

23 February 2022

Dear Panel Member,

You are kindly requested to attend the Wingecarribee Local Planning Panel to be held in **Nattai Room, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 2 March 2022** commencing at **3.30pm**

Yours faithfully



Geoff King
Director Communities and Place

Business

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- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. APOLOGIES**
Nil
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5. PLANNING PROPOSALS

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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

Council Chambers

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ACKNOWLEDGEMENT OF COUNTRY

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

APOLOGIES

Nil at time of print.

DECLARATIONS OF INTEREST

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.

5 PLANNING PROPOSALS

5.1 Update on the Welby Garden Centre Planning Proposal

Reference: PN1711130, PN1705357, PP-2021-3571
Report Author: Senior Strategic Land Use Planner
Authoriser: Manager Strategic Land Use Planning

PURPOSE

The purpose of the report is to provide an update on the Planning Proposal to rezone land at Welby Garden Centre.

RECOMMENDATION

THAT

- (a) the Planning Proposal for the Welby Garden Centre be amended to include the following lots - Lots 1,2,3,8,9 & 10 Section 6 DP 759070, Lot 1 DP 1006005 & Lot 2 DP 1019107, and
- (b) the Planning Proposal for the Welby Garden Centre be amended to include the following land uses - landscaping material supplies, plant nursery, garden centre, community facility and light industry, and
- (c) an amended Gateway Determination be sought from the NSW Department of Planning & Environment for the amended Planning Proposal under s3.35 of the *Environmental Planning & Assessment Act 1979*.

REPORT

BACKGROUND

A Planning Proposal was submitted to Council for assessment by Hogan Planning in November 2020 to amend WLEP 2010 with regard to land comprising the Welby Garden Centre - Lots 1,2,3,8,9 & 10 Sec 6 DP 759070, Lot 1 DP 1006005 and Lot 2 DP 10194107, being 10 & 12-14 Old Hume Highway Welby. **Figure 1** below indicates the general location of the subject land while **Figure 2** provides a more detailed map.

The subject land is owned and operated by the Incorporated Association 'Challenge Southern Highlands' as a Not for Profit community based charitable organisation. The business has operated continuously since 1989, providing employment opportunities for over 40 staff with intellectual disabilities through its retail and wholesale plant nurseries, garden maintenance and work crews, assembly of timber pallets, manufacturing spacers for transmitters, soap making and woodworking. The Centre also provides certain commercial services to local businesses and is financially assisted by sponsorship from local businesses, Council and public donations.

The subject land covers an area of some 17,000 m². Consistent with much of Welby, the land is zoned R2 Low Density Residential with a minimum lot size of 700m².

A portion of the subject land is listed at Item 28 in Schedule 1 (Additional Permitted Uses) of Wingecarribee Local Environmental Plan 2010 as indicated in **Figure 3** below.

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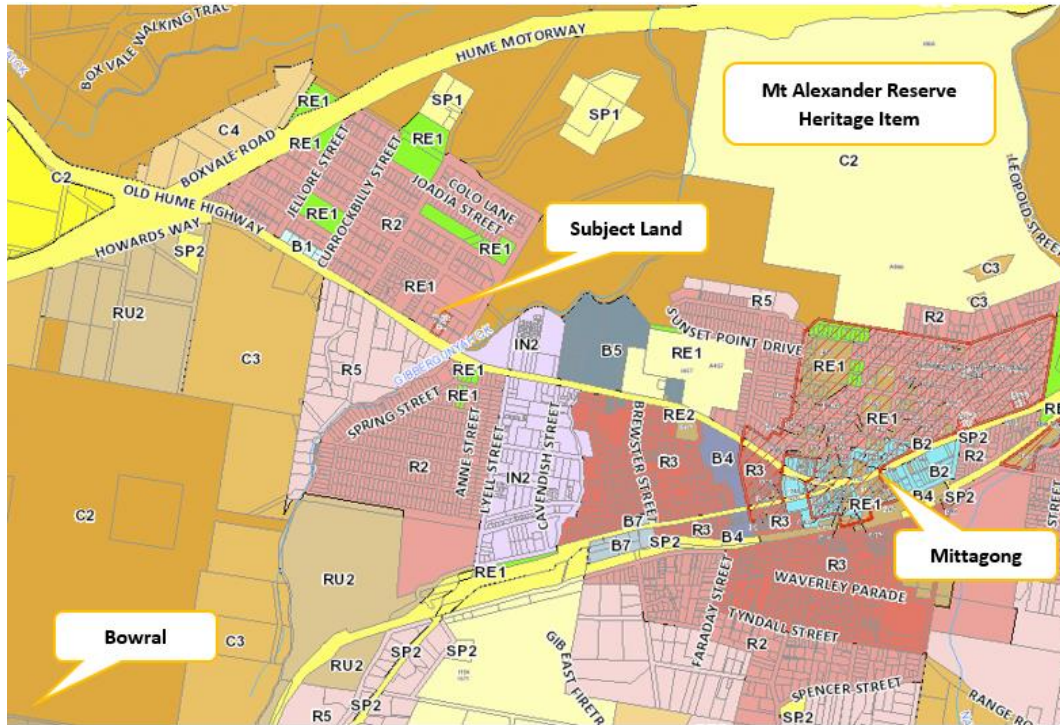


Figure 1 General Location of Subject Land



Figure 2 Immediate Location of Subject Land

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Figure 3 Extent of current Sch 1 designation (red). Subject land (blue)

The Centre has now extended its original site and seeks to also extend its range of permitted land uses. The Planning Proposal sought to achieve this by rezoning the subject land from R2 Low Density Residential to B5 Business Development and applying relevant height and FSR controls and removing the 700m² minimum lot size. The current Schedule 1 listing over a portion of the site would also be removed.

This approach was supported by Council, noting that there is a range of Business zones as well as an area of IN2 Light Industrial zoned land within the vicinity of the subject land. The range of land uses permitted in all of these zones was also considered.

At its Meeting of 7 April 2021, the Interim Independent Advisory Planning Assessment Panel recommended supporting the Planning Proposal and at the Ordinary Meeting of Council of 21 April 2021, the following Motion was carried.

MN 112/21

MOTION moved by Interim Administrator V May PSM

THAT a Planning Proposal be prepared under Section 3.33 of the Environmental Planning & Assessment Act 1979:

- **To amend Schedule 1 of Wingecarribee Local Environmental Plan 2020 to remove Item 28, and**
- **Rezone from R2 Low Density Residential to B5 Business Development and remove the 700m² minimum lot size of land at Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107, Nos. 10 & 12 -14 Old Hume Highway, Welby, being the Welby Garden Centre, and**
- **Apply a Maximum Building Height of 8 metres, and**
- **Apply a Maximum Floor Space Ratio of 0.9:1.**

DECLARED CARRIED BY THE INTERIM ADMINISTRATOR

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REPORT

A Gateway Determination (the Gateway) enabling the Planning Proposal to proceed was issued by the (then) Department of Planning, Industry and Environment (the Department) on 8 June 2021. Agency referrals were completed as required under the Gateway and no objections were received. The Gateway also required preparation of a Preliminary Site Inspection (PSI) report by the proponent to confirm the site is not contaminated, and that the PSI be approved by the Department prior to public exhibition of the Planning Proposal. The PSI approval was confirmed by the Department on 28 October 2021.

The Planning Proposal was placed on public exhibition for a period of 31 days from Wednesday 10 November to Friday 10 December 2021. Notification letters were sent to 24 property owners in the vicinity of the subject land and details of the exhibition were published on the Community Update page of Council's website throughout the exhibition period. The Planning Proposal was also notified on the What's On Exhibition page of Council's website and documentation could also be viewed on Council's Your Say Wingecarribee website and the NSW Planning Portal.

No submissions were received during the exhibition period. One (1) submission was received after the end of the exhibition period.

Subsequent to commencement of exhibition, the Department provided Council with details of proposed amendments to the Standard Instrument employment zone framework, including draft land use tables for each of the new zones.

Of particular relevance, and some concern for this Planning Proposal, is that certain Business zones are to be amalgamated under the new Employment zones. Both the B1 Neighbourhood Centre and B2 Local Centre zones, for example, will be amalgamated into a new E1 Local Centre zone. This will potentially impact the nearby small B1 zone at Welby. The IN1 General Industrial zone and the IN2 Light Industrial zone will be amalgamated into a new E4 General Industrial zone, potentially impacting the IN2 Light Industrial zone to the east.

Similarly, the B5 Business Development zone is to be amalgamated with the B7 Business Park zone into a new E3 Productivity Support zone. This amalgamation will result in a far more extensive set of permissible land uses within the new E3 Productivity Support zone, many of which are mandated permitted with consent.

In view of the location of the subject land among areas of residential development on residential zoned land, it is now considered that the proposed rezoning would no longer be appropriate as it could expose those residential areas to a wide range of potentially incompatible land uses in the future. Furthermore, creating an additional new employment zone would exacerbate the potential adverse impacts of the amalgamated Business and Industrial zones on Welby and the established employment lands hierarchy within Mittagong township.

However, Council does remain committed to supporting the outcomes sought by the current owners. Therefore, it is the recommendation of this report that the rezoning and associated amendments not proceed, and instead the Planning Proposal be amended (under s3.35 of the *Environmental Planning & Assessment Act 1979*) to retain the R2 Low Density Residential zone and instead amend the current *Schedule 1 (Additional Permitted Uses) Item 28* listing as the preferred pathway to achieve the outcomes sought.

Currently, *Item 28* states:

28 Use of certain land at Old Hume Highway, Welby

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- (1) *This clause applies to land at Old Hume Highway, Welby, being Lots 3 and 8, Section 6, DP 759070 and Lot 2, DP 1019107.*
- (2) *Development for the purposes of landscaping material supplies and a plant nursery is permitted with consent.*

To achieve this outcome, the property description would need to be amended to include all of the subject land, being Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107, as indicated in **Figure 3** above.

To enable Council to consider a Development Application for the subject land under Schedule 1 of WLEP 2010 seeking approval to undertake the range of land uses sought, the following land uses, as defined in the Standard Instrument Local Environmental Plan, would also need to be included in the Schedule 1 listing for the subject land.

Both *landscaping material supplies* and *plant nursery* are already in the list of additional permitted uses. The other nominated land uses, namely *garden centre*, *community facility* and *light industry*, would all be additional to the current listing. All proposed land uses are defined below.

landscaping material supplies means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

plant nursery means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,
- (b) pets and pet supplies,
- (c) fresh produce.

community facility means a building or place—

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.



light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry,
- (d) creative industry.

It is noted that any land use approval under Schedule 1 would be subject to a development application and an accompanying statement of environmental effects addressing the appropriateness of the proposed land use on the subject land. With regard to 'light industry' the definition contains the criteria which would need to be addressed before approval could be granted.

Therefore, the full draft amendment to Schedule 1 Item 28 would be as follows:

28 Use of certain land at Old Hume Highway, Welby

- (1) *This clause applies to land at Old Hume Highway, Welby, being Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107.*
- (2) *Development for the purposes of landscaping material supplies, plant nursery, garden centre, community facility and light industry are permitted with consent.*

This amendment allows the proponent to still achieve more land use flexibility on the site, but by a mechanism which significantly reduces potential future adverse impacts on the surrounding community.

A copy of the amended Planning Proposal forms **Attachment 1** to this report.

COMMUNICATION AND CONSULTATION

Community Engagement

Community engagement was undertaken as described above.

Internal Communication and Consultation

No additional internal consultation was undertaken.

External Communication and Consultation

External communication and consultation occurred as described above.

SUSTAINABILITY ASSESSMENT

• **Environment**

There are no environmental issues in relation to this report.

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- **Social**

The proposed amendment to the Planning Proposal would still enable the expansion of employment opportunities and associated benefits for people with disabilities and their families as well as the broader community without jeopardising potential future land use conflicts through Standard Instrument amendments to employment lands zoning and established hierarchy.

- **Broader Economic Implications**

The proposed amendment to the Planning Proposal would still enable the provision of additional employment opportunities for people with disabilities and associated economic growth as well as protecting the established employment lands hierarchy within Mittagong township.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with this report.

RELATED COUNCIL POLICY

There are no related Council Policies associated with this report.

CONCLUSION

The Welby Garden Centre has been operating for many years, demonstrating economic viability and social contribution. However, due to significant Departmental amendments to the zoning regime of employment land under the Standard Instrument Local Environmental Plan, it is no longer considered appropriate to rezone the subject land. This report proposes an alternative pathway using Schedule 1 of WLEP 2010 which will achieve the objectives of the Planning Proposal without potentially impacting surrounding land uses and zonings.

ATTACHMENTS

1. Planning Proposal Amendment - *circulated under separate cover*

5.2 Planning Proposal to rezone land at Darraby Lodge Broughton Street Moss Vale

Reference: PP-2021-7022, PN267200
Report Author: Senior Strategic Land Use Planner
Authoriser: Manager Strategic Land Use Planning

PURPOSE

The purpose of this report is to consider a Planning Proposal to amend WLEP 2010 to rezone and reduce the minimum lot size of land at Darraby Lodge, Lot 1 DP 819424, Broughton Street Moss Vale.

RECOMMENDATION

THAT Council reiterate its 'in principle' support for the Planning Proposal and will reconsider it when identified infrastructure shortfalls are resolved as set out in the Wingecarribee Local Housing Strategy 2020.

REPORT

BACKGROUND

The Subject Land

The subject site, Lot 1 DP 819424, known as Darraby Lodge, Broughton Street, Moss Vale, is located on the south western edge of the Moss Vale Township. The location of the subject land is indicated in **Figure 1** below.

The site has an area of some 31 hectares with a frontage to Broughton Street of over 450 metres. The land is zoned C3 Environmental Management with a minimum lot size of 40 hectares. The land adjoins the southern edge of the existing Broughton Street residential release area where a minimum lot size of 500m² applies.

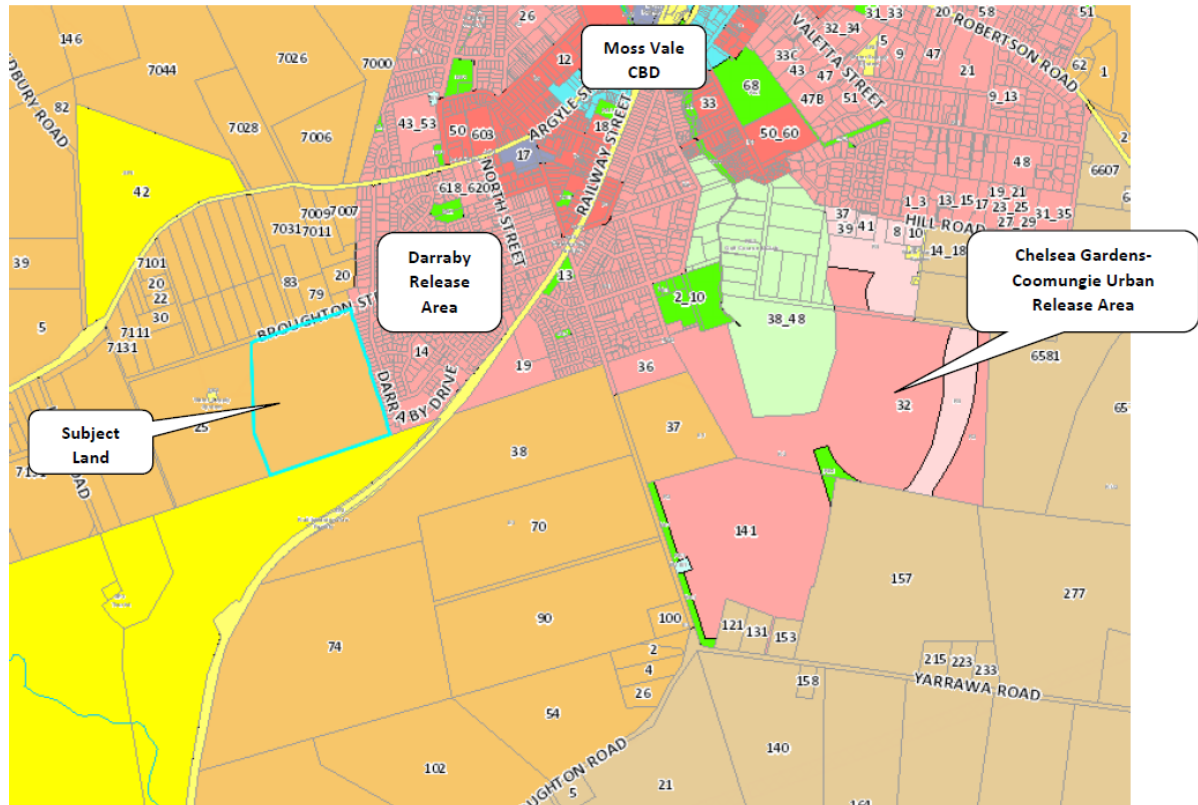


Figure 1 - Location of Subject Land

Previous Submissions & Planning Proposals

This property has been the subject of several rezoning reviews since 2007 including an appeal to the Southern Regional Planning Panel. A brief summary of each follows:

2007 – Drafting of WLEP 2010

The property was first submitted for rezoning during the drafting of the 2007 Wingecarribee Local Environmental Plan at which time Council resolved to not rezone the land, but instead to further consider it for potential residential development under the Local Planning Strategy 2015.

