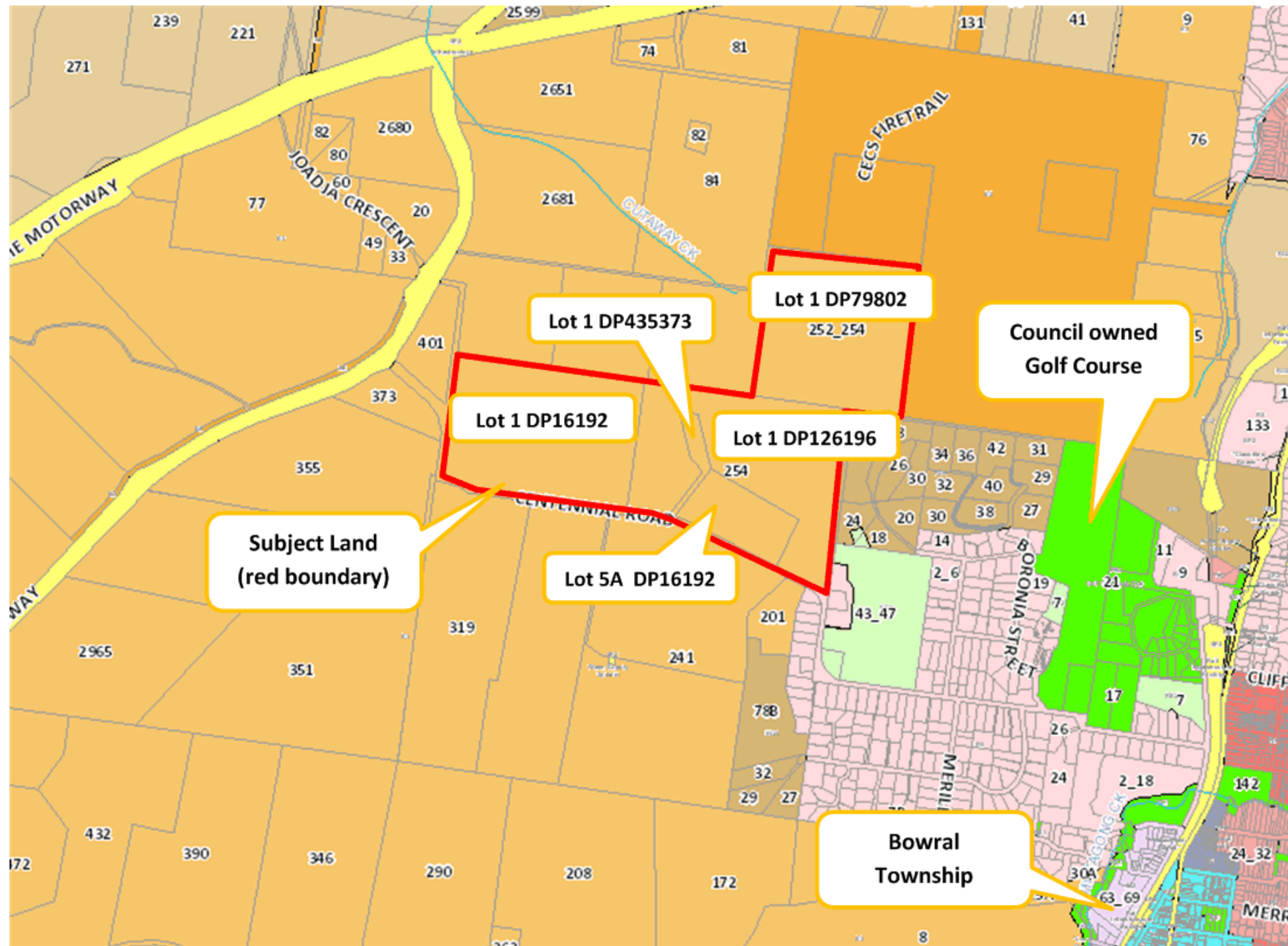


Figure 2 Lot identification & Zoning

ATTACHMENT 3

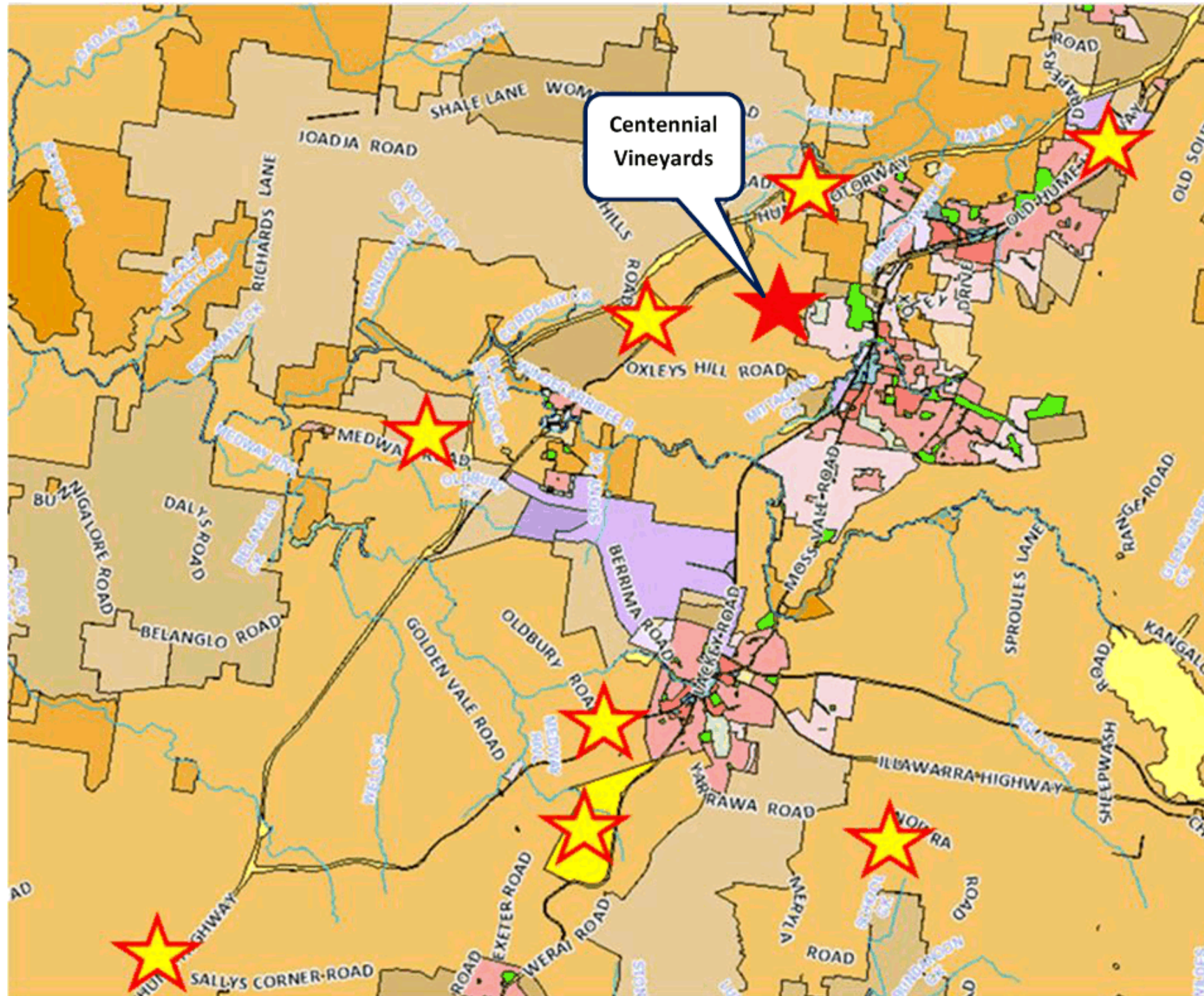


Figure 3 - Subject Site in context of existing SP3 Tourist Zoned Land (Proposed site =red star, existing sites=yellow star bounded red)

