

20 March 2020

Dear Councillor,

You are kindly requested to attend the **Ordinary Meeting** of Wingecarribee Shire Council to be held in **the temporary Council Chambers within the Theatre, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 25 March 2020** commencing at **3.30pm**.

Yours faithfully

Ann Prendergast  
**General Manager**

SCHEDULE

3.30pm	Council Meeting begins
7.40pm	Closed Council

# RUNNING SHEET

## ORDINARY MEETING OF COUNCIL

held in the the temporary Council Chambers within the Theatrette, Civic Centre, Elizabeth Street, Moss Vale on Wednesday, 25 March 2020 at 3.30pm.

Time	Item
3.30pm	1. <b>Opening of the Meeting</b> – please remind all present that mobile phones must be switched off before the meeting and that the meeting is tape recorded <b>AND that the Council Chamber now has 24 hour Video Surveillance.</b>
	2. <b>Acknowledgement of Country – Cllr Nelson</b>
	3. <b>Opening Prayer reverend Matthew Brooks Lloyd Mittagong Anglican Church</b>
3.35pm	4. <b>Apologies</b>
	5. <b>Adoption of Previous Minutes</b>
	6. <b>Declarations of Interest</b>
	7. <b>Mayoral Minute</b>
	8. <b>Public Forum</b>
	9. <b>Visitor Items</b>
	10.- 14. <b>Council Reports</b>
	15. <b>Petitions</b>
	16. <b>Committee Reports</b>
5.30pm	17. <b>Questions with Notice</b>
	18. <b>Notices of Motion</b>
7.40pm	19. <b>Closed Council</b>
8.00pm	21. <b>Meeting Close</b>

Ann Prendergast  
**General Manager**



## Business

<b>1. OPENING OF THE MEETING</b>	
<b>2. ACKNOWLEDGEMENT OF COUNTRY</b>	
<b>3. PRAYER</b>	
<b>4. APOLOGIES</b>	
Nil	
<b>5. ADOPTION OF MINUTES OF PREVIOUS MEETING</b>	
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Nil

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19.1 Tender for Merrigang Street Reconstruction - Subgrade Stabilisation  
*This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.*

19.2 Legal Report - Closed Council  
*This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(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.*

**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

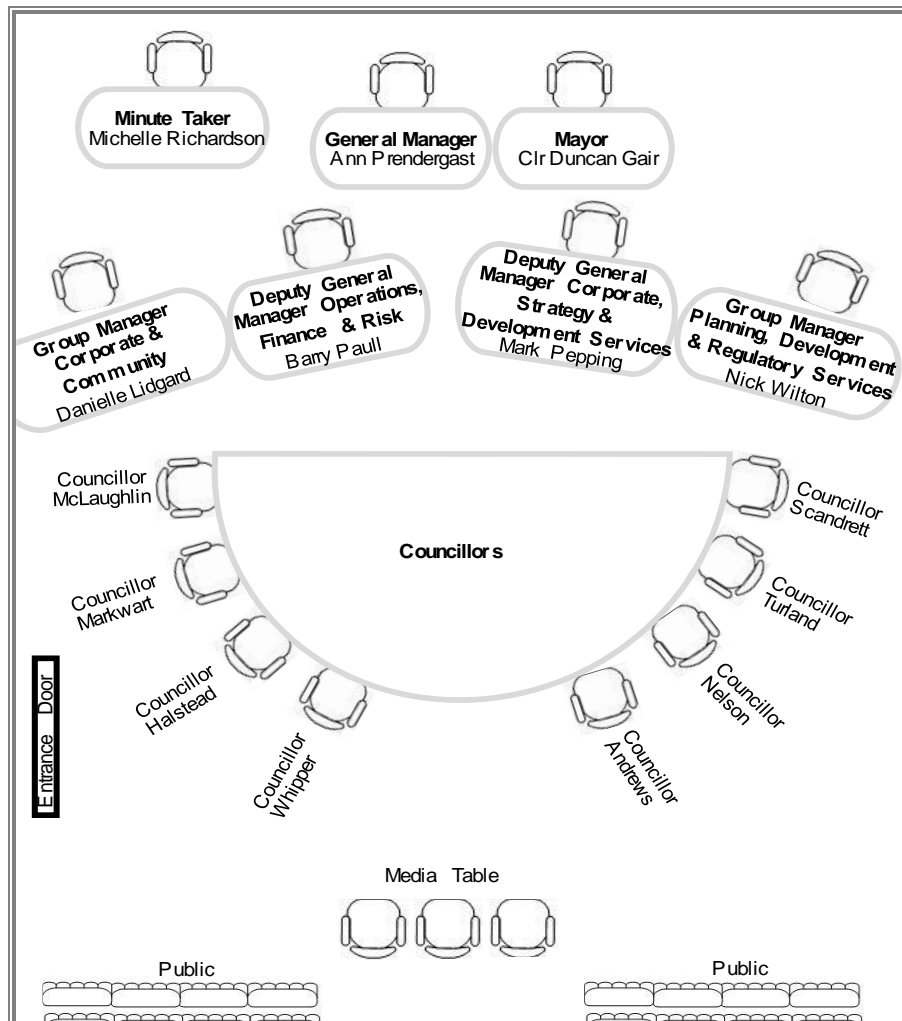
## Council Chambers

### 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.



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## ACKNOWLEDGEMENT OF COUNTRY

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

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## APOLOGIES

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Nil at time of print.

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## DECLARATIONS OF INTEREST

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101/3, 101/3.1

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

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

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

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

## 7 MAYORAL MINUTE

### 7.1 Permission for Backyard Burning in Bush Fire Affected Villages

**Reference:** 102/5; 6437/4; 5450/28.6  
**Report Author:** Mayor T D Gair  
**Authoriser:** Mayor T D Gair  
**Link to Community Strategic Plan:**

#### PURPOSE

To purpose of this Mayoral Minute is enable residents in the villages directly affected in the recent bush fires to remove and burn any dead vegetation on their properties during the non-bush fire period in 2020.

#### RECOMMENDATION

1. **THAT Council waive the restriction which prevents residents on properties under 4000m<sup>2</sup> from burning vegetation on their properties as per Council's Policy in the Wingello Village area and the Balmoral locality during the non-bush fire danger period in 2020.**
2. **THAT Council staff develop in consultation with the Local NSW Rural Fire Service a Guideline as how best to manage and implement this permission in accordance with any appropriate specifications and requirements to minimise impacts and risks within the Village environs.**

#### REPORT

In July 2017 Council adopted an Urban Backyard Burning of Vegetation Policy which banned the burning of vegetation on properties less than 4000m<sup>2</sup> across all towns and villages within the Shire. The Policy sets out the restrictions of backyard burning which aim to minimise air pollution in locations with higher densities of population as well as promote the alternatives for the disposal of green waste through re-use, composting and Council's kerb side green waste collection.

However, during the recent bush fires, many residents within Wingello and Balmoral experienced significant destruction to their surrounding landscaped areas and vegetation on site. The quantity far exceeds the ability to dispose of through kerb side collections and the burnt nature of the vegetation makes it unsuitable and undesirable for composting and mulching.

The current Policy includes an existing provision for those properties not permitted to back yard burn under the Policy to seek conditional approval from Council to burn on a case by case basis including in exceptional circumstances.

A Council resolution to relax the minimum property size permitted to back yard burn in the bushfire affected locations eliminates the need for those residents to seek individual Council permission and save staff time processing and approving individual requests.



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 25 March 2020

**MAYORAL MINUTES**



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**ATTACHMENTS**

There are no attachments to this report.

A handwritten signature in black ink, appearing to read "D Gair", is positioned above the name of the Mayor.

Clr Duncan Gair

**MAYOR**

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## 7.2 Deliveries to Supermarkets and Food Retailers

**Reference:** 5300; 102/5  
**Report Author:** Mayor T D Gair  
**Authoriser:** Mayor T D Gair

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### **PURPOSE**

The purpose of this Mayoral Minute is to recognise the actions already undertaken by the NSW State Government to introduce a State Environmental Planning Policy (SEPP) effective 20 March 2020 to enable retailers including supermarkets and other businesses to receive deliveries 24/7 to meet consumer demands. The SEPP title is (COVID-19 Response). At the time of preparation of the Business Paper, the full details of the inclusions of exemptions had not been published. Accordingly, it is suggested that should certain rural and regional type retailers be excluded from serving their communities, it would also be appropriate to extend that flexibility to other retailers such as general stores, retailers of food and personal items such as petrol stations and key service providers where local supermarkets are non-existent.

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### **RECOMMENDATION**

**THAT authority be given to Council staff responsible for monitoring and enforcing development consents to refrain from temporarily enforcing conditions of consent relating to delivery hours for local general stores and other food and personal item retailers within the Shire during the current Covid-19 Pandemic.**

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### **REPORT**

Wingecarribee Shire Council should support our community and businesses through these extraordinary times, by granting a flexible and pragmatic approach to enforcement and compliance action while we deal with the public health risk of COVID-19.

In the past week I have heard from our business community that some existing Development Application condition restrictions related to delivery hours is preventing essential goods being delivered to local supermarkets and food retailers in a timely manner. The State Government has swiftly taken appropriate action in regard to this issue which is to be applauded.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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### MAYORAL MINUTES



To ensure all necessary retail businesses operate flexibly during this extraordinary period, Council staff will not take enforcement action against store retailers such as local general stores, petrol stations and food retailers which under their development consents have conditions limiting their delivery hours. I understand that in locations where such stores are near residential properties some inconveniences may occur however, the current restrictions are causing significant inconveniences within our community requiring this temporary solution.

A handwritten signature in black ink, appearing to read "D. Gair".

Clr Duncan Gair

**MAYOR**

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### ATTACHMENTS

There are no attachments to this report.

## 7.3 Novel Coronavirus (COVID-19) Arrangements for Council

Reference: 100  
Report Author: Mayor T D Gair  
Authoriser: Mayor T D Gair

### PURPOSE

The purpose of this Mayoral Minute is to put in place temporary arrangements for acceptance or rejection of council tenders and to confirm the cancellation of the scheduled Council meetings in April 2020 due to the COVID-19 pandemic.

### RECOMMENDATION

- 1. THAT in accordance with Section 377 of the Local Government Act 1993 Council amend the General Manager's Delegations to include the power to accept or reject tenders as detailed in Clause 178 of the Local Government (General) Regulation 2005, AND THAT the amended delegations be in force until 30 June 2020 or as otherwise amended.**
- 2. THAT in accordance with Section 377 of the Local Government Act 1993 any tender that proposes to provide services currently provided by members of staff of the Council is excluded from the delegations as proposed in the amended delegations.**
- 3. THAT the ordinary meetings of Council scheduled for 8 and 22 April 2020 be cancelled due to Health and Safety concerns relating to the Novel Coronavirus (COVID-19) pandemic, AND FURTHER THAT Council review the situation regarding future council meetings once further advice is received from the Office of Local Government on changes proposed to allow alternatives to the current mandated format for voting and the conduct of Council Meetings.**

### REPORT

Councillors would be very aware that we are all in a rapidly changing environment in relation to the Novel Coronavirus (COVID-19) Pandemic, and I would confirm that Council continues to monitor and respond to all directives and advice from both Federal and State Health Authorities in relation to measures to contain and deal with the pandemic. It is my view that Council should also where practical take sensible and measured decisions to ensure that continuity of the council's services can be maintained within the constraints of that emerging environment.

In the recent Office of Local Government circular 20-06 Novel Coronavirus (COVID-19) Development Updates it is recommended that councils review its delegations as a matter of urgency to ensure that decisions can be made quickly in response to any developments outside of the normal meeting cycle. As such it is proposed that the General Manager's delegations in relation to accepting and declining tenders should be amended.

In line with the Government recommendations in relation to social distancing to minimise transmission of the Novel Coronavirus (COVID-19) it would also be wise to cancel Council meetings for April 2020 while investigations are undertaken into alternative methods for

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 25 March 2020

**MAYORAL MINUTES**



conducting council meetings. Staff are currently liaising with the Office of Local Government in relation to this matter including recommending urgent changes in the Local Government (General) Regulations 2005 including to temporarily allow for videoconferencing of council and Committee meetings.

A handwritten signature in black ink, appearing to read "Duncan Gair".

Clr Duncan Gair

**MAYOR**

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**ATTACHMENTS**

There are no attachments to this report.

## 9 VISITOR MATTERS

### OPERATIONS FINANCE AND RISK

#### 9.1 Station Street Upgrade

Reference:	40791
Report Author:	Group Manager Capital Projects
Authoriser:	Deputy General Manager Operations, Finance and Risk
Link to Community Strategic Plan:	Work in partnership to ensure a safe road network

#### **PURPOSE**

The purpose of this report is to provide an update on the progress of the Station Street upgrade project and to present the outstanding matters requiring Council approval to progress the works to tender phase.

#### **RECOMMENDATION**

1. **THAT Council endorses the modified design layout for roundabout at the Northern end of the Station Street Project.**
2. **THAT Council proceeds with the removal of eight (8) existing Pin Oaks from the Western alignment of Station Street with the adoption of the “Pin Oak Avenue Succession Plan” and replanting of five (5) Super Advanced Pin Oak trees within the new median strip.**
3. **THAT Council confirms the inclusion of the construction of a 70-space Public car park on land owned by Transport for NSW, adjacent to Mittagong Railway Station to provide alternative parking spaces for rail commuters and the general public**
4. **THAT the funds required for the construction of the 70-space public carpark adjacent to Mittagong Railway Station be included in the Draft 2020/21 Operational Plan and Budget.**

#### **REPORT**

##### **BACKGROUND**

The Station Street Upgrade Project has a long history with the provision of an improved traffic route through Bowral discussed at Council in various forms as far back as 1975.

In August 2015, Council was successful in securing \$7.5 million through the NSW State Government Restart program towards what is now known as the Station Street Upgrade Project – Stage 1. In the following five (5) years the project has been through a number of refinements primarily a result of:

- Public feedback after an extensive consultation programme in 2017,
- significant site constraints and to meet the requirements of key stakeholders such as Sydney Trains, Transport NSW, and the Roads and Maritime Services.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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



Council undertook a comprehensive community consultation exercise in November 2017 where the following activities were undertaken:

- Public exhibition of concept designs – Council leased a shopfront at 31a Station Street, Bowral for the exhibition period to display large scale plans, provide fact sheets, playing of the animation video and answering enquiries.
- Undertook numerous stakeholder meetings with individuals, tenants, and property owners during the exhibition period including letters, door knocks and newsletters.
- Council sought feedback for the overall design of Station Street from property owners, key stakeholders and the wider community.
- Held a public meeting on 20 September 2017
- Constructed a public web page
- Reported back to Council the submissions received from the period of community consultation.

Since the conclusion of the community engagement process, staff and relevant stakeholders have been committed to developing a project delivery plan which will meet the objectives of the project, while also addressing the concerns raised during the community consultation period.

With respect to the significant site constraints, this primarily concerns the provision of parking for customers of Sydney Trains, who utilise train services to commute from the Highlands. Other issues have included street trees and on street car parking, all of which have been assessed and reflected in the revised road design and landscape plans for the project.

The substantive issue that has led to significant project delays has been the resolution of issues raised by Sydney Trains regarding the provision of parking for train commuters travelling to and from the Highlands.

Whilst negotiations with Sydney Trains and Transport NSW have been protracted; agreement has now been reached on a way forward, which facilitates the realignment of Station Street at the northern end of the Station Street and provides the parking outcomes required by Sydney Trains. It is highlighted that correspondence with Sydney Trains commenced on the 13 August 2014 when Council wrote to then General Manager Property – Sydney Trains to open discussions for the purchase of the required railway land in Station Street.

These matters are addressed in further detail in this report.

#### **REPORT**

Following a deputation to the Minister for Regional Transport and Roads, The Hon. Paul Toole MP in June 2019, Transport for NSW in October 2019, appointed a single point of contact to facilitate discussions between Transport for NSW agencies and Council for resolving outstanding matters affecting the Station Street Project.

Due to the collaborative efforts of all parties involved, an in-principle agreement is close to being finalised which will allow the Station Street Upgrade project to commence.



Following extensive consultation with Transport for NSW, the roundabout and car parking design at Bowral Station precinct has been approved in-principle by the Regional and Outer Metropolitan (ROM), the Southern Region, and Customer Strategy & Technology/Sydney Trains.

The remaining issues which need to be addressed with respect to commencing the Station Street Upgrade relate to removal of eight (8) of the existing Pin Oaks, commuter parking and property acquisitions.

### **Removal of Pin Oak Trees**

The preparation of a Heads of Agreement document is being undertaken by Transport for NSW. The approved and compliant design has undergone numerous iterations due to the extremely constrained location and the final approved design is only achievable by the removal of all eight (8) Pin Oak trees on the Western alignment of Station Street. All other options to preserve the trees have been considered and deemed unsuitable.

It is recommended that during construction of the road and round-a-bout, five (5) new Super Advanced Pin Oak trees be replanted within the newly formed median strip as part of an "Pin Oak Avenue Succession Plan".

Council has obtained expert advice from a licensed landscape architect and qualified arborist, and the advice received is that the current Pin Oaks (8) on the Western alignment are nearing the end of their expected lifespan. These trees are significantly smaller, more stressed and generally in much poorer condition than those on the Eastern alignment.

Therefore, as part of the succession plan for the Avenue, the planting of super advanced specimens in optimal growing conditions will revitalise and restore the avenue and ensure that the distinct entrance to Bowral will thrive for future generations. Additionally, the Avenue Succession Plan also considers the age of the Eastern alignment of Pin Oak trees and succession plans for these mature plants are being developed to further safeguard this significant avenue.

### **Commuter Parking**

To satisfy Sydney Trains commuter car parking requirements in the Shire, the development of an additional 70 car parking spaces at Mittagong Station has been deemed an acceptable parking strategy by Sydney Trains. These parking spots will be unrestricted and available to the general public.

The number of direct commuter car parking spaces at Bowral Station within Sydney Trains land increases under the proposed new road alignment, although the unformed spaces on Council land will diminish to accommodate the road and roundabout. Sydney trains have approved this proposal and will enter into a suitable land transfer agreement for the release of 2 small parcels of land required to realign the road.

Approximately 14 car parking spaces will be retained on Council land and will be integrated with the existing car parking spaces on Sydney Trains land.

A summary of the proposed carparking spaces are indicated below:

- 71 off-street commuter spaces at Bowral train station



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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



- 70 off street public spaces at Mittagong train station
- 50 proposed spaces at the Wattle Lane off-street carpark extension
- 39 off street spaces on Station Street carpark south of old milk factory complex
- 38 on street spaces on Station Street between Boolwey Street and Bowral Street
- 137 on street spaces on Kirkham Rd between Oxley Hill Rd and Wingecarribee street
- 34 on street spaces on Kirkham Rd between Wingecarribee Street and Sherwood Lane
- 12 on street spaces in direct vicinity of Bowral station
- Current spaces = 347. Proposed spaces = 380 in total (ex Mittagong stn. 70 spaces)

#### **Property Acquisition**

Council is in the process of acquiring land from Transport NSW via acquisition by agreement. The application has been with the Office of Local Government since early 2019 and significant difficulties and extensive delays have been experienced with processing of Council's application by the Office of Local Government. Council has continually pursued progression of the matter with the Office of Local Government for completion of the acquisition and frustratingly delays continue. The latest information received from OLG is that Council's application is waiting on final sign off from the Minister and Governor to enable the required gazettal notice to be published transferring ownership of the property to Council.

#### **Project Roadmap**

To appreciate the project status on the basis that the matters discussed in this report are resolved, a high level roadmap has been considered and is presented below:

- Obtain gazettal from OLG for property acquisition
- Executive Heads of Agreement
- Finalise design and documentation
- Incorporate required utility adjustments based on final design
- Community engagement with directly affected businesses
- Design and construction of Mittagong station carpark
- Procurement/tender process

#### **Risks**

The project will continue to be exposed to a range of external risks which may result in further delays to commencing the works. These risks are described below:

- Delays with executing Heads of Agreement with Transport NSW
- Delays with Office of Local Government approving the gazettal to complete land transfer
- Constraints imposed by utilities and authorities
- Unidentified/unexpected finds - hazardous materials and latent conditions
- Market forces through the Procurement Process.



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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

A full and comprehensive community consultation program was undertaken in November 2017. Further consultation will occur once project timeframes are known so that Council can consult with those businesses directly impacted by the project. **Internal Communication and Consultation**

Council Executive  
Chief Financial Officer  
Assets (Traffic)

### **External Communication and Consultation**

Transport for NSW  
Sydney Trains  
ARTC  
Office of Local Government

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

Environmental impacts have been addressed in the comprehensive Review of Environmental Factors.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## **COUNCIL BUDGET IMPLICATIONS**

The upgrade of Station Street is estimated to cost \$16.333 million (Source: 2019/20 Adopted Budget). This was updated as part of the 2019/20 Budget to include an increase of \$1.258 million. The budget increase was included to ensure that the estimated cost of the project reflects price movements in materials and labour which will ultimately be factored into any future works contract.

Council's current funding strategy for the project is as follows:

\$7.5 million—State Government Grant

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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



- \$2.0 million—Developer Contributions
- \$3.884 million—Loan Borrowings
- \$2.798 million—General Fund Capital Works Allocation
- \$0.151 million - Capital Projects Reserve

Council is proposing to part-fund this upgrade through loan borrowings of \$3.884 million. Council has sufficient capacity to fund these loan repayments and stay within the required benchmark for debt servicing. The additional loan borrowing has also been included in Council's Long Term Financial Plan modelling.

#### RELATED COUNCIL POLICY

Councils Asset Management Policy.

#### OPTIONS

#### CONCLUSION

It is recommended that Council endorses:

- The modified design layout for roundabout at the Northern end of the Station Street Project.
- The removal of eight (8) Pin Oaks from the Western alignment of Station Street with the adoption of the "Avenue Succession Plan" and replanting of five (5) super advanced Pin Oak trees.
- The construction of a 70-space Public car park on land owned by Transport for NSW, adjacent to Mittagong Railway Station to provide alternative parking spaces for rail commuters and the general public, with the land to be leased back to Council for a peppercorn rent.
- The funds required for the construction of the 70-space public carpark adjacent to Mittagong Railway Station be included in the Draft 2020/21 Operational Plan and Budget.

#### ATTACHMENTS

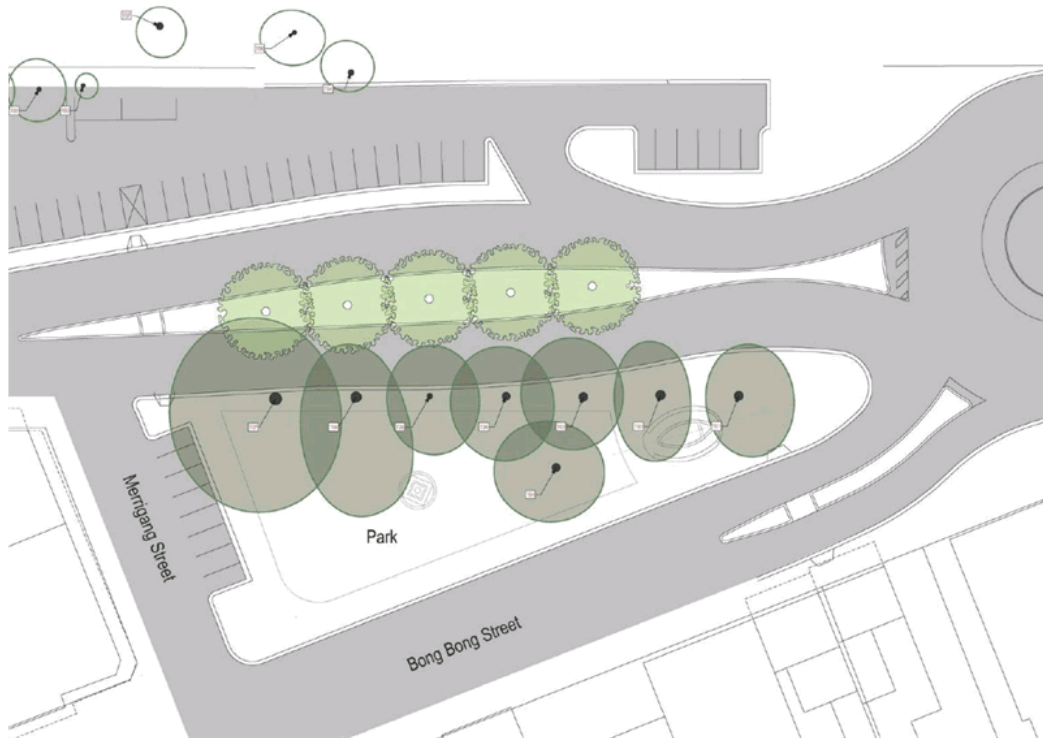
1. Avenue Succession Plan
2. Proposed Pin Oaks for the Avenue Succession Plan
3. Example Height
4. Proposed Car Park at Mittagong Station
5. Final design overlay
6. Proposed Removal of 8 Pin Oak Trees on Western Alignment

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

Friday 20 March 2020



Attachment 2 – Avenue Succession Plan, Pin Oak replanting scheme



Attachment 3 – Proposed Pin Oaks for the Avenue Succession Plan



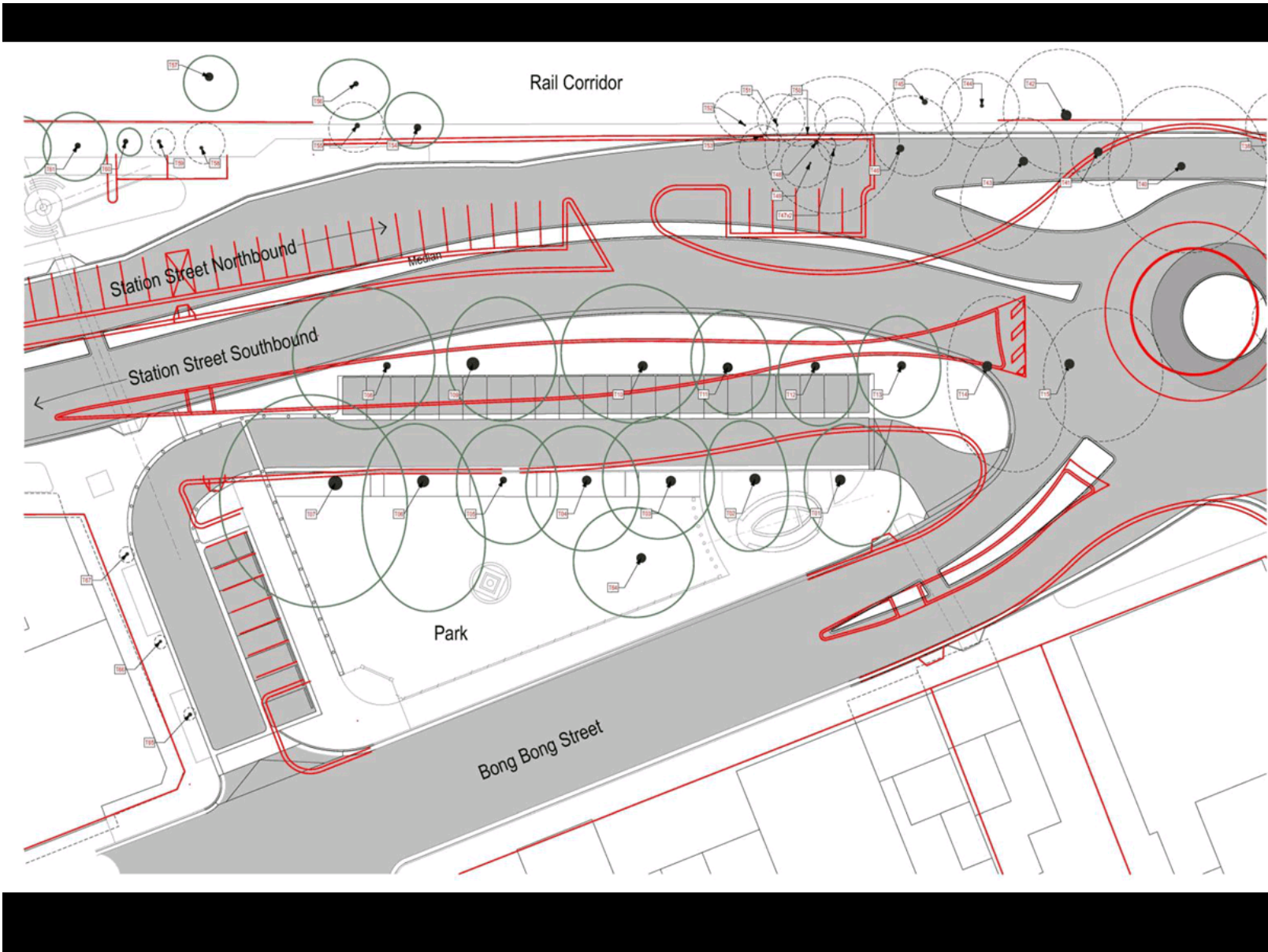
Attachment 4 – Example height





Attachment 5 – Proposed Car Park at Mittagong Station







Attachment 3 – Proposed Pin Oaks for the Avenue Succession Plan



## CORPORATE STRATEGY AND DEVELOPMENT SERVICES

### 9.2 Section 4.55 Modification 18/0565.01 - Modification of Concept Master Plan) Beendooley Estate 3020 Old Hume Highway Berrima

Reference:	100
Report Author:	Manager Development Assessment
Authoriser:	Group Manager Planning, Development and Regulatory Services Group Manager Planning Development and Regulatory Services
Applicant:	Bendooley Estate Berrima Pty Ltd
Owner:	Bendooley Estate Berrima Pty Ltd
Link to Community Strategic Plan:	Promote building practices and the types of developments that improve resource efficiency

#### PURPOSE

The purpose of this report is to consider a Section 4.55 Modification Application to Concept Plan Consent DA 18/0565 at 3020 Old Hume Highway Berrima NSW 2577, Lots 2 and 3 DP 584423. This report is prepared for determination, and recommends **APPROVAL**, subject to attached conditions of consent.

#### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

#### RECOMMENDATION

**THAT** the Section 4.55 Modification 18/0565.01 to modify the approved Concept Plan for various tourism related uses at Lots 2 and 3 DP 584423, No 3020 Old Hume Highway, Berrima be **APPROVED** subject to conditions as described in Attachment 1 to the report.

#### REPORT

##### ***Subject Site and Locality***

The site is located on the Old Hume Highway approximately 2.5 kilometres north-east of the township of Berrima (Figure 1). The site, known as Bendooley Estate, 3020 Old Hume Highway, is legally identified as:

- > Lot 3 in DP 584423 which has frontage to the Old Hume Highway of 540.84 metres and an area of 42.2 hectares; and
- > Lot 2 in DP 584423 which has frontages to the Old Hume Highway of 541.82 metres and Greenhills Road of 501.72 metres (irregular) respectively and an area of 40.47 hectares.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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



Bendooley Estate is a tourist facility and vineyard located in a rural residential precinct approximately 2.5 kilometres north-east of Berrima.

The topography of the site is undulating grazing land with mature vegetation along the Old Hume Highway and Greenhills Road frontages and along the southern boundary. The property can be approached travelling north east on the Old Hume Highway from Berrima or via Greenhills Road.

The subject site is occupied by the Berkelouw Book Barn and associated restaurant/function centre/wine cellar and vineyard. Five (5) self-contained cottages (DA 16/671) were opened in January 2018 and 'The Stables' function centre (DA17/204).

The original Georgian homestead and associated outbuildings and garden remain the private residence of the Berkelouw family. Lot 2 is used for agricultural purposes, primarily cattle grazing and the vineyard.

The property has been historically cleared for grazing and vineyard uses. The property contains two dams and a number of small lower order watercourses traversing both Lots. Small groups of trees exist on both lots.

The Site is not sewerred and relies on on-site effluent disposal systems and is not connected to a reticulated water supply.

The subject site was rezoned SP3 Tourist zone under Wingecarribee Local Environmental Plan 2010.

Surrounding development includes:

- To the north:* 2920 Old Hume Highway- a single storey residence located approximately 500 metres from the northern common boundary;
- To the east:* 2965 Old Hume Highway- a single storey residence located approximately 450 metres from the eastern boundary of the subject site; and  
3051 Old Hume Highway- a single storey residence located approximately 300 metres from the eastern boundary of the subject site;
- To the south:* 3092 Old Hume Highway- a single storey residence located approximately 200 metres from the southern boundary of the subject site;  
550 Oxleys Hill Road - two single storey residences on property - a single storey residence located approximately 200 metres from the south-eastern corner of the subject site accessed from Old Hume Highway and the second dwelling accessed from Oxleys Hill Road located over 400 metres from subject site;
- To the west:* 224 Greenhills Road - a two-storey residence located approximately 100 metres from the western boundary of the subject site (Lot 3) and 350 metres from the northern boundary of the subject site (Lot 2); and  
164 Greenhills Road - a single storey residence located approximately 150 metres from the south-western corner of the subject site, Lot 2.

### **Background**

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The development history of the site over the past two decades can be summarised in terms of the following consents as granted by Wingecarribee Shire Council, namely;

LUA00/1652	- café;
LUA03/180	- addition to commercial building;
LUA04/1581	- addition to existing building;
LUA11/151	- storage;
LUA 11/497	- winery refreshment room and cellar door building and addition to the Book Barn for the cafe / restaurant use - approved 29 July 2011 five modifications to the consent being 18 November 2011, 22 December 2011, 4 June 2012, 11 July 2014 and 20 May 2015;
LUA 12/265	- winery refreshment room and cellar door;
DA 14/1024	- storage facility;
DA 15/311	- conference facility and hotel accommodation;
DA 16/391	- construction of stables, horse arena and cattle yards;
DA 16/671	- guest accommodation (4 cabins and 1 cottage);
DA 17/0204	- alterations and additions to the stables building and change of use to occasional function centre approved 28 June 2017, two modifications approved 13 December 2017 and 30 January 2018.
DA 17/0204.2	- farm storage shed;
DA 17/0671.1	- Septic, Stormwater, Sanitary Drainage and Water Supply infrastructure;
DA 17/0671.3	- Tourist and visitor accommodation (4 cabins and 1 cottage);
DA 18/0565	- Concept Plan approval, and
DA 18/0743	- changes to the capacity of The Stables Function Centre, associated increase in parking and an increased number of events.

The purpose of the current Modification Application is to amend the Concept Plan approved under Consent No: DA 18/0565 by Council on 14 December 2018. The Modifications requested largely relate to the area in the south western section of the property within Lot 2, with some of the amendments being a consequence of compliance with the Concept Plan Consent conditions and include:

#### **Proposed amendments to comply with latest Concept Plan Consent DA 18/0565:**

- > Relocation of conference centre and associated main car parking area to ensure compliance with 20 metre setback from Old Hume Highway in Concept Plan Consent;
- > Relocation of accommodation lodge, associated car parking and housekeeping facility to ensure compliance with 30 metre setback from common boundary with 3092 Old Hume Highway in Concept Plan consent;
- > Redesign of car parking and internal roadways to incorporate 2 metre high earth mounding (bundling) for acoustic and visual screening purposes along the common boundary with 3092 Old Hume Highway in compliance with Concept Plan consent;
- > Relocation of Accommodation Suite 1, associated access roadway and parking to avoid remnant vegetation in compliance with Concept Plan consent;
- > Relocation of Wellness Centre to south-east of top dam and remnant vegetation in compliance with Concept Plan consent;
- > Amendment to the maximum floor space of the Accommodation Lodge from 1,800sqm to 2,470sqm;
- > Amendment of the maximum floorspace of the Housekeeping Shed from 180sqm to 162sqm;

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- > Amendment of the approved Staging Plan to allow the new facilities (restaurant/meeting rooms and secular meeting facility) to operate from 7.00am to 11.30pm, out by 11.45pm, 7 days.

#### **Additional facilities and amendments proposed:**

- > Introduction of a new 80 seat restaurant and 40 seat meeting room in the approved location of the Wellness Centre;
- > Introduction of a new 120 seat secular meeting place for special events and a small restaurant and meeting spaces;
- > Amendment to the maximum floor space of the Accommodation Lodge from 1,800sqm to 2,470sqm;
- > Amendment of the maximum floorspace of the Housekeeping Shed from 180sqm to 162sqm;
- > Provision of an additional 54 car parking spaces on the site to cater for the additional facilities;
- > Details of system proposed for the sewerage treatment plant on the site, and
- > Modification of some of the approved building heights.

Refer Appendix A for copy of the Draft Concept and Staging Plans

#### **APPLICATION HISTORY**

Following a review of the application by Council staff and external authorities a Request for Additional Information (RFI) was issued on 24 September 2019 to the Applicant. The current application has been amended to satisfy concerns raised in that RFI.

#### **Description of the proposed Modifications**

This Modification Application does not seek consent for construction, only modifications to the approved Concept DA under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The objective of the Application is to seek Council support modifications to the approved for Concept Plan that will form the basis for future tourist development proposals within the Bendooley Estate.

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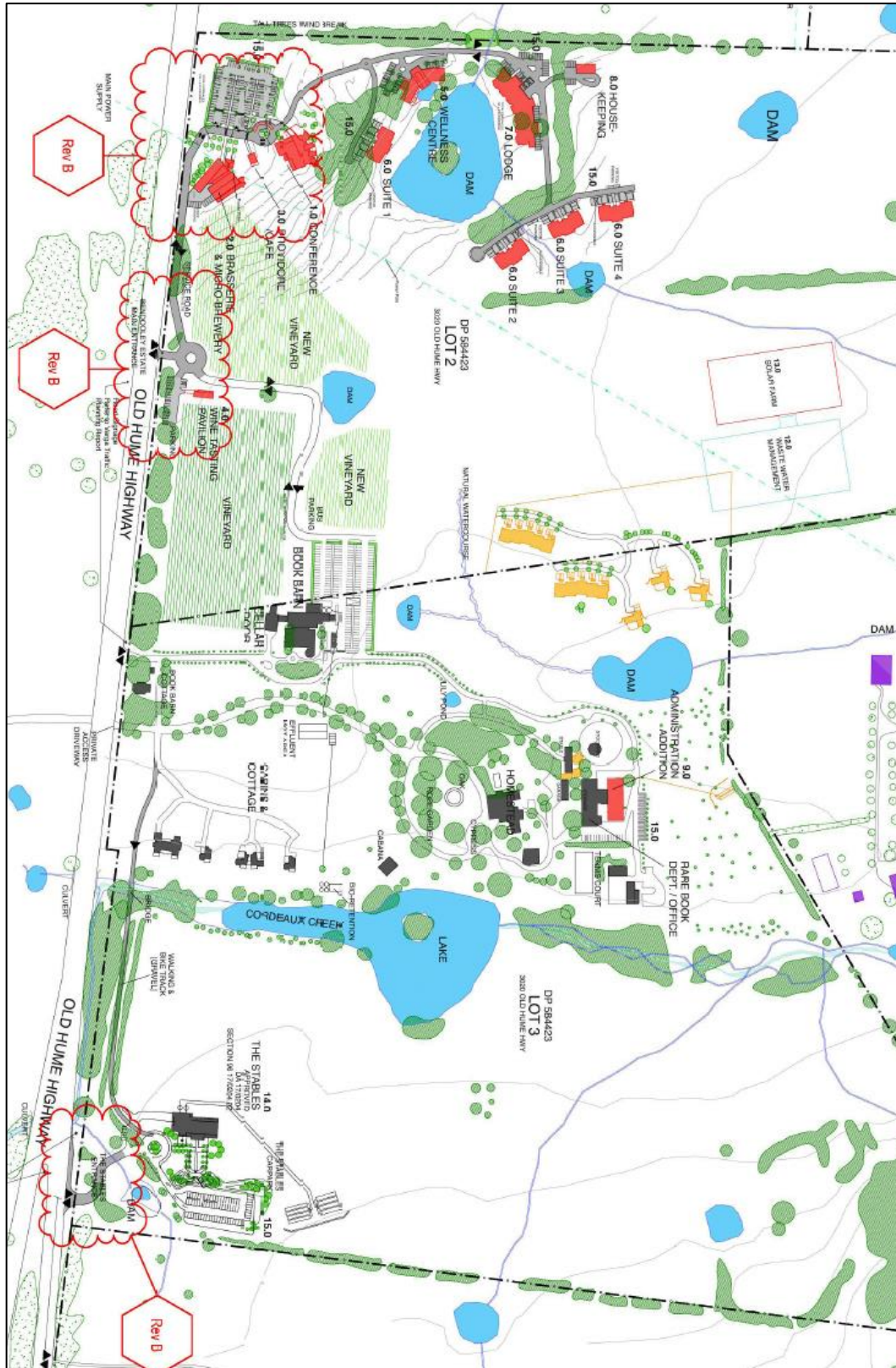
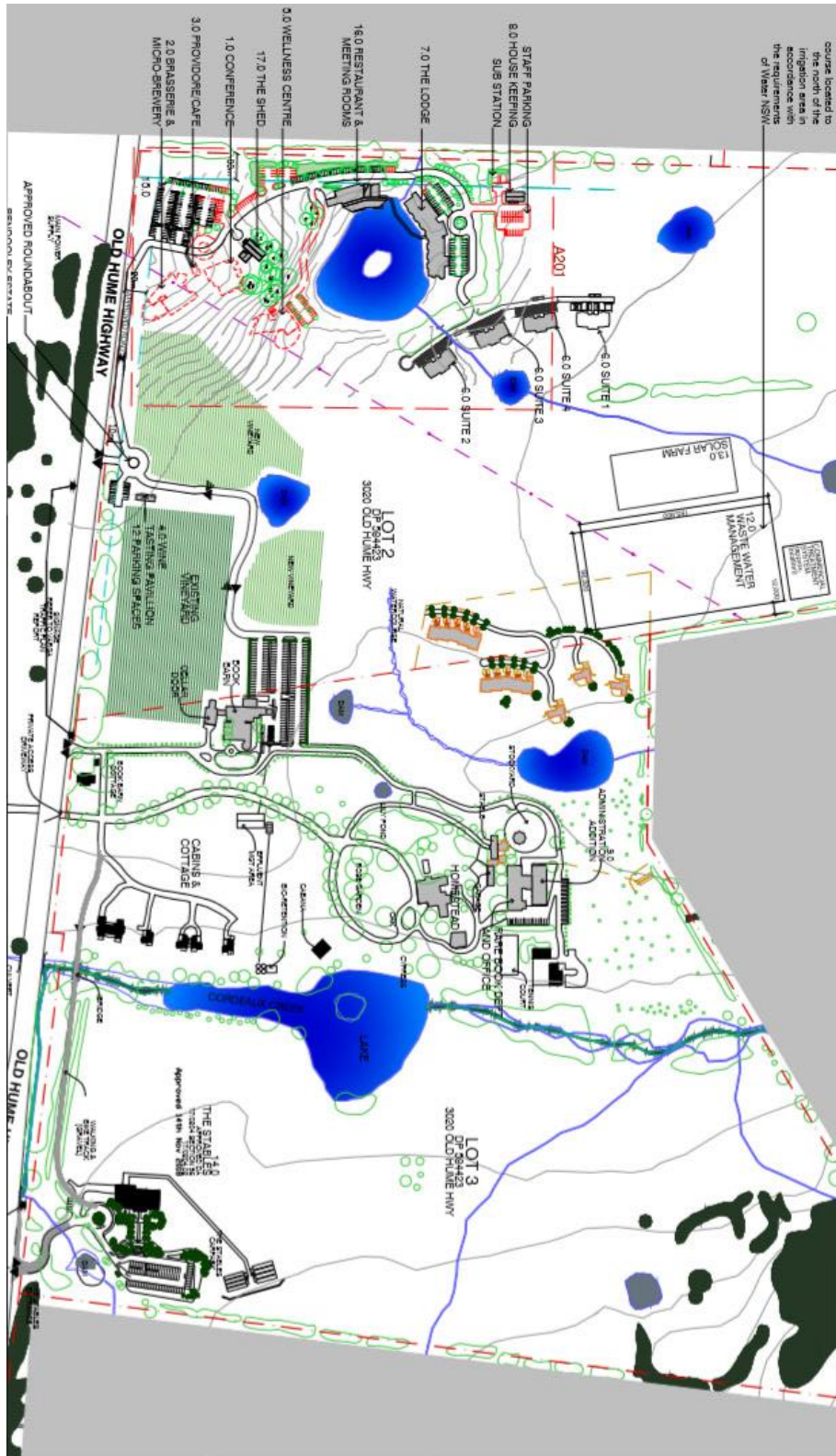


Figure 1 Approved Concept Plan

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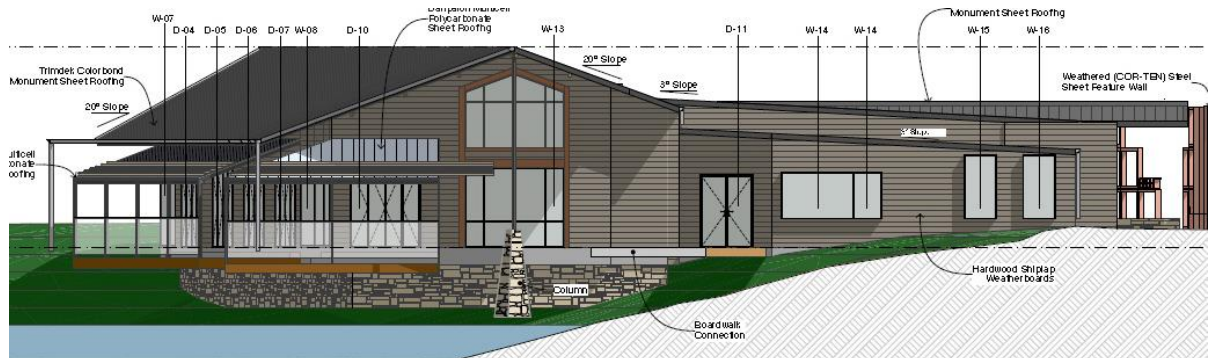
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**Figure 2 Proposed Concept Plan extract**  
*Proposed modifications indicated in red*

New 80 seat restaurant and two 20-seat meeting rooms building:

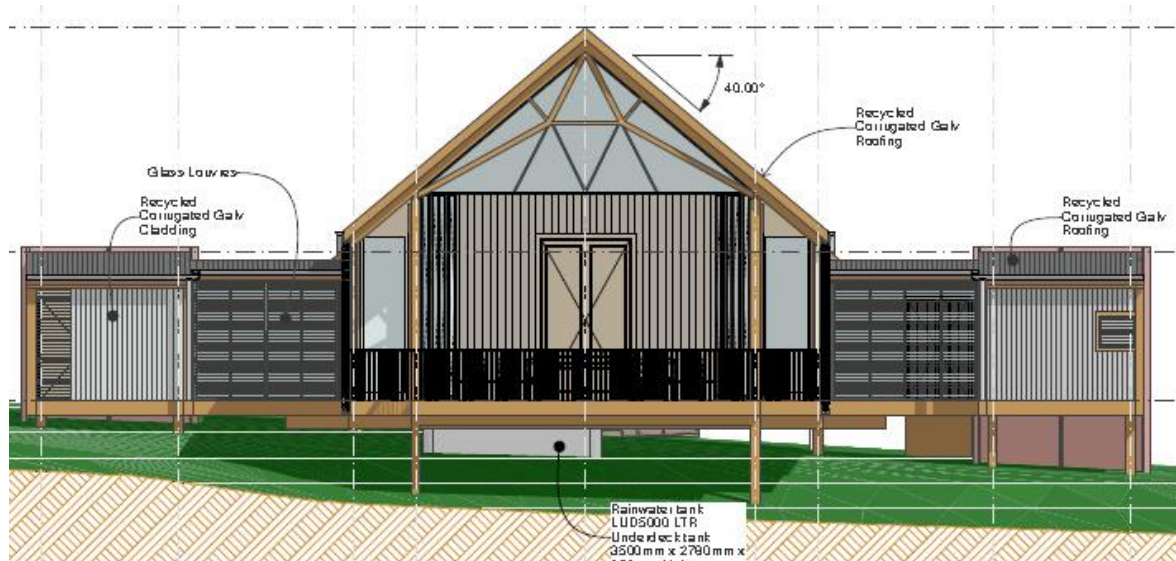
A new 859sqm restaurant and meeting rooms building is proposed in the location previously occupied by the Wellness Centre.



