

AGENDA

of the
Local Planning Panel
held in
Council Chambers,
Wingecarribee Shire Council Civic Centre,
68 Elizabeth Street, Moss Vale
on

Wednesday 25 September 2024

The meeting will commence at **2:00 pm**

**AGENDA OF THE LOCAL PLANNING PANEL
WEDNESDAY 25 SEPTEMBER 2024**

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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

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1 OPENING OF THE MEETING

The Chairperson opened the meeting and welcomed members of the public and the press.

2 ACKNOWLEDGEMENT OF COUNTRY

The Chairperson acknowledged country:

“Wingecarribee Shire Council acknowledge the Gundungurra and Tharawal people as the traditional custodians of this land we now call the Wingecarribee Shire. I pay my respect to Elders both past, present and emerging. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.”

3 APOLOGIES

Nil at time of print.

4 DECLARATIONS OF INTEREST

The provisions of Chapter 14 of the Local Government Act 1993 regulate the way in which 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 meeting.

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.

5 PLANNING PROPOSALS

5.1 Planning Proposal to Insert Additional Farm Stay Accommodation Provisions into Wingecarribee Local Environmental Plan 2010 – Post Exhibition Report

Report Author: Susan Stannard – Coordinator Strategic Planning

Authoriser: Deniz Kilic – Executive Manager Strategic Outcomes

PURPOSE

The purpose of this report is to inform the Panel on the public exhibition of proposed amendments to WLEP 2010 with regard to Farm Stay Accommodation.

Applicant / Proponent	Wingecarribee Shire Council
Owner	N/A
Consultants	N/A
Notification	Shire wide
Number Advised	N/A
Number of Submissions	Nil
Affected Zonings	C3 Environmental Management, C4 Environmental Living, RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, SP3 Tourist.
Proposed Amendment/s	LEP Insert clause 5.24 Farm Stay Accommodation Permit Farm Stay Accommodation with consent in the RU4 Primary Production zone
Political Donations	N/A
Recommendation	That the Planning Proposal be finalised under s3.36 of the Environmental Planning & Assessment Act 1979.

OFFICER'S RECOMMENDATION

THAT the attached Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to insert clause 5.24 Farm Stay Accommodation and to permit Farm Stay Accommodation with consent in the RU4 Primary Production zone be finalised under s3.36 of the Environmental Planning & Assessment Act 1979.

REPORT

PLANNING PROPOSAL

Introduction

At the Ordinary Meeting of Council of 20 April 2022, Council's nominations for Agritourism and Farm stay accommodation in response to the *draft Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2021* were considered. Those nominations included enabling *Farm Stay Accommodation* with consent in the RU4 Primary Production Small Lots zone and adopting the optional clause for *Farm Stay Accommodation* as provided in the Amendment Order.

The matter had previously been considered by the Wingecarribee Local Planning Panel meeting of 6 April 2022, at which time the Panel advised that it did not support the use of the Standard Instrument Amendment Order to amend the current WLEP 2010 provisions for Farm Stay Accommodation and that these should be done by means of a Planning Proposal to enable community engagement and consultation to occur. This advice was reflected in the Council Resolution of 20 April 2022 that:

2. *In relation to Farm Stay Accommodation, Council maintain the existing development standards by:*
 - a. *Continuing to allow Farm Stay Accommodation in the RU1, RU2, C3, C4 and SP3 Zones*
 - b. *Continuing to prohibit Farm Stay Accommodation in the RU4 Zone*
 - c. *Not adopting the optional Clause 5.23 – Farm Stay Accommodation*
3. *Council prepare a Planning Proposal to nominate additional development standards for Farm Stay Accommodation, in consultation with the community and industry.*

A report to initiate this Planning Proposal was subsequently considered at the Ordinary Meeting of Council of 18 May 2022, at which time it was resolved to proceed as advised by the Local Planning Panel.

The Planning Proposal was submitted for a Gateway Determination, but the (then) Department of Planning and Environment (the Department) advised Council that it was reviewing the proposed clause 5.23 and that the Planning Proposal could not proceed. Council was advised to wait until the Standard Instrument was amended with an updated clause. These amendments came into force on 18 August 2023 through the State Environmental Planning Policy Amendment (Agritourism) 2023 (the amending SEPP).

The amendments included two optional local clauses, clause 5.24 (changed from the previous 5.23) applying to Farm Stay Accommodation and clause 5.25 applying to Farm Gate Premises. The Farm Gate Premises clause was automatically adopted into WLEP 2010 through the amending SEPP, but because of Council's resolution of 18 May 2022, as explained above, clause 5.24 was not inserted into WLEP 2010.

At its Ordinary Meeting of 15 November 2023 Council resolved:

1. *The Planning Proposal attached to this Report be endorsed and forwarded to the Minister and the Department of Planning and Environment for a Gateway Determination to proceed to public exhibition.*
2. *Council request delegation from the Minister to make the Local Environmental Plan.*

This report responds to that Resolution.

STRATEGIC ASSESSMENT

Strategic Merit

The intent of the Planning Proposal is two-fold:

1. To insert *clause 5.24 Farm stay accommodation* into WLEP 2010, and
2. To amend the land use table for the RU4 Primary Production Small Lots zone to permit Farm Stay Accommodation with consent.

Each is considered in more detail below.

Intent 1 - To insert clause 5.24 into LEP 2010

The proposed clause 5.24 is the same as that in the Standard Instrument (SI). The purpose of the Planning Proposal is to enable community engagement that is facilitated and managed by Council regarding this proposed amendment instead of the clause being introduced by means of State legislation and NSW government-led consultation. Community engagement also provides the opportunity for Council to consider any additional objectives and development standards which may be nominated by the community through the consultation process, as enabled through the SI clause 5.24:

5.24 Farm stay accommodation

(1) The objectives of this clause are as follows—

- (1) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,*
- (2) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.*
- (3) other objectives which may result from community consultation (to be confirmed during consultation)*

Direction—

Additional objectives may be included.

- (2) Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied all buildings or manufactured homes used to accommodate guests on the landholding will be—*
 - (1) on the same lot as an existing lawful dwelling house, or*
 - (2) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.*

- (3) *Subclause (2) does not apply if the development is a change of use of an existing dwelling to farm stay accommodation.*
- (4) *Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered—*
- (1) *whether the development will result in noise or pollution that will have a significant adverse impact on the following on or near the land—*
 - (1) *residential accommodation,*
 - (2) *primary production operations,*
 - (3) *other land uses, and*
 - (2) *whether the development will have a significant adverse impact on the following on or near the land—*
 - (1) *the visual amenity or heritage or scenic values,*
 - (2) *native or significant flora or fauna,*
 - (3) *water quality,*
 - (4) *traffic,*
 - (5) *the safety of persons, and*
 - (3) *whether the development is on bush fire prone land or flood prone land, and*
 - (4) *the suitability of the land for the development, and*
 - (5) *the compatibility of the development with nearby land uses.*

Direction—

Additional development standards for farm stay accommodation may be included.

These objectives remain as they were previously and the only substantive change to subclause (2) is the exclusion of nominated maximum gross floor area, maximum number of guests in moveable dwellings and the maximum number of moveable dwellings.

The current provisions under clause 5.4(5) of WLEP 2010 with regard to the maximum number of bedrooms in all buildings used for farm stay accommodation would remain at 8 under this proposed clause.

Intent 2 - To amend the RU4 Primary Production Small Lots land use table to permit farm stay accommodation with consent.

Although the *State Environmental Planning Policy Amendment (Agritourism) 2023* automatically included *Agritourism* in the RU4 Primary Production Small Lots zone as development permitted with consent, *Farm Stay Accommodation* was not automatically included because Council had nominated to consider such an amendment by means of a Planning Proposal.

Farm Stay Accommodation is currently permitted in the RU1 Primary Production zone and the RU2 Rural Landscape zone as these were considered by the Council of the day to be the zones most suited to this land use. It is not currently permitted in the RU4 Primary Production Small Lots zone because the Council of the day did not support that option.

Enabling Farm Stay Accommodation with consent in the RU4 Primary Production Small Lots zone is considered consistent with the objectives of the zone, specifically:

- o To enable sustainable primary industry and other compatible land uses.

- o To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- o To provide for a restricted range of employment-generating development opportunities that are compatible with adjacent or nearby residential and agricultural development.

It is further considered that the remaining objectives of the zone will serve to ensure that the assessment of *Farm Stay Accommodation* includes consideration of neighbour impacts and environmental and landscape protection, specifically:

- o To minimise conflict between land uses within this zone and land uses within adjoining zones.
- o To avoid additional degradation or fragmentation of the natural environment caused by further clearing of native vegetation, high intensity development and land use.
- o To maintain flora and fauna species and habitats, communities and ecological processes that occupy land in the zone, ensuring that development minimises any off and on site impacts on biodiversity, water resources and natural landforms.
- o To conserve and enhance the quality of potentially valuable environmental assets, including waterways, riparian land, wetlands and other surface and groundwater resources, remnant native vegetation and fauna movement corridors as part of all new development and land use.
- o To provide for the effective management of remnant native vegetation within the zone, including native vegetation regeneration, noxious and environmental weed eradication and bush fire hazard reduction.

Site Specific Considerations

No site specific considerations are considered to apply to the Planning Proposal, but would be addressed through any subsequent Development Control Plan amendments.

CONSULTATION

External Referrals

A Gateway Determination was issued for the Planning Proposal on 20 December 2023 requiring referral to the following agencies.

Referrals	Advice/Response/Conditions
WaterNSW	WaterNSW's response confirmed that it was supportive of the proposed Amendment. WaterNSW also expressed certain concerns about the potential adverse impact of extending farm stay accommodation into certain zones and locations. Council is mindful of those concern but believes that the provisions of the clause and Council's own DCP requirements already adequately address these matters.
NSW Rural Fire Service	NSW RFS's response confirmed that it had no objections to the proposed Amendment
Department of Primary Industries-Agriculture	DPI's response confirmed that it had no objections to the proposed Amendment, noting that since the definition of farm stay accommodation means that it can only be undertaken on a commercial farm, and must remain ancillary to that farm, it is considered that the proposal is unlikely to have a significant adverse impact on agriculture production. DPI also noted that site specific issues would be addressed at the DA stage and that particular attention should be given to potential land use conflict for smaller lots near to rural-residential development. Careful monitoring was recommended.

Public Exhibition

The Planning Proposal was placed on public exhibition between 8 July and 20 August 2024. The Planning Proposal was notified on Council's Participate Wingecarribee website and available at Council's Customer Service Counter and at Local libraries.

The Participate Wingecarribee webpage for this exhibition received a total of 118 visitors, however no submissions were received.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed amendments require the assessment of an application for *Farm Stay Accommodation* to consider potential impacts on native or significant flora or fauna, water quality, whether the development is on bush fire prone land or flood prone land, and the general suitability of the land for the proposed activity.

- **Social**

The proposed amendments require the assessment of an application for *Farm Stay Accommodation* to consider potential impacts with regard to traffic generation and the overall compatibility of the proposed activity with nearby land uses.

- **Broader Economic Implications**

The proposed amendments offer opportunities for a broader agritourism and agribusiness base across the Shire.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Planning Proposal has been processed in accordance with relevant legislation and Departmental guidelines.

RELATIONSHIP TO CORPORATE PLANS

The Planning Proposal is not related to any Corporate Plans.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with this Proposal.

RELATED COUNCIL POLICY

There are no policy implications associated with this Proposal.

CONCLUSION

The Planning Proposal seeks to introduce clause 5.24 *Farm Stay Accommodation* from the Standard Instrument into WLEP 2010 and permit with consent *Farm Stay Accommodation* in the RU4 Primary Production Small Lots zone. This report seeks endorsement to finalise the Planning Proposal under delegation granted with the Gateway Determination.

The proposed amendments reflect Council's ongoing commitment to consultation with agritourism stakeholders across the Shire as well as the broader community. They also reflect Council's commitment to ongoing consultation and feedback.

ATTACHMENTS

1. P P-2023-2689 v 4 Farm Stay - Finalisation- Sep 24 [5.1.1 - 19 pages]

6 DEVELOPMENT APPLICATIONS

6.1 Dwelling House and Attached Secondary Dwelling, Lot 8 DP1286738 No33 Cordeaux Street, Willow Vale

Report Author: Coordinator Planning Assessment

Authoriser: Director Communities and Place

PURPOSE

The purpose of this report is to consider Development Application (DA24/0189) for development of a Dwelling House and attached Secondary Dwelling on land at 33 Cordeaux Street, Willow Vale (Lot 8 DP 1286738) for the Wingecarribee Local Planning Panel ('the Panel'). The report recommends determination by APPROVAL of consent subject to conditions specified in **Attachment 1**

Applicant	MACG INVESTMENTS PTY LTD
Landowner	Gold 3070 PTY LTD
Consultants	Plan Vision, Arbor Express , Capital Engineering Consultants
Notification Period	16 November 2023 to 30 November 2023
Estimated cost of development	\$450,000
Date Lodged	06 September 2024
Number of Submissions	Nil (0)
Zoning	R2 Low Density Residential - WLEP 2010
Political Donations	No
Reason for Referral to Panel	Contravention of a non-numerical development standard
Assessment Officer	Kimberley Kavwenje (Consultant Development Assessment Planner)

OFFICER'S RECOMMENDATION

THAT the Local Planning Panel determines development application DA24/0189 for development of a dwelling house and secondary dwelling on land at 33 Cordeaux Street, Willow Vale by APPROVAL, subject to conditions specified in Attachment 1 to this report.

EXECUTIVE SUMMARY

1. Executive summary

Council is in receipt of a Development Application (DA24/0189) for construction of a dwelling house and secondary dwelling on land at 33 Cordeaux Street, Willow Vale (Lot 8 DP 1286738). The site is zoned R2 Low Density Residential under the *Wingecarribee Local Environmental Plan 2010* (WLEP 2010), and the proposed development is permitted with consent pursuant to Section 52 of the *State Environment Planning Policy (Housing) 2021* (Housing SEPP).

Section 53 (2)(b) of the Housing SEPP, requires the number of car parking spaces existing prior to the development to remain the same number of car parking spaces on the site immediately after the development is carried out. The site is currently vacant and one (1) additional space is proposed to be exclusively used by the secondary dwelling. The dwelling house includes a double garage (2) spaces.

In accordance with the *Environmental Planning and Assessment Act 1979* (The Act), Section 9.1 – Directions by the Minister, this application is reported to the Wingecarribee Local Planning Panel for determination as the development proposes a contravention to a non-numerical, non-discretionary development standard of Section 53(2)(b) of the Housing SEPP.

The applicant has submitted a Clause 4.6 variation request to vary Section 53 (2)(b) of the Housing SEPP. The development provides additional parking than the current conditions resulting in a breach of the non-discretionary development standard.

Clause 4.6(2) allows a consent authority to grant development consent to a development that contravenes a development standard.

The development application (DA) was notified in accordance with the Wingecarribee Community Participation Plan (CPP). The notification period occurred between 16 November and 30 November 2023. In response, no submissions were received.

On 23 October 2023 a request for further information (RFI) was sent to the Applicant. The RFI sought a Clause 4.6 variation request, to vary Section 53(2)(b) of the Housing SEPP. In addition, confirmation was requested that the building footprint was within the building envelope on DP 1286738 and that the existing shared driveway arrangement be retained.

The applicant submitted amended plans and further information on 14 November 2023. The driveway arrangement was amended to ensure the existing driveway shared with 35 Cordeaux Street land adjoining to the south was retained. A Clause 4.6 variation request was submitted, as well as plans demonstrating the footprint is proposed entirely within the building envelope.

An updated Clause 4.6 variation request, to address the requirements of Clause 4.6, was requested on 23 October 2023. An amended Clause 4.6 request was submitted on 17 April 2024. It is recommended that the amended Clause 4.6 variation request addresses the requirements in Clause 4.6(3) of WLEP 2010.