ATTACHMENT 5

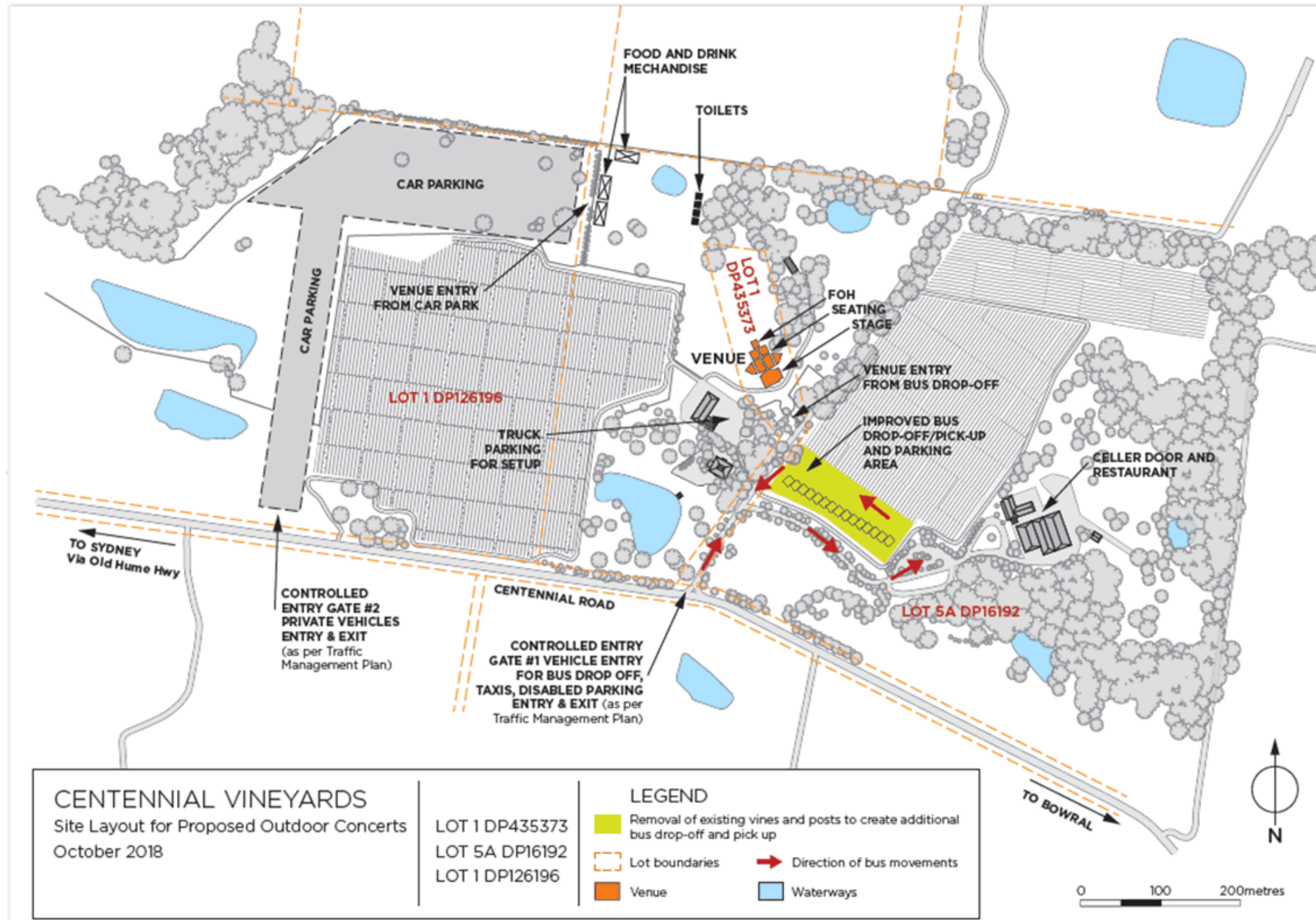


Figure 4 – Current Approved Uses & their location

ATTACHMENT 6

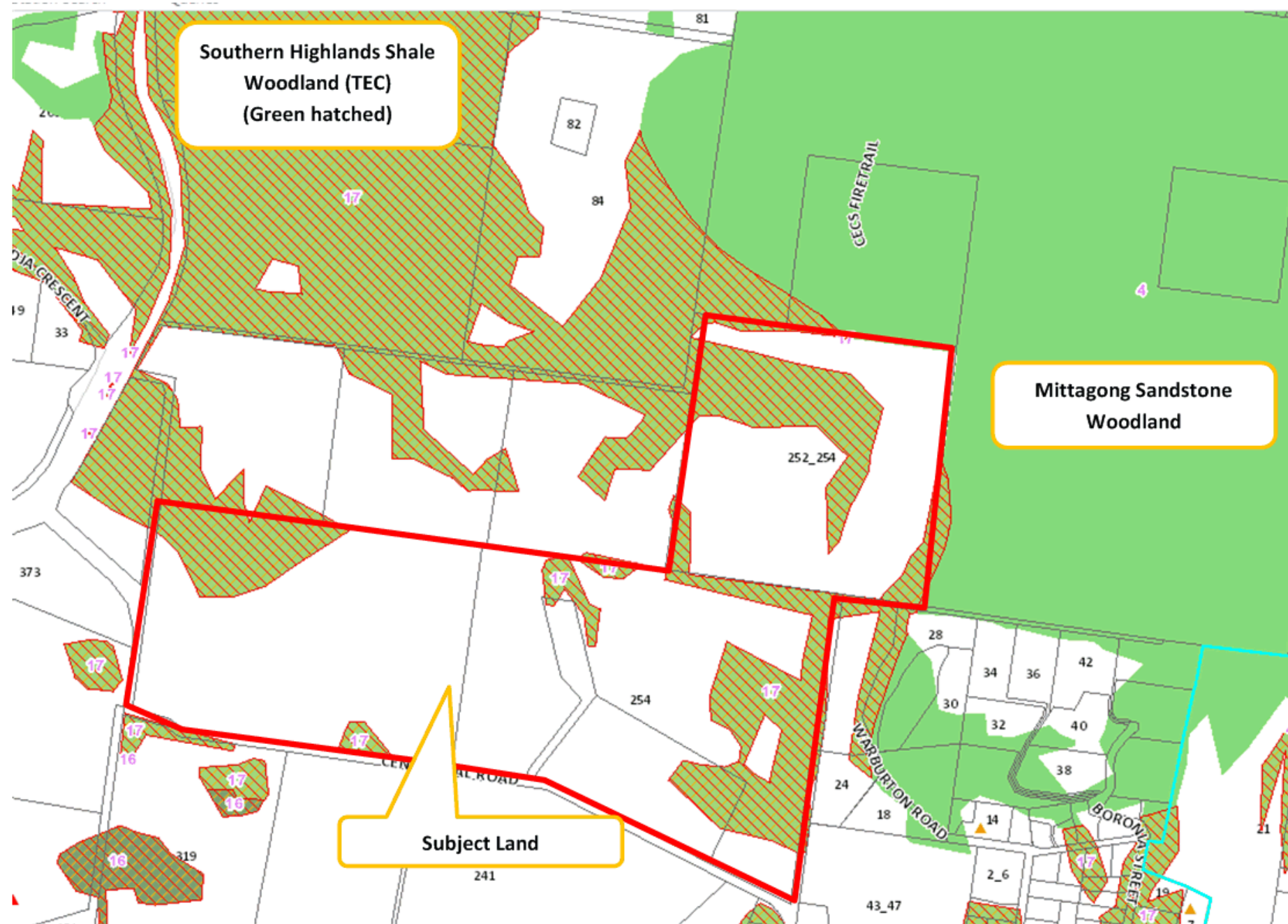


Figure 5 – Vegetation

ATTACHMENT 7

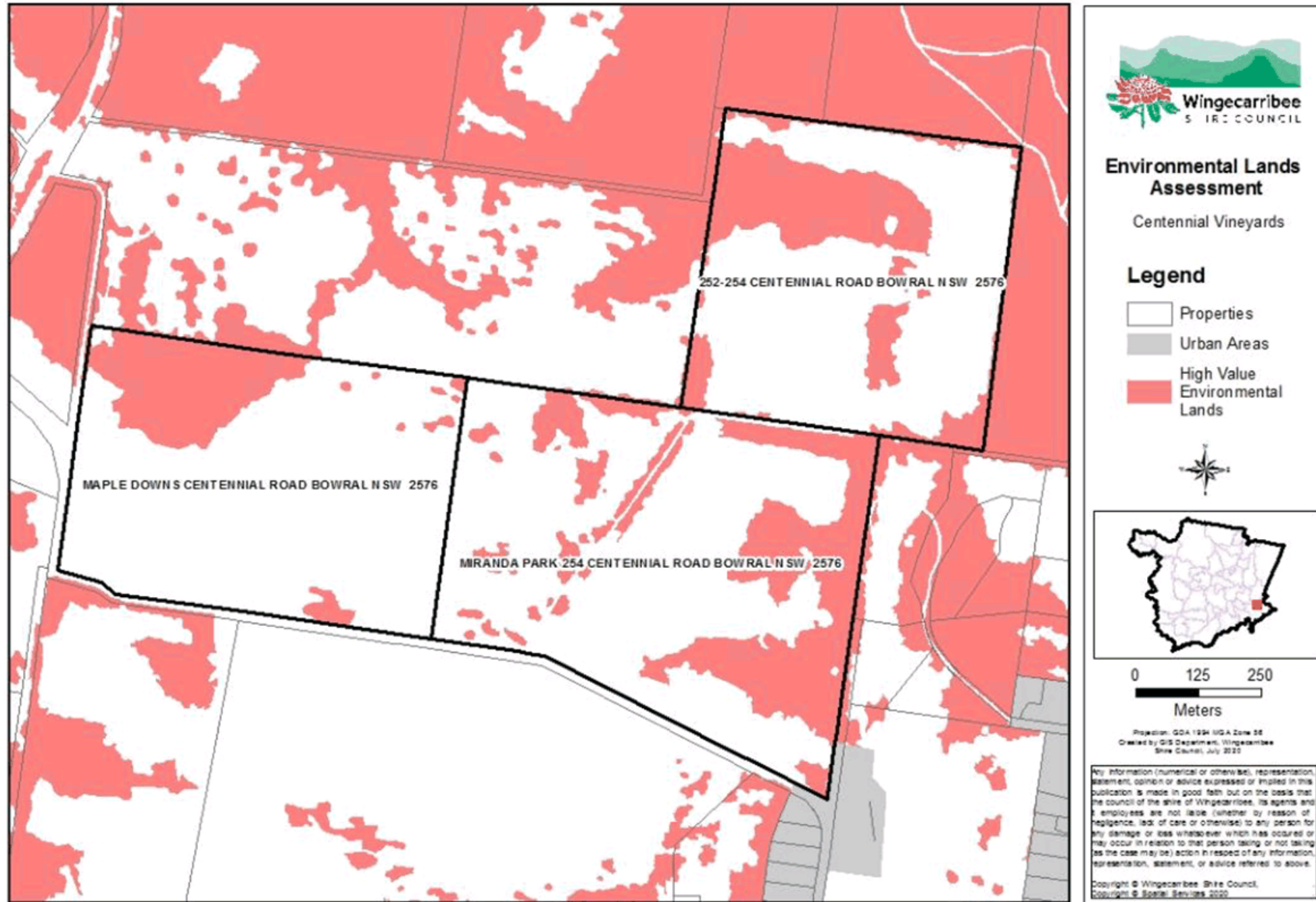


Figure 6 – Constraints map for High Value Environmental Land

ATTACHMENT 8

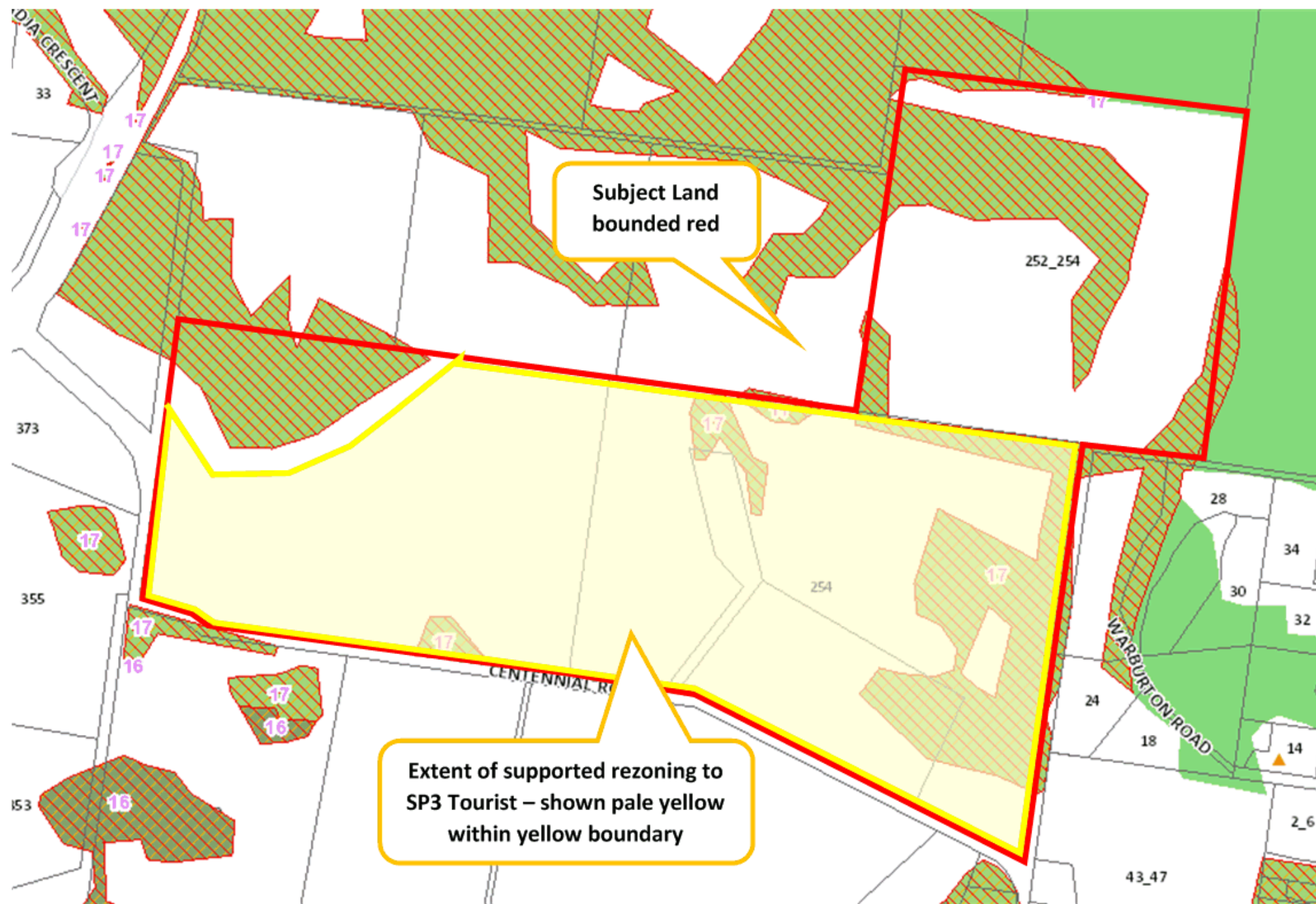


Figure 7 Extent of Supported Rezoning to SP3 Tourist

12.5 Draft Bonds Policy

Reference:	5350/1
Report Author:	Manager Development Assessment
Authoriser:	Group Manager Planning, Development and Regulatory Services
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

PURPOSE

The purpose of this report to Council is to consider the results of the public consultation of the Draft Bonds Policy and to seek final adoption of the policy.

RECOMMENDATION

THAT Council adopt the Draft Bonds Policy as amended at ATTACHMENT 1 following public consultation.

REPORT

BACKGROUND

The draft Bonds Policy was provided to Council at its meeting held on 9 October 2019. At this meeting, Council resolved as follows:

1. *THAT Council endorse the Draft Bonds Policy for the purposes of community consultation.*
2. *THAT Council place the Draft Bonds Policy on public exhibition for a period of not less than 28 days.*
3. *THAT a report be prepared outlining any submissions received during the exhibition period for consideration by full Council prior to the formal adoption of the draft policy.*

REPORT

The Draft Bonds Policy outlines Council's requirements for the lodgement of bonds and guarantees associated with development consents where public infrastructure works are undertaken by parties other than Council and where such works will become Council assets.

The objectives of the Policy are:

- *To establish clear guidelines for the acceptance of varying types of financial bonds for certain works;*
- *Ensure that future facilities and infrastructure including landscaping are delivered in a specified timeframe to protect existing Council assets and/or works are delivered to relevant standards when they are to become Council assets.*

The Policy outlines the different types of security bonds which may be required in accordance with sections 4.17(6) and 6.15 of the *Environmental Planning & Assessment Act 1979*

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including the required bond amounts and the duration and return of bonds. Section 4.17(6) of the EP&A Act enable Council to place a condition of consent to hold a security for remedying any defects in any such public work that arise within 6 months after the work is completed.

The endorsement of the Draft Bonds Policy will ensure that Council maintains sufficient security for works where such works will be transferred assets to Council to guarantee the delivery of those assets to relevant standards.

COMMUNICATION AND CONSULTATION

Community Engagement

The Draft Policy was exhibited for 28 days in accordance with the resolution by Council at its meeting on 9 October 2019. This is considered further below.

Internal Communication and Consultation

The Draft Policy has been developed in consultation with Council's Planning Development and Regulatory Services Staff, Assets Branch and Infrastructure Services.

External Communication and Consultation

The Draft Policy was exhibited for 28 days in accordance with the resolution by Council at its meeting on 9 October 2019. The Draft Policy was exhibited between 4 February 2020 and 2 March 2020.