**Figure 3 New restaurant**

New 120 seat secular meeting place

A 218sqm secular celebratory meeting facility is proposed adjacent to the grove of native trees.



**Figure 4 Secular meeting facility**

Relocation of conference centre and associated main car parking area 20 metres from Old Hume Highway

This relocation is to comply with Condition 6 of the Concept Plan DA18/0565 Consent 20 metre setback from the Old Hume Highway.

Relocation of the accommodation lodge, associated car parking and housekeeping facility to be set back 30 metres from boundary with 3092 Old Hume Highway

This relocation is to comply with Condition 8 of the Concept Plan DA18/0565 Consent.



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#### Increase the maximum floor space of the Accommodation Lodge from 1,800sqm to 2,470sqm.

This is required to increase the number of units in this facility from 38 rooms approved to 41. This increase of 3 suites is proposed to be offset by reducing the number of rooms in Suites 1-4 inclusive.

#### Minor repositioning of the Brasserie and Micro Brewery to comply with the 20 metre setback from Old Hume Highway

This relocation is to comply with Condition 6 of the Concept Plan DA18/0565 Consent 20 metre setback from the Old Hume Highway.

#### Minor repositioning of the Providore/Café and Conference Centre

#### Redesigned car parking and internal roadways to incorporate 2 metre high earth mounding for acoustic and visual screening purposes set back 6 metres from the common boundary with 3092 Old Hume Highway

This relocation is to comply with Condition 8 of the Concept Plan DA18/0565 Consent which requires the provision of 2 metre high earth mounding and continuous landscaping to screen the car parking area from the adjacent property at No. 3092 Old Hume Highway. Based on arborist advice, this mounding is designed not to encroach closer than 6 metres from the trunks of the substantial trees along the boundary.

#### Relocation of Accommodation Suite 1, associated access roadway and parking to avoid remnant vegetation

This relocation is to comply with Condition 9 of the Concept Plan DA18/0565 Consent which requires the retention and protection of the stand of native vegetation on the site. The Applicant has undertaken more detailed surveys which revealed that the original location of the Accommodation Suite 1 would encroach on the vegetation in question.

#### Relocation of Wellness Centre to south-east of top dam and remnant vegetation

Similarly, the more detailed site survey evidenced that the Wellness Centre, in its original location, would have encroached on the stand of native vegetation protected by Condition 9. The facility's footprint was therefore relocated.

#### Decrease the maximum floorspace of the Housekeeping Shed from 180sqm to 162sqm.

#### Provision of an additional 54 car parking spaces on the site to cater for the additional facilities.

An additional 54 on site car parking spaces are proposed to cater for the additional facilities as illustrated by the Concept Plan extract at Figure 5 below.



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Amendment of Consent Condition 10. Hours of Operation to allow the new facilities (restaurant/meeting rooms and secular meeting facility to operate from 7.00am to 11pm, out by 11.30pm, 7 days.

It is proposed that the hours of operation for the new restaurant/meeting rooms and secular meeting facility be:

Restaurant/meeting rooms - 7am to 11pm, out by 11.30pm; and  
Secular meeting facility – 9am to 11pm, out by 11.30pm.

Due to the location of the new facilities amongst accommodation suites on the site and the proximity of adjacent dwellings and livestock it is recommended that for 52 events per year the new facilities can operate 7am to 11pm (out by 11.30) with the rest adhering to 9am to 8pm, same operating hours as the Stables with no function operating past 10pm on Sundays.

New signage at Old Hume Hwy entry to the Stables complex

Details not supplied with this application.

Realignment of entry road and roundabout and reduced carparking area at the approved entry near the wine tasting pavilion

Realignment and reduction in parking spaces in association with wine tasting pavilion.

## STATUTORY PROVISIONS

Environmental Planning & Assessment Act 1979 (the Act)

### 4.55 Modification of consents—generally

The Application is submitted pursuant to the provisions of Section 4.55(2) of the Act (formerly Section 96) which states as follows:

#### (2) **Other modifications**

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

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

- advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

### **State Environmental Planning Policies**

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

Clause 9 of the Catchment SEPP requires that a consent authority must not grant consent to the carrying out of development unless it is satisfied that the carrying out of the proposed development will have a neutral or beneficial effect on water quality.

The Site is located within the Sydney Drinking Water Catchment.

Advice received from Water NSW indicated that the proposed development has been assessed as being able to achieve a neutral or beneficial effect on water quality provided appropriate conditions are included in any development consent and are subsequently implemented. Conditions of Consent from Water NSW have been included at Attachment 1.

All future development applications for construction will require referral to Water NSW. Conditions were included in the original Concept Plan consent.

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

For the purposes of a Concept DA, Council is satisfied that the land is not a site of potential contamination and no physical works are proposed in this DA which could be a risk to human health or the environment subject to the implementation of conditions as recommended. Therefore, no further assessment of contamination is required. However, future DA's for construction may be required to be accompanied by a Phase One Contamination Assessment.

#### **State Environmental Planning Policy (Rural Lands) 2008**

The proposed Tourist and Visitor Accommodation and Function Facilities proposed in this Modified Concept Plan are considered to be consistent with the Rural Planning Principles of the Rural Lands SEPP, providing a positive economic stimulus for the rural environment located close to the village of Berrima and the Moss Vale, Mittagong and Bowral townships.

### **Local Environmental Plans**

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

The relevant provisions of the LEP are discussed as follows.

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

The site is zoned SP3 – *Tourist*. The additional tourist facilities and visitor accommodation as proposed are permissible with development consent in the zone. The objectives of the zone are:



- *To provide for a variety of tourist-oriented development and related uses.*
- *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 proposal is generally consistent with the aims and objectives of the zone, although some of the proposed new structures and uses will continue to be subject to more detailed design requirements to address environmental factors such as bush fire risk, remnant bushland and impacts on watercourses and drinking water catchment.

The surrounding landscape is rural and includes recessive buildings as viewed from the roadway and adjacent properties. Future building design and layout will need to continue to be sympathetic to the rural landscape.

#### 4.3 Height of buildings and FSR

The SP3 zone does not impose a maximum building height or FSR.

The proposed amended maximum building height of the expanded Accommodation Lodge is 9.2 metres with the new Restaurant/Meeting Room Building being 7 metres and the Secular Meetings Building 9 metres.

These proposed heights are considered acceptable in the context of the wider site, with no buildings exceeding two storeys in height.

#### 7.5 Riparian Lands and watercourses

The Modification Application advises that the more detailed survey of the site as undertaken, has ensured the proposed siting of buildings will no longer impact on the riparian lands or watercourse to the site as required by Condition 7 of the original consent.

Clause 7.5 of the LEP requires:

*“(3) Before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the following:*

- (a) the natural flow regime,*
- (b) the water quality of receiving waters,*
- (c) the waterway’s natural flow paths,*
- (d) the stability of the waterway’s bed, shore and banks,*
- (e) the flow, capacity and quality of groundwater systems.*

*(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) the development is designed, sited and managed to avoid any potential adverse environmental impact, or*
- (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact”.*



The watercourse identified on Lot 2 is a Category 3 stream. In this case the WLEP requires development to be setback a minimum of 10m from the top of bank which is now achieved by the modified plans.

**5.10 Heritage conservation**

The Site is neither a locally listed heritage item nor located within a Heritage Conservation Area under the WLEP and is not located in close proximity to any listed items. The closest heritage item is the village of Berrima which is a state listed heritage item and also contains numerous locally listed heritage items under the WLEP.

The Concept Plan development will continue to have no impact on the curtilage of, or heritage significance of Berrima.

**Bushfire**

The extreme western and eastern boundaries of the Site are identified on the WLEP Bushfire Prone Lands Map as being located within the bushfire buffer areas.

Future Development Applications for construction must demonstrate compliance with Planning for Bushfire Protection (2018) and comply with the RFS conditions contained in Schedule 1.

**Development control plans**

**Rural Lands Development Control Plan**

The Rural Lands DCP applies to the Concept Plan. An assessment of the proposed amendments to the proposal against the relevant sections of the DCP follows:

Relevant DCP Section		
Section 3 – Ecologically Sustainable Development		
A3.2 Development in Sydney’s Drinking Water Catchments	Under the Catchment SEPP, Council cannot grant development consent unless it is satisfied that the development will have a neutral or beneficial effect on water quality.	Complies subject to Water NSW Conditions of Consent
A3.3 Protection of Watercourses and Riparian Lands	In this case a 10m setback from the top of bank applies to the identified watercourse on Lot 2.	Complies
Section 4 Vegetation Management		

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Relevant DCP Section		
A4.5 Landform and Vegetation Modification	All new development shall: (b) not require the clearing of native vegetation or established cultural plantings if this results in an increase in the prominence or visibility of the building from a public place or Heritage Conservation Zone.	The modified Concept Plan building locations have been amended to ensure that this stand of native trees is retained.
A4.7 Protection of Trees, Bushland and Vegetation during Construction and Development	(b) To ensure that development does not compromise the integrity and viability of existing native vegetation, flora and fauna habitat and riparian zones.	See comments above.
Section 5 – Water Management		
A5.2 Development within Sydney’s Drinking Water Catchments	Under the SEPP, Council cannot grant development consent unless it is satisfied the development will have a neutral or beneficial effect on water quality.	A matter for the future DA’s including construction.
A5.3 Water Sensitive Design	The applicant has provided a Water Cycle Management Study that demonstrates that the future development envisaged by the Concept Plan is capable of achieving water sensitive design objectives.	Future DA’s for construction can comply subject to consent conditions Water NSW consent conditions included in Schedule 1.

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Relevant DCP Section		
5.4 On-site Waste Water Disposal (OSWD) Systems	The applicant has provided a Soil and Site Assessment for Onsite Wastewater Disposal that addresses the OSWD Systems. This has been assessed by Council's Stormwater Engineer and was found to be compliant with the controls set out in Clause 5.4.	Future DA's for construction can comply.
5.5 Stormwater Management Plans	The applicant has provided a Water Cycle Management Study that has been assessed by Council's Stormwater Engineer and was found to comply with the controls set out in Clause 5.5.	Future DA's for construction can comply.
5.7 Protection of Watercourses, Water Bodies and Riparian Lands	The SEE and associated documents do not address the location of the riparian corridor. It appears that the development could encroach the riparian corridor associated with the stream through the extreme western corner of Lot 2.  An assessment of riparian impacts and associated Vegetation Management Plan (VMP) is required.	Achievable. This requires a Vegetation Management Plan and assessment of riparian impacts be prepared for the future DA's for construction. Refer to original consent condition 9 reproduced in Schedule 1.
Section 6 – Additional Controls		
6.2 Bushfire Prone Land	The extreme western and eastern boundaries of the Site are identified on the LEP Bushfire Prone Lands Map as being within the bushfire buffer areas.  Specifically, the	No changes are proposed to the siting of buildings near bush fire risk areas of the site. RFS conditions included in Schedule 1 require setbacks from bushfire prone areas.



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Relevant DCP Section		
	<p>proposed additional shed and staff accommodation close to the Greenhills Rd boundary and the Brasserie, Micro Brewery and Wine Tasting Pavilion fronting the Old Hume Highway are located in buffer zone.</p> <p>The application was referred to the Rural Fire Service who have provided their concurrence and conditions, particularly regarding the proposed staff accommodation in the Bushfire buffer zone.</p>	
6.3 Contaminated or Potentially Contaminated Land	<p>The applicant has not provided a preliminary site investigation to determine the suitability of the site for the proposed development.</p>	<p>As the affected areas of the Site have a history of grazing and no physical works are proposed, a contamination investigation is not deemed necessary at the Concept Plan stage.</p>
6.8 Minimisation of External Impacts – Noise	<p>The applicant has provided an Acoustic Assessment that details an assessment of the predicted noise impacts of the proposed development.</p> <p>The main potential noise sources from the additional facilities proposed in the Concept Plan is from the proposed expansion of the Stables and the Conference Centre and increased numbers of events/functions per year.</p>	<p>Achievable. This is a matter for future DA's for construction. However, as the proposed facilities in the area close to the adjoining neighbouring property at No. 3092 Old Hume Highway are set well below the level of that land behind a thick pine hedge, several hundred metres from the house on that property, with setbacks required by Draft Consent Condition 8 in Schedule 1.</p> <p>Acoustic impacts to nearby</p>

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Relevant DCP Section		
	Operating hours proposed for the majority of the facilities of 7am to 11pm. This may require refinement when assessed for future DA's for construction.	residential areas should be minimal. Detailed acoustic assessment would be required to accompany future DA's for the construction of the facilities. It is assumed that strict operating hours and decibel levels for live music and other such events would be required for future development consents for construction.
A6.10 Minimisation of External Impacts – outdoor Lighting	Light spill from the proposed hard stand car parks and facilities close to the Highway and adjacent properties would be required to be addressed in any future DA's for the construction of the facilities.	Matter for consideration for future assessment of DA's.
Part B – Development Specific Controls		
Section 5 – Tourist-related Development		
B5.2 Tourist and Visitor Accommodation	To be assessed on its merits with regard to all relevant sections of the DCP as well as the 5.2.1 objectives. To ensure that such development is: (a) Sited and designed to respect the rural environment within which the development is located. (b) Appropriately located to ensure no detrimental impacts on neighbouring development. (c) Constructed from materials which respect the rural landscape. (d) Complements the style of any existing development within the SP3 Tourist zone.	The Modified Concept layout is considered to be supportable subject to the implementation of conditions at the construction DA stage.
B5.3 Food and Drink	Ensure that such	

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Relevant DCP Section		
Premises	development is: (a) Sited and designed to respect the rural environment within which the development is located. (b) Appropriately located to ensure no detrimental impacts on neighbouring development. (c) Constructed from materials which respect the rural landscape. (d) Complements the style of any existing development within the SP3 Tourist zone. (e) Designed to provide adequate car parking, located to be accessible to tourists and visitors to the development without detracting from the rural landscape in which the development is located. (f) Appropriately located in terms of accessibility from regional access roads. (g) Appropriately located in terms of the suitability of the surrounding road network to support the level and type of traffic expected to be generated by the proposed development.	The modified Concept layout is considered to be supportable subject to conditions to be implemented at the construction DA stage.
<b>Section 6 Other Commercial and Community Development</b>		
B6.4 Function Centres	b) All Function Centres shall be assessed on their merits with particular regard to: (i) visual impacts of the	The modified Concept layout is considered supportable subject to conditions to be implemented at the

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Relevant DCP Section		
	<p>proposal</p> <p>(ii) potential noise impacts</p> <p>(iii) potential traffic generation</p> <p>c) Buildings shall be designed and located to minimise visual impacts within the rural landscape, particularly from neighbouring properties.</p> <p>d) Buildings shall be constructed from materials and colours which blend into the rural landscape.</p> <p>e) Proposed development shall not exceed 5dB(A) as required in Section A6.8 of this Plan.</p>	construction DA stage.

## COMMUNICATION AND CONSULTATION

### Internal Communication and Consultation

The DA was referred to all relevant departments of Council and their comments have informed and been incorporated into this report, recommendation and Consent Conditions. Results of internal consultations are provided in the Table below.

Development Engineers	The application is considered to be satisfactory in relation to engineering matters subject to conditions being imposed on the notice of determination.
Environmental Heath	The application is considered to be satisfactory in relation to environmental health matters subject to conditions being imposed on the notice of determination.
Traffic Engineer	The application is considered to be satisfactory in relation to traffic matters based on amendments sought during the assessment process by the deletion of one of the proposed vehicular access ways and provision of a deceleration lane off the Old Hume Highway
Tree and Vegetation	Concern was raised regarding the potential loss of a stand of native vegetation and the protection of the substantial stand of trees down the southern boundary. These have been addressed by way of condition.



### **External Communication and Consultation**

The DA was referred to:

- The RMS (TfNSW);
- Water NSW; and
- Rural Fire Service.

Their comments have informed and been incorporated into the recommendations within this report and recommended conditions.

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

The application was notified between 30 May 2018 and 27 June 2018, and during this time, one (1) community submission was lodged.

The submission raised the following concerns and recommendations for amendments to the proposed amended Concept Plan and DA:

#### **Protection of existing mature trees and additional landscaped screening along the boundary:**

- The proposed car parking setback and mounding of car park 5m from the common boundary between 3092 and 3020 Old Hume Hwy is insufficient to ensure the continued health of the existing screen planting of mature conifer trees along that boundary.
- The trees are located approximately 2-3 metres from the boundary, with their drip line (canopy) extending to 13 metres from the boundary. If any mounding occurs under the dripline of these Conifers, the trees will die.
- The concept of landscaped mounding to screen the carparks is supported and would like to see similar treatment to the rest of the carparks, to this area of the site.
- Recommend that the mounding begin at 13 metres from the boundary to ensure it is not under the dripline of the trees. This would mean relocating of car parks to ensure the continued health of the row of trees.
- Additional boundary screen planting between the existing trees is supported.

#### **Comment**

The building setback and car park setback have been conditioned to be a minimum of 30m from the boundary with minimum setbacks to the existing trees (**condition 8**).

#### **Hours of operation new restaurant/meeting rooms and secular meeting facility**

- Proposed hours of operation excessive.
- Would like to see the operating hours for the Providore/ Café and Brassiere/Micro Brewery reduced to closing time of 10.30 pm Monday to Saturday and 10.00 pm on Sunday.

#### **Comment**

The concerns raised have informed the final set of recommended conditions of consent in regard to the hours of operation across the site (**condition 10**).

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

The potential environmental impacts of the of the development have been addressed in this report and the original approval report.

- **Social**

Potential negative impacts on the surrounding residents and the rural setting have been addressed by way of additional setbacks, screening and reduction in proposed vehicular entries by way of consent conditions.

- **Broader Economic Implications**

The flow-on effect to the local economy from the expanded operation of tourist facilities at Bendooley Estate will be significant and beneficial.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

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

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## **RELATIONSHIP TO CORPORATE PLANS**

Operational Plan 2019/20: OP168 Assess and certify applications related to development.

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## **COUNCIL BUDGET IMPLICATIONS**

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

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

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

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



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#### RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010*, *SEPP (Sydney Drinking Water Catchment) 2011*, *State Environmental Planning Policy No 55 – Remediation of Land* and the Rural Lands Development Control Plan.

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#### OPTIONS

The options available to Council are:

##### Option 1

THAT the Section 4.55 Modification 18/0565.01 to modify the approved Concept Plan for various tourism related uses at Lots 2 and 3 DP 584423, No 3020 Old Hume Highway, Berrima be APPROVED subject to conditions as described in Attachment 1 to the report.

##### Option 2

Refuse the modification application, in which case Councillors would need to detail reasons for refusal.

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

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#### CONCLUSION

The development application has been assessed in accordance with the matters for consideration under Section 4.55(2) of the *Environmental Planning & Assessment Act 1979*, and all relevant environmental planning instruments and Council policies and the Concept Plan remains substantially the same as originally approved. It is recommended that the application be determined by way of approval, subject to the attached draft conditions of consent nominated in Schedule 1.

#### ATTACHMENTS

1. Att 1 Draft Conditions of Modified Consent
2. Att 2 Location Plan - *circulated under separate cover*
3. Att 3 Plans .pdf - *circulated under separate cover*



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**SCHEDULE 1 – PROPOSED MODIFIED CONDITIONS OF DEVELOPMENT CONSENT**

**Consent Conditions to be modified:**

**2. Development in Accordance with Plans and Documents**

*The development shall be implemented in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.*

The Table is to be amended to include amended plans and additional reports as follows. **(Changes in bold)**

Plan Title / Supporting Document	Reference / Version	Prepared by	Dated
<b>Concept Development plan</b>	<b>A200 Rev.B</b>	<b>McConnell Design Studio</b>	<b>11/10/2018</b>
<b>Indicative Staging Plan</b>	<b>A201 Rev.B</b>	<b>McConnell Design Studio</b>	<b>11/10/2018</b>
<b>Concept Development Plan Sheet 1</b>	<b>A200 F</b>	<b>McConnell Design Studio</b>	<b>4/11/2019</b>
<b>Concept Development Plan Sheet 2</b>	<b>A201 E</b>	<b>McConnell Design Studio</b>	<b>4/11/2019</b>
<b>Concept Development Indicative Staging Plan Sheet 3</b>	<b>A202 A</b>	<b>McConnell Design Studio</b>	<b>4/11/2019</b>
Facilities images – Conference Centre; Brasserie/Micro Brewery; Providore / Café; Wine Tasting Pavilion; Wellness Centre; Accommodation Suites; Accommodation Lodge; Rare Books Admin; and Staff Accommodation.	1.0 – 11.00	McConnell Design Studio	11/10/2018
Statement of Environmental Effects		KN Planning Pty Limited	May 2018
Water Cycle Management Study	0150517	SOWDES Pty Ltd	May 2017
Bushfire Hazard Assessments for the shed and staff Accommodation		Barry Eadie Consulting Pty Ltd	23 April 2018
Soil and Site Assessments for Onsite Wastewater Disposal – for the stables, , Staff Accommodation, New Administration Building	2587WW V. 2	Harris Environmental Consulting	7 May 2018





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and other proposed commercial development			
Acoustical Assessment	R170103AR1 Rev.0	Rodney Stevens Acoustics	8 May 2018
Traffic & Parking Assessment	18060	Varga Traffic Planning Pty Ltd	14 May 2018
<b>SW Sections Through Road and Earth Mounds</b>	<b>A1000</b>	<b>McConnell Design Studio</b>	<b>14/05/2019</b>
<b>Arborist report</b>		<b>Alex Bicknell</b>	<b>11/11/2019</b>
<b>Amended traffic report</b>		<b>Varga Traffic Planning</b>	<b>23/11/2019</b>
<b>Additional bush fire report</b>		<b>Barry Eadie Consulting</b>	<b>18/11/2019</b>
<b>Additional information SEE</b>		<b>KN Planning Pty Ltd</b>	<b>28/11/2019</b>
<b>Water Cycle Management Study</b>	<b>4</b>	<b>Harris Environmental Consulting</b>	<b>25/11/2019</b>
<b>Sewerage Management Facility details letter</b>		<b>Harris Environmental Consulting</b>	<b>20/11/2019</b>

**B CONCEPT PLAN DETAILS**

**3 Building heights**

Maximum building heights apply to the proposed buildings on the Site as follows:

- 1) Conference Centre -10.5 metres;
- 2) **Accommodation suites - 9.2 metres;**
- 3) Brasserie and micro-brewery - 6 metres;
- 4) Wellness Centre – 6 metres;
- 5) Providore /café - 5.2 metres;
- 6) Wine tasting pavilion – 6 metres;
- 7) Accommodation Lodge – 9.2 metres;
- 8) Housekeeping shed – 6 metres;
- 9) Staff accommodation – 5 metres;
- 10) Storage shed – 6 metres; and
- 11) Rare Book Administration Building – 7 metres.
- 12) **Restaurant/Meeting Room Building – 7 metres**
- 13) **Secular Meeting Building - 9 metres**

**4 Building footprints**

Maximum gross floor areas (GFA) apply to the proposed buildings on the Site as follows:

- 1) Conference Centre - 1070sqm GFA
- 2) **Accommodation suites, incorporating 4 buildings each containing a total of 21 suite rooms - 1400sqm total maximum GFA**
- 3) Brasserie and micro-brewery - 750sqm GFA;
- 4) Wellness Centre -400sqm GFA;
- 5) Providore /cafe - 120sqm GFA;



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- 6) Wine tasting pavilion - 100sqm GFA;
- 7) **Accommodation Lodge – 2,470sqm GFA;**
- 8) **Housekeeping shed - 162sqm GFA;**
- 9) Staff accommodation in two single storey 4 bedroom dwellings - 250sqm total GFA;
- 10) Storage shed - 200sqm GFA;
- 11) Rare Book Administration Building - 250sqm GFA
- 12) **Restaurant/Meeting Room Building - 859sqm GFA; and**
- 13) **Secular Meeting Building - 218sqm GFA.**

**Reason:** To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential visual impact on the surrounding rural environment.

**6 Maximum number of staff and patrons**

The maximum number of staff and patrons on the site at any one time is to be in accordance with the Tables 4.5.1 and 4.5.2 in the submitted Additional Information in the form of a letter prepared by KN Planning dated 28 November 2019.

**Reason:** To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential impact on the surrounding road system and rural environment.

**8 Building setback from No. 3092 Old Hume Highway boundary**

All buildings and their associated car parking shall be set back by a minimum of 30m from the common boundary with 3092 Old Hume highway Berrima. The proponent shall provide earth mounding constructed with the toe of the batter **no closer than 6m from the trunks of any existing substantial trees along that boundary. The maximum height of the earth mounding shall be 2m and shall include continuous landscape treatments to enable suitable screening to the adjacent property to the satisfaction Council.** The earth mounding and landscaping shall be provided to the extent of the developed area adjacent to the Southern Boundary of the Beendooley Estate.

**Reason:** To protect the amenity of the neighbouring property, ensure the continued health of the existing significant pine tree hedge along the Southern boundary and enable adequate additional screen planting to be provided.

**10 Hours of operation**

The maximum hours of operation for the facilities on the Site are to be limited as follows:

- Conference Centre: 8am to 10.30pm Monday to Saturday and 9am to 10pm on Sunday.
- Produce/Coffee Shop: 7:00am 10:30pm 7 days
- Brasserie & Micro Brewery: 8:00am 11:30pm out by 11:45pm 7 days



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Wellness Centre:	9:00 am 9:00pm 7 days
Wine Tasting Pavilion:	10:00am to 6:00pm 3 days (Friday, Saturday, Sunday & Public Holidays)
<i>Administration Building:</i>	<i>7:00 am to 7:00 pm 5 days (Monday to Friday)</i>
<b>Restaurant/Meeting Rooms:</b>	<b>7.00am to 11.00pm, out by 11.30pm, 7 days</b>
<b>Secular Meeting Space:</b>	<b>9.00am to 11.00pm, out by 11.30pm, 7 days</b>

Note: 'hours of operation' does not include cleaning or preparation time by staff that may occur an hour before and/or after these times. It relates to the timeframe for functions.

**Reason:** *To ensure that the amenity of the surrounding area is not compromised as a result of the operation of the development.*

**Note:** *Any variation to these hours will require Council consent via the lodgement of a modification application under Section 4.55 of the Environmental Planning and Assessment Act 1979.*

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**SCHEDULE 2 - DRAFT CONDITIONS OF MODIFIED DEVELOPMENT CONSENT**

**ADMINISTRATION CONDITIONS**

**1. Development Description**

Development consent has been granted in accordance with this notice of determination for the purposes of Tourism and Accommodation Concept Plan at 3020 Old Hume Highway, Berrima.

**2. Development in Accordance with Plans and Documents**

The development shall be implemented in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Concept Development plan	A200 Rev.B	McConnell Design Studio	11/10/2018
Indicative Staging Plan	A201 Rev.B	McConnell Design Studio	11/10/2018
Concept Development Plan Sheet 1	A200 F	McConnell Design Studio	4/11/2019
Concept Development Plan Sheet 2	A201 E	McConnell Design Studio	4/11/2019
Concept Development Indicative Staging Plan Sheet 3	A202 A	McConnell Design Studio	4/11/2019
Facilities images – Conference Centre; Brasserie/Micro Brewery; Providore / Café; Wine Tasting Pavilion; Wellness Centre; Accommodation Suites; Accommodation Lodge; Rare Books Admin; and Staff Accommodation.	1.0 – 11.00	McConnell Design Studio	11/10/2018



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Statement of Environmental Effects		KN Planning Pty Limited	May 2018
Water Cycle Management Study	0150517	SOWDES Pty Ltd	May 2017
Bushfire Hazard Assessments for the shed and staff Accommodation		Barry Eadie Consulting Pty Ltd	23 April 2018
Soil and Site Assessments for Onsite Wastewater Disposal – for the stables, , Staff Accommodation, New Administration Building and other proposed commercial development	2587WW V. 2	Harris Environmental Consulting	7 May 2018
Acoustical Assessment	R170103AR1 Rev.0	Rodney Stevens Acoustics	8 May 2018
Traffic & Parking Assessment	18060	Varga Traffic Planning Pty Ltd	14 May 2018
SW Sections Through Road and Earth Mounds	A1000	McConnell Design Studio	14/05/2019
Arborist report		Alex Bicknell	11/11/29019
Amended traffic report		Varga Traffic Planning	23/11/2019
Additional bush fire report		Barry Eadie Consulting	18/11/2019
Additional information SEE		KN Planning Pty Ltd	28/11/2019
Water Cycle Management Study	4	Harris Environmental Consulting	25/11/2019
Sewerage Management Facility details letter		Harris Environmental Consulting	20/11/2019

**Reason:** To ensure the development is carried out in accordance with the approved plans and documentation.

**B CONCEPT PLAN DETAILS**



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**3. Building heights**

Maximum building heights apply to the proposed buildings on the Site as follows:

- 1) Conference Centre -10.5 metres;
- 2) Accommodation suites - 9.2 metres;
- 3) Brasserie and micro-brewery - 6 metres;
- 4) Wellness Centre – 6 metres;
- 5) Providore /café - 5.2 metres;
- 6) Wine tasting pavilion – 6 metres;
- 7) Accommodation Lodge – 9.2 metres;
- 8) Housekeeping shed – 6 metres;
- 9) Staff accommodation – 5 metres;
- 10) Storage shed – 6 metres; and
- 11) Rare Book Administration Building – 7 metres.
- 12) Restaurant/Meeting Room Building – 7 metres
- 13) Secular Meeting Building - 9 metres

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential visual impact on the surrounding rural environment.*

**4. Building footprints**

Maximum gross floor areas (GFA) apply to the proposed buildings on the Site as follows:

- 1) Conference Centre - 1070sqm GFA
- 2) Accommodation suites, incorporating 4 buildings each containing a total of 21 suite rooms - 1400sqm total maximum GFA
- 3) Brasserie and micro-brewery - 750sqm GFA;
- 4) Wellness Centre -400sqm GFA;
- 5) Providore /cafe - 120sqm GFA;
- 6) Wine tasting pavilion - 100sqm GFA;
- 7) Accommodation Lodge – 2,470sqm GFA;
- 8) Housekeeping shed - 162sqm GFA;
- 9) Staff accommodation in two single storey 4 bedroom dwellings - 250sqm total GFA;
- 10) Storage shed -200sqm GFA;
- 11) Rare Book Administration Building -250sqm GFA
- 12) Restaurant/Meeting Room Building - 859sqm GFA; and
- 13) Secular Meeting Building - 218sqm GFA.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential visual impact on the surrounding rural environment.*

**5. Maximum number of staff and patrons**



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The maximum number of staff and patrons on the site at any one time is to be in accordance with the Tables 4.5.1 and 4.5.2 in the submitted Additional Information by KN Planning dated 28 November 2019.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential impact on the surrounding road system and rural environment.*

## C AMENDMENTS TO CONCEPT PLAN

The Concept Plan is to be amended as follows:

### 6. **Building Setbacks from Old Hume Highway frontage**

All new buildings, including their associated car parking, with the exception of the Wine Tasting Pavilion, are to be setback a minimum of 20 metres from the Old Hume Highway boundary of the Site. The Wine Tasting Pavilion is to be set back a minimum of 10m from the Old Hume Highway boundary.

**Reason:** *To ensure any potential visual impact on the surrounding rural environment is minimised and allow sufficient land area for effective screen planting.*

### 7. **Building setback from watercourses**

All buildings are to be set back a minimum of 10 metres from the top of bank of any identified watercourses on the Site.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential visual impact on the surrounding rural environment.*

### 8. **Building setback from No 3092 Old Hume Highway boundary**

All buildings and their associated car parking shall be set back by a minimum of 30m from the common boundary with 3092 Old Hume highway Berrima. The proponent shall provide earth mounding constructed with the toe of the batter no closer than 6m from the trunks of any existing substantial trees along that boundary. The maximum height of the earth mounding shall be 2m and shall include continuous landscape treatments to enable suitable screening to the adjacent property to the satisfaction Council. The earth mounding and landscaping shall be provided to the extent of the developed area adjacent to the Southern Boundary of the Beendooley Estate.

**Reason:** *To protect the amenity of the neighbouring property, ensure the continued health of the existing significant pine tree hedge along the Southern boundary and enable adequate additional screen planting to be provided.*

### 9. **Retention of Native vegetation**



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The siting of the Conference Centre be amended to enable the retention and protection of the stand of native vegetation located in that area of the Site. Details of such relocation and identification of the plant community are to be submitted to the satisfaction of Council's Environmental specialist.

**Reason:** *To protect valued native vegetation populations in the Shire.*

**10. Hours of operation**

The maximum hours of operation for the facilities on the Site are to be limited as follows:

- Conference Centre: 8am to 10.30pm Monday to Saturday and 9am to 10pm on Sunday.
- Produce/Coffee Shop: 7:00am 10:30pm 7 days
- Brasserie & Micro Brewery: 8:00am 11:30pm out by 11:45pm 7 days
- Wellness Centre: 9:00 am 9:00pm 7 days
- Wine Tasting Pavilion: 10:00am to 6:00pm 3 days (Friday, Saturday, Sunday & Public Holidays)
- Administration Building: 7:00 am to 7:00 pm 5 days (Monday to Friday)
- Restaurant/Meeting Rooms: 52 events per year the new facilities can operate 7am to 11pm (out by 11.30) with the rest adhering to 9am to 8pm (Monday to Saturday) with no function operating past 10pm on Sundays.
- Secular Meeting Space: 52 events per year the new facilities can operate 9am to 11pm (out by 11.30) with the rest adhering to 9am to 8pm (Monday to Saturday) with no function operating past 10pm on Sundays.

Note: 'hours of operation' does not include cleaning or preparation time by staff that may occur an hour before and/or after these times. It relates to the timeframe for functions.

**Reason:** *To ensure that the amenity of the surrounding area is not compromised as a result of the operation of the development, particularly when all facilities on the site are fully operational at the same time.*

**Note:** *Any variation to these hours will require Council consent via the lodgement of an application under Section 4.55 of the Environmental Planning and Assessment Act 1979.*

**11. Lighting**

All external lighting shall:

- (a) comply with AS 4282–1997 Control of the obtrusive effects of outdoor lighting, and
- (b) be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.





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Lighting at vehicle access points to the development must be provided in accordance with AS/NZS 1158 Set: 2010 *Lighting for roads and public spaces*.

**Reason:** *To ensure that the amenity of neighbouring properties is not compromised.*

**12. Noise Control**

The development shall comply with the requirements for industrial premises contained in the Noise Policy.

Noise emitted by the development:

- (a) shall not exceed an L A (15 min) of 5dB(A) above background noise when measured at any lot boundary of the property where the development is being carried out, and
- (b) shall not cause the relevant amenity criteria in Table 2.1 in the Noise Policy to be exceeded.

**Note:** *In this clause, the Noise Policy means the document entitled NSW Industrial Noise Policy (ISBN 0 7313 2715 2) published in January 2000 by the Environment Protection Authority.*

**Reason:** *To ensure that the amenity of surrounding residents is not compromised.*

**13. Noise Control Measures**

The Applicant and/or operator shall implement the noise control measures set out in the Acoustic Report prepared by Rodney Stevens Acoustics and dated 8 May 2018.

**Reason:** *To prevent loss of amenity to the area.*

**14. Noise Control Legislation**

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

**Reason:** *To prevent loss of amenity to the area.*

**15. Operational Management Plan**

The Applicant is to prepare a Site Operational Management Plan to the satisfaction of Council prior to any additional facilities being constructed and/or occupied on the site.

**16. Traffic and access**



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The Applicant is to provide detailed plans to the satisfaction of Council's traffic engineers and the RMS for the for the design and provision of a 70-metre-long deceleration lane to the Old Hume Highway linking to the Stage 2 internal road entry prior to the issue of any construction certificates for works on the Stage 2 portion of the site.

All costs associated with the design and construction of the deceleration lane are to be borne by the Applicant.

**Reason:** To ensure the traffic flow on the Old Hume Highway is not compromised and that patrons and staff visiting the site can do so safely considering the speed limit on the Old Hume Highway along the frontage of the site is 100kmph.

**D BUSHFIRE RISK MANAGEMENT – NSW RURAL FIRE SERVICE CONCURRENCE CONDITIONS FOR FUTURE DEVELOPMENT APPLICATIONS FOR CONSTRUCTION**

**17. Asset Protection Zones (RFS condition)**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

At the commencement of building works, and in perpetuity, the area around the proposed buildings shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection, 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' as follows:

Staff accommodation buildings:

- North: Inner Protection Area (IPA) for a minimum distance of 57 metres;
- South and East: IPA for a minimum distance of 40 metres; and
- West: IPA for a minimum distance of 30 metres

All other tourist accommodation buildings and Class 9 buildings

- West: Inner Protection Area (IPA) for a minimum distance of 30 metres; and
- All other Directions: IPA for a minimum distance of 40 metres Water and Utilities.

**18. Water and Utilities (RFS condition)**

In order to ensure adequate services of water for the protection of buildings is provided during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building, the following conditions shall apply:

The provision of all water, electricity, and gas services shall comply with section 4.1.3 of 'Planning for Bush Fire Protection, 2006'. In recognition that an unreliable water supply exists, 10,000 litre water supply shall be provided for each habitable



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building in accordance with 'Planning for Bush Fire Protection 2006' and the following:

- Aboveground tanks shall be constructed of non-combustible material.
- A 65mm metal storz fitting and ball or gate valve shall be installed in any tank.
- The gate or ball valve, pipes and tank penetration shall be adequate for full 50mm inner diameter water flow through the Storz fitting and shall be metal rather than plastic.
- A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- A standard Static Water Supply (SWS) marker shall be obtained from the District NSW Rural Fire Service as part of the Static Water Supply Program once the tank water supply has been installed. The marker once issued is to be:
  - (a) fixed in a suitable location so as to be highly visible;
  - (b) positioned adjacent to most appropriate access for the static water supply;
  - (c) fixed facing the roadway on a gatepost, fence or dedicated post, at the right hand side of the entranceway to the Static Water Supply;
  - (d) fixed no less than 600mm from the ground surface to the base of the sign and not higher than 1200mm from the ground surface to the base of the sign; and,
  - (e) fixed with suitable screws or nails.

**19. Access (RFS condition)**

The intent of measures for fire trails is to provide suitable access for fire management purposes and maintenance of APZs. To achieve this, the following conditions shall apply:

- All access within the site shall comply with section 4.2.7 of 'Planning for Bush Fire Protection, 2006'.

**20. Evacuation and Emergency Management (RFS condition)**

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014'.

**21. Design and Construction (RFS condition)**



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The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- All new construction associated with the proposed staff accommodation, tourist accommodation, and Class 9 Buildings shall comply with Sections 3 and 5 (BAL 12.5) *Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection, 2006'*.
- Any new Class 10b structures as defined per the *'Building Code of Australia'* situated within 10 metres of any habitable and/or SFPP building shall be non-combustible.

**22. Landscaping (RFS condition)**

All landscaping within the site is to comply with the principles of Appendix 5 of *'Planning for Bush Fire Protection, 2006'*.

**E WATER NSW'S CONCURRENCE CONDITIONS**

**23. General**

The site layout and staging (including staging sequence) shall be as specified in the Statement of Environmental Effects (dated May 2018) and letter (dated 28 November 2019) prepared by KN Planning Pty Ltd and shown on the Concept Development and Indicative Staging Plans prepared by McConnell Design Studio (Project No. 1625; Dwg. Nos. A200F, A201E and A202A)

No revised site layout, staging or works that may impact on water quality, shall be permitted without the agreement of Water NSW.

The Applicant is to show evidence of consultation and concurrence of the above plans to the satisfaction of Council prior to the issue of any construction certificate for works within stage 2 or later of the development.

**Reason:** Water NSW has based its assessment under the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the development.

**Wastewater Management**

The detailed design of the proposed package wastewater treatment plant and effluent irrigation system shall be submitted with the Development Application for Stage 1 of the Concept Plan.

The effluent irrigation area associated with the proposed package wastewater treatment system in Stage 1 of the Master Plan shall be located and designed such that it is at least 40 metres from the drainage line to the south and 100 metres from the watercourse located to the north of the location shown on the Concept



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Development Plan (Project No. 1625; Dwg. No. A200, dated 9/5/2018) prepared by McConnell Design Studio.

Detailed assessment of the capacity of the existing on-site wastewater management system for additional wastewater generation from any increase in wine production shall be assessed as part of the development application for that particular stage.

For Stage 4, the Site and Soil Assessment Report prepared by Harris Environmental Consulting (dated 7 May 2018) for staff accommodation shall be updated to ensure that effluent disposal area is appropriately sized.

**Reason for Conditions 23.2 to 5:** *To ensure that all wastewater on the property is designed, constructed and managed in a manner that has a sustainable neutral or beneficial effect on water quality over the longer term.*

#### **Stormwater Management**

Future development shall minimise impervious area and maximise rainwater capture from roof areas for re-use within the development. Water sensitive design measures shall be incorporated into the design of future development applications, incorporating the stormwater quality improvement devices as specified in the Water Cycle Management Study and Plans prepared by Harris Environmental Consulting (dated 7 May 2018 and 25 November 2019).

Detailed design of future stormwater quality improvement devices (i.e. water quality control pond (dam) and constructed wetland shall incorporate vehicular access for maintenance purposes.

**Reason for Conditions 23.6 to 8:** *To ensure that the stormwater quality management measures and structures for each stage of the proposed development have a sustainable neutral or beneficial impact on water quality over the longer term.*

#### **Creek Crossings**

Design of internal access road crossings of the southern tributary of Cordeaux Creek and other creek lines (in Stages 2 and 3) shall be appropriately sized pipe or box culverts consistent with the Sealed Local Roads Manual: guidelines to good practice for the construction, maintenance and rehabilitation of pavements (ARRB Transport Research Ltd revised and expanded edition 2005) and/or Unsealed Roads Manual: guidelines to good practice (ARRB Transport Research Ltd 3rd edition 2009), and shall be sealed, as appropriate on either side of the drainage line crossings.

**Reason for Condition 23.9:** *To ensure that crossings the creek crossings and associated infrastructure will have a sustainable neutral or beneficial impact on water quality during the operational phase of the development.*



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**F DEVELOPMENT CONSENT 15/311**

**24. Surrender of Consent**

Prior to development consent for any Stage 2 works the Applicant is to surrender Wingecarribee Development Consent DA 15/0311 Dated 17 September 2015.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation as amended by consent conditions.*

**G ADVISORY MATTERS**

**G001 Lapsing of Consent**

In accordance with Section 4.53 of the *Environmental Planning and Assessment Act 1979* (as amended), this Development Consent lapses five (5) years after the date from which it operates unless building, engineering or construction work has physically commenced. A Construction Certificate must be obtained and the works commenced in accordance with the approved plans and specifications within five (5) years from the date of this Development Consent.

**G002 Process for Modification**

The plans and/or conditions of this Consent are binding and may only be modified upon written request to Council under Section 4.55 of the *Environmental Planning and Assessment Act 1979*. The request shall be accompanied by the appropriate fee and application form. You are not to commence any action, works, contractual negotiations, or the like, on the requested modification unless and until the written authorisation of Council is received by way of an amended consent.