The site is mapped as being bushfire prone land (Vegetation Category 1 & Vegetation Buffer). In accordance with Section 4.14 of The Act, the DA was referred to NSW Rural Fire Service.

On 16 January 2024 the NSW Rural Fire Service responded indicating they are supportive of the proposal subject to conditions relating to Asset Protection Zones, Construction Standards, Water and utility Services and Landscaping Assessment. These conditions are included in **Attachment 1**.

There is a total of nine (9) trees existing on site. Eight (8) of the trees are proposed to be removed to accommodate the development. The DA was accompanied by an Arboricultural Impact Assessment (AIA). The DA was referred to Council's Tree and Vegetation Officer. They did not raise objection to the tree removal, subject to conditions, which have been included in **Attachment 1**.

The site is not affected by any other natural hazards and is not located within a Heritage Conservation Area (HCA). However, the site is located within vicinity of the following heritage items:

- Mt Alexandra Reserve (I066 & A066); and
- Picton-Mittagong Loop line railway Line (I473).

The development does not result in any adverse impacts upon the heritage items and archaeological site due to the separation distance and scale of the proposed development.

Having regard to the matters for consideration under Section 4.15 of the Act, it is recommended that Development Application (DA24/0189) be approved, subject to recommended conditions of consent, provided in **Attachment 1** of this report. The development does not result in any unreasonable adverse impacts to adjoining properties or the streetscape. The development is suitable for the site and approval would not be contrary to the public interest.

2. Site Description and Locality



Figure 1 Aerial photograph of subject site outlined in blue .
Source: Geocortex

The site is 33 Cordeaux Street, Willow Vale (Lot 8 DP 1270821). The site has an area of 1000m². The site is rectangular in shape. The site has a frontage of 22.9 metres to Cordeaux Street and the depth is 43.70 metres. The site is located to the south of the intersection with Willow Street.

A survey plan was submitted with the DA which includes site levels. In terms of topography, the site falls approximately 4.5 metres from the west (front) to the east (rear). The site is orientated west to east.

The site is currently vacant of any buildings, although a driveway was constructed as part of the subdivision creating the subject site and adjoining lots. The driveway is shared by the subject site and 35 Cordeaux Street due to the carriageway easements that have been applied.

There are nine (9) trees located on site which have been assessed within the submitted Arboricultural Impact Assessment accompanying the DA.

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The Deposited Plan (**Error! Reference source not found.**) illustrates that the site benefits from four (4) easements/right of way on adjoining land and is burdened by five (5) easements/right of way. Furthermore, the site is burdened by five (5) Positive Covenants and three (3) restrictions.

The following table lists the details of each of the easements:

Table 1 Details of each easement associated with Lot 8 DP 1270821

Item No. shown on plan	Identity of easement	Benefit or burdened	Reason
1	Easement to drain water 2 wide (B on plan)	Burdened	Permits lots 9 & 10 to drain water through the 2 metre wide easement along the rear boundary of the subject site.
2	Easement to drain water 3 and 5 wide (C on Plan)	Burdened	Permits Council to drain water through a 3 metre wide easement along the front boundary of the subject site.
3	Easement to drain water 5 wide (D on plan)	Benefit	Subject site (and others) is permitted to drain water through Lot 5 and 6.
4	Easement to drain water 2 and 3 Wide and variable width (E on Plan)	Burden and Benefit	Permits subject site to drain water within Lot 7. The same easement then crosses into the subject site in which lot 7 can be utilised for drainage.
5	Easement for Services 7 Wide and variable width	N/A	Associated with Lot 3, 5 and 6.
6	Right of Carriageway 7 wide and variable width (M on Plan)	N/A	Associated with Lot 3, 5 and 7.
7	Easement to Drain Water 7 Wide and variable width (G on Plan)	Benefit	Permits subject site (and others) to drain within Lot 5.
8	Right if of carriageway 3 Wide (J on Plan)	Burdened	Permits lot 7 to utilise land shown J for access.

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9	Right of way of carriageway 3 Wide and Variable width (N on Plan)	Benefit	Permits subject site to utilise land shown N for access.
10	Easement to drain water 2 Wide, 3 Wide and variable (K on Plan)	Benefit	Permits the site (and others) to drain water through Lot 5 and 6.
11	Easement to drain water 2 wide (A1 on Plan)	N/A	Associated with Lot 4 and 5.
12	Positive Covenant	Burdened	Lots 2-10 are required to maintain stormwater drainage system.
13	Restriction on the use of land	Burdened	Lots 2-10 are not permitted to obstruct or interfere with stormwater drainage, not erect or construct on the drainage system and not alter the existing drainage.
14	Positive Covenant	Burdened	Lots 2-10 are to manage the entire property as an inner protection area as per <i>Appendix 4 Planning for Bushfire Protection 2019</i> .
15	Positive Covenant	Burdened	Lots 2-10 are to incorporate native plant species and vegetation into future landscaping of the site.
16	Restriction on the use of land	Burdened	Occupants are not permitted to keep cats unless restricted to indoors or in a cattery.
17	Restriction on the use of land	Burdened	Dwellings are to be constructed unless the structure is designed and constructed utilising a suitable footing system.
18	Positive Covenant	N/A	Associated with Lot 4.

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19	Positive Covenant	N/A	Associated with Lot 6.
20	Positive Covenant	Burdened	Lots 2-10 are required to have rain water collection and re-use systems in accordance with specifications listed.
21	Positive Covenant	Burdened	All future dwellings are to have raingardens.
22	Restriction on the use of land	Burdened	No dwelling shall be constructed on the lot unless within the area marked "R" on the plan.

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A site inspection was undertaken on 13 September 2023. The photographs are provided in **Figures 3 – 5** below.

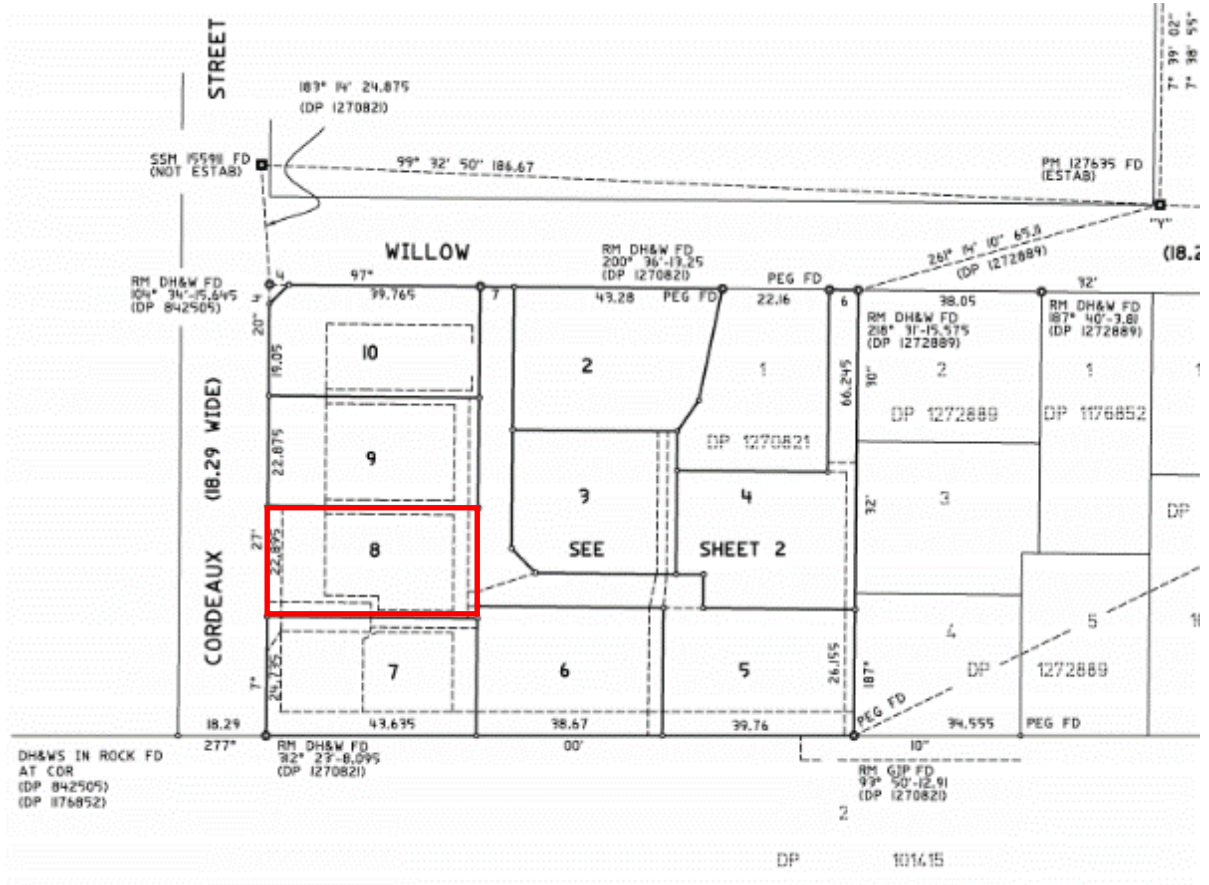


Figure 2 Extract of Deposited Plan (subject site is Lot 8 shown red).
Source: Geocortex



Figure 3: Existing driveway as viewed from Cordeaux Street.
Source: CPS Site inspection 13 September 2023



Figure 4: View towards south-eastern corner of the site.
Source: CPS Site inspection 13 September 2023



Figure 5: View towards north-western corner and existing vegetation on site.
Source: CPS Site inspection 13 September 2023

Adjoining land

The land immediately adjoining the site is currently vacant noting subdivision works commenced in July 2021 and were completed in early 2022.

35 Cordeaux Street (Lot 7) is located to the south of the subject site and has an area of 1079m². The site is presently vacant except for the shared driveway. The site is adjoined to the north by 31 Cordeaux Street (Lot9). The site is rectangular in shape with an area of 1000m². The site is presently vacant. Both allotments contain existing vegetation, however the vegetation is not located along the shared boundaries with the subject site.

Towards the east (adjoining rear) is Lot 5, which accommodates a driveway providing a vehicle access way. Carriageway easements are applied to this land creating vehicle access for Lot 3, 4 and 6 (39 – 43 Willow Street).

Towards the west, opposite Cordeaux Street is 42-44 and 46-48 Cordeaux Street. Each site is improved by a two-storey dwelling house and ancillary buildings. Each dwelling is setback from the street (approximately 40 metres). Existing vegetation consists of a mix of native and exotic species.

Locality

The site is located within the Township of Willow Vale. Willow Vale is located to the northwest of the Old Hume Highway and southeast of the Hume Highway. Generally, existing development consists of single dwelling houses with ancillary buildings on larger allotments. Larger allotments have recently been subdivided (subject as the subject site) to create new low density residential development, including to the northeast of the site along Willow Street and Carlton Street.

Further south of the site is Highlands Golf Club with the clubhouse/pro shop being accessed from Old Hume Highway. The Highlands Golf Club is zoned RE1 Public Recreation.

Towards the west is Mount Alexandra Reserve which contains dense native vegetation and numerous walking trails that are open to the public. This land is zoned C2 Environment Management pursuant to WLEP 2010.

The Mittagong Local Centre is located approximately 2 kilometres to the south-west. Various shops, cafes/restaurants and services are located within the centre. Additionally, the Mittagong Railway Station is centrally located within the township.

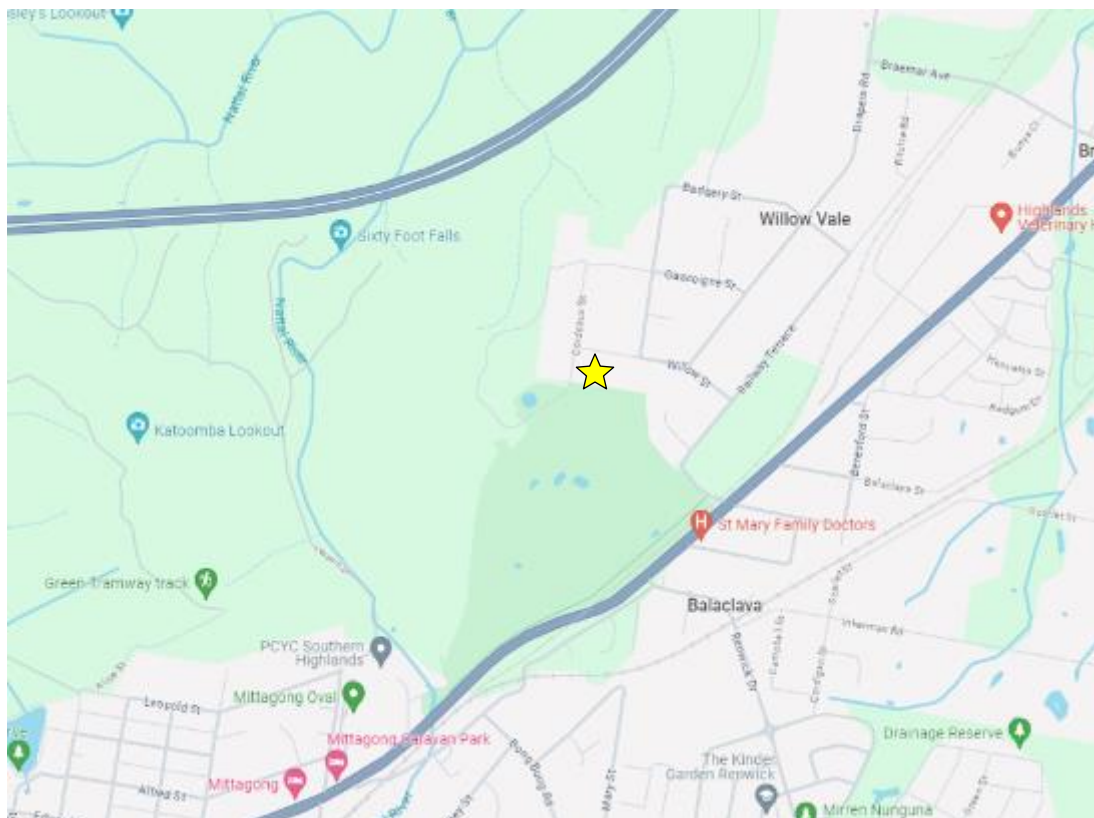


Figure 6: Locality Plan. Site identified by yellow star.
Source: google.com/maps



Figure 7: Aerial photograph of Locality showing surrounds. Site identified by red marker.
Source: NearMap

3. Proposed Development (as amended)

Development consent is sought for the construction of a dwelling house and an attached secondary dwelling. The proposed works included:

- The single storey dwelling (RL644.750) comprising:
 - Four (4) bedrooms (inclusive of primary bedroom);
 - One (1) shared bathroom;
 - One (1) powder room;
 - One (1) ensuite (master bedroom);
 - An open plan living, kitchen and dining area;
 - Laundry and 'media' room; and
 - A covered alfresco accessed from dining area.
- An attached double space garage (RL646.210), accessible by a double width garage door.
- The attached secondary dwelling (RL646.210) is proposed to contain:
 - Two (2) bedrooms;
 - One (1) shared bathroom;
 - An open plan meal and living area; and
 - A covered alfresco accessed from meals/living.
- An attached single space garage containing a laundry area.

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- Removal of eight (8) trees.

The development is proposed to be single storey and constructed of brickwork and weatherboard cladding. A hipped roof form is proposed and is to be constructed of Colorbond.

The development includes approximately 1m of fill for the main living of the secondary dwelling and garage of the primary dwelling.

690mm of fill is proposed for the access ramp from the existing driveway to the garage of the primary dwelling.

