

29 June 2021

Dear Panel Member,

You are kindly requested to attend the **Independent Advisory Planning Assessment Panel Meeting** of Wingecarribee Shire Council to be held remotely using audio visual link and open to members of the community via webcast on **Wednesday 7 July 2021** commencing at **3.30pm**.

Yours faithfully

Marissa Racomelara  
**Acting Deputy General Manager**

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## **Business**

- 1. OPENING OF THE MEETING**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. APOLOGIES**
- 4. DECLARATIONS OF INTEREST ..... 1**

---

### **5. DEVELOPMENT APPLICATIONS**

- 5.1 Development Application 21/1597 - Internal alteration to create an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A Old Hume Highway, Mittagong..... 2
- 5.2 Development Application 21/1483 - Subdivision of Land to Create Two Lots - Lot 1 DP 258420, No 10 Old Hume Highway Berrima ..... 17
- 5.3 Development Application 21/1578 - 32 Hood Street, Mittagong - Ancillary Residential Garage..... 41
- 5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home..... 62
- 5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, Lot 15 DP846332, 93-95 Kirkham Road, Bowral..... 98
- 5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) - Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin Avenue Moss Vale.....168
- 5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space Rouse Road Bowral - Access Road to service Southern Highlands Regional Art Gallery.....204
- 5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2 Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.....235

---

### **6. PLANNING PROPOSALS**

- 6.1 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 with regard to Council owned Public Reserve land at Retford Park Bowral and Anembo Street Moss Vale.....273
- 6.2 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to update Flood Planning Area maps .....283
- 6.3 Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of Retford Park Bowral residential estate.....288

### **7. MEETING CLOSURE**

## Our Mission, Our Vision, Our Values

### OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

### OUR VISION

**Leadership:** *'An innovative and effective organisation with strong leadership'*

**People:** *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

**Places:** *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

**Environment:** *'A community that values and protects the natural environment enhancing its health and diversity'*

**Economy:** *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

### OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

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## **Council**

### **Recording and Webcasting of Independent Advisory Planning Assessment Panel Meetings**

This meeting is being recorded and webcast via Council's website and a person's image and/or voice may be publicly broadcast. Attendance at the meeting is to be taken as consent by a person to their image and/or voice being webcast. Any part of the meeting that is held in closed session will not be webcast.

Council requests that everyone in attendance is respectful and uses appropriate language. All speakers should refrain from making any defamatory, discriminatory or offensive comments or releasing any personal information about another individual without their consent. Council accepts no liability for any damage that may result from defamatory, discriminatory or offensive comments made by persons attending meetings – all liability will rest with the individual who made the comments.

Individuals acting in a disorderly manner can be asked by the Chairperson to leave the meeting under the Council's Code of Meeting Practice.

The recording will be available for viewing on the internet for 12 months and retained as a Council record. The recording is subject to copyright.

The meeting must not be recorded by others.

Please ensure that all electronic devices including mobile phones are switched to silent.

**The Council Chamber has 24 Hour Video Surveillance.**

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## **ACKNOWLEDGEMENT OF COUNTRY**

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“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.”

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## **APOLOGIES**

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Nil at time of print.

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## **DECLARATIONS OF INTEREST**

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101/3, 101/3.1

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

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

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

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## 5 DEVELOPMENT APPLICATIONS

### 5.1 Development Application 21/1597 - Internal alteration to create an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A Old Hume Highway, Mittagong.

**Report Author:** Development Assessment Planner  
**Authoriser:** Manager Development Assessment

#### PURPOSE

The purpose of this report is to request the consideration, by the panel of DA21/1597 for internal alterations to a foyer area to create a larger area for the boxing gym and free up the sports hall for basketball and netball.

<b>Applicant:</b>	PCYC NSW
<b>Consultant:</b>	N/A
<b>Land Owner:</b>	Wingecarribee Shire Council
<b>Applicants estimated cost of proposed development:</b>	\$75,000
<b>Notification Period:</b>	04 May 2021 to 25 May 2021
<b>Number of Submissions:</b>	0
<b>Political Donations:</b>	None declared.
<b>Reason for referral to Panel:</b>	Council's Draft Code of Conduct states: CI 3.15 (b) development for which the applicant or land owner is: (i) the council, CI 3.16 The assessment of development applications referred to in clause 3.15 must be undertaken by external consultants who have no pecuniary or non-pecuniary interest (as defined in this code) in the application. Such consultants are to prepare and provide an assessment report to the local planning panel to consider in determining the application.

## RECOMMENDATION

**THAT** the Independent Advisory Planning Assessment Panel determines development application 21/1597 for internal alterations to change entry foyer area to create a boxing gym.



Figure 1: Site Locality Plan

### 1. EXECUTIVE SUMMARY

The application is referred to the Wingecarribee Interim Local Planning Panel (WILPP) as Council's Draft Code of Conduct states:

CI 3.15

(b) development for which the applicant or land owner is:

(i) the council,

CI 3.16 The assessment of development applications referred to in clause 3.15 must be undertaken by external consultants who have no pecuniary or non-pecuniary interest (as defined in this code) in the application. Such consultants are to prepare and provide an assessment report to the local planning panel to consider in determining the application.

The application is for proposed internal alterations to a foyer area to create a larger area for the boxing gym and free up the sports hall for basketball and netball. The application is recommended for approval subject to conditions.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**2. SITE DESCRIPTION AND LOCALITY**

The site is known as Part Lot 1 DP 724437, Sports Oval 1A Old Hume Highway Mittagong. The land is owned by Wingecarribee Shire Council and contains Mittagong Sports Oval, The PCYC building, Highlands Golf Course. On the eastern side of the PCYC building is an unformed extension of Leopold Street and on the immediate western side is Mittagong Swimming pool which is located on a separate Lot. All the sporting facilities on the lot are accessed by Hawkins Drive which intersects with the Old Hume Highway.

**3. BACKGROUND**

PCYC have met with Council a number of times to endeavour to increase their available space to provide space for their boxing gym to remove it from the main sports hall to free up the sports hall for basketball and netball. The use of a void under the building was considered, however, to comply with the requirements under BCA for fire safety made the proposal cost prohibitive.

**4. PROPOSAL**

The development application proposes:

- The removal of 2 office walls to create a larger area in the foyer for a boxing gym;
- Construction of new internal partition and entry doors for boxing gym;
- Create new opening between Managers office and retained meeting room, and
- Install ¾ height wall to upper mezzanine of sports hall to create Staff break-out room.

**5. NOTIFICATION**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance the Community Engagement Strategy dated 11 December 2019 from 04 May 2021 to 25 May 2021. There were no submissions received as a result of the notification process:

**6. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

The proposed development has been considered with regard to the matters for consideration specified by section 4.15(1) of the *Environmental planning and Assessment Act 1979*, as detailed below.

<b>Section 4.15(1)(a)(i)-The provision of any environmental planning instrument that apply to the land</b>	
<b>State Environmental Planning Policy No55-Remediation of land</b>	
Clause 2-object of the policy	The proposed development is considered satisfactory with respect to the Policy's particular aim to promote remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.
Clause 7-Contamination on and remediation to be considered in determining a development application	Then land is not considered to be contaminated, nor is it considered to require remediation to be made suitable for the proposed development. The land has not been used for a potentially contamination purpose in the past, so Council needn't consider the findings of a preliminary contamination investigation regarding the land before determining the application.



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



<b>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</b>	
Clause 3- Aims of the Policy	The catchment SEPP aims: <ul style="list-style-type: none"> <li>(a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.</li> <li>(b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.</li> <li>(c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.</li> </ul>
Clause 9- Recommended practices and performance standards of Water NSW	The development has been assessed as a Module 1 under the NorBE Guidelines, and Council may assume concurrence to consider water quality. In accordance with clause 10 of the Catchment SEPP, the NorBE Tool was used to determine that the carrying out of the proposed development would have a neutral or beneficial effect on water quality. The proposed modification will not have any impact on water quality.
Clause 10- Development consent cannot be granted unless neutral or beneficial effect on water quality	As discussed above, the NorBe tool has assessed the development as having a neutral or beneficial effect on water quality.
<b>Wingecarribee Local Environmental Plan 2010</b>	
The land is in Zone RE1 Public Recreation. The Land Use Table at the end of Part 2 of the WLEP specifies developments <i>Recreation facilities (Indoor)</i> is permitted with consent in Zone RE1.  The proposal is consistent with the specific objectives of the zone in that the proposed activity enables the land to be used for recreational purposes.	
<b>Section 4.5(1)(a)(ii)-The provisions of any proposed instrument that apply to the land.</b>	
The land is not subject to any proposed environmental planning instrument.	
<b>Section 4.15(1)(a)(iii)-The provisions of any development control plan that apply to the land</b>	
<b>Northern Villages Development Control Plan (the DCP)</b>	
The proposed development is minor internal alterations to an existing indoor recreation facility and therefore does not require further consideration under the DCP.	
<b>Section 4.15(1)(a)(iiia)-The provision of any planning agreement that apply to the land</b>	
The land is not subject to any planning agreement or proposed planning agreement.	
<b>Section 4.15(1)(a)(iv)-The provisions of the Regulations that apply to the land</b>	
The proposed development includes minor internal alterations and there are no provisions of the Regulations that apply to the land.	
<b>Section 4.15(1)(b)-The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality</b>	

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



The proposed development, being minor internal alterations will have no impacts on both the natural or built environments on terms of external appearance or the surrounding area, nor will it have any social or economic impacts on the locality.

**Section 4.15(1)(c)-The suitability of the site for the development**

The building is currently used by the PCYC as an indoor recreational facility and this alteration will enable an enhanced use of the building, therefore, the site is suitable for the development.

**Section 4.15(1)(d)-Any submissions made in accordance with the Act or the Regulations.**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance the Community Engagement Strategy dated 11 December 2019 from 04 May 2021 to 25 May 2021. There were no submissions received as a result of the notification process.

**Section 4.15(1)(e)-The public interest**

The existing indoor recreational facility is widely used by the community and the proposed alterations will allow a greater use of the facility. Accordingly, the proposal is considered to be in the public interest and will not offend it.

**7. INTERNAL AND EXTERNAL COMMUNICATION**

**7.1 Pre-lodgement meeting**

The applicant did not seek formal pre-lodgement meeting before making the application.

**7.2 Internal Referrals**

<b>Referral</b>	<b>Advice/Response/Conditions</b>
<b>Development Engineer</b>	The proposed internal alterations will have no impacts on engineering matters
<b>Accredited Certifier</b>	The assessment for compliance with the BCA was assessed by the author in his accreditation as a Certifier (BDC1808). Standard conditions have been provided for compliance with BCA and access.

**7.3 External Referrals**

As the application is for internal alterations there were no external referrals.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



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**8. DISCUSSION OF KEY ISSUES**

The proposed minor internal alterations to the building would provide for improved functional areas for the PCYC and enhance their scope to deliver services to the community.

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**9. CONCLUSION**

**THAT Development Application for alterations and additions to a Recreation Facility (Indoor) at Part Lot 1 DP 724437, Sports Oval, 1A Old Hume Highway Mittagong be approved subject to conditions as per Draft Development Consent at Attachment 1.**

**Responsible Officer:** Ross Jauncey – Development Assessment Officer (Contract)

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**ATTACHMENTS**

1. Attachment 1 DA21/1597 - Draft Conditions of Consent
2. Attachment 2 DA21/1597 - Architectural Plans

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.1 Development Application 21/1597 - Internal alteration to create  
an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A  
Old Hume Highway, Mittagong.**  
**ATTACHMENT 1 Attachement 1 DA21/1597 - Draft Conditions of  
Consent**



07 July 2021

PCYC NSW  
C/- JOHN DWYER  
6B FIGTREE DRIVE  
SYDNEY OLYMPIC PARK NSW 2127

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**  
Pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979

<b>APPLICATION NO:</b>	21/1597
<b>APPLICANT:</b>	PCYC NSW
<b>OWNER:</b>	WINGECARRIBEE SHIRE COUNCIL
<b>PROPERTY DESCRIPTION:</b>	Part Lot 1 DP 724437
<b>PROPERTY ADDRESS:</b>	SPORTS OVAL 1A OLD HUME HIGHWAY MITTAGONG NSW 2575
<b>PROPOSED DEVELOPMENT:</b>	Recreation Facility (Indoor) - Alterations and Additions
<b>DETERMINATION:</b>	Approval subject to conditions
<b>CONSENT TO OPERATE FROM:</b>	07 July 2021
<b>CONSENT TO LAPSE ON:</b>	07 July 2026

**Rights of Appeal**

Pursuant to Section 8.7 of the *Environmental Planning and Assessment Act 1979*, an applicant for development consent who is dissatisfied with the determination of the application by Council authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 12 months after the date the decision appealed against is notified.

**Review of Determination**

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.

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Ross Jauncey  
Development Assessment Planner

07 July 2021  
Date of Determination

5.1 Development Application 21/1597 - Internal alteration to create  
an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A  
Old Hume Highway, Mittagong.

ATTACHMENT 1 Attachment 1 DA21/1597 - Draft Conditions of  
Consent



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## SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

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### ADMINISTRATION CONDITIONS

#### 1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Internal alterations to foyer area to create a boxing gym.

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

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

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Floor Plan 1	Job No: W208 Dwg No: A02, Rev A	Facility Design Group	1.4.15

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

#### 3. Inconsistency between documents

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

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

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

- (a) That the work must be carried out in accordance with the requirements of the National Construction Code.
- (b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

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

5.1 Development Application 21/1597 - Internal alteration to create  
an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A  
Old Hume Highway, Mittagong.

ATTACHMENT 1 Attachment 1 DA21/1597 - Draft Conditions of  
Consent



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## 5. Erection of Signs

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

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

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

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

## 6. Compliance with Disability Discrimination Act 1992

This approval does not protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability Discrimination Act 1992*, and the applicant/owner is therefore advised to investigate their liability under this Act.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 -As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

## 7. Asbestos Removal - Renovation of Buildings

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

- a) All asbestos cement sheeting must be removed by contractors with an appropriate licence issued by WorkCover and who are familiar with asbestos removal prior to the commencement of:
  - (i) Recladding or brick veneering works where the existing walls to be covered are currently clad with asbestos cement; OR
  - (ii) Construction work where new work abuts existing asbestos cement sheeting and/or where parts of the existing building clad with asbestos cement sheeting are to be altered or demolished.

Removal must be carried out strictly in accordance with WorkCover's 'Your Guide to Working

**5.1 Development Application 21/1597 - Internal alteration to create  
an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A  
Old Hume Highway, Mittagong.**



**ATTACHMENT 1      Attachement 1 DA21/1597 - Draft Conditions of  
Consent**

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with Asbestos’.

- b) All waste containing asbestos, including asbestos cement flat and corrugated sheets must be disposed of at waste facility licensed by the NSW Environment Protection Authority (EPA).

**Note:** *The person responsible for disposing of asbestos waste is to telephone the EPA on 131 555 or Council’s Customer Service Department on (02) 48680888 to determine the location of a tip licensed to receive asbestos. Within fourteen (14) days of the completion of demolition works, the applicant must lodge with Council, all original weighbridge receipts issued by the receiving tip as evidence of proper disposal.*

- c) Within fourteen (14) days of completion of renovation or recladding or brick veneering works where asbestos cement sheeting was removed, the applicant shall submit to Council:

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

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

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

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

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

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.  
(b) If Council or a Principal Certifier (PC) issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.

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

**5.1 Development Application 21/1597 - Internal alteration to create  
an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A  
Old Hume Highway, Mittagong.**



**ATTACHMENT 1 Attachment 1 DA21/1597 - Draft Conditions of  
Consent**

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**Note:** *Construction work may only commence upon the issue of a Construction Certificate, appointment of a Principal Certifier (PC), and lodgement of Notice of Commencement.*

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

**9. Appointment of Principal Certifier (PC)**

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

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

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

**10. Access for People with Disabilities**

Access for people with disabilities shall be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the *Disability Discrimination Act 1992*.



**5.1 Development Application 21/1597 - Internal alteration to create  
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Old Hume Highway, Mittagong.**

**ATTACHMENT 1 Attachment 1 DA21/1597 - Draft Conditions of  
Consent**



Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

**Reason:** *To inform of relevant access requirements for persons with a disability.*

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

**11. Notice of Commencement**

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

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

**Reason:** *Statutory requirement.*

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

**12. Construction Certificate**

No work shall commence until a:

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

5.1 Development Application 21/1597 - Internal alteration to create  
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Old Hume Highway, Mittagong.

ATTACHMENT 1 Attachment 1 DA21/1597 - Draft Conditions of  
Consent



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**Reason** Statutory requirement.

### CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

#### 13. Approved Plans to be available on site

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

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

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

#### 14. Occupation Certificate

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

The Principal Certifier (PC) is required to be satisfied, amongst other things, that:

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

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

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

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

#### 15. Fire Safety Certificate

A final Fire Safety Certificate shall be obtained in accordance with Part 9, Division 4 of the *Environmental Planning and Assessment (Amendment) Regulation 2000*, prior to the issue of the Occupation Certificate for the building.

A copy of the Fire Safety Certificate and Fire Safety Schedule shall be:

- Forwarded to Wingecarribee Shire Council;

**5.1 Development Application 21/1597 - Internal alteration to create  
an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A  
Old Hume Highway, Mittagong.**



**ATTACHMENT 1      Attachement 1 DA21/1597 - Draft Conditions of  
Consent**

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- Forwarded to the Fire Commissioner; and
- Prominently displayed in the building.

**Reason:**            *To ensure the safety of the building.*

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

**16. Use not to Commence**

The approved use shall not commence until the development has been completed in accordance with Council's consent and issue of any other Council approvals which may be required.

**Reason:**            *To ensure that the use of the site is lawful.*

**17. Annual Fire Safety Statement**

Each year, the owner of a building to which an essential fire safety measure is applicable shall cause the Council to be given an annual fire safety statement for the building. Such a fire safety statement:

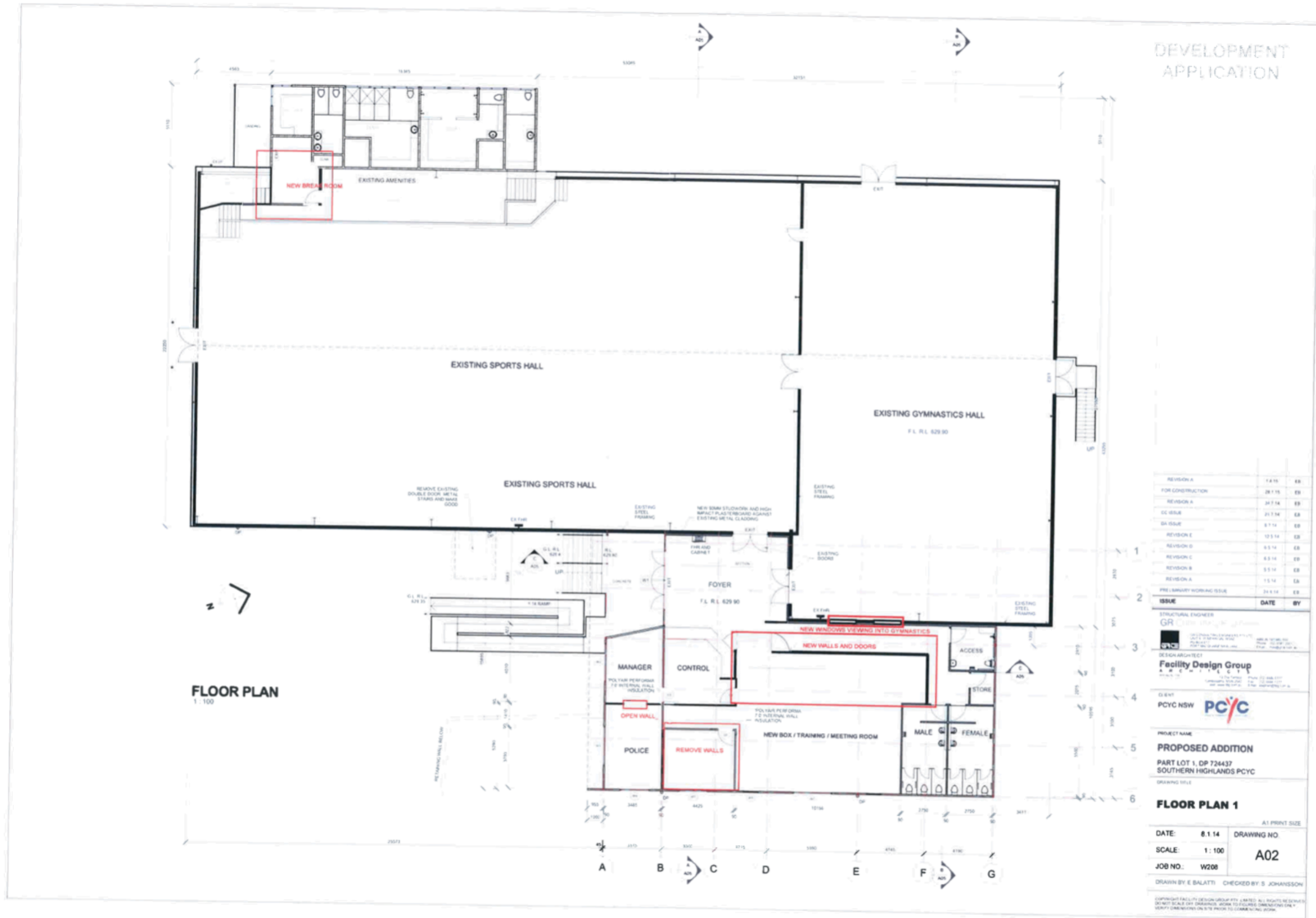
- (a) shall deal with each essential fire safety measure in the building premises; and
- (b) shall be given within twelve months after the last such statement was given, or if no such statement was given, within twelve months after a final fire safety certificate was first issued for the building.

As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:

- (a) shall cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades; and
- (b) shall cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be permanently displayed in the building.

**Reason:**            *To ensure compliance with fire safety requirements.*

**END OF CONDITIONS**



## 5.2 Development Application 21/1483 - Subdivision of Land to Create Two Lots - Lot 1 DP 258420, No 10 Old Hume Highway Berrima

Report Author: Senior Development Assessment Planner  
Authoriser: Manager Development Assessment

### PURPOSE

This report presents development application 21/1483 for the Panel's consideration and recommends determination by APPROVAL subject to conditions specified in **Attachment 1**.

Consultants:	Scott Lee – LEP Planning
Applicant:	Scott Lee – LEP Planning
Land owner:	Mr M.E. Hanratty
Land zoning:	Partly within Zone RU4 Primary Production Small Lots and Zone R2 Low Density Residential
Applicant's estimated cost of development:	\$nil (subdivision only)
Notification period:	31 March – 23 April 2021
Number of submissions:	One (1)
Political donations:	None declared
Reason for referral to Panel:	Development proposes variation of greater than 10% from controls in an environmental planning instrument (minimum allotment size under Clause 4.1)

### RECOMMENDATION

**THAT** the Interim Independent Advisory Planning Assessment Panel determines development application 21/1483, for subdivision of land to create two lots, at Lot 1 DP 258420, No 10 Old Hume Highway Berrima, by APPROVAL subject to conditions specified in Attachment 1 to this report.

### REPORT

#### 1. Executive Summary

Development Application (DA) 21/1483 seeks consent to subdivide the subject site into two (2) lots.

The site has two separate zonings under Wingecarribee Local Environmental Plan (WLEP) 2010. Most of the land is zoned RU4 Primary Production Small Lots, and a small part of the site (at the southern end) is zoned R2 Low Density Residential.

The proposed subdivision does not comply with the minimum lot sizes prescribed under Clause 4.1 WLEP 2010. Proposed Lot 1 is subject to a minimum lot size of 10ha (proposed size 9.2ha or 8% variation); and Proposed Lot 2 is subject to a minimum lot size of 2000m<sup>2</sup> (proposed size 1445m<sup>2</sup> or 27.75% variation).

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



However, Clause 4.2C of WLEP 2010 (*Exceptions to minimum subdivision lots sizes for certain split zones*) prescribes controls which allow subdivisions of land affected by multiple zonings under WLEP 2010 – and the subdivision proposes two allotments which directly accords with the WLEP 2010 zone boundary within this site. The proposed subdivision is therefore satisfactory given compliance with Clause 4.2C(5)(a).

The proposal has been referred to several officers within and external to Council. In particular (because the site immediately adjoins two heritage items and is partly within the Berrima Landscape Conservation Area), the proposal was referred to Council's Heritage Advisor who does not support the proposal, raising concerns regarding the relatively un-developed character of the Berrima village – and the impacts that a new dwelling (resulting from any approval of this subdivision) could have on this character.

Although the Heritage Advisor's concerns are noted, the applicant has provided an indicative building footprint, showing a generous (12.5m) front setback on Lot 2, which will assist to preserve the existing un-developed character of the front of this site, largely addressing concerns regarding impacts on the Berrima village. This will be discussed in full detail in the body of the report.

The DA has been notified to neighbours in accordance with Council's Community Participation Plan, and one (1) submission was received, from the Berrima Resident's Association. The submission raised concerns regarding under-sized allotments, and the heritage sensitivity of the site. The concerns raised in the submission will also be discussed in the body of the report.

The DA has been considered under the heads of consideration listed in Section 4.15(1) of the Environmental Planning and Assessment Act 1979 and is generally considered to be satisfactory. Approval is recommended subject to conditions.

## REPORT

### 2. Site Description and Locality

The subject site is legally described as Lot 1 DP258420, with a street address of No 10 Old Hume Highway, Berrima. It is a large mid-block site generally located between the Old Hume Highway (forming the eastern boundary of the site) and Wilkinson Street (forming the western boundary). The site is at the northern edge of the Berrima village.

The site is highly irregular in shape and has a site area of 9.332ha (as per DP258420, registered 1979). The site has a total frontage of 301.583m to the Old Hume Highway (plus 9.865m to Greenhills Road) along its eastern boundary; a depth of 347.07m along the northern boundary; a depth of 173.385m along the southern boundary; and a frontage of 409.7m to Wilkinson Street along its western boundary.

The site contains a dwelling house in the north-west corner of the site. It contains an extensive coverage of native vegetation, while there are some cleared areas towards the southern end. The site slopes from the north-eastern corner down to both the west and south.

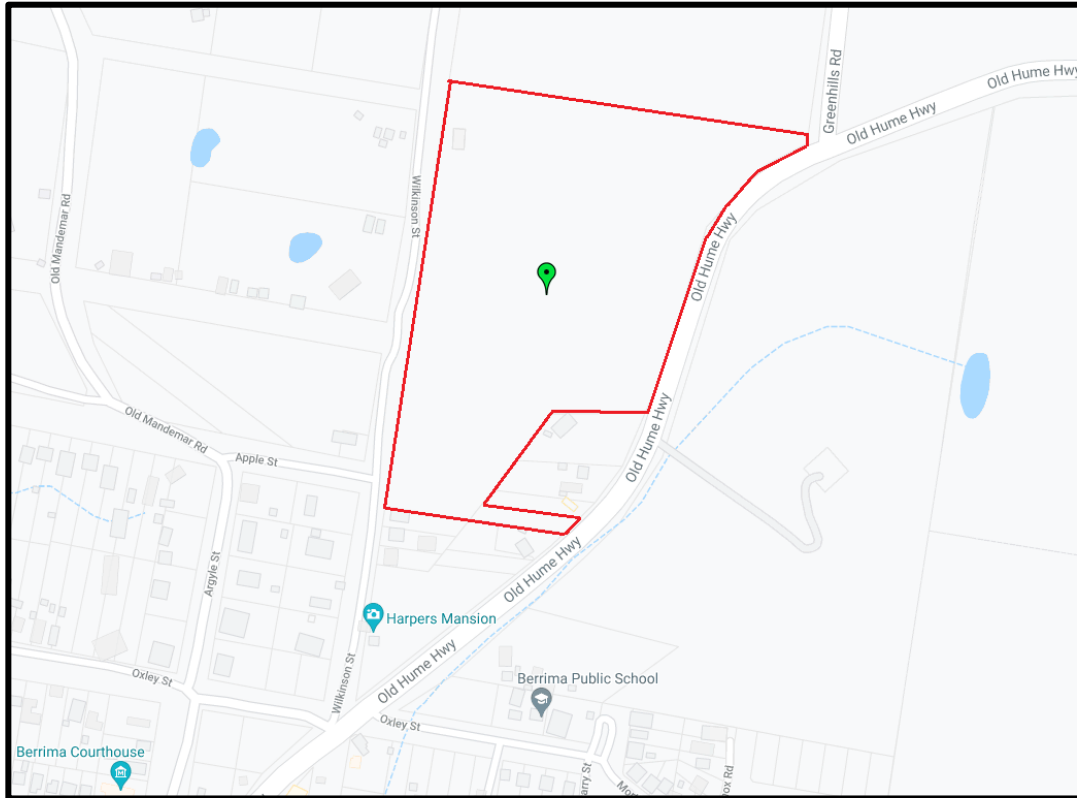
Surrounding development includes rural-zoned properties to the north, west and east which contain a scattering of dwellings/outbuildings. To the south there are several smaller residential-zoned properties containing dwellings/outbuildings in a residential setting of the Berrima village. Several of those residential properties are heritage-listed under WLEP 2010.

A visual description of the site is provided in the locality map (**Figure 1**) and aerial photos (**Figures 2 and 3**) below.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**Figure 1 – Locality Map, No 10 Old Hume Highway, Berrima**



**Figure 2 – Aerial Photo, No 10 Old Hume Highway, Berrima**



Figure 3 – Aerial Photo close-up, 10 Old Hume Highway Berrima showing position of proposed Lot 2 and adjoining heritage items (at No 8 and No 12 Old Hume Highway)

### 3. Description of Proposed Development and History of the Current Application

#### Description of Proposed Development

DA 21/1483 seeks consent to subdivide the subject site into two allotments – Lot 1 with a site area of 9.2ha; and Lot 2 with a site area of 1445m<sup>2</sup>. Lot 1 would comprise the bulk of the site, and Lot 2 would comprise the smaller portion at the south-east corner (the “heel” of the site as shown on the air photo above).

A key aspect of the proposal is that consent is sought in accordance with Clause 4.2C of WLEP 2010 which relates to “exceptions to minimum subdivision lots sizes for certain split zones”. The proposed allotments of the subdivision directly align with the WLEP 2010 zone boundary traversing the site – Lot 1 comprises the part of the site zoned RU4 and Lot 2 is the R2-zoned portion.

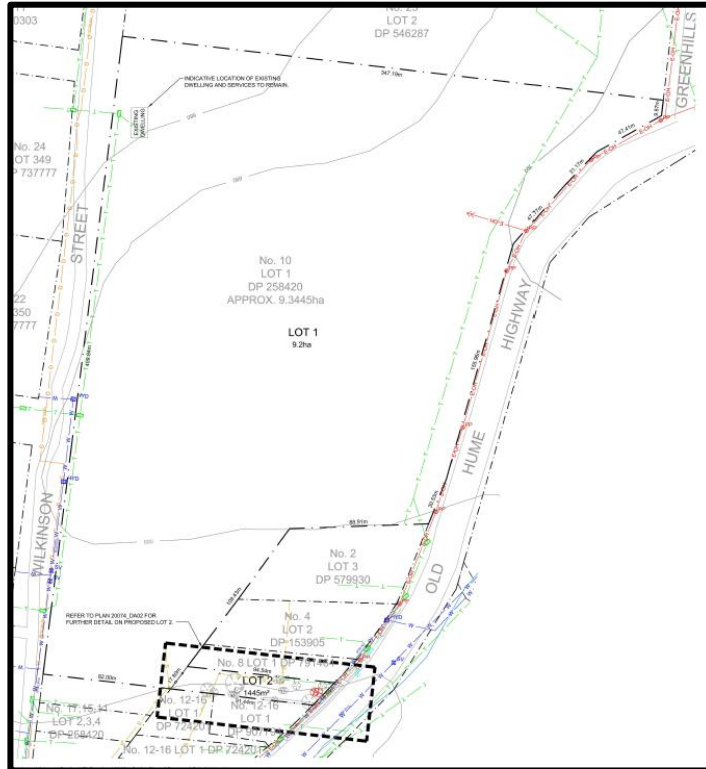
The plan of the proposed subdivision is provided below (**Figure 4**), and the zoning map of the showing the two zones under WLEP 2010 affecting the site (**Figure 5**).



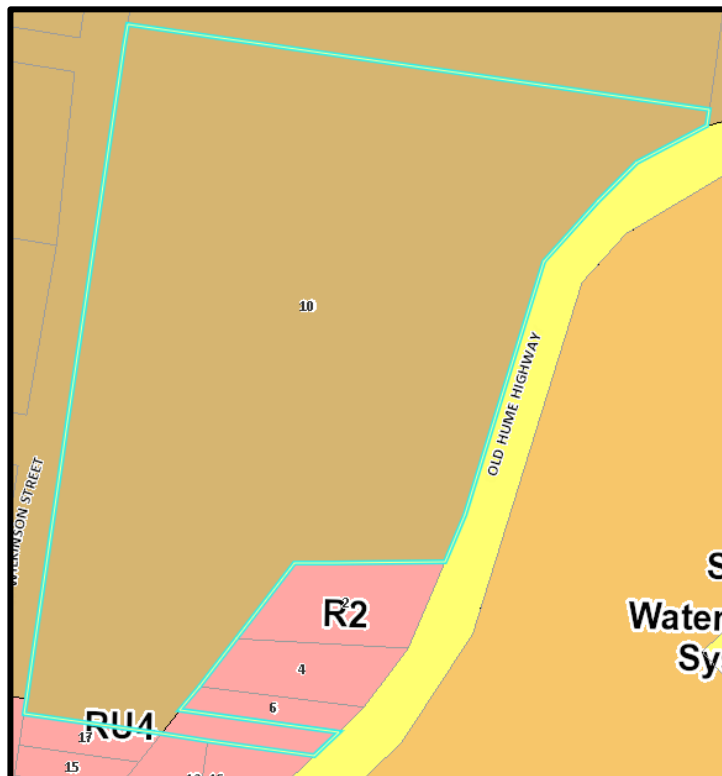
**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**Figure 4 – Plan of Proposed Subdivision**



**Figure 5 – Extract of Wingecarribee LEP 2010 zoning map, showing subject site (teal coloured outline). Lot 1 is to comprise the portion zoned RU4 (brown) and Lot 2 is to contain the portion zoned R2 (pink)**

History of DA: 21/1483

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



The current DA 21/1483 was lodged on 24 March 2021. Shortly after, it was referred to several officers both internal and external to Council; and was notified to adjoining owners in accordance with Council's Policy for Notification of Development Proposals for a minimum period of 31 March to 23 April 2021 (one submission was received). Further details on both processes are provided later in this report.

Council's Heritage Advisor raised concern that an important part of the character of the Berrima village is the largely un-developed state of the northern edge of the village (where the subject site is located). The proposed subdivision would enable further (residential) development which was considered to diminish the objectives and provisions of the Berrima Village DCP.

Following an assessment of the proposal, on 21 May 2021, an email was sent to the applicant requesting information regarding:

- building footprint details (to show where a future dwelling could be situated on proposed Lot 2), and
- arborist report, given that there are a number of trees on proposed Lot 2 that could be affected, and given that retention of existing vegetation is important to preserve the predominantly un-developed character of the village.

A site inspection was conducted, attended by Council's assessment officer, the applicant and the property owner to discuss the above issues. At the site inspection, the applicant indicated basic details of the proposed building footprint to be provided with a minimum 12.5m setback from the front boundary (with Old Hume Highway) to enable much of the vegetation at the front of Lot 2 to be retained, to help preserve the un-developed character of the site. Further, at the time inspection it was evident that the existing vegetation on the site are not significant and so an arborist report was not required.

The applicant formally submitted a building footprint on 17 June 2021, details of which are attached to this report.

#### 4. PLANNING ASSESSMENT

The DA has been considered using the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 as detailed below.

##### **Section 4.15 (1) (a) (i)—The provisions of any environmental planning instrument that apply to the land**

Assessment against the provisions of the various environmental planning instruments applicable to the site / and proposed development is undertaken in the following section.

##### State Environmental Planning Policy (Koala Habitat Protection) 2021

SEPP (Koala Habitat Protection) 2021 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.

Clause 11 of this SEPP prescribes the development assessment process where the land has an area of at least 1 hectare and does not have an approved koala plan of management applying to the land. Subclauses (2) and (3) prescribe the following:

*(2) Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.*

*(3) If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.*

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



Comment: The subject DA is only for subdivision and involves minimal physical work (tree removal), therefore it will have no impact on koalas or koala habitat. The subdivision would create a dwelling entitlement for proposed Lot 2 (noting that proposed Lot 1 already contains a dwelling). Proposed Lot 2 contains a sparse coverage of non-native vegetation and is unlikely to provide koala habitat.

Therefore, both the proposed subdivision and the construction of a future dwelling on Proposed Lot 2 are satisfactory when considered in terms of the Koala Habitat Protection SEPP.

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

SEPP 55 aims to provide for a Statewide approach to the remediation of contaminated land; and aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Clause 7 of SEPP 55 requires Council to consider whether the land is contaminated. The subject site is largely vacant and has been used for rural purposes over its history. There is no reason to suspect potential contamination of the site and no need to require any formal assessment (eg preliminary contamination investigation report) before determining this DA.

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

SEPP (Drinking Water Catchment) 2011 provides the following aims (Clause 3):

1. (a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and
2. (b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and
3. (c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.

An assessment has been undertaken using the WaterNSW NorBE tool to determine if the proposed development is able to achieve a neutral or beneficial effect on water quality, which satisfies the recommended practices and performance standards of Water NSW as required by clause 9 of SEPP (Drinking Water Catchment) 2011.

Clause 10 of this SEPP states that a consent authority (Council) must not grant consent to the carrying out of development on land in the Sydney drinking water catchment unless it is satisfied that the proposed development would have a neutral or beneficial effect on water quality. Subclause 10(2) requires the consent authority to undertake an assessment using the NorBE Tool.

As stated, an assessment using the NorBE tool has been undertaken which identifies that the proposed development would have a neutral or beneficial effect on water quality – and therefore it is satisfactory when assessed under SEPP (Drinking Water Catchment) 2011.

#### Wingecarribee Local Environmental Plan 2010

WLEP 2010 contains a number of provisions applicable to the proposed development, and these are discussed and assessed in the Table below.

Clause	Controls	Assessment	Compliance
<b>2.3 Zone Objectives and land use table</b>	<i>Provides objectives and permissible/prohibited landuses for the various zones under WLEP 2010</i>	The site is zoned part RU4 Primary Production Small Lots and part R2 Low Density Residential.  The proposal is consistent with the aims and objectives	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Clause	Controls	Assessment	Compliance
		of the zones, which will be demonstrated and discussed throughout this report.	
<b>2.6 Subdivision – consent requirements</b>	<i>Sub-clause (1) states that land may be subdivided, but only with development consent</i>	This DA lodgement satisfies the requirements of clause 2.6	Yes
<b>4.1 Minimum subdivision lot size</b>	<i>Sub-clause (3) prescribes minimum lot sizes for lots resulting from subdivision of land.</i>		
	<ul style="list-style-type: none"> <li><i>The minimum lot size for the RU4-zoned portion is <u>10ha</u>;</i></li> </ul>	Lot 1 – 9.2ha (variation of 8%)	No
	<ul style="list-style-type: none"> <li><i>The minimum lot size for the R2-zoned portion is <u>2000m<sup>2</sup></u>.</i></li> </ul>	Lot 2 – 1445m <sup>2</sup> (variation of 27.75%)	No
<b>See discussion re clause 4.2C below.</b>			
<b>4.2C Exceptions to minimum subdivision lots sizes for certain split zones.</b>	<p><i>The objectives of this clause are as follows:</i></p> <ul style="list-style-type: none"> <li><i>to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1</i></li> <li><i>to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.</i></li> </ul> <p><i>Sub-clause (5) states that development consent may be granted to subdivide an original lot if:</i></p> <p>(a) <i>the lots to be created from the subdivision will each contain land in only one zone, or</i></p> <p>4. (b) <i>the lots to be created from the subdivision will each contain land in more than one zone and any land in Zone RU4 Primary Production Small Lots, in Zone E4 Environmental Living or in a residential zone will have an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.</i></p>	<p>The proposed development fully complies with clause 4.2C(5)(a).</p> <p>The original lot (i.e. the whole of the subject site) has two separate zones under WLEP 2010 as shown in Figure 4 above. The proposed subdivision seeks to create allotments which align with the WLEP 2010 zone boundaries.</p> <p>The lots to be created from the subdivision will each contain land in only one zone. That is, Lot 1 will be wholly within the RU4 zone and Lot 2 will be wholly within the R2 zone.</p> <p>The subdivision can therefore be considered, even though the lot sizes do not comply with the minimum lot sizes prescribed in Clause 4.1 above.</p> <p>Clause 4.2C sets aside the minimum lot sizes prescribed in clause 4.1 for original lots which have more than one zone.</p> <p>The proposed subdivision meets both the objectives</p>	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Clause	Controls	Assessment	Compliance
		clause 4.2C, and the particular provisions of clause 4.2C(5)(a). It is the type of subdivision which clause 4.2C was designed to facilitate.	
<b>5.10 Heritage conservation</b>	<p><i>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>The subject site (in particular proposed Lot 2) immediately adjoins two heritage items:</p> <ul style="list-style-type: none"> <li>• No 8 Old Hume Highway to the north;</li> <li>• No 12-16 Old Hume Highway to the south.</li> </ul> <p>Concern has been raised that the subdivision (in particular any dwelling resulting on proposed Lot 2) could have an adverse impact on the setting of the northern entry into Berrima – both the heritage-significant dwellings and the relatively un-developed character of land at the northern entry.</p> <p>However, details of building footprint (for a new dwelling to be constructed on proposed Lot 2) have been provided which shows that such a new dwelling could respect and preserve the un-developed character of Proposed Lot 2 and have an acceptable impact on adjoining heritage listed dwellings.</p> <p>This is discussed in more detail later in this report – see Internal and External Communications (Referral Comments).</p>	Yes (see commentary later in this report)

**Section 4.15 (1) (a) (ii)—The provisions of any proposed instrument that apply to the land**

There are no draft environmental planning instruments which apply to the subject land.

**Section 4.15 (1) (a) (iii)—The provisions of any proposed development control plan that apply to the land**

There are two Development Control Plans (DCPs) which apply to the subject site:

- the Rural Living DCP applies to land zoned RU4 – Primary Production Small Lots, i.e. proposed Lot 1); and

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



- the Berrima Village DCP applies to the portion of the site zoned R2 Low Density Residential (i.e. proposed Lot 2).

Assessment of the proposed development against the applicable provisions of these DCPs is made in the following section:

Rural Living Development Control Plan

Most of the site (in particular proposed Lot 1) is subject to the Rural Living DCP. An assessment of the proposal in terms of the applicable provisions of this DCP is undertaken in the following table:

<b>Section</b>	<b>Control</b>	<b>Assessment</b>	<b>Compliance</b>
<b>A3.6 Subdivision of Land</b>	<p><i>A3.6.1 Allotment Sizes:</i></p> <ul style="list-style-type: none"> <li><i>Directs applicants to the minimum lot size maps under WLEP 2010;</i></li> <li><i>Where proposed subdivision would create an allotment below the minimum lot size, certain provisions of WLEP 2010 apply</i></li> </ul>	<p>As discussed earlier in this report, the proposal does not comply with the minimum lot sizes prescribed in clause 4.1 WLEP.</p> <p>However, the proposal relies on clause 4.2C WLEP 2010 – relating to subdivision of land with split zoning, and the proposal fully complies with clause 4.2C(5)(a).</p>	Yes (complies with WLEP 2010 clause 4.2C(5)(a))
<b>A6.2 Bushfire Prone Land</b>	<p><i>A report may be required if the subject property is affected by bush fire risk under Planning for Bushfire Protection.</i></p>	<p>The subject site is affected by bushfire, and a Bushfire Assessment report has been submitted with the DA.</p> <p>The proposal has been referred to the NSW Rural Fire Service as Integrated Development, as discussed in the Internal and External Communications section of this report (see later in this report).</p>	Yes
<b>A8.4 Development in the vicinity of heritage items</b>	<ul style="list-style-type: none"> <li><i>DAs on properties containing or adjoining locally listed items shall be referred to Council's Heritage Advisor;</i></li> <li><i>DAs on properties adjoining listed heritage items shall contain a Heritage Impact Statement</i></li> </ul>	<p>The subject site immediately adjoins two heritage items (one on either side of the site – No 8 Old Hume Highway and No 12-16 Old Hume Highway).</p> <p>The DA has not been accompanied by a Heritage Impact Statement, however this is not considered necessary given that the proposal only involves a subdivision.</p> <p>The DA has been referred to Council's Heritage Advisor as discussed in the Internal and External Communications</p>	Yes (acceptable)

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section	Control	Assessment	Compliance
		section of this report below.	
<b>A8.6 Berrima Landscape Conservation Area</b>	<p><i>Section A8.6.4 of the Rural Living DCP contains extensive controls regarding built form of new development in Berrima.</i></p> <p><i>The controls relating to subdivision are that no building is to be erected that will be visually prominent when viewed from the village of Berrima, its approaches or any listed heritage item.</i></p>	<p>The majority of the controls relate to new development (e.g. dwellings and related structures).</p> <p>The proposal will not lead to any additional dwelling entitlement on Lot 1.</p> <p>Refer to discussion under the Berrima DCP (below) for issues regarding proposed Lot 2.</p>	Yes

Berrima Village Development Control Plan

A small portion of the site (in particular Proposed Lot 2) is subject to the Berrima Village DCP. Most of the controls in this DCP apply to new residential- or business-zoned buildings with limited controls applicable to subdivisions. An assessment of the proposal in terms of the applicable provisions of this DCP is undertaken in the following table:

Section	Control	Assessment	Compliance
<p><b>Part A – Provisions applicable to all land</b></p> <p><b>Section 2 – General Objectives</b></p> <p><b>A2.2 General Objectives</b></p>	<p><i>This Section of the DCP contains objectives relating to:</i></p> <ul style="list-style-type: none"> <li>• <i>Economic Function;</i></li> <li>• <i>Urban Function;</i></li> <li>• <i>Residential Amenity;</i></li> <li>• <i>Heritage Conservation;</i></li> <li>• <i>Residential Diversity;</i></li> <li>• <i>Visual Amenity;</i></li> <li>• <i>Environmental Sustainability;</i></li> <li>• <i>Public Domain; and</i></li> <li>• <i>Road Reserves</i></li> </ul>	<p>Provided all recommended conditions of consent are complied with, the proposed subdivision development is considered to satisfy the objectives in this Section of the DCP.</p> <p>The controls in this Section will be more applicable to new residential development (on proposed Lot 2).</p>	Yes
<p><b>Section 3 – Biodiversity</b></p> <p><b>A3.2 Flora and Fauna Assessment Report</b></p>	<p><i>This Section of the DCP provides that a Flora and Fauna Assessment report maybe required with the DA if the site contains (or is adjacent to) native vegetation or will directly or indirectly impact native vegetation by clearing, runoff, waste water irrigation or bushfire asset protection.</i></p>	<p>The proposed subdivision has minimal impact in terms of existing vegetation – only the removal of 2-3 non-native trees on proposed Lot 2, for new vehicle access and is considered to satisfy the objectives in this Section of the DCP.</p> <p>The controls in this Section will be more applicable to new residential development (on proposed Lot 2).</p>	Yes
<b>Section 4 – Water Management</b>	<p><i>This Section of the DCP contains a range of controls for Water Management.</i></p>	<p>The most pertinent of the DCP controls relates to Development in Sydney's</p>	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



<b>Section</b>	<b>Control</b>	<b>Assessment</b>	<b>Compliance</b>
<b>A4.1 Protection of Watercourses and Riparian Lands</b>  <b>A4.2 Vegetation Management Plan for Riparian Corridors</b> <b>A4.3 Development in Sydney's Drinking Water Catchments</b>  <b>A4.4 Water Cycle Management Study</b>  <b>A4.5 Stormwater Management Plan</b>  <b>A4.6 Erosion and Sediment Control Plans</b>  <b>A4.7 Water Sensitive Urban Design</b>  <b>A4.8 Water Treatment Drain</b>		<p>Drinking Water Catchments. In this regard a NorBE assessment has been undertaken [as discussed in the assessment under SEPP (Sydney Drinking Water Catchment) 2011 above] which confirms that the subdivision will have a satisfactory outcome in terms of water quality.</p> <p>Further, Council's Development Engineers have provided conditions of consent relating to stormwater design.</p> <p>Generally, the proposed subdivision is considered to satisfy the objectives and controls in this Section of the DCP.</p> <p>The controls in this Section will be more applicable to new residential development (on proposed Lot 2).</p>	
<b>Section 5 Flood Liable Land</b>	<i>This Section of the DCP prescribes a range of controls regarding development on flood liable land</i>	The subject site is not flood liable	Yes
<b>Section 6 Bushfire Hazard</b>  <b>A6.1 Potential Bushfire Hazard</b>	<i>This Section of the DCP provides that development in bushfire prone land will be required to comply with "Planning for Bushfire Protection".</i>	<p>As discussed elsewhere in this report, the proposal is classified as Integrated Development because it involves subdivision of bushfire prone land.</p> <p>A Bushfire Assessment Report has been submitted with this DA, complying with Planning for Bushfire Protection. The NSW Rural Fire Service has considered the development and provided conditions of consent.</p> <p>The proposal is considered to be satisfactory in terms of the site's bushfire affectation</p>	Yes



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section	Control	Assessment	Compliance
		(subject to conditions of consent).	
<p><b>Section 7 Vegetation Management and Landscaping</b></p> <p><b>A7.1 Protection of Trees and Other Vegetation</b></p> <p><b>A7.2 Private Landscaped Open Space</b></p> <p><b>A7.3 Verges</b></p> <p><b>A7.4 Verge Crossings and Driveways</b></p> <p><b>A7.5 Hedges and Front Gardens</b></p> <p><b>A7.6 Recreation Area Incidental Green Spaces and Street Trees</b></p>	<p><i>This Section of the DCP contains a range of controls for Vegetation Management and Landscaping.</i></p>	<p>As mentioned above (Biodiversity), the proposed subdivision has minimal impact in terms of existing vegetation – only the removal of 2-3 non-native trees on proposed Lot 2, for new vehicle access and is considered to satisfy the objectives and controls in this Section of the DCP.</p> <p>The controls in this Section will be more applicable to new residential development (on proposed Lot 2).</p>	<p>Yes</p>
<p><b>Section 8 Subdivision, Demolition, Siting and Design</b></p> <p><b>A8.1 Subdivision of Land</b></p> <p><b>A8.1.1 Existing Subdivision Pattern</b></p>	<p><i>The village of Berrima is laid out as a Georgian village based on a grid pattern. Allotments are regular and rectangular in shape leading out into the surrounding rural area.</i></p>	<p>The proposal generally respects the existing subdivision pattern. As depicted earlier in this report (Figure 5), the proposal involves subdivision in accordance with the two land use zones affecting the subject property.</p>	<p>Yes</p>
<p><b>A8.1.2 Minimum Lot Sizes</b></p>	<p><i>Directs applicants to the minimum lot size maps under WLEP 2010. Where the proposed subdivision would create an allotment below the minimum lot size, certain provisions of WLEP 2010 apply.</i></p>	<p>As discussed in the assessment under WLEP 2010, the proposed subdivision creates two allotments which do not comply with the minimum lot size prescribed under clause 4.1 WLEP 2010.</p> <p>However, the subject land has a split zoning (part RU4 and part R2) under WLEP 2010, and clause 4.2C of WLEP 2010 specifically provides for this type of subdivision.</p> <p>The subdivision is satisfactory</p>	<p>Yes, given compliance with WLEP 2010 clause 4.2C(5)(a)</p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



<b>Section</b>	<b>Control</b>	<b>Assessment</b>	<b>Compliance</b>
		and complies with clause 4.2C(5)(a).	
<b>A8.1.3 Building Envelopes</b>	<i>Building envelopes may need to be considered in order to protect public vistas and view corridors, energy efficiency principles, mitigation of visually obtrusive development and to manage stormwater disposal.</i>	A Building Envelope was considered necessary for this subdivision given that it is very important to preserve the relatively un-developed character of the entry to Berrima Village and to ensure acceptable relationship with the two immediately adjoining heritage items.  The applicant has submitted a satisfactory building envelope, and compliance with this will be required as a condition of consent	Yes
<b>A8.1.4 Noxious and Environmental Weeds</b>	<i>Requires an inspection to determine if the site contains noxious/environmental weeds; and the eradication of any such weeds.</i>	The site does not contain noxious weeds.	Yes
<b>A8.1.5 Landscape Embellishment</b>	<i>A condition of subdivision approval will be that landscape embellishment of allotments and public roads shall occur to enhance the native vegetation in the locality</i>	This is an isolated subdivision, creating one new lot adjoining an existing pattern of subdivision.  There is no existing theme of street tree planting in this location, therefore new street tree planting or landscaping is not considered necessary in this instance.	Yes
<b>A8.1.6 Street Trees</b>	<i>Standard street tree planting required to provide consistency between subdivision developments, providing a unified theme for the village</i>	As above, new street tree planting or landscaping is not considered necessary in this instance.	Yes
<b>A8.1.7 Lighting</b>	<i>Council will require street lighting where new streets or roads are created as part of subdivisions</i>	This subdivision does not create any new streets/roads.	NA
<b>A8.2 Demolition</b>	<i>No demolition to occur on property which is a heritage item or heritage conservation area.  Any application for demolition is to be accompanied by a landscape plan</i>	No demolition proposed.	Yes
<b>A8.3 Site Analysis</b>	<i>This section of the DCP contains various requirement for a Site Analysis to be provided with DAs.</i>	A satisfactory site analysis has been provided.	Yes
<b>A8.4 Cut and Fill</b>	<i>Provides various requirements</i>	No cut/fill proposed as part of	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



<b>Section</b>	<b>Control</b>	<b>Assessment</b>	<b>Compliance</b>
	<i>for cut and fill.</i>	the subdivision, this will be more applicable to subsequent construction of a dwelling on proposed Lot 2	
<b>A8.5 Shipping Containers</b>	<i>Prohibits shipping containers unless approval has been granted by Council for conversion as a residential building.</i>	No shipping container proposed	Yes
<b>A9 Development in a Heritage Context</b>  <b>A9.6 Subdivision Pattern and Landuse</b>	<i>This section of the DCP provides an extensive background to the heritage significance of Berrima and an extensive range of controls for new development in a heritage context.</i>  <i>The most pertinent controls in this Section are in A9.6 – Subdivision Pattern and Land Use</i>	Provided all recommended conditions of consent are complied with, the proposed subdivision development is considered to satisfy the objectives and controls in this Section of the DCP.  As stated previously, this subdivision generally maintains the existing subdivision pattern by creating one new allotment in an existing subdivision pattern.  The controls in this Section will be more applicable to new residential development (on proposed Lot 2).	Yes
<b>Section 13 Heritage Precincts</b>  <b>A13.7 Harpers Mansion Precinct (No 6)</b>	<i>This Section of the DCP provides precinct controls for the 10 precincts which make up the Berrima village.</i>  <i>The subject site is located in Precinct 6 – Harpers Mansion Precinct. The objectives of this Precinct are all new buildings in the eastern part of the precinct must be in sympathy with Harper’s Mansion; and that dwellings in the western part of the precinct shall have regard to the heritage character of Berrima.</i>	Provided all recommended conditions of consent are complied with, the proposed subdivision development is considered to satisfy the objectives in this Section of the DCP.  The controls in this Section will be more applicable to new residential development (on proposed Lot 2).	Yes
<b>Part C Residential Zoned Land</b>	<i>This section of the DCP contains extensive controls for new residential development in Berrima, including:</i> <ul style="list-style-type: none"> <li>• <i>Low Density Housing</i></li> <li>• <i>Universal Design for Adaptable Housing</i></li> <li>• <i>Other forms of residential development</i></li> <li>• <i>Ancillary development</i></li> <li>• <i>Home Business and home</i></li> </ul>	Provided all recommended conditions of consent are complied with, the proposed subdivision development is generally considered to satisfy the objectives and controls in this Section of the DCP – noting that many of the controls are not applicable to the proposed subdivision and will only be applicable for	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section	Control	Assessment	Compliance
	<i>industry</i> <ul style="list-style-type: none"> <li>• <i>Bed and Breakfast establishments</i></li> <li>• <i>Seniors Housing</i></li> <li>• <i>Exhibition homes and villages</i></li> <li>• <i>Educational establishments</i></li> <li>• <i>Places of public worship</i></li> <li>• <i>Child Care Centres.</i></li> </ul>	particular development types.  The controls in this Section will be more applicable to new residential development (on proposed Lot 2).	

**Section 4.15 (1) (a) (iiia)—The provisions of any environmental planning instrument that apply to the land**

No planning agreement has been entered into or proposed under section 7.4 of the *Environmental Planning and Assessment Act 1979* in relation to the land.

**Section 4.15 (1) (a) (iv)—The provisions of the regulations that apply to the land**

No provisions of Division 8 of Part 6 of the *Environmental Planning and Assessment Regulation 2000* are relevant to the proposed development.

**Section 4.15 (1) (b)—The likely impacts of the proposed development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The likely impacts of the development have been discussed throughout this report. The proposed subdivision itself would have minimal impact – however a key impact is how any resulting future dwelling on proposed Lot 2 would impact upon the natural and built environment of the Berrima village particularly in terms of heritage significance.

Generally, it is considered that the future dwelling on Lot 2 would have an acceptable impact on the natural and built environment of Berrima. Such a dwelling would need to be designed in accordance with the controls in the Berrima Village DCP, which are very strict to ensure a high design quality for new development in the village.