Four (4) submissions were received during the exhibition period. A further submission was received immediately following the matter being reported to Council in October 2019. The contents of that submission are also addressed below.

Summary of key issues considered from public submissions received prior to the commencement of the exhibition period:

Key Issues	Consideration
Deletion of reference to 'maintenance' from 'purpose' of Defects and Liability Bond description.	This is considered to be reasonable in the context of s4.17 which does not enable Bonds for maintenance. It is recommended that the wording is updated as found at Attachment 1 .
Consideration that defects Bond should only be held for period of 6 months.	Please refer to consideration below which refers to the 6-month time period within which any defects that arise in regard to public works. It does not relate to the period of time which the Bond may be held.
Concern regarding the value of 10% of the value of works required as Bond for Defects and Liability. Concern that 5% is industry standard and should therefore be inserted.	The 10% requirement has been reached due to Council's experience around the coverage and security that 10% provides where defects are identified and is therefore considered appropriate. There is no statutory basis to limit this amount. Accordingly, the requested amendment is not recommended.

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Key Issues	Consideration
Concern regarding the Bond amount calculation methodology and valuation of works. The use of 2 quotes and / or QS report is unreasonable.	Please refer to comments in the table below which find that the methodology is sound and has been arrived at to ensure that the value of works is an accurate indication of the actual cost of the proposed works. Accordingly, the amendment of the policy is not recommended.
The minimum Bond amount of \$10,000 is considered to be unreasonable.	This amount has been considered due to Council's exposure to risks associated with construction and experience regarding such works. Accordingly, the amendment of the policy is not recommended.
Details of the way in which the funds given to Council are 'invested' should be released and form part of policy.	S4.17 only requires that the monies be deposited with the consent authority or in the form of a guarantee satisfactory to the consent authority. Council deposits any funds received which are held in a restricted account.

Summary of key issues considered from public submissions received during the exhibition period:

Key Issues	Consideration
Duration of time bonds are to be held. Specific concerns about compliance with 4.17(6)(c) which states <i>'remedying any defects in any such public work that arise within 6 months after the work is completed,'</i> Concern that the reference to <i>'24 months'</i> regarding the Defects and Liability Bond is not lawful and may be <i>ultra vires</i> .	The Act is specific about the type of work it refers to being <i>'public work'</i> . The wording of 4.17(6)(c) goes to the time period within which any defects may arise (6 months) after the completion of works. It does not relate to the time period of the holding / releasing of any Bond. In general terms, there are no clauses within s4.17 of the Act that dictate a specific time period within which any Bond can be held or released other than the matters defined by section 4.17(6)(c). Accordingly, the policy is lawful and not <i>ultra vires</i> as drafted.