The proposal includes a retaining wall along the northern side boundary. The maximum height of the wall is 1 metre. A retaining wall is also proposed along the southern boundary with a maximum height of 600mm which is reasonable given the sloping nature of the site. 1 metre and 1.1 metre high retaining walls are located between the two building pads.

Landscaping and stormwater works including provision of 2 x 5000L rainwater tanks are nominated on the submitted drawings package.

The development is shown in **Figures 8 – 11**.



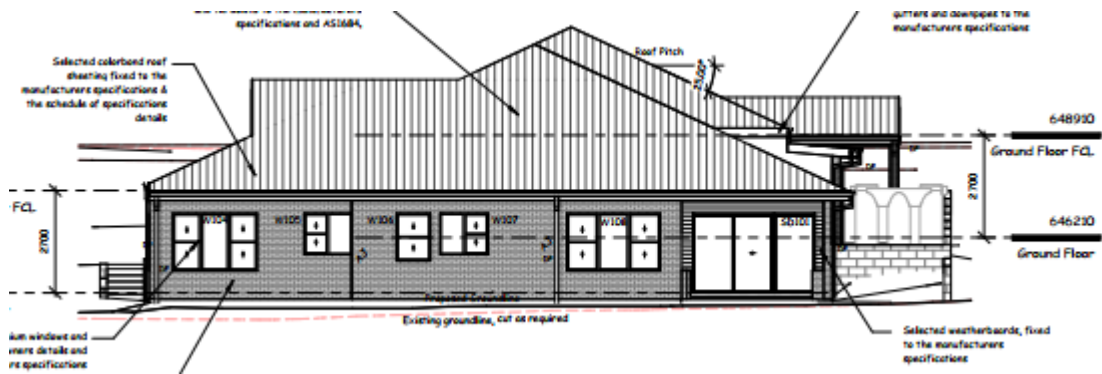
**Figure 8: Extract of western elevation
Source: Plan Vision**



**Figure 9: Extract of northern elevation
Source: Plan Vision**



**Figure 10: Extract of southern elevation
Source: Plan Vision**



**Figure 11: Extract of eastern elevation
Source: Plan Vision**

4. Background

4.1 Site Background

27 July 2016	Development Application LUA16/0372 for 10 Lot subdivision of 33 Willow Street, Willow Vale (Lot 1 DP 6245516) was issued a deferred commencement consent.
26 February 2019	Section 96 Modification application (16/0372.01) to amend conditions of consent pertaining to stormwater easement (deferred commencement condition 1 deleted), vehicular access during construction and construction of cul-de-sac was approved by Council.
19 October 2020.	Subdivision Works Certificate 16/0372.06 for Torrens title subdivision of 33 Willow Street, Will Vale (Lot 1 DP 624516) into 10 lots was issued by Private Certifier.
20 May 2021	Subdivision Certificate 16/0372.07 for Torrens title subdivision of 33 Willow Street, Will Vale (Lot 1 DP 624516) into 10 lots – stage 1 (2 Lots) was issued by Council.
26 July 2022	Subdivision Certificate 16/0372.08 for Torrens title subdivision of 33 Willow Street, Will Vale (Lot 2 DP 1270821) into 9 lots – stage 2 was issued by Council.

4.2 Application Background

14 August 2023	The DA is made on the NSW Planning Portal.
06 September 2023	The DA was lodged with Council.
11 October 2023	Council’s Tree Management Team provided a referral response and was supportive of the development subject to conditions.
23 October 2023	A RFI was sent to the applicant requesting the following: <ul style="list-style-type: none"> • Clause 4.6 Variation Request as the development did not satisfy a non-discretionary standard at Section 53(2) of the Housing SEPP • Confirmation the dwelling is contained within the area marked “R” on DP 1286738. • Landscaping to align with Item 15 of the Section 88B instrument. • The levels of the already constructed driveway to be retained.
14 November 2023	The applicant submits amended plans and a Clause 4.6 Variation Request.
16 November 2023 - 30 November 2023	The DA was notified to surrounding properties. In response, no submissions were received.

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27 December 2023	The DA was referred to NSW RFS for consideration pursuant to Section 4.14 of the <i>Environment Planning and Assessment Act 1979</i> .
16 January 2024	The NSW RFS consented to the application subject to General Conditions.
4 March 2024	Council's Development Engineer provided a referral response and is supportive of the development subject to conditions.
28 March 2024	A RFI was sent the applicant requesting the plans be amended to show that the gross floor area of the secondary dwelling does not exceed 60m ² .
28 March 2024	The applicant submitted amended plans showing the gross floor area secondary dwelling does not exceed 60m ² .
9 April 2024	The applicant submitted amended plans showing the gross floor area secondary dwelling does not exceed 60m ² .
17 April 2024	The applicant was requested to submit an updated Clause 4.6 variation with further clarification of the sufficient environmental planning grounds. The applicant submitted an updated Clause 4.6 variation request.

5. Notification

The owners of adjoining, and likely affected neighbouring properties, were notified of the proposed development in accordance the Notification of Development Proposals Policy – 14 November 2018. The notification period was from 16 November 2023 - 30 November 2023. In response, no submissions were received.

6. Applicable Planning Controls

The following legislation, policies and controls are of relevance to the development:

- State Environmental Planning Policy (Housing) 2021
 - Chapter 3 Diverse Housing
 - Part 1 Secondary Dwellings
- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 4 Remediation of Land
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Chapter 2 Vegetation in non-rural area
 - Chapter 4 Koala Habitat Protection 2021
 - Chapter 6 Water Catchments
- State Environmental Planning Policy Building Sustainability Index: BAISX 2004
- Wingecarribee Local Environmental Plan 2010
- Wingecarribee Development Control Plan 2010

7. Planning Assessment

7.1 Environmental Planning and Assessment Act 1979

Section 1.3 Objects of The Act

Section 1.3 of the EP & A Act contains the following relevant objects:

1.3 Objects of Act (cf previous s 5)

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The proposal achieves the objectives, as it promotes orderly and economic use and development of the land by providing a principal and secondary dwelling within the approved building envelope. The development does not adversely affect surrounding heritage items. The development has been designed to achieve the required residential amenity and does not adversely affect or confine surrounding properties. The development will provide for an appropriate built form which responds to the immediate and surrounding area of Willow Vale. The development results in acceptable levels of environmental impact including the removal of non-significant vegetation from site.

Section 4.14 Consultation and development consent – certain bush fire prone land

The site is mapped Bush Fire Prone Land (Vegetation Category 1 and Vegetation Buffer) as shown in Error! Reference source not found.. The proposal is subject to the provisions of Section 4.14 of the EP&A Act.

The proposed development, being a dwelling house and secondary dwelling on bushfire prone land, requires consultation with New South Wales Rural Fire Service. The applicant submitted a Bushfire Attack Level (BAL) Assessment prepared by Perception Planning (Level 3 Certified Practitioner), dated 22 February 2023.

The DA was subsequently referred to NSW RFS. On 16 January 2024, the NSW RFS issued a response of support for the development application subject to conditions. The conditions have been included in **Attachment 1**.

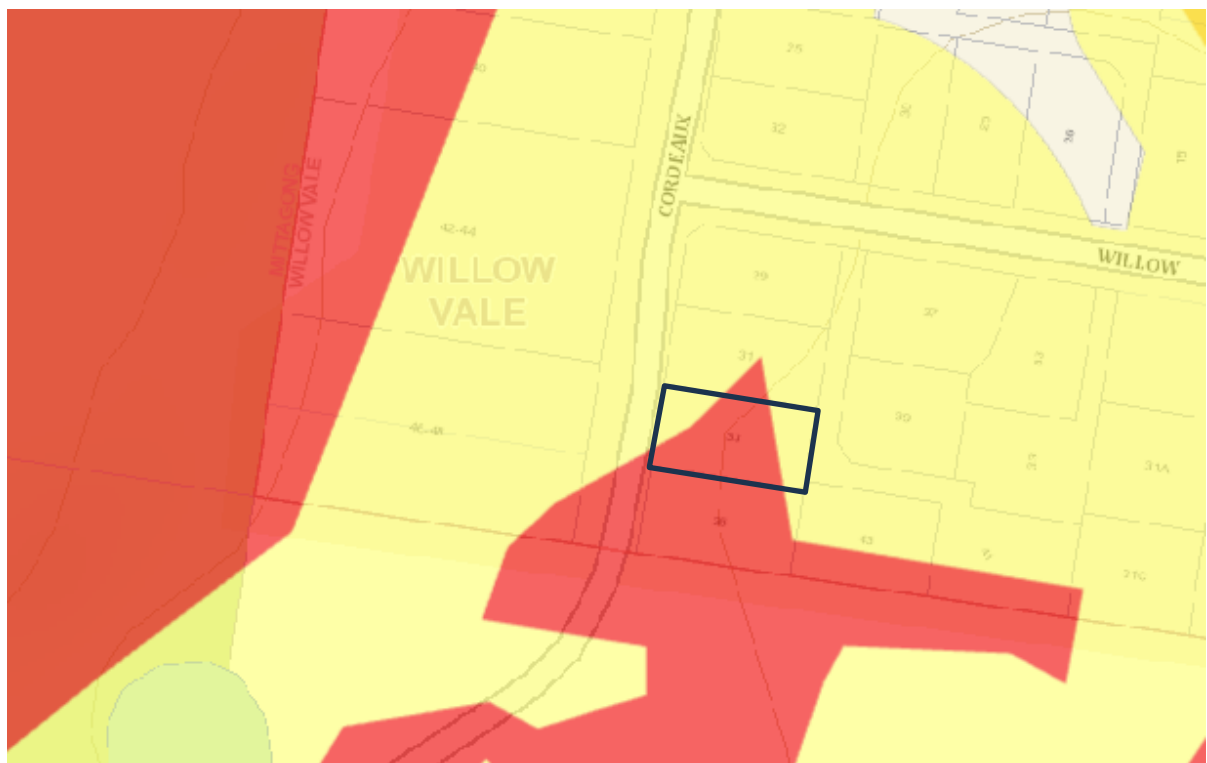


Figure 12: Extract of Bushfire Prone Land. Site outlined in blue. Red represents Vegetation Category 1, yellow represents Vegetation Buffer.
Source: NSW Planning Portal

7.2 Relevant Environmental Planning Instruments

7.2.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation. The development seeks consent for the removal of eight (8) trees. The DA has been accompanied by an Arboricultural Impact Assessment.

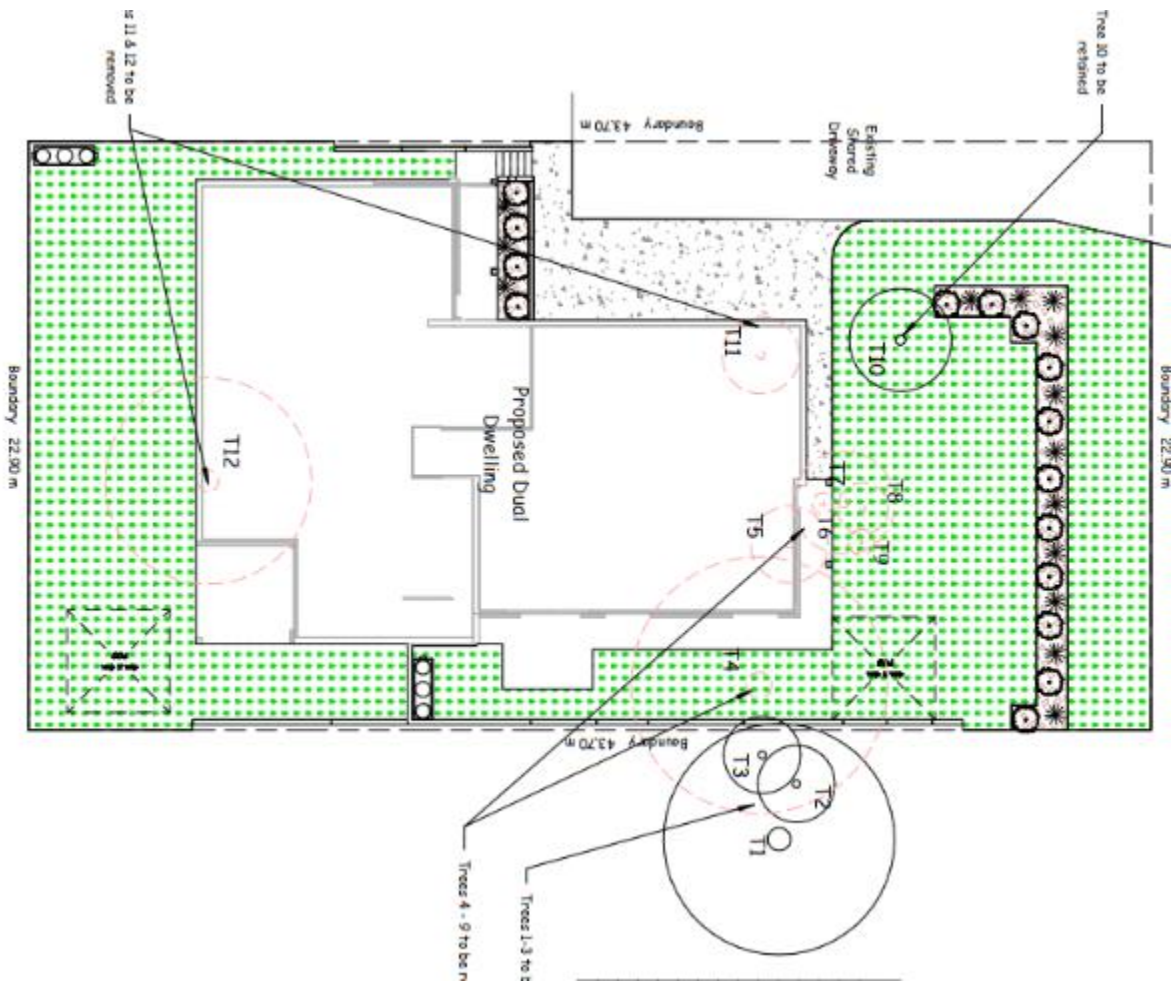


Figure 13: Extract of plan showing eight (8) to be removed, one (1) tree to be retained on site and three (3) trees on adjoining land to be retained.

Of the eight (8) trees to be removed, five (5) have been identified as dead and one (1) has major dieback throughout the canopy (**Error! Reference source not found.**). Trees 5 and 11 are in good condition, however they are located within the building envelope shown 'R' on the deposited plan. The site was created from an approved 10 lot subdivision in July 2022 which included a building envelope (**Error! Reference source not found.**). As such, it was always the likely scenario that these trees would be removed to accommodate future development.

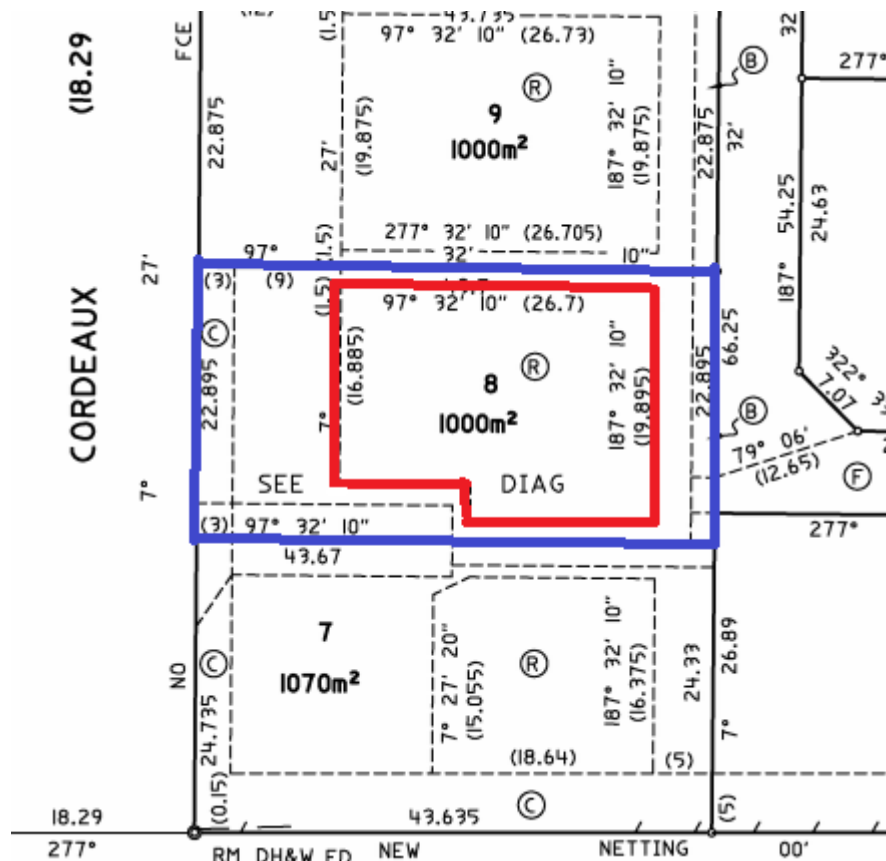


Figure 14: Site outlined in blue. The red indicates the approved building envelope. The R indicates the building envelope and restriction of use created as part of the subdivision and creation of the subject site.
Source: Geocortex. Markups by CPS.