The proposed building footprint provided for Lot 2 shows a 12.5m front setback, which would enable a future dwelling to be recessive and respect the heritage items on either side of Lot 2. This large setback also would help to allow the relatively un-developed character of sites at the northern entry to Berrima to be maintained.

**Section 4.15 (1) (c)—The suitability of the site for the proposed development**

The subject site is not affected by any natural constraints which would render the site as unsuitable for the proposed development.

The site is shown on Council's mapping system as being affected by bushfire, and this has been addressed by an Integrated Development referral to the NSW Rural Fire Service (see Internal and External Communications section later in this report).

**Section 4.15 (1) (d)—Any submissions made in accordance with the Act or the regulations**

Refer to the Community Consultation section of this report, below.

**Section 4.15 (1) (e)—The Public Interest**

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Having regard to the circumstances of the case, approval of the proposed subdivision is in the public interest, as it is consistent with the provisions of clause 4.2C of WLEP 2010, and it will facilitate the subsequent construction of residential development on suitably-zoned (R2 Low Density Residential) allotment of land.

**5. Community Consultation**

Neighbouring property owners/occupiers were notified of the application in accordance with Council's Community Participation Plan for a minimum period of 31 March to 23 April 2021. One (1) submission was received (after completion of the minimum notification period) from the Berrima Residents Association objecting to the proposed development.

The issues raised in the submission are summarised and discussed in the following table:

Issue	Discussion
<p><b>Issue 1: Non-compliance with minimum lot size.</b> Concern is raised that the proposed subdivision results in two lots which are both less than the minimum lot size for the RU4 and R2 zones.</p>	<p><u>Assessment Officer's Comment:</u> Agreed. The proposed development does result in lot sizes which do not comply with the minimum lot size prescribed in clause 4.1 of WLEP 2010.</p> <p>However, this proposal involves a subdivision of land involving two land use zones, with lot boundaries directly conforming with the zone boundary.</p> <p>Subdivisions of this nature are facilitated by clause 4.2C WLEP 2010. The proposal fully complies with clause 4.2C(5)(a).</p>
<p><b>Issue 2: Re-zoning required.</b> Concern is raised that lot sizes created in the subdivision would require re-zoning of the land to allow future dwellings to be approved, which would in turn require a change in the LEP for Berrima.</p> <p>Further, the BRA has been advised by Senior Council staff that there would be no further planning proposals to re-zone land in Berrima.</p>	<p><u>Assessment Officer's Comment:</u> This is not correct. Re-zoning (i.e. a planning proposal) of the land is not required for this subdivision to proceed. It is the type of subdivision facilitated by clause 4.2C and the subdivision fully complies with clause 4.2C(5)(a).</p> <p>Any future residential development (e.g. dwelling house) on proposed Lot 2 would be permissible with consent given the existing R2 Low Density Residential zoning of Lot 2 and does not require a planning proposal to occur.</p>
<p><b>Issue 3: Heritage sensitivity.</b> Concern is raised that the land is in a highly visible location at the entry to the village, so heritage sensitivity of the location is particularly important.</p> <p>The submission states that Berrima's high heritage value derives from it's undeveloped character.</p>	<p><u>Assessment Officer's Comment:</u> Agreed, this site is in a highly sensitive location from a heritage perspective. However, it is considered that given the position of existing adjoining dwellings/buildings, and the proposed building footprint for Lot 2, any future dwelling on lot 2 would be mostly obscured when viewed from the public domain (when viewed from north and south on the Old Hume Highway).</p> <p>The proposed building footprint shows a 12.5m front setback, which will be sufficient to preserve the un-developed character of the site when viewed from the front. Any future dwelling on proposed Lot 2 would be recessive and would also respect the heritage items on either side.</p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Issue	Discussion
	Further, any subsequent residential development on proposed Lot 2 would need to be designed in accordance with the controls in the Berrima Village DCP, which are very strict to ensure a high design quality for new development in the village.
<b>Issue 4: Heritage Advisor referral required.</b> The submission states that the DA should be referred to Council's Heritage Advisor for comment.	<u>Assessment Officer's Comment:</u> The DA has been referred to Council's Heritage Advisor – see details of the referral and assessment in the Internal and External Communications section of this report, below.

**6. Internal and External Communications**

The DA was referred to a number of officers within and external to Council. The referral comments are discussed as follows:

**Internal Communications:**

Accredited Certifier: Has reviewed the proposal and advised there are no comments or conditions.

Development Engineer: Has reviewed the proposal in terms of vehicle access, approval requirements for vehicle access (Section 138), sewer and water connections, and stormwater discharge – and raised no objection. The following comments have been provided:

- **Access:** *Old Hume Highway is a Local Road. The section fronting the site is within 50km/h before transitioning to 80km/h zone 100m away. Therefore, I have no issues with the accessing Lot 2 from Old Hume Highway as proposed in NCE Plans.*
- **Section 138:** *Section 138 is required for driveway servicing Lot 2. No upgrade is required for Lot 1 existing driveway as Lot 1 driveway connects to Wilkinson Street which is not sealed.*
- **Sewer & Water:** *available to the site. Application shall be made for an additional water service and sewer junction & sideline.*
- **Stormwater:** *No issues with discharging to the existing table drain in Old Hume Highway. OSD shall be provided with future dwelling and shall be registered in Section 88B Instrument of Lot 2.*

Appropriate conditions have been provided which are included in the draft conditions of consent.

Co-ordinator Strategic Planning (Developer Contributions): Has reviewed the proposal and provided details of the contributions payable (both developer contributions under Section 7.11 of the Environmental Planning & Assessment Act 1979 and levies for water and sewer infrastructure under Section 64 of the Local Government Act 1993).

These contributions are included in the draft conditions of consent.

Heritage Advisor: The proposed development has been referred to Council's Heritage Advisor for comment, given the site immediately adjoins two heritage items and is (partly) located within the Berrima Landscape Conservation Area.

The Heritage Advisor has provided the following comments:

*(7 April 2021):*

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



*The land proposed for subdivision would result in both lots less than the minimum lot size which is not permitted in the LEP for both RU4 and R2. Heritage advice is that the application be rejected.*

*The land proposed for subdivision is in the Berrima Conservation Area and is between two heritage listed properties, Harpers Cottage at 8 Old Hume Highway adjoining to the north and Woodely Cottage (also known as Telegraph Cottage) at 12-16 Old Hume Highway, adjoining to the south.*

*This is a very heritage sensitive location. An important part of the character of the town at this northern edge is its undeveloped state. This lot did not develop for the last 180 years. Part of protecting the heritage character of Berrima (emphasised in the DCP) is the requirement for the town to remain undeveloped. Developing this land now would diminish this provision in the DCP. Heritage advice is that the council not support a spot rezoning at this location in Berrima.*

#### Assessment Officer's Comment:

Following the above comments, a site inspection was undertaken on 11 May 2021 with the Heritage Advisor to view the site and provide a more complete explanation of the proposed development. After the site inspection, the Heritage Advisor provided the following additional comments:

*(16 May 2021):*

*Thank you for referring this DA and accompanying me for the site inspection. Heritage advice is:*

- Berrima's heritage DCP notes that part of the special character of this village is the undeveloped, vegetated character of its landscape conservation area. This proposal for an additional dwelling entitlement would place a building in the village gateway, between two listed cottages, impacting on the undeveloped character of the landscape conservation area.*
- If the subdivision was to be supported by council then it is important that a large project home is not put on this land. A fully DCP compliant cottage (scaled to match the adjoining listed cottages on each side) and landscape plan would need to be provided. Setbacks should at least equal those of its neighbours. To be appropriate infill, the roof size, height, pitch and house footprint should match that of its neighbours.*
- There is no public interest in Council eroding the integrity of the landscape conservation area by providing this additional dwelling entitlement and in such a heritage-sensitive location. To summarize, the application is not supported.*

Assessment Officer's Comment: Although the Heritage Advisor's comments are noted, it is considered that the proposal is acceptable and able to be supported for the following reasons:

1. The proposed development does not require a "spot re-zoning" (i.e. planning proposal) to enable further residential development (e.g. dwelling house) to occur. The subdivision is proposed under clause 4.2C WLEP 2010 which provides for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1;
2. Any future dwelling on proposed Lot 2, resulting from approval of the current subdivision, would be largely obscured by the position of the adjoining dwellings on either side (at No 8 and 12-16 Old Hume Highway). Both adjoining dwellings are constructed very close to the Old Hume Highway, and with the (curved) alignment of the Old Hume Highway, any future dwelling on proposed Lot 2 would be mostly obscured from the front when travelling in either direction along the Old Hume Highway. See street-view photos in **Figure 6** below.
3. The applicant has provided a building footprint for proposed Lot 2, with a 12.5m front setback. This will allow the vegetation within this front setback to be retained, which will help to preserve

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



the un-developed character of the front part of proposed Lot 2. It will also help to enable any future dwelling to be recessive and obscured by the adjoining dwellings.

- Any subsequent residential development on proposed Lot 2 would need to be designed in accordance with the controls in the Berrima Village DCP, which are very strict to ensure a high design quality for new development in the village.



**Figure 6 – Street view photos of subject site, No 10 Old Hume Highway Berrima, when viewed from the south and north.**

#### External Communications:

Rural Fire Service (Integrated Development): The subject site is identified on Council's mapping system as being affected by bushfire, therefore the subdivision is Integrated Development requiring concurrent approval from the NSW Rural Fire Service (s100B of the Rural Fires Act 1997).

The NSW RFS have provided General Terms of Approval for this development, including requirements for Asset Protection Zones, management of the site as an Inner Protection Area, and Construction Standards. These are included in the draft conditions of consent.

Transport for NSW: A referral was sent to Transport for NSW given that the site's frontage to the Old Hume Highway. In response, the following comments were provided:

*We have rejected this referral as this is not integrated development under the Roads Act, 1993. It would only be integrated development under S138 where TfNSW is the road authority, e.g. the Hume Motorway. In this instance Council is the road authority for Old Hume Highway, so this referral is a matter for Council.*

#### 7. Conclusion

The proposed development has been assessed using the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 and is found to be satisfactory.

The subject site has two land use zones under Wingecarribee LEP 2010 (part RU4 Primary Production Small Lots and part R2 Low Density Residential), and the proposal is to create two allotments which directly accord with these land use zones – the proposed allotment boundary will accord with the zone boundary. This is the type of subdivision which is facilitated by clause 4.2C of WLEP 2010, and the proposal fully complies with clause 4.2C(5)(a).

Concerns have been raised by both Council's Heritage Advisor, and also in the submission received from the Berrima Residents Association, that the proposal would be contrary to the existing character



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**

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of the Berrima village, which is a predominantly un-developed setting at the northern entry to the village.

In this regard, the applicant's submitted building footprint plan provides for a 12.5m front setback of any future dwelling on proposed lot 2 which will generally ensure that the character can be maintained. It is also noted that any future development of Lot 2 will be subject to and need to comply with the extensive controls for new development in the Berrima village.

Overall, the development is considered to be satisfactory and approval is recommended subject to conditions of consent (see Attachment 1).

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**ATTACHMENTS**

1. Attachment 1 - Draft Conditions of Consent
2. Attachment 2 - Plan of Subdivision
3. Attachment 3 - Building Footprint Plan

5.2 Development Application 21/1483 - Subdivision of Land to Create Two Lots - Lot 1 DP 258420, No 10 Old Hume Highway Berrima



ATTACHMENT 1 Attachment 1 - Draft Conditions of Consent

Indicative Future Dwelling Envelope in support of DA21/1483

10 Old Hume Highway Berrima

Base Plan - extract from plans prepared by Novatti Consulting Engineers in support of DA21/1483

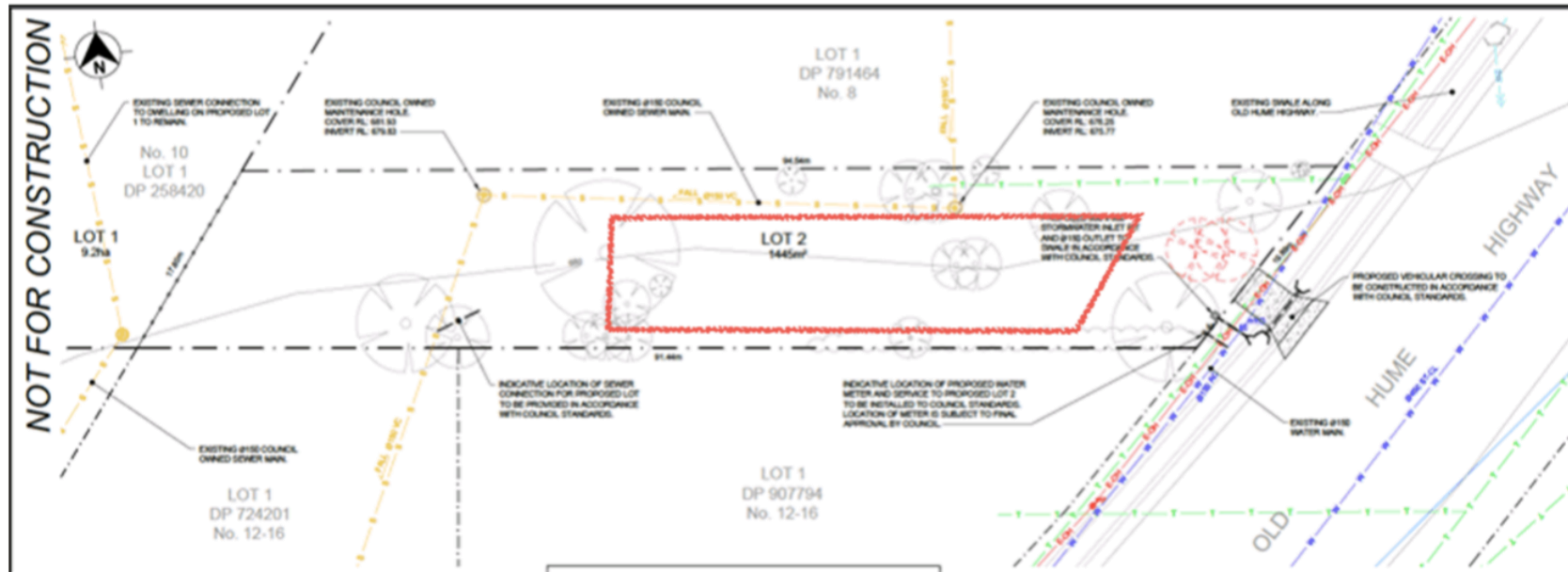
Dimensions of proposed Dwelling Envelope

12.5 metre minimum street setback

Maximum 40.5 metre depth

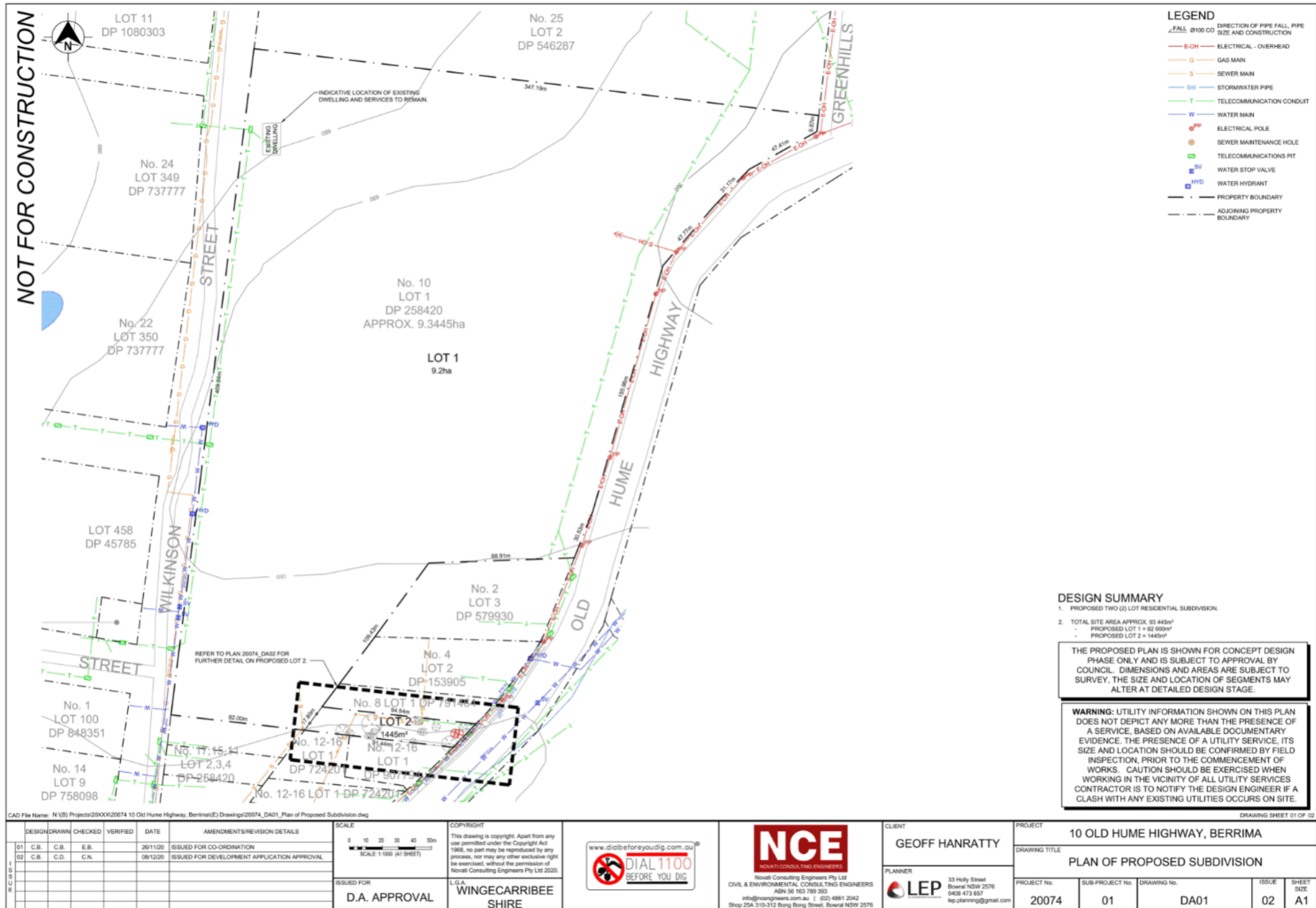
Minimum 1 metre southern boundary setback

Minimum 4 metre northern boundary setback



Prepared by Lee Environmental Planning

17 June 2021



**LEGEND**

	100 CO	DIRECTION OF PIPE FALL, PIPE SIZE AND CONSTRUCTION
	E-OH	ELECTRICAL - OVERHEAD
	G	GAS MAIN
	S	SEWER MAIN
	SW	STORMWATER PIPE
	T	TELECOMMUNICATION CONDUIT
	W	WATER MAIN
	PP	ELECTRICAL POLE
	SMH	SEWER MAINTENANCE HOLE
	TP	TELECOMMUNICATIONS PIT
	SV	WATER STOP VALVE
	HYD	WATER HYDRANT
	- - -	PROPERTY BOUNDARY
	- . - . -	ADJOINING PROPERTY BOUNDARY

**DESIGN SUMMARY**

- PROPOSED TWO (2) LOT RESIDENTIAL SUBDIVISION.
- TOTAL SITE AREA APPROX. 93 445m<sup>2</sup>
  - PROPOSED LOT 1 = 52 000m<sup>2</sup>
  - PROPOSED LOT 2 = 1445m<sup>2</sup>

THE PROPOSED PLAN IS SHOWN FOR CONCEPT DESIGN PHASE ONLY AND IS SUBJECT TO APPROVAL BY COUNCIL. DIMENSIONS AND AREAS ARE SUBJECT TO SURVEY, THE SIZE AND LOCATION OF SEGMENTS MAY ALTER AT DETAILED DESIGN STAGE.

**WARNING:** UTILITY INFORMATION SHOWN ON THIS PLAN DOES NOT DEPICT ANY MORE THAN THE PRESENCE OF A SERVICE, BASED ON AVAILABLE DOCUMENTARY EVIDENCE. THE PRESENCE OF A UTILITY SERVICE, ITS SIZE AND LOCATION SHOULD BE CONFIRMED BY FIELD INSPECTION, PRIOR TO THE COMMENCEMENT OF WORKS. CAUTION SHOULD BE EXERCISED WHEN WORKING IN THE VICINITY OF ALL UTILITY SERVICES. CONTRACTOR IS TO NOTIFY THE DESIGN ENGINEER IF A CLASH WITH ANY EXISTING UTILITIES OCCURS ON SITE.

CAD File Name: N:\B\Projects\20XXXX\20074 10 Old Hume Highway, Berrima\E\Drawings\20074\_DA01\_Plan of Proposed Subdivision.dwg

DESIGN DRAWN	CHECKED	VERIFIED	DATE	AMENDMENTS/REVISION DETAILS
01 C.B.	C.B.	E.B.	26/11/20	ISSUED FOR CO-ORDINATION
02 C.B.	C.D.	C.N.	08/12/20	ISSUED FOR DEVELOPMENT APPLICATION APPROVAL

SCALE

SCALE: 1:1000 (A1 SHEET)

ISSUED FOR  
**D.A. APPROVAL**

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L.G.A.  
**WINGECARRIBEE SHIRE**



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CLIENT  
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PROJECT <b>10 OLD HUME HIGHWAY, BERRIMA</b>	
DRAWING TITLE <b>PLAN OF PROPOSED SUBDIVISION</b>	
PROJECT No. <b>20074</b>	SUB-PROJECT No. <b>01</b>
DRAWING No. <b>DA01</b>	ISSUE <b>02</b>
SHEET SIZE <b>A1</b>	



Indicative Future Dwelling Envelope in support of DA21/1483

10 Old Hume Highway Berrima

Base Plan - extract from plans prepared by Novatti Consulting Engineers in support of DA21/1483

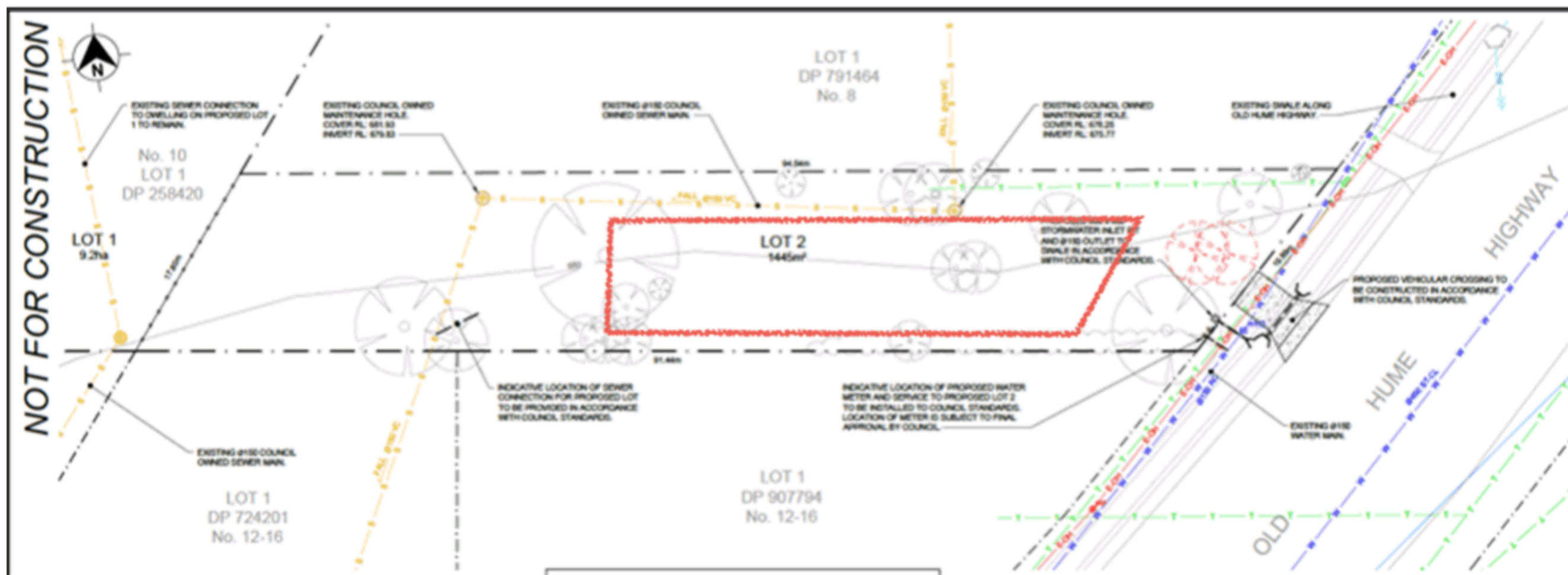
Dimensions of proposed Dwelling Envelope

12.5 metre minimum street setback

Maximum 40.5 metre depth

Minimum 1 metre southern boundary setback

Minimum 4 metre northern boundary setback



Prepared by Lee Environmental Planning

17 June 2021

### 5.3 Development Application 21/1578 - 32 Hood Street, Mittagong - Ancillary Residential Garage

Report Author: Trainee Accredited Certifier  
Authoriser: Acting Deputy General Manager

#### PURPOSE

The purpose of this report is to consider Development Application 21/1578, which seeks consent for a detached garage at 32 Hood Street, Mittagong. As one of the property owners is an employee of Council the application is required to be determined by the Independent Advisory Planning Assessment Panel, consequently this report is prepared and recommends **APPROVAL**, subject to attached conditions of consent (Attachment 3).

<b>Proposal:</b>	New Detached Garage Ancillary to an Existing Dwelling
<b>Applicant:</b>	Giulio Linolli
<b>Owner:</b>	Giulio Linolli
<b>Cost of works:</b>	\$14,000
<b>Reason for Referral:</b>	The property owner is an Employee of Council the application is required to be determined by the Independent Advisory Planning Assessment Panel for probity and transparency reasons.

#### RECOMMENDATION

**THAT** Development Application 21/1578 for a proposed detached garage at Lot 5 DP 702376 32 Hood Street, Mittagong be **APPROVED** subject to conditions as described in Attachment 3 to the report.

#### REPORT

##### 1. Executive summary

The proposed development is for a three-bay detached garage with a shower, toilet and basin and the removal of one (1) tree. The proposed architectural plans are provided in **Attachment 2** of this report. This report recommends approval of the application subject to conditions in **Attachment 3**.

##### 2. Site Description, Locality & Background

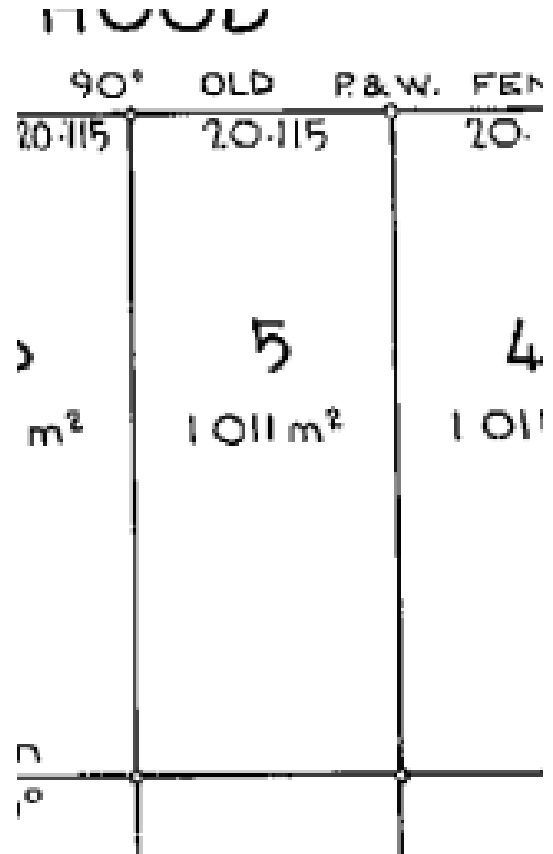
The subject site is identified as Lot 5 DP 702376, 32 Hood Street, Mittagong. The site is zoned R2 Low Density Residential. The property has an area of 1,011m<sup>2</sup> and contains an existing dwelling and multiple mature trees located at the front and rear of the allotment. One (1) existing tree is proposed to be removed within the building footprint in conjunction with the application. A cumquat tree located within the proposed building footprint is to be removed and replanted on the site. The site falls gently to the north-west corner of the

subject lot (front right corner) where an existing swale is present at the front of the allotment and the driveway cross over has been established.

**Figure 1: Aerial Image** (courtesy Winmap)



**Figure 2: Deposited Plan Extract**



As per the Deposited Plan (DP) image in Figure 2 and the 88B instrument, the subject lot is not burdened by any easements, restrictions or positive covenants.

Figure 3: Locality Map (courtesy Winmap)



### 3. Relevant Environmental Planning Instruments

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

The site is located within the Wingecarribee River Sub-catchment. Compliance with the provisions of the SEPP and associated guidelines is therefore required to consider water quality. The development is a Module 1 under the NorBE Guidelines and therefore Council has assumed concurrence to consider water quality. The development can achieve a neutral or beneficial effect on water quality.

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

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated and whether the land is or can be made suitable for the purpose for which development is proposed.

Based on Council's records, the site and immediately adjoining properties have been used for residential purposes from the mid 1980's to present. There is no evidence to suggest any potentially contaminating activities have taken place on or near the site. Accordingly, the site is considered suitable for the proposed residential use and satisfies the provisions of SEPP 55.

### **3.3 Wingecarribee Local Environmental plan 2010 (WLEP)**

The site is zoned Zone R2 Low Density Residential and in this zone a detached garage is permissible with development consent as it is ancillary to the existing Dwelling House. The objectives of the zone are:

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

The proposal is largely consistent with the aims and objectives of the zone, which will be demonstrated and discussed throughout this report.

The following development standards in the Wingecarribee Local Environmental Plan (WLEP) 2010 apply to the proposal:

<b>Clause</b>	<b>Development Standard</b>	<b>Proposal</b>	<b>Compliance</b>
Clause 7.1 (a) Development on existing lots in Zones R2, R3 and R5	(a) have an area that is at least the minimum lot size specified for that lot on the <a href="#">Lot Size Map</a>	The minimum lot size identified on the Lot Size map is 700m <sup>2</sup> where the subject allotment is 1,011m <sup>2</sup> .	Yes
Clause 7.10 Public Utility Infrastructure	Public utility infrastructure is available to the land	The subject allotment has connection to electricity supply and council's reticulated water and sewer.	Yes

## **4. Development Control Plans and Policies**

### **4.1 Mittagong Town Development Control Plan (DCP)**

The Mittagong Town Plan 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 a more desirable planning and urban design outcome.

The relevant provisions of the Mittagong Town Plan DCP are addressed in Attachment 1.

## **5. Environmental Assessment**



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



The site has been inspected by the Assessing Officer on 11<sup>th</sup> June 2021 and 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	As discussed earlier, provided all recommended consent conditions are complied with, the proposed development is considered satisfactory with respect to the LEP's relevant provisions.
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	Provided all recommended consent conditions are complied with, the proposed development is considered satisfactory with respect to the relevant provisions of Council's applicable Mittagong Town Development Control Plan (Attachment 1).
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.	Not applicable.
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.	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report and are discussed within the table below.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15 (1)(c) – The suitability of the site for the development.	<p>The proposed development is considered suitable in the given locality. There are no constraints posed by adjacent developments that would prohibit this proposal. There are adequate utilities and services available to the proposed development where necessary. The air quality and microclimate are appropriate for the development, there are no hazardous land uses or activities nearby, and ambient noise levels are suitable for the development.</p> <p>The site is not subject to natural hazards including flooding. The soil characteristics are appropriate for the development, and there are no critical habitats, or threatened species, populations, ecological communities or habitats on the site.</p>
<i>Context &amp; Setting</i>	<p>The likely impacts of the development on the context and setting are considered reasonable.</p> <p>The proposed development will not adversely impact on the</p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section 4.15 'Matters for Consideration	Comments
	<p>streetscape or amenity of adjoining lots, by means of scale, bulk or height. Neither views, privacy or solar access will be significantly reduced. The development is not visually intrusive. External materials and finishes have been considered and while a subjective judgment, these have been considered to be satisfactory.</p>
<i>Access, Transport and Traffic</i>	<p>There are no identified issues with respect to the access to the site and car parking. The driveway and verge crossing are currently provided to the allotment and will remain unaffected by the proposal.</p>
<i>Public Domain</i>	<p>The subject development will not have an adverse impact on the public domain.</p>
<i>Utilities</i>	<p>The property is serviced by Council's reticulated water supply and reticulated sewer. Electricity and communications are available to the subject site subject to provision by the relevant service provider.</p>
<i>Heritage</i>	<p>The property is not listed as having heritage significance by Schedule 5 of the Wingecarribee LEP 2010. The site is not known to be culturally significant or having indigenous heritage value.</p>
<i>Flora and Fauna</i>	<p>The proposed development involves the removal of only 1 tree. A cumquat tree is proposed to be removed and replanted elsewhere on site and the retention and protection of a third tree which is located in the far south west corner of the subject lot. The proposed development is clear of any areas mapped by Council's GIS based fauna atlas and is not expected to adversely impact on threatened species. The tree proposed for removal is located within the building footprint where it is considered that a compliant development in terms of Council's DCP (as above) and consistency with the neighbouring property developments is proposed. Given the absence of significant environmental implications as discussed above the tree removal proposed in conjunction with the application is considered acceptable.</p>
<i>Air and Microclimate</i>	<p>The subject development will not give rise to any significant air pollution or other emission.</p>
<i>Soils and Earthworks</i>	<p>The subject development will not have any significant soils impacts. 0.500 metres of cut and 0.500 metres of fill is proposed to establish the building platform. This level of cut and fill is not considered extensive and significant environmental implications are not anticipated.  The site is not subject to any significant soils constraints, i.e. is not noted as acid sulphate, highly erodible, saline or of</p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section 4.15 'Matters for Consideration	Comments
	high productive value.
<i>Energy</i>	The proposed development is adequately served by the energy provision to the subject site. A BASIX Certificate is not required for the proposed detached garage as the proposal is considered <b>BASIX excluded development</b> under the <i>Environmental Planning and Assessment Regulation 2000</i> .
<i>Noise and Vibration</i>	The proposed development will not give rise to any significant noise or vibration generation, beyond typical residential uses.
<i>Natural Hazards</i>	The subject site is not identified as flood liable land.  Part of the land is mapped as bushfire prone land on Council's mapping system. In accordance with Planning for Bushfire Protection 2019 – cl. 8.3.2 there are no bush fire protection requirements for Class 10a (non-habitable buildings) located more than 6 metres from a dwelling in bush fire prone areas. As the proposed detached garage is located more than 6 metres from the dwelling no bushfire measures or construction requirements are necessary.
<i>Technological Hazards</i>	No technological/man-made hazards are noted as affecting the site or characteristic of the subject development. - Whilst primarily the subject of the Construction Certificate (CC) assessment process, the overall fire safety of the development has been considered and the subject development is not characterised by excessive fire risk.
<i>Social and Economic Impacts in the Locality</i>	The single-residential nature of the development will not give rise to any noted adverse social impacts.
<i>Site Design and Internal Design</i>	The design is not insensitive to site conditions, including constraints such as topography, vegetation, easements, etc.
<i>Cumulative Impacts</i>	The proposed development is not excessive when considered in a wider context and will not give rise to excessive cumulative impacts.
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The application was not required to be notified.
Section 4.15 (1)(e) – The public interest.	The proposed development is consistent with the objectives of Wingecarribee Local Environmental Plan 2010 and is considered to be in the public interest.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



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

The development application was not Neighbour Notified as the Community Participation Plan states outbuildings that are ancillary to a residential usage of the land (e.g. sheds, pools, garage or carports) are not required to be notified. The proposal is compliant with the development controls generally and specifically the setback, height and site coverage requirements where no identifiable implications/impacts in the opinion of the Assessing Officer were identified in relation to adjoining properties. Therefore, notification of the proposed development is not required in this instance.

**7. Conclusion**

All relevant matters have been addressed. It is considered this report adequately considers the merits of the development in terms of legislative compliance and its potential impact on the locality. The development application has been assessed in accordance with the matters for consideration under section 4.15 of the *Environmental Planning & Assessment Act 1979*, and all relevant environmental planning instruments and Council policies.

On balance, it is recommended the application be determined by way of **Approval**, subject to the conditions nominated in **Attachment 3**.

**RECOMMENDATION**

**THAT** Development Application 21/1578 for the proposed detached garage at Lot 5 DP 702376, 32 Hood Street, Mittagong be **APPROVED** subject to conditions as described in Attachment 3 to the report.

**ATTACHMENTS**

1. Attachment 1 - Mittagong DCP Compliance Table
2. Attachment 2 - Architectural Plans
3. Attachment 3 - Proposed Conditions of Consent



**21/ 1578 - Appendix 1 – Mittagong Town Development Control Plan (DCP)**

The relevant provisions of the Mittagong Town Plan DCP are addressed below:

The proposed development generally complies with the Mittagong Town Development Control Plan as discussed as follows:

DCP Compliance Table			
Part C – Residential Zoned Land – Section 2 – Low Density Housing			
Control	Standard	Proposed	Compliance
C2.4 Development Density and Scale	Maximum development footprint permitted on allotments less than 2,000m <sup>2</sup> in area is 65%.	Part C2.4 of the DCP is complied with given the total site coverage is 32% as follows.  Site Area = 1,011m <sup>2</sup> Site Cover = 322.6m <sup>2</sup> (includes existing dwelling, driveway, cubby house and proposed detached garage). Site Cover % = 31.9%	Yes
C2.6 Front Setbacks	Front setbacks of new residential development shall be consistent with those immediately adjacent to the site and to those in the immediate vicinity.  6.5 metre requirement for allotments between 900m <sup>2</sup> and 1500m <sup>2</sup> as identified in Part C2.6.2 of the DCP.	The proposal is located in the rear yard and behind the building line of the existing dwelling.  The proposals front setback is approximately 40 metres and complies with the 6.5 metre numerical requirement.	Yes
C2.10 Roof Forms	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.	The proposed roof pitch is between 10 and 12 degrees which is consistent with the roof pitch of the approved garage on the neighbouring property at 30 Hood Street – 11-degree roof pitch approved under LUA07/0065.	Yes
C2.12 Garaging & Driveways	The location and treatment of garages and driveways can have a significant impact on the streetscape, particularly in the case	The location of the proposal reflects the current street pattern (situated in the rear yard behind the building line). As such, the proposal	Yes

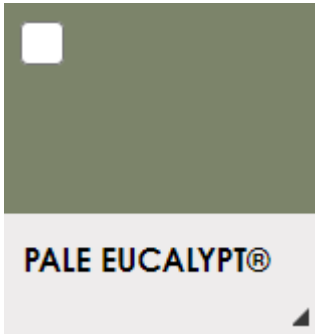
5.3 Development Application 21/1578 - 32 Hood Street, Mittagong -  
Ancillary Residential Garage

ATTACHMENT 1 Attachment 1 - Mittagong DCP Compliance Table



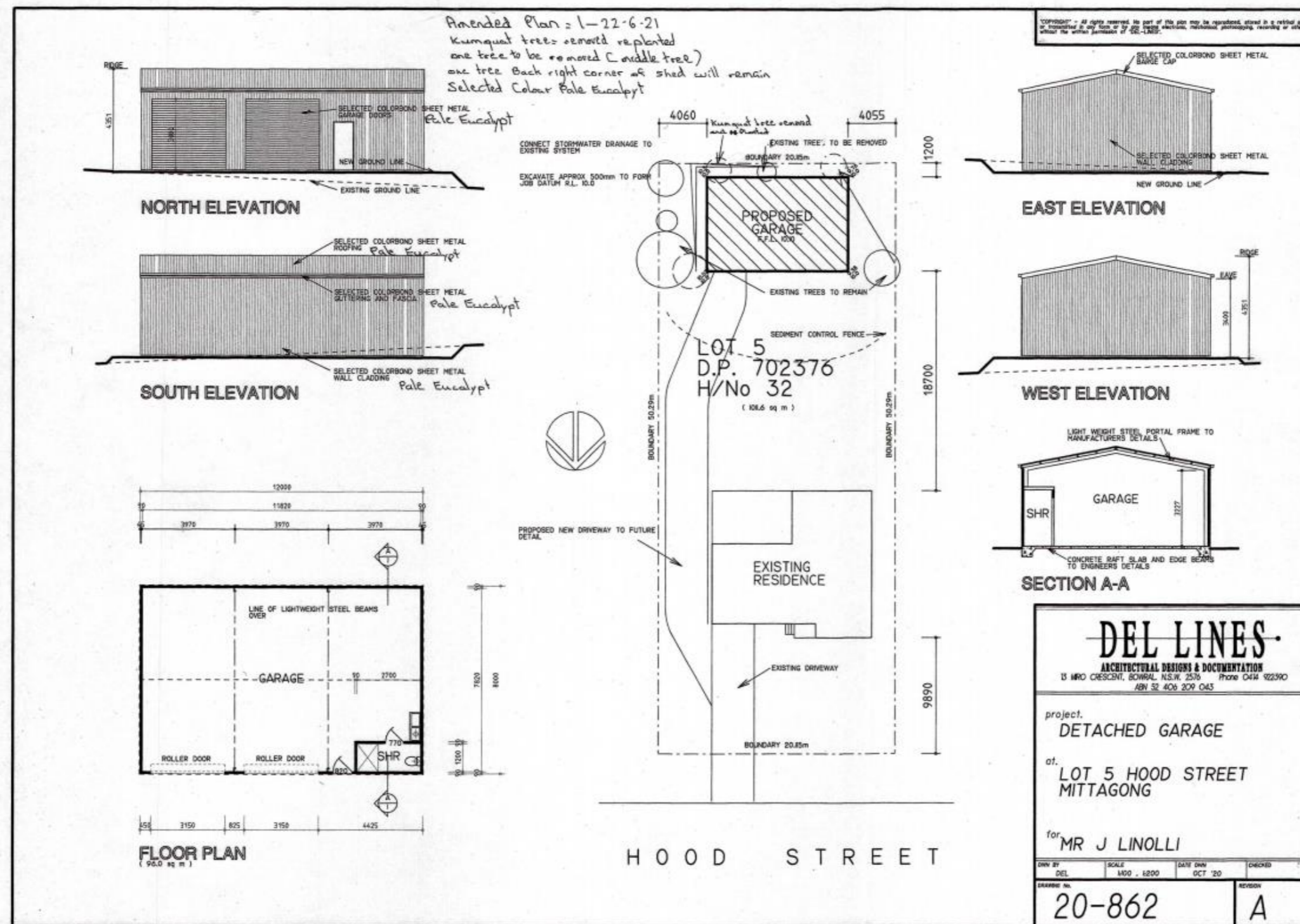
DCP Compliance Table			
	of infill development in streets with more traditional forms of housing design. Garages must not dominate the streetscape and, preferably, should be situated behind the primary building line.	does not directly have implications to the streetscape. The garage does not exceed the height of the dwelling.	
C2.13 Landscaped Open Space	35% of the site area or 90m <sup>2</sup> , whichever is the greater is required to be open space for lots under 2,000m <sup>2</sup> .	In this instance a percentage of 68.1% of the subject lot will be landscaped space, which is considerably more than the minimum of 35%.	Yes
Part C – Residential Zoned Land – Section 5 – Ancillary Development			
C5.2.2 (b) Floor Area	The combined floor area of all non-habitable buildings or non-habitable portions of buildings is limited to:  (i) 120 square metres for lots up to 2,000 square metres.	Part C5.2.2 of the DCP is complied with as follows:  Site Area = 1,011m <sup>2</sup> Floor area of proposed garage (8x12) = 96m <sup>2</sup> Floor area of existing cubby house – approx. 10m <sup>2</sup>  Total floor area of all non-habitable buildings = 106m <sup>2</sup>	Yes
C5.2.2 (d) Building Height	The maximum height of any non-residential building shall be determined by Council staff with reference to the objectives of the zone, the location of the proposed development and any relevant environmental and amenity considerations.	<b>Objectives of Ancillary Development:</b>  (a) To ensure non-habitable detached buildings do not dominate streetscapes. (b) To ensure that such buildings do not adversely impact on neighbouring property amenity.  With reference to the objectives of the zone the wall height of the proposed garage is considered acceptable. (3.4 metres to the eave and 4.351 metres to the ridgeline) which is less	Yes



DCP Compliance Table			
		than the height of the existing dwelling.	
C5.2.2 (e) Building Materials	The materials used shall be non-reflective. Zinalume is not permissible.	The proposal comprises of colorbond metal sheeting for the roof and walls in Pale Eucalypt.    Standard building materials condition to be placed on DA.	Yes
C5.2.2 (h) Side Setbacks	Side setbacks of new development will be generally consistent with those of existing development in the immediate adjacent context. External walls will generally be required to be located a minimum of 600mm from side and rear boundaries.	Proposed eastern side setback is 4.060 metres and the western side setback is 4.055 metres.	Yes
C5.2.2 (h) Rear Setback	External walls will generally be required to be located a minimum of 600mm from side and rear boundaries.	Proposed rear (southern) setback is 1.2 metres.	Yes



21/ 1578 - Attachment 2 – Plans for proposed Garage at 32 Hood Street, Mittagong







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21/ 1578 - Attachment 3 – Conditions for proposed Garage at 32 Hood Street, Mittagong

SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

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ADMINISTRATION CONDITIONS

1. Development in Accordance with Plans and Documents

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Site Plan, Floor Plan & Elevations	Drawing Number: 20-862 Revision: A	Del Lines Architectural Design & Documentation	OCT '20

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

2. Inconsistency between Documents

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

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

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

- (a) That the work must be carried out in accordance with the requirements of the National Construction Code.
- (b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

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

4. Erection of Signs

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

- (a) Showing the name, address and telephone number of the Principal Certifier (PC) for the work, and



(b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(c) Stating that unauthorised entry to the work site is prohibited.  
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

#### **5. Notification of *Home Building Act 1989* Requirements**

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

(a) In the case of work for which a principal contractor is required to be appointed:

- (i) the name and licence number of the principal contractor, and
- (ii) the name of the insurer by which the work is insured under Part 6 of that Act,

(b) In the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

(2) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the Principal Certifier (PC) for the development to which the work relates (not being the council) has given the council written notice of the updated information.

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

#### **6. Condition relating to shoring and adequacy of adjoining property**

(1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense—

- (a) protect and support the building, structure or work from possible damage from the excavation, and
- (b) where necessary, underpin the building, structure or work to prevent any such damage.

(2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

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



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

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

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

- Carry out water supply work
- Carry out sewerage work

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

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

**8. Notice of Commencement**

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

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

**Reason:** *Statutory requirement.*

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

**9. Construction Certificate**

No work shall commence until a:

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



**Reason:** *Statutory Requirement.*

#### **10. Appointment of Principal Certifier (PC)**

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

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

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

#### **11. Developer to advise of damage to Council property**

The developer must advise Council of any damage to property controlled by Council which adjoins the site including kerbs, gutters, footpaths, walkways, reserves and the like, prior to commencement of any work on the site (dilapidation report). Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the Developer's expense.

The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged grass verges, concrete footpath, kerb and gutter are to be carried out by the contractor/builder to Council's specification and supervision prior to occupation of the development.



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**Reason:** *Public safety.*

## **12. Erosion and Sediment Control Plan**

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

- (a) Erosion and sediment controls are to be in place before the disturbance of any soils on the site, and are to be maintained during the works and for as long as necessary after the completion to prevent sediment and dirty water leaving the site and/or entering the surface water system outside the worksite boundaries.
- (b) Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping. Soil is to be retained within the property.
- (c) Stockpiles of construction and landscaping materials, and of site debris shall be located clear of drainage lines and in such a position that they are protected from erosion and do not encroach upon any footpath, nature strip or roadway.
- (d) Final site spoil shall be disposed of to conform to the specifications and standards quoted and to any conditions of approval of those measures and must comply with any relevant NSW Department of Planning and Environment requirements.
- (e) Trenches shall be backfilled, capped with topsoil and compacted to a level at least 75mm above adjoining ground level.
- (f) Vehicular access shall be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where sediment is deposited on adjoining roadways the same shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.
- (g) All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for more than 14 days or such other period as may be approved after earthworks cease. All driveways and parking areas shall be stabilised with compacted sub-grade as soon as possible after their formation.

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

## **13. Protection of Trees**

Prior to any work commencing, certification of the installation and inspection of the required tree protection works is to be provided to Council and the Principal Certifying Authority by the arborist. A copy of the certificate is to be provided to Council within seven days of the inspection and prior to any works commencing.

**Reasons:** *Tree protection*

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

### **14. Building Materials & Colour Scheme**

The use of Zinalume, Galvanised Iron, stainless steel, unetched zinc or copper is not permitted.



New external building materials and colours shall be recessive in the surrounding landscape as required by Councils Development Control Plan.

**Reason:** *To ensure that the new building is visually compatible with the existing environment.*

#### **15. Tree Removal**

This development consent approves the removal of one (1) tree located within the footprint of the approved garage as identified on the site plan - job number 20-862 Revision A dated Oct '20.

**Advice:** *Tree removal should be carried out by a level 3 and above professional arborist to avoid any risk to life or damage to property. This person should have adequate public liability insurance cover.*

**Reason:** *To comply with the Wingecarribee Local Environmental Plan 2010.*

#### **16. Tree Protection Measures**

Protective fencing is to be installed around the tree to be retained in line with the Tree Protection Zone. This fencing is to be constructed of chain wire mesh 1.8m high, which is supported by steel stakes or piping and braced to resist impacts and as per the requirements detailed in AS4970-2009 "Protection of Trees on Development Sites", the installation of which is carried out under the supervision of the arborist.

**Note:** *Removal of the protective fencing during construction work will affect bonds and may result in fines or legal proceedings being instigated by Council against the applicant and/or builder.*

#### **17. Approved hours of Construction/Demolition**

Construction activities shall be limited to the following hours:

<b>DAY</b>	<b>HOURS</b>
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil

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

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

#### **18. Ground Levels**

Natural ground levels shall not be altered or adjusted other than shown on the approved plans or where varied by the conditions of consent without the prior consent of Council.

Finished ground levels shall be graded away from the buildings and adjoining properties must achieve natural drainage. The concentrated flows are to be dispersed down slope or collected and discharged to an approved storm water drainage system.

**Reason:** *To ensure that natural drainage of the property and adjoining properties is not*



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*affected.*

### 19. Building Operations

Building operations such as brick cutting, washing tools or brushes and mixing mortar are not permitted on public roadways or footways or in any other locations which could lead to the discharge of materials into the storm water drainage system.

**Reason:** *To ensure that building materials are not washed into storm water drains.*

### 20. Maintenance of the site

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

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

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

During construction:

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

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

**Reason:** *Environmental amenity*

### 21. Temporary Onsite Toilet

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

Each toilet shall:

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

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

### 22. Waste Management

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



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

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

### 23. Imported 'Waste-derived' Fill Material

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

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

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

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

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

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

### 24. Retaining Walls and Drainage

If the soil conditions require it:

- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
- (b) adequate provision shall be made for drainage.
- (c) any retaining walls which do not comply with the exempt development standards outlined in the State Environmental Planning Policy (Exempt and Complying Codes) 2008, are subject to a separate approval prior to the construction of the retaining wall.

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

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

### 25. Occupation Certificate

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





The Principal Certifier (PC) is required to be satisfied, amongst other things, that:

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

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

**Note:** *A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a new building (within the meaning of section 6.9 (4) of the Act) unless an Interim Occupation Certificate or Final Occupation Certificate has been issued in relation to the building or part.*

## **26. Stormwater Drainage**

Prior to the issue of any Occupation Certificate:

- (a) The additional rainwater drains shall be connected to the existing rain water drains discharging to the swale located at the front of the lot.
- (b) Any regraded areas shall be free draining, away from the building, and shall not concentrate surface water onto adjoining properties.
- (c) Stormwater drainage work shall comply with AS/NZS 3500.3, 2003 - Stormwater drainage;

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

## **CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

### **27. Outbuildings Use**

The structure shall not be used at any time for habitable, industrial or commercial purposes (unless ancillary to an approved use conducted on the site), or used for the storage of goods associated with industrial or commercial undertakings.

**Reason:** *To ensure compliance with Council planning legislation.*

### **28. Amenity**

The approved use on the site shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood by reason of noise, smoke, smell, vibration, gases, vapours, dust, particulate matter or other impurities from the premises.

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

**END OF CONDITIONS**

**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**

**Report Author:** Development Assessment Planner  
**Authoriser:** Manager Development Assessment

**PURPOSE**

The purpose of this report is to request the consideration, by the panel of DA20/0492 for a two (2) Stage development with Stage one (1) being a subdivision of the site into two (2) allotments and stage 2 of the proposal as a concept development Application to achieve a ninety (90) bed nursing home at Lot 2345 DP 1110446, 133 Old Bowral Road Bowral.

<b>Consultants:</b>	Darren Hogan – Hogan Planning John M Daly & Associates
<b>Applicant:</b>	Old Bowral Estate Pty Ltd
<b>Land Owner:</b>	Old Bowral Estate Pty Ltd
<b>Applicant's estimated cost of development:</b>	\$19,676,782 – Low Cost \$25,301,782 – High Cost
<b>Notification Period:</b>	13 November 2019 to 13 December 2019
<b>Number of submissions:</b>	0
<b>Political donations:</b>	None declared
<b>Reasons for referral to panel</b>	Previous Councillors called up the application for determination by full Council.

**RECOMMENDATION**

**THAT** the Independent Advisory Planning Assessment Panel determines development application 20/20/0492 for a two (2) Stage development with Stage one (1) being a subdivision of the site into two (2) allotments and stage 2 of the proposal as a concept development Application to achieve a ninety (90) bed nursing home at 133 Old Bowral Road Bowral by APPROVAL as per the draft conditions of consent in Attachment 1 to the report.

**1. Executive Summary**

Development application 20/0492 is referred to the Interim Independent Advisory Assessment Panel (WIIAAP) for determination because it was called up for determination by the Council. The application was notified, and no submissions were received.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING**

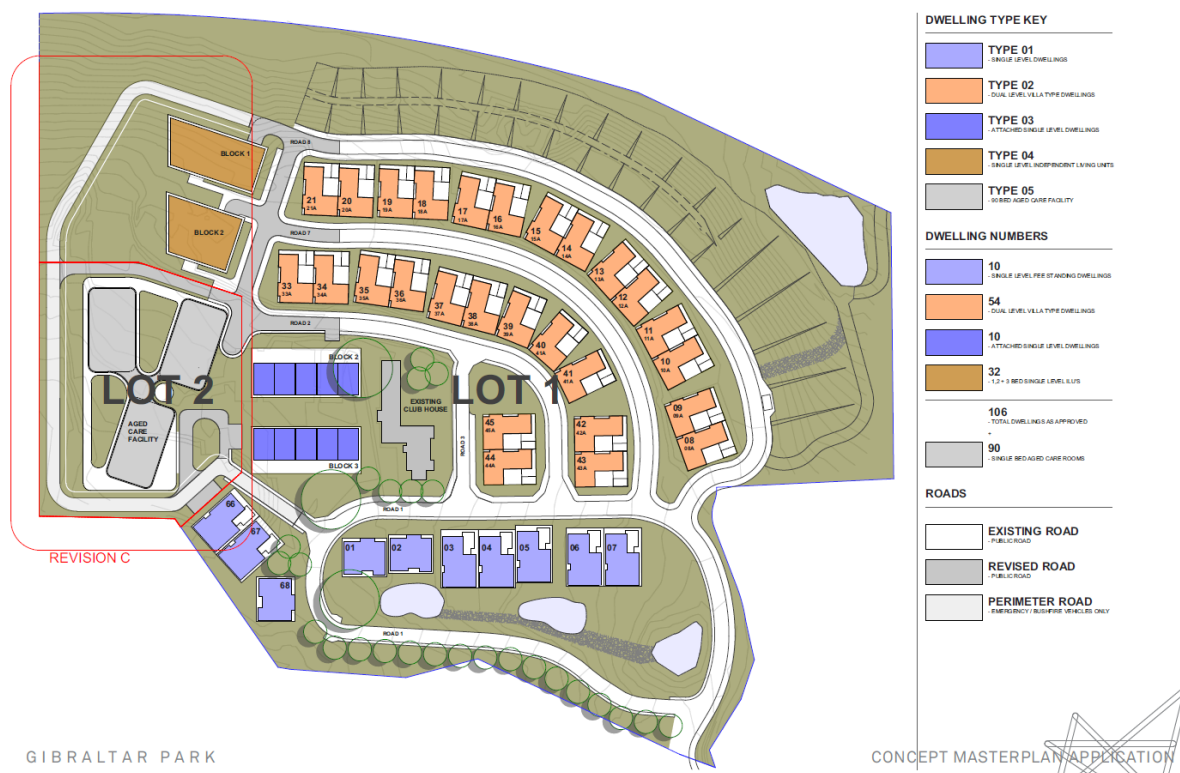
Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



The proposed development is for a two (2) Stage development with Stage one (1) being a subdivision of the site into two (2) allotments and stage 2 of the proposal as a concept development Application to achieve a ninety (90) bed nursing home at Lot 2345 DP 1110446, 133 Old Bowral Road Bowral.

An extract from the proposed development drawings accompanying the application is reproduced in **Figure 1** below.



**Figure 1: Proposed development layout**

**2. Site Description and Locality.**

**Figures 2 and 3** illustrate the land's location and general layout. The site is a 7.744ha parcel of land that is located on the western side of Old Bowral Road at the northern limits of the township of Bowral. The entrance to the site is situated approximately 120m to the north of the intersection of Old Bowral Road with Mittagong Road. Bowral Railway Station is approximately 2klm to the south and Mittagong Railway Station is approximately 2.5klm to the northeast of the site. Mittagong Road, to which Old Bowral Road serves as a loop access road, intersects to the north and to the south of the site. Mittagong Road is the main traffic thoroughfare connecting the principle Southern Highlands towns of Bowral and Mittagong and the site access and location are considered satisfactory for the siting of a seniors living development.