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Key Issues	Consideration
<p>Requirement that Bonds will be returned only once 'works' are completed to Council's satisfaction.</p>	<p>Council has adopted standards and specifications for physical works and it is not unreasonable for Council to require works to be undertaken by a consent or other agreement to a requisite standard. Bonds can be an acceptable security to ensure that those works are completed to the required standard.</p>
<p>Draft policy unreasonable where it requires those undertaking the development to be financially and physically responsible for the rectification works or ongoing maintenance works where lots have been registered or in other circumstances.</p>	<p>Where conditions of consent require any ongoing maintenance of assets / areas, compliance with conditions is required under the Act.</p> <p>The requirement ensures that the works are appropriately maintained and perform during the maintenance liability period.</p>
<p>The quantum of Bonds required is unreasonable and excessive.</p>	<p>The quantum of Bond has been calculated based upon Council's experience and types and scale of works undertaken in the LGA. There is no limitation in the Act upon the quantum of Bond that can be imposed and therefore the approach used is based upon Council's experience. This approach is due to past events which have put Council at increased financial risk where works have not been completed satisfactorily or where the quote / works estimates upon which calculations were based were unrealistic. Accordingly, no change to the quantum of Bonds is recommended as part of this report.</p>
<p>The Bond quantum calculation methodology in regard to use of 'two quotes or QS report' is unfair and unreasonable.</p>	<p>The proposed methodology takes a risk averse approach to the calculation of the quantum of Bonds. It is reasonable to request quotes from builders/civil works contractors in regard to works to be undertaken to enable Council to understand and consider approximate values. The request for a QS reports also enables Council to determine the value of high cost or work that involves risk that cannot be ordinarily costed by market quotes that sometimes provide significant cost differential. Accordingly, no change to the methodology for the quantum of Bonds is recommended as part of this report.</p>

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Key Issues	Consideration
<p>Consideration that the Bond monies must be held in trust in an interest – bearing account specifically maintained for bonds and applied only as stated in the relevant consent.</p>	<p>Section 4.17 does not require monies to be held by the Council in interest bearing accounts. Section 4.17(8) only requires that:</p> <p><i>‘the security may be provided, at the applicant’s choice, by way of—</i></p> <p><i>(a) deposit with the consent authority, or</i></p> <p><i>(b) a guarantee satisfactory to the consent authority.’</i></p> <p>Council does however hold financial bonds in restricted accounts specifically relating to security bonds.</p>
<p>Consideration that interest from the account (trust-as above) is also payable when the Bond funds are released.</p>	<p>Again, Section 4.17 does not require this, it states s4.17(10):</p> <p><i>‘The funds realised from a security may be paid out to meet any cost referred to in subsection (6). Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.’</i></p>
<p>Request to delete reference to <i>‘street plantings and vegetation and public reserves...’</i> in 2. of the draft policy.</p>	<p>The draft policy now refers as follows:</p> <p><i>‘To ensure costs to cover maintenance and for any defects and liabilities of any new public infrastructure provided by an applicant/developer, such as roads, drainage, footpaths, water, sewer, buildings, riparian corridors, water sensitive urban development and public reserves.’</i></p> <p>These are in accordance with s4.17(6) which refers to <i>‘making good any damage caused to any property...’</i> and <i>‘environmental controls’</i>.</p> <p>Accordingly, no amendment is recommended to the draft policy.</p>
<p>Concern regarding the retention of terms ‘interim’ and ‘final’ Occupation Certificates- request to remove.</p>	<p>The policy will be amended to reflect current legislation and those projects still underway under the old system of certification further to the amendment of the Regulation.</p>

SUSTAINABILITY ASSESSMENT

• **Environment**

There are no Environmental impacts or issues associated with this report.

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- **Social**

There are no Social impacts or issues associated with this report.

- **Broader Economic Implications**

There are no Broader Economic Implications or issues associated with this report.

- **Culture**

There are no cultural impacts or issues associated with this report.

- **Governance**

The use of Bonds by Council enables the efficient and effective management of works in some cases and helps Council avoid potential situations where governance issues relating to works and liability for Council may arise.

COUNCIL BUDGET IMPLICATIONS

The policy will ensure that future budgetary costs on the Council are ameliorated as a result of maintaining appropriate securities for the completion of works and the appropriate performance of completed civil infrastructure during prescribed warranty periods. In the absence of appropriate security bonds, Council may be exposed to risk associated with uncompleted works or works that do not perform to adopted standards. In such cases, Council would be required to fund such works and or repairs which would impact on future operational budgets. This policy seeks to prevent such financial risk.

RELATED COUNCIL POLICY

There is no related Council Policy in regard the Draft Bonds Policy.

OPTIONS

The options available to Council are:

Option 1

THAT Council adopt the Draft Bonds Policy as amended at **Attachment 1** following public consultation.

Option 2

THAT Council not endorse the Draft Bonds Policy and provide an alternative position for the acceptance of bonds relating to development.

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

CONCLUSION

The draft bonds policy will provide an appropriate and effective governance framework for the application and management of security bonds. This policy will ensure that Council manages risk associated with uncompleted and also performance of civil works during prescribed maintenance periods. Minor revisions have been considered to the draft policy following community engagement.

ATTACHMENTS

1. Attachment 1 Draft Bonds Policy



Draft Bonds Policy

[Main Category – link to Community Strategic Plan Wingecarribee 2031 Theme]

[Subcategory – link to Community Strategic Plan Wingecarribee 2031 Goal]

Adoption Date:	<i>(Governance to insert)</i>
Council Reference:	<i>(Governance to insert)</i>
Policy Owner:	Group Manager Planning Development and Regulatory Services
Next review date:	<i>(2 years recommended)</i>
File Reference:	TBA
Related Policies/Legislation:	<i>Environmental Planning and Assessment Act 1979 (as amended) and Environmental Planning and Assessment Regulation 2000.</i>
Related Documents:	Nil
Superseded Policy/GM Practice Note:	Nil



Objectives

This Policy has been prepared to outline Council's requirements for the lodgement of bonds and guarantees associated with the development process where public infrastructure works are undertaken by parties other than Council.

Council will require a cash bond or bank guarantee to ensure that future facilities and infrastructure including landscaping are delivered in a specified timeframe, to protect existing Council assets, or to ensure that constructed works perform or are delivered to relevant standards. They are also accepted to facilitate the release of a subdivision or occupation certificate prior to completion of all public infrastructure works.

This policy outlines the different types of security bonds which may be required in accordance with Section 4.17(6) and 6.15 of the *Environmental Planning & Assessment Act 1979* including the required bond amounts and the duration and return of bonds and bank guarantees.

Any bond taken under this policy must not be applied or used for the purposes of deferring any development contributions arising under Section 94 (**now Section 7.11**) or any obligation under a Voluntary Planning Agreement (VPA) or Works-In-Kind Agreement (WIK). Conversely, any bond, bank guarantee, or the like, taken as security to defer Section 94 (**now Section 7.11**) development contribution, VPA or WIK obligations, cannot be applied to any purposes described under this bonds policy.

Policy Statement

The intent of the Bonds Policy is to establish clear guidelines for the acceptance of varying types of financial bonds as security from parties, other than Council, for certain works on public land or works on private land where such works will become donated assets to Council.

These works are typically, but not necessarily limited to, roads and other public works such as community infrastructure including footpaths, drainage facilities, recreational facilities, water and sewer infrastructure, water quality facilities, buildings or landscaping that are required to be constructed in association with a Development Consent, or other Council approval.

The various security bonds are detailed as follows:

1. Incomplete Works Bonds

1.1 General Works

Purpose of the Bond

To ensure the cost of incomplete civil works are covered, at the discretion of Council. The bond may also apply if the proposed works do not comply with Council's standard or the developer seeks to obtain registration of the subdivision prior to the works being completed due to:

- (i) timing to comply with Council's standards; or
- (ii) time required to complete non-essential infrastructure works.

The deferral of such works shall not expose Council to any public liability risks or safety issues. Council will not accept a bond for the completion of essential outstanding Council infrastructure works.

Circumstances where bonds are required

A bond is payable prior to release of the Subdivision, ~~Interim or Final~~ Occupation Certificate.



The Applicant shall provide a written guarantee (letter of undertaking) of the timeframe to undertake the required works. The timeframe and schedule for the carrying out of the bonded works yet to be completed shall be not more than 6 months from the date of the Subdivision, ~~Interim or Final~~ Occupation Certificate being issued.

Bond amounts (excluding GST)

The bond amount is either 150% of the total engineering public works costs where latent conditions are prevalent prior to finalisation of works; or 130% of the total engineering public works costs where there is certainty in estimating and validating outstanding works.

The bond amount shall be determined by written evidence (including two quotes or QS Report prepared by qualified professional taking into account local market conditions) identifying the cost of the works, provided by the applicant to Council to ascertain the amount.

Council will undertake its own assessment of the quotes submitted/QS Report prior to accepting the bond amount. The works are required to be scoped by the applicant / developer and agreed to by Council prior to the assessment of costs being undertaken.

Duration and return of the bond

The bond will be held by Council until the works are completed to Council's satisfaction.

If the works are not completed within the nominated time, then Council may either call in the bond or request additional security to cover the future value of the work including administrative costs to Council and increases in construction costs due to the timing of works and contingency costs.