Council’s Tree and Vegetation Officer considered the submitted architectural plans and AIA to be satisfactory. Conditions of consent have been recommended requiring the implementation of tree protection zones, works are to be carried out by a qualified arborist and all pruning is to be in accordance with AS4373-2007.

Chapter 4 – Koala Habitat Protection 2021

This chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. Wingecarribee is listed within Schedule 2 as to land where this Chapter applies.

The site is zoned R2 Low Density Residential and is subject to Part 4.2 Development control of koala habitats. Due to the nature of the development and the location of the proposed works, the proposal does not include the removal of any trees identified for koala feeding. Therefore, the development would have no adverse impact on Koalas or Koala habitats and a Koala Assessment Report is not required.

Chapter 6 Water Catchments

Part 6.6 Sydney Water Drinking Catchment

The site is within the Sydney Drinking Water Catchment and therefore the Catchment SEPP is applicable to the assessment of the application. The application is a Module 1 development for the purposes of the Neutral or Beneficial Effect (NorBE) on Water Quality Assessment Guideline, and therefore Council has delegated authority to determine water quality impacts. An assessment was undertaken for the development and the development achieves the required neutral or beneficial impact upon water quality subject to standard sediment and erosion conditions recommended for the development, which have been included in **Attachment 1** of this report.

7.2.2 State Environmental Planning Policy (Housing) 2021

Pursuant to Section 50 of the Housing SEPP, Part 1 is applicable if the development is for the purposes of a secondary dwelling on land in a residential zone if the development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.

Residential zone means the following land use zones or an equivalent land use zone:

- (a) Zone R1 General Residential,*
- (b) Zone R2 Low Density Residential,***
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential,*
- (e) Zone R5 Large Lot Residential.*

A dwelling house is permitted with consent within the R2 Low Density Residential Zone of the WLEP 2010. A secondary dwelling is not a permitted land use within the R2 Low Density Zone under WLEP 2010. The secondary dwelling is permitted by the provisions of Clause 52 of the Housing SEPP and is subject to Chapter 3, Part 1 of the Housing SEPP.

Clause 52 of the Housing SEPP states:

- “(1) Development to which this Part applies may be carried out with consent.*
- (2) Development consent must not be granted for development to which this Part applies unless—*
 - (a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and*
 - (b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and*
 - (c) the total floor area of the secondary dwelling is—*

- (i) no more than 60m², or*
- (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.”*

The site will accommodate the principal dwelling and secondary dwelling only. There is no applicable Floor Space Ratio development standard for the land under the provisions of WLEP 2010. The submitted plans as amended, demonstrate the GFA of the secondary dwelling is 59.44m², this is inclusive of the residual area within the secondary dwelling garage. Only 16.5m² of the secondary dwelling garage can be excluded from the GFA calculation. It is recommended that the development complies with the relevant requirements Clause 52(2)(a) – (c) of the Housing SEPP.

Clause 53(2) of the Housing SEPP includes the following non-discretionary development standards applicable to the development:

- (a) for a detached secondary dwelling—a minimum site area of 450m²,*
- (b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The proposed secondary dwelling is attached to the dwelling house; therefore, development standard (a) is not applicable.

The proposed development does not comply with development standard (b) as the site is currently vacant (there are no existing parking spaces on site), and one (1) car space is proposed for the secondary dwelling.

Section 4.15(3)(b) of the Act enables flexibility to be shown where a departure from a non-discretionary development standard is permitted. Clause 4.6(2) of WLEP 2010 enables flexibility to be shown to development standards within the Housing SEPP.

The applicant has submitted a written request to vary the non-discretionary development under Clause 4.6 of the WLEP 2010.

The variation to the non-discretionary development standard is considered within the section of this report assessing the provisions of the WLEP 2010.

7.2.3 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

Clause 4.3 of this Chapter of the SEPP 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.

The subdivision of land to create the subject site was created from Development Consent LUA16/0372 issued on 27 July 2016. The Subdivision Certificate was issued in July 2022. Matters associated with contamination have been considered in the determination of Development Application LUA16/0372. The LPP can be satisfied that the land is suitable for residential use.

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

A satisfactory BASIX Certificate No. 1400635M_02, dated 28 August 2023, was submitted as part of the DA. The plans illustrate 2 x 5,000 Litre water tanks as per the commitment within the BASIX Certificate. The DA was submitted on 14 August 2023 and therefore the BASIX certificate is issued no earlier than 3 months before the day on which the DA was submitted on the NSW Planning Portal.

7.2.5 Wingecarribee Local Environmental plan 2010 (WLEP)

The land is in Zone R2 Low Density Residential. The development is for the construction of a dwelling house and secondary dwelling. The relevant land use definitions from the Dictionary of the LEP are provided as follows:

dwelling house means a building containing only one dwelling.

Note—

Dwelling houses are a type of ***residential accommodation***—see the definition of that term in this Dictionary.

secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

A dwelling house development is permitted with consent in the R2 Low Density Residential zone. The secondary dwelling is permitted with consent pursuant to the Housing SEPP.

The objectives of the R2 zone are provided below along with a comment on how the DA performs with respect to the objectives:

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

Comment: The development provides for additional housing. The dwelling house and secondary dwelling are consistent with the existing and future pattern of development within the area. Existing development along Willow Street is characterised by single storey dwellings on allotments with an area of approximately 1000m², with open landscapes and generous private open space areas. The development is located within the approved building envelope ensuring that the desired degree of separation between buildings is achieved as anticipated by the original subdivision. The development provides for the housing needs of the community within a low density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: This objective is not relevant to the development for a residential land use.

The development is consistent with the objectives of the R2 zone.

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The following development standards in the WLEP apply to the proposal:

Clause	Standard	Proposal	Compliance
1.9A Suspension of Covenants, agreements and instruments	<p><i>(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.</i></p> <p><i>(2) This clause does not apply—</i></p> <p><i>(a) to a covenant imposed by the Council or that the Council requires to be imposed, or</i></p> <p><i>(b) to any relevant instrument within the meaning of section 13.4 of the Crown Land Management Act 2016, or</i></p> <p><i>(c) to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or</i></p> <p><i>(d) to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or</i></p> <p><i>(e) to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or</i></p> <p><i>(f) to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or</i></p>	<p>The restrictions and covenants shown on title are outlined within Section 2 of this Report.</p> <p>The development does not seek to modify any existing instrument.</p>	Yes

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	<p><i>(g) to any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act.</i></p>		
<p>4.6 Exceptions to development standards</p>	<p><i>(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p><i>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p> <p><i>(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i></p> <p><i>(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—</i></p> <p><i>(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and</i></p> <p><i>(b) there are sufficient environmental planning grounds to justify the contravention of the</i></p>	<p>The written Clause 4.6 variation is discussed below.</p> <p>The development contravenes Section 53(2)(b) of the Housing SEPP by providing more parking spaces than existing on site.</p> <p>The development results in a technical non-compliance, given the allotment is vacant and contains no existing vehicle parking.</p> <p>Section 4.15(3)(b) of the Act enables flexibility to be shown where a departure from a non-discretionary development standard is permitted. Clause 4.6(2) of WLEP enables flexibility to be shown to development standards within the Housing SEPP.</p>	<p>Yes</p>

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	<i>development standard.</i>		
5.10 Heritage Conservation	<p><i>(1) Objectives The objectives of this clause are as follows—</i></p> <p><i>(a) to conserve the environmental heritage of Wingecarribee,</i></p> <p><i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i></p> <p><i>(c) to conserve archaeological sites,</i></p> <p><i>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</i></p> <p><i>(2) Development consent is required for any of the following—</i></p> <p><i>(e) erecting a building on land—</i></p> <p><i>(i) on which a heritage item is located or that is within a heritage conservation area, or</i></p> <p><i>(f) subdividing land—</i></p> <p><i>(i) on which a heritage item is located or that is within a heritage conservation area, or</i></p> <p><i>(5) The consent authority may, before granting consent to any development—</i></p> <p><i>(a) on land on which a heritage item is located, or</i></p> <p><i>(b) on land that is within a heritage conservation area, or</i></p> <p><i>(c) on land that is within the</i></p>	<p>The subject site is not listed as a Heritage Items or being located within a Heritage Conservation Area.</p> <p>The site is located within vicinity of heritage items being Mt Alexandra Reserve (I066 & A066) and Picton-Mittagong Loop line railway Line (I473). The heritage items are outlined in brown in Error! Reference source not found. below.</p> <p>The development does not result in any adverse impacts upon the significance of the heritage items and archaeological site due to the separation distance and scale of the development. The development satisfies Clause 5.10(4) Heritage Conservation.</p>	Yes

	<p><i>vicinity of land referred to in paragraph (a) or (b),</i></p> <p><i>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</i></p>		
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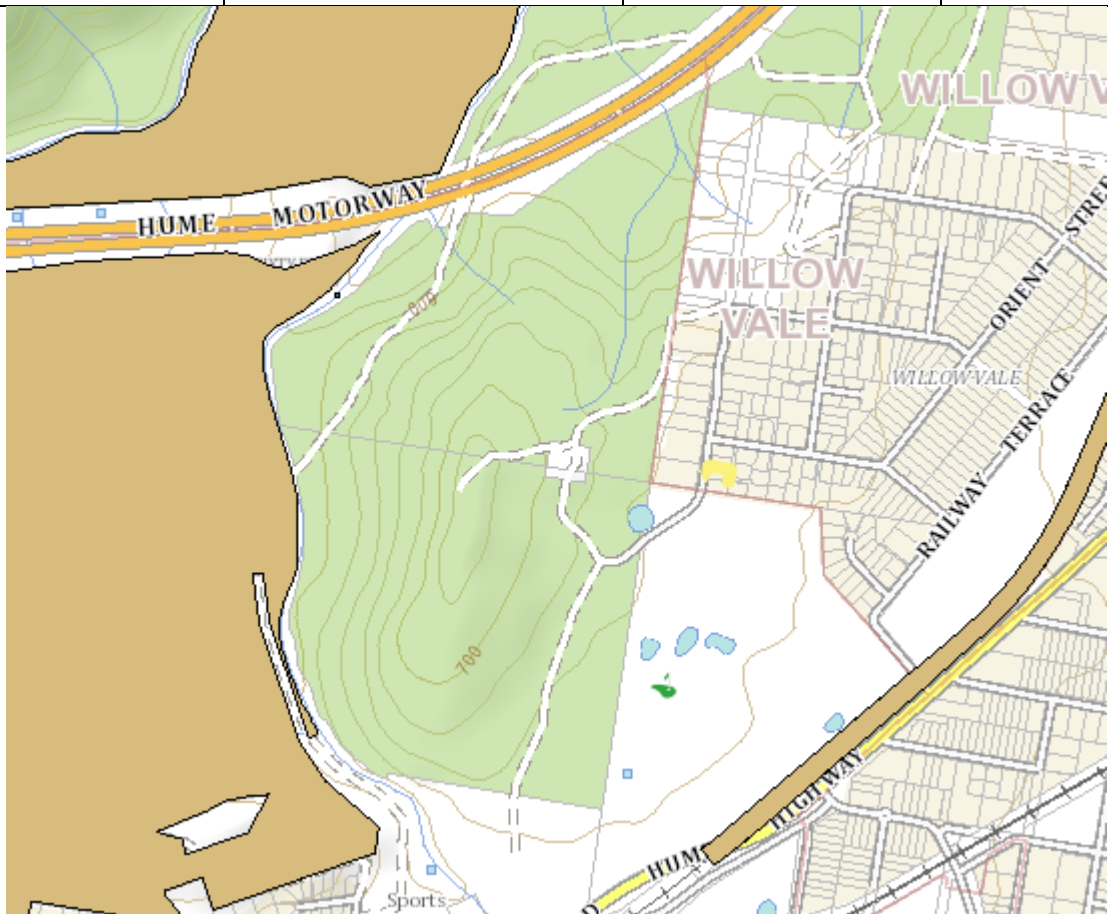


Figure 15 Extract of heritage map from WLEP. The brown indicates heritage items. The site is outlined in yellow.
Source: WLEP Maps.

<p>7.3 Earthworks</p>	<p><i>(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to ensure that any earthworks will not have a detrimental impact on environmental</i></p>	<p>The development is split level with the secondary dwelling and garages located above the primary dwelling.</p> <p>The development</p>	<p>Yes</p>
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	<p><i>functions and processes, neighbouring uses or heritage items and features surrounding land,</i></p> <p><i>(b) to allow earthworks of a minor nature without separate development consent.</i></p> <p><i>(2) Development consent is required for earthworks unless—</i></p> <p><i>(a) the work does not alter the ground level (existing) by more than 600 millimetres, or</i></p> <p><i>(b) the work is exempt development under this Plan or another applicable environmental planning instrument, or</i></p> <p><i>(c) the work is ancillary to other development for which development consent has been granted.</i></p> <p><i>(3) Before granting development consent for earthworks, the consent authority must consider the following matters—</i></p> <p><i>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></p> <p><i>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p><i>(c) the quality of the fill or of the soil to be excavated, or both,</i></p> <p><i>(d) the effect of the</i></p>	<p>includes approximately 1m of fill for the main living of the secondary dwelling and garage of the primary dwelling.</p> <p>690mm of fill is proposed for the access ramp from the existing driveway to the garage of the primary dwelling.</p> <p>The proposal includes a retaining wall along the northern side boundary. the maximum height of the wall is 1 metre and will not impact vegetation on adjoining properties as the TPZ fencing is to be installed along the property boundary.</p> <p>A retaining wall is also proposed along the southern boundary with a maximum height of 600mm which is reasonable given the sloping nature of the site.</p> <p>1 metre and 1.1 metre high retaining walls are located between the two building pads.</p> <p>The proposal is considered acceptable on the basis that the earthworks are necessary to respond to the sloping nature of the site. Retaining walls are not excessive and the cut proposed will not impact vegetation on the subject site and adjoining land as</p>	
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	<p><i>proposed development on the existing and likely amenity of adjoining properties,</i></p> <p><i>(e) the source of any fill material or the destination of any excavated material,</i></p> <p><i>(f) the likelihood of disturbing Aboriginal objects or other relics,</i></p> <p><i>(g) proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p>	supported by Council's Tree and Vegetation Officer.	
7.10 Public utility infrastructure	(2) Development consent must not be granted for development on land to which this clause applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.	<p>The site is zoned R2 and subject to the provisions of this Clause in accordance with subclause (1).</p> <p>The site has access to essential public infrastructure. Referral responses have not raised any concerns with essential public infrastructure.</p>	Yes

Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the WLEP 2010 provides flexibility in the application of planning controls by allowing Council to approve a development application that does not comply with a development standard, where the provisions of clause 4.6 are satisfied.