The lot configuration of the subject site is described as irregular and the boundary lines are irregular for both the east facing and the northern facing boundaries. The rear, west facing boundary line follows the curve of the main Great Southern Railway Line whilst the south facing boundary is regular and linear. Overall the site has an area of 7.744ha and the existing developments within the site are located approximately central within this land area.

The site is legally described as Lot 2345 DP 1110446 and has the street address of No 133 Old Bowral Road Bowral. The land enjoys consent under LUA03/0786.15 Modified 29 January 2021 for a one hundred and six (106) unit selfcare retirement complex and associated facilities, of which thirty-eight (38) dwellings have been constructed.

The site is situated adjacent to native bushland that is located to the west of the site.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**

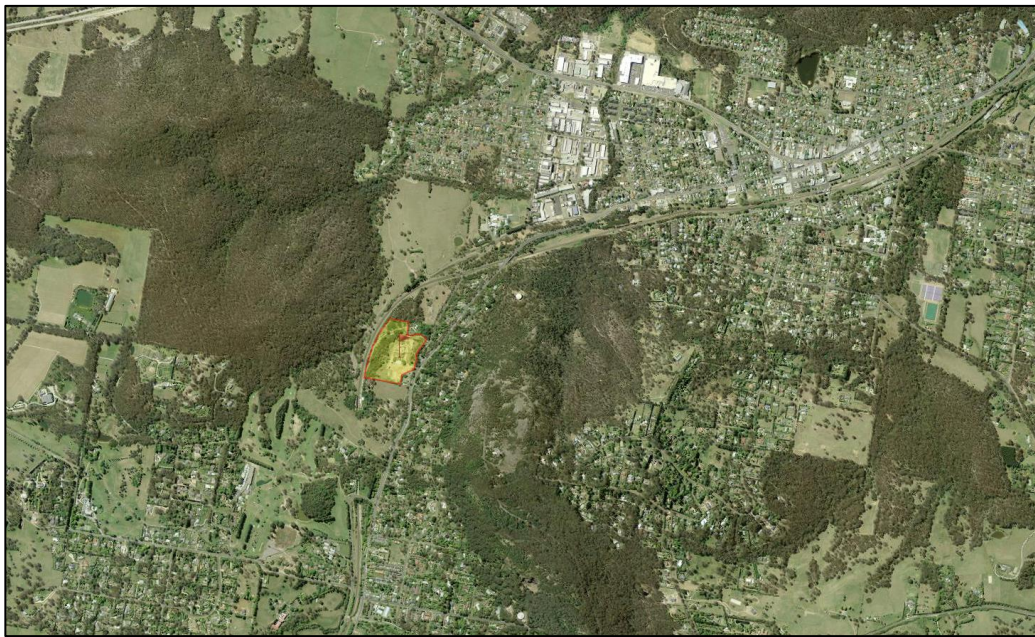


The location is at the north western periphery of the urban extent of Bowral and as such the land use zonings in the location are reflective of a residential/rural interface. Property located to the east of the site and on the opposite side of Mittagong Road is established residential and shares the R5 Large Lot Residential land use zoning of the subject site.

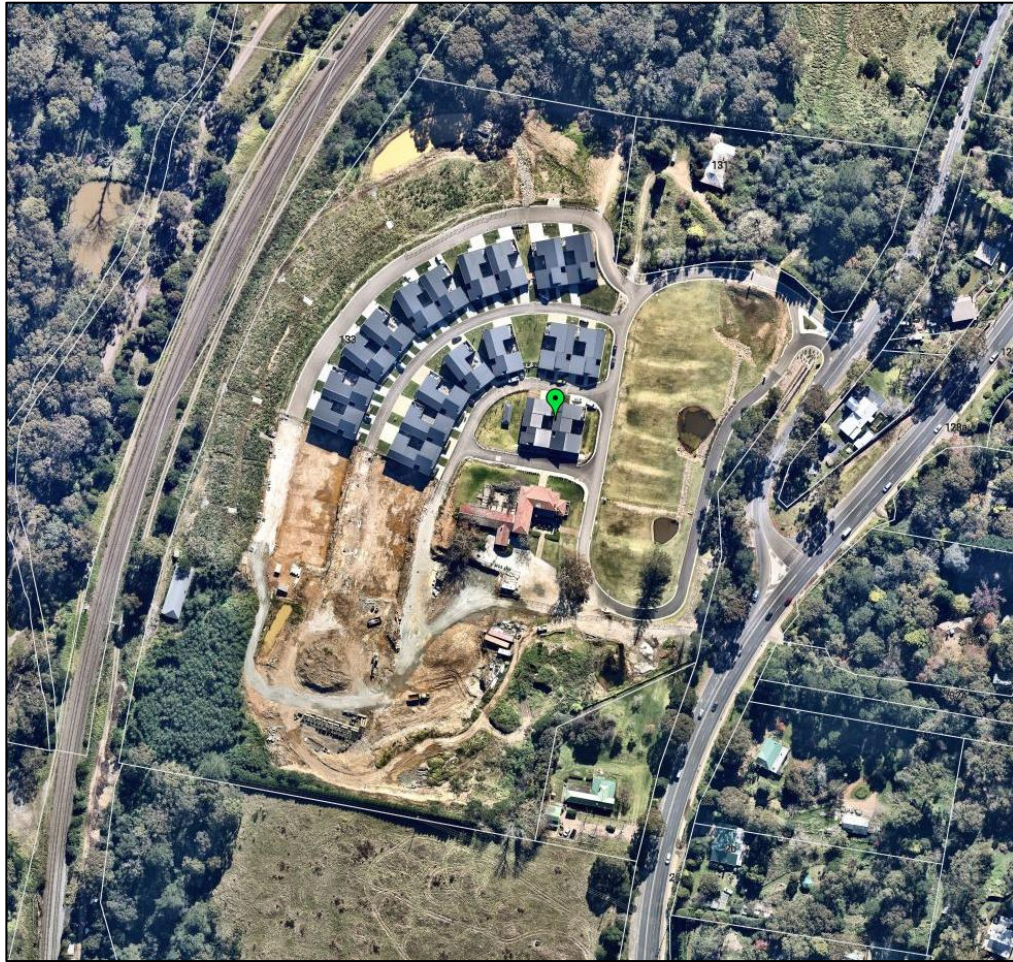
Lands adjacent to the north and to the south of the site are zoned for rural activities, with land to the north west zoned RU2 Rural Landscape and land adjacent to the south zoned RU4 Primary Production Small Lots. The exception to rural zoning to the northeast is the adjacent Lot 6 DP 1010734 that shares the same R5 zoning as that of the subject site.

To the west of the subject site the Great Southern Railway Line, zoned SP2 Railway defines the property boundary line. West of the railway line the land use zoning changes to RU2 Rural Landscape and west again E3 Environmental management. Given the proximity to rural land and native forest the subject site and adjacent lands are identified as bushfire prone land within Council's RFS endorsed mapping.

Mount Gibraltar and the Mount Gibraltar Reserve are key landmarks that are situated to the east of the site on the opposite side of Mittagong Road. The summit of Mount Gibraltar is approximately 800m distant from the subject site and to the southeast. The Gibbergunyah Nature Reserve is situated to the west and northwest of the subject side and constitutes an area of contiguous native vegetation that is interspersed with watercourses within gullies.



**Figure 2: Locality Map**



**Figure 3: Aerial image (Courtesy Nearmap)**

**3. Notification**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Engagement Strategy dated 11 December 2019 from 13.11.19 to 13.12.19. No submissions were received as a result of the notification process.

**4. Background**

Council approved a seniors living development at Gibraltar Park on August 26, 2004 to the then owner UFT Pty Ltd, who was also the owner of Annesley in Bowral. Both complexes were to share facilities creating economies of scale. The combined number of units for both retirement villages was 112. Both villages were then sold to different operators, Annesley to Lend Lease Prime Life, and Gibraltar Park was initially sold to Babcock and Brown Communities in 2006. Under this ownership a construction certificate was granted in 2007 with bulk earth works commencing in late 2007, which secured the consent. In the aftermath of the 2008 global financial crisis the property was dormant until the current owners acquired the site.

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS

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The original approval was granted under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

There have been a number of modifications approved for the development as follows:

LUA03/0786.01 – was issued on 14 May 2014 and increased the development from 66 units to 106 units and introduced a Voluntary Planning Agreement.

LUA03/0786.02 – was issued on 05 November 2014 which deleted a number of conditions including requirements for a POPE and modified conditions related to noise levels.

LUA03/0786.03 – was issued on 21 January 2018 and was for the relocation of a rising sewer main.

LUA03/0786.06 – was issued on 28 February 2019 for a modification of a number of consent conditions and deletion of a number of consent conditions.

LUA03/0786.15 – was issued on 29 January 2021 for modification to the design and layout of the stage 3 dwellings.

The applicant has held pre-lodgement consultation with Council's Executive staff which established that further seniors living development of the subject land may be considered by Council despite the land use prohibition for "Residential Accommodation" for the R5 Large Lot residential zone, as a consequence of the existing seniors living development constituting an 'existing use' of the land in accordance with Part 4, Division 4.11 Section 4.65 of the EP&A Act 1979 and thereby enjoying existing use rights.

#### **5. Proposal**

The proponent, Old Bowral Estate Pty Ltd seeks to compliment an existing one hundred and six (106) unit selfcare seniors living development of the site with the introduction of a Residential Care Facility to accommodate a maximum of ninety (90) residents. The introduction of a Residential Care Facility to the site is proposed to meet the future care needs for residents of the approved retirement complex and will further contribute towards meeting the demand for aged care facilities within the broader Southern Highlands community.

This proposal to introduce a Residential Care Facility has come about through the offer of the owner of the site to gift land comprising 8,630 square metres in area to the not-for-profit organisation – The Royal Freemasons' Benevolent Institution (RFBI). The offer will create an opportunity to provide on-going aged care to the benefit of the aged community of the Southern Highlands. To provide a positive financial position, the owner of the site needs to ensure that the land gift can be made without compromising the number of dwellings approved as selfcare retirement units within the present approval under LUA03/0786.15 dated 29 January 2021.

The first step to achieve the land gift to the RFBI is the stage 1 proposal for the subdivision of the land.

Stage 2 of the application proposes a 90 bed nursing facility (future DA).

The Royal Freemason's Benevolent Institution, founded in 1880 was conceptualised at a time when no government funded social welfare programs, including that for aged care, were available. In the intervening 139 years to the present day the RFBI has continued to diversify in the provision of benevolent care within the community and plays an important role in aged care that compliments existing government funded initiatives.

As a Registered Not-For-Profit Organisation, the RFBI reinvests funds back into the communities that it supports and in more recent times has focussed upon assisting the aged care industry to meet the

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



current and projected demands of an ageing demographic. This assistance has included ownership and operation of residential care facilities and retirement villages and includes home care (hospices) respite to family of aged family members in need of support.

RFBI currently operates 20 retirement villages and covers six regions with Home Care Services across NSW and the ACT. These existing facilities are operational within Sydney, the Hunter Valley, Central and Mid-North Coast, the South Coast, Southern Highlands and ACT, Central West, Riverina and New England-Armidale district. Home Care Services are provided for by the RFBI within the ACT, Goulburn-Mulwarree, Central and Mid-North Coast, Newcastle and Hunter Region, New England and Armidale District, Orana and South Western Sydney. This support collectively amounts to aged care provision for more than 2,500 members of the aged community.

This provision of a Residential Care Facility to complement selfcare retirement living within the location is firmly in line with State planning objectives in making provision for 'aging in place' for residents who value connection with the local environment and the local community whilst their health needs reliance upon this community increases with the progression of age.

**5.22 Concept development applications.**

*(cf previous s83B)*

- (1) *For the purpose of this Act, a **concept development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out development on any part of the site concerned unless:*
  - (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
  - (b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the further need for consent.*

*The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.*

- (5) *The consent authority, when considering under S4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

**Note:**

*The proposals for detailed development of the site will require further consideration under S4.15 when a subsequent development application is lodged (subject to subsection (2)).*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

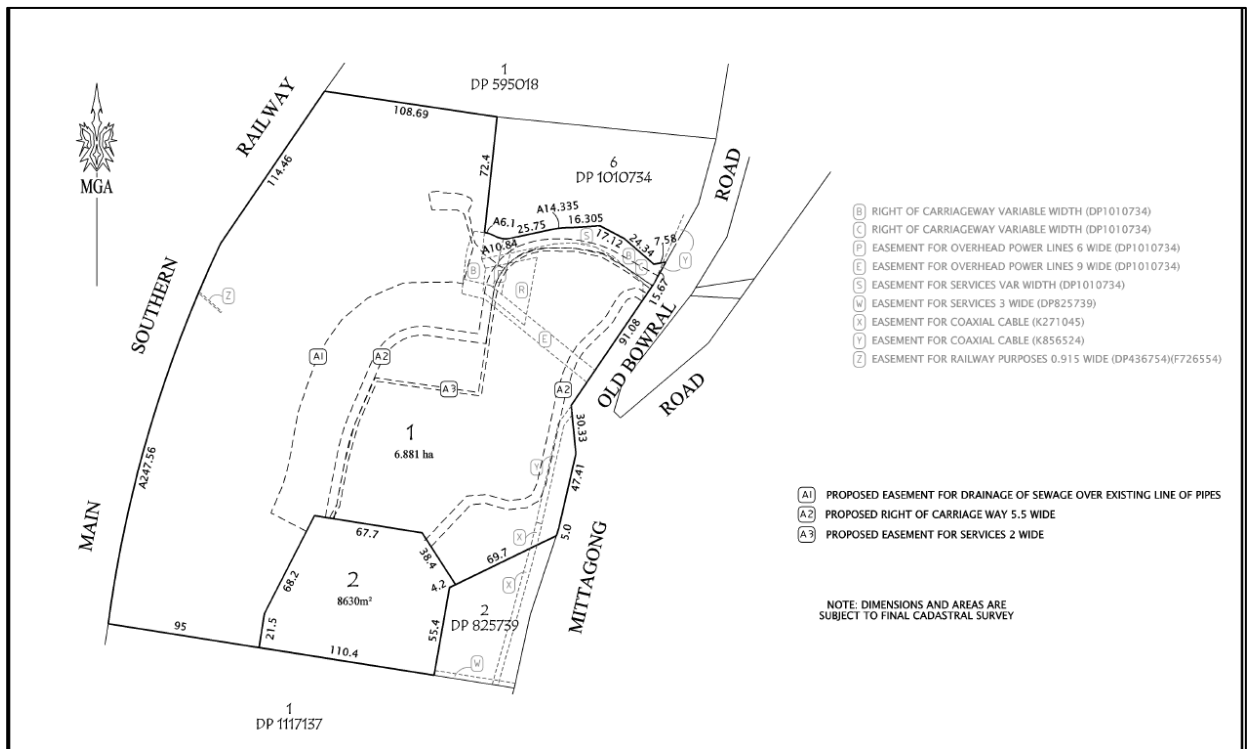
Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



The description of the proposed development of the land for Stage 1 and Stage 2 are as per the following table:

<p>Stage 1 Subdivision</p>	<p>A subdivision of Lot 2345 DP 1110446 that has a land area of 7.744 ha to excise a vacant lot of 8,630 square metres for the purpose of supporting a proposed ninety (90) bed residential Care Facility and for the approved one hundred and six (106) unit selfcare retirement complex and associated facilities approved by LUA03/0786.15 to be contained within the residue lot.</p>
<p>Stage 2 Concept Master Plan</p>	<p>Approval is sought of a concept design for a ninety (90) bed Residential Care Facility over the 8,630 square metre allotment that is proposed as Stage 1 of the development.</p>



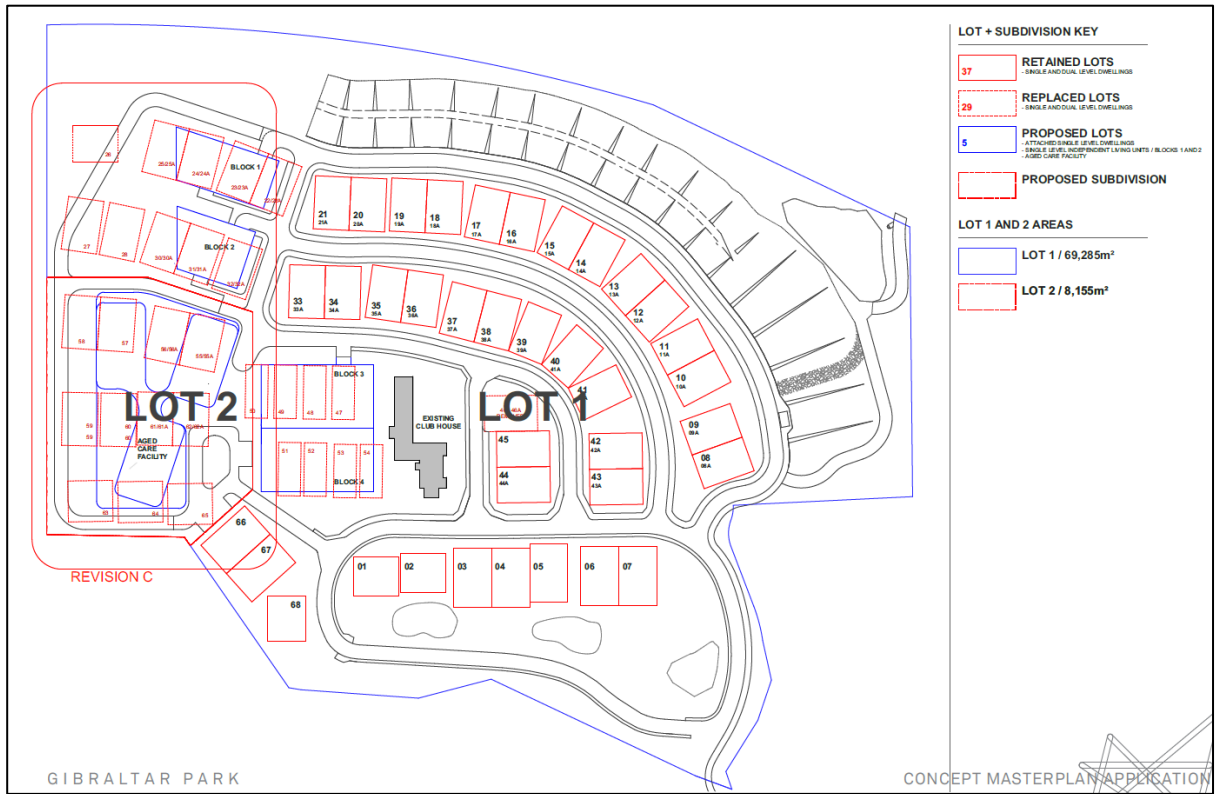
**Figure 4: Stage 1 Proposed Subdivision Plan**



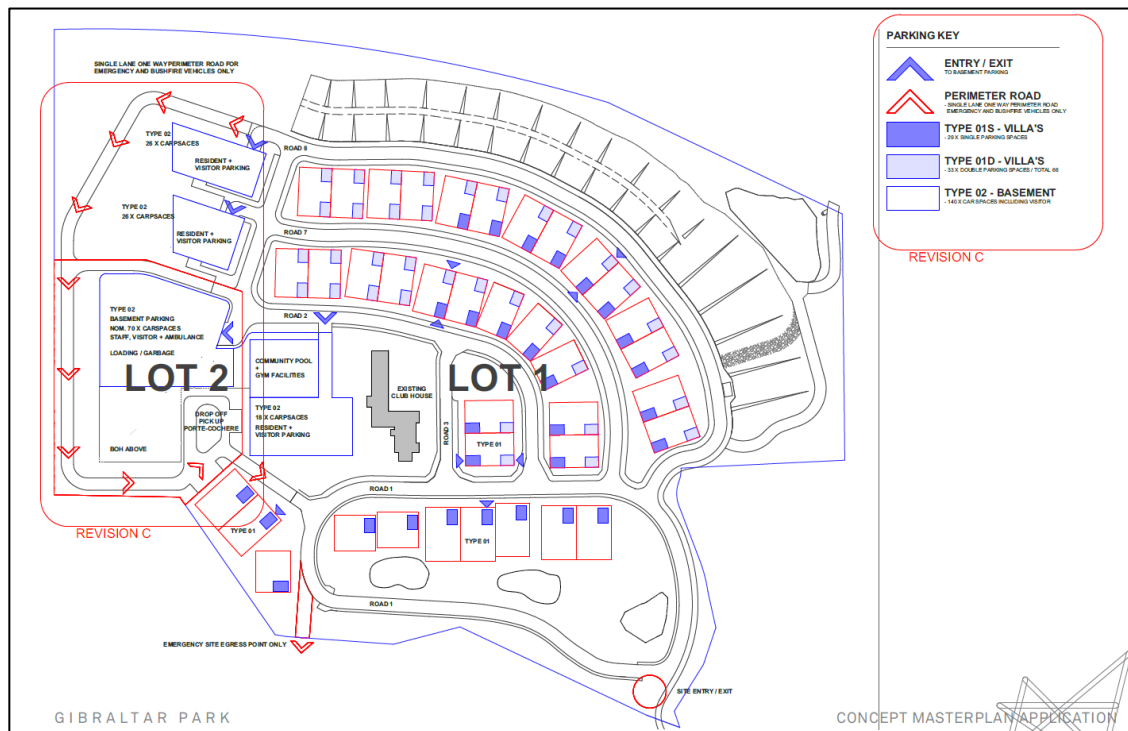
**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**Figure 5:** Stage 2 Concept Master Plan showing proposed 8,630 square metre lot to be excised.

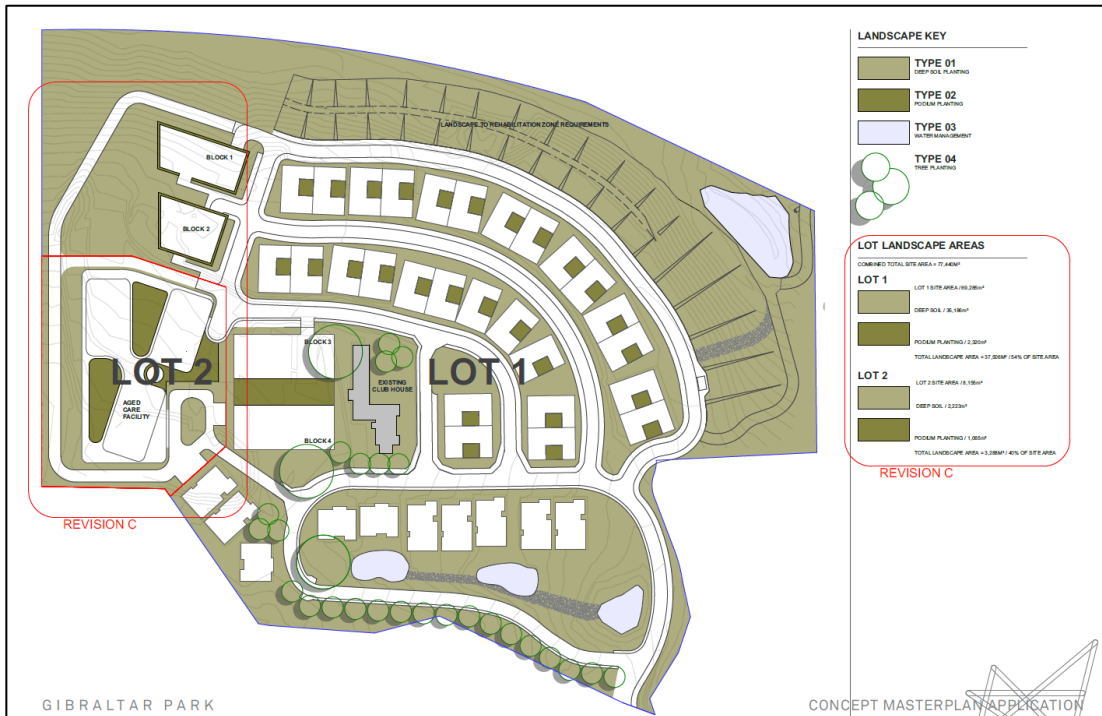


**Figure 6:** Stage 2 Concept Masterplan showing proposed road circulation and car parking areas.

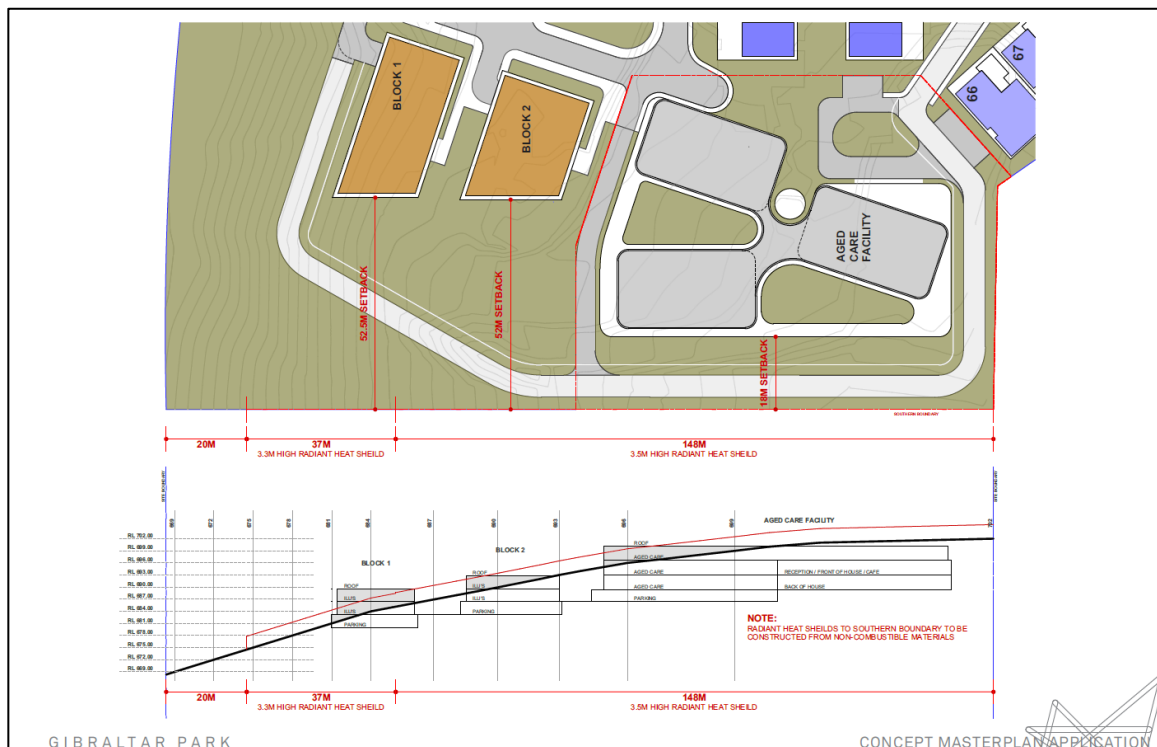
**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**Figure 7:** Stage 2 Concept Masterplan showing proposed landscape areas



**Figure 8:** Stage 2 Concept Masterplan showing Bushfire Plan and position of Radiant heat walls.

**Proposed residential Care Facility Compliance Table – SEPP (Housing for Seniors and People with a Disability) 2004.**

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**Note:** The SEPP does not apply to the subject site as it is excluded under Schedule 1 'Environmentally Sensitive Land - Catchment Area, however it is applicable to align with the controls and objectives of the SEPP.

SEPP – Development Control	SEPP – Development Requirements		Proposed	Complies
Building Height	Maximum 8m		The proposal provides for 2-3 storeys. The third storey is largely to accommodate the natural topography of the site and contains back of house uses and basement car parking. The predominate built form is 2 storeys presented to the public domain and the third storey is not visible from Old Bowral Road as it is located downslope of the sites high point in the south western corner of the site.	In Part
FSR	1:1		Proposed Lot 2 has a site area of 8,630 square metres. The proposed floor area equates to 7,000 square metres or 0.81:1	Yes
Landscape Area	25square metres/bed		The proposal provides for 90 aged care beds, requiring 2,250 square metres of open space. The proposal provides for 3,700 square metres.	Yes
Car Parking	1 space/10 beds; or 1 space/15 beds (if facility for dementia patients only)		The proposal provides for 70 car parking spaces within a secure basement structure for use by staff and visitors.	Yes
	1 space /2 employees (at any one time).		See above	Yes
	1 space for ambulance.		An ambulance bay is provided within the proposed basement.	Yes

**Proposed residual lot Compliance Table – SEPP (Housing for Seniors and People with a Disability) 2004.**

SEPP – Development Control	SEPP – Development Requirements	Proposed	Complies
Building Height	Maximum 8m	The proposal provides for 2 to 3 storeys the predominate being 2 storey villa type accommodation. The third storey is largely to accommodate the natural topography of	In Part

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



SEPP – Development Control	SEPP – Development Requirements	Proposed	Complies
		the site and is relevant to Blocks 1 and 2 only in the south western corner of the site and not visible from Old Bowral Road. Furthermore Blocks 1 and 2 sit below the floor level of the existing clubhouse on site, which occupies the high point within the Gibraltar Park masterplan.	
FSR	0.5:1	Proposed Lot 1 has a site area of 68,810 square metres. The proposed floor area equates to 34,000 square metres or 0.49:1.	Yes
Landscape Area	30% of site area (20,921 square metres)	39,575 square metres	Yes
Deep Soil Zones	Not less than 15% of the area of the site (the <b>deep soil zone</b> ). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres.	The area between the perimeter road and the western boundary (rail corridor), with a minimum dimension of 3 metres equates to 18,680 square metres or 27% of the site area.  Other considerable area for deep soil planting is provided throughout the site.	Yes
Solar Access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	A minimum of 70% of dwellings provided achieve 3 hours of direct sunlight in mid-winter.	Yes
Private Open Space	In the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and of this open space, one area is not less than 3 metres wide and 3 meters long and is accessible from a living area located on the ground floor, and in the case of any other dwelling, there is a	All dwellings achieve the minimum requirements for private open space.	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



SEPP – Development Control	SEPP – Development Requirements	Proposed	Complies
	balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less 2 metres in either length or depth and that is accessible from a living area.		
Car Parking	0.5 car spaces for each bedroom where the development application is made by a person other than a social provider.	The proposal provides the required parking at the rate as prescribed by the SEPP	Yes

**6. Relevant Environmental Planning Instruments**

The proposed development has been considered with regard to the matters for consideration specified by section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, as detailed below. It is noted that as the land is identified by *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* as being within the Sydney Drinking water catchment, *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* is not applicable to the land, pursuant to clause 4(6)(a) of the latter policy.

**Section 4.15(1)(a)(i) – The provisions of any environmental planning instrument that apply to the land.**

**State Environmental Planning Policy (Infrastructure) 2007**

Clause 87-Impact of rail noise or vibration on non-rail development	<p>The land is adjacent to the Great Southern Railway, located on the western boundary. The nearest railroad track is approximately 130 metres from the proposed Residential Care Facility. Whilst the space between the rail line and the residential buildings will be landscaped, there is no earthen or other barrier between the railway and the buildings that might be considered to significantly attenuate rail noise.</p> <p>Clause 87(3) specifies:</p> <p style="text-align: center;"><b>87 Impact of rail noise or vibration on non-rail development</b></p> <p>(3) <i>If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded-</i></p> <p>(a) <i>In any bedroom in the residential accommodation- 35dB(A) at any time between 10.00pm and 7.00am.</i></p> <p>(b) <i>Anywhere else in the residential accommodation (other than a garage, kitchen, bathroom, or hallway)-40dB(A) at any time.</i></p> <p>The statement of Environmental Effects accompanying the application has not addressed the impact of rail noise or vibration.</p>
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**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



	<p>Recommended conditions of consent (if granted) specify:</p> <ul style="list-style-type: none"> <li>• No construction certificate shall be granted for any building work in the development unless the certifying authority is satisfied by information accompanying the application for construction certificate that the following LAeq levels will not be exceeded: <ul style="list-style-type: none"> <li>○ In any bedroom in the development-35dB(A) at any time between 10.00pm and 7.00am.</li> <li>○ Anywhere else in each dwelling in the development (other than a garage, kitchen, bathroom or hallway)-40dB(A) at any time.</li> </ul> </li> <li>• No occupation certificate shall be granted in relation to any residential care facility or dwellings in the development unless the certifying authority is satisfied by information accompanying the application for occupation certificate that the residential care facility or dwellings concerned have been designed and constructed to ensure the following LAeq levels will not be exceeded: <ul style="list-style-type: none"> <li>○ In any bedroom-35dB(A) at any time between 10.00pm and 7.00am.</li> <li>○ Anywhere else (other than a garage, kitchen, bathroom or hallway)-40dB(A) at any time.</li> </ul> </li> </ul>
<p><b>State Environmental Planning Policy (Koala Habitat Protection) 2021</b></p>	
<p>Clause 18-Existing development applications</p>	<p>Clause 18 specifies:</p> <p style="text-align: center;"><b>18 Existing development applications</b></p> <p>A development application made in relation to land, but not finally determined before this Policy applied to the land, must be determined as if this Policy had not commenced in its application to the land.</p> <p>The policy commenced to apply to the land on 17 March 2021. The application was made on 21 October 2019. Clause 18 therefore effectively renders the Policy irrelevant to the application.</p>
<p><b>State Environmental Planning Policy No 55- Remediation of Land</b></p>	
<p>Clause 2 -object of this policy</p>	<p>The proposed development is considered satisfactory with respect to the Policy's particular aim to promote remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p>
<p>Clause 7- Contamination on and remediation to be considered in determining development application.</p>	<p>The land is not considered likely to be contaminated, nor is it considered to need remediation to be made suitable for the proposed development. The land has not been used for potentially contamination purposes in the past, so Council needn't consider the findings of a preliminary contamination investigation regarding the land before determining the application.</p>
<p><b>State Environmental planning Policy (Sydney Drinking Water Catchment) 2011</b></p>	

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



<p>Clause 3-Aims of Policy</p>	<p>Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the aims specified by clause 3:</p> <p><b>3. Aims of Policy</b></p> <p>The aims of this policy are:</p> <p>(a) <i>to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and</i></p> <p>(b) <i>to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and</i></p> <p>(c) <i>to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment'.</i></p>
<p>Clause 9-Recommended practices and performance standards of Water NSW.</p>	<p>The application was referred to Water NSW, which considers the proposed development able to achieve a neutral or beneficial effect on water quality. Water NSW is taken to consider the proposed development to satisfactorily incorporate Water NSW's current recommended practices and standards.</p>
<p>Clause 10-Development consent cannot be granted unless neutral or beneficial effect on water quality.</p>	<p>As discussed above, Water NSW considers the proposed development able to achieve a neutral or beneficial effect on water quality.</p>
<p>Clause 11-Development that needs concurrence of Regulatory Authority.</p>	<p>Water NSW has confirmed its concurrence to the granting of consent for the proposed development, subject to conditions that can be conveyed by conditions of consent.</p>
<p><b>Wingecarribee Local Environmental Plan 2010</b></p>	
<p>Clause 1.2-Aims of the Plan</p>	<p>The proposed subdivision development and erection of a Residential Care Facility is compatible with the existing and desired character and amenity of the locality and is an appropriate form of development for the zoning and represents 'in-fill residential development' within an existing residential zone as encouraged by the Local Plan and State Government Policy.</p> <p><b>1.2 Aims of Plan</b></p> <p>(2) <i>The particular aims of this plan are as follows:</i></p> <p>(a) <i>to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of</i></p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



	<p><i>Wingecarribee.</i></p> <p>(b) <i>To provide opportunities for development and land use activities that-</i></p> <p>(iii) <i>retain the critical natural, rural and built environmental landscape elements that make up the scenic and cultural heritage value of Wingecarribee.</i></p> <p>(e) <i>To provide opportunities for a range of new housing and housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities, including opportunities for the provision of adaptable and affordable housing.</i></p> <p>(f) <i>To provide for a range of living opportunities that address differing lifestyle needs without compromising the environmental quality of Wingecarribee, and the value of its natural resources such as water, biodiversity and agricultural land,</i></p> <p>(j) <i>To conserve the aboriginal and European cultural and environmental heritage of Wingecarribee.</i></p>
<p>Clause Definitions 1.4-</p>	<p>The proposed development comprises subdivision, erection of buildings and carrying out of works for the purpose of <i>seniors housing</i> as defined:</p> <p><b><i>seniors housing</i></b> means a building or place that is-</p> <p>(a) <i>a residential care facility, or</i></p> <p>(b) <i>a hostel within the meaning of clause 12 of State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004, or</i></p> <p>(c) <i>a group of self-contained dwellings, or</i></p> <p>(d) <i>a combination of any of the buildings or places referred to in paragraphs (a)-(c),</i></p> <p><i>and that is, or is intended to be, used permanently for-</i></p> <p>(e) <i>seniors or people who have a disability, or</i></p> <p>(f) <i>people who live in the same household with seniors or people who have a disability, or</i></p> <p>(g) <i>staff employed to assist in the administration of the building or place in the provision of services living in the building or place,</i></p> <p><i>but does not include a hospital.</i></p> <p>To ensure the proposed development is carried out in accordance with the above definition, recommended conditions of consent specify:</p> <ul style="list-style-type: none"> <li>• Council's consent permits the development to be carried out for the accommodation of only:</li> </ul>



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



	<ul style="list-style-type: none"> <li>○ Seniors, being: <ul style="list-style-type: none"> <li>▪ People aged 55 or more years</li> <li>▪ People who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 of the Commonwealth) is provided</li> <li>▪ People who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider</li> </ul> </li> <li>○ People who have a disability, being people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life</li> <li>○ People who live within the same household with seniors or people who have a disability</li> <li>○ Staff employed to assist in the administration of and provision of services to housing provided in the development.</li> <li>● No work in the development shall be permitted to commence unless a restriction as to user has been registered against the title of the land, in accordance with section 88E of the conveyancing Act 1919, limiting the use of any accommodation in the development to: <ul style="list-style-type: none"> <li>○ Seniors, being: <ul style="list-style-type: none"> <li>▪ People aged 55 or more years</li> <li>▪ People who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 of the Commonwealth) is provided</li> <li>▪ People who have been assessed as being eligible to occupy housing for the aged persons provided by a social housing provider</li> </ul> </li> <li>○ People who have a disability, being people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.</li> <li>○ People who live within the same household with seniors or people who have a disability</li> <li>○ Staff employed to assist in the administration of and provision of services to housing provided in the development.</li> </ul> </li> </ul>
<p>Clause 2.3-zone objectives and Land Use Table</p>	<p>The land is zoned R5 Large Lot Residential. The Land Use Table at the end of Part 2 of the LEP specifies development for the purposes of <i>residential accommodation (seniors housing)</i> is prohibited in the R5 Large Lot Residential zone.</p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



	<p>However, as a Residential Care Facility does not constitute a permissible land use activity for the R5 Large Lot Residential zone under the WLEP2010, the proposed ninety (90) bed Residential Care Facility is considered to represent a development that is ancillary to the existing use of the site for the purposes of seniors living.</p> <p>A pre DA meeting was held by the applicant with Council Staff who agreed that the use of the site was an 'existing use' and thereby enjoys existing use rights to continue to operate.</p>		
Clause 2.7- Demolition requires development consent	The proposed development does not include any demolition.		
Clause 5.10- Heritage conservation	The land is recognised as having local heritage significance, although the land is not in a conservation area nor does it contain an item of heritage. The existing building on the land is seen to have a heritage significance and Council is looking at a possibility of listing the building as an item of heritage in the future.		
Clause 7.3- Earthworks	A recommended condition of consent specifies Council's consent does not permit the carrying out of any earthworks other than indicated by the stamped consent drawings, necessitated by conditions of consent, or specified by an environmental planning instrument as not requiring consent.		
Clause 7.10- Public utility infrastructure	The development site has an existing availability of essential public utility infrastructure (water supply, electricity supply and sewerage services).		
<b>Section 4.15(1)(a)(ii)-The provisions of any proposed instrument that apply to the land.</b>			
	The land is not subject to any proposed environmental planning instrument.		
<b>Section 4.15(1)(a)(iii)-The provisions of any development control plan that apply to the land</b>			
<b>Bowral Township Development Control Plan</b>			
The Bowral Township Development Control Plan on 9 October 2019 was amended to adopt the objectives and controls from the <i>State Environmental Policy (Housing for Seniors (Housing for Seniors or people with a Disability) 2004</i> .			
Part C-Provisions applicable to residential zoned land	Section 8- Seniors Housing	Section C8.2- General Objectives	<p>The proposed development is considered satisfactory with regard to a range of seniors housing provisions specified by section 8, rendering it suitable for residential accommodation.</p> <p><b>C8.2 General Objectives</b>  <i>The purpose of these controls is to encourage the provision of seniors housing, including residential care facilities</i></p> <p>(a) <i>Increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</i></p> <p>(b) <i>Make efficient use of existing infrastructure and services, and</i></p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



			(c) <i>Be of good design.</i>
		Section C8.3- Neighborhood amenity and streetscape	<p>The proposed development is considered satisfactory to the provisions of section c8.3.</p> <p><b>C8.3 Neighborhood Amenity and Streetscape</b></p> <p><i>The proposed development should:</i></p> <ul style="list-style-type: none"> <li>(a) <i>Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.</i></li> <li>(b) <i>Retain, complement and sensitively harmonise with Items of Heritage or Conservation Areas.</i></li> <li>(c) <i>Maintain reasonable neighbourhood amenity and appropriate residential character by:</i> <ul style="list-style-type: none"> <li>(i) <i>providing building setbacks to reduce bulk and overshadowing,</i></li> <li>(ii) <i>using building form and siting that relates to the site's land form,</i></li> <li>(iii) <i>adopting building heights at the street frontage that are compatible in scale with adjacent development, and</i></li> <li>(iv) <i>considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</i></li> <li>(v) <i>be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line.</i></li> </ul> </li> <li>(d) <i>Embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape,</i></li> <li>(e) <i>retain, wherever reasonable, major existing trees,</i></li> <li>(f) <i>be designed so that no building is constructed in a riparian zone.</i></li> </ul>
		Section C8.4- Visual and acoustic privacy	<p>Provided all recommended conditions of consent are complied with, the proposed development is considered satisfactory with respect to the visual and acoustic privacy provisions specified by section C8.4.</p>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



		Section C8.5- Solar access and design for climate.	The orientation of the proposed development should ensure that the buildings will receive sufficient direct sunlight to living areas.
		Section C8.6- Crime prevention	The development proposes underground car parking which will provide safe access to the residential portions of the development. There will be some at grade parking which will be primarily for staff.
		Section C8.7- Accessibility	The proposed development will be served by lifts and will ensure that the proposed buildings will be accessible from the parking areas.
		Section 8.9- Height controls	Conditions of development consent have been placed on the consent conditions restricting the building heights to a maximum of 8 metres. As this is a concept approval these controls will be assessed further when the final development application/s are lodged for assessment.
		Section C8.10-Site design	The site is capable of compliance with this section and appropriate conditions of consent have been placed on the consent to ensure that the future development application will address these issues.
		Section C8.11-On site Car parking	<p>The application has provided the required amount of car parking spaces are to be provided.</p> <p>The following recommended conditions of consent specify:</p> <ul style="list-style-type: none"> <li>• No construction certificate shall be granted for any building work in the development unless the Certifying Authority is satisfied by information accompanying the application for construction certificate that all off street car parking spaces in the development comply with the requirements of Australian Standard AS2890, Parking Facilities, Part1: Off street parking regarding off street car parking for use by people with disabilities.</li> </ul>
		Section C8.12-Entry and corridors	<p>Recommended conditions of consent specify:</p> <ul style="list-style-type: none"> <li>• No Construction Certificate shall be granted for any building work in the development unless the Certifying Authority is satisfied by information accompanying the application for Construction Certificate that: <ul style="list-style-type: none"> <li>○ Every entry (whether a front entry</li> </ul> </li> </ul>

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



			<p>or not) to each self-contained dwelling in the development complies with clauses 4.3.1 and 4.3.2 of Australian Standard AS 4299-1995, Adaptable Housing.</p> <ul style="list-style-type: none"> <li>○ Widths of internal corridors and circulation at internal doorways comply with the relevant provisions of Australian Standard AS 1428.1 Design for Access and Mobility, Part 1: General requirements for access-new building work.</li> </ul>
		Section C8.13- Bedrooms	The size and provision of bedrooms will be assessed when the final development application is submitted to Council.
		Section C8.14- Bathrooms	The size and provision of bathrooms will be assessed when the final development application is submitted to Council.

**Section 4.15(1)(a)(iii) The provisions of any planning agreement that apply to the land.**

The land is currently subject to a voluntary planning agreement.

**Section 4.15(1)(a)(iv)-The provisions of the Regulations that apply to the land**

The development does not require any demolition therefore this section is not relevant.

**Section 4.15(1)(b)-The likely impacts of the development, including environmental impacts on both the natural environments, and social and economic impacts in the locality.**

The proposed development should not have any environmental impacts on both the natural environments or social and economic impacts in the locality.

**Section 4.15(1)(c)-The suitability of the site for the development**

The site is a very large site of 7.7 hectares and has a current consent for the erection of one hundred and six (106) unit selfcare retirement complex. The ninety (90) bed nursing home will have a minimal impact on adjoining properties.

**Section 4.15(1)(d)-Any submissions made in accordance with the Act or the Regulations.**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Engagement Strategy dated 11 December 2019 from 13.11.19 to 13.12.19. No submissions were received as a result of the notification process.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**Section 4.15(1)(e)-The public interest**

Approval of the proposed development would be in the public interest as shown by the lack of submissions to the proposal. The proposed development will provide a choice of housing within area.

**7. Internal and External Communication**

***Pre-lodgment Meeting***

The applicant held a pre-lodgment meeting before making the application, with Council Executive staff and Councilors where a concept masterplan was tabled.

***External Referrals***

<b>Referrals</b>	<b>Advice/Response/Conditions</b>
NSW Rural Fire Service (integrated development)	The NSW Rural Fire Service has issued their General Terms of Approval by letter dated 21 May 2021.
Water NSW	Water NSW has concurred with Council granting consent to the application in a letter dated 9 January 2020 subject to conditions to be attached to the consent

***Internal Referrals***

<b>Referrals</b>	<b>Advice/Response/Conditions</b>
Accredited Certifier	No objection, subject to various recommended consent conditions.
Development Engineer	No objection, subject to various recommended consent conditions.
Water and Sewer Engineer	No objection, subject to various recommended consent conditions.
Coordinator Strategic Land Use Planning	Developer contributions payable will be assessed when the detailed development application is lodged detailing exact number/s of facilities provided.
Traffic and Transport Planning Engineer	No objection, subject to various recommended conditions.

**8. Conclusion**

It is recommended Development Application 20/0492 A two stage development with Stage one (1) being a Subdivision of the site into two (2) lots and Stage two (2) of the proposal as a concept development application to achieve a ninety (90) bed nursing home.

The proposal is considered satisfactory in terms of S4.15 of the *Environmental Planning and Assessment Act 1979*, therefore it is recommended that the development application be approved, subject to the attached draft conditions of consent nominated in **Attachment 1**.

**ATTACHMENTS**

1. DA20/0492 - Draft Conditions of Consent

**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**  
**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**



07 July 2021

OLD BOWRAL ESTATE PTY LIMITED  
PO Box 3057  
ROSEMEADOW NSW 2560

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**  
Pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979

<b>APPLICATION NO:</b>	20/0492
<b>APPLICANT:</b>	OLD BOWRAL ESTATE PTY LIMITED
<b>OWNER:</b>	OLD BOWRAL ESTATE PTY LIMITED
<b>PROPERTY DESCRIPTION:</b>	Lot 2345 DP 1110446
<b>PROPERTY ADDRESS:</b>	133 OLD BOWRAL ROAD BOWRAL NSW 2576
<b>PROPOSED DEVELOPMENT:</b>	Concept development application including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.
<b>DETERMINATION:</b>	Approval subject to conditions
<b>CONSENT TO OPERATE FROM:</b>	07 July 2021
<b>CONSENT TO LAPSE ON:</b>	07 July 2026

**Rights of Appeal**

Pursuant to Section 8.7 of the *Environmental Planning and Assessment Act 1979*, an applicant for development consent who is dissatisfied with the determination of the application by Council authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 12 months after the date the decision appealed against is notified.

**Review of Determination**

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.

Ross Jauncey  
Development Assessment Planner (Contract)

07 July 2021  
Date of Determination

**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**



**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**

**SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT  
ADMINISTRATION CONDITIONS**

**1. Development Description**

Development consent has been granted in accordance with this notice of determination for the purposes of Concept development application including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.

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

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

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

<b>Plan Title / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared By</b>	<b>Dated</b>
Plan of Subdivision	Ref: 19200(NH)PS	JMD Development Consultants	16/10/2019
Concept Master Plan	Project No: 1916A, Dwg No: A-0101 Issue C	Benson McCormack Architecture	October 2020
Lot + Subdivision Plan	Project No: 1916A, Dwg No: A-0102 Issue C	Benson McCormack Architecture	October 2020
Traffic and Parking Plan	Project No: 1916A, Dwg No: A-0103 Issue C	Benson McCormack Architecture	October 2020
Landscape Calculation Plan	Project No: 1916A, Dwg No: A-0104 Issue C	Benson McCormack Architecture	October 2020
Bushfire Plan	Project No: 1916A, Dwg No: A-0105 Issue C	Benson McCormack Architecture	May 2021
Statement of Environmental Effects	Not Referenced	Hogan Planning	October 2019
Traffic and Parking Assessment Report	Report No: PT190-45r01_Final	Positive Traffic	September 2019
Bushfire Report	Ref: 19HOPE002	Travers Bushfire & Ecology	April 2021
Report on Water and Sewer Servicing and Stormwater Drainage	Ref: 19200, Issue B	JMD Development Consultants	16/10/2019



**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**



**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**

Water/Sewer Development Assessment Report	Revision C	Urban Water Solutions	02 April 2020
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**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation.*

**3. Inconsistency between documents**

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

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

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

- (a) That the work must be carried out in accordance with the requirements of the National Construction Code.
- (b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

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

**STAGE ONE (1) CONDITIONS OF CONSENT**

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE**

**5. Water and Sewer Authority Conditions**

Prior to issue of a Subdivision Works Certificate, the developer shall obtain approval from Council (as the Water Supply Authority and/or as required under Section 68 of the *Local Government Act 1993*) for the works to be undertaken by submitting adequate documentation including plans, calculations and specifications which justify that the required works are in accordance with all Council's standards and all other relevant codes and guidelines.

**Reason:** *To ensure water and sewer reticulation are in accordance with Council's standards.*

**6. Application for a Subdivision Works Certificate**

Subdivision work in accordance with the consent shall not be commenced until a Subdivision Works Certificate has been applied for and issued by Council, pursuant to Section 6.13 of the *Environmental Planning and Assessment Act 1979*. The application for a Subdivision Works Certificate needs to be accompanied by detailed engineering plans and specifications and

5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.



ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent

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completed design checklists found in Council's Engineering Design and Construction Specifications.

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

## 7. Amendments to Approved Plans

The applicant shall make the following amendments to the approved plans prior to the issue of a Subdivision Works Certificate:

a) <text>

**Note:** *This involves a change to the Development Application plans as submitted to and approved by Council.*

Any changes in this regard shall be reflected as amended plans to be submitted to the Principal Certifying Authority prior to the issue of a Subdivision Works Certificate for the proposed development.

**Reason:** *To confirm and clarify the terms of Council's approval.*

## 8. Appointment of Principal Certifier (PC)

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

- (a) A Subdivision Works Certificate for the subdivision work has been issued by:
  - (i) the consent authority; or
  - (ii) a Principal Certifier (PC); and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a Principal Certifier (PC) for the subdivision work, and
  - (ii) notified the Principal Certifier (PC) that the person will carry out the subdivision work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the Council of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:
  - (i) appointed a principal contractor for the subdivision work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the Principal Certifier (PC) of such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor

5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.



ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent

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of any critical stage inspections and other inspections that are to be carried out in respect of the subdivision work, and

- (c) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the subdivision work.

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

## 9. Section 68 Local Government Act 1993 Approvals

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

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

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

## CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

### 10. Engineering Inspections by Council

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

- (a) Sewer / water main extensions/augmentations.

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

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

**Reason:** *Statutory requirement.*

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

### 11. Subdivision Certificate

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier (in accordance with Section 6.15 of the *Environmental Planning and Assessment Act 1979*) for approval to enable the subdivision plans to be submitted to and registered with NSW Land Registry Services. Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and 3 copies shall be included with the application.

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with

**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**  
**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**



prior to issue of the Subdivision Certificate.

The application for a Subdivision Certificate is to be accompanied by supporting documentation outlining how each condition of consent has been complied with.

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

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

**12. Section 138 Roads Act Final**

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

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

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

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

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

**14. Dedication of Right of Carriageway / Easements**

The creation or obtaining by the Applicant of the following easements and rights of carriageway, at the Applicant's expense prior to the issue of the Subdivision Certificate.

- (a) Stormwater drainage easements over Lot 1 in favour of Lot 2 a minimum of **2** metres wide.
- (b) Right of Carriageway to be created over applicable roads 1 and 2 servicing proposed Lot 2 located within proposed Lot 1 for a minimum of 6 metres wide and variable.

**Reason:** *To protect infrastructure.*

**15. Construction of Right of Carriageway**

Construction of Right of Carriageway with asphaltic concrete surface for a minimum of 6 metre wide and variable shall be completed on applicable roads 1 and 2 within proposed Lot 1 prior to the issue of the Subdivision Certificate.

**Reason:** *To ensure that adequate access is provided.*

**16. Section 88B Instrument - Restriction as to User - Rail Noise**

**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**  
**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**



A Section 88B Restriction as to User under the *Conveyancing Act 1919* shall be placed on the title of each lot, advising owners of the need to comply with the Rail Authorities requirements for the effect of rail noise and vibration when designing a residential accommodation for the lot.

Full details to be submitted for the approval of Council with the application for a Subdivision Certificate.

**Reason:** *To ensure compliance with the rail authority guidelines.*

**17. Provision of Public Lighting**

The applicant shall provide public lighting in accordance with the requirements of Council Development Engineering Specifications and Drawings and relevant Australian Standards for street lighting to:

a) subdivision roads

prior to the issue of the Subdivision Certificate.

**Reason:** *To ensure appropriate street lighting is provided.*

**18. Provision of Reticulated Sewer to Each Lot**

Reticulated sewer service shall be constructed to each allotment in accordance with the approved civil engineering plans prior to the issue of the Subdivision Certificate.

Sewerage mains shall be constructed to serve the development.

**Reason:** *To ensure that the development is serviced.*

**19. Provision of Water Service to each Lot**

Each Lot shall have a dedicated water service connection to Council's infrastructure prior to Subdivision certificate.

Council's application form shall be completed by the Developer and the appropriate fee paid.

**Advice:** *A water meter should be installed prior to construction commencing.*

**Reason:** *To ensure that the development is serviced.*

**INTEGRATED DEVELOPMENT CONDITIONS**

**20. General Terms of Approval - NSW Rural Fire Service**

General Terms of Approval have been granted by the NSW Rural Fire Service for the development pursuant to section 100B of the *Rural Fires Act 1997*. The conditions provided by the NSW Rural Fire Service are provided below:

5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.  
ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent



NSW RURAL FIRE SERVICE

Wingecarribee Shire Council  
PO Box 141  
MOSS VALE NSW 2577

Your reference: 20/0492 (CNR-18473)  
Our reference: DA20191110000920-CL55-1

ATTENTION: Ross Jauncey

Date: Thursday 20 May 2021

Dear Sir/Madam,

**Integrated Development Application**  
s100B - Subdivision - Torrens Title Subdivision  
133 Old Bowral Road Bowral NSW 2576, 2345//DP1110446, 2345//DP1110446

I refer to your correspondence dated 19/02/2021 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the submitted amended information. General Terms of Approval are now re-issued, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions.

**Asset Protection Zones**

**Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.**

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entirety of both proposed lots must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*. When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth-barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;

1

**Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

**Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.



ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent

- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

**Access - Property Access**

**Intent of measures:** to provide safe operational access to structures and water supply for emergency services while residents are seeking to evacuate from an area.

2. Prior to the issue of a subdivision certificate the existing internal road providing access to proposed Lot 2 shall demonstrate compliance with Table 5.3b of *Planning for Bush Fire Protection 2019*. An easement for the purpose of providing legal access shall be created over any part of the existing access road within Lot 1 that provides access to benefit Lot 2.

**Water and Utility Services**

**Intent of measures:** to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

3. The provision of water, electricity and gas must comply with the following in accordance with Table 5.3c of *Planning for Bush Fire Protection 2019*:

- reticulated water is to be provided to the development where available;
- fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;
- hydrants are and not located within any road carriageway;
- reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;
- fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005;
- all above-ground water service pipes are metal, including and up to any taps;
- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are proposed as follows:
  - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 - The storage and handling of LP Gas, the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- connections to and from gas cylinders are metal; polymer-sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

**Landscaping Assessment**

4. Landscaping within the required asset protection zone shall comply with Appendix 4 of '*Planning for Bush Fire Protection 2019*'.

**General Advice - Consent Authority to Note**

- This approval is for the 2 lot subdivision of Lot 2345 DP 1110446 only. Future development application on Lot 2 and/or modification to the approved development on Lot 1 shall be subject to a separate application and address the requirements of *Planning for Bushfire Protection 2019* including but not limited to demonstrating a radiant heat <10kW/sqm for any Special Fire Protection Purpose.