The bond shall be returned following a written request for the return of the bond and completion of Council's adopted bond return application form.

1.2 Footpath Infrastructure

Council requires footpath infrastructure to be delivered as part of the approved subdivision works. If a developer elects to defer the footpath construction and Council agrees to that deferral, a payment of a bond shall be required.

The deferred footpath works must be completed once 80% of housing has been constructed within the approved subdivision, or within 2 years from the date of the deferral, whichever occurs first.

Where a Footpath Bond is accepted by Council, the following provisions will apply.

Purpose of the bond

To ensure the construction of concrete footpaths and/or pedestrian/cycle shared ways located in existing and/or proposed public land are constructed as detailed in the development consent and approved construction certificate plans. The bond applies only where such facilities are in existing and/or proposed public land.

Circumstances where the bond is required

The bond is payable prior to release of the Subdivision or Occupation Certificate. The bond period is to commence on the date of issue of a subdivision and is required to be held until works are complete to the satisfaction of Council.

Bond amounts (excluding GST)

The total amount of the incomplete works will be confirmed by Council following the provision of written evidence provided by the Applicant to Council to ascertain the amount. Evidence can be provided in the form of two written quotes or QS Report prepared by qualified professional taking into account local market conditions.

Council will undertake its own assessment of the quotes prior to accepting the bond amount.



The bond amount is 130% of the value of the incomplete works.

Duration and return of bonds

The bond is held by Council until the works are completed to Council's satisfaction.

If the works are not completed within the nominated time, then Council may call in the bond or request additional security for indexation of the value of the works.

The bond shall be returned following a written request for the return of the bond and completion of the bond return request form.

1.3 Water Quality Facility Works

Purpose of the bond

To ensure the water quality facility/facilities located in existing and/or proposed public land are constructed as detailed in the approved drawings. The bond applies only where such facilities are in existing and/or proposed public land.

Circumstances where the bond is required

The bond is payable prior to the issue of a Subdivision Certificate.

The Applicant shall provide a written guarantee of the timeframe to undertake the works.

The timeframe and schedule for the carrying out of the bonded works yet to be completed shall be not more than 6 months from the date of the Subdivision Certificate being issued.

Bond amounts (excluding GST)

The bond amount is 130% of the total value of the water quality facility works including:

- (i) the cost of removing the sediment, turf and geotextile layer on the water quality facility;
- (ii) the cost of preparing detailed design documentation if the design is yet to be finalised, and
- (iii) planting the water quality facility to its final form.

The bond amount shall be determined by written evidence (including two quotes or QS Report prepared by qualified professional taking into account local market conditions) identifying the cost of the works provided by the Applicant to Council to ascertain the amount.

Council will undertake its own assessment of the quotes submitted/QS Report prior to accepting the bond amount.

Duration and return of bonds

The bond is held by Council until the works are completed to Council's satisfaction.

If the works are not completed within the nominated time, then Council may either call in the bond or request additional security for indexation of the value of the works.

The bond shall be returned following a written request for the return of the bond and completion of the bond release request form.



2. Defects and Liability Bond

Purpose of the bond

To ensure costs to cover ~~maintenance and for~~ any defects and liabilities of any new public infrastructure provided by an applicant/developer, such as roads, drainage, footpaths, water, sewer, buildings, riparian corridors, water sensitive urban development and public reserves.

Circumstances where bonds are required

The bond is payable prior to issue of Subdivision, ~~Interim or Final~~ Occupation Certificate for the designated works. The bond needs to clearly nominate the value of the actual works that the developer is liable for.

Bond amount (excluding GST)

The defects and liability bond is 10% of the value of the works covered by the defects liability period, with a minimum value of \$10,000.

The value of the works shall be determined by written evidence (including two quotes or QS Report prepared by qualified professional taking into account local market conditions) identifying the cost of the works provided by the Applicant to Council to ascertain the amount.

Council will undertake its own assessment of the quotes submitted/QS Report prior to accepting the bond amount.

Duration and return of bonds

The bond is held for a minimum of 24 months from the date of the release of the Subdivision Certificate. Following the rectification of any defects Council at its discretion may request a new defects and liability period to apply from the date of acceptance of rectification works.

If the rectification works are not completed to Council's satisfaction, Council may either call in the bond or request additional security to cover the future value of the work including administrative costs to Council and increases in construction costs due to the timing of works and contingency costs.

Bonds are considered for release on receipt of a written request for the return of the bond and completion of the bond release request form.

3. Damages Bond

Purpose of the bond

To ensure any damage to existing public infrastructure resulting from development or associated works is rectified to Council's satisfaction.

The bond is required for the protection of existing Council assets during construction, such as footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter and road pavement.

Circumstances where bonds are required

The bond is payable prior to issue of a Construction Certificate for commencement of the development.

Bond amount (excluding GST)

A dilapidation report of the identified infrastructure is to be submitted to Council prior to the commencement of construction to determine current state of repair.



The report should identify relevant infrastructure in the vicinity of the works and a written assessment of the condition of the infrastructure, including photos and any test results.

The bond amount is calculated at 10% of the value of the development works.

Duration and return of bonds

The bond is held by Council until all identified rectification works (if required) are completed to Council's satisfaction. Bonds are considered for release on receipt of a written request for the return of the bond and completion of the bond release request form.

4. Rolling Developer Bond

Purpose of the bond

Council may allow a rolling bond where there is a large development entity with a project in which there are multiple stages in a development. This enables a developer to submit a consolidated security to cover each of the bonds required by this policy.

This allows for bonds to be transferred from one stage to another provided the required works have been satisfactorily completed, rather than needing to submit lodgement and/or refund applications for each bond, at the end of each stage.

This option provides a streamlined approach to managing various bonds.

How to apply for a rolling bond

Any application to enter into a rolling bond arrangement will be dealt with on a case by case basis.

The Applicant will be required to enter into a formal agreement with Council that outlines how the rolling bond is managed.

The Applicant will be required to maintain a complete register of all bonds within the rolling bond agreement and provide quarterly reports to Council on the status of existing included bonds, and upcoming proposed changes.

Circumstances where bonds are required

The criteria for lodgement of bonds are outlined in Sections 1- 4 of this policy. The type of bonds incorporated into a Rolling Bond will determine when the initial security must be submitted to Council. For example, if the rolling bond for a staged development is to include damage bonds, then the Rolling Bond must be in place prior to the issue of a Construction Certificate for stage 1.

Bond amount (excluding GST)

The value of a Rolling Bond is calculated by accumulated value of all bonds required by the policy and applicable Development Consents, as appropriate to the staging of works.

Accordingly, the amount of security held under a rolling bond at any time, must be equivalent to the accumulated value of all outstanding bonds required for that development.

The value of the rolling bond may vary over the course of the development, depending on the timing and completion of stages.

Duration and return of bonds

Bonds will be returned or credited against the rolling bond in accordance with the criteria outlined in Sections 1- 4 of this policy.



Scope

Development Consents that require works on public infrastructure and process to fulfil the condition could require lengthy disruption to normal operation and presents a risk to the community if not able to be completed as intended or scheduled.

A security bond will take the form of an irrevocable and unconditional bank guarantee (without expiry or termination date) in favour of Council, bank cheque or cash.

Council may consider a request to bond incomplete works, where the following criteria are met:

- The works do not adversely affect the efficiency and/or operation of the development or a vital element of the development (including health and sanitary conditions);
- The incomplete works do not present a safety issue that cannot be satisfactorily managed at the discretion of council;
- The completion of the incomplete works can be carried out without significant impact on the operation of the development site and/or will not inhibit the commencement of building development on the development site;
- The nature and value of the incomplete works can be accurately estimated and validated. A request to bond where there exist latent conditions on site may be considered; and
- The developer can retain sufficient control of the site to satisfactorily carry out the incomplete works.

Council reserves its rights to refuse a Bond, based on its own risk assessment.

Definitions

Nil

Responsibilities

Responsibilities for implementing this policy are shared between Councillors, Executive and staff as follows:

Councillors: N/A

Executive: N/A

Staff: Group Manager Planning, Development & Regulatory Services

- To implement and review this Policy and related procedures.
- To lead staff in their understanding of, and compliance with, this Policy.

Performance Measures

Zero departures from the Policy

Breaches of the Policy

Breaches of this policy should be reported to Group Manager Planning, Development & Regulatory Services. The Group Manager Planning, Development & Regulatory Services will investigate alleged breaches and determine the appropriate course of action to resolve the matter.



Approved by:

WINGECARRIBEE SHIRE COUNCIL

[Governance to insert adoption date]



Attachments

~~1. Development Engineers Procedures Manual~~

Nil

Approved By:

WINGECARRIBEE SHIRE COUNCIL

(Insert Date)

12.6 Smoke-Free Outdoor Areas Policy Review

Reference:	5450/28.1
Report Author:	Environmental Policy Officer
Authoriser:	Coordinator Environment and Health Systems
Link to Community	
Strategic Plan:	Increase promotion of healthy lifestyle choices

PURPOSE

A scheduled review of the Smoke-Free Outdoor Areas Policy has been undertaken. No substantive changes have been made, however administrative edits have been made. This report seeks the re-adoption of the updated Policy at **Attachment 1**.

RECOMMENDATION

THAT the Smoke-Free Outdoor Areas Policy at **Attachment 1** be adopted.

