

26 June 2024

Mr Viv May PSM  
Council Administrator  
Wingecarribee Shire Council  
Civic Centre  
Elizabeth Street  
MOSS VALE NSW 2577

**By Email: AdministratorOffice@wsc.nsw.gov.au**

Dear Mr May,

**Wingecarribee Shire Council  
Bowral South Investigation Area Project | Landowner Concerns**

- 1 We act for the landowners within the Wingecarribee Shire Council named in Schedule 1.
- 2 We write specifically to raise concerns that our clients hold with respect to conduct in connection with the Bowral South New Living Area Project (**Project**).

***Flood risk issues***

- 3 Our clients hold grave concerns that there has been and will be inadequate regard to flood risk and flood risk management in respect of the Project.
- 4 As should be clear, given the location of the Project, careful consideration of the flood risk aspects is warranted.
- 5 There are complex flooding issues affecting the relevant Bowral South lands contemplated by the Project which include, but are not limited to, issues stemming from the partial collapse of the Wingecarribee Swamp in August 1998. There are large masses of floating peat which are being held back by barriers to stop it blocking the spillway. This has led to concerns about the safety of Wingecarribee Dam, flooding issues in respect of water releases, the consequence category assessment and emergency/evacuation protocols.
- 6 To date, the Project has failed to address these complex flooding issues and constraints, including as it relates to dam safety issues and emergency management, particularly in circumstances where the flood planning levels guiding the Project were not set in accordance with the Flood Risk Management Manual or Planning Circular 24-001. The effect of this is to set flood planning levels at a lower level than they otherwise should be. Incorrect flood planning levels should not be used in a proponent Master Plan to inform site-specific Local

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Environmental Plan provisions, a site-specific Development Control Plan or a contributions plan that might not otherwise see the light of day.

- 7 In about September 2021, Council publicly exhibited a draft flood study which had been prepared following correspondence between Bowral South landowners and the consultant. A risk management study has not been prepared for the Wingecarribee River, and no flood risk management plan has been implemented.
- 8 On 20 July 2022, Council adopted the Wingecarribee River Flood Study Update (**2022 Flood Study**). The Dam Break Modelling of Wingecarribee Dam provided by Water NSW was incomplete. The 2022 Flood Study does not contain predictive flood waters modelling in relation to the proposed Project and such modelling has either not been prepared or not made publicly available.
- 9 Against this background, our clients are concerned that the absence of appropriate governance mechanisms for the ongoing management of the Wingecarribee River and appropriate flood studies may expose Council, its employees and by expansion, ratepayers to liability under s. 733 *Local Government Act 1993*.
- 10 Our clients consider that paltry consideration has been given by Council to a very serious issue and factual matrix, which not only has safety consequences, but also goes to the heart of public trust in the Project.

#### ***Disbanding of advisory committees***

- 11 Exacerbating that concern, we are instructed that on about 14 July 2021, Council disbanded all advisory committees, including the Wingecarribee Floodplain Risk Management Committee. The Wingecarribee Floodplain Risk Management Committee was never reconvened.
- 12 It is difficult to understand how, in the context of the Project, Council saw it clear to disband that Committee.

#### ***Tirrikee Lane***

- 13 A number of the concerned landowners reside on Tirrikee Lane, Burradoo. For a number of reasons, those residents are likely to be most significantly impacted by the development for reasons in addition to those already set out in this letter. This includes a severe impact to the amenity, view and quiet that characterises that street, including the potential repurposing of a private road servicing those residents to provide a thoroughfare for traffic.
- 14 They are also particularly impacted by flooding in the area, including a number of documented incidences in recent years. Given the lack of due diligence with respect to flooding and the impact of and on the Project, it is entirely unclear how the Project will impact the flow and management of water in this particularly vulnerable area.
- 15 To date, Council has not consulted with even one landowner on Tirrikee Lane.

#### ***Broader governance and accountability concerns***

- 16 On 24 May 2024, a project change request was submitted where Council requested that the 6 week community consultation period for the Project (a Project Milestone included in Schedule 5 of the Funding Agreement dated 20 January 2023 between Department of Planning, Housing and Infrastructure and Wingecarribee Shire Council) be changed to a period that had

already passed, 1 April 2024 to 10 May 2024, which had the effect of cancelling the required community consultation period.

17 In the context of the matters outlined in this letter, the effective scrapping of the opportunity for community input is inexplicable.

18 This is against a history which includes, in about April 2021, Council convening meetings of a group of landowners (who own land and, we are instructed could benefit financially from the Project) which were not made public, and which benefitted from regular updates and information about the Project.

19 Adding to this, we understand that, on 19 May 2024, you stated at an ordinary meeting of Council that the current General Manager, Ms Miscamble, will be taking leave from 6 July 2024 until 4 August 2024, and proposed an external General Manager, Mr McNulty, act in her absence.


20 The Agenda for a meeting scheduled for tomorrow, 26 June 2024, indicates a proposal to delegate authority to the Council General Manager (being an interim General Manager) to commence land acquisitions that anticipate rezoning for the Project. This is extraordinary in circumstances where:

- a. an interim General Manager is about to commence in the role (for a limited, four week period);
- b. the caretaker period for the 2024 NSW Local Government elections commences on 16 August 2024; and
- c. as you would be fully aware, r.393B(1)(b) prevents Council from determining a controversial development application during that period (yet proposes to commence acquisitions, by the determination of an interim General Manager, potentially during that period).

21 We are further instructed that access to the Wingecarribee River at Boardman Road South. has been blocked for an extended period of time by unauthorised works conducted by the owner of the property located at Lot 1, in deposited plan 1259607. We are instructed that to date Council has refused to order that the obstruction be removed. It is unclear how Council proposes to address this matter.

22 Having regard to the above, our clients consider that Council must update the flood study with correct and complete information and urgently establish sustainable governance arrangements for the management of the Wingecarribee River (including but not limited to the re-establishment of a flood risk management committee) and commission a full flood risk management study and plan to determine flood planning levels and implement any recommendations arising from any such study *before* any master plan for the Project can be prepared.

23 Our clients will continue to closely monitor the matter, and generally reserve all of their rights.



## **Schedule 1**

Ms Naomi Pearce Coates – Tirrikee Lane  
Major Christopher Coates – Tirrikee Lane  
Dr Michael Ayling – Tirrikee Lane  
Ms Penny Fischer – Tirrikee Lane  
Mr Clifford Kennedy – Tirrikee Lane  
Ms Arlene Stacey – Tirrikee Lane  
Mr James Mijoc – Tirrikee Lane  
Ms Michelle Biasutti – Tirrikee Lane  
Mr Matthew Carroll – Tirrikee Lane  
Ms Rachel Carroll – Tirrikee Lane  
Ms Ann-Maree Koop – Eridge Park Rd  
Ms Vicki Aspinall – Eridge Park Rd  
Mrs Carol Corkill and Mr Glenn Corkhill – Eridge Park Rd  
Mrs Caroline Walsh and Mr Christopher Walsh – Eridge Park Rd  
Mr David Dickson – Headlam Rd  
Mr Peter Cunningham and Mrs Gail Cunningham – Gibraltar Rd  
Mr Robert Westaway – Parmenter Court  
Ms Kate Bergin – Parmenter Court  
Ms Karen Conroy – Sutherland Park Drive  
Ms Susanna Shelton – Sutherland Park Drive  
Ms Lyndal Breen – Anembo St