**G003 Review of Determination**

In accordance with the provisions of section 8.2 of the *Environmental Planning and Assessment Act 1979* (as amended) the applicant can request Council to review this determination. The request shall be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.

**G004 Right of Appeal**

Sections 8.7 and 8.10 of the *Environmental Planning and Assessment Act 1979* gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.

### 9.3 Development Application 19/1042 - Multi Dwelling Housing containing 7 units - 25 Oxley Drive, Bowral

Reference:	19/1042
Report Author:	Senior Town Planner
Authoriser:	Manager Development Assessment
Applicant:	Le Ralais Pty Ltd
Owner:	Tony & Serena Antoun
Link to Community Strategic Plan:	Identify and protect the unique characteristics of towns and villages to retain a sense of place

#### PURPOSE

The purpose of this report is to consider Development Application 19/1042 which seeks development consent for a Multi Dwelling Housing development containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral. This report is prepared for determination, and recommends **APPROVAL**, subject to attached conditions of consent (**Attachment 1**).

#### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

#### RECOMMENDATION

**THAT** Development Application 19/1042 which seeks approval for a Multi Dwelling Housing development containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral, be **APPROVED** by way of a deferred commencement consent, subject to attached conditions of consent as described in Attachment 1 to the report.

#### REPORT

Council at its meeting of 26 February 2020 considered Development Application 19/1042 which sought approval for a Multi Dwelling Housing development containing 7 units within three buildings at Lot 11 DP 603108, being 25 Oxley Drive, Bowral.

Council resolved

***THAT Development Application 19/1042 which seeks approval for a Multi Dwelling Housing development containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral, be DEFERRED to allow the applicant to address the issues raised by the objectors in terms of over shadowing and overall building height as viewed from adjoining properties.***

In response to Council's resolution, the applicant has submitted amended plans dated 3 March 2020, which change the roofline of proposed Units 3 – 7 from a 25 degree pitched gable and hipped roof to a 5 degree skillion roof, so as to reduce overshadowing and reduce building height. Proposed Units 1 and 2 in the upper portion of the site retain the originally proposed 25 degree pitched gable and hipped roof.

The site plan, floor plans, and landscape plans are not altered.

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The amended Elevation plans showing the 5 degree skillion roof for Units 3 - 7, containing a highlighted line showing natural ground level, can be found at **Attachment 10**.

The amended Overshadowing plans showing reduced overshadowing as a result of the introduction of the 5 degree skillion roof for Units 3 – 7 can be found at **Attachment 11**.

The amended plans are a further improvement in terms of reduced overshadowing and reduced building height. The objectors' concerns regarding overshadowing and building height matters have previously been submitted to Council and summarised within the report to Council dated 26 February 2020 (**Attachment 9**). The amended plans dated 3 March 2020 have not been re-notified to surrounding properties as the amendments have addressed the concerns raised.

#### **Building Height / Visual Impact on adjoining properties**

As advised above, in response to Council's resolution at its meeting of 26 February 2020, the applicant has submitted amended plans dated 3 March 2020, which change the roofline of proposed Units 3 – 7 from a 25 degree pitched gable and hipped roof, to a 5 degree skillion roof, so as to reduce overshadowing and reduce building height. Proposed Units 1 and 2 in the upper portion of the site retain the originally proposed 25 degree pitched gable and hipped roof.

The site plan, floor plans, and landscape plans are not altered.

The amended Elevation plans dated 3 March 2020 showing the 5 degree skillion roof for Units 3 - 7, containing a highlighted line showing natural ground level, can be found at **Attachment 10**. These amended plans show a further reduction in building height, achieving a maximum 6.5 metre height measured from natural ground level to roof pitch, which is a further compliance with the maximum 9 metre / 2 storey height limit under Bowral Township Development Control Plan, and which has further reduced visual impact to adjoining properties.

While 5 degree skillion roofs are not generally characteristic of the Bowral area, the proposed 5 degree skillion roof for Units 3 – 7 are not fronting Oxley Drive, and are therefore not highly visible from the public domain. Units 1 and 2 which will be visible from Oxley Drive, will retain the proposed 25 degree pitched gable and hipped roof.

Elevation plans (**Attachment 10**) show natural ground levels as a highlighted line, which assists in understanding the proposed development's compliance with the maximum 9 metre / 2 storey height limit under Bowral Township Development Control Plan.

The height of the proposed development will have a visual impact upon adjoining properties, however as the proposed development complies with the height controls of the Bowral Township Development Control Plan, the visual impact of the height of the development is not beyond that which would be expected within a Medium Density Residential zone.



### **Overshadowing**

The amended Overshadowing plans dated 3 March 2020 showing reduced overshadowing as a result of the introduction of the 5 degree skillion roof for Units 3 – 7 can be found at **Attachment 11**.

These amended plans show a further reduction in overshadowing impacts, which further satisfy the Bowral DCP requirement that any new development must not reduce the solar access currently enjoyed in living areas of adjacent dwellings to be less than 3 hours of direct sunlight on June 21<sup>st</sup>, and the Bowral DCP requirement that “Any new development must not reduce the solar access currently enjoyed in ..... 50% of the primary private open space of adjacent dwellings so (*sic*) be less than 3 hours of direct sunlight on June 21<sup>st</sup>.”

### **Deferred Commencement**

A stormwater easement is required burdening the adjoining southern land and benefitting the subject property. Should approval be granted for the proposed development, proof of registration of a stormwater easement burdening Lot 12 DP 603108 and benefitting Lot 11 DP 603108, shall be submitted to the satisfaction of Council prior to general conditions of consent being enacted. This can be addressed by way of deferred commencement condition (**deferred commencement condition 1**).

An assessment of the proposed development has been made against the Wingecarribee Local Environmental Plan 2010, State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, and the Bowral Township Development Control Plan within the report to Council dated 26 February 2020 (**Attachment 9**).

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

Any perceived environmental issues have been discussed within the body of the report to Council dated 26 February 2020 (**Attachment 9**).

- **Social**

Any perceived social issues have been discussed within the body of the report to Council dated 26 February 2020 (**Attachment 9**).

- **Broader Economic Implications**

There are no broader economic implications associated with the report to Council dated 26 February 2020 (**Attachment 9**).

- **Culture**

The proposed Multi dwelling housing development has no identifiable cultural impacts.

- **Governance**

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

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#### COUNCIL BUDGET IMPLICATIONS

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

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

#### RELATED COUNCIL POLICY

An assessment of the proposed development has been made against the Wingecarribee Local Environmental Plan 2010, State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, and the Bowral Township Development Control Plan within the report to Council dated 26 February 2020 (**Attachment 9**).

#### OPTIONS

The options available to Council are:

##### **Option 1**

**THAT** Council determine Development Application 19/1042 by way of deferred commencement approval subject to conditions of development consent contained in **Attachment 1**

##### **Option 2**

**THAT** Council determine Development Application 19/1042 by way of refusal, and nominate reasons for refusal.

**Option 1** is recommended.

#### CONCLUSION

It is recommended that Development Application 19/1042 which seeks approval for Multi Dwelling Housing containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral, be supported subject to conditions.

The proposal is considered satisfactory in terms of s.4.15 EPA Act 1979, therefore it is recommended that the development application be approved by way of a deferred

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commencement approval, subject to the attached draft conditions of consent nominated in **Attachment 1**.

#### ATTACHMENTS

1. Draft Conditions
2. Site Location - *circulated under separate cover*
3. Zoning - *circulated under separate cover*
4. Site Plan - *circulated under separate cover*
5. Elevation plans as presented to Council meeting 26 February 2020 (now superseded) - *circulated under separate cover*
6. Overshadowing plans as presented to Council meeting 26 February 2020 (now superseded) - *circulated under separate cover*
7. Objector's consultant's shadow diagrams based on superseded plans - *circulated under separate cover*
8. Objector's consultant's plans showing view of development from 29 B Oxley Drive based on superseded plans - *circulated under separate cover*
9. Report to Council 26 February 2020
10. Elevations (amended plans dated 3 March 2020 responding to Council resolution 26 February 2020).
11. Overshadowing (amended plans dated 3 March 2020 responding to Council resolution 26 February 2020) - *circulated under separate cover*



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## ATTACHMENT 1 – DRAFT CONDITIONS OF CONSENT

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### SCHEDULE 1

#### DEFERRED COMMENCEMENT CONDITION THAT MUST BE SATISFIED BEFORE THE CONSENT CAN OPERATE

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1. Proof of registration of a stormwater easement burdening Lot 12 DP 603108 and benefitting Lot 11 DP 603108, shall be submitted to the satisfaction of Council prior to general conditions of consent being enacted. This can be addressed by way of deferred commencement condition.

Deferred Commencement condition 1 is required to be addressed to the satisfaction of Council within 12 months of X March 2019 prior to General Development Consent Conditions 1 – X being acted upon.

**Note:** *The consent shall operate from the date in which Council acknowledges compliance with the condition within Schedule 1 of this Deferred Commencement of Consent, and shall lapse X March 2025.*



## SCHEDULE 2 CONDITIONS OF DEVELOPMENT CONSENT

### ADMINISTRATION CONDITIONS

#### 1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Multi Dwelling Housing containing 7 units. No strata subdivision is approved by this consent.

**Reason:** *To confirm the use of the approved development.*

#### 2. Development in Accordance with Plans and Documents

The development shall be implemented in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Plans	DA01C, DA02C, DA03B, DA04D, DA05E, DA06B, DA07C, DA08B, DA09B, DA10-1C, DA10-2D, DA10-3B, DA10-4B, DA11D, DA12C, DA13C	Coble Stephens Architects	3/3/2020
Statement of Environmental Effects		Lee Environmental Planning	January 2019
Flora and Fauna Assessment Report		Joy Hafey	December 2019
Arboricultural Impact Appraisal and Method Statement		Andrew Scales Naturally Trees	31 July 2019
Geotechnical Risk Management Report	PX 0004	Hodgson Consulting Engineers	6 July 2019
Water & Sewer Development Assessment Report	Issue 1 Rev B	Jones Nicholson Consulting Engineers	8 October 2019

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation.*

#### 3. Inconsistency between documents

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In the event of any inconsistency between the conditions of this consent and the drawings/documents referred to above, the conditions of this consent shall prevail to the extent of the inconsistency.

**Reason:** *To ensure that the development is undertaken in accordance with the submitted plans and documents (as amended).*

**4. Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

That the work must be carried out in accordance with the requirements of the National Construction Code.

**Reason:** *The condition is prescribed under clause 98 of the Environmental Planning and Assessment Regulation 2000.*

**5. Erection of Signs**

A sign must be erected in a prominent position on any site on which building work, is being carried out:

- (a) Showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) Stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**Reason:** *The condition is prescribed under clause 98A of the Environmental Planning and Assessment Regulation 2000.*

**6. Notification of Home Building Act 1989 Requirements**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) In the case of work for which a principal contractor is required to be appointed:
  - (i) the name and licence number of the principal contractor, and
  - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) In the case of work to be done by an owner-builder:
  - (i) the name of the owner-builder, and
  - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority (PCA) for the development to which the work

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relates (not being the council) has given the council written notice of the updated information.

**Reason:** *The condition is prescribed under clause 98B of the Environmental Planning and Assessment Regulation 2000.*

**7. Asbestos Removal - Demolition of Buildings**

**Advice:** *These conditions of development consent are to be applied to work that may involve asbestos, in particular demolition and renovation or recladding or brick veneering works of buildings erected prior to 1987. Evidence acceptable to Council may be required to establish the construction date of a building or part of a building;*

a) Demolition is to be carried out in accordance with the applicable provisions of Australian Standard AS2601-2001 - The demolition of structures.

**Note:** *Developers are reminded that WorkCover requires that all plant and equipment used in demolition work must comply with the relevant Australian Standards and manufacturer specifications.*

b) The developer is to notify owners and occupiers of premises on either side, opposite and at the rear of the development site five (5) working days prior to demolition. Such notification shall state the date demolition will commence and is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site. Demolition must not commence prior to the date stated in the notification.

c) Five (5) working days (i.e., Monday to Friday with the exclusion of Public Holidays) notice in writing is to be given to Wingecarribee Shire Council for inspection of the site prior to the commencement of works. Such written notice is to include the date when demolition will commence and details of the name, address, business hours contact telephone number and licence number of the demolisher. Works are not to commence prior to Council's inspection and works must not commence prior to the commencement date nominated in the written notice.

d) On the first day of demolition, work is not to commence until the Principal Certifying Authority (PCA) has inspected the site. Should the building to be demolished be deemed likely to contain asbestos, approval to commence demolition will not be granted until the PCA is satisfied that all measures are in place so as to comply with WorkCover's document 'Your Guide to Working with Asbestos'.

e) On demolition sites where buildings to be demolished are likely to contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

f) Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence".

g) Demolition is to be completed within five (5) days of commencement at which time the applicant shall notify the Certifying Authority.

h) Demolition works are restricted to Monday to Friday between the hours of 7.00am to 6.00pm. No demolition works are to be undertaken on Saturdays, Sundays or Public Holidays.

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- i) Protective fencing is to be installed to prevent public access to the site.
- j) All asbestos laden waste, including asbestos cement flat and corrugated sheets must be disposed of at a facility licensed by the NSW Environmental Protection Authority (EPA) to accept such waste provided to Council.

**Note:** *The person responsible for disposing of the above asbestos waste is to telephone the EPA on 131 555 or Council's Customer Service Department on (02) 4868 0888 to determine the location of a waste facility licensed to receive asbestos. Within 14 days of the completion of demolition works, the applicant must lodge with Council, all original weighbridge receipts issued by the receiving licensed waste facility as evidence of proper disposal.*

- k) After completion, the applicant shall notify the Principal Certifying Authority within seven (7) days to assess the site and ensure compliance with Australian Standard AS2601 2001 - The Demolition of Structures.

- l) Within 14 days of completion of demolition, the applicant shall submit to Council:
- (i) an asbestos clearance certificate prepared by a WorkCover licensed asbestos assessor; and
- (ii) a signed statement verifying that demolition work and the recycling of materials was undertaken in accordance with the Waste Management Plan approved with this consent. In reviewing such documentation Council will require the provision of actual weighbridge receipts for the recycling/disposal of all materials.

**Reason:** *To ensure that asbestos is disposed of to a licensed waste facility and is removed in accordance with safe work practices.*

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION  
CERTIFICATE**

**8. Application for a Construction Certificate (Building Works)**

The applicant shall apply to Council or an Accredited Certifier for a Construction Certificate to carry out the relevant building works in accordance with this consent. The details to be included in the application for a Construction Certificate are:

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.
- (b) If Council or a private accredited certifier issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) If an alternative solution to the "deemed to satisfy" provisions of National Construction Code is proposed, the following details must be lodged:
- Performance requirements that the alternative solution intends to meet.
  - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
  - A statement about the person who prepared the alternate solution, indicating qualifications,



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experience, insurance details, and membership of an approved accreditation body.

**Reason:** *A requirement under the provisions of the Environmental Planning and Assessment Act 1979.*

**Note:** *Please note that if demolition works forms part of the extent of works approved in the same application, then demolition must not commence prior to the issue of a Construction Certificate.*

**9. Appointment of Principal Certifying Authority**

No work shall commence in connection with this Development Consent until:

- (a) A Construction certificate for the building work has been issued by:
- (i) the consent authority; or
  - (ii) an accredited certifier; and
- (b) the person having the benefit of the development consent has:
- (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
- (i) notified the Council of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the principal certifying authority of such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Reason:** *To ensure that there is certainty as to the consent applying to the land.*

**10. Section 68 Local Government Act 1993 Approvals**

Prior to the issue of a Construction Certificate, an application under section 68 of the *Local Government Act 1993* shall be made to, and issued by, Wingecarribee Shire Council, for the following approvals:

- Carry out sewerage works
- Carry out water supply
- Carry out stormwater drainage works

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**Reason:** *A requirement under the provisions of the Local Government Act 1993.*

**11. Section 7.11 Contributions (formerly Section 94)**

Under Section 7.11 of the *Environmental Planning and Assessment Act 1979* (as amended), Council has satisfactorily determined that Development Contributions are applicable to this development consent, as the development is likely to require the provision of, or increase the demand for, public amenities and public services within the Wingecarribee Local Government Area.

The following Wingecarribee Shire Council Section 7.11 Developer Contributions Plans are applicable to the development:

- Roads & Traffic Management Facilities
- Resource Recovery Centre 2009
- Central Library Facility
- Section 7.11 Administration 2011 to 2031
- Open Space & Recreation Facilities

A "Developer Charges - Notice of Payment" is attached to the back of this consent, and outlines monetary contributions and unit rates applicable at the time of issue of this consent. The contributions listed in the Notice of Payment must be paid prior to the issue of the Construction Certificate.

All contributions are indexed quarterly in accordance with upward movements in the Consumer Price Index (All Groups, Sydney) as published by the Australian Bureau of Statistics ([www.abs.gov.au](http://www.abs.gov.au) <<http://www.abs.gov.au>>); Section 25I of the *Environmental Planning and Assessment Regulation 2000*; and Council's Developer Contributions Plans.

**Note:** *Copies of the Contributions Plans are available at Wingecarribee Shire Council's Administration building Moss Vale or are available for download from Council's website [www.wsc.nsw.gov.au](http://www.wsc.nsw.gov.au) <<http://www.wsc.nsw.gov.au>>.*

**Note:** *Payment of the attached contributions is to be by BANK CHEQUE OR CASH and is to be accompanied by the attached sheet entitled "Notice of Payment - Developer Charges & Section 7.11". Should the Applicant pay by personal or company cheque the plans subject to this approval will not be available for collection until such time as the cheque has been honoured (i.e. a minimum of 10 days).*

**Reason:** *To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments.*

**12. Water Management Act - Certificate of Compliance**

A Certificate of Compliance under Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* shall be obtained **prior to the issue of Construction Certificate**.

**Note:** *Section 64 of the Local Government Act 1993 authorises Council to issue Certificates of Compliance under Section 306 of the Water Management Act 2000. Section 64 of the Local Government Act 1993 also authorises Council to impose pre-conditions to the issuing of Certificates of Compliance.*

As a precondition to the issuing of a Certificate of Compliance Council requires the payment of Developer Charges **prior to the issue of Construction Certificate** as prescribed by Wingecarribee Shire Council's Development Servicing Plans:

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- Water Supply Development Servicing Plan;
- Sewerage Development Servicing Plan; and
- Stormwater Development Servicing Plan.

A developer Charges - Notice of Payment is attached to the back of this consent and outlines monetary contributions and unit rates applicable at the time of issue of this consent.

The water, sewer and stormwater headworks levies are indexed quarterly in accordance with upward movements in the Consumer Price Index (All Groups, Sydney) as published by the Australian Bureau of Statistics ([www.abs.gov.au](http://www.abs.gov.au) <<http://www.abs.gov.au>>); and Council's Development Servicing Plans.

Copies of Development Servicing Plans are available at Wingecarribee Shire Council's Administration building Moss Vale or are available for download from Council's website [www.wsc.nsw.gov.au](http://www.wsc.nsw.gov.au) <<http://www.wsc.nsw.gov.au>>.

The Water and Sewerage Development Servicing Plans (DSP's) were adopted by Council and came into effect on 15 September 2017. The Stormwater DSP was adopted on 9 November 2010 and came into effect on 8 February 2010. The current charges under these Plans are listed as follows:

CPI Period	Water DSP	Sewer DSP	Stormwater DSP
1 February 2020 to 30 April 2020	<b>\$11,192.12</b>	<b>\$10,850.36</b>	<b>\$3,663.76</b>
Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, <a href="http://www.abs.gov.au">www.abs.gov.au</a> < <a href="http://www.abs.gov.au">http://www.abs.gov.au</a> >.			

Should new DSP's be prepared, it is possible that the charges may increase significantly. Draft DSP's must be advertised by Council for a period of 30 days prior to adoption.

**Note:** *Payment of the above charges is to be by BANK CHEQUE OR CASH and is to be accompanied by the attached sheet entitled "Notice of Payment - Developer Charges & Section 94". Should the Applicant pay by personal or company cheque the plans subject to this approval will not be available for collection until such time as the cheque has been honoured (i.e., a minimum of 10 days).*

**Compliance Certificate**

Compliance Certificate fees, in accordance with Council's Revenue Policy are as follows and shall be paid prior to the issue of **Construction** Certificate:-

Water \$250 + Sewer \$250 + Stormwater \$250 = \$750

Prior to final release, you will need to contact Council's Infrastructure Services Division for an inspection to ensure that Council will accept the infrastructure constructed. In response the Manager of Water and Sewer will specify requirements which will have to be met.

In the case of subdivision, the title plan of subdivision will not be certified and released by Council until the *Water Management Act 2000* charges have been paid and/or secured and the approval of Council has been obtained for all works related to this infrastructure.

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In the case of other forms of development, the Construction Certificate will not be issued until the *Water Management Act 2000* charges have been paid and/or secured and the approval of Council has been obtained.

**Reason:** *To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments.*

**13. Dilapidation Report**

A Dilapidation Report shall be undertaken on all properties, which in the opinion of a suitably experienced professional and chartered qualified engineer, could be potentially affected by the construction of the project. The Dilapidation Report shall be carried out taking into account civil infrastructure and submitted to Council prior to the issue of the Construction Certificate.

The Report shall cover structural and geotechnical factors likely to arise from the development.

The person having the benefit of the development consent shall, at their own cost, rectify any damage caused to other properties during the construction of the project to the satisfaction of Council.

**Reason:** *To ensure the structural stability of neighbouring buildings.*

**14. Construction Traffic Management Plan**

To undertake development works including demolition, earthworks and construction a Construction Traffic Management Plan (CTMP) is required to be submitted and approved by Council prior to issue of the Construction Certificate. The CTMP shall indicate measures to be implemented to protect the environment as well as public health, safety and convenience. The CTMP must include the following:

- a) Details of site security;
- b) Off-street parking for employees, contractors and sub-contractors.
- c) Site access for construction vehicles and equipment purposes.
- d) Public safety in the use of roads and footpaths where development activities adjoin such facilities.
- e) The storage and removal, on a regular frequency, of builder's rubble and waste by trade waste contractors.
- f) Provision for loading and unloading materials;
- g) Location of all building materials, structures, plant and equipment to be stored or placed within the construction site;
- h) How materials are to be loaded/unloaded and potential impact on Council infrastructure (including but not limited to footpaths and street trees)
- i) Public risk policies and management for all contractors' employees using or gaining access over public footpaths and roads.
- j) External lighting and security alarms proposed for the construction site.

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- k) Firefighting measures to be available on site during development and construction.
- l) Sanitary amenities proposed on site during development and construction.
- m) Ensuring the safety of members of the public and Council staff who may have occasion to enter and be in attendance on the site;
- n) Details of management of storm water run-off and the propose sediment and erosion control measures including the location of any rubble grids;
- o) Details of any air and dust management;
- p) Details of noise and vibration controls;
- q) Anticipated staging and duration of works
- r) Provision of Traffic Management Plan (TMP) and Traffic Control Plans (TMP)

**Reason:** *To ensure the safety, amenity and protection of public infrastructure and the environment.*

**15. Provision of Works and Services**

Prior to the issue of the Construction Certificate, the developer shall obtain approval for the works to be undertaken by submitting adequate documentation including plans, standard notes and completed design checklists, calculations and specifications, to Council which justify that the proposed works are in accordance with all Council's standards and all other relevant codes and guidelines.

**Reason:** *Statutory requirement.*

**16. Stormwater - Control of Peak Discharge**

Adequate and suitable infrastructure shall be provided to ensure the peak discharge from the site is no greater than the pre-developed peak discharge. This infrastructure shall be designed in accordance with Council's Engineering Policies. Calculations to demonstrate that the post-development peak discharge will not exceed the pre-development peak discharge shall be provided with the application for a Construction Certificate.

Any stormwater temporarily stored onsite shall be done in a manner that does not jeopardise public safety. In this regard the development shall provide a risk assessment with the Construction Certificate documentation.

**Reason:** *To ensure the peak discharge from the site is no greater than the pre-developed peak discharge.*

**17. Detailed Stormwater Drainage System Design**

Prior to the issue of the Construction Certificate, a detailed storm water hydraulic drainage plan for the disposal of storm water from the site, prepared in accordance with Council's Design Standards shall be submitted to Council and approved by Council's Development Engineer.

Should any changes be required to the approved storm water drainage plan, the amended design shall achieve equivalent performance standards in accordance with Design Specifications.

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**Note:** *Construction Certificate Approval does not include approval for works external to the property or civil works.*

Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the *Roads Act 1993*, must be obtained from Council prior to the commencement of works.

The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 of the *Roads Act 1993* applies.

**Reason:** *To ensure adequate storm water management.*

**18. Off Street Parking Provision - General**

14 off-street car parking spaces suitably marked in accordance with the approved plans (unless elsewhere specified) shall be provided (being 2 car spaces for each unit, and 3 visitor car spaces. Each space shall have minimum dimensions in accordance with Australian Standard AS2890.1 Off Street Car Parking.

Details shall be submitted to the Accredited Certifier prior to the issue of a Construction Certificate showing compliance with this condition.

**Reason:** *To ensure adequate parking and access.*

**19. Energy Service Provider Requirements**

The provision of underground electricity to service the development in accordance with the requirements of the Energy Service Provider. The Developer shall submit to Council documentary evidence from the Energy Service Provider qualifying that the requirements of that provider have been obtained. The requirements of the supply authority will need to be met prior to the issue of the Occupation Certificate.

**Reason:** *To ensure appropriate infrastructure is provided to the development.*

**20. Waste Management Plan**

A Waste Management Plan shall be completed and submitted to Council for approval, prior to the issue of the Construction Certificate for the development.

Requirements of the approved Waste Management Plan shall be complied with during site preparation and throughout demolition and construction. Waste management and its storage must not pose a threat to public health or the environment.

**Reason:** *To minimise the amount of waste going to landfill.*

**21. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan shall be prepared in accordance with "Landcom's Blue Book" for sedimentation and erosion control plan by a suitably qualified person, and approved by Council prior to issue of the Construction Certificate.

The Erosion and Sediment Control Plan shall include scaled drawings and detailed specifications which can be referred to onsite by project management staff or project construction supervisor. Items to be shown on the Plan shall include:

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- (a) Locality of the site, a north point and scale.
  - (b) Existing contours of the site including catchment area boundaries and indications of direction of fall.
  - (c) Location of and basic description of existing vegetation.
  - (d) Diversion of uncontaminated up-slope run-off around the disturbed sites.
  - (e) Location of significant natural areas requiring special planning or management including waters, floodplains, seasonally wet areas, areas prone to ponding/water logging, unstable slopes etc.
  - (f) Nature and extent of earthworks, including cut and fill roadworks.
  - (g) Location of all soil and material stockpiles.
  - (h) Location of site access, proposed roads and other impervious areas.
  - (i) Existing and proposed drainage patterns.
  - (j) Location and type of proposed erosion and sediment control measures.
  - (k) Site rehabilitation proposals, including final contours.
  - (l) Time of placement of sediment controls.
  - (m) Staging of works and how the plan is to be implemented for each stage or activity on site.
  - (n) Maintenance schedule.

**Reason:** *To minimise soil erosion and sediment movement during construction.*

**22. Erosion and Sediment Control Plan**

To minimise soil erosion and sediment movement during construction, the following measures shall be implemented:-

- (a) Erosion and sediment controls are to be in place before the disturbance of any soils on the site, and are to be maintained during the works and for as long as necessary after the completion to prevent sediment and dirty water leaving the site and/or entering the surface water system outside the worksite boundaries.
- (b) Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping. Soil is to be retained within the property.
- (c) Stockpiles of construction and landscaping materials, and of site debris shall be located clear of drainage lines and in such a position that they are protected from erosion and do not encroach upon any footpath, nature strip or roadway.
- (d) Final site spoil shall be disposed of to conform to the specifications and standards quoted and to any conditions of approval of those measures and must comply with any relevant NSW Department of Planning and Environment requirements.
- (e) Trenches shall be backfilled, capped with topsoil and compacted to a level at least 75mm

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above adjoining ground level.

(f) Vehicular access shall be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where sediment is deposited on adjoining roadways the same shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.

(g) All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for more than 14 days or such other period as may be approved after earthworks cease. All driveways and parking areas shall be stabilised with compacted sub-grade as soon as possible after their formation.

**Reason:** *To minimise soil erosion and sediment movement during construction.*

### 23. Landscape Plan

A Landscape Plan prepared by a suitably qualified professional to a scale of 1:100 or 1:200, conforming to all relevant conditions of consent shall be submitted to Council for approval prior to the issue of the Construction Certificate.

The plan shall include the following information:

- Location of all existing and proposed landscape features including materials to be used;
- Delineate and identify all trees to be retained, removed or transplanted;
- Existing and proposed finished ground levels;
- Top and bottom wall levels for both existing and proposed retaining and free standing walls and
- Detailed plant schedule which includes proposed species listed by botanical (genus and species) and common names, quantities of each species, pot sizes and the estimated size at maturity.
- Pot size at planting out stage
- Soil treatment prior to planting out, fertilizing and water maintenance schedule.
- Removal of noxious and environmental weeds from the site (including removal of ivy and blackberry)
- Compensatory plantings of Mt Gibraltar Forest tree species (at a rate of 3:1 for the 5 trees from the Mt Gibraltar Endangered Ecological Community group of species approved for removal by this consent) to occur within a regeneration area in the south of the site.
- Plantings of Mt Gibraltar Forest shrub and ground cover species as listed in the Flora and Fauna Assessment prepared by Joy Hafey, dated December 2019, being:
 

*6 Melaleuca hypericifolia, 1 Hymenantha dentata, 1 Hedycaria angustifolia, 12 Helichrysum scorpiodes, 15 Blechnum cartilagineum, 10 Doodia aspera, 10 Dichonra repens, 6 Hardenbergia violacea, and 2 Acacia melanoxylon.* Following removal of exotic grasses eg *Phalaris*, native seed such as *Poa sp, Microleana stipoides, Themeda australis* is to be sown.
- Erection of two large and one small nesting boxes, and one bat box to compensate for the removal of trees with existing hollows
- Boundary landscaping to soften visual impact of development when viewed from adjoining



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properties

Consideration within the design should be given to the scale of planting in proportion to the proposed development, consistency with the existing landscape character of the area, potential views, solar access and privacy for neighbouring development.

**Reason:** *To ensure appropriate landscaping treatments are applied to facilitate amenity.*

**24. Fire Hydrants Minor Residential Developments**

Prior to the issue of any Construction Certificate or Section 68 Approval for the development, detailed plans and specifications shall be provided to the Principal Certifier and Council to demonstrate compliance with *Fire and Rescue NSW (FRNSW) Fire hydrants for minor residential development - Fire Safety Guideline*. This includes the requirement for the provision of vehicular access for FRNSW fire appliances and water to allow firefighting operations to be undertaken at the development.

**Note:** *This may require separate approvals under Section 68 of the Local Government Act and Section 138 of the Roads Act for the extension of Councils mains water supply where necessary.*

**25. Fixed Obscure Glazing / Fixed Screening**

The proposed upper level western facing rumpus room window of Unit 1 should have fixed obscure glazing in any part of the window less than 1.7 metres above the floor to ensure privacy of the adjoining western Unit 3/23 Oxley Drive and its open space area.

The eastern facing first floor rumpus and "window seat" windows of Unit 2 should have fixed obscure glazing in any part of the windows less than 1.7 metres above the floor to ensure privacy of the adjoining eastern properties.

Due to the elevation of the eastern facing ground floor kitchen window of Unit 4, this window shall have fixed obscure glazing in any part of the window less than 1.7 metres above the floor.

Due to the elevation of the eastern facing ground floor kitchen window of Unit 5, and the elevation of the eastern facing lower ground floor rumpus window of Unit 5, both windows shall have fixed obscure glazing in any part of the window less than 1.7 metres above the floor.

The upper level Unit 7 eastern facing study area, shall have fixed obscure glazing in any part of the window less than 1.7 metres above the floor.

Fixed screening to the east of the elevated entry path to Units 4 and 5 to ensure the privacy of eastern / south eastern properties shall be provided.

Details shall be submitted to Council for approval prior to the issue of the Construction Certificate.

**CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK**

**26. Notice of Commencement**

No work shall commence until a notice of commencement form has been submitted (form will be attached with issue of a Construction Certificate or Subdivision Works Certificate or available from Council's website), giving the PCA:

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- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;
- (b) Details of the appointment of a Principal Certifying Authority (either Wingecarribee Council or another Accredited Certifier)
- (c) Details of the Principal Contractor or Owner Builder.
  - Name
  - Builders Licence Number or Owner Builder Permit Number
  - Principal Contractor Company Name
  - Principal Contractor ABN
  - Address of Principal Contractor or Owner Builder
  - Email Address
- (d) Copy of the HBCF Insurance Certificate (if residential building works exceed \$20,000) or Owner Builder Permit;
- (e) Details demonstrating compliance with development consent conditions relevant prior to commencement of the development been satisfied.

**Reason:** *Statutory requirement.*

**Advice:** *Attached Notice of Commencement form to be completed.*

**27. Construction Certificate**

No work shall commence until a:

- (a) Construction Certificate is obtained from either the Wingecarribee Shire Council or an Accredited Certifier; and
- (b) Construction Certificate lodged with Council obtained from an Accredited Certifier (together with associated plans and documents) - a fee applies for this service.

**Reason** *Statutory requirement.*

**28. Developers Representative during Construction of Works**

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

Details to be submitted include:-

- 1 Name of Representative:
- 2 Company:
- 3 Position:
- 4 Contact phone:
- 5 Contact fax:
- 6 After Hours Contact:
- 7 Signature of Representative:
- 8 Signature & Acceptance of representative by the Developer:
- 9 Council requires that the nominated " Construction Supervisor" either hold qualifications

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acceptable for Corporate Membership of the Institute of Engineers, Australia, or be Approved by the Director and/or has proven experience and suitable relevant qualifications for the control, supervision and management of civil engineering works as required for carrying land development.

Prior to commencing any works on site the representative shall:

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

The Developer may be required to arrange for Council to peruse all other contract documentation prior to the contractor arriving on site to commence work (Schedule of Works, Specifications Bill of Quantity, traffic control plan and Soil and water management plan).

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

**Reason:** *Statutory requirement.*

**29. Inspection of Demolition Works**

Council will require the following inspections of the site with the owner and demolition contractor present:

- (a) Prior to demolition works commencing (fencing must be erected and approved Waste Management Plan to be on site).
- (b) At the completion of demolition works (documents relating to disposal of hazardous waste are to be provided on site).

A minimum of twenty four (24) hours notice is required to be given to Council prior to these inspections.

**Reason:** *To ensure compliance with the consent.*

**30. Approval Required for Work within Road Reserve - Section 138 Roads Act 1993**

Where works are proposed within the road reserve, the Developer must obtain approval from Council (as the Roads Authority and / or as required under Section 138 of the *Roads Act 1993*) before any works are undertaken. Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the *Roads Act 1993*.

The following details must be submitted to Council in order to obtain the Section 138 approval:

- A copy of approved design plans related to the development and proposed works to be undertaken.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority's manual "Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742.3 - 2002 Traffic Control Devices for Works on Roads. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.
- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by

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applicant / contractor undertaking the works.

**Advice:** *Where works are required within a Classified Road, the Developer must obtain the concurrence and / or the approval of the Roads and Traffic Authority for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.*

**Reason:** *Statutory requirement.*

**31. Relocation of Existing Services**

Where existing services including drainage, sewerage and water may be required to be relocated as a result of the development, a plumber's permit is required from Council prior to commencing work. Inspection of these works by Council as the Water Supply Authority is required.

**Reason:** *Statutory requirement.*

**32. Fencing of the Construction Site**

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

**Reason:** *To ensure that the safety of the public is not compromised.*

**33. Erosion and Sediment Control**

Erosion and sediment control measures (as per the approved Erosion and Sediment Control Plan) shall be installed prior to the commencement of works.

**Reason:** *To ensure that sediment does not leave the site as a result of the construction of the development.*

**34. Wheel Wash**

A vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed in accordance with the approved Erosion and Sediment Control Plan prior to the commencement of any site works, to prevent mud and dirt leaving the site and being tracked.

**Reason:** *To minimise soil being trucked off site.*

**CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE**

**35. Approved Plans to be available on site**

Endorsed Council approved plans, specifications, documentation and the consent shall be made available on site at all times during construction.

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**Reason:** *To ensure compliance with approved plans.*

**36. Imported 'Waste-derived' Fill Material**

The only waste derived fill material that may be received at the development site is:

- Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act 1997* (POEO); or
- Any other waste-derived material the subject of a resource recovery exemption under clauses 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material

**Note:** *Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.*

The application of waste-derived material to land is an activity that may require a licence under the *Protection of the Environment Operations Act 1997*. However, a licence is not required if the only material applied to land is virgin excavated natural material or waste-derived material that is the subject of a resource recovery exemption under clauses 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014*.

Resource recovery exemptions are available on the NSW EPA website at <http://www.epa.nsw.gov.au/waste/>.

**Reason:** *To ensure that imported fill is of an acceptable standard for environmental protection purposes.*

**37. Demolition Requirements**

The existing building shall be demolished in accordance with the requirements of AS2601-2001 "The Demolition of Structures".

Amongst others, precautions to be taken shall include compliance with the requirements of the SafeWork NSW and Council's Water and Sewer Asset Protection, including:-

- (a) Protection of site workers and the general public.
- (b) Erection of hoardings where appropriate.
- (c) Asbestos removal handling and disposal where applicable by licensed contractors.
- (d) Ensuring only licensed demolition contractors are used as required pursuant to Occupational Health and Safety Legislation.
- (e) Appropriate precautions are taken in regard to lead based paints.
- (f) Water and Sewer Asset Protection

All water and sewer assets on the site or on adjacent road reserve or lands that may be affected by the demolition works are to be clearly identified on site and protected from damage. Those water and sewer protection measures are to be shown on the site plan and are to be approved by Council's Water and Sewer Planning and Development Engineer before any demolition works can commence.

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(g) Sewer Assets Temporary Disconnection or Closure

The site sanitary drainage is to be temporarily disconnected or closed off by a suitably qualified Plumber from any of Council's sewer sidelines, sewer junctions and or boundary traps that are to be retained and reused to prevent ingress contaminants into Council's sewer mains. This work shall be sited and approved by Council's Water and Sewer Development Engineer before demolition works can commence.

(h) Removal of Redundant Council Sewer Assets and Water Services

The site sanitary drainage is to be temporarily disconnected or closed off by a suitably qualified Plumber from any of Council's sewer sidelines, sewer junctions and or boundary traps that are to be disconnected by Council to prevent ingress of contaminants into Council's sewer mains. This work shall be sited and approved by Council's Water and Sewer Development Engineer before demolition works can commence.

Make application and pay fees for the removal of redundant sewer assets and or water services. These fees shall be paid before any demolition works can commence.

Redundant water meter shall not be removed to allow for final readings and removal by Council staff.

(i) Temporary Use of Council Sewer Junctions and Water Services

During demolition or building works Council may permit temporary use of sewer junctions and water services. Details of the proposed use shall be shown on the site plan and are to be approved by the Water and Sewer Planning and Development Engineer before any demolition works can commence.

Water services that are to be temporarily retained shall not have the water meter disconnected or removed. An approved backflow prevention device shall be installed. Details shall be shown on the site plan and are to be approved by the Water and Sewer Planning and Development Engineer before any demolition works can commence.

The disposal of refuse is to occur at an approved location. Council will require documentary proof of destination for hazardous materials such as asbestos and contaminated soils and may request evidence on disposal of other demolition materials - refer approved Waste Management Plan.

**Reason:** *To comply with statutory requirements.*

**38. Excavations and Backfilling**

All excavations and backfilling associated with the erection or demolition of a building shall be executed safely and in accordance with appropriate professional standards properly guarded and protected to prevent them from being dangerous to life or property.

**Reason:** *To ensure the safety of life and property.*

**39. Retaining Walls and Drainage**

If the soil conditions require it:

(a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and

(b) adequate provision shall be made for drainage.

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(c) any retaining walls which do not comply with the exempt development standards outlined in the *State Environmental Planning Policy (Exempt and Complying Codes) 2008*, are subject to a separate approval from Council prior to the construction of the retaining wall.

**Reason:** *To ensure that soil is appropriate retained.*

**40. Support for Neighbouring Buildings**

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a) must preserve and protect the building from damage, and
- b) if necessary, must underpin and support the building in an approved manner (under guidance / instruction of a structural engineer), and
- c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work to be carried out for the purposes of this clause, whether carried out on the allotment of land.

In this case, allotment of land includes a public road and any other public place.

**Reason:** *To preserve and protect neighbouring buildings.*

**41. Engineering Inspections by Council**

24 hours prior to the covering of the following works, Council shall be notified by the licensed builder, owner builder or licensed plumber/drainer that the following works are ready for inspection:

- (a) Works in relation to road reserves, footpath, kerb and gutter, road shoulder and drainage within public lands or road reserves.
- (b) Final inspection of footpath, driveway, stormwater and utility construction works within the road reserve.

**Note:** *The subject building is not to be occupied until an Interim or Final Occupation Certificate is issued.*

**Note:** *An accredited certifier may not be substituted for Council in respect of these inspections, as Council remains the sole responsible authority for these matters.*

**Reason:** *Statutory requirement.*

**42. Stormwater - Construction**

The applicant shall provide adequate storm water drainage infrastructure (pits/pipes/open channels/detention storage) for the conveyance of storm water passing through the site from upstream, and sourced from the development to a discharge outlet to be approved by Council. The

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point of discharge shall be clearly depicted and the legal right to discharge at that point to be justified. Status of the point of discharge is to be made clear (i.e. provision of drainage easements).

**Reason:** *To assist in the prevention of erosion of the site from storm water.*

**43. Stormwater - Discharge**

All stormwater runoff from the development shall be collected within the property and discharged to an approved stormwater management system.

**Reason:** *To ensure that stormwater is appropriately disposed of.*

**44. Damage to Adjoining Properties**

All precautions shall be taken to prevent any damage likely to be sustained to adjoining properties. Where damage occurs to adjoining property all necessary repair or suitable agreement for necessary repairs shall be undertaken by the applicant in consultation with, and with the consent of, the affected property owner.

**Reason:** *Structural safety.*

**45. Erosion and Sediment Control Plan Compliance**

All site works shall be carried out in accordance with the approved Erosion and Sediment Control Plan. Implementation of the Erosion and Sediment Control Plan shall be supervised by personnel with appropriate qualification and experience in erosion and sediment control.

**Note:** *In the event of non-compliance with the approved plan, Council Officers have the ability to issue Penalty Notices, being an on the spot fine and/ or orders.*

**Reason:** *To ensure that the environment is protected.*

**46. Prevention of Nuisance**

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris and noise during the demolition, excavation and building works.

**Reason:** *Health and amenity.*

**47. Dust Control**

**Small Works**

Where a dust nuisance is likely to occur, suitable screens and/or barricades shall be erected during the demolition, excavation and building works. If necessary, water sprays shall be used on the site to reduce the emission of dust. Screening shall consist of minimum 2 metres height of shade cloth or similar material secured to a chain wire fence of the like.

**Reason:** *Environmental amenity*

**48. Vegetation Management**

Approval is granted by this development consent for the removal of 12 of the 45 trees on site



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(including 5 trees from the Mt Gibraltar Endangered Ecological Community group of species, being 4 Eucalyptus radiata and 1 Pittosporum undulatum). 19 of the 24 trees which belong to the Mt Gibraltar Endangered Ecological Community group of species on site shall be retained. No approval is granted by this consent for the removal of the eucalypt tree located at the boundary between the subject site and the adjoining eastern Lot 4 DP 1197464, 29 B Oxley Drive.

A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any other tree or other vegetation without the prior consent of Council (unless considered exempt development).

Any vegetation removed with Council consent and any other vegetation cleared in association of the approved development shall be disposed of in accordance with the approved Waste Management Plan.

For minor development, vegetation shall be either mulched for reuse on site or transported to an approved waste/recycling facility.

**Reason:** *To ensure compliance with State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 by preserving the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*

**Note:** *Failure to comply with this condition may result in prosecution by Council.*

**Note:** *No vegetation shall be burnt except with an approval issued by Council pursuant to the Protection of the Environment Operations (Clean Air) Regulation 2010. Failure to comply may result in a penalty of up to \$500 for an individual or up to \$1,000 for a corporation.*

**Advice:** *Tree removal should be carried out by a competent person to avoid any risk to life or damage to property. This person should have adequate public liability insurance cover.*

**49. Approved hours of Construction/Demolition**

Construction/demolition activities shall be limited to the following hours:

DAY	HOURS
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil

**Reason:** *To ensure that the amenity of the surrounding area is not compromised as a result of the construction of the proposal.*

**Note:** *Any variation to these hours shall require Council consent via the lodgment of an application under section 4.55 of the Environmental Planning and Assessment Act 1979.*

**50. Construction Traffic Management Plan**

All development activities and traffic movements shall be carried out in accordance with the approved Construction Traffic Management Plan.

All controls in the Plan shall be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

**Reason:** *Compliance with condition of consent.*



51. **Maintenance of the site**

All materials and equipment shall be stored wholly within the work site.

Waste materials (including excavation, demolition and construction waste materials) shall be managed on the site and then disposed of at a waste management facility.

Any run-off and erosion control measures required shall be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

During construction:

- (a) all vehicles entering or leaving the site shall have their loads covered, and
- (b) all vehicles, before leaving the site, shall be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

At the completion of the works, the work site shall be left clear of waste and debris.