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.4 Staged Concept Development Application 20/0492 including two  
(2) stages with Stage one (1) being a subdivision of the site into  
two (2) allotments and Stage two (2) being a separate future  
development application for a ninety (90) bed nursing home.**



**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**

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- The bush fire assessment report provided with this referral includes assessment details relating to the future development of Lot 2 and future modification to the existing development on Lot 1 that do not form part of this Bush Fire Safety Authority. The bush fire report should not be referenced in Council's determination as an approved document.

This letter is in response to an assessment of the application based on the submitted further information and supersedes our previous general terms of approval dated 16/09/2020.

For any queries regarding this correspondence, please contact Anna Jones on 1300 NSW RFS.

Yours sincerely,

Alan Bawden  
Supervisor Development Assessment & Plan  
Built & Natural Environment



- 5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.
- ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent



## BUSH FIRE SAFETY AUTHORITY

Subdivision - Torrens Title Subdivision  
133 Old Bowral Road Bowral NSW 2576, 2345//DP1110446, 2345//DP1110446  
RFS Reference: DA20191110000920-CL55-1  
Your Reference: 20/0492 (CNR-18473)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority supersedes the previous Bush Fire Safety Authority DA20191110000920-Original-1 issued on 16/09/2020 and confirms that, subject to the attached reissued General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.

**Alan Bawden**

Supervisor Development Assessment & Plan  
Built & Natural Environment

Thursday 20 May 2021

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

- 5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**



**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**

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**CONCURRENCE CONDITIONS**

**21. Concurrence - Water NSW**

Concurrence has been granted by Water NSW for the development pursuant to *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*. The conditions provided by Water NSW are provided below:

- 5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.
- ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent



PO Box 398, Parramatta NSW 2124  
Level 14, 169 Macquarie Street  
Parramatta NSW 2150  
www.waternsw.com.au  
ABN 21 147 934 787

**Water NSW's Concurrence Conditions**  
DA No 20/0492 ; Lot 2345 DP 1110446; 133 Old Bowral Road, Bowral

**General**

1. The lot layout, staging and concept master plan for amended seniors living development (LUA 03/0786.06) and a residential care facility shall be as described in the Statement of Environmental Effects prepared by Hogan Planning (dated October 2019) and shown on the proposed Concept Master Plan and Lot plus Subdivision Plan (Project No. 1916A, Dwg. No. A-0101 and A-0102, Rev A, dated October 2019) prepared by Benson McCormack Architecture. No revisions to lot layout or staging of the subdivision that will have any impact on water quality, shall be permitted without the agreement of Water NSW.

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

**Wastewater Management**

2. The proposed Lot 2 shall be serviced by gravity sewer of sufficient capacity to meet the needs of a 90-bed Residential Care Facility and not be connected to the existing sewage pump station on the proposed Lot 1.

*Reason for Condition 2 - To ensure that all wastewater generated on each lot is disposed of and treated via Council's sewerage system to ensure a sustainable neutral or beneficial effect on water quality over the longer term.*

**Stormwater Management**

3. All stormwater from the proposed Lot 2 shall be connected to the internal stormwater drainage system on the proposed Lot 1 and sufficient easement(s) defined over proposed Lot 1 in favour of Lot 2 for the stormwater drainage prior to the issuance of a Subdivision Certificate for Stage 1.

*Reason for Condition 3 - To ensure that all stormwater generated on each lot is treated prior to leaving the lot or to the same standard outside of the lot so as to ensure a neutral or beneficial effect on water quality.*

**Construction Activities**

4. An Erosion and Sediment Control Plan shall be prepared by a person with knowledge and experience in the preparation of such plans for all works required as part of the Stage 1 of the development. The Plan shall:
  - meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
  - be prepared prior to the issuance of a Construction Certificate and be to the satisfaction of Council, and
  - include controls to prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system.
5. The Erosion and Sediment Control Plan shall be implemented and no works shall commence until effective erosion and sediment controls have been installed. The controls shall be regularly inspected, maintained and retained until works have been completed and ground surface has stabilised or groundcover has re-established.

- 5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.
- ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent



*Reason for Conditions 4 & 5 - To manage adverse environmental and water quality impacts during the construction phase of the development and to minimise the risk of erosion, sedimentation and pollution within or from the site during this construction phase.*

## STAGE 2: CONCEPT DEVELOPMENT APPLICATION CONDITIONS

### 22. Building Heights

Maximum building heights apply to the proposed Aged Care Facility on the site as follows:

- (a) Aged Care Facility – 8 metres.

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

### 23. Off Street Car Parking

The aged Care Facility shall be provided with a minimum of seventy (70) off Street car parking spaces, one (1) ambulance parking space, five (5) bicycle spaces and associated end-of-trip shower facilities and appropriate motor bike parking.

The basement car parking is required to be readily available without security gates allowing free access to any vehicle, even after hours. If parking restrictions are envisaged then at-grade over flow “open air” car parking needs to be provided.

**Reason:** *To ensure that adequate parking is provided to service the facility.*

### 24. Noise Control

The aged Care Facility shall be designed to comply with the Rail Authorities requirements for the effect of rail noise and vibration when designing a residential accommodation for the development.

**Reason:** *To ensure compliance with the rail authority guidelines.*

### 25. Lighting

All external lighting shall:

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**



**ATTACHMENT 1 DA20/0492 - Draft Conditions of Consent**

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

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

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

**END OF CONDITIONS**

## 5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, Lot 15 DP846332, 93-95 Kirkham Road, Bowral

**Report Author:** Senior Development Assessment Planner  
**Authoriser:** Manager Development Assessment

### PURPOSE

The purpose of this report is to present, for the Panel's consideration, application 19/1439.02 to modify development consent 19/1439.01. Council granted development consent 19/1439.01 on 1 August 2019 to develop Lot 15 DP846332, 93-95 Kirkham Road, Moss Vale for the purpose of an information and education facility.

Consultants:	Scott Lee – LEP Planning
Applicant:	Craig Robson.
Land owner:	Mr C.A Robson.
Land zoning:	IN1 General Industrial.
Applicant's estimated cost of development:	\$50,000.
Notification period:	Not applicable.
Number of submissions:	1
Political donations:	None declared.
Reason for referral to Panel:	The application was called up for consideration by the Council, and the Council has previously considered the application at its Ordinary Meetings of 9 December 2020 and 24 February 2021.

### RECOMMENDATION

**THAT** the Interim Independent Advisory Planning Assessment Panel determines application 19/1439.02 to modify development consent 19/1439.01, for development of Lot 15 DP846332, 93-95 Kirkham Road, Bowral for the purpose of an information and education facility, by REFUSAL for the reasons specified in Attachment 1 to the report.

#### 1. Executive summary

Development application 19/1439 proposed development of Lot 15 DP846332, 93-95 Kirkham Road, Bowral for the purpose of an information and education facility. Council determined development application 19/1439 on 27 June 2019 by refusing consent.

On 1 August 2019 Council reviewed and changed its determination of development application 19/1439, granting development consent 19/1439.01. Condition 14 of development consent 19/1439.01 requires payment of water supply and sewerage servicing contributions as a precondition to granting a certificate of compliance for the development.

The subject application 19/1439.02 proposes modification of development consent 19/1439.01 by deletion of condition 14, to effectively waive its requirement to pay developer contributions. At its

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS

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Ordinary Meeting of 9 December 2020, the Council considered a staff report recommending refusal of the modification application, instead resolving to defer the application's determination "until the Acting General Manager has discussions with the applicant..."

The Council considered a further report regarding modification application 19/1439.02 at its Ordinary Meeting of 24 February 2021. The report recommended the Council determine the modification application at its own discretion. Instead, the Council resolved to invite the applicant to withdraw the modification application, and to offer the applicant a donation equivalent to 50% of the developer contribution required by condition 14 of development consent 19/1439.01.

The applicant was invited to withdraw modification application 19/1439.02 but is taken to have notified Council that the application will not be withdrawn.

It is recommended that the Panel determines modification application 19/1439.02 by refusing to modify development consent 19/1439.01, for the same reasons as recommended to the Council's Ordinary Meeting of 9 December 2020.

## 2. Detailed background

Development application 19/1439 was made to Council on 2 April 2019, proposing "use of premises for occasional functions and tours". An extract from the proposed development drawings that accompanied the development application is reproduced in **Figure 1** and **Attachment 2**.

In considering development application 19/1439, Council's assessing officer noted:

*"The Applicant estimates that functions for 100 people will generate a demand for up to 35 car parking spaces."*

*"The proposal would not make a positive improvement to the locality with regard to access."*

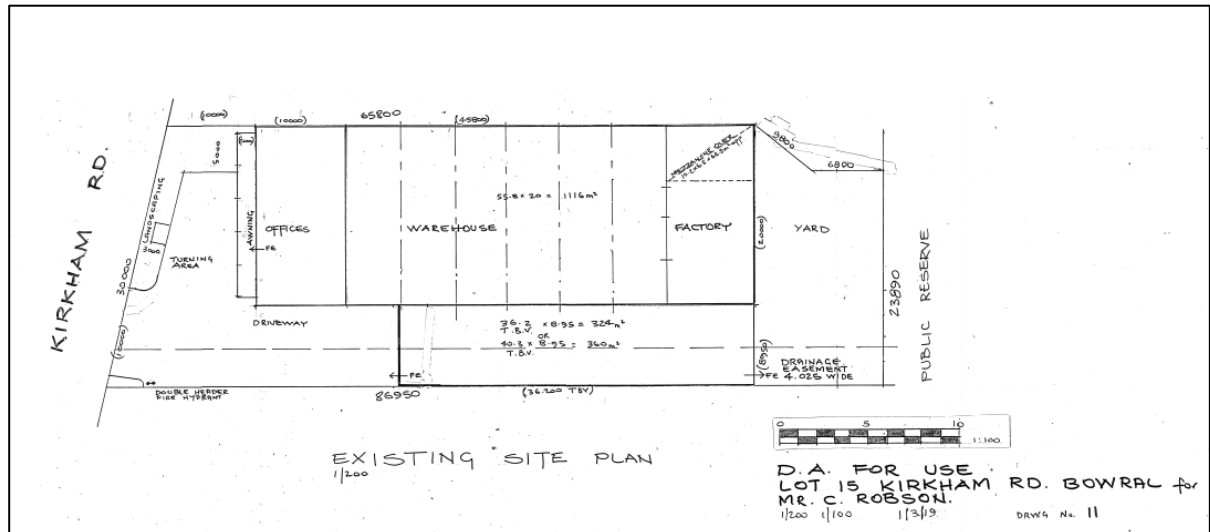
*"The applicant has sought, by way of a car parking study, to show that the street can accommodate all the car parking required. No other arrangements have been put forward. The car parking study does not provide a sound evidence base as when, outside business hours, it may be reasonable to utilise on-street car parking. The proposal fails to comply with the DCP."*

*"The proposal relies on on-street parking to function. Expected to be up to 40 spaces, to accommodate employees and up to 100 guests. Between two and six spaces can be provided on site based on whether a coach will need to access parking and manoeuvring space. The proposal, with its current hours of use, fails to comply with the DCP and would have a serious detrimental impact on traffic flow and the associated economic function of the locality."*

*"The proposal would have a significant impact on the local economy by monopolising on street car parking which is intended to service of the businesses in the locality, both now and into the future."*

*"The proposed development is not a good fit for the locality given it cannot accommodate sufficient car parking to address expected demand."*

*"The development application has been assessed in accordance with the matters for consideration under section 4.15 of the Environmental Planning & Assessment Act 1979, and all relevant environmental planning instruments and Council policies, and is considered to fail to comply with all relevant items. It is recommended that the development application be refused."*



**Figure 1: Extract from proposed development drawings accompanying DA 19/1439**

On 27 June 2019 Council officers determined development application 19/1439 under delegated authority, refusing consent for the nominated reasons below. Council's notice of determination of development application 19/1439 is reproduced in **Attachment 3**.

1. Council requested the applicant provide a car parking and traffic study to support the proposed development. Council is not satisfied that the information furnished provides a sound evidence base which demonstrates that the majority of the proposal's car parking demand can be accommodated on local streets while complying with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Council's Industrial Lands DCP. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest.

(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)

2. The proposal would significantly reduce on street car parking supply to the detriment of the efficient operation of the local road system. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development therefore does not meet the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.

(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)

3. The proposal would generate an on-street car parking demand that would prejudice the efficient and effective operation of surrounding employment generating and commercial activity in the locality, both current and future, to the detriment of the local economy. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development is therefore inconsistent with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.

(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



The applicant subsequently sent an e-mail to Council's Deputy General Manager regarding Council's determination of development application 19/1439. In response, the Deputy General Manager observed, "This is a significant operation of huge tourism potential". Later, the Deputy General Manager advised in an e-mail message to relevant Council officers:

*"Have spoken with [the applicant] about the proposal to be able to condition the usage of the premises in such a way to restrict usage so as not to impact on trading hours of adjoining business as we discussed with parking issues. He was receptive to this proposition..."*

*"[The applicant] will seek direction...about lodging an 8.2A review application...with the suggestion of conditioning the use and hours of the premises as we discussed."*

*"Once lodged I would like the 8.2A review to be determined as quickly as possible ie within a week. In accordance with previous direction I will be the determining officer under my delegations but accept a different officer needs to assess the application other than the initial assessor. I am open to how we can fast track that process to meet a speedy determination."*

Application 19/1439.01 was made to Council on 9 July 2019, seeking review of Council's determination of development application 19/1439 pursuant to Division 8.2 of the *Environmental Planning and Assessment Act 1979*. The review application was assessed by a Council officer other than, but not subordinate to, the officer who assessed the original development application 19/1439. The assessing officer noted:

***"Engineering Referral Response—27 June 2019***

*"The application is considered to be unsatisfactory in relation to engineering matters."*

*"The proposed development is expected to have a significant impact on the local economy by monopolising on street car parking which is intended to service the businesses in the locality both now and into the future."*

*"The site is considered unsuitable for the type, scale and nature development. The development cannot be integrated into the locality without any significant adverse impacts. The site is therefore considered unsuitable for the proposed development as it cannot accommodate sufficient car parking to address expected demand."*

*"The proposed development is not in the public interest."*

*"A Review of the determination has been undertaken under S8.2 of the Environmental Planning and Assessment Act 1979. The proposed development is considered unsatisfactory in terms of the matters for consideration under the Act. As the application was refused by [Council's Group Manager Planning, Development and Regulatory Services] the review must be determined by [Council's Deputy General Manager]."*

*"[The Deputy General Manager] has instructed:*

*"I have spoken with [the original applicant for consent] about the proposal to be able to condition the usage of the premises in such a way to restrict usage so as not to impact on trading hours of adjoining businesses with parking issues."*

*"Once lodged I would like the 8.2 review to be determined as quickly as possible i.e. within a week. In accordance with previous direction I will be determining Officer under my delegations but accept a different officer needs to assess the application other than the initial assessor. I am open to how we can fast track that process to meet a speedy determination."*

*"Therefore as instructed I have prepared this assessment recommending an approval by [Council's Deputy General Manager]."*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Council's Deputy General manager endorsed the assessing officer's assessment report – including the above comments – on 7 August 2019, having already changed Council's determination of development application 19/1439 by granting development consent 19/1439.01.

Council's notice of favourable determination of development application 19/1439.01 is reproduced in **Attachment 4**. Condition 14 of development consent 19/1439.01 specifies:

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

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

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

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

- *Water Supply Development Servicing Plan;*
- *Sewerage Development Servicing Plan; and*

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

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

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

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

<b>CPI Period</b>		<b>Water DSP</b>	<b>Sewer DSP</b>	<b>Stormwater DSP</b>
01/06/2019	–	\$35,170.83	\$34,096.86	\$0
31/10/2019				

*Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) <<http://www.abs.gov.au>>.*

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

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



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

**Compliance Certificate**

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

*Water \$250.00 + Sewer \$250.00 + Stormwater \$0 = \$500.00*

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

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

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

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

Put simply, condition 14 requires payment of water supply and sewerage services contributions, amounting to \$69,267.69 as at 7 August 2019 (and prior to more recent quarterly adjustments), as a precondition to the granting of a compliance certificate to the development under section 306 of the Water Management Act 2000.

**3. Proposed modification**

The subject application seeks modification of development consent 19/1439.01 by deletion of condition 14, i.e. removal of the requirement to pay developer contributions.

Information accompanying the modification application suggests development the subject of development consent 19/1439.01 will not increase demand for public water supply or sewerage infrastructure from the demands generated by the land's past use for industrial and/or warehouse purposes. The accompanying information also quotes Council's previous advice:

*"...the initial contributions were calculated significantly higher than what was ultimately levied on the DA. The initial calculation for a change of use from a warehouse to a function centre came out at 13.48ETs, in accordance with Council's policy. [Council staff] reviewed these calculations, and applied the highest credit possible under Council's Policy, being for 'Industrial, multi-purpose future use unknown' (albeit, the development technically did not warrant that level of credit). This reduced the ET calculation from 13.48ETs to 6.35ETs.*

*"Further...in consultation with [Council's Deputy General Manager], we applied a significant discount to the calculations set out in our policy, to reflect the fact that the facility will not operate on a full time basis (albeit not conditioned that way), and there is no commercial*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



*kitchen proposed. The discounted calculation came out at 3.175ETs, which is significantly lower than what should technically be levied under Council's policy of 13.48ETs".*

The information accompanying the application asserts:

*"The Council has not properly taken into account the number of potential staff that could be employed on the premises if occupied for industrial purposes.*

*"The Council has not properly taken into account the fact that the demand for services from such full time occupation as an industrial premise would greatly exceed the limited time that visitors would be present at the information and education facility that would have an average on site attendance time per person of just 2 hours, significantly reducing the likely demand from these visitors upon the water and sewer services".*

**4. Assessment**

On 9 December 2020 the Council considered a report detailing assessment of the modification application under section 4.55 of the *Environmental Planning and Assessment Act 1979*, which is reproduced in **Attachment 5**. The report recommended the Council determine the application by refusing to modify development consent 19/1439.01 for the following reason:

- 1. The application proposes modification of Council's development consent 19/1439.01 by rescission of condition 14 of the consent. Pursuant to section 306 (2) (a) of the Water Management Act 2000, condition 14 of the consent conveys a requirement, as a precondition to Council (the water supply authority) granting a certificate of compliance under the Water Management Act 2000, for the developer to pay a specified amount to Council by way of a contribution towards the cost of water management works expected to be demanded by the development.*

*In the absence of the developer's payment of any contribution towards the cost of water management works expected to be demanded by the development, the full cost burden of such works will be borne by Council and, in turn, the Wingecarribee Shire community.*

*Given the above, and having regard to sections 4.55 (3) and 4.15 (1) (b) & (e) of the Environmental Planning and Assessment Act 1979:*

- (a) Council considers the proposed modification of development consent 19/1439.01 likely to have significant negative social and economic impacts*
- (b) Council considers the proposed modification of development consent 19/1439.01 contrary to the public interest.*

**[Environmental Planning and Assessment Act 1979, sections 4.55 (3) and 4.15 (1) (b) & (e)]**

Having considered the abovementioned report, the Council resolved:

*THAT application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral be DEFERRED until the Acting General Manager has discussions with the applicant on the amount of community benefit that could be applied in this matter AND THAT a further report be brought back to Council.*

Pursuant to the Council's above resolution of 9 December 2020, Council's Deputy General Manager authored a further report to the Council's Ordinary Meeting of 24 February 2021 regarding the modification application. The report is reproduced in **Attachment 6**. It indicated the Acting General manager and senior Council staff met with the applicant on 4 February 2021. It noted:

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



*“The premises offers a unique experience for residents and visitors to the Shire. Whilst the owner proposes to operate tours and hold functions at the premises, its main purpose is the housing of rare musical machinery and instruments seen in many parts of the world including Australia in public places and in fairgrounds during the late 1800s and into the 1900s. The collection is extension, rare and of significant historical and cultural value. Collections such as this are usually housed in a museum or gallery operated as a not for profit organisation which because of their community value would qualify for to have certain developer contributions waived. Whilst the venue is not operated as a not for profit facility nor is the public able to walk in off the street as one would do in the case of a museum or gallery, it does reflect many of the attributes of such facilities and therefore could be categorised as such.*”

*“Taking into consideration the above comparisons, an option presented to Council is to waive the charges levied under Condition 14 of development consent DA19/1439.01 or offer a donation to cover the charges either in full or in part.*”

*“By way of comparison, the Southern Highlands Regional Gallery which is currently under construction was not levied any Development Servicing Plan levies under its Development Consent based on its ‘not for profit’ status and public benefit. Were the Regional Gallery to be operated as a ‘for profit’ establishment with the operation of tours and occasional functions similar to Fairground Follies, the base levy that would have been imposed would have been \$125,785.70 and with the application of the discount components as applied to the Fairground Follies premises, the DSP levies would have been reduced to \$47,488.38 compared to \$69,267.69 levied on Fairground Follies which had a larger floorspace. The Regional Gallery development does include a small café operation of which the rental income will be used for expenditure in the Regional Gallery. Notwithstanding, because of the commercial nature of the café, that component was levied DSP charges which based on size and capacity was calculated to be \$6,245.73 DSP charges.”*

The report went on to refer to section 356 (2) of the Local Government Act 1993:

**356 Can a council financially assist others?**

- (2) *A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days’ public notice of the council’s proposal to pass the necessary resolution has been given.*

The report suggested:

*“As the operation is not registered as a not for profit it is technically classified as a for profit business. Whilst such operations are not excluded from being provided financial assistance, Council must provide the necessary public notification as required. Therefore, should Council resolve to waive the contributions or offer a donation in full or in part, public notice of the decision must be given for a period of at least 28 days before the resolved financial assistance is awarded.”*

The report recommended that the Council exercise its discretion to determine the modification application – either favourably or unfavourably – noting the following specified options:

*“The options available to Council are:*

**Option 1**

*“THAT Modification Application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove condition 14 be **REFUSED** for the reasons specified in Attachment 1 to 9 December 2020 report...”*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**“Option 2**

- “1. THAT Modification Application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove Condition 14 be **APPROVED**.
- “2. THAT Council give public notice under Section 356 of the Local Government Act 1993 for 28 days of the council’s proposal to pass the resolution to waive the Development Services Plan charges under Condition 14 of development consent 19/1439.01.
- “3. THAT Council determine the source of the funds to offset the waiver of the Development Services Plan levies as part of the March Quarterly budget review.

**“Option 3**

- “1. THAT the applicant be invited to formally withdraw Modification Application 19/1439.02 to modify development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove Condition 14 **AND THAT** Council offer the proponent a donation of a specified amount to offset the development contribution charges as levied under Development Consent 19/1439.01.
- “2. THAT Council give public notice under Section 356 of the Local Government Act 1993 for 28 days of the council’s proposal to pass the resolution to waive the Development Services Plan charges under Condition 14 of development consent 19/1439.01.
- “3. THAT Council determine the source of the funds for the donation to the proponent for the specified amount to cover the Development Services Plan levies as part of the March Quarterly budget review.”

The Council resolved:

1. THAT the Applicant be invited to formally withdraw Modification Application 19/1439.02 to modify development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove Condition 14 **AND THAT** Council, in recognition of the significant historical value of the collection and public benefit to the Shire, offer the Applicant a donation of \$35,082.17 being equivalent to 50% as at 24 February 2021 of the development contribution charges as levied under Development Consent 19/1439.01.
2. THAT Council give public notice under Section 356 of the Local Government Act 1993 for 28 days of the Council’s proposal to pass the resolution to offer a donation for the amount of \$35,082.17 to the Applicant towards the Development Services Plan charges as per Condition 14 of development consent 19/1439.01.
3. THAT Council determine the source of the funds for the donation to the Applicant as part of the March Quarterly budget review.

Pursuant to item 1 of the Council’s above resolution, on 20 April 2021 (following the 28-day public notice period referred to in item 2 of the resolution), Council gave the applicant a written invitation to withdraw the application, which was forwarded to the applicant by post and e-mail. The application had not been withdrawn as of 18 May 2021, so Council gave the applicant a second written invitation to withdraw the application, again forwarding the invitation to the applicant by post and e-mail. The second invitation advised the applicant:

*“If you intend to request withdrawal of the application, please provide your written request for withdrawal no later than **4:30pm on 8 June 2021**. If the application is not withdrawn by the end*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



*of the period specified, Council will take you to have notified it that the application will not be withdrawn and will deal with the application accordingly."*

Apart from an acknowledgement by e-mail on 22 April 2021, there is no apparent record of the applicant responding to either of Council's invitations to withdraw the application.

**5. Conclusion**

The modification application's assessment in accordance with section 4.55 of the *Environmental Planning and Assessment Act 1979* is discussed in detail in **Attachment 5**. Despite the development's acknowledged value to local tourism, the proposed modification of development consent 19/1439.01 is considered likely to cause significant negative social and economic impacts and is considered directly contrary to the public interest. It is therefore recommended that the Panel determines application 19/1439.02 by refusing to modify development consent 19/1439.01 as proposed, for the same reason as recommended to the Council's Ordinary Meeting of 9 December 2020 (reproduced in **Attachment 1**).

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**ATTACHMENTS**

1. Recommended reasons for refusal
2. Extract from DA 19/1439 proposed development drawings
3. DA 19/1439 notice of determination
4. DA 19-1439.01 notice of determination
5. Report to Council Ordinary Meeting of 9 December 2020
6. Report to Council Ordinary Meeting of 24 February 2021



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**19/1439.02 DRAFT REASONS FOR REFUSAL**

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1. The application proposes modification of Council's development consent 19/1439.01 by rescission of condition 14 of the consent. Pursuant to section 306 (2) (a) of the Water Management Act 2000, condition 14 of the consent conveys a requirement, as a precondition to Council (the water supply authority) granting a certificate of compliance under the Water Management Act 2000, for the developer to pay a specified amount to Council by way of a contribution towards the cost of water management works expected to be demanded by the development.

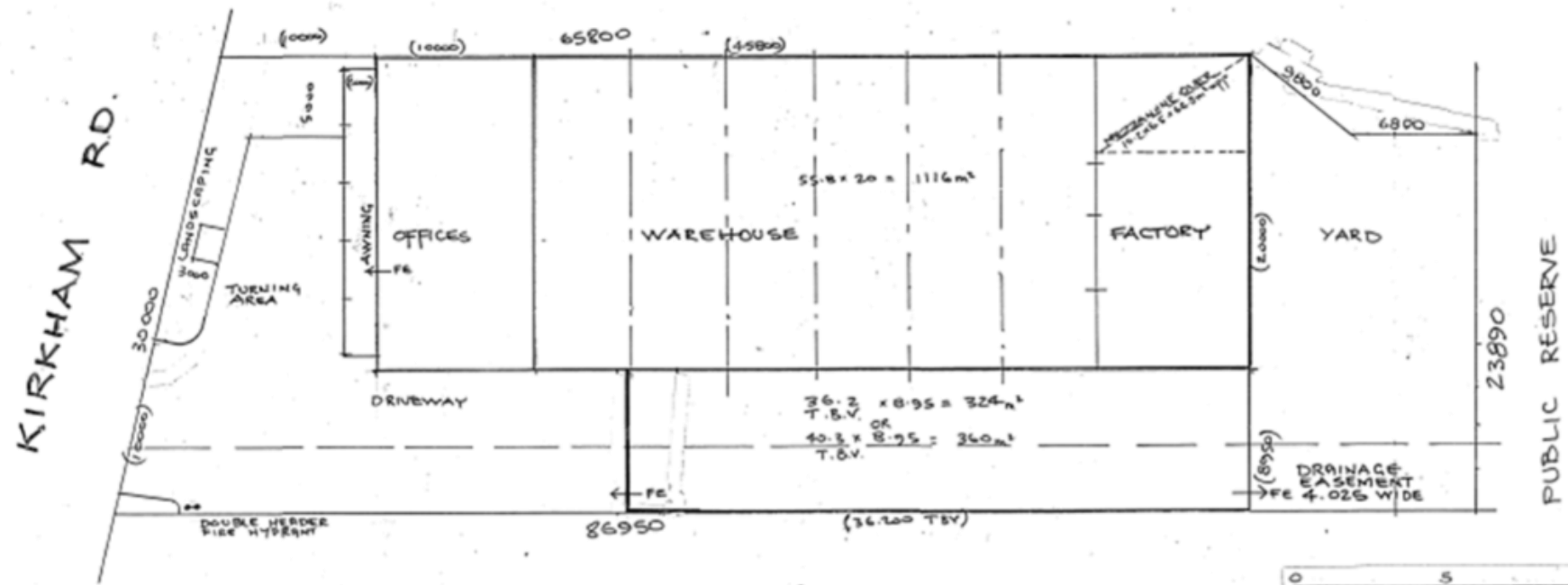
In the absence of the developer's payment of any contribution towards the cost of water management works expected to be demanded by the development, the full cost burden of such works will be borne by Council and, in turn, the Wingecarribee Shire community.

Given the above, and having regard to sections 4.55 (3) and 4.15 (1) (b) & (e) of the Environmental Planning and Assessment Act 1979:

- (a) Council considers the proposed modification of development consent 19/1439.01 likely to have significant negative social and economic impacts
- (b) Council considers the proposed modification of development consent 19/1439.01 contrary to the public interest.

***[Environmental Planning and Assessment Act 1979, sections 4.55 (3) and 4.15 (1) (b) & (e)]***





EXISTING SITE PLAN  
1/200



D.A. FOR USE  
LOT 15 KIRKHAM RD. BOWRAL for  
MR. C. ROBSON.  
1/200 1/100 1/3/19 DRWG No. 11

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 3 DA 19/1439 notice of determination



27 June 2019

Lee Environmental Planning  
33 HOLLY ROAD  
BURRADOO NSW 2576

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**  
Pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*

APPLICATION NO:	19/1439
APPLICANT:	Lee Environmental Planning
OWNER:	CA ROBSON
PROPERTY DESCRIPTION:	Lot 15 DP 846332
PROPERTY ADDRESS:	93-95 KIRKHAM ROAD BOWRAL NSW 2576
PROPOSED DEVELOPMENT:	Warehouse, function centre and museum
DETERMINATION:	Determined way of REFUSAL.

**Rights of Appeal**

Pursuant to Section 8.7 of the *Environmental Planning and Assessment Act 1979*, an applicant for development consent who is dissatisfied with the determination of the application by Council authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 6 months after the date the decision appealed against is notified.

**Review of Determination**

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.

  
\_\_\_\_\_  
Nicholas Wilton  
Group Manager  
Planning, Development and Regulatory Services

27 June 2019  
Date of Determination



19/1439, Lot 15 DP 846332

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#### SCHEDULE 1 REASONS FOR REFUSAL

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1. Council requested the applicant provide a car parking and traffic study to support the proposed development. Council is not satisfied that the information furnished provides a sound evidence base which demonstrates that the majority of the proposal's car parking demand can be accommodated on local streets while complying with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Council's Industrial Lands DCP. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest.

(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)

2. The proposal would significantly reduce on street car parking supply to the detriment of the efficient operation of the local road system. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development therefore does not meet the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.

(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)

3. The proposal would generate an on-street car parking demand that would prejudice the efficient and effective operation of surrounding employment generating and commercial activity in the locality, both current and future, to the detriment of the local economy. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development is therefore inconsistent with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.

(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 4 DA 19-1439.01 notice of determination



*Wingecarribee – A Coal Mining Free Shire*



01 August 2019

CRAIG A ROBSON  
C/- LEE ENVIRONMENTAL PLANNING  
33 HOLLY ROAD  
BURRADOO NSW 2576

**NOTICE OF DETERMINATION OF A REVIEW OF DETERMINATION**  
Pursuant to section 8.2 of the *Environmental Planning and Assessment Act 1979*

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<b>APPLICATION NO:</b>	19/1439.01
<b>DA NO:</b>	19/1439 .
<b>DA DETERMINATION DATE:</b>	28 June 2019
<b>APPLICANT:</b>	Lee Environmental Planning
<b>OWNER:</b>	CA ROBSON
<b>PROPERTY DESCRIPTION:</b>	Lot 15 DP 846332
<b>PROPERTY ADDRESS:</b>	93-95 KIRKHAM ROAD BOWRAL NSW 2576
<b>PROPOSED DEVELOPMENT:</b>	Information and Education Facility
<b>DETERMINATION:</b>	Determined by granting of CONSENT.
<b>CONSENT TO OPERATE FROM:</b>	01 August 2019
<b>CONSENT TO LAPSE ON:</b>	01 August 2024

**Note:** The conditions of consent are listed in Schedule 1.

**Rights of Appeal**

If you are dissatisfied with the determination of Council (including determination of a review under section 8.2 of the *Environmental Planning and Assessment Act 1979*, you may appeal to the New South Wales Land and Environment Court within 6 months after the date on which you receive the notice of determination or review, if your application was lodged after 27<sup>th</sup> February 2011. Otherwise the appeal period is 12 months after the date in which you receive this notice.

  
Mark Pepping  
Deputy General Manager  
Corporate Strategy and Development Services

01 August 2019  
Date of Determination.

Civic Centre, Elizabeth St, Moss Vale, NSW 2577. PO Box 141, Moss Vale. t. (02) 4868 0888 f. (02) 4869 1203  
e. mail@wsc.nsw.gov.au ABN 49 546 344 354

www.wsc.nsw.gov.au

**Working with you**



19/1439.01

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**SCHEDULE 1 Conditions of Development Consent**

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**ADMINISTRATION CONDITIONS**

**1. Development Description**

Development consent has been granted in accordance with this notice of determination for the purposes of Warehouse, function centre and museum.

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

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

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Existing Site Plan	Drwg No 11	Not referenced	01/03/2019
Site Plan	Drwg No 12A	Not referenced	20/03/2019
Bus 2 Turning Area	Drwg No 14	Not referenced	15/05/2019
Statement of Environmental Effects	Fairground Follies	Lee Environmental Planning	March 2019
Access Report	17041	Vesna Giles	Undated
BCA Capability Report	17041	Vesna Giles	March 2019

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

**3. Inconsistency between documents**

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

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

**4. Erection of Signs**

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

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



19/1439.01

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

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

#### 5. Compliance with Disability Discrimination Act 1992

This approval does not protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability Discrimination Act 1992*, and the applicant/owner is therefore advised to investigate their liability under this Act.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 -As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

#### 6. Asbestos Removal - Renovation of Buildings

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

- a) All asbestos cement sheeting must be removed by contractors with an appropriate licence issued by WorkCover and who are familiar with asbestos removal prior to the commencement of:
  - (i) Recladding or brick veneering works where the existing walls to be covered are currently clad with asbestos cement; OR
  - (ii) Construction work where new work abuts existing asbestos cement sheeting and/or where parts of the existing building clad with asbestos cement sheeting are to be altered or demolished.

Removal must be carried out strictly in accordance with WorkCover's 'Your Guide to Working with Asbestos'.

- b) All waste containing asbestos, including asbestos cement flat and corrugated sheets must be disposed of at waste facility licensed by the NSW Environment Protection Authority (EPA).

**Note:** *The person responsible for disposing of asbestos waste is to telephone the EPA on 131 555 or Council's Customer Service Department on (02) 48680888 to determine the location of a tip licensed to receive asbestos. Within fourteen (14) days of the completion of demolition works, the applicant must lodge with Council, all original weighbridge receipts issued by the receiving tip as evidence of proper disposal.*

- c) Within fourteen (14) days of completion of renovation or recladding or brick veneering works where asbestos cement sheeting was removed, the applicant shall submit to Council:
  - (i) an asbestos clearance certificate prepared by a WorkCover licensed asbestos assessor; and.



19/1439.01

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- (ii) a signed statement verifying that work and the recycling of materials was undertaken in accordance with the Waste Management Plan approved with this consent. In reviewing such documentation Council will require the provision of actual weighbridge receipts for the recycling/disposal of all materials.

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

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

##### 7. Application for a Construction Certificate (Building Works)

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

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.
- (b) If Council or a private accredited certifier issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.
- (e) Disabled access provisions to common and public areas in accordance with AS1428 Design for Access and Mobility and the Premises Code.
- (f) If an alternative solution to the "deemed to satisfy" provisions of National Construction Code is proposed, the following details must be lodged:
- Performance requirements that the alternative solution intends to meet.
  - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
  - A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body.

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

**Note:** *Construction work may only commence upon the issue of a Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.*



19/1439.01

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

#### 8. Appointment of Principal Certifying Authority

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

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

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

#### 9. Access for People with Disabilities

Access for people with disabilities shall be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the *Disability Discrimination Act 1992*.

Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*





19/1439.01

**Reason:** *To inform of relevant access requirements for persons with a disability.*

#### 10. Disabled Toilets

Plans and details of the disabled toilet/s shall comply with the relevant Australian Standards, the Building Code of Australia, and with regard to the *Disability Discrimination Act 1992*.

Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992. The plans must be approved by the Accredited Certifier prior to issue of a Construction Certificate.*

**Reason:** *To inform of relevant access requirements for persons with a disability.*

#### 11. Long Service Levy Payments

The payment of a long service levy as required under part 5 of the *Building and Construction Industry Long Service Payments Act 1986*, in respect to this building work, and in this regard, proof that the levy has been paid, is to be submitted to Council prior to the issue of a Construction Certificate. Council acts as an agent for the Long Services Payment Corporation and the levy may be paid at Councils Office.

**Reason:** *Statutory requirement*

#### 12. Section 68 Local Government Act 1993 Approvals

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

- Water
- Sewerage

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

#### 13. Installation Requirements

All sewer and water plumbing and drainage work shall be carried out by a licensed plumber. A Permit in accordance with the NSW Code of Practice Plumbing and Drainage is to be obtained from Council (as the local Water Supply Authority) for the work to be carried out prior to the issue of the Construction Certificate.

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

#### 14. Water Management Act - Certificate of Compliance

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

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

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, Lot 15 DP846332, 93-95 Kirkham Road, Bowral  
ATTACHMENT 4 DA 19-1439.01 notice of determination



19/1439.01

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

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

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

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

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

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

CPI Period	Water DSP	Sewer DSP	Stormwater DSP
01/06/2019 – 31/10/2019	\$35,170.83	\$34,096.86	\$0
Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, <a href="http://www.abs.gov.au">www.abs.gov.au</a> < <a href="http://www.abs.gov.au">http://www.abs.gov.au</a> >.			

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

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

**Compliance Certificate**

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

Water \$250.00 + Sewer \$250.00 + Stormwater \$0 = \$500.00

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

In the case of subdivision, the title plan of subdivision will not be certified and released by Council until the *Water Management Act 2000* charges have been paid and/or secured and



19/1439.01

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

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

#### 15. Carpark Design - Site Servicing

The off street car parking shall be designed to accommodate the turning movements for a 12.5m coach/bus. The car park design shall incorporate the following:

- (a) The site shall accommodate the turning movements of 12.5m service vehicle.
- (b) Service vehicles shall manoeuvre into and out of the site in a forward direction.
- (c) The front overhang, and swept path made by the service vehicle shall not obstruct car park traffic or encroach onto parking spaces.
- (d) The vehicle swept path shall be reflected on the engineering design plans.
- (e) Loading and unloading of service vehicles shall be undertaken onsite with no intrusion onto the road system.
- (f) The footpath crossing shall be splayed from the property boundary to the kerb line to accommodate the swept path made by the service vehicle.

**Reason:** *To ensure that the car parking area is constructed to Council requirements*

#### 16. Off Street Parking Provision - General

Two (2) off-street car parking spaces suitably marked in accordance with the approved plans (unless elsewhere specified) shall be provided for a 12.5M Coach/Bus.

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

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

#### 17. Waste Management Plan

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

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

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



19/1439.01

**18. Fire Safety Upgrade - Change of building use (cl. 93 of the Regulation) - minor or no building works for example internal fit-out or cosmetic changes**

Council considers pursuant to clause 93 of the *Environmental Planning and Assessment Regulation 2000* requires the existing building to be upgraded to comply with the National Construction Code (NCC) in the following respects:

- (A)
- (i) Structural provisions - Part B1;
  - (ii) Fire resistance and stability - Part C1;
  - (iii) Protection of openings - Part C3;
  - (iv) Provision for escape (access and egress) - Part D1;
  - (v) Construction of exits - Part D2;
  - (vi) Access for people with disabilities - Part D3;  
**Note:** Compliance with the access provisions of Part D3 may necessitate design modifications prior to a construction certificate being issued.
  - (vii) Fire fighting equipment - Part E1;
  - (viii) Smoke hazard management - Part E2;
  - (ix) Emergency lighting, exit signs and warning systems - Part E4;
  - (x) Sanitary and other facilities - Part F2;  
**Note:** For restaurants, cafes, bars and the like, sanitary facilities (including accessible facilities for persons with disabilities complying with AS 1428.1) must be provided for customers where more than 20 seats are provided, including seating for any future footway dining facilities.
  - (xi) Light and ventilation - Part F4;
  - (xii) Energy Efficiency - Air-conditioning and ventilation systems - Part J5;
  - (xii) Energy Efficiency - Artificial lighting and power - Part J6;
  - (xiii) Energy Efficiency - Hot water supply - Part J7;
- (B) If compliance with the deemed-to-satisfy provisions of the BCA and the conditions listed above cannot be achieved, an alternative building solution in accordance with Part A0 of the BCA must be prepared by a suitably qualified and accredited person and submitted to the Certifying Authority illustrating how the relevant performance requirements of the BCA are to be satisfied. Prior to a Construction Certificate being issued the Certifying Authority must ensure that the building complies with the Building Code of Australia.

If applicable, the Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation shall detail building upgrade works required by for the approved use.



19/1439.01

The Certifying Authority shall be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the provisions of the BCA in force at the date of lodgement of the Construction Certificate application.

**Note:** *The Certifying Authority issuing the Construction Certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this condition specifies compliance with performance requirements of the National Construction Code (NCC), the Certifying Authority (subject to their level of accreditation) may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed to satisfy) provisions of the National Construction Code (NCC), these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 8.2 or modified under section 4.55 of the Environmental Planning and Assessment Regulation 1979.*

**Reason:** *To ensure compliance with statutory requirements.*

#### 19. Disabled Persons Access and Facilities

- (a) Detailed drawings shall be provided to Council for the fit out to the disabled person's facilities with the construction certificate application. Details shall be in accordance with AS 1428.1 Design for Access and Mobility and the Premises Code.
- (b) No work is to commence on disabled persons access routes until details of the routes are submitted to and approved by the Principal Certifying Authority. The details shall include a site plan clearly identifying the proposed route for access by disabled persons. It is noted that access from the allotment boundary, carpark and any other building on the allotment which access for people with disabilities is required, to the entrance of the subject building. Access shall be in accordance with AS 1428.1 Design for Access and Mobility.
- (c) Access for people with disabilities shall be provided to and within buildings as set out in Table D3.2 of the National Construction Code (NCC) by means of a continuous path of travel in accordance with AS1428.1:
  - (i) from the allotment boundary at the main points of entry; and
  - (ii) from any car parking space on the allotment (whether within or outside the building) provided in accordance with D3.5; and
  - (iii) from any adjacent and associated accessible building on the allotment; and
  - (iv) through the principal public entrance.
- (d) Sanitary facilities must be provided in accordance with Table F2.4 of the National Construction Code (NCC) for:
  - (i) every Class 3, 5, 6, 7, 8 and 9 building that is required by the deemed to satisfy provisions of Part D3 to be accessible to people with disabilities and may be calculated as part of the number of facilities required by Table F2.3; and
  - (ii) a Class 10a building to which the public will have access and which contains sanitary facilities, showers or hand basins etc.
  - (iii) The construction and layout of all facilities provided in accordance with Table F2.4 must comply with AS1428.1.
  - (iv) A unisex facility must be located so that it can be entered without crossing an area reserved for one sex only.
- (e) Identification of Accessible Facilities, Services and Features



19/1439.01

In every building required to be accessible, clear and legible Braille and tactile signage complying with Specification D3.6 and incorporating the international symbol of access or deafness or other symbol as appropriate in accordance with AS1428.1 must identify all items as specified in Clause D3.6 of the National Construction Code (NCC).

(f) Hearing Augmentation

- (a) Where an inbuilt amplification system, other than one used for emergency warning purposes only, is installed, a hearing augmentation system complying with AS1428.1 must be provided in the locations specified in Clause D3.7 of the National Construction Code (NCC).
- (b) In a Class 9b building, any screen or scoreboard capable of displaying public announcements must be capable of supplementing any public address system, other than a public address system used for emergency warning purposes only.

(g) Tactile Indicators

- (a) For a building required to be accessible, tactile ground surface indicators must be provided to warn people with vision impairment that they are approaching any area as specified in Clause D3.8 of the National Construction Code (NCC).
- (b) Tactile ground surface indicators required by (a) must be Type B indicators in accordance with AS1428.4.
- (c) A hostel for the aged, nursing home for the aged or a residential aged care building, need not comply with (a) (i) of D3.8 of the National Construction Code (NCC) if handrails incorporating a raised dome button in accordance with AS1428.1 are provided to warn people with impaired vision that they are approaching a stairway or ramp.

(h) Braille Signage

In every building required to be accessible, clear and legible Braille and tactile signage complying with Specification D3.6 of the National Construction Code (NCC) and incorporating the international symbol of access or deafness or other symbol as appropriate, in accordance with AS 1428.1 must identify:

- (a) each
  - (i) sanitary facility; and
  - (ii) accessible space with a hearing augmentation system; and
- (b) where an entrance or lift is not accessible, identify each accessible -
  - (i) entrance; and
  - (ii) lift or bank of lifts; and

the path of travel from the principal public entrance to these features and facilities where their location is not apparent to the building occupant (see National Construction code (NCC) D3.6 Braille and Tactile Signs).

(i) Disabled Sanitary Facility

The sanitary facility shall be constructed in accordance with the requirements of AS1428.1 *Design for Access and Mobility General Requirements for Access*.



19/1439.01

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(j) **Advisory Note**

- (i) The Applicants/property owner should note that the Commonwealth *Disability Discrimination Act 1992* provides opportunity for public complaint potentially leading to legal action if access to premises by people with disabilities or their carers is precluded. This may require action to provide or improve access in addition to the minimum requirements of the National Construction Code (NCC), particularly if such work would not cause "unjustifiable hardship" for the proprietors or owners.
- (ii) The Human Rights and Equal Opportunity Commission can provide further information on this issue).

**Reason:** *Statutory requirement.*

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

**20. Notice of Commencement**

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

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;
- (b) Details of the appointment of a Principal Certifying Authority (either Wingecarribee Council or another Accredited Certifier)
- (c) Details of the name, address and licence details of the Principal Contractor.

**Reason:** *Statutory requirement.*

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

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

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

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

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

**22. Hot Water Installations**

All new hot water installations shall deliver hot water at the outlet of all sanitary fixtures used primarily for personal hygiene purposes, at a temperature not exceeding:

- (a) 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- (b) 50°C in all other classes or buildings.



19/1439.01

- (c) Where hot water is being delivered to an outlet of a sanitary fixture, used primarily for personal hygiene purposes on commercial premises or by the public, at a temperature exceeding 50°C, such fixture must have a sign, using symbol and red writing on a white background in appropriate languages, displayed adjacent to the sanitary fixture which states, "Warning - this fixture may deliver hot water which will scald".

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

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

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

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

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

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

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

**24. Occupation Certificate**

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

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

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

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

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





19/1439.01

#### 25. Vehicle Manoeuvring

All vehicles shall enter and leave the site in a forward direction to ensure traffic/pedestrian safety. A sign worded "No Reversing Across Footpath" is to be provided adjacent to the vehicular entry and clearly visible to users of the car park to inform drivers of this requirement prior to the issue of the Occupation Certificate. Sign to be to the satisfaction of the Group Manager Planning, Development and Regulatory Services and of approximate dimensions 0.3m x 0.6m.

**Reason:** *To comply with Engineering Standards.*

#### 26. Final Fire Safety Certificate

A final fire safety certificate pursuant to clause 172 of the *Environmental Planning & Assessment Regulations 2000* shall be submitted, to the principal certifying authority upon completion of the specified work in the Schedule of Fire Safety Measures. As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:

- (a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner; and
- (b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

**Reason:** *To ensure the safety of the building.*

#### 27. Food Shop Requirements

Prior to the issue of the Occupation Certificate, the premise shall be set up and operated in accordance with the *Food Act*, the *Food Regulations* and the *Food Safety Standards*. The premise shall be fitted out in accordance with the Australian Standard AS4674 - 2004.

**Reason:** *Statutory requirement.*

#### 28. Food Premises - Final Inspection

Prior to the issue of an Occupation Certificate, the food premises shall be inspected by Council's Environmental Health Officer to determine compliance with applicable food legislation.

**Reason:** *To ensure registration of the food premises.*

#### 29. Food Shop Registration Requirements

Occupation of the premises shall not occur until:

- a) a registration form has been submitted to Council for the food premises; and
- b) notification to the NSW Food Authority under Food Safety Standard 3.2.2 Division 2 Section 4 Notification.

This requirement is to be met by notifying through the following website:  
[www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) <<http://www.foodnotify.nsw.gov.au>>

Evidence of compliance of the above shall be submitted to Council prior to the issue of the Occupation Certificate and commencement of business.



19/1439.01

**Reason:** Registration and notification to relevant authorities.

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

**30. Use not to Commence**

The approved use shall not commence until the proposed development has been completed in accordance with this consent and issue of any other Council approvals which may be required.

**Reason:** To ensure that the use of the site is lawful.

**31. Hours of operation**

**Functions**

The approved hours of operation for functions are:

DAY	HOURS
Monday to Friday	5.30pm to 12.30 midnight
Saturday	1.00pm to 12.30 midnight
Sunday	9.00am to 11.00pm
Public Holidays	9.00am to 12.30 midnight

**Tours.**

1. Tours are to be by appointment only with visitors to only arrive by bus/coach;
2. No more than two (2) tours (two buses/coaches) are to be on site at any time;
3. The premises shall not be available for individual 'drop in' visitors;
4. The conduct of tours and functions shall not overlap.

The approved hours of operation for tours are:

DAY	HOURS
Monday to Friday	9.00am to 12.30 midnight
Saturday	9.00am to 12.30 midnight
Sunday	9.00am to 11.00pm
Public Holidays	9.00am to 12.30 midnight

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

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

**32. Annual Fire Safety Statement**

Each year, the owner of a building to which an essential fire safety measure is applicable shall cause the Council to be given an annual fire safety statement for the building. Such a fire safety statement:

- (a) shall deal with each essential fire safety measure in the building premises; and
- (b) shall be given within twelve months after the last such statement was given, or it no



19/1439.01

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such statement was given, within twelve months after a final fire safety certificate was first issued for the building.

As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:-

- (a) shall cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades; and
- (b) shall cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be permanently displayed in the building.

**Reason:** To ensure compliance with fire safety requirements.

### 33. Food Premises - General

The construction and operation of the food premises shall comply with all applicable legislation/regulation and standards, including:

- The Food Act 2003
- Food Regulation 2004
- Food Standards Australia and New Zealand - Food Standards Code 2001
- Relevant Australian Standards for Design, Construction and Fit out of Food Premises
- Mechanical ventilation - Australian Standard 1668.2-2002

**Reason:** Compliance legislation and standards.

END CONDITIONS



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



VISITOR MATTERS

**CORPORATE STRATEGY AND DEVELOPMENT SERVICES**

**9.1 Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and  
Function Centre, Lot 15 DP846332, 93-95 Kirkham Road,  
Bowral**

Reference:	19/1439.02
Report Author:	Senior Development Assessment Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
Applicant:	Mr C A Robson
Owner:	Mr C A Robson
Link to Community Strategic Plan:	Ensure tourism balances the economic benefits with impact on environment and community

**PURPOSE**

The purpose of this report is to present modification application 19/1439.02 for the Council's consideration and recommends determination by REFUSAL for the reasons specified in Attachment 1.

**VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.

**RECOMMENDATION**

**THAT** application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral be REFUSED for the reasons specified in Attachment 1 to the report.

**REPORT**

***Subject Site and Locality***

Lot 15 DP 846332, 93-95 Kirkham Road Bowral is a developed 2384m<sup>2</sup> industrial lot on the northwestern side of Kirkham Road in Bowral, around 500m southwest of the town centre. Its location and layout are illustrated in Attachment 2.

**Background**

**Original development application 19/1439**

The original development application 19/1439 proposed "use of premises for occasional functions & tours", comprising two components:



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



*"Tours – arranged for groups by appointment only, arriving by coach (bus). These could occur on any day of the week, but most likely on weekdays...there would never be more than two coaches on site at any one time – approximately 100 people. Tours are not available for individual walk up visitors. Tours could operate throughout the day...it is possible that up to 8 tours each day (9am-5pm) would be accommodated..."*

*"Functions – obviously functions would be by appointment only, catering for up to 100 guests at any one function. There would be no tours conducted when a function is booked...the majority of guests to a function would arrive in private vehicles..."*

Council's assessing officer assessed development application 19/1439 in accordance with section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, and recommended refusal of consent. Council determined the application by refusing consent on 27 June 2019, specifying the following reasons:

- 1. Council requested the applicant provide a car parking and traffic study to support the proposed development. Council is not satisfied that the information furnished provides a sound evidence base which demonstrates that the majority of the proposal's car parking demand can be accommodated on local streets while complying with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Council's Industrial Lands DCP. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest.  
(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)*
- 2. The proposal would significantly reduce on street car parking supply to the detriment of the efficient operation of the local road system. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development therefore does not meet the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.  
(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)*
- 3. The proposal would generate an on-street car parking demand that would prejudice the efficient and effective operation of surrounding employment generating and commercial activity in the locality, both current and future, to the detriment of the local economy. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development is therefore inconsistent with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.  
(Section 4.15 (1) (a) (b) (c) (d) (e) of the Environmental Planning and Assessment Act 1979)*



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



**Review of determination of development application 19/1439**

The applicant made application 19/1439.01 on 9 July 2019 seeking review of Council's determination by refusal of development application 19/1439, which resulted in consent being granted for the proposed development, subject to conditions, on 1 August 2019.

**Details of Proposed Modification**

The subject modification application seeks deletion of condition 14 of Council's development consent 19/1439.01, i.e. removal of the requirement to pay developer contributions.

Condition 14 of Council's development consent 19/1439.01 specifies:

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

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

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

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

- *Water Supply Development Servicing Plan;*
- *Sewerage Development Servicing Plan; and*

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

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

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

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



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



CPI Period	Water DSP	Sewer DSP	Stormwater DSP
01/06/2019 – 31/10/2019	\$35,170.83	\$34,096.86	\$0

Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) <<http://www.abs.gov.au>>.

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

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

**Compliance Certificate**

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

Water \$250.00 + Sewer \$250.00 + Stormwater \$0 = \$500.00

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

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

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

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

At the time of consent, developer contributions payable to Council under condition 14 amounted to \$69,767.69.

Information accompanying the modification application suggests development the subject of development consent 19/1439.01 will not increase demand for public water supply or sewerage infrastructure from the demands generated by the land's past use for industrial



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



and/or warehouse purposes. The accompanying information also quotes Council's previous advice:

*"...the initial contributions were calculated significantly higher than what was ultimately levied on the DA. The initial calculation for a change of use from a warehouse to a function centre came out at 13.48ETs, in accordance with Council's policy. [Council staff] reviewed these calculations, and applied the highest credit possible under Council's Policy, being for 'Industrial, multi-purpose future use unknown' (albeit, the development technically did not warrant that level of credit). This reduced the ET calculation from 13.48ETs to 6.35ETs.*

*"Further...in consultation with [Council's Deputy General Manager], we applied a significant discount to the calculations set out in our policy, to reflect the fact that the facility will not operate on a full time basis (albeit not conditioned that way), and there is no commercial kitchen proposed. The discounted calculation came out at 3.175ETs, which is significantly lower than what should technically be levied under Council's policy of 13.48ETs".*

The information accompanying the application asserts:

*"The Council has not properly taken into account the number of potential staff that could be employed on the premises if occupied for industrial purposes.*

*"The Council has not properly taken into account the fact that the demand for services from such full time occupation as an industrial premise would greatly exceed the limited time that visitors would be present at the information and education facility that would have an average on site attendance time per person of just 2 hours, significantly reducing the likely demand from these visitors upon the water and sewer services".*

**STATUTORY PROVISIONS**

***Environmental Planning and Assessment Act 1979, section 4.55—Modification of consents—generally***

Section 4.55 (1A) and (3) of the Act specifies as follows:

**4.55 Modification of consents—generally**

- (1A) *Modifications involving minimal environmental impact* A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—
- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
  - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (c) *it has notified the application in accordance with—*
    - (i) *the regulations, if the regulations so require, or*





AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



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

Subsections (1), (2) and (5) do not apply to such a modification.

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

The proposed modification of development consent 19/1439.01 is considered satisfactory with respect to section 4.55 (1A) (a) and (b). With respect to section 4.55 (1A) (c) and (d), neither the *Environmental Planning and Assessment Regulation 2000* nor any development control plan specifies any requirement to notify the modification application. Despite this, Council received one submission regarding the proposed development, discussed later.

With respect to section 4.55 (3) of the Act, the proposed modification has been considered with regard to the matters referred to in section 4.15 (1) that are relevant to the development the subject of the modification application, as discussed below.

**Environmental Planning and Assessment Act 1979, section 4.15—Evaluation**

Section 4.15 (1) of the Act specifies as follows:

**4.15 Evaluation**

- (1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—
  - (a) the provisions of—
    - (i) any environmental planning instrument, and
    - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
    - (iii) any development control plan, and
    - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
    - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



- (v) *(Repealed)*  
*that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

The modification application is not considered to carry any implications with respect to the provisions of applicable environmental planning instruments that are relevant to the proposed development, including:

- State Environmental Planning Policy No 55—Remediation of Land
  - Clause 2—Object of this Policy
  - Clause 7—Contamination and remediation to be considered in determining development application
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
  - Clause 3—Aims of Policy
  - Clause 9—Recommended practices and performance standards of Water NSW
  - Clause 10—Development consent cannot be granted unless neutral or beneficial effect on water quality
- *Wingecarribee Local Environmental Plan 2010 (the LEP)*
  - Clause 1.2—Aims of Plan
  - Clause 1.4—Definitions
  - Clause 2.3—Zone objectives and Land Use Table
  - Clause 7.5—Natural resources sensitivity—water
  - Clause 7.9—Flood planning.