REPORT

BACKGROUND

Council's Smoke-Free Outdoor Areas Policy was adopted in 2013 and last updated in 2018. The Policy aims to improve the amenity of Council facilities and raise awareness of the health issues associated with smoking.

NSW laws

In NSW, the *Smoke-Free Environment Act 2000* and *Regulation 2016* requires the following areas to be smoke-free:

- Enclosed public spaces.
- Within 10 metres of children's outdoor play equipment.
- Public swimming pool complexes.
- Spectator areas of public sports grounds and recreational areas during an organised event.
- Public transport stops and platforms.
- Within 4 metres of a pedestrian entrance or exit to a public building.
- Commercial outdoor dining areas.

NSW Health is the compliance authority for these laws.

Council's Policy

Council's Policy goes beyond the NSW laws by prohibiting smoking within 10 metres of a public Council building. This includes buildings such as administration buildings, libraries, sports buildings and community centres. Council's Policy also prohibits smoking at outdoor dining areas that serve beverages only as these are not covered by the NSW laws. Conditions in leases and licence agreements contain the provisions of the Policy and the NSW laws.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Council is able to undertake enforcement for littering and where certain signs are not being complied with. However, the primary approach is an educative response.

REPORT

A scheduled review of Council's Smoke-Free Outdoor Areas Policy has been undertaken. The review did not identify any substantive position changes required for the Policy. Changes have been made to the format of the Policy to bring it up to date and minor edits were made for clarity.

Policy Review

Rangers reported that very few smoking related complaints have been received over the past two years. Other enquiries about community facilities were supportive of the Policy and related to identifying designated smoking areas outside of the smoke free areas.

The Policy review did consider the position of a number of councils that have recently extended smoke-free areas. For example, Wollongong has made outdoor fitness areas, beaches and areas of the CBD smoke-free and North Sydney has trialled smoke-free CBD areas.

Both these councils note that active enforcement of these rules will not be undertaken due to resourcing priorities. North Sydney also noted that there was a cost of over \$20,000 for signs without considering enforcement or education costs.

Given the very limited number of complaints received and potential costs to implement, increasing the area covered by this policy is not recommended and is unlikely to result in further health gains for the community.

COMMUNICATION AND CONSULTATION

Community Engagement

The Policy has been in place since 2013. The updates in [Attachment 1](#) are administrative rather than position changes. Therefore, additional community consultation on the Policy is not recommended.

Internal Communication and Consultation

The review of the Policy included staff from Assets, Corporate Strategy, Coordinator Assets - Parks and Buildings, Coordinator Regulatory Services, Coordinator Sustainability, Coordinator Corporate Strategy and Governance, Manager Organisational Development, and Manager Environment and Sustainability.

External Communication and Consultation

No external communication has been undertaken as no position changes have been identified.

SUSTAINABILITY ASSESSMENT

- **Environment**

The Policy may improve health, air quality and reduce cigarette litter within and surrounding smoke-free outdoor areas.

- **Social**

As the Policy position has been in place since 2013 there are no additional 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 updated Policy does not have an additional impact on Council's budget.

RELATED COUNCIL POLICY

Smoke-free Workplace General Manager's Practice Note and Procedure

OPTIONS

The options available to Council are:

Option 1

THAT the Smoke-Free Outdoor Areas Policy at Attachment 1 be adopted.

Option 2

THAT further changes are made to the policy prior to adoption.

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

CONCLUSION

A scheduled review of the Smoke-Free Outdoor Areas Policy has been undertaken. Minor editing amendments have been made however, no substantive position changes have been made. It is recommended that the updated policy at Attachment 1 is adopted.

ATTACHMENTS

1. Draft Smoke-Free Outdoor Areas Policy



Smoke-Free Outdoor Areas Policy

People

2.1 Our people have the opportunity for a happy and healthy lifestyle

Adoption Date:	<i>(Governance to insert)</i>
Council Reference:	<i>(Governance to insert)</i>
Policy Owner:	Manager Environment and Sustainability
Next review date:	<i>(Governance to insert)</i>
File Reference:	5450/28.1
Related Policies/Legislation:	<i>Smoke-free Environment Act 2000</i> <i>Smoke-free Environment Regulation 2016</i> <i>Liquor Act 2007</i> <i>Local Government Act 1993</i> <i>Local Government (General) Regulation 2005</i> <i>Roads Act 1993</i>
Related Documents:	Smoke-Free Workplace General Manager Practice Note Smoke-Free Workplace Procedure
Superseded Policy/GM Practice Note:	Smoke-Free Outdoor Areas Policy v.3



Objectives

The objectives of this policy are to:

- improve the public amenity of Council property;
- raise community awareness of the health issues associated with smoking;
- provide community leadership in protecting the health and wellbeing of the community; and
- minimise cigarette butt litter on Council land.

Policy Statement

Council is committed to minimising the harmful effects of tobacco and e-cigarette smoking (including passive smoking) on community health, local amenity and the natural environment.

This Policy extends NSW smoke-free legislation and prohibits smoking in additional areas. Further information on the NSW legislative framework is provided in the following sections.

Smoke-free outdoor public places

Smoking is prohibited at, or within 10 metres of any Council-owned public building and associated structures, such as enclosed verandahs, awnings and covered walkways. Signs are in place to support this Policy. Designated smoking areas for Council officials are outlined in the Smoke-free Workplace Procedure.

Under the *Smoke-free Environment Act 2000*, smoking is also prohibited:

- in an enclosed public area;
- within 10 metres of children's play equipment;
- at public swimming pools;
- in spectator areas at sports grounds or other recreational areas when being used for an organised sporting event;
- at public transport stops and platforms;
- in commercial outdoor dining areas; and
- within four metres of a pedestrian entrance or exit to a public building.

Council has installed signs to support the State Government legislation in certain areas such as playgrounds, pools and parks.

Smoke-free clauses in leases, licences and user agreements for all Council sporting grounds and community facilities reflect the requirements of the State Government legislation and this Policy. These clauses must be complied with.

Smoke-free commercial outdoor dining areas

Smoking is prohibited at or within Council-managed outdoor dining areas. This includes areas that are used for the consumption of beverages only and areas that are used for the consumption of food.

Commercial outdoor dining areas are required to comply with all requirements of the *Smoke-free Environment Act 2000* and *Smoke-free Environment Regulation 2016*, as well as any smoke-free clauses in licence agreements that have been established under the *Roads Act 1993*, for example, footways.



Signs are required for commercial outdoor dining areas under the *Smoke-free Environment Regulation 2016*. These signs must be prominently displayed on the premises and are available free of charge from NSW Health. Signs are not mandatory, although strongly recommended, for pedestrian access points to licenced venues, restaurants and cafés.

Smoke-free clauses in outdoor dining licences reflect the requirements of State Government legislation and this Policy. These clauses must be complied with.

Enforcement

NSW Health is responsible for enforcing the NSW *Smoke-Free Environment Act 2000*. Suspected breaches of outdoor smoking bans can be reported online at [Smoke-free laws](#).

Enforcement of this Policy is supported primarily by persuasion and self-policing by the community rather than punitive enforcement by Council. Where a member of the public continually fails to comply with the terms of public notices erected by Council, Council may serve a caution or penalty notice under the *Local Government Act 1993* and *Local Government (General) Regulation 2005*. For Council-managed outdoor dining areas, Council may issue a written warning or terminate a licence where a breach of a licence condition repeatedly occurs.

Scope

This Policy applies to:

- Council-owned buildings and Council-managed licenced outdoor dining areas;
- all Council officials; and
- members of the general public.

Definitions

commercial outdoor dining areas and **smoke-free areas - outdoor public places** have the same meaning as in sections 4A and 6A respectively of the *Smoke-free Environment Act 2000*.

Council-managed outdoor dining areas include those areas as defined above and areas that are used for the consumption of beverages only.

Council official includes Councillors, members of Council staff, administrators, Council committee members (including members of a wholly advisory committee), delegates of Council, Council advisers and Council contractors.

smoking has the same meaning as the term **smoke** in section 4 of the *Smoke-free Environment Act 2000* and therefore includes using, consuming, holding or otherwise having control over a tobacco product, non-tobacco smoking product or e-cigarette that is generating (whether or not by burning) smoke or an aerosol or vapour.

Responsibilities

Responsibilities for implementing this policy are shared between Councillors, Executive and other Council official as follows:



Councillors:

Councillors shall:

- lead the community in their understanding of and compliance with this Policy; and
- lead the community in their understanding of and compliance with State Government smoke-free

Executive:

The Executive shall:

- implement this Policy; and
- lead Council staff in their understanding of and compliance with this Policy.

Manager Environment and Sustainability:

The Manager Environment and Sustainability shall:

- implement this Policy;
- provide guidance to Councillors and staff in relation to this Policy; and
- ensure the timely review of this Policy.

Council officials:

Council officials shall:

- comply with this Policy;
- undertake enforcement of this Policy where authorised to do so; and
- apply this Policy in the administration of outdoor dining areas, sporting grounds and community facilities.

Performance Measures

The success of this Policy will be measured by:

- improved community compliance with State Government legislation;
- no reported breaches of this Policy; and
- a reduced number of smoking and litter complaints received.

Approved by:

WINGECARRIBEE SHIRE COUNCIL

[Governance to insert adoption date]



Attachments

There are no attachments to this Policy.

Draft



12.7 Compliance Update - Notices and Orders (April - June 2020)

Reference:	20/0001
Report Author:	Group Manager Planning, Development and Regulatory Services
Authoriser:	Group Manager Planning, Development and Regulatory 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 provide Councillors with an update on the current notices and orders issued under the relevant statutes of the *Environmental Planning and Assessment Act 1979*, *Local Government Act 1993* and the *Protection of the Environment Operations Act 1997*.

