

3 March 2021

Dear Councillor,

You are kindly requested to attend the **Ordinary Meeting** of Wingecarribee Shire Council to be held in **Council Chambers, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 10 March 2021** commencing at **3.30pm**.

Yours faithfully

Barry W Paull
Acting General Manager

SCHEDULE

3.30pm	Council Meeting begins
7.40pm	Closed Council

Business

1. **OPENING OF THE MEETING**
 2. **ACKNOWLEDGEMENT OF COUNTRY**
 3. **PRAYER**
 4. **APOLOGIES**
Nil
 5. **ADOPTION OF MINUTES OF PREVIOUS MEETING**
Ordinary Meeting of Council held on 24 February 2021
 6. **DECLARATIONS OF INTEREST**1
 7. **MAYORAL MINUTES**
 8. **PUBLIC FORUM**
-
9. **VISITOR MATTERS**
OPERATIONS, FINANCE AND RISK
Nil
CORPORATE, STRATEGY AND DEVELOPMENT SERVICES
 - 9.1 Development Application 21/0195 - The Restoration of Heritage Listed Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong.....2
-
10. **EN BLOC MOTION**
-
11. **OPERATIONS FINANCE AND RISK**
Nil
-
12. **CORPORATE STRATEGY AND DEVELOPMENT SERVICES**
 - 12.1 Development Applications Determined from 23 January 2021 to 21 February 202166
 - 12.2 Development Applications Received from 23 January 2021 to 21 February 202180
 - 12.3 Proposed Bowral Development Control Plan Amendments for Conservation Precincts - Public Exhibition Results91
 - 12.4 Planning Proposal for Provisions Relating to Secondary Dwellings in Rural Zones.....96
 - 12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges.....103
-
13. **GENERAL MANAGER**
 - 13.1 Legal Report.....176
-

13.2	Memorandum of Understanding Between Wingecarribee Shire Council and Transport Asset Holding of NSW	180
13.3	Exclusion of a Question with Notice and a Notice of Motion from Business Paper on 10 March 2021	181
14.	DELEGATE REPORTS	
15.	PETITIONS	
	Nil	
16.	COMMITTEE REPORTS	
16.1	Management Advisory Committee Reports	182
16.2	Minutes of the Finance Committee Meeting held on 17 February 2021	183
17.	QUESTIONS WITH NOTICE	
17.1	Question with Notice 5/2021 - Riverview Cottage, Jellore Street, Berrima.....	186
17.2	Question with Notice 6/2021 - General Manager Contract	188
17.3	Question with Notice 7/2021 - Councillor Dinners.....	189
17.4	Question with Notice 8/2021 - Station Street Budget.....	191
17.5	Question with Notice 9/2021 - Pavement along Old South Road, Mittagong	192
17.6	Question with Notice 10/2021 - Proposed Renaming of Eridge Park ..	193
17.7	Question with Notice 11/2021 Covid Screens	194
17.8	Question with Notice 12/2021 - Civic Centre Total Cost	201
18.	NOTICES OF MOTION	
18.1	Notice of Rescission Motion 1/2021 - Tender for Refurbishment of Bowral Memorial Hall	202
18.2	Notice of Motion 2/2021 Recruitment of General Manager	203
18.3	Notice of Motion 3/2021 Traffic and Parking Study Funston Street, Bowral	204
18.4	Notice of Motion 4/2021 Mittagong Playhouse and Bowral Memorial Hall Projects Community and Stakeholder Meeting	205
18.5	Notice of Motion 5/2021 - Animal Fur and Skin Sales.....	206
19.	CLOSED COUNCIL	
	Moving into Closed Session	207
19.1	Memorandum of Understanding Between Wingecarribee Shire Council and Transport Asset Holding Entity of New South Wales <i>This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.</i>	
19.2	Legal Report - Closed Council <i>This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal</i>	

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021



proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

20. RESUMPTION OF OPEN COUNCIL

Resumption of Open Council

Adoption of Closed Session

21. 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

Recording and Webcasting of Ordinary and Extraordinary Meetings of Council

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

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

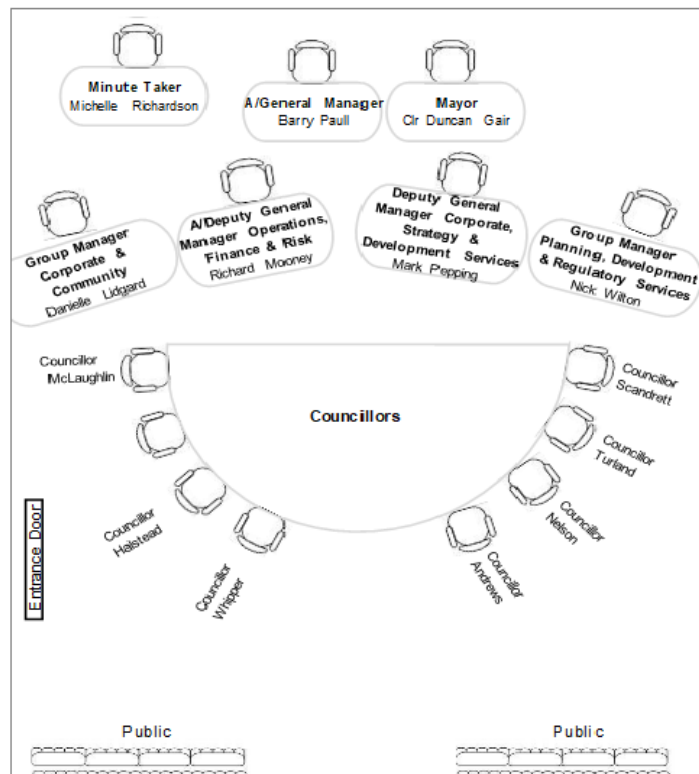
Individuals acting in a disorderly manner can be asked by the Chairperson to leave the meeting under the Council's Code of Meeting Practice.

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

The meeting must not be recorded by others without the prior written consent of Council in accordance with Council's Code of Meeting Practice.

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

The Council Chamber has 24 Hour Video Surveillance.



ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the Traditional Custodians of this land and pay my respect to Elders both past and present. 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 Councillors 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 Chamber.

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.



9 VISITOR MATTERS

CORPORATE STRATEGY AND DEVELOPMENT SERVICES

9.1 Development Application 21/0195 - The Restoration of Heritage Listed Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong

Reference:	DA21/0195
Report Author:	Development Assessment Planner
Authoriser:	Manager Development Assessment
Applicant:	Sunshine Lodge Pty Ltd
Owner:	Sunshine Lodge Pty Ltd
Link to Community Strategic Plan:	Conserve the key natural resources of the Shire and minimise the impact from development

PURPOSE

The purpose of this report is to present Development Application 21/0195 for the Council's consideration and recommends APPROVAL subject to the conditions specified in **(Attachment 1)**.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

THAT Development Application 21/0195 for the restoration of the heritage listed former Sunshine Lodge and development to provide forty-eight (48) single boarding house rooms and two (2) detached dual occupancy dwellings with basement car parking for 25 cars, 10 motor cycles and 10 bicycles, Lot 145 – 147, Sec O, DP 1289 5 Alice Street Mittagong be APPROVED subject to conditions as described in Attachment 1 to the report.

REPORT

Subject Site and Locality

Figures 1 and 2 illustrate the land's location and general layout (see also **Attachments 2 & 3**). The site is described as Lots 145, 146 and 147, Section O, DP 1289. It has a street address of 5 Alice Street Mittagong and 56 Alfred Street Mittagong and is commonly known as Sunshine Lodge. The main building structure to 5 Alice Street was constructed in 1926 as a convent / boarding school run by the Catholic church. The last use of the building was as a boarding house established in the 1970's known as Sunshine Lodge. In 2013 it was badly damaged by fire whilst undergoing refurbishment and has been uninhabitable since that time.

Each of the three lots that comprise the site are the same regular shape of 20 metre width and 50 metre depth, running on a north south alignment. This gives the site an overall rectangular shape with a site area of approximately 3,036 square metres.

The land occupies the south east corner of Alice Street and Alfred Street, with its western boundary to Alice Street of 50 metres and its northern boundary frontage to Alfred Street of 60 metres. The site has a southern boundary frontage to Alfred Lane of 60 metres. Its eastern boundary is to a single storey dwelling.

The site is located approximately 200 metres north of the Mittagong shopping and business centre. It sits directly opposite Alexandra Square, a Council owned public open space which has been significantly upgraded in recent years.

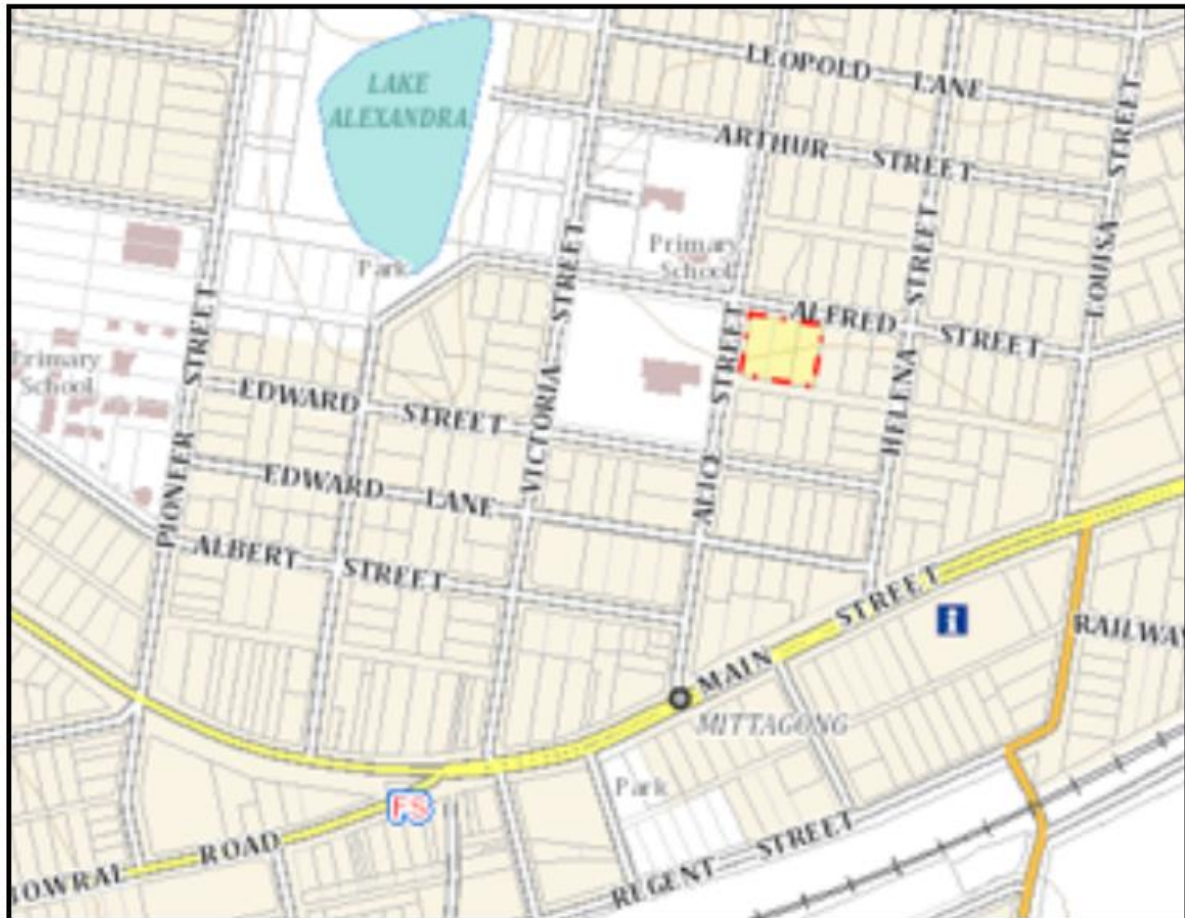


Figure 1: Locality Map

The site is centrally located within the Mittagong Conservation Area that covers the majority of the area of the Old Hume Highway between Pioneer Street to the west and Beatrice Street to the east.

Sunshine Lodge is one of a number of specifically listed heritage items within the Conservation Area that are contained within Schedule 5 of the Wingecarribee Local Environmental Plan 2010.



Figure 2: Aerial image (Courtesy Nearmap)

Development History of the Site.

Development Application 18/0539 was lodged with Council in May 2018. The proposed development was for the demolition of the existing buildings and the construction of a new building containing a residential flat building of 14 units and a boarding house containing 29 individual rooms, all over a basement car park to be accessed off Alfred Lane.

The application was predicated on the heritage listed Sunshine Lodge building no longer being of sufficient structural safety to enable its restoration and reuse.

The development application was not supported by Council and the applicant lodged an appeal to the Land and Environment Court on deemed refusal grounds. The process of Conciliation conferencing pursuant to Section 34 of the *Land and Environment Court Act 1979*, was undertaken as part of standard court practices.

The S34 process identified the issues with the site and brought forward alternative development scenarios that would be more acceptable to Council and the community.

Council maintained the position that although the existing building was badly damaged, it was possible to retain and reuse the significant portion of it. The retention of the Sunshine Lodge building became the starting point of Council's position along with a new built form and scale being designed that was respectful of the heritage conservation area.

Through the S34 conciliation process Council expressed its concerns and the applicant made amendments to the proposal address Council's concerns.

However, the proponent discontinued their appeal. No formal agreement had been reached and the development application was withdrawn from Council.



Subsequently, the application plans were revised, and this application has responded directly to the design suggestions of Council and includes the decision to retain the existing former Sunshine Lodge building and reduce the height of the new boarding house, built form.

Proposed Development

The proposed development is for a boarding house and a detached dual occupancy of two (2) single storey dwelling houses with basement car parking for 22 cars plus 10 motorbikes and 10 bicycles.

A total of 25 car spaces are proposed for use by boarding house users / residents as an additional 3 spaces are provided at grade. The development will retain and reuse the existing heritage listed Sunshine Lodge building on the site.

The development will provide the following residential accommodation:

- Boarding House of 48 single boarding house rooms, with a single manager's unit and a communal lounge, with basement car parking off Alfred Lane; and
- Detached dual occupancy consisting of two (2) dwellings, each with 3 bedrooms, 2 bathrooms. One dwelling will be accessed off Alfred Street and the other accessed off Alfred Lane with at grade car parking for each dwelling.

The boarding house building is in four elements, being the retained Sunshine Lodge building flanked by new two storey buildings to both the north and south, with a 3-storey building set behind (to the east) of the original Sunshine Lodge.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES

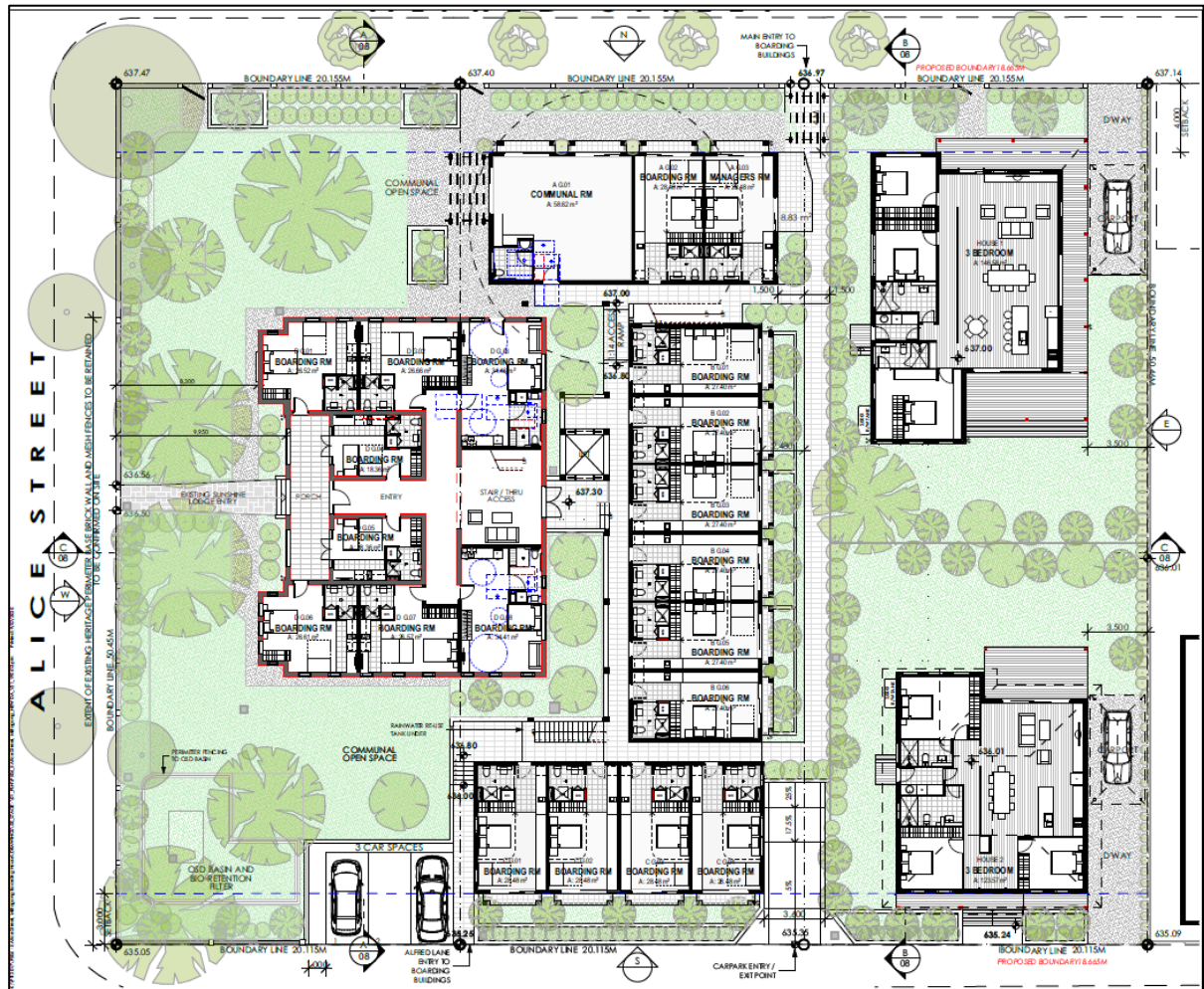


Figure 3: Site plan

This building form is confined to the western area of the site being Lots 145 and 146. Each boarding house apartment is designed as a studio apartment and contains a combined living/sleeping area with a small kitchenette and a separate bathroom. Each apartment has a small cupboard laundry. Additional amenity for each resident is provided by a small balcony or ground level terrace off each apartment.

The basement car park is accessed off Alfred Lane on the south side of the site. This allows a complete retention of the historic street address to Alice Street for the Sunshine Lodge retained portion of the building, including retention and repair of the existing brick wall onto Alice Street which is a feature of the streetscape. The use of Alfred Lane for car access also significantly reduces the potential for impact upon the streetscape of Alfred Street.

A total of 25 car parking spaces are provided for the boarding house. The basement provides a total of 22 car parking spaces for the use of residents of the boarding house. There are also 10 motor cycle spaces and 10 bicycle parking spaces within the basement.

The basement occupies only the central portion of the site behind the original Sunshine Lodge thus allowing this building to be retained as well as offering generous deep soil landscape areas at ground level around the site, including the entire setback area to Alice Street. In addition to the basement parking there are also 3 at grade spaces directly accessed off Alfred Lane.



Figure 4: Artist impression of street presentation, built form and materials.

STATUTORY PROVISIONS

State Environmental Planning Policies

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. After undertaking 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.

In this case, abundant caution has been used and a condition included in the draft conditions of consent requiring 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 26 October 2020



State Environmental Planning Policy (Affordable Rental Housing) 2009

The proposed development seeks to utilise the provisions of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

This State policy provides specific planning controls for the development of boarding houses. Boarding houses are also a permissible use under the provisions of the Wingecarribee Local Environmental Plan 2010 in both the R2 Low Density Residential and R3 Medium Density Residential zones that apply to the site

An assessment of the proposed development against the relevant State policy provisions is set out below:

Division 3 – Boarding Houses

Clause 26 describes the land to which Division 3 applies. It confirms that the SEPP 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:

- (b) Zone R2 Low density Residential.
- (d) Zone R3 Medium Density Residential.

The site is partly within a R2 Low Density Zone and R3 Medium Density zone and therefore Division 3 of the SEPP applies.

Clause 27 excludes some land within the R2 Low Density zones unless that land is within prescribed distances of accessible areas. Because the site is land within the R2 Low Density Residential Zone, this particular Clause is relevant.

Clause 27(3) states that despite subclause (1), this Division does not apply to development on land within R2 Low Density Residential zone within a land use zone that is equivalent to that zone that is not in the 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 these zones.

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.

Clause 28 confirms that development can be carried out with consent.

Clause 29 sets out a number of standards that if satisfied, cannot be used as a reason to refuse a Development Application for a boarding house.

- (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—*
 - (a) *the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*



- (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*
 - (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—*
 - (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.*
- (a) the site is not subject to a maximum floor space ratio under the WLEP 2010. The Mittagong Development Control Plan sets a floor space ratio maximum of 0.6:1 for that part of the site within the R3 zone. The stated maximum FSR in the R2 zone is 0.5:1.
- (b) is not relevant because residential accommodation is permitted on the site.
- (c) can provide a bonus FSR in locations where residential flat buildings are permissible, but not in cases where the site contains a listed Schedule 5 heritage item. Residential flat buildings are permissible within R3 Medium Density zone of the WLEP 2010, however, the site contains a heritage item. Therefore the 'bonus' FSR available under Clause 29(1)(c)(i) cannot be considered for the development.

The proposed development results in a FSR of 0.8:1 for the boarding house component of the development that is located on Lots 145 and 146, that have a site area of 2,024m². This is a combination of the floor area of the retained Sunshine Lodge plus the new building form.

The proposed development results in a FSR of 0.26:1 for the dual occupancy component of the proposed development that is restricted to Lot 147 that has a site area of 1012m². When combined, the boarding house and the dual occupancy dwellings have a total floor area of 1891m². Therefore, on the total site area of 3,036m², this equates to a floor space ratio of 0.62:1.

With regard to these FSR calculations, the development upon the R3 portion of the site is above the nominal FSR whilst the development upon the R2 portion of the site is below the nominal FSR.

However, the site needs to be considered as a single development parcel, noting that the heritage listing does not make any distinction or reference to the split zoning of the heritage site.

Therefore, while it is reasonable to contend that the development is not excessive density or scale, the development does not satisfy all of the numerical prerequisites of Clause 29(1), and therefore density and scale of development is not precluded by the State Policy as a reason to refuse the development.

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds—

- (a) ***building height***

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,

The site is not subject to a maximum building height under the WLEP 2010. With no development standard within the WLEP 2010, reference can be made to the provisions of the Mittagong DCP to help gauge the suitability of the building height proposed.

Part 3 Section C1.5 of the DCP allows a maximum height of 6 metres for single storey development, 9 metres for a two-storey development and 12 metres for three storey development. The more specific Part C Section 4.2 that deals with residential flat buildings, states that a residential flat building shall not exceed three storeys. The two new buildings that flank the Sunshine Lodge building to its north and south are kept to two storeys, while the third new building to the east (behind) the Sunshine Lodge building is three storeys. None of the building forms within this development exceed three storeys.



Figure 5: Cross Section drawing showing maximum height of building.

All three proposed new buildings have a maximum height to the roof ridge line that is below the maximum height of the retained Sunshine Lodge building. From finished ground level to roof ridge line, the maximum building height of the proposed new built form of the development is 9.510 metres. When measured to the existing ground level, the maximum building height is 10.481 metres.

The landscape treatment of the development within the front setback area is not incompatible with the streetscape and meets the requirements below:

(a) landscaped area

if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,

The landscaped setback to Alice Street has maintained the generous existing setback through the retention of the Sunshine Lodge building. This setback is significantly deeper

than the adjoining development to both the north and south. This area is deep soil area not impeded by the basement below, which will allow for significant trees to be either retained or new plantings to occur. **(See Proposed Landscape Plan at Attachment 4).**

The building setback to Alfred Street is consistent with the setbacks of the existing low-density housing. This street frontage is similarly landscaped, again with deep soil areas to enhance the street presentation. The Sunshine Lodge building has never presented to Alfred Street and the current situation is a 1.8-metre-high colorbond fence running the entire 60 metre frontage. The proposed landscape plans show that this will be replaced with a proposed wall and mesh fence to match the existing heritage wall along Alice Street.

The development will now present one new single storey dwelling house, similar to its neighbour at 54A Alfred Street and one new element of boarding house. This new boarding house element has a length of 17 metres to Alfred Street.

The proposed development has laneway access off Alfred Lane thereby avoiding any new driveways or on-site car parking becoming a major visual element in the streetscape.

The landscape presentation to both Alice Street and Alfred Street will be of a high standard and compatible with the existing properties in the vicinity.

Therefore, it is considered that landscaped area cannot be used as a reason to refuse the application.

The proposed communal living room has a northerly aspect, designed with large north facing windows and glass sliding doors opening onto an outdoor common area that has a northerly aspect.

(a) solar access

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,

Therefore, it is considered that a lack of solar access to communal rooms cannot be used as a reason to refuse the application.

(b) private open space

if at least the following private open space areas are provided (other than the front setback area)—

- (i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,*
- (ii) 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,*

The development provides two distinct communal open spaces, being located either side of the Sunshine Lodge building. These areas can provide lawned area with seating and perimeter planting. Both spaces are level, have good solar access and provide a suitable area of the minimum dimensions.

Each of the two individual dwelling houses have “traditional” backyard open space.

Further private recreation opportunity is provided for each apartment by way of a small balcony off each room, with the ground floor apartments having the benefit of small private

terraces. The proximity of public open space immediately opposite at Alexandra Square and Lake Alexandra 250 metres to the west, further enhances the recreational opportunities of the site.

Therefore, it is not considered that a lack of private open space can be used as a reason to refuse the application.

(c) **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*
- (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*
- (ia) *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*
- (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,*

The site is within an accessible area as defined within the SEPP. This definition is shown below:

'accessible area means land that is within:

- (a) *800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- (b) *400 metres walking distance of a public entrance to a light rail station, or in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- (c) *400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger transport Act 1990) that has at least one bus per hour servicing the bus stop between 0600 and 2100 each day from Monday to Friday (both days inclusive) and between 0800 and 1800 on each Saturday and Sunday.'*

The site is within 600 metres walking distance of the entrance to Mittagong Railway Station. There is also a bus stop for the main inter-town bus route on the corner of the Old Hume Highway and Alice Street, approximately 250 metres from the site.

The proposed development is subject to the minimum requirement of 0.5 spaces per boarding room and 1 space for the manager residing on the property. This equates to a minimum of 25 car spaces, 10 motor cycle spaces and 10 bicycle spaces for the 48 boarding apartments (inclusive of the managers room). A compliant number of spaces has been provided with this application.

Therefore, it is not considered parking can be used as a reason to refuse the application.

(d) **accommodation size**

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- 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—*
- (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or*
 - (ii) 16 square metres in any other case.*
- (3) *A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.*
- (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).*
- (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 Australian Charities and Not-for-profits Commission Act 2012 of the Commonwealth.*

The development will provide rooms with a minimum gross floor area above the required 12 or 16 square metres as required above. Each room includes a kitchenette and a separate bathroom. All are designed to be capable of accommodating either a single lodger or couples.

Therefore, it is not considered that accommodation size can be used as a reason to refuse the application.

Clause 30 of the Affordable Housing SEPP provides some additional standards for boarding houses as detailed below:

- (a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,*

A large ground floor communal room, with access to a north facing open courtyard has been provided. The room is approximately 60 square metres, with good solar access and near the Manager's room to ensure an appropriate level of supervision.

- (b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchens or bathroom facilities) of more than 25 square metres,*

All boarding rooms have private kitchens and bathrooms. When these areas are deducted from the total floor area of each room, all rooms are within the maximum floor area allowance.

- (c) no boarding room will be occupied by more than 2 adult lodgers,*

All rooms are designed to be suitable for either single lodgers or couples with room for either a single bed or a double bed. They are in the 'studio apartment' mode, being a combined living/sleeping space, with a separate bathroom, kitchenettes and some with separate kitchen.

- (d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,*

Each boarding house room is designed to allow lodgers to be self-sufficient with their own cooking area and bathroom. The development does not propose any communal kitchen or bathroom.

- (e) if the boarding house has a capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager,*

There will be more than 20 lodgers and therefore a boarding house manager apartment is provided which is situated at ground level adjacent to the communal lounge and adjoining one of the main pedestrian entries off Alfred Street.

- (f) (Repealed)*

- (g) if the boarding house is on land 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,*

The zoning of the site is part R3 Medium Density Residential and part R2 Low Density Residential and therefore is not land zoned primarily for commercial purposes.

- (h) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms,*

As part of the car parking area, there are ten motorcycle spaces provided within the basement parking area and 10 bicycle spaces provided in compliance with this standard.

Clause 30A of the Affordable Housing SEPP deals with Character of the area and requires Council to take into consideration the design of the development and its compatibility with the character of the area.

The character of the area is predominantly single residential dwelling houses on small lots, although there is a scattering of institutional buildings such as churches and schools. The site is within the Mittagong Conservation Area and the surrounding development reflects that historical development pattern.

However, the subject site has, since 1926, represented a different development character and scale, being utilised as an amalgamation of three standard residential lots, thus providing a far greater site area for one single development than is normal for other residential development in the area. As a result, it has accommodated a building form that has always been much larger in scale than the single residential housing surrounding it.

Council's relevant planning controls for this area have acknowledged the difference in character of this site through the zoning of the major portion of the site to the R3 Medium Density zone. This is the only R3 zone land throughout the whole of the Mittagong Conservation Area.

The new building style has been tailored to respect elements of the existing historic building that they will complement. Although these buildings are clearly read as new modern development, the overall architectural proportion, the setbacks, roof form and window proportions have taken cues from the original building. The retention and repair of the front boundary wall on Alice Street frontage and wrapping this around to the Alfred Street frontage is a significant element in the streetscape and it will continue to contribute positively as part of the development scheme.

The architecture of the development is respectful to the existing historic building and is a therefore considered to be suitable addition to the character of the area.

Local Environmental Plans

Wingecarribee Local Environmental Plan 2010

The relevant provisions of the LEP are discussed as follows.

Clause 2.3—Zone objectives and Land Use Table

The land is partly within the R3 Medium Density Residential zone and R2 Low Density Residential zone. The Land Use Table at the end of Part 2 of the LEP specifies developments for the purposes of *boarding houses* are permitted with consent.

Clause 5.10—Heritage Conservation

It is relevant to the proposed development and the need to assess the impacts of that development upon listed items of heritage significance and of development within conservation areas.

The site is currently an item of heritage listed within Schedule 5 of WLEP 2010, being item 1554 Sunshine Lodge. The Schedule 5 listing includes all 3 lots – Lots 145, 146 and 147. It is also within the defined conservation area identified as Mittagong Conservation Area.