Council did determine however, that only a portion of the site would be considered for residential development, due primarily to topography and visibility from surrounding areas, as well as the existence of remnant vegetation and an identified water course. The extent of residential development which Council was prepared to consider is indicated in **Figure 2** below and is calculated to be some 9.3 hectares.

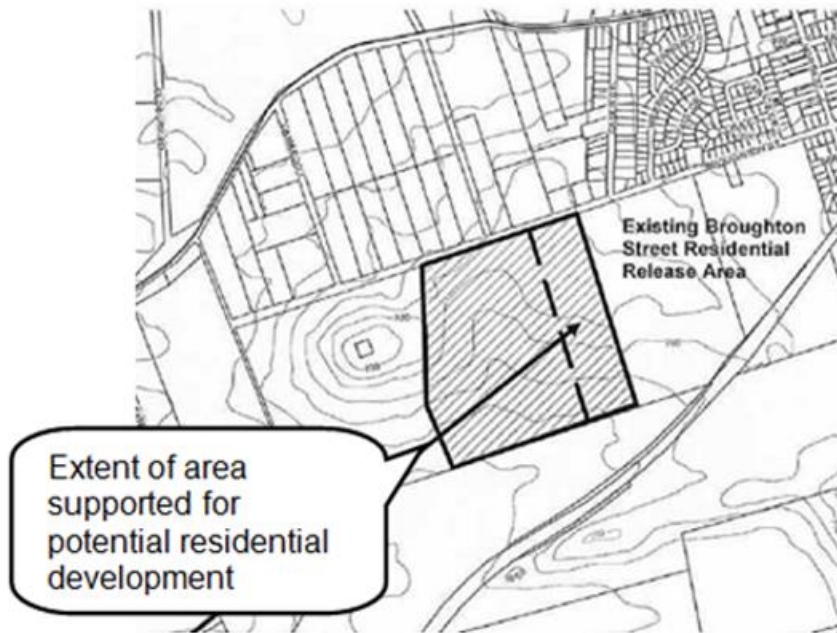


Figure 2 - Extent of Development Potential indicated by Council in 2007

It is noted that the extent of this identified developable area is roughly in line with an established row of trees on the site as indicated in **Figure 3** below.



Figure 3 - Aerial view of extent of Development Potential as indicated by Council in 2007

2015 - Wingecarrabee Local Planning Strategy

A second submission for residential development was made during the drafting of the Wingecarrabee Local Planning Strategy in accordance with Council's decision of 2007. After consideration and exhibition, the property was included in the Moss Vale Township Precinct Plan.

In response, a Planning Proposal was submitted to Council by Michael Brown Planning Strategies in August 2016. The proposal sought to develop the whole site by rezoning the subject land to R2 Low Density Residential and applying a minimum lot size range between 450m² and 2000m² to achieve a lot yield of 227.

Council's assessment noted the previously identified extent of potential residential development (Figures 2 and 3 above) and the reasons for supporting only that portion of the site for development, namely to minimise impacts on the visual prominence of the higher land and to protect environmentally sensitive land.

Of particular concern was the fact that the Office of Environment and Heritage (OEH) had recently prepared new draft vegetation maps for the Shire which provided a much more accurate data base of ecological communities (threatened or otherwise) than that previously available to Council.

These new maps confirmed the environmental sensitivity of the site and specifically identified Tableland Basalt Forest (TBF) and Southern Highlands Shale Woodland (SHSW) as indicated in **Figure 4** below.

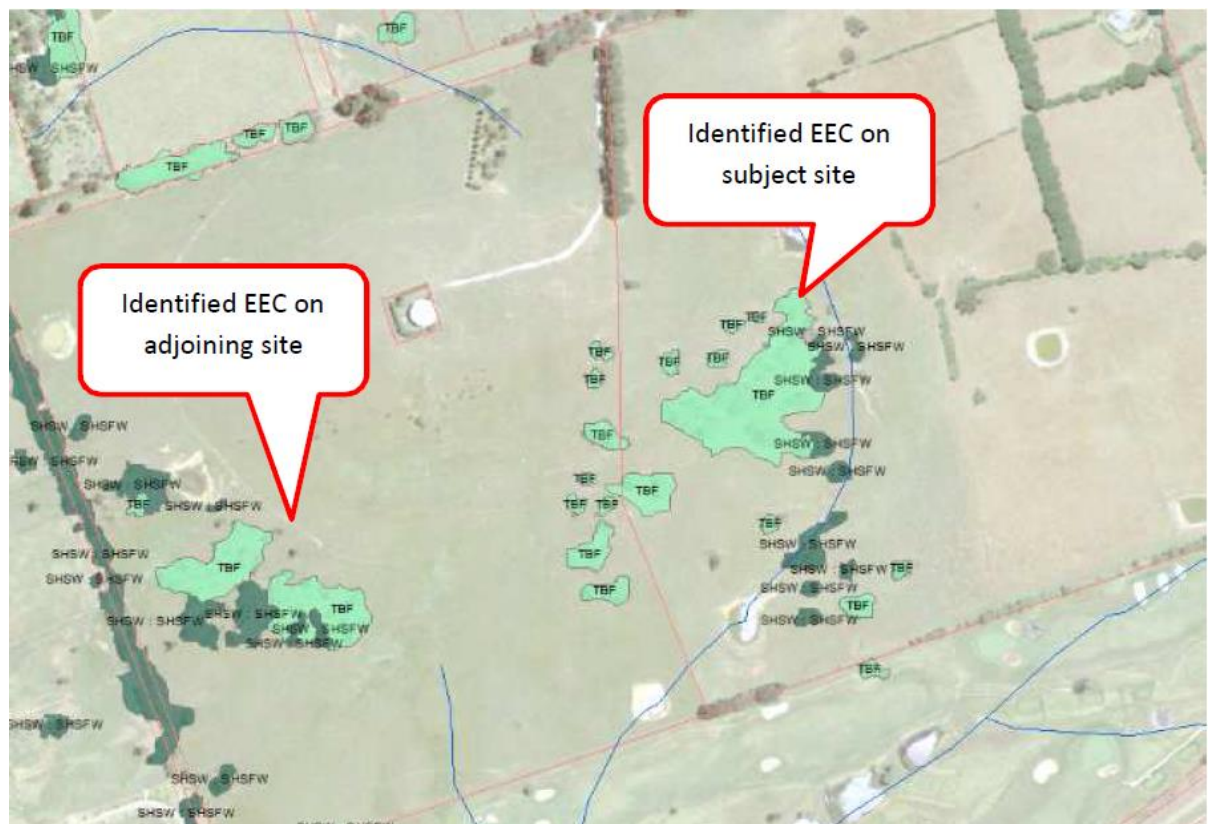


Figure 4 – Identified Threatened Ecological Communities

The Planning Proposal was reported to the Ordinary Meeting of 12 July 2017 at which time it was resolved THAT:



The Planning Proposal to rezone Lot 1 DP 819424, Darraby Lodge, Broughton Street Moss Vale from E3 Environmental Management to R2 Low Density Residential and apply a minimum lot size of between 450m² and 2000m² to achieve a lot yield of 227 NOT BE SUPPORTED.

2018 - Southern Regional Planning Panel Assessment

Following the Resolution of 12 July 2017, the proponents sought a Rezoning Review by the Southern Regional Planning Panel (The Regional Panel) in September 2017. On 8 February 2018 the Regional Panel issued its Determination that the Proposal should not proceed in its present form.

The Regional Panel acknowledged that the Proposal did have some broad strategic merit, however, the Panel also considered the Proposal to lack site specific merit, noting the following site-specific deficiencies:

- *Its location in a rural landscape context*
- *Its location in the visual catchment of a number of significant heritage sites*
- *The existence of Office of Environment and Heritage (OEH) mapped endangered ecological communities (Tableland Basalt Forest and Southern Highlands Shale Woodland), the latter also being listed under the Environment Protection and Biodiversity Conservation Act 1999 (Cwth)*
- *The limitations on the capacity of Council's existing sewerage and road infrastructure to accommodate new development without significant upgrading.*

The rezoning review was ultimately not supported by the Regional Panel.

2020 – Wingecarribee Local Housing Strategy

The subject land was again considered during drafting of the Wingecarribee Local Housing Strategy (LHS) 2020, adopted by Council in June 2020, and subsequently endorsed by the NSW Department of Planning and Environment. The LHS assessed every site which sought to be included in the Strategy to determine the potential impact of any development on bushfire and flood prone land, biodiversity, heritage conservation, high value agricultural land and Sydney Drinking Water Catchment areas.

During drafting of the LHS, submissions were also received from several public agencies including WaterNSW. The following extracts from the WaterNSW submission to the reveal their position with regard to rezoning of unsewered land for residential development.

As a general principle, infill (and greenfield) development should be encouraged in sewerred as opposed to unsewered areas. Unsewered areas should be excluded from further consideration, or the Strategy (should) qualify that such areas should be sewerred before proposing further subdivision.

WaterNSW also makes the following comment which Council considers applicable across the Shire to ensure that the full infrastructure requirements of the whole development are addressed up front.

Any staging of development should ensure that all residential areas are connected to the reticulated sewer rather than staging the development by initially creating large unsewered lots for later residential subdivision.

The Local Housing Strategy identified the subject land as the Moss Vale (West) investigation area. It is noted that, following the assessment outlined above, the Strategy proposes a reduced development area within the site, consistent with the area originally identified and supported by Council in 2007, as indicated in **Figure 5** below.

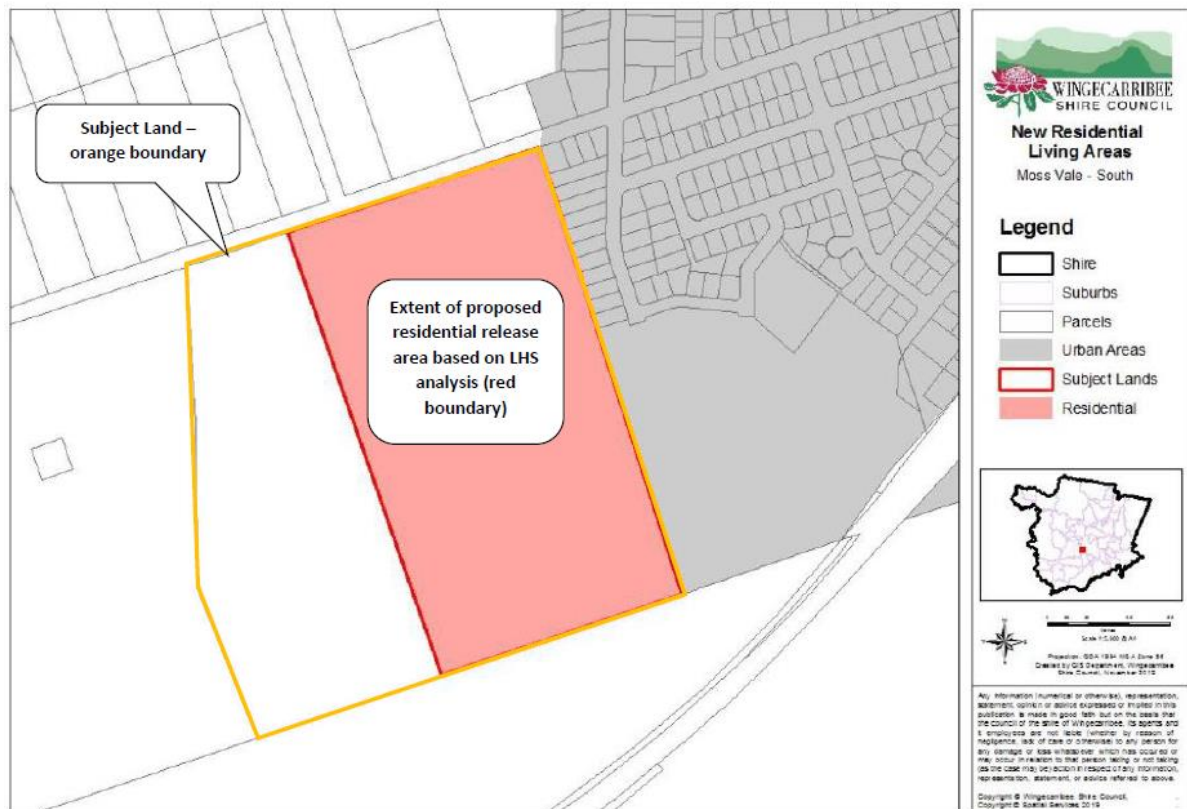


Figure 5 – Extract from Wingecarribee Local Housing Strategy 2020 (page 50)

The Local Housing Strategy clearly states that no proposed new living area will be considered for rezoning until identified infrastructure shortfalls are addressed (page 51):

Prior to new living areas being rezoned, an infrastructure plan and servicing strategy will be required to coordinate the delivery of infrastructure, and ensure infrastructure is planned for and delivered in the most efficient way possible. The infrastructure plan and servicing strategy will directly influence the staging of the land release.

And with regard to the subject land,

A number of known infrastructure upgrades will be required to support the future new living area. Prior to the land being rezoned, Council will formalise a value capture system that will provide an equitable and sustainable means of funding new infrastructure and ensure that those who benefit the most from (and

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generate the demand for) new infrastructure, contribute to the cost of delivering that infrastructure.

The proposed new living area may trigger the need for infrastructure upgrades including but not limited to:

- *Intersection improvements to assist movement onto Argyle Street*
- *Potential improvements to the Spring Street sub-way.*

In addition to the traffic network upgrades, the site will be serviced by the Moss Vale Sewage Treatment Plan and the Wingecarribee Water Treatment Plant.

Prior to rezoning, modelling would need to be undertaken to determine the capacity of the existing network and what upgrades are required to water and sewer infrastructure. The timing of land release may be subject to the planned upgrade of the Moss Vale sewerage treatment plant and Moss Vale reservoir trunk main duplication.

2020 – Planning Proposal from Michael Brown Planning Strategies

At its Ordinary Meeting of 28 October 2020, Council considered a Planning Proposal which sought to rezone a portion of the site from C3 Environmental Management to R2 Low Density Residential with the remaining portion of the site proposed to be rezoned C4 Environmental Living with a minimum lot size of 10 hectares to enable a single dwelling entitlement within that residual lot.