**Reason:** *Environmental amenity.*

52. **Temporary Onsite Toilet**

Toilet facilities shall be available or provided at the work site prior to the commencement of works and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet shall:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

**Reason:** *To ensure that there are appropriate facilities on-site for construction workers.*

53. **Waste Management**

The provision of a metal waste skip with self-closing lid or secure covering on-site for the duration of the construction to ensure that all wastes are contained on the site. The receptacle shall be emptied periodically to reduce the potential for rubbish to leave the site.

Sorting of waste materials shall occur on site in accordance with the approved Waste Management Plan.

**Reason:** *To ensure that all wastes generated from the construction of the development are contained on the site.*

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN INTERIM OR FINAL  
OCCUPATION CERTIFICATE**

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**54. Occupation Certificate**

In accordance with Section 6.9 of the *Environmental Planning and Assessment Act 1979*, an application for an Occupation Certificate, shall be made on completion of the works and the relevant application fee paid. All works specified in the development consent and approved Construction Certificate plans shall be completed and all development consent conditions complied with prior to the issue of the Occupation Certificate.

The Principal Certifying Authority (PCA) is required to be satisfied, amongst other things, that:

- All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- Any preconditions to the issue of the certificate required by a development consent have been met.

**Reason:** *To comply with the provisions of the Environmental Planning and Assessment Act 1979*

**Note:** *A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a new building (within the meaning of Section 6.10 of the Environmental Planning and Assessment Act 1979 unless an Occupation Certificate has been issued in relation to the building or part.*

**Note:** *The applicant is to ensure that works associated with the Section 138 (Roads Act) approval and Section 68 (Local Government Act) approval are completed and inspected by Council.*

**55. Section 138 Roads Act Final**

The applicant is to ensure that the works associated with the Section 138 approval for this development be completed and inspected by Council prior to the issue of any Occupation Certificate.

**Reason:** *To ensure that the development is completed as per this consent and the approved plans.*

**56. Section 68 Local Government Act Final**

The applicant is to ensure that the works associated with the Section 68 approval for this development be completed and inspected by Council prior to the issue of any Occupation Certificate.

**Reason:** *To ensure that the development is completed as per this consent and the approved plans.*

**57. Council Property**

The applicant shall rectify any damage to Council property (including footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter, road pavement and the like) as a result of the development, prior to the issue of any Occupation Certificate at no cost to Council.

**Reason:** *To ensure that Councils assets are protected.*

**58. Smoke Alarms**

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A Compliance Certificate certifying the installation of smoke alarms shall be provided to Council prior to the Occupation Certificate.

**Reason:** *To ensure compliance in accordance with Australian Standard AS 3786 Smoke Alarms and NCC requirements.*

**Advice:** *Where there is more than 1 alarm to be installed, the certificate shall state that the alarms have been interconnected.*

**59. BASIX Commitments**

Pursuant to Clause 97A of the *Environmental Planning & Assessment Regulation 2000*, it is a condition of this consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled prior to the issue of an Occupation Certificate.

In this condition:

(a) Relevant BASIX Certificate means:

(i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, a BASIX Certificate that is applicable to the development when this development consent is modified); or

(ii) if a replacement BASIX Certificate accompanies any subsequent application for a Construction Certificate, the replacement BASIX Certificate; and

(b) BASIX Certificate has the meaning given to that term in the *Environmental Planning & Assessment Regulation 2000*.

**Reason:** *To ensure that all of the commitments of BASIX Certificate have been met.*

**60. House Numbering**

A street house number being 75mm on house and no less than 42mm on mailbox or rural address number (allocated by Council), shall be prominently displayed so that it is visible from the street/road prior to issue of the Occupation Certificate.

**Reason:** *To ensure that the property is easily identifiable.*

**61. Civil Engineering works and services**

All civil engineering works and services are to be constructed in accordance with the Wingecarribee Shire Council Engineering Plans and Specifications, relevant Standards and approved engineering plans prior to the issue of the Occupation Certificate.

**Reason:** *To ensure that the works and services are constructed in accordance with the approved plans.*

**62. Vehicle Access (Urban)**

Access to the site shall be provided by means of a new vehicle crossing as per Standard Drawing 107 and approved by Council prior to the issue of the Occupation Certificate. A copy of the Standard Drawing can be obtained from Council's offices.

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**Reason:** *To ensure that the driveway is constructed to Councils standard specification.*

**63. Multi Dwelling Housing**

The following shall be completed prior to the issue of the Occupation Certificate:

Letter Boxes and Street Numbers - Units

Separate letter boxes and street numbers for each unit being provided adjacent to the street frontage, to meet the specification of Australia Post and Council.

Television Aerials - Units and Motels etc.

Only one common television aerial shall be installed per building, to minimise visual "clutter" and maintain the amenity of the locality.

Fencing - Medium Density

Provision and maintenance thereafter at the developer's expense of permanent and effective screen fencing of 1.8m height hardwood timber lapped and capped fencing to the side eastern and western boundaries of the site, to maintain the privacy of residents of the site and other properties. Fencing to the western boundary of the property shall be 1.8m height hardwood timber lapped and capped fencing with 300mm lattice above, but shall not extend into the most southern 1:100 flood affected portion of the site. Fencing to the eastern boundary of the property shall be 1.8m height hardwood timber lapped and capped fencing with 300mm lattice above, and shall commence at the north western corner of 29A Oxley Drive, but shall not extend into the most southern 1:100 flood affected portion of the site.

The eucalypt tree located at the boundary between the subject site and the adjoining eastern Lot 4 DP 1197464 29 B Oxley Drive is to be retained, therefore side boundary fencing shall be erected sensitively to ensure the retention of this tree.

**Reason** *To ensure compliance with Councils development controls.*

**64. Parking Signs**

A sign worded "**VISITOR PARKING AT REAR**" adjacent to the vehicular entry at Oxley Drive and clearly visible from the street shall be erected prior to the issue of the Occupation Certificate. The sign shall be of maximum dimensions 1.2m x 0.6m.

**Reason:** *To direct customers to the rear parking area.*

**65. Landscaping Plan**

Landscaping as per the approved Landscaping Plan shall be established prior to the issue of the Occupation Certificate.

**Reason:** *To ensure that the landscaping is completed prior to occupation.*

**66. Street Trees**

Prior to the issue of the Occupation Certificate, one street tree shall be planted in the Oxley Drive footpath verge area adjoining the site in accordance with Council's Urban Street Tree Masterplan.

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**Reason:** *To ensure that the landscaping is completed prior to occupation.*

**67. National Plumbing and Drainage Code**

All plumbing and drainage shall comply with the requirements of Australian Standard AS3500 "National Plumbing and Drainage Code" and the relevant New South Wales Amendments.

**Reason:** *To comply with legislation.*

**68. Stormwater Facilities Alterations**

A "Restriction as to User" shall be included on the plan of subdivision and title of the proposed development to prevent any change in shape or alteration in structure of the proposed storm water facilities after the final approval of the structure has been given by Council. Details shall be provided for the approval of Council prior to the issue of the Occupation Certificate.

**Reason:** *To provide appropriate storm water management.*

**69. Storm water Facilities Maintenance**

A "Positive Covenant" shall be included on the plan of subdivision and title of the proposed development and requiring that the proposed storm water facilities be maintained in a safe and functional manner. In addition, the Section 88B Instrument (*Conveyancing Act 1919*) shall make provision for Council to conduct maintenance on the subject storm water facilities at the owner's expense if the storm water facilities are not maintained to the agreed standard. Details shall be provided for the approval of Council prior to issue of the Occupation Certificate.

**Reason:** *To provide appropriate storm water management.*

**70. NSW Rural Fire Service**

**Asset Protection Zones**

*The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:*

At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

**71. Water Management Act 2000**

While no building footprints are approved within 40 metres of the Mittagong Rivulet, no works shall occur within 40 metres of the defined watercourse unless approval is obtained under the Water Management Act 2000, or written advice received from Natural Resources Access Regulator that such approval is not required.

**CONCURRENCE CONDITIONS**

**72. Concurrence - Water NSW**

Concurrence has been granted by Water NSW for the development pursuant to *State Environmental*

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*Planning Policy (Sydney Drinking Water Catchment) 2011.* The conditions provided by Water NSW are provided below and form part of this Notice of Determination.



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### General

1. The layout and works of the development shall be as specified in the Statement of Environmental Effects (dated January 2019) prepared by Lee Environmental Planning and shown on the Site Plan and Landscape Plan (Job No. 610-18-482, Sheet No. DA02A, Rev. A, dated 27-09-19) prepared by Coble and Stephens Architects. No revisions to layout or works or staging of the development that will impact on water quality, shall be permitted without the agreement of Water NSW.

*Reason for Condition 1 - Water NSW has based its assessment under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the development.*

### Stormwater Management

2. All stormwater management measures as specified in Section 7 of the WSUD Treatment Measures Report (Rev. A; dated 12 December 2018) and shown on Civil Design Plans (Sheet No. C01P2, AMDT. P2; dated 25.09.19 & Sheet No. C03P1; AMDT. P1; dated 11.12.18) both prepared by Jones Nicholson Consulting Engineers Pty Ltd shall be implemented. The stormwater management measures shall include:
  - six rainwater tanks
  - gross pollutant traps (Ocean Guard or Water NSW endorsed equivalent), and
  - cartridge filters (Storm Filter or Water NSW endorsed equivalent).
3. Six rainwater tanks shall be installed as specified in Section 7 of the WSUD Treatment Measures Report (Rev. A; dated 12 December 2018) prepared by Jones Nicholson Consulting Engineers Pty Ltd and shown on the Site Plans (Job No. 610-18-482, Sheet Nos. DA 03A, 04A, 06A, Rev. A, dated 27-9-19) prepared by Coble and Stephens Architects. Each rainwater tank shall:
  - be plumbed to toilets and for external uses (i.e. irrigation and washing), and
  - overflow from the tanks be directed to the site stormwater drainage system.
4. No changes to stormwater treatment and management that will have any impact on water quality, shall be permitted without the agreement of Water NSW.
5. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to the issuance of an Occupation Certificate that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.
6. An Operational Environmental Management Plan shall be prepared in consultation with Water NSW by a person with knowledge and experience in the preparation of such plans. The Plan shall be prepared prior to the issuance of an Occupation Certificate and shall be provided to body corporation. The Plan shall:
  - include details about the location and nature of stormwater management structures such as pits, pipes, gross pollutant traps (GPTs), cartridge filters, rainwater tanks and any other stormwater structures and drainage works
  - outline the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures including the frequency of such activities



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- identify the persons responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
  - include checklists for recording inspections and maintenance activities, particularly for Cartridge Filters and GPTs.
7. All stormwater treatment devices, particularly GPTs and cartridge filters, be inspected, monitored, maintained and managed in accordance with the Operational Environmental Management Plan.

*Reason for Conditions 2 to 7 – To ensure that the stormwater quality management measures and structures for the proposed development have a sustainable neutral or beneficial impact on water quality over the longer term.*

**Construction Activities**

8. The Site Analysis and Erosion Control Plan (Job No. 610-18-482, Sheet No. DA01A, Rev. A, dated 27-09-19) prepared by Coble Stephens Architects shall be updated for all works required as part of the development by a person with knowledge and experience in the preparation of such plans. The Plan shall:
- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
  - be prepared prior to issuance of a Construction Certificate and to the satisfaction of Council, and
  - include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.
9. The Erosion and Sediment Control Plan shall be implemented, and effective erosion and sediment controls shall be installed prior to any construction activity. The controls shall be regularly inspected, monitored and maintained until works have been completed and groundcover established.

*Reason for Conditions 8 & 9 – To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.*

**END OF CONDITIONS**



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**CORPORATE STRATEGY AND DEVELOPMENT SERVICES**

**9.1 Development Application 19/1042 - Multi Dwelling Housing containing 7 units - 25 Oxley Drive, Bowral**

Reference: 19/1042  
 Report Author: Senior Town Planner  
 Authoriser: Manager Development Assessment Group Manager  
 Planning Development and Regulatory Services  
 Applicant: Le Ralais Pty Ltd  
 Owner: Tony & Serena Antoun  
 Link to Community  
 Strategic Plan: Identify and protect the unique characteristics of towns and villages to retain a sense of place

**PURPOSE**

The purpose of this report is to consider Development Application 19/1042 which seeks development consent for a Multi Dwelling Housing development containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral. This report is prepared for determination, and recommends **APPROVAL**, subject to attached conditions of consent (**Attachment 1**).

**VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.

**RECOMMENDATION**

**THAT** Development Application 19/1042 which seeks approval for a Multi Dwelling Housing development containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral, be **APPROVED** by way of a deferred commencement consent, subject to attached conditions of consent as described in Attachment 1 to the report.

**REPORT**

**Subject Site and Locality**

The subject site, Lot 11 DP 603108, being 25 Oxley Drive, Bowral, is located on the southern side of Oxley Drive, approximately 90 metres west of the Oxley Drive / Rose Street intersection (**Attachments 2 and 3**). The site is 2608 square metres in area, has a frontage of 20.735 metres to Oxley Drive, and currently contains a single storey Residential Flat Building containing 4 residential units in the northern portion of the site. The site slopes steeply down to the rear, and adjoins Mittagong Creek and Cherry Tree Walk to the south. The site has a fall of approximately 21 metres from north (top) to south (bottom).

The site contains numerous exotic and native trees, including 24 trees which belong to the Mt Gibraltar Endangered Ecological Community group of species.



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The lowest portion of the site is flood affected land, however a Flood Certificate shows that the proposed buildings are higher than 1:100 year flood levels, and not located in the 1:100 year flood affected area.

To the east of the site are a combination of recently constructed single storey and two storey detached dwelling houses on 700 square metre lots at 27, 29, 29A, 29B, 29C and 29D Oxley Drive. To the west of the site is medium density residential development constructed between the 1980's -1990's at 21 and 23 Oxley Drive. The broader locality is characterised by a combination of medium density residential development, and single storey / two storey detached dwelling houses on 700 square metre lots.

**Proposed Development**

Development Application 19/1042 originally sought approval for a Multi Dwelling Housing development containing 8 units within three buildings. Due to concerns raised by Council during the assessment process, including issues such as non-compliant side setbacks, building height, solar access, privacy / overlooking, insufficient landscaped area, private open space area, geotechnical concerns, and tree and vegetation matters, amended plans were submitted in October 2019 reducing the proposed development to 7 units within three buildings. Further amended plans have been submitted relating to overshadowing and privacy matters. It is the amended proposal which is being assessed in this report.

The proposed development includes:

- Three 4 bedroom units, and four 3 bedroom units, contained within three 2 storey buildings which step down the site. The lower portion of the property is proposed open space area containing existing trees;
- Double garage for each of Units 1,2,3, 6 and 7, two basement car spaces for each of Units 4 and 5, two basement visitor car spaces and one visitor car space at ground level, being a total of 14 car spaces and 3 visitor parking spaces;
- External materials of fibre cement cladding and weatherboard with 25 degree pitch colorbond roof;
- 50% of the site area being landscaped open space;
- Maximum 8 metre height (measured from natural ground level to roof pitch. Note that natural ground level is shown by highlighted line in **Attachment 5**);
- Front setback of 8 metres to Oxley Drive;
- Removal of 12 of the 45 trees on site (including 5 trees from the Mt Gibraltar Endangered Ecological Community group of species, being 4 Eucalyptus Radiata and 1 Pittosporum Undulatum). 19 of the 24 trees which belong to the Mt Gibraltar Endangered Ecological Community group of species on site will be retained;
- Gross Floor Area of 896 square metres, being a 0.34:1 Floor Space Ratio;
- Private Open Space Areas for each unit exceeding 50 square metres each, with the exception of 47 square metres private open space area for Unit 3.

The site plan of the proposed development can be found at **Attachment 4**. The elevations of the proposed development, containing a highlighted line showing natural ground level, can be found at **Attachment 5**. Plans showing June 21 midwinter overshadowing can be found at **Attachment 6**.



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**STATUTORY PROVISIONS*****State Environmental Planning Policies***State Environmental Planning Policy No 55 – Remediation of Land

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

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is located within the Wingecarribee River Sub-catchment. Compliance with the provisions of the SEPP and associated guidelines is therefore required to consider water quality. Water NSW advises that the proposed development satisfies the requirements of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, subject to conditions of consent including conditions addressing stormwater management measures, and construction activities as contained within attached conditions of consent (**Attachment 1 - condition 72**).

State Environmental Planning Policy 44 (Koala Habitat Protection)

The site does not contain any of the Koala Feed Tree species listed in Schedule 2 of State Environmental Planning Policy 44 (Koala Habitat Protection), therefore SEPP 44 does not apply to the development. State Environmental Planning Policy (Koala Habitat Protection) 2019 commences on 1 March 2020, however is not applicable as the development application was made prior to the commencement of the new policy (Cl.15 Savings provision relating to development applications).

**Local Environmental Plans**Wingecarribee Local Environmental Plan 2010Clause 2.3 Zone objectives and land use table

The site is zoned R3 Medium Density Residential under the *Wingecarribee Local Environmental Plan 2010* and in this zone, Multi Dwelling Housing is permissible with development consent.

The objectives of the R3 Medium Density Residential zone are:

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

The proposed 7 unit Multi Dwelling Housing development is consistent with these zone objectives.

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The proposed development is considered satisfactory with respect to the relevant objectives specified by Section A2.2. of the Bowral Township Development Control Plan, including economic function objectives, urban function objectives, residential amenity objectives, residential diversity objectives, visual amenity objectives, public views and vistas objectives, and environmental sustainability objectives.

A Flora and Fauna Assessment report has been submitted in accordance with Section A3.2 of the Bowral Township Development Control Plan, and is discussed in the Discussion of Key Issues section of this report.

The proposed development is considered satisfactory with respect to Section A4 Water Management of the Bowral Township Development Control Plan. Mittagong Creek to the south of the site is mapped as a Category 2 stream. No works are proposed within 30 metres of Mittagong Creek, therefore a Vegetation Management Plan for Riparian Corridors detailed within Section A4.1 of the Bowral Township Development Control Plan, is not required.

The proposed development is considered satisfactory with respect to Section A5 Flood Liable Land of the Bowral Township Development Control Plan. While the lowest portion of the site is flood affected land, a Flood Certificate shows that the proposed buildings are higher than 1:100 year flood levels, and not located in the 1:100 year flood affected area.

The proposed development is considered satisfactory with respect to Section A6 Vegetation Management and Landscaping of the Bowral Township Development Control Plan, including private landscaped open space objectives and controls.

The proposed development is considered satisfactory with respect to Section A8 Safer by Design of the Bowral Township Development Control Plan, including space and activity management, territorial reinforcement, surveillance, and access control.

The proposed development is considered satisfactory with respect to Section C1.2 objectives of Residential Zoned Land of the Bowral Township Development Control Plan, including new residential development being sympathetic with existing streetscapes and neighbourhood character, energy efficient, of good amenity, being safe and attractive, and which meets the needs of a range of community and demographic types.

The proposed development is considered satisfactory with respect to Section C3.1.1 objectives of Medium Density Residential Zoned Land of the Bowral Township Development Control Plan, including that the development provides a variety of housing form to cater for differing lifestyles and income levels, does not adversely affect the amenity of existing and likely future residents of a locality (as discussed in the Discussion of Key Issues section of this report), is appropriate to the existing residential streetscape; maximises urban amenity and convenience for residents; is located within reasonable walking distance of public transport; and retail and service facilities.

The proposed 7 unit Multi Dwelling Housing development complies with numerous standards contained within the Bowral Township Development Control Plan, including compliance with maximum 2 storey / 9 metre height limit, compliance with the maximum



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floor space ratio of 0.5:1 (the proposed 7 unit Multi Dwelling Housing development has a proposed floor space ratio of 0.34:1), compliance with minimum street setback requirements, compliance with minimum side setback requirements, compliance with solar access requirements, compliance with the minimum 50% landscaped open space area requirement, and compliance with private open space requirements for each unit (with the exception of Unit 3 which provides a 47 square metre private open space area, being a 3 square metre deficiency).

Two variations are sought to Bowral Township Development Control Plan requirements, being a variation to the minimum 25 metre site frontage requirement and a variation to the private open space area of Unit 3, as discussed below.

The subject site, which currently contains a single storey Residential Flat Building containing 4 residential units in the northern portion of the site, has a frontage of 20.735 metres to Oxley Drive. To the east of the site are a combination of recently constructed single storey and two storey detached dwelling houses on 700 square metre lots. To the west of the site is medium density residential development constructed between the 1980's -1990's at 21 and 23 Oxley Drive. Due to these adjoining medium density developments, and recent detached dwelling developments, combined with the fact that the site already contains a medium density development which is proposed to be demolished, boundary adjustment or consolidation of an adjoining lot to achieve the minimum 25 metre site frontage is considered unreasonable and unnecessary in this instance. A refusal based on this non-compliance is not considered to be a defensible position for Council should an appeal be lodged in the Land and Environment Court.

Bowral Township Development Control Plan requires Private Open Space Areas for each multi dwelling housing unit of 50 square metres. All proposed units have a private open space area exceeding 50 square metres, with the exception of 47 square metres private open space area for Unit 3. It is considered that a refusal based on this minor non-compliance is not considered to be a defensible position for Council should an appeal be lodged in the Land and Environment Court.

#### **Section 4.15 Evaluation**

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

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

- (a) the provisions of:*
  - (i) any environmental planning instrument, and*

The proposed 7 unit Multi Dwelling Housing development is permissible within the R3 Medium Density Residential zone under *Wingecarribee Local Environmental Plan 2010*, and satisfies the R3 Medium Density Residential zone objectives. The proposed development also complies with the provisions of State Environmental Planning Policy No 55 – Remediation of Land, and State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority*



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*that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

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

(iii) *any development control plan, and*

The proposed 7 unit Multi Dwelling Housing development complies with standards contained within the Bowral Township Development Control Plan, including compliance with maximum 2 storey / 9 metre height limit applicable to multi dwelling housing, compliance with the maximum floor space ratio of 0.5:1 (the proposed 7 unit Multi Dwelling Housing development has a proposed floor space ratio of 0.34:1), compliance with minimum street setback requirements, compliance with minimum side setback requirements, compliance with solar access requirements, compliance with the minimum 50% landscaped open space area requirement, and compliance with private open space requirements for each unit (with the exception of Unit 3 which provides a 47 square metre private open space area, being a 3 square metre deficiency. The two variations sought to Bowral Township Development Control Plan requirements, being a variation to the minimum 25 metre site frontage requirement and a variation to the private open space area of Unit 3, are discussed above and within the Discussion of Key Issues section of this report.

Standard	Required	Provided	Compliance
Site Frontage	>25 metres	20.735 metres	No
Floor Space Ratio	Maximum 0.5:1	0.34:1	Yes
Front setbacks	8 metres	8 metres	Yes
Side Setbacks	2 metres where development is up to 3 metres in height above natural ground level (excluding balconies)	2.34 metres to 7.907 metres	Yes
Side Setbacks	3.5 metres where development is more than 3 metres in height above natural ground level (excluding balconies)	3.5 metres to 7 metres	Yes
Height	Maximum 2 storeys / 9 metres when measured from natural ground level to the highest point of the roofline	2 storeys / 8 metres (measured from natural ground level to roof pitch. Note that natural ground level is shown by highlighted line in <b>Attachment 5</b> )	Yes
Site Landscaping	50% of site area	50% of site area	Yes
Private Open Space Area	50 sqm per unit with a minimum length of 5 metres	Private Open Space Areas are	No



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Standard	Required	Provided	Compliance
		provided for each unit exceeding 50 square metres each, with the exception of 47 square metres private open space area for Unit 3	
Carparking	2 spaces per 3 or more bedroom dwelling, and 1 visitor parking space per 3 dwellings Therefore = 14 resident spaces required, and 3 visitor spaces required	14 resident spaces and 3 visitor spaces provided	Yes

The proposed 7 unit multi dwelling housing development is considered to satisfy Section C15.3 Northern Entrance Medium Density Development of Bowral Township Development Control Plan, including:

- The proposed scale and configuration of the proposed 7 unit multi dwelling housing development is considered an acceptable architectural outcome. The proposed building will not be visually prominent when viewed from Oxley Drive, and its visual prominence when viewed from Cherry Tree Walk will be softened by the retention and enhancement of vegetation in the southern portion of the site. Proposed landscaping within side setback areas will assist in softening the appearance of the development.
- The provision of more than 50% site landscaping is considered to respect the overall garden character of the neighbourhood.
- Proposed architectural features, including roof forms, window positioning and proportioning, verandah treatment, fencing, and building proportions are considered compatible with existing architecture occupying adjoining or nearby land.
- Proposed external materials of fibre cement cladding and weatherboard, with 25 degree pitch colorbond roof is considered to result in a harmonious relationship with existing development on adjoining and nearby land.

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

Not applicable to Development Application 19/1042.

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

Not applicable to Development Application 19/1042.





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

Not applicable.

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

The impacts of the proposed development, including built form, character, streetscape, setbacks, and solar access are discussed in the Discussions of Key issues section of this report.

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

The site is considered suitable for the proposed 7 unit Multi Dwelling Housing development as discussed in the Discussions of Key issues section of this report.

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

Refer to the Consultation Section of this report.

(e) *the public interest.*

The proposed 7 unit Multi Dwelling Housing development is consistent with the objectives of Wingecarribee Local Environmental Plan 2010, and is considered to be in the public interest.

**CONSULTATION**

**Internal Referrals**

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

<b>Referrals</b>	<b>Advice/Response/Conditions</b>
Development Engineer	Council's Development Engineer has provided conditions of consent, including conditions addressing stormwater, parking and access.
Modelling Assistant Engineer	Council's Modelling Assistant Engineer raises no objection to the submitted Water and Sewer modelling showing sufficient water and sewer capacities available to service the development.
Flood Engineer	Council's Flood Engineer raises no objection to the proposed development, as the development is located above the flood affected portion of the site.
Accredited Certifier	Council's Accredited Certifier raises no objection to the proposed 7 unit Multi Dwelling Housing development and has provided conditions of consent.
Flora and Fauna	The proposed development will remove 12 of the 45 trees on site (including 5 trees from the Mt Gibraltar Endangered Ecological Community group of species, being 4 Eucalyptus radiata and 1 Pittosporum undulatum). 19 of the 24 trees which belong to the Mt Gibraltar Endangered Ecological Community group of species on site will be retained. The proposed tree removal is supported by Council's Flora and



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Referrals	Advice/Response/Conditions
	Fauna Consultant, subject to conditions addressing tree protection, removal of noxious and environmental weeds from the site (including removal of ivy and blackberry), compensatory plantings of Mt Gibraltar Forest species to occur within a regeneration area in the south of the site, and the erection of two large and one small nesting boxes, and one bat box (condition 23).

**External Referrals**

Referrals/Notice	Advice/Response/Conditions
Water NSW	Water NSW supports the proposed 7 unit Multi Dwelling Housing development, subject to conditions of consent addressing stormwater management and construction activities ( <b>condition 72</b> ).
Rural Fire Service	Rural Fire Service raise no objection to the proposed development, subject to the entire property being managed as an inner protection area ( <b>condition 70</b> ).

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

The originally proposed 8 unit Multi Dwelling Housing development was neighbour notified to 52 surrounding properties, advertised in the local paper, and a site sign was erected on the premises. 10 submissions objecting to the proposal were received.

As a courtesy, objectors were advised in October 2019 that amended plans had been submitted by the applicant proposing a 7 unit multi dwelling housing development, seeking to address concerns raised by Council in the assessment of the application. While this was not a re-notification or re-advertisement requesting submissions, four subsequent submissions were received objecting to the amended plans.

The issues raised from all 14 submissions regarding the proposed multi dwelling housing development have been summarised and are considered below:

Issues	Response
Overshadowing - Unacceptable overshadowing of neighbouring properties, particularly in winter. Units 6 and 7 will block western afternoon sunlight to adjoining eastern property. Buildings will destroy winter sun in our back garden, and most of the other sun at other times of the year. Our major source of light comes from the north west/west for the part of our house that is most utilised during the day. The new development will impede this light in a major way in our view. This conclusion is self-evident if the site is reviewed and is made particularly problematic due to the heights. Natural light on either side of the development will be greatly compromised. The overshadowing impact is in effect a major reduction of solar access to the landscaped and usable areas of the garden at no.29B during the winter afternoons. Overshadowing impacts will affect 29A in a similar manner and also and 29C Oxley Drive. Major reduction in the bulk of the	Overshadowing matters are discussed in the Discussion of Key Issues section of this report. An additional submission from an objector and objector's consultant, containing shadow diagrams, was received 7 February 2020. The shadow diagrams submitted with the objection ( <b>Attachment 7</b> ) are based upon



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Issues	Response
<p>development needed to maintain our solar access into the future. Proposed development has major impacts on the amenity of not only 29B's exterior usable outdoor space and garden but also on the indoor habitable bedrooms and living room, and major reduction of solar access to the landscaped and usable areas of the garden at no 29B during the winter afternoon in comparison to a single dwelling or a unit reduced development. Western side of 25 Oxley Drive will have significant overshadowing. The excessive height and bulk of the roof form of unit 5 causes extensive loss of midwinter solar access to both 29B's outdoor open space after 1pm and the living room windows after 2pm. The height and roof form of unit 4 blocks sun completely to the northern outdoor space from 2.30pm onward. Unit 5 becomes effectively a 3 storey building in relation to 29B and unit 4 is a 4.5 storey building in relation to 29B. Proposal does not satisfy the amenity test for neighbouring properties. Deletion of unit 5 roof would increase solar access to 29B indoor space and outdoor usable space by 30mins.</p>	<p>superseded plans, and are not based upon the amended plans submitted by the applicant dated 3 February 2020 (<b>Attachment 6</b>) as placed on Council's DA Tracker 4 February 2020, which reduce overshadowing impacts upon adjoining eastern properties by the replacement of the previous eastern elevation gable roof of Unit 5 with a hipped roof. <b>Attachment 7</b> shows objector's consultant's shadow diagrams based on superseded plans. <b>Attachment 6</b> shows shadow diagrams submitted with amended plans 3 February 2020, reducing overshadowing impacts.</p>
<p>Privacy impacts - Balconies and living areas will invade the privacy of adjoining properties. Huge privacy impacts upon the privacy of units 3 – 6, 23 Oxley Drive, and new dwellings at 29, 29A, 29B, 29C Oxley Drive. The owners of 29B will be living with no privacy all year round until tall and dense vegetation can be realised. Large opening doors and balconies will look directly into adjoining properties' bedrooms and gardens. Design will overlook adjoining residences causing a loss of privacy in private personal living areas, courtyard, kitchen dining and rear bedroom of townhouses 7 &amp; 8, 21 Oxley Drive. Major reduction in the bulk of the development to maintain our solar access and privacy into the future. Privacy impacts will affect 29A in a similar manner and also and 29C Oxley Drive. Major reduction in the bulk of the development to maintain privacy into the future. Units 5 and particularly Unit 7 will tower over us, with very little setback between the buildings and our boundary fence. Owners of 29B will be living in a dwelling and outdoor area with no privacy from at least 2 apartments in the new development, all year round. The proposed development at No 25 Oxley Drive is a bulky form in relation to the adjoining single storey houses. The two storey form</p>	<p>Privacy / overlooking matters are discussed in the Discussion of Key Issues section of this report.</p>



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Issues	Response
<p>while suitable for single dwellings adjoining each other in a typical street here creates a situation where windows of upper levels, which would normally face front and rear, now face side boundaries and so impinge markedly on privacy of neighbouring houses. Unit 7's lower level is located at approximately the same contour as 29B south edge. However the upper floor windows face directly onto both 29B's outdoor usable space, garden and private indoor spaces, namely a bedroom and living room. These spaces are at a lower level which creates an invasion of privacy such that the owners must always keep their curtains or blinds shut and so lose the amenity of their garden. Habitable rooms look over the outdoor space and the interior spaces of 29B such that the owners will feel intimidated and will have to close their curtains or blinds to find privacy.</p>	
<p>Density / Character / Appearance - Proposed development is out of keeping with style and standard of development expected in Bowral, is a severe overdevelopment of a highly constrained site and inconsistent with the surrounding area and also with planning requirements. Proposal does not meet minimum 25 metre site frontage for medium density developments. Proposal is not of a modest scale, and will be visually obtrusive when viewed from Cherry Tree Walk. Development will dominate properties to the east and west. The most important issue is whether the proposed development fits into the Northern Medium Density Precinct area. There is no objective evidence produced as to how its scale is appropriate in the local context. What are the local buildings that are similar in scale, having 8 units on a small site with minimal open space immediately surrounding them? This is a regional town, not inner Sydney, where the scale and density of the proposed development would be more usual.</p>	<p>The site is zoned R3 Medium Density Residential under the <i>Wingecarribee Local Environmental Plan 2010</i> and in this zone, Multi Dwelling Housing is permissible with development consent. Built Form / Density / Character of the proposed development, and the requested variation to minimum 25 metre frontage requirement are discussed in the Discussion of Key Issues section of this report.</p>
<p>Setbacks - Insufficient side setbacks of units to boundaries do not comply with Bowral DCP requirements, and do not provide sufficient area for landscaping. Very little opportunity available for landscaping to reduce the bulk of the new dwellings.</p> <p>Rear setback provided has no benefit to 29A and 29B Oxley Drive.</p>	<p>Proposed side setbacks as shown in amended plans comply with Bowral Town Plan DCP requirements.</p>
<p>Unacceptable degree of tree removal and insufficient landscaping. Trees to be removed are a rare species that is native to Mt Gibraltar and are not found elsewhere in the district. They are quite beautiful and form part of the view for all surrounding properties. Adjoining properties' views of trees on the site will be removed. The overwhelming impact is of a development without any landscaping when viewed from the east</p>	<p>The proposed development will remove 12 of the 45 trees on site (including 5 trees from the Mt Gibraltar Endangered Ecological Community</p>



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Issues	Response
<p>or west, adjacent to the proposed buildings. Developer is requesting approval to remove trees without an arborist report which, given the sensitivities surrounding environmental issues, is not in accordance with what is expected when describing environmental issues. The loss of rare trees and their replacement with the type of overdevelopment that is typical in inner Sydney city, is clearly a loss. The fact that the bottom third of the development has been left as open space does not benefit adjoining properties at all. It is questionable whether it benefits anyone at all other than the two units numbers 7 and 8 at the rear of the proposed development. The site will lose approximately half the current mature trees on site, and loss of habitat for native birds, snakes, lizards, echidna, wombat and koala habitat. Council Rangers have marked these trees as "protected". The required 50% open space requirement is not achieved by this development.</p>	<p>group of species, being 4 Eucalyptus radiata and 1 Pittosporum undulatum). 19 of the 24 trees which belong to the Mt Gibraltar Endangered Ecological Community group of species on site will be retained.</p> <p>The proposed tree removal is supported by Council's Flora and Fauna Consultant, subject to conditions addressing tree protection, removal of noxious and environmental weeds from the site (including removal of ivy and blackberry), compensatory plantings of Mt Gibraltar Forest species to occur within a regeneration area in the south of the site, and the erection of two large and one small nesting boxes, and one bat box (<b>condition 23</b>).</p> <p>A condition of consent (<b>condition 23</b>) will require replacement planting to compensate for the removal of the 5 trees from the Mt Gibraltar Endangered Ecological Community group of species at a rate of 3:1. The amended plans submitted in October 2019 show compliance with the 50% site landscaping requirement.</p>
<p>Eucalypt marked on the plans as tree number 5 is mostly on adjoining property, and should not be removed. The developer</p>	<p>Amended plans submitted show retention of tree located</p>



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Issues	Response
<p>had been given permission by the Council to remove a tree owned by us without our permission.</p>	<p>at the boundary between the subject site and the adjoining eastern Lot 4 DP 1197464 29 B Oxley Drive. The retention of this tree can be reinforced by a condition of consent (<b>condition 48</b>).</p>
<p>Each unit “has its own generous private outdoor open space that is directly off the main living area.” The drawings do not support the accuracy of this statement.</p>	<p>Private Open Space Areas for each unit exceeds the minimum requirement of 50 square metres each, with the exception of 47 square metres private open space area for Unit 3.</p>
<p>Additional dwellings at the site will contribute to the further development of a heat sink.</p>	<p><b>“Heat island effect”</b> is caused when an urban area is significantly hotter due to hard surfaces, like roads, footpaths, roofs, as well as buildings. While the proposed development will increase hard surface area on the site, the proposed development contains more than 50% site landscaped area, which complies with Bowral Township DCP requirements.</p>
<p>The market does not need additional medium density residential development.</p>	<p>The commercial success of a development is not a matter for consideration in the assessment of a Development Application under s.4.15 of the Environmental Planning and Assessment Act 1979.</p>



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**DISCUSSION OF KEY ISSUES**

**Height / Visual Impact on adjoining properties**

While the site has a fall of approximately 21 metres from north to south, the proposed development steps down the slope, and includes basement parking areas below natural ground level, thereby achieving a maximum 8 metre height measured from natural ground level to roof pitch, which complies with the maximum 9 metre / 2 storey height limit under Bowral Township Development Control Plan. Elevation plans (**Attachment 5**) show natural ground levels as a highlighted line, which assists in understanding the proposed development's compliance with the maximum 9 metre / 2 storey height limit under Bowral Township Development Control Plan.

The height of the proposed development will have a visual impact upon adjoining properties, however as the proposed development complies with the height controls of the Bowral Township Development Control Plan, the visual impact of the height of the development is not beyond that which would be expected within a Medium Density Residential zone.

**Overshadowing**

The subject site has a north-south orientation, therefore shadow impacts are not concentrated upon one property, but shared between adjoining properties throughout the day. As the site slopes down to the south, shadows are therefore lengthened in comparison to a flat level site.

Amended plans submitted by the applicant dated 3 February 2020 (**Attachment 6**), which include reduced overshadowing impacts upon adjoining eastern properties by the replacement of the previous eastern elevation gable roof of Unit 5 with a hipped roof, are the shadow diagrams assessed below.

On June 21 midwinter, the adjoining eastern properties at 29, 29A, and 29C Oxley Drive currently enjoy more than 1 ½ to 2 hours of morning solar access to private open space areas, and 3 hours afternoon solar access to private open space areas (as the current existing Residential Flat Building at 25 Oxley Drive is located in the northern portion of the site which minimises afternoon overshadowing impacts upon the adjoining eastern properties). The proposed development at 25 Oxley Drive will not reduce morning solar access to the private open space areas of these eastern dwellings. The proposed development will reduce June 21 midwinter afternoon solar access to private open space areas of 29, 29A, and 29C Oxley Drive to 1 ½ to two hours, however combined with the current morning solar access, overshadowing impacts will comply and satisfy the Bowral DCP requirement that "Any new development must not reduce the solar access currently enjoyed in ..... 50% of the primary private open space of adjacent dwellings so (*sic*) be less than 3 hours of direct sunlight on June 21st." for 29, 29A, and 29C Oxley Drive. Specifically, solar access to 50% of the primary private open space on June 21<sup>st</sup> will be available for 29 Oxley Drive for 4 hours between 10am – 2pm, 29A Oxley Drive for 3 hours between 10.30am – 1.30pm, and 29C Oxley Drive for 4 hours between 10am – 2pm.

On June 21 midwinter, the adjoining eastern properties at 29, 29A, and 29C Oxley Drive currently enjoy more than 1 ½ to 2 hours of morning solar access to living areas, and 1 - 2 hours afternoon solar access to living areas (as the current existing Residential Flat Building at 25 Oxley Drive is located in the northern portion of the site which minimises afternoon overshadowing impacts upon the adjoining eastern properties). The proposed development at 25 Oxley Drive will not reduce morning solar access to the living areas of these eastern dwellings. The proposed development will reduce June 21 midwinter afternoon solar access to living areas of 29, 29A, and 29C Oxley Drive to 1 to 2 hours, however combined with the current morning solar access, overshadowing impacts will comply and satisfy the Bowral DCP requirement that "Any new development must not reduce the solar access currently



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enjoyed in living areas ..... of adjacent dwellings so (*sic*) be less than 3 hours of direct sunlight on June 21st.” for 29, 29A, and 29C Oxley Drive. Specifically, solar access to living areas on June 21<sup>st</sup> will be available for 29 Oxley Drive for 3 hours between 10am – 1pm, 29A Oxley Drive for 3 ½ hours between 10.30am – 2pm, and 29C Oxley Drive for 3 hours between 9 -10am and then 11am -1pm.

On June 21 midwinter, the adjoining eastern property at 29B Oxley Drive currently receives half an hour solar access in the morning to northern facing windows of the living room area, which is located in the north eastern portion of the dwelling, and receives more than 3 hours solar access from 12 midday onwards to the western facing windows of the family area which is located in the north western corner of the dwelling. The proposed development at 25 Oxley Drive will not reduce the morning solar access to the northern facing living room windows of 29B Oxley Drive, but will reduce afternoon solar access to the western facing family room window from its current 3+ hours down to 3 hours, being 12 midday to 3pm June 21 midwinter, due to the reduced roof line of proposed Unit 5/25 from a gable roof to a hipped roof, as shown in plans dated 3 February 2020. Combined with current morning solar access which will not be impeded by the proposed development, the living and family areas of 29B Oxley Drive will have 3 ½ hours of solar access, which is half an hour greater than the Bowral DCP requirement that “Any new development must not reduce the solar access currently enjoyed in living areas ..... of adjacent dwellings so (*sic*) be less than 3 hours of direct sunlight on June 21st.”.

Continuing this example, on June 21 midwinter, more than 50% of the private open space of 29B Oxley Drive currently receives more than 4 hours solar access. The proposed development at 25 Oxley Drive will not reduce morning solar access to the private open space of 29B Oxley Drive, but will reduce afternoon solar access to private open space, particularly from 2pm onwards. However should the proposed development at 25 Oxley Drive proceed, solar access to the private open space area of 29B Oxley Drive will not be reduced below 50% of its private open space area between 10:30am – 1:30pm, therefore satisfying Bowral DCP requirement that “Any new development must not reduce the solar access currently enjoyed in ..... 50% of the primary private open space of adjacent dwellings so (*sic*) be less than 3 hours of direct sunlight on June 21st.”

On June 21 midwinter, the adjoining western properties at 3/23, 4/23, 5/23, 6/23 Oxley Drive enjoy approximately 3 hours morning solar access to private open space areas. 3/23 Oxley Drive has a northern facing living area which will not be affected by the proposed development, and 4/23, 5/23, 6/23 Oxley Drive enjoy approximately 3 hours afternoon solar access to upper level western / north western orientated living areas (it should be noted that Council approved plans for the adjoining western properties at 4/23, 5/23, 6/23 Oxley Drive do not include upper or lower level eastern facing living room areas, but rather upper level eastern facing bedroom areas and eastern facing lower level subfloor areas, some of which have been subsequently converted into rumpus room areas / secondary living areas with no record of Council consent). On June 21 midwinter, the proposed development at 25 Oxley Drive will remove morning solar access until 10 am to the private open space of the eastern courtyards of 3/23, 4/23, 5/23, 6/23 Oxley Drive, but solar access to these private open space eastern courtyards will be available from 10am - 1pm and will comply and satisfy the Bowral DCP requirement that any new development must not reduce the solar access currently enjoyed in 50% of the primary private open space of adjacent dwellings to be less than 3 hours of direct sunlight on June 21st. The proposed development will not reduce June 21 midwinter solar access to the northern facing living area of 3/23 Oxley Drive. The proposed development will not reduce June 21 midwinter afternoon solar access to approved living areas of 4/23, 5/23, 6/23 Oxley Drive (which are located in the upper level western / north western areas of these units), therefore will satisfy the Bowral DCP





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requirement that any new development must not reduce the solar access currently enjoyed in living areas of adjacent dwellings to be less than 3 hours of direct sunlight on June 21st.

On June 21 midwinter, the proposed development at 25 Oxley Drive will remove morning solar access until 10 am to the private open space courtyards and northern facing living areas of 7/21 and 8/21 Oxley Drive, but solar access to these private open space courtyards and living areas for the remainder of the day will comply and satisfy the Bowral DCP requirement that any new development must not reduce the solar access currently enjoyed in 50% of the primary private open space of adjacent dwellings to be less than 3 hours of direct sunlight on June 21<sup>st</sup>, and satisfy the Bowral DCP requirement that any new development must not reduce the solar access currently enjoyed in living areas of adjacent dwellings to be less than 3 hours of direct sunlight on June 21st.

An additional submission from an objector and objector's consultant, containing shadow diagrams, was received 7 February 2020. The shadow diagrams submitted with the objection (**Attachment 7**) are based upon superseded plans, and are not based upon the amended plans submitted by the applicant dated 3 February 2020 (**Attachment 6**) as placed on Council's DA Tracker 4 February 2020, which reduce overshadowing impacts upon adjoining eastern properties by the replacement of the previous eastern elevation gable roof of Unit 5 with a hipped roof. **Attachment 7** shows objector's consultant's shadow diagrams based on superseded plans, and are included for the information of Councillors. **Attachment 6** shows shadow diagrams submitted by applicant with amended plans dated 3 February 2020, reducing overshadowing impacts.

**Privacy / Overlooking**

Due to concerns raised by Council during the assessment process, including issues such as privacy / overlooking, amended plans were submitted in October 2019 reducing the proposed development to a Multi Dwelling Housing development containing 7 units within three buildings. Further amended plans have been submitted relating to privacy matters. It is the amended proposal which is being assessed in this report.