The site is immediately adjacent to listed item, 1559, being the house at 54 Alfred Street to the east and Items 1557 and 1558 being 43 and 45 Alfred Street on the opposite side of Alfred Street

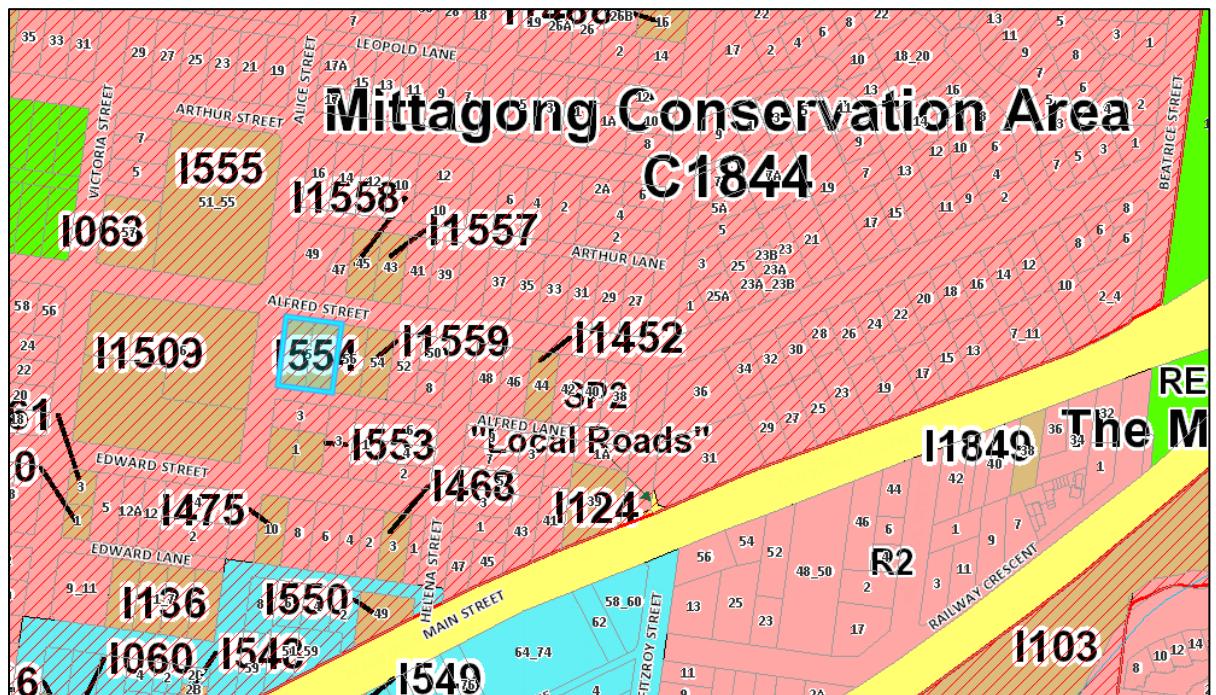


Figure 6: Extract from WLEP 2010 Heritage Maps.

The question of demolition of the fire damaged heritage building was a fundamental consideration of DA 18/0539 and Council was of the opinion that they would not support the demolition of the building.

A Statement of Heritage Impact (SoHI) has been prepared by Noel Thompson Heritage Architect and Consultant.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY
AND DEVELOPMENT SERVICES**



The SoHI provides a history of the site including its origins dating from 1926 as St Joseph's Convent and boarding school and then from the early 1970's, being known as Sunshine Lodge, a residential care centre

It notes the fire event of April 2013 and has considered the proposed development in the context of retaining the building in lieu of demolishing it.



Figure 7: St Josephs Convent date unknown (Source SoHI Noel Thomson Architecture)



Figure 8: 'St Joseph' s Convent pending closure in 1972 (source SoHI Noel Thomson Architecture)



Figure 9: 'Sunshine Lodge' pending closure Oct 2012 (Source SoHI Noel Thomson Architecture)

'The new boarding house development adjacent to the 'reconstructed' heritage listed former Convent Building will be sympathetic to the item and the heritage conservation area. These new boarding house buildings of 2 and 3 storeys have been sited, setback and behind the former convent building, are designed with architectural merit of a high quality and in this sense the new development aims to be a positive addition to the locality.

...In particular the form and proportions of the single storey 'residential' buildings at the eastern block does not try to continue the Victorian era style of housing, however it takes its style and traditional form of the 1920-30s 'bungalow'.'

The statement concludes:

'The proposal for the new residential development that is in accordance with the R3 zoning requirements and a continuation of boarding house accommodation land use that has been in existence since 1926 at the 2 western blocks within the heritage Conservation Area is appropriate.

The proposal for the east block abutting the existing residential development, in accordance with the R2 zoning requirements is to provide two single storey residential houses fitting into the streetscape facing both Alfred Street and Alfred Lane is appropriate.

The proposal for the new landscape designs for the sites where the aim is to preserve original trees, landscape elements and enhance the site and streetscape with new sympathetic plantings and fencing as highlighted in the SoHI is appropriate.'

Council's Heritage advisor has provided the following comments:

“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”.

These requirements are included at **Condition 9**.

The proposed development is considered satisfactory with respect to the particular aims specified by clause 5.10.

Development Control Plans

Mittagong Development Control Plan

The applicable sections of the Mittagong DCP are addressed below:

The proposed development generally complies with the numerical standards under the Mittagong Township Development Control Plan.

Section 4.15 Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

As discussed earlier, provided all recommended consent conditions are complied with, the proposed development is considered satisfactory with respect to the LEP's relevant provisions.

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Not applicable.

(iii) any development control plan, and

As discussed earlier, provided all recommended consent conditions are complied with, the proposed development is considered satisfactory with respect to the relevant provisions of Council's applicable Mittagong Town Plan Development Control Plan.

(iiia) any planning agreement that has been entered into under section

93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

Not applicable.



(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Not applicable.

(v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Context and setting

In terms of scale, nature and likely intensity of use, the dominant component of the land is for residential purposes and whilst the number of people will intensify, it is only a marginal increase. The development is not considered contrary to the R2 Low Density Residential objectives specified by the LEP:

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

Or the R3 Medium Density Residential objectives specified by the LEP:

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

Protection of social and economic impacts in the locality

There have been a number of conditions (**Condition 78**) of consent included for the protection of the nearby residents and to ensure the proper management of the premises being:

Accordingly, Condition 78 reads:

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

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

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



2. The manager/Managing Agent shall ensure that a notice is placed near the entrance to the property in a visible position to the public advising of his name and contact number.

Reason: *To ensure proper management of the premises.*

3. Guest Safety and Security Information
Each room shall be supplied with an information folder containing the Manager/Managing Agent details and contact number, emergency contact numbers for essential services such as fire, police and utilities such as gas, electricity, plumbing and installation of perimeter lighting.

Reason: *To ensure safety and amenity for occupants.*

4. Accommodation Register and Boarder Identification.
 - i. All guests will be registered in an electronic register. This system provides details of the lodger, proposed length of stay and room rate and payment details;
 - ii. The Manager/Managing Agent requires photo ID (e.g, typically either passport or driver's licence). Where the person is an Australian Citizen and does not hold a driver's licence then alternative ID which may not hold a photo can be accepted;
 - iii. All residents in the boarding house are to sign a lease or licence agreeing to comply with the House Rules, with the length of the lease to be determined by the management on the explicit understanding that accommodation is not to be provided on a temporary basis to persons on recreational pursuits. The length of lease or licencing agreement shall be no less than a term of 3 months; and
 - iv. All such records made shall be submitted to Wingecarribee Shire Council on an annual basis.

Reason: *To ensure that proper records are kept.*

5. The communal living area shall be made available for all residents at all reasonable hours and in accordance with the approved "Plan of Management" and the applicant shall ensure that basic facilities in good working order are provided, including but not limited to:
 - Comfortable seating;
 - Personal hygiene (hand sanitiser);
 - A television set; and
 - Any doors to any common areas shall be clear glazed.

Reason: *To protect the amenity of boarding house residents.*

6. The boarding house and immediate surrounds shall be kept in a tidy and sanitary condition at all times.

Reason: *To maintain the amenity of the area.*

7. A copy of the house rules shall be placed in prominent locations on the site, including in all communal areas, behind doors in bedrooms, and upon the rear façade of the dwelling, in order to familiarise residents of the boarding house with acceptable activities.

Reason: *To ensure that residents of the boarding house are familiar with the local house rules.*

8. The applicant shall supply a single bed for each single occupancy room (including base, a mattress with a minimum dimension of 800mm X 1900mm and a mattress protector).

Reason: *To ensure suitable amenity for occupants.*

9. In addition to the above, the applicant shall ensure that each room is provided with the following basic facilities:

- Wardrobe for clothes storage including drawers and hanging racks;
- A suitable refrigerator;
- A washing machine and dryer
- An oven and stove top
- A microwave oven;
- Dishwashing facilities;
- Personal hygiene (soap, paper towels and the like);
- Food storage space;
- A bench top for food preparation;
- Mirror;
- At least one double power point;
- Table and chair;
- A night light or other approved illumination device for each bed;
- Coffee and tea making facilities;
- Waste container;
- An approved latching device on the door;
- Curtains or blinds for privacy. The curtains or blinds are to be a consistent type and colour so that the building retains a well-maintained appearance from the street;
- Each room shall have access to WiFi and each resident is to be provided with the password;

All room furnishings shall be detailed in the “Plan of Management”.

Reason: *To ensure suitable amenity for occupants.*

10. Process for Community Consultation and dealing with noise complaints from residents.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



The Manager/Managing Agent will be available during business hours 9am to 6pm Monday to Friday and weekends, to deal with any complaints as to the operation and management of the premises. There will be a register of all complaints. The register will contain:

- Complaint – date and time;
- Name of person/Police/Council making the complaint;
- Contact details;
- Nature of the complaint;
- Action taken (by whom and when); and
- Outcome and/or further action.

All complaints shall be dealt with by the Manager/Managing Agent within 24 hours of notification.

The complaints register is to be made available to Council or Police upon request.

Reason: *To maintain the amenity of the area.*

(c) *the suitability of the site for the development,*

The proposed development is considered generally compatible with the intended character and amenity of the locality, and no site attributes are considered to render the land unsuitable for it.

(d) *any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.

(e) *the public interest.*

There is not considered to be any overriding public interest against granting consent for the proposed development.

CONSULTATION

Pre-lodgement Meeting

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

External Referrals

Referrals	Advice/Response/Conditions
Water NSW	Water NSW concurs with Council granting consent to the application subject to conditions included in the consent.

Internal Referrals

Referrals	Advice/Response/Conditions
Development Engineer	No objection, subject to various recommended consent conditions.
Coordinator Strategic Land Use Planning	Developer contributions payable, as specified by recommended consent - Conditions 16 and 17.
Accredited Certifier	No objection, subject to various recommended consent

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Referrals	Advice/Response/Conditions
	conditions.

Neighbour Notification (or Advertising)/Public Participation

The development application was Neighbour Notified from 26/08/20 to 30/09/20 and Council received 24 submissions objecting to the proposed development. The issues raised in the submissions have been summarised and are considered below:

Issues	Response
The proposed application states the two-storey façade along the southern side of the building was later added and needs to be demolished. – This is incorrect as a photo taken 1926 shows the 2-storey cloister was built at the same time.	The demolition of the façade has not been raised as an issue by Council's heritage advisor nor the applicants Heritage Architect
The proposed 3 storey block at the back of the convent is an over development and needs to be reduced by 1 storey.	The 3-storey block is compliant with the height controls of the property.
There will be a change of boundaries between the R3 and R2 zone.	The change of boundary is in relation to an underground stratum where the underground car park will encroach on the R2 zone in the sub floor basement area.
The development is opposite Alexandra Square and the developer should pay contributions towards the maintenance and the historic Rotunda.	Developer Contributions will be paid by the developer in regard to the development in accordance with Council's contribution plan under s7.11 of the Act. The owner will pay rates to Council which are used for a variety of purposes including maintenance of public open space.
Any removal of windows in the original building must be replaced with wooden sash windows as originally used.	There is a condition of consent requiring the replacement windows in the lodge building to be timber sash windows. Condition 9
The loss of privacy of 3 Alice Street Mittagong.	3 Alice Street is located across Alfred Lane and is some distance from the southern building.
Single storey development predominates in the Conservation Area. It is submitted that the proposed redevelopment due to the magnitude of its scale and density, is manifestly incompatible with the character of the Mittagong Conservation Area and the	Sunshine Lodge has occupied the site since 1926 and has established a larger scale and form of development on the site. Council has recognised this fact when the site was rezoned to R3 Medium Density to allow for an intensified development

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Issues	Response
intent of the DCP. The proposed development will erode the character by setting an undesirable precedent.	
There are 3 heritage listed cottages within the immediate vicinity.	The proposed development will not have an unreasonable visual impact on the heritage cottages in the vicinity and is designed to address the street / lane frontages.
There is no precedent for anything of the bulk and scale of this development. The proposed development is not in keeping with preserving or restoring the heritage nature of the building.	The proposed development is consistent with the R3 Medium Density zoning and scale of previous buildings used on these sites.
Object to the close proximity to St Michaels Catholic Primary School	The proximity of St Michaels School is not a 'head of consideration' for the assessment of the proposed development.
What assurances do we have that removing bedrock foundations for the car park will not create a disturbance to the natural water table.	The excavation will be undertaken in accordance with all applicable engineering standards.
Access to the car park should be from Alfred Street and not Alfred Lane as Alfred Street is wider. The developer should not be relying on on-street car parking and should be providing additional car parking on the ground level area of the land.	The design of the car park access has been to protect the heritage streetscape of Alfred Street and Alice Street and maintained the practice of vehicular access being from rear lanes. Three at-grade spaces are provided with the proposed development which complies with parking requirements and therefore will not be relying on the use of on-street parking.
The DA's over development with its blocks of micro units which dominate but does not harmonise with our convent.	The design of the development has been supported by the applicant's Heritage Architect and Council's Heritage Advisor.
The DA's micro units is an over development and is likely to result in serious social problems immediate and on-going.	The proposed boarding house complies with the requirements of the SEPP and the issue of any potential social problems in the future will be resolved by the appropriate agencies and/or site manager.
Poor design and cramming is likely to result in psychological and physical health problems. We may be creating areas of investor driven urban slums.	The development is compliant with the SEPP.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Issues	Response
Former residents of Sunshine Lodge where not looked after properly, and my concern is so many people under control of one caretaker will again mean disaster.	There are conditions within the development consent to protect the amenity of the proposed residents. The health and wellbeing of tenants are administered through government departments at State/Federal level.
The development proposal will place severe pressure on Alfred Lane which is relatively narrow and therefore ingress/egress has the potential to become a problem	Alfred Lane is an access lane and is the most appropriate access for the car park.
There are no three storey buildings in the area.	The form and scale of Sunshine Lodge is a pseudo 3 storey building. There is also an existing 4 storey building on the corner of Regent Street and Station Street Mittagong.
There is no outline as to who will be managing the manager of the boarding house.	The manager of the boarding house is appointed by the owner/s
If the development does go ahead then there must be a dilapidation report prior to any building works undertaken.	A standard condition of any consent requires a dilapidation report prior to the commencement of works.
Streetscape and kerb appeal of surrounding homes will be severely compromised.	The proposed development will improve the streetscape with the removal of the colorbond fence in Alfred Street and the construction of a new fence to match the existing fence.
The loss of privacy to all Alfred Street residents given the proposed use of glass fronted balconies.	In the S34 conference held at the Land & Environment Court Council requested the applicant to provide glass or solid balustrades.
Design is out of character in this heritage area with roof colour palette not red as defined in this application.	Council's Heritage advisor has recommended the following condition: 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". Refer to Condition 9 .
Provision of washing machine and dryer increases the carbon footprint and individual costs.	The provision of a washing machine and dryer has been required through the imposition of a condition of consent which provides for the

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Issues	Response
	independence and welfare of the tenants.
Is the development for retirement housing, housing for unemployed, drug and alcohol rehabilitation or a halfway house?	The proposed development does not specify the clientele that will occupy the building. Further, Council does not have the powers to control the actions of the boarding house tenants unless there are issues that arise relating to nuisance etcetera, i.e. matters that fall within the remit of Council and not other agencies.

SUSTAINABILITY ASSESSMENT

- **Environment**

Provided all recommended consent conditions are complied with, the proposed development is not expected to have any significant negative environmental impact.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

COUNCIL BUDGET IMPLICATIONS

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010*, *State Environmental Planning Policy (Affordable Rental Housing) 2009* and the Mittagong Development Control Plan.

OPTIONS

The options available to Council are:

Option 1

That the Council determines Development Application 21/0195 by granting consent, subject to the conditions specified by **Attachment 1**.

Option 2

That the Council determines Development Application 21/0195 by refusing consent, and specifies the reasons for its determination.

Option 1 is the recommended option to this report.

CONCLUSION

It is recommended Development Application 21/0195 which seeks approval for the restoration of heritage listed Sunshine Lodge and development to provide forty-eight (48) single boarding house rooms and two (two) detached dual occupancy dwellings. A basement car park will provide 25 car parking spaces, 10 motorcycle spaces and 10 bicycle spaces at Lot 145.146 and 147 Sec 0 DP 1289, 5 Alice Street Mittagong, be supported subject to conditions.

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

ATTACHMENTS

1. Attachment 1 DA21-0195 Draft Conditions of Consent
2. Locality Plan - *circulated under separate cover*
3. Aerial Image - *circulated under separate cover*
4. Landscape Plan - *circulated under separate cover*
5. Basement Plan - *circulated under separate cover*
6. Ground Floor Plan - *circulated under separate cover*
7. Level 1 Floor Plan - *circulated under separate cover*
8. Level 2 Floor Plan - *circulated under separate cover*

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY
AND DEVELOPMENT SERVICES**



-
9. Streetscape Elevations - *circulated under separate cover*

Mark Pepping

Deputy General Manager Corporate, Strategy and Development Services

Wednesday 3 March 2021



TBA



SUNSHINE LODGE PTY LIMITED
C/- LEE ENVIRONMENTAL PLANNING
33 HOLLY STREET
BOWRAL NSW 2576

Civic Centre, 68 Elizabeth St,
Moss Vale NSW 2577
PO Box 141, Moss Vale
02 4868 0888
mail@wsc.nsw.gov.au
ABN 49 546 344 354

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

APPLICATION NO:	21/0195
APPLICANT:	SUNSHINE LODGE PTY LIMITED
OWNER:	SUNSHINE LODGE PTY LIMITED
PROPERTY DESCRIPTION:	Lot 145 Sec O DP 1289 Lot 146 Sec O DP 1289 Lot 147 Sec O DP 1289
PROPERTY ADDRESS:	5 ALICE STREET MITTAGONG NSW 2575
PROPOSED DEVELOPMENT:	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.
DETERMINATION:	Approval subject to conditions
CONSENT TO OPERATE FROM:	TBA
CONSENT TO LAPSE ON:	TBA

Rights of Appeal

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

Review of Determination

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

Ross Jauncey

TBA

Working with you

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WINGECARRIBEE - A COAL MINING FREE SHIRE



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

Development Assessment Planner

Date of Determination

DRAFT



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

ADMINISTRATION CONDITIONS

1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of 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..

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

2. Development in Accordance with Plans and Documents

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Cover Sheet & Location Plan	Project No: P506 Dwg No: 00 Revision A	PTI Architecture	01/04/2020
3D View	Project No: P506 Dwg No: 01 Revision A	PTI Architecture	01/04/2020
Site Plan/Site Analysis	Project No: P506 Dwg No: 02 Revision A	PTI Architecture	01/04/2020
Basement Plan _A	Project No: P506 Dwg No: 03 Revision A	PTI Architecture	01/04/2020
Ground Floor Plan _A	Project No: P506 Dwg No: 04 Revision A	PTI Architecture	01/04/2020
Level 1 Floor Plan _A	Project No: P506 Dwg No: 05 Revision A	PTI Architecture	01/04/2020
Level 2 Floor Plan _A	Project No: P506 Dwg No: 06 Revision A	PTI Architecture	01/04/2020
Roof Plan _A	Project No: P506 Dwg No: 07 Revision A	PTI Architecture	01/04/2020

9.1 Development Application 21/0195 - The Restoration of Heritage Listed
Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

Sections_A	Project No: P506 Dwg No: 08 Revision A	PTI Architecture	01/04/2020
Sections_A	Project No: P506 Dwg No: 09 Revision A	PTI Architecture	01/04/2020
Streetscape Elevations_A	Project No: P506 Dwg No: 010 Revision A	PTI Architecture	01/04/2020
Elevations_A	Project No: P506 Dwg No: 11 Revision A	PTI Architecture	01/04/2020
Elevations_A	Project No: P506 Dwg No: 12 Revision A	PTI Architecture	01/04/2020
Landscape Plan	Dwg No: 02 Issue B	Catherine Lewis	10/02/2020
Tree Removal Plan	Dwg No: 01	Catherine Lewis	20/03/2018
Contour Plan	Dwg No: 209208- DET2 Issue A	Land team	07/11/2017
Concept Stormwater Management Plan	Job No: 20180043, Sheet DA.1.01 Rev: C	RGH Consulting Group	26/08/2019
Concept Sediment and Erosion Plan	Job No: 20180043, Sheet DA.2.01 Rev: C	RGH Consulting Group	26/08/2019
Concept Sediment and Erosion Control details	Job No: 20180043, Sheet DA.2.02 Rev: C	RGH Consulting Group	26/08/2019
Concept Stormwater Management Plan	Job No: 20180043, Sheet DA.3.01 Rev: C	RGH Consulting Group	26/08/2019
Concept stormwater Management Details Sheet 1 of 2	Job No: 20180043, Sheet DA.3.02 Rev: C	RGH Consulting Group	26/08/2019
Concept stormwater Management Details Sheet 2 of 2	Job No: 20180043, Sheet DA.3.03 Rev: C	RGH Consulting Group	26/08/2019
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	June 2020
Statement of Heritage Impact	Issue C	Noel Thomson Architecture	May 2020
Basix Assessment Report	ES20171130_00	ESD Synergy	09/07/2020
NatHers	0005003600	ESD Synergy	09/07/2020
Basix Certificate	1107757M		09/07/2020
Basix Certificate	1111916M		09/07/2020
Waste Management Plan	Not Referenced	PTI Architecture	July 2020

9.1 Development Application 21/0195 - The Restoration of Heritage Listed Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
 ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

Section J Assessment Report	Not Referenced	ESD Synergy	09/07/2020
Traffic Report	19362	Varga Traffic Planning	18.05.2020

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

3. **Inconsistency between documents**

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

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

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

(a) That the work must be carried out in accordance with the requirements of the National Construction Code.

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

5. **Erection of Signs**

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

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

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

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

6. **Compliance with Disability Discrimination Act 1992**

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

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

Note: *Disability (Access to Premises - Buildings) Standards 2010 -As of 1 May 2011, if access is provided to the extent covered by this Standard, then such*



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

7. Asbestos Removal - Renovation of Buildings

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

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

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

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

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

- c) Within fourteen (14) days of completion of renovation or recladding or brick veneering works where asbestos cement sheeting was removed, the applicant shall submit to Council:
 - (i) an asbestos clearance certificate prepared by a WorkCover licensed asbestos assessor; and
 - (ii) a signed statement verifying that work and the recycling of materials was undertaken in accordance with the Waste Management Plan approved with this consent. In reviewing such documentation Council will require the provision of actual weighbridge receipts for the recycling/disposal of all materials.

Reason: *To ensure that asbestos is disposed of to a licensed waste facility and is*



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

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

8. Application for a Construction Certificate (Building Works)

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

- (a) Architectural plans and building specifications complying with the National Construction Code (NCC) relevant Australian Standards, and the development consent and conditions.
- (b) If Council or a Principal Certifier (PC) issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a qualified chartered professional practicing consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.
- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.
- (e) Plans detailing the layout, extent and location of key components of any required Hydraulic Fire Safety System/s (Fire Hydrant and Fire Hose Reels) including Specifications that describe the basis for the design, installation and construction and identify the provisions of the BCA upon which the design of the system is based. The Plans and Specifications shall both be endorsed by a competent fire safety practitioner (CFSP) as complying with the relevant provisions of the Building Code of Australia (BCA).
- (f) Disabled access provisions to common and public areas in accordance with AS1428 Design for Access and Mobility and the Premises Code.
- (g) If an alternative solution to the "deemed to satisfy" provisions of National Construction Code is proposed, the following details must be lodged:
 - Performance requirements that the alternative solution intends to meet.
 - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
 - A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body.

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

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



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

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

9. Amendments to Approved Plans

The applicant shall make the following amendments to the approved plans prior to the issue of a

Construction Certificate:

- (a) Roof and Gutter finishes.

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.

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

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

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

10. Appointment of Principal Certifier (PC)

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

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



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

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

11. **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.*

12. **Site Consolidation**

That the site be consolidated into one (1) lot prior to issue of the Construction Certificate.

Reason: *To ensure the use of the land as one allotment is legally recognised and to prevent separate dealings in the existing allotments after the use commences.*

13. **Developer to provide photos of damage to Council property**

The developer must provide Council and the Principal Certifier (PC) with photos of any damage of Council property adjoining the development prior to the issue of the Construction Certificate.

Photos should include any damage to footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter and road pavement and the like.

Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the developer/owners/proponents expense.

The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged Council property are to be carried out by the contractor/builder to Council's specification and supervision prior to issue of any Occupation Certificate.

Reason: *To ensure that Councils assets are protected.*

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

Prior to the issue of a Construction Certificate, an application under section 68 of the *Local*



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

Government Act 1993 shall be made to, and issued by, Wingecarribee Shire Council, for the following approvals:

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

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

15. **Section 138 Roads Act 1993 Approval**

Where works are proposed within the road reserve, the developer must obtain approval from Council (as the Roads Authority and/or as required under Section 138 of the *Roads Act 1993*) before any works are undertaken. Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the *Roads Act 1993*.

The following details must be submitted to Council in order to obtain the Section 138 approval:

- A copy of approved design plans related to the development and proposed works to be undertaken.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority's manual "Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742.3 - 2002 Traffic Control Devices for Works on Roads. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.
- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by applicant / contractor undertaking the works.

Advice: *Where works are required within a Classified Road, the Developer must obtain the concurrence and / or the approval of the Roads and Maritime Services for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.*

Reason: *Statutory requirement.*

16. **Section 7.11 Contributions (formerly Section 94) (Contact Council for Assessment)**

Under Section 7.11 of the *Environmental Planning and Assessment Act 1979* (as amended), Council has satisfactorily determined that Development Contributions are applicable to this development consent, as the development is likely to require the provision of, or increase the demand for, public amenities and public services within the Wingecarribee Local Government Area.

The following Wingecarribee Shire Council Section 7.11 Developer Contributions Plans are applicable to the development:

- Roads & Traffic Management Facilities
- Resource Recovery Centre 2009
- Central Library Facility

9.1 Development Application 21/0195 - The Restoration of Heritage Listed
Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

- Section 7.11 Administration 2011 to 2031
- Open Space & Recreation Facilities

A "Developer Charges - Notice of Payment" is attached to the back of this consent, and outlines monetary contributions and unit rates applicable at the time of issue of this consent. The contributions listed in the Notice of Payment must be paid prior to the issue of the Construction Certificate.

All contributions are indexed quarterly in accordance with upward movements in the Consumer Price Index (All Groups, Sydney) as published by the Australian Bureau of Statistics (www.abs.gov.au <<http://www.abs.gov.au>>); Section 251 of the *Environmental Planning and Assessment Regulation 2000*; and Council's Developer Contributions Plans.

Note: *Copies of the Contributions Plans are available at Wingecarribee Shire Council's Administration building Moss Vale or are available for download from Council's website www.wsc.nsw.gov.au <<http://www.wsc.nsw.gov.au>>.*

Note: *Payment of the attached contributions is to be by BANK CHEQUE OR CASH and is to be accompanied by the attached sheet entitled "Notice of Payment - Developer Charges & Section 7.11". Should the Applicant pay by personal or company cheque the plans subject to this approval will not be available for collection until such time as the cheque has been honoured (i.e. a minimum of 10 days).*

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

17. **Water Management Act - Certificate of Compliance (Contact Council for Assessment)**

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

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

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

- Water Supply Development Servicing Plan;
- Sewerage Development Servicing Plan; and
- Stormwater Development Servicing Plan.

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

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

Copies of Development Servicing Plans are available at Wingecarribee Shire Council's Administration building Moss Vale or are available for download from Council's website

9.1 Development Application 21/0195 - The Restoration of Heritage Listed Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
 ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

www.wsc.nsw.gov.au <<http://www.wsc.nsw.gov.au>>.

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

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

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

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

Compliance Certificate

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

Water \$----- + Sewer \$----- + Stormwater \$----- = \$-----

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

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

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

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

18. **Construction Management Plan**

To undertake development works including demolition, earthworks and construction a Construction Management Plan (CMP) is required to be submitted and approved by Council prior to issue of the Construction Certificate. The CMP shall indicate measures to be implemented to mitigate construction risks in the protection of the environment as well as public health, safety and convenience. The CMP must address the following:

9.1 Development Application 21/0195 - The Restoration of Heritage Listed
 Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
 ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

- (a) Details of site security;
- (b) Off-street parking for employees, contractors and sub-contractors.
- (c) Public safety in the use of roads and footpaths where development activities interacts with existing facilities and operations.
- (d) The storage and removal, on a regular frequency, of builder's rubble and waste by trade waste contractors.
- (e) Provision for loading and unloading materials;
- (f) Location of all building materials, structures, plant and equipment to be stored or placed within the construction site;
- (g) How materials are to be loaded/unloaded and potential impact on Council infrastructure (including but not limited to footpaths and street trees)
- (h) Public risk policies and management for all contractors' employees using or gaining access over public footpaths and roads.
- (i) External lighting and security alarms proposed for the construction site.
- (j) Firefighting measures to be available on site during development and construction.
- (k) Sanitary amenities proposed on site during development and construction.
- (l) Ensuring the safety of members of the public and Council staff who may have occasion to enter and be in attendance on the site;
- (m) Details of management of storm water run-off and the propose sediment and erosion control measures including the location of any rubble grids;
- (n) Details of any air and dust management;
- (o) Details of noise and vibration controls;
- (p) Anticipated staging and duration of works
- (q) Provision of Construction Traffic Management Plan (CTMP) and Traffic Control Plans (TCP) addressing construction related traffic issues including:
 - Surrounding traffic environment including roads, public transport and existing parking restrictions
 - Truck routes to and from the site
 - General site access and egress for construction vehicles and equipment purposes
 - Frequency of truck movements
 - Sweep paths for trucks entering, circulating and exiting site
 - Location of vehicle standing areas to load and unload and any work zones (if required)
 - Impact of works on residents, businesses, pedestrians, cyclists, local traffic, emergency services and management of staff parking
 - Directional signage for pedestrian and trafficable areas



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

Reason: *To ensure the safety, amenity and protection of public infrastructure and the environment.*

19. **Stormwater - Control of Peak Discharge**

Adequate and suitable infrastructure shall be provided to ensure the peak discharge from the site is no greater than the pre-developed peak discharge. This infrastructure shall be designed in accordance with Council's Engineering Policies. Calculations to demonstrate that the post-development peak discharge will not exceed the pre-development peak discharge shall be provided with the application for a Construction Certificate.

Any stormwater temporarily stored onsite shall be done in a manner that does not jeopardise public safety. In this regard the development shall provide a risk assessment with the Construction Certificate documentation.