The assessment of that Proposal was undertaken within the context of the newly endorsed Wingecarribee Local Housing Strategy. Council also considered comments from WaterNSW provided specifically for this site in its submission to Strategy, which included the following:

WaterNSW supports the Strategy's commitment (to addressing implications for infrastructure prior to considering a rezoning proposal), noting that any future Planning Proposal to rezone this land (the subject site) for residential (development) would be accompanied by an assessment of the capacity of the Moss Vale STP.

It is noted that subsequent to the adoption of the Strategy, Council undertook a detailed modelling exercise to confirm the existing capacity within the Moss Vale Sewage Treatment Plant. This modelling concluded that there is insufficient capacity to accommodate existing zoned land within the Moss Vale area, let alone future proposed development, and no further rezoning should occur until the upgrade of the Sewage Treatment Plant has been completed.

On the basis of that assessment, the recommendation of the report on that Proposal, supported by Council Resolution, was that Council provide 'in principle' support only for the Planning Proposal and to reconsider it when current infrastructure shortfalls are resolved. The proponent was advised of Council's decision.

REPORT

The Current Planning Proposal

On 23 November 2021 a 'Planning Proposal Request' for the subject land was submitted through the NSW Planning Portal by Michael Brown Planning Strategies on behalf of the property owners. A copy of this document forms **Attachments 1** to this report. The accompanying proposed "Master Plan" subdivision plan is reproduced at **Figure 6** below.

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Figure 6 – proposed subdivision plan

The Planning Proposal document is supported by several studies including Traffic and Parking Impact Assessment, Cultural Visual Assessment, Archaeological Due Diligence Assessment, Bushfire Assessment, Ecological Assessment, Urban Services Overview and Contamination Assessment.

The Proposal’s background statement says that:

This Darraby Lodge Planning Proposal Request (DLPPR) represents the formative phase in the development of a Planning Proposal (PP) geared toward the rezoning of the land situated contiguous with the existing Moss Vale Township for residential purposes. The rezoning is to be affected through the preparation of a relevant Local Environmental Plan (LEP) amendment; it being proposed to amend Wingecarribee LEP 2010.

Nonetheless, the document adopts the format of a standard Planning Proposal and has been considered as such. The other supporting documents have been reviewed and considered, but are not included with the report. As explained above, and reiterated below, the decision as to whether or not to proceed with the Planning Proposal does not rely on them. However, they can be made available on request.

Strategic Assessment

The content of the current Planning Proposal and supporting documentation has been reviewed. As discussed previously, broad strategic merit has been confirmed through the inclusion of the subject land in the Wingecarribee Local Housing Strategy 2020.

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The principal issues with the development of this site have always been, and remain, the extent of the site which would be considered for rezoning and the provision of necessary sewer and road infrastructure as set out in the endorsed Wingecarribee Local Housing Strategy 2020.

As stated above, subsequent to the adoption of the Local Housing Strategy, Council has confirmed the existing capacity within the Moss Vale Sewage Treatment Plant, the conclusion being that there is insufficient capacity to accommodate existing zoned land within the Moss Vale area, let alone future proposed development, and no further rezoning should occur until the upgrade of the STP has been completed.

These significant limitations of the existing Moss Vale infrastructure reinforce the requirements clearly set out in the Local Housing Strategy as to when a rezoning of any land within the Shire can be considered, not just the subject land.

Therefore, it is once again concluded that the only option available to Council at this stage with regard to the current Planning Proposal is to confirm Council's 'in principle' support for a rezoning of a portion of the site for residential purposes, but that no further amendment to Wingecarribee Local Environmental Plan be made until such time that adequate infrastructure is in place as required under the Local Housing Strategy.

To resolve otherwise would risk jeopardising the integrity of the Strategic Land Use Planning process which underpins the Wingecarribee Local Housing Strategy. And to rezone land which is not yet capable of further development would create expectations which could not be achieved. Council does not consider this outcome to be in the best interests of any stakeholder, current or future.

Of specific relevance are the comments in the Local Housing Strategy that the rezoning process offers the only opportunity for Council to formalise a value capture system that will provide an equitable and sustainable means of contributing to the funding of new infrastructure to ensure that those who benefit the most from (and generate the demand for) it, contribute to the cost of delivering that infrastructure with consequent implications for Council's opportunities to meet social housing goals and for budgeting outcomes.

COMMUNICATION AND CONSULTATION

Community Engagement

Extensive community engagement occurred during drafting of the Wingecarribee Local Housing Strategy 2020 in which the subject land is included.

Internal Communication and Consultation

No further internal consultation has occurred at this stage.

External Communication and Consultation

No further external consultation has occurred at this stage.

SUSTAINABILITY ASSESSMENT

- **Environment**

The recommendation to this report seeks to ensure that adequate infrastructure is available to ensure that no adverse environmental impacts occur.

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- **Social**

Council's commitment to ensuring that the rezoning of land for residential purposes proceeds in accordance with the adopted Local Housing Strategy offers opportunities for Council to meet its social housing objectives.

- **Broader Economic Implications**

Council's commitment to ensuring that the rezoning of land for residential purposes proceeds in accordance with the adopted Local Housing Strategy offers opportunities for Council to obtain contributory funds towards the financial costs of infrastructure provision.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with this report.

RELATED COUNCIL POLICY

There is no related Council Policy associated with this report.

CONCLUSION

Council has reviewed many rezoning requests for this land over the past 14 years. The matter has also been reviewed by the Southern Regional Planning Panel. The status of this land is that it is included in the Wingecarribee Local Housing Strategy 2020 and has subsequently received 'in principle' support for such a rezoning when adequate infrastructure is available.

Until that time comes, Council can only reiterate its 'in principle' support for such a rezoning and confirm it will be reconsidered when identified infrastructure shortfalls are resolved, as set out in the Wingecarribee Local Housing Strategy 2020.

ATTACHMENTS

1. Planning Proposal - Darraby Lodge Moss Vale - *circulated under separate cover*



5.3 Planning Proposal and Heritage Assessment of 2 & 4 Myrtle Street, Bowral, and 'Karingal', 26 Elizabeth Street, Moss Vale—Interim Heritage Orders Nos. 12 & 13

Reference: PN 1018300; PN 1018200; PN 475201; DA 22/0513; DA 22/0535; Interim Heritage Orders (LUP); Planning -
Report Author: Strategic Land Use Planner (Heritage)
Authoriser: Manager Strategic Land Use Planning

PURPOSE

The purpose of this report is to present heritage assessments of the properties at 2 and 4 Myrtle Street, Bowral, and the property known as 'Karingal' at 26 Elizabeth Street, Moss Vale, which are the subject of two current Interim Heritage Orders (IHOs). IHO No. 12 for 2 and 4 Myrtle Street and IHO No. 13 for 26 Elizabeth Street were both issued under delegation by Council in November 2021. This report recommends that the Planning Proposal that has been prepared for these sites be endorsed for submission to the Department of Planning and Environment for a Gateway Determination to effect heritage protection of these sites through inclusion on Schedule 5 and on the Heritage Map of the Wingecarribee Local Environmental Plan 2010.

Applicant / Proponent	N/A
Consultants	N/A
Notification	N/A
Number Advised	N/A
Number of Submissions	N/A
Current Zoning / MLS	R3 Medium Density Residential / 700m ²
Proposed Amendment/s	To add 26 Elizabeth Street, Moss Vale, comprising Lot 1 DP 986025 and Lot 110 DP 877316, as a heritage item of local significance to Schedule 5 (environmental heritage); and to include 2, 4 and 6 Myrtle Street, Bowral, within the Bowral Conservation Area; and to make the necessary changes to the Heritage Map of the Wingecarribee Local Environmental Plan 2010.
Political Donations	N/A



RECOMMENDATION

1. **THAT** the Panel supports the heritage assessment and proposed heritage listing of “‘Karingal’ Interwar bungalow and garden including brick and trachyte fence” comprising Lot 1 DP 986025 and Lot 110 DP 877316 and located at 26 Elizabeth Street, Moss Vale.
2. **THAT** the Panel supports the heritage assessment and proposed inclusion of 2, 4 and 6 Myrtle Street, Bowral, comprising Lot 1 DP 840484, Lot 1 DP 741837 and Lot C DP 157898, within the Bowral Conservation Area
3. **THAT** the Panel supports the Planning Proposal prepared under section 3.33 of the Environmental Planning & Assessment Act 1979 to amend Schedule 5 of the Wingecarribee Local Environmental Plan 2010 to add “‘Karingal’ Interwar bungalow and garden including brick and trachyte fence” as a new heritage item, and amend the Heritage Map of the Wingecarribee Local Environmental Plan 2010 to include 26 Elizabeth Street, Moss Vale, as a heritage item (general) and 2, 4 and 6 Myrtle Street, Bowral, within the boundaries of the Bowral Conservation Area.
4. **THAT** the Planning Proposal be sent to the Department of Planning and Environment with a request for a Gateway Determination in accordance with section 3.34 of the Environmental Planning & Assessment Act 1979.
5. **THAT** Interim Heritage Order No. 12 and Interim Heritage Order No. 13 are extended until 19 November 2022 to allow for the preparation and processing of the Planning Proposal.
6. **THAT** the affected property owners and residents, applicants of DA 22/0513 and DA 22/0535, and interested community members be advised of this decision.

REPORT

SUBJECT SITES

This report relates to three sites, two neighbouring sites in Myrtle Street, Bowral, and one in Elizabeth Street, Moss Vale. The Myrtle Street sites and Elizabeth Street site will mainly be dealt with separately in this report. However, both locations are combined in the same Planning Proposal provided as **ATTACHMENT 4** to this report.

2 & 4 Myrtle Street, Bowral

These sites are located on the eastern side of Myrtle Street, Bowral, between Merrigang and Shepherd Streets. Each site contains a modest brick and tile dwelling surrounded by established gardens. The sites comprise two out of three similar dwellings that were built contemporaneously in 1949. Due to the topography which sees the ground level rise from Myrtle Street at a gradient of approximately 1:6 or 16%, all houses gain vehicular access from Oak Lane to the rear, creating a distinctive streetscape in Myrtle Street with no driveways or garages visible from the street. **Figure 1** shows a detailed aerial photograph of the two properties and **Figure 2** shows an aerial photo of the sites in the context of the surrounding area.

The houses were very likely designed and built by prominent and prolific local builder, Alf Stephens Jnr from Alf Stephens & Sons Builders, although the original 1949 building applications were not located. The houses are rendered full brick mid-20th Century “Bowral

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houses” with Marseilles terracotta tile roofs. They sit high on the slope overlooking Bowral and their grouping provides a cohesive streetscape.

The two houses are surrounded by established gardens with many mature tree species including a large pin oak, a large Liquidambar, numerous large conifers, a large Himalayan cedar (deodar), established maples and various smaller ornamental and fruit trees. The rear yard of the sloping block at no. 4 contains a fine trachyte retaining wall and trachyte paths in excellent condition.



Figure 1: Aerial photo of 2 & 4 Myrtle Street (Source: Nearmap, December 2021).

The sites are zoned R3 Medium Density Residential with a minimum lot size of 700m². No. 2 Myrtle Street is 1,743m² in area, and no. 4 is 1,623m² in area. In 2021, the Low Rise Housing Diversity Code contained within State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 came into force in the Wingecarribee Shire which allows for dual occupancies, manor houses and terrace style developments to be undertaken under certain circumstances as complying development in R3 zones. These sites are currently developable under that Code.

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Figure 2: 2 & 4 Myrtle Street (outlined) in the context of surrounding development (Source: Nearmap, December 2021). The existing Bowral Conservation Area is show hatched in red to the west.



Figure 3: Exterior view of 2 Myrtle Street, Bowral (January 2022).



Figure 4: Exterior view of 4 Myrtle Street, Bowral (January 2022).

'Karingal', 26 Elizabeth Street, Moss Vale

The site known as 'Karingal' is located on the southern side of Elizabeth Street between Robertson Road and Valetta Street in Moss Vale. The property comprises two allotments: Lot 1 DP 986025 which contains the house and Lot 110 DP 877316 which contains the bulk of the garden. **Figure 5** shows an aerial photo of the property and **Figure 6** shows an aerial photo of the property in the context of surrounding development.

The house was built c.1927 (Interwar period) in a Californian Bungalow style out of dark local bricks (Bowral bricks) on trachyte foundations with a terracotta tile roof and matching brick and trachyte front fence that spans the width of the nearly 50 metre street frontage. The house is substantially intact although some alterations have been made over time. The grounds are substantially intact except for several senescent trees that were removed near the rear boundary, a large oak tree removed at the front of the house after being seriously damaged by a lightning strike in 2013, and the removal of the tennis court which has been replaced by a parterre garden immediately adjacent to the house to the east. **Figure 7** shows a photo of 'Karingal' from the street and **Figure 13** shows the gate and the detail of the brick and trachyte front fence.

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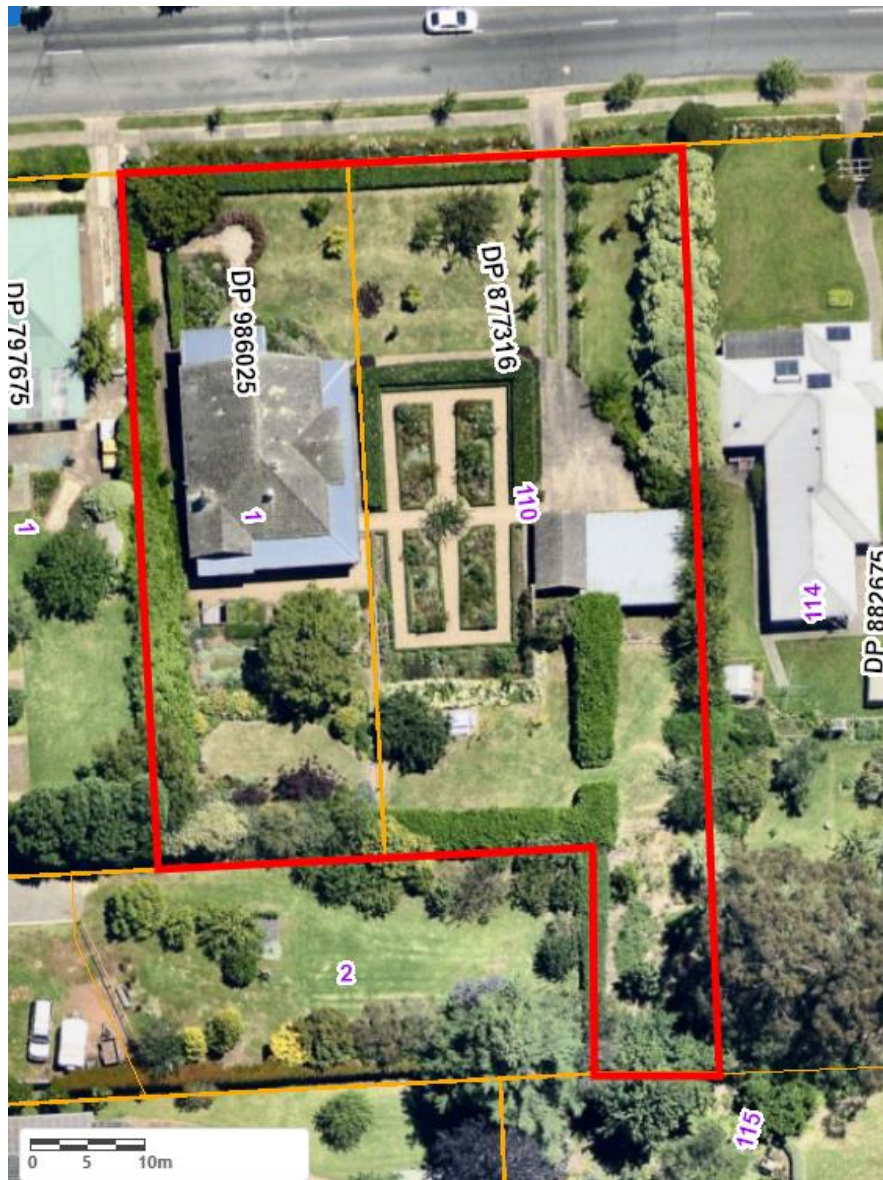


Figure 5: Aerial photo of 'Karingal' with cadastral boundaries (Source: Nearmap, December 2021).