The DA was lodged on 6 September 2023 and is subject to provisions of clause 4.6, which were applicable at the time of lodgement. The provisions of clause 4.6 were amended by Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) 2023. This order commenced on 1 November 2023.

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From 1 November 2023, clauses 4.6(3) – (5) and (7) of the Standard Instrument—Principal Local Environmental Plan were omitted. The clause 4.6 variation request considers the provisions applicable at the time of lodgement.

The applicant has submitted a written request (**Attachment 3**) to vary the non-discretionary development standard at Clause 53 subclause (2)(b) of the Housing SEPP, which requires the number of parking spaces provided on site be the same number of parking spaces provided on site immediately before the development is carried out.

An assessment of the relevant provisions of clause 4.6 is as follows:

- Clause 4.6(3)(a) - Is compliance unreasonable or unnecessary in the circumstances of the case?
- Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

Unreasonable and unnecessary

The applicant's Section 4.6 written request relies upon Part 1 of the five-part test established in *Wehbe v Pittwater Council* (2007) to demonstrate compliance with the non-discretionary development standard is unreasonable and unnecessary in the circumstances of the case.

Part 1 of the five-part test provides that the objectives of the standard are achieved notwithstanding noncompliance with the standard.

The objective of Section 53 of the housing SEPP is reproduced below:

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

The Applicant's comments on how the objective is achieved is provided below, followed by a response from the assessing officer.

Written Request Comments:

Compliance with the development standard is unreasonable and unnecessary where it would result in no parking being provided onsite.

The development standard is, in this instance, considered to be an anomaly and would typically apply for a situation where a Secondary Dwelling is sought within an existing Dwelling house allotment. The standard is therefore both unreasonable and unnecessary.

Assessment Officer's Comments:

The objective of Section 53 of the Housing SEPP indicates that the purpose of this non-discretionary development standard is to ensure that Council does not seek more onerous standards, in this situation being more car parking spaces on site.

As outlined by the applicant, Section 53(2)(b) Housing SEPP is to prevent Council from requiring additional car parking spaces where there is an existing dwelling on site. Without this provision it would likely prevent many secondary dwelling developments. The DCP requires two (2) car parking spaces per dwelling. Thus four (4) spaces would be required for this development per Council's controls.

The site is currently vacant; therefore, no parking spaces exist on site. The non-compliant parking in this instance would provide for a better planning outcome by providing on-site car parking, avoiding reliance of vehicles being parked on the street.

Regarding clause 4.6(4)(a)(i) of the WLEP 2010, the consent authority should be satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Environmental planning grounds

The environmental planning grounds raised in the Applicant's written request are provided below, followed by a response from the Assessment Officer.

Written Request Comment:

Firstly, it is noted that in accordance with Initial Action Pty Ltd v Woollahra Council (2018) that this clause only requires a demonstration of sufficient environmental planning grounds justifying the non-compliance. It does not require a non-compliant development to have a better environmental outcome than a compliant development (see Paragraph 88 of the judgement).

In any case the non-compliant development will have an improved development outcome over a compliant development, providing all parking onsite as opposed to no parking.

The environmental planning grounds to justify contravention of the development standard are detailed as follows:

- *The variation will be providing additional parking on site – The provision of parking for the secondary dwelling is necessary given Willow Vale is a car reliant community and there are limited Public Transport options available.*

Assessment Officer's Response:

The site is within 450 metres walking distance of the nearest bus stop served by the 805 and 811 bus routes. However, it is agreed that public transport options, within the Township of Willow Vale, are currently limited. Control (g) of Section C2.12 Garaging & Driveways within NVDCP, requires two (2) spaces per dwelling (including secondary dwellings), demonstrating that car ownership rates are generally higher than inner city LGA's.

- *Providing formal on-site parking will avoid future residents from parking informally on the site. I.e. without the provision of formal parking, residents will likely park in landscaped areas and/or over the right of way benefiting Lot 7 (adjoining property to the south).*

Assessment Officer's Response:

The development proposes generous landscaped areas within the front setback of building. Should no parking be provided for the secondary dwelling it is likely residents or visitors will park their vehicles within the front landscaped area, which over time would deteriorate and present poorly to the streetscape. It is also agreed that the lack of formal parking provided on site may cause conflicts with the future development of 35 Cordeaux Street, this is on the basis that right of ways that are applied to the driveway creates a shared vehicle access arrangement. Providing parking for the secondary dwelling will likely reduce residents parking within the driveway area or on the street.

- *The site has an area of 1,000m² and is able to accommodate a formal parking space for the secondary dwelling. The provision of the car space will not result in a noncompliance with landscaped area or site coverage requirements. Furthermore, the entirety of the built form including the car parking space is contained within the building envelope that applies to the sit.*

Assessment Officer's Response:

The provision of formal parking for the secondary dwelling does not result in a departure from the applicable building envelope, or non-compliance with landscaped area and site coverage controls within the DCP. The site area is generous being 1000m², and it has been demonstrated that there is sufficient area for a designated car space for the secondary dwelling.

- *The provision of the car parking space will not be of a consequence to safety. The design of the development includes manoeuvring areas so that vehicles can enter and exit the secondary dwelling garage safely. is also entirely consistent with Council's development control plan requiring a minimum of two parking spaces for developments of this nature.*

Assessment Officer's Response:

The provision of formal parking for the secondary dwelling will likely improve safety as cars parked informally within the driveway are not likely to occur. As such, vehicles will be able to reverse from the garage and manoeuvre to exit in a forward direction, rather than reversing onto Cordeaux Street.

Written Request Comment:

Further, as per the Initial Action judgement (Paragraph 23), in the absence of a definition of environmental planning grounds it is accepted that response to the objectives of the Environmental Planning and Assessment Act provide a suitable demonstration of sufficient environmental grounds to justify the non-compliance:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*

The proposed non-compliance can be accommodated within the site without influence on the social and economic welfare of the community in the context. The non-compliances will not impact on amenity provided to any adjoining allotments.

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment*

The development, and non-compliance, is to be subject to detailed assessment to determine the proposals response to economic, environmental and social considerations.

These matters are in no way impacted by the proposed non-compliance.

- (c) to promote the orderly and economic use and development of land*

The additional parking is an orderly and economic use of the land, where the parking is integrated into the dwelling and has been provided in due consideration of the site conditions.

- (d) to promote the delivery and maintenance of affordable housing*

The non-compliance forms part of a proposal that includes an affordable housing option, entirely consistent with this objective.

- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats*

The proposal will have no impact on any threatened species or ecological communities.

- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)*

The proposal will have no impact on any item of built or cultural heritage.

- (g) *to promote good design and amenity of the built environment*

The non-compliance promotes good design by including onsite parking, integrated into the building and obscured from view within the street.

- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants*

The proper construction and maintenance of the building will be confirmed via the Construction Certificate process, responding to any conditions imposed by Council.

- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State*

Not considered to be relevant to the application.

- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The application will be subject of community participation via notification by Council. Any items raised during consultation can be addressed by the applicant as required.

Assessment Officer's Response:

The written request has provided several reasons to demonstrate that there are sufficient environmental planning grounds to justify contravening the non-discretionary development standard. These are generally agreed with for the following reasons:

- The subject site is located within Willow Vale which has limited public transport options.
- The site area being 1000m² can accommodate designated parking for the secondary dwelling without impacting compliance with landscaped area and site coverage requirements.

- The development, including the formal parking space can be accommodated within the building envelope applicable to the subject allotment.
- The provision of formal parking on site will reduce the likelihood of residents parking informally across landscaped areas or the shared driveway.
- The formal parking space will not adversely impact safety and will likely improve safety as residents will be able to exit in a forward direction.

The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) of clause 4.6.

Public interest – Development consistent with the zone objectives and objectives of the development standard

Clause 4.6 (4)(a)(ii) requires that the consent authority is satisfied that the development is in the public interest because it is consistent with the objectives of the standard, and the objectives for development within the zone.

As detailed earlier in this Report, the development is consistent with the objectives of the standard in that the development is not subject to a more onerous number of parking spaces than required under the Housing SEPP. The development provides for additional housing needs of the community within a low density residential environment and achieves of the relevant objective of the R2 Low Density Residential zone.

On balance, the impacts associated with the additional car parking does not result in unreasonable impacts on the immediate area. Therefore, the proposal is not contrary to the public interest. The development has demonstrated consistency with Clause 4.6(4)(a)(ii).

Has concurrence been obtained?

Pursuant to clause 4.6(4) of WLEP 2010, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 20-002 dated 5 May 2020, the Secretary's concurrence may be assumed by the Wingecarribee Local Planning Panel, despite the non-compliance with the non-numerical development standard.

Conclusion

The assessment above has demonstrated the Applicant's written request adequately addresses the matters required to be demonstrated by clause 4.6(3). It has also been demonstrated that the proposed development will not be contrary to the public interest because it is consistent with the objectives of the Section 53(2)(b) non-discretionary development standard and the objectives of the R2 Low Density Residential zone.

For these reasons, it is considered that the development application is acceptable.

8. Development Control Plans and Policies

8.1 Northern Villages Development Control Plan (DCP)

The Northern Villages DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in an undesirable planning and urban design outcome.

The relevant provisions of the Northern Villages DCP are addressed in **Appendix 2**.

Where strict compliance has not been achieved, in accordance with Section 4.15 (3A)(b) of the EP&A Act, flexibility has been applied to consider reasonable alternative solutions that achieves the objectives of the relevant standard. These matters are discussed below:

Height of Buildings

Control (a) of Section C1.6 Height of Buildings requires single storey development to have a maximum height of 6m. The proposed dwelling has a maximum height 6.33m and is non-compliant. The objectives for height are detailed under Section C2.9.1 Building Height Objectives.

The following Height controls seek to achieve the following objectives:

- (a) Retention of a low scale domestic residential character (or appropriate alternative depending on locality),*
- (b) Minimal loss of privacy for existing development*
- (c) Minimal overshadowing of neighbouring properties by new development*
- (d) Minimal disruption to the views of existing development*

The submitted plans do not nominate a ridge level. However, the roof form proposed at the rear of the principal dwelling is calculated to have a ridge height of RL651.33. The rear roof form is approximately 500mm lower than the apex of the roof form (RL651.83) presenting to the streetscape. The natural ground level below the dwelling ranges between RL645.00 – RL645.50. The development results in a maximum height of 6.33m.

The non-compliance with the control is a consequence of the pitched roof and ensuring levels respond to the existing driveway. The 330mm variation will not result in unreasonable visual impacts when viewed from the street or adjoining properties.

Pitched roof forms are prevalent within the locality and the built form has regard for the desired and existing dwelling characteristics of Willow Vale.

The proposed height does not lead to any adverse impacts upon privacy for existing development and does not result in any adverse overshadowing to neighbouring properties. The proposed height does not result in any adverse disruption to the views of surrounding development.

The roof ridge is setback 13.55m from the front boundary and the low scale domestic residential character is maintained, despite the height exceedance. The development achieves the objectives of height of buildings control.

Development Density and Scale

Control (c) of Section 2.4 Development Density and Scale, requires the dual occupancy component of a residential development not to exceed the height of the principal dwelling. The secondary dwelling is located at the front north western corner of the development and is located on an upper floor level of RL646.210 and the roof form results in a greater height than the principal dwelling located to the rear of the development at RL644.750.

The control objectives are detailed in Section C2.4.2 with the height, scale and style of development required to:

- (a) Be compatible with the scale, appearance and character of any existing buildings on the site.*
- (b) Retain important natural features of the site, including any significant existing trees.*
- (c) Ensure that dwellings address the street in an appropriate way.*
- (d) Be compatible with the scale of development of the established built environment and streetscape.*
- (e) Ensure that the sides and rear of dwellings, which are generally viewed by neighbours, make a positive contribution to residential amenity,*
- (f) Provide sufficient vehicle access and parking in accordance with standards contained within this Plan.*
- (g) Ensure that the visual and acoustic privacy of adjoining dwellings are protected.*
- (h) Ensure adjoining living areas are located to minimise overshadowing and overlooking.*
- (i) Ensure windows in living areas are located to minimise and overlooking both within the site and between sites.*

The development comprises an attached secondary dwelling and principal dwelling. There is no existing development on site. The existing tree to be removed from site is located within the approved building envelope. The site contains an existing driveway access adjacent to the southern side boundary. The development has been designed orientating the garages to the southern side boundary in response to the driveway location. The dwelling presents appropriately to Cordeaux Street.

The scale of the development is consistent with surrounding development and streetscape. The maximum height is attained 13.5m from the streetscape and will not be discernible from the public domain.

The development incorporates 1.585m from the northern and 1.5m from the southern side setbacks and a 6.5m rear setback. In conjunction, the development has 2.7m wall heights to ensure the scale

of the development is acceptable when viewed from neighbouring properties. The development achieves residential amenity to neighbouring properties.

The development comprises a two (2) car garage for the principal dwelling and a single garage for the secondary dwelling. The development relies upon the existing driveway created under the original subdivision application.

The living areas are located along the northern and eastern elevations achieving solar access. The window siting does not result in any adverse privacy impacts to adjoining properties.

The internal configuration of the principal and secondary dwelling means there is no created conflict in the living areas in terms of visual privacy.

The development achieves the objectives of the controls.

Garaging and Driveways

Control (c) of Section C2.12.2 Garaging & Driveways requires garages, where they form part of the dwelling to not exceed 40% of the total width of the dwelling frontage to a maximum width of six (6) metres.

The western elevation of the development has a width of 11.565m. The proposed garage is orientated towards the southern side boundary and therefore the garage length of 5.965m presents to the western dwelling frontage presenting to Cordeaux Street. The garage results in a width of 51.5% of the western frontage and is non-compliant.

However, the western elevation of the garage contains two (2) windows. The garage will not be perceived as a garage from the streetscape (Error! Reference source not found.). The garage doors are orientated to the side boundary improving the appearance of the building when viewed from the street.

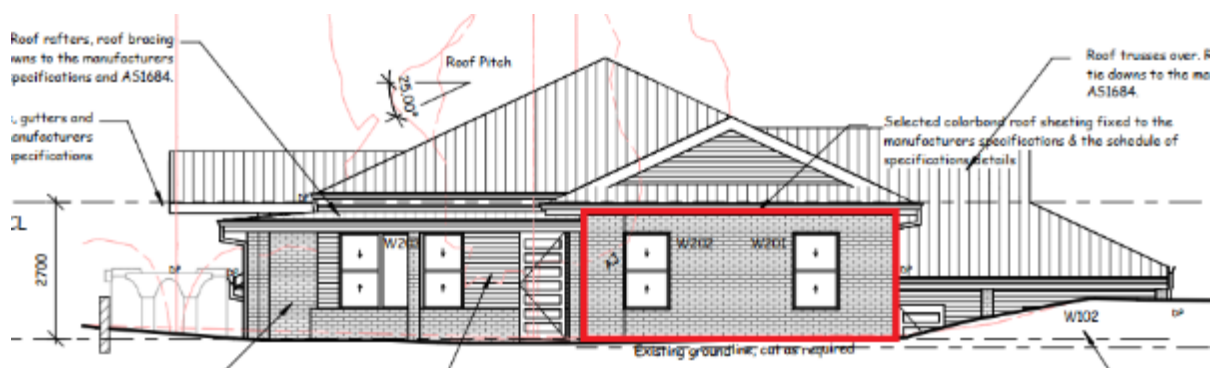


Figure 16: Western front elevation presenting to Cordeaux Street. The red outline is the garage which presents to the southern side boundary. The garage, given it is a side elevation and contains windows will not be perceived as a garage from the streetscape.

Source: Plan Vision. Mark ups by CPS.