## Proposed Units 1 and 2

Proposed Units 1 and 2 / 25 Oxley Drive contain ground level western facing living area (living / dining / kitchen area) windows facing the eastern facing living areas and private open space areas of the adjoining western Unit 3/23 Oxley Drive. Proposed Unit 1/ 25 western facing ground level living area window will face the blank eastern wall of Unit 3/23 Oxley Drive, and combined with the existing fence line, will create no privacy impacts. The proposed upper level western facing rumpus room window of Unit 1 should have fixed obscure glazing in any part of the window less than 1.7 metres above the floor to ensure privacy of the adjoining western Unit 3/23 Oxley Drive and its open space area. This can be addressed by a condition of consent (**condition 25**).

Proposed Unit 2/25 Oxley Drive ground level western facing living, dining and kitchen windows are setback 2.34 metres from the western boundary, and the adjoining western Unit 3/23 Oxley Drive is setback 3.5 metres from its eastern boundary. Therefore the 5.85 metre separation between windows, combined with landscaping and fencing, ensures privacy for the existing 3/23 Oxley Drive. Unit 2 upper level western facing rumpus and deck is screened by louvres, providing sufficient privacy for Unit 3/23 Oxley Drive.

Western facing bedroom windows and eastern facing bedroom windows will overlook the adjoining properties, however as bedrooms are not living areas, obscure glazing to bedroom areas is not required. Eastern facing first floor rumpus and "window seat" windows should have fixed obscure glazing in any part of the windows less than 1.7 metres above the floor to ensure privacy of the adjoining eastern properties. This can be addressed by a condition of consent (**condition 25**).



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## Proposed Unit 3

Proposed Unit 3/25 Oxley Drive adjoins the western existing Unit 4/23 Oxley Drive. Proposed Unit 3/25 has western facing ground level living area (living / dining / kitchen area) windows setback 2.4 metres from the western boundary, with a ground floor level and private open space level of RL 693.485, which is 0.195 metres (19.5 cm) higher than the existing Unit 4/23 terrace level of 693.28, therefore due to similar levels and combined with fencing there will be no privacy impacts. Amended plans show the upper level western facing rumpus room windows will have fixed obscure glazing in any part of the window less than 1.7 metres above the floor to ensure privacy of the adjoining western Unit 4/23 Oxley Drive and its open space area. This will ensure the privacy for the adjoining western Unit 4/23 Oxley Drive private open space area, and eastern facing upper level bedroom windows of Unit 4/23 Oxley Drive.

Eastern facing bedroom window will overlook the adjoining eastern properties, however as bedrooms are not living areas, obscure glazing to bedroom areas is not required.

## Proposed Unit 4

Proposed Unit 4/25 Oxley Drive adjoins the western existing Units 4 and 5 /23 Oxley Drive and directly adjoins the private open space area of 4 /23 Oxley Drive. Proposed Unit 4/25 has western facing living area (living / dining) windows, and private open space area at RL 693.485. The directly adjoining private open space terrace level of 4/23 Oxley Drive is RL 693.28, which is 0.205 metres (20.5 cm) and 0.335 metres (33.5 cm) lower than the proposed yard and terrace of proposed Unit 4/25, therefore due to similar levels and combined with fencing there will be no privacy impacts.

Amended plans show the upper level western facing rumpus room windows will have fixed obscure glazing in any part of the window less than 1.7 metres above the floor to ensure privacy of the adjoining western Units 4 and 5/23 Oxley Drive and their open space areas. This will ensure the privacy for the adjoining western Units 4 and 5/23 Oxley Drive private open space area, and eastern facing upper level bedroom windows of Units 4 and 5/23 Oxley Drive.

Western facing bedroom windows and eastern facing bedroom windows will overlook adjoining properties, however as bedrooms are not living areas, obscure glazing to bedroom areas is not required.

Due to the elevation of the eastern facing ground floor kitchen window of Unit 4, this window should also have fixed obscure glazing in any part of the window less than 1.7 metres above the floor. This can be addressed by a condition of consent (**condition 25**).

## Proposed Unit 5

Proposed Unit 5/25 Oxley Drive directly adjoins the private open space area of 5/23 Oxley Drive, and is in close proximity to the private open space area of Unit 6/23 Oxley Drive. Proposed Unit 5/25 has western facing living areas at RL 693.485, and western facing dining /study area and deck at RL 692.07. The western facing living area window is proposed to have obscure glazing in its lower panes, to prevent overlooking to the private open space areas and windows of Units 5 and 6/23 Oxley Drive. The proposed Unit 5/25 deck area at RL 692.07 is 0.7 metres (70 cm) higher than the adjoining private open space of Unit 5/23 Oxley Drive. With the provision of new 1.8 metre high lapped & capped timber boundary fencing, topped with 300mm lattice between 25 Oxley Drive and adjoining eastern and western properties, at the developer's expense, privacy of 5 and 6/23 Oxley Drive will be achieved. **Attachment 5** shows the view of proposed Unit 5/25 Oxley Drive when viewed from 6/23 Oxley Drive.



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Eastern facing bedroom window will overlook the adjoining eastern properties, however as bedrooms are not living areas, obscure glazing to bedroom areas is not required. Due to the elevations of the eastern facing ground floor kitchen window of Unit 5, and the eastern facing lower ground floor rumpus window of Unit 5, both windows should also have fixed obscure glazing in any part of the window less than 1.7 metres above the floor. This can be addressed by a condition of consent (**condition 25**).

Fixed screening to the east of the elevated entry path to Units 4 and 5 to ensure the privacy of eastern / south eastern properties is required by a condition of consent (**condition 25**).

## Proposed Unit 6

Kitchen, dining and living areas of proposed Unit 6/25 Oxley Drive are located on the lower ground floor, with western windows facing a steep vegetated portion of the adjoining western property at 23 Oxley Drive. This steep vegetated portion of the adjoining western property at 23 Oxley Drive is not useable private open space area due to its gradient. Therefore the western facing kitchen / dining / living area windows of proposed Unit 6/25 Oxley Drive, and the ground floor entry walkway to proposed Unit 6/25 which is not screened to the west, do not adversely impact upon the privacy of the adjoining western property at 23 Oxley Drive.

The dining / living / verandah of proposed Units 6 & 7/25 Oxley Drive is approximately 6 metres higher than the courtyard of 8/21 Oxley Drive, which is located downslope on the adjoining south western property. There is an approximate 13 metre separation between the dining / living / verandah of proposed Units 6 & 7/25 Oxley Drive and the courtyard of 8/21 Oxley Drive. The existing vegetation, and proposed additional plantings as required by condition 23, combined with the 13 metre separation distance and 1.8 metre high lapped and capped timber fencing with 300mm lattice, is considered to provide sufficient privacy between proposed Units 6 and 7/25 Oxley Drive, and the neighbouring 8/21 Oxley Drive.

Western facing bedroom window will overlook the adjoining western property, however as bedrooms are not living areas, obscure glazing to bedroom areas is not required.

## Proposed Unit 7

Kitchen, dining and living areas of proposed Unit 7/25 Oxley Drive are located on the lower ground floor, with eastern windows facing the adjoining eastern property at 29B Oxley Drive. The living / dining window and kitchen window will have obscure glazing to the bottom panes, so there is no privacy impact from these living areas to the adjoining eastern property. The ground level entry walkway contains a 1.7 metre high screen to its east, to prevent overlooking into 29B Oxley Drive.

Eastern facing bedroom windows will overlook 29B Oxley Drive, however as bedrooms are not living areas, obscure glazing to bedroom areas is not required. A condition of consent (**condition 25**) will require the upper level Unit 7 eastern facing study area, shall have fixed obscure glazing in any part of the window less than 1.7 metres above the floor. The submitted landscape plans show proposed plantings of Viburnum hedging of between 2 metres – 7 metres height between proposed Unit 7 and the eastern boundary, which with 1.8 metre high lapped and capped timber fencing with 300mm lattice, will assist in provision of privacy for the adjoining eastern 29B Oxley Drive.

The existing vegetation, and proposed additional plantings as required by **condition 23**, combined with the separation distance, is considered to provide sufficient privacy between proposed Unit 7 and the neighbouring south eastern dwellings at 29C and 29D Oxley Drive.



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#### Variation to minimum 25 metre Site Frontage requirement

The site currently contains a single storey Residential Flat Building containing 4 residential units on a site with a 20.735 metre frontage to Oxley Drive. While the site does not achieve the minimum 25 metre site frontage to a public street as required by Section C3.2.2 of Bowral Town Plan DCP, it is accepted that the adjoining western properties contain existing medium density residential development, and the adjoining eastern properties comprise 6 separate residential lots containing dwelling houses, making consolidation to achieve the 25 metre minimum frontage requirement difficult to achieve.

Due to these adjoining medium density developments, and recent detached dwelling developments, combined with the fact that the site already contains a medium density development which is proposed to be demolished, consolidation of an adjoining lot to achieve the minimum 25 metre site frontage is considered unreasonable and unnecessary in this instance. A refusal based on this non-compliance is not considered to be a defensible position for Council should an appeal be lodged in the Land and Environment Court.

The amended design of the proposed multi dwelling housing proposal sufficiently minimises amenity impacts upon adjoining lots, particularly to compensate for the narrow 20 metre width of the property. The improved design minimizing impacts assists Council in supporting the requested variation to the 25 metre site frontage requirement.

#### 47 square metre private open space area for Unit 3

Bowral Township Development Control Plan requires Private Open Space Areas for each multi dwelling housing unit of 50 square metres. All proposed units have a private open space area exceeding 50 square metres, with the exception of 47 square metres private open space area for Unit 3. It is considered that a refusal based on this minor non-compliance is not considered to be a defensible position for Council should an appeal be lodged in the Land and Environment Court.

This 3 square metre deficiency is considered minor, and a variation to the standard is considered acceptable.

#### Built Form / Density / Character

The proposed 7 unit multi dwelling housing development contained within three 2 storey buildings which step down the site, with external materials of fibre cement cladding and weatherboard, 25 degree pitch colorbond roof, 50% of the site area being landscaped open space, with a maximum 8 metre height (measured from natural ground level to roof pitch) and a gross floor area of 896 square metres, being a 0.34:1 Floor Space Ratio, is not considered to be an overdevelopment of the site.

The R3 Medium Density Residential zone within Bowral is undergoing a gradual transition from dwelling houses to multi dwelling housing and residential flat buildings, and this proposed development is representative of that transitional change, and consistent with the intended character of a medium density residential area.

The proposed 7 unit multi dwelling housing development is considered to satisfy Section C15.3 Northern Entrance Medium Density Development of Bowral Township Development Control Plan, including:

- The proposed scale and configuration of the proposed 7 unit multi dwelling housing development is considered an acceptable architectural outcome. The proposed building will not be visually prominent when viewed from Oxley Drive, and its visual prominence when viewed from Cherry Tree Walk will be softened by the retention and enhancement of vegetation in the southern portion of the site. Proposed



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landscaping within side setback areas will assist in softening the appearance of the development.

- The provision of more than 50% site landscaping is considered to respect the overall garden character of the neighbourhood.
- Proposed architectural features, including roof forms, window positioning and proportioning, verandah treatment, fencing, and building proportions are considered compatible with existing architecture occupying adjoining or nearby land.
- Proposed external materials of fibre cement cladding and weatherboard, with 25 degree pitch colorbond roof is considered to result in a harmonious relationship with existing development on adjoining and nearby land.

**Side Setbacks / Side boundary landscaping**

Section C3.7.2 of Bowral Town Plan DCP requires minimum side setbacks for medium density development including multi dwelling housing of

- (i) 2 metres where development is up to 3 metres in height above natural ground level, or
- (ii) 3.5 metres where development is more than 3 metres in height above natural ground level.

The purpose of these minimum side setback requirements is to assist in preserving the visual and acoustic privacy of adjoining residential development, while placing medium density development with sufficient separation to respect the spatial character of the locality.

The proposed side setbacks on the originally submitted plans did not comply with the above numerical requirements, however amended plans now fully comply with Bowral Town Plan DCP side setback requirements.

**Deferred Commencement**

A stormwater easement is required burdening the adjoining southern land and benefitting the subject property. Should approval be granted for the proposed development, proof of registration of a stormwater easement burdening Lot 12 DP 603108 and benefitting Lot 11 DP 603108, shall be submitted to the satisfaction of Council prior to general conditions of consent being enacted. This can be addressed by way of deferred commencement condition (**deferred commencement condition 1**).

**Flora and Fauna**

The proposed development will remove 12 of the 45 trees on site (including 5 trees from the Mt Gibraltar Endangered Ecological Community group of species, being 4 Eucalyptus radiata and 1 Pittosporum undulatum). 19 of the 24 trees which belong to the Mt Gibraltar Endangered Ecological Community group of species on site will be retained.

The proposed tree removal is supported by Council's Flora and Fauna Consultant, subject to conditions addressing tree protection, removal of noxious and environmental weeds from the site (including removal of ivy and blackberry), compensatory plantings of Mt Gibraltar Forest species to occur within a regeneration area in the south of the site, and the erection of two large and one small nesting boxes, and one bat box (**condition 23**).



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**SUSTAINABILITY ASSESSMENT**

• **Environment**

Any perceived environmental issues have been discussed within the body of this report.

• **Social**

Any perceived social issues have been discussed within the body of this report.

• **Broader Economic Implications**

There are no broader economic implications associated with this report.

• **Culture**

The proposed Residential Flat Building development has no identifiable cultural impacts.

• **Governance**

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

**COUNCIL BUDGET IMPLICATIONS**

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

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



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**RELATED COUNCIL POLICY**

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

**OPTIONS**

The options available to Council are:

**Option 1**

**THAT** Council determine Development Application 19/1042 by way of deferred commencement approval subject to conditions of development consent contained in **Attachment 1**

**Option 2**

**THAT** Council determine Development Application 19/1042 by way of refusal, and nominate reasons for refusal.

**Option 1** is recommended.

**CONCLUSION**

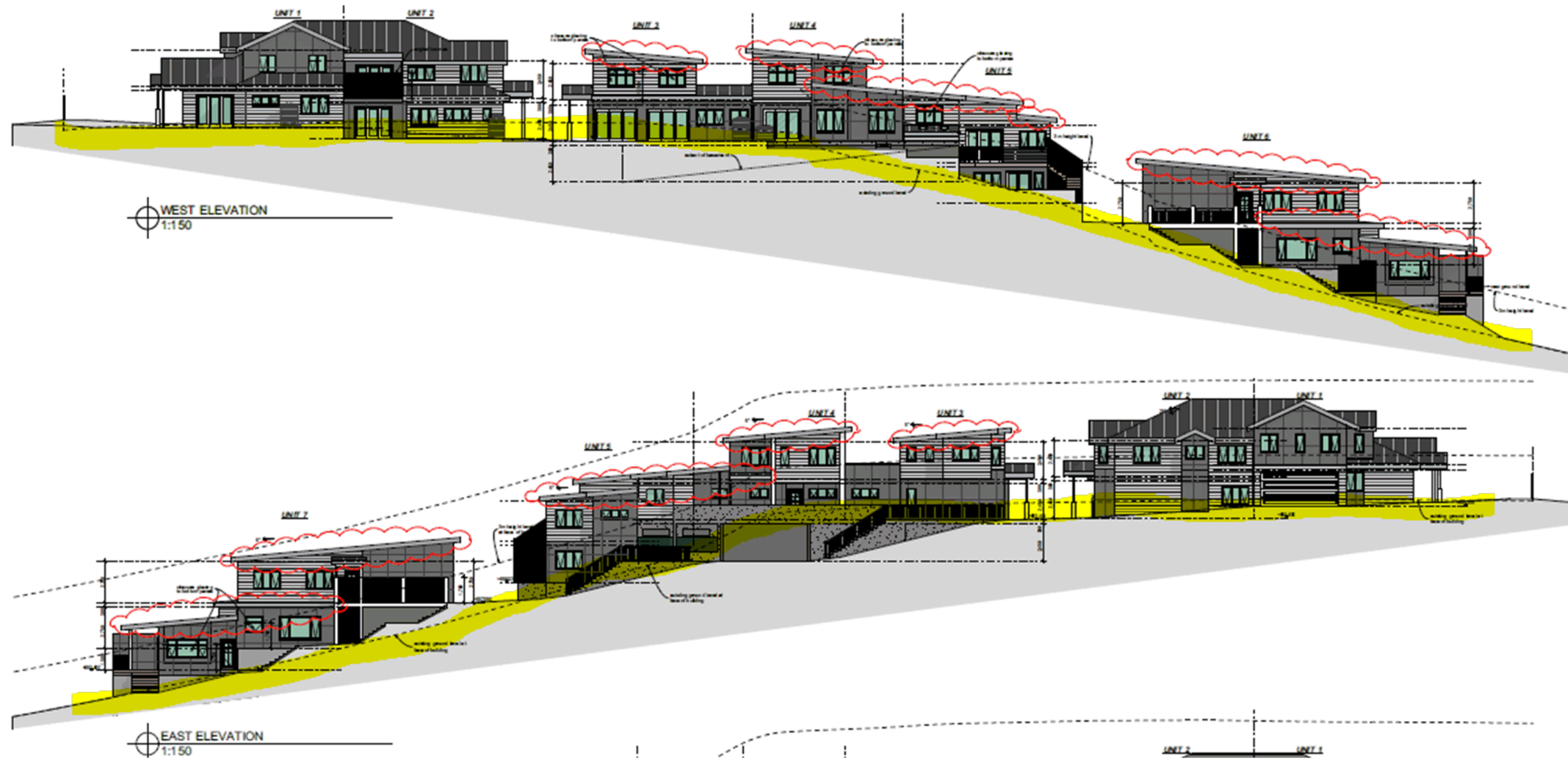
It is recommended that Development Application 19/1042 which seeks approval for Multi Dwelling Housing containing 7 units at Lot 11 DP 603108, being 25 Oxley Drive, Bowral, be supported subject to conditions.

The proposal is considered satisfactory in terms of s.4.15 EPA Act 1979, therefore it is recommended that the development application be approved by way of a deferred commencement approval, subject to the attached draft conditions of consent nominated in **Attachment 1**.

**ATTACHMENTS**

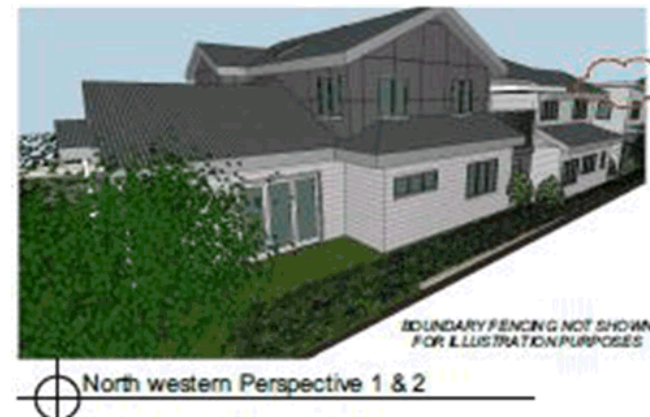
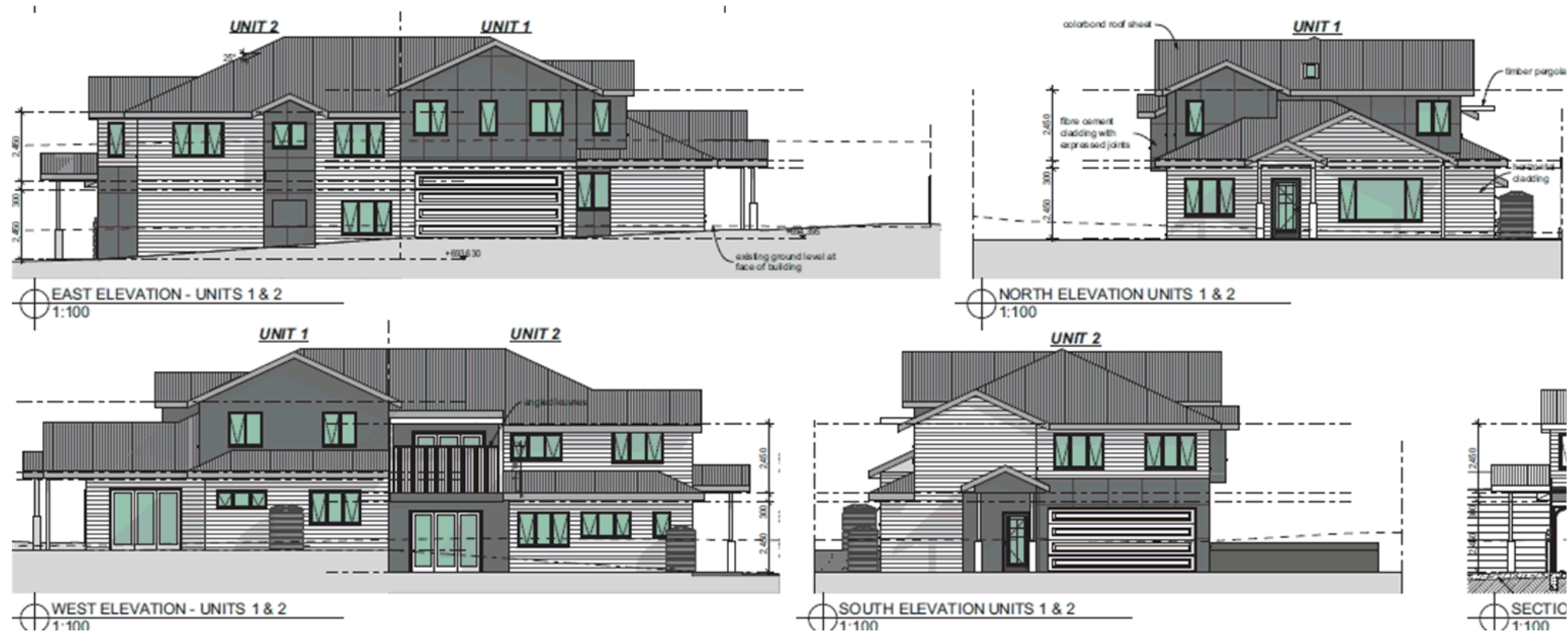
1. Draft Conditions
2. Site Location - *circulated under separate cover*
3. Zoning - *circulated under separate cover*
4. Site Plan - *circulated under separate cover*
5. Elevations - *circulated under separate cover*
6. Overshadowing - *circulated under separate cover*
7. Objector's consultant's shadow diagrams based on superseded plans - *circulated under separate cover*
8. Objector's consultant's plans showing view of development from 29 B Oxley Drive - *circulated under separate cover*

ATTACHMENT 10 – ELEVATIONS (amended plans submitted 3 March 2020 responding to Council resolution 26 February 2020)

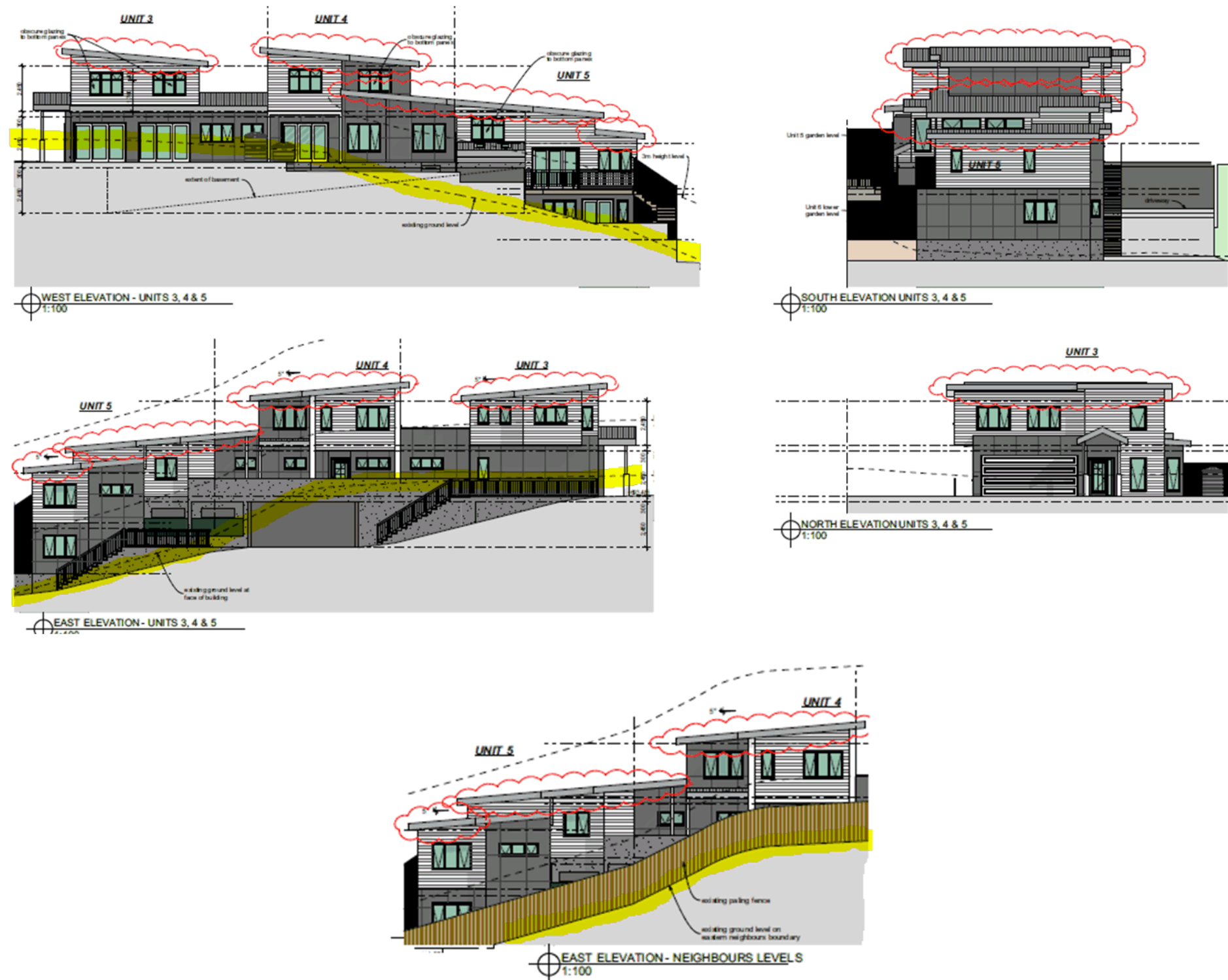


Eastern and western elevations (Yellow highlight shows existing natural ground level)

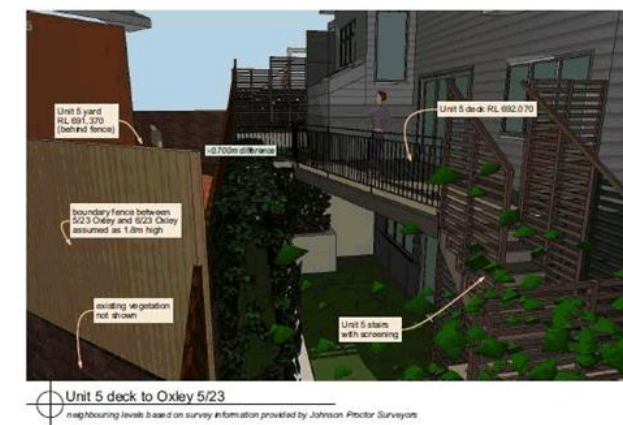
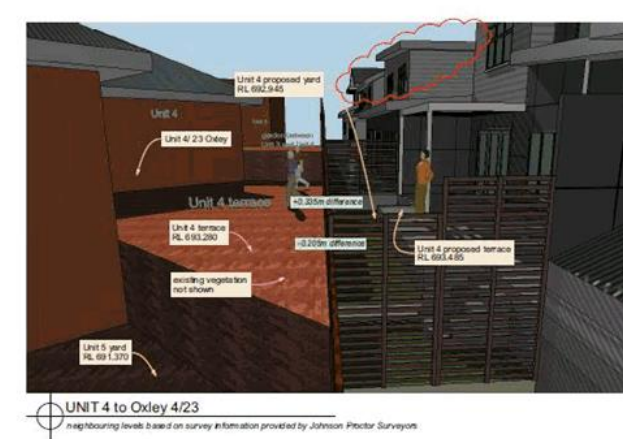
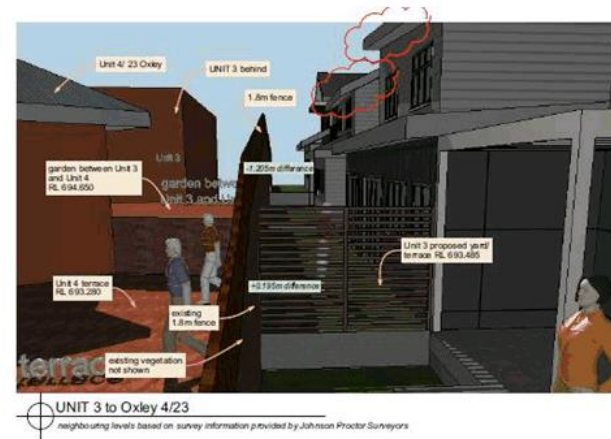
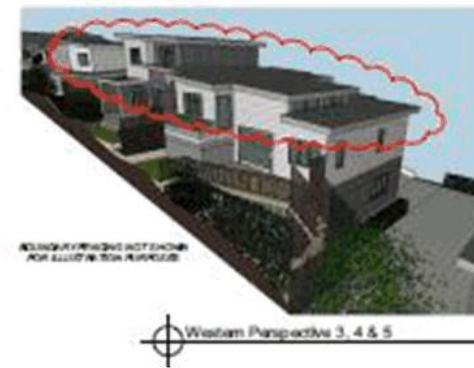




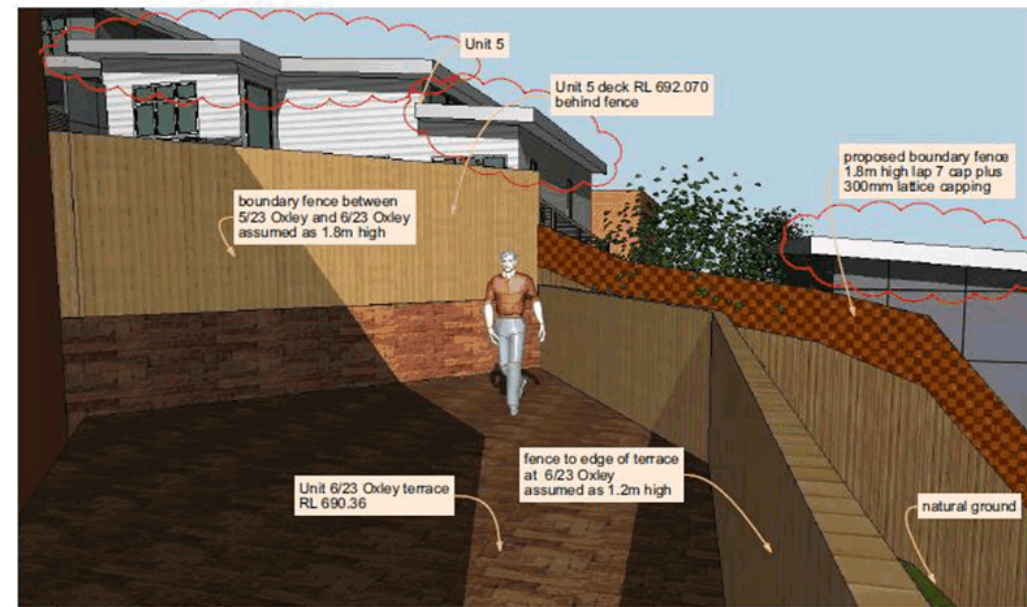
Elevations – Proposed Units 1 and 2



Elevations – Proposed Units 3, 4 and 5 (Yellow highlight shows existing natural ground level)

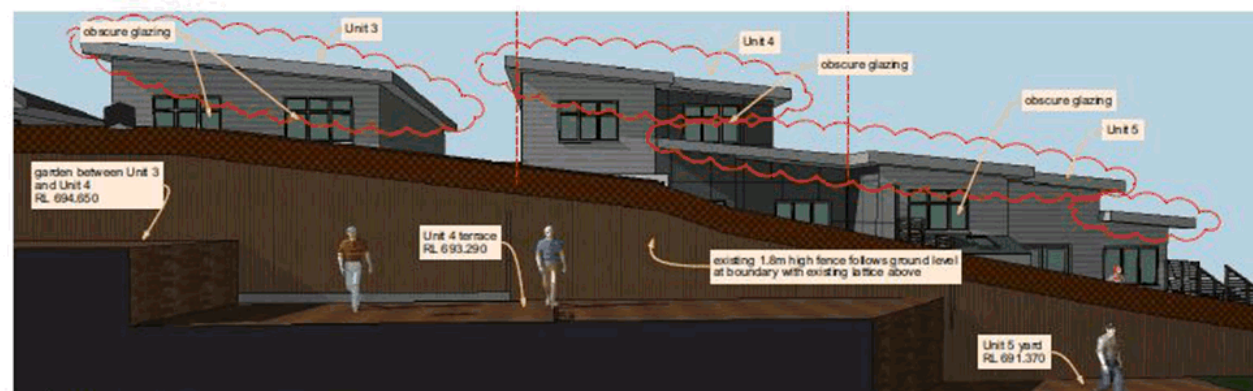


Perspectives – Proposed Units 3, 4 and 5 and adjoining western units 3/23, 4/23, 5/23 and 6/23 private open space areas

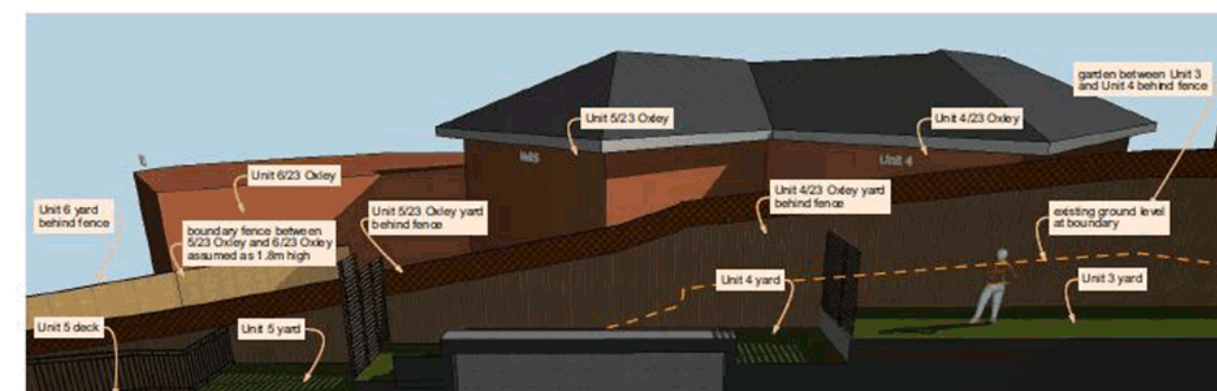


Oxley 6/23 terrace to Unit 5  
 neighbouring levels based on survey information provided by Johnson Proctor Surveyors

Perspectives – Proposed Unit 5 and adjoining western unit 6/23 private open space area



23 Oxley Drive view from terraces  
 neighbouring levels based on survey information provided by Johnson Proctor Surveyors

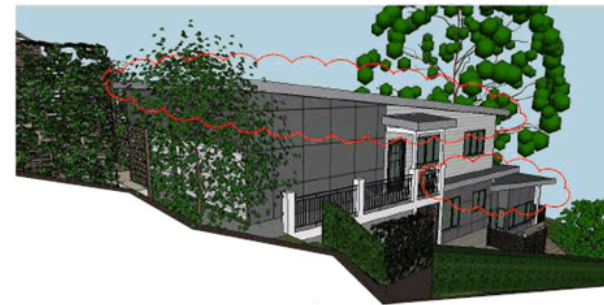
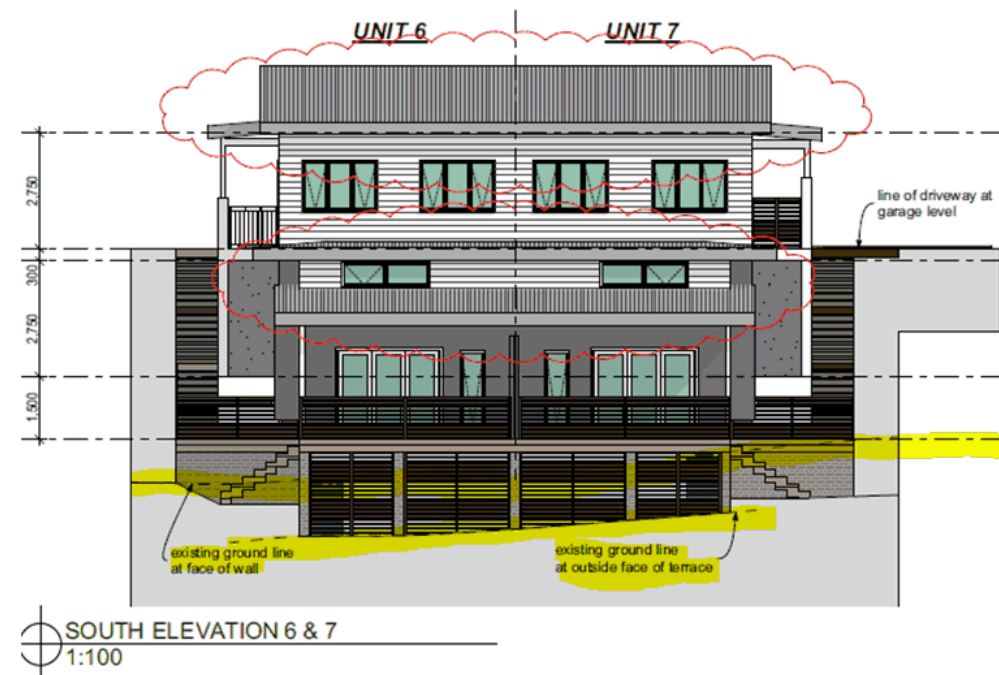


Proposed units view from terraces  
 neighbouring levels based on survey information provided by Johnson Proctor Surveyors

Proposed views between proposed Units 3, 4 and 5 / 25 Oxley Drive and existing Units 4, 5 and 6 /23 Oxley Drive



Elevations – Proposed Units 6 and 7 (Yellow highlight shows existing natural ground level)



North western Perspective 6 & 7  
BOUNDARY FENCING NOT SHOWN FOR ILLUSTRATION PURPOSES



South Eastern Perspective 6 & 7  
BOUNDARY FENCING NOT SHOWN FOR ILLUSTRATION PURPOSES

Elevations – Proposed Units 6 and 7

## 9.4 DA 20/0102 Tourist and Visitor Accommodation Bendooley Estate - Construction of Accommodation Lodge, Restaurant and Meeting Room Building, Secular Meeting Space and House Keeping Facility

Reference:	20/0102
Report Author:	Manager Development Assessment
Authoriser:	Group Manager Planning, Development and Regulatory Services Group Manager Planning Development and Regulatory Services
Applicant:	Bendooley Estate Berrima Pty Ltd
Owner:	Antikovrem Pty Ltd
Link to Community Strategic Plan:	Promote building practices and the types of developments that improve resource efficiency

### PURPOSE

The purpose of this report is to consider a Development Application for the construction of an Accommodation Lodge, Restaurant/Meeting Room building, Secular Meeting Place, Housekeeping facility with associated carparking, landscaping and services at 3020 Old Hume Highway Berrima NSW 2577, specifically on Lot 2 DP 584423. This report is prepared for determination, and recommends **APPROVAL**, subject to attached conditions of consent.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

**THAT Development Application 20/0102 to construct an Accommodation Lodge, Restaurant/Meeting Room building, Secular Meeting Place, Housekeeping facility and associated car parking, roadworks, stormwater management, electricity substation and landscaping on Lot 2 DP 584423, that forms part of the Bendooley Estate at No 3020 Old Hume Highway, Berrima be APPROVED subject to conditions as described in Attachment 1 to the report.**

### REPORT

#### *Subject Site and Locality*

The site is located on the Old Hume Highway approximately 2.5 kilometres north-east of the township of Berrima (Figure 1). The site, known as Bendooley Estate, 3020 Old Hume Highway, is legally identified as:

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- > Lot 2 in DP 584423 which has frontages to the Old Hume Highway of 541.82 metres and Greenhills Road of 501.72 metres (irregular) respectively and an area of 40.47 hectares.

Bendooley Estate is a tourist facility and vineyard located in a rural precinct approximately 2.5 kilometres north-east of Berrima and comprises Lots 2 & 3 DP 584423. The subject works are wholly located on Lot 2 in the south eastern area of the Estate.

The Site is not sewered and relies on on-site effluent disposal systems and is not connected to a reticulated water supply. Lot 2 is burdened by an easement for a water pipeline 6 to 10 metres in width providing water supply from Lot 15, DP 242793 (3092 Old Hume Highway) across the subject site to Lot 1, DP 710577 (224 Greenhills Road).

The subject site is zoned SP3 Tourist zone under the Wingecarribee Local Environmental Plan 2010.



#### **Subject site**

Source: Six maps

Surrounding development includes:

#### *To the north:*

Lot 3 DP 584423 which contains the current Bendooley Estate facilities - the vineyard, administration office, rare book shop, restaurant, wine tasting, Stables function centre, visitor accommodation, homestead and car parks; and

224 Greenhills Road - a 2-storey residence located approximately 350 metres from the northern boundary of the subject site (Lot 2);



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- Further to the north:* 2950 Old Hume Highway- containing a single storey residence located approximately 500 metres from the northern boundary of Lot 3;
- To the east:* 3051 Old Hume Highway- a single storey residence located approximately 300 metres from the eastern boundary of the subject site (Lot 2);
- To the southwest:* 3092 Old Hume Highway- a horse agistment property single storey residence located approximately 150 metres from the boundary of the subject site (Lot 2);
- To the southwest:* 550 Oxleys Hill Road - two single storey residences on property - a single storey residence located approximately 200 metres from the south-eastern corner of the subject site accessed from Old Hume Highway and the second dwelling accessed from Oxleys Hill Road located over 400 metres from subject site; and
- To the west:* 164 Greenhills Road - a single storey residence located approximately 150 metres from the south-western corner of the subject site (Lot 2).

### **BACKGROUND**

The development history of the site over the past two decades can be summarised in terms of the following consents be granted by Wingecarribee Shire Council, namely;

- |              |  |
|--------------|--|
| LUAOO/1652   | - cafe   |
| LUA03/180    | - addition to commercial building  |
| LUA04/1581   | - addition to existing building  |
| LUA11/151    | - storage  |
| LUA 11/497   | - winery refreshment room and cellar door building and addition to the Book Barn for the cafe / restaurant use - approved 29 July 2011; five modifications to the consent being 18 November 2011, 22 December 2011, 4 June 2012, 11 July 2014 and 20 May 2015. |
| LUA 12/265   | - winery refreshment room and cellar door  |
| DA 14/1024   | - storage facility   |
| DA 15/311    | - conference facility and hotel accommodation  |
| DA 16/391    | - construction of stables, horse arena and cattle yards.   |
| DA 16/671    | - guest accommodation (4 cabins and 1 cottage).  |
| DA 17/0204   | - alterations and additions to the stables building and change of use to occasional function centre approved 28 June 2017; two modifications approved 13 December 2017 and 30 January 2018.  |
| DA 17/0204.2 | - farm storage shed.   |
| DA 17/0671.1 | - Septic, Stormwater, Sanitary Drainage and Water Supply infrastructure  |
| DA 17/0671.3 | - Tourist and visitor accommodation (4 cabins and 1 cottage)   |
| DA 18/0565   | - Concept Plan approval  |
| DA 18/0743   | - changes to the capacity of The Stables Function Centre, associated increase in parking and an increased number of events   |

### **Current Modification Application**

- |             |   |
|-------------|---|
| DA18/0565.1 | - Modification Application to amend the approved Concept Plan consent is separately considered by Council at this meeting. Any approval of the subject DA is dependent on Council consent to that Modification Application. |
|-------------|---|



Required surrender of Development Consent DA 15/311

As the proposed works are to be included in the Stage 2 works under the Concept Plan approval as modified by Modification Application 18/0565.01 the Applicant is to surrender Development Consent DA 15/0311 Dated 17 September 2015 as required by Condition 23 of the original Concept Plan consent 18/0565 and draft condition 24 of the Modification application 18/0565.01 (in Section F of that draft consent) which reads:

**F DEVELOPMENT CONSENT 15/311**

**24. Surrender of Consent**

Prior to development consent for any Stage 2 works the Applicant is to surrender Wingecarribee Development Consent DA 15/0311 Dated 17 September 2015.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation as amended by consent conditions.*

The purpose of the Development Application is to seek Council consent for the construction of four (4) buildings within Stage 2, namely:

- (i) the Accommodation Lodge;
- (ii) Restaurant/Meeting Room building;
- (iii) Secular Meeting Place; and
- (iv) Housekeeping facility;

The Development Application also proposes landscaping, stormwater/drainage management works, new roadways, parking and an electricity sub-station.

The Current Development application relies on Council approval of a Modification Application DA20/0102.01 currently before Council. Refer Appendix A for copy of Draft Concept Plan.

**Description of the proposed works**

As annotated on the copy of the submitted site plan at **Attachment 5** the proposed facilities and associated roadworks, car parking, electricity substation and landscaping are located generally around the existing dam in the south western corner of the subject site.

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## **RESTAURANT AND MEETING ROOMS BUILDING**



**Restaurant & meeting rooms perspective**

A new restaurant and meeting rooms building is proposed in the location previously occupied by the Wellness Centre (in the originally approved Concept Plan). The building, providing a restaurant will have a capacity for 80 patrons, bar and lounge areas plus two meeting rooms with total capacity for 40 persons.