Elizabeth Street, including no. 26, is zoned R3 Medium Density Residential and has a minimum lot size of 700m². The total site area of the two lots that comprise 'Karingal' is 3,239m² making it the second largest land holding in this section of Elizabeth Street. (No. 8 Elizabeth Street is significantly larger than the subject site but contains an early 20th Century single dwelling and a multi-unit housing development dating from the mid-20th Century.)

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Figure 6: 'Karingal' (outlined) in the context of Elizabeth Street (Source: Nearmap, December 2021).



Figure 7: Photo of 'Karingal' from the street showing the brick and trachyte fence and gardens (January 2022).

BACKGROUND

Development Proposals

On 21 September 2021 a development application (DA 22/0513) was lodged for a 2-lot subdivision of 26 Elizabeth Street, Moss Vale, together with a proposed carport in front of the building line of the existing house. On 23 September 2021 a further DA (DA 22/0535) was lodged for a multi dwelling housing proposal on the proposed subdivided “vacant” lot. **Figure 8** shows a perspective diagram of the proposals and **Figure 9** shows the proposals on a plan of the site with explanatory annotations.

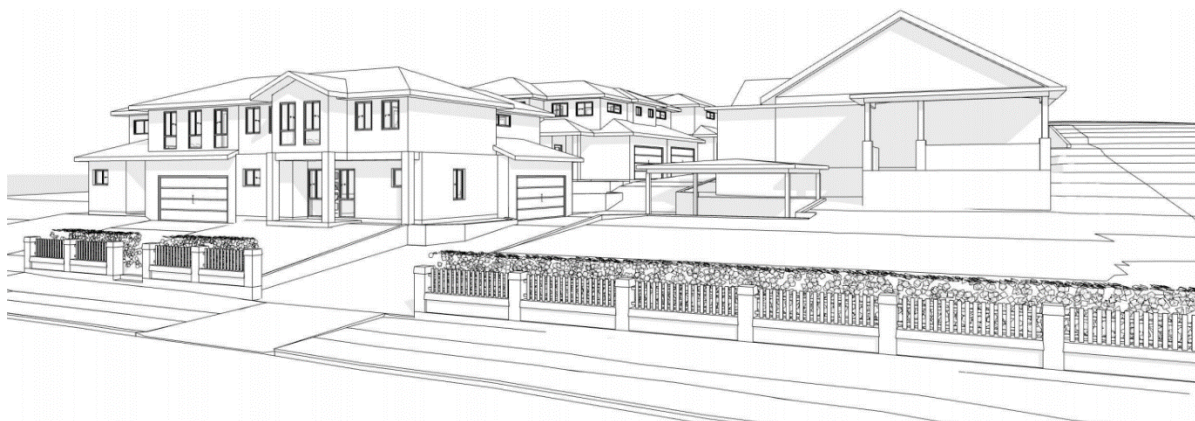


Figure 8: Perspective of the proposed multi-dwelling housing development of 26 Elizabeth Street (from DA 22/0535). Also visible is the carport in front of the dwelling (at right) proposed as part of DA 22/0513.

These applications were notified to neighbours and there was significant interest in and concern about these proposals from the community, including a change.org petition urging Council to issue an Interim Heritage Order over the site and newspaper publicity in the Southern Highlands News and the Sydney Morning Herald.

In early November 2021, Council and neighbours were advised by letter from a private certifier that a complying development application had been received for 4 Myrtle Street, Bowral, comprising demolition of the house and construction of terrace houses under the Low Rise Housing Diversity Code, a complying development code under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. In such cases, there is limited to negligible community consultation and plans of the proposal are not made available until after approval has been issued. Like the ‘Karingal’ site, and learning from their experience, a neighbour launched a change.org petition and sought newspaper coverage to encourage Council to issue an Interim Heritage Order over the site to prevent demolition of the central house in a grouping of three.

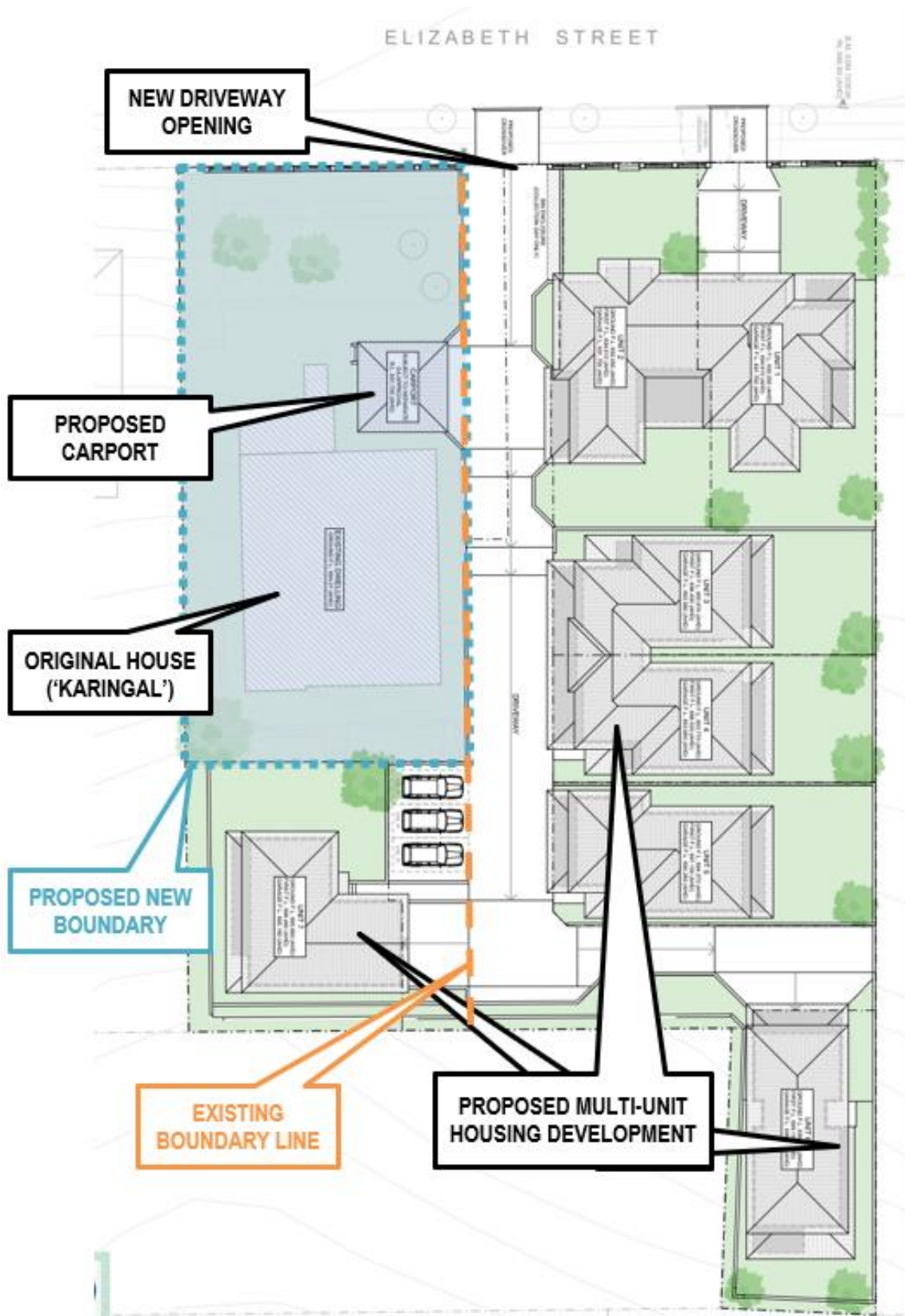


Figure 9: Proposed subdivision and development of 26 Elizabeth Street via DA 22/0513 and DA 22/0535 (from plans provided as part of DA 22/0535 with added annotations).

Issuing of Interim Heritage Orders

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Council officers were similarly concerned about the potential adverse impact of the proposals on these properties, particularly on 'Karingal' which had first been recommended for heritage listing in 2009. Consequently, Council staff recommended the making of two Interim Heritage Orders (IHOs) via the delegation under the Ministerial Authorisation to Councils to issue Interim Heritage Orders (2001) pursuant to section 25 of the NSW Heritage Act 1977.

On 19 November 2021, Interim Heritage Order No. 12 for 2 & 4 Myrtle Street, Bowral, and Interim Heritage Order No. 13 for 'Karingal', 26 Elizabeth Street, Moss Vale, were published in the NSW Government Gazette and commenced on that day. On 8 December 2021, a report was presented to Council on these Interim Heritage Orders (item L.1). A copy of that report and the corresponding minutes to that meeting are provided as **ATTACHMENT 1**.

A condition of Council issued IHOs under the Ministerial delegation is that they are initially valid for six months to give Council time to undertake a heritage assessment of the property to determine heritage significance. However, if Council resolves to include a place in its heritage schedule (including within a heritage conservation area) the IHO is extended to give a total of 12 months' protection under the Heritage Act. The following section of this report presents the heritage assessments undertaken for the Myrtle Street sites in Bowral and 26 Elizabeth Street, Moss Vale.

REPORT

Since the issuing of the Interim Heritage Orders, the complying development proposal at 4 Myrtle Street, Bowral, has not proceeded and both development applications on 26 Elizabeth Street, Moss Vale, have been withdrawn.

Heritage Assessments—General

In NSW and in accordance with the Heritage NSW publication *Assessing Heritage Significance* which forms part of the NSW Heritage Manual, an assessment of the heritage significance of a place is to be undertaken with reference to seven (7) specific criteria developed by the NSW Heritage Office (2001). To be eligible for local heritage listing a place must meet one or more of these criteria at a local level. To be eligible for listing on the State Heritage Register an item must meet two or more of these criteria on a State level. This report contains an assessment of the Bowral and Moss Vale sites against these criteria.

Heritage Assessment of 2 & 4 Myrtle Street, Bowral

The subdivision of 2, 4 and 6 Myrtle Street occurred in 1949 and was referred to in the plan of subdivision as "part of Lot D of Upper Bowral Subdivision". This subdivision plan is shown on Deposited Plan (DP) 157898 reproduced as **Figure 10**. Interestingly, this plan shows the location of 2 garages surveyed at that time: one for no. 2 which remains extant and the other off Oak Lane which was a double garage with a common wall servicing nos. 4 and 6 Myrtle Street and which was demolished in 2020 as part of the renovation of no. 6.

As previously mentioned, there is evidence that the houses were built at the same time and by the same owner or builder. There are two consecutively numbered building applications lodged in 1949 for nos. 2 and 4-6. While it is unknown who designed these houses but it's likely that they were built by Alf Stephens Jnr of Alf Stephens & Sons (1886-1965) and likely also designed by this firm. This is reinforced by a surviving building application of 1950 for additions to no. 6 for Dr George Augustus Hardwicke, a doctor from Dulwich Hill. The drawings for the extension were made by Sydney architect A. W. Cozens and the extension of the house to the south was built by Alf Stephens Jnr.

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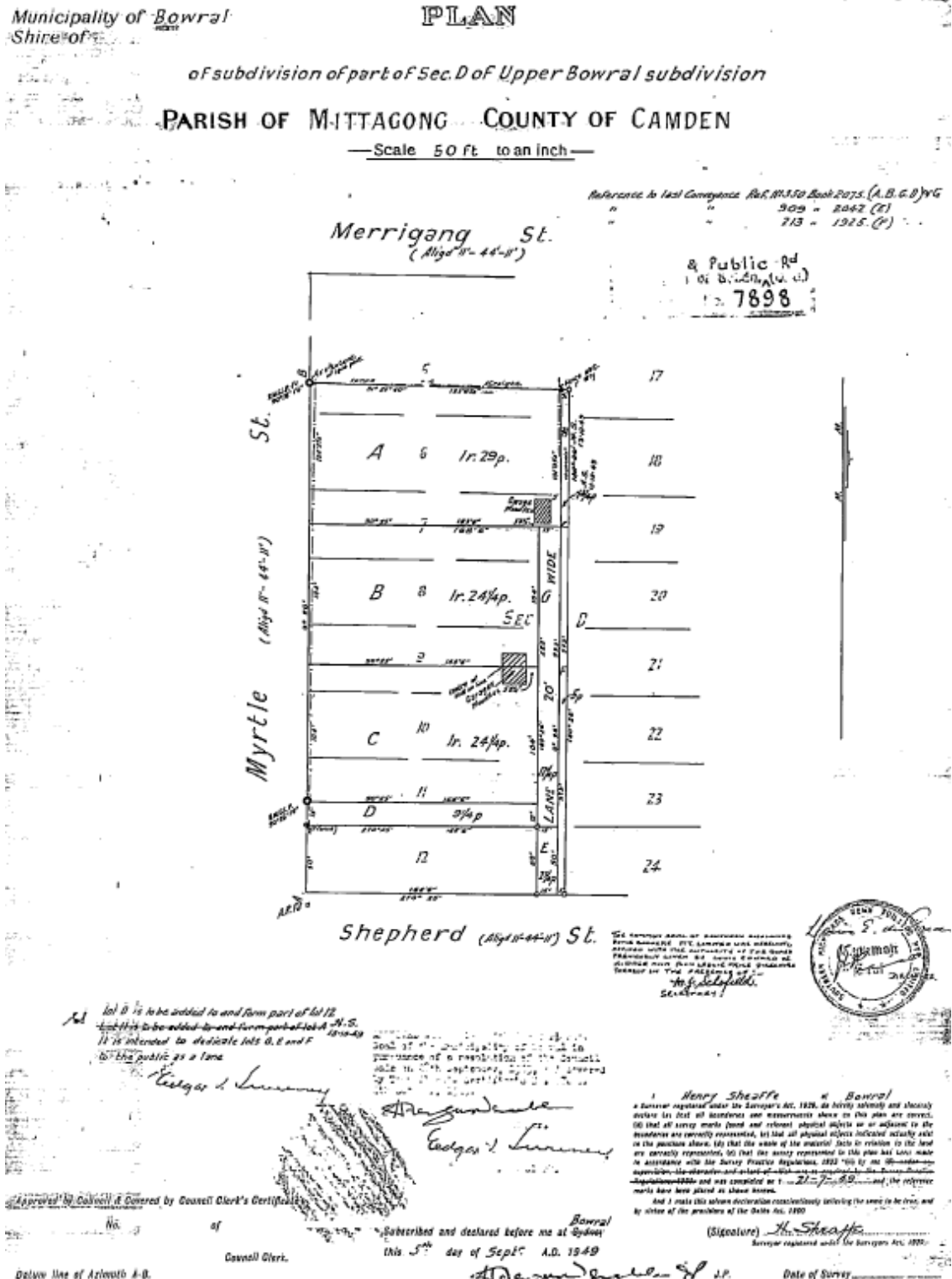


Figure 10: 1949 subdivision of the eastern side of Myrtle Street, Bowral (DP 157898). Garages existing at that time are shown hatched.

ATTACHMENT 3 contains a summary of the life and work of Alf Stephens Snr, Alf Stephens Jnr, and their company, Alf Stephens & Sons which operated from 1886 to 1965.