Control (f) requires garages to be set back from the front façade and designed so that the dwelling entry and façade are the dominant building features. The proposed single garage associated with the secondary dwelling is sited forward of the front façade of the dwelling entry.

Despite being set forward; the garage doors are orientated to the south so that no doors present to the streetscape. As shown above, the western wall of the garage is improved with windows giving the appearance of a habitable room. As such, the garage does not appear as the dominant feature of the building.

Control (g) requires new dwellings to provide a minimum of two (2) car spaces behind the building line for each dwelling which may include an access way to the side of the dwelling of a minimum width of 2700mm.

The development includes a dwelling house and secondary dwelling, requiring a total of four (4) car spaces (2 per dwelling). A total of three (3) spaces are proposed. The non-compliance has been supported by Council's Development Engineer.

Control (i) requires driveways to be located a minimum of one (1) metre from any side boundary. The driveway is an existing shared driveway with 35 Cordeaux Street, created as part of the original subdivision works. The Deposited Plan shows a carriage way easement. Whilst not compliant with the control, the driveway is in accordance with the Deposited Plan and is an existing element.

The objectives of these controls are detailed in Section C2.12.1. The objectives of considering the location of garages associated with dwellings are to ensure that:

(a) Garages are located to minimise the dominance of garages and driveways in the streetscape.

(b) Garages shall be designed and located to minimise adverse solar impacts.

(c) Where possible, garages should offer linkages between on-site open space areas.

(d) Driveways shall be designed and located so as to be recessive in the streetscape.

(e) Driveways shall be located so as not to impact on existing street trees.

The garages are orientated towards the southern side boundary and existing driveway. The garage doors are not located within the western elevation presenting to Cordeaux Street. The western elevation of the garage contains windows and will be perceived from the streetscape as a habitable room. The garage is not a dominant element within the streetscape.

The garage is located to ensure it does not result in any adverse overshadowing to adjoining properties. The garages being located at the south western corner of the dwelling provide a connected between the front and rear of the site.

The development relies upon the existing driveway created under the subdivision application and does not seek to provide a new driveway access. Therefore, the driveway does not impact upon street trees.

9. Environmental Assessment

The Application has been assessed having regard to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, as amended.

Section 4.15 'Matters for Consideration	Comments
Section 4.15 (1)(a)(i) – Provision of any environmental planning instrument	See discussion in sections 6 and 7 and key issues below.
Section 4.15 (1)(a)(ii) – Provision of any draft environmental planning instrument.	Not Applicable.
Section 4.15 (1)(a)(iii) – Provisions of any development control plan	The proposal is consistent with the objectives and controls of the Northern Villages DCP. See table in Appendix 2 and the discussion below.
Section 4.15 (1)(a)(iiia) – Provision of any Planning Agreement or draft Planning Agreement.	Not Applicable.
Section 4.15 (1)(a)(iv) – Provisions of the Regulations.	The Regulation guides the processes, plans, public consultation, impact assessment and decision made by local councils, the Department of Planning and Environment and others. Except where otherwise referred to in this report, the matters for consideration contained from Clause 61 to Clause 64 of <i>Environmental Planning and Assessment Regulation 2021</i> are of limited relevance to this application.
Section 4.15 (1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.	The development will not result in any significant adverse impacts upon any adjoining properties or the environment in general due to high level of compliances with the built form controls.
Section 4.15 (1)(c) – The suitability of the site for the development.	<p>The site is zoned R2 Low Density Residential. The proposal is for development of a dwelling house and secondary dwelling.</p> <p>The assessment demonstrates the development is consistent with the statutory requirements and policy controls. The development has been accompanied by a</p>

Section 4.15 'Matters for Consideration	Comments
	satisfactory Clause 4.6 objection addressing the contravention of Section 53(2)(b) of the Housing SEPP in relation to car parking. The development demonstrates it does not result in any significant adverse impacts upon adjoining properties or the streetscape. The development is suitable for the site.
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation.	No submissions have been received by Council.
Section 4.15 (1)(e) – The public interest.	<p>The public interest is best served by the consistent application of the requirements of relevant environmental planning instruments and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised. The proposal has been assessed against the relevant planning instruments and is acceptable.</p> <p>As detailed in the discussion of whether compliance with the standard is unreasonable or unnecessary, Council is satisfied that the non-compliance with the non-discretionary standard achieves the objectives of the <i>Environmental Planning and Assessment Act</i>.</p> <p>The development must also be consistent with the objectives of the zone. As already discussed in this report, the development is consistent with the R2 Low Density Residential zone objectives.</p> <p>Therefore, the development is not contrary to the public interest.</p>

10. Conclusion

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Wingecarribee Local Environmental Plan 2010; and
- Northern Villages Development Control Plan.

This assessment has taken into consideration the submitted plans, all other documentation supporting the application, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

This proposal, for the construction of a dwelling house and secondary dwelling has been referred to the Wingecarribee Local Planning Panel (WLPP) as the proposal seeks a contravention to a non-numerical, non-discretionary development standard, pursuant to Schedule 1 of the Local Planning Panel Direction.

The development application was notified for fourteen (14) days between 16 November 2023 – 30 November 2023, as stated within Council’s Community Participation Plan, in which no objections were received during this period or at any time prior to the preparation of this report.

Overall, the proposal is a compatible residential development within a recent residential subdivision that performs satisfactorily against the objectives of the relevant controls and will not result in unacceptable impacts on adjoining or nearby properties, or the natural environment.

11. Recommendation

- A. That the Wingecarribee Local Planning Panel Council accepts that the Clause 4.6 written request to vary the non-numerical, non-discretionary development standard of Section 53(2)(b) of the Housing SEPP has adequately addressed the matters in subclause (4) and will be in the public interest as it is consistent with the objective of the development standard in Section 53(2)(b) and the objectives of the R2 Low Density Residential Zone of the Wingecarribee Local Environmental Plan 2010.

- B. That the Wingecarribee Local Planning Panel, as the consent authority **grant development consent** to Development Application DA24/0189 for development of a dwelling house and secondary dwelling on land at 33 Cordeaux Street, Willow Vale (Lot 8 DP 1286738) subject to the draft conditions contained in **Attachment 1**.

Summary of Referrals

Internal Referrals:

- 1. Development Engineer.** The development application was referred internally to Council's Development Engineer. The assessing officer was supportive of the proposed development, including the parking arrangements, subject to conditions. It was highlighted that a rainwater tank was proposed on the sewer main which is not acceptable, however this can be resolved within the Section 68 application.
- 2. Tree and Vegetation Officer:** The officer approves of the findings and recommendations in the Arboricultural Impact Assessment prepared by Arbor Express. The development and associated vegetation removal is supported. Trees to be retained are to be protected and pruned (if necessary) in accordance with Australian Standards AS4970-2009 and AS4373-2007.

External Referral:

- 1. NSW RFS:** The subject site is bushfire prone land. The NSW RFS are required to be consulted in accordance with Section 4.14 of the PE&A Act. NSW RFS consented to the development on 17 January 2024 subject to conditions of consent.

Appendix 2: Northern Villages DCP.

Section	Control	Assessment	Compliance
Part A – Applies to Willow vale,			
Section 2 – General Objectives			
A2.2 Objectives of this Plan			
A2.2.3 Urban Function			
<p><i>New development can also impact on the existing functional amenity of a locality. Traffic, parking, pedestrian access and streetscape all contribute to resident and visitor convenience, safety and enjoyment and Council constantly seeks to improve urban function throughout the villages. While not all development can make a positive contribution to these improvements, Council certainly expects that new development will in no way have a detrimental impact on such function. In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Urban Function objectives:</i></p> <ul style="list-style-type: none"> <i>(a) Improvement of traffic and parking management within the villages.</i> <i>(b) Minimisation of vehicular and pedestrian conflicts.</i> <i>(c) Provision of a safe and accessible network of pedestrian links throughout the villages.</i> <i>(d) Improvement of connections to public transport facilities.</i> <p>The proposal provides two (2) parking space garage for the primary dwelling and one (1) car space garage for the secondary dwelling. The onsite parking proposed results in a non-compliance with the non-discretionary development standard at Section 53(2)(b) of the Housing SEPP, however, it has been demonstrated that the proposed parking will minimise the reliance of on street parking. Ultimately the development will not have an adverse impact upon the parking management within the Willow Vale Township.</p> <p>The development achieves objectives (a) of Section A2.2.3, whilst objective (b), (c) and (d) are not applicable.</p>			
Section A2.4 Residential Amenity			
<p><i>In addition to residential diversity, Council also seeks to ensure that future residential development within the Northern Villages at least maintains and, where possible, improves, existing residential amenity.</i></p> <p><i>In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Residential Amenity objectives:</i></p> <ul style="list-style-type: none"> <i>(a) Conserve the unique characteristics of existing residential areas within the northern villages.</i> <i>(b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character.</i> <i>(c) Ensure that residential development includes sustainable principles such as energy</i> 			

- and water efficiency, using sustainable building products where ever possible.*
- (d) Contribute to the enhancement of the urban amenity*
 - (e) Ensure that there is no light spill from any new development which would adversely impact on surrounding residents, including diminishment of the night sky experience.*

The development has been considered in accordance with the provisions of Section 2 relating to residential amenity. The provisions include specific controls relating to residential diversity, visual amenity and the public domain.

The proposed development is sympathetic to existing and desired future streetscapes. The development is located within the building envelope shown 'R' on the deposited plan resulting in a high level of compliance with setbacks that are consistent with the character desired for the recently created lots.

BASIX Certificate no. 1400635M_02 was submitted. The architectural plans reference the required two x 5000L rainwater tanks. The Certificate and requirements have been included as part of the consent.

The development is not contrary to objectives (a) to (e).

Section A2.4.1 Residential diversity

In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Residential Diversity objectives:

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

The proposal includes a dwelling house and attached secondary dwelling increasing housing choice within the township. The development achieves the objectives of Section 2.4.1.

A2.4.2 Visual Amenity

Council does expect that all new development should at least respond to the essential elements that make up the character of the surrounding urban environment. In particular, all new development should:

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

The development is conforming to the building envelope shown 'R' on the deposited plan and therefore responds to the desired future front setback of development on the eastern side of Cordeaux Street. The garages are orientated to the southern side boundary and does not present

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directly to the streetscape, reducing the visual impact of the garage doors when viewed from the street. The front (west) elevation includes a mix of materials and the use of windows to create a well-presented development.

Generous private open spaces areas have been provided for both the dwelling house and secondary dwelling which has opportunities for meaningful landscaping.

<p>Section 3 Biodiversity</p>	<p><i>A Flora and Fauna Assessment Report is required to be lodged with a Development Application under the following circumstances and must address the requirements in the Wingecarribee Shire Council Flora and Fauna Assessment Guidelines for Development Applications.</i></p>	<p>There is existing vegetation on site that is proposed to be removed. The site is not mapped as containing significant vegetation. A Flora and Fauna Assessment is not required as existing vegetation is not native vegetation and is planted vegetation.</p>	<p>Yes</p>
<p>Section 4 Water Management</p>	<p>A4.1 & 4.2 Provisions for the protection of water courses and riparian lands</p>	<p>The proposal is not in near vicinity of a watercourse or riparian land, so this is not applicable.</p>	<p>Yes</p>
	<p>A4.3 Development in Sydney's Drinking Water Catchment</p>	<p>See assessment under Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 above</p>	<p>Yes</p>
	<p>A4.4 Water Cycle Management Study</p> <p><i>The development is required to provide modelling using the small-scale Stormwater Quality Model and conceptual erosion and sediment controls to be applied during construction.</i></p>	<p>As above.</p>	<p>Yes</p>
	<p>A4.6 Details of erosion and sediment control are to be provided to meet the Neutral or Beneficial Effect Test.</p>	<p>A satisfactory Erosion and Sediment Plan was submitted and has been reviewed by Council's Development Engineer.</p>	<p>Yes</p>
	<p>A4.5 & A4.7 Stormwater Management Plan and Water Sensitive Urban Design</p>	<p>A Stormwater Management plan was submitted as part of the development application. Council's Development Engineer was satisfied</p>	<p>Yes</p>

		<p>with the submitted plan as the development was proposing to discharge to rear which aligns with the stormwater strategy proposed for the approved subdivision.</p> <p>A rainwater tank is proposed on the sewer main which will be required to be relocated, via a recommended condition of consent.</p>	
<p>Section 6 Bushfire Hazard</p>	<p><i>The Northern Villages are listed as being of high risk from bushfire hazard under Council's Bushfire Risk Management Plan 1997 (last updated 2001). The main risk management strategy listed for the Northern Villages is the encouragement of residents to reduce fuels on their property.</i></p> <p><i>There are Category 1 lands and buffer areas under the Rural Fire Service Mapping located within and around the villages. Where properties are affected by these, an individual assessment of risk will need to be undertaken for development applications. Development will be required to comply with the NSW Department of Infrastructure, Planning and Natural Resources guideline "Planning for Bushfire Protection – A Guide for Councils, Planners, Fire Authorities, Developers and Home Owners".</i></p> <p><i>The following maps show the affected properties and is an extract from the Bush Fire Prone Land Map certified by the Commissioner of the NSW Rural Fire Service.</i></p>	<p>The site is bushfire prone land and is mapped as being Vegetation Category 1 and Vegetation Buffer. Development.</p> <p>A Bushfire Assessment prepared by Perception Planning was submitted with the application. The Assessment found the development is in accordance with A1.12.5 of the PBP 2019 and can archive defensible space within the lot.</p> <p>NSW RFS supported the DA subject to conditions.</p>	<p>Yes</p>

Section 7 Vegetation Management & Landscaping

The objectives of this Section of the Plan are to:

- (a) *preserve the amenity, biodiversity and ecology of the Northern Villages through the preservation of trees and other vegetation as described in Clause 5.9 of WLEP 2010.*
- (b) *preserve the amenity and heritage value of trees and other vegetation associated with Items of Heritage or within Heritage Conservation Areas.*
- (c) *clarify the meaning of Clause 5.9 of WLEP 2010.*
- (d) *define and explain the terms used in Clause 5.9 of WLEP 2010.*
- (e) *clarify the assessment criteria under which exemptions will be determined.*

The submitted architectural drawings illustrate that the removal of eight (8) trees will be required to accommodate the dwelling.

A satisfactory Arboricultural Impact Assessment accompanies the DA.

Council is satisfied with the proposed tree removal noting five (5) trees are dead, and one (1) tree has major dieback within the canopy. Two (2) trees are located within the building footprint and building envelope shown 'R'. Despite being of moderate health, the application of building envelope 'R' conceived that these trees would likely be removed to accommodate future development.

One (1) tree is proposed to be retained on site, whilst the application documents illustrate that the works will not unreasonably impact trees on the adjoining land to the north.

Council's Tree and Vegetation Officer was supportive of the findings and recommendations of the submitted Arboricultural Impact Assessment.