Reason: *To ensure the peak discharge from the site is no greater than the pre-developed peak discharge.*

20. **Detailed Stormwater Drainage System Design**

Prior to the issue of the Construction Certificate, a detailed storm water hydraulic drainage plan for the disposal of storm water from the site, prepared in accordance with Council's Design Standards shall be submitted to Council and approved by Council's Development Engineer.

Should any changes be required to the approved storm water drainage plan, the amended design shall achieve equivalent performance standards in accordance with Design Specifications.

Note: *Construction Certificate Approval does not include approval for works external to the property or civil works.*

Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the *Roads Act 1993*, must be obtained from Council prior to the commencement of works.

The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 of the *Roads Act 1993* applies.

Reason: *To ensure adequate storm water management.*

21. **Carpark Design - Site Servicing**

The car park shall be designed to accommodate the turning movements of the largest vehicle servicing the development. The car park design shall incorporate the following:

- (a) The site shall accommodate the turning movements of (how many) m service vehicle.
- (b) Service vehicles shall manoeuvre into and out of the site in a forward direction.
- (c) The front overhang, and swept path made by the service vehicle shall not obstruct car park traffic or encroach onto parking spaces.

9.1 Development Application 21/0195 - The Restoration of Heritage Listed
Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

- (d) The vehicle swept path shall be reflected on the engineering design plans.
- (e) Loading and unloading of service vehicles shall be undertaken onsite with no intrusion onto the road system.
- (f) The footpath crossing shall be splayed from the property boundary to the kerb line to accommodate the swept path made by the service vehicle.

Reason: *To ensure that the car parking area is constructed to Council requirements.*

22. **Vehicular Crossings**

Full-width, heavy-duty concrete vehicular crossing(s) shall be provided across the footway at the entrance(s) and/or exit(s) to the site, subject to approval by Council's Development Engineer. In this regard the Applicant shall obtain a copy of Council's Standard Drawing and lodge an application for vehicular crossing(s) (available from Council's Customer Services Centre or downloaded from Council's website), and pay the appropriate fees and charges prior to the lodgment of the Construction Certificate.

Reason: *To ensure appropriate access to the site can be achieved.*

23. **Accessible Car Parking Spaces**

One (1) of the car parking spaces provided as part of the total requirement shall be reserved for disabled persons.

These spaces shall be constructed and identified in accordance with Volume 1 of the National Construction Code (NCC) and AS/NZS 2890.6 - Parking Facilities; Off-street parking for people with disabilities.

Details to demonstrate compliance shall be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate.

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

24. **Off Street Parking Provision - General**

Twenty five (25) off-street car parking spaces, 10 motorcycle and 10 bicycles suitably marked in accordance with the approved plans (unless elsewhere specified) shall be provided. Each space shall have minimum dimensions in accordance with Australian Standard AS2890.1 Off Street Car Parking.

Details shall be submitted to the Accredited Certifier prior to the issue of a Construction Certificate showing compliance with this condition.

Reason: *To ensure adequate parking and access.*

25. **Waste Management Plan - Construction Waste**

A Waste Management Plan shall be completed and submitted to Council for approval, prior to the issue of the Construction Certificate for the development.

Requirements of the approved Waste Management Plan shall be complied with during site preparation and throughout demolition and construction. Waste management and its storage must not pose a threat to public health or the environment.



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

Reason: *To minimise the amount of waste going to landfill.*

26. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan shall be prepared in accordance with "Landcom's Blue Book" for sedimentation and erosion control plan by a suitably qualified person, and approved by Council prior to issue of the Construction Certificate.

The Erosion and Sediment Control Plan shall include scaled drawings and detailed specifications which can be referred to onsite by project management staff or project construction supervisor. Items to be shown on the Plan shall include:

- (a) Locality of the site, a north point and scale.
- (b) Existing contours of the site including catchment area boundaries and indications of direction of fall.
- (c) Location of and basic description of existing vegetation.
- (d) Diversion of uncontaminated up-slope run-off around the disturbed sites.
- (e) Location of significant natural areas requiring special planning or management including waters, floodplains, seasonally wet areas, areas prone to ponding/water logging, unstable slopes etc.
- (f) Nature and extent of earthworks, including cut and fill roadworks.
- (g) Location of all soil and material stockpiles.
- (h) Location of site access, proposed roads and other impervious areas.
- (i) Existing and proposed drainage patterns.
- (j) Location and type of proposed erosion and sediment control measures.
- (k) Site rehabilitation proposals, including final contours.
- (l) Time of placement of sediment controls.
- (m) Staging of works and how the plan is to be implemented for each stage or activity on site.
- (n) Maintenance schedule.

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



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK

27. Notice of Commencement

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

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

Reason: *Statutory requirement.*

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

28. Construction Certificate

No work shall commence until a:

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

Reason *Statutory requirement.*

29. Developers Representative during Construction of Works

A minimum of 48 hours prior to commencement of any construction works on site the Developer shall nominate to Council in writing their representative (Construction Supervisor) who will be responsible for all aspects of construction and site control, including Traffic Control, Sediment and Erosion Control and liaison with Council Officers and all other Authorities.

Details to be submitted include:-

- 1 Name of Representative:

9.1 Development Application 21/0195 - The Restoration of Heritage Listed
 Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
 ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

- 2 Company:
- 3 Position:
- 4 Contact phone:
- 5 Contact fax:
- 6 After Hours Contact:
- 7 Signature of Representative:
- 8 Signature & Acceptance of representative by the Developer:
- 9 Council requires that the nominated "Construction Supervisor" either hold qualifications acceptable for Corporate Membership of the Institute of Engineers, Australia, or be Approved by the Director and/or has proven experience and suitable relevant qualifications for the control, supervision and management of civil engineering works as required for carrying land development.

Prior to commencing any works on site the representative shall:

- 10 Inform Council in writing of their intention 7 days before entering the site.
- 11 Submit to Council a proposed Schedule of Works.

The Developer may be required to arrange for Council to peruse all other contract documentation prior to the contractor arriving on site to commence work (Schedule of Works, Specifications Bill of Quantity, traffic control plan and Soil and water management plan).

Failure to comply with the requirements as set out above will result in an immediate stop work order.

Reason: *Statutory requirement.*

30. **Inspection of Demolition Works**

Council will require the following inspections of the site with the owner and demolition contractor present:

- (a) Prior to demolition works commencing (fencing must be erected and approved Waste Management Plan to be on site).
- (b) At the completion of demolition works (documents relating to disposal of hazardous waste are to be provided on site).

A minimum of twenty four (24) hours notice is required to be given to Council prior to these inspections.

Reason: *To ensure compliance with the consent.*

31. **Approval Required for Work within Road Reserve - Section 138 Roads Act 1993**

Prior to any works being undertaken within the road reserve, the Developer must obtain approval from Council (as the Roads Authority and / or as required under Section 138 of the *Roads Act 1993*). Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the *Roads Act 1993*.

The following details must be submitted to Council in order to obtain the Section 138 approval:

- A copy of the approved development plans and proposed works to be undertaken.



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

- Plans and adequate documentation which validate that the required works are in accordance with Councils Engineering Plans and Specifications and relevant standards.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority's manual "Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742.3 - 2002 Traffic Control Devices for Works on Roads. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.
- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by applicant / contractor undertaking the works.

Advice: *Where works are required within a Classified Road, the Developer must obtain the concurrence and / or the approval of the Roads and Traffic Authority for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.*

Reason: *Statutory requirement.*

32. **Fencing of the Construction Site**

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

Reason: *To ensure that the safety of the public is not compromised.*

33. **Erosion and Sediment Control**

Erosion and sediment control measures (as per the approved Erosion and Sediment Control Plan) shall be installed prior to the commencement of works.

Reason: *To ensure that sediment does not leave the site as a result of the construction of the development.*

34. **Wheel Wash**

A vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed in accordance with the approved Erosion and Sediment Control Plan prior to the commencement of any site works, to prevent mud and dirt leaving the site and being tracked.

Reason: *To minimise soil being trucked off site.*



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

35. **Set Out Survey**

The development shall be set out by a Registered Land Surveyor to ensure the correct location on the site in accordance with the approved site plan prior to the commencement of works.

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

CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

36. **Approved Plans to be available on site**

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

Reason: *To ensure compliance with approved plans.*

37. **Imported 'Waste-derived' Fill Material**

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

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

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

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

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

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

38. **Structure not to be built over easements/infrastructure**

No portion of any structure shall be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

Reason: *To protect infrastructure.*

39. **Ground Levels**

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



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

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

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

40. **Excavations and Backfilling**

All excavations and backfilling associated with the erection or demolition of a building shall be executed safely and in accordance with appropriate professional standards properly guarded and protected to prevent them from being dangerous to life or property.

Reason: *To ensure the safety of life and property.*

41. **Support for Neighbouring Buildings**

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a) must preserve and protect the building from damage, and
- b) if necessary, must underpin and support the building in an approved manner (under guidance / instruction of a structural engineer), and
- c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work to be carried out for the purposes of this clause, whether carried out on the allotment of land.

In this case, allotment of land includes a public road and any other public place.

Reason: *To preserve and protect neighbouring buildings.*

42. **Vehicular Access Point - Construction and Delivery Vehicles**

A suitable entry point shall be nominated on site and utilised by construction and delivery vehicles. This entry point is to be located so that the possibility of damage to Council's property is minimised during construction. The access point shall be surfaced with all-weather materials of a minimum of (WHAT SIZE) mm in size. Ballast or crushed gravel (minimum of 40mm rock) for the full width of the kerb from the edge of the road to the property boundary.

Reason: *To reduce the possibility of damage to public property.*

43. **Engineering Inspections by Council**

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



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

- (a) Stormwater drains. (Note Council only inspects stormwater drains for residential outbuildings, detached single dwellings and additions thereto. Internal stormwater drainage for medium density residential, commercial and industrial developments will need to be inspected and certified by the developer's Hydraulic Consultant. Any drainage works on Council property must be inspected by Council).
- (b) Works in relation to road reserves, footpath, kerb and gutter, road shoulder and drainage within public lands or road reserves.
- (c) Final inspection of footpath, driveway, stormwater and utility construction works within the road reserve.

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

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

Reason: *Statutory requirement.*

44. **Stormwater - Connection to Kerb**

All stormwater connections to the kerb shall be done using minimum 2mm thick galvanised steel section in accordance with Wingecarribee Shire Council's Standard Drawing No SD102.

Reason: *To comply with Council standards.*

45. **Stormwater - Construction**

The applicant shall provide adequate storm water drainage infrastructure (pits/pipes/open channels/detention storage) for the conveyance of storm water passing through the site from upstream, and sourced from the development to a discharge outlet to be approved by Council. The point of discharge shall be clearly depicted and the legal right to discharge at that point to be justified. Status of the point of discharge is to be made clear (i.e. provision of drainage easements).

Reason: *To assist in the prevention of erosion of the site from storm water.*

46. **Stormwater - Discharge**

All stormwater runoff from the development shall be collected within the property and discharged to an approved stormwater management system.

Reason: *To ensure that stormwater is appropriately disposed of.*

47. **Earthworks, retaining walls and structural support**

Any earthworks (including any structural support or other related structure for the purposes of the development):

- (a) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and

9.1 Development Application 21/0195 - The Restoration of Heritage Listed Sunshine Lodge and Associated Developments - 5 Alice Street Mittagong
 ATTACHMENT 1 Attachment 1 DA21-0195 Draft Conditions of Consent



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

- (b) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property, and
- (c) that is fill brought to the site-must contain only virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the *Protection of the Environment Operations Act 1997*, and
- (d) that is excavated soil to be removed from the site-must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.

Any excavation must be carried out in accordance with *Excavation Work: Code of Practice* (ISBN 978-0-642-785442), published in October 2013 by Safe Work Australia.

Reason: *Structural safety.*

48. **Erosion and Sediment Control Plan Compliance**

All site works shall be carried out in accordance with the approved Erosion and Sediment Control Plan. Implementation of the Erosion and Sediment Control Plan shall be supervised by personnel with appropriate qualification and experience in erosion and sediment control.

Note: *In the event of non-compliance with the approved plan, Council Officers have the ability to issue Penalty Notices, being an on the spot fine and/ or orders.*

Reason: *To ensure that the environment is protected.*

49. **Prevention of Nuisance**

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris and noise during the carrying out of works in the development.

Reason: *Health and amenity.*

50. **Dust Control**

Where a dust nuisance is likely to occur, suitable screens and/or barricades shall be erected during the demolition, excavation and building works. If necessary, water sprays shall be used on the site to reduce the emission of dust. Screening shall consist of minimum 2 metres height of shade cloth or similar material secured to a chain wire fence of the like.

Reason: *Environmental amenity*

51. **Approved hours of Construction/Demolition**

Construction/demolition activities shall be limited to the following hours:

DAY	HOURS
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

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

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

52. **Construction Management Plan**

All development activities and traffic movements shall be carried out in accordance with the approved Construction Management Plan.

All controls in the Plan shall be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

Reason: *Compliance with condition of consent.*

53. **Building Operations**

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

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

54. **Maintenance of the site**

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

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

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

During construction:

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

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

Reason: *Environmental amenity.*

55. **Temporary Onsite Toilet**

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

Each toilet shall:



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

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

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

56. **Waste Management**

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

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

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

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

57. **Occupation Certificate**

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

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

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

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

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

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



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

58. **Completion Requirements**

All of the conditions of this consent shall be at no cost to Council and shall be completed prior to the issuing of any Occupation Certificate in relation to the development (unless stated otherwise).

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

59. **Section 138 Roads Act Final**

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

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

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

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

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

61. **Consolidation of Lots**

The existing allotments shall be consolidated. Evidence that the plan of consolidation has been registered as a Deposited Plan (DP) by the NSW Land Registry Services shall be submitted to Council prior to issue of the Occupation Certificate.

Reason: *To comply with the provisions of the Wingecarribee Local Environmental Plan 2010 or National Construction Code (as applicable).*

62. **Council Property**

The applicant shall rectify any damage to Council property (including footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter, road pavement and the like) as a result of the development, prior to the issue of any Occupation Certificate at no cost to Council.

Reason: *To ensure that Councils assets are protected.*

63. **Works as Executed Plans - Building Works**

Prior to the issue of the Occupation Certificate, one full set of work-as-executed drawings shall be submitted to and retained by Council. Sufficient details including locations and levels of the below ground infrastructure are required in order to enable a complete check of the work as executed as compared to the original approved design. Any deviation from the approved engineering plans shall be shown on the work-as-executed drawings. Each sheet of the drawings shall carry the certification of the developers supervising engineer.

Reason: *To ensure that there is a record of final works carried out on the site.*



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

64. **Civil Engineering works and services**

All civil engineering works and services are to be constructed in accordance with the Wingecarribee Shire Council Engineering Plans and Specifications, relevant Standards and approved engineering plans prior to the issue of the Occupation Certificate.

Reason: *To ensure that the works and services are constructed in accordance with the approved plans.*

65. **Certification of Internal Civil Works**

On completion of the works and prior to the issue of the Occupation Certificate, certification from a professional engineer who has appropriate experience and competence in the relevant registered area of practice, shall be submitted to Council detailing that all the internal civil works (i.e. internal driveways, paths and stormwater drainage system, including any onsite detention) are in accordance with the approved plans and specifications.

Reason: *Asset management.*

66. **Vehicle Access (Urban)**

Access to the site shall be provided by means of a vehicle crossing as per Standard Drawing **SD107 and SD123** and approved by Council prior to the issue of the Occupation Certificate. A copy of the Standard Drawing can be obtained from Council's offices.

Reason: *To ensure that the driveway is constructed to Council's standard specification.*

67. **Upgrading of Alfred Lane**

Prior to the issue of the Occupation certificate, Alfred Lane shall be upgraded from the intersection with Alice Street to the intersection of Helena Street to provide appropriate access to the proposed development. Alfred Lane shall be upgraded to 5.5m wide with kerb and gutter on both sides with appropriate signage showing no parking permitted on street.

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

68. **Defects and Liability Bond for Public Assets – Building Works**

Prior to the issue of any Occupation Certificate the developer shall lodge a cash bond to cover defects liability period of 24 months for any public infrastructure constructed by them which will be handed over to Council. The liability period will commence from the date of issue of the Occupation Certificate.

The security bond will be in an amount equal to 10% of the value of the total building works with a minimum value of \$10,000 based on the building costs supported by written evidence in accordance with Council's Bond Policy. The bond shall be assessed by Council for release after the 24-month period on formal request from the developer.

Reason: *To ensure appropriate warranty periods apply for defect liability*

69. **Construction of Concrete Footpath**

A concrete footpath of width 1.2 metres shall be constructed along the frontage of the property on Alfred Street with appropriate ramp crossings.



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

The above works shall be programmed and constructed prior to the issue of the Occupation Certificate.

Reason: *Preserve Council asset and amenity.*

70. **Construction of Kerb & Gutter and Drainage**

Concrete kerb and gutter in Alfred Lane for the adequate discharge of stormwater shall be constructed in accordance with Council's Engineering Specifications and drawings prior to the issue of the Occupation Certificate.

Concrete kerb and gutter and associated drainage system in Alice Street shall be constructed as the stormwater legal point of discharge for the site. Works shall be constructed in accordance with Council's Engineering Specifications and drawings prior to the issue of the Occupation Certificate.

Reason: *To ensure that storm water is appropriately managed.*

71. **Asset Management**

Prior to the issue of the Occupation Certificate, the developer shall provide a detailed summary of the Assets that will be handed over to Council at the end of the maintenance period. The details shall be provided in a tabular form so as to allow Council to update its Assets register.

The assets to be identified include:

- Roadways length and width and type of surface
- Drainage systems length and size of pipes, number of pits, total area (m²)
- Footpath and pram ramps.

Reason: *To ensure appropriate details are held for asset management.*

72. **Identification Survey**

An identification survey prepared by a Registered Land Surveyor shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate to demonstrate that all buildings and structures have been constructed entirely within the allotment boundary and in accordance with the approved plans.

Reason *To ensure compliance with the approved plans.*

73. **Fire Safety Certificate**

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

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

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



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

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

74. Private Fire Service Backflow Prevention

As this development has a Private Fire Service line connected to Council's reticulated water supply, Council will require prior to the issue of the Occupation Certificate:

- a) A testable backflow prevention device to be installed by a licensed plumber to the fire service line, in accordance with *AS/NZ 3500 Part 1: Water Services* and the Plumbing Code of Australia.
- b) When the device is installed the commissioning / test results shall be submitted to Council for registration prior to the issue of any Occupation Certificate or the Final Section 68.
- c) The backflow prevention device must be maintained and tested annually by an accredited backflow prevention plumber. The plumber must complete and submit the maintenance and test reports for each device installed and pay the appropriate registration fees to Council in accordance with Council's adopted Backflow Prevention Policy and Schedule of Fees and Charges.

Reason: *To protect the water supply.*

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

75. Use not to Commence

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

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

76. Australia Post Guidelines

Mail deliveries shall to be in accordance with Australia Post Guidelines, as set out in the Australia Post publication "General Post Guide - September 2007". A copy of this Guide can be obtained from Australia Post's web page at www.auspost.com.au. A copy of the brochure may be obtained from Australia Post. In general, a clearly marked mailbox (or group of mailboxes) shall be provided within 500mm of the footpath alignment.

Reason: *To ensure compliance with mail delivery regulations.*

77. Noise Control Legislation

The Applicant shall comply with relevant noise control provisions contained within the *Protection of the Environment Operations Act 1997* and Noise Control Regulations and Policies to ensure local amenity is not adversely affected by noise impacts associated with the development.

Reason: *To prevent loss of amenity to the area.*



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

78. **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.

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

- (ii) The manager/Managing Agent shall ensure that a notice is placed near the entrance to the property in a visible position to the public advising of his name and contact number.

Reason: *To ensure proper management of the premises.*

- (iii) **Guest Safety and Security Information**

Each room shall be supplied with an information folder containing the Manager/Managing Agent details and contact number, emergency contact numbers for essential services such as fire, police and utilities such as gas, electricity, plumbing and installation of perimeter lighting.

Reason: *To ensure safety and amenity for occupants.*

- (iv) **Accommodation Register and Boarder Identification.**

- i. All guests will be registered in an electronic register. This system provides details of the lodger, proposed length of stay and room rate and payment details;
- ii. The Manager/Managing Agent requires photo ID (e.g, typically either passport or driver's licence). Where the person is an Australian Citizen and does not hold a driver's licence then alternative ID which may not hold a photo can be accepted;
- iii. All residents in the boarding house are to sign a lease or licence agreeing to comply with the House Rules, with the length of the lease to be determined by the management on the explicit understanding that accommodation is not to be provided on a temporary basis to persons on recreational pursuits. The length of lease or licencing agreement shall be no less than a term of 3 months; and
- iv. All such records made shall be submitted to Wingecarribee Shire Council on an annual basis.

Reason: *To ensure that proper records are kept.*

- (v) The communal living area shall be made available for all residents at all reasonable hours and in accordance with the approved "Plan of Management" and the applicant shall ensure that basic facilities in good working order are provided, including but not limited to:

- Comfortable seating;
- Personal hygiene (hand sanitiser);
- A television set; and
- Any doors to any common areas shall be clear glazed.

Reason: *To protect the amenity of boarding house residents.*



21/0195, Lot 145 Sec O DP 1289
 Lot 146 Sec O DP 1289
 Lot 147 Sec O DP 1289

(vi) The boarding house and immediate surrounds shall be kept in a tidy and sanitary condition at all times.

Reason: To maintain the amenity of the area.

(vii) A copy of the house rules shall be placed in prominent locations on the site, including in all communal areas, behind doors in bedrooms, and upon the rear façade of the dwelling, in order to familiarise residents of the boarding house with acceptable activities.

Reason: To ensure that residents of the boarding house are familiar with the local house rules.

(viii) The applicant shall supply a single bed for each single occupancy room (including base, a mattress with a minimum dimension of 800mm X 1900mm and a mattress protector).

Reason: To ensure suitable amenity for occupants.

(ix) In addition to the above, the applicant shall ensure that each room is provided with the following basic facilities:

- Wardrobe for clothes storage including drawers and hanging racks;
- A suitable refrigerator;
- A washing machine and dryer
- An oven and stove top
- A microwave oven;
- Dishwashing facilities;
- Personal hygiene (soap, paper towels and the like);
- Food storage space;
- A bench top for food preparation;
- Mirror;
- At least one double power point;
- Table and chair;
- A night light or other approved illumination device for each bed;
- Coffee and tea making facilities;
- Waste container;
- An approved latching device on the door;
- Curtains or blinds for privacy. The curtains or blinds are to be a consistent type and colour so that the building retains a well-maintained appearance from the street;
- Each room shall have access to WiFi and each resident is to be provided with the password;

All room furnishings shall be detailed in the "Plan of Management".

Reason: To ensure suitable amenity for occupants.

(x) **Process for Community Consultation and dealing with noise complaints from residents.**

The Manager/Managing Agent will be available during business hours 9am to 6pm Monday to Friday and weekends, to deal with any complaints as to the operation and management of the premises. There will be a register of all complaints. The register will contain:



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

- Complaint – date and time;
- Name of person/Police/Council making the complaint;
- Contact details;
- Nature of the complaint;
- Action taken (by whom and when); and
- Outcome and/or further action.

All complaints shall be dealt with by the Manager/Managing Agent within 24 hours of notification.
The complaints register is to be made available to Council or Police upon request.

Reason: *To maintain the amenity of the area.*

79. **Annual Fire Safety Statement**

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

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

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

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

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

80. **Advertising Signs - Consent required**

Unless Exempt Development, before an advertising signage is erected/displayed development consent is required to be issued by Council.

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

81. **Places of Shared Accommodation requirement**

The construction, fit-out and operation of the development shall comply with the Standards for Places of Shared Accommodation in Part 1, Schedule 2 of *Local Government (general) regulation 2005* or any applicable provisions in amending, supplementing or replacing legislation.

Reason: Statutory requirement.



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

82. Concurrence– Water NSW

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

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21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289



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

Water NSW's Concurrence Conditions
DA No 21/0195; Lots 145-147 Section O DP 1289; 5 Alice Street, Mittagong

General

1. The site layout and works shall be as specified in the Statement of Environmental Effects prepared by Lee Environmental Planning (dated June 2020) and shown on the Site Plans (Project No. P506, Dwg. Nos. DA03, DA04, DA05, DA06; Rev. A, dated 01.04.2020) prepared by Project Tourism International Architecture Pty Ltd. No revised site layout, staging or external works that will impact on water quality, shall be permitted without the agreement of Water NSW.

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

Stormwater Management

2. All stormwater management measures as shown and specified on the Concept Stormwater Management Plans (Job Number 20180043, Dwg. Nos. DA.3.01 to DA.3.03; all Rev. C, all dated 26.08.2019) prepared by RGH Consulting Group, shall be incorporated in the final stormwater drainage plan to be approved by Council.

The final approved plan shall be implemented.

3. The driveway and hardstand areas shall be sealed and shall drain to stormwater pits fitted with inlet filters (EcoSol Litter Basket – 200 or Water NSW endorsed equivalent) and directed to a bioretention basin on the site.
4. The bioretention basin shall be designed and constructed as shown on the Concept Stormwater Management Plan (Dwg. Nos. DA.3.02; Rev C, dated 26.08.2019) prepared by RGH Consulting Group. The basin shall also:
 - be designed consistent with Adoption Guidelines for Stormwater Biofiltration Systems Version 2 (Payne *et al*, 2015, Melbourne, CRC for Water Sensitive Cities)
 - incorporate a gross pollutant trap (EcoSol Trash Rack or Water NSW endorsed equivalent) installed at the main inlet point
 - direct all discharge and overflow to the nearest suitable connection point to Council's stormwater drainage system
 - be constructed after all hardstand areas have been paved or sealed and all ground surfaces have been stabilised
 - be accessible from a road or driveway by machinery to facilitate cleaning, monitoring and maintenance of the structure
 - be permanently protected from vehicle damage by guardrails, castellated kerb, bollards, or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
 - be protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is re-vegetated or stabilised.
5. A rainwater collection and reuse system for the roofs shall be installed that:
 - have rainwater tank(s) with a minimum total capacity of 18,000 litres above any volume required for mains top-up
 - ensures roofs and gutters are designed to maximise the capture of rainwater in the tanks



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

- ensures the tanks plumbed are to toilets and other areas for non-potable use including use landscape watering, and
 - ensures all rainwater tank overflow is directed to the bioretention basin on the site.
6. No variation to stormwater treatment or management that will have any impact on water quality shall be permitted without prior agreement of Water NSW.
7. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to the issuance of an Occupation Certificate that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.

Operational Environmental Management Plan

8. An Operational Environmental Management Plan (OEMP) shall be prepared in consultation with Water NSW by a person with knowledge and experience in the preparation of such plans prior to the issuance of an Occupation Certificate. The OEMP shall be implemented which shall:
- include details on the location, description and nature of stormwater management structures such as pits, pipes, inlet filters, gross pollutant trap, bioretention basin and on-site detention and rainwater collection system
 - identify responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, including the frequency of such activities
 - identify the individuals or positions responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
 - include checklists for recording inspections and maintenance activities.
9. All stormwater treatment devices shall be monitored, maintained and managed as per the Operational Environmental Management Plan.

Reason for Conditions 2 to 9 – To ensure appropriate stormwater treatment and quality control measures are designed, implemented and maintained to achieve a sustainable neutral or beneficial impact on water quality, particularly during wet weather, over the longer term.

Construction Activities

10. The Concept Sediment and Erosion Control Plans (Dwg. Nos. DA.2.01 & DA.2.02; both Rev. C, both dated 26.08.2019) prepared by RGH Consulting Group shall:
- be updated to a Soil and Water Management Plan by a person with knowledge and experience in the preparation of such plans
 - meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
 - be prepared prior to the issuance of a Construction Certificate, and be to the satisfaction of Council
 - include controls for the management of dirty water collected in any excavation for the basement car park, and
 - include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.
11. The Soil and Water Management Plan shall be implemented and no works shall commence until effective erosion and sediment controls have been installed for all demolition, excavation, and construction works. The controls shall be regularly



21/0195, Lot 145 Sec O DP 1289
Lot 146 Sec O DP 1289
Lot 147 Sec O DP 1289

inspected, maintained and retained until works have been completed and groundcover established.

Reason for Conditions 10 & 11 – To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.

END OF CONDITIONS

DRAFT



11 OPERATIONS FINANCE AND RISK

NIL

12 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

12.1 Development Applications Determined from 23 January 2021 to 21 February 2021

Reference: 5302
Report Author: Team Leader Business Support
Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Promote building practices and the types of developments that improve resource efficiency

PURPOSE

The purpose of this report is to update Councillors on Development Applications Determined for the period 23 January 2021 to 21 February 2021.

RECOMMENDATION

THAT the information relating to the lists of Development Applications Determined for the period 23 January 2021 to 21 February 2021 be received and noted.