RECOMMENDATION

THAT the report concerning Compliance Update- Notices and Orders (April – June 2020) be considered in Closed Council – Item 19.1.

This report is confidential in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(e) as it contains information that would, if disclosed, prejudice the maintenance of law.

Note: *The Council, or a committee of the Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed (15.9 – Code of Meeting Practice)*

Where the matter has been identified in the agenda of the meeting under clauses 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 15.9, member of the public must first make an application to the Council in the approved form. Applications must be received by close of business (4.30pm) two (2) business days prior to the meeting at which the matter is to be considered (15.11 – Code of Meeting Practice).

ATTACHMENTS

There are no attachments to this report.

Mark Pepping
Deputy General Manager Corporate, Strategy and Development Services
Friday 17 July 2020

COUNCIL MATTERS

13 GENERAL MANAGER

13.1 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

PURPOSE

The purpose of this report is to update Council on the status of legal proceedings reported at the ordinary meeting of Council on 24 June 2020.

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 19.2.**

This report is confidential in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Note: *The Council, or a committee of the Council, may allow member of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed (15.9 – Code of Meeting Practice).*

Where the matter has been identified in the agenda of the meeting under clauses 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 15.9, members of the public must first make an application to the Council in the approved form. Applications must be received by close of business (4.30pm) two (2) business days prior to the meeting at which the matter is to be considered (15.11 – Code of Meeting Practice).

REPORT

BACKGROUND

This report updates the current status and costs paid during June 2020, for legal proceedings involving Council in the Land and Environment Court, including those matters completed since the last report to Council.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT GENERAL MANAGER



Legal proceedings involving Council and legal advice obtained by Council are confidential and attract legal professional privilege. Therefore, their status is report in a closed report.

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 and 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 Costs report to Council.

There were consultants' fees for legal proceedings paid in the month of June 2020 – refer **Attachment 1**.

COMMUNICATION AND CONSULTATION

Community Engagement

Nil

Internal Communication and Consultation

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

External Communication and Consultation

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

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.

RELATED COUNCIL POLICY

Council's Compliance and Enforcement Policy.

ATTACHMENTS

1. Legal Costs- June 2020

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Legal Costs - June 2020

Legal Matter	Legal Expenditure Jun-20	Consultant Expenditure Jun-20	Legal Expenditure Year to Date (YTD)	Consultant Expenditure Year to Date (YTD)	Total Expenditure Life to Date (LTD)
Catholic Health Care Pty Ltd Aitken Road, Bowral	\$ 779		\$ 54,501	\$ 41,789	\$ 97,989
K.N.D Nominees Pty Ltd Walker Street, Bowral	-	-	\$ 8,134	-	\$ 8,134
Reulie Land Co Pty Ltd Myra Vale Road, Wildes Meadow	\$ 13,760	-	\$ 53,370	-	\$ 72,270
Lend Lease Retirement Living Holdings Aitken Road, Bowral	-	-	\$ 7,787	-	\$ 16,095
ERF Hospice Pty Ltd Edward Street, Bowral		-	\$ 20,061	-	\$ 29,751
Michael Brown Planning Loftus Street, Bowral	\$ 50,180	-	\$ 168,374	-	\$ 392,537
Turland Mittagong Road Bowral	\$ 1,421	\$ 1,820	\$ 11,798	\$ 3,745	\$ 217,478
Bowral Garage Development Pty Ltd Bong Bong Street, Bowral			\$ 7,186	-	\$ 7,186
Phoebe Hodgson Gordon Road, Bowral	\$ 604	-	\$ 19,872	\$ 5,100	\$ 24,972
Woodbine Park Nominees Wombeyan Caves Road, High Range	\$ 5,290	-	\$ 13,228	-	\$ 13,228
Lasovase Pty Ltd Myra Vale Road, Wildes Meadow	\$ 6,836	-	\$ 19,704	\$ 4,200	\$ 23,904
Morris Brigadoon Drive, Bundanoon	-	-	\$ 1,720	-	\$ 11,226
Paloma Blanca Pastoral Pty Ltd Colo Road, Colo Vale	-	-	\$ 12,430	\$ 3,240	\$ 60,673
Strathleigh Investments Pty Ltd Alice Street, Mittagong	-	-	\$ 11,607	-	\$ 55,216
Shelley Boyce Tyndall Street Mittagong	-	-	\$ 6,715	-	\$ 34,883
Sett Homes P/L Willow Street, Willow Vale	-	-	\$ 8,246	-	\$ 13,169
Fenwick v Woodside Properties Wingello Road, Bundanoon	-	-	\$ 31,255	-	\$ 72,669
PS Design and Construction Sir James Fairfax Circuit, Bowral		-	\$ 5,450	\$ 5,141	\$ 10,591
John Bennett Oxley Drive, Mittagong	\$ 6,101	\$ 2,250.00	\$ 16,405	\$ 2,250.00	\$ 18,655
Total Expenditure	\$ 84,970	\$ 4,070	\$ 477,842	\$ 65,465	\$ 1,180,625

Note: This report includes proceedings where legal and/or consultancy costs have been incurred in the 2019/20 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 – June 2020

Legal Matter	Fees Recovered June-20	Fees Recovered YTD	Fees Recovered LTD
O'Shanassy	-	\$4,750	\$18,728
Willow Properties	-	\$5,000	\$18,500
Michael Brown Planning Strategies	-	\$12,453	\$45,080
Garry Turland	-	\$5,000	\$5,000
Shelley Boyce	-	\$5,000	\$5,000
Total Recovery	\$0	\$32,203	\$92,308

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.

13.2 Exclusion of Question with Notice from Business Paper on 8 July 2020

Reference:	503/60
Report Author:	General Manager
Authoriser:	General Manager
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

To advise Council of the exclusion of an item from the Ordinary Meeting of Council dated 8 July 2020.

The Code of Meeting Practice (adopted 12 June 2019) Clause 3.20 states:

“the General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is, or the implementation of the business would be, unlawful. The General Manager must report, without giving details of the item of business, any such exclusion to the next meeting of Council”.

As required the General Manager advises that one submitted Question with Notice was excluded in accordance with Clause 3.20 above. Further details are provided below:

This item was excluded as it does not comply with Section 372(5) of the *Local Government Act 1993* (and clause 18.6 of Council’s Code of Meeting Practice). The General Manager determined it would be unlawful to include the item as it offends Clause 3.15 of Council’s Code of Meeting Practice that is:

“A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.”

RECOMMENDATION

THAT the report be noted.

ATTACHMENTS

There are no attachments to this report.

13.3 Exclusion of Notices of Motion from Business Paper on 8 July 2020

Reference:	503/60
Report Author:	General Manager
Authoriser:	General Manager
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

To advise Council of the exclusions of two items from the Ordinary Meeting of Council dated 8 July 2020.

The Code of Meeting Practice (adopted 12 June 2019) Clause 3.20 states:

“the General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is, or the implementation of the business would be, unlawful. The General Manager must report, without giving details of the item of business, any such exclusion to the next meeting of Council”.

As required the General Manager advises that one submitted Notice of Motion and Part Two of a Notice of Motion were excluded in accordance with Clause 3.20 above. Further details are provided below:

These items were excluded as they do not comply with Section 372(5) of the *Local Government Act 1993* (and clause 18.6 of Council’s Code of Meeting Practice). The General Manager determined it would be unlawful to include the items for the following reasons:

1. Notice of Motion
 - Council cannot amend a development consent once issued without the lodgement of a modification application by the applicant in possession of the development consent.
 - If the Motion was carried it would not meet the requirements of Section 356 of the *Local Government Act 1993*.
2. Part Two of a Notice of Motion was excluded as it could not be lawfully implemented by Council.

RECOMMENDATION

THAT the report be noted.

ATTACHMENTS

There are no attachments to this report.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

REPORT GENERAL MANAGER



Ann Prendergast
General Manager

Friday 17 July 2020



15 PETITIONS

15.1 Petition 4/2020 Retford Park Estate

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

PURPOSE

The purpose of this report is to present Council with a petition relating to Retford Park Estate.

The petition contains over 100 signatures.

A copy of the Petition will be tabled at the Ordinary Meeting of Council.

RECOMMENDATION

THAT Petition 4/2020 relating to Retford Park Estate be received and noted by Council.

ATTACHMENTS

There are no attachments to this report.



16 COMMITTEE REPORTS

16.1 Management and Advisory Committee Reports

Reference: 107/1
Report Author: Committee Coordinator

PURPOSE

This report provides the Minutes of the following Committee Meetings, copies of which will be tabled for information:

1. Loseby Park Community Hall Management Committee held on 7 February 2020
2. East Bowral Community Centre Management Committee 25 February 2020
3. Wingello Mechanics Institute Hall 3 February 2020
4. Hill Top Community Centre Committee 20 February 2020

RECOMMENDATION

THAT the information contained in the following Committee Reports be noted:

1. Loseby Park Community Hall Management Committee held on 7 February 2020
2. East Bowral Community Centre Management Committee 25 February 2020
3. Wingello Mechanics Institute Hall 3 February 2020
4. Hill Top Community Centre Committee 20 February 2020

ATTACHMENTS

There are no attachments to this report.