***Development Control Plans***

Industrial Land Development Control Plan (the DCP)

Whilst a range of the DCP's provisions are relevant to the development the subject of the proposed modified consent, only section B.9, which provides for Council's collection of developer contributions for industrial development, is relevant to the proposed modification itself.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



Section 64 of the *Local Government Act 1993* specifies as follows:

**64 Construction of works for developers**

*Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.*

Within Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000*, sections 305 and 306 (2) (a) and (3) specify as follows:

**305 Application for certificate of compliance**

- (1) *A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.*
- (2) *An application must be accompanied by such information as the regulations may prescribe.*

**306 Authority may impose certain requirements before granting certificate of compliance**

- (2) *As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following—*
  - (a) *to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,*
  - (3) *In calculating an amount for the purposes of subsection (2) (a)—*
    - (a) *the value of existing water management works and the estimated cost of projected water management works may be taken into consideration, and*
    - (b) *the amount of any government subsidy or similar payment is not to be deducted from the relevant value or cost of the water management works, and*
    - (c) *consideration is to be given to any guidelines issued for the time being for the purposes of this section by the Minister.*

Council is the water supply authority over the land. Condition 14 of development consent 19/1439.01 requires application to be made to Council for a certificate of compliance for the proposed development pursuant to section 305 (1) of the *Water Management Act 2000*. It also, pursuant to section 306 (2) (a) of that Act, gives written notice to the applicant that as a precondition to granting a certificate of compliance for the proposed development, Council requires the applicant to pay a specified contribution to Council towards the cost of the water management works specified by condition 14.

In assessment of application 19/1439.01 for review of Council's determination of development application 19/1439, Council calculated the specified contribution amount in accordance with section 306 (3) of the *Water Management Act 2000* and Council's Water Supply and Sewerage Development Servicing Plans. The initially calculated contribution amounts were considerably higher than ultimately specified by condition 14 of the consent.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



However, Council staff revised these calculations, applying the highest credit practicable under Council's Policy to the land and existing development thereon. This considerably reduced the proposed development's projected water supply and sewerage services infrastructure demands and, in turn, the applicable contributions under section 306 of the *Water Management Act 2000*. Revision of the proposed development's projected water supply and sewerage services demands reflected an understanding that the proposed development will not operate on a full-time basis and does not include a commercial kitchen. In all, this revision reduced the proposed development's allowed demands on water supply and sewerage services infrastructure by some 76%. Notwithstanding, due to the nature of the proposed development and potential for large gatherings of people for several hours at a time, the activity would generate more waste water for treatment and water usage than would be expected from a warehousing or light industrial usage involving a small number of employees.

Development consent 19/1439.01 could perhaps be modified to still require application to be made to Council for a certificate of compliance under section 305 of the *Water Management Act 2000*, but no longer specify the requirement to pay a specified contribution amount to Council towards the cost of specified water management works. However, this would not remove the lawful ability of Council, as the water supply authority, to separately notify the applicant in writing of a requirement to pay a specified contribution amount as a precondition to the granting of a certificate of compliance. Indeed, in such circumstances, Council's calculation of a contribution amount payable may not necessarily include the concessions made by the revisions discussed above; therefore, the contributions amount payable may be significantly and legitimately greater.

Given the above, it is considered appropriate to refuse to modify development consent 19/1439.01 by deleting condition 14 as proposed, and retain condition 14 without change.

**Section 4.15 Evaluation**

(1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

As discussed earlier, no provisions of any environmental planning instrument applicable to the development the subject of the proposed modified consent (including the LEP) are relevant to the proposed modification of development consent 19/1439.01.

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

Not applicable.

(iii) any development control plan, and

As discussed earlier, section B.9 of the DCP regarding development contributions applies in the consideration of the modification application. No other DCP provisions are relevant to the proposed modification itself.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



(iiiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

Not applicable.

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

No provisions of Division 8 of Part 6 of the Regulation are relevant to the proposed modification.

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

Not applicable.

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

The proposed modification is considered likely to have significant negative economic and social impacts. Removal of the requirement of condition 14 to pay developer contributions to Council will result in the entire cost burden of providing and/or augmenting water supply and sewerage infrastructure demanded by the development being borne by Council and, in turn, the Wingecarribee community.

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

The land's suitability for the development the subject of the proposed modified consent is not considered relevant to the proposed modification itself.

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

Refer to the Consultation section of this report.

(e) *the public interest.*

A main basis for Council's granting of consent for the proposed development is the proposed development's potential to attract tourism income. Whilst this is acknowledged, the proposed waiving of contributions required by condition 14 of development consent 19/1439.02 is considered directly contrary to the public interest.

Developer contribution funds received pursuant to section 306 of the *Water Management Act 2000* go towards the cost of Council's provision and augmentation of water supply, sewerage and/or stormwater drainage infrastructure, the demands for and on which are increased by ongoing development. If such contributions were not levied and received, the expense of providing and augmenting water supply, sewerage and stormwater drainage infrastructure demanded by development would be entirely borne by Council and, in turn, the wider Wingecarribee community. It is therefore considered in the public interest to retain the requirement of condition 14 of development consent 19/1439.01 for payment of contributions, without change.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT DEPUTY GENERAL MANAGER CORPORATE STRATEGY  
AND DEVELOPMENT SERVICES



**CONSULTATION**

***Pre-lodgement Meeting***

No formal pre-lodgement meeting was held with Council officers regarding the proposed development prior to development application 19/1439, review application 19/1439.01 or the subject modification application 19/1439.02.

***External Referrals***

There is no requirement or need to have referred the modification application externally to Council.

***Internal Referrals***

The modification application was referred to Council's Coordinator Strategic Land Use Planning, who confirmed applicable developer contributions were correctly calculated in assessment of application 19/1439.01 to review Council's determination of development application 19/1439, and subsequently revised and reduced by some 74% before being specified by condition 14 of development consent 19/1439.01.

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

The modification application is not required by the *Environmental Planning and Assessment Regulation 2000*, any development control plan, nor Council's Community Participation Plan to have been notified or advertised. Council nonetheless received one submission in support of the proposed development and modification of consent.

**SUSTAINABILITY ASSESSMENT**

• ***Environment***

There are no environmental impacts in relation to this report.

• ***Social***

The proposed removal of the requirement of condition 14 of development consent 19/1439.01 to pay developer contributions to Council is expected to shift the entire cost burden of providing and/or augmenting water supply and sewerage infrastructure demanded by the development to Council and, in turn, the Wingecarribee community. The proposed modification is therefore considered likely to have significant negative social impact.

• ***Broader Economic Implications***

It is acknowledged that the development the subject of the proposed modified consent may be expected to make a significant economic contribution through tourist income. However, the proposed removal of the requirement of condition 14 of development consent 19/1439.01 to pay developer contributions to Council is expected to shift the entire cost burden of providing and/or augmenting water supply and sewerage infrastructure demanded by the development to Council and, in turn, the Wingecarribee community. Additionally, it may be presumed that local tourism income generated by the proposed development will not ultimately be put towards the cost of provision and/or augmentation of water supply and sewerage services infrastructure demanded by the proposed development. Finally, if Council removes the requirement of condition 14 of development consent 19/1439.01 to pay developer contributions on the basis of overriding financial benefit from tourism income, it may be taken to imply that all tourism and other business income generating developments



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 09 December 2020

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



in the Wingecarribee Shire should be given similar contributions concessions, further reducing funds available for Council's adequate provision of water supply, sewerage and stormwater drainage services infrastructure in response to ongoing development demands.

• **Culture**

There are no cultural issues in relation to this report.

• **Governance**

The application has been considered in accordance with the relevant matters specified by section 4.55 of the *Environmental Planning and Assessment Act 1979* and any other relevant matters.

**RELATIONSHIP TO CORPORATE PLANS**

Operational Plan 2020/21: OP167 Assess and certify applications related to development.

**COUNCIL BUDGET IMPLICATIONS**

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

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

**RELATED COUNCIL POLICY**

An assessment of the proposed modification of development consent 19/1439.01 has been made with regard to the matters specified by section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**OPTIONS**

The options available to Council are:



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 09 December 2020

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



**Option 1**

Council refuses to modify development consent 19/1439.01 as proposed, for the reasons specified in Attachment 1 to the report.

**Option 2**

Council modifies development consent 19/1439.01 by removal of condition 14.

Option 1 is the recommended option to this report.

**CONCLUSION**

Application 19/1439.02, for modification of development consent 19/1439.01 by deletion of condition 14 of the consent, has been considered in accordance with the relevant provisions of section 4.55 of the *Environmental Planning and Assessment Act 1979*. The proposed modification of development consent 19/1439.01 is considered likely to cause significant negative social and economic impacts, and is considered directly contrary to the public interest. It is therefore recommended that Council refuse to modify development consent 19/1439.01 as proposed.

**ATTACHMENTS**

1. 19/1439.02 Draft reasons for refusal
2. 19/1439.02 Locality Plan and Aerial Image



**5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 5 Report to Council Ordinary Meeting of 9 December 2020**



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 9 December 2020

**9.1 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 1 19/1439.02 Draft reasons for refusal**



**19/1439.02 DRAFT REASONS FOR REFUSAL**

1. The application proposes modification of Council's development consent 19/1439.01 by rescission of condition 14 of the consent. Pursuant to section 306 (2) (a) of the Water Management Act 2000, condition 14 of the consent conveys a requirement, as a precondition to Council (the water supply authority) granting a certificate of compliance under the Water Management Act 2000, for the developer to pay a specified amount to Council by way of a contribution towards the cost of water management works expected to be demanded by the development.

In the absence of the developer's payment of any contribution towards the cost of water management works expected to be demanded by the development, the full cost burden of such works will be borne by Council and, in turn, the Wingecarribee Shire community.

Given the above, and having regard to sections 4.55 (3) and 4.15 (1) (b) & (e) of the Environmental Planning and Assessment Act 1979:

- (a) Council considers the proposed modification of development consent 19/1439.01 likely to have significant negative social and economic impacts
- (b) Council considers the proposed modification of development consent 19/1439.01 contrary to the public interest.

***[Environmental Planning and Assessment Act 1979, sections 4.55 (3) and 4.15 (1) (b) & (e)]***

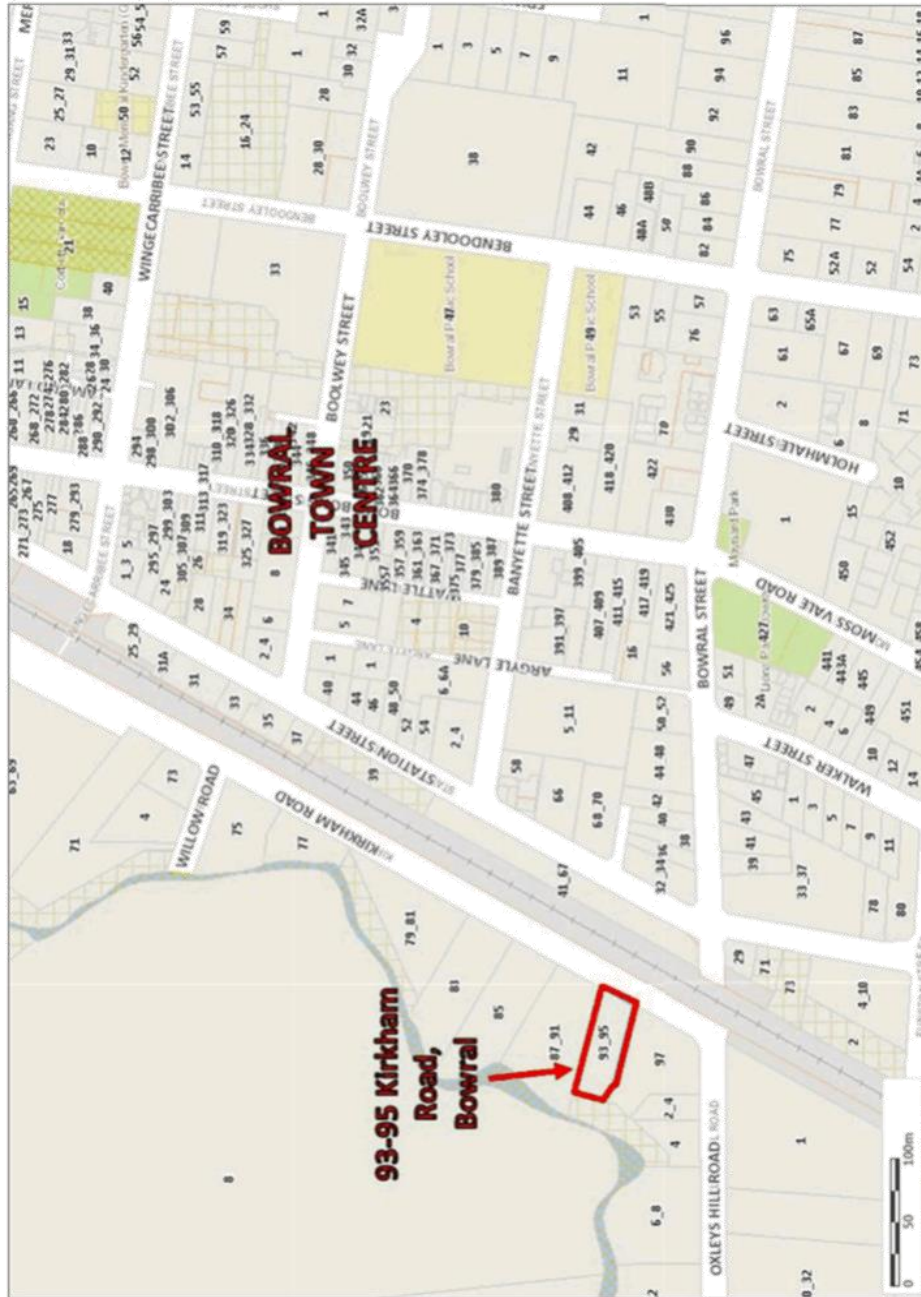
5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, Lot 15 DP846332, 93-95 Kirkham Road, Bowral  
 ATTACHMENT 5 Report to Council Ordinary Meeting of 9 December 2020



Wednesday 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
 9.1 Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, Lot 15 DP846332, 93-95 Kirkham Road, Bowral  
 ATTACHMENT 2 19/1439.02 Locality Plan and Aerial Image



**5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 5 Report to Council Ordinary Meeting of 9 December 2020**



Wednesday 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
9.1 Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, Lot 15 DP846332, 93-95 Kirkham Road, Bowral  
ATTACHMENT 2 19/1439.02 Locality Plan and Aerial Image



Page | 17



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES



**9.3 Modification Application 19/1439.02 to Modify  
Development Consent 19/1439.01 - Information and  
Education Facility and Function Centre, 93-95 Kirkham  
Road, Bowral**

Reference:	19/1439.02
Report Author:	Deputy General Manager Corporate, Strategy and Development Services
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
Applicant:	Mr C A Robson
Owner:	Mr C A Robson
Link to Community Strategic Plan:	Ensure tourism balances the economic benefits with impact on environment and community

**PURPOSE**

The purpose of this report is to re-present Modification Application 19/1439.02 for consideration which seeks Council's approval to waive the Developer Charges under Council's Development Services Plan which were levied against the development. The report provides options for Council to consider so as to determine the Application.

**VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.

**RECOMMENDATION**

**THAT** Modification Application 19/1439.02 to modify development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral by waiving the Developer Charges in Condition 14 be determined by Council.

**REPORT**

**Subject Site and Locality**

Lot 15 DP 846332, 93-95 Kirkham Road Bowral is a developed 2384m<sup>2</sup> industrial lot on the northwestern side of Kirkham Road in Bowral, around 500m southwest of the town centre. Its location and layout are illustrated in **Attachment 2**.

**Background**

The matter was considered in a report to Council on 9 December 2020. For all the background information associated with the application, the 9 December 2020 Council Report can be found in **Attachment 3**.

In considering the matter, Council resolved;

*THAT application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No*



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES



*93-95 Kirkham Road, Bowral be DEFERRED until the Acting General Manager has discussions with the applicant on the amount of community benefit that could be applied in this matter AND THAT a further report be brought back to Council.*

The Acting General Manager and Senior Staff met with the applicant on 4 February 2021 at the premises.

**Details of the Proposed Modification**

The applicant made application 19/1439.01 on 9 July 2019 seeking review of Council's determination by refusal of development application 19/1439, which resulted in consent being granted for the proposed development, subject to conditions, on 1 August 2019.

The subject modification application seeks deletion of condition 14 of Council's development consent 19/1439.01, i.e. removal of the requirement to pay developer contributions.

Condition 14 of Council's development consent 19/1439.01 specifies:

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

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

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

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

- *Water Supply Development Servicing Plan;*
- *Sewerage Development Servicing Plan; and*

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

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

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

*The Water and Sewerage Development Servicing Plans (DSP's) were adopted by Council and came into effect on 15 September 2017. The Stormwater DSP*



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES



was adopted on 9 November 2010 and came into effect on 8 December 2010.  
The current charges under these Plans are listed as follows:

CPI Period	Water DSP	Sewer DSP	Stormwater DSP
01/06/2019	– \$35,170.83	\$34,096.86	\$0
31/10/2019			

Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) <<http://www.abs.gov.au>>.

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

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

**Compliance Certificate**

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

Water \$250.00 + Sewer \$250.00 + Stormwater \$0 = \$500.00

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

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

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

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

As outlined in the previous report to Council on 9 December 2020 in **Attachment 3**, Council staff reviewed the final levied amounts following additional supporting information provided by the applicant against the Development Service Plan which resulted in the revised amount as conditioned.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES



The premises offers a unique experience for residents and visitors to the Shire. Whilst the owner proposes to operate tours and hold functions at the premises, its main purpose is the housing of rare musical machinery and instruments seen in many parts of the world including Australia in public places and in fairgrounds during the late 1800s and into the 1900s. The collection is extension, rare and of significant historical and cultural value. Collections such as this are usually housed in a museum or gallery operated as a not for profit organisation which because of their community value would qualify for to have certain developer contributions waived. Whilst the venue is not operated as a not for profit facility nor is the public able to walk in off the street as one would do in the case of a museum or gallery, it does reflect many of the attributes of such facilities and therefore could be categorised as such.

Taking into consideration the above comparisons, an option presented to Council is to waive the charges levied under Condition 14 of development consent DA19/1439.01 or offer a donation to cover the charges either in full or in part.

By way of comparison, the Southern Highlands Regional Gallery which is currently under construction was not levied any Development Servicing Plan levies under its Development Consent based on its 'not for profit' status and public benefit. Were the Regional Gallery to be operated as a 'for profit' establishment with the operation of tours and occasional functions similar to Fairground Follies, the base levy that would have been imposed would have been \$125,785.70 and with the application of the discount components as applied to the Fairground Follies premises, the DSP levies would have been reduced to \$47,488.38 compared to \$69,267.69 levied on Fairground Follies which had a larger floorspace. The Regional Gallery development does include a small café operation of which the rental income will be used for expenditure in the Regional Gallery. Notwithstanding, because of the commercial nature of the café, that component was levied DSP charges which based on size and capacity was calculated to be \$6,245.73 DSP charges.

The NSW Local Government Act 1993 provides Councils with an option of providing financial assistance under section 356 which reads as follows:

**356 Can a council financially assist others?**

- (1) *A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.*
- (2) *A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.*
- (3) *However, public notice is not required if—*
  - (a) *the financial assistance is part of a specific program, and*
  - (b) *the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
  - (c) *the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
  - (d) *the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.*



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES



- (4) *Public notice is also not required if the financial assistance is part of a program of graffiti removal work.*

The relevant part of the section for Council consideration is subsection (2). As the operation is not registered as a not for profit it is technically classified as a for profit business. Whilst such operations are not excluded from being provided financial assistance, Council must provide the necessary public notification as required. Therefore, should Council resolve to waive the contributions or offer a donation in full or in part, public notice of the decision must be given for a period of at least 28 days before the resolved financial assistance is awarded.

**SUSTAINABILITY ASSESSMENT**

• **Environment**

There are no environmental impacts in relation to this report.

• **Social**

There are no social issues in relation to this report.

• **Broader Economic Implications**

It is acknowledged that the development the subject of the proposed modified consent may be expected to make a significant economic contribution through its tourism opportunities to the Shire. Whilst the operation offers tours and functions within the premises involving up to 100 people, the main intent of the premises is the housing and display of significant historical musical and fairground artefacts from around the world. This significant purpose distinguishes the premises from other function centres.

• **Culture**

The collection of large rare musical street organs and historical carousel rides from across the world makes this a site of significant cultural value.

• **Governance**

The application has been considered in accordance with the relevant matters specified by section 4.55 of the *Environmental Planning and Assessment Act 1979* and any other relevant matters.

**COUNCIL BUDGET IMPLICATIONS**

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

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;





AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES



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

**RELATED COUNCIL POLICY**

An assessment of the proposed modification of development consent 19/1439.01 has been made with regard to the matters specified by section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**OPTIONS**

The options available to Council are:

**Option 1**

THAT Modification Application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove condition 14 be **REFUSED** for the reasons specified in Attachment 1 to 9 December 2020 report in **Attachment 3**.

**Option 2**

1. THAT Modification Application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove Condition 14 be **APPROVED**.
2. THAT Council give public notice under Section 356 of the Local Government Act 1993 for 28 days of the council's proposal to pass the resolution to waive the Development Services Plan charges under Condition 14 of development consent 19/1439.01.
3. THAT Council determine the source of the funds to offset the waiver of the Development Services Plan levies as part of the March Quarterly budget review.

**Option 3**

1. THAT the applicant be invited to formally withdraw Modification Application 19/1439.02 to modify development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral to remove Condition 14 **AND THAT** Council offer the proponent a donation of a specified amount to offset the development contribution charges as levied under Development Consent 19/1439.01.
2. THAT Council give public notice under Section 356 of the Local Government Act 1993 for 28 days of the council's proposal to pass the resolution to waive the Development Services Plan charges under Condition 14 of development consent 19/1439.01.



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 February 2021

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



3. THAT Council determine the source of the funds for the donation to the proponent for the specified amount to cover the Development Services Plan levies as part of the March Quarterly budget review.

**CONCLUSION**

The Fairground Follies establishment is without doubt a unique and significant tourist facility operating within the Shire. Notwithstanding, Council has a plethora of Planning Policies in place that are considered in the assessment of all proposed developments in the Shire. In certain circumstances, such Policies have mechanisms to grant variations to development standards and reductions in levies such as developer contributions. When such variations and reductions are exhausted within the delegations of staff, the matter must be determined by Council.

This report offers Council options to make a contribution to the applicant to offset the Developer Contribution amount in part or in full based on the public benefit attributed to the establishment.

**ATTACHMENTS**

1. Draft Reasons for Refusal
2. Location Plan
3. Council Report 9 December 2020

**5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021**



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 February 2021

**9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 1 Draft Reasons for Refusal**



**19/1439.02 DRAFT REASONS FOR REFUSAL**

1. The application proposes modification of Council's development consent 19/1439.01 by rescission of condition 14 of the consent. Pursuant to section 306 (2) (a) of the Water Management Act 2000, condition 14 of the consent conveys a requirement, as a precondition to Council (the water supply authority) granting a certificate of compliance under the Water Management Act 2000, for the developer to pay a specified amount to Council by way of a contribution towards the cost of water management works expected to be demanded by the development.

In the absence of the developer's payment of any contribution towards the cost of water management works expected to be demanded by the development, the full cost burden of such works will be borne by Council and, in turn, the Wingecarribee Shire community.

Given the above, and having regard to sections 4.55 (3) and 4.15 (1) (b) & (e) of the Environmental Planning and Assessment Act 1979:

- (a) Council considers the proposed modification of development consent 19/1439.01 likely to have significant negative social and economic impacts
- (b) Council considers the proposed modification of development consent 19/1439.01 contrary to the public interest.

***[Environmental Planning and Assessment Act 1979, sections 4.55 (3) and 4.15 (1) (b) & (e)]***



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, 93-95 Kirkham Road, Bowral  
ATTACHMENT 2 Location Plan





AGENDA FOR THE ORDINARY MEETING OF COUNCIL

9.3 Modification Application 19/1439.02 to Modify Development Consent 19/1439.01 - Information and Education Facility and Function Centre, 93-95 Kirkham Road, Bowral  
ATTACHMENT 2 Location Plan

Wednesday 24 February 2021



5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral

ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
Wednesday 09 December 2020  
REPORT MANAGER DEVELOPMENT ASSESSMENT



9.1 Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and  
Function Centre, Lot 15 DP846332, 93-95 Kirkham Road,  
Bowral

Reference: 19/1439.02  
Report Author: Senior Development Assessment Planner  
Authoriser: Group Manager Planning, Development and Regulatory  
Services  
Applicant: Mr C A Robson  
Owner: Mr C A Robson  
Link to Community  
Strategic Plan: Ensure tourism balances the economic benefits with impact  
on environment and community

**PURPOSE**

The purpose of this report is to present modification application 19/1439.02 for the Council's consideration and recommends determination by REFUSAL for the reasons specified in Attachment 1.

**VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.

**RECOMMENDATION**

**THAT** application 19/1439.02 for modification of development consent 19/1439.01 for an information and education facility and function centre at Lot 15 DP 846332, No 93-95 Kirkham Road, Bowral be REFUSED for the reasons specified in Attachment 1 to the report.

**REPORT**

**Subject Site and Locality**

Lot 15 DP 846332, 93-95 Kirkham Road Bowral is a developed 2384m<sup>2</sup> industrial lot on the northwestern side of Kirkham Road in Bowral, around 500m southwest of the town centre. Its location and layout are illustrated in Attachment 2.

**Background**

**Original development application 19/1439**

The original development application 19/1439 proposed "use of premises for occasional functions & tours", comprising two components:

*"Tours – arranged for groups by appointment only, arriving by coach (bus).  
These could occur on any day of the week, but most likely on weekdays...there*

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral

ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT MANAGER DEVELOPMENT ASSESSMENT



*would never be more than two coaches on site at any one time – approximately 100 people. Tours are not available for individual walk up visitors. Tours could operate throughout the day...it is possible that up to 8 tours each day (9am-5pm) would be accommodated...*

*"Functions – obviously functions would be by appointment only, catering for up to 100 guests at any one function. There would be no tours conducted when a function is booked...the majority of guests to a function would arrive in private vehicles..."*

Council's assessing officer assessed development application 19/1439 in accordance with section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, and recommended refusal of consent. Council determined the application by refusing consent on 27 June 2019, specifying the following reasons:

1. Council requested the applicant provide a car parking and traffic study to support the proposed development. Council is not satisfied that the information furnished provides a sound evidence base which demonstrates that the majority of the proposal's car parking demand can be accommodated on local streets while complying with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Council's Industrial Lands DCP. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest.  
(Section 4.15 (1) (a) (b) (c) (d) (e) of the *Environmental Planning and Assessment Act 1979*)
2. The proposal would significantly reduce on street car parking supply to the detriment of the efficient operation of the local road system. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development therefore does not meet the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.  
(Section 4.15 (1) (a) (b) (c) (d) (e) of the *Environmental Planning and Assessment Act 1979*)
3. The proposal would generate an on-street car parking demand that would prejudice the efficient and effective operation of surrounding employment generating and commercial activity in the locality, both current and future, to the detriment of the local economy. The use of on street car parking to accommodate the majority of the proposal's car parking demand is not considered to be in the public interest. The development is therefore inconsistent with the objectives of the IN1 'General Industrial' zone of Wingecarribee Local Environmental Plan 2010 and Section B.5 of the Industrial Lands Development Control Plan.  
(Section 4.15 (1) (a) (b) (c) (d) (e) of the *Environmental Planning and Assessment Act 1979*)

**Review of determination of development application 19/1439**

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral

ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT MANAGER DEVELOPMENT ASSESSMENT



The applicant made application 19/1439.01 on 9 July 2019 seeking review of Council's determination by refusal of development application 19/1439, which resulted in consent being granted for the proposed development, subject to conditions, on 1 August 2019.

**Details of Proposed Modification**

The subject modification application seeks deletion of condition 14 of Council's development consent 19/1439.01, i.e. removal of the requirement to pay developer contributions.

Condition 14 of Council's development consent 19/1439.01 specifies:

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

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

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

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

- *Water Supply Development Servicing Plan;*
- *Sewerage Development Servicing Plan; and*

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

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

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

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

CPI Period	Water DSP	Sewer DSP	Stormwater DSP
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5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
Wednesday 09 December 2020  
REPORT MANAGER DEVELOPMENT ASSESSMENT



CPI Period	Water DSP	Sewer DSP	Stormwater DSP
01/06/2019 31/10/2019	– \$35,170.83	\$34,096.86	\$0
<p><i>Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, <a href="http://www.abs.gov.au">www.abs.gov.au</a> &lt;<a href="http://www.abs.gov.au">http://www.abs.gov.au</a>&gt;.</i></p>			

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

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

**Compliance Certificate**

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

Water \$250.00 + Sewer \$250.00 + Stormwater \$0 = \$500.00

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

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

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

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

At the time of consent, developer contributions payable to Council under condition 14 amounted to \$69,767.69.

Information accompanying the modification application suggests development the subject of development consent 19/1439.01 will not increase demand for public water supply or sewerage infrastructure from the demands generated by the land's past use for industrial

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT MANAGER DEVELOPMENT ASSESSMENT



and/or warehouse purposes. The accompanying information also quotes Council's previous advice:

*"...the initial contributions were calculated significantly higher than what was ultimately levied on the DA. The initial calculation for a change of use from a warehouse to a function centre came out at 13.48ETs, in accordance with Council's policy. [Council staff] reviewed these calculations, and applied the highest credit possible under Council's Policy, being for 'Industrial, multi-purpose future use unknown' (albeit, the development technically did not warrant that level of credit). This reduced the ET calculation from 13.48ETs to 6.35ETs.*

*"Further...in consultation with [Council's Deputy General Manager], we applied a significant discount to the calculations set out in our policy, to reflect the fact that the facility will not operate on a full time basis (albeit not conditioned that way), and there is no commercial kitchen proposed. The discounted calculation came out at 3.175ETs, which is significantly lower than what should technically be levied under Council's policy of 13.48ETs".*

The information accompanying the application asserts:

*"The Council has not properly taken into account the number of potential staff that could be employed on the premises if occupied for industrial purposes.*

*"The Council has not properly taken into account the fact that the demand for services from such full time occupation as an industrial premise would greatly exceed the limited time that visitors would be present at the information and education facility that would have an average on site attendance time per person of just 2 hours, significantly reducing the likely demand from these visitors upon the water and sewer services".*

**STATUTORY PROVISIONS**

***Environmental Planning and Assessment Act 1979, section 4.55—Modification of consents—generally***

Section 4.55 (1A) and (3) of the Act specifies as follows:

**4.55 Modification of consents—generally**

- (1A) *Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*
- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
  - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (c) *it has notified the application in accordance with—*
    - (i) *the regulations, if the regulations so require, or*

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
Wednesday 09 December 2020  
REPORT MANAGER DEVELOPMENT ASSESSMENT



- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
  - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.
- Subsections (1), (2) and (5) do not apply to such a modification.
- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The proposed modification of development consent 19/1439.01 is considered satisfactory with respect to section 4.55 (1A) (a) and (b). With respect to section 4.55 (1A) (c) and (d), neither the *Environmental Planning and Assessment Regulation 2000* nor any development control plan specifies any requirement to notify the modification application. Despite this, Council received one submission regarding the proposed development, discussed later.

With respect to section 4.55 (3) of the Act, the proposed modification has been considered with regard to the matters referred to in section 4.15 (1) that are relevant to the development the subject of the modification application, as discussed below.

***Environmental Planning and Assessment Act 1979, section 4.15—Evaluation***

Section 4.15 (1) of the Act specifies as follows:

**4.15 Evaluation**

- (1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—
  - (a) the provisions of—
    - (i) any environmental planning instrument, and
    - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
    - (iii) any development control plan, and
    - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
Wednesday 09 December 2020  
REPORT MANAGER DEVELOPMENT ASSESSMENT



- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (v) *(Repealed)*  
*that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

The modification application is not considered to carry any implications with respect to the provisions of applicable environmental planning instruments that are relevant to the proposed development, including:

- State Environmental Planning Policy No 55—Remediation of Land
  - Clause 2—Object of this Policy
  - Clause 7—Contamination and remediation to be considered in determining development application
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
  - Clause 3—Aims of Policy
  - Clause 9—Recommended practices and performance standards of Water NSW
  - Clause 10—Development consent cannot be granted unless neutral or beneficial effect on water quality
- *Wingecarribee Local Environmental Plan 2010 (the LEP)*
  - Clause 1.2—Aims of Plan
  - Clause 1.4—Definitions
  - Clause 2.3—Zone objectives and Land Use Table
  - Clause 7.5—Natural resources sensitivity—water
  - Clause 7.9—Flood planning.

**Development Control Plans**

Industrial Land Development Control Plan (the DCP)

Whilst a range of the DCP's provisions are relevant to the development the subject of the proposed modified consent, only section B.9, which provides for Council's collection of developer contributions for industrial development, is relevant to the proposed modification itself.

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
Wednesday 09 December 2020  
REPORT MANAGER DEVELOPMENT ASSESSMENT



Section 64 of the *Local Government Act 1993* specifies as follows:

**64 Construction of works for developers**

*Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.*

Within Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000*, sections 305 and 306 (2) (a) and (3) specify as follows:

**305 Application for certificate of compliance**

- (1) A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.
- (2) An application must be accompanied by such information as the regulations may prescribe.

**306 Authority may impose certain requirements before granting certificate of compliance**

- (2) As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following—
  - (a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,
- (3) In calculating an amount for the purposes of subsection (2) (a)—
  - (a) the value of existing water management works and the estimated cost of projected water management works may be taken into consideration, and
  - (b) the amount of any government subsidy or similar payment is not to be deducted from the relevant value or cost of the water management works, and
  - (c) consideration is to be given to any guidelines issued for the time being for the purposes of this section by the Minister.

Council is the water supply authority over the land. Condition 14 of development consent 19/1439.01 requires application to be made to Council for a certificate of compliance for the proposed development pursuant to section 305 (1) of the *Water Management Act 2000*. It also, pursuant to section 306 (2) (a) of that Act, gives written notice to the applicant that as a precondition to granting a certificate of compliance for the proposed development, Council requires the applicant to pay a specified contribution to Council towards the cost of the water management works specified by condition 14.

In assessment of application 19/1439.01 for review of Council's determination of development application 19/1439, Council calculated the specified contribution amount in accordance with section 306 (3) of the *Water Management Act 2000* and Council's Water Supply and Sewerage Development Servicing Plans. The initially calculated contribution

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT MANAGER DEVELOPMENT ASSESSMENT



amounts were considerably higher than ultimately specified by condition 14 of the consent. However, Council staff revised these calculations, applying the highest credit practicable under Council's Policy to the land and existing development thereon. This considerably reduced the proposed development's projected water supply and sewerage services infrastructure demands and, in turn, the applicable contributions under section 306 of the *Water Management Act 2000*. Revision of the proposed development's projected water supply and sewerage services demands reflected an understanding that the proposed development will not operate on a full-time basis and does not include a commercial kitchen. In all, this revision reduced the proposed development's allowed demands on water supply and sewerage services infrastructure by some 76%. Notwithstanding, due to the nature of the proposed development and potential for large gatherings of people for several hours at a time, the activity would generate more waste water for treatment and water usage than would be expected from a warehousing or light industrial usage involving a small number of employees.

Development consent 19/1439.01 could perhaps be modified to still require application to be made to Council for a certificate of compliance under section 305 of the *Water Management Act 2000*, but no longer specify the requirement to pay a specified contribution amount to Council towards the cost of specified water management works. However, this would not remove the lawful ability of Council, as the water supply authority, to separately notify the applicant in writing of a requirement to pay a specified contribution amount as a precondition to the granting of a certificate of compliance. Indeed, in such circumstances, Council's calculation of a contribution amount payable may not necessarily include the concessions made by the revisions discussed above; therefore, the contributions amount payable may be significantly and legitimately greater.

Given the above, it is considered appropriate to refuse to modify development consent 19/1439.01 by deleting condition 14 as proposed, and retain condition 14 without change.

**Section 4.15 Evaluation**

(1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

As discussed earlier, no provisions of any environmental planning instrument applicable to the development the subject of the proposed modified consent (including the LEP) are relevant to the proposed modification of development consent 19/1439.01.

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

Not applicable.

(iii) any development control plan, and

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT MANAGER DEVELOPMENT ASSESSMENT



As discussed earlier, section B.9 of the DCP regarding development contributions applies in the consideration of the modification application. No other DCP provisions are relevant to the proposed modification itself.

(iii) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

Not applicable.

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

No provisions of Division 8 of Part 6 of the Regulation are relevant to the proposed modification.

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

Not applicable.

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

The proposed modification is considered likely to have significant negative economic and social impacts. Removal of the requirement of condition 14 to pay developer contributions to Council will result in the entire cost burden of providing and/or augmenting water supply and sewerage infrastructure demanded by the development being borne by Council and, in turn, the Wingecarribee community.

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

The land's suitability for the development the subject of the proposed modified consent is not considered relevant to the proposed modification itself.

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

Refer to the Consultation section of this report.

(e) *the public interest.*

A main basis for Council's granting of consent for the proposed development is the proposed development's potential to attract tourism income. Whilst this is acknowledged, the proposed waiving of contributions required by condition 14 of development consent 19/1439.02 is considered directly contrary to the public interest.

Developer contribution funds received pursuant to section 306 of the *Water Management Act 2000* go towards the cost of Council's provision and augmentation of water supply, sewerage and/or stormwater drainage infrastructure, the demands for and on which are increased by ongoing development. If such contributions were not levied and received, the expense of providing and augmenting water supply, sewerage and stormwater drainage infrastructure demanded by development would be entirely borne by Council and, in turn, the wider Wingecarribee community. It is therefore considered in

5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL  
Wednesday 09 December 2020  
REPORT MANAGER DEVELOPMENT ASSESSMENT



the public interest to retain the requirement of condition 14 of development consent 19/1439.01 for payment of contributions, without change.

CONSULTATION

*Pre-lodgement Meeting*

No formal pre-lodgement meeting was held with Council officers regarding the proposed development prior to development application 19/1439, review application 19/1439.01 or the subject modification application 19/1439.02.

*External Referrals*

There is no requirement or need to have referred the modification application externally to Council.

*Internal Referrals*

The modification application was referred to Council's Coordinator Strategic Land Use Planning, who confirmed applicable developer contributions were correctly calculated in assessment of application 19/1439.01 to review Council's determination of development application 19/1439, and subsequently revised and reduced by some 74% before being specified by condition 14 of development consent 19/1439.01.

*Neighbour Notification (or Advertising)/Public Participation*

The modification application is not required by the *Environmental Planning and Assessment Regulation 2000*, any development control plan, nor Council's Community Participation Plan to have been notified or advertised. Council nonetheless received one submission in support of the proposed development and modification of consent.

SUSTAINABILITY ASSESSMENT

• *Environment*

There are no environmental impacts in relation to this report.

• *Social*

The proposed removal of the requirement of condition 14 of development consent 19/1439.01 to pay developer contributions to Council is expected to shift the entire cost burden of providing and/or augmenting water supply and sewerage infrastructure demanded by the development to Council and, in turn, the Wingecarribee community. The proposed modification is therefore considered likely to have significant negative social impact.

• *Broader Economic Implications*

It is acknowledged that the development the subject of the proposed modified consent may be expected to make a significant economic contribution through tourist income. However, the proposed removal of the requirement of condition 14 of development consent 19/1439.01 to pay developer contributions to Council is expected to shift the entire cost burden of providing and/or augmenting water supply and sewerage infrastructure demanded by the development to Council and, in turn, the Wingecarribee community. Additionally, it may be presumed that local tourism income generated by the proposed development will



5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 February 2021

9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 December 2020

REPORT MANAGER DEVELOPMENT ASSESSMENT



not ultimately be put towards the cost of provision and/or augmentation of water supply and sewerage services infrastructure demanded by the proposed development. Finally, if Council removes the requirement of condition 14 of development consent 19/1439.01 to pay developer contributions on the basis of overriding financial benefit from tourism income, it may be taken to imply that all tourism and other business income generating developments in the Wingecarribee Shire should be given similar contributions concessions, further reducing funds available for Council's adequate provision of water supply, sewerage and stormwater drainage services infrastructure in response to ongoing development demands.

• **Culture**

There are no cultural issues in relation to this report.

• **Governance**

The application has been considered in accordance with the relevant matters specified by section 4.55 of the *Environmental Planning and Assessment Act 1979* and any other relevant matters.

RELATIONSHIP TO CORPORATE PLANS

Operational Plan 2020/21: OP167 Assess and certify applications related to development.

COUNCIL BUDGET IMPLICATIONS

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

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

RELATED COUNCIL POLICY

An assessment of the proposed modification of development consent 19/1439.01 has been made with regard to the matters specified by section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021**



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 February 2021

**9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020**



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**  
Wednesday 09 December 2020  
**REPORT MANAGER DEVELOPMENT ASSESSMENT**



**OPTIONS**

The options available to Council are:

**Option 1**

Council refuses to modify development consent 19/1439.01 as proposed, for the reasons specified in Attachment 1 to the report.

**Option 2**

Council modifies development consent 19/1439.01 by removal of condition 14.

Option 1 is the recommended option to this report.

**CONCLUSION**

Application 19/1439.02, for modification of development consent 19/1439.01 by deletion of condition 14 of the consent, has been considered in accordance with the relevant provisions of section 4.55 of the *Environmental Planning and Assessment Act 1979*. The proposed modification of development consent 19/1439.01 is considered likely to cause significant negative social and economic impacts, and is considered directly contrary to the public interest. It is therefore recommended that Council refuse to modify development consent 19/1439.01 as proposed.

**ATTACHMENTS**

1. 19/1439.02 Draft reasons for refusal
2. 19/1439.02 Locality Plan and Aerial Image

**5.5 Application 19/1439.02 to Modify Development Consent 19/1439.01 -  
Information and Education Facility and Function Centre, Lot 15 DP846332,  
93-95 Kirkham Road, Bowral  
ATTACHMENT 6 Report to Council Ordinary Meeting of 24 February 2021**



**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 February 2021

**9.3 Modification Application 19/1439.02 to Modify Development Consent  
19/1439.01 - Information and Education Facility and Function Centre, 93-95  
Kirkham Road, Bowral  
ATTACHMENT 3 Council Report 9 December 2020**



**19/1439.02 DRAFT REASONS FOR REFUSAL**

1. The application proposes modification of Council's development consent 19/1439.01 by rescission of condition 14 of the consent. Pursuant to section 306 (2) (a) of the Water Management Act 2000, condition 14 of the consent conveys a requirement, as a precondition to Council (the water supply authority) granting a certificate of compliance under the Water Management Act 2000, for the developer to pay a specified amount to Council by way of a contribution towards the cost of water management works expected to be demanded by the development.

In the absence of the developer's payment of any contribution towards the cost of water management works expected to be demanded by the development, the full cost burden of such works will be borne by Council and, in turn, the Wingecarribee Shire community.

Given the above, and having regard to sections 4.55 (3) and 4.15 (1) (b) & (e) of the Environmental Planning and Assessment Act 1979:

- (a) Council considers the proposed modification of development consent 19/1439.01 likely to have significant negative social and economic impacts
- (b) Council considers the proposed modification of development consent 19/1439.01 contrary to the public interest.

***[Environmental Planning and Assessment Act 1979, sections 4.55 (3) and 4.15 (1) (b) & (e)]***

## 5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) - Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin Avenue Moss Vale

Report Author: Development Assessment Planner  
Authoriser: Manager Development Assessment

### PURPOSE

The purpose of this report is to request the consideration, by the panel of Modification Application 20/0758.01 for the addition of a 14 square metre adult change room to an existing external void area adjacent to the pool deck at the Moss Vale War Memorial Aquatic Centre.

Applicant:	Bluefit Pty Ltd
Land Owner:	Wingecarribee Shire Council
Consultants:	Scott Lee – Lee Environmental Planning
Applicants estimated cost of proposed development:	\$10,000
Notification Period:	07 May 2021 to 28 May 2021
Number of Submissions:	0
Political Donations:	None declared.
Reason for referral to Panel:	Council's Draft Code of Conduct states: CI 3.15 (b) development for which the applicant or land owner is: (i) the council, CI 3.16 The assessment of development applications referred to in clause 3.15 must be undertaken by external consultants who have no pecuniary or non-pecuniary interest (as defined in this code) in the application. Such consultants are to prepare and provide an assessment report to the local planning panel to consider in determining the application.

### RECOMMENDATION

**THAT** the Independent Advisory Planning Assessment Panel determines Modification Application 20/0758.01 for the addition of a 14 square metre adult change room at the Moss Vale War Memorial Aquatic Centre at Part Lot 3 DP 1108992, Donkin Avenue Moss Vale subject to draft development conditions attached to this report.



Figure 1: Aerial Location Plan

## 1. EXECUTIVE SUMMARY

The application is referred to the Wingecarribee Interim Advisory Local Planning Panel (WILPP) as required under the Draft Code of Conduct as the land is owned by Wingecarribee Shire Council.

The Modification Application is made under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* seeking to modify development application 20/0758 which was approved for alterations and additions to an existing Recreation Facility (Indoor) at Part Lot 3 DP 1108992, Donkin Avenue Moss Vale. The modification proposes to change the floor plan to include a 14 square metre adult change room adjacent to the pool deck. The proposed change room is specifically designed to accommodate those with mobility issues and is a positive outcome that ensures the aquatic centre can properly cater for all members of the community. The proposed addition will be visible from an internal access road that traverses the site from Donkin Avenue to Kirkham Road but will not be visible from either Kirkham Road or Donkin Avenue.

## 2. SITE DESCRIPTION AND LOCALITY

Figure 2 illustrates the land's location and general layout. The site is legally described as Part Lot 3 DP 1108992 and has a street address of Donkin Avenue Moss Vale, however, the building addresses Kirkham Road. The subject site is the Moss Vale War Memorial Aquatic Centre. In its entirety, Lot 3 is the land owned by Wingecarribee Shire Council that forms the Moss Vale Civic Centre, inclusive of the Moss Vale Shire Council Administration building, Council Chambers, the Moss Vale War Memorial Aquatic Centre, Donkin Avenue car park, adjoining scout hall and the Community Oval. In front of the centre, running along Kirkham Street frontage, is formalized on-site car parking.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



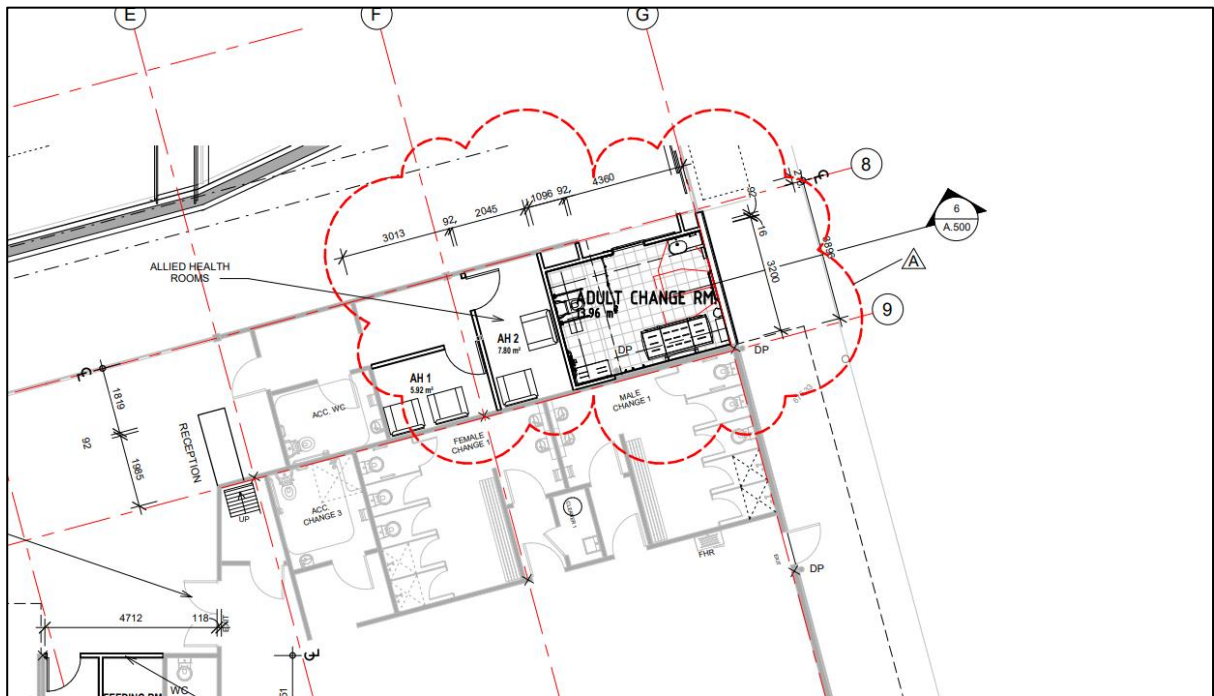
**Figure 2: Locality Map**



**Figure 3: Location of proposed adult change room**



**Figure 4: Elevation of Aquatic Centre.**



**Figure 5: Floor plan of proposed Adult change room.**

### **3. BACKGROUND**

Development Application No. 20/0758 was approved on 23 June 2020 to construct alterations and additions to the existing aquatic and fitness centre.

The Moss Vale War Memorial Aquatic Centre is an indoor community recreational facility that offers a range of aquatic and fitness-based activities. It is located adjacent to the Wingecarribee Shire Council Administration building on Kirkham Street Moss Vale.

The approved development incorporates the following:

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



- Building extension to create new floor area of approximately 120m<sup>2</sup> to provide for group exercise and gymnasium use. This space is an extension of the existing gym area and extends the building in a south westerly direction towards the site carpark. The extension is single level to match existing scale and character of the centre;
- New after-hours entry to facilitate potential after hours use of gymnasium for individual users only – no organised classes will be held in the extended hours periods and the 24 hours operation relates only to that part of the building occupied by the gymnasium that can be isolated from the pool areas.
- Creation of two new consultation rooms to be utilised by Allied Health practitioners such as physiotherapy, podiatry and dieticians, providing ancillary services to customers and users of the Centre; and
- minor internal re-arrangements to crèche and baby change area.

The main localised environmental effects from the proposal was from the 24-hour operation of the new extended floor area to provide individual user gym access. There will be no after-hours access to the swimming pools.

The works associated with the development application have not been constructed. The applicant, Bluefit Pty Ltd, who manage the Moss Vale Aquatic Centre under licence from Wingecarribee Shire Council have modified the application to include the adult change room at the request of Council's Asset Department.

#### 4. PROPOSAL

Modification Application 20/0758.01 seeks to modify the approved development application to provide for a new adult change room of 14 square metres adjacent to the pool deck. The change room is specifically designed to accommodate those with mobility issues which is a positive outcome that ensures the aquatic centre can properly cater for all members of the community.

#### 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 application was notified from 07 May 2021 to 28 May 2021. There were no submissions received as a result of the notification process:

#### 6. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The proposed development has been considered with regard to the matters for consideration specified by section 4.15(1) of the *Environmental planning and Assessment Act 1979*, as detailed below.

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

The catchment SEPP aims:

- 'to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.*
- to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.*
- to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.'*



*The development was previously assessed as a Module 1 under the NorBE Guidelines, and Council assumed concurrence to consider water quality. In accordance with clause 10 of the Catchment SEPP, the NorBE Tool was used to determine that the carrying out of the proposed development would have a neutral or beneficial effect on water quality. The proposed modification will not have any impact on water quality.*

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

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated and whether the land is or can be made suitable for the purpose for which development is proposed.

Based on Council's records, the site and immediately adjoining property have been historically used for recreational purposes. There is no evidence to suggest any potentially contaminating activities have taken place on or near the site. Accordingly, the site is considered suitable for the proposed recreational use and satisfies the provisions of SEPP 55.

### **6.3 Wingecarribee Local Environmental plan 2010 (WLEP)**

The land is in Zone RE1 Public Recreation. The Land Use Table at the end of Part 2 of the LEP specifies developments for the purpose of *Recreation facilities (Indoor)* is permitted with consent in Zone RE1.

The proposal is consistent with the specific objectives of the zone in that the proposed activity enables the land to be used for recreational purposes.

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## **7. DEVELOPMENT CONTROL PLAND AND POLICIES**

### **7.1 Moss vale Township Development Control Plan (DCP)**

The Moss Vale Township 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 a more desirable planning and urban design outcome.

The relevant provisions of the Moss Vale Township DCP are addressed in Appendix 2.

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## **8. ASSESSMENT OF APPLICATION PURSUANT TO S4.55(1A)**

Council is satisfied pursuant to s4.55(1A), that the development as modified, will be substantially the same development as originally approved and of minimal environmental impact.

The development will remain a recreational facility (indoor), with the proposed alterations providing a complimentary feature of the development as distinct from changing the nature or function of the use.

There will be no environmental impacts arising from the modification that would be any different to any potential impacts originally assessed and the modification will not require any changes to the conditions of consent other than amending condition 2 relating to the referenced documents and condition 7 requiring an access report for compliance with the requirements of adult change facilities.

The applicant has provided direct reference to the provisions of Clause 115 of the regulations with the following information provided:

(1) *an Application for modification of a development consent under s4.55(1), (1A) or (2) or 4.56(1) of the Act must contain the following information:*

(a) *the name and address of the applicant.*

Refer to the application form;

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



- (b) *a description of the development to be carried out under the consent (as previously modified).*

The approval issued under Development Approval 20/0758 is for the development of the land for a Recreation Facility (Indoor) – Alterations and Additions. The proposed modification to the consent does not seek any change to this;

- (c) *the address, and formal particulars of title of the land on which the development is to be carried out.*

Refer to the application form. The land the subject of development application 20/0758 was Part Lot 3 DP 1108992. This remains the legal description of the land.

- (d) *a description of the proposed modification to the development consent.*

The proposed modification is described in the Statement of Support, but more specifically upon the set of drawings prepared by Facility Design Group.

- (e) a statement that indicates either:  
(i) *that the modification is merely intended to correct a minor error, description or miscalculation*

It does not correct a minor error, misdescription or miscalculation.

- (ii) *that the modification is intended to have some other effect, as specified in the statement*

The modification is to have the effect of providing an additional change room that is specifically designed for people with mobility issues. It is directly adjacent to the pool deck. It will make the centre a more inclusive community facility.

- (f) *a description of the expected impacts of the modification.*

It is not expected that the proposed modification will result in any impacts of an adverse nature, or be different to or greater than, the impacts already accepted by Council in approving the original development application. There are no proposed modifications to any of the operational aspects of the aquatic centre.

- (g) *an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved.*

The development as to be modified, will remain substantially the same as that originally approved. The approval issued under DA20/0758 for the Moss Vale Aquatic Centre, allowed for some important additions to the facilities provided at the centre. The modification to the approved consent retains that development outcome with the addition of a much needed change room that will properly cater for those users of the centre that have limited mobility.

The additional change room will not change the final development outcome in any material way because there is no proposed change to any of the operational aspects of the aquatic centre, nor any change to its overall bulk, scale or character.

- (h) *if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*

Wingecarribee Shire Council is the owner of the land and has authorized the application.

- (i) *a statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56), and, if the consent authority so requires, must be in the form approved by that authority.*

Not relevant to this application.

## **9. CATEGORY OF MODIFICATION**

The proposed modification to the existing consent is considered to qualify for consideration under Section 4.55 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The modification application has been lodged pursuant to Section 4.55(1A) of the Act, which states:

### **(1A) Modifications involving minimal environmental impact.**

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
  
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  
- (c) it has notified the application in accordance with—*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
  
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*  
*Subsections (1), (2) and (5) do not apply to such a modification.”*

The application is seeking to provide a small additional change room of 14 square metres. It will have no detrimental environmental impact on the originally approved development application.

In accordance with Section 4.55(1A), Council is satisfied that this modification, if approved, results in a development that will be substantially the same as the development as originally approved.

The minor addition of the small change room does not change what the development is and is not considered to be a material change to the development itself. The test for whether or not a modified development is substantially the same as the original development involves far more than a minor addition to the development.

Section 4.55(1A) is appropriate in this case in recognition of the fact that the proposed modification does not seek to change the original application in that it still remains as alterations and additions to a Recreation facility (Indoor).

In accordance with the above, Council is satisfied that the development, as modified, is substantially the same development as originally approved, as required by Section 4.55(1A)

## **10. ENVIRONMENTAL ASSESSMENT**

The site has been inspected (18 May 2021) and the application has been assessed having regard to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, as amended.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section 4.15 'Matters for Consideration	Comments
Section 4.15 (1)(a)(i) – Provision of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15 (1)(a)(ii) – Provision of any draft environmental planning instrument.	Nil
Section 4.15 (1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Moss Vale Township 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 relevant clauses of the Regulations have been satisfied.
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.	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15 (1)(c) – The suitability of the site for the development.	The site is located in close proximity to local services. The site has sufficient area to accommodate the proposed land-use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation.	There were no submissions made in regard to the Modification Application.
Section 4.15 (1)(e) – The public interest.	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

**10.1 Discussion of Key Issues**

The proposed modification application is a very minor addition to the Moss Vale War Memorial Aquatic Centre and is a positive outcome for the community to provide this additional facility that will ensure that the recreational facility may properly cater for all members of the community.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



**11. CONCLUSION**

That Modification Application 20/0758.01 for Part Lot 3, DP 1108992 Donkin Avenue Moss Vale under Section 4.55(A) of the *Environmental Planning & Assessment Act 1979* be APPROVED to provide an adult change room adjacent to the pool deck subject to the conditions of development consent in the attached draft conditions of consent.