APPROVED APPLICATIONS BY DATE RANGE Date Range: 23 January 2021 to 21 February 2021

**** Denotes an application for a property that has been affected by the Green Wattle Creek or Morton Bushfires.**

	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
1	21/0923	Inala 154 Old South Road Alpine NSW 2575 Lot 2 DP 732711	DG Pride, L Pride	Residential Alterations and Additions (Extensions)	27/11/2020	0	79	79	15/02/2021
2	21/1022	1030 Old Hume Highway Alpine NSW 2575 Lot 52 DP 1076836	JL Abel, VE Abel	Dwelling House	16/12/2020	0	62	62	16/02/2021
3	21/0900	1 Station Road Aylmerton NSW 2575 Lot 43 DP 1245618 Lot 42 DP 1245618	MFA Williams	Dwelling House	25/11/2020	0	75	75	09/02/2021
4	19/0878.05	Monaro 562 Wilson Drive Balmoral NSW 2571 Lot 2 DP 701917	SM Casey	Section 4.55 Modification (Reduce Front Setback. Alter Floor Plan and Elevations)	18/12/2020	0	61	61	17/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
5	** 21/0540	248 Wilson Drive Balmoral NSW 2571 Lot 1 DP 355896	GK Welch, KC Welch	Manufactured Home & Associated Works	01/10/2020	112	12	124	03/02/2021
6	** 21/1000	3 Amy Street Balmoral NSW 2571 Lot 201 DP 1161145	JC Vuckovic, JC Vuckovic	Dwelling House	11/12/2020	21	45	66	15/02/2021
7	21/1006	3 Amy Street Balmoral NSW 2571 Lot 201 DP 1161145	JC Vuckovic, JC Vuckovic	Secondary Dwelling	14/12/2020	23	42	65	18/02/2021
8	21/1039	Monaro 562 Wilson Drive Balmoral NSW 2571 Lot 2 DP 701917	SM Casey	Residential Alterations and Additions (Swimming Pool, Spa and Pool Amenities Building)	18/12/2020	0	60	60	16/02/2021
9	21/1256	75-77 Railway Parade Balmoral NSW 2571 Lot 2 Sec 1 DP 2500 Lot 3 Sec 1 DP 2500	KA Radford, CHD Driscoll	Residential Alterations and Additions (Shed and Swimming Pool)	11/02/2021	0	6	6	17/02/2021
10	21/0539	21 Apple Street Berrima NSW 2577 Lot 27 Sec 37 DP 758098	SA Strong, JE Downs	Dwelling House	01/10/2020	56	80	136	15/02/2021
11	21/0557	50 Oldbury Street Berrima NSW 2577 Lot 10 DP 1244255	EL Shanks, TE Shanks	Dwelling House and Secondary dwelling	07/10/2020	81	32	113	29/01/2021
12	21/0813	41 Wilkinson Street Berrima NSW 2577 Lot 4 DP 546287	CCS Dyball	Dwelling House, Swimming Pool and Shed	16/11/2020	0	84	84	05/02/2021
13	21/1218	252 Compton Park Road Berrima NSW 2577 Lot 14 DP 262971	DA Gilbert, FJ Lewis	Private Burial Site	05/02/2021	0	6	6	11/02/2021
14	20/1426.01	190 Bowral Street Bowral NSW 2576 Lots 13 & 22 Sec D DP 192732 & Lot 131 DP 524470	Boardman Developments Pty Ltd	Section 4.55 Modification Subdivision (Alter Lot Size and Boundaries of proposed Lots 11, 12 and 13)	27/11/2020	0	67	67	02/02/2021
15	21/0212	1 Sir James Fairfax Circuit Bowral NSW 2576 Lot 140 DP 1231974	SJ Harris	Subdivision (2 Lots)	11/08/2020	107	75	182	Determined by Council 10/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
16	21/0367	Retford Park Old South Road Bowral NSW 2576 Lot 221 DP 1206897	The National Trust Of Australia (New South Wales)	Information and Educational facility (Regularise the existing business which include open days, exhibitions and tours, community events, cultural activities and heritage interpretation. Commercial venue hire for functions and events including wedding ceremonies –not receptions)	04/09/2020	0	160	160	Determined by Council 10/02/2021
17	21/0586.03	24 St Clair Street Bowral NSW 2576 Lot 25 DP 1261548	AC Hucker, NJ Hucker	Section 4.55 Modification (Relocate Shed)	14/01/2021	0	13	13	27/01/2021
18	21/0822	6 Myrtle Street Bowral NSW 2576 Lot C DP 157898	CJ Toll	Residential Alterations and Additions (Retaining Wall)	16/11/2020	49	43	92	17/02/2021
19	21/0826	22 Boronia Street Bowral NSW 2576 Lot 2 DP 568664	CM Nohra, D Obeid	Residential Alterations and Additions (Extensions)	17/11/2020	23	56	79	05/02/2021
20	21/0838	14 Kangaloon Road Bowral NSW 2576 Lot 2 DP 798459	KE Wilson	Dwelling House	17/11/2020	46	36	82	08/02/2021
21	21/0846	15 Oxley Drive Bowral NSW 2576 Lot 2 DP 260073	HRSM Ta-Me, CF Mackintosh	Secondary Dwelling, and Studio	18/11/2020	0	72	72	29/01/2021
22	21/0936	10 Beavan Place Bowral NSW 2576 Lot 81 DP 1248918	M Feng	Dwelling House	01/12/2020	10	55	65	04/02/2021
23	21/1048	Southern Highlands Botanic Gardens 1 Old South Road Bowral NSW 2576 Lot 1 DP 1231536	Wingecarribee Shire Council	Storage Premises	18/12/2020	39	19	58	15/02/2021
24	21/1188	Milton Park 201 Horderns Road Bowral NSW 2576 Lot 9 S/P 32202	EA Armstrong, DT Armstrong	Residential Alterations and Additions (Extensions)	01/02/2021	0	18	18	19/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES

	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
25	21/1213	2 Herald Drive Bowral NSW 2576 Lot 119 DP 1227641	BJ Leech	Residential Alterations and Additions (Shed)	04/02/2021	0	15	15	19/02/2021
26	03/0786.15	133 Old Bowral Road Bowral NSW 2576 Lot 2345 DP 1110446	Old Bowral Estate Pty Limited	Section 4.55 Modification (Amend Design of Approved Dwellings)	01/09/2020	0	149	149	29/01/2021
27	18/0171.04	68-72 Old Hume Highway Braemar NSW 2575 Lot 22 DP 789172	Clarendon Display Homes Pty Limited	Section 4.55 Modification (7 Lot Subdivision – Alter Lot Layout and Driveway to Lots 4-7)	18/12/2020	0	61	61	17/02/2021
28	21/0702	17 Drapers Road Braemar NSW 2575 Lot 5 DP 715213	17 Drapers Road Pty Limited	Hard stand	28/10/2020	0	92	92	28/01/2021
29	21/0698.03	14 Lochinvar Drive Bundanoon NSW 2578 Lot 214 DP 1266143	D Phillpott	Section 4.55 Modification (Reduce building height and garage footprint. Replace brick veneer with cladding. Internal Alterations)	25/01/2021	0	7	7	02/02/2021
30	21/0920	91 Penrose Road Bundanoon NSW 2578 Lot 1 DP 1244654	MJ Woods, SG Woods	Dwelling House	27/11/2020	24	45	69	05/02/2021
31	21/1082	32-34 Viewland Street Bundanoon NSW 2578 Lot 2 DP 17230	RW Richmond, CA Richmond	Residential Alterations and Additions (Extensions)	24/12/2020	0	43	43	05/02/2021
32	21/1157	103 Penrose Road Bundanoon NSW 2578 Lot 5 DP 20831	SS Catlin, D Catlin	Residential Alterations and Additions (Shed)	21/01/2021	0	11	11	02/02/2021
33	21/0780	39 Werrington Street Burradoo NSW 2576 Lot 20 DP 856053	AG Roth	Residential Alterations and Additions (Extension and Swimming Pool)	11/11/2020	22	68	90	10/02/2021
34	21/0894	54 Burradoo Road Burradoo NSW 2576 Lot 31 DP 602743	HC Lewis, CT Lewis	Residential Alterations and Additions (Extensions)	25/11/2020	0	65	65	29/01/2021
35	21/1067	3-5 Patchway Place Burradoo NSW 2576 Lot 2 DP 1067070	JP Tonkin, SJ Tonkin	Residential Alterations and Additions (Internal, Carport, Pergola, Tennis Court)	21/12/2020	5	31	36	27/01/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES

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36	21/0387	2400 Canyonleigh Road Canyonleigh NSW 2577 Lot 14 DP 806293	Noah Retail Group Pty Ltd	Change of Use (Eco Tourism, Residential Alterations and Additions)	09/09/2020	0	149	149	05/02/2021
37	21/1129	1300 Tugalong Road Canyonleigh NSW 2577 Lot 1 DP 818616	SN Barton	Residential Alterations and Additions (Shed)	15/01/2021	0	10	10	25/01/2021
38	21/1087	49-59 Grevillea Place Colo Vale NSW 2575 Lot 4 DP 717530	CAP Urquhart	Residential Alterations and Additions (Garage)	04/01/2021	0	20	20	25/01/2021
39	21/0666	Braeside 1990 Kangaloon Road East Kangaloon NSW 2576 Lot 100 DP 1166953	WLS Investments Pty Ltd	Residential Alterations and Additions (Shed)	22/10/2020	66	42	108	08/02/2021
40	21/0857	St Matthews 1971 Kangaloon Road East Kangaloon NSW 2576 Lot 3 DP 773276	SAH Given	Residential Alterations and Additions (Extensions)	19/11/2020	0	81	81	09/02/2021
41	21/1079	Pepper Tree Creek 2128 Kangaloon Road East Kangaloon NSW 2576 Lot 1 DP 957959	Kat (Aust) Pty Ltd	Residential Alterations and Additions (Pool House and Swimming Pool)	23/12/2020	6	33	39	01/02/2021
42	20/0738.01	58 Middle Road Exeter NSW 2579 Lot 2 DP 1256824	JH Clark	Section 4.55 Modification (Amend Approved Location of Proposed Dwelling to Increase Setback)	22/10/2020	50	52	102	01/02/2021
43	21/0749	30 Indigo Lane Exeter NSW 2579 Lot 8 DP 1180426	MB Magill, KR Magill	Partial use of the site for horticultural purposes, being a potted plant propagation facility.	04/11/2020	0	99	99	12/02/2021
44	21/0952	55 Burnhams Lane Exeter NSW 2579 Lot 4 DP 1077545	GR Brown, JD Brown	Residential Alterations and Additions (Equestrian Arena)	02/12/2020	0	70	70	11/02/2021
45	21/1055	222 Bundanoon Road Exeter NSW 2579 Lot 2 DP 1104771	HS Ng, DJ Barlow	Farm Building	18/12/2020	0	59	59	16/02/2021
46	21/1088	100 Old Argyle Road Exeter NSW 2579 Lot 41 DP 811984	SW Jones, LE Jones	Residential Alterations and Additions (Garage)	04/01/2021	0	35	35	08/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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47	21/0745	1211 Nowra Road Fitzroy Falls NSW 2577 Lot 107 DP 1121074	S Hinde, AM Hinde	Residential Alterations and Additions (Shed)	04/11/2020	35	60	95	08/02/2021
48	20/0830.01	345 Sheepwash Road Glenquarry NSW 2576 Lot 2 DP 248254 Lot 2 DP 555648 Lot 2 DP 1113295	G E Menzies Pty Ltd	Section 4.55 Modification (Remove Approved Secondary Dwelling)	10/12/2020	0	71	71	17/02/2021
49	21/0855	2025 Wombeyan Caves Road High Range NSW 2575 Lot 4 DP 708447	SS Nance, NI Nance	Dwelling House	19/11/2020	37	31	68	27/01/2021
50	20/0393.04	88-90 Penrose Road Bundanoon Lot 1 DP 1150584	CL Beazley, ML Flemming	Section 4.55 Modification (Alter Building Envelopes of Lots 2 & 3)	27/11/2020	0	0	55	21/01/2021
51	21/0475	363 Jacks Valley Road Joadja NSW 2575 Lot 3 DP 877821	DR Feetham, CA Feetham	Residential Alterations and Additions (Pavilion and Swimming Pool)	23/09/2020	81	49	130	01/02/2021
52	21/0631	Mount Pleasant Farm 220 Rowlands Road Kangaloon NSW 2576 Lot 2 DP 700438	Jsr Human,Kp Human	Subdivision - Boundary Adjustment	19/10/2020	0	108	108	04/02/2021
53	16/0009.16	Clear Hills 230 Medway Road Medway NSW 2577 Lot 12 DP 1245786	TKMMG Pty Limited	Section 4.55 Modification (Amend Stormwater Design)	16/12/2020	0	50	50	04/02/2021
54	14/1103.01	5 Station Street Mittagong NSW 2575 Lot 1 DP 746469	M Henderson,Lg O'connor- Henderson	Section 4.55 Modification (Remove Existing Ground Floor Door from Southern Façade)	25/02/2020	0	337	337	29/01/2021
55	17/1444.19	10 Owen Street Mittagong NSW 2575 No Related Land	Owen Street Pty Ltd	Section 4.55 Modification (Reduction in size of proposed buildings 3, 4 and 5 and additional of proposed building 6)	17/11/2020	0	94	94	19/02/2021
56	19/0999.07	7 Bracken Street Mittagong NSW 2575 Lot 1 DP 869824	MR Fox, KA Fox	Section 4.55 Modification Dual Occupancy (Detached) & Subdivision (2 Lots)	08/01/2021	0	39	39	16/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
57	20/0152.01	193-203 Old Hume Highway Mittagong NSW 2575 Lot 1 DP 1142703	Bieson Pty Ltd	Section 4.55 Modification Commercial Premises (Relocate proposed signage and click and collect parking spaces for existing supermarket and increase in number from 2 to 4)	14/12/2020	0	53	53	05/02/2021
58	20/0544.01	31 Murchison Street Mittagong NSW 2575 Lot 1 Sec 25 DP 1338	NA Jones, HA Jones	Section 4.55 Modification (Delete Condition 43 pertaining to Construction of Private Road)	09/12/2020	0	67	67	15/02/2021
59	20/0724.04	66 Sunset Point Drive Mittagong NSW 2575 Lot 48 DP 732184	K Sarty, IW Sarty	Section 4.55 Modification (Change Location of Swimming Pool)	04/01/2021	0	35	35	09/02/2021
60	21/0721	33 Alfred Street Mittagong NSW 2575 Lot 117 Sec K DP 1289	KE Goard, TA Selby	Residential Alterations and Additions (Garage)	02/11/2020	73	17	90	01/02/2021
61	21/0801	13 Albert Street Mittagong NSW 2575 Lot 2 DP 510192	J Birta, MJ Birta	Dwelling House	13/11/2020	65	17	83	04/02/2021
62	21/0806	25 Faraday Street Mittagong NSW 2575 Lot 301 DP 839117	PS Hoye, KM Forrester	Demolish Existing Garage. Residential Alterations and Additions (Dwelling Extensions, New Garage and Verandah)	13/11/2020	54	33	87	09/02/2021
63	21/0987	11 Station Street Mittagong NSW 2575 Lot 2 DP 664262	T Taqi, JR Emerson	Change of Use (Commercial) – from Office to Medical facility	10/12/2020	0	57	57	05/02/2021
64	21/1024	1220 Old South Road Mittagong NSW 2575 Lot 1 DP 1006329	PJ Purnell, SM Purnell	Residential Alterations and Additions (Swimming Pool, Deck, Carport)	16/12/2020	0	42	42	27/01/2021
65	21/1041	3 Alexandra Place Mittagong NSW 2575 Lot 50 DP 773272	CJ Wilcox, H Factor	Residential Alterations and Additions (Internal Alterations)	18/12/2020	0	52	52	08/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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66	21/1075	22 Oxley Drive Mittagong NSW 2575 Lot 5 DP 36282	DR Bramble, KM Bramble	Residential Alterations and Additions (Extensions)	22/12/2020	0	41	41	02/02/2021
67	20/0883	47 Narellan Road Moss Vale NSW 2577 Lot 133 DP 1232222	L-L Chao	Child Care Centre	06/02/2020	321	55	376	17/02/2021
68	21/0001.08	123 Darraby Drive Moss Vale NSW 2577 Lot 5117 DP 1262565	R Klasen, DA Klasen	Section 4.55 Modification (Retaining Wall)	28/01/2021	0	8	8	05/02/2021
69	21/0239	1 Kennedy Close Moss Vale NSW 2577 Lot 162 DP 258240	CM Mckinnon	Demolition Existing Shed. Construct New Shed	17/08/2020	112	63	175	09/02/2021
70	21/0272	Saleyards 205 Berrima Road Moss Vale NSW 2577 Lot 2 DP 215782	Wingecarribee Shire Council	Commercial Premises (Alterations and Additions)	20/08/2020	0	178	178	15/02/2021
71	21/0573	60 Throsby Street Moss Vale NSW 2577 Lot 5 DP 8915	JR Guthrie, DF Cash	Residential Alterations and Additions (Additions)	09/10/2020	58	72	130	16/02/2021
72	21/0634	74 Yarrowa Road Moss Vale NSW 2577 Lot 12 DP 790612	T D'agostino, FA D'agostino	New Dwelling and Secondary Dwelling. Conversion of Existing Principal Dwelling to Shed and Conversion of Existing Secondary Dwelling to Farm Stay Accommodation Building containing 3 Bedrooms for Guests.	19/10/2020	119	2	121	17/02/2021
73	21/0757	94 Darraby Drive Moss Vale NSW 2577 Lot 4057 DP 1242576	Broughton Street Moss Vale Pty Limited	Subdivision (3 Lots)	05/11/2020	0	85	85	29/01/2021
74	21/0967	22 Lansdown Place Moss Vale NSW 2577 Lot 4 DP 1262703	CR Springett, NE Paquette	Dwelling House	04/12/2020	0	67	67	10/02/2021
75	21/0984	6 Mawson Terrace Moss Vale NSW 2577 Lot 3 DP 263584	S Griffith-Jones	Residential Alterations and Additions (Internal Alterations)	09/12/2020	0	56	56	04/02/2021
76	21/1014	11 Anembo Street Moss Vale NSW 2577 Lot 1264 DP 1248764	GS Lansdown	Dwelling House	15/12/2020	0	55	55	09/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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77	21/1018	18 Torulosa Drive Moss Vale NSW 2577 Lot 141 DP 1232222	B Dunlop	Continued Use (Patio, Deck and Retaining Walls)	15/12/2020	0	44	44	28/01/2021
78	21/1031	11 Stanley Terrace Moss Vale NSW 2577 Lot 10 DP 262491	RA Brewer, CD Brewer	Residential Alterations and Additions (Garage and Workshop)	17/12/2020	0	60	60	16/02/2021
79	21/1109	13 Montgomery Way Moss Vale NSW 2577 Lot 5215 DP 1266473	JR Gilroy, RA Masters-Gilroy	Dwelling House	08/01/2021	8	18	26	04/02/2021
80	21/1111	18 Hoskins Street Moss Vale NSW 2577 Lot 1 DP 199940 Lot 2 DP 199940	TH McCrea	Dwelling House and Secondary Dwelling	11/01/2021	0	35	35	16/02/2021
81	21/1115	12 Snowy Gum Rise Moss Vale NSW 2577 Lot 12 DP 1252867	S Clayton, K Clayton	Dwelling House	12/01/2021	0	27	27	09/02/2021
82	21/1116	12 Spring Street Moss Vale NSW 2577 Lot 2 DP 1046797	SN Dark, GW Dark	Residential Alterations and Additions (Internal)	12/01/2021	0	38	38	19/02/2021
83	21/1193	38 Chapman Street Moss Vale NSW 2577 Lot 4 DP 8915	IA Pilgrim, MA Pilgrim	Residential Alterations and Additions (Extensions)	01/02/2021	0	17	17	18/02/2021
84	12/0924.04	18 Watkins Drive Moss Vale NSW 2577 Lot 24 DP 263854	J Ott	Section 4.55 Modification (Temporary Occupation of Portable Building for 12 Months during construction of dwelling)	03/12/2020	0	78	78	19/02/2021
85	06/1154.03	104-106 Taylor Avenue New Berrima NSW 2577 Lot 21 DP 1122805	MD & St Investments Pty Ltd	Section 4.55 Modification (Remove Condition pertaining to the renewal of Water Main)	26/11/2020	49	13	62	28/01/2021
86	21/0574.01	15 Plumb Street Renwick NSW 2575 Lot 1387 DP 1234992	GC Davis	Section 4.55 Modification (Minor Extension and Internal Alterations)	29/01/2021	0	20	20	19/02/2021
87	21/0864	2 Windeyer Street Renwick NSW 2575 Lot 1398 DP 1234992	DN Payne, J Payne	Dwelling House and Secondary Dwelling	20/11/2020	44	31	75	03/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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88	21/0890	66 Challoner Rise Renwick NSW 2575 Lot 1251 DP 1221207	CM Ford, KL Wilkinson	Dwelling House	24/11/2020	44	19	63	27/01/2021
89	21/0937	3 Mary Street Renwick NSW 2575 Lot 3032 DP 1260441	JH Mcduling	Dwelling House	01/12/2020	0	58	58	28/01/2021
90	21/1003	10 Challoner Rise Renwick NSW 2575 Lot 3 DP 1221206	CP Gasson, TK Loughran	Dwelling House	14/12/2020	0	50	50	02/02/2021
91	21/1050	5 Mary Street Renwick NSW 2575 Lot 3031 DP 1260441	KI Schoonenberg, R Schoonenberg	Dwelling House	18/12/2020	19	21	40	28/01/2021
92	21/1061	47 Renwick Drive Renwick NSW 2575 Lot 38 DP 1241461	AP Sawicki, LD Sawicki	Dwelling House	21/12/2020	25	18	43	03/02/2021
93	21/1078	10 Challoner Rise Renwick NSW 2575 Lot 3 DP 1221206	CP Gasson, TK Loughran	Residential Alterations and Additions (Shed)	23/12/2020	21	19	40	02/02/2021
94	21/1113	30 Guthawah Way Renwick NSW 2575 Lot 701 DP 1234984	SJ Hensby, VM Hensby	Residential Alterations and Additions (Shed)	12/01/2021	6	15	21	02/02/2021
95	21/1123	19 Oldfield Road Renwick NSW 2575 Lot 126 DP 1221206	J Peppin, DI Baker	Dwelling House	13/01/2021	22	13	35	18/02/2021
96	21/1158	27 Challoner Rise Renwick NSW 2575 Lot 1230 DP 1221207	N Chamberlain, V Sampson	Dwelling House	22/01/2021	0	20	20	11/02/2021
97	21/1183	1 Plumb Street Renwick NSW 2575 Lot 1380 DP 1234992	SJ Shah, AS Shah	Dwelling House	29/01/2021	0	13	13	12/02/2021
98	21/1199	2 Solomon Street Renwick NSW 2575 Lot 1330 DP 1234992	H Singh, P Kaur	Dwelling House	02/02/2021	0	9	9	12/02/2021
99	21/1046	4963 Illawarra Highway Robertson NSW 2577 Lot 1 DP 500547	GR Lawrence, SHP Roberts	Residential Alterations and Additions (Verandah to Dwelling and Demolish Existing Secondary Dwelling)	18/12/2020	0	38	38	25/01/2021
100	20/0730.07	248 Exeter Road Sutton Forest NSW 2577 Lot 1 DP 872651	HJ Green, S Green	Section 4.55 Modification (Internal and External Alterations)	28/01/2021	0	6	6	03/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY
AND DEVELOPMENT SERVICES**

	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
101	21/0035.03	The Dairy 216 Oldbury Road Sutton Forest NSW 2577 Lot 1 DP 746268	RA Ferguson, JE Ferguson	Dwelling House	18/12/2020	0	62	62	19/02/2021
102	21/0895	510 Golden Vale Road Sutton Forest NSW 2577 Lot 7 DP 806772	SE Tod, MJ Sprague	Residential Alterations and Additions (Extensions)	25/11/2020	0	86	86	19/02/2021
103	21/0696	Forest Hill 1392 Highland Way Wingello NSW 2579 Lot 1 DP 838894	RA Doonan	Residential Alterations and Additions (Shed)	27/10/2020	81	23	104	09/02/2021
104	21/0998	13 Mundego Street Wingello NSW 2579 Lot 2 DP 1265827	CB Tregannon, TJ Conquest	Dwelling House	11/12/2020	0	61	61	10/02/2021

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



REFUSED APPLICATIONS

105	21/0911	12324 Hume Highway Sutton Forest NSW 2577 Lot 1 DP 124496 Lots 1-2 DP 124497 Lots 1-2 DP 124498 Lot 2 DP 213223 Lots 10-11 DP 262736 Lot 23 DP 262737	Fenugreek Investments Pty Ltd	Temporary use – Food and Drink Premises	26/11/2020	0	62	62	28/01/2021
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Reasons for Refusal

1. Council has characterised the development as a “Function Centre”, as defined by WLEP 2010, and therefore assessed the application as Change of Use - Temporary use as a function centre.

Consequently:

- (a) Council considers the use of the premises as a function centre in the E3 zoned land is prohibited under the Land-Use table in *Wingecarribbee Local Environmental Plan 2010*, and
- (b) Clause 2.8 (6) of WLEP 2010 does not permit the consent authority to grant consent for temporary use of the land for the purpose of a function centre:

2.8 Temporary use of land

- (6) *Despite subclause (2), development consent may not be granted under that subclause for development for the purposes of function centres.*

106	19/1650	Morton Park 198 Foxgrove Road Canyonleigh NSW 2577 Lot 999 DP 818282	FM Maly	Eco-Tourist Facility	21/05/2019	544	86	630	Refused by Council 10/02/2021
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Reasons for Refusal

1. Inadequate details in the flora/fauna report and lack of measures to minimise impacts on natural environment

(S.4.15(1)(a)(b)(e) of the Environmental Planning & Assessment Act 1979)

2. Resident's concerns about compliances with Bushfire Management Plan

(S.4.15(1)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

3. Lack of detail and justification for meeting the recognised standards of an Eco Tourism Facility

(S.4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979)

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



4. Resident's concerns about the traffic impacts generated by this proposal, including safety, lack of passing areas due to road width, dust

(S.4.15(1)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

5. Access and egress restrictions to road users during natural disasters (e.g. bushfires) and for emergency vehicles

(S.4. 15(1)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

6. No comprehensive evacuation plan as required under the Development Application has been submitted.

(S.4. 15(1)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

107	20/1248	33 King Street Hill Top NSW 2575 Lot 2 DP 1008184	C Palaniwat, DR Riley	Residential Alterations and Additions (Shed)	08/05/2020	210	74	284	17/02/2021
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Reasons for Refusal

The application proposes the erection of a detached shed on the subject allotment (Lot 2 DP 1008184). Council considers the development poses unacceptable impact on numerous trees on the subject site and neighbouring land.

Consequently;

1. Council considers the proposed development contrary to the particular aim specified by clause 1.2 (2) (d) of Wingecarribee Local Environmental Plan 2010 (the LEP):

(d) *to provide opportunities for development and land use activities that—*

(i) *make an effective contribution towards the economic wellbeing of the community in a socially and environmentally responsible manner, and*

(ii) *do not adversely impact on natural systems and processes and the overall quality of Wingecarribee's natural environment, and*

(iii) *retain the critical natural, rural and built environmental landscape elements that make up the scenic and cultural heritage value of Wingecarribee,*

[Section 4.15 (1) (a) (i) of the Environmental planning and Assessment Act 1979]

2. Council considers the proposed development contrary to the environmental sustainability objectives specified by section A2.2.8 (h) of the applicable Northern Villages Development Control Plan (the DCP):

(h) *protect vegetation, threatened species, ecological communities, hydrological aspects, watercourses, significant natural features, and any other aspect of environmental quality.*

[Section 4.15 (1) (a) (iii) of the Environmental planning and Assessment Act 1979]

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



3. Council considers the proposed location of the shed and associated earthworks has an unacceptable impact on numerous remnant trees that provide ecological and amenity value. The supporting documentation supplied with the application is considered to provide an inaccurate impact on site trees and the structural root zones of neighbouring trees.

[Section 4.15 (1) (b) of the Environmental planning and Assessment Act 1979]

4. Council does not consider the proposed development to be in the public interest.

[Environmental Planning and Assessment Act 1979, section 4.15 (1) (e)]

ATTACHMENTS

There are no attachments to this report.

12.2 Development Applications Received from 23 January 2021 to 21 February 2021

Reference: 5302
 Report Author: Team Leader Business Support
 Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Open and effective communication methods and technology are utilised to share information about Council plans, intentions, actions and progress

PURPOSE

The purpose of this report is to update Councillors on Development Applications Received for the period 23 January 2021 to 21 February 2021.

RECOMMENDATION

THAT the information relating to Development Applications Received from 23 January 2021 to 21 February 2021 be received and noted.

REPORT

RECEIVED APPLICATIONS BY DATE RANGE

Date range: 23 January 2021 to 21 February 2021

**** Denotes an application for a property that has been affected by the Green Wattle Creek or Morton Bushfires.**

	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
1	21/1298	26 Chalkerville Road Aylmerton NSW 2575 Lot 43 DP 1245618	BL Ball, SE Ball	Dwelling House	19/02/2021		#PENDING		
2	21/1257	18 Balaclava Street Balaclava NSW 2575 Lot 9 DP 1222421	MK Stewart, MF Petersen	Dwelling House	11/02/2021		#PENDING		
3	21/1256	75-77 Railway Parade Balmoral NSW 2571 Lot 2 Sec 1 DP 2500 Lot 3 Sec 1 DP 2500	KA Radford, CHD Driscoll	Residential Alterations and Additions (Shed and Swimming Pool)	11/02/2021		#APPROVED	17/02/2021	

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
4	18/0565.02	3020 Old Hume Highway Berrima NSW 2577 Part Lot 3 DP 584423	Antikovrem Pty Ltd	Section 4.55 Modification (Amend Condition 16 pertaining to re-prioritise internal road construction.)	15/02/2021		#APPROVED	22/02/2021	
5	21/1218	252 Compton Park Road Berrima NSW 2577 Lot 14 DP 262971	DA Gilbert, FJ Lewis	Private Burial Site	05/02/2021		#APPROVED	11/02/2021	
6	21/1293	44 Oldbury Street Berrima NSW 2577 Lot 3 DP 1213372	MO Hicks, JM Kerr	Secondary Dwelling	18/02/2021		#PENDING		
7	17/0992.07	34 Railway Parade Bowral NSW 2576 Lot A DP 157666	MT Woods, AJ Virgona	Section 4.55 Modification (Remove Conditions 64 & 65 pertaining to Subdivision)	17/02/2021		#PENDING		
8	21/1188	Villa 9 201 Horderns Road Bowral NSW 2576 Lot 9 S/P 32202	EA Armstrong, DT Armstrong	Residential Alterations and Additions (Extensions)	01/02/2021		#APPROVED	19/02/2021	
9	21/1189	15-17 Soma Avenue Bowral NSW 2576 Lot 18 DP 11372	RS Mrsnik, AJ Mrsnik	Residential Alterations and Additions (Dwelling Extensions and New Shed)	01/02/2021		#PENDING		
10	21/1203	118 Merrigang Street Bowral NSW 2576 Lot 2 DP 115831	J Harrison	Residential Alterations and Additions (Shed)	02/02/2021		#PENDING		
11	21/1213	2 Herald Drive Bowral NSW 2576 Lot 119 DP 1227641	BJ Leech	Residential Alterations and Additions (Shed)	04/02/2021		#APPROVED	19/02/2021	
12	21/1238	43 Aitken Road Bowral NSW 2576 Lot 2 DP 1151362	LP Feng	Dual Occupancy (Detached) and Subdivision (2 Lots)	08/02/2021		#PENDING		✓

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
13	21/1241	38 Boolwey Street Bowral NSW 2576 Lot B DP 157056	GA Oxford, WM Hartley	Demolish Existing Dwelling. Construct New Dwelling.	09/02/2021		#PENDING		
14	21/1251	22 Merrigang Street Bowral NSW 2576 Lot 2 DP 790218	Woodcote Property Pty Ltd	Multi Dwelling Housing (4 Dwellings)	10/02/2021		#PENDING		✓
15	21/1258	263 Bong Bong Street Bowral NSW 2576 Lot A DP 161828	Welger Holdings Pty Limited	Change Of Use (Food Premises)	11/02/2021		#PENDING		
16	21/1265	2 Fairway Drive Bowral NSW 2576 Lot 12 DP 574453	A Laus, JA Laus	Demolition of Existing Dwelling. Construct New Dwelling and Secondary Dwelling.	15/02/2021		#PENDING		
17	21/1271	401 Centennial Road Bowral NSW 2576 Part Lot 14 DP 12827	Lupeke Pty Ltd	Residential Alterations and Additions (Dwelling Extensions and Carport)	16/02/2021		#PENDING		
18	21/1302	13 Banksia Street Bowral NSW 2576 Lot 44 DP 534609	JS Olsen, SK Markgren	Secondary Dwelling	19/02/2021		#PENDING		
19	21/1197	64 Biggera Street Braemar NSW 2575 Lot 26 DP 1233367	ACW Cumming, MGM Hilmi	Dwelling House	02/02/2021		#PENDING		
20	21/1202	66a Biggera Street Braemar NSW 2575 Lot 24 DP 1233367	RL Humphreys, JB Wyszynski	Dwelling House	02/02/2021		#PENDING		
21	21/1214	6-8 Biggera Street Braemar NSW 2575 Lot 235 DP 874482	LC Gross, HC Edwards	Residential Alterations and Additions (Shed)	04/02/2021		#PENDING		