17 QUESTIONS WITH NOTICE

17.1 Question with Notice 29/2020 Bowral Uniting Church Charity Kitchen

Reference:	101/2
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

To: General Manager

From: Clr Scandrett

Received: 28.6.20

Subject: Bowral Uniting Church Charity Kitchen

Question:

Could Councillors inspect with staff and the Church the Bowral Uniting Church Charity Kitchen regarding its proposal to refit and improve? Transport might need to be Councillors' individual cars to comply with COVID 19 guidelines.

Response:

In relation to development matters, Councillors and Council staff have only undertaken site inspections in relation to lodged development applications which are to be reported to Council. At this point in time, there is no development application for the proposed works which have been deemed by staff as requiring a development application on the account the property is a heritage listed property under Wingecarribee LEP 2010 and as a result the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 cannot be relied on to complete the works without a formal development application lodged with Council as per the provisions printed below.

Subdivision 26 Minor building alterations (internal)

2.51 Specified development

(1) A minor internal building alteration for the replacement or renovation of—

- (a) a doorway, wall, ceiling or floor lining, or
- (b) a deteriorated frame member, including stairs and stairwells, or
- (c) a bathroom or **kitchen**, or
- (d) a built in fixture such as a vanity, a cupboard or a wardrobe, or
- (e) an existing sanitary fixture, such as a grease trap or the like, or

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

QUESTIONS WITH NOTICE



- (f) shelving or racking that is not higher than 2.7m, or
- (g) a work station or counter,

is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item.

It would also be inappropriate for Councillors to meet with staff on such a matter where a breach of Clause 7.6(i) of the Code of Conduct may occur.

Subject to the lodgement of a development application for the proposed works, Councillors can decide at a future date of the need for the development application to be determined by full Council.

RECOMMENDATION

THAT the information in relation to Question with Notice 29/2020 Bowral Uniting Church Charity Kitchen - be noted.

18 NOTICES OF MOTION

18.1 Notice of Motion 22/2020 - Playhouse Renovation

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

THIS ITEM WAS DEFERRED FROM 24 JUNE 2020 COUNCIL MEETING

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 June 2020:

1. THAT Council staff prepare a design and construct tender document as a matter of urgency;
2. THAT Council staff report back to Council by Council meeting 22 July 2020 on the tender documents (OC) and to be funded by the first settlement from the sale of Frankland Street property.

RECOMMENDATION

Submitted for determination.

COMMENT FROM STAFF

The Draft 2020/2021 Capital Works program currently on exhibition in Council's Draft Operational Plan and Budget includes \$67.5 million of capital works. With the recent announcement regarding Council's success in obtaining \$2.8 million under the Federal Government's "Building Better Regions Fund", for the Bowral Memorial Hall, that project will now also be included for commencement in early 2021, thus further expanding the proposed Capital Works Programme.

The Project Delivery resources of Council will therefore have a very challenging program of capital works to deliver which is now in the vicinity of \$70 million.

If it is Council's direction to now fast track the repairs and refurbishment of the Mittagong Memorial Hall, it will require a review of priorities of the Capital Works program and other projects may need to be deferred. Alternatively, the project management of this work could be outsourced to an appropriate consultant, that will involve significant additional costs, in the order of 10% of the total project costs or approximately \$200k to \$250K.

It is also highlighted that a "design and construct" delivery model for this type of project is a much higher risk approach with an increased likelihood of project variations due to unforeseen

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 22 July 2020

NOTICES OF MOTION



issues in design and delivery of the project which will inevitably occur. If this model of delivery is imposed by Council, the contingency component of the project budget will need to be significantly increased to manage the increased risk and the delivery timeline will need to be flexible as the investigation and design process confirms the details of the project.

In conclusion the proposal to fast track a “design and construct” Project Delivery Model is not favoured by staff and does not align with the Project Delivery Framework currently being implemented across Council. The endorsed project delivery model requires “high risk” projects to be delivered in two stages. Stage 1 involves detailed investigation and design with a focus on identifying all risk factors from the project and ensuring that action is taken to manage those risks prior to commencement of delivery, with a “shovel ready” project then taken to market with an appropriate budget and project delivery plan. A fast tracked “design and construct” approach will also preclude Council the opportunity to pursue grant funding for this project.

It is highlighted also that the commitment to create a reserve for the proposed new Animal Shelter in the 2020/21 Draft Operational Plan & Budget of \$5.2 million is partly funded by the sale of Lot 3 of the Frankland St. property mentioned in the proposed recommendation 2.



18.2 Notice of Motion 24/2020 - Shire Bike Strategy

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

THIS ITEM WAS DEFERRED FROM 24 JUNE 2020 COUNCIL MEETING

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 June 2020:

1. THAT Councillors and staff undertake a site visit with the proponent;
2. THAT Councillors and staff hold a briefing session with the proponent;
3. THAT Council coordinate a workshop with stakeholders and interested parties, including the Member for Goulburn and the Member for Wollondilly as a matter of urgency..

RECOMMENDATION

Submitted for determination.

COMMENT FROM STAFF

From the information supplied in the Notice of Motion, it is unclear as to who the proponent is and what site would be visited and how that relates to the Shire Bicycle Strategy.

Notwithstanding the above, it is noted that Council has an adopted Bicycle Strategy which dates back to 2008. In Stage 1, the Bicycle Strategy identified existing and proposed key bicycle routes for Moss Vale, Bowral and Mittagong and established priorities for the implementation of upgrades and construction of new bicycle routes.

In 2016, Council adopted Stage 2 of the Bicycle Strategy which identified a proposed network of bicycle routes that will promote the connectivity between Wingecarribee's Main town to the rural towns and villages including from Mittagong to the northern villages of Willow Vale, Colo Vale, Hill Top, Balmoral and Yerrinbool, from Bowral and Moss Vale to the eastern villages of Robertson and Burrawang and the western villages of Berrima and New Berrima and from Moss Vale to the southern villages of Sutton Forest, Exeter and Bundanoon.

Council staff have secured in the past and continue to source potential government grants to continue with the short, medium and long term implementation of the Shire's Bicycle Strategy. Council's Section 94 (now S7.11) Developer Contributions Plan for Open Space, Recreation, Community and Cultural Facilities 2012-2036 also identifies cycleways across the Shire for funding from Developer Contributions.



18.3 Notice of Motion 25/2020 Fire at Resource Recovery Centre on 4 January 2020

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

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 8 July 2020:

THAT Council prepare a report on the fire at the RRC on 4.1.20.

RECOMMENDATION

Submitted for determination.

18.4 Notice of Motion 26/2020 Environment and Sustainability Committee Minutes

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

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Whipper has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 8 July 2020:

1. THAT: Additional to the endorsed Minutes of the Environment and Sustainability Committee of 19 February, ES 23/20, that Council amend the minute to acknowledge that it will be WinZero that makes a presentation to council in place of Extinction Rebellion.
2. THAT: with reference to ES 23/20, Council nominate a date to schedule the WinZero presentation to Council (noting that due to COVID, the two-month period proposed has now expired).
3. THAT following on from the Council Resolution MN 135/20, Council prepare a report for the next Finance Committee scheduled for the 19th of August to consider funding implications of the Climate Emergency Declaration and to identify potential funding sources
4. THAT: Expressions of Interest be called for the establishment of the proposed Climate Change Advisory Panel. (MN 135/20 2.)
5. THAT: this Climate Change Advisory group be established as a working group of the E& S Committee for the remainder of this current Council term and become operational in September 2020.
6. THAT: This recommendation, be referred to the E& S Committee for information and comment.

RECOMMENDATION

Submitted for determination.

18.5 Notice of Motion 27/2020 Settlement of Lot 3 Frankland Street, Mittagong

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

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 8 July 2020:

1. THAT Staff provide a report on the settlement of Lot 3 Frankland Street, Mittagong and address the concerns from the purchaser.
2. THAT staff provide a report from the email from Willow Properties 12.6.20 to Staff General Manager, Deputy General Manager, Mayor Gair and Deputy Mayor Garry Turland.

RECOMMENDATION

Submitted for determination.



18.6 Notice of Motion 28/2020 Station Street Upgrade Project

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

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Halstead has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 8 July 2020:

THAT the General Manager bring forward a report on the Station Street Upgrade Project, outlining the administrative procedures proposed to be followed to ensure absolute compliance with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

The report is to outline what action is to be undertaken to place the Review of Environmental Factors (REF) on public exhibition.

RECOMMENDATION

Submitted for determination.

18.7 Notice of Motion 29/2020 Road Closure Part Argyle Street Mittagong

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

THIS ITEM WAS DEFERRED FROM 8 JULY 2020 COUNCIL MEETING

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 8 July 2020:

THAT Council staff bring back a response on this road closure as it was approved at a council meeting 26 July 2017.

THAT Council respond to include all valuations and correspondence.

RECOMMENDATION

Submitted for determination.



19. 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 15 of Council's Code of Meeting Practice.

Section 10B(5) of the Act requires that council have regard to these guidelines when considering resolving into Closed Session.



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:**

19.1 Compliance Actions (Notices and Orders) Update (April - June 2020)

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)(e) as it contains information that would, if disclosed, prejudice the maintenance of law 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 provide Councillors with an update on the current notices and orders issued under the relevant statutes of the *Environmental Planning and Assessment Act 1979*, *Local Government Act 1993* and the *Protection of the Environment Operations Act 1997*.

19.2 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)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to update Council on the status of legal proceedings reported to Council at the meeting of 24 June 2020.

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

Ann Prendergast
General Manager
Friday 17 July 2020