Figure 11 comprises a 1963 aerial photo overlaid with the current cadastral boundaries and this shows the configuration of the Myrtle Street houses consistent with how they appear

today (compare to **Figure 2**). Council's records show that there have been some minor alterations to the houses over time, including a screened room at the Myrtle Street frontage of no. 2 (shown projecting in **Figure 3**), and a flat roofed side addition to the north in 1984; and a 1981 addition to the southern elevation of no. 4 to create two additional bedrooms. Aside from this, the houses are relatively intact and retain their mid-century character.



Figure 11: 1963 aerial photo overlaid with current cadastre. 2 & 4 Myrtle Street are outlined.

According to real estate websites, no. 2 Myrtle Street was last sold in 2001 and appears to have been used for rental accommodation in more recent years. Real estate photos available online reveal a very modest and simple rendered masonry building with a terracotta tiled roof, timber windows, timber floors, simple decorative plaster ceilings and picture rails. No. 4 was last sold in 2021 and photographs available online show an attractive home with some decorative plaster ceilings, timber floors but only some original timber windows remaining. It's likely that some of the original timber windows were replaced as part of the 1981 renovations. No. 6 was last sold in 2019 and extensively renovated in 2021. The renovations included new terrace style landscaping down to Myrtle Street.

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Heritage Criterion

Assessment of 2 & 4 Myrtle Street, Bowral

(a) HISTORICAL

An item is important in the course, or pattern, of NSW's (or local) cultural or natural history.

Of significance to the history of the local area because it illustrates the subdivision and development of the eastern edge Myrtle Street area, in the post-war period. Aerial photos demonstrate this to be at the edge of the Bowral urban area at that time with only scattered development east of Myrtle Street.

(b) ASSOCIATIONAL

An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's (or the local area's) cultural or natural history.

Of significance because of its likely association with Alf Stephens and Sons, prominent Bowral builder. However, this association has not been confirmed.

(c) AESTHETIC/TECHNICAL

An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW or the local area.

Although attractive in their simplicity, the heritage assessment has not found 2 & 4 Myrtle Street to have any strong aesthetic or technical significance.

(d) SOCIAL

An item has strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons.

The heritage assessment has not found 2 & 4 Myrtle Street to have any strong social significance.

(e) RESEARCH

An item has potential to yield information that will contribute to an understanding of NSW's or the local area's cultural or natural history.

The heritage assessment has not found 2 & 4 Myrtle Street to have any strong research potential.

(f) RARITY

An item possesses uncommon, rare or endangered aspects of NSW's or the local area's cultural or natural history.

The heritage assessment has not found 2 & 4 Myrtle Street to be of particular rarity. These simple "Bowral-style" houses, likely built by Alf Stephens and Sons builders, are still relatively common throughout the Highlands. These particular examples are not of particular importance.



Heritage Criterion Assessment of 2 & 4 Myrtle Street, Bowral

(g) REPRESENTATIVENESS

An item is important in demonstrating the principal characteristics of a class of NSW's (or a class of the local area's) cultural or natural places; or cultural or natural environments.

While the houses at 2 & 4 Myrtle Street are representative of a particular style of design and building during the post-war era, they are not of particular importance in demonstrating this.

The above heritage assessment against the seven (7) heritage assessment criteria demonstrates that the houses meet the threshold for heritage listing and as a group of three (with number 6) they form a cohesive group. However, despite there being justification for listing, it is considered that there are more significant examples of post-war building displayed by the same builders that provide better examples for heritage listing. Nevertheless, the strong streetscape character defined by these three large properties perched on the rise above Myrtle Street do warrant protection, but it is considered that this streetscape character can be better protected through inclusion within a heritage conservation area. The Heritage Review 2021 will be proposing an extension to the Bowral Conservation Area to the east that includes these properties, but it is proposed that 2, 4 and 6 Myrtle Street be included in a heritage conservation area as part of the Planning Proposal so that there is continuity of protection following on from the Interim Heritage Order. **Figure 12** shows the proposed amendment to the boundary of the Bowral Conservation Area to include these properties.

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Figure 12: Proposed extension to Bowral Conservation Area to include 2, 4 and 6 Myrtle Street.

Heritage Assessment of 'Karingal' Interwar bungalow and garden including brick and trachyte fence

The heritage significance of 'Karingal' was first examined in 2009 as part of the Wingecarribee Heritage Survey undertaken by consultants, Architectural Projects, on behalf of Council. That study recommended that the site be heritage listed.

In 2012, Council officers consulted with the owners of the nearly 400 properties proposed for heritage listing as part of the Wingecarribee Heritage Survey. When the results of these consultations were presented to Council with a recommendation to proceed with listing of more than 300 items (including 'Karingal'), Council resolved in November 2012 to defer listing of any property whose owner did not actively support heritage listing. This included 'Karingal' whose then owner objected to the listing at that time. The deferred items have not been revisited due to staffing shortfalls and competing priorities. No opportunity was given as part of the 2012 consultations for the wider public to comment on the proposed heritage

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listings as the list of proposed heritage items and those deferred has not been made public and the consultant's report on the Wingecarribee Heritage Survey was also not publicly released.



Figure 13: Detail of entry gate with aesthetically significant brick and trachyte fence (2022).

In 2021, members of Council's Heritage Advisory Committee together with members of the community in conjunction with Council's Strategic Land Use Planning Branch have undertaken a review of those deferred recommended heritage items as well as a significant number of other potential heritage items identified by Council officers and members of the community over the past 10 years. As part of this work, additional research has been conducted about 'Karingal' which strengthens its significance to the community and heritage listing of the site is recommended. The Heritage Review 2021 will be reported to the Local Planning Panel (and thereafter to Council) in the first quarter of 2022 with consultations with owners and the wider community occurring shortly thereafter.

The table below presents the updated heritage assessment of 'Karingal'. Ample evidence now exists resulting from work done as part of the Heritage Review 2021 to determine that the 1920s house, garden and brick and trachyte front fence display sufficient heritage significance to warrant heritage listing.

Heritage Criterion Assessment of 'Karingal', 26 Elizabeth Street, Moss Vale

(a) HISTORICAL

An item is important in the course, or pattern, of NSW's (or local) cultural or natural history.

Of significance to the history of the local area because it illustrates the subdivision and development of the Elizabeth Street area of Moss Vale in the Interwar period.

(b) ASSOCIATIONAL

An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's (or the local area's) cultural or natural history.

Of significance because of its association with:

- Stanley Edward Gibson Browne original owner (in occupation 1927-1955), Moss Vale businessman
- Alf Stephens and Sons, prominent Bowral Builder.

(c) AESTHETIC/TECHNICAL

An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW or the local area.

Of significance in demonstrating aesthetic achievement in the local area because the beauty of its setting, its garden, architectural form and brick and trachyte fence.

(d) SOCIAL

An item has strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons.

The heritage assessment has not found 'Karingal' to have any strong social significance.

(e) RESEARCH

An item has potential to yield information that will contribute to an understanding of NSW's or the local area's cultural or natural history.

The heritage assessment has not found 'Karingal' to have any strong research potential.

(f) RARITY

An item possesses uncommon, rare or endangered aspects of NSW's or the local area's cultural or natural history.

Of significance in demonstrating an uncommon combination of locally designed and built house from locally sourced and unique materials, namely Bowral bricks and trachyte quarried on the slopes of Mt Gibraltar in Bowral.



Heritage Criterion Assessment of 'Karingal', 26 Elizabeth Street, Moss Vale

(g) REPRESENTATIVENESS

An item is important in demonstrating the principal characteristics of a class of NSW's (or a class of the local area's) cultural or natural places; or cultural or natural environments.

Of significance in demonstrating the principal characteristics of a class of the local area's heritage in this case a high-quality Californian Bungalow style inspired residence utilising locally made Bowral bricks and locally quarried trachyte foundations and fence.

The site exhibits significance of five out of the seven heritage assessment criteria on a local level therefore qualifying it for heritage listing. Heritage listing of this property, including the grounds and the fence along its frontage, is recommended to be heritage listed.

The overall statement of significance for the proposed heritage listing is as follows:

Karingal at 26 Elizabeth Street, Moss Vale, is significant because it illustrates the subdivision and development of the Elizabeth Street area of Moss Vale in the Interwar period and for its association with Stanley Edward Gibson Brown, Moss Vale businessman and original owner (1927-1955), and Alf Stephens and Sons, prominent Bowral Builder. Karingal is also of significance in demonstrating aesthetic achievement in the local area because the beauty of its setting, its garden, architectural form and brick and Trachyte fence and for demonstrating the principal characteristics of a high-quality Californian Bungalow style inspired residence. It is also an uncommon example of a house using unique local materials.

The updated heritage inventory sheet is contained as **ATTACHMENT 2** which includes additional historical information for the property and contains the above assessment of heritage significance. A summary of the life and work of Alf Stephens Snr, Alf Stephens Jnr, and their company, Alf Stephens & Sons which operated from 1886 to 1965, which supports the associational significance of the Alf Stephens and Sons connection, is contained at **ATTACHMENT 3**.

A comparative assessment of bungalows within the Wingecarribee Shire reveals that there are three bungalows that are currently listed heritage items. Of these, one is an earlier (c.1915) Federation bungalow in Mittagong, and the other two are located in Moss Vale and are of weatherboard construction. All of these are on smaller suburban allotments and none display the grand garden setting and curtilage that are features of 'Karingal'. In addition, none have trachyte foundations or trachyte fencing. However, the Federation and Interwar periods have been long under-represented within the heritage schedule of the Wingecarribee Local Environmental Plan 2010 in favour of places of the Colonial, Georgian and Victorian periods. The 2021 Heritage Review has identified a number of heritage significant bungalows throughout the Shire that it will recommend for heritage recognition. As previously stated, the Review will be reported to the Panel and to Council as soon as possible.

A review of heritage listed bungalows across the State reveals that there are 384 listed items. While the majority of these items are within Sydney, bungalows are represented in many rural and regional local government areas. While the existence of a bungalow is not in itself significant or rare, the fine detailing, locally made/quarried construction materials, and intact site of 'Karingal' make it a fine local example.

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PLANNING PROPOSAL TO AMEND WLEP 2010 INSTRUMENT AND MAPS

This report recommends heritage protection of 26 Elizabeth Street, Moss Vale, through heritage listing. Furthermore, it recommends that 2, 4 and 6 Myrtle Street, Bowral, are included in the Bowral Conservation Area.

To effect these changes, a Planning Proposal has been prepared which seeks to:

- Add a new heritage item '*Karingal*' *Interwar bungalow and garden including brick and trachyte fence* comprising Lot 1 DP 986025 and Lot 110 DP 877316 and located at 26 Elizabeth Street, Moss Vale, in Part 1 of Schedule 5 of the Wingecarribee Local Environmental Plan (WLEP) 2010.
- Add 26 Elizabeth Street (comprising Lot 1 DP 986025 and Lot 110 DP 877316) to the Heritage Map of WLEP 2010 as a heritage item (general).
- Add 2, 4 and 6 Myrtle Street, Bowral, comprising Lot 1 DP 840484, Lot 1 DP 741837 and Lot C DP 157898, to the Heritage Map of WLEP 2010 as a heritage conservation area (general).

A copy of the draft Planning Proposal is provided as **ATTACHMENT 4**.

COMMUNICATION AND CONSULTATION

Community Engagement

Due to its nature, there is no requirement for Council to consult with property owners before an Interim Heritage Order is gazetted. However, following gazettal, all affected property owners and residents were notified in accordance with the NSW Heritage Act 1977 and the Local Government Heritage Guidelines prepared by the NSW Heritage Office. In addition, the DA applicants (for DA 22/0513 and 22/0535) along with a number of concerned members of the community members were notified about the gazettal of the Interim Heritage Order.

Should the Planning Proposal be supported, community consultation is a necessary and integral part of the Planning Proposal process. Any proposed amendment to WLEP 2010 is lodged via a Planning Proposal with the Department of Planning & Environment for a Gateway Determination to proceed. Community consultation then occurs in accordance with the Gateway requirements which is normally a 28-day minimum public exhibition period. This community engagement period allows for property owners and the community to comment on the proposal and any submissions received will be reported to Council for a final decision on whether or not to proceed with the Planning Proposal.

Internal Communication and Consultation

Any proposed amendment to WLEP 2010 supported by the Panel and thereafter by Council would be internally referred to relevant staff for comment.

External Communication and Consultation

Any proposed amendment to WLEP 2010 supported by the Panel and thereafter by Council would be externally referred to relevant agencies for comment as required by the Gateway Determination.

SUSTAINABILITY ASSESSMENT

- **Environment**

The listing of these sites would help to protect existing private green space and would limit development to proposals that are sympathetic to heritage and streetscape values.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

The issuing of Interim Heritage Orders has implications on the owners of those sites as any development proposals are put on hold until the heritage assessment and heritage listing process has been undertaken.

- **Culture**

The listing of new heritage items is one of the strategies identified in the Wingecarribee Community Strategic Plan, Wingecarribee 2031 (amended 2017) under goal 3.2 (Wingecarribee has maintained a distinct character and separation of towns and villages). Council is committed to ensuring that places of heritage significance are identified, assessed and listed, as appropriate. This report is consistent with this goal and strategy.

- **Governance**

This report has been prepared in consideration of guidelines provided by Heritage NSW and the Department of Planning & Environment and the Planning Proposal has been prepared and will be processed in accordance with Departmental guidelines.

COUNCIL BUDGET IMPLICATIONS

As the Interim Heritage Orders were initiated by Council, no Planning Proposal fees are applicable.

RELATED COUNCIL POLICY

There is no related Council policy.

CONCLUSION

In November 2021, Council issued two Interim Heritage Orders under delegation to protect the sites at 2 and 4 Myrtle Street, Bowral, and the property known as 'Karingal' at 26 Elizabeth Street, Moss Vale, from unsympathetic development proposals. This report presents heritage assessments for the sites and has recommended that 26 Elizabeth Street, Moss Vale, be heritage listed and 2, 4 and 6 Myrtle Street, Bowral be included in the Bowral Conservation Area, consistent with the goals of the revised Wingecarribee 2031 Community Strategic Plan 2017 to identify, protect and promote places of significant cultural heritage (Strategy 3.2.3).

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PLANNING PROPOSALS



ATTACHMENTS

1. Report and Minutes of 8 December 2021 Council Meeting regarding Interim Heritage Order No. 12 for 2 & 4 Myrtle Street, Bowral, and Interim Heritage Order No. 13 for 26 Elizabeth Street, Moss Vale. - *circulated under separate cover*
2. Heritage inventory sheet for 'Karingal' Interwar bungalow and garden including brick and trachyte fence, 26 Elizabeth Street, Moss Vale. - *circulated under separate cover*
3. Biographical Notes and Gazetteer of Work on Alf Stephens & Sons 1886-1965. - *circulated under separate cover*
4. Planning Proposal for 2, 4 & 6 Myrtle Street, Bowral, and 26 Elizabeth Street, Moss Vale (heritage) - *circulated under separate cover*

6 DEVELOPMENT APPLICATIONS

6.1 S8.2 Review of DA 21/0195.01 for a Mixed Use Development at 5 Alice Street, Mittagong - Lot 145 - 147, Sec O, DP 1289

Reference: 21/0195.01
Report Author: Consultant Planner
Authoriser: Manager Development Assessment

PURPOSE

The purpose of this report is to consider a Review of Determination of Development Application 21/0195.01 which seeks development consent for the Restoration of heritage listed Sunshine Lodge and development to provide forty-eight (48) single boarding rooms and two (2) detached dual occupancy dwellings. A basement car park will provide 25 car parking spaces, 10 motorcycle spaces and 10 bicycle spaces at Lots 145 – 147, Section O, DP 1289, 5 Alice Street, Mittagong. The subject application was determined by way of deferred commencement consent by Council on 10 March 2021.