A7.2 Private Landscaped Open Space	<i>(a) A Landscape Plan shall be prepared, in consultation with Council, and submitted with the development application indicating the location of proposed plantings and the botanical names of proposed plant species. The level of detail required will be determined by the type of development and size of the allotment.</i>	A satisfactory landscape plan has been submitted indicating the location of proposed plantings and the botanical names of proposed plant species. A satisfactory level of detail is contained within the landscape plan.	Yes
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Section 8 Subdivision, Demolition, Siting and Design

A8.3 Site Analysis	<i>Every land use application which involves significant alteration to the site whether through development of currently vacant land, extensive renovation of an existing building, or demolition, must be accompanied by an</i>	A satisfactory site analysis has been provided with the Statement of Environmental Effects.	Yes
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	<p><i>appropriate Site Analysis Report.</i></p> <p><i>A written statement explaining how the site conditions have been interpreted into the design principles that guide the new development.</i></p>		
A8.4 Cut and Fill	<p><i>Objectives</i></p> <p><i>a) Encourage stepping of buildings in response to existing topography.</i></p> <p><i>b) Minimise disturbance to existing landforms and soil profile.</i></p> <p><i>c) Minimise use of retaining walls.</i></p> <p><i>Controls</i></p> <p><i>a) Where the cut and fill objectives cannot be met, the development must be stepped in order to accommodate the contours of the site.</i></p>	<p>The development is split level with the secondary dwelling, garages and laundry and media room of the principal dwelling elevated in comparison to the principal dwelling.</p> <p>The development includes approximately 1m of fill for the main living of the secondary dwelling and garage of the primary dwelling.</p> <p>690mm of fill is proposed for the access ramp from the existing driveway to the garage of the primary dwelling.</p> <p>The proposal includes a retaining wall along the northern side boundary. the maximum height of the wall is 1 metre and will not impact vegetation on adjoining properties as the TPZ fencing is to be installed along the property boundary.</p> <p>A retaining wall is also proposed along the southern boundary with a maximum height of 600mm which is reasonable given the sloping nature of the site.</p> <p>1 metre and 1.1 metre</p>	Yes

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		<p>high retaining walls are located between the two building pads.</p> <p>The proposal is acceptable on the basis that the earthworks are necessary to respond to the sloping nature of the site. Retaining walls are not excessive and the cut proposed will not impact vegetation on the subject site and adjoining land as supported by Council's Tree and Vegetation Officer.</p>	
	<p><i>a) Where the cut and fill objectives cannot be met, the development must be stepped in order to accommodate the contours of the site.</i></p>	<p>The development has been stepped to accommodate the contours of the site.</p>	<p>Yes</p>
	<p><i>b) Any cut and fill required shall comply with the maximum controls set out in Clause 7.3 (Earthworks) of Wingecarribee Local Environmental Plan 2010.</i></p>	<p>The development does satisfy Clause 7.3 of WLEP.</p>	<p>Yes</p>
<p>A8.10 New Development within the vicinity of Heritage Items</p>	<p><i>a) remain compatible with the average height, bulk and scale of buildings located on adjoining or nearby land and be adequately set back to ensure that heritage items and other significant buildings in the streetscape are not dominated by new or infill development.</i></p>	<p>The height and scale of the development is compatible with heritage items. The items located within the vicinity are not buildings (being archaeological site and railway line). The development nonetheless achieves the desired streetscape presentation.</p>	<p>Yes</p>
	<p><i>b) seek unification with existing built forms on adjoining or nearby land, by ensuring respect for and compatibility with architectural elements including:</i></p> <ul style="list-style-type: none"> <i>(i) the existing building line,</i> <i>(ii) brickwork styles,</i> <i>(iii) parapet style and rhythm,</i> <i>(iv) window and door opening dimensions, proportions and spacing,</i> 	<p>As outlined above, the nearby items are not buildings which contain specific setbacks, brickwork and architectural styles to be represented in the development.</p> <p>The architectural elements of the</p>	<p>Yes</p>

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	(v) fenestration treatment, (vi) roof form and treatment, (vii) materials and finishes.	development is compatible with surrounding development.	
Section 10 – Construction Standards and Procedures			
A10.7 Stormwater Disposal	<i>Connection to inter-allotment drainage line, kerb and guttering, road table drain or council's stormwater mains.</i>	A satisfactory Stormwater Plan has been submitted with the application. Stormwater will drain to two (2) 5000L rainwater harvesting tanks with overflow to drain to the existing inter allotment drainage system.	Yes
A10.11 Waste Management and Disposal	<i>A Waste Management Plan is required for all demolition works and /or construction works (with a value greater than \$50,000).</i>	A satisfactory Waste Management Plan has been submitted with the application.	Yes
A10.15 Property Address	<i>a) After completion of a building, the mailbox or building must be identified with letters or numerals with a minimum height of 38mm, of colour contrasting with the area of attachment.</i>	A standard condition of consent is recommended requiring property address.	Yes
Part C – Residential Zones Land			
Section 1 Introduction			
C1.2 Objectives			
<p>This Part of the Plan aims to achieve:</p> <ul style="list-style-type: none"> (a) <i>Conservation of the unique characteristics of the residential areas of the Northern Villages.</i> (b) <i>New residential development which is sympathetic with existing streetscapes and neighbourhood character.</i> (c) <i>New residential development that is energy efficient, provides good amenity, and is safe and attractive.</i> (d) <i>Residential development which meets the needs of a range of community and demographic types, including smaller households, older people, people with a disability or people requiring group accommodation.</i> <p>The development does conserve the unique characteristics of Willow Vale, through the provision of generous landscaping areas. The adopted setbacks will maintain the sense of spacing between buildings that are desired for the newly created allotments. The dwelling house and secondary dwelling is sympathetic with the desired streetscapes given the level of compliance with setbacks.</p>			
C1.4 Height of buildings	<i>Single storey development, maximum height is 6m.</i>	The overall building height is 6.3 metres.	No

		<p>The non-compliance with the control is a consequence of the pitched roof and ensuring levels respond to the existing driveway. The 300mm variation will not result in unreasonable visual impacts when viewed from the street or adjoining properties.</p> <p>Pitched roof forms are prevalent within the locality and it is considered that the built form has regard for the desired and existing dwelling characteristics of Willow Vale.</p>	
C1.5 Building Materials	<i>(a) The use of zincalume is not permitted and galvanised steel may only be used with specific Council consent.</i>	Zincalume is not proposed.	Yes
	<i>(b) A detailed exterior colour scheme must be presented to allow Council to assess the proposed colours against the existing streetscape</i>	The proposed materials include weatherboard (white), light brown brick and Colorbond (deep ocean) for the roof. These finishes are sympathetic to the surrounding area.	Yes
Section 2 Low Density Housing			
C2.2 Objectives of Low Density Housing			
<p><i>Detached dwellings are the dominant form of residential development in (locality). This section describes the objectives against which such development will be measured and the controls by which such development will be assessed. These objectives and controls apply to new dwellings as well as to alterations and additions to existing dwellings.</i></p> <p><i>To ensure that all forms of Low Density Housing, including Dual Occupancy and Secondary Dwellings, provide good amenity and do not adversely impact on existing dwellings, the following controls apply.</i></p> <p><i>All low density residential development shall:</i></p>			

- (a) *Maintain and improve the amenity and character of residential areas in (locality).*
- (b) *Ensure that development is of a type, scale, height, bulk and character compatible with existing streetscape characteristics.*
- (c) *Ensure that the heritage value of any property which is, or is within the vicinity of, an Item, or Draft Item of Heritage, or is within a Heritage, or Draft Heritage Conservation Area, is not compromised.*
- (d) *Promote ecologically sustainable development by requiring the construction of energy smart dwellings.*
- (e) *Maximise solar access to the proposed development.*
- (f) *Maximise privacy between existing development and proposed development.*
- (g) *Ensure that adequate on-site car parking is provided for residents and visitors.*
- (h) *Preserve existing mature vegetation and encourage the planting of native vegetation suitable for the area.*
- (i) *Ensure that adequate provision is made for high landscaped open space which complements the overall development, and which assists in maintaining existing streetscape quality.*
- (j) *Where located near to road or rail corridors, provide an acceptable acoustic environment for residents through appropriate design, layout and construction measures.*

The development maintains and improves the amenity and character of the locality. The proposal utilises a vacant residential lot recently created from a subdivision completed in 2022. The proposed development is consistent with the desired pattern of development. The development does not result in amenity impacts upon adjoining properties and has been supported by sufficient levels of information to demonstrate acceptable built and environmental impacts. The development provides for sufficient levels of landscaping which complement the streetscape.

C2.3 Dual Occupancy and Secondary Dwellings

C2.3.2 Controls in the R2 Low Density Residential Zone	<i>(a) On a minimum lot area of 1,000m², Secondary Dwellings are permitted with consent to a maximum floor area as defined in WLEP 2010, or</i>	The lot has an area of 1000m ² and the GFA does not exceed 60m ² as required by the WLEP.	Yes
	<i>b) On a minimum lot area of 450m², Secondary Dwellings are permitted with consent under State Environmental Planning Policy (Affordable Rental Housing) 2009 ('the Affordable Housing SEPP') to a maximum floor area of 60m².</i>	The site area is greater than 450m ² (1000m ²). The submitted plans as amended, show the gross floor area of the secondary dwelling is 59.44m ² , inclusive of the additional area within the garage.	Yes
C2.4 Development Density and Scale	<i>(a) Development shall comply with the standards for maximum development area set out in the following table. The maximum</i>	The development footprint is approximately 300m ² , equating to 30% of the site area.	Yes

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	<p><i>development footprint includes all forms of housing – principal dwelling and dual occupancy or secondary dwelling, as well as non-habitable buildings such as garages and sheds.</i></p> <p><i>The minimum open space area shown in the table represents the balance of the site after the maximum building footprint has been applied. Section C2.13 below considers the appropriate treatment of this open space.</i></p> <p><i>Area of total lot less than 2000m²</i></p> <ul style="list-style-type: none"> • <i>Maximum area of development footprint = 65% of site area</i> • <i>Minimum area of open space = 35% of site area.</i> 	<p>The area which is open space (not roofed) is 624.8m², being 62.48% of the site area.</p>	
	<p><i>(b) In applying the controls of subclause (a) above, the following additional controls apply specifically to Dual Occupancy and Second Dwelling development:</i></p> <p><i>(i) The maximum floor space ratio for a combined Principal Dwelling/Dual Occupancy (Attached or Detached) residential development is 0.5:1. This excludes the area of any carport or garage.</i></p> <p><i>(ii) An exception to subclause (b)(i) above may be considered where an existing dwelling house exceeds a floor space ratio of 0.5:1, and it is proposed to convert the dwelling into an attached Dual Occupancy without increasing the total floor space.</i></p>	<p>The maximum FSR is 0.24:1.</p> <p>Not applicable.</p>	<p>Yes</p> <p>N/A</p>

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	<i>(iii) The Dual Occupancy component of a residential development on a site which is not capable of subdivision shall have a maximum floor space of 100m². This excludes the area of any carport or garage.</i>	Not Applicable.	N/A
	<i>(c) The Dual Occupancy component of a residential development shall not exceed the height of the principal dwelling.</i>	The overall height of the dwelling house and secondary dwelling component is approx. 6.30 metres. This is due to the slope of the land, and the proposed cut and fill that is proposed to level out the building pads. The secondary dwelling does not appear greater in height than the principal dwelling, given the development appears as one dwelling when viewed from adjoining land and the street.	No
	<i>(d) Both the principal dwelling and the Dual Occupancy dwelling should have clear and direct access from a public street.</i>	Both the principal and secondary dwelling have clear and direct access from Cordeaux Street.	Yes
C2.5 Dwelling Orientation	<i>(a) New dwellings shall be orientated to ensure that key living areas and 50% of the primary private open space of that dwelling receive a minimum of 3 hours of direct sunlight on June 21st.</i>	The primary and secondary dwelling have living and dining room windows orientated to the north. The private open spaces will also receive more than 3 hours sunlight on June 21 st given the northern aspect.	Yes
	<i>(b) The design the main living areas shall open directly on to private open space to permit adequate sunlight and natural light into the dwelling.</i>	The living areas of the primary and secondary dwelling open directly to the private open space and permit adequate sunlight into the dwelling.	Yes

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	<i>(c) The design of the dwelling shall allow good natural cross ventilation with well-considered placement of windows.</i>	The development does not include raised sill heights.	Yes
	<i>(d) New development shall not reduce the solar access currently enjoyed in living areas and 50% of the primary private open space of adjacent dwellings so that they receive less than three (3) hours of direct sunlight on June 21st.</i>	There is no existing development on the adjoining allotments.	Yes
C2.6 Front Setbacks	<i>(a) Front setbacks of new residential development shall be consistent with those of the dwellings immediately adjacent to the site and to those in the immediate vicinity.</i>	There is no existing development on adjoining developments.	N/A
	<i>(b) Where properties immediately adjacent to the proposed development do not feature a consistent front setback, the following guidelines will apply:</i> <i>In general, subject to site assessment, Council requires the following front setbacks, exclusive of garage setbacks:</i> <ul style="list-style-type: none"> • <i>Between 900m² and 1500m² a minimum front setback of 6.5 metres.</i> 	A building envelope is applicable to the site and shown as 'R' on the deposited plan. The building is required to be setback 12 metres from the front title boundary. The development is setback a minimum of 13.4 metres to the front wall and 12 metres to the edge of the eave.	Yes
C2.7 Side Setbacks	<i>c) In general, subject to site assessment, Council requires the following side setbacks:</i> <ul style="list-style-type: none"> • <i>Between 900m² and 1500m² a minimum required side setback = 1.5 metres.</i> 	The building envelope shown 'R' on the deposited plan shows that buildings are to be setback 1.5 metres from the side boundaries. The building is setback 1.585 and 1.5 metres from the northern and southern boundaries respectively.	Yes

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C2.8 Rear Setbacks	<p><i>In general, subject to site assessment, Council requires the following rear setbacks:</i></p> <ul style="list-style-type: none"> <i>Between 900m² and 1500m² a minimum required rear setback = 5.0 metres to 12 metres.</i> 	<p>The building envelope shown 'R' on the deposited plan shows that buildings are to be setback 5 metres from the rear boundary.</p> <p>A rear setback of 6.505 metres is proposed.</p>	Yes
C2.9 Building Height	<p><i>(a) The maximum height of a dwelling house shall not exceed two (2) storeys, with storey being defined under the BCA.</i></p>	<p>The development is to be single storey and the roof pitch is accentuated and is the prominent element of the dwelling.</p>	Yes
	<p><i>(c) On steeper sloping sites, applicants shall consider the stepping of buildings, or the provision of underfloor garages and non-habitable rooms, in order to reduce the overall height and bulk of development.</i></p>	<p>The site is sloping, and the development has been stepped to respond to the fall of the land.</p>	Yes
C2.10 Roof forms	<p><i>Roof forms shall reflect those of the existing streetscape. It is noted that modern roofs tend to be pitched at around 22 degrees, which is not sympathetic with older residential forms where roof pitches tend to range from 27.5 - 33 degrees. Accordingly, in Heritage Conservation Areas, or Draft Heritage Conservation Areas, or other areas where older housing predominates, roof pitches should be no less than 27.5 degrees.</i></p>	<p>The roof pitch is 25 degrees and is consistent with existing residential development in the wider area. The subject site is not located within a Heritage Conservation Area.</p>	Yes
C2.12 Garaging & Driveways	<p><i>(a) In established residential areas, the location of new garages should reflect the current street pattern.</i></p>	<p>There is no existing development on the adjoining properties. However, the garages have been well integrated into the design so that garage doors are not orientated to the street, reducing the visual impact on the public domain.</p>	Yes
	<p><i>(b) The height of the garage shall not exceed the height of the principal dwelling.</i></p>	<p>The garage is integrated to building, resulting in shared roof.</p>	Yes

		The section of roof above the garage is slightly greater in height than the principal dwelling. Despite the non-compliance, the design response avoids garages being visible from the street and responds to the existing driveway on the site.	
	<i>(c) Where garages form part of the dwelling they shall not exceed 40% of the total width of the dwelling frontage to a maximum width of six (6) metres.</i>	The garage width exceeds 40% of the front façade and has a width over 6m. However, windows have been integrated to the front façade of the garage, so it does not appear as a garage. The garage doors are orientated to the side boundary improving the appearance of the building when viewed from the street.	No
	<i>(d) Double garages are only permitted on allotments of at least 12.5 metres in width.</i>	The width of the allotment is 22.90 metres.	Yes
	<i>(e) Triple fronted garages are not permitted where they face directly on to the street.</i>	The garages are orientated to the south and do not directly face Cordeaux Street.	Yes
	<i>(f) The garage shall be set back from the front façade and designed so that the dwelling entry and façade are the dominant building features.</i>	The secondary dwelling garage is forward of the front façade of the dwelling entry. Despite being set forward; the garage doors are orientated to the south so that no doors face the street. The western wall of the secondary dwelling garage is improved with windows giving the appearance of a habitable room.	No