**APPENDIX 1 - REFERRALS**

**1. Development Engineer Referral response dated 01 June 2021**

The application is considered to be satisfactory in relation to engineering matters subject to no additional conditions being imposed on the notice of determination.

**2. Accredited Certifier Referral response dated 27 May 2021**

The application is considered to be satisfactory in relation to building matters subject to conditions being imposed on the notice of determination.

**APPENDIX 2 – MOSS VALE TOWNSHIP DCP**

The Moss Vale Township 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 a more desirable planning and urban design outcome.

The relevant provisions of the Moss Vale Township DCP are addressed below:

DCP Compliance Table			
Part A – All Land			
Section 2 – General Objectives			
Control	Standard	Proposed	Compliance
A2.2.6 Visual Amenity	Every new development generates an impact on the visual amenity of the immediate environment which can in turn, affect the environment of the surrounding area.	The proposed adult change room is single storey and is not visible from any public road.	Yes

**Responsible Officer:** Ross Jauncey – Development Assessment Officer (Contract)

**ATTACHMENTS**

1. Attachment1: 20/0758.01 Draft Conditions of Consent
2. Attachment 2: 20/0758.01 - Architectural Plans



07 July 2021

SCOTT LEE  
33 HOLLY STREET  
BOWRAL NSW 2576

## **NOTICE OF DETERMINATION OF A MODIFICATION APPLICATION**

Pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*

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<b>DEVELOPMENT APPLICATION NO:</b>	20/0758
<b>APPLICATION NO:</b>	20/0758.01
<b>PROPOSED MODIFICATION:</b>	Recreation Facility (Indoor) - Alterations and Additions
<b>APPLICANT:</b>	BLUEFIT PTY LTD
<b>OWNER:</b>	WINGECARRIBEE SHIRE COUNCIL
<b>PROPERTY DESCRIPTION:</b>	Part Lot 3 DP 1108992
<b>PROPERTY ADDRESS:</b>	POOL DONKIN AVENUE MOSS VALE NSW 2577
<b>APPROVED DEVELOPMENT:</b>	Recreation Facility (Indoor) - Alterations and Additions
<b>DA APPROVAL DATE:</b>	23 June 2020
<b>CONSENT TO OPERATE FROM:</b>	23 June 2020
<b>CONSENT TO LAPSE ON:</b>	23 June 2027
<b>DETERMINATION:</b>	<b>Approved</b> subject to conditions attached in schedule 1 of this consent
<b>DATE OF DETERMINATION:</b>	07 July 2021

### **Inconsistencies**

In the event of any inconsistency between the conditions of this modified consent and the plans / supporting documents referred to in this notice, the conditions of this development consent shall prevail.

### **Rights of Appeal**

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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Pursuant to Section 8.9 of the *Environmental Planning and Assessment Act 1979*, an applicant for the modification of a development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 6 months after the date the decision appealed against is notified.

**Review of determination**

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.

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**Ross Jauncey  
Development Assessment Planner**

07 July 2021  
**Date of Issue.**

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

**SUMMARY SCHEDULE OF MODIFIED CONDITIONS**

**2. Development in Accordance with Plans and Documents  
Modified Application 20/0758.01 dated 07 July 2021 to read:**

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

<b>Plan Title / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared By</b>	<b>Dated</b>
Overall Site Plan	Job No: W277, Dwg No: DA010	Facility Design Group	14.08.2019
Proposed Floor Plan	Job No: W277, Dwg No: DA100	Facility Design Group	16.12.2019
Elevations and Sections	Job No: W277, Dwg No: DA500	Facility Design Group	16.12.2019
Acoustic Assessment	SLR Ref: 610.19186-R01 Version No: - v0.1	SLR Consulting Australia Pty Ltd	18 November 2019
Traffic and Parking Assessment Report	Ref: 19470	Varga Traffic Planning Pty Ltd	17 October 2019
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	December 2019
<b>Modified Drawings (Modified 20/0758.01) – 07 July 2021</b>			
Coversheet	Job No: W277, Dwg No: A.000 Rev A	Facility Design Group	19.02.2021
Overall Site Plan	Job No: W277, Dwg No: A.010 Rev A	Facility Design Group	19.02.2021
Proposed Floor Plan	Job No: W277, Dwg No: A.100 Rev A	Facility Design Group	19.02.2021
Roof Plan	Job No: W277, Dwg No: A.101 Rev A	Facility Design Group	19.02.2021
Reflected Ceiling Height	Job No: W277, Dwg No: A.300 Rev A	Facility Design Group	19.02.2021
Elevations and Sections	Job No: W277, Dwg No: A.500 Rev A	Facility Design Group	19.02.2021
Colourboard	Job No: W277, Dwg No: A.1000	Facility Design Group	16.12.2019
Statement of Support	Not Referenced	Lee Environmental Planning	23 pril 2021

**7. Application for a Construction Certificate (Building Works)  
Modified Application 20/0758.01 dated 07 July 2021 to read:**



**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.
- (b) If Council or a private accredited certifier issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.
- (e) Plans detailing the layout, extent and location of key components of any required Hydraulic Fire Safety System/s (Fire Hydrant and Fire Hose Reels) including Specifications that describe the basis for the design, installation and construction and identify the provisions of the BCA upon which the design of the system is based. The Plans and Specifications shall both be endorsed by a competent fire safety practitioner (CFSP) as complying with the relevant provisions of the Building Code of Australia (BCA).
- (e1) Detailed construction plans and specifications detailing compliance with *BCA Specification F2.9 – Accessible Adult Change Facilities*. The plans shall be endorsed by a qualified and practicing access consultant as capable of achieving compliance.
- (f) Disabled access provisions to common and public areas in accordance with AS1428 Design for Access and Mobility and the Premises Code.
- (g) If an alternative solution to the “deemed to satisfy” provisions of National Construction Code is proposed, the following details must be lodged:
  - Performance requirements that the alternative solution intends to meet.
  - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
  - A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body.

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

**Note:** *Construction work may only commence upon the issue of a Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.*

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

5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale



ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent

## SCHEDULE 1 CONDITIONS OF MODIFIED DEVELOPMENT CONSENT

### ADMINISTRATION CONDITIONS

#### 1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Recreation Facility (Indoor) – Alterations and Additions.

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

#### 2. Development in Accordance with Plans and Documents Modified Application 20/0758.01 dated 07 July 2021 to read:

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Overall Site Plan	Job No: W277, Dwg No: DA010	Facility Design Group	14.08.2019
Proposed Floor Plan	Job No: W277, Dwg No: DA100	Facility Design Group	16.12.2019
Elevations and Sections	Job No: W277, Dwg No: DA500	Facility Design Group	16.12.2019
Acoustic Assessment	SLR Ref: 610.19186-R01 Version No: - v0.1	SLR Consulting Australia Pty Ltd	18 November 2019
Traffic and Parking Assessment Report	Ref: 19470	Varga Traffic Planning Pty Ltd	17 October 2019
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	December 2019
<b>Modified Drawings (Modified 20/0758.01) – 07 July 2021</b>			
Coversheet	Job No: W277, Dwg No: A.000 Rev A	Facility Design Group	19.02.2021
Overall Site Plan	Job No: W277, Dwg No: A.010 Rev A	Facility Design Group	19.02.2021
Proposed Floor Plan	Job No: W277, Dwg No: A.100 Rev A	Facility Design Group	19.02.2021
Roof Plan	Job No: W277, Dwg No: A.101 Rev A	Facility Design Group	19.02.2021
Reflected Ceiling Height	Job No: W277, Dwg No: A.300 Rev A	Facility Design Group	19.02.2021
Elevations and Sections	Job No: W277, Dwg No: A.500 Rev A	Facility Design Group	19.02.2021

5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale



ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent

Colourboard	Job No: W277, Dwg No: A.1000	Facility Design Group	16.12.2019
Statement of Support	Not Referenced	Lee Environmental Planning	23 April 2021

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

3. Inconsistency between documents

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

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

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

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

(b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

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

5. Erection of Signs

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

(a) Showing the name, address and telephone number of the principal certifying authority for the work, and

(b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(c) Stating that unauthorised entry to the work site is prohibited.

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

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

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**

**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**



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**6. Compliance with Disability Discrimination Act 1992**

This approval does not protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability Discrimination Act 1992*, and the applicant/owner is therefore advised to investigate their liability under this Act.

**Reason:** *To inform of relevant access requirements for persons with a disability.*

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 -As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

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

**7. Application for a Construction Certificate (Building Works)  
Modified Application 20/0758.01 dated 07 July 2021 to read:**

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

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.
- (b) If Council or a private accredited certifier issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.
- (e) Plans detailing the layout, extent and location of key components of any required Hydraulic Fire Safety System/s (Fire Hydrant and Fire Hose Reels) including Specifications that describe the basis for the design, installation and construction and identify the provisions of the BCA upon which the design of the system is based. The Plans and Specifications shall both be endorsed by a competent fire safety practitioner (CFSP) as complying with the relevant provisions of the Building Code of Australia (BCA).
- (e1) Detailed construction plans and specifications detailing compliance with *BCA Specification F2.9 – Accessible Adult Change Facilities*. The plans shall be endorsed by a qualified and practicing access consultant as capable of achieving compliance.
- (f) Disabled access provisions to common and public areas in accordance with AS1428 Design for Access and Mobility and the Premises Code.

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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(g) If an alternative solution to the “deemed to satisfy” provisions of National Construction Code is proposed, the following details must be lodged:

- Performance requirements that the alternative solution intends to meet.
- Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
- A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body.

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

**Note:** *Construction work may only commence upon the issue of a Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.*

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

**8. Appointment of Principal Certifying Authority**

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

(a) A Construction certificate for the building work has been issued by:

- (i) the consent authority; or
- (ii) an accredited certifier; and

(b) the person having the benefit of the development consent has:

- (i) appointed a principal certifying authority for the building work, and
- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

(b1) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the Council of his or her appointment, and
- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

(b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
- (ii) notified the principal certifying authority of such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**

**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**



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

**9. Access for People with Disabilities**

Access for people with disabilities shall be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the *Disability Discrimination Act 1992*.

Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

**Note:** *Disability (Access to Premises - Buildings) Standards 2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.*

**Reason:** *To inform of relevant access requirements for persons with a disability.*

**10. Long Service Levy Payments**

The payment of a long service levy as required under part 5 of the *Building and Construction Industry Long Service Payments Act 1986*, in respect to this building work, and in this regard, proof that the levy has been paid, is to be submitted to Council prior to the issue of a Construction Certificate. Council acts as an agent for the Long Services Payment Corporation and the levy may be paid at Councils Office.

**Reason:** *Statutory requirement*

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

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

- Replace and encase existing sewer main beneath proposed structure. Plans to include cross sections demonstrating compliance with Council's build over/adjacent to sewer requirements.
- Stormwater

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

**12. Section 138 Roads Act 1993 Approval**

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

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

- A copy of approved design plans related to the development and proposed works to be undertaken.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site,

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority's manual "Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742.3 - 2002 Traffic Control Devices for Works on Roads. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.

- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by applicant / contractor undertaking the works.

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

**Reason:** *Statutory requirement.*

**13. Hoardings and Other Temporary Barriers on Council Property**

Council areas are required to have appropriate measures put in place to protect the public. A separate application under the *Roads Act 1993* along with details and appropriate fees be submitted to Council prior to the commencement of work. The application shall detail all hoardings, temporary barriers and various other arrangements proposed to be installed to protect the general public from potential disruption and/or injury and also how Council assets will be protected throughout the course of construction activities.

**Reason:** *To maintain public safety.*

**14. Installation Requirements**

All sewer and water plumbing and drainage work shall be carried out by a licensed plumber. A Permit in accordance with the NSW Code of Practice Plumbing and Drainage is to be obtained from Council (as the local Water Supply Authority) for the work to be carried out prior to the issue of the Construction Certificate.

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

**15. Building within Vicinity of Sewer Main**

Where a building is constructed within the zone of influence of the sewer main, the weight of the building shall be distributed away from the sewer main by pier and beam construction. The piers shall be designed by a suitably qualified experienced professional and chartered Engineer and shall be embedded on firm foundation at least 300mm below the zone of influence with a minimum horizontal clearance from the pipe of 600mm.

The area of influence of the sewer main is considered that area within the angle of repose of 45° for normal loam/clay/sand foundations, or 60° for rock foundations measured 600mm from the outside of the pipe from the trench bottom.

Notwithstanding the above, a building shall not be erected within 1.2m of the outside edge of a sewer manhole and unobstructed personal access of minimum width of 900mm shall be provided to any manhole located upon private property.

**Reason:** *To protect public infrastructure.*

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**

**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**



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**16. Construction Management Plan**

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

- a) Details of site security;
- b) Off-street parking for employees, contractors and sub-contractors.
- c) Site access for construction vehicles and equipment purposes.
- d) Public safety in the use of roads and footpaths where development activities adjoin such facilities.
- e) The storage and removal, on a regular frequency, of builder's rubble and waste by trade waste contractors.
- f) Provision for loading and unloading materials;
- g) Location of all building materials, structures, plant and equipment to be stored or placed within the construction site;
- h) How materials are to be loaded/unloaded and potential impact on Council infrastructure (including but not limited to footpaths and street trees)
- i) Public risk policies and management for all contractors' employees using or gaining access over public footpaths and roads.
- j) External lighting and security alarms proposed for the construction site.
- k) Firefighting measures to be available on site during development and construction.
- l) Sanitary amenities proposed on site during development and construction.
- m) Ensuring the safety of members of the public and Council staff who may have occasion to enter and be in attendance on the site;
- n) Details of management of storm water run-off and the propose sediment and erosion control measures including the location of any rubble grids;
- o) Details of any air and dust management;
- p) Details of noise and vibration controls;
- q) Anticipated staging and duration of works
- r) Provision of Traffic Management Plan (TMP) and Traffic Control Plans (TCP)

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



**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**

**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**



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*environment.*

**17. Pedestrian Safety**

The Contractor shall endeavour to minimise disturbance to pedestrian / vehicle traffic in the vicinity of the site. If required by Council a hoarding shall be erected and consent required in accordance with Section 138 of *Roads Act 1993*.

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

**Reason:** *To ensure pedestrian and vehicular safety.*

**18. Erosion and Sediment Control Plan**

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

(a) Erosion and sediment controls are to be in place before the disturbance of any soils on the site, and are to be maintained during the works and for as long as necessary after the completion to prevent sediment and dirty water leaving the site and/or entering the surface water system outside the worksite boundaries.

(b) Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping. Soil is to be retained within the property.

(c) Stockpiles of construction and landscaping materials, and of site debris shall be located clear of drainage lines and in such a position that they are protected from erosion and do not encroach upon any footpath, nature strip or roadway.

(d) Final site spoil shall be disposed of to conform to the specifications and standards quoted and to any conditions of approval of those measures and must comply with any relevant NSW Department of Planning and Environment requirements.

(e) Trenches shall be backfilled, capped with topsoil and compacted to a level at least 75mm above adjoining ground level.

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

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

(h) Sediment control devices shall be installed prior to any site works being carried out and prior to construction work commencing and remain in position until the disturbed soils are turfed, 70% vegetated or otherwise stabilised.

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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

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

**19. Notice of Commencement**

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

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

**Reason:** *Statutory requirement.*

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

**20. Construction Certificate**

No work shall commence until a:

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

**Reason** *Statutory requirement.*

**21. Fencing of the Construction Site**

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

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) - Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of Consent**

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

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

**22. Erosion and Sediment Control**

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

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

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

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

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

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

**24. Engineering Inspections by Council**

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

- (a) Piers associated with external drainage designed to distribute weight of structure away from sewer main prior to pouring of concrete.
- (b) Sewer / water main extensions/augmentations.
- (c) Final inspection of stormwater drainage.

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

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

**Reason:** *Statutory requirement.*

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

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

DAY	HOURS
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**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
Alterations and Additions at Part Lot 3 DP 1108992, Pool, Donkin  
Avenue Moss Vale**



**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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

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

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

**26. Building Operations**

Building operations such as brick cutting, washing tools or brushes and mixing mortar are not permitted on public roadways or footways or in any other locations which could lead to the discharge of materials into the storm water drainage system.

**Reason:** *To ensure that building materials are not washed into storm water drains.*

**27. Storage of Building Materials, Plant and Equipment**

All building materials, plant and equipment are to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and also so that the road reserve is not damaged.

No storage, or placing of any building materials to occur on adjacent public roads or footpath areas in association with the construction, maintenance or use of the development or site.

**Reason:** *To ensure that pedestrian and vehicular access in public places is not restricted and also so that the road reserve is not damaged.*

**28. Protection of Public Places**

The adjoining or adjacent public area shall not be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances.

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the closure of a public place, a barrier, fence or hoarding shall be erected prior to the commencement of any work subject to approval of a Section 138 Roads Act 1993 approval (including submission of a Traffic Management Plan).

Where a hoarding is required, an application for hoarding shall also be submitted to and approved by Council prior to commencement of any work. Hoardings shall be erected to comply with the requirements of WorkCover, the Principal Certifying Authority and with relevant Australian Standards.

**Reason:** *Public safety.*

**29. Temporary Onsite Toilet**

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

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
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**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**

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every 20 persons employed at the site.

Each toilet shall:

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

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

**30. Waste Management**

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

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

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

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

**31. Occupation Certificate**

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

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

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

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

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

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

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
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Avenue Moss Vale**

**ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
Consent**



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**32. Completion Requirements**

All of the conditions of this consent shall be at no cost to Council and shall be completed prior to the issuing of any Occupation Certificate in relation to the development (unless stated otherwise).

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

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

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

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

**34. Works as Executed Drainage Diagram**

The applicant shall submit to Council a copy of the works as executed plans for the both internal and external drainage (Sewer Service Diagram) prior to the issue of an Occupation Certificate. These plans shall be drawn to scale including all relevant details in accordance with the requirements of the NSW Fair Trading. The requirements of the Plumbing Act are to be complied with also in this regard.

**Reason:** *So that Council may ensure that the construction is in accordance with Council's requirements, and so that a permanent record of the drainage details may be held by Council, to assist in future maintenance.*

**35. Maintenance and Bond for Public Assets - Civil Works**

The developer shall at their own expense maintain all building works constructed by them and which will fall into Councils care with respect to the development for a period of 12 months after the date of issue of the Occupation Certificate. Prior to the issue of any Occupation Certificate the developer shall lodge a cash bond with regard to maintenance of the public assets constructed in an amount equal to 5% of the total building works with a minimum bond value of \$1,000. The bond shall be assessed by Council for release after the 12 month period on request by the developer.

**Reason:** *To ensure appropriate warranty periods apply for defect liability.*

**36. Asset Management**

Prior to the issue of the Occupation Certificate, the developer shall provide a detailed summary of the Assets that will be handed over to Council at the end of the maintenance period. The details shall be provided in a tabular form so as to allow Council to update its Assets register.

The assets to be identified include:

- Sewer

**Reason:** *To ensure appropriate details are held for asset management.*

5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
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ATTACHMENT 1 Attachment1: 20/0758.01 Draft Conditions of  
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**37. Final Fire Safety Certificate**

A final fire safety certificate pursuant to clause 172 of the *Environmental Planning & Assessment Regulations 2000* shall be submitted, to the principal certifying authority upon completion of the specified work in the Schedule of Fire Safety Measures. As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:

(a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner; and

(b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

**Reason:** *To ensure the safety of the building.*

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

**38. Use not to Commence**

The approved use shall not commence until the proposed development has been completed in accordance with this consent and issue of any other Council approvals which may be required.

**Reason:** *To ensure that the use of the site is lawful.*

**39. Hours of Operation – Gym Only**

The approved hours of operation for the gym only are:

DAY	HOURS
Monday to Sunday	24 hours

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

**Note:** *Any variation to these hours will require Council consent via the lodgement of an application under Section 4.15 of the Environmental Planning and Assessment Act 1979.*

**40. Noise from Premises**

Noise from patrons and amplified music emitted from the premises shall comply with the following criteria:

- The L10 noise level emitted from the premises shall not exceed 3dB(A) above the background (L90) noise level in any Octave Band Centre Frequency (31.5Hz to 8KHz) between the hours of 7am to 12 midnight when assessed at the nearest affected residential boundary. The background noise level shall be measured in the absence of noise emitted from the premises.
- The LA10 noise level emitted from the premises shall not exceed the background (LA90) noise level in any Octave Band Centre Frequency (31.5Hz to 8KHz) between the hours of 12 midnight to 7am when assessed at the nearest affected residential boundary. The background noise level shall be measured in the absence of noise emitted from the premises.

**5.6 Modification Application 20/0758.01 Recreation Facility (Indoor) -  
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- Notwithstanding compliance with the above clauses, the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight to 7am.

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

**41. External Noise Reduction**

A suitable sign shall be erected at the main exit door requesting gym members to respect the neighbours and limit noise outside of the gym when arriving and leaving after hours.

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

**END OF CONDITIONS**





DRAWING LIST				
Dwg No.	Drawing Name	Dwg Issue Date	Rev	Rev Date
A.000	COVERSHEET	13.03.2021	A	19.02.2021
A.010	OVERALL SITE PLAN	13.03.2021	A	19.02.2021
A.100	PROPOSED FLOOR PLAN	13.03.2021	A	19.02.2021
A.101	ROOF PLAN	13.03.2021	A	19.02.2021
A.300	REFLECTED CEILING PLAN	13.03.2021	A	19.02.2021
A.500	ELEVATIONS + SECTIONS	13.03.2021	A	19.02.2021
A.1000	COLOURBOARD	13.03.2021		

CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING ANY WORK OR PREPARING SHOP DRAWINGS

All Architectural drawing sheets to be cross-referenced with other relevant disciplines.

Rev	Description	Date
A	ADULT CHANGE ROOM ADDED	19.02.2021



LOCATION PLAN

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 15/03/2021  
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 15/03/2021  
 15/03/2021  
 15/03/2021

CLIENT:  
**BLUEFIT**

PROJECT NAME:  
**MOSS VALE AQUATIC CENTRE**

**FOR \$4.55**  
 PROJECT ADDRESS:  
 KIRKHAM STREET, MOSS VALE

DRAWING TITLE:  
**COVERSHEET**

81 PRINT SIZE

DATE	REVISION	DRAWING NO.	REV.
13.03.2021			
19.02.2021			
		A.000	A

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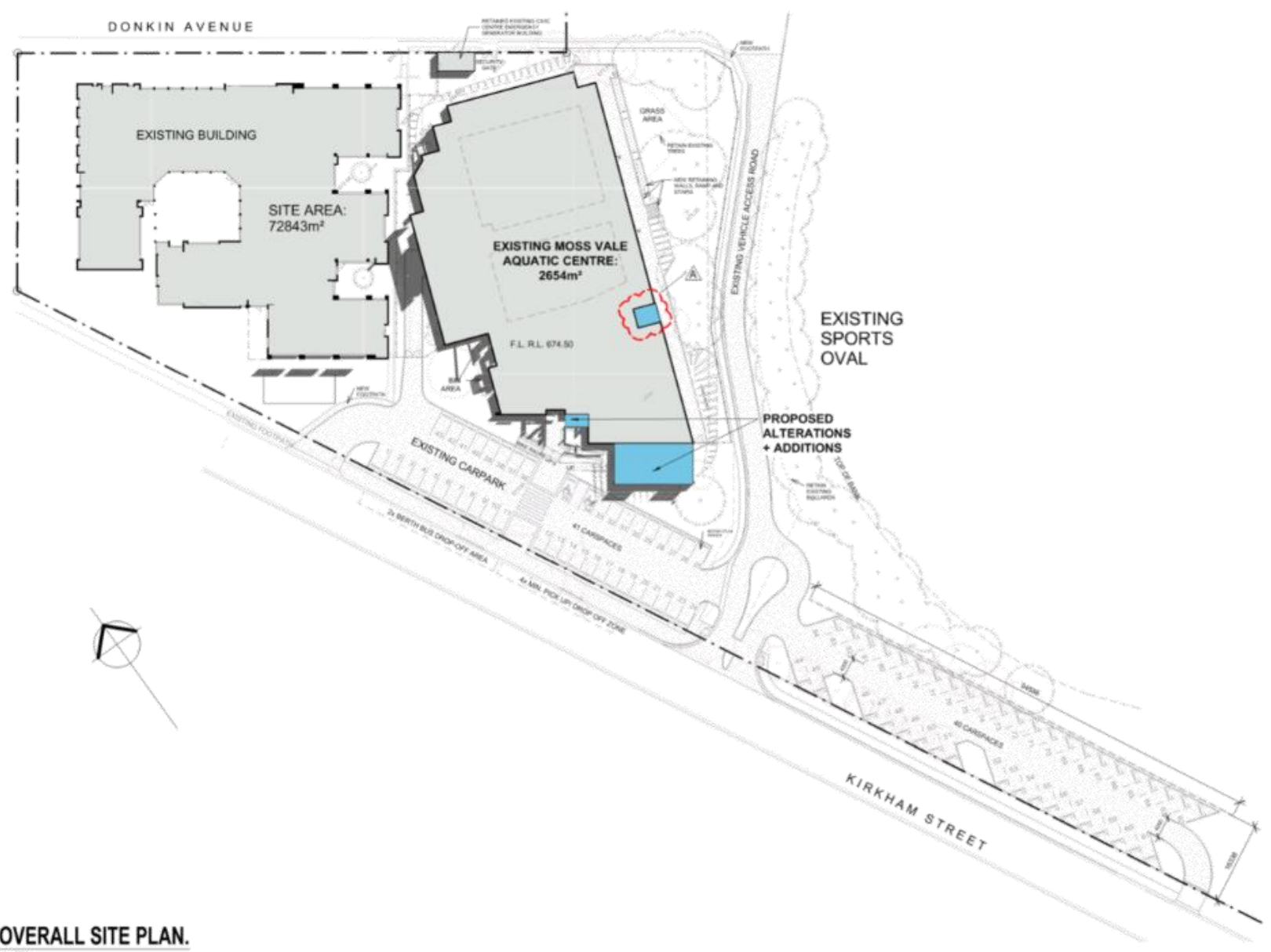
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Rev	Description	Date
A	ADULT CHANGE ROOM ADDED	19.02.2021



1 OVERALL SITE PLAN.  
1:500

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 A 20/0758.01  
 11/01/2021  
 11/01/2021

**MECHANICAL ENGINEER:**  
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 11/01/2021

**ELECTRICAL ENGINEER:**  
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**STRUCTURAL + CIVIL ENGINEERS:**  
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**DESIGN ARCHITECT:**  
**FACILITY DESIGN GROUP**  
 11/01/2021  
 11/01/2021

**CLIENT:**  
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**PROJECT NAME:**  
**MOSS VALE AQUATIC CENTRE**

**FOR \$4.55**

**PROJECT ADDRESS:**  
 KIRKHAM STREET, MOSS VALE

**DRAWING TITLE:**  
**OVERALL SITE PLAN**

**81 PRINT SIZE**

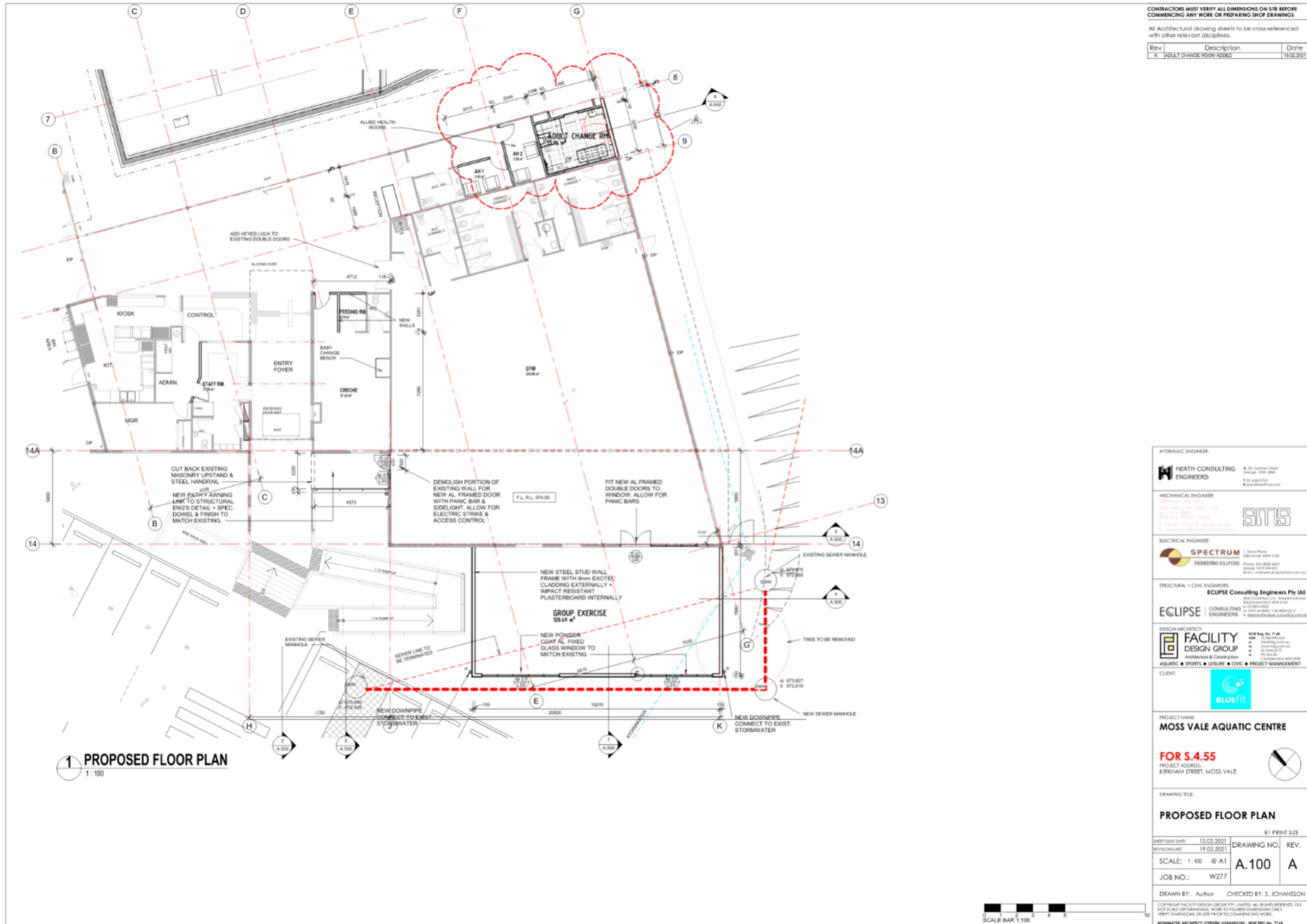
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REVISION DATE: 19.02.2021	A.010	A

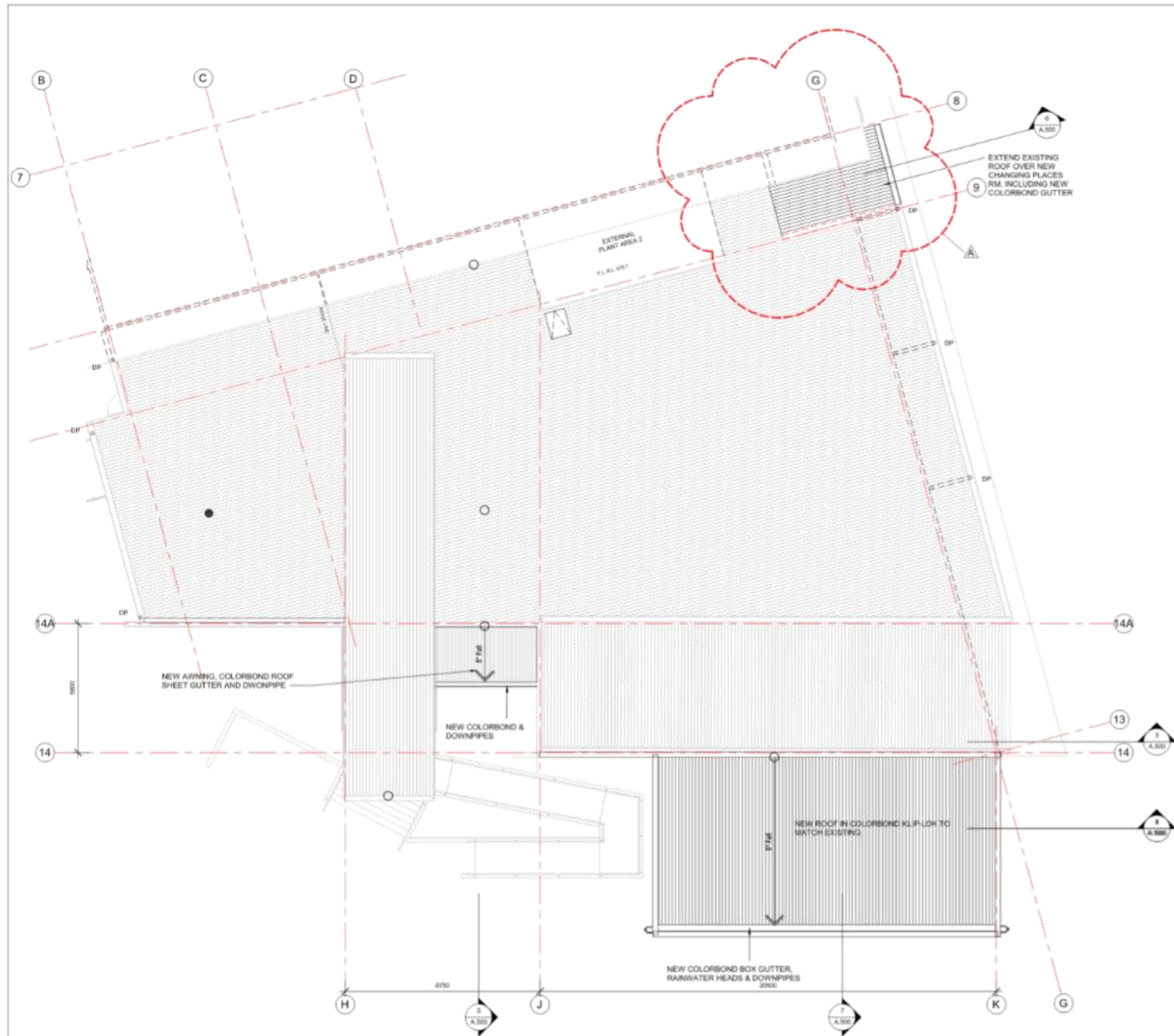
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**1 ROOF PLAN**  
1:100

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Rev	Description	Date
A	ADULT CHANGE ROOM ADDED	19.02.2021

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PROJECT NAME:  
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PROJECT ADDRESS:  
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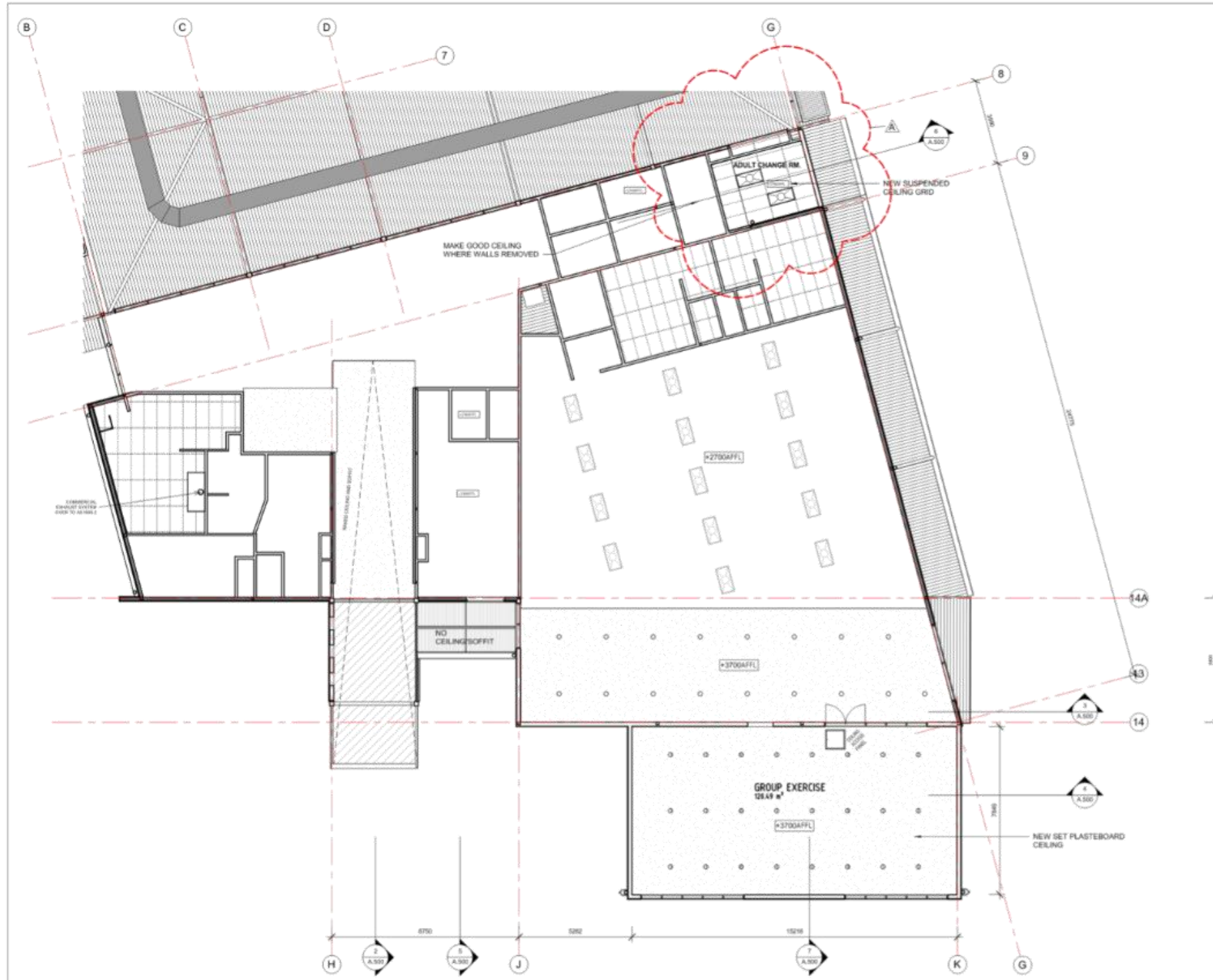
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SHEET/ISSUE DATE:	13.03.2021	DRAWING NO.:	REV.
REVISION DATE:	19.02.2021	A.101	A
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1 REFLECTED CEILING PLAN  
 1:100

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Rev	Description	Date
A	ADULT CHANGE ROOM ADDED	19.02.2021

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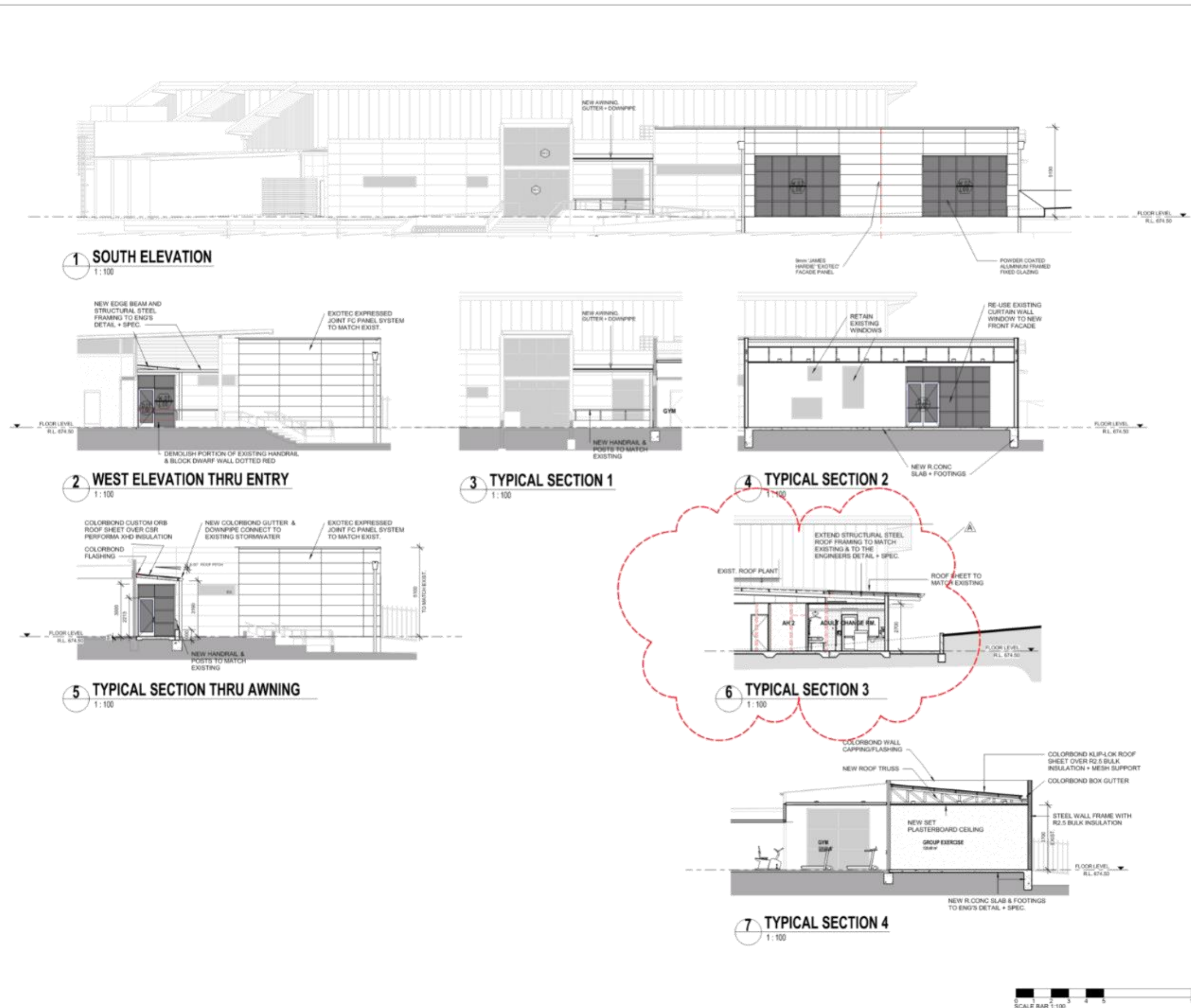
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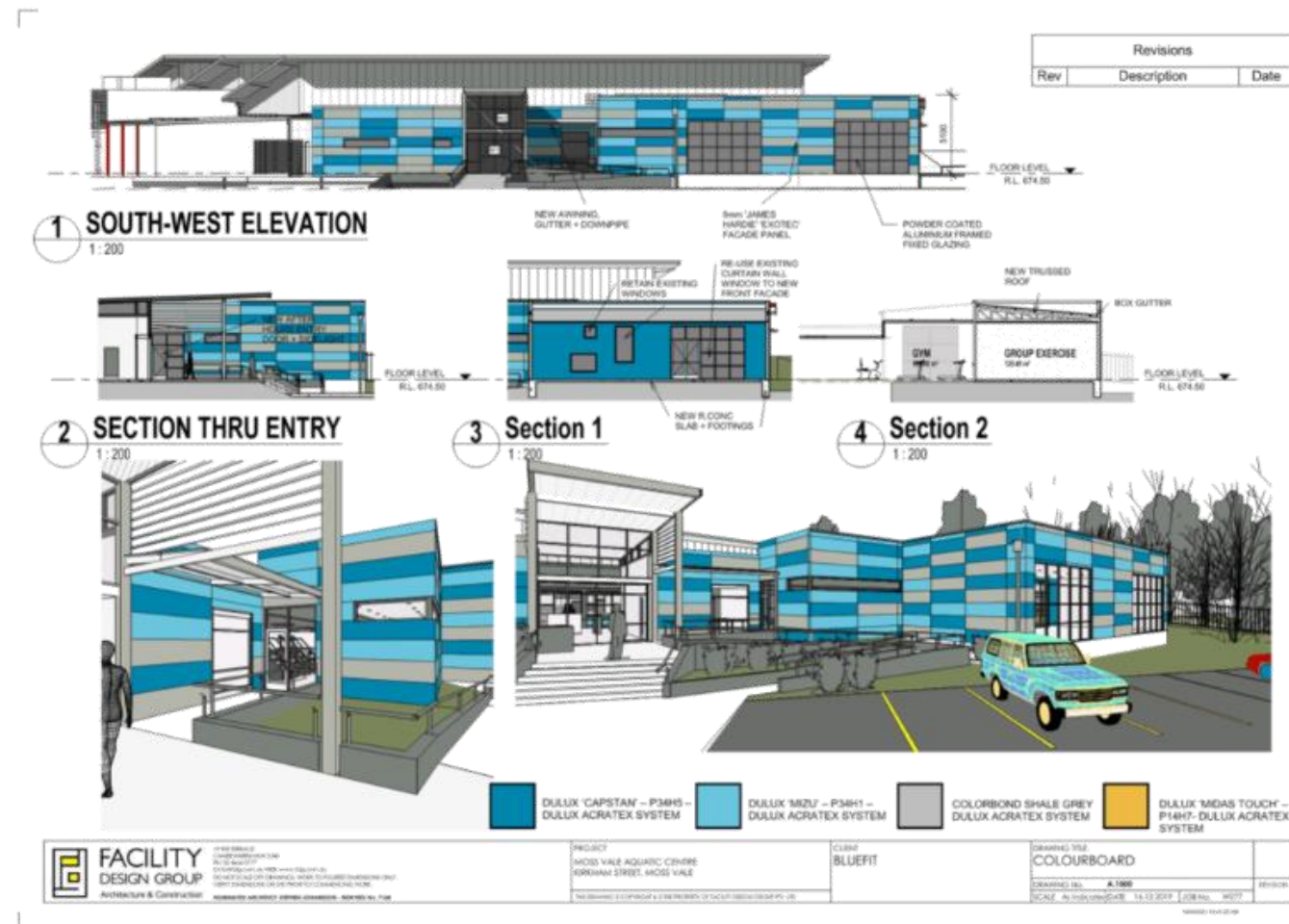
Rev	Description	Date
A	DAILY CHANGE ROOM ADDED	19.02.2021

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**ECLIPSE Consulting Engineers Pty Ltd**  
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## 5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space Rouse Road Bowral - Access Road to service Southern Highlands Regional Art Gallery

**Report Author:** Development Assessment Planner  
**Authoriser:** Manager Development Assessment

### PURPOSE

The purpose of this report is to request consideration, by the panel, of Modification 21/0023.05 for access road to service Southern Highlands Regional Art Gallery

<b>Proposed Development:</b>	Modification Application of DA21/0023 to delete condition 4(f) and to modify condition 32.
<b>Applicant:</b>	Richard Crookes Constructions
<b>Land Owner:</b>	Wingecarribee Shire Council
<b>Applicants estimated cost of proposed development:</b>	\$0
<b>Notification Period:</b>	23 April 2021 to 14 May 2021.
<b>Number of Submissions:</b>	1
<b>Political Donations:</b>	None declared.
<b>Reason for referral to panel:</b>	Council's Draft Code of Conduct states: CI 3.15 (b) development for which the applicant or land owner is: (i) the council, CI 3.16 The assessment of development applications referred to in clause 3.15 must be undertaken by external consultants who have no pecuniary or non-pecuniary interest (as defined in this code) in the application. Such consultants are to prepare and provide an assessment report to the local planning panel to consider in determining the application.

### RECOMMENDATION

That the panel approve Modification Application DA21/0023.05 to Delete Clause 4(F) relating to traffic calming devices and amend clause 32 relating to defects and liability bond for public assets.





Figure 1: Aerial Site Location Plan

## 1. EXECUTIVE SUMMARY

The Modification Application is to delete condition 4(f) of the development consent which states:

### 4. Amendments to Approved Plans

*The applicant shall provide the following plans/details to Council for approval prior to the issue of the Section 138 Roads Act 1993 Approval:*

- a) *The exact location of the 300mm Trunk Water Main is to be ascertained and any measures to protect the integrity of it are to be detailed on plan. These plans and any supporting report is to be approved by Council's Manager Development Assessment.*
- b) *Amended plans are to be submitted to Council indicating the proposed gate at boundary of the public road reserve and Lt 221 DP 1206897 relocated wholly inside Lot 221. These plans are to be approved by Council's Manager Development Assessment.*
- c) *Flood depth markers and appropriate flood warning signs are required to warn the drivers and pedestrians of the flood risks. Vehicle and pedestrian access to proposed road and footpath needs to be restricted during the major flood events. A signage plan for flood depth markers and flood warning signs is to be approved by Council's Manager Development Assessment.*
- d) *The causeway section of the road needs to have bollards or similar safety measures to protect the vehicles from the risk of falling. Pedestrians need to be physically separated from the road carriageway where footpath merges with the road. A plan is to be provided to Council for approval by Manager Development Assessment indicating proposed measures i.e. bollards, kerb, etc. to separate pedestrians and prevent vehicles falling across the causeway.*
- e) *Plans are to be amended to include concrete edge strips instead of unsealed shoulders for the road from the Rowland Avenue intersection and the access gate and then first 10 metres past the access gate on both sides of the proposed road. These plans and any supporting report is to be approved by Council's Manager*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



- Development Assessment.*
- f) *Plans are to be submitted to Council for approval by Council's Manager Development Assessment detailing the proposed traffic calming devices to be installed at the intersection of the new road and Rowland Avenue/Jonathon Street.*

The applicant has submitted proposed details of traffic calming devices to Council which have been assessed by Council's Traffic Engineers who have advised that the historical speed data for Rowland Avenue does not show a speeding issue and therefore traffic calming devices are not warranted. The view of Council engineers is that it would be safer to leave the intersection as a priority (stop sign) controlled four-way intersection rather than introduce a non-compliant roundabout design.

The application also seeks to amend condition 32 of the consent which states:

**32. Defects and Liability Bond for Public Assets - Building Works**

Prior to the issue of Section 138 Final Approval the developer shall lodge a cash bond to cover the defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.

The security bond will be in an amount equal to 10% of the value of the total building works with a minimum value of \$10,000 based on the building costs supported by written evidence in accordance with Council's Bond Policy. The bond shall be assessed by Council for release after the 24 month period on formal request from the developer.

**Reason:** *To ensure appropriate warranty periods apply for defect liability.*

The applicant proposes to amend the condition to read as follows:

**32. Defects and Liability Bond for Public Assets - Building Works**

Prior to the issue of Section 138 Final Approval the developer shall lodge a deed of agreement to cover the defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.

The deed of agreement shall be assessed by Council for release after the 24-month period on formal request from the developer.

**Reason:** *To ensure appropriate warranty periods apply for defect liability.*

The (now ex) Acting General Manager was consulted and agreed to the proposed modification by email dated 15 June 2021.

The modification application is referred to the Wingecarribee Interim Local Planning Panel (WILPP) as Council's Draft Code of Conduct states:

- 'Cl 3.15 (b) development for which the applicant or land owner is:*
- (i) the council,..*
- Cl 3.16 The assessment of development applications referred to in clause 3.15 must be undertaken by external consultants who have no pecuniary or non-pecuniary interest (as defined in this code) in the application. Such consultants are to prepare and provide an assessment report to the local planning panel to consider in determining the application.'*

**2. SITE DESCRIPTION AND LOCALITY**

The site is known as Lot 3 DP 1266903 which was created from a subdivision of Lot 38 DP 882935 to create a separate lot in the Public Reserve to allow it to be reclassified as operational land for the

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



specific purpose of creating a public road reserve that would allow the provision of public road access to the Southern Highlands Regional Art Gallery to be situated on Retford Park.

The subdivision was approved under DA 20/0272. The Gallery was approved under DA 20/0518 in March 2020 and was issued as a deferred commencement with one of the deferred matters being the establishment of legal vehicular access to the gallery site.



**Figure 2: Location Plan including surrounding area**

The public road follows an alignment that commences at the intersection of Rowland Road and Jonathon Street, effectively creating the fourth leg to what is now a “T” intersection at this point.

The road then heads north towards the Retford Park land avoiding any major stands of remnant native vegetation. It crosses a mapped Category 2 water course approximately 50 metres north of the Jonathon Street intersection. This crossing has been designed as a low-level crossing that ensures that the current flood extent on adjoining properties is not impacted.

The main features of the proposed road are:

- 7-metre-wide carriageway;
- 500mm unsealed shoulders;
- First 10 metres off Rowland Avenue will have concrete edge strips;
- 2.8 metre swales, 300mm deep either side of the road pavement acting as water quality devices;
- concrete culvert creek crossing with the horizontal alignment of the road designed to the 20% AEP level with appropriate flood depth indicators;
- entry gate at new intersection with Rowland Road/Jonathon Street to restrict access in flood events;
- suitable pavement width at intersection with Rowland Road/Jonathon Street to cater for swept path of 14.5 metre buses; and
- Tree planting on both sides of new road with alternate Pin Oaks and Chinese Pistachio spaced at 10 metre intervals.

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### **3. BACKGROUND**

Council approved DA 20/0518 in March 2020 for the conversion of the existing dairy on the heritage estate of Retford Park to house the Southern Highlands Regional Art Gallery. The consent was issued as a deferred commencement consent with one of the deferral conditions requiring the establishment of legal vehicular access to the gallery site.

The current site for the road access is on Lot 3 DP 1266903 which was created from a subdivision of Lot 38 DP 882935 to create a separate lot in the public reserve to allow it to be reclassified as operational land for the specific purpose of creating a public road reserve that would allow the construction of a public road access to the Regional Art Gallery.

During the assessment period a number of residents raised issue of excessive speed on Rowland Avenue at the intersection of Jonathon Avenue and the proposed new access road. As a result, the assessing officer placed a condition on the development consent requiring the installation of proposed traffic calming devices at the intersection.

The applicant has submitted details for the installation of traffic calming devices which have been considered by Council Traffic Engineers who have determined that the installation of traffic calming devices was not required and that it would be safer to leave the intersection as a priority (stop sign) controlled four-way intersection rather than introduce a non-compliant roundabout design.

On this basis, the applicant has submitted the modification application to delete the condition which is supported by Council Traffic Engineers.

The standard condition (32) requiring a defects and liability bond for the building works for the road was placed on the consent. The applicant has had discussions with the previous Deputy General Manager who had agreed to modify the condition to provide for a Deed of Agreement in lieu of a monetary bond.

The Acting General Manager has confirmed this agreement and therefore the amendment has been recommended.

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### **4. PROPOSAL**

The Modification application seeks the deletion of condition 4(f) and amendment to condition 32. Condition 4 is reproduced below:

#### ***Condition 4. Amendments to Approved Plans***

*The applicant shall provide the following plans/details to Council for approval prior to the issue of the Section 138 Roads Act 1993 Approval:*

- a) *The exact location of the 300mm Trunk Water Main is to be ascertained and any measures to protect the integrity of it are to be detailed on plan. These plans and any supporting report is to be approved by Council's Manager Development Assessment.*
- b) *Amended plans are to be submitted to Council indicating the proposed gate at boundary of the public road reserve and Lt 221 DP 1206897 relocated wholly inside Lot 221. These plans are to be approved by Council's Manager Development Assessment.*
- c) *Flood depth markers and appropriate flood warning signs are required to warn the drivers and pedestrians of the flood risks. Vehicle and pedestrian access to proposed road and footpath needs to be restricted during the major flood events. A signage plan for flood depth markers and flood warning signs is to be approved by*

*Council's Manager Development Assessment.*

- d) *The causeway section of the road needs to have bollards or similar safety measures to protect the vehicles from the risk of falling. Pedestrians need to be physically separated from the road carriageway where footpath merges with the road. A plan is to be provided to Council for approval by Manager Development Assessment indicating proposed measures i.e. bollards, kerb, etc. to separate pedestrians and prevent vehicles falling across the causeway.*
- e) *Plans are to be amended to include concrete edge strips instead of unsealed shoulders for the road from the Rowland Avenue intersection and the access gate and then first 10 metres past the access gate on both sides of the proposed road. These plans and any supporting report is to be approved by Council's Manager Development Assessment.*
- f) *Plans are to be submitted to Council for approval by Council's Manager Development Assessment detailing the proposed traffic calming devices to be installed at the intersection of the new road and Rowland Avenue/Jonathon Street.*

The applicant has submitted proposed details of traffic calming devices to Council which have been assessed by Council's Traffic Engineers who have advised that the historical speed data for Rowland Avenue does not show a speeding issue and therefore traffic calming devices are not warranted. The view of Council engineers is that it would be safer to leave the intersection as a priority (stop sign) controlled four-way intersection rather than introduce a non-compliant roundabout design.

The application also seeks to amend condition 32 of the consent which states:

**32. Defects and Liability Bond for Public Assets - Building Works**

Prior to the issue of Section 138 Final Approval the developer shall lodge a cash bond to cover the defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.

The security bond will be in an amount equal to 10% of the value of the total building works with a minimum value of \$10,000 based on the building costs supported by written evidence in accordance with Council's Bond Policy. The bond shall be assessed by Council for release after the 24 month period on formal request from the developer.

**Reason:** *To ensure appropriate warranty periods apply for defect liability.*

The applicant seeks to amend the condition to read as follows:

**32. Defects and Liability Bond for Public Assets - Building Works**

Prior to the issue of Section 138 Final Approval the developer shall lodge a deed of agreement to cover the defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.

The deed of agreement shall be assessed by Council for release after the 24 month period on formal request from the developer.