Consultants: Scott Lee - LEP Planning
Peter Israel – PTI Architects
Brian McDonald – DFP Planning
Noel Thompson – Noel Thompson Architecture
Graham McKee – McKees Legal Solutions
Brett Morris – Harrison & Morris Consultancy
Scott Lee

Applicant:

Land owner: Isthmus Holdings Pty Ltd

Land zoning: R3 Medium Density Residential & R2 Low Density Residential

Applicant's estimated cost of proposed development: 6.5 Million

Notification period: 15 July – 15 August 2021

Number of submissions: 17 Submissions received objecting to the proposed development

Political donations: None identified

Reason for referral to Panel: Review of Determination where original decision made by Council, works also include demolition works to a heritage item and a clause 4.6 variation request that proposes a variation of 25%.

RECOMMENDATION

THAT the Local Planning Panel determines Review of Determination DA21/0195.01 – Restoration of heritage listed Sunshine Lodge and development to provide forty eight (48) boarding rooms, detached dual occupancy, including basement car park at Lots 145 – 147, Section O, DP 1289, 5 Alice Street, Mittagong by PART APPROVED, subject to the draft condition specified in Attachment 1 to the report.

REPORT

Executive Summary

An 8.2 review of determination has been lodged by the applicant to the deferred commencement consent granted by Council on 10 March 2021 of Development Application (DA) 21/0195.01 for “*Restoration of heritage listed Sunshine Lodge and development to provide forty-eight (48) single boarding house rooms and two (2) detached dual occupancy dwellings. A basement car park will provide 25 car parking spaces, 10 motorcycle spaces and 10 bicycle spaces.*”

On 10 March 2021 Council considered a report from Council officers recommending approval of the DA. Council resolved to approve the development, subject to the following additional conditions:

- *The entire front façade of the original Convent building and that section of the cloister running on the southern façade of the former Convent which is proposed to be demolished, be retained and restored.*
- *The maximum floor space ratio of the development proposed within the R3 zone is to comply with the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3, Clause 29 and Councils “Mittagong Development Control Plan”, which sets a maximum Floor Space Ratio of 0.6:1.*
- *The applicant resolves to Council’s satisfaction the use of that portion of land located in the R2 zone which is to be utilised by the development on the adjoining R3 zone.*

The applicant has submitted additional information, including amended plans, heritage impacts statement, structural report in support of their application. (See **Attachment 2**).

The review of determination was notified between 15 July and 15 August 2021 and 17 submissions were received objecting to the application.

This review of determination is finally balanced. The applicant has chosen to lodge a Review of Determination rather than a modification to the deferred commencement consent granted on 10 March 2021. This requires a full assessment of the application, not just the reasons for the review.

The application as amended proposes two (2) clause 4.6 variation requests. (**See Attachment 3**) These requests principally relate to the creation of a lot and subdivision of the detached dual occupancy component of the development. For the reasons outlined in this report these variation requests are not well founded and are not supported.

Notwithstanding, the application is recommended for part approval, subject to the deletion of the subdivision component of the development.

Site Description and Locality

The subject site (**the site**) is legally described as Lots 145, 146 and 147, Section O, DP 1289 1 DP 1251538, and known as 5 Alice Street, Mittagong. It has also been known as Sunshine Lodge.

The site is a corner lot with frontage to both Alice Street and Alfred Street.

The site has a split zoning with Lot 145 and 146 located within an R3 Medium Density Residential zone and Lot 147 located within an R2 Low Density Residential zone under the LEP.

The site is identified as a locally listed heritage item (I554), with the listing covering all 3 lots. The site is also located within the Mittagong Conservation Area (C1844).

Figures 1 and 2 illustrate the site's location and context, and **Figures 3 through to 6** provide context photos of the subject site and existing building



Figure 1: Locality Map (Source: Nearmap)

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Figure 2: Aerial Photo of Subject Site (Source: Nearmap)



Figure 3: Photo of Front (West) from across Alice Street (Source: Applicant)



Figure 4: Photo of Northern Elevation from across Alfred Street (Source: Applicant)



Figure 5: Photo of Site from Corner of Alice Street & Alfred Lane (Source: Applicant)

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Figure 6: Photo of Existing Building Entrance from Alice Street (Source: Council)

Application for Review of Determination

The applicant has lodged a Review of Determination under the provisions of Section 8.2 of the *Environmental Planning and Assessment Act, 1979*.

Clause 8.2(1)(a) of the Environmental Planning and Assessment Act, 1979 states:

“(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this division –

- (a) The determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary)”*

Consequently, the purpose of this report is to consider a review of the determination having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

The applicant has submitted additional information, including amended plans, Heritage Impact Statement and other supporting information to address reasons for refusal.

Description of Proposed Development

The proposed development as amended and as describe seeks development consent for:

- The restoration of heritage listed Sunshine Lodge and construction of a Boarding House consisting of forty-eight (48) boarding rooms, a manager’s residence and communal living room. The boarding house consists of sunshine lodge, and Blocks A, B and C and 2 and 3 storeys’ in height.
- Basement car parking for 22 car parking spaces, 3 car parking spaces at grade fronting Alfred Lane, 10 motorcycle parking spaces and 10 bicycle spaces. The basement car park is accessed from Alfred Lane.
- The application also includes subdivision, with the re-subdivision of the existing 3 lots to create Lot 1 (Heritage Lot) and Lot 2 (detached dual occupancy lot).
- Construction of a detached dual occupancy, both dwellings 3 bedrooms, single storey in height with Dwelling 1 fronting Alfred Street and Dwelling 2 fronting Alfred Lane.
- Following construction of the detached dual occupancy, the applicant proposes the Torrens title subdivision of the detached dual occupancy into 2 lots.
- Stratum subdivision is also included with the boarding house basement extending under the detached dual occupancy lots.

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In response to feedback during the assessment of this Review of Determination additional information has been provided including detailed demolition plans, structural report, updated architectural plans and updated heritage impact assessment.



Figure 7 – Proposed Ground Floor Plan (Source – PTI Architects)



Figure 8 – Artist Impression (Source: Applicant)

History of the Site

The existing building is c1926, built as a convent to accommodate approximately 50 girls for the Sister of St Joseph. Below is of the building when it was known as “St Joseph’s Convent” prior to its closure in 1972.

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Figure 9 – Photo taken in 1972 of Subject Site (Source: Mr Robert Deane)

Following the closure of the convent, the building was known as “Sunshine Lodge” and used as a hostel for disabled men and women from late teens to early 50’s. Below is a photo of the building in 2012.



Figure 10 – Photo of Subject Site taken in 2012 (Source: Southern Highland News)

On 12 April 2013 a fire tore through the building with the fire destroying the roof and second floor. At the time of the fire the building was unoccupied and was considered suspicious. Below is a photo taken during the fire. The current owners bought the property in 2016.



Figure 11 – Photo of Subject Site taken on 12 April 2013 (Source: David Alexander)

“Sunshine Lodge” is described in the Statement of Heritage Impact as being significant due to:

“its association with the Catholic Church for 45 years and then as a health institution for 50 years until its closure in 2012. The site has historical significance due to the convent being constructed in 1927 within the former New Sheffield subdivision and is its association with the development Mittagong. The 2 storey convent building of ‘Interwar Gothic’ style and in particular the Alice Street (front) façade, even though damaged by fire and with some later alterations, still has aesthetic significance and is representative of convent buildings being constructed during the early twentieth century in regional NSW.”

A previous DA (18/0539) was lodged with Council in May 2018. The proposed development included demolition of the existing buildings and construction of a residential flat building and boarding house with basement car parking. This DA was subject to an appeal in the Land & Environment Court with Council’s concerns primarily that although the existing building was badly damaged, it was possible to retain and reuse some of the existing building. The appeal was subsequently discontinued by the applicant and the DA withdrawn.

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Subsequently, the current DA (21/0195) was lodged with Council, with Council considering a report from Council officers recommending approval of the DA. Council resolved to approve the development, however they imposed a number of additional conditions as follows:

- *The entire front façade of the original Convent building and that section of the cloister running on the southern façade of the former Convent which is proposed to be demolished, be retained and restored.*
- *The maximum floor space ratio of the development proposed within the R3 zone is to comply with the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3, Clause 29 and Councils “Mittagong Development Control Plan”, which sets a maximum Floor Space Ratio of 0.6:1.*
- *The applicant resolves to Council’s satisfaction the use of that portion of land located in the R2 zone which is to be utilised by the development on the adjoining R3 zone.*

These additional conditions were issued as a Deferred Commencement Consent requiring satisfaction within 12 months of the date of determination, being 12 March 2021.

Assessment Against Specific Review Request

As previously noted, the DA was approved by Council subject to a number of conditions, including deferred commencement conditions which the applicant seeks to be deleted and/or modified as part of this Review of Determination.

Whilst the Review of Determination requires a full assessment of the DA which is provided further in this report, below is an assessment against the reasons the subject of the review lodged by the applicant.

Deferred Commencement Condition DC1 (a)

The applicant proposes the deletion of deferred commencement condition DC1 (a) which states:

The entire front façade of the original Convent building and that section of the cloister running on the southern façade of the former Convent which is proposed to be demolished, be retained and restored.

The applicant states:

“This requirement arose out of the Council meeting of 10 March 2021 and was not part of the town planning assessment report prepared for the consideration of the Council.

That report included comments from Council’s heritage adviser, who had provided input into the assessment report as follows:

“Overall I consider the proposal to be good redevelopment from a heritage perspective. Historic fence is proposed to be retained, building form is generally in keeping with the original building and a good deep---soil landscaped area is provided. The only recommended heritage condition of consent is for roof gutter finish. That is roofs, gutters, and any metal fascia covers are to be galvanised finish (not colorbond), and all ridges and valleys and any barge rolls to be roll---capped”.

Development Application 21/0195 was supported by a detailed Statement of Heritage Impact prepared by Noel Thompson Heritage Architect and Consultant. The Development Application reflected the detailed discussions that resulted from the previous development assessment associated with DA18/0539, including the Section 34 conciliation conferencing that was undertaken with Council in April 2019, who were represented in that process with external heritage expertise.

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The application for review is supported by a heritage advice letter prepared by DFP Planning, specifically Brian McDonald Principal Urban Designer and Heritage Consultant. In preparation of this letter, DA21/0195 was compared to the original DA18/0539 that was refused by Council. The conclusion reached was that:

- the current proposal is far superior, the scope of the reconstruction of missing building fabric is unprecedented and will allow the reconstructed building to contribute to character of the heritage conservation area and the history of Mittagong*
- the transition of building bulk and scale will have a much more satisfactory transition to the existing low scale residential dwellings to the east*
- the development will retain the landscaped curtilage to Alice Street, Alfred Street and Alfred Lane, with the balance of landscaped open space to built form in the eastern part of the site, more compatible with the low density residential streetscape to the east*

It is the applicant's contention that Condition DC1(a), imposed without forethought or discussion with the applicant, has not been justified by Council and is not necessary in order to secure an appropriate heritage outcome."

Comment

It is considered that the applicant has provided further information during the assessment of this review in the form of structural information and better details on the plans that identify what is being demolished / retained. The application has been reviewed by Council's heritage advisor who has supports the proposed development.

Deferred Commencement Condition DC1 (b)

The applicant proposes the deletion of deferred commencement condition DC1 (b) which states:

The maximum floor space ratio of the development proposed within the R3 zone is to comply with the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3, Clause 29 and Councils "Mittagong Development Control Plan", which sets a maximum Floor Space Ratio of 0.6:1.

The applicant states:

"This requirement arose out of the Council meeting of 10 March 2021. It was not part of the draft conditions of consent that were put forward as part of the Council's development assessment report.

The issue of Floor Space Ratio was part of the town planning assessment report prepared for the consideration of the Council, with the conclusion being that the site needs to be considered as a single development parcel rather than two sites split by its zoning. This is particularly important because the heritage listing does not make any distinction or reference to the split zoning. It is therefore reasonable to deal with the whole of the site and conclude that the development is not of excessive density or scale.

It is important to note that the State Environmental Planning Policy (Affordable Rental Housing) 2009 does not impose a maximum Floor Space Ratio, rather it allows Council to use FSR as a reason to refuse a Development Application if a certain FSR is exceeded. It was acknowledged that the best site responsive design was achieved by using the volume of the heritage item to maximize the built form on that portion of the site that is within the R3

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Medium Density zone and then transition to the R2 Low Density zone with the lower density floor space ratio of the detached dual occupancy. The provisions of the State Policy do not provide for a maximum FSR.

In this case, the FSR for the boarding house component of the development is 0.8:1 based on the site area of the R3 Medium Density land, whilst the dual occupancy component is 0.26:1 based on the site area of the R2 Low Density land.

Overall the development is 0.62:1 based on the total site area.

This overall figure is comparable to Council's 0.6:1 for development in the R3 zone. Further it is noted that the 0.6:1 is not a development standard contained in the Wingecarribee Local Environmental Plan 2010 --- it springs from the Mittagong Development Control Plan.

The question of whether or not the scale of the development is suitable is not best answered by reference to a non-binding FSR control. The answer lies in the significant public benefit of the heritage response of rebuilding/restoring the original building and the development of the site as a whole. If the heritage restoration approach is appropriate, then the FSR, which is reflective of the volume of the restored building, cannot be out of scale.

In this regard, the applicant has dealt with the development of the whole of the heritage property as it is listed within Schedule 5 of WLEP2010; that is, as one single redevelopment site of Lots 145, 146 and 147.

The design of the development is positive from a heritage perspective. It should therefore be supported rather than thwarted by imposing the arbitrary FSR calculations on each of the zoned areas separately. In this case, FSR is not the relevant planning consideration and therefore should not be given determinative weight.

It is the applicant's contention that Condition DC1(b), imposed without forethought or discussion with the applicant, has not been justified by Council and is not necessary in order to secure an appropriate outcome in terms of bulk and scale."

Comment

As detailed in the body of this report, the control specified in the Affordable Rental Housing SEPP is not a development standard. There is however a maximum FSR for the R3 component of the development in the DCP, which is discussed further in this report.

Deferred Commencement Condition DC1 (c)

The applicant proposes the deletion of deferred commencement condition DC1 (c) which states:

The applicant resolves to Council's satisfaction the use of that portion of land located in the R2 zone which is to be utilised by the development on the adjoining R3 zone.

The applicant states:

"This requirement arose out of the Council meeting of 10 March 2021 and was not part of the town planning assessment report prepared for the consideration of the Council.

In satisfaction of this condition, it is noted that the provisions of the State Policy allows a boarding house within the R2 Low Density Residential zone. This issue was covered in the original Statement of Environmental Effects and was not disputed in the Council's development assessment report as quoted below:

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That part of the site that is within the R2 Low Density zone is within 400 metres of land within a B2 Local Centre zone. Such land is situated within the business/shopping strip of the Old Hume Highway, immediately south of the site.

The walking distance from the site, directly along Alice Street to the intersection of the Old Hume Highway is approximately 250 metres. Therefore, that part of the site that is within the R2 Low Density Residential zone, being Lot 147 satisfies Clause 27 and is not excluded from the provisions of Division 3 of the SEPP. None of the boarding house rooms are situated upon this portion of the lot. A small portion of the basement car parking does extend across the lot boundary into Lot 147 and therefore into the R2 zone, but this does not constitute development outside of the provisions of the State Policy.

With regard to the draft conditions of consent that were put forward as part of the Council's development assessment report, Condition 12 is relevant. This Condition requires that the site (Lots 145, 146 and 147) be consolidated into one lot prior to the issue of a Construction Certificate. The applicant objects to this condition.