The restaurant/meeting room building is single storey in height located on the southern edge of the top of the dam, setback 30 metres from the common boundary with 3092 Old Hume Highway, consistent with the requirement under Condition 8 of DA 18/0565 consent.

The proposed facility will have a total floorspace of 859sqm which is consistent with the maximum floorspace proposed for the building in the Modification Application 18/0565.01.

A free-standing weathered steel sheet feature wall to a height of RL 700.120 is located south of the building to provide acoustic and visual screening of the restaurant building and loading dock from the proposed internal roadway.

The primary purpose of the restaurant and meeting room facility is to provide meals, refreshments and conference facilities for occupants of the Accommodation Lodge in the short to medium term.

It is proposed that the restaurant will have a staffing of 12 persons and the proposed hours of operation are 7.00am to 11.30pm, out by 11.45pm, 7 days a week.

**'THE SHED' SECULAR MEETING PLACE**



**The Shed perspective**

'The Shed' secular meeting space is proposed to be a single storey building located adjacent to the remnant vegetation above of the dam. The purpose of the building is to provide a meeting place for special events such as celebratory occasions and will have a maximum capacity of 120 persons.

The proposed development has a gross floor area of 218.5m<sup>2</sup> which is consistent with the maximum floorspace proposed for the building in the Modification Application 18/0565.01.

A lightweight construction method is proposed to ensure that no building footings are located within three metres of the existing remnant trees which have been individually surveyed.

The proposed hours of operation of the building are 9.00am to 11.30pm, out by 11.45pm, 7 days a week.

## **THE LODGE**



### **Accommodation Lodge perspective**

The Accommodation Lodge is a 2-storey building located on the north-west foreshore of the Top Dam, providing short-term tourist accommodation within Bendooley Estate. The proposed building has a total floorspace of 2470sqm which is consistent with the Draft amended Concept Plan the subject of the current Modification Application 18/0565.01 to modify the Concept Consent 18/0565. The building is setback 37.50 metres from the common boundary with 3092 Old Hume Highway, compliant with the requirement under Condition 8 of DA 18/0565.

The proposed building includes 39 standard rooms and two family suites.

The ground floor level of the Lodge is connected to a proposed elevated timber bridge over part of the top dam to provide easy access to the restaurant/meeting room building adjacent.

## **THE HOUSEKEEPING FACILITY**



**Housekeeping perspective**

The proposed building is to provide housekeeping facilities for the tourist accommodation and other facilities within Bendooley Estate, in particular, laundry, maintenance and stores.

The proposed building is single storey and located 37.0 metres from the common boundary with 3092 Old Hume Highway in compliance with Condition 8 of CDA 18/0565. The proposed building has a gross floor area of 162.18sqm and will have a staff of two.

### **INTERNAL ROADWORKS**

Internal roads - a new entry off Old Hume Highway is proposed that will be the subject of a separate application under Section 138 of the Roads Act 1993 in the near future.

The internal road providing access from the new entry to the site to the Accommodation Lodge has been designed by FWB Civil Engineering.

Adjoining the Accommodation Lodge, to the north-west, is a porte-cochere and roundabout capable of handling bus arrivals and other delivery and emergency vehicles

### **CAR PARKING**

As detailed in the traffic and parking impact assessment a total of 147 parking spaces are proposed to service the proposed development which meets the Traffic Authority Guidelines.

The Assessment advises further that the geometric design layout of the proposed car parking facilities has been designed to comply with the relevant requirements specified in

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the Standards Australia publication Parking Facilities Part 1 - Off-Street Car Parking AS2890.1 and Parking Facilities Part 6 - Off-Street Parking for People with Disabilities AS2890.6 in respect of parking bay dimensions and aisle widths.

The provision of the additional carparking to service patrons and staff of the restaurant & meeting rooms building should ensure that sufficient off-street parking will be provided such that there will not be any parking along the Old Hume Highway.

#### **ELECTRICITY SUB-STATION**

An electricity sub-station is proposed to provide supply to the proposed development is to be located within the site, setback approximately 120 metres from the Old Hume Highway frontage and 20 metres from the common boundary with 3092 Old Hume Highway. The Landscape Plan incorporates earth mounding and dense screen planting around the sub-station site to provide appropriate visual screening from the Old Hume Highway and the adjoining rural holding (No 3092). It is accepted the substation is required to be accessible from the front of the site by the service provider.

#### **LANDSCAPING**

It is proposed to comprehensively landscape the area in and around the proposed development with particular attention to screen planting between the development and the Old Hume Highway and the neighbouring property at No. 3092 Old Hume Highway. Extensive use of landscaped mounding is proposed to further screen the development. A mixture of native grasses and exotic vegetation is proposed to complement the existing vegetation on the site.

#### **STORMWATER MANAGEMENT WORKS**

Proposed stormwater works to services the proposed development include:

- Installation of rainwater tanks;
- Installation of SPEL Stormsacks (Gross Pollutant Traps) or similar, for each stormwater inlet pit for the proposed parking spaces and access roads;
- Installation of roadside drainage as grassed trapezoidal swales for the proposed access roads
- Installation of Raingardens (Bioretention basins) for stormwater overflow and Ag-pipe underdrain for subsoil drainage;
- Conversion of the existing farm dam (1) to a pond; and
- Conversion of the existing farm dam (2) to a wetland.

The submitted Water Cycle Management report, based on MUSIC modelling assesses that the stormwater management measures proposed will result in a Neutral or Beneficial Effect on water quality, in accordance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

## **WASTE WATER TREATMENT**

The onsite waste water treatment works were approved subject to conditions to be constructed in Stage 1 under DA 16/0671.01. As the proposed works are included in Stage 2, details of compliance with the conditions and approximate timing of delivery of the waste water treatment facility and proposed connections to the subject buildings are required prior to final determination of the current DA. As detailed in the report to Council on the Modification application 18/0565.01, Water NSW has provided additional comments and requests for details on the delivery of the Sewerage treatment facilities.

A condition of the Modification Application consent requires that the details of the design of the sewage treatment works be approved by Council and Water NSW prior to the issue of any construction certificate.

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## **STATUTORY PROVISIONS**

### **Environmental Planning & Assessment Act 1979 (the Act)**

Section 4.15(1) of the Environmental Planning & Assessment Act 1979, as amended, specifies the matters which a consent authority must consider when determining a development application. The following is a summary assessment of the proposed development against the Matters for Consideration in Section 4.15(1) of the Act.

The proposed development is required to comply with the Disability Discrimination Act.

The proposed restaurant is also required to comply with the Food Act, the Food Regulations and the Food Safety Standards and Australian Standard AS4674 - 2004.

### **(a)(i) The provisions of any environmental planning instrument.**

## **STATE ENVIRONMENTAL PLANNING POLICIES**

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

Clause 9 of the Catchment SEPP requires that a consent authority must not grant consent to the carrying out of development unless it is satisfied that the carrying out of the proposed development will have a neutral or beneficial effect on water quality.

The Site is located within the Sydney Drinking Water Catchment.

The applicant commented in their Statement of Environmental Effects as follows:

*The proposed modification is considered to be consistent with the aims and objectives of the SEPP and will not impact on the Sydney Drinking Water Catchment.*

Advice received from Water NSW indicated that the proposed development has been assessed as being able to achieve a neutral or beneficial effect on water quality provided appropriate conditions are included in any development consent and are subsequently implemented. Conditions of Consent from Water NSW have been included at **Attachment 2**.



State Environmental Planning Policy No 55 – Remediation of Land

It is found to be highly unlikely that the subject land contains any contaminants that could be a risk to human health or the environment due its previous use for grazing land. Accordingly, no further information was required.

State Environmental Planning Policy (Rural Lands) 2008

The proposed Tourist and Visitor Accommodation and Function Facilities are considered to be consistent with the Rural Planning Principles of the Rural Lands SEPP in providing a positive economic stimulus for the rural environment located close to the village of Berrima and the Moss Vale, Mittagong and Bowral townships.

**Local Environmental Plans**

Wingecarribee Local Environmental Plan 2010

The relevant provisions of the LEP are discussed as follows:

2.3 Zone objectives and land use

The site is zoned SP3 – *Tourist*. The additional tourist facilities and visitor accommodation as proposed are permissible with development consent in the zone. The objectives of the zone are:

- *To provide for a variety of tourist-oriented development and related uses.*
- *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 proposal is consistent with the aims and objectives of the zone. The surrounding landscape is currently very rural with recessive buildings as viewed from the roadway and adjacent properties. The proposed development has been setback in line with the Concept Plan approval and extensive mounding and planting proposed to screen the buildings and car parks from the rural views and neighbouring property.

4.3 Height of buildings and FSR

The SP3 zone does not impose a maximum building height or FSR.

The maximum heights of the proposed buildings are consistent with the approved Concept Plan as amended by the MOD application and are as follows:

Accommodation Suites	9.2m
Accommodation Lodge	9.2m
Restaurant & Meeting Rooms	7m
The Shed	9m

7.5 Riparian Lands and watercourses

The Modification Application advised that more detailed survey of the site has ensured the proposed siting buildings will now not impact on the riparian lands or watercourse on the site as required by Condition 7 of the original consent.

Clause 7.5 of the LEP requires:



*“(3) Before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the natural flow regime, water quality of receiving waters, waterway’s natural flow paths, stability of the waterway’s bed, shore and banks, the flow, capacity and quality of groundwater systems.*

*(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

*(a) the development is designed, sited and managed to avoid any potential adverse environmental impact, or*

*(b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact”.*

The watercourse identified on Lot 2 is a Category 3 stream. In this case the LEP requires development to be setback a minimum of 10m from the top of bank which is achieved.

The submitted Water Cycle Management Assessment confirms that the proposed storm water works will have a Neutral or Beneficial effect on water quality.

#### 5.4 Bushfire

Clause 5.4 – *Bushfire Hazard* of the LEP requires assessment of bushfire risk. The extreme western and eastern boundaries of the Site are identified on the LEP Bushfire Prone Lands Map as being within the bushfire buffer areas.

The proposed buildings are not located within these areas.

The recommendations of the Bushfire Hazard Assessment Report and RFS have been included in the recommended conditions of consent to ensure compliance with Planning for Bushfire Protection (2018).

#### 7.4 Biodiversity

Clause 7.4 - *Natural Resources Sensitivity – Biodiversity* stipulates that before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the native ecological community, the habitat of any threatened species, population or ecological community, any regionally significant species of fauna, flora or habitat and /or habitat elements providing connectivity.

The mapped biodiversity sensitive area of the subject site is located within the road reserve of Greenhills Road along the frontage to Lot 2 and is not impacted by the development and infrastructure proposed under this development application.

However, in accordance with Condition 9 (c) of the Concept Plan Consent, the stand of remnant vegetation located near the top dam has been surveyed and individual trees identified by registered survey and the proposed building footprints, roads and parking areas, both in this DA and the Modification Application amendments to the Concept Plan, have been sited to ensure no adverse impacts on these trees to be retained.

As detailed above, the Shed has been relocated to ensure no impact on this stand of remnant trees.

**Development control plans**

**Rural Lands Development Control Plan**

The Rural Lands DCP applies to the Concept Plan. An assessment of the proposal against the relevant sections of the DCP follows:

Relevant DCP Section		Project consistency
Section 3 – Ecological Sustainable Development		
A3.2 Development in Sydney’s Drinking Water Catchments	Under the Catchment SEPP, Council cannot grant development consent unless it is satisfied that the development will have a neutral or beneficial effect on water quality.	Complies subject to Water NSW Conditions of Consent included being conditions numbered 22.1 – 22.9.
A3.3 Protection of Watercourses and Riparian Lands	In this case a 10m setback from the top of bank applies to the identified watercourse on Lot 2.	Complies
A3.6 Cut and Fill	Cut and fill in excess of Council’s	The proposal seeks to vary Council’s control to permit the construction of 2m high earth moundings adjacent to the boundary to protect the visual and acoustic amenity of neighbours and screen them from view from the Old Hume Highway. This is considered acceptable in this case.
Section 4 Vegetation Management		
A4.5 Landform and Vegetation Modification	All new development shall: (a) seek to use the existing natural topography of the site. (b) not require the clearing of native vegetation or established cultural plantings if this results in an increase in the prominence or visibility of the building from a public place or Heritage Conservation Zone. (c) where cut and fill of the area of the building footprint is required, that a limit of 750mm cut and 750mm fill apply.	The proposed buildings and internal roads have been designed to follow the natural fall of the property.  No significant clearing of native vegetation is proposed. A detailed above, the stand of remnant native trees close to the Shed is to be retained and protected.  In order to screen the proposed carparks along the boundary 2m high earth mounding is proposed which is considered supportable in this case.

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Relevant DCP Section		Project consistency
A4.7 Protection of Trees, Bushland and Vegetation during Construction and Development	To ensure that development does not compromise the integrity and viability of existing native vegetation, flora and fauna habitat and riparian zones.	See comments above.
Section 5 – Water Management		
A5.2 Development within Sydney’s Drinking Water Catchments	Under the SEPP, Council cannot grant development consent unless it is satisfied the development will have a neutral or beneficial effect on water quality.	Water NSW has assessed the Application as likely to be able to achieve a neutral or beneficial effect on water quality provided appropriate conditions are included in the development consent. Please refer to conditions numbered 22.1 to 22.9.
A5.3 Water Sensitive Design	<p>The applicant has provided a Water Cycle Management Study that demonstrates that the development will achieve a Neutral or Beneficial Effect on water quality in accordance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, provided the following stormwater treatment measures are included in the development:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Installation of rainwater tanks</li> <li><input type="checkbox"/> Installation of SPEL Stormsacks (Gross Pollutant Traps) or similar, for each stormwater inlet pit</li> <li><input type="checkbox"/> Installation of roadside drainage as grassed trapezoidal swales for the proposed access roads</li> <li><input type="checkbox"/> Installation of Raingardens (Bioretention basins), installed with grated pits for stormwater overflow and Ag-pipe underdrain for subsoil drainage; and</li> <li><input type="checkbox"/> Conversion of the existing farm dam to a pond.</li> </ul>	The recommendations of Water NSW and the submitted Water Cycle Management Study have informed the draft consent conditions to ensure compliance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

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Relevant DCP Section	Project consistency	
	These have been included on the amended plans.	
5.4 On-site Waste Water Disposal (OSWD) Systems	The applicant has provided a Soil and Site Assessment for Onsite Wastewater Disposal that addresses the OSWD Systems.	<p>The Soils and Site Assessment for onsite Wastewater Disposal has been assessed by Council's Stormwater Engineer and was found to be compliant with the controls set out in Clause 5.4 of the DCP.</p> <p>Details of the proposed sewage treatment plant have now been provided and will require further assessment and approval from Water NSW. This will be addressed by way of draft consent condition.</p>
5.5 Stormwater Management Plans	The applicant has provided an amended Water Cycle Management Study.	The amended Study that has been assessed by Council's Stormwater Engineer and was found to comply with the controls set out in Clause 5.5.
5.6 Erosion and Sediment control	<p>An Erosion and Sediment Control (E&amp;SC) Plan has not been supplied.</p> <p>The submitted Water Management Study does provide recommendations for the Management of soil during and after construction.</p> <p>These include:</p> <ol style="list-style-type: none"> <li>1. Diversion of clean stormwater during earthworks by way of an earth bank upslope of the development and until revegetation</li> <li>2. Separating stockpiles of topsoil and subsoil so the topsoil can be used to re-spread on the property.</li> <li>3. A sediment fences to be installed along the downslope</li> </ol>	<p>An Erosion and Sediment Control (E&amp;SC) Plan will be required by draft condition of consent</p> <p>This incorporates the recommendations of the Water Management Study.</p>

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Relevant DCP Section		Project consistency
	<p>side of the road and stockpile, parallel with the contour and along the downslope length of the internal road to filter runoff as it drains through to downslope grassland. sediment and replaced when functionality is lost.</p> <p>4. Site revegetation Exposed soil shall be re-vegetated after the works are completed.</p>	
<p>5.7 Protection of Watercourses, Water Bodies and Riparian Lands</p>	<p>The proposed buildings and roadworks have been set away from the riparian corridor.</p> <p>An assessment of riparian impacts and associated Vegetation Management Plan (VMP) is required.</p>	<p>As the proposed buildings are set well away from the riparian corridor on the property a Vegetation Management Plan (VMP) is not considered to be required.</p>
<p>Section 6 – Additional Controls</p>		
<p>6.2 Bushfire Prone Land</p>	<p>The extreme western and eastern boundaries of the Site are identified on the LEP Bushfire Prone Lands Map as being within the bushfire buffer areas.</p> <p>Specifically, the proposed additional shed and staff accommodation close to the Greenhills Rd boundary and the Brasserie, Micro Brewery and Wine Tasting Pavilion fronting the Old Hume Highway are located in buffer zone.</p> <p>The application was referred to the Rural Fire Services who have provided their approval, subject to a number of conditions, particularly regarding the proposed staff accommodation in the Bushfire buffer zone.</p>	<p>The RFS conditions included in <b>Attachment 2</b> establish setbacks which have been complied with in the amended plans.</p>
<p>6.8 Minimisation of External Impacts – Noise</p>	<p>The applicant has provided an Acoustic Assessment that details an assessment of the</p>	<p>The proposed facilities in the area close to the adjoining the neighbouring property at No.</p>

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Relevant DCP Section		Project consistency
	<p>predicted noise impacts of the proposed development.</p>	<p>3092 Old Hume Highway are set well below the level of the adjoining land and located behind a thick pine hedge, many hundred metres from the house on that property. The additional setbacks and earth mounding as required by the recommended condition of the Modification Application will further minimise acoustic impacts to the any nearby residents.</p> <p>The Modification and DA applications were accompanied by a detailed acoustic impact assessment that recommended various acoustic measures that have been included as consent conditions in <b>Attachment 2</b>. Please refer to condition number 10.</p>
<p>A6.10 Minimisation of External Impacts – outdoor Lighting</p>	<p>Light spill from the proposed hard stand car parks and facilities close to the Highway and adjacent properties would be required to be addressed in any future DA's for the construction of the facilities.</p>	<p>Earth mounding around the proposed car parks along the boundary with No 3092 old Hume Highway and facing the highway frontage will ensure light spill from the carparks and facilities operations do not cause nuisance to neighbours or impact of the visual amenity of the surrounding area. Please refer to conditions 10 and 14 as recommended.</p>
<p>Section 9 – Construction Standards and Procedures</p>		
<p>A9.8 Stormwater Disposal</p>	<p>Detailed stormwater management plans and reports accompanied the application</p>	<p>Stormwater details have been reviewed by council and Water NSW and found to be satisfactory subject to draft consent conditions.</p>
<p>A9.12 Waste Management and Disposal</p>	<p>A Waste Management Plan is required for all construction works with a value greater than \$50,000.</p> <p>The applicant is required to prepare a Waste Minimisation and Management Plan.</p>	<p>This will be required by draft condition of consent at <b>Attachment 2</b>. Please refer to condition 25 as recommended.</p>

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Relevant DCP Section		Project consistency
Part B – Development Specific Controls		
Section 5 – Tourist-related Development		
B5.2 Tourist and Visitor Accommodation	<p>To be assessed on its merits with regard to all relevant sections of the DCP as well as the 5.2.1 objectives.</p> <p>To ensure that such development is:</p> <p>(a) Sited and designed to respect the rural environment within which the development is located.</p> <p>(b) Appropriately located to ensure no detrimental impacts on neighbouring development.</p> <p>(c) Constructed from materials which respect the rural landscape.</p> <p>(d) Complements the style of any existing development within the SP3 Tourist zone.</p>	<p>The proposed development is considered to be of high quality design, of appropriate character to fit well in the rural setting.</p> <p>The buildings have been set well back from the Highway frontage and adjacent properties with extensive earth mounding and vegetation screening proposed to minimise visual intrusion in the rural landscape.</p> <p>Proposed materials and finishes are similar to other existing buildings of the property and include muted tones, stone and corrugated metal details typical of rural construction.</p>
B5.3 Food and Drink Premises	<p>Ensure that such development is:</p> <p>(a) Sited and designed to respect the rural environment within which the development is located.</p> <p>(b) Appropriately located to ensure no detrimental impacts on neighbouring development.</p> <p>(c) Constructed from materials which respect the rural landscape.</p> <p>(d) Complements the style of any existing development within the SP3 Tourist zone.</p> <p>(e) Designed to provide adequate car parking, located to be accessible to tourists and visitors to the development without detracting from the rural landscape in which the development is located.</p> <p>(f) Appropriately located in terms of accessibility from regional access roads.</p>	<p>As detailed above, the proposed development is considered supportable subject to conditions at <b>Attachment 2</b>.</p>



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Relevant DCP Section		Project consistency
	(g) Appropriately located in terms of the suitability of the surrounding road network to support the level and type of traffic expected to be generated by the proposed development.	
Section 6 Other Commercial and Community Development		
B6.4 Function Centres	<p>b) All Function Centres shall be assessed on their merits with particular regard to:</p> <ul style="list-style-type: none"><li>(i) visual impacts of the proposal</li><li>(ii) potential noise impacts</li><li>(iii) potential traffic generation</li></ul> <p>c) Buildings shall be designed and located to minimise visual impacts within the rural landscape, particularly from neighbouring properties.</p> <p>d) Buildings shall be constructed from materials and colours which blend into the rural landscape.</p> <p>e) Proposed development shall not exceed 5dB(A) as required in Section A6.8 of this Plan.</p>	As detailed above, the proposed development is considered supportable subject to conditions included in <b>Attachment 2</b> .

#### **Consistency with Modified Concept Approval**

**Attachment 1** contains a tabulated assessment of the subject proposal against the Concept Plan development consent DA 18/0565 as modified by conditions of proposed Modification application 18/0565.01.

With the exception of the proposed hours of operation and required deceleration lane on the Old Hume Highway, the proposed development the subject of this DA is consistent with the Concept Plan consent. These matters are addressed in the draft development consent conditions contained in **Attachment 2**.

#### **COMMUNICATION AND CONSULTATION**

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

The DA was referred to all relevant departments of Council and their comments have informed and been incorporated into this reports, recommendations and Consent Conditions. Please refer to the table below for further information:

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#### **Internal Referrals**

Development Engineers	The application is considered to be satisfactory in relation to engineering matters subject to conditions being imposed on the notice of determination.
Environmental Health	The application is considered to be satisfactory in relation to environmental health matters subject to conditions being imposed on the notice of determination.
Traffic Engineer	The application is considered to be satisfactory in relation to traffic matters based on amendments sought during the assessment process by the deletion of one of the proposed vehicular access ways.
Tree and Vegetation	Concern was raised regarding the potential loss of a stand of native vegetation that has been addressed by way of condition

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

The DA was referred to:

- The RMS;
- Water NSW; and
- Rural Fire Service

Their comments have informed and been incorporated into this reports, recommendations and Consent Conditions.

#### **Community Engagement**

The application was notified and advertised between 14 August and 20 September 2019 and during this time one (1) public submission was forwarded to Council.

Their submission raised the following concerns and recommendations for amendments to the proposed amended Concept Plan and DA:

##### **Protection of existing mature trees and additional landscaped screening along the boundary:**

- The objector advises that the proposed car parking setback and mounding of car park 5m from the common boundary between 3092 and 3020 Old Hume Hwy is insufficient to ensure the continued health of the existing screen planting of mature Conifer trees along that boundary.
- The trees are located approximately 2-3 metres from the boundary, with their drip line (canopy) extending to 13 metres from the boundary. The Objector believes that if any mounding occurs under the dripline of these Conifers, the trees will die.
- The objector considers that It is important that this planting is maintained as a visual screen.
- The concept of landscaped mounding to screen the carparks is supported by the objector who would like to see similar treatment to the rest of the carparks, in this area of the site.
- The objector recommends that the mounding begin at 13 metres from the boundary to ensure it is not under the dripline of the trees. This would mean relocating of car parks to ensure the continued health of the row of trees.

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- Additional boundary screen planting between the existing trees is supported by the objector.

#### Comments

The Building setback and car park setback have been conditioned to be a minimum of 30m from the boundary with minimum setback to the existing trees

#### Hours of operation new restaurant/meeting rooms and secular meeting facility

- Proposed hours of operation excessive.
- Would like to see the operating hours for the Provedore/ Café and Brassiere/Micro Brewery reduced to closing time of 10.30 pm Monday to Saturday and 10.00 pm on Sunday.

#### Comments

The concerns raised have informed the final set of recommended conditions of consent in regard to the hours of operation across the site (**condition 13**)

## SUSTAINABILITY ASSESSMENT

### • **Environment**

The subject site is located Old Hume Highway just north of the Berrima village. The surrounding area is characterised by rural land use activities, predominately the vineyards and grazing of cattle interspersed with dwellings distributed at a low density and set within landscaped gardens.

The site is located within the SP3 Tourist zone. The proposed development is permitted under the provisions of the WLEP and under Chapter 3 of the Wingecarribee Local Planning Strategy 2015-2031.

The Bendooley Winery complex is a high-quality tourist facility with an established winery, restaurant, rare book barn, event facilities and accommodation with a significant reputation within the Southern Highlands Region. The introduction of additional facilities on the site as proposed will allow for the hosting of more functions such as weddings and provide accommodation solutions for guests attending functions as well as other holidaymakers travelling to the region.

### • **Social**

The proposed tourism related development would be expected to have positive social impacts and provide new opportunities for social interaction within a pleasing environmental setting of vineyards and buildings associated with the wine industry.

Potential negative impacts on the surrounding residents and the rural setting have been addressed by way of additional setbacks, screening and reduction in proposed vehicular entries through requested design amendments during the assessment process and by way of Consent conditions.

### • **Broader Economic Implications**

As discussed in the proposed in the subject DA will MOD Application report, the additional facilities will generate a number of additional full and part time jobs in the locality as well as significant flow-on effect to the local economy from the expanded operation of tourist

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facilities on the Bendooley Estate facilitated by this proposal. *The economic benefits of the proposal are considered likely to be significant and beneficial.*

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

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

#### RELATIONSHIP TO CORPORATE PLANS

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

#### OPTIONS

The options available to Council are:

##### Option 1

THAT Development Application 20/0102 to construct an Accommodation Lodge, Restaurant/Meeting Room building, Secular Meeting Place, Housekeeping facility and associated car parking, roadworks, stormwater management, electricity substation and landscaping on Lot 2 DP 584423, that forms part of the Bendooley Estate at No 3020 Old Hume Highway, Berrima be APPROVED subject to conditions as described in Attachment 1 to the report.

##### Option 2

Refuse the application, in which case Councillors would need to specify reasons for refusal  
Option 1 is the recommended option to this report.

#### CONCLUSION

The development application has been assessed in accordance with the matters for consideration under section 4.15 of the *Environmental Planning & Assessment Act 1979*, and all relevant environmental planning instruments and Council policies. It is therefore recommended that the application be determined by way of conditional approval.

#### ATTACHMENTS

1. 20 0102 Architectural Plans Housekeeping Building 01.pdf - *circulated under separate cover*
2. 20 0102 Architectural Plans The Lodge 02 part A.pdf - *circulated under separate cover*
3. 20 0102 Architectural Plans The Lodge 02 part B.pdf - *circulated under separate cover*
4. 20 0102 Architectural Plans Restaurant & Meeting Rooms 03.pdf - *circulated under separate cover*
5. 20 0102 Architectural Plans The Shed 04.pdf - *circulated under separate cover*

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6. 20-0102-Att 2 - Draft Conditions of Consent.pdf
7. 20-0102 Att 3 Location Plan.pdf - *circulated under separate cover*
8. 20 0102 Att 4 Site Plan.pdf - *circulated under separate cover*
9. Att 5 Annotated Site Plan - *circulated under separate cover*

Mark Pepping

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

Friday 20 March 2020



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**ATTACHMENT 2 – DRAFT CONDITIONS OF CONSENT**

**A ADMINISTRATION CONDITIONS**

**1. Development Description**

Development consent has been granted in accordance with this notice of determination for the construction of an Accommodation Lodge, Restaurant & Meeting Room Building, Secular Meeting Building, House Keeping building and associated car parking, services and roadworks.

**Reason:** *To confirm the use of the approved development.*

**2. Development in Accordance with Plans and Documents**

The development shall be implemented in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Statement of Environmental Effects		KN Planning Pty Limited	July 2019
Additional Information letter		KN Planning Pty Limited	November 2019
Cover Page	D000 A	McConnell Design Studio	28 May 2019
Site Plan	D100 A	McConnell Design Studio	28 May 2019
Ground Floor Plan	D200 B	McConnell Design Studio	19 July 2019
Sub floor Plan	D300 B	McConnell Design Studio	19 July 2019
Roof Plan	D400 A	McConnell Design Studio	28 May 2019
Housekeeping Elevations	D600 B	McConnell Design Studio	19 July 2019
Housekeeping Long Sections	D500 C	McConnell Design Studio	28 May 2019

9.4 DA 20/0102 Tourist and Visitor Accommodation Bendooley Estate -  
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Short Section	D501 B	McConnell Design Studio	19 July 2019
Cover Page	A000	McConnell Design Studio	13 May 2019
Site Plan	A100	McConnell Design Studio	13 May 2019
The Lodge - Ground Floor Plan & First Floor Plan Overall	A200	McConnell Design Studio	13 May 2019
Ground Floor Pan – Part A	A201	McConnell Design Studio	13 May 2019
Ground Floor Plan – Part B	A202	McConnell Design Studio	13 May 2019
First Floor Plan – Part A	A203	McConnell Design Studio	13 May 2019
First Floor Plan – Part B	A204	McConnell Design Studio	13 May 2019
Standard Room Layout	A205	McConnell Design Studio	13 May 2019
Subfloor Plan – Part A	A300	McConnell Design Studio	13 May 2019
Subfloor Plan – Part B	A301	McConnell Design Studio	13 May 2019
Roof Plan – Part A	A400	McConnell Design Studio	13 May 2019
Roof Plan – Part B	A401	McConnell Design Studio	13 May 2019
The Lodge – Section 1	A500	McConnell Design Studio	13 May 2019
East Elevation	A600	McConnell Design Studio	13 May 2019
South East Elevation A	A601	McConnell Design Studio	13 May 2019
South East Elevation B	A602	McConnell Design Studio	13 May 2019
North East Elevation	A603	McConnell Design Studio	13 May 2019

9.4 DA 20/0102 Tourist and Visitor Accommodation Bendooley Estate -  
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North West Elevation A	A604	McConnell Design Studio	13 May 2019
North West Elevation B	A605	McConnell Design Studio	13 May 2019
West Elevation	A606	McConnell Design Studio	13 May 2019
South Elevation	A607	McConnell Design Studio	13 May 2019
Cover Page	B000	McConnell Design Studio	16 April 2019
Site Plan	B100	McConnell Design Studio	16 April 2019
Ground Floor Plan	B200 B	McConnell Design Studio	18 July 2019
Subfloor Plan	B300 A	McConnell Design Studio	18 July 2019
Roof Plan	B400	McConnell Design Studio	18 April 2019
Restaurant & Meeting Rooms – Sections 01 & 02	B500 C	McConnell Design Studio	16 April 2019
Restaurant & Meeting Rooms - North Elevation	B600	McConnell Design Studio	16 April 2019
Restaurant & Meeting Rooms – East Elevation	B601	McConnell Design Studio	16 April 2019
Restaurant & Meeting Rooms – South Elevation	B602	McConnell Design Studio	16 April 2019
Restaurant & Meeting Rooms – West Elevation	B603	McConnell Design Studio	16 April 2019
The Shed – Cover Page	C000 A	McConnell Design Studio	4 November 2019
The Shed – Floor plan	C200 A	McConnell Design Studio	4 November 2019
The Shed – Roof plan	C400 A	McConnell Design Studio	4 November 2019



9.4 DA 20/0102 Tourist and Visitor Accommodation Bendooley Estate -  
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The Shed – Long Section	C500 D	McConnell Design Studio	4 November 2019
The Shed – South section	C501 D	McConnell Design Studio	4 November 2019
The Shed – North Elevation	C600 D	McConnell Design Studio	4 November 2019
The Shed – East Elevation	C601 D	McConnell Design Studio	4 November 2019
The Shed – South Elevation	C602 D	McConnell Design Studio	4 November 2019
The Shed – West Elevation	C603 D	McConnell Design Studio	4 November 2019
Earth Mound details	A1000	McConnell Design Studio	14 May 2019
Proposed Top Dam Stormwater and Driveway Layout	SW 1 B	FWB Civil Engineering	May 2019
Proposed Top Dam Stormwater and Driveway Layout	SW 2 D	FWB Civil Engineering	May 2019
Proposed Top Dam Stormwater and Driveway Layout	SW 2 D	FWB Civil Engineering	July 2019
Stormwater Details Sheet 1	B	FWB Civil Engineering	July 2019
Stormwater Details Sheet 1	B	FWB Civil Engineering	July 2019
Water Cycle Management Study	0150517	Harris Environmental Consulting	18 July 2019
Bushfire Hazard Assessments for the shed and staff Accommodation		Barry Eadie Consulting Pty Ltd	18 November 2019
Soil and Site Assessments for Onsite Wastewater Disposal – for the stables, , Staff Accommodation, New	2587WW V. 2	Harris Environmental Consulting	7 May 2018

9.4 DA 20/0102 Tourist and Visitor Accommodation Bendooley Estate -  
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Administration Building and other proposed commercial development			
Acoustical Assessment	R170103AR1 Rev.0	Rodney Stevens Acoustics	25 July 2019
Traffic & Parking Assessment	18060	Varga Traffic Planning Pty Ltd	July 2019
Amended Traffic & Parking Assessment	18060	Varga Traffic Planning Pty Ltd	23 November 2019
Arborist Report		Alex Bicknell	11 November 2019

**Reason:** To ensure the development is carried out in accordance with the approved plans and documentation.

**3. Inconsistency Between Documents**

In the event of any inconsistency between the conditions of this consent and the drawings/documents referred to above, the conditions of this consent shall prevail to the extent of the inconsistency.

**Reason:** To ensure that the development is undertaken in accordance with the submitted plans and documents (as amended).

**4. Consistency with approved Concept Plan**

The proposed works are to be generally consistent with the Concept Plan Development Consent DA 18/0565 as modified conditions of MOD 18/0565.01.

**5. Surrender of Consent DA 15/311**

The Applicant is to surrender Wingecarribee Development Consent DA 15/311 Dated 17 September 2015.

**Reason:** To ensure the development is carried out in accordance with the approved plans and documentation as amended by consent conditions.

**B DEVELOPMENT DETAILS**

**6. Building heights**

Maximum building heights apply to the proposed buildings as follows:



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- 1) Accommodation suites - 9.2 metres;
- 2) Accommodation Lodge – 9.2 metres;
- 3) Housekeeping shed – 6 metres;
- 4) Staff accommodation – 5 metres;
- 5) Restaurant/Meeting Room Building – 7 metres
- 6) Secular Meeting Building - 9 metres

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential visual impact on the surrounding rural environment.*

**7. Building footprints**

Maximum gross floor areas (GFA) apply to the proposed buildings as follows:

- 1) Accommodation suites, incorporating 4 buildings each containing a total of 21 suite rooms - 1400sqm total maximum GFA
- 2) Accommodation Lodge – 2,470sqm GFA;
- 3) Housekeeping shed - 162sqm GFA;
- 4) Storage shed - 200sqm GFA;
- 5) Restaurant/Meeting Room Building - 859sqm GFA; and
- 6) Secular Meeting Building - 218sqm GFA.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential visual impact on the surrounding rural environment.*

**8. Maximum number of staff and patrons**

The maximum number of staff and patrons on the site at any one time is to be in accordance with the Tables 4.5.1 and 4.5.2 in the submitted Additional Information by KN Planning dated 28 November 2019.

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation and minimises potential impact on the surrounding road system and rural environment.*

**9. Building Setbacks from Old Hume Highway frontage**

All buildings are to be setback a minimum of 20 metres from the Old Hume Highway boundary of the Site.

**Reason:** *To ensure any potential visual impact on the surrounding rural environment is minimised and allow sufficient land area for effective screen planting.*

**10. Building setback from No 3092 Old Hume Highway boundary**

All buildings and their associated car parking shall be set back by a minimum of 30m from the common boundary with 3092 Old Hume highway Berrima. The proponent shall provide earth mounding constructed with the toe of the batter no closer than 6m from



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the trunks of any existing substantial trees along that boundary. The maximum height of the earth mounding shall be 2m and shall include continuous landscape treatments to enable suitable screening to the adjacent property to the satisfaction Council. The earth mounding and landscaping shall be provided to the extent of the developed area adjacent to the Southern Boundary of the Bendooley Estate.

**Reason:** *To protect the amenity of the neighbouring property, ensure the continued health of the existing significant pine tree hedge along the Southern boundary and enable adequate additional screen planting to be provided.*

**11. Traffic and access**

The Applicant is to provide detailed plans for the design to the satisfaction of Council's traffic engineers and the RMS for the provision of a 70 metre long deceleration lane on the Old Hume Highway linking to the Stage 2 internal road entry prior to the issue of any construction certificates for works on the Stage 2 portion of the site.

All costs associated with the design and construction of the deceleration lane are to be borne by the Applicant.

**Reason:** *To ensure the traffic flow on the Old Hume Highway is not compromised and that patrons and staff visiting the site can do so safely bearing in mind the speed limit on the Old Hume Highway along the frontage of the site is 100kph.*

**12. Protection of Native vegetation**

A Vegetation Management Plan is to be submitted detailing the ongoing maintenance procedures for the protection of the stand of remnant native trees on the site satisfaction of Council's Environmental specialist prior to the issue of any construction certificate pursuant to this consent.

**Reason:** *To protect valued native vegetation populations in the Shire.*

**13. Hours of operation**

The maximum hours of operation for the facilities on the Site are to be limited as follows:

<i>Restaurant/Meeting Rooms:</i>	52 events per year the new facilities can operate 7am to 11pm (out by 11.30) with the rest adhering to 9am to 8pm (Monday to Saturday) with no function operating past 10pm on Sundays.
<i>Secular Meeting Space:</i>	52 events per year the new facilities can operate 9am to 11pm (out by 11.30) with the rest adhering to 9am to 8pm (Monday to Saturday) with no function operating past 10pm on Sundays.



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Note: 'hours of operation' does not include cleaning or preparation time by staff that may occur an hour before and/or after these times. It relates to the timeframe for functions.

**Reason:** *To ensure that the amenity of the surrounding area is not compromised as a result of the operation of the development, particularly when all facilities on the site are fully operational at the same time.*

**Note:** *Any variation to these hours will require Council consent via the lodgement of an application under Section 4.55 of the Environmental Planning and Assessment Act 1979.*

**14. Lighting**

All external lighting shall:

- (a) comply with AS 4282–1997 Control of the obtrusive effects of outdoor lighting, and
- (b) be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.

Lighting at vehicle access points to the development must be provided in accordance with AS/NZS 1158 Set: 2010 *Lighting for roads and public spaces*.

**Reason:** *To ensure that the amenity of neighbouring properties is not compromised.*

**15. Compliance with Disability Discrimination Act 1992**

This approval does not protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the Disability Discrimination Act 1992, and the applicant/owner is therefore advised to investigate their liability under this Act.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

Note: *Disability (Access to Premises - Buildings) Standards 2010 -As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

**B CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

**16. Application for a Construction Certificate (Building Works)**

The applicant shall apply to Council or an Accredited Certifier for a Construction Certificate to carry out the relevant building works in accordance with this consent. The details to be included in the application for a Construction Certificate are:

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- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions .
- (b) If Council or a private accredited certifier issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also, a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) Essential services plan outlining the existing and proposed fire safety measures.  
 A fire hydrant system in accordance with AS2419 .1-2005 is required to be installed due to the building total floor area exceeding 500m2, however reference to installation or compliance for an existing system has not been included in BCA Report prepared by Ian Williams & Associates dated 14/06/2018.
- (d) Disabled access provisions to common and public areas in accordance with AS1428 Design for Access and Mobility and the Premises Code.
- (e) If an alternative solution to the "deemed to satisfy" provisions of National Construction Code is proposed, the following details must be lodged:
  - Performance requirements that the alternative solution intends to meet;
  - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the SCA; and
  - A statement about the person who prepared the alternate solution, indicating qualifications , experience, insurance details and membership of an approved accreditation body.

**Reason:** *A requirement under the provisions of the Environmental Planning and Assessment Act 1979.*

**Note:** Construction work may only commence upon the issue of a Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.

**Note:** Please note that if demolition works forms part of the extent of works approved in the same application, then demolition must not commence prior to the issue of a Construction Certificate.

**17. Appointment of Principal Certifying Authority**

No work shall commence in connection with this Development Consent until:

- (a) A Construction certificate for the building work has been issued by:
  - (i) the consent authority ; or



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- (ii) an accredited certifier ; and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the Council of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the principal certifying authority of such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Reason:** *To ensure that there is certainty as to the consent applying to the land.*

**18. Access for People with Disabilities**

Access for people with disabilities shall be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the Disability Discrimination Act 1992.

Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance

Note: Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

**19. Disabled Toilets**

Plans and details of the disabled toilets shall comply with the relevant Australian Standards, the Building Code of Australia, and with regard to the Disability Discrimination Act 1992.

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Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

**Note:** Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992. The plans must be approved by the Accredited Certifier prior to issue of a Construction Certificate.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

#### 20. Construction Management Plan

A Construction Management Plan (CMP) is required to be submitted and approved by Council prior to the commencement of works. The CMP shall indicate measures to be implemented to protect the environment as well as public health, safety and convenience. The CMP must include the following:

- (a) Off-street parking for employees, contractors and sub-contractors .
- (b) Site access for construction vehicles and equipment purposes.
- (c) Public safety in the use of roads and footpaths where development activities adjoin such facilities.
- (d) The storage and removal, on a regular frequency, of builder's rubble and waste by trade waste contractors.
- (e) Storage of all building materials and equipment wholly within the construction site.
- (f) Public risk policies and management for all contractors' employees using or gaining access over public footpaths and roads.
- (g) External lighting and security alarms proposed for the construction site.
- (h) Firefighting measures to be available on site during development and construction.
- (i) Sanitary amenities proposed on site during development and construction .
- (j) Ensuring the safety of members of the public and Council staff who may have occasion to enter and be in attendance on the site.

**Reason:** *To ensure the safety, amenity and protection of public infrastructure and the environment.*

#### 21. Operational Management Plan

The Applicant is to prepare a Site Operational Management Plan to the satisfaction of Council prior to any additional facilities being constructed and/or occupied on the site.

**Reason:** *To ensure the safety of patrons and staff and protection of the amenity of neighbours.*

#### 22. Provision of Works and Services





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Prior to the issue of the Construction Certificate the Developer shall obtain approval for the works to be undertaken by submitting adequate documentation including plans, standard notes and completed design checklists, calculations and specifications, to Council which justify that the proposed works are in accordance with all Council's standards and all other relevant Codes and guidelines.

**Reason:** *Statutory requirement.*

### **23. Stormwater - Control of Peak Discharge**

Adequate and suitable infrastructure shall be provided to ensure the peak discharge from the site is no greater than the pre-developed peak discharge. This infrastructure shall be designed in accordance with Council's Engineering Policies. Calculations to demonstrate that the post- development peak discharge will not exceed the pre-development peak discharge shall be provided with the application for a Construction Certificate.

**Reason:** *To ensure the peak discharge from the site is no greater than the pre-developed peak discharge.*

### **24. Detailed Stormwater Drainage System Design**

Prior to the issue of the Construction Certificate, a detailed storm water hydraulic drainage plan for the disposal of storm water from the site, prepared in accordance with Council's Design Standards shall be submitted and approved by Council's Development Engineer.

Should any changes be required to the approved storm water drainage plan, the ,amended design shall achieve equivalent performance standards in accordance with Design Specifications.

**Note:** Construction Certificate Approval does not include approval for works external to the property or civil works.

Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the Roads Act 1993, must be obtained from Council prior to the commencement of works.

The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 of the Roads Act 1993 applies.

**Reason:** *To ensure adequate storm water management.*

### **25. Waste Management Plan**

A Waste Management Plan shall be completed and submitted to Council for approval, prior to the issue of the Construction Certificate for the development.



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Requirements of the approved Waste Management Plan shall be complied with during site preparation and throughout demolition and construction. Waste management and its storage must not pose a threat to public health or the environment.

**Reason:** *To minimise the amount of waste going to landfill.*

#### **26. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan shall be prepared in accordance with "Landcom's Blue Book" for sedimentation and erosion control plan by a suitably qualified person, and approved by Council prior to issue of the Construction Certificate.

The Erosion and Sediment Control Plan shall include scaled drawings and detailed specifications which can be referred to onsite by project management staff or project construction supervisor. Items to be shown on the Plan shall include:

- (a) Locality of the site, a north point and scale.
- (b) Existing contours of the site including catchment area boundaries and indications of direction of fall.
- (c) Location of and basic description of existing vegetation.
- (d) Diversion of uncontaminated up-slope run-off around the disturbed sites.
- (e) Location of significant natural areas requiring special planning or management including waters, floodplains, seasonally wet areas, areas prone to ponding/water logging, unstable slopes etc.
- (f) Nature and extent of earthworks, including cut and fill roadworks. Location of all soil and material stockpiles.
- (g) Location of site access, proposed roads and other impervious areas. Existing and proposed drainage patterns.
- (h) Location and type of proposed erosion and sediment control measures. Site rehabilitation proposals, including final contours.
- (i) Time of placement of sediment controls.
- (j) Staging of works and how the plan is to be implemented for each stage or activity on site.
- (k) Maintenance schedule.

**Reason:** *To minimise soil erosion and sediment movement during construction.*

#### **27. Waste Management Plan**

A Waste Management Plan shall be completed and submitted to Council for approval, prior to the issue of the Construction Certificate for the development.