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
22	21/0698.03	14 Lochinvar Drive Bundanoon NSW 2578 Lot 214 DP 1266143	D Phillpott	Section 4.55 Modification (Reduce building height and garage footprint. Replace brick veneer with cladding. Internal Alterations)	25/01/2021		#APPROVED	02/02/2021	
23	21/1175	57 Greasons Road Bundanoon NSW 2578 Lot 1 DP 1241467	CR Fellows, CM Fellows	Dwelling House	27/01/2021		#PENDING	01/02/2021	
24	21/1178	13 Rosenthal Avenue Bundanoon NSW 2578 Lot 20 Sec 1 DP 10378	SL Dawson	Residential Alterations and Additions (Deck, Pergola and Swimming Pool)	28/01/2021		#PENDING		
25	21/1181	46 Penrose Road Bundanoon NSW 2578 Lot 31 DP 513341	JA Hatzikalimnios, H Hatzikalimnios	Subdivision (2 Lots)	29/01/2021		#PENDING		
26	21/1282	9 Birch Park Road Bundanoon NSW 2578 Lot 13 DP 800633	GJ Devenish	Dual Occupancy and Subdivision (2 Lots)	17/02/2021		#PENDING		
27	21/1284	4 Lochinvar Drive Bundanoon NSW 2578 Lot 203 DP 1266143	JH Nicholas, EM Cosgrove, SK Lee-Billinghurst	Dwelling House	18/02/2021		#PENDING		
28	21/1285	35-39 Osborne Street Bundanoon NSW 2578 Lots 30-32 DP 11791	PR Macefield	Boundary Adjustment	18/02/2021		#PENDING		
29	21/1184	34a Elizabeth Street Burradoo NSW 2576 Lot 2 DP 1270561	CA Ahern	Dwelling House	29/01/2021		#PENDING		
30	21/1227	70 Eridge Park Road Burradoo NSW 2576 Lot 181 DP 566744	GW Conner	Residential Alterations and Additions (Studio)	05/02/2021		#PENDING		

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY
AND DEVELOPMENT SERVICES**

	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
31	21/1236	2 Toongoon Road Burradoo NSW 2576 Lot 2 DP 838472	M Chojnacki, DM Chojnacki	Residential Alterations and Additions (Extensions)	08/02/2021		#PENDING		
32	21/1273	Bong Bong Keep 8 Loyalty Lane Burradoo NSW 2576 Lot 1 DP 1023574	JE Doring, PT Gunning	Residential Alterations and Additions (Extensions and Garage)	16/02/2021		#PENDING		
33	21/1287	19 Hurlingham Avenue Burradoo NSW 2576 Lot 4 DP 259638	V Katter	Subdivision (3 Lots)	18/02/2021		#PENDING		
34	21/1283	11 Geebung Close Colo Vale NSW 2575 Lot 206 DP 1245987	BJ Wilson, LM Wilson	Residential Alterations and Additions (Shed)	17/02/2021		#PENDING		
35	21/1204	104 Moresby Hill Road East Kangaloon NSW 2576 Lot 4 DP 733478	Lau Investment Holdings Pty Ltd	Residential Alterations and Additions (Extensions)	02/02/2021		#PENDING		
36	15/0445.03	94 Rockleigh Road Exeter NSW 2579 Lot 25 DP 1154427	LA Hines	Section 4.55 Modification (Extension and Internal Alterations)	16/02/2021		#PENDING		
37	21/1291	594 Sallys Corner Road Exeter NSW 2579 Lot 1 DP 851102	D Clark, RD Clark	Residential Alterations and Additions (Extensions)	18/02/2021		#PENDING		
38	21/1262	8 Gwen Road Fitzroy Falls NSW 2577 Lot 35 DP 24454	JW Smith, ML Smith	Residential Alterations and Additions (Carport and Shed)	12/02/2021		#PENDING		
39	21/1200	221 Sproules Lane Glenquarry NSW 2576 Lot 22 DP 1000527	SB Nolan	Secondary Dwelling	02/02/2021		#PENDING		
40	21/1272	5 Pearce Street Hill Top NSW 2575 Lot 1 DP 628189	MS Davenport, LM Davenport	Residential Alterations and Additions (Swimming Pool)	16/02/2021		#PENDING		

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
41	20/1304.04	320 Diamond Fields Road Mittagong NSW 2575 Lot 10 DP 872275	Rovalblue Pty Ltd	Section 4.55 Modification (Extensions)	05/02/2021		#PENDING		
42	21/0226.03	81 Diamond Fields Road Mittagong NSW 2575 Lot 12 DP 1226788	G Dinallo, R Dinallo	Section 4.55 Modification (Amend Dwelling Footprint. Bathroom in Shed)	16/02/2021		#PENDING		
43	21/1266	31a Oxford Street Mittagong NSW 2575 Lot 1 DP 1270569	Pc Stokes, DJ Stokes	Dwelling House	15/02/2021		#PENDING		
44	17/1063.05	559 Argyle Street Moss Vale NSW 2577 Lot 1 DP 1229770	NPM Bray	Section 4.55 Modification (Add Pergola to Secondary Dwelling)	18/02/2021		#PENDING		
45	21/0001.08	123 Darraby Drive Moss Vale NSW 2577 Lot 5117 DP 1262565	R Klasen, DA Klasen	Section 4.55 Modification (Retaining Wall)	28/01/2021		#APPROVED	05/02/2021	
46	21/1176	28 Eloura Lane Moss Vale NSW 2577 Lot 226 DP 1135120	ABD Neylan, SM Neylan	Residential Alterations and Additions (Internal Alterations)	28/01/2021		#PENDING		
47	21/1193	38 Chapman Street Moss Vale NSW 2577 Lot 4 DP 8915	IA Pilgrim, MA Pilgrim	Residential Alterations and Additions (Extensions)	01/02/2021		#APPROVED	18/02/2021	
48	21/1196	9 Peppermint Drive Moss Vale NSW 2577 Lot 22 DP 1252867	SK Narayan, BM Narayan	Dwelling House	02/02/2021		#PENDING		
49	21/1208	Kalaurgan 24 Browley Street Moss Vale NSW 2577 Lot A DP 329683	CMS Stiff	Residential Alterations and Additions (New Carport. Dwelling Extensions and Internal Alterations)	03/02/2021		#PENDING		

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
50	21/1212	68 Darraby Drive Moss Vale NSW 2577 Lot 5222 DP 1266473	MC Bomford	Dwelling House	04/02/2021		#PENDING		
51	21/1223	80 Darraby Drive Moss Vale NSW 2577 Lot 5216 DP 1266473	LE Weinert, P Weinert	Dwelling House	05/02/2021		#PENDING		
52	21/1226	26 Lovelle Street Moss Vale NSW 2577 Lot A DP 379040	McIntyre Superannua- tion Fund Pty Limited	Dwelling House	05/02/2021		#PENDING		
53	21/1243	15a Arthur Street Moss Vale NSW 2577 Lot 1 DP 596061	RJ D'Adam	Residential Alterations And Additions (Extensions)	09/02/2021		#PENDING		
54	21/1259	9 Lytton Road Moss Vale NSW 2577 Lot 35 Sec D DP 2810	A Phillips	Secondary Dwelling	11/02/2021		#PENDING		
55	21/1263	25 Valetta Street Moss Vale NSW 2577 Lot 1 DP 163878	WA Spence, EM Spence	Residential Alterations and Additions - Extensions, Garage	12/02/2021		#PENDING		
56	21/1297	17a Young Road Moss Vale NSW 2577 Lot 3 DP 1222061	MJ Elphick, MA Elphick	Residential Alterations and Additions (Shed)	19/02/2021		#PENDING		
57	21/1301	26 Lovelle Street Moss Vale NSW 2577 Lot A DP 379040	McIntyre Superannua- tion Fund Pty Limited	Demolish Existing Dwelling	19/02/2021		#PENDING		
58	21/1306	17 Anembo Street Moss Vale NSW 2577 Lot 1261 DP 1248764	MM Zaja, P Zrilic	Dwelling House	19/02/2021		#PENDING		
59	21/1269	91 McGuinness Drive Mount Murray NSW 2577 Lot 10 DP 215550	MA Eggleton, SJ Raftery	Residential Alterations and Additions (Extensions, Internal Alterations and Swimming Pool	15/02/2021		#PENDING		

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY
AND DEVELOPMENT SERVICES**

	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
60	21/1270 **	264 Teudts Road Penrose NSW 2579 Lot 1 DP 558278	M Cady, A Allen	Residential Alterations and Additions (Shed)	16/02/2021		#PENDING		
61	21/0574.01	15 Plumb Street Renwick NSW 2575 Lot 1387 DP 1234992	GC Davis	Section 4.55 Modification (Minor Extension and Internal Alterations)	29/01/2021		#APPROVED	19/02/2021	
62	21/1183	1 Plumb Street Renwick NSW 2575 Lot 1380 DP 1234992	SJ Shah, AS Shah	Dwelling House	29/01/2021		#APPROVED	12/02/2021	
63	21/1199	2 Solomon Street Renwick NSW 2575 Lot 1330 DP 1234992	H Singh, P Kaur	Dwelling House	02/02/2021		#APPROVED	12/02/2021	
64	21/1201	9 Jefferis Avenue Renwick NSW 2575 Lot 57 DP 1221206	D John, B Philip	Dwelling House	02/02/2021		#PENDING		
65	21/1206	7 Sherwin Crescent Renwick NSW 2575 Lot 3027 DP 1260441	A Kaur, VS Batra	Dwelling House	03/02/2021		#PENDING		
66	21/1220	18 Windeyer Street Renwick NSW 2575 Lot 1390 DP 1234992	RS Hucker, AK Hucker	Dwelling House	05/02/2021		#PENDING		
67	21/1222	47C Renwick Drive Renwick NSW 2575 Lot 35 DP 1241461	JK Arceno, GF Arceno	Dwelling House	05/02/2021		#PENDING		
68	21/1240	49C Renwick Drive Renwick NSW 2575 Lot 31 DP 1241461	J Silwal	Dwelling House	09/02/2021		#PENDING		
69	21/1244	71 Renwick Drive Renwick NSW 2575 Lot 1006 DP 1163906	PJ Barreca, JA Fisher	Residential Alterations and Additions (Awning and Deck)	09/02/2021		#PENDING		

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
70	21/1245	8 Sherwin Crescent Renwick NSW 2575 Lot 3024 DP 1260441	JC Benecke	Dwelling House	09/02/2021		#PENDING		
71	21/1252	52 Challoner Rise Renwick NSW 2575 Lot 1258 DP 1221207	DJ Drewe, RE Drewe	Residential Alterations and Additions (Swimming Pool)	10/02/2021		#PENDING		
72	21/1304	10 Sherwin Crescent Renwick NSW 2575 Lot 3025 DP 1260441	LC Redding	Dwelling House	19/02/2021		#PENDING		
73	21/0354.07	100 Vandenberg Road Robertson NSW 2577 Lots 52-57 DP 30332	NP Rojas, DA Zecevic	Section 4.55 Modification (Relocate Water Tank and Access for Fire Truck)	04/02/2021		#PENDING		
74	21/1234	2264 Kangaloon Road Robertson NSW 2577 Lot 2 DP 500519	K Bunda	Change of Use – Convert Dwelling to Farm Stay Accommodation	08/02/2021		#PENDING		
75	21/1261	1 Cattle Valley Close Robertson NSW 2577 Lot 1 DP 1253189	RJ Handley	Dwelling House	12/02/2021		#PENDING		
76	20/0730.07	248 Exeter Road Sutton Forest NSW 2577 Lot 1 DP 872651	HJ Green, S Green	Section 4.55 Modification (Internal and External Alterations)	28/01/2021		#APPROVED	03/02/2021	
77	21/1239	3055 Canyonleigh Road Sutton Forest NSW 2577 Lot 5 DP 708386	HM Cowlshaw, JA O'Riordan	Residential Alterations and Additions (Extensions and New Garage)	09/02/2021		#PENDING		
78	21/1180	61 Colo Street Welby NSW 2575 Lot 5 Sec 21 DP 759070	RI Seville	Residential Alterations and Additions (Shed)	28/01/2021		#PENDING		
79	21/1303	89 Berrima Street Welby NSW 2575 Lot 32 DP 1120194	BK Norman, AM Norman	Dwelling House	19/02/2021		#PENDING		

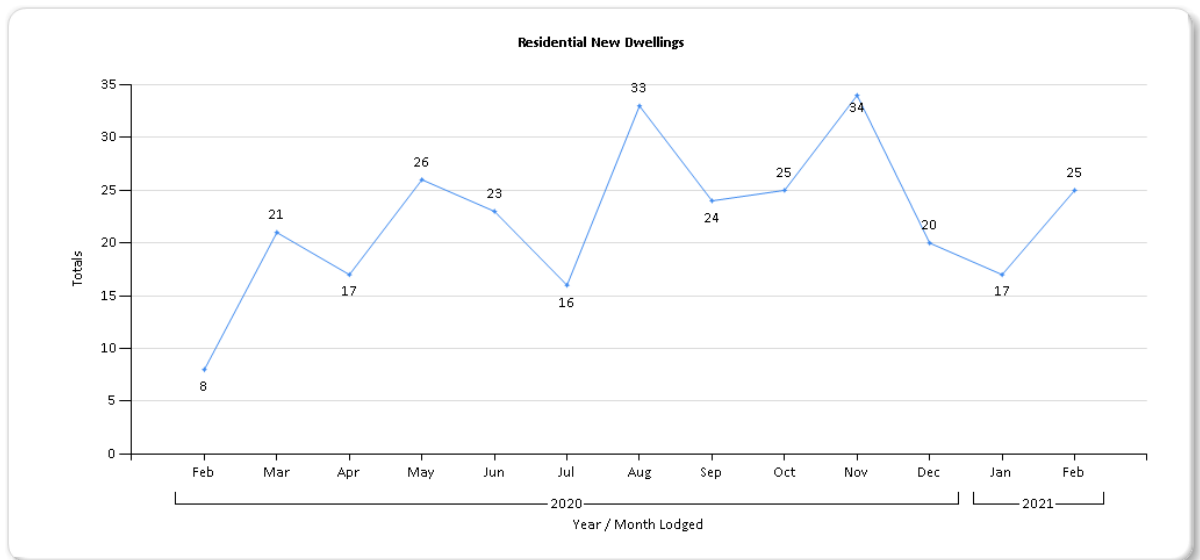
AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



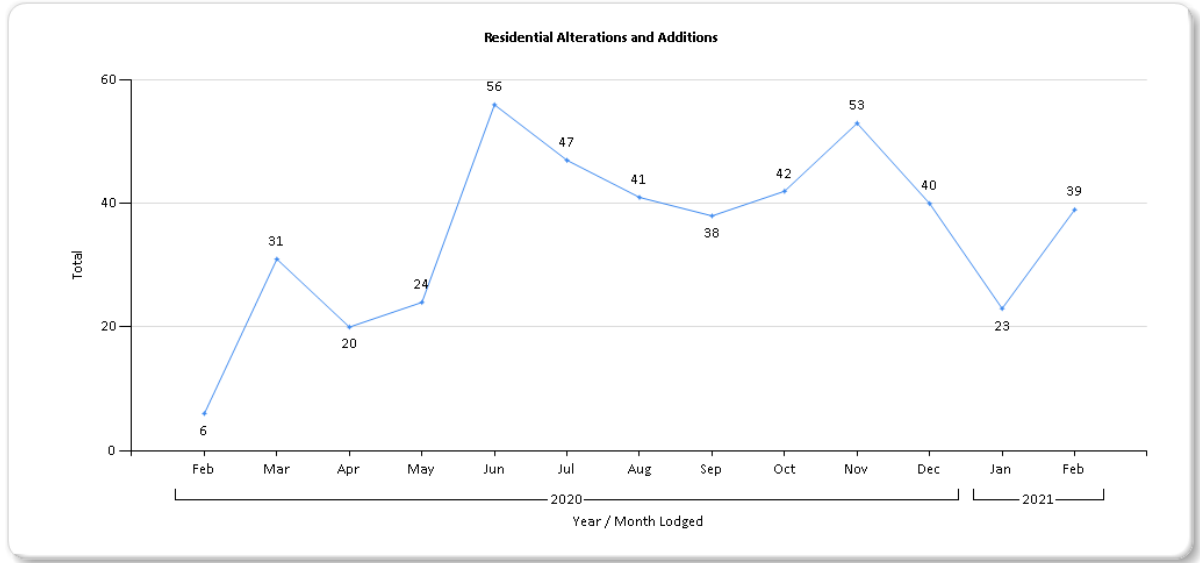
	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
80	21/1246	543 Myra Vale Road Wildes Meadow NSW 2577 Lot 23 DP 626594	JA Newton	Residential Alterations and Additions (Shed)	10/02/2021		#PENDING		
81	21/1190 **	41 Camden Street Wingello NSW 2579 Lot 13 Sec 2 DP 759097	TM Polycarpou	Dwelling House	01/02/2021		#PENDING		
82	21/1228	14 Jemima Lane Wingello NSW 2579 Lot 6 DP 1036841	W Hesselung, RC Hesselung	Residential Alterations and Additions (Shed)	08/02/2021		#PENDING		
83	21/1294 **	35 Bumballa Road Wingello NSW 2579 Lot 5 DP 1012679	T Mitrevski, S Mitrevski	Dwelling House	18/02/2021		#PENDING		
84	21/1172	17 Kent Street Yerrinbool NSW 2575 Lot 305 DP 1172501	DB McCann, KL McCann	Residential Alterations and Additions (Swimming Pool)	27/01/2021		#PENDING		



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



ATTACHMENTS

There are no attachments to this report.

12.3 Proposed Bowral Development Control Plan Amendments for Conservation Precincts - Public Exhibition Results

Reference:	5700/70, 5901/68
Report Author:	Strategic Land Use Planner (Heritage)
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Identify, protect and promote places of significant cultural heritage

PURPOSE

The purpose of this report is to inform Council of the results of the public exhibition of the proposed amendments to the Bowral Township Development Control Plan in relation to conservation precinct controls. The primary purpose of these amendments is to include the new Aitken Road Conservation Area in the existing controls and to make some minor amendments and additions to the existing conservation area development controls to protect significant elements in the Bowral heritage conservation areas.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

1. **THAT** the draft amendments to the Bowral Township Development Control Plan relating to Conservation Precincts be adopted.
2. **THAT** a notice of Council's decision be published within 28 days which includes the date of commencement of the amended Bowral Township Development Control Plan.

REPORT

BACKGROUND

Following an investigation of heritage significance for some identified properties in Aitken Road, Bowral, triggered by an Interim Heritage Order in early 2019, an amendment to the Wingecarribee Local Environmental Plan 2010 was published in November 2020 which established the heritage listing of three properties (nos. 25-27, 33-37 and 39-41 Aitken Road) and a new heritage conservation area (the Aitken Road Conservation Area).

On 25 November 2020, Council considered a report on proposed amendments to the Bowral Township Development Control Plan (Bowral DCP) to include the Aitken Road Conservation Area within the existing Conservation Precinct controls in that Plan. Council resolved at that meeting:

MN 479/20

1. ***THAT the draft amendments to the Bowral Township Development Control Plan that relate to the Aitken Road Conservation Area be placed on public exhibition for a period of 9 weeks from Wednesday 2 December 2020 to Friday 5 February 2021;***

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



2. ***THAT Council notify affected property owners and residents of the exhibition period; and***
3. ***THAT a report be presented to Council at the conclusion of the exhibition period.***

Figure 1 shows the location of the Bowral Conservation Area and the Aitken Road Conservation Area (both shown outlined in red and hatched) and the heritage items in and around these areas (coloured brown).

REPORT

The proposed Bowral DCP Conservation Precinct controls—largely contained in Section C14 of the Plan—were placed on public exhibition from Wednesday 2 December 2020 to Friday 5 February 2021. Documents could be viewed on Council’s consultation website, *Your Say Wingecarribee*, and printed copies of the proposed amendments were available at the Customer Service Centre at the Civic Centre and at Bowral Library.

One (1) submission was received which supported the proposed amendments to the DCP, particularly as they complement the new Aitken Road Conservation Area. The submission also congratulates Council and staff “for the effort directed in respecting the values and character of the Aitken Road Conservation Area in the face of ongoing development pressures”.

DCP AMENDMENTS

A copy of the proposed amendments to the Bowral DCP which are presented to Council for adoption are contained at **ATTACHMENT 1**. This attachment shows the proposed amendments which were publicly exhibited, together with some additional minor wording amendments as indicated below.

In addition to the proposed amendments as exhibited, the following additional amendments to the DCP are recommended for adoption.

Part C1.4 Structure of this Part of the Plan

- Amend singular references to Bowral Conservation Precinct to the plural.
- Add references to the Aitken Road Conservation Area, where relevant.
- Amend Figure C1.2 which shows the Bowral Conservation Area to also show Aitken Road Conservation Area.
- Other minor amendments to improve readability.

Part C14 Bowral Conservation Precincts

- Amend the labels to Figure C14.1, C14.2 and C14.3 to read Conservation Areas rather than Conservation Precincts.

These amendments improve the readability of the document and do not introduce new controls or a change in approach and it is considered immaterial that they were not indicated in the publicly exhibited version of the document.

COMMUNICATION AND CONSULTATION

Community Engagement

Community engagement on the proposed amendments was undertaken in accordance with Council policy and legislative requirements and included letters sent to property owners and residents within the Aitken Road Conservation Area.

Internal Communication and Consultation

Internal consultation was undertaken with Council's Heritage Advisor in relation to the proposed amendments.

External Communication and Consultation

Aside from what is included in this report, no external communication and consultation was undertaken.

SUSTAINABILITY ASSESSMENT

- **Environment**

The inclusion of the Aitken Road precinct as a heritage conservation area and to include controls for this precinct within the Bowral DCP will help protect this urban environment from inappropriate development and loss of vegetation which contributes to the streetscape character of this area.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

The inclusion of the Aitken Road precinct as a heritage conservation area within the WLEP 2010 and the proposal to include it within the Bowral Township DCP recognises the value that the community places on this area of heritage significance.

- **Governance**

The public exhibition of the proposed amendments to the Bowral Township DCP was undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications. The draft amendments are managed by Council's Strategic Planning staff.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



RELATED COUNCIL POLICY

No other Council policies are affected by this report.

OPTIONS

The options available to Council are:

Option 1

This option is that Council adopt the amendments to the Bowral DCP as contained in **ATTACHMENT 1**. This option forms the recommendation to this report, as follows:

1. **THAT the draft amendments to the Bowral Township Development Control Plan relating to Conservation Precincts be adopted.**
2. **THAT a notice of Council's decision be published within 28 days which includes the date of commencement of the amended Bowral Township Development Control Plan.**

Option 2

This option is that Council does not proceed with the proposed amendments. This option is not recommended due to the need for additional guidance for development within the new Aitken Road Conservation Area.

Option 1 is the recommended option to this report.

CONCLUSION

The proposed amendments to the Bowral DCP to include the Aitken Road Conservation Area within the existing Conservation Precinct controls and to make minor amendments to those controls, will ensure that new development within the existing Bowral Conservation Area and the new Aitken Road Conservation Area will protect the significant elements of these special areas of the Shire.

ATTACHMENTS

1. Proposed Amendments to Bowral Development Control Plan - *circulated under separate cover*

12.4 Planning Proposal for Provisions Relating to Secondary Dwellings in Rural Zones

Reference:	5901
Report Author:	Strategic Land Use Planner (Heritage)
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community	
Strategic Plan:	Provide a mixture of housing types that allow residents to meet their housing needs at different stages of their lives and support affordable living

PURPOSE

The purpose of this report is to obtain a resolution of Council to prepare a Planning Proposal to introduce a new control within the Wingecarribee Local Environmental Plan 2010 related to secondary dwellings within rural zones which has been necessitated by a recent amendment to the Standard Instrument Local Environmental Plan which affects Wingecarribee Local Environmental Plan 2010.

RECOMMENDATION

THAT a Planning Proposal be prepared and submitted to the Department of Planning, Industry and Environment for a Gateway Determination under section 3.33 of the *Environmental Planning and Assessment Act 1979*, to insert a new clause 5.5 in the *Wingecarribee Local Environmental Plan 2010* to provide development standards for secondary dwellings in rural zones in accordance with the *Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020* and consistent with Council's established standards for size and separation of secondary dwellings.

REPORT

BACKGROUND

On 18 December 2020, the *Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020* was published. A copy of this Order is contained at **ATTACHMENT 1**. This order amended the Standard Instrument Local Environmental Plan, on which Wingecarribee Local Environmental Plan (WLEP) 2010 is based, and made a mandatory and automatic amendment to the controls for secondary dwellings contained in subclause 9 of clause 5.4 (Controls relating to miscellaneous permissible uses). The amendments came into force on 1 February 2021.

REPORT

The amendment makes a change to the development standards in place for secondary dwellings to specifically exclude secondary dwellings in rural zones. Currently, secondary dwellings are permissible in the following Rural Zones: RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots. The wording of the amended subclause is reproduced below with the changes indicated in red.



5.4 Controls relating to miscellaneous permissible uses

- (9) **Secondary dwellings on land other than land in a rural zone** If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—
- (a) 60 square metres,
 - (b) 33% of the total floor area of the principal dwelling.

It is important to note that this new clause—which is now in force—only excludes the Rural Zones (RU1, RU2 and RU4) and not any of the Environmental Zones, which make up the majority of the recognised rural and pastoral areas of the Shire. Secondary dwellings are permissible within the E3 Environmental Management and E4 Environmental Living zones which are the most abundant of the Environmental Zones. The Rural Zones (excluding RU3 Forestry in which secondary dwellings are prohibited) are mainly concentrated in the Canyonleigh, Belanglo and Berrima/Joadja/Woodlands/High Range areas. There is also some Rural Zoned land around Colo Vale/Alpine; on the edges of Mittagong, Bowral and Moss Vale; in the Werai/Exeter and Bundanoon area; and around Penrose.

In addition to the mandatory change in clause 5.4(9) of the WLEP, the Order provides for an optional clause (which would be inserted as clause 5.5 of the WLEP 2010) as follows:

5.5 Controls relating to secondary dwellings on land in a rural zone [optional]

If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—
 - (i) [insert number] square metres,
 - (ii) [insert number]% of the total floor area of the principal dwelling, and
- (b) the distance between the secondary dwelling and the principal dwelling must not exceed [insert number] metres.

Consistent with the approach that has been in place for all secondary dwellings for some time, it is intended to adopt this clause with the following numerical standards:

- **60** square metres
- **33%** of the total floor area of the principal dwelling
- Distance between the secondary dwelling and the principal dwelling must not exceed **50** metres.

The distance standard of 50 metres has been adopted from the Rural Lands Development Control Plan (DCP) (applicable to RU1 and RU2 zones) and the Rural Living DCP (applicable to the RU4 zone) where it has been a guideline for the location of secondary dwellings in the rural zones for more than 10 years.

COMMUNICATION AND CONSULTATION

Community Engagement

Should the Planning Proposal be supported by the Department, community engagement would be undertaken in accordance with the Gateway Determination.

Internal Communication and Consultation

Internal consultation with Council's Planning, Development and Regulatory Services staff has been undertaken on this proposed amendment.

External Communication and Consultation

Should the Planning Proposal be supported by the Department, external consultation would be undertaken in accordance with the Gateway Determination.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed amendment to the WLEP 2010 will ensure that consistent development controls are applied to secondary dwelling applications.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications in relation to this report. The preparation of the Planning Proposal will be undertaken with existing staff resources.

RELATED COUNCIL POLICY

There are no related Council policies.

OPTIONS

The options available to Council are:

Option 1

Option 1 is to support the inclusion of the new clause within the WLEP 2010. This option forms the recommendation of this report, as follows:

THAT a Planning Proposal be prepared and submitted to the Department of Planning, Industry and Environment for a Gateway Determination under section 3.33 of the *Environmental Planning and Assessment Act 1979*, to insert a new clause 5.5 in the *Wingecarribee Local Environmental Plan 2010* to provide development standards for secondary dwellings in rural zones in accordance



with the *Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020* and consistent with Council's established standards for size and separation of secondary dwellings

Option 2

Option 2 is to not support the inclusion of new clause within the WLEP 2010. This option is not recommended as it would mean that there would be no development controls for secondary dwelling developments in the Shire's rural zones. This would result in increasing development pressure for large secondary dwellings within these zones and is not considered to be a desirable outcome.

Option 1 is the recommended option to this report.

CONCLUSION

While the majority of our recognised rural areas are not actually within Rural Zones, it is important that there are standards in place for secondary dwellings within the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones. This report recommends that Council prepare a Planning Proposal to adopt the optional clause for secondary dwellings in rural zones with appropriate numerical standards consistent with the approach followed by Council to date.

ATTACHMENTS

1. Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020.



New South Wales

Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020

under the

Environmental Planning and Assessment Act 1979

MARGARET BEAZLEY, Governor

I, the Honourable Margaret Beazley AC QC, Governor of New South Wales, with the advice of the Executive Council, and in pursuance of section 3.20 of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 16th day of December 2020.

By Her Excellency's Command,

ROB STOKES, MP
Minister for Planning and Public Spaces

12.4 Planning Proposal for Provisions Relating to Secondary Dwellings in Rural Zones

ATTACHMENT 1 Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020.



Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020 [NSW]

Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020

under the

Environmental Planning and Assessment Act 1979

1 Name of Order

This Order is *Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020*.

2 Commencement

This Order commences on 1 February 2021 and is required to be published on the NSW legislation website.

12.4 Planning Proposal for Provisions Relating to Secondary Dwellings in Rural Zones

ATTACHMENT 1 Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020.



Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020 [NSW]
 Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

[1] Clause 1.1 Name of Plan [compulsory]

Insert at the end of the clause—

Direction— If required, an additional name may be added in brackets before the year to distinguish the Plan from another Plan in the same local government area.

[2] Clause 5.4 Controls relating to miscellaneous permissible uses [compulsory]

Omit clause 5.4(9). Insert instead—

(9) Secondary dwellings on land other than land in a rural zone

If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—

- (a) 60 square metres,
- (b) [insert number]% of the total floor area of the principal dwelling.

[3] Clause 5.5

Insert after clause 5.4—

5.5 Controls relating to secondary dwellings on land in a rural zone [optional]

If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—
 - (i) [insert number] square metres,
 - (ii) [insert number]% of the total floor area of the principal dwelling, and
- (b) the distance between the secondary dwelling and the principal dwelling must not exceed [insert number] metres.

Direction— This clause may also be adopted without paragraph (a) or without paragraph (b).

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

Reference:	5701/7
Report Author:	Deputy General Manager Corporate, Strategy and Development Services
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
Link to Community Strategic Plan:	Manage and plan for future water, sewer and stormwater infrastructure needs

PURPOSE

The purpose of this Council report is to table the Final Report delivered by the NSW Ombudsman in response to their investigation of a complaint relating to Development Servicing Charges. A redacted version of the Final Report as provided by the NSW Ombudsman is included in **Attachment 1**.

Council needs to determine what action to take having regard to the recommendations made in the Ombudsman's Report.

RECOMMENDATION

Submitted for determination by Council.