An appropriate response to DC1(c) places Condition 12 in conflict. It needs to be clarified that the development proposal contemplates a boarding house, including basement parking and some at grade parking area, on its own allotment of land, as well as a detached dual occupancy to be constructed on its own allotment with the subsequent subdivision of the dual occupancy to create two smaller lots, one for each of the dual occupancy dwellings. A stratum subdivision will provide for a small portion of the basement car parking associated with the boarding house to extend under the dual occupancy land.

All of the above is permissible within the provisions of the relevant planning instruments.

All of the above is achieved with the built form outcomes proposed by DA21/0195.

All of the above can be achieved by the development proceeding along the following sequence:

- Create two lots from the existing three lots, being one of approximately 2100 square metres for the boarding house and one of approximately 950.5 square metres for the detached dual occupancy*
- based on the above Council should amend the Schedule 5 WLEP2010 listing of Sunshine Lodge, to refer to the new boarding house lot rather than the original Lots 145, 146 and 147*
- construct the detached dual occupancy dwellings*
- at the time of practical completion, subdivide the detached dual occupancy into two lots --- one for each of the dwellings*
- create Stratum subdivision that will provide the legal rights for the basement encroachment onto the dual occupancy site*

Council has been provided with a plan of both the Torrens Title and Stratum subdivision plan."

Comment

See the Clause 4.6 assessment for further discussion.



Condition 11

The applicant proposes the deletion of condition 11 which states:

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.*

The applicant states:

No reasons have been provided by the applicant for the deletion of this condition.

Condition 78

The applicant proposes the deletion of condition 78 (i) which states:

Protection of social and economic impacts in the Locality

(i) *The boarding house shall be limited to a maximum of one (1) person per room. Maximum occupancy of 48.*

1.

2. **Reason:** *To control the intensity of the development.*

The applicant states:

“The boarding rooms have always, and continue to be, designed to accommodate two lodgers. This is demonstrated on the plans by way of inclusion of queen beds in all rooms, together with the fact that all rooms are larger than the 16m² requirement for a double room, as provided by clause 29(2)(f)(ii) of the SEPP.”

“This condition is unnecessarily and unreasonably restrictive. It is, in our opinion, arguably beyond Council’s power.”

Comment

It is agreed that the rooms are of a size that exceed the requirement for 2 persons.

Assessment

The application 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.

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

State Environmental Planning Policy (State and Regional Development) 2011

Clause 20(1) and Schedule 7 of the SEPP identifies development that is declared regionally significant development for the purposes of the Act.

Schedule 7(5) includes affordable housing that has a capital investment value of more than \$5 million as being regionally significant development. The original DA was not considered regionally significant development, and the applicant has supplied the capital investment value of the affordable housing component of the development which confirms it sits below the \$5 million threshold, therefore it is not considered regionally significant development.

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use.

Council undertook a desktop search using Council's Property and Rating database, Council is satisfied the land is not a site of possible contamination and therefore no further assessment is required.

The existing consent includes conditions as a precaution that should asbestos or any evidence of it be found that works must cease, and the site decontaminated (all asbestos removed by a licenced contractor).

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 application was referred to Water NSW who have concurred with Council granting consent to the application subject to conditions as detailed in their letter dated 2 August 2021.

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

The SEPP aims to encourage sustainable development and requires DA's for such development to be accompanied by a list of BASIX commitments as to the manner in which the development will be carried out.

A BASIX certificate was prepared with the original development and forms part of the approved conditions of consent which satisfies the SEPP.

State Environmental Planning Policy (Affordable Rental Housing) 2009

SEPP (Affordable Rental Housing) 2009 was repealed on 26 November 2021. This policy was repealed by Section 10(1)(a) of the State Environmental Planning Policy (Housing) 2021.

However, this is where matter gets complicated. The new Housing SEPP (Schedule 7) includes savings provisions.

These savings provisions were considered in a very recent judgement of the NSW Land & Environment Court (*Emag Apartments Pty Limited v Inner West Council NSWLEC 1042*) (**Attachment 4**) handed down on 1 February 2022 before Commissioner Horton which at para 43 states:

"While I have some sympathy for the Applicant's submission at [35] – [38], as the wording of the savings provision does not expressly preclude operation of the provisions in the Housing SEPP, and because no inherent inconsistency arises from the operation of both SEPP's, being in similar terms, I reluctantly accept the Respondent's argument that consideration must be given to the provisions of both the SEPP ARH and the Housing SEPP."

The circumstances in this review are different to those under consideration in *Emag*. In *Emag* there was no inherent inconsistency in applying both SEPP's.

In this review, we have a proposed boarding house with the basement car park siting over a split in the zone. In other words, the majority of the basement car park associated with the boarding house sits in the R3 Medium Density Residential zone, with a small portion located within an R2 Low Density Residential zone. The NSW Department of Planning issued a circular (PS 13-001) (**Attachment 5**) which would characterise that small portion of basement being part of the dominant use, a boarding house, rather than a car park.

Under the Affordable Rental Housing SEPP boarding houses are permissible within both the R3 and R2 zoned land. However, under the Housing SEPP, a boarding house has a different meaning, but provides for a form of development defined as "Co-Living housing" which is not permissible under the SEPP in the R2 zone. We therefore have a conflict between two SEPP's that apply to the development.

Both SEPP's include a provision at clause 8 in respect of relationship with other environmental planning instruments, that in the event of an inconsistency whether made before or after the commencement of the policy, the policy prevails to the extent of the inconsistency.

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The issue of what SEPP prevails in the event of an inconsistency between SEPP's was dealt with in 2019 in *Universal Property Group Pty Ltd v Blacktown City Council [2019] NSWLEC 179 (Attachment 6)* before Justice Moore.

This case involved resolving an inconsistency in respect of a secondary dwelling where the State Environmental Planning Policy (Sydney Growth Centres) 2006 was in direct conflict with the Affordable Rental Housing SEPP, in short there was a different minimum site area under each SEPP. In the case it was determined that the Growth Centres SEPP prevail over the Affordable Rental Housing SEPP which at para 32 Moore states:

"I am satisfied that there are two factors which weigh decisively in favour of the position advanced by Mr Seton on behalf of the Council that cl 4.1AC of the Precinct Plan is to prevail over the conflicting provision in the Affordable Rental Housing SEPP. They arise from matters of first principle and do not require recourse to authority for their obvious validity. The first arises from timing, whilst the second arises from the specificity (properly understood) of the Precinct Plan provision."

Turning to consideration of this review of determination, as not above, the conflict arises because of a small portion of the basement being located within the R2 zoned land which is permissible under the Affordable Rental Housing SEPP but not under the new Housing SEPP. The resolution of this issue is finally balanced, however it is considered that on balance that the Affordable Rental Housing SEPP should be preferred in consideration of permissibility because:

- Unlike in *Universal Property Group Pty Ltd v Blacktown City Council* the question of permissibility has already been determined by the granting of a deferred commencement consent, with the basement car park not changing from the original determination.
- Boarding houses were permissible in the R2 zoned land at the time of lodgement of the DA which is saved by Clause 1.8A of the WLEP 2010, notwithstanding that boarding houses and co-living housing is now not permissible in the zone.

An assessment of the proposed development against both SEPPS is provided below, starting with the Affordable Rental Housing SEPP:

Clause	Control	Discussion	Compliance
26 – Land to which Division applies	This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones— (a) Zone R1 General Residential, (b) Zone R2 Low Density Residential, (c) Zone R3 Medium Density Residential, (d) Zone R4 High Density Residential, (e) Zone B1 Neighbourhood Centre,	The site is located within both the R3 Medium Density Residential zone and R2 Low Density Residential Zone.	Yes



		(f) Zone B2 Local Centre,	
		(g) Zone B4 Mixed Use.	
27	–	(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.	The subject site is not within the Greater Sydney Region.
Development to which Division applies		(2) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Greater Sydney region unless the land is within an accessible area.	The majority of the boarding house is located within the R3 zoned land; however a small portion of the boarding house is located within the R2 zoned land.
		(3) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Greater Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	That part of the site that is within the R2 zoned land is within 400 metres of a B2 Local Centre
			Yes
			The walking distance from the site along Alice Street is approximately 200m.
29	–	(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than—	The LEP does not contain an FSR, however the DCP has an FSR of 0.6:1 on the R3 component of the site, which contains the GFA of the boarding house. The proposed FSR for the boarding house component is 0.8:1. This is not a development standard but rather a standard that if complied with cannot be used to refuse the DA.
Standards that cannot be used to refuse consent		(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	No
		(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or	N/A

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<p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus—</p>	<p>N/A</p>	
<p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		<p>N/A</p>
<p>A consent authority must not refuse consent to development to which this Division applies on any of the following grounds—</p>		
<p>(a) building height</p>	<p>N/A</p>	
<p>if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,</p>		<p>Yes</p>
<p>(b) landscaped area</p>	<p>The Landscape treatment is considered compatible.</p>	<p>Yes</p>
<p>if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</p>		
<p>(c) solar access</p>	<p>The proposed communal living room is orientated to the north and receives the required sunlight.</p>	<p>Yes</p>
<p>where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p>		
<p>(d) private open space</p>	<p>Private open space is provided as required which meets the minimum require area.</p>	
<p>if at least the following private open space areas are provided (other than the front setback area)— one area of at least 20 square</p>		



metres with a minimum dimension of 3 metres is provided for the use of the lodgers,

if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,

Yes

(e) parking

if—

(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and

A minimum of 0.5 spaces per boarding room is required, and 1 space for the on-site manager. A total of 25 spaces is provided which complies with the minimum requirement.

(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and

(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and

Yes

(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,

(f) accommodation size

if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least—

A minimum 16m² gross floor area (excluding kitchen and bathroom facilities) is provided.

Yes

(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or

Noted

(ii) 16 square metres in any other case.

(3) A boarding house may have

Noted, all boarding house rooms have

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	private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	kitchen and bathroom facilities.	
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).		Noted
	(5) In this clause— social housing provider does not include a registered community housing provider unless the registered community housing provider is a registered entity within the meaning of the <i>Australian Charities and Not-for-profits Commission Act 2012</i> of the Commonwealth.		
30 Standards for boarding houses	– A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—		
	if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	A communal living room is provided.	Yes
	no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,	No boarding room will have a gross floor area (minus exclusions) of more than 25m2.	Yes
	no boarding room will be occupied by more than 2 adult lodgers,	A condition is included limiting the number of lodgers.	Yes
	adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Adequate bathroom and kitchen facilities are provided.	Yes
	if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager,	A boarding house manager is provided for.	
	(Repealed)		N/A
	if the boarding house is on land		

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	<p>zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,</p> <p>at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</p> <p>Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.</p>	<p>N/A</p> <p>10 bicycle and 10 motorcycle spaces are provided complying the standard, which requires at least 10.</p>	<p>Yes</p>
<p>30AA Boarding Houses in Zone R2 Low Density Residential</p>	<p>– A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.</p>	<p>The applicant does not respond to this clause. It is noted that a small portion of the basement is located within the R2 zone, however given the boarding rooms are located in the R3 land, it is considered acceptable.</p>	<p>Yes</p>
<p>30A Character of local area</p>	<p>– A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	<p>The boarding house is located on R3 zoned land, with the exception of a small component of the basement.</p> <p>The existing heritage item which is a large building in the streetscape is being restored / rebuilt and adoptively reused with new buildings built adjacent.</p> <p>Heritage advice was sought which supports the proposed development and the proposed</p>	<p>NA</p>

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development is considered to be a suitable addition to the character of the area.

State Environmental Planning Policy (Housing) 2021

The Housing SEPP came into force on 26 November 2021. As detailed above, an assessment of the proposed development against the Housing SEPP is provided below, specifically against the Co-living housing provisions because under the Housing SEPP, a Boarding House requires the boarding house to be managed by a registered housing provider, which is not the case in this application.

Clause	Control	Discussion	Compliance
67 – Co-living housing may be carried out on certain land with consent	Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living, residential flat buildings or shop top housing is permitted under another environmental planning instrument.	The site has a split zoning, with the majority of the boarding house located on R3 land which	No (See discussion above)
68 – Non-discretionary development standards-the Act, S4.15	<p>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—</p> <p>(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than—</p> <p>(i) the maximum permissible floor space ratio for residential accommodation on the land, and</p> <p>(ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-</p>	<p>Noted.</p> <p>The R3 zone does not have an FSR in the LEP however an FSR of 0.6:1 applies in the DCP. The proposed FSR for the boarding house component is 0.8:1. This is not a development standard but rather a standard that if complied with cannot</p>	<p>NA</p> <p>No</p>

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living housing,	be used to refuse the DA.	N/A
(b) for co-living housing containing 6 private rooms—	NA, boarding house contains more than 6 rooms	
(i) a total of at least 30m ² of communal living area, and		
(ii) minimum dimensions of 3m for each communal living area,		Yes
(c) for co-living housing containing more than 6 private rooms—		
(i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and	The boarding house has 48 rooms, which would require a communal living area of at least 84m ² . The communal living room area for the development is Approx 86m ² .	Yes
(ii) minimum dimensions of 3m for each communal living area,		
(d) communal open spaces—		
(i) with a total area of at least 20% of the site area, and	At least 20% of the site area is communal open space.	
(ii) each with minimum dimensions of 3m,		
(e) unless a relevant planning instrument specifies a lower number—		Yes
(i) for development on land in an accessible area—0.2 parking spaces for each private room, or		
(ii) otherwise—0.5 parking spaces for each private room,	A minimum of 0.5 spaces per boarding room is required, and 1 space for the on-site manager. A total of 25 spaces is provided which complies with the minimum requirement.	N/A
(f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,	N/A	N/A
(g) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.	N/A	

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<p>69 Standards for co-living housing</p>	<p>– (1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—</p> <p>(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m² and not less than—</p> <p>(i) for a private room intended to be used by a single occupant—12m², or</p> <p>(ii) otherwise—16m², and</p> <p>(b) the minimum lot size for the co-living housing is not less than—</p> <p>(i) for development on land in Zone R2 Low Density Residential—the lesser of the minimum lot size requirements for manor houses under a relevant planning instrument, or 600m²,</p> <p>(ii) for development on land in Zone R3 Medium Density Residential—the minimum lot size requirements for multi dwelling housing under a relevant planning instrument,</p> <p>(iii) for development on other land—the minimum lot size requirements for residential flat buildings under a relevant planning instrument, and</p> <p>(c) for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing—</p> <p>(i) will not contain more than 12 private rooms, and</p> <p>(ii) will be in an accessible area, and</p> <p>(d) the co-living housing will contain an appropriate workspace</p>	<p>No boarding room will have a gross floor area (minus exclusions) of more than 25m².</p> <p>Yes, a minimum 16m² gross floor area (excluding kitchen and bathroom facilities) is provided</p> <p>The boarding house / co living component of the development sits on R3 zone land with the exception of a small portion of the basement. No minimum lot size applies.</p> <p>The boarding house / co living component of the development sits on R3 zone land with the exception of a small portion of the basement. No minimum lot size applies.</p> <p>An area is available within the communal living area.</p>	<p>Yes</p> <p>Yes</p> <p>NA</p> <p>N/A</p> <p>Yes</p>
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for the manager, either within the communal living area or in a separate space, and	N/A	N/A
(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	Adequate facilities are provided.	Yes
(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and	Can be suitably conditioned.	Yes
(g) each private room will be used by no more than 2 occupants.		
(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—	Appropriate setbacks are provided.	Yes
(a) the front, side and rear setbacks for the co-living housing are not less than—		
(i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or		
(ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument, and	The boarding house / co-living development is at least 3 storeys. Appropriate setbacks are provided.	Yes
(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	At least 3 hours is received to the communal living area.	Yes
(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	10 spaces are provided for the 48 rooms, which does not comply, however this conflicts with the Affordable Rental	No, but see discussion early in the report regarding

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	(d) at least 1 bicycle parking space will be provided for each private room, and	Housing SEPP, see discussion above on which prevails.	conflicting SEPPs
		10 spaces are provided	Yes
	(e) at least 1 motorcycle parking space will be provided for every 5 private rooms, and	Yes, the proposed development is considered	Yes
	(f) the design of the building will be compatible with—	compatible, see discussion under Affordable housing SEPP table.	
	(i) the desirable elements of the character of the local area, or		
	(ii) for precincts undergoing transition—the desired future character of the precinct.		
	(3) Subsection (1) does not apply to development for the purposes of minor alterations or additions to existing co-living housing.		
70 – No subdivision	Development consent must not be granted for the subdivision of co-living housing into separate lots.	No subdivision is proposed of the boarding house / co-living component of the development.	Yes

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Wingecarribee Local Environmental Plan 2010 (the LEP)

The relevant provisions of the LEP are addressed in the table below.