Requirements of the approved Waste Management Plan shall be complied with during site preparation and throughout demolition and construction. Waste management and its storage must not pose a threat to public health or the environment.



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*Reason:* To minimise the amount of waste going to landfill.

**C CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK**

**28. Developers Representative during Construction of Works**

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

Details to be submitted include:-

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

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

- (i) Inform Council in writing of their intention 7 days before entering the site; and
- (ii) Submit to Council a proposed Schedule of Works.

The Developer may be required to arrange for Council to peruse all other contract documentation prior to the contractor arriving on site to commence work (Schedule of Works, Specifications Bill of Quantity, traffic control plan and Soil and water management plan).

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

*Reason:* Statutory requirement.

**29. Approval Required for Work within Road Reserve - Section 138 Roads Act 1993**



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Where works are proposed within the road reserve, the Developer must obtain approval from Council (as the Roads Authority and I or as required under Section 138 of the Roads Act 1993) before any works are undertaken. Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the Roads Act 1993.

The following details must be submitted to Council in order to obtain the Section 138 approval:

- A copy of approved design plans related to the development and proposed works to be undertaken.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority 's manual *"Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742 .3 - 2002 Traffic Control Devices for Works on Roads*. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.
- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by applicant I contractor undertaking the works.

Advice: Where works are required within a Classified Road, the Developer must obtain the concurrence and I or the approval of the *Roads and Traffic Authority* for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.

**Reason:** *Statutory requirement .*

**30. Relocation of Existing Services**

Where existing services including drainage, sewerage and water may be required to be relocated as a result of the development, a plumber's permit is required from Council prior to commencing work . Inspection of these works by Council as the Water Supply Authority is required.

**Reason:** *Statutory requirement.*

**31. Fencing of the Construction Site**

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

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**Reason:** *To ensure that the safety of the public is not compromised.*

### 32. Developer to advise of damage to Council property

The developer must advise Council of any damage to property controlled by Council which adjoins the site including kerbs, gutters, footpaths, walkways, reserves, street trees, drainage pits and the like, prior to commencement of any work on the site. Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the developer/owners/applicant's expense.

The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged grass verges, concrete footpath, kerb and gutter, street trees, drainage pits are to be carried out by the contractor/builder to Council's specification and supervision prior to occupation of the development.

**Reason:** *Public safety.*

### 33. Erosion and Sediment Control

Erosion and sediment control measures (as per the approved Erosion and Sediment Control Plan) shall be installed prior to the commencement of works.

**Reason:** *To ensure that sediment does not leave the site as a result of the construction of the development.*

### 34. Wheel Wash

A vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed in accordance with the approved Erosion and Sediment Control Plan prior to the commencement of any site works, to prevent mud and dirt leaving the site and being tracked.

**Reason:** *To minimise soil being trucked off site.*

## D CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

### 35. Approved Plans to be available on site

Endorsed Council approved plans, specifications, documentation and the consent shall be made available on site at all times during construction .

**Reason:** *To ensure compliance with approved plans.*

### 36. Erection of Signs

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A sign must be erected in a prominent position on any site on which building work, is being carried out:

- (a) Showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) Stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**Reason:** *The condition is prescribed under clause 98A of the Environmental Planning and Assessment Regulation 2000.*

### 37. Imported 'Waste-derived' Fill Material

The only waste derived fill material that may be received at the development site is:

- Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act 1997* (POEO); or
- Any other waste-derived material the subject of a resource recovery exemption under clauses 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material

**Note:** Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

The application of waste-derived material to land is an activity that may require a licence under the *Protection of the Environment Operations Act 1997*. However, a licence is not required if the only material applied to land is virgin excavated natural material or waste-derived material that is the subject of a resource recovery exemption under clauses 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014*.

Resource recovery exemptions are available on the NSW EPA website at <http://www.epa.nsw.gov.au/waste/>.

**Reason:** *To ensure that imported fill is of an acceptable standard for environmental protection purposes.*

### 38. Excavations and Backfilling

All excavations and backfilling associated with the erection or demolition of a building shall be executed safely and in accordance with appropriate professional standards



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properly guarded and protected to prevent them from being dangerous to life or property.

**Reason:** *To ensure the safety of life and property.*

**39. Vehicular Access Point - Construction and Delivery Vehicles**

A suitable entry point shall be nominated on site and utilised by construction and delivery vehicles . This entry point is to be located so that the possibility of damage to Council's property is minimised during construction . The access point shall be surfaced with all-weather materials of a minimum of 20mm in size. Ballast or crushed gravel (minimum of 40mm rock) for the full width of the kerb from the edge of the road to the property boundary.

**Reason:** *To reduce the possibility of damage to public property .*

**40. Engineering Inspections by Council**

24 hours prior to the covering of the following works, Council shall be notified by the licensed builder, owner builder or licensed plumber/drainer that the following works are ready for inspection:

- (a) Works in relation to road reserves, footpath, kerb and gutter, road shoulder and drainage within public lands or road reserves;

**Note:** The subject building is not to be occupied until an Interim or Final Occupation Certificate is issued.

**Note:** An accredited certifier may not be substituted for Council in respect of these inspections, as Council remains the sole responsible authority for these matters.

**Reason:** *Statutory requirement.*

**41. Stormwater - Construction**

The applicant shall provide adequate storm water drainage infrastructure (pits/pipes/open channels/detention storage) for the conveyance of storm water passing through the site from upstream, and sourced from the development to a discharge outlet to be approved by Council. The point of discharge shall be clearly depicted and the legal right to discharge at that point to be justified. Status of the point of discharge is to be made clear (i.e. provision of drainage easements) .

**Reason:** *To assist in the prevention of erosion of the site from storm water.*

**42. Stormwater - Discharge**

All stormwater runoff from the development shall be collected within the property and discharged to an approved stormwater management system.

**Reason:** *To ensure that stormwater is appropriately disposed of.*



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#### 43. Damage to Adjoining Properties

All precautions shall be taken to prevent any damage likely to be sustained to adjoining properties. Where damage occurs to adjoining property all necessary repair or suitable agreement for necessary repairs shall be undertaken by the applicant in consultation with, and with the consent of, the affected property owner.

**Reason:** *Structural safety.*

#### 44. Disruption of Traffic

During any construction works on the public road that is associated with this approval, the Applicant shall provide appropriate signage and traffic control facilities as per the requirements of AS 1742.3-2009 *Manual of uniform traffic control devices - Traffic control for works on roads* and the RMS "Traffic Control at Works Sites" manual.

**Reason:** *Safety and information.*

#### 45. Erosion and Sediment Control Plan Compliance

All site works shall be carried out in accordance with the approved Erosion and Sediment Control Plan. Implementation of the Erosion and Sediment Control Plan shall be supervised by personnel with appropriate qualification and experience in erosion and sediment control.

**Note:** In the event of non-compliance with the approved plan, Council Officers have the ability to issue Penalty Notices, being an on the spot fine and/ or orders.

**Reason:** *To ensure that the environment is protected.*

#### 46. Prevention of Nuisance

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris and noise during the demolition, excavation and building works.

**Reason:** *Health and amenity.*

#### 47. Dust Control Small Works

Where a dust nuisance is likely to occur, suitable screens and/or barricades shall be erected during the demolition, excavation and building works. If necessary, water sprays shall be used on the site to reduce the emission of dust. Screening shall consist of minimum 2 metres height of shade cloth or similar material secured to a chain wire fence of the like.

**Reason:** *Environmental amenity*





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**48. Tree Removal/Tree Preservation**

No trees shall be pruned, removed, damaged or destroyed without the prior written consent of Council. Failure to comply with this requirement will result in prosecution by Council in accordance with the provisions of Wingecarribee Local Environmental Plan 2010 and associated Development Control Plans.

Advice: Tree removal should be carried out by a level 3 and above professional arborist to avoid any risk to life or damage to property. This person should have adequate public liability insurance cover.

Reason: To comply with the Wingecarribee Local Environmental Plan 2010.

**49. Approved hours of Construction/Demolition**

Construction/demolition activities shall be limited to the following hours:

DAY	HOURS
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil

Reason: To ensure that the amenity of the surrounding area is not compromised as a result of the construction of the proposal.

Note: Any variation to these hours shall require Council consent via the lodgement of an application under section 4.55 of the Environmental Planning and Assessment Act 1979.

**50. Maintenance of the site**

All materials and equipment shall be stored wholly within the work site.

Waste materials (including excavation, demolition and construction waste materials) shall be managed on the site and then disposed of at a waste management facility.

Any run-off and erosion control measures required shall be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

During construction :

- (a) all vehicles entering or leaving the site shall have their loads covered, and
- (b) all vehicles, before leaving the site, shall be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

At the completion of the works, the work site shall be left clear of waste and debris.

Reason: Environmental amenity.

**51. Storage of Building Materials, Plant and Equipment**



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All building materials, plant and equipment are to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and also so that the road reserve is not damaged.

No storage, or placing of any building materials to occur on adjacent public roads or footpath areas in association with the construction, maintenance or use of the development or site.

**Reason:** *To ensure that pedestrian and vehicular access in public places is not restricted and also so that the road reserve is not damaged.*

**52. Protection of Public Places**

The adjoining or adjacent public area shall not be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances .

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the closure of a public place, a barrier, fence or hoarding shall be erected prior to the commencement of any work subject to approval of a Section 138 Roads Act 1993 approval (including submission of a Traffic Management Plan).

Where a hoarding is required, an application for hoarding shall also be submitted to and approved by Council prior to commencement of any work . Hoardings shall be erected to comply with the requirements of WorkCover , the Principal Certifying Authority and with relevant Australian Standards.

**Reason:** *Public safety.*

**53. Temporary Onsite Toilet**

Toilet facilities shall be available or provided at the work site prior to the commencement of works and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet shall:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the Local Government Act 1993, or
- (c) be a temporary chemical closet approved under the Local Government Act 1993.

**Reason:** *To ensure that there are appropriate facilities on-site for construction workers.*

**54. Waste Management**



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The provision of a metal waste skip with self-closing lid or secure covering on-site for the duration of the construction to ensure that all wastes are contained on the site. The receptacle shall be emptied periodically to reduce the potential for rubbish to leave the site.

Sorting of waste materials shall occur on site in accordance with the approved Waste Management Plan.

**Reason:** *To ensure that all wastes generated from the construction of the development are contained on the site.*

**E CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN INTERIM OR FINAL OCCUPATION CERTIFICATE**

**55. Occupation Certificate**

In accordance with Section 6.9 of the *Environmental Planning and Assessment Act 1979*, an application for an Occupation Certificate, shall be made on completion of the works and the relevant application fee paid. All works specified in the development consent and approved Construction Certificate plans shall be completed and all development consent conditions complied with prior to the issue of the Occupation Certificate.

The Principal Certifying Authority (PCA) is required to be satisfied, amongst other things, that:

- All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- Any preconditions to the issue of the certificate required by a development consent have been met.

**Reason:** *To comply with the provisions of the Environmental Planning and Assessment Act 1979*

**Note:** A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a new building (within the meaning of Section 6. 10 of the *Environmental Planning and Assessment Act 1979* unless an Occupation Certificate has been issued in relation to the building or part.

**56. Public Infrastructure**

The applicant shall rectify any damage to public infrastructure (including roads, gutters, footpaths, street trees, etc.) prior to the issue of an Occupation Certificate at no cost to Council.

**Reason:** *To ensure that public infrastructure is protected from damage as a result of the development.*

**57. Civil Engineering works and services**



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All approved civil engineering works and services as per the approved engineering plans are to be constructed prior to the issue of the Occupation Certificate.

**Reason:** *To ensure that the works and services are constructed in accordance with the approved plan.*

**58. Certification of Engineering Works**

Prior to issue of the Occupation Certificate, the following documents shall be submitted to the Principal Certifying Authority. These documents are:

- a) A Certificate from a suitably Qualified Engineer, with Corporate Membership standing in the Institution of Engineers, Australia, and registered on the National Professional Engineers Register (NPER) under the appropriate professional category, and
- b) A "Work - As - Executed" (WAE) plans of the engineering and/or drainage works.

The abovementioned Certificate shall certify that:

- (i) the stormwater drainage system, and/or
- (ii) the car parking arrangement and area, and/or
- (iii) any related footpath crossing works, and/or
- (iv) the proposed basement pump and well system, and/or
- (v) the proposed driveway and layback, and/or
- (vi) other civil works have been constructed in accordance with the approved plans and details, satisfies the design intent and complies with appropriate SAA Codes relevant Standards and Councils Policies and Specifications.

are to be provided to Council prior to the issue of any Occupation Certificate. These documents are to be retained on Council's file.

**Reason:** *Asset management.*

**59. Disabled Car Parking**

Prior to the issue of the Occupation Certificate, car parking spaces shall be provided at the rate of not less than one disabled car parking space for each 100/50 spaces or part thereof in a carpark required to be accessible, and a car parking area on the same allotment as a building required to be accessible . The spaces are not required to be signposted where there is a total of not more than 5 car parking spaces, so as to restrict the use of the car parking space only for people with disabilities.

The spaces shall comply with the requirements for parking in the current version of AS 2890 .1 for people with disabilities.

All works shall be completed prior to the issue of the Occupation Certificate.

**Reason:** *To ensure that there are adequate disabled car parking spaces provided for the development.*



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#### 60. Fire Safety

Fire safety measures to meet relevant standards shall be implemented and approved by the Building Certifier prior to any occupation of the building and issue of any Occupation Certificate.

If an alternative solution to the "deemed to satisfy" provisions of National Construction Code is proposed, the following details must be lodged:

- Performance requirements that the alternative solution intends to meet.
- Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
- A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body

**Reason:** *To ensure the safety of the building.*

#### 61. Final Fire Safety Certificate

A final fire safety certificate pursuant to clause 172 of the *Environmental Planning & Assessment Regulations 2000* shall be submitted, to the principal certifying authority upon completion of the specified work in the Schedule of Fire Safety Measures. As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:

- (a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner ; and
- (b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

**Reason:** *To ensure the safety of the building.*

#### 62. Evacuation Plan

Prior to the issue of the Occupation Certificate for the development , an evacuation plan complying with Australian Standard (AS3745) shall be prepared and implemented . The emergency evacuation should consider:

- (a) The mobility of occupants and how this is to be accommodated during an evacuation;
- (b) The location of a safe congregation area, away from the evacuated building, busy roads, other hazards and the evacuation points of other residents or tenants within the building or surrounding buildings;

**Reason:** *To ensure the safety of the building.*



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### 63. Food Shop Requirements

Prior to the issue of the Occupation Certificate, the premise shall be set up and operated in accordance with the *Food Act, the Food Regulations and the Food Safety Standards*. The premise shall be fitted out in accordance with the *Australian Standard AS4674 - 2004*.

**Reason:** *Statutory requirement.*

### 64. Food Shop Notification Requirements

Occupation of the premises shall not occur until a notification form has been submitted to Council for the food business conducted on the premises.

Evidence of compliance of the above shall be submitted to Council prior to the issue of an Interim or Final Occupation Certificate and commencement of business.

**Reason:** *Registration and notification to relevant authorities.*

### 65. Storm water Facilities Alterations

A "Restriction as to User" shall be included on the linen plan and title of the proposed development to prevent any change in shape or alteration in structure of the proposed storm water facilities after the final approval of the structure has been given by Council. Details shall be provided for the approval of Council prior to the issue of the Occupation Certificate.

**Reason:** *To provide appropriate storm water management.*

### 66. Stormwater Facilities Maintenance

A "Positive Covenant" shall be included on the linen plan and title of the proposed development showing the location of storm water facilities and requiring that the proposed storm water facilities be maintained in a safe and functional manner. In addition, the *Section 888 Instrument (Conveyancing Act 1919)* shall make provision for Council to conduct maintenance on the subject storm water facilities at the owner's expense if the storm water facilities are not maintained to the agreed standard. Details shall be provided for the approval of Council prior to issue of the Occupation Certificate.

**Reason:** *To provide appropriate storm water management.*

### 67. Construction of Internal Roads and Parking

Internal roads, turning areas and off street vehicular parking spaces shall be constructed with an all-weather surface of a suitable 'soft' appearance to complement the landscape scheme to the satisfaction of the Group Manager Planning, Development and Regulatory. 'Soft' may be interpreted as exposed gravel aggregate except in heritage areas or sites where decomposed granite is approved. Exposed gravel aggregate should be stabilised with a minimum of 5% cement. Where grades



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exceed 5% ( i.e., 1 in 20)the pavement is to be sealed prior to the issued of Occupation Certificate. The parking spaces shall be line marked prior to the issue of Occupation Certificate.

The internal roads are to have vegetated swales (table drains) and stabilised embankments on both sides (if applicable) for the entire length, with appropriately spaced cross drains (piped), level spreaders, sills and mitre drains that divert water onto a stable surface capable of accepting concentrated water flow and which provides for efficient sediment trapping and energy dissipation. Where outlets discharge into drainage depressions or watercourses, they are to be stabilised by an energy dissipater.

All internal roads widths are to be designed to accommodate 2-way traffic .

**Reason:** *To ensure the safe movement and parking of vehicles on the property.*

**68. Certification of Internal Civil Works**

On completion of works and prior to occupation, certification from a practising appropriately qualified Engineer shall be submitted to Council detailing that all internal civil works (i.e., internal driveways, paths and stormwater drainage systems including any onsite detentions) are in accordance with the approved plans and specifications .

**Reason:** *To ensure all civil works are constructed in accordance with approved plans and meet all relevant standards.*

**F CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

**69. Noise Control**

The development shall comply with the requirements for industrial premises contained in the Noise Policy.

Noise emitted by the development:

- (a) shall not exceed an L A (15 min) of 5dB(A) above background noise when measured at any lot boundary of the property where the development is being carried out, and
- (b) shall not cause the relevant amenity criteria in Table 2.1 in the Noise Policy to be exceeded.



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**Note:** *In this clause, the Noise Policy means the document entitled NSW Industrial Noise Policy (ISBN 0 7313 2715 2) published in January 2000 by the Environment Protection Authority.*

**Reason:** *To ensure that the amenity of surrounding residents is not compromised.*

**70.Noise Control Measures**

The Applicant and/or operator shall implement the noise control measures set out in the Acoustic Report prepared by Rodney Stevens Acoustics and dated 25 July 2019.

After completion of the works, prior to the issue of an Occupation Certificate, the developer must submit to the Council or the accredited certifier, a report from a suitably qualified acoustic consultant (who is a member of either the Australian Acoustical Society, or the Association of Australian Acoustical Consultants) verifying that the abovementioned noise control measures have been satisfactory implemented.

**Reason:** *To prevent loss of amenity to the area.*

**71.Noise Control Legislation**

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

**Reason:** *To prevent loss of amenity to the area.*

**72.Noise Monitoring**

The operator of the approved development must engage a suitably qualified acoustic consultant (as defined above) to carry out noise monitoring designed to confirm that actual noise emanating from the development under normal operating conditions with no less than 120 patrons at one time in the venue is within the noise criteria levels outlined in the Acoustical Assessment Report Reference R170103DR1 prepared by Rodney Stevens Acoustics Pty Ltd and dated 25 July 2019 . The monitoring shall be carried out:-

- (a) In accordance with the current Australian Standard and the relevant NSW EPA noise control requirements.
- (b) Within 60 days of commencement of operations of the noise generating activities and equipment associated with the development.

Details of the monitoring shall be the subject of a report prepared by the Acoustic Consultant to Council and including where applicable, detailed recommendations concerning the measures required to reduce noise levels to approved levels.





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**Reason:** To prevent loss of amenity to the area.

### **73. Noise Control Legislation**

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

**Reason:** To prevent loss of amenity to the area.

### **74. Noise from Commercial Premises**

Noise from patrons and amplified music emitted from the premises shall comply with the following criteria:

- The L10 noise level emitted from the premises shall not exceed 3dB(A) above the background(L90) noise level in any Octave Band Centre Frequency (31.5Hz to 8 KHz) between the hours of 7am to 12 midnight when assessed at the nearest affected residential boundary. The background noise level shall be measured in the absence of noise emitted from the premises.
- The LA10 noise level emitted from the premises shall not exceed the background (LA90) noise level in any Octave Band Centre Frequency (31.5Hz to 8 KHz) between the hours of 12 midnight to 7am when assessed at the nearest affected residential boundary . The background noise level shall be measured in the absence of noise emitted from the premises.
- Notwithstanding compliance with the above clauses, the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight to 7am.

**Reason:** To prevent loss of amenity to the area.

### **75. Noise Control**

The use of the premises shall not give rise to the transmission of offensive noise to any place of different occupancy .

**Reason:** To prevent loss of amenity to the area.

### **76. Car Parking**

Visitors and staffs to utilize onsite parking only. In the event of the proposed parking areas reach capacity the overflow vehicles must be accommodated within the development property.

### **77. Annual Fire Safety Statement**

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Each year, the owner of a building to which an essential fire safety measure is applicable shall cause the Council to be given an annual fire safety statement for the building. Such a fire safety statement:

- (a) shall deal with each essential fire safety measure in the building premises; and
- (b) shall be given within twelve months after the last such statement was given, or if no such statement was given, within twelve months after a final fire safety certificate was first issued for the building.

As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:-

- (a) shall cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades; and
- (b) shall cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be permanently displayed in the building.

**Reason:** *To ensure compliance with fire safety requirements.*

## E WATER NSW'S CONCURRENCE CONDITIONS

Concurrence has been granted by Water NSW for the development pursuant to State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. The conditions provided by Water NSW are provided below and form part of this Development Consent.

### 78. General

1. The site layout and staging (including staging sequence) shall be as specified in the Statement of Environmental Effects (dated July 2019) as amended by the Additional Information letter dated 28 November prepared by KN Planning Pty Ltd and shown on the plans listed in Condition 2 prepared by McConnell Design Studio.
2. No revised site layout, staging or works that may impact on water quality, shall be permitted without the agreement of Water NSW.

**Reason:** *Water NSW has based its assessment under the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the development.*

### Wastewater Management

3. The detailed design of the proposed package wastewater treatment plant and effluent irrigation system connections to the buildings the subject of this consent shall be submitted to Council and WaterNSW for approval prior to the issue of any construction certificate.



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**Reason:** *To ensure that all wastewater on the property is designed, constructed and managed in a manner that has a sustainable neutral or beneficial effect on water quality over the longer term.*

**Stormwater Management**

4. Development shall minimise impervious area and maximise rainwater capture from roof areas for re-use within the development.
5. Details of water sensitive design measures, incorporating the stormwater quality improvement devices as specified in the Water Cycle Management Study prepared by Harris Environmental Consulting (dated 25 November 2019) are to be submitted to Council and WaterNSW for approval prior to the issue of any construction certificate.
6. The bioretention swale and basin shall be designed, located and constructed as per the Water Cycle Management Study Details, Ref: 2588WW Version 4 dated November 25, 2019 prepared by Harris Environmental Consulting to capture and treat all run-off from the main car park, loading dock, rainwater tank overflow and western part of driveway . The bioretention basin shall also incorporate the following specifications and requirements:
  - be designed consistent with Adoption Guidelines for Stormwater Biofiltration Systems Version 2 (Payne et al, 2015, Melbourne, CRC for Water Sensitive Cities)
  - a filter media consisting of a clean sandy loam with a certified median particle diameter of 0.5 mm, a maximum orthophosphate concentration of 40 mg/kg and a maximum total nitrogen concentration of 400 mg/kg
  - be planted with appropriate deep-rooted , moisture-tolerant vegetation protected by rock mulch (grass and turf is not appropriate vegetation and organic mulch is not suitable)
  - direct all discharge and overflow via armoured discharge points such that discharge does not cause erosion
  - be accessible from the driveway by machinery to facilitate cleaning, monitoring and maintenance of the structures
  - be permanently protected from vehicular and livestock damage by bollards, fences, castellated kerbs or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
  - be protected by sediment and erosion control measures during any construction and post- construction phase until the ground surface is revegetated or stabilised.
7. A rainwater collection and reuse system for the building roof shall be installed that incorporates the following specifications and requirements:
  - rainwater tanks with a minimum total capacity of 24,000 litres
  - roofs and gutters designed so as to maximise the capture of rainwater in the tanks
  - the tanks plumbed to toilets, showers and other areas for non-potable use including landscape watering, and



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- all rainwater tank overflow shall be directed to the bioretention basin on the site.
8. No wash water used in cleaning the floors of the kitchen facility shall be directed to the stormwater system.
  9. No variation to stormwater treatment or management that will impact on water quality shall be permitted without the agreement of Water NSW.
  10. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to the issuance of any Occupation Certificate that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.

**Reasons:** *To ensure that the stormwater quality management measures and structures for each stage of the proposed development have a sustainable neutral or beneficial impact on water quality over the longer term.*  
*To ensure appropriate stormwater management and quality control measures are installed and managed to ensure a sustainable neutral or beneficial impact on water quality particularly during wet weather over the longer term.*

**Operational Environmental Management Plan**

11. An Operational Environmental Management Plan (OEMP) shall be prepared prior to issuance of any Occupation Certificate in consultation with Water NSW by a person with knowledge and experience in the preparation of such plans and then be submitted to Wingecarribee Shire Council. The OEMP shall be implemented and shall as a minimum include but not be limited to:
  - details on the location and nature of wastewater and stormwater treatment structures such as tanks, pumps, filters, monitoring equipment, swales, bioretention basin and effluent disposal area
  - an identification of the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all components of the wastewater treatment and effluent disposal systems and stormwater treatment systems, including the frequency of such activities
  - a monitoring program for the wastewater treatment system that shall include, but not be limited to:
    - o daily wastewater flow generated by individual functions
    - o weekly loading once the stable complex is fully operational
  - the identification of the individuals or positions responsible for inspection, monitoring and maintenance activities, and
  - checklists for recording inspections, monitoring and maintenance activities.



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12. All stormwater and wastewater management measures shall be monitored, managed and maintained as per Operational Environmental Management Plan referred in Condition 15 above.

**Reason:** *To ensure appropriate wastewater and stormwater treatment and disposal and quality control measures are designed, implemented and maintained so as to achieve a sustainable neutral or beneficial impact on water quality, particularly during wet weather, over the longer term*

**Construction Activities**

13. A Soil and Water Management Plan shall be prepared by a person with knowledge and experience in the preparation of such plans for all works proposed or required as part of the development. The Plan shall meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004) manual - the "Blue Book". The Plan shall be prepared prior to Council issue a Construction Certificate and be to the satisfaction of Council. The plan shall also specify how suitable groundcover will be achieved within required timeframes .
14. The Soil and Water Management Plan shall be implemented and no works shall commence until effective erosion and sediment controls have been installed. The controls shall prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system and shall be regularly maintained and retained until works have been completed and ground surface stabilised or groundcover re-established .

**Reason:** *To manage adverse environmental and water quality impacts during the construction phase of the development and to minimise the risk of erosion, sedimentation and pollution within or from the site during this construction phase.*

**F BUSHFIRE RISK MANAGEMENT – NSW RURAL FIRE SERVICE CONCURRENCE CONDITIONS**

**79. Asset Protection Zones (RFS condition)**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

At the commencement of building works, and in perpetuity, the area around the proposed buildings shall be managed as outlined within section 4.1.3 of 'Planning for Bush Fire Protection, 2018' and the NSW Rural Fire Service's document 'Standards for asset protection zones' as follows:

Staff accommodation buildings:

- North: Inner Protection Area (IPA) for a minimum distance of 57 metres;

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- South and East: IPA for a minimum distance of 40 metres; and
- West: IPA for a minimum distance of 30 metres

All other buildings:

- West: Inner Protection Area (IPA) for a minimum distance of 30 metres; and
- All other Directions: IPA for a minimum distance of 40 metres Water and Utilities.

**80. Water and Utilities (RFS condition)**

In order to ensure adequate services of water for the protection of buildings is provided during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building, the following conditions shall apply:

The provision of all water, electricity, and gas services shall comply with section 4.1.3 of 'Planning for Bush Fire Protection, 2018'. In recognition that an unreliable water supply exists, 10,000 litre water supply shall be provided for each habitable building in accordance with 'Planning for Bush Fire Protection 2018' and the following:

- Aboveground tanks shall be constructed of non-combustible material.
- A 65mm metal storz fitting and ball or gate valve shall be installed in any tank.
- The gate or ball valve, pipes and tank penetration shall be adequate for full 50mm inner diameter water flow through the Storz fitting and shall be metal rather than plastic.
- A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- A standard Static Water Supply (SWS) marker shall be obtained from the District NSW Rural Fire Service as part of the Static Water Supply Program once the tank water supply has been installed. The marker once issued is to be:
  - (a) fixed in a suitable location so as to be highly visible;
  - (b) positioned adjacent to most appropriate access for the static water supply;
  - (c) fixed facing the roadway on a gatepost, fence or dedicated post, at the right hand side of the entranceway to the Static Water Supply;
  - (d) fixed no less than 600mm from the ground surface to the base of the sign and not higher than 1200mm from the ground surface to the base of the sign; and,
  - (e) fixed with suitable screws or nails.

**81. Access (RFS condition)**

The intent of measures for fire trails is to provide suitable access for fire management purposes and maintenance of APZs. To achieve this, the following conditions shall apply:

- All access within the site shall comply with section 4.2.7 of 'Planning for Bush Fire Protection, 2018'.

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**82. Evacuation and Emergency Management (RFS condition).**

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014'.

**83. Design and Construction (RFS condition)**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- All new construction associated with the proposed staff accommodation, tourist accommodation, and Class 9 Buildings shall comply with Sections 3 and 5 (BAL 12.5) *Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and *'Planning for Bush Fire Protection, 2018'*.
- Any new Class 10b structures as defined per the *'Building Code of Australia'* situated within 10 metres of any habitable and/or SFPP building shall be non-combustible.

**84. Landscaping (RFS condition)**

All landscaping within the site is to comply with the principles of *'Planning for Bush Fire Protection, 2018'*.

**END OF CONDITIONS**

**G ADVISORY MATTERS**

**G001 Lapsing of Consent**

In accordance with Section 4.53 of the *Environmental Planning and Assessment Act 1979* (as amended), this Development Consent lapses five (5) years after the date from which it operates unless building, engineering or construction work has physically commenced. A Construction Certificate must be obtained and the works commenced in accordance with the approved plans and specifications within five (5) years from the date of this Development Consent.

**G002 Process for Modification**

The plans and/or conditions of this Consent are binding and may only be modified upon written request to Council under Section 4.55 of the *Environmental Planning and*



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*Assessment Act 1979.* The request shall be accompanied by the appropriate fee and application form. You are not to commence any action, works, contractual negotiations, or the like, on the requested modification unless and until the written authorisation of Council is received by way of an amended consent.

**G003 Review of Determination**

In accordance with the provisions of section 8.2 of the *Environmental Planning and Assessment Act 1979* (as amended) the applicant can request Council to review this determination. The request shall be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.

**G004 Right of Appeal**

Sections 8.7 and 8.10 of the *Environmental Planning and Assessment Act 1979* gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.

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## 11 OPERATIONS FINANCE AND RISK

### 11.1 Tender for Merrigang Street Reconstruction - Subgrade Stabilisation

Reference:	6330/20.5
Report Author:	Project Engineer Civil
Authoriser:	Group Manager Infrastructure Services
Link to Community Strategic Plan:	Work in partnership to ensure a safe road network

#### PURPOSE

The purpose of this report is to present the evaluation of the Request for Tender for the Merrigang Street Reconstruction – Subgrade Stabilisation (full service).

#### RECOMMENDATION

1. **THAT** the report concerning Merrigang Street Reconstruction – Subgrade Stabilisation (full service) - Council adopts the recommendations contained within the Closed Council report – Item 19.1.

OR

2. **THAT** the report concerning Merrigang Street Reconstruction – Subgrade Stabilisation (full service) - Council - 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)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

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



**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, 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

Council sought tenders for suitable and qualified contractors to provide a lump sum tender for the cement stabilisation of the Merrigang Street pavement between Jasmine St and Albert Street in accordance with the scope of works. The full scope of works was detailed in the design drawings and tender documents.

In accordance with the *Local Government (General) Regulation 2005* part 7, section 163(1), Council is required to invite tenders where estimated expenditure is greater than \$250,000 (GST inclusive).

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

## ADVERTISING

The tender advertising period was from the 11 February 2020 to 03 March 2020 (21 days).

The tender was advertised as follows:

Newspaper / Website	Date Advertised
Newspaper – Sydney Morning Herald	11 February 2020
Newspaper – Southern Highlands News	12 February 2020
Council's Website	For the duration of the advertising period
Council's eTendering Website	For the duration of the advertising period

## TENDERS RECEIVED

A total of Two (2) tender submissions were received:

Company Name	Location	Postcode
<u>Roadworx Surfacing Pty Ltd</u>	<u>56 Marley Place</u> <u>Unanderra</u>	<u>NSW 2526</u>
<u>Stabilised Pavements of Australia Pty Ltd</u>	<u>234 Wisemans Ferry</u> <u>Rd, Somersby</u>	<u>NSW 2250</u>

## LATE TENDERS

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

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



There were no ate tender submissions received (therefore non-conforming):

### TENDER EVALUATION

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

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

### SELECTION CRITERIA

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

#### **Mandatory Criteria:**

Criteria
Public Liability - \$20 million
Workers Compensation OR [Self Employed] Personal Accident and Illness Insurance or Personal Income Protection

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

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

Criteria	Weighting
Capability and experience	20%
Specifications, Service & Support, Fit for Purpose	10%
Community & Social(including local content)	10%
Work Health and Safety, Environment & Sustainability	10%
<b>Total</b>	<b>50%</b>

#### **Summary of Selection Criteria & Weighting:**

Criteria	Weighting
Total Non-Cost Criteria	50%
Total Cost Criteria	50%
<b>Total</b>	<b>100%</b>

## **NON-COMPLIANT TENDERS**

There were a tender submissions were determined to be non-compliant:

<b>Company Name</b>	<b>Reason for Non-Compliance</b>
N/A	

## **CONSULTATION**

### **Community Engagement**

Tenders are part of a commercial arrangement and therefore no community engagement is required.

### **Internal Consultation**

Consultation has taken place between Council's Procurement Section and Assets. This consultation included scope, technical requirements and evaluation methodologies.

### **External Consultation**

None

## **SUSTAINABILITY ASSESSMENT**

- **Environment**

The Contractor has to develop and implement an Environmental Management Plan that complies with the current NSW Government Environmental Management Systems Guidelines (EMS Guidelines) before starting any construction works.

- **Social**

There are no social implications in relation to this report.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

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

## **RELATED COUNCIL POLICY**

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

## **CONCLUSION**

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

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 25 March 2020

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



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**ATTACHMENTS**

There are no attachments to this report.



## 11.2 Investment Report - February 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 29 February 2020.

### RECOMMENDATION

**THAT** the information on Council's Investments as at 29 February 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 29 February 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 \$2,522,519.38 for eight (8) months to 29 February 2020.

### ATTACHMENTS

1. Investment Report Summary as at 29 February 2020

Barry W Paull  
Deputy General Manager Operations, Finance and Risk  
Friday 20 March 2020



## Wingecarribee Shire Council Investment Report Summary

For the period ending 29 February 2020

### List of Investments

Council's investment portfolio as at 29 February 2020 consists of the following investments:

INVESTMENT PORTFOLIO AS AT 29 February 2020						
Institution	Type	Amount	Interest Rate	Investment Term - Days	Maturity Date	% Investment Portfolio
NAB	Term Deposit	5,000,000	2.65%	366	4/03/2020	2.73%
MyState	Term Deposit	5,000,000	1.73%	119	6/03/2020	2.73%
NAB	Term Deposit	5,000,000	1.73%	180	10/03/2020	2.73%
IMB	Term Deposit	4,000,000	1.60%	119	27/03/2020	2.18%
CBA	Term Deposit	5,000,000	1.63%	210	30/03/2020	2.73%
NAB	Term Deposit	5,000,000	1.82%	270	20/04/2020	2.73%
New castle	Term Deposit	3,000,000	2.50%	365	29/04/2020	1.64%
AMP	Term Deposit	5,000,000	1.90%	180	13/05/2020	2.73%
BDCU	Term Deposit	5,000,000	2.55%	366	21/05/2020	2.73%
BDCU	Term Deposit	3,000,000	2.50%	366	24/05/2020	1.64%
AMP	Term Deposit	2,500,000	1.90%	181	25/05/2020	1.36%
BDCU	Term Deposit	5,000,000	2.20%	366	28/05/2020	2.73%
AMP	Term Deposit	2,500,000	1.90%	184	28/05/2020	1.36%
MyState	Term Deposit	5,000,000	1.65%	181	15/06/2020	2.73%
Macquarie	Term Deposit	10,000,000	1.60%	120	23/06/2020	5.46%
Auswide	Term Deposit	5,000,000	2.05%	365	26/06/2020	2.73%
ME	Term Deposit	4,000,000	1.55%	182	3/07/2020	2.18%
NAB	Term Deposit	5,000,000	1.55%	158	10/07/2020	2.73%
MyState	Term Deposit	5,000,000	1.60%	181	20/07/2020	2.73%
Rural	Term Deposit	6,000,000	1.60%	180	22/07/2020	3.28%
MyState	Term Deposit	5,000,000	1.60%	183	29/07/2020	2.73%
NAB	Term Deposit	5,000,000	1.54%	210	7/08/2020	2.73%
Macquarie	Term Deposit	5,000,000	1.60%	180	26/08/2020	2.73%
NAB	Term Deposit	5,000,000	1.51%	210	28/08/2020	2.73%
WBC	Term Deposit	5,000,000	1.62%	364	4/09/2020	2.73%
ME	Term Deposit	5,000,000	1.63%	364	4/09/2020	2.73%
ME	Term Deposit	5,000,000	1.58%	212	16/09/2020	2.73%
BDCU	Term Deposit	5,000,000	1.65%	365	24/09/2020	2.73%
BDCU	Term Deposit	5,000,000	1.65%	365	26/09/2020	2.73%
NAB	Term Deposit	5,000,000	1.53%	243	7/10/2020	2.73%
MyState	Term Deposit	5,000,000	1.58%	269	23/10/2020	2.73%
WBC	Term Deposit	5,000,000	1.62%	365	3/11/2020	2.73%
Auswide	Term Deposit	4,000,000	1.70%	364	27/11/2020	2.18%
Auswide	Term Deposit	5,000,000	1.66%	365	11/12/2020	2.73%
Auswide	Term Deposit	5,000,000	1.63%	365	19/02/2021	2.73%
ING	Term Deposit	2,000,000	1.60%	365	19/02/2021	1.09%
ING	Term Deposit	5,000,000	1.60%	365	23/02/2021	2.73%
NAB	Call Account	6,440,131	0.75%	NA	NA	3.52%
BDCU	Call Account	750,565	0.95%	NA	NA	0.41%
<b>Total Investments</b>		<b>\$183,190,696</b>				<b>100.00%</b>

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 29 February 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%	22.62%	41,440,131	YES	YES
CBA	A1+	40%	2.73%	5,000,000	YES	YES
WBC	A1+	40%	5.46%	10,000,000	YES	YES
Macquarie	A1	25%	8.19%	15,000,000	YES	YES
ING	A1	25%	3.82%	7,000,000	YES	YES
AMP	A2	15%	5.46%	10,000,000	YES	YES
BDCU	A2	15%	12.96%	23,750,565	NO	YES
Rural Bank	A2	15%	3.28%	6,000,000	NO	YES
IMB	A2	15%	2.18%	4,000,000	NO	YES
ME	A2	15%	7.64%	14,000,000	NO	YES
MyState	A2	15%	13.65%	25,000,000	NO	YES
Newcastle	A2	15%	1.64%	3,000,000	NO	YES
Auswide	A2	15%	10.37%	19,000,000	NO	YES
<b>Total</b>			<b>100.00%</b>	<b>183,190,696</b>		

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%	30.81%	56,440,131	YES
A1	80%	12.01%	22,000,000	YES
A2	60%	57.18%	104,750,565	YES
A3	20%	0.00%	0	YES
Govt	25%	0.00%	0	YES
<b>Total</b>		<b>100.00%</b>	<b>183,190,696</b>	



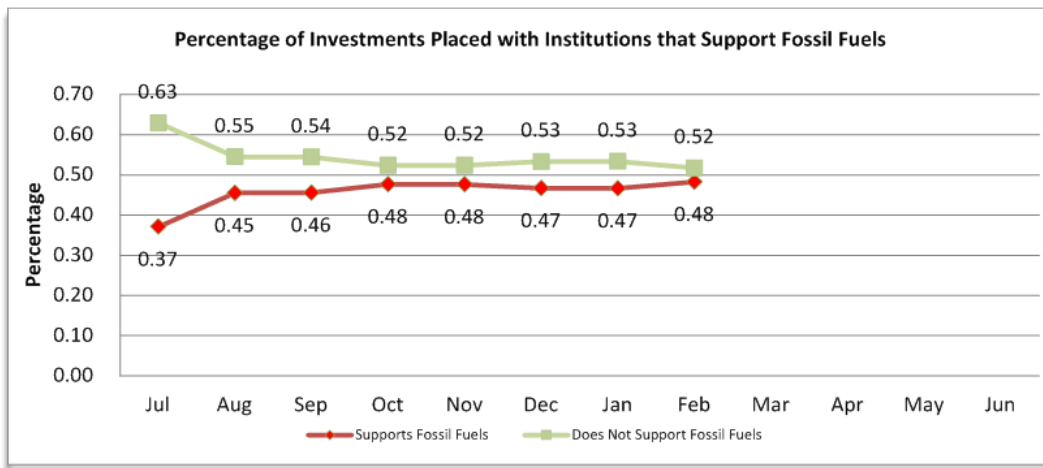


## Wingecarribee Shire Council Investment Report Summary For the period ending 29 February 2020

### Non-Fossil Fuel Investment Preferecing

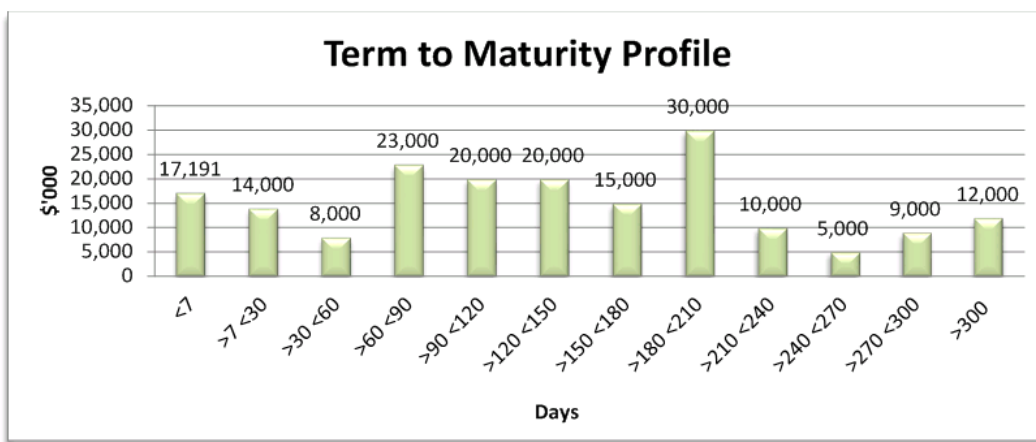
Council's adopted Investment Policy states a preference for placing funds with institutions that do not support the fossil fuel industry. The chart below identifies Council's percentage of investments placed with institutions that do not support the fossil fuel industry.

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



### Term to Maturity

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



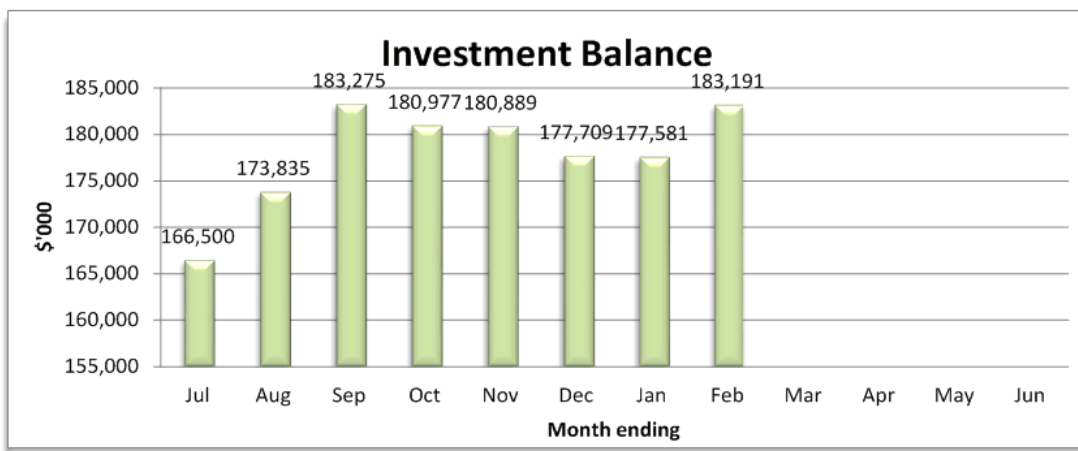


## Wingecarribee Shire Council Investment Report Summary

For the period ending 29 February 2020

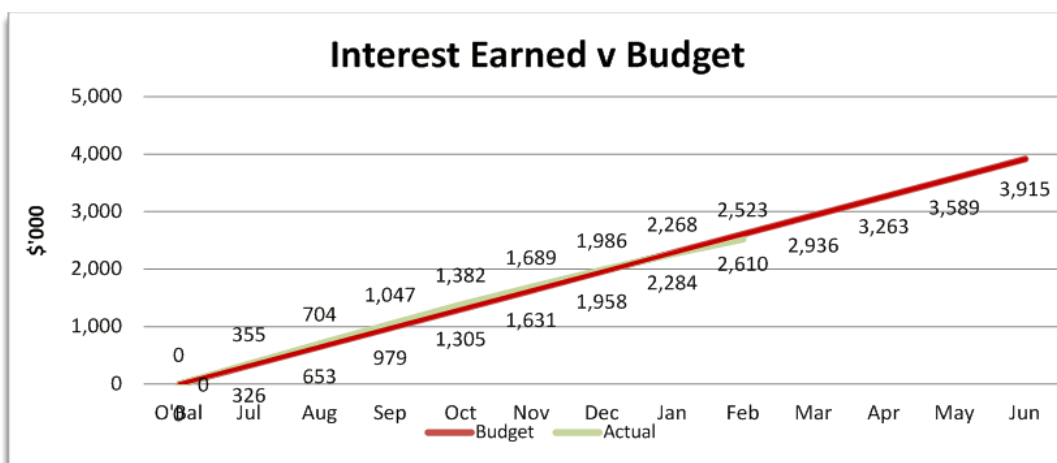
### Portfolio Performance

Council's investment balance at the end of February 2020 was \$183.191 million. This has increased by \$5.61 million since the end of January 2020. The increase in investments is due to the 3<sup>rd</sup> quarter rates and water instalments both being payable 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.





