

ATTACHMENT 8 TO REPORT

(Circulated Under Separate Cover)

EXTRA ORDINARY LOCAL PLANNING PANEL MEETING

**5.1 S8.2 Review of DA21/0257.01 for a
Two (2) Lot Subdivision of Land at Part
Lot 313 DP 1245164, No. 27 Kimberley
Driver, Bowral**

Wednesday 22 September 2021

ATTACHMENTS:

- ATTACHMENT 6 - Applicant's Review of Determination Cover Letter & Application
- ATTACHMENT 7 - Applicant's Review of Determination Supporting Information
- ATTACHMENT 8 - Further Information from Applicant on Clause 4.2D of WLEP 2010
- ATTACHMENT 9 - Further Aerial Photo prepared by Applicant detailing

The Planning Hub
Attention: Jeremy Swan

Dear Mr Swan,

RE: Comments in support of Section 8.2 Review Application in relation to DA21/0257, two lot subdivision of land, Milton Park, Bowral

I write on behalf of the land owners and applicants for the above Development Application.

The purpose of the letter is to provide some final comments in relation to the specific requirements of Clause 4.2D of *Wingecarribee Local Environmental Plan 2010*.

The provisions of Clause 4.2D(4) require the consent authority to be satisfied of certain matters before development consent can be granted. I trust the following comments, in association with all information previously submitted, will assist in your understanding of the merits of the application.

a) The subdivision will not adversely affect the use of the surrounding land for agriculture

- The subdivision has no impact on the use of surrounding land for agriculture because the subdivision will not alter the current land use pattern as approved. It does not affect access or use of other land.
- The subdivision will protect the existing use of the subject land for cattle production by keeping 40 hectares as a separate Torrens Title allotment that is fully compliant with the minimum lot size requirements of the WLEP2010, enabling that existing use to continue without the restraints of a Strata Title scheme that is associated with a non rural activity (Village 2).
- The separate parcels of land to be created by the proposed subdivision will recognise the relevant ownership patterns and enable ongoing management of land that is occupied by separate elements of the original approved Master Plan for Milton Park. The rural land and agricultural uses will occupy its own compliant lot.

b) The subdivision is necessary for the ongoing operation of the permissible use

- The development that will sit upon Proposed Lot 2 is approved by both the original development consent (DA32/27/3182/84) and the amendment issued by Council under 11/0689. It is under construction through a Construction Certificate CC395/18 issued by Building Certification Associates Pty Ltd.
- For the purposes of consideration under Clause 4.2D(4)(b), the permissible use in this case is "Village 2", which is a component of the original approval issued under DA32/27/3182/84. The villas within the approved development were always intended to be strata titled – this is clear and not in dispute. This outcome has been achieved already for the Village 1 villas - Refer to SP32202. In this case, the creation of the smaller of the proposed two lots in the subdivision is necessary because it will form the basis for the strata subdivision of the approved villas when construction is complete. This then enables efficient and economical management of the strata development that is not relevant to the land and the dwelling house that is outside of the approved site area of Village 2.
- The 40ha lot is used for the grazing of cattle, which is a permissible and suitable use for a 40 hectare rural lot. This is a different use to that of the balance of the future strata

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scheme, which is of a purely residential/tourist nature. Keeping this larger rural lot within the strata scheme creates difficulties with the preparation of an application/strata by-laws and increases the chances of conflict within the strata scheme. Strata title is designed to create separate entities within a development that have a commonality of interest – in this case it would be villas within Village 2. Enforcing the 40 hectare rural lot to be part of the strata lot is not necessary for the strata lot to function properly, whereas allowing the 40 hectare rural lot to be a stand alone Torrens Title lot enables efficient and economical use of the land for agriculture.

- On 8th August, 2003 WSC Approved a combined DA/CC (LUA 03/0812) for a Single Dwelling House on Lot 304 DP 1040419 comprising slightly in excess of 40Ha at Kimberley Drive, Bowral. This lot, while part of the broader Milton Park Estate, is distinct from the rest of the Milton Park estate and it has its own individual access.
- The 40ha lot and the existing dwelling upon it, is of significantly more value than what would be the value of the villas in the strata scheme, but it would not have direct access to the proposed facilities within the strata scheme. This would result in a situation where the 40ha lot is paying significantly higher strata contributions without the benefit of the facilities, again increasing the chance of conflict within the scheme. One of the foundation objectives of the Environmental Planning and Assessment Act 1979, is *to promote the orderly and economic use and development of land*. The subdivision will facilitate this.

c) The subdivision is appropriate having regard to the natural and physical constraints affecting the land

- in this case, the subdivision follows on from development already approved, whereas it is far more common for subdivision of land to facilitate the future development of that land. In this case, the reverse is true. The subdivision is following on from the already approved and under construction development of Village 2 villas. It is being put forward so that development can be viable and properly funded with good title being provided to the stakeholders and the Strata Plan for Village 2 being economically and effectively managed in the long term.

The impacts of the development of the villas has already been assessed and agreed to be acceptable. The natural and physical constraints of the land have been considered previously in the various approvals over the past 37 years that have led to this point. When the subdivision is approved and the new Lots registered, there would be no work associated with that process and no change to the already approved built form. There will be no impact or effects upon the natural or physical constraints of the land.

I trust that these points are useful in your deliberation. We believe that previous submission of relevant information should allow the s8.2 review application for the proposed two lot subdivision (DA21/0257) to be recommended for approval.

Yours Faithfully,

Scott Lee

4 September 2021

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