REPORT

BACKGROUND

Council considered a report in Closed Council at its meeting held on 22 May 2019 which sought direction to a request for a refund of Developer Charges levied on a subdivision approved in 2004 in which the NSW Ombudsman became involved. As a result of the report, Council resolved as follows:

THAT Council write to the NSW Ombudsman and advise that Council will not implement its request to provide a refund to the applicant for the following reasons:

- a) ***Council has acted in accordance with the appropriate legislation, NSW Guidelines and case law in levying developer charges under the DSP applicable at the time an application for a certificate of compliance is made.***
- b) ***There is no formal resolution of Council that would allow pre-2007 development consents to be levied at the rate specified in the relevant condition of consent.***

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Council engaged one of its Panel Lawyers, Lindsay Taylor Lawyers to act on its behalf in relation to this matter.

The following is an extract of the information that was contained in the closed report to Council.

In August 2018, the Ombudsman's office wrote to Council with the following request:

Since [REDACTED] development consent was granted before 1 January 2007 and it contained the same condition (as worded), which council accepted as being flawed, I request that council, in accordance with its own resolution of 22 July 2009:

- 1) Accepts that the water and sewerage contribution rates applicable to [REDACTED] [REDACTED] should be as quoted in condition 49 of [REDACTED] development consent LUA04/0353 (or the identical condition 50 of the amended consent);*
- 2) Refunds to [REDACTED], if applicable, any outstanding amount that represents any portion of [REDACTED] payment to council above the figures quoted in condition 49 (or condition 50 of the amended consent) – [REDACTED] claims that the remaining amount in dispute is \$167,131.36;*
- 3) Informs our office why [REDACTED] claim was not previously accepted by council in accordance with council's resolution;*
- 4) Confirms to our office how many developers have been affected by the condition and whether council has written to all of them (other than [REDACTED]) to acknowledge and apologise for the flaw; and*
- 5) Informs our office what council currently uses as the standard text for the condition of development consent that relates to the payment of water and sewerage contribution charges.*

Council sought advice from its Panel Lawyer in relation to the Ombudsman's request who on 13 September 2018, responded to the Ombudsman's request on behalf of Council. Relevant extracts of the response are detailed below:

- In 2016, the Court of Appeal stated in Nash Bros Builders Pty Ltd v Riverina Water County Council [2016] NSWCA 225 that a water supply authority has no power to require DSP Charges to be paid by way of a condition of development consent, and in advance of the making of an application for a certificate of compliance under the Water Management Act 2000 (WM Act). That is, there is no power to impose a condition on a development consent requiring a specific DSP Charge to be paid.*
- In light of that decision, the advice of 2009 to the effect that a development consent could require DSP Charges, and fix the rate of those DSP Charges to those noted in the consent condition, cannot now be considered to be correct at law.*
- Council therefore remains of the view that it is entitled to charge DSP Charges above those noted in the Consent, in accordance with the plans applicable at the time an application is made for a certificate of compliance.*
- Council cannot be bound by advice which is now out of date and inconsistent with Court of Appeal authority, or by a resolution based on that advice, where the resolution did not apply to the particular Consent.*

On this basis, the Ombudsman was advised that Council does not intend to refund the DSP charges to the applicant to reflect the rates specified in the 2006 consent.

REPORT

On 9 February 2021, Council received the final report from the Acting NSW Ombudsman concerning the investigation into the conduct of Council relating to the payment of water and sewerage charges to developers, the closure of parts of Council meetings, and Council's compliance with earlier provisional recommendations by his office.

A draft report was provided to the Minister for Local Government, the Hon Shelley Hancock, MP on 16 December 2020 to enable her to decide whether to consult with the Ombudsman under s25 of the Ombudsman Act 1974. The Minister advised the Ombudsman's Office on 1 February 2021 that she did not require a consultation.

The report has been made final pursuant to s 26 of the Ombudsman Act. A copy of the redacted report is provided as **Attachment 1** to this Council report which is in accordance with one of the recommendations made within the Ombudsman Report on page 3 (Recommendation 5).

An extract of the recommendations of the Ombudsman's Report is as follows:

Recommendations

Under s 26(2)(a)(b) and (e) of the Ombudsman Act, I recommend that Wingecarribee Shire Council:

1. Refund [REDACTED] for the difference between the rates listed in her initial development consent and those she was ultimately required to pay.
2. Post a notice on its website, issue a media release and advertise in a local newspaper inviting developers to contact Council if their consents include the standard condition and were granted before 1 January 2007, so Council can:
 - consider whether to refund any fees these developers paid over and above the fees listed in their consents
 - if necessary, amend its records to ensure Council does not charge the relevant developers higher fees in the future.
3. Write to the developers who hold consents [REDACTED] and [REDACTED], and advise them that any water and sewerage fees they are required to pay if they apply for a compliance certificate will be the fees listed in their consents.
4. Ensure its practice regarding closing Council meetings – and providing the required public record of why part of a meeting is closed – comply with the *Local Government Act 1993* and Office of Local Government guidelines.
5. Table the final Ombudsman report on this matter in a public Council meeting.
6. Give its Audit, Risk and Improvement Advisory Committee a copy of the final Ombudsman report.
7. Provide us with updates every six months on its progress implementing the above recommendations.

It is noted that the Ombudsman's Office does not find that Council was legally bound by the rates it had set out in the development consent. However, the Office finds it was unreasonable for Council to later apply higher rates in circumstances where it had failed to provide any prior notice that the rates would be subject to increases.

The NSW Ombudsman has considered at the core of their investigation is how a condition of development consent was worded and whether the beneficiary of the consent was sufficiently informed that the fees as quoted could at a future point in time be increased and that the condition of consent did not make reference to the Development Servicing Plan that was in place at the time the consent was issued.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



The Ombudsman has therefore concluded in their opinion developers had no prior notice that the fees they would ultimately be charged could increase over time and as such developers were deprived of certainty as to the financial commitment they needed to meet.

Implications of Not Complying with the Ombudsman's Recommendations

Under the *Ombudsman Act 1974*, the Ombudsman does not have the power to direct a Council in doing something and can only recommend as has been done per the extract above.

Notwithstanding, under Section 27 of the *Ombudsman Act* provision is made that where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of the Report, the Ombudsman may make a report to the Presiding Officer of each House of Parliament and must also provide the responsible Minister with a copy of the report. The responsible Minister must then make a statement to the House of Parliament in which the Minister sits in response to the report not more than 12 sitting days after the report is made to the Presiding Officer.

COMMUNICATION AND CONSULTATION

Community Engagement

No Community Engagement has taken place in regard to the Final Report.

Internal Communication and Consultation

The Final Report has been considered by Council staff and sent to Council's Panel Solicitors.

External Communication and Consultation

No external communication or consultation has taken place in regard to the Final Report

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



COUNCIL BUDGET IMPLICATIONS

If Council resolves to give effect to the recommendations of the Ombudsman, Council will be required to refund the applicant **\$167,131.36** in water and sewer DSP charges to the applicant holding Development Consent LUA04/0353.

Further, Council would be required to provide a refund to all pre-2007 consents who paid their water and sewer contribution charges in amounts above those stipulated in their consents, but who have not yet received refunds.

Finally, the Ombudsman also requested that Council honour the rates specified in the consents for all pre-2007 consents that have not yet paid their water and sewer contribution charges.

From the information available in Council's information systems, a total of four (4) pre-2007 consents were found that would potentially be eligible for the pre-2007 DSP charges. Should Council accept the recommendations of the NSW Ombudsman, recommendations 2 and 3 cover these scenarios.

If the direction of Council is to adhere to the recommendation of the Ombudsman, the refunds will be funded through Council's externally restricted cash reserve for Water and Sewer DSP Charges.

RELATED COUNCIL POLICY

The DSP charges were levied in accordance with the relevant legislation and Council's S94/94A & S64 Assessment Policy.

OPTIONS

The options available to Council are:

Option 1

THAT Council accept all 7 recommendations made by the NSW Ombudsman as outlined on page 3 of the report in **Attachment 1**.

Option 2

THAT Council accept recommendations (insert the numbers) made by the NSW Ombudsman as outlined on page 3 of the report in **Attachment 1** acknowledging **Recommendation 5** has been satisfied having tabled the Ombudsman's Final Report as attached in a Public Council Meeting.

Option 3

THAT Council not accept any of the recommendations made by the NSW Ombudsman as outlined on page 3 of the report in **Attachment 1** other than Recommendation 5 which has been satisfied having tabled the Ombudsman's Final Report in a Public Council Meeting.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



CONCLUSION

Council's Panel lawyers provided the Ombudsman with legal advice confirming that the NSW Guidelines and recent case law both confirm Council's position of applying the DSP that is applicable at the time an application is made for a certificate of compliance.

Notwithstanding, the NSW Ombudsman has considered at the core of their investigation is how a condition of development consent was worded and whether the beneficiary of the consent was sufficiently informed that the fees as quoted could at a future point in time be increased and that the condition of consent did not make reference to the Development Servicing Plan that was in place at the time the consent was issued.

The Ombudsman is of the opinion that developers had no prior notice that the fees they would ultimately be charged could increase over time and as such developers were deprived of certainty as to the financial commitment they needed to meet.

Following the initial investigation conducted in 2009, Council addressed the issue of containing the necessary information within the wording of the condition of consent to avoid any doubt that the levied amounts within the condition reflect the current rates at the time the consent was issued and subject to indexation or new Development Servicing Plan.

ATTACHMENTS

1. NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council

Mark Pepping

Deputy General Manager Corporate, Strategy and Development Services

Wednesday 3 March 2021



Sensitive: Legal

Final report

Section 26 of the Ombudsman Act 1974

Investigation into Wingecarribee Shire Council

February 2021

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12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council




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 NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

 www.ombo.nsw.gov.au

@ nswombo@ombo.nsw.gov.au

 (02) 9286 1000
For general enquiries

1800 451 524
Toll free outside Sydney metro area only

 (02) 9283 2911

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Investigation into Wingecarribee Shire Council

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Contents

1 Executive summary	1
1.1 Complaint	1
1.2 What we considered	1
1.3 Conclusions on key issues	1
1.4 Findings and recommendations	3
1.5 Council's response to our provisional findings and recommendations	4
2 Background	6
2.1 Summary of facts	6
3 Conclusions on key issues	7
3.1 Council's treatment of certain developers was unreasonable	7
3.2 It was unreasonable for Council to close its meeting to discuss contact with the Ombudsman, and unlawful not to publicly record why it was closed	12
3.3 Council did not keep to its agreement in 2009	14
4 Findings and recommendations	18
4.1 Findings	18
4.2 Recommendations	18
5 Supporting information	19
5.1 The investigation timelines	19
Appendix 1: Council's current standard condition of consent	21
Appendix 2: [REDACTED] development consent condition	23
Appendix 3: [REDACTED] development consent condition	24
Appendix 4: 2009 report	26
Appendix 5: Council response to 2020 statement of provisional findings and recommendations	55

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Investigation into Wingecarribee Shire Council

Sensitive: Legal

1 Executive summary

This report is issued under s 26 of the *Ombudsman Act 1974* and sets out the Ombudsman's findings and recommendations following an investigation into Wingecarribee Shire Council (Council).

Section 25 (2) of the Ombudsman Act provides that the Ombudsman shall inform the responsible Minister that the Ombudsman proposes to issue a report under s 26 and consult the Minister, if requested, before making the report final.

This report was provided to the Minister for Local Government on 16 December 2020. The Minister wrote to the Ombudsman on 01 February 2021 indicating that she did not wish to consult.

1.1 Complaint

In 2018, we received a complaint from a property developer, [REDACTED], claiming that Council required her to pay water and sewerage management fees at a rate substantially higher than that which was originally specified by the relevant condition of her development consent.

When a local council is the water supply authority, the council has the power to require developers to pay a contribution towards water and sewerage management works. Some councils choose to include a condition in development consents specifying that this contribution will be required. In [REDACTED] case, the condition in her development consent specified the amount payable for water and sewerage works. It did not include any statement to inform her that the fees may increase in the future.

1.2 What we considered

In this investigation we considered whether:

- Council treated [REDACTED] reasonably
- Council treated all developers with the same conditions in their consent the same way
- Council acted lawfully in closing a meeting to consider contact with our office.

1.3 Conclusions on key issues

Council's treatment of certain developers, including [REDACTED], was unreasonable

At the core of this investigation is how a condition (**standard condition**) in the complainant's development consent was worded, and how this condition was applied by Council. The condition in question – which was a standard condition also present in the consents of other developers – listed the fees payable for water and sewerage works under the *Water Management Act 2000 (WM Act)*.

The standard condition did not include any notice, express or implied, that the fees could increase in the future. It also contained no reference to the Developer Contribution Plan (DCP) that was in place at the time the consent was issued.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges**ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council****Investigation into Wingecarribee Shire Council****Sensitive: Legal**

This meant that developers, including [REDACTED], had no prior notice that the fees they would ultimately be charged could increase – and in some cases, increase substantially. The lack of notice resulted in [REDACTED] and other developers being deprived of certainty as to the financial commitment they needed to meet.

We note that Council has subsequently amended its standard condition to include the appropriate information about the possibility of fee increases.

It was unreasonable for Council to close its meeting to discuss this matter, and it was unlawful to fail to minute the meeting as required

In May 2019, Council closed part of a meeting to the public, during which it discussed [REDACTED] complaint to us and the contact from our office. There are clear legislative requirements around why and how part of a Council meeting can be closed, and what information must be included on the public record when this happens. We concluded that some of these requirements were not met, and the meeting should not have been closed.

Council did not keep to an earlier undertaking it gave to the Ombudsman

Our office previously investigated Council about substantially the same issues some time ago. In April 2008, a different developer complained to us about the way Council charged him for water and sewerage fees, and we commenced an investigation.

The circumstances in both matters are very similar – Council charged both the developers higher fees than the amounts listed in their development consents.

As a consequence of the provisional findings and recommendations of our earlier investigation, in 2009 Council gave us an undertaking that it would note in its records that anyone holding a development consent dated before 2007 (as [REDACTED] did) would not have to pay an increased fee different from that set out in the consent.

However, at a later meeting in 2009, Council determined instead to write to all those with a development consent dated before 2007 to tell them that they would have to pay water and sewerage fees in line with the Development Servicing Plan (DSP) in place at the time they applied for a construction certificate.

Council has now told us that due to an oversight, it did not write to all developers, and did not write to [REDACTED].

We discontinued the earlier investigation in 2009 after Council agreed to accept the provisional findings and recommendations. However, as the current investigation demonstrates, Council did not implement all those recommendations as originally agreed.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

1.4 Findings and recommendations

Findings

I make the following findings about Wingecarribee Shire Council's conduct under s 26 of the *Ombudsman Act 1974*:

1. Council acted unreasonably within the meaning of s 26(1)(b) by charging [REDACTED] at a higher rate than that listed in her development consent without providing any prior notice of the increase.
2. Council acted unreasonably within the meaning of s 26(1)(b) by failing to treat all developers who received consents before 1 January 2007 in the same way.
3. Council acted unreasonably within the meaning of s 26(1)(b) in closing part of its 22 May 2019 meeting.
4. Council acted contrary to law within the meaning of s 26(1)(a) by failing to minute and publicly report on its reasons for closing part of its 22 May 2019 meeting.

Recommendations

Under s 26(2)(a)(b) and (e) of the *Ombudsman Act*, I recommend that Wingecarribee Shire Council:

1. Refund [REDACTED] for the difference between the rates listed in her initial development consent and those she was ultimately required to pay.
2. Post a notice on its website, issue a media release and advertise in a local newspaper inviting developers to contact Council if their consents include the standard condition and were granted before 1 January 2007, so Council can:
 - consider whether to refund any fees these developers paid over and above the fees listed in their consents
 - if necessary, amend its records to ensure Council does not charge the relevant developers higher fees in the future.
3. Write to the developers who hold consents [REDACTED] and [REDACTED], and advise them that any water and sewerage fees they are required to pay if they apply for a compliance certificate will be the fees listed in their consents.
4. Ensure its practice regarding closing Council meetings – and providing the required public record of why part of a meeting is closed – comply with the *Local Government Act 1993* and Office of Local Government guidelines.
5. Table the final Ombudsman report on this matter in a public Council meeting.
6. Give its Audit, Risk and Improvement Advisory Committee a copy of the final Ombudsman report.
7. Provide us with updates every six months on its progress implementing the above recommendations.

Our recommendations address a legacy issue

These recommendations largely mirror those in our 2009 provisional statement of findings and recommendations (appendix 4). They aim to ensure that Council:

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

- deals fairly and consistently with developers in the same situation
- follows legal requirements around closing meetings, including recording why it is doing so.

1.5 Council's response to our provisional findings and recommendations

We provided Council with a statement of provisional findings and recommendations on 24 June 2020.

On 21 July 2020 Council responded to the provisional findings and recommendations, raising a number of concerns. These included several legal issues which are separately addressed at pages 10-11. The Council's response is also included at **appendix 5**.

- (a) Council raised issues of fairness with our proposed recommendation to provide a partial refund to [REDACTED].

It argued that refunding [REDACTED] and others who may be in a similar situation, and/or only charging developers who were granted development consents before 2007 at the rate listed in their consent, would lead to inequity as it would place other developers with more recent consents at a financial disadvantage.

We agree with Council that fairness is critical. As this investigation found, and as we explain later in this report, Council did not treat [REDACTED] fairly. She was not given any notice that the fee she would be charged could change in the future, either at the time her consent was issued or following Council's decision to contact all consent holders in November 2009. Instead, [REDACTED] was required to pay \$336,837.16 instead of the \$169,705.80 she would have paid had Council acted in accordance with the original consent.

It is important to note that those developers with consents issued after our earlier investigation benefited from having certainty, as their consent conditions expressly contained notice of potential increases in water and sewer fees in line with changes to the consumer price index (CPI) and the DSP in place at the time of their application for a compliance certificate.

- (b) Council noted that some developers who have been charged at higher rates would have passed these costs on to end purchasers, and as a result would profit from any refund they receive in accordance with our recommendations. This will certainly be a relevant consideration if the Council were to provide refunds to those who have paid water and sewerage servicing fees. As the Council has already acknowledged, it does not know how many developers have or had development consents containing the same standard conditions as [REDACTED] consent. Any consideration of applications for refunds by those who have already paid their water and sewerage contribution fees will need to include some consideration of whether they have passed these costs on to purchasers.

Council has suggested that the wording of the condition itself is 'advisory' only, and as such cannot be viewed as binding. As noted in the body of this report, Council's former General Manager had stated that the fees were originally included in the consent to provide certainty to developers around their contributions. This suggests that, at the time the condition was introduced, it was not viewed as merely advisory.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges**ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council****Investigation into Wingecarribee Shire Council****Sensitive: Legal**

Council has a template document for staff preparing development consents that contains its standard development consent conditions. Council has always had a similar set of conditions for staff to use, and it was the source of the standard condition. The standard condition sits within a section of the template document called 'Conditions to be satisfied prior to issuing a construction certificate' and under the subheading "Contributions". This section includes several other developer contributions, including those under section 7.11 (formerly s. 94) of the *Environmental Planning and Assessment Act 1979 (EPA Act)*. These contributions reflect essential stages in a development process, and developers should be able to look to the conditions of their consent and easily understand their obligations. (We note that the current condition provides the certainty by explicitly stating that the amount payable will change in line with CPI and future DSPs.)

- (c) Council has indicated that implementing the above recommendations would create a funding shortfall in its water and sewer funds. Funds collected for water and sewerage can only be used to provide those services to the Council area. We acknowledge that this is a genuine consideration, as it is essential that Council can plan for and provide water and sewerage services for all planned and future developments. When Council considered this issue in November 2009, the advice prepared by Council staff was that Council would be able to absorb the cost of refunds without having a detrimental impact on its water and sewer funds. A similar review of the impact of any possible refunds to [REDACTED] and others who have been affected would be required when considering the recommendations in this report.
- (d) Finally, Council highlighted a range of improvements it has made to its systems, providing it with an accurate data set of all applicants and landowners with active development consents with outstanding developer charges. Council has also implemented a range of consultative systems around future changes to its DSP, ensuring that those who are impacted are consulted appropriately and provided adequate notice of upcoming changes. These are all positive developments, and we commend Council for making these changes.

Challenges around implementation

We recognise that bushfires, flooding and COVID-19 have had a substantial impact on many Council areas, including Wingecarribee Shire Council. This may mean that it will take Council longer than usual to implement our final recommendations. Nevertheless, it is important that the issues outlined in this report are addressed.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

2 Background

2.1 Summary of facts

On 27 July 2018, [REDACTED] complained to us on behalf of [REDACTED], claiming she was wrongly charged higher rates by Council for water and sewerage contributions under the WM Act for the third stage of her subdivision development. The amount she paid in January 2018 to obtain a subdivision certificate totalled \$465,884.98. This amount was calculated by Council based on the rates in its Development Servicing Plan 2017 (DSP 2017), which took effect from 15 September 2017.

The rates [REDACTED] paid were higher than the rates listed in condition 49 (later renumbered to 50) of the development consent granted to her company [REDACTED]. The rates listed in the condition were based on Council's Development Contributions Plan 1997 (DCP 1997), which was in effect when the development consent was granted on 20 April 2006. The Development Servicing Plan 2007 (DSP 2007) came into effect from 1 January 2007, replacing the DCP 1997. Had [REDACTED] paid the rates listed in the condition, she would have paid \$169,705.80. The relevant condition is included in full at **appendix 3**.

On 28 March 2018, Council passed a resolution which in effect imposed a six-week moratorium on increases to the rates from DSP 2007. As [REDACTED] had paid the DSP 2017 rates during the moratorium period, she subsequently received a refund of \$129,047.82. This reduced her charges to the rates in DSP 2007. However, [REDACTED] felt she should only have to pay at the rates listed in her company's consent, which were taken from DCP 1997.

[REDACTED] argued that the condition clearly states the applicable rates that she was required to pay. There was no provision in the condition or elsewhere in the consent stating that the applicable rates could or would increase at any future time.

¹ [REDACTED]
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Investigation into Wingecarribee Shire Council

Sensitive: Legal

3 Conclusions on key issues

3.1 Council's treatment of certain developers was unreasonable

Conclusion

Wingecarribee Shire Council acted unreasonably in its treatment of [REDACTED] and several other developers with development consents issued before 1 January 2007.

Councils can lawfully charge for water and sewerage management works

The EPA Act designates local councils as consent authorities, while section 64 of the LG Act designates them as water supply authorities:

Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.

This means that as a consent authority, Council can:

- make decisions about development applications
- grant development consents, subject to certain conditions, such as requiring a developer to provide or improve public amenities or services in the local government area, in line with section 7.11 (formerly s 94) of the EPA Act.

The definition of public amenities or services that applies to s 7.11 of the EPA Act excludes water and sewerage services.

As a water supply authority, Council can collect payments or require certain works under s 306(2) of the WM Act. Section 306(2) of the WM Act states

As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant require the applicant to do either or both of the following:

- a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,
- b) to construct water management works to serve the development.

To calculate payments s 306(3) of the WM Act allows Council to consider:

- the value of existing water management works
- the projected cost of future water management works
- any guidelines issued by the relevant Minister.

Section 283 of the WM Act defines **water management works** as 'a water supply work, drainage work, sewerage work or flood work' including 'a work in the nature of a water supply work (being work that receives water from a water supply work under the control or management of a water supply authority)'.

Clause 226 of the Water Management (General) Regulation 2018 defines **development**, for the purposes of s 306 of the WM Act, as:

- a) the erection, enlargement or extension of a building or the placing or relocating of a building on land,

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

- a) the erection, enlargement or extension of a building or the placing or relocating of a building on land,
- b) the subdivision of land,
- c) the change of use of land or of any building situated on the land.

In line with s 306(3) of the WM Act, Councils that are water supply authorities prepare DSPs in line with the *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater*.² The Guidelines state that DSPs are required to ensure fair and transparent pricing for water supply and sewerage services.

Council's standard condition did not originally state that fees can change

The standard condition in the development consents at the centre of both [REDACTED] complaint and our earlier investigation states that the developer must pay water and sewerage fees before obtaining a construction or subdivision certificate. It also listed fees in the condition. At the time of our earlier investigation, the General Manager told us the consent was included because:

Council considered that the conditions of the development consent provided the necessary information to the applicant in regard to what contributions applied to the development and that this information was best provided in the development consent rather than in a separate notice. Development consents are used by applicants as a blueprint for their responsibilities and from that perspective, Council believes it is preferable to include the information pertaining to the water and sewer charges on the development consent rather than within a separate notice.

Council's DCP 1997, DSP 2007 and DSP 2017 all require Council to include a note in the consent making it clear that fees are subject to change. The 1997 DCP stated that:

Development consents requiring the payment of a Developer Contribution will contain a condition specifying the amount payable in monetary terms at the time the consent is issued. A note will be attached to the consent condition which will advise that the contribution rate charged will be that rate which applies at the time of payment. i.e. The rate may increase (through indexation or replacement of this plan with a new one) from the time the condition appears on the notice of development consent until the time the contribution is actually paid to Council.

Neither the standard condition included in [REDACTED] consent (at **appendix 3**) nor the consent issued to an earlier complainant to our office (at **appendix 2**) included a note with this information.

Council charged [REDACTED] fees above those listed in her development consent

Developers such as [REDACTED] rely on consents to understand their rights, responsibilities and financial commitments.

The wording of the standard condition included in development consents issued before 2007 has meant some developers, including [REDACTED], are likely to have planned to pay significantly lower fees than those they were ultimately charged.

² Department of Primary Industry and Environment, *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater*, 2016, https://www.water.nsw.gov.au/_data/assets/pdf_file/0011/663698/2016-Developer-Charges-Guidelines.pdf.

12.5 NSW Ombudsman’s Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

The following table summarises the key details of [REDACTED] complaint.

Date	Key details
2006	<p>Council granted [REDACTED] company a development consent, including (then) condition 49. The condition included a cost per equivalent tenement that would have added up to \$169,705.80.</p> <p>This cost was based on Development Contributions Plan (DCP) 1997. The condition included in the consent did not mention the DCP or that fees were subject to change due to CP changes and the introduction of future plans, despite DCP 1997 requiring for consent conditions to include this information.</p>
2007, 2017	<p>Council revised its DCP 1997, and introduced new Development Servicing Plans (DSP) in 2007 and again in 2017 – in both cases increasing the fees payable for water and sewerage fees.</p> <p>[REDACTED] completed an earlier stage of her subdivision, which involved eight lots. At the time of paying her contributions, she was charged the rate for water and sewerage listed in her development consent. When she complained to Council in 2018 about being charged at a higher rate than her consent, Council informed her that ‘it would appear the Council officer responsible for preparing your Notice of Payment for the first 8 lot subdivision did not take into account such indexation [under CPI and the new DSP] which was to your benefit. Council has no intention to recoup the forfeited funds in this regard.’</p>
2018	<p>When [REDACTED] applied for her subdivision (compliance) certificate, Council charged her \$465,884.98 in water and sewerage fees. It based this on the rates per equivalent tenement listed in DSP 2017.</p> <p>In January, [REDACTED] paid Council this amount, but under protest in order to obtain the certificate. Had she paid pursuant to her original consent, she would have paid \$169,705.80. Council refunded part of [REDACTED] payment. This was to address the difference between the DSP 2017 amount and the DSP 2007 amount. A similar refund was offered to all those in a similar position, as the Council had not contacted those with development consents to make them aware of the 2017 DSP increases. This reduced [REDACTED] fees to \$336,837.16, an amount calculated in accordance with the 2007 DSP, and not to the level listed in the DCP 1997.</p>

Council did not deal with [REDACTED] matter in line with its response to the Ombudsman

Council did not handle [REDACTED] case in line with either our 2009 preliminary recommendations or Council’s subsequent November 2009 resolution, discussed below in section 3.3. It did not:

- mark [REDACTED] file to ensure she would not pay higher fees than those in her consent
- write to her about future fee increases in line with the DSP so she could plan for higher costs.

After receiving [REDACTED] complaint, the Deputy Ombudsman wrote to Council’s Mayor, Mr Duncan Gair, and Council’s General Manager, Ms Anne Prendergast, on 1 March 2019 asking Council to comply fully with the recommendations it agreed to in 2009. If Council complied with those recommendations, [REDACTED] would have received a further refund.

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Ms Prendergast replied to the Deputy Ombudsman, refusing the request to act on the recommendations. She wrote:

This matter was reported to the Ordinary Meeting of Council held on 22 May 2019 where it was resolved:

THAT Council write to the NSW Ombudsman and advise that Council will not implement its request to provide a refund to the applicant for the following reasons:

- a) Council has acted in accordance with the appropriate legislation, NSW Guidelines and case law in levying developer charges under the DSP applicable at the time an application for a certificate of compliance is made.
- b) There is no formal resolution of Council that would allow pre-2007 development consents to be levied at the rate specified in the relevant condition of consent.

Accordingly, Council has determined that it is not required to give effect to the suggestions in your letter of 1 March 2019 in relation to [REDACTED] matter, nor necessary to address suggestions 2-6 in light of the position by Council as resolved on 22 May 2019.

Other developers may be in [REDACTED] position

Along with [REDACTED], Council has acknowledged that it has likely charged or will charge other developers (who have the same condition in their development consent) higher fees than the developers' consents set out.

Council has advised that, due to changes in its information technology systems it cannot determine the number of developers who paid higher fees for water and sewerage than the fees listed in their consents, but did not receive a refund.

Council has also acknowledged that, due to an administrative oversight, it failed to write to all developers in 2009 (including [REDACTED]) who were yet to apply for a compliance certificate to tell them about potential increases.

Council has said that it can only identify three other developers with consents containing the standard condition who have not yet paid any water and sewerage fees (references [REDACTED] and [REDACTED]). As with [REDACTED], Council had not written to these developers to advise them that fees they will be charged will increase in line with CPI and the DSP in place at the time of their application.

Council's reliance on the Nash case and other legal arguments

Nash Bros Builders Pty Ltd v Riverina Water County Council

Council has relied on the Court of Appeal decision in *Nash Bros Builders Pty Ltd v Riverina Water County Council* [2016] NSWCA 225 to argue that:

- Council cannot use a condition of consent to require a developer to pay for water management works before they apply for a compliance certificate because [REDACTED] did not apply for such a certificate before Council granted her consent and imposed the standard condition, the condition cannot be taken to have set the fees.

Council's submission relied particularly on the following comment in Nash by Ward JA:

[t]he opening words of s 306(2) make clear in my opinion that it is only "as a precondition" to the grant of a certificate of compliance that such a contribution can be required (at [90]).

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

His Honour was essentially making the point that, unless or until an application was made for a compliance certificate, no developer charge could be sought under s 306(2).

Nash was a case about the time at which a payment obligation could be imposed. In that case, his Honour held that a Council cannot, through a development consent, impose a requirement on a developer to pay an amount for water management works in advance of the developer having applied for a compliance certificate.

The findings made in this report do not demur from that. We do not suggest that the development consent imposed a legal requirement on the developer to pay the stated fees in advance of the application for a compliance certificate. We also do not dispute that Council was legally authorised, under the WM Act, to impose water and sewerage fees in line with its DSP when such an application was made.

However, the finding of this investigation is that it was *unreasonable* to charge those (higher) rates in circumstances where it had set out lower rates in the development consent while giving no notice to the consent holder that those rates may be subject to change over time.