**Reason:** *To ensure appropriate warranty periods apply for defect liability.*

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**5. NOTIFICATION**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance the Community Engagement Strategy dated 11 December 2019 from 23

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



April 2021 to 14 May 2021. The following total submissions were received as a result of the notification process:

- 7 Rowland Road Bowral – 1 submission

Issue	Comment
There is already an existing road to access gallery so why do we as ratepayers have to put up with disruption and cost when it is not necessary.	The construction of the proposed access road has been approved. This modification is to delete the requirement for traffic calming devices and to alter condition in relation to payment of bond.

## 6. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

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

The catchment SEPP aims:

- 'to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.*
- to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.*
- to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.'*

Development proposed by the application requires a concurrence from Water NSW pursuant to section 62 of the *Water NSW Act 2014*.

As such, the application was referred to Water NSW for comment and concurrences. General terms of approval have been provided and included in the draft conditions of consent.

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

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated and whether the land is or can be made suitable for the purpose for which development is proposed.

Based on Council's records, the site and immediately adjoining properties have been used for public open space for some 30 years and prior to this was used for rural purposes. There is no evidence to suggest any potentially contaminating activities have taken place on or near the site. Accordingly, the site is considered suitable for the proposed road use and satisfies the provisions of SEPP 55.

### 6.3 Wingecarribee Local Environmental plan 2010 (WLEP)

The land is in Zone RE1 Public Recreation. The Land Use Table at the end of Part 2 of the WLEP specifies developments (including roads) is permitted with consent in Zone RE1.

The proposal is consistent with the specific objectives of the zone in that the proposed activity increase the available land stock within the subdivision.

The following development standards in the WLEP 2010 apply to the proposal:

Clause	Development Standard	Proposal	Compliance
Cl 5.2 Classification and reclassification of land	The public land described in Part 1 or Part 2 of Schedule 4 is classified, reclassified,	The land has been reclassified as Operational Land	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



	as operational land for the purposes of the <i>Local Government Act 1993</i> .	for the purposes of the <i>Local Government Act 1993</i>	
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**7. DEVELOPMENT CONTROL PLANS AND POLICIES**

**7.1 Bowral Town Plan Development Control Plan (DCP)**

The Bowral Town Plan 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 a more desirable planning and urban design outcome.

The proposed modification is minor and the Bowral Town Plan DCP is not impacted upon by the proposal.

**8. CONSULTATION**

***Pre-lodgement Meeting***

The applicant did not seek formal pre-lodgment meeting before making the application.

**8.1 External Referrals**

Referrals	Advice/Response/Conditions
Natural Resources Access Regulator	The Natural Resources Access Regulator has advised by letter dated 29 April 2021 that their previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary.
Water NSW	Water NSW has provided their comments by letter dated 11 December 2020 with no conditions.

**8.2 Internal Referrals**

Referrals	Advice/Response/Conditions
Development Engineer	The historical speed data for Rowland Road immediately west of Jonathon Street shows an 85% speed of 49km/h. This does not constitute a speeding issue, so we do not believe traffic calming is warranted. Furthermore, on review of the proposed mini-roundabout design recently submitted by you at the request of Council's Traffic Engineer, it is the combined view of Council engineers that it would be safer to leave the intersection as a priority (Stop sign) controlled four-way intersection rather than introduce a non-compliant roundabout design.  Should the site experience significant growth in traffic volumes in future, for example if additional development was to occur which would generate traffic on the new access road, then Council will consider the implementation of a roundabout or other traffic management device/s as necessary and the funding of such would not fall on the Art Gallery development.
Acting General	The Acting General Manager has been consulted and has concurred

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Referrals	Advice/Response/Conditions
Manager	to the proposed modification by email dated 15 June 2021.

**9. ENVIRONMENTAL ASSESSMENT**

The site has been inspected (14 May 2021) and 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 & 7 and key issues below.
Section 4.15 'Matters for Consideration	Comments
Section 4.15 (1)(a)(ii) – Provision of any draft environmental planning instrument.	Nil
Section 4.15 (1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Bowral Town Plan DCP. See table in Appendix 3 and the discussion below.
Section 4.15 (1)(a)(iiiia) – Provision of any Planning Agreement or draft Planning Agreement.	Not Applicable.
Section 4.15 (1)(a)(iv) – Provisions of the Regulations.	The relevant clauses of the Regulations have been satisfied.
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.	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15 (1)(c) – The suitability of the site for the development.	The land was reclassified as operational land for the sole purpose of providing road access to the Southern Highlands Regional Art Gallery. Therefore, the site is considered suitable for the proposed development.
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation.	The issues raised in the submissions have been addressed in this report.
Section 4.15 (1)(e) – The public interest.	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.



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## **10. DISCUSSION OF KEY ISSUES**

### **Traffic Calming Devices**

During the notification period for the development application a number of residents raised concerns about excessive speed on Rowland Road. As a result, the assessing officer placed a condition on the consent in regard to the provision of traffic calming devices for the intersection. The applicant has submitted designs for the devices. Council's Traffic Engineers have now advised that the historical speed data does not constitute a speeding issue and have determined that it would be safer to leave the intersection as a priority stop sign controlled intersection rather than the proposed mini roundabout.

### **Condition 32 – Defects and Liability Bond.**

The Acting General Manager has provided advice that it is acceptable to amend the condition to provide a Deed of Agreement in lieu of a Bond.

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## **11. CATEGORY OF MODIFICATION**

The proposed modification to the existing consent is considered to qualify for consideration under Section 4.55 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The modification application has been lodged pursuant to Section 4.55(1A) of the Act, which states:

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.”*

The application is seeking to delete condition 4(f) related to the provision of traffic calming device/s and modify condition 32 related to a Deed of Agreement in lieu of a cash or security bond for defects of road construction of the approved consent DA21/0023.

In accordance with Section 4.55(1A)(b), Council is satisfied that this modification, if approved, results in a development that will be substantially the same as the development as originally approved.

The deletion of the development condition and change of condition does not change what the development is and is not considered to be a material change to the development itself. The test for whether or not a modified development is substantially the same as the original development involves far more than a simplistic deletion and/or modification of a condition.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Section 4.55(1A) is appropriate in this case in recognition of the fact that the proposed modification does not seek to change the original application in that it remains as the construction of an access road to the Regional Art Gallery.

In accordance with the above, Council is satisfied that the development, as modified, is substantially the same development as originally approved, as required by Section 4.55(1A).

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**12. CONCLUSION**

That the modification application pursuant to Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* to modify DA 21/0023, by way of deletion of condition 4(f) and modify condition 32 be APPROVED for the following reasons:

- The proposal is consistent with the relevant objectives contained within the Wingecarribee Local Environmental Plan 2010 and the relevant requirements of the Bowral Town Plan Development Control Plan.
- The proposal is consistent with the specific objectives of the RE1 Public Recreation zone in that the proposed activity will protect and enhance the natural environment for recreational purposes and will enable other land uses that provide facilities or services to meet the day to day needs of residents.

**Appendix 1: - Referrals**

**1. Development Engineer.**

Traffic calming device is not required as part of the development based on our historical speed data for Rowland Road.

**2. General Manager**

The Acting General Manager has confirmed this agreement and therefore the amendment has been recommended.

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**ATTACHMENTS**

1. Draft Conditions of Consent



07 July 2021

RICHARD CROOKES CONSTRUCTIONS  
3 /4 BROADCAST WAY  
ARTARMON NSW 2064

## NOTICE OF DETERMINATION OF A MODIFICATION APPLICATION

Pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*

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<b>DEVELOPMENT APPLICATION NO:</b>	21/0023
<b>APPLICATION NO:</b>	21/0023.05
<b>PROPOSED MODIFICATION:</b>	Construction of a new public road within road reservation to access proposed Southern Highlands Regional Art Gallery
<b>APPLICANT:</b>	RICHARD CROOKES CONSTRUCTIONS
<b>OWNER:</b>	WINGECARRIBEE SHIRE COUNCIL
<b>PROPERTY DESCRIPTION:</b>	Lot 38 DP 882935
<b>PROPERTY ADDRESS:</b>	OPEN SPACE ROUSE ROAD BOWRAL NSW 2576
<b>APPROVED DEVELOPMENT:</b>	Construction of a new public road within road reservation to access proposed Southern Highlands Regional Art Gallery
<b>DA APPROVAL DATE:</b>	27 November 2020
<b>CONSENT TO OPERATE FROM:</b>	27 November 2020
<b>CONSENT TO LAPSE ON:</b>	27 November 2027
<b>DETERMINATION:</b>	<b>Approved</b> subject to conditions attached in schedule 1 of this consent
<b>DATE OF DETERMINATION:</b>	07 July 2021

**Inconsistencies**

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



In the event of any inconsistency between the conditions of this modified consent and the plans / supporting documents referred to in this notice, the conditions of this development consent shall prevail.

**Rights of Appeal**

Pursuant to Section 8.9 of the *Environmental Planning and Assessment Act 1979*, an applicant for the modification of a development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 6 months after the date the decision appealed against is notified.

**Review of determination**

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.

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**Ross Jauncey**  
**Development Assessment Planner**

07 July 2021  
**Date of Issue.**



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**SUMMARY SCHEDULE OF MODIFIED CONDITIONS**

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**4. Amendments to Approved Plans**

**Modified Application 21/0023.05 dated 07 July 2021 to read:**

The applicant shall provide the following plans/details to Council for approval prior to the issue of the Section 138 Roads Act 1993 Approval:

- a) The exact location of the 300mm Trunk Water Main is to be ascertained and any measures to protect the integrity of it are to be detailed on plan. These plans and any supporting report is to be approved by Council's Manager Development Assessment.
- b) Amended plans are to be submitted to Council indicating the proposed gate at boundary of the public road reserve and Lt 221 DP 1206897 relocated wholly inside Lot 221. These plans are to be approved by Council's Manager Development Assessment.
- c) Flood depth markers and appropriate flood warning signs are required to warn the drivers and pedestrians of the flood risks. Vehicle and pedestrian access to proposed road and footpath needs to be restricted during the major flood events. A signage plan for flood depth markers and flood warning signs is to be approved by Council's Manager Development Assessment.
- d) The causeway section of the road needs to have bollards or similar safety measures to protect the vehicles from the risk of falling. Pedestrians need to be physically separated from the road carriageway where footpath merges with the road. A plan is to be provided to Council for approval by Manager Development Assessment indicating proposed measures i.e. bollards, kerb, etc. to separate pedestrians and prevent vehicles falling across the causeway.
- e) Plans are to be amended to include concrete edge strips instead of unsealed shoulders for the road from the Rowland Avenue intersection and the access gate and then first 10 metres past the access gate on both sides of the proposed road. These plans and any supporting report is to be approved by Council's Manager Development Assessment.
- ~~f) Plans are to be submitted to Council for approval by Council's Manager Development Assessment detailing the proposed traffic calming devices to be installed at the intersection of the new road and Rowland Avenue/Jonathon Street.~~

**Reason:** *To confirm and clarify the terms of Council's approval.*

**32. Defects and Liability Bond for Public Assets - Building Works**

**Modified Application 21/0023.05 dated 07 July 2021 to read:**

~~Prior to the issue of Section 138 Final Approval the developer shall lodge a cash bond to cover the defects liability period of 24 months for any public infrastructure constructed by them which will handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.~~

~~The security bond will be in an amount equal to 10% of the value of the total building works with a minimum value of \$10,000 based on the building costs supported by written evidence in accordance with Council's Bond Policy. The bond shall be assessed by Council for release after the 24 month period on formal request from the developer.~~

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**

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Prior to the issue of Section 138 Final Approval the developer shall lodge a deed of agreement to cover the defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.

The deed of agreement shall be assessed by Council for release after the 24 month period on formal request from the developer.

***Reason:*** To ensure appropriate warranty periods apply for defect liability.



**SCHEDULE 1 CONDITIONS OF MODIFIED DEVELOPMENT CONSENT**

**ADMINISTRATION CONDITIONS**

**1. Development Description**

Development consent has been granted in accordance with this notice of determination for the purposes of Construction of a new public road within road reservation to access proposed Southern Highlands Regional Art Gallery.

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

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

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

<b>Plan Title / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared By</b>	<b>Dated</b>
Cover Sheet, Drawing Schedule & locality Plan	Job No: 191323, Dwg No: DAC101.01 Rev: 01	Northrop	01.05.2020
Concept Sediment & Erosion Control Plan	Job No: 191323, Dwg No: DAC102.01 Rev: 01	Northrop	01.05.2020
Concept Sediment & Erosion Control Details	Job No: 191323, Dwg No: DAC102.21 Rev: 01	Northrop	01.05.2020
Access Road Plan	Job No: 191323, Dwg No: DAC104.01 Rev: 02	Northrop	07.05.2020
Access Road Longitudinal & Typical Road Cross Sections	Job No: 191323, Dwg No: DAC105.01 Rev: 01	Northrop	01.05.2020
Culvert Plan & section	Job No: 191323, Dwg No: DAC106.01 Rev: 01	Northrop	01.05.2020
Civil Documentation Details	Job No: 191323, Dwg No: DAC107.01 Rev: 01	Northrop	01.05.2020
14.5m Bus Swept Paths	Job No: 191323, Dwg No: DAC109.81 Rev: 01	Northrop	01.05.2020
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	June 2020

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



Threatened Species Habitat Assessment	Not Referenced	Eco Planning	18 May 2020
Flora and Fauna Assessment	Version 1.0 - Draft	Eco Planning	11 October 2019
Traffic Impact Assessment Report	Ref: 19364	Varga Traffic Planning Pty Ltd	11 May 2020
Flood Study	Ref: SY191323- CR01 Rev: B	Northrop	21.10.2019

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SECTION 138 ROADS ACT  
1993 APPROVAL**

**3. Developer to provide photos of damage to Council property**

The developer must provide Council with photos of any damage of Council property adjoining the development prior to the issue of the Section 138 approval.

Photos should include any damage to footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter and road pavement and the like.

Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the developer/owners/proponents expense.

The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged Council property are to be carried out by the contractor/builder to Council's specification and supervision prior to issue of the Section 138 Final Approval.

**Reason:** To ensure that Council's assets are protected.

**4. Amendments to Approved Plans**

**Modified Application 21/0023.05 dated 07 July 2021 to read:**

The applicant shall provide the following plans/details to Council for approval prior to the issue of the Section 138 Roads Act 1993 Approval:

- (a) The exact location of the 300mm Trunk Water Main is to be ascertained and any measures to protect the integrity of it are to be detailed on plan. These plans and any supporting report is to be approved by Council's Manager Development Assessment.
- (b) Amended plans are to be submitted to Council indicating the proposed gate at boundary of the public road reserve and Lt 221 DP 1206897 relocated wholly inside Lot 221. These plans are to be approved by Council's Manager Development Assessment.
- (c) Flood depth markers and appropriate flood warning signs are required to warn the drivers and pedestrians of the flood risks. Vehicle and pedestrian access to proposed road and footpath needs to be restricted during the major flood events. A signage plan for flood depth markers and



**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



flood warning signs is to be approved by Council's Manager Development Assessment.

(d) The causeway section of the road needs to have bollards or similar safety measures to protect the vehicles from the risk of falling. Pedestrians need to be physically separated from the road carriageway where footpath merges with the road. A plan is to be provided to Council for approval by Manager Development Assessment indicating proposed measures i.e. bollards, kerb, etc. to separate pedestrians and prevent vehicles falling across the causeway.

(e) Plans are to be amended to include concrete edge strips instead of unsealed shoulders for the road from the Rowland Avenue intersection and the access gate and then first 10 metres past the access gate on both sides of the proposed road. These plans and any supporting report is to be approved by Council's Manager Development Assessment.

~~(f) Plans are to be submitted to Council for approval by Council's Manager Development Assessment detailing the proposed traffic calming devices to be installed at the intersection of the new road and Rowland Avenue/Jonathon Street.~~

**Reason:** *To confirm and clarify the terms of Council's approval.*

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

Prior to the issue of a Section 138 *Roads Act 1993* Approval, an application under Section 68 of the *Local Government Act 1993* shall be made to, and issued by Wingecarribee Shire Council, for the following approvals:

- Stormwater works

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

**6. Section 138 Roads Act 1993 Approval**

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

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

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

**Advice:** *Where works are required within a Classified Road, the Developer must obtain the*

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



*concurrence and / or the approval of the Roads and Maritime Services for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.*

**Reason:** *Statutory requirement.*

**7. Hoardings and Other Temporary Barriers on Council Property**

Council areas are required to have appropriate measures put in place to protect the public. A separate application under the *Roads Act 1993* along with details and appropriate fees be submitted to Council prior to the commencement of work. The application shall detail all hoardings, temporary barriers and various other arrangements proposed to be installed to protect the general public from potential disruption and/or injury and also how Council assets will be protected throughout the course of construction activities.

**Reason:** *To maintain public safety.*

**8. Construction Management Plan**

To undertake development works including demolition, earthworks and construction a Construction Management Plan (CMP) is required to be submitted and approved by Council prior to issue of the Section 138 Approval. The CMP shall indicate measures to be implemented to protect the environment as well as public health, safety and convenience. The CMP must include the following:

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

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



enter and be in attendance on the site;

- n) Details of management of storm water run-off and the propose sediment and erosion control measures including the location of any rubble grids;
- o) Details of any air and dust management;
- p) Details of noise and vibration controls;
- q) Anticipated staging and duration of works
- r) Provision of Traffic Management Plan (TMP) and Traffic Control Plans (TCP)

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

**9. Tree Retention - Road Design and Construction**

The proposed road design and construction shall preserve and retain existing vegetation within the road reserve. Any trees proposed to be removed within the road reserve must be approved by Council and are to be clearly identified by survey and shown on submitted Section 138 Application plans.

All trees shown on approved engineering plans as being retained are to be appropriately marked and protected during construction works.

**Reason:** *To ensure preservation of as many existing trees as possible.*

**10. Pedestrian Safety**

The Contractor shall endeavour to minimise disturbance to pedestrian / vehicle traffic in the vicinity of the site. If required by Council a hoarding shall be erected and consent required in accordance with Section 138 of *Roads Act 1993*.

Details shall be submitted to the Accredited Certifier prior to the issue of a Section 138 Approval showing compliance with this condition.

**Reason:** *To ensure pedestrian and vehicular safety.*

**11. Waste Management Plan**

A Waste Management Plan shall be completed and submitted to Council for approval, prior to the issue of the S138 *Roads Act 1993* approval for the development.

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

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

**12. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (**also see Condition 31, xi, Water NSW concurrence**

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



**conditions**) shall be prepared in accordance with "Landcom's Blue Book" for sedimentation and erosion control plan by a suitably qualified person, and approved by Council prior to issue of the Section 138 Approval.

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

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

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

**13. Detailed Stormwater Drainage System Design**

Prior to the issue of the Section 138 Approval, a detailed storm water hydraulic drainage plan for the disposal of storm water from the site, prepared in accordance with Council's Design Standards shall be submitted to Council and approved by Council's Development Engineer. Should any changes be required to the approved storm water drainage plan, the amended design shall achieve equivalent performance standards in accordance with Design Specifications.

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



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

### **14. Notice of Commencement**

No work shall commence until a notice of commencement form has been submitted (form will be attached with issue of a Section 138 Roads Act 1993 Approval or available from Council's website), giving the Council:

(a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent.

(b) Details of the Principal Contractor:

- Name
- Builders Licence Number
- Principal Contractor Company Name
- Principal Contractor ABN
- Address of Principal Contractor
- Email Address

(c) Details demonstrating compliance with development consent conditions relevant prior to commencement of the development been satisfied.

**Reason:** *Statutory requirement.*

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

### **15. Developers Representative during Construction of Works**

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

Details to be submitted include:-

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

Prior to commencing any works on site the representative shall:

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



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

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

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

**Reason:** *Statutory requirement.*

**16. Fencing of the Construction Site**

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

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

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

**17. Traffic Control Plan**

A minimum of seven (7) days prior to the commencement of work, the developer shall submit to Council a Certified Traffic Management Plan for each activity of work in accordance with the current version of Roads and Maritime Services (RMS) document "Traffic Control at Work Sites". This plan must include each construction activity that involves works on or adjacent to public land. If the work site alters, further plans are to be submitted to Council. A copy of the plan(s) is to be kept on site at all times.

**Reason:** *To ensure public safety.*

**18. Erosion and Sediment Control**

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

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

**19. Wheel Wash**

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

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



## CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

### 20. Approved Plans to be available on site

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

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

### 21. Imported 'Waste-derived' Fill Material

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

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

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

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

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

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

### 22. Soil and Water Management - Stockpiles

Stockpiles of topsoil, sand, aggregate, soil or other material are not to be located on any drainage line or easement, natural watercourse, footpath or roadway and shall be protected with adequate sediment controls.

**Reason:** *To ensure that building materials are not washed into stormwater drains.*

### 23. Soil and Water Management - Site Maintenance

Roads servicing the construction site shall be maintained in a condition free of mud, soil and other construction/demolition materials at all times.

**Reason:** *To minimise construction / demolition materials being trucked off site.*



**24. Prevention of Nuisance**

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris and noise during the carrying out of works in the development.

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

**25. Dust Control**

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

**Reason:** *Environmental amenity*

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

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

<b>DAY</b>	<b>HOURS</b>
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil

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

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

**27. Construction Management Plan**

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

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

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

**28. Temporary Onsite Toilet**

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

Each toilet shall:

- (a) be a standard flushing toilet connected to a public sewer, or



**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF SECTION 138 ROADS ACT 1993  
FINAL APPROVAL**

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

The applicant is to ensure that the works associated with the Section 68 approval for this development be completed and inspected by Council prior to the issue of the Section 138 Final Approval.

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

**30. Engineering Details in DXF Format**

The Developer shall provide a copy of the Works As Executed information on disk in DXF format prior to the issue of the Section 138 Final Approval. The developer may contact Council's GIS Officer for further details and technical specifications.

**Reason** *To ensure appropriate records are held and asset management.*

**Note:** *The successful handover of constructed assets to Council resulting from new developments must be accompanied by the work as executed (WAE) documents specified on the Council Website: <http://www.wsc.nsw.gov.au/engineering-standards>.*

Failure to provide completed documents in this format will result in a delay in the issue of the S138 *Roads Act 1993* final approval and retention of bonds held until such time as Council have deemed the WAE information to be complete in the required format. The standards are updated as required; please ensure you are using the correct version. Please note the work as executed information requirements include providing surveyed levels for all underground assets. WAE Information submitted must be checked and signed off by a Registered Surveyor or suitably qualified Engineer.

**31. Asset Management**

The developer shall provide a detailed summary of the Assets that will be handed to Council at the end of the maintenance period prior to the issue of the Section 138 Final Approval. The details shall be provided in a tabular form so as to allow Council to update its Assets register.

The assets to be identified include:

- Roadways length and width and type of surface
- Drainage systems length and size of pipes, number of pits, total area (m2)
- Footpath

**Reason:** *To ensure appropriate asset management.*

**32. Defects and Liability Bond for Public Assets - Building Works  
Modified Application 21/0023.05 dated 07 July 2021 to read:**

~~Prior to the issue of Section 138 Final Approval the developer shall lodge a cash bond to cover the~~

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



~~defects liability period of 24 months for any public infrastructure constructed by them which will handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.~~

~~The security bond will be in an amount equal to 10% of the value of the total building works with a minimum value of \$10,000 based on the building costs supported by written evidence in accordance with Council's Bond Policy. The bond shall be assessed by Council for release after the 24 month period on formal request from the developer.~~

Prior to the issue of Section 138 Final Approval the developer shall lodge a deed of agreement to cover the defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to council. The liability period will commence from the date of issue of the Section 138 Final Approval.

The deed of agreement shall be assessed by Council for release after the 24 month period on formal request from the developer.

**Reason:** *To ensure appropriate warranty periods apply for defect liability.*

**33. Street Trees**

Prior to the issue of the Section 138 Roads Act 1993 Final Approval, street trees shall be planted alternately at a rate of one (1) tree per 10 metres of road length on both sides of proposed road

**Species:** *Quercus palustris* (Pin Oak)  
*Pistacia chinensis* (Chinese Pistachio)

The street trees shall be planted in accordance with Council's Street Tree Implementation Plan.

**Reason:** *To ensure that the landscaping is completed prior to commencement of use of the road.*

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENTS.**

**34. Road and Footway access**

The Art Gallery operator shall be responsible for the management of access through the proposed access road and footway, including the unlocking and locking of the gate adjoining the Rowland Road intersection. Access shall be prevented during any major flood events or the likelihood of a major flood event. The Art Gallery operator shall also be responsible for the removal and disposal of **ALL** debris that is deposited on the access road following a flood event. **ALL** debris shall be removed from the roadway prior to the opening of the road.

**Reason:** *To ensure the safety of persons attending the Art Gallery.*

**INTEGRATED DEVELOPMENT CONDITIONS**

**35. General Terms of Approval – Natural Resources Access Regulator**

**Reference No:** IDAS1127021 GTA116502

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery**



**ATTACHMENT 1 Draft Conditions of Consent**

**Issue date of GTA:** 30 October 2020

**Type of Approval** Controlled Activity

**Location of work/activity:** Lot 38 DP882935 ROUSE ROAD BOWRAL 2576

**Waterfront Land:** Tributary of Mittagong Creek.

**DA Number:** DA21/0023

**LGA:** Wingecarribee Shire Council

**The GTA issued by NRAR do not constitute an approval under the *Water Management Act 2000*.** The development consent holder must apply to NRAR for the relevant approval **after development consent** has been issued by Council **and before** the commencement of any work or activity.

GT0009 Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the *Water Management Act 2000*.

GT0002 A. This general terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application DA21/0023 provided by Council to Natural Resources Access Regulator.

B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, Parramatta Office, must be notified in writing to determine if any variations to the GTA will be required.

GT0005 A. The application for a controlled activity approval must include the following plan(s).

1. Detailed civil construction plans;
2. Erosion and sediment control plans.

B. The plan(s) must be prepared in accordance with Natural Resources Access regulator's guidelines located on the website:

<https://www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities>

**SCHEDULE 1**

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by NRAR for integrated development associated with IDAS1127021 GTA116502 as provided by Council.

- Statement of Environmental Effects, prepared by LEP, dated June 2020;

**5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space  
Rouse Road Bowral - Access Road to service Southern  
Highlands Regional Art Gallery  
ATTACHMENT 1 Draft Conditions of Consent**



- Stormwater Quality report, prepared by Northrop, dated 15/06/2020;
- Civil Plans, 191323, Sheets 101-105, prepared by Northrop, dated 1/05/2020;
- Flora and Fauna Assessment, prepared by Ecoplanning, dated 11/10/2020.

**CONCURRENCE CONDITIONS**

**36. Concurrence - Water NSW**

Concurrence has been granted by Water NSW for the development pursuant to *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*. The conditions provided by Water NSW are provided below:

**General**

i. The scope of works and road construction shall be as specified in Statement of Environmental Effects prepared by Lee Environmental Planning (dated June 2020) and shown on the Access Road Plan (Job No. DAC104.01; Rev. 03, dated 10.09.2020) prepared by Northrop. No revisions to scope that will have an impact on water quality, shall be permitted without the agreement of Water NSW.

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

**Public Road**

- ii. The road shall:
- Be sealed and otherwise constructed in accordance with Council's engineering standards, and
  - Direct all runoff via swales to bioretention areas.
- iii. The road crossing of the tributary of Mittagong Creek shall be an engineered box culvert crossing that shall:
- Be designed consistent with the guidelines Sealed Local Roads Manual: *guidelines to good practice for the construction, maintenance and rehabilitation of pavements (ARRB Transport Research Ltd revised and expanded edition 2005)*, and
  - Meet any requirements for Controlled Activity Approval under the *Water Management Act 2000* issued by the Natural Resources Access regulator (NRAR).
- iv. All stormwater structures and drainage works associated with the proposed road shall be wholly included in the road or drainage reserve or within suitably defined easements.

**Reasons for Conditions ii to iv:** *To ensure that the proposed road and associated infrastructure will have a sustainable neutral or beneficial impact on water quality during the operational phase of the development.*



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**Stormwater Management**

v. All stormwater management measures as specified in the Stormwater report (dated 15 June 2020) and shown on the Access Road and Details Plan (Job No. 19323; Dwg. No. DAC 104.1, Rev.03 and DAC 107.01, Rev 02; both dated 10.09.2020) both prepared by Northrop, shall be implemented. The stormwater management measures shall incorporate:

- Swales, and
- Bioretention swales.

vi. The swales and bioretention swales shall be located so as to capture and treat all run-off from the road. The bioretention swales shall:

- Be located offline along the edge of the riparian zone of the tributary of Mittagong Creek but above the 2% Annual Exceedance Probability (1 in 50 year) flood level;
- Be designed consistent with Adoption Guidelines for Stormwater Biofiltration Systems Version 2 (Payne *et al*, 2015, Melbourne, CRC for Water Sensitive Cities);
- Be planted with appropriate deep-rooted, moisture tolerant vegetation protected by rock mulch (grass and turf is not appropriate vegetation and organic mulch is not suitable);
- Direct all discharge and overflow to the tributary of Mittagong Creek via armoured discharge points such that discharge does not cause erosion;
- Be accessible from the road by machinery to facilitate cleaning, monitoring and maintenance of the structures;
- Ensure the discharge outlets are consistent with the requirements of any Controlled Activity Approval under the *Water Management Act (2000)* from the Natural Resources Access Regulator (NRAR);
- Be permanently protected from vehicular damage by bollards, fences, castellated kerbs or similar structures, with signs erected to advise of its nature and purpose in water quality management; and
- Be protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is revegetated or stabilized.

vii. No changes to stormwater treatment and management that will have any impact on water quality, shall be permitted without the agreement of Water NSW.

viii. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to issue of the Sec 138 *Roads Act 1993* Final Approval that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.

ix. An Operational Environmental Management Plan (OEMP) shall be prepared in consultation with Water NSW and Wingecarribee Shire Council by a person with knowledge and experience in the preparation of such plans. The OEMP shall be prepared prior to Sec 138 *Roads Act 1993* Final Approval and shall be incorporated in the OEMP for the Southern Highlands Regional Art Gallery for



implementation. The OEMP shall

- Include details on the location, description and function of stormwater management structures such as swales and bioretention swales and any other stormwater structures and drainage works;
  - Outline the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, including the frequency of such activities;
  - Identify the individuals or positions responsible for inspections and maintenance activities including a reporting protocol and hierarchy; and
  - Include checklists for recording inspections and maintenance activities.
- x. All stormwater treatment devices shall be monitored, maintained and managed as per the Operational Environmental Management Plan.

**Reasons for Conditions v to x:** *To ensure that the stormwater quality management measures and structures for the proposed road have a sustainable neutral or beneficial impact on water quality over the longer term.*

#### **Construction Activities**

xi. The concept Erosion and Sediment Control Plan (Job No: 191323; Dwg. Nos. DAC102.01 and DAC102.21, both Rev: 01, both dated 01.05.2020) prepared by Northrop shall be updated to a Soil and Water Management Plan by a person with knowledge and experience in the preparation of such plans. The Plan shall:

- Meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004);
- Be prepared prior to the issuance of the Sec 138 *Roads Act 1993* approval and be to the satisfaction of Council; and
- Include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain including for culvert and temporary water crossing construction.

xii. The soil and Water Management Plan shall be implemented and no works shall commence until effective erosion and sediment controls have been installed. The controls shall be regularly inspected, maintained and retained until works have been completed and groundcover established.

**Reasons for Conditions xii & xii:** *To manage adverse environmental and water quality impacts during the construction phase of the development to minimize the risk or erosion, sedimentation and pollution within or from the site during this phase.*

**END OF CONDITIONS**

**5.8 Section 8.2 Review of Determination DA21/0212  
Subdivision 2 Lots Lot 140, DP 1231974, 1 Sir James  
Fairfax Circuit Bowral.**

**Report Author:** Development Assessment Planner  
**Authoriser:** Manager Development Assessment

**PURPOSE**

The purpose of this report is to request the consideration, by the panel of DA21/0212 for a Section 8.2 Review of Determination for a 2 Lot subdivision at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral

Proposed Development:	Section 8.2 Review of DA21/0212 for a 2 Lot subdivision.
Applicant:	Lee Environmental Planning
Consultants:	Scott Lee – Lee Environmental Planning
Land Owner:	Stephen Joseph Harris
Applicants estimated cost of proposed development:	\$0
Notification Period:	03 May 2021 to 24 May 2021
Number of Submissions:	0
Political Donations:	None declared.
Reason for referral to Panel:	The original Development Application was determined by Full Council.

**RECOMMENDATION**

**THAT the Interim Independent Advisory Planning Assessment Panel determines a Review of DA20/0212 under Section 8.2 of the *Environmental Planning and Assessment Act 1979* for a two (2) Lot subdivision at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral and delete Conditions 9, 10 and 32 from the consent.**



Figure 1: Aerial Site Plan

## 1. EXECUTIVE SUMMARY

The application is referred to the Wingecarribee Interim Local Planning Panel (WILPP) as the original application was determined by Council.

The application is made under Section 8.2 of the *Environmental Planning and Assessment Act 1979* seeking to delete condition 9, 10 and 32 of development application 21/0212 which was approved for the subdivision of land and carrying out of works to create two (2) lots at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral. The applicant disputes the imposition of the following Conditions of Consent because they do not have the proper justification necessary to substantiate their imposition.

- *Condition 9 – Stormwater Control of Peak Discharge*

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

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

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



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



- *Condition 10 – Detailed Stormwater Drainage System Design*

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

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

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

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

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

**Reason:** *To ensure adequate stormwater management.*

- *Condition 32 – Section 88E Instrument.*

*No subdivision Certificate shall be granted for the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision certificate that an instrument under Section 88E of the Conveyancing Act 1919 has been submitted to and endorsed by Council and will be registered to apply to both proposed Lots 1 and 2 specifying subdivision of each burdened lot is prohibited.*

**Reason:** *To prevent further subdivision of the land.*

Council's development engineer has provided advice that supports the deletion of conditions 9 and 10 as detailed in the report.

The applicant has provided a legal advice that supports the deletion of condition 32. Council's Legal Counsel has provided advice that further supports the deletion of the condition.

The Section 8.2 review to delete conditions 9, 10 and 32 is recommended for approval and the attached draft conditions of consent have been attached deleting the conditions.

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## **2. SITE DESCRIPTION AND LOCALITY**

**Figures 1 and 2** illustrate the land's location and general layout. The site is legally described as Lot 140 DP 12311974 and has a street address of 1 Sir James Fairfax Circuit Bowral. It is situated on the south western corner of Sir James Fairfax Circuit and Ayrshire Parade within the residential precinct of Retford Park.

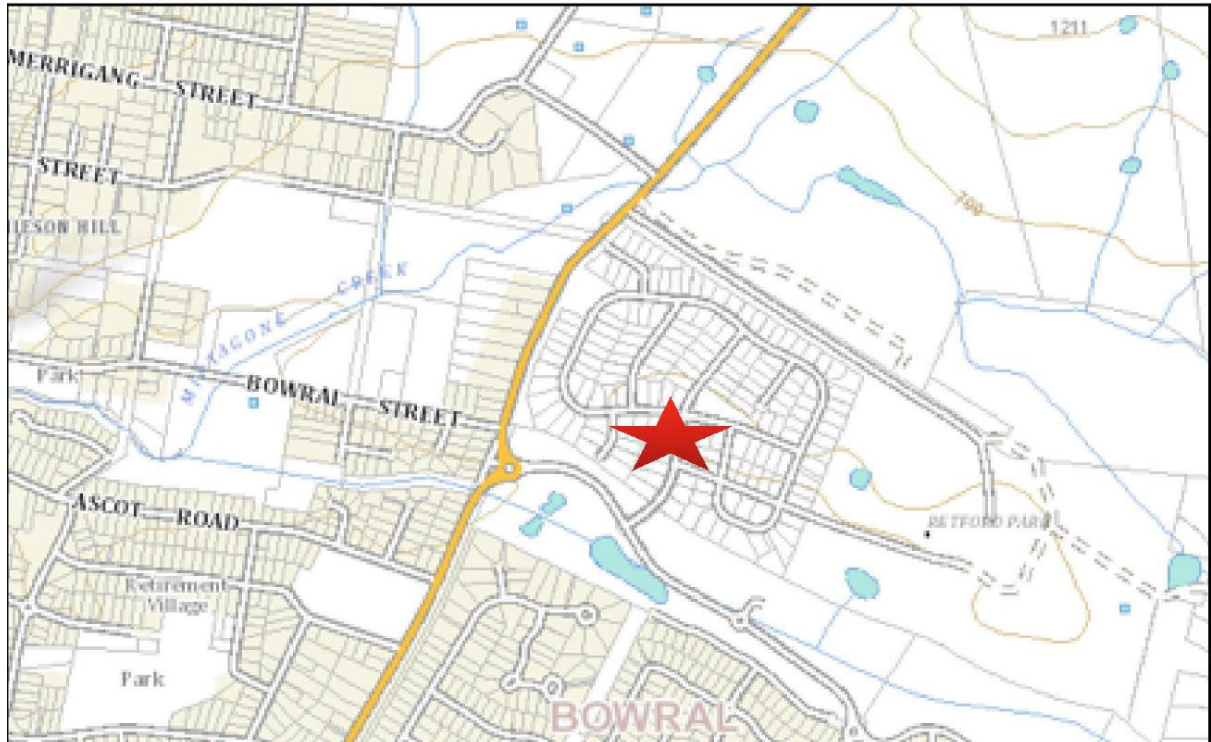


Figure 2: Locality Map

The site is rectangular in shape on a generally north south orientation with its longer eastern street frontage of approximately 60 metres to Ayrshire Parade and its shorter street frontage of 25 metres to Sir James Fairfax Circuit. The total site area is approximately 2004 square metres.

The subject land was kept as a single lot at a larger lot size in the original subdivision layout for the specific purpose of retaining a significant tree on the site, whilst allowing sufficient room for appropriate residential development. This tree was in fact unhealthy and has since been removed.

Council considered this issue and granted approval to remove the tree under a Vegetation Clearing Permit, reference number 20/0570 issued on 03 December 2019.

### 3. BACKGROUND

Development Application 21/0212 which sought Council consent for a 2-lot subdivision was considered by Council at its meeting of 10 February 2021.

Council's Officers recommended the following:

**THAT Development Application 21/0212 for a proposed subdivision of land and carrying out of works to create two (2) lots at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral be approved subject to conditions as described in Attachment 1 to the report.**

When the application was considered by Council, Council resolved:

**THAT development Application DA 21/0212 for a proposed subdivision of land and carrying out of works to create two (2) lots at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit, Bowral be approved subject to conditions as described in Attachment 1 to the report AND THAT a further condition be included that a section 88E Instrument be prepared and submitted to Council for approval and registered over Lots 1 and 2 with the Lands Registry Authority prior to the issue of a Subdivision Certificate restricting further subdivision of Lots 1 and 2 to prevent subdivision of the corner block.**

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



Assessing Officer's comment: It would appear that Council in their determination have placed this additional condition of consent in an attempt to accede to the concerns of the residents of the Retford Estate to circumvent the WLEP 2010 that allows the development of corner lots to have dual occupancy development with Torrens title subdivision on corner lots of 1000m<sup>2</sup>.

Clause 7.2 of WLEP 2010 state:

**7.2 Requirements for subdividing dual occupancies in zones R2 and B1**

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

- (a) to provide for the opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone B1 Neighbourhood Centre,
- (2) Despite any other provision of this plan, development consent may be granted for the subdivision of a lawfully erected dual occupancy in Zone R2 Low Density Residential, only if the development:
  - (a) Is on a corner allotment of not less than 1,000 square metres; and
  - (b) Has access to a reticulated town water supply and sewage system.
- (3) Despite subclause (2), development consent must not be granted for the subdivision of a lawfully erected dual occupancy on land in Zone R2 Low Density Residential or Zone B1 Neighbourhood Centre if the land is located within the Berrima Conservation Area as shown on the Heritage Map.

**4. S8.2 REVIEW OF DETERMINATION APPLICATION 21/0212**

S8.2 Review of Determination of Development Application 21/0212 which was approved for the subdivision of land and carrying out of works to create two (2) lots at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral. The applicant disputes the imposition of the following Conditions of Consent because they do not have the proper justification necessary to substantiate their imposition.

- *Condition 9 – Stormwater Control of Peak Discharge*

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

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

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

- *Condition 10 – Detailed Stormwater Drainage System Design*

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



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

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

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

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

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

**Reason:** *To ensure adequate stormwater management.*

- *Condition 32 – Section 88E Instrument.*

*No subdivision Certificate shall be granted for the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision certificate that an instrument under Section 88E of the Conveyancing Act 1919 has been submitted to and endorsed by Council and will be registered to apply to both proposed Lots 1 and 2 specifying subdivision of each burdened lot is prohibited.*

**Reason:** *To prevent further subdivision of the land.*

The applicant has provided the following comments in support of the application:

**“Conditions 9 and 10 of Development Consent.**

*The respective reasons given for the imposition of Conditions 9 and 10 relate to ensuring Peak discharge from the site is no greater than the pre-developed peak discharge and to ensure adequate stormwater management.*

*Both of these Conditions are superfluous in a situation where the residential precinct within which the subject land exists, has been the subject of a single co-ordinated approval process that has culminated in the design and construction of high standard stormwater infrastructure. These conditions may be appropriate in circumstances of infill residential development where aged and inadequate infrastructure may not be suitable for increased stormwater flows. When infill development applies it does so more randomly, increasing the density of development within a catchment that has not been designed with that development in mind.*

*In this case Retford Park Estate was designed in a co-ordinated fashion, with a Comprehensive stormwater management regime assessed and approved under Development Application 15/0677. This process included detailed analysis of stormwater management by Water NSW and Council, resulting in a raft of requirements relating to stormwater management and infrastructure.*

*Condition 9 and 10 now being imposed are beyond the requirements of Water NSW and Council as they related to stormwater management within Retford Park. Water NSW*

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



assessed and provided concurrence to the subdivision of the Retford Park Estate subject to the placement of required stormwater/nutrient removal dams to service the Estate. These dams were installed and are located on the Estate. Stormwater infrastructure (pipes, kerbs, gutters) are all in place.

Beyond and furthermore to this, lots within the Estate are already encumbered with an 88B Restriction that was required by Water NSW. This restriction has Water NSW as the beneficiary and requires each lot to install the following:

1. All future dwellings shall have rainwater tanks with a minimum capacity of 4,000 litres above any volume required for mains top-up;
2. All roof and gutters shall be designed so as to maximise consistent with good design the capture of rainwater in rainwater tanks; and
3. The rainwater tanks shall as a minimum be plumbed to toilets, laundry and any other areas for non-potable use including use on gardens.

No other lots in the state are required to install stormwater retention requirements beyond Those discussed above, being the retention ponds and the 88B instrument requirements

The proposed subdivision will not change any stormwater management, nor will it lead to any overall increase in stormwater flows. Whether the site is developed as one large site or two smaller sites, the amount of impervious area permitted is the same. Any development upon the lots will comply with points 1-3 mentioned above.

#### **Condition 32 of Development Consent**

In relation to Condition 32, this is simply "ultra vires" and fails the tests of a valid and fair condition of consent. This view is presented in the letter from RMB Lawyers submitted in support of the review application. (Copy attached at **Attachment 2**)

In brief, it reconfirms that the Land and Environment Court has a well-established position That Council cannot seek to create a prohibition of development through the use of restrictions under the Conveyancing Act, where such prohibitions do not exist in the relevant planning instrument. The RMB letter states that:

31. The Restriction that Council has sought to impose at Condition 32 of the Consent does not and cannot operate as a prohibition to supplement WLEP 2010, particularly where Clause 7.2 of WLEP 2010 appears to expressly allow further subdivision of the Property in certain circumstances.
32. The restriction and clause 7.2 of WLEP 2010 appear to be contradictory.
33. In practice, any restriction created pursuant to Condition 32 of the Consent may be set aside by a consent authority in the future pursuant to Clause 1.9A of WLEP 2010 when assessing further proposed development.

With reference to the above, Condition 32 must be struck out.

We note also that this condition was not originally intended to be imposed following the assessment process undertaken by Council's professional assessment staff. It was only imposed following the intervention of Councillors at the meeting of 10 February 2021. In this respect, the request that the condition is now to be deleted is simply ensuring consistency with Council's original assessment position".

Advice has been received from Council's legal Counsel in relation to the submitted legal advice and the advice is:

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### DEVELOPMENT APPLICATIONS



*"It is my opinion that the applicant has a reasonably arguable case that may well convince the Court that the condition should be deleted on merit or otherwise declared invalid."*

The advice has been provided on a Confidential basis and subject to legal professional privilege. A copy of the full advice will be provided to the panel members.

#### 5. NOTIFICATION

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Notification of Development Proposals Policy – 14 November 2018. The application was notified from 03 May 2021 to 24 May 2021. There were no submissions received as a result of the notification process:

#### 6. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The proposed development has been considered with regard to the matters for consideration specified by section 4.15(1) of the *Environmental planning and Assessment Act 1979*, as detailed below.

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

The catchment SEPP aims:

- (a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.
- (b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.
- (c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.

The development was previously assessed as a Module 1 under the NorBE Guidelines, and Council assumed concurrence to consider water quality. In accordance with clause 10 of the Catchment SEPP, the NorBE Tool was used to determine that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.

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

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated and whether the land is or can be made suitable for the purpose for which development is proposed.

Based on Council's records, the site and immediately adjoining properties have been used for residential purposes since 2016 and prior to this was used for rural uses. There is no evidence to suggest any potentially contaminating activities have taken place on or near the site. Accordingly, the site is considered suitable for the proposed residential use and satisfies the provisions of SEPP 55.

##### 6.3 Wingecarribee Local Environmental plan 2010 (WLEP)

The land is in Zone R2 Low Density Residential. The Land Use Table at the end of Part 2 of the LEP specifies developments (including subdivision of land to create lots) for the purpose of *dwelling houses* is permitted with consent in Zone R2.

The proposal is consistent with the specific objectives of the zone in that the proposed activity increase the available land stock within the subdivision.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



The following development standards in the WLEP 2010 apply to the proposal:

Clause	Development Standard	Proposal
CI 4.1: Minimum subdivision lot size	The minimum size shown on the LEP Lot Size Map in relation to the land is 1000m <sup>2</sup> .	Each lot size exceeds 1000m <sup>2</sup> .
CI 7.10: Public utility infrastructure	Public utility infrastructure is available to the land	Provided all consent conditions are complied with, the proposed development will have access to water supply, electricity supply and sewerage infrastructure.

**7. DEVELOPMENT CONTROL PLANS AND POLICIES**

**7.1 Bowral Town Plan Development Control Plan (DCP)**

The Bowral Town Plan 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 a more desirable planning and urban design outcome.

The relevant provisions of the Bowral Town Plan DCP are addressed in Appendix 2.

**8. ENVIRONMENTAL ASSESSMENT**

The site has been inspected (14 May 2021) and 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 & 7 and key issues below.
Section 4.15 'Matters for Consideration	Comments
Section 4.15 (1)(a)(ii) – Provision of any draft environmental planning instrument.	Nil
Section 4.15 (1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Bowral Town Plan DCP. See table in Appendix 3 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	The relevant clauses of the Regulations have been satisfied.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



of the Regulations.	
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.	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15 (1)(c) – The suitability of the site for the development.	The site is located in close proximity to local services. The site has sufficient area to accommodate the proposed land-use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation.	No submissions were received.
Section 4.15 (1)(e) – The public interest.	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

**8.1 Key Issues**

The key issues relating to the assessment of the Review of Determination primarily relate to Council assessment of the matter at its Council meeting where they elected to impose Condition 32 in an attempt to accede to the concerns of the residents of the Retford Estate to circumvent the WLEP 2010 that allows the development of corner lots to have dual occupancy development with Torrens title subdivision on corner lots of 1000m<sup>2</sup>. The applicant has raised the issue of the condition being “*Ultra Virus*” Which is considered on Council’s legal advice to be correct.

It is considered that Conditions of Development Consent should not be imposed to circumvent the numerical standards of the Local Environmental Planning Policy.

Condition/s 9 and 10 were imposed by Council’s Development Engineers and in hindsight should not have been imposed as the estate was designed to cater for the stormwater disposal over the entire estate and not from each individual lot.

**9. CONCLUSION**

That the application under Section 8.2 of the *Environmental Planning & Assessment Act 1979* for review of Determination of Development Application DA21/0212.01 for two (2) Lot Subdivision, Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral, be APPROVED to delete conditions 9, 10 and 32 of the consent for the following reasons:

- The proposal is consistent with the relevant objectives contained within the Wingecarribee Local Environmental Plan 2010 and the relevant requirements of the Bowral Town Plan Development Control Plan.
- The proposal is consistent with the specific objectives of the R2 Low Density Residential zone in that the proposed activity will provide for the housing needs of the community within a



**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



low-density residential environment and will enable other land uses that provide facilities or services to meet the day to day needs of residents.

**APPENDIX 1: REFERRALS**

**1. Development Engineer.**

Council's Development Engineer has advised:

*"In relation to the approved two (2) lot subdivision on the subject property there is no objection raised to the deletion of the following conditions.*

- *Condition 9: Due to the fact that stormwater detention from within Retford Park subdivision is catered for by way of site detention not individual lot detention facilities; and*
- *Condition 10: As this information will be requested and approved in conjunction with future DA building works on the lots.*

**2. Legal Counsel**

Advice has been received from Council's legal Counsel in relation to the submitted legal advice. The advice was provided on a confidential basis and subject to legal professional privilege. A copy of the advice has been provided to members of the panel. Briefly the advice is:

*"It is my opinion that the applicant has a reasonably arguable case that may well convince the Court that the condition should be deleted on merit or otherwise declared invalid."*

**APPENDIX 2: BOWRAL TOWN PLAN DCP**

The Bowral Town Plan 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 a more desirable planning and urban design outcome.

The relevant provisions of the Bowral Town Plan DCP are addressed below:

<b>DCP Compliance Table</b>			
Part A – All Land			
Section 7 – Subdivision, Demolition, Siting and Design			
<b>Control</b>	<b>Standard</b>	<b>Proposed</b>	<b>Compliance</b>
<b>A7.1.1</b> Minimum Lot sizes	The minimum Lot Size map under WLEP 2010 is 1000m <sup>2</sup> .	Each proposed Lot exceeds 1000m <sup>2</sup> .	Yes
<b>A7.1.5</b> Street Trees	Street tree planting is required to provide consistency between subdivision developments.	<b>Condition 39</b> specifies no subdivision certificate shall be granted unless the certifying	Yes

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**DEVELOPMENT APPLICATIONS**



		authority is satisfied by evidence accompanying the application for subdivision certificate that street trees have been provided and/or retained in Sir James Fairfax Circuit and Ayrshire Parade adjoining the land to achieve compliance with Council's Urban Street Tree Master Plan	
<b>A7.4</b> Cut and Fill	Developments be designed to respond to a site's topography	There is no cut and fill proposed.	Yes

**Responsible Officer:** Ross Jauncey, Development Assessment Officer (Contract)

**ATTACHMENTS**

1. Attachment 1 S82 21/0212.01 Draft Conditions of Consent
2. Attachment 2 Legal Advice from RMB Lawyers

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021

**5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent**



07 July 2021

Lee Environmental Planning  
33 HOLLY ROAD  
BURRADOO NSW 2576

**NOTICE OF DETERMINATION OF A REVIEW OF DETERMINATION  
Pursuant to section 8.2 of the *Environmental Planning and Assessment Act 1979***

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**APPLICATION NO:** 21/0212.01  
**DA NO:** 21/0212  
**DA DETERMINATION DATE:** 10 February 2021  
**APPLICANT:** Lee Environmental Planning  
**OWNER:** SJ HARRIS  
**PROPERTY DESCRIPTION:** Lot 140 DP 1231974  
**PROPERTY ADDRESS:** 1 SIR JAMES FAIRFAX CIRCUIT BOWRAL NSW 2576  
**PROPOSED DEVELOPMENT:** Subdivision - 2 Lots  
**DETERMINATION:** Determined by granting of CONSENT.  
**CONSENT TO OPERATE FROM:** 31 May 2021  
**CONSENT TO LAPSE ON:** 31 May 2026

**Note:** The conditions of consent are listed in Schedule 1.

**Rights of Appeal**

If you are dissatisfied with the determination of Council (including determination of a review under section 8.2 of the *Environmental Planning and Assessment Act 1979*, you may appeal to the New South Wales Land and Environment Court within 6 months after the date on which you receive the notice of determination or review, if your application was lodged after 27<sup>th</sup> February 2011. Otherwise the appeal period is 12 months after the date in which you receive this notice.

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Ross Jauncey  
Development Assessment Planner

07 July 2021  
Date of Determination.



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## SUMMARY SCHEDULE OF MODIFIED CONDITIONS

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### 9. Stormwater - Control of Peak Discharge

#### Review of Determination 21/0212.01 dated 07 July 2021 to delete

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

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

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

### 10. Detailed Stormwater Drainage System Design

#### Review of Determination 21/0212.01 dated 07 July 2021 to delete

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

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

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

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

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

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



**32. Section 88E Instrument**

**Review of Determination 21/0212.01 dated 07 July 2021 to delete**

~~No subdivision certificate shall be granted for the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision certificate that an instrument under section 88E of the Conveyancing Act 1919 has been submitted to and endorsed by Council, and will be registered to apply to both proposed Lots 1 and 2, specifying subdivision of each burdened lot is prohibited.~~

~~**Reason:** To prevent further subdivision of the land.~~



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## SCHEDULE 1 Conditions of Development Consent

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### ADMINISTRATION CONDITIONS

#### 1. Development Description

Development consent is granted in accordance with Council's notice of determination for subdivision of land and carrying out of works to create two lots.

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

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

Except where otherwise specified by conditions of consent, the development shall be carried out in accordance with the information and documents accompanying the development application, and the stamped consent drawings set out in the following table including any notations or amendments made by Council.

Drawing Title	Reference	Prepared By	Dated
Plan of Proposed Subdivision of Lot 140 DP 1231974	Drawing No 170802, Issue A	Australian Survey Solutions (drawn by PB)	17 August 2017 (Issue A dated 19 August 2017)
Concept Stormwater Drainage, Sewer and water Services Plan	Drawing No DA01, Issue 02	Novati Consulting Engineers (drawn by CB)	17 November 2020

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

#### 3. Inconsistency between documents

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

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

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

#### 4. Application for a Subdivision Works Certificate

Subdivision work in accordance with Council's consent shall not be commenced until a Subdivision Works Certificate has been applied for and issued by Council or an

**5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent**



accredited certifier, pursuant to Section 6.13 of the *Environmental Planning and Assessment Act 1979*. The application for a Subdivision Works Certificate needs to be accompanied by detailed engineering plans and specifications and completed design checklists found in Council's Engineering Policies.

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

**5. Appointment of Principal Certifier (PC)**

No subdivision work in the development shall be permitted to commence unless:

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

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



**6. Developer to provide photos of damage to Council property**

The developer must provide Council and the Principal Certifier (PC) with photos of any damage of Council property adjoining the development prior to the issue of the Subdivision Works Certificate.

Photos should include any damage to footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter and road pavement and the like.

Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the developer/owners/proponents expense.

The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged Council property are to be carried out by the contractor/builder to Council's specification and supervision prior to issue of the Subdivision Certificate.

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

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

No subdivision works certificate shall be granted for any subdivision work in the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision works certificate that the following applications for approval under section 68 of the Local Government Act 1993 have been made to and favourably determined by Council:

- Approval to carry out stormwater drainage work
- Approval to carry out water supply work
- Approval to carry out sewerage work.

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

**8. Section 138 Roads Act 1993 Approval**

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

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



5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



approval:

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

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

**Reason:** *Statutory requirement.*

9. **Stormwater - Control of Peak Discharge**  
**Review of Determination 21/0212.01 dated 07 July 2021 to delete**

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

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

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

10. **Detailed Stormwater Drainage System Design**  
**Review of Determination 21/0212.01 dated 07 July 2021 to delete**

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



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

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

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

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

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

## 11. Energy Service Provider Requirements

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

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

## 12. Erosion and Sediment Control Plan

No subdivision works certificate shall be granted for any subdivision work in the development unless the certifying authority is satisfied by information and documents accompanying the application for subdivision works certificate that an Erosion and Sediment Control Plan has been prepared in accordance with "Landcom's Blue Book" for sedimentation and erosion control plan by a suitably qualified person, and will be implemented throughout the carrying out of subdivision works in the development..

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

- (a) Locality of the site, a north point and scale.
- (b) Existing contours of the site including catchment area boundaries and indications of direction of fall.
- (c) Location of and basic description of existing vegetation.



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

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

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

### **13. Notice of Commencement**

No subdivision work in the development shall be permitted to commence until a notice of commencement form has been submitted (form will be attached with issue of a Construction Certificate or Subdivision Works Certificate or available from Council's website), giving the Principal Certifier (PC):

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent.
- (b) Details of the appointment of a Principal Certifier (PC) (either Wingecarribee Council or another Principal Certifier).
- (c) Details of the Principal Contractor or Owner Builder:
  - Name
  - Builders Licence Number or Owner Builder Permit Number
  - Principal Contractor Company Name
  - Principal Contractor ABN

**5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent**



- Address of Principal Contractor or Owner Builder
- Email Address
- (d) Copy of the HBCF Insurance Certificate (if residential building works exceed \$20,000) or Owner Builder Permit.
- (e) Details demonstrating compliance with development consent conditions relevant prior to commencement of the development been satisfied.