Clause	Control	Discussion	Compliance
1.8A Savings provisions relating to development applications	– (1) If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.	The DA and review of determination were lodged when boarding houses were permissible in the R2 zone land. The current in force version of the LEP does not permit boarding houses.	Noted.
2.3 – Zone objectives and Land Use Table	<p>The land is zoned R2 Low Density Residential and R3 Medium Density Residential</p> <p>The objectives of the R2 zone are:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low-density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>The objectives of the R3 zone are:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a medium density residential environment.</i> • <i>To provide a variety of housing types within a medium density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> 	Boarding houses and detached dual occupancy development were permissible under the LEP in force at time of lodgement.	Yes
4.1 – Minimum Lot size	The size of any lot resulting from subdivision of land is not to be less than the minimum size shown on the lot size map. In this case the minimum lot size is 700m2.	The proposed subdivision will result in a lot that exceeds 700m2 prior to the erection of the detached dual occupancy.	Yes (but see below for further discussion)

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|--|---|---|---|
| <p>4.2E
Minimum Lot size for Dual Occupancies</p> | <p>– Development must not be granted for development for the purpose of a dual occupancy on a lot in the R2 or R3 zone unless the area of the lot is at least 1,000m².</p> | <p>The detached dual occupancy lot will be 950m².</p> | <p>No (See Clause 4.6 for discussion)</p> |
| <p>4.2F
Minimum Subdivision Lot Sizes for Dual Occupancies in certain zones.</p> | <p>– (1) The objective of this clause is to ensure that dual occupancy development is compatible with the character of existing development within the surrounding area.
(2) This clause applies to land in the following zones—
(a) Zone R2 Low Density Residential,
(b) Zone R3 Medium Density Residential.
(3) Despite clause 4.1, development consent may be granted for the subdivision of land to which this clause applies if the consent authority is satisfied that—
(a) there is an existing dual occupancy on the land that was lawfully erected under an environmental planning instrument, or
(b) the application for development consent also provides for the erection of a dual occupancy on the land.
(4) In addition to the matters listed in subclause (3), the consent authority must be satisfied that—
(a) the lot size of each resulting lot will be 50% of the minimum lot size shown on the Lot Size Map in relation to the land, and
(b) the lot size of each resulting lot will be at least 600 square metres, and
(c) there will be no more than 1 dwelling on each resulting lot.
(5) If an application is made to which subclause (3)(b) applies, the subdivision must not occur before</p> | <p>The detached dual occupancy once subdivided will sit on lots that are 500m² and 450m².</p> | <p>No (See Clause 4.6 for discussion)</p> |

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an occupation certificate has been issued for each dwelling forming part of the dual occupancy.

4.6 – Exceptions to development standards – Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

See further discussion on Clause 4.6's.

5.10 - Heritage Conservation - (2) Development consent is required for any of the following—
(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—
(f) subdividing land—
(i) on which a heritage item is located or that is within a heritage conservation area, or

A Statement of Heritage Impact has been lodged with both the original DA and the review of determination. Yes

This report has been reviewed by Council's heritage advisor and considered acceptable.

(4) The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

As noted in the original DA report, the heritage advisor provided the following comment:

(5)The consent authority may, before granting consent to any development—
(a) on land on which a heritage item is located, or
(b) on land that is within a heritage conservation area, or
(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management

“Overall I consider the proposal to be good redevelopment from a heritage perspective. Historic fence is proposed to be retained, building form is generally in keeping with the original building and a good deep-soil landscaped area is provided. The only recommended



document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

heritage condition of consent is for roof gutter finish. That is roofs, gutters, and any metal fascia covers are to be galvanized finish (not colorbond), and all ridges and valleys and any barge rolls to be roll-capped”.

Following the further information requested during the assessment of this review, the applicant provided structural advice, which has been reviewed by Council’s heritage advisor and considered to be acceptable and worthy of approval.

Clause 4.6 Request – Clause 4.2E – Minimum Lot Size for Dual Occupancies

The applicant seeks to contravene the minimum lot size for dual occupancies development standard applying to the site. This development standard prescribes a minimum lot size for dual occupancies in the R2 Low Density and R3 Medium Density Residential zones of at least 1,000m². The proposed development proposes the construction of a detached dual occupancy on a lot that will be 950.5m², thereby contravening the standard by 49.5m² or 5%.

Pursuant to Clause 4.6(3) of the LEP, the applicant has provided a written request seeking to justify the contravention of the development standard for the following reasons:

- The fundamental layout of the overall development being proposed for this heritage listed site is not affected by the variation sought.
- The “dual occupancy” site, while not numerically compliant, retains regularity of shape and efficiency of access to provide two effective building locations on the land.
- The resultant pattern of development is completely consistent with neighbouring development.
- The non-compliance does not give rise to any significant impacts on any adjoining properties.

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A copy of the applicant's Clause 4.6 written request is provided as an **Attachment 3** to this report.

The justification contained within the Clause 4.6 written request is considered not well founded for the following reasons:

- There are insufficient planning reasons to vary the control,
- The variation will result in an undesirable precedent.

The proposed development has not demonstrated that compliance with the development standard is not unreasonable and unnecessary in the circumstances of the case and that there are insufficient planning grounds to justify contravening the development standard and the objectives for development within the zone, in accordance with Clause 4.6(4).

Clause 4.6 Request – Clause 4.2F – Minimum Subdivision Lot Sizes for Dual Occupancies in Certain Zones

The applicant seeks to contravene the minimum subdivision lot size for dual occupancies development standard applying to the site. This development standard prescribes a minimum lot size of each resulting lot of at least 600m². The proposed development proposes the subdivision of a detached dual occupancy resulting in 2 lots undersized, one being 450 and the other being 500m², thereby contravening the standard by 150m² or 25%.

Pursuant to Clause 4.6(3) of the LEP, the applicant has provided a written request seeking to justify the contravention of the development standard for the following reasons:

- The fundamental layout of the overall development being proposed for this heritage listed site is not affected by the variation sought.
- The “dual occupancy” site, while not numerically compliant, retains regularity of shape and efficiency of access to provide two effective building locations on the land.
- The resultant pattern of development is completely consistent with neighbouring development.
- The non-compliance does not give rise to any significant impacts on any adjoining properties.

A copy of the applicant's Clause 4.6 written request is provided as an **Attachment 3** to this report.

The justification contained within the Clause 4.6 written request is considered not well founded for the following reasons:

- There are insufficient planning reasons to vary the control,
- The variation will result in an undesirable precedent.

The justification contained within the Clause 4.6 written request demonstrates that compliance with the development standard is not unreasonable and unnecessary in the circumstances of the case and that there are insufficient planning grounds to justify contravening the development standard and the objectives for development within the zone, in accordance with Clause 4.6(4).



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

No draft instrument is relevant to the proposed development.

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

The Mittagong Township DCP is the applicable DCP with the relevant provisions of the DCP are addressed in the table below:

Clause	Control	Discussion	Compliance
Part C Residential Zoned Land			
C1.5 - Height of Buildings	For single (1) storey development, six (6) metres. For two (2) storey development, nine (9) metres For three (3) storey development, twelve (12) metres.	The proposed development is 3 storeys' in height and sits below 12m.	Yes
C1.6 Building Materials	– A detailed exterior colour scheme must be presented to allow Council to assess the proposed colours against the existing streetscape.	The applicant has identified the colours and materials in the amended plans and provided a schedule of external finishes.	Yes.
Section 2 Low Density Housing			
C2.3 – Dual Occupancy and Secondary Dwellings	On a minimum lot area of 1,000m ² , where the lot is incapable of subdivision under the LEP, detached dual occupancies are permitted to a max floor area of 100m ²	The lot area is less than 1,000m ² and has an area of more than 100m ² .	No
C2.4 Development Density and Scale	– Maximum Area of Development Footprint 50% of the site area.	50%	Yes
	Minimum Area of Open space of the site area.	50% 81%	Yes
C2.6 – Front	- Consistent with immediate	The front setback is	Yes

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Setbacks	dwelling	consistent with the immediate area.	
C2.7 – Side Setbacks	900mm	Minimum of 900m provided.	Yes
C2.8 – Rear Setbacks	5m – 12m	An appropriate rear setback is provided.	Yes.
C2.9 Building Height Storeys	– Maximum height of a dwelling houses shall not exceed one (1) in storey.	The low density component of the proposed development does not exceed 1 storey.	Yes
C2.10 – Roof Forms	In heritage conservation areas, roof pitches should be no less than 27.5 degrees.	The roof pitch is 27 degrees.	Yes.

Section 3 Medium Density Development

C3.4 – Density and Site Coverage	0.6: 1 Floor space ratio	An FSR of 0.8:1 is proposed on the medium density zoned land for the boarding house	No
C3.6 – Front Setbacks	Consistent with buildings immediately adjacent to the site and in the immediate vicinity.	Appropriate front setbacks are provided	Yes
C3.7 – Side Setbacks	3.5m where development is more than 3m in height	A 3m setback is provided for the boarding house component to the side boundary.	No
C3.8 – Rear setbacks	Generally consistent with those of existing adjacent development	Consistent	Yes
C3.13 Privacy	- Windows are to be designed and located so as to reduce direct overlooking	Windows are designed to prevent overlooking	Yes

Section 4 – Other Forms of Residential Development

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C4.3 Controls for Boarding Houses	<p>– (a) The proposed development shall comply with all relevant design controls contained in previous section of Part C of this Plan.</p> <p>(b) A Landscape Plan shall be provided for all development other than detached dwellings.</p> <p>(c) On-site private open space shall be provided to improve the residential amenity of the development.</p> <p>(d) Access to the subject site shall be located to ensure adequate vehicular and pedestrian safety.</p>	<p>Noted.</p> <p>A landscape plan has been provided.</p> <p>On site private open space has been provided but is not well connected to the communal living room.</p> <p>Access to the site is provided.</p>	<p>See assessment above.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p>
C14 – Central Heritage Precinct	<p>(c) Front gardens must not be extensively paved, concreted or made impermeable to water. Hard paving, including driveways and paths etc should not exceed 20% of the area forward of the building.</p> <p>(d) Driveways that are visible to the street should preferably consist of two wheel tracks made of bricks, gravel, concrete strips or compacted material. Full width driveways should be generally less than 2.5m wide. Extensive use of poured concrete should be avoided where visible from the street, unless there is no feasible alternative.</p> <p>(h) Single storey development predominates in the conservation area. No building shall exceed one storey plus pitched roof with dormer windows.</p>	<p>Paving is minimised</p> <p>Driveways are minimised</p> <p>Single storey proposed for detached dual occupancy, with high buildings located on R3 zoned land.</p>	<p>Yes</p> <p>Yes</p> <p>Yes.</p>

Section 4.15 (1) (a) (iv)—The provisions of any planning agreement that apply to the land



No planning agreement or draft planning agreement applies to the land.

Section 4.15 (1) (a) (v)—The provisions of the regulations (to the extent that they prescribe matters for the purposes of this paragraph) 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 development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The impacts of the proposed development are discussed in the Assessment Against Specific Review Request section of this report and throughout this report.

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

The key issues have been identified which may impact upon the suitability of the site for the development and discussed in the Assessment Against Reasons for Refusal section of this report.

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

Notification of the review of determination was undertaken in accordance with Council's Community Engagement Strategy. Refer to the consultation section of this report for discussion on both internal and external submissions received.

Section 4.15 (1) (e)—The public interest

The public interest is considered in the consultation section of this report below:

AGENDA FOR THE WINGECARRIBEE LOCAL PLANNING PANEL MEETING

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DEVELOPMENT APPLICATIONS



Internal and External Communication and Consultation

Internal Referrals

Heritage Advisor

The original application was referred to Council's heritage advisor who advised that:

“Overall I consider the proposal to be good redevelopment from a heritage perspective. Historic fence is proposed to be retained, building form is generally in keeping with the original building and a good deep-soil landscaped area is provided. The only recommended heritage condition of consent is for roof gutter finish. That is roofs, gutters, and any metal fascia covers are to be galvanized finish (not colorbond), and all ridges and valleys and any barge rolls to be roll-capped

The review of determination was referred back Council's heritage advisor, including providing them with structural advice and they advised they have no objections to the development.

External Referrals

Water NSW

The application was re-referred to Water NSW who have concurred with Council granting consent to the application subject to conditions as detailed in their letter dated 2 August 2021.

Public Notification

The review of determination was publicly notified in accordance with Council's Community Participation Plan from 15 July 2021 to 15 August 2021. Council received 17 submissions, objecting to the proposed development.

The issues raised in the submissions have been summarised and considered below:

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Issues	Response
The density of the proposed development is unacceptable.	On balance, the proposed built form is considered acceptable, however the proposed subdivision of the detached dual occupancy is not supported.
There will be increased traffic and associated parking issues.	The parking proposed complies with the requirements of the SEPP's.
We will be overlooked with reduced privacy.	It is considered that there will be no overlooking from the proposed development.
The subdivision will allow creep from the R3 into the R2 zone.	See the body of the report for discussion on the Clause 4.6 and the issue of permissibility.
How will the boarding house facility be managed and by whom?	The applicant has not lodged a Plan of Management which would detail how the boarding house would be managed. Conditions of consent have been recommended to ensure a plan of management is prepared and includes a complaint mechanism for local residents.
The Clause 4.6 request will set an undesirable precedent	The Clause 4.6 variation request is not well founded
The proposed development will have an unacceptable impact on the heritage item and conservation area.	Council's heritage advisor has raised no objections, notwithstanding the application is recommended for refusal.
Object to the basement car park	The basement car park is contained predominantly within the R3 zone and is therefore considered acceptable.

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CONCLUSION

This review of determination is finally balanced. The original application was approved by Council subject to deferred commencement conditions and the applicant has chosen to seek a review rather than lodge a modification. The amended application includes 2 clause 4.6 variation requests which are considered not well founded, therefore It is recommended that the Panel determines the application by part approving the application, subject to the reasons specified in **Attachment 1** which includes the removal of the subdivision component of the application.

ATTACHMENTS

1. Attachment 1 - Draft Conditions of Consent - *circulated under separate cover*
 2. Attachment 2 - Amended Plans and Associated Reports - *circulated under separate cover*
 3. Attachment 3 - Applicant's Clause 4.6 - *circulated under separate cover*
 4. Attachment 4 - Emag Apartments V Inner West Council - *circulated under separate cover*
 5. Attachment 5 - How to Characterise Development - *circulated under separate cover*
 6. Attachment 6 - Universal Property Group P/L V Blacktown Council - *circulated under separate cover*
 7. Attachment 7 - Original DA Report, Deferred Commencement Consent and Stamped Plans - *circulated under separate cover*
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Geoff King
Director, Communities and Place

Wednesday 23 February 2022