As noted above, Council's DCP 1997, DSP 2007 and its current DSP 2017 all require that any condition of consent dealing with payments under the WM Act should include a note outlining that the amount payable will change in line with CPI, and also subject to any future DSP that Council may introduce. [REDACTED] development consent did not include such a note.

The suggestion that Council would be fettered

Council also submitted that to hold it to the contribution specified in the development consent would be to 'fetter' the Council's exercise of its discretionary powers, citing in support *Rederiaktiebolaget Amphitrite v The King*.³ Council also referenced *Shi v Migration Agents Registration Authority*.⁴ The principle in *Shi* is that consideration must be given to the circumstances existing at the date that power is exercised.

On several occasions, Australian courts have criticised the breadth with which the so-called 'fettering principle' was expressed in *The Amphitrite*.⁵ In any case it is unnecessary to address this particular submission here, as we do not suggest that Council acted unlawfully in charging [REDACTED] rates above those that it had previously set out in the development consent.

We do not find that Council was *legally* bound by the rates it had set out in the development consent. However, we find it was *unreasonable* for it to later apply higher rates in circumstances where it had failed to provide any prior notice that the rates would be subject to increase.

³ [1921] 3 KB 500 at 503

⁴ (2008) 235 CLR 285; [2008] HCA 31

⁵ See *Ansett Transport Industries (Operations) Pty Ltd v Commonwealth* (1977) 139 CLR 54; [1977] HCA 71 at 74-75 and 113, *A v Hayden (No 2)* (1984) 156 CLR 532; [1984] HCA 67 at 543, and *Searle v Commonwealth of Australia* [2019] NSWCA 127.



Investigation into Wingecarribee Shire Council

Sensitive: Legal

3.2 It was unreasonable for Council to close its meeting to discuss contact with the Ombudsman, and unlawful not to publicly record why it was closed

Conclusions
 Wingecarribee Shire Council acted unreasonably in closing part of its meeting to discuss [REDACTED] matter and the involvement of our office.
 Wingecarribee Shire Council acted contrary to the Local Government Act 1993 in failing to appropriately minute and publicly report on the public interest reasons for closing that part of the meeting.

The Local Government Act regulates when council meetings can be closed

The legislative framework around closing council meetings aims to balance:

- the public interest in open and transparent deliberations, and
- Council’s need for confidentiality around certain discussions and decisions.

The following provisions of the *Local Government Act 1993 (LG Act)* outline Council’s obligations concerning council meetings.

Who	Rights and powers	Section and details
The public	To attend council or council committee meetings	10(1) ‘Except as provided by this Part: (a) everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, and (b) a council must ensure that all meetings of the council and of such committees are open to the public.’
Council	To close a meeting to discuss privileged information	10A(2)(g) Privileged information includes ‘advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege’ 10B(2) ‘(1) A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A(2)(g) unless the advice concerns legal matters that: (a) are substantial issues relating to a matter in which the council or committee is involved, and (b) are clearly identified in the advice, and (c) are fully discussed in that advice.’
Council	To close a meeting to discuss information it is not in the public interest to share	10B(1)(b) Requires that a meeting stay open unless the council or committee concerned is satisfied that discussing the information in an open meeting would be, on balance, against the public interest. 10B(4)

Sensitive: Legal



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Who	Rights and powers	Section and details
		To determine whether it is contrary to the public interest, it is irrelevant that: <ul style="list-style-type: none"> (a) a person may misinterpret or misunderstand the discussion, or (b) the discussion of the matter may: <ul style="list-style-type: none"> (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or (ii) cause a loss of confidence in the council or committee.

Before Council can close part of a meeting, the General Manager must ensure the following requirements under s 9A(2A) of the LG Act are met:

- (a) the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and
- (b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.

After a meeting is partly closed, Council must record the grounds for closing it in the minutes. Section 10D(2) states the minutes must include:

- (a) the relevant provision of section 10A(2)
- (b) the matter that is to be discussed during the closed part of the meeting
- (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

It is not clear how discussing contact with the Ombudsman in an open meeting would have been contrary to the public interest

The Council considered the following documents in the closed session on 22 May 2019:

- A report from the Deputy General Manager detailing the history of our interaction with Council about water and sewerage fees.
- The 1 March 2019 letter from the Deputy Ombudsman asking Council to comply with the recommendations it agreed to accept in 2009, as part of our earlier investigation.

The Deputy General Manager’s report included Council’s 22 July and 11 November 2009 resolutions, [REDACTED] 2018 complaint, advice from Council’s solicitors, and Council’s response to us based on that advice.

The Deputy General Manager’s report also noted that if Council did not comply with our request to implement the recommendations, we could table a special report in Parliament which would be publicly available. The Deputy General Manager’s report stated:

Under the *Ombudsman Act 1974*, the Ombudsman does not have the power to force Council to comply with its request. If Council resolves not to implement the request of the Ombudsman, as recommended in this report, the Ombudsman can either:

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

- Commence a further investigation; or
- Prepare a special report under the Ombudsman Act 1974.

A special report under the Ombudsman Act 1974 would be tabled in Parliament and would therefore be made public. However, it would not require Council to implement the Ombudsman's recommendations.

Lastly, the Deputy General Manager's report outlined the budget implications Council's Finance Section had said would occur if Council complied with our request. Compliance would result in:

- refunding [REDACTED] \$167,131.36
- forgoing \$347,572 in potential water and sewerage revenue from the three developers affected by the standard condition who have not paid any water and sewerage fees
- consideration of the cost of refunding all pre-2007 consent holders who paid higher water and sewerage fees than their consents listed.

It was in the public interest for Council to discuss these items openly, as they directly impacted ratepayers and developers in the Council area. They also related to decisions about whether Council would adhere to the provisional recommendations we made that Council had previously agreed to accept.

The minutes from Council's closed session:

- mentioned a report by the Coordinator Strategic Land Use Planning which sought further direction from Council in relation to a request for a refund of Developer Charges levied on a subdivision approved in 2006, in which the NSW Ombudsman has become involved
- referred to s 10A(2)(g) of the LG Act (the minutes referenced s 10A(2)(c). Council has now acknowledged the section referenced was incorrect, but felt that s 10A(2)(g) was correctly applied)
- stated that 'Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.'

There is no explanation in the publicly available minutes for the meeting or the recording of the meeting of how or why an open discussion of the matter was contrary to the public interest.

3.3 Council did not keep to its agreement in 2009

Conclusion

Wingecarribee Shire Council did not fully implement all the provisional recommendations from the earlier Ombudsman investigation relating to the standard condition as it had previously agreed to.

Our provisional recommendations

In April 2008, [REDACTED], complained to us that Council had charged higher fees for water and sewerage works than those listed in the development consent of his client, [REDACTED]. The original fees were based on DCP 1997, but the eventual charges were based on the higher figures from DSP 2007 that had come into effect in January that year.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

We started an investigation in December 2008 to consider how Council levied water and sewerage charges under the WM Act, and whether it had acted on any legal advice.

We provided Council with a statement of provisional findings and recommendations:

9.1 I recommend that Council immediately reviews its resolution of 12 December 2007 and reconsiders and accepts the legal advices provided by its solicitor, and reconsiders and adopts the staff report prepared for the Legal Committee meeting of 25 July 2007, namely, that the provisions of the 2007 Development Servicing Plans be applied only to development consents granted after 1 January 2007.

9.2 I recommend that Council refund to [REDACTED] the amount of the increase in contributions it required him to pay under the 2007 Development Servicing Plans prior to the issue of the Certificate of Compliance, over and above the amount specified in his 2004 development consent.

9.3 I recommend that Council also refund [REDACTED] the amount of the increase in contributions it required them to pay under the 2007 Development Servicing Plans prior to the issue of the Certificate of Compliance, over and above the amount they would reasonably have been required to pay in relation to their 2005 development consent.

9.4 I recommend that Council refund all other developers who hold consents granted prior to 1 January 2007, who have been required to pay increased contributions under the 2007 Development Servicing Plans, the amount of such increase over and above the amounts specified in their development consents.

9.5 I recommend that Council note its records so that the remaining holders of subdivision development consents granted prior to 1 January 2007 will not be required to pay the increased rate of contribution under the 2007 Development Servicing Plans.

9.6 I recommend that Council formally apologises to [REDACTED], and all other holders of development consents granted prior to 1 January 2007 who were required to pay increased contributions under the 2007 Development Servicing Plans.

We also recommended that Council review and change its meeting practices:

Council immediately reviews its meeting practice in relation to the conduct of the Legal Committee, the closure of meetings to the public, and reporting of the items and decisions, and that it amends its practices to comply with sections 9 and 10 of the Local Government Act, the Regulation and its own Code of Meeting Practice.

Council resolved to accept the provisional recommendations

In response to our preliminary report, Council passed a resolution in July 2009:

THAT Council immediately inform the Ombudsman that it accepts the recommendations contained within the Statement of Preliminary Findings and Recommendations into the complaint received from [REDACTED] and indicate its willingness to action those recommendations as a matter of priority.

Council also issued the following press release announcing its resolution:

Wingecarribee Shire Council's Deputy Mayor explained that in a Statement of Preliminary Findings and Recommendations, the Ombudsman was of the opinion that the council had calculated contribution rates based on the 2007 Developer Servicing Plan on a development application that was granted before that plan took effect, but was paid after it came into force. ...

"The council accepts the recommendations contained in the Ombudsman's Statement of Preliminary Findings and Recommendations and we will be taking action on those recommendations as a matter of priority," he concluded, indicating that applicants will be contacted

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

and necessary adjustments will be made to any contributions calculated on Council's 2007 plan, but paid after that plan came into effect in relation to developer consents granted prior to the date of that plan.

As a result of this resolution, we discontinued the investigation.

Council did not implement all the provisional recommendations

When we first made inquiries about [REDACTED] complaint, Council told us that it:

- did not implement all of our 2009 recommendations
- refunded \$662,068.46 to 53 of the 124 developers who qualified.

After we discontinued the investigation in 2009, Council passed a second resolution in November that year that supplemented and changed its July 2009 resolution. The second resolution limited the scope of its implementation of our provisional recommendations:

THAT Council confirm a refund of \$306,896.45 from the Sewer Funds Section 64 contributions and a refund of \$373,898.22 from the Water Funds Section 64 contributions.

THAT an initial letter be sent to the payee or their representative contact of each of the 124 Development Applications eligible for a refund on paid water and sewer contributions, informing them of Council's decision and of the refund to be expected.

THAT upon review of Council's Water and Sewer Development Servicing Plans, Council write to the applicants of all consents with unpaid water and sewer contributions informing them of impending price increases.

THAT Council formerly adopt the condition of consent discussed in the report that requires developers to apply for Compliance Certificates when connecting to Council's Water and Sewer Services.

THAT Council staff investigate and report back to Council on the costs of reviewing the current Water and Sewer Developer Servicing Plans with the intent of including infrastructure to supply water and sewer services to identified urban land release areas and the Enterprise Zone; and to adjust charges accordingly.

Council stated that while its July 2009 resolution showed it was willing to act on the recommendations, its November 2009 resolution outlined the actions it would take to implement the recommendations. Council also advised that the resolution Council passed in May 2019 further clarified its November 2009 resolution. The result of the subsequent resolutions meant that Council would:

- only authorise refunds for water and sewerage contributions paid before 11 November 2009, which Council has provided to some, but not all, affected developers
- not authorise refunds for payments made after that date.

Council did not contact some developers and gave others different advice

Council also initially agreed to the recommendations to:

- issue a public call for developers to seek a refund if their consents included the standard condition but they paid a higher fee
- contact developers who had not paid to tell them they would only pay the fee listed in their consent if it included the standard condition.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Contacting developers is important because there is often a delay between receiving the consent and applying for a compliance certificate. However, following its November 2009 meeting, Council contacted some, but not all, of the relevant developers. It did not contact [REDACTED].

In relation to the developers it did contact, instead of telling those developers they would only pay the fee listed in their consent, Council told them they would be charged in line with the DCP in force when they applied for a compliance certificate. This did not alter the relevant condition in their development consents, which still contained the standard condition.

Council changed the standard condition

When Council was responding to the complaint that triggered our first investigation, it recognised that the standard condition needed to be changed. The amended condition (see appendix 1):

- clarifies that Council will recalculate water and sewerage fees at the time of payment, based on any new DSP
- includes the time period to which the listed fees apply, along with a note that fees are subject to change.

We acknowledge that these changes:

- address some of the concerns our 2009 investigation raised
- ensure development applicants are made aware of the impact of both the CPI and new DSPs on their fees
- demonstrate that Council recognised that the relevant condition of consent needed to include these details.

Council took steps to ensure more open meetings

Our earlier investigation also looked at the issue of closed meetings, as Council's Legal Committee held all its meetings in closed session. We noted this did not comply with the LG Act, and recommended that Council review and end this practice.

Council agreed to disband its Legal Committee and issue open reports for matters requiring a Council resolution. It further agreed to only close meetings when it was necessary and lawful.

However, the closed meeting it held on 22 May 2019 to discuss [REDACTED] matter and this office's involvement does not appear to be consistent with this earlier agreement.



Investigation into Wingecarribee Shire Council

Sensitive: Legal

4 Findings and recommendations

4.1 Findings

I make the following findings about Wingecarribee Shire Council's conduct under s 26 of the *Ombudsman Act 1974*:

1. Council acted unreasonably within the meaning of s 26(1)(b) in charging [REDACTED] at a higher rate than that listed in her development consent without providing any prior notice of the increase.
2. Council acted unreasonably within the meaning of s 26(1)(b) by failing to treat all developers who received consents before 1 January 2007 in the same way.
3. Council acted unreasonably within the meaning of s 26(1)(b) in closing part of its 22 May 2019 meeting.
4. Council acted contrary to law within the meaning of s 26(1)(a) by failing to minute and publicly report on its reasons for closing part of its 22 May 2019 meeting.

4.2 Recommendations

Under s 26(2)(a)(b) and (e) of the *Ombudsman Act*, I recommend that Wingecarribee Shire Council:

1. Refund [REDACTED] for the difference between the rates listed in her initial development consent and those she was ultimately required to pay.
2. Post a notice on its website, issue a media release and advertise in a local newspaper inviting developers to contact Council if their consents include the standard condition and were granted before 1 January 2007, so Council can:
 - consider whether to refund any fees these developers paid over and above the fees listed in their consents
 - if necessary, amend its records to ensure Council does not charge the relevant developers higher fees in the future.
3. Write to the developers who hold consents [REDACTED] and [REDACTED], and advise them that any water and sewerage fees they are required to pay if they apply for a compliance certificate will be the fees listed in their consents.
4. Ensure its practice regarding closing Council meetings, and also providing the required public record of why part of a meeting is closed, comply with the *Local Government Act 1993* and Office of Local Government guidelines.
5. Table the final Ombudsman report on this matter in a public Council meeting.
6. Give its Audit, Risk and Improvement Advisory Committee a copy of the final Ombudsman report.
7. Provide us with updates every six months on its progress implementing the above recommendations.



Investigation into Wingecarribee Shire Council

Sensitive: Legal

5 Supporting information

5.1 The investigation timelines

The following table sets out the key events for each of the investigations discussed in this report.

Events relating to the first investigation

1 September 2004	Council granted [REDACTED] development consent. Condition 22 listed the fees per lot as: <ul style="list-style-type: none"> • \$2,211 for water • \$5,051 for sewerage. These fees came from Council’s DCP 1997. (See the condition at appendix 2)
1 January 2007	Council’s DSP 2007 replaced DCP 1997.
8 March 2007	[REDACTED], complained to us on behalf of his client, [REDACTED], that Council had increased the water and sewerage fees required to develop [REDACTED] (council reference [REDACTED]).
28 August 2007	[REDACTED] received a bill per lot of: <ul style="list-style-type: none"> • \$4,000 for water • \$5,000 for sewerage. Council calculated this using the fees in DSP 2007.
12 December 2007	Council resolved to apply the higher DSP 2007 fees to consents that included the same standard condition as [REDACTED] consent but were issued before DSP 2007 took effect.
12 December 2008	We started an investigation into: <ul style="list-style-type: none"> • how Council charged for water and sewerage under the WM Act • if Council sought legal advice when it drafted standard condition • if Council acted in line with any advice it received.
2 July 2009	The Deputy Ombudsman provided Council with a ‘Statement of Preliminary Findings and Recommendations’ and invited Council to make a submission. (See appendix 4)
22 July 2009	Council met and resolved to accept all of the preliminary recommendations in the statement.
23 July 2009	Acting General Manager Mr Michael Brearley wrote to us with Council’s decision. Council also issued a press release.
11 August 2009	The Deputy Ombudsman discontinued the investigation and sent notices to Mr Brearley and the Mayor confirming this and explaining why.
11 November 2009	Council resolved to implement a limited scope of our preliminary recommendations. Council has claimed that this overrode the 22 July resolution.

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal**Events relating to the second investigation**

20 April 2006	Council granted [REDACTED] development consent. Condition 49 listed the fees per lot as: <ul style="list-style-type: none"> • \$2,349 for water • \$5,365 for sewerage. The total fees of \$169,705.80 under this condition were based on DCP 1997. (See appendix 3)
1 January 2007	Council's DSP 2007 replaced DCP 1997.
2016	Council renumbered consent condition 49 to 50 but did not change the wording of the consent.
15 September 2017	Council's DSP 2017 replaced DSP 2007.
January 2018	[REDACTED] paid Council \$465,884.98 under protest for a subdivision (compliance) certificate. Council calculated this using the fees in DSP 2017.
28 March 2018	Council suspended fee increases for 6 weeks following the introduction of the 2017 DSP. Because [REDACTED] had paid the DSP 2017 fees during this period, Council refunded her \$129,047.82. This reduced her fees to \$336,837.16.
27 July 2018	[REDACTED] solicitors complained to us on her behalf that Council wrongly charged her higher water and sewerage fees for the third stage of her subdivision development (Council reference [REDACTED]).
1 March 2019	The Deputy Ombudsman wrote to Council's Mayor and General Manager asking them to review Council's actions and fully comply with the recommendations it agreed to accept in 2009.
22 May 2019	Council met in a closed session (agenda item 13.5) to discuss: <ul style="list-style-type: none"> • the Deputy Ombudsman's letter • a report from the Deputy General Manager about the matter. It resolved that it would not grant our request, and then advised us of this.
26 June 2019	We commenced an investigation into: <ul style="list-style-type: none"> • what Council had done since it agreed to accept all the preliminary recommendations in 2009 • if Council had breached the LG Act by closing its 22 May 2019 meeting.

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Investigation into Wingecarribee Shire Council

Sensitive: Legal

Appendix 1: Council’s current standard condition of consent

Contributions under the *Water Management Act 2000*

Water Management Act – Certificate of Compliance

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

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

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

- Development Servicing Plans for Water Supply and Sewerage
- Stormwater Development Servicing Plan.

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

The water, sewer and stormwater headworks levies are indexed quarterly in accordance with upward movements in the Consumer Price Index (All Groups, Sydney) as published by the Australian Bureau of Statistics (www.abs.gov.au) and Council’s Development Servicing Plans.

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

The Water and Sewerage Development Servicing Plans (DSP’s) were adopted by Council on 26 July 2017 and came into effect on 15 September 2017. The Stormwater DSP was adopted on and came into effect on 15 September 2017. The current charges under these Plans are listed as follows:

CPI Period	Water DSP	Sewer DSP	Stormwater DSP
1 November – 31 January 2019	\$##	\$##	\$##

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

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

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



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Compliance Certificate

Compliance Certificate fees, in accordance with Council's Revenue Policy are as follows and shall be paid prior to the issue of Construction Certificate:

Water \$250 + Sewer \$250 + Stormwater \$250 = \$750

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

The Construction Certificate will not be issued until the *Water Management Act 2000* charges have been paid and/or secured and the approval of Council has been obtained.

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

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Investigation into Wingecarribee Shire Council

Sensitive: Legal

Appendix 2: [REDACTED] development consent condition

Condition 22

Water supply authority contributions

Contribution towards Water and/or Sewer Facilities – you are advised that Council as the supply authority shall require the payment of a developer contribution towards the provision of water and/or sewer facilities required to serve the development in accordance with Division 5 Part 2 Chapter 6 of the *Water Management Act 2000* as amended.

The current rates of contribution applicable are as follows:

Water Headworks

The payment of a monetary contribution towards the augmentation of the headworks water supply system that services the development.

Contributions to existing infrastructure (Assets)		
No Lots/ETs	Rate	Total
15	\$2,211	\$33,165

Sewer Headworks

The payment of a monetary contribution for headworks sewerage system that serves the development.

Contributions to proposed infrastructure (Works)		
No Lots/ETs	Rate	Total
15	\$5,051	\$75,765

Compliance Certificate

Compliance Certificate fees are as follows:

Water \$90 + Sewer \$90 = \$180

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

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

In the case of other forms of development, the Construction Certificate will not be issued until the Water Management Act contributions have been paid and/or secured and the approval of the Manager of Water & Sewer has been gained.



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Appendix 3: [REDACTED] development consent condition

Condition 50

Water supply authority contributions

Contribution towards Water and/or Sewer Facilities – you are advised that Council as the supply authority shall require the payment of a developer contribution towards the provision of water and/or sewer facilities required to serve the development in accordance with Division 5 Part 2 Chapter 6 of the *Water Management Act 2000* as amended.

The current rates of contribution applicable are as follows:

Water Supply Contributions Plan (Effective 23/07/97)

The payment of a momentary contribution towards the augmentation of the headworks water supply system that services the development.

Contributions to existing infrastructure (Assets)		
No Lots/ETs	Rate	Total
30	\$2,349	\$70,470

Sewerage Contributions Plan (Effective 23/07/97)

The payment of a monetary contribution for headworks sewerage system that serves the development.

Contributions to proposed infrastructure (Works)		
No Lots/ETs	Rate	Total
30	\$5,365	\$160,950

NOTE: Payment of the above contributions is to be by BANK CHEQUE OR CASH and is to be accompanied by the attached sheet entitled “Record of Payment of Contribution”. Should the Applicant pay by personal or company cheque the plans subject to this approval will not be available for collection until such time as the cheque has been honoured (ie. A minimum of 10 days).

Compliance Certificate

Compliance Certificate fees, in accordance with Council’s Revenue Policy are as follows and shall be paid concurrently with developer contributions:

Water – 141901-1536 \$90 + Sewer – 141901-1536 \$90 = \$180

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

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

Sensitive: Legal



Investigation into Wingecarribee Shire Council

Sensitive: Legal

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

Redacted for Tabling



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Appendix 4: 2009 report

Statement of Preliminary Findings and Recommendations

1. INTRODUCTION3

2. THE COMPLAINT3

3. THE CONDUCT THE SUBJECT OF INVESTIGATION7

4. THE PUBLIC AUTHORITY THE SUBJECT OF INVESTIGATION ... 5

5. THE INVESTIGATION5

6. RELEVANT MATTERS5

6.1 Legislative Background5

6.2 Guidelines, policies and practices6

6.2.1 1997 Developer Contributions Plan.....6

6.2.2 Method of payment under the 1997 Plans 6

6.2.3 Standard text form conditions of consent – contributions under the *Water Management Act*7

6.2.4 Ministerial guidelines7

6.3 Development consent 2004, and amended consent 2006, to DA 02/06788

6.4 Notice under section 302(2) of the *Water Management Act*9

6.5 Background to the new Development Servicing Plans for Water Supply and Sewerage commencing 1 January 20079

6.6 Council’s request for legal advice11

6.7 [REDACTED] legal advice12

6.8 Council’s second communication with [REDACTED] seeking clarification12

6.9 [REDACTED] second advising13

6.10 Council’s consideration of the two legal advices13

6.11 Council’s second deliberation on the staff report and additional paper15

6.12 [REDACTED] third advising15

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

6.13 Concurrent action during Council deliberations – Council’s account to [REDACTED] for all contributions payable under the condition of consent17

6.14 Council’s further letter to [REDACTED] seeking clarification17

6.15 [REDACTED] further advice17

6.16 Further consideration of the legal advisings18

6.17 Council’s further consideration of the legal advisings19

6.18 Further legal advice on the standard text20

6.19 The other complaint21

6.20 Outstanding subdivision consents granted prior to 1 January 200721

6.21 2007 Development Servicing Plan contributions paid on consents granted prior to 1 January 200722

6.22 Matter arising – Meeting practice of the Legal Committee 22

7. CONCLUSIONS24

7.1 Council’s investigation of complaints..... 24

7.2 The drafting of development consents for subdivisions28

7.3 Meeting practice28

8. FINDINGS28

9. RECOMMENDATIONS30

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal**1. INTRODUCTION**

This is a statement of preliminary findings and recommendations following an investigation of Wingecarribee Shire Council's actions (and inactions) regarding the levying of increased contributions under its Development Servicing Plan which commenced on 1 January 2007, to subdivision development consents granted prior to 1 January 2007.

The document has been prepared in confidence pursuant to section 24(2) of the *Ombudsman Act 1974* for the purpose of obtaining submissions and further evidence, which will be taken into account in the investigation. Submissions are sought on the accuracy of the matters set out in the statement and on the provisional conclusions drawn. Any general submissions on the conduct the subject of investigation are also invited.

2. THE COMPLAINT

██████████, complained to Council on 8 March 2007 in relation to its verbal advice that Council had resolved to substantially increase contributions for water and sewer and that this would apply retrospectively to the development consent for ██████████. ██████████ was the consultant planner engaged by the owner of the subject property, ██████████.

██████████ stated in his letter:

Unlike the provisions of s94 of the Environmental Planning and Assessment Act, the Water Management Act 2000 does not empower a Water Supply Authority to increase contributions after a specified amount has been by notice in writing served on the applicant. The contribution amount was specified in writing by virtue of Condition 22 of the development consent. It is therefore our view that the Water Supply Authority, in this case the Council, has no power to alter the amount specified in the development consent.

Council did not respond formally to ██████████ letter.

On 28 August 2007 Council faxed through to ██████████ a statement listing the contributions Council required him to pay totalling \$234,750. This total included items which appeared to be contributions payable under section 94 of the *Environmental Planning and Assessment Act 1978*, and also items listed as being Sewerage (Wastewater) – Precinct 7 and Water Supply – Precinct 7 \$82,500 and \$60,000 respectively, which were taken to be Council's requirements under the *Water Management Act*.

██████████ paid the amount of \$234,750, sought by the Council, on 29 August 2007. On the same date, he wrote to the General Manager confirming that his company had paid in full the requested developer contributions for the subject property. He also advised that the fees had been paid under duress and would be subject to legal opinion and legal action in relation to the increased sewer and water charges which in his opinion contravened the *Water Management Act*.

██████████ also wrote to Councillor Murray, Chairman of Council's Legal Committee, on 30 August 2007, regarding the increase in charges. He sought a meeting with Councillor Murray to

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

discuss the matter. [REDACTED] forwarded a copy of his letter to Councillor Murray to all Councillors.

No response was made by Councillor Murray or any of the Councillors to [REDACTED] letter.

[REDACTED] subsequently sent a letter to the General Manager (undated) seeking advice on which legislative provision allowed Council to substantially increase sewer and water charges once a development application had been approved. He also requested a copy of Council's legal opinion on such increases. [REDACTED] followed up this correspondence on 8 April 2008.

Council's Manager Development Control responded to [REDACTED] on 14 April 2008 advising that section 64 of the *Local Government Act 1993* and section 306 of the *Water Management Act* enabled Council to require payment as a pre-condition to the issue of a certificate of compliance. He advised he was unable to provide a copy of Council's Solicitor's advice as this would void any legal privilege.

[REDACTED] complained to the Ombudsman on 29 April 2008 about the increased charges. He stated that the development consent contained a condition requiring the payment of a Developer Servicing Plan contribution to Council for the provision of water and sewer, and that the specific amounts payable had been stated on the development consent. The condition had no statement to the effect that the amounts advised in the condition were subject to increase until paid.

It was the initial view of the Ombudsman's Office that the Court was the most appropriate authority to make determinations regarding the dispute on charges, and to interpret the law. [REDACTED] wrote again to us raising further issues for our consideration. While he had brought to our attention the wording of the development consent, in his view, the *Water Management Act* did not empower the Council to adjust the contribution rates after it had already given him 'notice in writing' of the contributions. The Ombudsman reviewed all the material on the complaint file and directed that we make further inquiries into the matters raised.

3. THE CONDUCT THE SUBJECT OF INVESTIGATION

All of its actions and inactions which were part of any process used by the Council in its:

Handling and investigation of complaints regarding increased charges under the Development Servicing Plan which commenced on 1 January 2007.

Handling and investigation of complaints about the retrospective application of the provision for charges in the Development Servicing Plan which commenced on 1 January 2007.

Drafting and issuing of development consents for subdivisions and the notification of developer charges.

4. THE PUBLIC AUTHORITY THE SUBJECT OF INVESTIGATION

Wingecarribee Shire Council

5. THE INVESTIGATION

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

On 12 September 2008, written preliminary inquiries were made of the Council pursuant to section 13AA of the *Ombudsman Act 1974*. Council responded to our preliminary inquiries on 12 September 2008.

After considering the Council's response and the information provided by the complainant, we had concerns about the reasonableness of Council's handling and investigation of complaints, and its consideration of the legal advice from its solicitor. We noted that the condition of development consent relating to the payment of developer contributions for water and sewerage did not comply with the requirements set out in Council's Development Servicing Plans.

Consequently we decided to commence a formal investigation pursuant to section 13 of the *Ombudsman Act*. On 12 December 2008, under section 16 of the Act, we issued a Notice of Investigation to the Mayor of the Council, Councillor Duncan Gair, with a copy forwarded to the General Manager, Mr Mike Hyde. We also required the Council to give a statement of information, and produce particular documentation, by way of Notice under section 18 of the Act.

Council responded to the section 18 Notice on 13 February 2009. However, there were a number of instances where Council had failed to give any response at all to requirements to provide statements of information, and where it had failed to respond to requirements to provide copies of documents. There were also instances where Council had not completely responded to the requirements. On 13 March 2009 we wrote to the Mayor and to the General Manager requiring full compliance with the Notice by 26 March 2009.

Council forwarded the required information and documentation on 25 and 30 March 2009.

6. RELEVANT MATTERS

6.1 Legislative background

The legislation primarily relevant to the complaint is:

- (a) Local Government Act 1993

64 Construction of works for developers

Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.

and

- (b) Water Management Act 2000

306 Authority may impose certain requirements before granting certificate of compliance

(2) As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

- (a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice
- (b) to construct water management works to serve the development.

6.2 Guidelines, policies and practices

6.2.1 1997 Developer Contributions Plan

At the Ordinary Meeting held on 9 July 1997 adopted a Developer Contributions Plan for Sewerage, and a Developer Contributions Plan for Water Supply, both effective from 23 July 1997. The Plans were prepared in accordance with section 64 of the *Local Government Act* and Part 3 Division 2 of the *Water Supply Authorities Act 1987*. This latter legislation was repealed and replaced in 2000 by the *Water Management Act*.

6.2.2 Method of Payment under the 1997 Plan

Both the 1997 Plans for sewerage and water supply contributions included identical clauses in relation to the payment of developer contributions, with the requirement that a notation be included in the condition of the development consent relating to sewer and water contributions to the effect that the contribution will be calculated at the rate applying at the date of payment, and that the rate may increase with the introduction of a new plan. The clause (referred to by Council as condition '5103') stated:

4.3 Payment of Contributions

The timing for payment of contributions is as follows:

- (a) *Subdivision: The full amount of contributions levied for sewerage must be paid prior to the release of linen plans*

Contribution rates will be indexed on the basis of the Consumer Price Index (CPI), all groups produced by the Australian Bureau of Statistics, on an annual basis at the end of June each year.