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		As such, the garage does not appear as the dominant feature of the building.	
	<i>(g) New dwellings (including principal, dual occupancy or secondary dwellings) shall provide a minimum of two car spaces behind the building line for each dwelling which may include an access way to the side of the dwelling of a minimum width of 2700mm.</i>	The proposal includes the development of a dwelling house and secondary dwelling requiring a total of four (4) car spaces (2 per dwelling). A total of three (3) spaces are proposed. The non-compliance has been supported by Council's Development Engineer.	No
	<i>(h) Driveways are to be located a minimum of three (3) metres from the nearest street tree.</i>	There are no existing street trees.	Yes
	<i>(i) Driveways are to be located a minimum of one (1) metre from any side boundary.</i>	The driveway is shared driveway with 35 Cordeaux Street. The Deposited Plan shows a carriage way easement. Whilst not compliant with the control, the driveway is in accordance with the Despotised Plan.	No
C2.13 Landscaped Open Space	<i>(a) Low density residential development, including additions and alterations to existing dwellings, shall meet the minimum private landscaped open space standards. 35% of the site area or 90m², whichever is the greater</i>	The landscaped area is approximately 444m ² , being 44.4% of the site area.	Yes
	<i>(e) There must be at least one consolidated deep soil area with a minimum dimension of five (5) metres by five (5) metres.</i>	At least one consolidated deep soil area is shown to the rear of the proposed dwelling that has dimensions of 5m by 5m	Yes
C2.14 Fencing, gates and letterboxes	<i>(a) Fence heights shall match the heights generally in use in the immediate vicinity, to a maximum 1200mm in front of</i>	No fencing details have been provided on the plans. This will be managed via	Yes

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	<i>the front building line and 1800mm behind the front building.</i>	recommended conditions of consent.	
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ATTACHMENTS

1. Attachment 1 - 33 Cordeaux Street, Willow Vale - Recommended Conditions of Consent [**6.1.1** - 20 pages]
2. Attachment 2 - 33 Cordeaux Street, Willow Vale - Development Plans - [**6.1.2** - 3 pages]
3. Attachment 3 - 33 Cordeaux Street, Willow Vale - Variation Request - [**6.1.3** - 12 pages]
4. Attachment 4 - 33 Cordeaux Street, Willow Vale - NSW Rural Fire Service response [**6.1.4** - 2 pages]

6.2 Delegations & Guidelines - Wingecarribee Local Planning Panel

Report Author: **Manager Development Assessment and Regulation**
Authoriser: **Michael McCabe**

PURPOSE

The purpose of this report is to review the current delegations of the Local Planning Panel in relation to appeals, to provide greater certainty as to the conduct of appeals for the Panel, Council and the community. The report also seeks guidance from the Panel on the adoption of a new set of guidelines, which includes reporting requirements for appeal matters to ensure the Panel is updated regularly.

OFFICER'S RECOMMENDATION

That the

- (a) Wingecarribee Local Planning Panel (WLPP) pursuant to Section 2.20(8) of the Environmental Planning & Assessment Act 1979 (EPA Act) revoke their current delegation in relation to the conduct of appeals.**
- (b) WLPP pursuant to Section 2.20(8) of the EPA Act, delegates to Council's General Manager, the functions of the Panel under Section 8.15(4) of the EPA Act with respect to the control and direction of appeals subject to the WLPP Operational Guidelines.**
- (c) Amended WLPP Operational Guidelines, provided in Attachment 1, be adopted.**

BACKGROUND

At the Wingecarribee Local Planning Panel (WLPP) meeting on 28 June 2024 the WLPP providing the following advice:

"The Panel recommends that a report be submitted to the new Local Planning Panel seeking a resolution to delegate authority to Council Officers to manage appeals against panel determinations based on the Randwick Council model.

The Panel also recommends that in respect of appeals against Deemed Refusals of matters which would have come to the Panel, these also be dealt with in accordance with the Randwick model. It would also be best practice, if practicable to report such appeals to the Panel.

The Panel notes that the Operational Guidelines issued by the Minister for Local Planning Panels require the Council to report to the Panel all Development Applications which have been lodged for a period of 180 days which would have come to the Panel.

The Panel does not consider it feasible to direct and control / manage appeals against Deemed Refusals or actual Refusals in respect of matters which would not have come to the Panel. The Panel notes however, that Council will be represented by specialist Local Government Planning Lawyers who will provide advice on prospects in respect to such appeals. Further Council will be under an obligation to participate in good faith in Section 34 Conciliation Conferences with a view to narrowing any issues and potentially settling such appeals.

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The Panel recommends that a further report be submitted to the Local Planning Panel following a period of at least twelve months to review the operation of delegations and make any necessary refinements.

REASONS:

The Panel Expert members have experience on other Local Planning Panels which have delegated the power of the Panel to direct and control the conduct of appeals against Panel decisions. Some Panels have not delegated this power but deal with each appeal on a case-by-case bases.

The Panel has been provided with delegations by the Randwick Local Planning Panel and considers these to represent a good model.”

At the Ordinary Meeting of Council on 7 August 2024 Council resolved that:

“1. A report be presented to the Wingecarribee Local Planning Panel:

a. Seeking resolution that the Panel pursuant to Section 2.20(8) of the Environmental Planning & Assessment Act 1979 (EPA Act) revoke their current delegation in relation to the conduct of appeals.

b. That the Panel pursuant to Section 2.20(8) of the EPA Act delegates to Council’s General Manager the functions of the Panel under Section 8.15(4) of the EPA Act with respect to the control and direction of appeals subject to the current operational guidelines documented in the Wingecarribee Shire Council - Planning Panel Guidelines.

2. Routine reporting mechanism be developed for Appeals and Development Applications which have been lodged for a period of 180 days which would have come to the Wingecarribee Local Planning Panel.

3. The routine reporting mechanism be reported to the Wingecarribee Local Planning Panel to seek their feedback.

4. The Wingecarribee Shire Council - Planning Panel Guidelines be reviewed and draft amendments be proposed for consideration by the Wingecarribee Local Planning Panel in response to the Council resolutions of this report.

5. A further report be brought back to Council following consideration of the above resolutions by the Wingecarribee Local Planning Panel.

REPORT

In areas where a Local Planning Panel (LPP) has been constituted (as is the case with Wingecarribee Shire Council), under the provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act), the functions of a Council as a consent authority (including the determination of a DA) are exercisable on behalf of Council by the LPP or a delegate of Council, and not the Councillors.

The Minister for Planning has the power to direct which development applications (DAs) Local Planning Panels (LPPs) determine and which planning proposals must be referred to an LPP for advice. This is set out in the Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents, dated 6 March 2024.

It provides that in the local government area of Wingecarribee Shire Council, the Wingecarribee Local Planning Panel (WLPP) is to determine DAs involving development of a kind specified in Schedule 1 of that direction.

Applicants may choose to lodge appeals to the Land and Environment Court against either a decision of the Council or the WLPP. Applicants may also choose to lodge deemed refusals to the LEC.

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Deemed refusals are based on the timing of an assessment. After certain time periods, prescribed under the EP&A Act, the Applicant can deem that their DA has been refused and then appeal to the LEC against that decision.

The WLPP has the power to direct and control the conduct of appeals against decisions of the WLPP. The WLPP (via the Chair) must be advised of the lodgement of an appeal.

It is requested that the WLPP delegations, to direct and control the conduct of appeals against decisions of the WLPP, be delegated to Council's General Manager, Director Communities and Place and Manager Development Assessment and Regulation, pursuant to Section 2.20(8) of the EP&A Act, which states:

“(8) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council. Section 381 of the Local Government Act 1993 does not apply to any such delegation.”

To assist in managing this process, a new set of WLPP guidelines has been prepared and is provided at **Attachment 1**. The new guidelines, with respect to appeals, include the following:

- (i) As required by Section 8.15(4) of the EP&A Act, Council is to give notice to the Panel Chair and Alternate Panel Chair (electronically) of all Appeals relating to the determination or decision of the Panel or any deemed refusal within seven (7) days of the appeal being served.*
- (ii) In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, either the General Manager, Director Communities and Place or Manager Development Assessment and Regulation will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal within 5 business days of the notice of service of the appeal.*
- (iii) In the case of all Appeals relating to a determination or decision of the Panel, either the General Manager, Director Communities and Place or Manager Development Assessment and Regulation will keep the Panel Chair that made the determination or decision (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.*
- (iv) In the case of an appeal being lodged relating to a deemed refusal of a development application, that application shall be referred to the first practical meeting, following the date that the Appeal was served, for determination or decision by the Panel. If it is not practical to provide a report, the Chair (or Chair's nominee) shall be consulted prior to any Statement of Facts and Contentions being filed with the Court. Should there be no opportunity to consult with, or a response to a draft Statement of Facts and Contentions no be received from, the Chair (or the Chair's nominee) at least two business days prior to the date required for the filing of the Statement of Facts and Contentions the General Manager, Director Communities and Place or Manager Development Assessment and Regulation shall have delegation to settle the Statement of Facts and Contentions without consultation or a response.*
- (v) The Council shall circulate a memo to all Panel members quarterly on the status of all Appeals relating to the determination or decision of the Panel and deemed refusals which would, but for the Appeal, have come before the Panel. If an agreement under Section 34 of the Land and Environment Court Act has been made, the memo shall include reasons sufficient to demonstrate how the Panel's determination was addressed in the Section 34 Agreement.*

The amended Wingecarribee Local Planning Panel Guidelines shall provide greater clarity on the operation of the Panel and ensure compliance with the Ministers direction under section 9.1 of the EP&A Act, effective from 6 March 2024.

ATTACHMENTS

1. Attachment 1 - Draft Amended WLPP Operational Guidelines [6.2.1 - 8 pages]

6.3 Development Applications Greater Than 180 Days to be reported to the WLPP

Report Author: Manager Development Assessment and Regulation

Authoriser: Director Communities and Place

PURPOSE

The purpose of this report is to provide the Wingecarribee Local Planning Panel with detail regarding the current Development Applications that exceed 180 days, in accordance with the resolution of Council from the Ordinary Meeting of Council on 7 August 2024.

OFFICER'S RECOMMENDATION

THAT the Wingecarribee Local Planning Panel note the Development Applications that are currently being assessed which have exceeded 180 days since lodgement.

BACKGROUND

At the Ordinary Meeting of Council on 7 August 2024 Council resolved that:

"1. A report be presented to the Wingecarribee Local Planning Panel:

a. Seeking resolution that the Panel pursuant to Section 2.20(8) of the Environmental Planning & Assessment Act 1979 (EPA Act) revoke their current delegation in relation to the conduct of appeals.

b. That the Panel pursuant to Section 2.20(8) of the EPA Act delegates to Council's General Manager the functions of the Panel under Section 8.15(4) of the EPA Act with respect to the control and direction of appeals subject to the current operational guidelines documented in the Wingecarribee Shire Council - Planning Panel Guidelines.

2. Routine reporting mechanism be developed for Appeals and Development Applications which have been lodged for a period of 180 days which would have come to the Wingecarribee Local Planning Panel.

3. The routine reporting mechanism be reported to the Wingecarribee Local Planning Panel to seek their feedback.

4. The Wingecarribee Shire Council - Planning Panel Guidelines be reviewed and draft amendments be proposed for consideration by the Wingecarribee Local Planning Panel in response to the Council resolutions of this report.

5. A further report be brought back to Council following consideration of the above resolutions by the Wingecarribee Local Planning Panel.

REPORT

The table, provided in Attachment 1, includes a list of DAs that are currently being assessed which have exceeded 180 days since lodgement which are to come to the Wingecarribee Local Planning Panel for determination.

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A short commentary has been included against each Application.

The table is being provided to the Wingecarribee Local Planning Panel for information and feedback.

ATTACHMENTS

1. ATTACHMENT 1 _ WLPP DA Matters over 180 Days [6.3.1 - 1 page]

6.4 Land & Environment Court Matters - WLPP Briefing

Report Author: Manager Development Assessment and Regulation
Authoriser: Director Communities and Place

PURPOSE

The purpose of this report is to provide an update on the Class 1 Appeals in the Land and Environment Court against either the refusal of Development Applications by the Local Planning Panel or the deemed refusal of Development Applications that would, but for the appeal, have been sent to the Local Planning Panel for determination.

OFFICER'S RECOMMENDATION

THAT the:

- 1. Wingecarribee Local Planning Panel (WLPP) note this report and the memo, provided under separate cover, outlining the status of all Appeals relating to the determination or decision of the WLPP and deemed refusals which would, but for the appeal, have come before the panel for determination.**
- 2. WLPP provides feedback on this proposed routine reporting mechanism for such Appeals**

BACKGROUND

A separate report has been prepared to this Wingecarribee Local Planning Panel (WLPP) meeting dated 25 September 2024, seeking a resolution from the WLPP to revoke their current delegations in relation to the conduct of appeals and that, pursuant to Section 2.20(8) of the EPA Act, that the WLPP delegates to Council's General Manager, the functions of the Panel under Section 8.15(4) of the EPA Act with respect to the control and direction of appeals subject to the WLPP Operational Guidelines.

In addition, the separate report is seeking a resolution to update the WLPP Guidelines to include a new section relating to the control and direction of Court Appeals. If resolved the panel will receive a routine report and memo, on a quarterly basis, outlining the status of all Appeals relating to the determination or decision of the panel and deemed refusals which would, but for the appeal, have come before the panel for determination.

This report provides the inaugural routine report and memo outlining the status of such Appeals.

REPORT

A list is provided below of the appeals, in the Land and Environment Court, against either the refusal of Development Applications by the Local Planning Panel or the deemed refusal of Development Applications that would, but for the appeal, have been sent to the Local Planning Panel for determination:

**AGENDA OF THE LOCAL PLANNING PANEL
WEDNESDAY 25 SEPTEMBER 2024**

Council DA No.	Address	Proposed Development	Deemed Refusal/ Refusal
21/1043	7 Reg Grundy Drive, Bundanoon	Twenty-three (23) lot subdivision	Refused by LPP – 28/06/2023
23/0017	279-293 Bong Bong Street, Bowral	Demolition of the remaining on-site structures and construction of a 2-storey retail and commercial building	Refused by LPP – 23 August 2023
24/0673	22 Rosemary Crescent, Bowral	Demolition of Existing Dwelling and Associated Structures and Construction of Centre-based Childcare Facility (96 Children / Places) and Associated Landscaping, Stormwater and Car Parking Works	Refused by LPP – 05/07/2024
24/1487	159 Railway Avenue, Bundanoon	Forty (40) lot subdivision comprising 38 residential lots and two lots for public infrastructure, and associated works including earthworks, construction of two roads and a stormwater detention basin and landscaping	Deemed Refusal – would have been referred to the LPP for determination

A memo is provided to the WLPP, under separate cover, providing an update on each of the above matters.

ATTACHMENTS

1. CONFIDENTIAL REDACTED - 6.4 Attachment 1 - Under Separate Cover [6.4.1 - 9 pages]
2. CONFIDENTIAL REDACTED - Attachment 1 1 Sharjag Pty Limited v Wingecarribee Shire Council - NSW Caselaw under separate cover [6.4.2 - 15 pages]
3. CONFIDENTIAL REDACTED - Attachment 1 2 SOFAC Reg Grundy Drive under separate cover [6.4.3 - 17 pages]
4. CONFIDENTIAL REDACTED - Attachment 1 3 SOFAC Rosemeary Cresnet Bowal_ under separate cover [6.4.4 - 24 pages]

7 MEETING CLOSURE