**Reason:** *Statutory requirement.*

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

**14. Principal Certifier (PC) Sign**

Prior to commencement of any subdivision work in the development, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifier (PC) by showing the name, address and telephone number of the Principal Certifier (PC);
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

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

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

**Advice:** *Where Council is the PCA, signage is available from Council.*

**Reason:** *Statutory requirement.*

**15. Subdivision Works Certificate & Appointment of Principal Certifier (PC)**

Subdivision work in accordance with a consent must not commence until:

- (a) A Subdivision Works Certificate has been issued.
- (b) The person having the benefit of the development consent has appointed the Principal Certifier (PC).
- (c) The Principal Certifier (PC) (if not Council) has, no later than two (2) days before the subdivision work commences, notified the Council (or other consent authority where applicable) of the Principal Certifier's (PC) appointment.



- (d) The person having the benefit of the consent has given at least two (2) days' notice to the Council of the person's intention to commence the subdivision work.

**Advice:** *Crown work certified in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 is exempted from the above requirements.*

**Reason:** *Statutory requirement.*

## 16. Developers Representative during Construction of Works

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

Details to be submitted include:-

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

Prior to commencing any works on site the representative shall:

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

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

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



**Reason:** *Statutory requirement.*

#### 17. Approval Required for Work within Road Reserve - Section 138 Roads Act 1993

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

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

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

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

**Reason:** *Statutory requirement.*

#### 18. Erosion and Sediment Control

Erosion and sediment control measures (as per the approved Erosion and Sediment Control Plan) shall be installed prior to the commencement of any subdivision work in the development.

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



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*construction of the development.*

## CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

### 19. Approved Plans to be available on site

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

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

### 20. Engineering Inspections by Council

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

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

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

**Reason:** *Statutory requirement.*

### 21. Stormwater - Construction

The applicant shall provide adequate storm water drainage infrastructure (pits/pipes/open channels/detention storage) for the conveyance of storm water passing through the site from upstream, and sourced from the development to a discharge outlet to be approved by Council. The point of discharge shall be clearly depicted and the legal right to discharge at that point to be justified. Status of the point of discharge is to be made clear (i.e. provision of drainage easements).

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

### 22. Stormwater - Discharge

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

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



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

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

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

**24. Council Reserve / Street Tree Retention**

All trees in public road reserves adjoining the land shall be preserved unless removal is permitted by the consent.

**Advice:** *Reference should be made to Council's Urban Street Tree Master Plan.*

**Reason:** *To ensure the continued amenity of the streetscape and to retain the ecological integrity of the roadside area.*

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

The carrying out of subdivision works in the development shall be limited to the following hours:

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

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

**26. Temporary Onsite Toilet**

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

Each toilet shall:

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



5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

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

**27. Waste Management**

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

**28. Subdivision Certificate**

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier (in accordance with Section 6.15 of the *Environmental Planning and Assessment Act 1979*) for approval to enable the subdivision plans to be submitted to and registered with NSW Land Registry Services. Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and 3 copies shall be included with the application.

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

The application for a Subdivision Certificate is to be accompanied by supporting documentation outlining how each condition of consent has been complied with.

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

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

**29. Section 138 Roads Act Final**

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

5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



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

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

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

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

**31. Council Property**

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

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

**32. Section 88E Instrument  
Review of Determination 21/0212.01 dated 07 July 2021 to delete**

~~No subdivision certificate shall be granted for the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision certificate that an instrument under section 88E of the Conveyancing Act 1919 has been submitted to and endorsed by Council, and will be registered to apply to both proposed Lots 1 and 2, specifying subdivision of each burdened lot is prohibited.~~

~~**Reason:** — To prevent further subdivision of the land.~~

**33. Energy Service Provider Requirements**

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

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

**34. Civil Engineering works and services**

All civil engineering works and services, including construction works within the road reserve, are to be constructed in accordance with the Wingecarribee Shire Council Engineering Design and Construction Specifications and Drawings, relevant

5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



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Standards and approved engineering plans prior to the issue of the Subdivision Certificate.

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

**35. Provision of Services**

A separate access, sewer connection, storm water drainage connection, water service and electricity supply shall be provided to each allotment within the subdivision at the applicants expense prior to the issue of the Subdivision Certificate.

All property services shall be located within the lots that they serve in accordance with Wingecarribee Shire Council Engineering Design and Construction Specifications, Drawings and relevant Standards. The applicant shall provide to Council written confirmation of compliance.

**Reason:** *To ensure that all available services are provided to each lot within the subdivision.*

**36. Certification of Internal Civil Works**

On completion of works and prior to issue of the Subdivision Certificate, certification from a practicing appropriately qualified engineer shall be submitted to Council detailing that all internal civil works (i.e. internal driveways, paths and stormwater drainage system including any onsite detention) are in accordance with approved plans and specifications.

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

**37. Provision of Reticulated Sewer to Each Lot**

Reticulated sewer service shall be constructed to each allotment in accordance with the approved civil engineering plans prior to the issue of the Subdivision Certificate.

Sewerage mains shall be constructed to serve the development.

**Reason:** *To ensure that the development is serviced.*

**38. Construction of Sewer Sidelines**

Sidelines and junctions shall be installed for sewer connections to the development by Council at the Developer's cost prior to the issue of the Subdivision Certificate.

Council's application form shall be completed by the applicant and the appropriate fee paid.

If the sideline is to be extended from a sewer main in adjoining property, written

5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



permission of the affected landowner allowing work to be undertaken, shall be submitted with the application form.

**Reason:** *To ensure that the development is serviced.*

**39. Construction of Water Service**

A water service shall be installed to each lot in the subdivision prior to the issue of the Subdivision Certificate.

Council's application form shall be completed by the Developer and the appropriate fee paid.

**Reason:** *To ensure that the development is serviced.*

**40. Street Trees**

No subdivision certificate shall be granted for the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision certificate that street trees have been planted and/or retained in the roads adjoining the land in compliance with Council's Urban Street Tree Masterplan.

**Advice:** *Councils Urban Street Tree Master Plan must be referenced with respect to any street plantings.*

**Reason:** *To maintain and improve visual amenity.*

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

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

The following Wingecarribee Shire Council Section 94 Developer Contributions Plans are applicable to the development:

- Roads & Traffic Management Facilities
- Resource Recovery Centre 2009
- Central Library Facility
- Section 94 Administration 2011 to 2031
- Open Space & Recreation Facilities

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

5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



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

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

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

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

#### 42. Water Management Act - Certificate of Compliance

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

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

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

**Drafting Note:** *Assessment Officer to determine which plans apply - delete plans not applicable.*

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

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

5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



consent.

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

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

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

CPI Period	Water DSP	Sewer DSP	Stormwater DSP
To 31 January 2021	\$11,220.79	\$10,878.16	\$3,673.15

Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) <<http://www.abs.gov.au>>.

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

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

### Compliance Certificate

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

Water \$255.00 + Sewer \$255.00 + Stormwater \$255.00 = \$765.00.

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

In the case of subdivision, the title plan of subdivision will not be certified and

5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2  
Lots Lot 140, DP 1231974, 1 Sir James Fairfax Circuit Bowral.  
ATTACHMENT 1 Attachment 1 S82 21/0212.01 Draft Conditions of  
Consent



released by Council until the *Water Management Act 2000* charges have been paid and/or secured and the approval of Council has been obtained for all works related to this infrastructure.

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

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

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT**

**43. Erosion Control on Completed Developments**

Adequate erosion and sediment control measures shall be maintained in place where necessary until site stabilisation and revegetation is finalised.

**Reason:** *To protect the environment.*

**ADVISORY MATTERS**

**Dial Before You Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

*Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's mobile network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Commonwealth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision or essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

**END CONDITIONS**



**PARTNERS**  
CRAIG OSBORNE  
CHRIS SHEPPARD  
JOSH BIGNELL  
ADAM BARLOW  
MICHAEL LEWIS  
CLAIRE OSBORNE  
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PAUL ELL  
JAMES WATT  
OLIVIA YEATMAN

Our Ref: OMY:HAR-892-1

8 April 2021

The Interim Administrator  
Wingecarribee Shire Council  
PO Box 141  
MOSS VALE NSW 2577

BY EMAIL ONLY: [mail@wsc.nsw.gov.au](mailto:mail@wsc.nsw.gov.au)

Dear Administrator,

Re: **Review Application**  
**Consent to Development Application No. 21/0212**

1. We act for Stephen Harris, registered proprietor of Lot 140 DP1231974 known as 1 Sir James Fairfax Circuit, Bowral NSW 2576 ("Property").

**Background**

2. On 10 February 2021, Wingecarribee Shire Council ("Council") determined Development Application No. 21/0212 by way of consent subject to conditions ("Consent").
3. The Consent was for development described as "subdivision of land and carrying out of land to create two lots".
4. Condition 32 of the Consent states:

*"No subdivision certificate shall be granted for the development unless the certifying authority is satisfied by evidence accompanying the application for subdivision certificate that an instrument under Section 88E of the Conveyancing Act 1919 has been submitted to and endorsed by Council, and will be registered to apply to both proposed lots 1 and 2, specifying subdivision of each burdened lot is prohibited."*

**Reason:** to prevent further subdivision of the land.

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- 2 -

5. Our advice has been prepared in support of a review application pursuant to section 8.2 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act").

**Request for advice**

6. We have been instructed to advise as follows:

- (a) Whether Condition 32 of the Consent is considered ultra vires and therefore invalid?

**Planning constraints applying to the Property**

7. The Property is zoned R2 Low Density Residential pursuant to Wingecarribee Local Environmental Plan 2010 ("WLEP 2010").
8. The minimal lot size applying to the Property is 1,000 m<sup>2</sup> in accordance with clause 4.1 of and the Minimum Lot Size Map in WLEP 2010.
9. The Property has an area of 2,004 m<sup>2</sup>.
10. Despite the minimum subdivision lot size requirements set out in clause 4.1 of WLEP 2010 and the relevant minimum lot size map, clause 7.2 of WLEP 2010 permits further subdivision of the Property for a dual occupancy.
11. Clause 7.2(2) of WLEP 2010 states:

*"Despite any other provision of this Plan, development consent may be granted for the subdivision of a lawfully erected dual occupancy in Zone R2 Low Density Residential only if the development:*

- (a) *is on a corner allotment of not less than 1,000 square metres; and*
- (b) *has access to a reticulated town water supply and sewerage system."*

**Invalidity of condition 32 of the Consent**

12. The case law around the invalidity of conditions of development consent is well established.

**Summarised approach**

13. The approach that should be taken when determining the validity of the condition of a development consent was summarised by Justice Basten in the case of *Botany Bay Council v Saab Corp Pty Ltd* [2011] NSWCA 308 ("Saab") as follows:

Question 1: whether the condition is authorised by section 4.17 of the EP&A Act?

Question 2: whether the condition is within power or was imposed for an ulterior or improper purpose?

Question 3: whether the condition is manifestly unreasonable in the *Wednesbury* sense?



- 3 -

McDonald Case

14. Specifically, the case of *McDonald v Mosman Municipal Council* [1999] 105 LGERA 49 ("*McDonald*") considered whether the imposition of a restriction on the use of land pursuant to section 88E of the *Conveyancing Act 1919* ("*Conveyancing Act*") was invalid or ultra vires.
15. The disputed condition in *McDonald* sought to restrict further development of a property.
16. The wording of the disputed condition was as follows:  
  
*"An instrument under Section 88B of the Conveyancing Act generally restricting any further development south of the proposed access steps and landing is to be registered. The name of the person empowered to vary or modify this restriction is Mosman Municipal Council. The Applicant must meet Council's costs in the preparation of this instrument."*
17. Justice Lloyd in *McDonald* referred to the unreported decision of Justice Bignold in *S Y Holdings Pty Ltd v Waringah Shire Council* where His Honour stated:  
  
"As a matter of principle, the Court is not favourably disposed to the view that restrictions on development operating by virtue of the Environmental Planning and Assessment Act 1979 or action taken thereunder (eg the imposition of conditions on the grant of development consent) should be, or need to be, supplemented or reinforced by action taken pursuant to the Conveyancing Act to create binding restrictions on user [Emphasis added]."
18. Justice Lloyd agreed with the established reasoning and held that a restriction on the use of land created under the *Conveyancing Act* was not required to supplement the conditions of consent.
19. Justice Lloyd at [14] stated:  
  
"I am prepared in this case to follow and apply the principles explained in the abovementioned cases. I am not satisfied that the power of the Council to either grant or withhold development consent for the erection of any further or additional structure on the southern side of the Applicant's dwelling house needs to be reinforced in the manner contended for by the Council. The Court has not, in the past, been favourably disposed towards conditions requiring registered restrictions as to user. In particular, *Cripps J in Carr v Goulburn City Council* held that it was not appropriate to impose such a condition. The abovementioned cases show that such a condition is neither necessary or generally appropriate. I agree. In the present case, on a consideration of the merits, there is nothing in the present case that takes the matter outside those principles. The condition will not be imposed [Emphasis added]."

Redson Case

20. The effect of *McDonald* was further considered in the case of *Redson Group Pty Ltd (trading as Progenia) v Wollongong City Council* [2018] NSWLEC 1627 ("*Redson*").
21. Commissioner Chilcott considered the purpose and operation of a restriction on the use of land within a Section 88B Instrument which the council argued sought to restrict any proposed development on part of the site.

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- 4 -

22. Council argued that the restriction on the use of land burdening the site in question had the effect of a prohibition on any development within a certain portion of the site that was burdened by the Section 88B Instrument.
23. The Applicant successfully argued that whilst the Section 88B Instrument sought to restrict development on a portion of the subject site, the Court had the power to set aside or vary the Section 88B Instrument as the proposed development was not prohibited on that portion of the land in accordance with the relevant local environmental plan.
24. It appears that the council in this case sought to create further prohibitions outside of what was considered a "prohibition" under its local environmental plan.
25. Clause 1.9A of the Standard Instrument could be relied upon to vary or set aside such a restriction when assessing proposed development.

**Application of established case law to the Consent**

26. The findings in *McDonald* and *Redson* can be directly applied to Condition 32 of the Consent and the proposed restriction on the use of land ("Restriction").
27. Firstly, in applying *McDonald*, the Court has a well-established position that a restriction on the use of land should not be imposed where such issues can be dealt with by way of conditions of consent pursuant to section 4.17 of the EP&A Act.
28. Council should take note of the decision in *Redson* whereby the Council in that case sought to create a prohibition that was not in fact a prohibition for the purposes of the relevant local environmental plan.
29. This appears to be what Council is seeking to do in the present scenario.
30. The Restriction as would be created under section 88E of the *Conveyancing Act* must be distinguished from a prohibition in its application within an environmental planning instrument for the purposes of section 3.14 of the EP&A Act.
31. The Restriction that Council has sought to impose at Condition 32 of the Consent does not and cannot operate as a prohibition to supplement WLEP 2010, particularly where clause 7.2 of WLEP 2010 appears to expressly allow further subdivision of the Property in certain circumstances.
32. The Restriction and clause 7.2 of WLEP 2010 appear to be contradictory.
33. In practice, any Restriction created pursuant to Condition 32 of the Consent may be set aside by a consent authority in the future pursuant to clause 1.9A of WLEP 2010 when assessing further proposed development.
34. On this basis, Condition 32 of the Consent is likely to be considered by the Court to be invalid and of no effect.

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5.8 Section 8.2 Review of Determination DA21/0212 Subdivision 2 Lots Lot 140,  
DP 1231974, 1 Sir James Fairfax Circuit Bowral.

ATTACHMENT 2 Attachment 2 Legal Advice from RMB Lawyers



- 5 -

If Council has any questions or requires clarification in relation to the above advice, please contact the writer.

Yours faithfully,

**Olivia Yeatman**  
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Legal Assistant: Dayna Deller  
Direct Line: (02) 4232 0811  
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***RMB Lawyers is working at full pace with its team over the COVID-19 restrictions period.***

## 6 PLANNING PROPOSALS

### 6.1 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 with regard to Council owned Public Reserve land at Retford Park Bowral and Anembo Street Moss Vale.

Reference: 5901, 5901/87, 5901/88  
Report Author: Senior Strategic Land Use Planner  
Authoriser: Coordinator Strategic Land Use Planning

#### PURPOSE

The purpose of this report is to seek a Resolution of Council to prepare a Planning Proposal to:

- (a) rezone to RE1 Public Recreation Council owned Public Reserves at Retford Park West Bowral (Lot 439 DP1248107) and Anembo Street Moss Vale (Lot 1266 DP 1248764), and
- (b) remove the current minimum lot size provision of 1000m<sup>2</sup> for the Council owned Public Reserve at Retford Park West Bowral (Lot 439 DP1248107) and 700m<sup>2</sup> for the Council owned Public reserve at Anembo Street Moss Vale (Lot 1266 DP 1248764), and
- (c) confirm by Resolution the 'Community' classification of both Public Reserves, being Lot 439 DP1248107 and Lot 1266 DP 1248764, as provided for under *Sect 33* of the *Local Government Act 1993*.

<b>Applicant / Proponent</b>	Wingecarribee Shire Council
<b>Owners</b>	Wingecarribee Shire Council
<b>Consultants</b>	N/A
<b>Notification</b>	N/A
<b>Number Advised</b>	N/A
<b>Number of Submissions</b>	N/A
<b>Current Zoning / MLS</b>	(a) R2 Low Density Residential / 1000m <sup>2</sup> minimum lot size (Retford Park West) (b) R2 Low Density Residential / 700m <sup>2</sup> minimum lot size (Anembo Street)
<b>Proposed LEP Amendment/s</b>	<ul style="list-style-type: none"><li>• Rezone to RE1 Public Recreation</li><li>• Remove current minimum lot size provisions</li><li>• Confirm Classification as Community under <i>Sect 31</i> of the <i>Local Government Act 1993</i></li></ul>
<b>Political Donations</b>	N/A
<b>Recommendation</b>	Planning Proposal BE SUPPORTED

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**



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**RECOMMENDATION**

**THAT a Planning Proposal be prepared under section 3.33 of the *Environmental Planning and Assessment Act 1979* to:**

**(a) rezone to RE1 Public Recreation Council owned Public Reserves at Retford Park West Bowral (Lot 439 DP1248107) and Anembo Street Moss Vale (Lot 1266 DP 1248764), and**

**(b) remove the current minimum lot size provision of 1000m<sup>2</sup> for the Council owned Public Reserve at Retford Park West Bowral (Lot 439 DP1248107) and 700m<sup>2</sup> for the Council owned Public reserve at Anembo Street Moss Vale (Lot 1266 DP 1248764), and**

**(c) confirm by Resolution the 'Community' classification of both Public Reserves, being Lot 439 DP1248107 and Lot 1266 DP 1248764, as provided for under Sect 33 of the *Local Government Act 1993*.**

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**REPORT**

This report addresses the rezoning of two areas of Public Reserve created through the Registration of the relevant Plan of Subdivision. The first is Lot 439 of DP 1248107, being located at 33 Sir James Fairfax Drive Bowral. The second is Lot 1266 of DP 1248764, being located at 19 Anembo Street Moss Vale. Each site is addressed in turn.

**Retford Park West (Lot 439 DP1248107)**

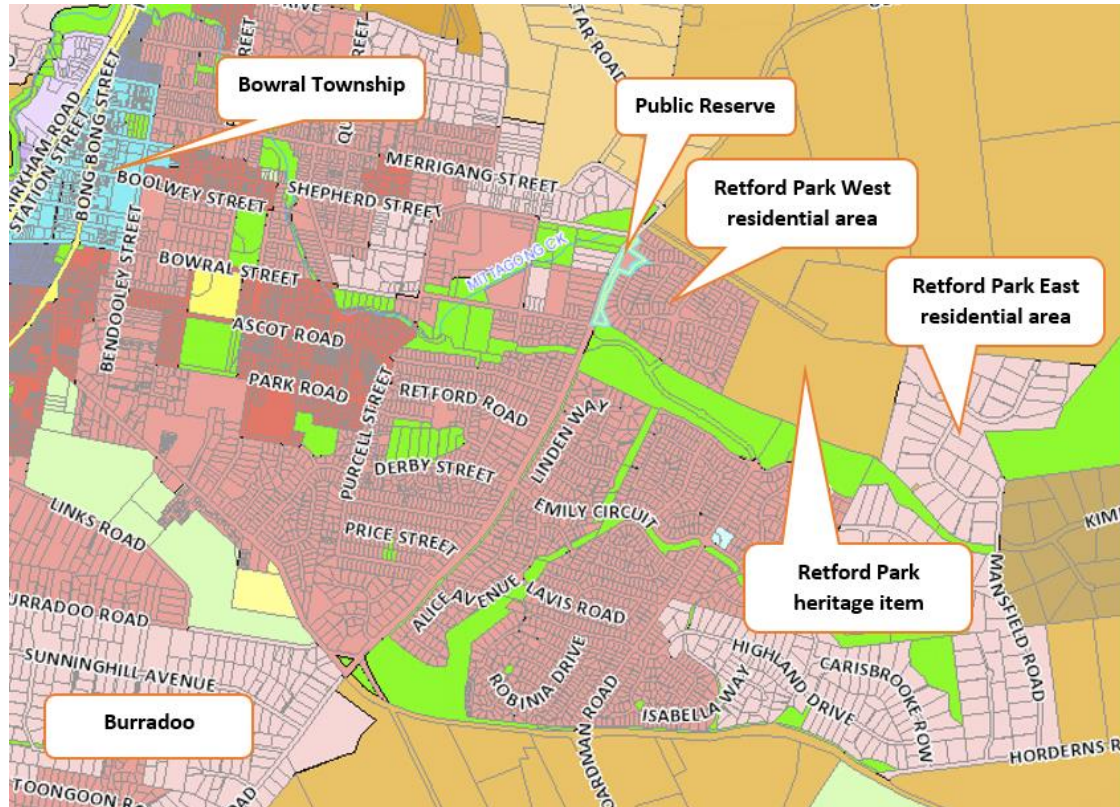
Amendment 23 to Wingecarribee Local Environmental Plan (WLEP) 2010 was made on 12 September 2014. The amendment rezoned land to either side of the State heritage property 'Retford Park' in Bowral from E3 Environmental Management to R5 Large Lot Residential on the eastern side and R2 Low Density Residential on the western side for the purposes of residential subdivision and development.

The location of Retford Park West is indicated in **Figure 1** below.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**



**Figure 1 – Location of Retford Park within Bowral Township**

The Retford Park West Plan of Subdivision, registered on 16 November 2018 (DP1248107), included a lot (Lot 439) identified as Public Reserve as indicated in **Figure 2** and **Figure 3** below. This Public Reserve is owned by Council.

AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

PLANNING PROPOSALS

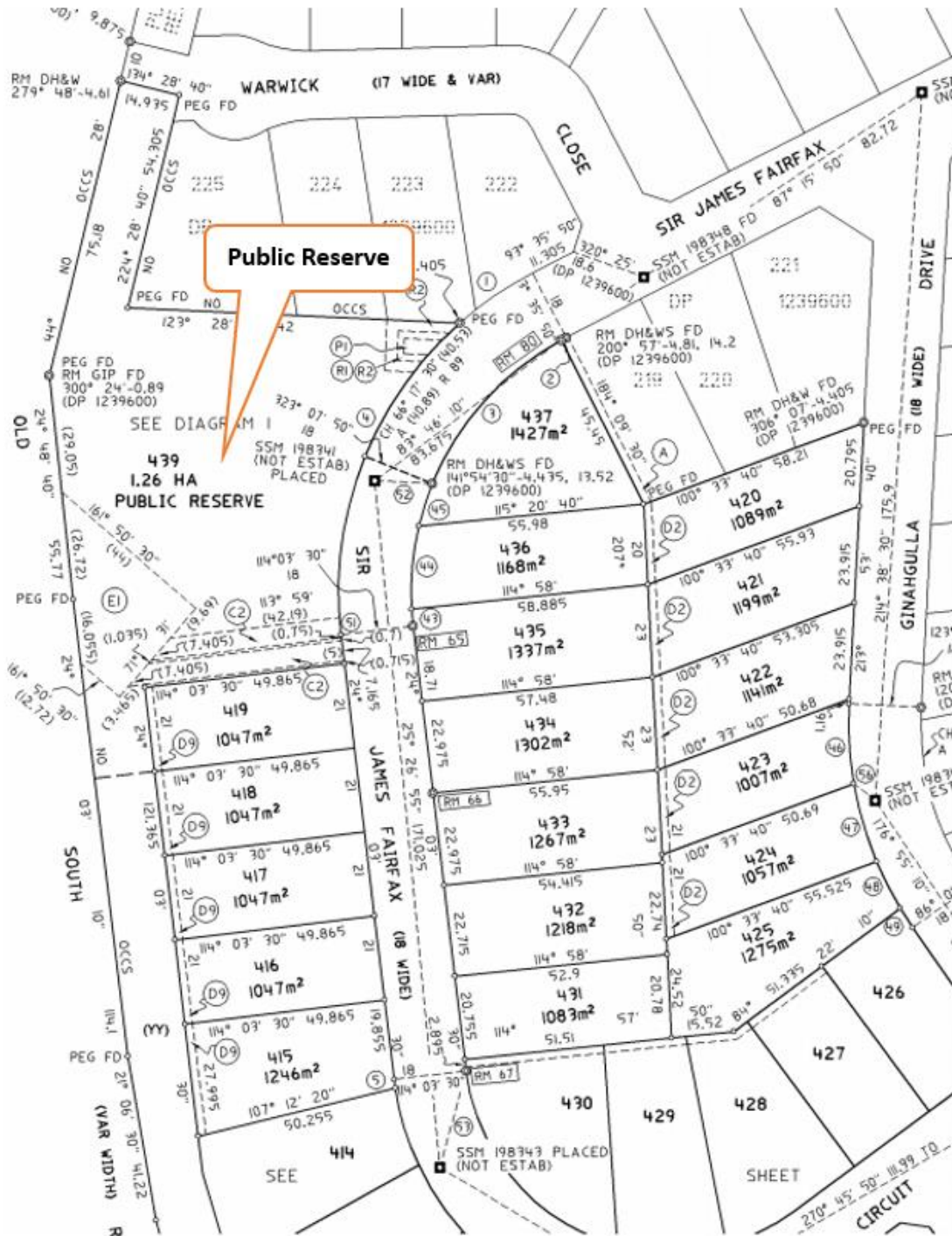


Figure 2 – Location of Public Reserve (northern section) on DP1248107



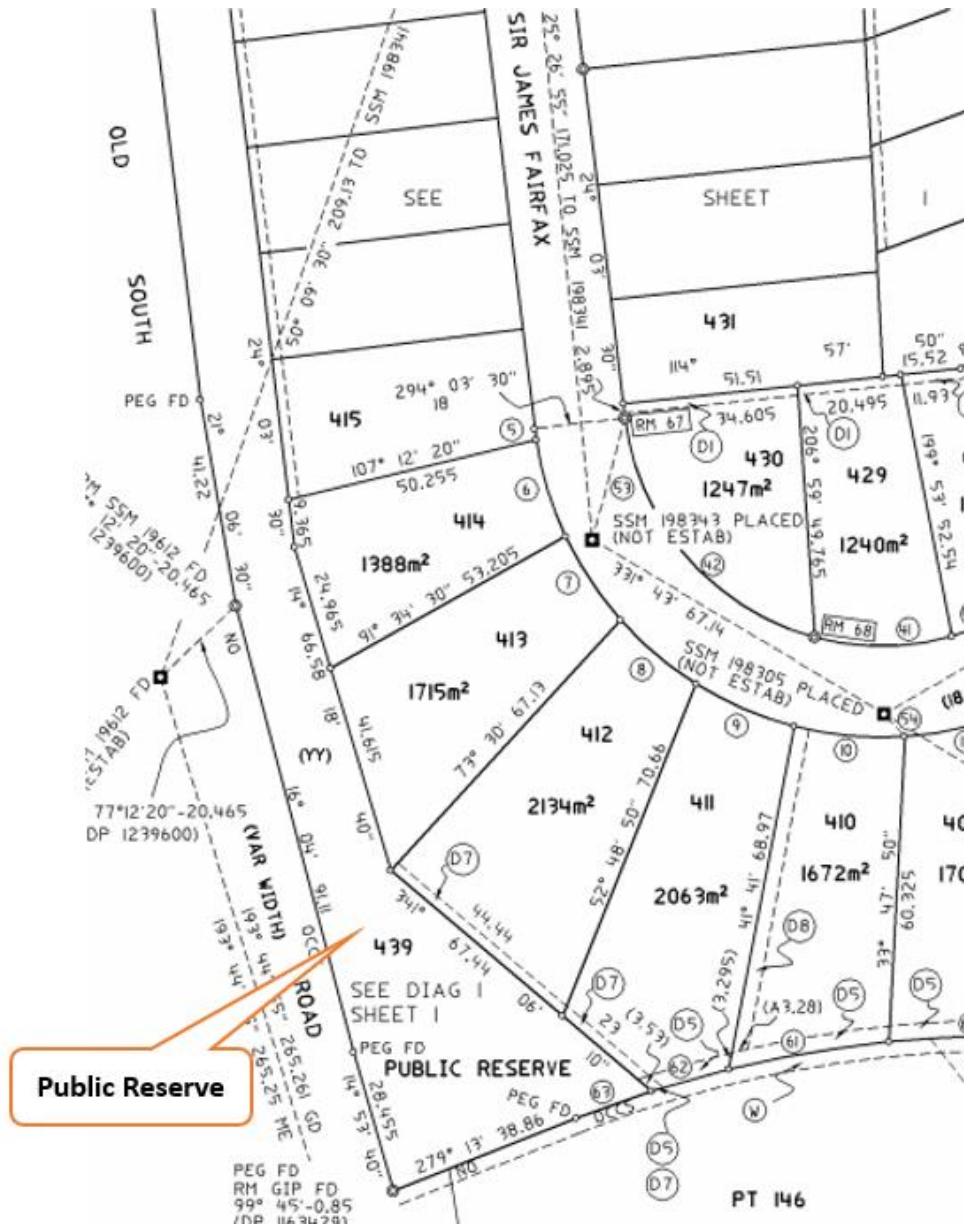


Figure 3 – Location of Public Reserve (southern section) on DP1248107

The subject land remains zoned R2 Low Density Residential, as indicated in **Figure 4** below with a minimum lot size of 1000m<sup>2</sup>.

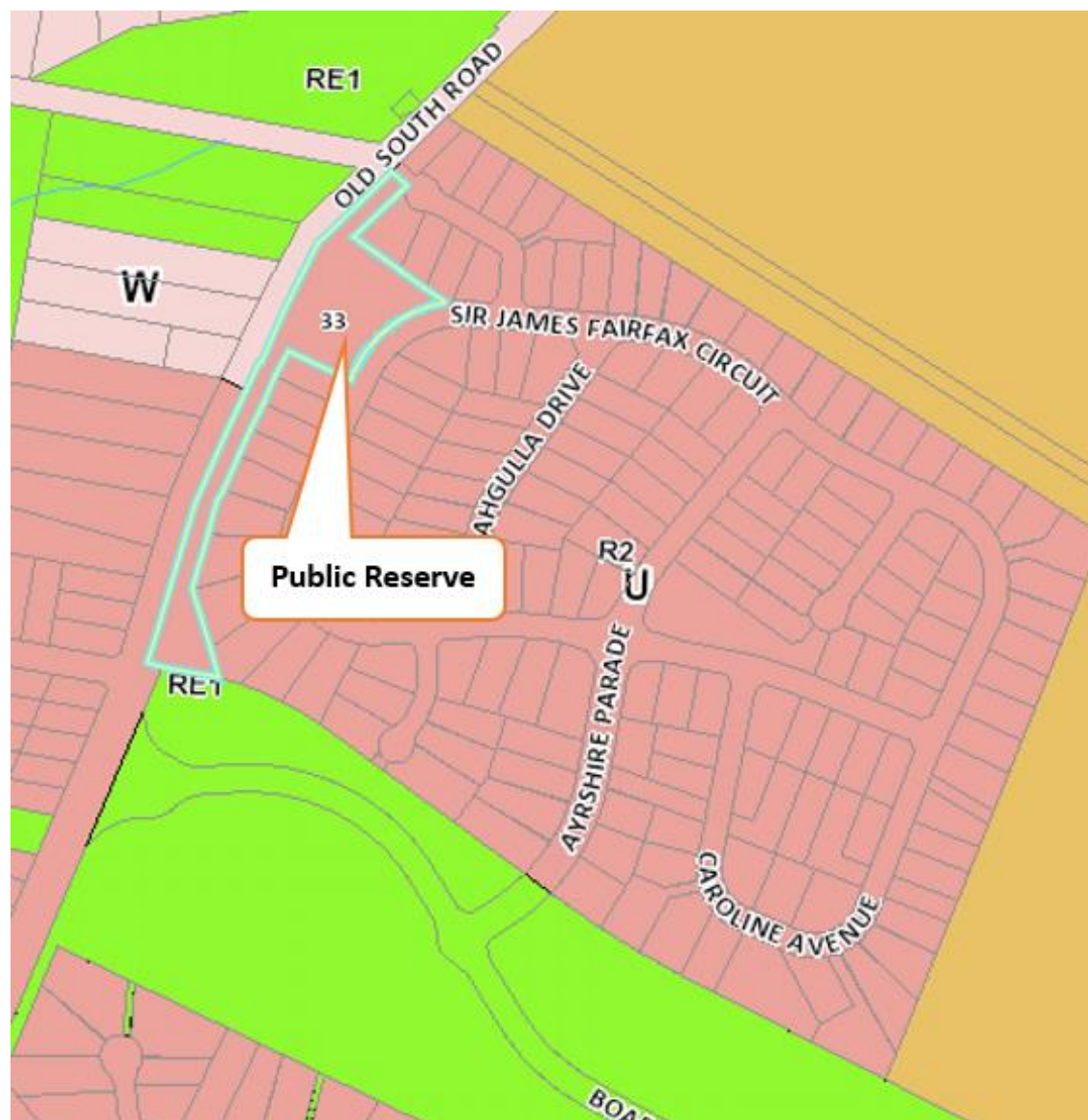


Figure 4 – Zoning of Public Reserve

In this context, the purpose of this report, therefore, is to seek a resolution to prepare a Planning Proposal to rezone the designated Public Reserve lot (Lot 439 DP 1248107, being 33 Sir James Fairfax Circuit Bowral) to RE1 Public Recreation and remove the 1000m<sup>2</sup> minimum lot size applied under Amendment 23.

#### **Anembo Street, Moss Vale (Lot 1266 DP1248764)**

At its Ordinary Meeting of 12 October 2011 Council resolved to prepare a Planning Proposal to amend Wingecarribee Local Environmental Plan (WLEP) to rezone a portion of Council owned land, Lot 126 DP 263356, Anembo Street, Moss Vale, from RE1 Public Recreation to R2 Low Density Residential and apply a minimum lot size of 700m<sup>2</sup> consistent with the existing surrounding minimum lot size. The purpose of the draft amendments to WLEP 2010 was to enable subdivision of Lot 126 to achieve five (5) residential lots with a residual

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**



lot to be retained as a Public Reserve and subsequently rezoned back to RE1 Public Recreation. The location of the land is indicated in **Figure 5** below.



**Figure 5 – Location and Zoning of Subject Land**

Amendment 36 to Wingecarribee Local Environmental Plan (WLEP) 2010 was made on 22 January 2016, resulting in the proposed map amendments described above and the

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

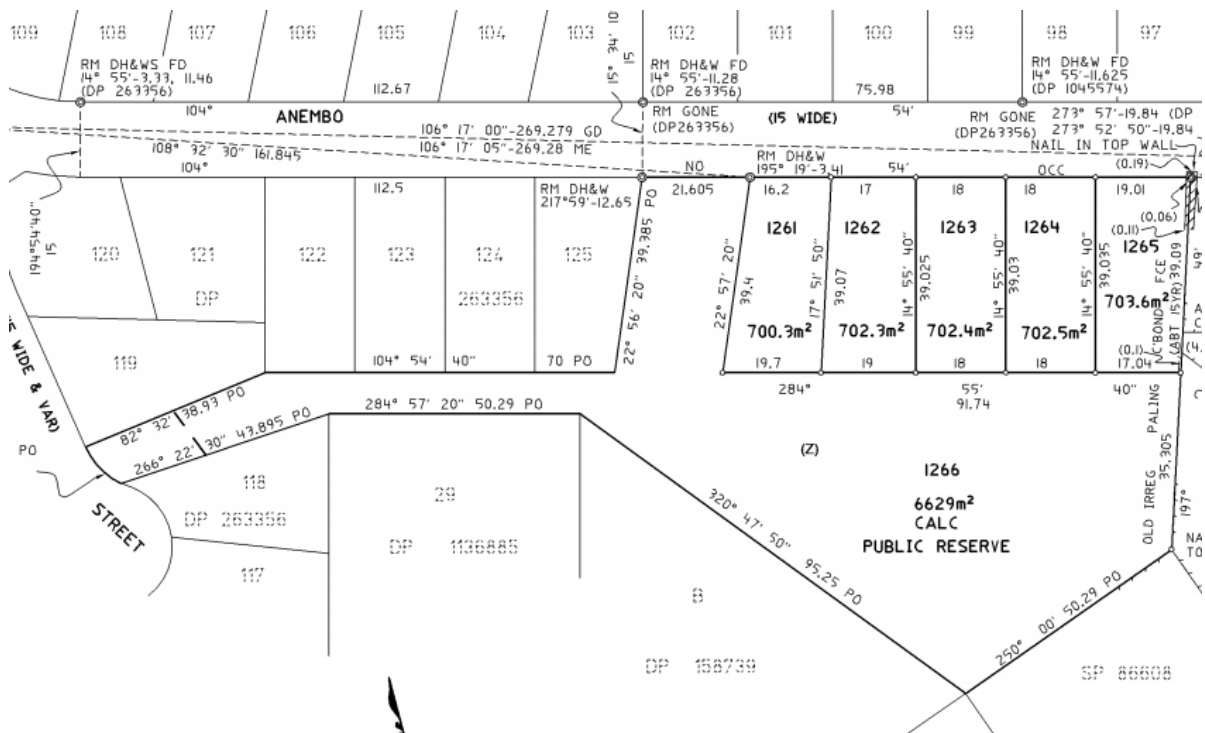
**PLANNING PROPOSALS**



inclusion of Lot 126 DP 263356 in Schedule 4 Part 2 (Land classified, or reclassified, as Operational land—interests changed) of the WLEP 2010 instrument.

DA16/1290 was subsequently approved by Council staff and a six (6) lot subdivision was registered on 20 December 2018, comprising five (5) residential lots of approximately 700m<sup>2</sup> each and one (1) residual lot (Lot 1266 DP 1248764) of 6,629m<sup>2</sup> to be dedicated as Public Reserve.

The Registered Plan of Subdivision is contained in **Figure 6** below. The five (5) newly created lots have subsequently been sold and are now in private ownership.



**Figure 6 – Plan of Subdivision indicating newly created lots and residual Public Reserve**

In this context, the purpose of this report, therefore, is to seek a Resolution to prepare a Planning Proposal to rezone the designated Public Reserve lot (Lot 1266 DP 1248764, being 19 Anembo Street Moss Vale) back to RE1 Public Recreation and remove the 700m<sup>2</sup> minimum lot size applied under Amendment 36.

**Confirmation of classification of both sites as Community land**

Both properties are designated as Public Reserve on the relevant registered Plan of Subdivision. There is no Resolution of Council that either lot be classified as Operational as provided for under s31 of the *Local Government Act 1993*. It could therefore be assumed that the lots are automatically classified as Community. However, to be certain, it is also recommended that the subject residual lot be confirmed as Community under s33 of the *Local Government Act 1993*, which states: “A council may resolve that public land classified as operational land is to be reclassified as community land”. No further action would be required.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Community engagement would occur as required under the Gateway determination would the Planning Proposal proceed. This would normally be for a period of at least 28 days and include notification to adjacent and near neighbours.

### **Internal Communication and Consultation**

Consultation with Council's Property and Assets Branches has already commenced and would continue through the progression of the Planning Proposal.

### **External Communication and Consultation**

External consultation would occur as required by the Gateway Determination and would include at least WaterNSW and probably also NSW Rural Fire Service.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

As indicated in each Plan of Subdivision, it is the intent of the subject land that it be dedicated to Council as Public Reserve. The Planning Proposal would complete this process.

- **Social**

The completion of the process of creating these Public Reserves would provide additional open space to the community, connecting with existing open space in each locality.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## **COUNCIL BUDGET IMPLICATIONS**

There are no Council budget implications arising from this report.

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## **RELATED COUNCIL POLICY**

There is no related Council Policy arising from this report.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**

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**CONCLUSION**

The purpose of this report is to finalise the zoning of two public reserves in Council ownership following land subdivision. It is recommended that the Planning Proposal proceed to ensure that Council's records with regard to public reserves is accurate and correctly maintained.

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**ATTACHMENTS**

There are no attachments to this report.

## 6.2 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to update Flood Planning Area maps

Report Author: Senior Strategic Land Use Planner  
Authoriser: Coordinator Strategic Land Use Planning

### PURPOSE

The purpose of this report is to seek a resolution of Council to progress a Planning Proposal to update the Flood Planning Area maps in WLEP 2010.

### RECOMMENDATION

#### THAT

1. Council request the Minister for Planning & Public Spaces determine, under s.3.35 of the *Environmental Planning & Assessment Act 1979*, that Planning Proposal PP\_2018\_WINGE\_002\_00 (to update the Flood Planning Area Maps in the Wingecarribee Local Environmental Plan 2010 to reflect the 100-year flood planning level identified in flood studies completed for Nattai Ponds, Nattai River, Robertson Village and Gibbergunyah Creek) not proceed, and
2. A Planning Proposal be prepared under s.3.33 of the *Environmental Planning & Assessment Act 1979* to revoke the current Flood Planning Area Maps contained within WLEP 2010 and to replace them with new Flood Planning Area Maps which reflect the '100-year flood level + 0.5m extent' as identified in the following studies adopted by Council:
  - a) Bowral Floodplain Risk Management Study and Plan
  - b) Burradoo BU2 Catchment Study
  - c) Burradoo BU2 Floodplain Risk Management Study and Plan
  - d) Gibbergunyah Creek Flood Study and Plan
  - e) Gibbergunyah Creek Floodplain Risk Management Study and Plan
  - f) Nattai River Flood Study
  - g) Nattai River Floodplain Risk Management Study and Plan
  - h) Nattai Ponds Flood Study
  - i) Nattai Ponds Floodplain Risk Management Study and Plan
  - j) Robertson Village Overland Flow Study
  - k) Wembly Road & Farnborough Drive Catchments Overland Flow Study
  - l) Whites Creek Floodplain Risk Management Study and Plan review

Applicant / Proponent	Wingecarribee Shire Council
Owners	N/A

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**



<b>Consultants</b>	N/A
<b>Notification</b>	N/A
<b>Number Advised</b>	N/A
<b>Number of Submissions</b>	N/A
<b>Current Zoning / MLS</b>	N/A
<b>Proposed LEP Amendment/s</b>	New Flood Planning Area Maps based on most recent adopted studies
<b>Political Donations</b>	N/A
<b>Recommendation</b>	Planning Proposal BE SUPPORTED

**REPORT**

**BACKGROUND**

WLEP 2010 contains a number of Flood Planning Area maps which indicate the 100-year flood level plus 0.5metre extent (or margin) for various waterways within the Shire. These maps were adopted when WLEP 2010 was initially made on 16 June 2010. They have not been amended since.

It is noted that a Planning Proposal (PP\_2018\_WINGE\_002\_00) was prepared to progress a number of additional flood studies, namely Nattai Ponds, Nattai River, Robertson Village and Gibbergunyah Creek, and a Gateway Determination was issued by the Department of (then) Planning & Environment on 13 June 2018.

However, it subsequently became apparent that not all of the new flood maps were in a form that enabled them to be included on the Flood Planning Area Maps in WLEP 2010 and the Planning Proposal progressed no further.

In consultation with the Department of Planning, Industry and Environment it is now recommended that Council request that the Minister for Planning & Public Spaces determine, under s.3.35 of the *Environmental Planning & Assessment Act 1979*, that Planning Proposal PP\_2018\_WINGE\_002\_00 not proceed.

Instead, this report seeks to commence a new Planning Proposal to amend WLEP 2010 to include the latest adopted versions of those studies previously considered under PP\_2018\_WINGE\_002\_00 as well as new studies which have been undertaken since.

**REPORT**

The flood studies proposed to be included in the new Planning Proposal as follows:

- Bowral Floodplain Risk Management Study and Plan – adopted by Council 13 May 2009
- Burradoo BU2 Catchment Study – adopted by Council 27 July 2011
- Burradoo BU2 Floodplain Risk Management Study and Plan – adopted by Council 30 April 2014
- Gibbergunyah Creek Flood Study and Plan – adopted by Council 25 September 2013



## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### PLANNING PROPOSALS



- Gibbergunyah Creek Floodplain Risk Management Study and Plan – adopted by Council 26 July 2017
- Nattai River Flood Study - adopted by Council 26 March 2014
- Nattai River Floodplain Risk Management Study and Plan – adopted by Council 26 April 2017
- Nattai Ponds Flood Study – adopted by Council 12 October 2016
- Nattai Ponds Floodplain Risk Management Study and Plan – adopted by Council 12 February 2020
- Robertson Village Overland Flow Study – adopted by Council 14 June 2017
- Wembly Road & Farnborough Drive Catchments Overland Flow Study – 13 September 2017
- Whites Creek Floodplain Risk Management Study and Plan review – adopted by Council 24 June 2020

It is noted that, at the time of the adoption of several of these studies, Council often did resolve to also proceed with a Planning Proposal to include them in WLEP 2010. Although technically these resolutions would still stand, those studies are included again in this report in order to obtain a single consolidated Resolution for all relevant flood studies for the purposes of progressing a new 'Flood Planning Area Maps' Planning Proposal.

It is further noted that the draft Wingecarribee Flood Study is expected to be placed on public exhibition in the near future. The recommendation to this report also includes this study, so that once it too has been adopted by Council, it can be included within the new Planning Proposal and progressed with those studies already adopted.

The progression of this Planning Proposal will bring the WLEP 2010 Flood Planning Area Maps up to date and this will support the introduction of the 'Flood Prone Land Package' by the Department of Planning, Industry and Environment on 14 July 2021. It is noted that the Flood Prone Land Package will include the following:

- a revised s9.1 Local Planning Direction on flooding (Local Planning Direction),
- a new Planning Circular: Considering flooding in land use planning: guidance and statutory requirements,
- a new Guideline: Considering Flooding in Land Use Planning,
- Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021, and
- Environmental Planning and Assessment Amendment (Flood Planning) Regulation 2021.

The Flood Prone Land Package also proposes State Environmental Planning Policy amendments in relation to two new standard instrument Local Environmental Plan (LEP) clauses,

- a flood planning clause, and

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### PLANNING PROPOSALS



- an optional special flood consideration clause.

Both clauses introduce flood-related development controls.

It is therefore the recommendation of this report that the Flood Planning Area maps from all flood studies already adopted by Council, as well as the draft Wingecarribee River Flood Study, once adopted, be included in a Planning Proposal to bring all the Wingecarribee Flood Planning Area maps up to date as efficiently as possible.

---

## COMMUNICATION AND CONSULTATION

### Community Engagement

Community engagement would occur as required should a Gateway Determination be received. It is noted that all Flood Planning Area maps included in the Planning Proposal have already been adopted by Council, so consultation would be limited to progressing the Planning Proposal rather than further consideration of the already adopted Flood Studies and Plans.

### Internal Communication and Consultation

Internal communication would occur as required should a Gateway Determination be received.

### External Communication and Consultation

Agency referrals would occur as required should a Gateway Determination be received.

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## SUSTAINABILITY ASSESSMENT

### • **Environment**

A primary intent of including the adopted flood studies in WLEP 2010 is to ensure transparency with regard to the location of potentially flood liable land and the protection of waterway environments which are subject to flooding.

### • **Social**

A key intent of including the adopted flood studies in WLEP 2010 is to ensure that buildings are protected from potential flood damage by not being located within waterway environments that are subject to flooding.

### • **Broader Economic Implications**

Damage to buildings through flooding and to the flood ways themselves can generate an economic cost which accurate flood mapping can avoid.

### • **Culture**

There are no cultural issues in relation to this report.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**



- **Governance**

The Planning Proposal would be progressed in accordance with all legislative requirements and would ensure that Flood Planning Area maps in WLEP 2010 is accurate and up to date so as to best support new state flood planning legislation.

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**COUNCIL BUDGET IMPLICATIONS**

There are no Council budget implications.

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**RELATED COUNCIL POLICY**

There are no related Council policies associated with this report.

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**CONCLUSION**

The inclusion of all adopted Flood Planning Area maps into WLEP 2010 ensures that the LEP remains an accurate record of flood prone land across the Shire and best supports new state flood planning area legislation.

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**ATTACHMENTS**

There are no attachments to this report.

**6.3 Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of Retford Park Bowral residential estate.**

**Report Author:** Senior Strategic Land Use Planner  
**Authoriser:** Coordinator Strategic Land Use Planning

**PURPOSE**

The purpose of this report is to consider comments from the Department of Planning, Industry and Environment with regard to a Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of the Retford Park residential estate.

<b>Applicant / Proponent</b>	Wingecarribee Shire Council
<b>Owners</b>	N/A
<b>Consultants</b>	N/A
<b>Notification</b>	N/A
<b>Number Advised</b>	N/A
<b>Number of Submissions</b>	N/A
<b>Current Zoning / MLS</b>	N/A
<b>Proposed LEP Amendment/s</b>	Nil
<b>Political Donations</b>	N/A
<b>Recommendation</b>	Planning Proposal BE WITHDRAWN

**RECOMMENDATION**

**THAT** Council request the Minister for Planning and Public Spaces to determine, under Section 3.35 of the *Environmental Planning & Assessment Act 1979*, that the Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of the Retford Park residential estate not proceed.

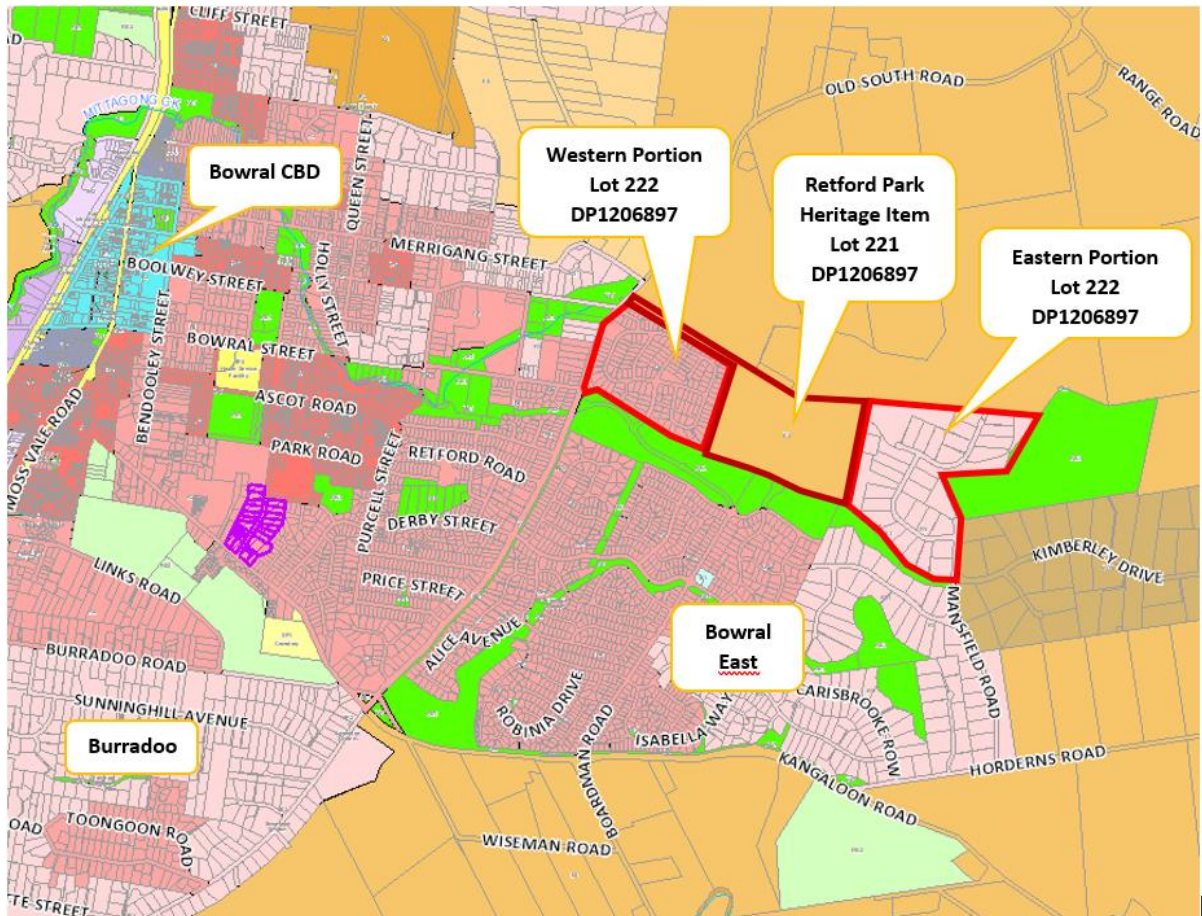
**REPORT**

At its Ordinary Meeting of 9 September 2020 Council considered a petition (Petition 5/2020) objecting to an application (DA20/0720) for a dual occupancy development and subdivision at 40 Sir James Fairfax Circuit, Bowral, located within the western portion of the Retford Park residential estate (the subject land). The location of the subject land is indicated in **Figure 1** below.

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**



**Figure 1 Location of Subject Land**

Accompanying the petition was correspondence from Hicksons Lawyers on behalf of the Executors of the Estate of the Late James O. Fairfax AC seeking to amend Clause 1.9A(2) of Wingecarribee Local Environmental Plan (WLEP) 2010 to include the subject land.

Clause 1.9A of WLEP 2010 addresses the suspension of covenants, agreements and instruments and states:

- (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.*

Subclause (2) lists those covenants, agreements and instruments to which subclause (1) does not apply.

The intent of this request was to enable the legal enforcement of the Purchaser's Agreement and Future Purchaser's Agreement (the Agreements) into which every purchaser of a lot within the Retford Park residential estate had entered with the Executors of the Estate of the Late James O. Fairfax AC (the Executors) at the time of purchase.

The intent of the Agreements was to establish and maintain a consistent standard of development within the estate through a set of Design Guidelines. The Purchaser's

## AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 July 2021

### PLANNING PROPOSALS



Agreement requires the purchaser to abide by the Design Guidelines and to ensure that any person they sell to also enters into a Further Purchaser's Deed of Agreement with the Executors.

The Petition and accompanying request from Hicksons Lawyers were in response to DA20/0720 which sought approval for a dual occupancy development and subsequent subdivision within the Retford Park west residential area. Although the Design Guidelines do allow the opportunity for a dual occupancy development, they expressly prohibit further subdivision of such a development. The Executors had obtained legal advice that the Agreements could not be enforced as their operation is suspended by clause 9.1A of WLEP 2010.

In response, Council resolved at its Ordinary Meeting of 9 September 2020 (MN367/20) as follows:

1. ***THAT*** Petition 5/2020 relating to Retford Park Estate be received and noted by Council.
2. ***THAT*** a report come to Council to prepare a Planning Proposal to amend clause 1.9A(2) of Wingecarribee LEP 2010 by adding the following:
  - (h) ***to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of Lot 222 DP1206897.***

In response to Resolution MN367/20, a report was considered by Council at its Ordinary Meeting of 14 October 2020 and Council resolved as follows:

***THAT*** a Planning Proposal be urgently prepared and submitted to the Department of Planning, Industry and Environment for a Gateway Determination under section 3.33 of the Environmental Planning and Assessment Act 1979, to amend clause 1.9A(2) of the Wingecarribee Local Environmental Plan 2010 by adding the following:

***(h) to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of the estate bounded by Old South Road Bowral, David Woods Playing Fields and Lot 221 DP1206897 known as Retford Park.***

The Planning Proposal was submitted to the NSW Department of Planning, Industry and Environment (the Department) on 22 October 2020.

Council subsequently received a response from the Department on 9 November 2020, advising that it (the Department) "*is uncertain the Proposal would obtain support from the Parliamentary Counsel's Office or the Governor*". The Department further noted that "*it is preferable to not use the LEP to enforce what is essentially a private matter between a developer and purchaser.*"

In considering the Department's comments it is recommended that Council request the Minister for Planning and Public Spaces to determine, under Section 3.35 of the *Environmental Planning & Assessment Act 1979*, that the Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of the Retford Park residential estate not proceed.

Council remains mindful of the concerns of residents within the Retford Park residential estate, but it would appear that it is perhaps more appropriate now for the proponents to investigate alternative options for enforcing their Purchasers' Agreements.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Should the Planning Proposal not proceed, no community engagement would occur. The proponents would, however, be informed of Council's decision.

### **Internal Communication and Consultation**

No further consultation would occur should the Planning Proposal not proceed.

### **External Communication and Consultation**

No further consultation would occur should the Planning Proposal not proceed.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications in relation to this report.

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## **RELATED COUNCIL POLICY**

There are no related Council policies in relation to this report.

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## **CONCLUSION**

Following the receipt of comments from the Department of Planning, Industry and Environment that the Planning Proposal is unlikely to be supported, it would appear more appropriate for the proponents to investigate alternative options for enforcing their

**AGENDA FOR THE INDEPENDENT ADVISORY PLANNING  
ASSESSMENT PANEL MEETING**

Wednesday 07 July 2021

**PLANNING PROPOSALS**

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Purchasers' Agreements rather than pursue the Planning Proposal. Therefore it is recommended that Council request the Minister for Planning and Public Spaces to determine, under Section 3.35 of the *Environmental Planning & Assessment Act 1979*, that the Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of the Retford Park residential estate not proceed.

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**ATTACHMENTS**

There are no attachments to this report.

Marissa Racomelara  
**Acting General Manager**

Tuesday 29 June 2021