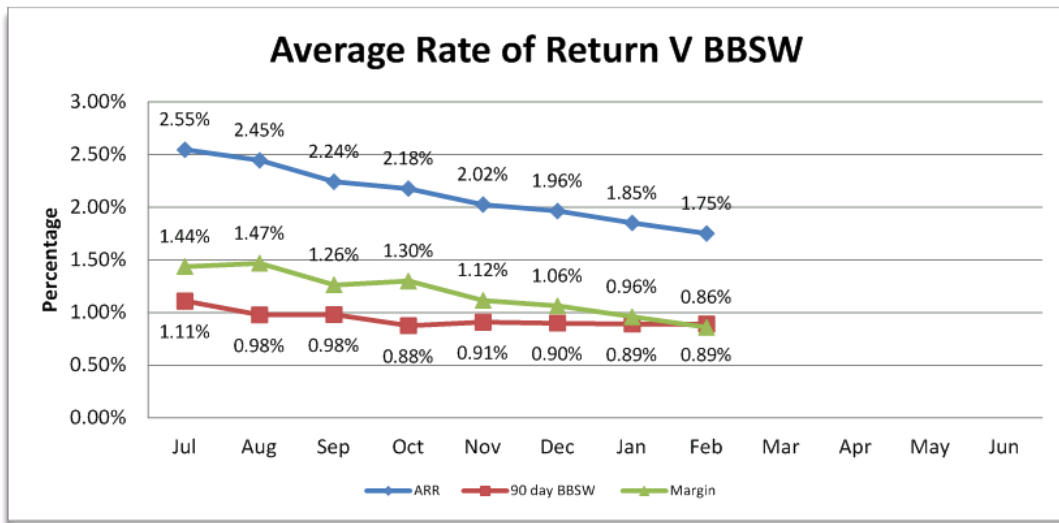
## Wingecarribee Shire Council Investment Report Summary For the period ending 29 February 2020

### 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 February 2020 was 1.75% which is 0.1% lower than January 2020. There was no change in the BBSW at 0.89%.

The margin above BBSW decreased by 0.1% in February 2020 as short term interest rates continue to decline.



## 12 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

### 12.1 Draft Councillor Information Session Code

Reference:	800/2
Report Author:	Governance Officer
Authoriser:	Deputy General Manager Corporate, Strategy And Development Services
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### **PURPOSE**

The purpose of this report is to seek adoption of the draft Councillor Information Session Code at **Attachment 1** (the 'draft Code').

#### **RECOMMENDATION**

**THAT Council adopt the draft Councillor Information Session Code at Attachment 1 to this report.**

#### **REPORT**

##### **BACKGROUND**

Council adopted its current Code of Conduct on 12 June 2019 (MN 271/19), the provisions of which are based upon the Model Code of Conduct for Local Council in NSW prescribed under section 440 of the *Local Government Act 1993* (the Act) and clause 180 of the *Local Government (General) Regulation 2005* (the Regulation).

Council also adopted its current Code of Meeting Practice on 12 June 2019 (MN 270/19), the provisions of which are based on the Model Code of Meeting Practice for Local Councils in NSW prescribed under section 360 of the Act and clause 232 of the Regulation.

While the Code of Meeting Practice includes provisions regarding the conducting of pre-meeting briefing sessions held to brief Councillors on business to be considered at a Council meeting, it does not address additional information sessions held for Councillors. The Code of Conduct, however, does include provisions that are relevant to such information sessions.

This draft Code, relating to Councillor Information Sessions, has therefore been developed to reflect relevant provisions of the adopted Code of Conduct and provide further guidance regarding the conducting of Information Sessions (excluding pre-meeting briefing sessions) by members of Council staff or other persons for the purpose of fully informing Councillors of significant or complex matters.

##### **REPORT**

This draft Code seeks to provide guidance as to the manner in which Councillor Information Sessions are to be conducted, expectations for the behaviour of persons in attendance at Councillor Information Sessions, and expectations and obligations with respect to

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

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



confidentiality at Councillor Information Sessions. While such matters are largely provided for in the Code of Conduct, this draft Code collates and summarises those provisions of the Code of Conduct that are most relevant to Councillor Information Sessions, and provides tailored guidance to ensure proper governance around the conducting of these Information Sessions.

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## COMMUNICATION AND CONSULTATION

### Community Engagement

Community engagement in relation to the development of this draft Code is not necessary.

### Internal Communication and Consultation

Council's Governance staff and Executive have been involved in developing this draft Code.

### External Communication and Consultation

This draft Code was developed with reference to comparable documents published by a number of other local councils within NSW and other states and territories.

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## SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

This draft Code has been prepared with reference to the relevant provisions of the Code of Conduct in order to clearly set out expectations and obligations with respect to Councillor information sessions.

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## COUNCIL BUDGET IMPLICATIONS

Nil.

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## RELATED COUNCIL POLICY

Code of Conduct

Code of Meeting Practice

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

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



Councillors' Access to Information and Interaction with Staff Policy

#### OPTIONS

The options available to Council are:

##### **Option 1**

**THAT** Council adopt the draft Councillor Information Session Code at **Attachment 1**.

##### **Option 2**

**THAT** Council adopt the draft Councillor Information Session Code at **Attachment 1** with amendments as determined by Council.

##### **Option 3**

**THAT** Council not adopt the draft Councillor Information Session Code at **Attachment 1**.

Option 1 is the recommended option to this report.

#### CONCLUSION

This report seeks adoption of the draft Councillor Information Session Code at **Attachment 1**. The adoption of this draft Code will ensure that Councillor Information Sessions are undertaken in a professional and respectful manner and with integrity.

#### ATTACHMENTS

1. Draft Councillor Information Session Code

Mark Pepping

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

Friday 20 March 2020



Wingecarribee Shire Council

# Councillor Information Session Code

Adopted by Council **insert date**  
(**insert resolution number**)





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**1 OBJECTIVE**

The objectives of this Code are to:

- 1.1 provide guidance as to how information sessions are to be conducted, including the role and powers of the Chair;
- 1.2 provide guidance regarding Council's expectations for conduct at information sessions; and
- 1.3 provide guidance as to expectations and obligations relating to confidentiality.

**2 CHAIR**

- 2.1 The General Manager is to preside as Chair at information sessions.
- 2.2 The General Manager may nominate a member of Council staff to preside as Chair at an information session in place of the General Manager.
- 2.3 The Chair is responsible for the good governance and order of information sessions.
- 2.4 At the commencement of an information session, the Chair shall state the following:
  - (a) That Councillors will not debate or otherwise formally consider any matter that is the subject of a presentation at an information session; and
  - (b) If confidential information arises during the course of an information session, that the attendees of the information session are not to disclose such information to any other person or body except as otherwise permitted by this Code, Council's Code of Conduct and Code of Meeting Practice, or any other relevant document or legislation.

**3 ATTENDANCE**

- 3.1 Information sessions are to be attended by:
  - (a) the General Manager, or member of Council staff nominated to preside as Chair at an information session in place of the General Manager; and
  - (b) the relevant Deputy General Manager; and
  - (c) any other member of Council staff who is required to attend because of their position or involvement in a matter that will be discussed at the information session, including, but not limited to, the relevant Manager or Group Manager.
- 3.2 Any other person invited by the General Manager to attend an information session may attend an information session.
- 3.3 Councillor attendance at information sessions is not compulsory, but is encouraged.
- 3.4 Information sessions are to be closed to the public, however members of the public may be invited by the General Manager to present to Councillors in relation to certain matters.
- 3.5 Where a presentation is to be given at an information session by a member of Council staff who is less senior than a Manager or Group Manager (in accordance



with Council's Organisational Structure), that member of staff's relevant Manager or Group Manager is to be present at all times during the time at which the member of Council staff is giving a presentation, consistent with the Councillors' Access to Information and Interaction with Staff Policy.

- 3.6 The attendance of all persons present at an information session must be recorded.

**4 CONFLICTS OF INTEREST**

- 4.1 Conflicts of interest arising in relation to matters that are the subject of an information session must be declared and managed in accordance with Council's Code of Conduct.

4.2 Pecuniary Conflicts of Interest

- (a) A Councillor or member of a committee of Council must, where the person is present at an information session at which a matter in which the person has a pecuniary interest is to be discussed, disclose the nature of that interest as soon as practicable.
- (b) A Councillor or a member of a committee of Council must not, at any time during which a matter in which they have a pecuniary interest is being discussed at an information session, be present or in sight of the information session in the same way that is required at a meeting of Council or a committee of Council under clause 4.29(a) of the Code of Conduct, except as otherwise provided by Part 4 of the Code of Conduct.

4.3 Non-Pecuniary Conflicts of Interest

- (a) A Councillor or a member of a committee of Council must manage significant non-pecuniary conflicts of interest arising in relation to an item of business to be discussed at an information session by managing the interest as if it were a pecuniary interest, in the same way that is required at a meeting of Council or a committee of Council under clause 5.10 of the Code of Conduct.

4.4 The following details concerning conflicts of interest must be recorded:

- (a) The name of the person declaring the interest;
- (b) The item to which the person's interest relates;
- (c) The nature of the interest (i.e. whether the interest is pecuniary or non-pecuniary);
- (d) A description of the interest; and
- (e) The way in which the interest was managed.

**5 CONDUCT OF COUNCIL STAFF, COUNCILLORS AND OTHER ATTENDEES**

- 5.1 The provisions of Council's Code of Conduct shall apply to information sessions as far as they are applicable.
- 5.2 Rulings of the Chair must be complied with.
- 5.3 Council staff, Councillors and other attendees at information sessions must not engage in bullying behaviour towards the Chair, other Council officials or any other person (including members of the public) present at an information session.



5.4 Council staff, Councillors and other attendees at information sessions must not engage in conduct that is disruptive to an information session, or that would otherwise be inconsistent with the orderly conduct of an information session.

5.5 Councillors may ask questions about matters which are the subject of a presentation at an information session.

**6 CONFIDENTIALITY**

6.1 Council staff and Councillors, in their capacities as Council officials, must:

- (a) only access Council information required for Council business, subject to clause 8.14 of Council's Code of Conduct;
- (b) not use Council information for private purposes;
- (c) not seek or obtain (in any manner whether directly or indirectly) any financial benefit or other improper benefit for themselves or any other person or body from any information accessible by virtue of the office or position held by the member of Council staff or Councillor;
- (d) only release information in accordance with Council's approved policies and procedures, and in compliance with legislation (clause 8.9 Code of Conduct).

6.2 Council staff, Councillors or any other attendees must maintain the integrity and security of confidential information which comes into their possession in the course of an information session, or for which that person is otherwise responsible (clause 8.10 Code of Conduct).

6.3 Council staff, Councillors or any other attendees must:

- (a) only access confidential information to which the person is authorised to have access, and only access such information for the purposes of exercising official functions;
- (b) protect confidential information;
- (c) only release confidential information if the person is authorised to do so;
- (d) only use confidential information for its intended purpose;
- (e) not use confidential information obtained through an official position for the purpose of securing a private personal benefit or a private benefit for any other person;
- (f) not use confidential information with the intention of causing harm or detriment to Council or any other person or body;
- (g) not disclose confidential information discussed during any confidential forum, including an information session (clause 8.11 Code of Conduct).

6.4 Further to clause 6.3(b):

- (a) Members of Council staff who are to present on a confidential matter at an information session must take reasonable precautions to ensure that it is made clear that the information to be conveyed is confidential. This may include, but is not limited to, watermarking the word "Confidential" on any material or other document that will be presented or distributed at the information session (such as a PowerPoint presentation or other document that will be distributed to attendees).



- (b) Attendees who make any notes about confidential information presented at an information session, whether in handwritten, digital, or any other form, must ensure the integrity and security of those notes by taking reasonable precautions to ensure that no other person or body has access to or otherwise becomes aware of the contents of the notes. Such notes (or the contents of such notes) shall not be shared with, distributed to, or otherwise communicated to any other person or body without the consent of the General Manager.

6.5 Further to clauses 6.3(c) and 6.3(g), prior to the presentation of confidential information at an information session, the Chair is to make a statement to the effect that:

- (a) the confidential information is not to be disclosed by any attendee without the prior consent of the General Manager; and
- (b) disclosure of the confidential information without such consent may result in action being taken in accordance with Council's Code of Conduct.

## 7 BREACH OF THIS CODE

7.1 Breaches of this Code shall be handled in accordance with Council's Code of Conduct and Procedures for the Administration of the Code of Conduct.

## 8 INTERPRETATIVE PROVISIONS

In this Code:

- 8.1 **Attendee** means any person who is present at any time during an information session.
- 8.2 **Bullying behaviour** means bullying behaviour within the meaning of Part 3 of Wingecarribee Shire Council's Code of Conduct.
- 8.3 **Chair** refers to the General Manager, or a member of Council staff nominated by the General Manager to preside at an information session in place of the General Manager, whichever is applicable, in their capacity as Chair of an information session.
- 8.4 **Council** means Wingecarribee Shire Council.
- 8.5 **Committee of Council** has the same meaning as provided by Part 23 of Wingecarribee Shire Council's Code of Meeting Practice, which states that:  
*committee of the council means a committee established by the council in accordance with clause 21.2 of [the Code of Meeting Practice] (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 13.1 [of the Code of Meeting Practice].*
- 8.6 **Council official** has the same meaning as provided by Part 2 of Wingecarribee Shire Council's Code of Conduct, which states that:  
*council official includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16 [of the Code of Conduct], council advisers.*



- 8.7 **Council staff** means the collective body of persons employed by Wingecarribee Shire Council, and includes the General Manager and Deputy General Managers, but does not include a Councillor.
- 8.8 **Councillor** has the same meaning as in the Dictionary to the *Local Government Act 1993*.
- 8.9 **Information session** means a meeting session held in which Councillors are provided with information by members of Council staff or other persons for the purpose of fully informing Councillors of significant or complex matters that are relevant to Wingecarribee Shire Council, but does not include a pre-meeting briefing session within the meaning of clause 3.32 of Wingecarribee Shire Council's Code of Meeting Practice.
- 8.10 **Non-pecuniary conflict of interest** means a conflict of interest in relation to a matter arising as a result of a non-pecuniary interest within the meaning of Part 5 of Wingecarribee Shire Council's Code of Conduct.
- 8.11 **Pecuniary interest** means a pecuniary interest within the meaning of Part 4 of Wingecarribee Shire Council's Code of Conduct.

**DOCUMENT CONTROL**

Version	Date	Notes
1.0 (this version)		

<b>Related Documents and other Material</b>	Code of Conduct
	Code of Meeting Practice
	Councillors' Access to Information and Interaction with Staff Policy
	<i>Local Government Act 1993</i>
	Procedures for the Administration of the Code of Conduct
<b>Responsible Branch</b>	Corporate and Community

## 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 11 March 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.

**Note:** *The Council, or a committee of the Council, may allow member of the public to make representations to or at a 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 February 2020, for legal proceedings involving Council in the Land and Environment Court, including those matters completed since the last report to Council.

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

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

### REPORT GENERAL MANAGER



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 February 2020 – refer **Attachment 1**.

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## **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.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

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

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

### REPORT GENERAL MANAGER



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- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

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

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### RELATED COUNCIL POLICY

Council's Compliance and Enforcement Policy.

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### ATTACHMENTS

1. Legal Costs - February 2020

Ann Prendergast  
**General Manager**

Friday 20 March 2020





**Legal Costs – February 2020**

Legal Matter	Legal Expenditure Feb-20	Consultant Expenditure Feb-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	-	-	\$ 49,839	\$ 32,792	\$ 84,330
K.N.D Nominees Pty Ltd Walker Street, Bowral	-	-	\$ 7,108	-	\$ 7,108
Reulie Land Co Pty Ltd Myra Vale Road, Wildes Meadow	-	-	\$ 3,892	-	\$ 22,792
Lend Lease Retirement Living Holdings Aitken Road, Bowral	-	-	\$ 4,612	-	\$ 12,920
ERF Hospice Pty Ltd Edward Street, Bowral	-	-	\$ 18,408	-	\$ 28,098
Michael Brown Planning Loftus Street, Bowral	-	-	\$ 58,998	-	\$ 283,161
Turland Mittagong Road Bowral	-	\$ 1,925	\$ 5,902	\$ 1,925	\$ 209,762
Bowral Garage Development Pty Ltd Bong Bong Street, Bowral	-	-	\$ 2,866	-	\$ 2,866
Phoebe Hodgson Gordon Road, Bowral	-	-	\$ 7,743	-	\$ 7,743
Woodbine Park Nominees Wombeyan Caves Road, High Range	\$ 3,380	-	\$ 3,380	-	-
Lasovase Pty Ltd 421 Myra Vale Road, Wildes Meadow	-	-	\$ 700	-	\$ 3,380
Morris Brigadoon Drive, Bundanoon	-	-	\$ 1,720	-	\$ 11,226
Paloma Blanca Pastoral Pty Ltd Colo Road, Colo Vale	-	-	\$ 12,430	\$ 3,240	\$ 151,173
Strathleigh Investments Pty Ltd Alice Street, Mittagong	\$ 1,035	-	\$ 11,607	-	\$ 55,216
Shelley Boyce Tyndall Street Mittagong	-	-	\$ 6,547	-	\$ 34,715
Sett Homes P/L Willow Street, Willow Vale	\$ 1,950	-	\$ 6,002	-	\$ 8,975
Fenwick v Woodside Properties Wingello Road, Bundanoon	-	-	\$ 31,255	-	\$ 72,669
<b>Total Expenditure</b>	<b>\$ 6,365</b>	<b>\$ 1,925</b>	<b>\$ 233,009</b>	<b>\$ 37,957</b>	<b>\$ 996,134</b>

*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 – February 2020**

Legal Matter	Fees Recovered Feb-20	Fees Recovered YTD	Fees Recovered LTD
<b>O'Shanassy</b>	\$500	\$4,250	\$18,228
<b>Total Recovery</b>	<b>\$500</b>	<b>\$4,250</b>	<b>\$18,228</b>

Notes:

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

## 16 COMMITTEE REPORTS

### 16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

Reference: 107/16  
Report Author: Strategic Land Use Planner (Heritage)

#### PURPOSE

This report provides the Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020.

#### SUMMARY OF RECOMMENDATIONS AND ACTIONS FOR COUNCILLORS' ATTENTION AND ADOPTION

A copy of the Minutes of the Heritage Advisory Committee Meeting of 14 February 2020 is provided at **ATTACHMENT 1**.

The following recommendations are brought to Council's attention:

#### Item 3 Adoption of Minutes of Previous Meeting

HAC 2/20

*THAT the minutes of the Heritage Advisory Committee Meeting held on Thursday 12 December 2019 MN 18/19 to MN 23/19 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.*

#### Item 5.2 Development Applications Notified to the Committee since the Last Meeting

HAC 1/20

*THAT the following submission made on development applications since the last meeting of the Committee be noted:*

Property	88 Bowral Street, Bowral
Application Number	20/0737
Application For	Change of Use – Dental Clinic
Date	28 January 2020
Comment	<p>The Heritage Advisory Committee has carefully examined the above DA for 88 Bowral Street, Bowral (incorrectly notified to us as 33 Bowral Street) and recommends it be rejected. We make the following comments to support this recommendation:</p> <ol style="list-style-type: none"><li>1. The Statement of Environmental Effects (SEE) for the DA is misleading in that it misrepresents the work proposed for the site. On page 6 it states:  In terms of physical works proposed in order to facilitate the</li></ol>

*planned new occupation of the building, the following is proposed:*

- *Demolition of outbuilding to the rear of the site.*
- *Removal and repositioning of some internal walls*
- *Erection of partitions to create new rooms*
- *Construction of upgraded entrance to tenancy to comply with disabled access standards and the BCA.*
- *Addition of car parking area*
- *Erection of business identification signage*

*In fact, the architectural drawings submitted show major demolition, new building and cladding. The works proposed are totally at odds with the requirements for the Bowral Conservation Area. In short the proposed changes are illustrated by [two images included with the submission].*

2. *In relation to heritage, the SEE totally misrepresents the DA proposal. Page 11 states:*

*As this proposal merely pertains to alterations and additions, and does not concern demolition or the making of significant changes to the appearance of the dwelling on the subject site, it is not anticipated that the development will have any impact upon the heritage significance of the area, nor will it impact upon surrounding items of heritage significance.*

3. *The documentation and plans attached to the notification to the committee gave insufficient detail. However, the proposal is for almost total demolition except for three exterior walls. The roof appears to have been totally redesigned, with a new pitch of 18 degrees, considerably less than the current roof pitch and in contravention of the DCP which provides for a minimum 25 degree pitch. The proposal also replaces the existing timber front windows with aluminium windows, which are not in keeping with the requirements of the BCA.*

4. *The Committee has been provided with a five page report from [local amateur historians – names omitted for privacy – report attached to the submission] whose studies of the Bowral Conservation Area have provided valuable and important information. Their report clearly sets out specific concerns, including the lack of any regard for the requirements of the DCP. We concur with all of the comments in that report and request that this report be included in any council report on this matter.*

*The only acceptable development for this site is its retention as a dwelling or for a more modest change of use involving the retention of the original heritage appearance of the dwelling and site, no car parking at the front, modest car parking at the rear and minimal driveway construction.*

*Reinstatement of the appearance of the dwelling could include removal of paint finish to the brick work and trachyte foundation and retention of traditional windows. A good example of the original finish of No 88 is the adjoining houses at No 90 Bowral Street [photograph included in submission].*

*Reinstatement of the site could also include appropriate landscaping and a new traditional style front fence.*

*The Committee notes that this DA is in stark contrast to the sympathetic design of a brand new dwelling four houses away on the corner of*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

### COMMITTEE REPORTS



*Bowral and Bendooley Streets which succeeds in enhancing the heritage values on Bowral Street.*

*The DA for a dental clinic at 88 Bowral Street represents a gross disfigurement of the Bowral Conservation Area. As previously stated, the Heritage Advisory Committee recommends that this Development Application be rejected.*

#### Item 5.4 Heritage Advisory Committee Meeting - Revised Schedule for 2020

*HAC 6/20*

*THAT the Committee confirm that there will be two more meetings held in 2020 on 3 April and 12 June ahead of the local government elections on 12 September 2020.*

#### **RECOMMENDATION**

**THAT the minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020 numbered HAC 1/20 to HAC 6/20, inclusive, copies of which were forwarded to Councillors and members, be adopted as a correct record of the proceedings of the meeting.**

#### **ATTACHMENTS**

1. Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



# MINUTES

## of the Heritage Advisory Committee Meeting

held in

Nattai Room, Civic Centre, Elizabeth Street, Moss Vale

on

**Friday 14 February 2020**

The meeting commenced at 3:11pm

*File No. 107/16*

16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

ATTACHMENT 1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



1. WELCOME AND APOLOGIES

2. ACKNOWLEDGEMENT OF COUNTRY

3. ADOPTION OF MINUTES OF PREVIOUS MEETING

4. DECLARATIONS OF INTEREST

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5. AGENDA REPORTS ..... 3

5.1 Update on Heritage Matters ..... 3

5.2 Development Applications Notified to the Committee since the Last Meeting ..... 4

5.3 Heritage & Urban Design Awards ..... 7

5.4 Heritage Advisory Committee Meeting - Revised Schedule for 2020 ..... 8

7. DATE OF NEXT MEETING ..... 9

8. MEETING CLOSURE ..... 9

16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

ATTACHMENT 1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD IN NATTAI ROOM, CIVIC CENTRE, ELIZABETH STREET, MOSS VALE ON FRIDAY 14 FEBRUARY 2020 COMMENCING AT 3:11PM.

- |                                   |  |   |
|-----------------------------------|--|---|
| <b>Present:</b>                   | Clr G McLaughlin   | <i>Chair</i>  |
| <b>Community Representatives:</b> | Mr Dennis McManus<br>Mr Ian Stapleton<br>Ms Charlotte Webb |   |
| <b>Agency Representatives:</b>    | Ms Linda Emery<br>Ms Laurel Cheetham<br>Ms Mhairi Clark    | <i>Berrima District Historical &amp; Family History Society<br/>Australian Garden History Society<br/>National Trust of Australia</i> |
| <b>In Attendance:</b>             | Mr Michael Park<br>Ms Sarah Farnese                        | <i>Coordinator Strategic Land Use Planning<br/>Strategic Land Use Planner (Heritage)</i>  |

**1. WELCOME AND APOLOGIES**

It was noted that apologies were received from Clr Peter Nelson and Mr Simon Bathgate.

**HAC 1/20**

**MOTION** moved by Mr D McManus and seconded by Ms L Cheetham

**THAT the apologies of Clr Nelson and Mr Bathgate be accepted and leave of absence granted.**

**PASSED**

**2. ACKNOWLEDGEMENT OF COUNTRY**

Clr McLaughlin acknowledged 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.

**3. ADOPTION OF MINUTES OF PREVIOUS MEETING**

MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING HELD ON THURSDAY 12 DECEMBER 2019

16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

ATTACHMENT 1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



**HAC 2/20**

**MOTION** moved by Ms M Clark and seconded by Ms C Webb

**THAT** the minutes of the Heritage Advisory Committee Meeting held on Thursday 12 December 2019 MN 18/19 to MN 23/19 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.

**PASSED**

**4. DECLARATIONS OF INTEREST**

Nil





MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING  
Friday 14 February 2020



## 5. AGENDA REPORTS

### 5.1 Update on Heritage Matters

Reference: 5650  
Report Author: Strategic Land Use Planner (Heritage)

#### PURPOSE

The purpose of this report is to update the Committee on non-DA related heritage matters.

#### DISCUSSION

The following matters on the Agenda were discussed:

- Welby Park Manor, 28 Old Hume Highway, Welby—heritage assessment
- Draft Aitken Road Interwar Housing Group and Draft Aitken Road Conservation Area Planning Proposal
- Rochester Park, 102-104 Old Wingello Road, Bundanoon—Interim Heritage Order No. 10
- Local Housing Strategy

#### HAC 3/20

**MOTION** moved by Ms L Cheetham and seconded by Ms L Emery

**THAT the report be noted.**

**PASSED**

16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

ATTACHMENT 1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



**5.2 Development Applications Notified to the Committee since the Last Meeting**

Reference: 107/16  
Report Author: Strategic Land Use Planner (Heritage)

**PURPOSE**

The purpose of this report is to present a list of development applications (DAs) notified to the Heritage Advisory Committee since the last meeting on 12 December 2019.

Mr I Stapleton arrived to the meeting, the time being 16:28pm.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



**HAC 4/20**

**MOTION** moved by Mr I Stapleton and seconded by Ms C Webb

**THAT the following submission made on development applications since the last meeting of the Committee be noted:**

<b>Property</b>	88 Bowral Street, Bowral
<b>Application Number</b>	20/0737
<b>Application For</b>	Change of Use – Dental Clinic
<b>Date</b>	28 January 2020
<b>Comment</b>	<p>The Heritage Advisory Committee has carefully examined the above DA for 88 Bowral Street, Bowral (incorrectly notified to us as 33 Bowral Street) and recommends it be rejected. We make the following comments to support this recommendation:</p> <ol style="list-style-type: none"> <li> <p>The Statement of Environmental Effects (SEE) for the DA is misleading in that it misrepresents the work proposed for the site. On page 6 it states:</p> <p>In terms of physical works proposed in order to facilitate the planned new occupation of the building, the following is proposed:</p> <ul style="list-style-type: none"> <li>Demolition of outbuilding to the rear of the site.</li> <li>Removal and repositioning of some internal walls</li> <li>Erection of partitions to create new rooms</li> <li>Construction of upgraded entrance to tenancy to comply with disabled access standards and the BCA.</li> <li>Addition of car parking area</li> <li>Erection of business identification signage</li> </ul> <p>In fact, the architectural drawings submitted show major demolition, new building and cladding. The works proposed are totally at odds with the requirements for the Bowral Conservation Area. In short the proposed changes are illustrated by [two images included with the submission].</p> </li> <li> <p>In relation to heritage, the SEE totally misrepresents the DA proposal. Page 11 states:</p> <p>As this proposal merely pertains to alterations and additions, and does not concern demolition or the making of significant changes to the appearance of the dwelling on the subject site, it is not anticipated that the development will have any impact upon the heritage significance of the area, nor will it impact upon surrounding items of heritage significance.</p> </li> <li> <p>The documentation and plans attached to the notification to the committee gave insufficient detail. However, the proposal is for almost total demolition except for three exterior walls. The roof appears to have been totally redesigned, with a new pitch of 18</p> </li> </ol>



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



*degrees, considerably less than the current roof pitch and in contravention of the DCP which provides for a minimum 25 degree pitch. The proposal also replaces the existing timber front windows with aluminium windows, which are not in keeping with the requirements of the BCA.*

- 4. *The Committee has been provided with a five page report from [local amateur historians – names omitted for privacy – report attached to the submission] whose studies of the Bowral Conservation Area have provided valuable and important information. Their report clearly sets out specific concerns, including the lack of any regard for the requirements of the DCP. We concur with all of the comments in that report and request that this report be included in any council report on this matter.*

*The only acceptable development for this site is its retention as a dwelling or for a more modest change of use involving the retention of the original heritage appearance of the dwelling and site, no car parking at the front, modest car parking at the rear and minimal driveway construction.*

*Reinstatement of the appearance of the dwelling could include removal of paint finish to the brick work and trachyte foundation and retention of traditional windows. A good example of the original finish of No 88 is the adjoining houses at No 90 Bowral Street [photograph included in submission].*

*Reinstatement of the site could also include appropriate landscaping and a new traditional style front fence.*

*The Committee notes that this DA is in stark contrast to the sympathetic design of a brand new dwelling four houses away on the corner of Bowral and Bendooley Streets which succeeds in enhancing the heritage values on Bowral Street.*

*The DA for a dental clinic at 88 Bowral Street represents a gross disfigurement of the Bowral Conservation Area. As previously stated, the Heritage Advisory Committee recommends that this Development Application be rejected.*

**PASSED**



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING  
Friday 14 February 2020



### 5.3 Heritage & Urban Design Awards

Reference: 1607/5  
Report Author: Strategic Land Use Planner (Heritage)

#### PURPOSE

The purpose of this report is to update the Committee on the progress of the Heritage & Urban Design Awards 2020 and to make a preliminary assessment of nominated projects.

#### **HAC 5/20**

**MOTION** moved by Ms C Webb and seconded by Ms M Clark

***THAT the report be noted.***

**PASSED**

16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

ATTACHMENT 1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



**5.4 Heritage Advisory Committee Meeting - Revised Schedule for 2020**

Reference: 107/16  
Report Author: Strategic Land Use Planner (Heritage)

**PURPOSE**

To amend previous advice regarding the Heritage Advisory Committee's Meeting Schedule for 2020.

**HAC 6/20**

**MOTION** moved by Ms L Emery and seconded by Clr G McLaughlin

***THAT the Committee confirm that there will be two more meetings held in 2020 on 3 April and 12 June ahead of the local government elections on 12 September 2020.***

**PASSED**

16.1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 February 2020

ATTACHMENT 1 Minutes of the Heritage Advisory Committee Meeting held on Friday 14 April 2020.



MINUTES OF THE HERITAGE ADVISORY COMMITTEE MEETING

Friday 14 February 2020



**6. DATE OF NEXT MEETING**

The next meeting will be held on Friday 3 April 2020 in Nattai Room, Civic Centre, Elizabeth Street, Moss Vale commencing at 3:00pm.

**7. MEETING CLOSURE**

THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 17:20 PM

## 16.2 Minutes of the Environment and Sustainability Committee meeting of 19 February 2020

Reference:	107/25
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 report provides the Minutes of the Environment and Sustainability Committee Meeting held on 19 February 2020.

### SUMMARY OF RECOMMENDATIONS AND ACTIONS FOR COUNCILLORS' ATTENTION AND ADOPTION

#### Item 3 – Adoption of Minutes of Previous Meeting

ES 22/20

THAT the minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 November 2019 MN 15/19 to MN 21/19 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.

#### Item 5.1 – Extinction Rebellion

ES 23/20

THAT Extinction Rebellion provide an information session outlining the vision of XR for Councillors and Council staff within a maximum period of two months.

#### Item 5.2 - 2020/2021 Environment Levy Budget – First Draft

ES 24/20

THAT the first draft of the 2020/2021 Environment Levy budget be noted.

#### Item 5.3 – Climate Change Emergency Declaration

ES 25/20

1. THAT in recognition of the climate change emergency declared recently by council, two councillors be nominated to work with council staff to develop the terms of reference, membership roles and responsibilities for a proposed Climate Change Advisory Committee.
2. THAT expressions of interest for a panel of experts for the proposed Climate Change Advisory Committee be sought to advise on climate emergency policies within council
3. AND THAT the proposed Committee becomes operational in October 2020 and remains as such until the end of the first two year period of the council 2020-2024 term concurrent with other committees for the same period.



## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020

### COMMITTEE REPORTS



4. THAT until Council makes a determination on the proposed Committee, climate change issues remain the responsibility of the Environment and Sustainability Committee.
5. THAT Council provide an immediate “bridging” statement to the community regarding actions Council’s is already implementing to address climate change under the Emergency Declaration, and the preparation of a Shire Wide Community Climate Change Emergency Plan.

#### Item 5.4 – Council Bushfire Recovery Support

ES 26/20

THAT an extraordinary meeting of the Environment and Sustainability Committee be convened at a date to be agreed to endorse the program of works for the allocation of \$100,000 emergency relief funds for Flora and Fauna recovery.

#### **RECOMMENDATION**

**THAT recommendations Nos 22/20 to 26/20 – as detailed in the Minutes of the Environment and Sustainability Committee Meeting held on 19 February 2020 be adopted, save for any items which have budgetary implications AND THAT any item with budgetary implications and which is unfunded, be referred to the Finance Committee for consideration.**

#### **ATTACHMENTS**

There are no attachments to this report.

## 16.3 Minutes of the Traffic Committee Meeting held electronically on Monday 2 March 2020

Reference:	107/6
Report Author:	Traffic Engineer (Contractor)
Authoriser:	Manager Assets
Link to Community	
Strategic Plan:	Work in partnership to ensure a safe road network

### PURPOSE

This report provides the Minutes of the Traffic Committee Meeting electronically held on 2 March 2020.

### SUMMARY OF THE RECOMMENDATION AND ACTION FOR COUNCILLORS' ATTENTION AND ADOPTION

#### Item 1 Dragon Skin 2020

TC 21/20

THAT there is no objection to the traffic arrangements proposed by Scouts Australia NSW Branch to conduct Dragon Skin 2020 from Friday 10 April to Monday 13 April 2020 subject to the satisfactory completion of all requirements detailed in the Guide to Traffic and Transport Management for Special Events for a class 2 event.

#### Item 2 Traffic Arrangements for 2020 ANZAC Day

TC 22/20

THAT permission be granted for the 2020 ANZAC Day traffic arrangements subject to the satisfactory completion of all requirements detailed in the Guide to Traffic and Transport Management for Special Events for a Class 2 Event.

#### Item 3 2020 Bundanoon Highland Gathering

TC 23/20

THAT there is no objection to the traffic arrangements for the Bundanoon Highland Gathering on Saturday 4 April 2020 subject to the satisfactory completion of all requirements detailed in the Guide to Traffic and Transport Management for Special Events for a class 2 event.

### RECOMMENDATION

**THAT recommendation Nos TC21/20 to TC23/20 as detailed in the Minutes of the Traffic Committee Meeting held electronically on Monday 2 March 2020 be adopted.**

### ATTACHMENTS

1. Minutes of the Traffic Committee Meeting held electronically on 2 March 2020



# MINUTES

of the  
Traffic Committee Meeting  
held Electronically on

**Monday 2 March 2020**

*File No. 107/6*

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 25 March 2020



**MINUTES OF THE TRAFFIC COMMITTEE MEETING**

Monday 2 March 2020



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1.1 Dragon Skin 2020 .....	2
1.2 Traffic Arrangements for 2020 ANZAC Day	<b>Error! Bookmark not defined.</b>
1.3 2020 Bundanoon Highland Gathering .....	4

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020



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### MINUTES OF THE TRAFFIC COMMITTEE MEETING

Monday 2 March 2020



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### MINUTES OF THE TRAFFIC COMMITTEE MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD ELECTRONICALLY ON MONDAY 2 MARCH 2020.

**Present:**

Clr Ken Halstead	Chair
Mrs Jayd Marsh	Transport for NSW
Senior Constable Scott Ferguson	NSW Police
Mr Ian Armstrong	Representing Member for Wollondilly
Mrs Katherine Wood	Representing Member for Goulburn

**Council Staff:**

Mr Stace Lewer	Manager Assets
Ms Daria Chen	Acting Traffic Engineer
Mr Naif Ahmed	Coordinator Assets Roads & Traffic

# AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020



## MINUTES OF THE TRAFFIC COMMITTEE MEETING

Monday 2 March 2020



### 1. AGENDA REPORTS

#### 1.1 Dragon Skin 2020

**Reference:** 7420/3  
**Report Author:** Traffic Engineer (Contractor)  
**Authoriser:** Manager Assets  
**Link to Community Strategic Plan:** Work in partnership to ensure a safe road network

#### PURPOSE

Reporting on traffic arrangements for the Dragon Skin 2020 in Belanglo State Forest at Easter

#### RECOMMENDATION

***THAT there is no objection to the traffic arrangements proposed by Scouts Australia NSW Branch to conduct Dragon Skin 2020 from Friday 10 April to Monday 13 April 2020 subject to the satisfactory completion of all requirements detailed in the Guide to Traffic and Transport Management for Special Events for a class 2 event.***

TC21/20

Unanimous support

# AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020



## MINUTES OF THE TRAFFIC COMMITTEE MEETING

Monday 2 March 2020



### 1.2 Traffic Arrangements for 2020 ANZAC Day

**Reference:** 7420/3  
**Report Author:** Traffic Engineer (Contractor)  
**Authoriser:** Manager Assets  
**Link to Community**  
**Strategic Plan:** Work in partnership to ensure a safe road network

#### PURPOSE

Reporting on the traffic arrangements for ANZAC Day in 2020.

#### RECOMMENDATION

***THAT permission be granted for the 2020 ANZAC Day traffic arrangements subject to the satisfactory completion of all requirements detailed in the Guide to Traffic and Transport Management for Special Events for a Class 2 Event.***

TC22/20

Unanimous support

# AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 25 March 2020



## MINUTES OF THE TRAFFIC COMMITTEE MEETING

Monday 2 March 2020



### 1.3 2020 Bundanoon Highland Gathering

**Reference:** 7420/3  
**Report Author:** Traffic Engineer (Contractor)  
**Authoriser:** Manager Assets  
**Link to Community Strategic Plan:** Work in partnership to ensure a safe road network

#### PURPOSE

Reporting on traffic arrangements for the 2020 Bundanoon Highland Gathering event.

#### RECOMMENDATION

***THAT there is no objection to the traffic arrangements for the Bundanoon Highland Gathering on Saturday 4 April 2020 subject to the satisfactory completion of all requirements detailed in the Guide to Traffic and Transport Management for Special Events for a class 2 event.***

TC23/20

Unanimous support



## 17 QUESTIONS WITH NOTICE

### 17.1 Question with Notice 9/2020 Mayoral Use of Microphone in Meetings

<b>Reference:</b>	101/2
<b>Report Author:</b>	Administration Officer (Meetings)
<b>Authoriser:</b>	Group Manager Corporate and Community
<b>Link to Community Strategic Plan:</b>	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

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**To:** General Manager  
**From:** Clr G Turland  
**Received:** 16.3.20

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**Subject:** Mayoral Microphone in Meetings

**Question:**

I request a report to where in the code of meeting practice does the Mayor have the authority to use the gag button on the Mayor's microphone.

**Response:**

The Code of Meeting Practice (Code) does not contain any provisions specifically relating to the use of microphones.

Clause 7.9 of the Code states as follows with respect to the chairperson having precedence:

Chairperson to have precedence

7.9 When the chairperson rises or speaks during a meeting of the council:

- (a) any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
- (b) every councillor present must be silent to enable the chairperson to be heard without interruption.

The chairperson also has various responsibilities under Part 16 of the Code for keeping order at meetings.

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### RECOMMENDATION

**THAT the information in relation to Question with Notice 9 /2020 – Mayoral Use of Microphone in Meetings - be noted.**



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## 18 NOTICES OF MOTION

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### 18.1 Notice of Motion 9/2020 Letter of Appreciation to Mittagong Airfield Committee

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

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#### PURPOSE

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

THAT Council endorse a letter of appreciation to the Mittagong Airfield Committee for their support to the Rural Fire Service and the residents of the Wingecarribee during the devastating fire months that have passed (sic).

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#### RECOMMENDATION

**Submitted for determination.**

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## 18.2 Notice of Motion 10/2020 - Regular Update on Compliance Activities

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

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### PURPOSE

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

THAT Councillors be provided with a regular update on the compliance activities undertaken by Council including notices and order issued.

THAT the information be provided in the monthly report to Council via the Legal Affairs Update Report.

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### RECOMMENDATION

**Submitted for determination.**

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## **18.3 Notice of Motion 11/2020- Information Session on Milton Park**

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

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### **PURPOSE**

Councillors McLaughlin and Nelson have given notice that it is their intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

THAT an information session be held as a matter of urgency on matters pertaining to the heritage listed item, Milton Park.

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### **RECOMMENDATION**

**Submitted for determination.**

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## 18.4 Notice of Motion 12/2020 2019 Deferred Heritage Items

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

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### PURPOSE

Councillors McLaughlin and Nelson have given notice that it is their intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

THAT a report on the proposed heritage items that were deferred in 2019 be brought back to Council for a resolution to progress these heritage items.

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### RECOMMENDATION

Submitted for determination.



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## **18.5 Notice of Motion 13/2020 Postponement of Council Meetings - Covid-19**

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

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### **PURPOSE**

Councillor Halstead has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

1. THAT all Council meetings after 25 March 2020, be postponed until further notice due to the very serious corona virus health threat.
2. THAT Council call upon the NSW State Government to postpone the Local Government Election in September 2020 until 2021.

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### **RECOMMENDATION**

**Submitted for determination.**

## 18.6 Notice of Motion 14/2020 Old South Road Costing

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

### PURPOSE

Councillor Scandrett has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

1. THAT Council commence Planning and costing for a major upgrade to Old South Road from Range Road to Yerrinbool, such project to refer to current growing traffic loads and likely traffic loads arising from new population and new greenfield site investigations.
2. THAT such planning and costing be expedited so as to have a shovel ready project proposal available within three months ready for seeking Federal and State grant funding in conjunction with State infrastructure loans support such as T Corp.

### RECOMMENDATION

Submitted for determination.

### COMMENT FROM STAFF

Council was advised on the 21<sup>st</sup> February 2020 that it had been successful in gaining approval for works to the value of **\$4,796,220 under the NSW State Governments “Safer Roads Programme” for the design and construction of safety improvements to Old South Road.**

**Council has also committed \$7,715,000 to Old South Road for the renewal of Segment 0115 and 0105 in its forward capital works programme in 2021/22 - 2022/23 bringing the total expenditure across the next (3) years on renewal and safety improvement works for Old South Road of \$12,511,220.**

## 18.7 Notice of Motion 15/2020 - Staff Removal from Council Meetings

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

### **PURPOSE**

Councillor Scandrett has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 25 March 2020:

THAT the General Manager provide a detailed explanation as to how she had the power to remove all staff from the meeting of 11 March 2020, such explanation to include references to the appropriate act or similar.

### **RECOMMENDATION**

**Submitted for determination.**

### **COMMENT FROM STAFF**

The General Manager did not remove all staff from the meeting of 11 March 2020.

- a. the General Manager is entitled, but not obliged, to attend Council and committee meetings other than where her performance or terms of employment are being dealt with (Model Code, cl.5.23-5.25),
- b. the General Manager is empowered to approve the attendance of all other staff at Council and committee meetings (Model Code, cl.5.26); and
- c. the General Manager is empowered to direct staff (LG Act, s335(1)) and is therefore is empowered to direct staff not to attend Council or committee meetings provided that any such direction is given for a proper purpose and is not otherwise unlawful



## **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.

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**RECOMMENDATION**

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

- 19.1 **Tender for Merrigang Street Reconstruction - Subgrade Stabilisation**

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)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to present the evaluation of the Request for Tender for the Merrigang Street Reconstruction – Subgrade Stabilisation (full service).

- 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 11 March 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 20 March 2020