Contributions must be made in the form of cash payment to Council. Development consents requiring the payment of a Developer Contribution will contain a condition specifying the amount payable in monetary terms at the time the consent is issued. A note will be attached to the consent condition which will advise that the contribution rate charged will be that rate which applies at the time of payment. i.e. The rate may increase (through indexation or replacement of this plan with a new one) from the time the condition appears on the notice of development consent until the time the contribution is actually paid to Council.

Council did not seek legal advice during the drafting and consideration of the 1997 Plans.

6.2.3 Standard text for conditions of consent - contributions under the *Water Management Act*

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

During the lifetime of the 1997 Developer Contributions Plans, it was the practice of the Council to use standard text in subdivision development consents in relation to the requirement of contributions under the *Water Management Act*. The text of the standard condition relating to the contributions under the Act was referred to as '5013'. The text of condition '5013' did not include the notation which was required under the Developer Contributions Plans to the effect that the rate of contribution may increase through indexation or replacement of the 1997 Plans with new ones. The text only provided for a statement as to the amount of contributions required under each of the Plans, effective from 23 November 1997.

We asked Council what independent legal advice Council obtained in or around 1997 on the standard text to be used in respect of the condition of consent for subdivision consents relating to contributions under the Developer Contributions Plans, and the standard text for the notation to be attached to the consent condition advising that the contribution rate charged would be the rate which applies at the time of payment.

Council responded that it did not consider it necessary at the time to seek legal advice on the wording contained in the consent condition.

6.2.4 Ministerial guidelines

In 2002 the Minister for Land and Water Conservation issued *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater* pursuant to section 306(3) of the *Water Management Act*. The guidelines applied to non-metropolitan water utilities in NSW and over 170 general purpose local government councils. The underlying principle was that new development should meet the full cost of assets serving the development.

Under the guidelines, water utilities and councils were required to prepare Development Servicing Plans in accordance with the guidelines, and register their Plans with the (then) Department of Land and Water Conservation by 30 June 2004. Council submitted its new Plan, effective from 1 January 2007 to the (then) Department of Water and Energy on 15 November 2007.

6.3 Development consent 2004, and amended consent 2006, to [REDACTED]

On 1 September 2004 Council issued a Notice of Determination in relation to [REDACTED] granting approval for a 16 Lot subdivision and new road, subject to conditions specified in the Notice. The Notice stated that Conditions Nos 1-30 were pre-conditions that must be complied with prior to the issue of an Occupation Certificate or Subdivision Certificate.

The wording of the condition of consent in relation to water and sewer developer contributions followed text '5103'. It stated:

22. Water Supply Authority Contributions

Contribution towards Water and/or Sewer Facilities – you are advised that Council as the supply authority shall require the payment of a developer contribution towards the provision of water

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

and/or sewer facilities required to serve the development in accordance with Division 5 Part 2 Chapter 6 of the Water Management Act 2000 as amended.

The current rates of contribution applicable are as follows:

Water Headworks

The payment of a monetary contribution towards the augmentation of the headworks water supply system that services the development.

Contributions to existing infrastructure (Assets)

No Lots/ETs	Rate \$	Total\$
15	2,211	33,165

Sewer Headworks

The payment of a monetary contribution for headworks sewerage system that serves the development

Contributions to proposed infrastructure (Works)

No Lots/ETs	Rate\$	Total\$
15	5,051	75,765

Compliance Certificate

Compliance Certificate fees are as follows;
Water \$90 – Sewer \$90 = \$180

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

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

In the case of other forms of development, the Construction Certificate will not be issued until the Water Management Act contributions have been paid and/or secured and the approval of the Manager of Water & Sewer has been gained.

On 31 October 2006, Council approved an amendment to the development consent granted on 1 September 2004 to include the demolition of a shed. The conditions of development consent remained exactly the same as in the consent granted on 1 September 2004. The wording of the condition 22 in relation to Water Supply Authority Contributions was in the same format in terms of text '5103', stating the same rate of charges and the total amount to be paid.

6.4 Notice under section 306(2) of the Water Management Act

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges**ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council****Investigation into Wingecarribee Shire Council****Sensitive: Legal**

We asked the Council whether or not Council considered the condition attached to the development consent for DA 02/0678 relating to contributions under the Development Servicing Plan, constituted a notice in writing pursuant to section 306(2) of the Act.

Council responded:

Council considered that the conditions of the development consent provided the necessary information to the applicant in regard to what contributions applied to the development and that this information was best provided in the development consent rather than in a separate notice. Development consents are used by applicants as a blueprint for their responsibilities and from that perspective, Council believes it is preferable to include the information pertaining to the water and sewer charges on the development consent rather than within a separate notice.

6.5 Background to the new Development Servicing Plans for Water Supply and Sewerage, 1 January 2007

At the Ordinary Meeting of Council on 9 August 2006 Council considered a report by the Director Technical Services on the key elements of the proposed Water & Sewerage Strategic Plans. Council resolved that the draft Water & Sewerage Development Servicing Plans be approved in principle and that the contribution for water be \$5,500 per lot and for sewerage schemes \$7,000 per lot, commencing immediately upon adoption of the plans by Council.

The draft Development Servicing Plans were placed on public exhibition from 25 September to 3 November 2006, and a public invitation was extended to inspect the draft plans and make submissions. Details of the public exhibition were included in Council's advertisement in the 11 October 2006 edition of the Southern Highland News.

The Development and Planning Engineer, [REDACTED], wrote to the Urban Development Institute of Australia and the Housing Industry Association on 7 and 21 September 2006 respectively notifying them of the public exhibition, providing a copy of the draft plan.

[REDACTED] also wrote to seven independent consultants, [REDACTED]

[REDACTED] on 7 September 2006 informing them of the public exhibition of the draft plan. The Director, Environment and Planning, informed us that these consultants represented the majority of applicants in the Shire.

At the Ordinary Meeting held on 22 November 2006 Council considered a further report from the Director of Technical Services. He reported that no submissions had been received following the public exhibition of the draft plan. In relation to the levying of charges, the report stated:

In general the charge levied is that applicable at the date the payment is made.

As there were no submissions and the charges proposed represent in many cases a significant increase from those that currently apply it is considered that following formal adoption the new charges be publicly advertised advising of a date from which the new charges will apply. This

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

will provide those developers who have DA approval and/or have commenced works with the opportunity to assess the impacts of the increased developer charges on their projects.

Council resolved that the Water and Sewerage Development Servicing Plans be adopted by Council and that the new charges of \$5,500 and \$7,000 for water and sewerage works respectively be publicly advertised, advising that the new charges will come in to effect from 1 January 2007. The information was inserted in Council's public advertisement in the Southern Highland News on 6 December 2006.

At the Ordinary Meeting held on 28 February 2007 Council resolved to phase in the new charges under the 2007 Development Servicing Plans over a three year period, with the new charges commencing at \$4,000 per lot for Water Supply and \$5,500 per lot for sewerage increasing to \$5,500 and \$7,000 per lot, applying from 1 January 2007.

Method of payment under the 2007 Development Servicing Plans.

Clause 5.3.2 of each of the 2007 Development Servicing Plans (for Water Supply and Sewerage) referred to the method of payment of the developer charges, in the same form as Clause 4.3 of the preceding 1997 Plans:

5.3.2 Method of Payment

Developer charges must be made in the form of monetary payments to Wingecarribee Shire Council. Development consents requiring the payment of a DC will contain a condition specifying the amount payable in monetary terms at the time the consent is issued. A note will be attached to the consent condition which will advise that the DC will be at the rate which applies at the time of payment. That is the rate may increase through indexation or replacement of this DSP with a new one, from the time the condition appears on the notice of development consent until the time the DC is actually paid to Council.

At the commencement of the 2007 Development Servicing Plans, the text, '5103', remained standard practice in relation to the development consent for contributions under the *Water Management Act*, i.e. there was no notation included in the consent condition that the rate of contribution may increase through indexation replacement of a new DSP, (as required under clause 5.3.2 of the Plans).

6.6 Council's request for legal advice

Following the consideration of the content of [REDACTED] letter to Council of 8 March 2007, [REDACTED] [REDACTED], wrote to Council's solicitor, [REDACTED] on 2 April 2007, advising that complaints had been received from developers regarding the levying of water and sewerage developer charges retrospectively, seeking legal opinion on 2 matters:

- . the issue of applying the new charges retrospectively, and
- . Council's proposed rewording of consent condition '5103'.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

██████████ quoted Clause 5.3.2 of the 2007 Development Servicing Plan (requiring a notation to be included in the consent condition advising that the contribution will be at the rate which applies at the time of payment, and that the rate may increase through indexation or replacement of the plan with a new one). He advised ██████████ that the previous plan which the new plan superseded had a statement identical to the abovementioned clause.

██████████ attached a copy of Council's standard text, '5103', and informed ██████████ of the proposed rewording of it, including the proposed paragraph:

The exact amount of the charge will be determined at the time of payment at the rates which apply at that time. From the time development consent is granted the charges may increase through indexation or by the adoption of a new Development Servicing Plan by Council.

██████████ name and telephone number were provided to ██████████, as the contact person

While ██████████ letter was a catalyst for Council to obtain legal advice, no response was made to ██████████. Council advised that this was an oversight by the officer to whom the letter was referred for action.

6.7 ██████████ legal advice

██████████ responded to the General Manager on 27 April 2007. His advising included the following points:

...There exists a basic legal presumption that, in the absence of some clear statement to the contrary, legislation will not have a retrospective operation.

...the proposal does not attempt to introduce a retrospective operation of the DSP. The DSP can only apply to those development consents granted after 1 January 2007 pursuant to which contributions are determined for the particular development. In respect to development consents granted prior to 1 January 2007, the conditions of development and any contribution plans relating to water and sewerage are determined in accordance with those plans. To say, therefore that the possible increase in the amount payable in contributions (depending upon when the payment is made) does not constitute a retrospective application.

He also advised in relation to the proposed changes to text '5103':

Paragraph 1 would read better if the word 'charges' in the three places where it appears in the paragraph, are replaced by the word 'contributions'.

He further advised that the remaining two paragraphs of the text could be amended as follows:

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

The amount payable by way of developer contributions is in accordance with the development consent provided such contributions are paid within the time limit stipulated in the development consent. Otherwise, the amount payable by way of developer contributions will be determined on the grant of the certificate of compliance issued under s305 of the Water Management Act 2000 and will be the amount specified in the development consent and increased either in accordance with the Consumer Price Index or in accordance with a new Development Servicing Plan, should such a new plan be adopted prior to the payment of the developer contributions.

6.8 Council's second communication with [REDACTED] seeking clarification

On 21 June 2007, [REDACTED] and [REDACTED] had a conversation with [REDACTED] to clarify three points in his advising of 27 April 2007. This was followed by a faxed letter on 22 June 2007 signed by [REDACTED].

[REDACTED] letter stated that on clarification of the first point, [REDACTED] had informed them that Council should **not** (Council's emphasis) apply the new DSP's and associated developer charges where development consent (including advice of the charges determined at the time of that consent) was issued prior to 1 January 2007.

The second point for clarification related to the calculation of charges and taking into account any government subsidy or similar payment.

The third point for clarification was whether or not it would be appropriate to state in text '5103', the charges that would apply for the anticipated life of the DSP (approximately 5 years) subject to movements in the CPI, and that if not paid within that period new charges may be determined in accordance with a revised DSP.

[REDACTED] concluded that he would appreciate advice on the second and third points.

6.9 [REDACTED] second advising

[REDACTED] wrote to the General Manager on 25 June 2007 in response to [REDACTED] brief. [REDACTED] responded to the issues needing clarification, and also reiterated his previous advice regarding development consents issued prior to 1 January 2007:

With regard to your enquiry as to whether developer charges payable pursuant to development consents issued prior to 1 January 2007 can be calculated in accordance with the new Development Servicing Plan for Water and Sewerage which came into effect on 1 January 2007, we are of the view that there is nothing in the legislation which empowers the retrospective application of the new Plan. Once the consent is issued, retrospective changes cannot be made unless there is a clear intention of the legislature that a Development Servicing Plan is to operate retrospectively if payment of the water and sewerage charges had not been made at the time the new Plan came into effect.

6.10 Council's consideration of the two legal advices

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

A report was prepared by Council's Technical Services department for the purpose of providing advice to Councillors on [REDACTED] advisings in relation to the application of the new Water & Sewerage Development Servicing Plans to developments approved prior to 1 January 2007.

The report provided the history of the new Development Servicing Plan, the new charges, the phasing in of the charges, and the two legal advisings.

The salient points in the staff report were:

Options

The options open to Council are:

- . to continue applying the charges with the resolution of Council on 28 February 2007; or
- . to accept the advice of [REDACTED] and apply the new charges only to those developments approved post 1 January 2007. The charges that would apply to developments approved prior to this date would still be subject to CPI adjustments.

Should Council choose to continue applying the new charges "retrospectively" it is highly likely that we would be challenged in the Land and Environment Court, should this happen, and the legal opinion received is confirmed, it is considered that Council would receive adverse publicity which it can ill afford in the current climate.

Financial implications

A number of developments approved prior to 1 January 2007 have been processed based on the new water and sewerage developer charges.

Should Council resolve that the new charges not apply to those developments prior to 1 January 2007, this would result in refunding approximately \$98,000 for water and \$77,500 for sewerage.

The report continued that the Environment and Planning Department were conducting research on developments approved over the past five years, and had determined the number that have yet to commence or were currently in progress. The Department would provide further information at the Legal Committee meeting on the number of equivalent tenements of those developments that are in progress or may still proceed, the total value of charges on these developments under the new Plan and the previous Plan, and the total estimated reduction in income for water supply and sewerage.

The report also drew attention to the fact that the developer charges were based on future development over the next thirty years, and future income from developments where consents had been granted were not included in the Plans, viz:

While the resulting shortfall in projected income is not insignificant, it is to be emphasized that the water and sewerage developer charges calculated through the financial modelling process were based on the predicted future development over a thirty year period.

No allowance was made for those developments for which consent had previously been determined i.e. future income from developments approved prior to the modelling being undertaken was not included in the water and sewerage strategic plans.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

In concluding, the report recommended that Council accept the advice of [REDACTED] and that water and sewerage developer charges previously advised to applicants (subject to CPI adjustment) remain current for those developments where consent was issued prior to 1 January 2007; and that for developments approved from 1 January 2007 the new charges be phased in accordance with Council's resolution of 28 February 2007.

The meeting of the Legal Committee

The Legal Committee met on Wednesday 25 July 2007.

Additional paper tabled

An additional paper was prepared by Council staff for consideration with the Technical Services Report. It was provided to Councillors at the meeting. The paper provided the following information:

- . the estimated number of equivalent tenements that may be generated from developments approved prior to 1 January was 865
- . under the new DSP, the approximate amount of income generated from these developments would be – Water Supply \$3.4M, Sewerage \$4.8M
- . prior to adoption of the 2007 Plan, the income generated would have approximated – Water Supply \$2.4M, Sewerage \$3.9M
- . the total estimated reduction in income – Water Supply \$1M, Sewerage \$0.9M.

The minutes of the Legal Committee meeting of 25 July 2009 state in relation to Item 19, *Water and Sewerage Development Servicing Plans*,

RECOMMENDATION

THAT the matter be deferred until the next Legal Committee meeting on 22 August 2007.

The Committee recommendation was adopted by Council at the Ordinary Meeting held on 8 August 2007.

6.11 Council's second deliberation on the staff reports

The Legal Committee met on 22 August 2007. [REDACTED] attended this particular meeting. The minutes of the meeting state:

RECOMMENDATION

THAT Council's Solicitor be requested to provide advice on rates charged under Development Servicing Plans AND THAT the matter be discussed at the next Legal Committee following receipt of this advice.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

There were no records, written or tape recorded in relation to the deliberations of the Committee prior to its recommendation that a further third advising be provided by [REDACTED].

The minutes of the meeting of the Legal Committee on 22 August 2007 were adopted by the Council at the Ordinary Meeting held on 12 September 2009.

6.12 [REDACTED] third legal advising

On 28 August 2007 [REDACTED] provided the third advising to the Council on its Water & Sewerage Development Servicing Plans, in accordance with the recommendation of the Legal Committee on 22 August 2009, brought forward in his presence.

In his advising, [REDACTED] commenced with the following statement:

We have considered the power of Council to require the payment of development contributions towards water and/or sewer facilities at a rate greater than those calculated at the date of a development consent. In particular, we have considered whether the contribution payable for water and sewer facilities may be made pursuant to a development servicing plan adopted after the granting of the development consent.

His advice concluded with a four point summary, two of which are particularly relevant to the matters under investigation.

Clause (b) of his summary advised that the rate of contributions for water and sewer was applicable as at the date of issue of the Certificate of Compliance, stating that the development consent makes it quite clear that contributions may increase due to regular review. Clause (d) referred to the requirement that the relevant condition of consent should specifically refer to the contributions rate payable as being the rate applicable at the date of payment, and not as at the date of consent. [REDACTED] advice was

(b) If contributions for water and sewer determined by the development consent are not paid immediately after the granting of consent, then the rate applicable as at the date of issue of the Construction Certificate (sic) or any other date nominated in the development consent is payable. This is so irrespective of whether the development consent was issued during the lifetime of an earlier development servicing plan. In such circumstances, the question of retrospectivity does not arise as the development consent makes it quite clear that the contributions for water and/or sewer may increase due to their regular review. This is the prospective application of the contributions plan rather than a retrospective application of the development servicing plan.

(d) In granting development consents, Council should ensure that the Consent clearly identifies contributions payable to Council in its capacity as a water supply authority referring to the fact that the contributions are not determined pursuant to s94 or s94A of the Environmental Planning and Assessment Act 1979 but pursuant to s64 of the Local Government Act 1993 and s306 of the Water Management Act 2000. The consent should specifically refer to the contributions rate payable as being the rate applicable at the date of payment and not at the date of consent. In addition,

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

reference should be made to the fact that Council has the power to review the contributions payable for water and/or sewer either quarterly or annually, and does so regularly.

6.13 Concurrent action during Council deliberations - Council's account to [REDACTED] for all contributions payable under the condition of consent

There had been no reply from Council to [REDACTED] letter of 8 March 2007, and it was apparent that [REDACTED] was ready to progress the subdivision development. To do so, he would need to pay to the Council the development contributions it required, prior to the issue of a certificate of compliance.

On 28 August 2007 Council faxed to [REDACTED] a statement setting out all the individual amounts of contributions payable to Council under the conditions of consent. Though not specifically stated on the account, the statement included contributions which would have been levied under section 94 of the *Environmental Planning and Assessment Act 1974* and under section 306 of the *Water Management Act*. The statement showed the amount required for sewerage at the rate of \$5,500 per lot, totalling \$82,500, and Water Supply at the rate of \$4,000 per lot, totalling \$60,000. The amounts were considerably higher than the contributions set out in the condition of consent, viz totals of \$75,765 for sewerage and \$33,165 for water. This amounts to an overall increase of \$33,570 in the contributions under the *Water Management Act*.

[REDACTED] paid the amount sought by the Council on 29 August 2007 and received a receipt.

6.14 Council's further letter to [REDACTED] seeking clarification

Following [REDACTED] letter to the General Manager on 29 August 2007 in which [REDACTED] indicated he was seeking legal advice, Council entered into further correspondence with [REDACTED].

On 4 September 2007 [REDACTED] wrote again to [REDACTED] regarding the Water and Sewerage Development Servicing Plans, seeking clarification of paragraphs (b) and (d) of the advising of 28 August 2007.

[REDACTED] letter informed [REDACTED] of the fact that in relation to consents issued prior to 1 January 2007, the condition *Water Supply Authority Contributions* made no reference to possible increases in the monetary contributions payable and nor did it refer to the contributions rate payable as being the rate applicable at the date of payment and not at the date of consent.

[REDACTED] asked for confirmation from [REDACTED] that his advice that the rates adopted in the new water and sewerage development servicing plans shall apply to all developments, irrespective of when consent was issued until such time as the current plans are reviewed.

6.15 [REDACTED] further advice

On 5 September 2007, [REDACTED] responded to the request for advice forwarded by [REDACTED] the previous day.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

██████████ advising provided an alternative interpretation of Council's position and arguments which Council could be put forward. He referred to paragraph 5102, the standard text for the condition of consent relating to section 94 contributions under the *Environmental Planning and Assessment Act*. He advised that while the text for the condition of consent relating to water and sewer contributions for approvals prior to 1 January 2007 did not make specific reference to any increase in the rate of contribution, paragraph 5102 under the general heading, *Contributions*, made reference to the fact that contributions are calculated at the rate applicable at the time of payment. He advised that it could be argued by Council that all contribution rates determined at the date of consent were capable of being increased to reflect the rates applicable at the date of issue of the Subdivision Certificate.

He advised further on Council's position in any dispute and the difficulty facing the developer. He saw the issue as being essentially one of construction of the relevant development consent and the words used in the condition requiring payment of the contribution. He stated:

Whilst it might be possible to argue that Council should be bound by the original statement of the amount required to be paid for water/sewerage contributions and not be able to be varied, the difficulty which a person who has the benefit of a consent faces is that the water and sewerage contributions levied pursuant to section 64 of the Local Government 1993 and section 306 of the Water Management Act 2000 are not contributions against which an appeal may be brought, nor are they contributions which may be varied by a Court. Essentially, the issue is one of construction of the relevant development consent and the words in the condition requiring payment of the contributions.

He advised further in relation to possible action against the Council:

In such circumstances, unless the contributions required by Council are paid, the Construction Certificate or Plan of Subdivision would not be released and a decision would need to be made as to whether action should be commenced against Council on the ground that the payment of the original amount assessed for water/sewerage contributions amounted to a compliance with the conditions of consent. The appropriate procedure which an applicant would need to adopt is an application to the Land and Environment Court of New South Wales seeking a declaration that all conditions of development consent had been satisfied and an order that Council issue the Construction Certificate or release the Plan of Subdivision.

6.16 Further consideration of the legal advisings

The Committee met on 26 September 2007. ██████████ and ██████████ were asked to attend the meeting. The minutes state:

RECOMMENDATION

THAT the Legal Committee consider the advice from Council's Solicitor.

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

██████████ recollection of this Legal Committee meeting was that there was little discussion between him and the committee members. ██████████ recalled the Committee discussing the issue and resolving that the new Plans would apply to those developments for which consent was granted prior to 1 January 2007. At this meeting the Legal Committee had the benefit of the latest legal advising from ██████████ dated 28 August 2007, although he wasn't in attendance.

The minutes of the Legal Committee meeting of 26 September 2007 were submitted to the Ordinary Meeting of the Council on 10 October 2007. The Ordinary Meeting minutes record:

THAT the recommendations as detailed in the minutes of the Legal Committee meeting held Wednesday 26 September 2007 be adopted.

6.17 Council's further consideration of the legal advisings

The General Manager distributed the agenda and business papers for the Legal Committee meeting to be held on 24 October 2007.

The Business Paper

Water & Sewerage Development Servicing Plans were at item 11 in the Business Paper. The report in the Business Paper stated that the matter had been discussed at the meeting of 22 September, however the recommendation of that meeting recorded in the minutes which had been adopted by Council at the Ordinary Meeting did not accurately reflect the discussion and resolution of the Committee. The recorded recommendation was *That the Legal Committee consider the advice from Council's Solicitor.*

The Business Paper went on to state that the Committee, after Council's Solicitor's advice, reconfirmed the view that the Council's current position in relation to the levying of contributions under the Water and Sewerage Development Servicing Plans was correct. The Business Paper further stated

To be clear and enable staff to properly deal with any future inquiries from developers as to contributions payable, the following recommendation is put forward for adoption.

RECOMMENDATION

THAT Council reconfirm the current monetary contributions as set out in the adopted Water and Sewerage Development Servicing Plans.

Deliberations

The minutes of the Legal Committee meeting of 24 October 2007 record the following recommendation:

THAT the Council reconfirm the current monetary contributions (amended) as set out in the adopted Water and Sewerage Development Servicing Plan.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

We were informed that in reaching this decision, Council had relied specifically on the summary points (a) to (d) in [REDACTED] advice of 27 August 2007.

The minutes of the Legal Committee meeting of 24 October 2007 were submitted to the Ordinary Meeting of Council on 28 November 2007 when it was resolved:

THAT the matter be deferred for consideration to the Ordinary Meeting of Council to be held on Wednesday 12 December 2007.

At the Ordinary Meeting held on 12 December 2007, Council resolved:

THAT the recommendations as detailed in the minutes of the Legal Committee meeting held Wednesday 24 October 2007 be adopted.

We asked during the investigation whether any of the Councillors had expressed concern regarding the continuing deferral of consideration of the legal advisings. We were informed:

Councillors, although conscious of the need to make a decision were also conscious of the sensitivity of increasing contribution rates. It is Council's prerogative to defer matters until such time as they feel they are ready to make a decision and in this case the Councillors believed that it was preferable to take their time before finalising their decision.

6.18 Further legal advice on the standard text

In the meantime, [REDACTED], wrote to [REDACTED] on 18 September 2007 regarding the wording of the conditions of consent in relation to developer contributions 'both typical s94 and water and sewer'. [REDACTED] attached a copy of the proposed amendments to the standard conditions of consent.

The proposed wording for the developer charges under the *Water Management Act* included a final paragraph to the effect that the amount of the charge would be determined at the time of payment at the rates applying at that time, and that the charges may increase through indexation or by the adoption of new Development Servicing Plans.

[REDACTED] responded to Council on 5 November 2007 providing precise wording for the paragraphs regarding Council's authority under the Act, and the exact wording for the final paragraph:

The exact amount of any charge for either water supply or sewerage will be determined in accordance with s306 of the Water Management Act 2000 at the rate applicable as at the date of payment. The charges levied as at the date of the development consent will increase through indexation in accordance with movements in the Consumer Price Index (All Groups index) for Sydney issued by the Australian Statistician or by increases due to the adoption of new Development Servicing Plans by Council.

[REDACTED] advised that he looked forward to discussing the proposed changes with the Council.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges**ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council****Investigation into Wingecarribee Shire Council****Sensitive: Legal**

Council amended the standard text in October 2007, with further amendments in April and October 2008 to include notations along the lines recommended by [REDACTED].

6.19 The other complaint

We asked Council for all details of other complaints it had received regarding increased charges under the 2007 Plan, and to provide all relevant documentation. We were informed that the only other complaint Council had received regarding the application of charges under the 2007 Plan to development consents granted prior to 1 January 2007 was in relation to [REDACTED], in respect of [REDACTED], owned by [REDACTED].

The Notice of Determination for [REDACTED] included at clause 41 the condition relating to water supply authority contributions, and it followed the standard text for condition '5103', stating that the amount of contribution effective 23.7.97, and did not include any notation regarding the payment of the contribution being at the rate applicable at the date of payment.

On 22 October 2008, [REDACTED] had written to Council in relation to their 3 lot subdivision, [REDACTED]. They informed Council that they were fully aware of the developer charges that were imposed by Council when the DA was approved, and the fact that this amount could be paid at any time during the subdivision process. They had chosen to delay payment until the development was ready for approval, understanding that the amount would increase in line with the CPI.

At the time of payment they were 'unpleasantly surprised' by the huge increase in the water and sewer components of the charges. The sewer contribution had increased from \$2,199 to \$6,343, and the water contribution from \$2,074 to \$4,821 per subdivision lot. They could not understand why the holders of a pending application were not formally notified in writing of the impending increase. They had made payment in full and now requested that they be refunded the amount attributed to the DSP increase.

On 9 December 2009 Council responded to [REDACTED] informing them of Council's resolution on 28 February 2007 to phase in the new charges over a 3 year period. Council refused the request for a refund but Council would review the notification process for future draft Development Servicing Plans.

6.20 Outstanding subdivision consents prior to 1 January 2007

During the investigation we sought advice from Council on the number of development consents granted between 1 January 2002 and 31 December 2006 where certificates of compliance had not been obtained and/or contributions under the Development Servicing Plans had not been paid, as at the commencement of the Plans on 1 January 2007.

On 25 March 2009 Council provided us with a schedule setting out such consents. The schedule indicated that there were 32 subdivision determinations during this period where the water and sewerage development contributions had not been paid.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Details of [REDACTED] did not appear on the schedule, and it appears that the schedule may not be fully accurate.

6.21 2007 Development Servicing Plan contributions paid on consents granted prior to 1 January 2007

We also asked the Council to provide details of all instances where developers holding development consents granted prior to 1 January 2007 had been required to pay the increased contributions under the 2007 Development Servicing Plan when applying for certificates of compliance.

On 25 March 2009 Council provided us with a schedule indicating the development consents granted prior to 1 January 2007 where the applicants had paid the charges required by Council as set out under the 2007 Plan. The schedule listed 18 development applications on which Council had imposed the 2007 charges.

6.2.2 Matter arising – Meeting practice of the Legal Committee

The documentation gathered during the investigation has indicated that Notices of meetings of the Legal Committee were given to the appointed members of the Committee, and to all other Councillors, the General Manager and his senior staff, and Council's Solicitor. As a matter of practice, no notice is given to the public of the proposed convening of a meeting of this committee of Council.

The *Local Government Act 1993*, at Chapter 4, *How can the community influence what a Council does*, contains the following provisions regarding notice of meetings, who is entitled to attend meetings, and when meetings can be closed to the public:

9 *Public notice of meetings*

9(1) *(Notice of time and place)* A council must give notice to the public of the times and places of its meetings and meetings of those of its committees of which all the members are councillors

9(2) *(Copies of agenda and business papers)* A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the agenda and the associated business papers (such as correspondence and reports) for the meeting

9(2A) *(Agenda for closed meetings)* In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public:

- (a) *the agenda for the meeting must indicate that the relevant item of business is of such a nature (but not give details of that item), and*
- (b) *the requirements of subsection(2) with respect to the availability of the business papers do not apply to the business papers for that item of business.*

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

It was also noted that it was, and still is, Council's practice that Legal Committee Meetings, in their entirety, are closed meetings and never open to the public as a matter of course.

The documentation indicates or suggests that the agendas over a four month period included items concerning matters proceeding through the Court with progress reports, lodgements of development applications, unauthorised works, unauthorised parking, non-compliance with conditions of consent, issuing of penalty notices, tree removals, neighbourhood disputes and the role of the Community Justice Centre, land acquisition, and lease of council land.

Section 10A of the *Local Government Act* provides that a council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises the discussion of any of the matters listed in section 10A(2).

While the subject matter of the agenda items to be considered by the Committee as noted above, may well fall within a number of subsections under section 10A(2), the grounds for closing the meeting under section 10A(2) have not been specified in any of the Committee's minutes pursuant to section 10D:

10D Grounds for closing part of the meeting to be specified

- (1) *the grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.*
- (2) *The grounds must specify the following:*
 - (a) *the relevant provision of section 10A(2)*
 - (b) *the matter that is to be discussed during the closed part of the meeting*
 - (c) *the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.*

The conduct of meetings in respect of the abovementioned statutory requirement is also included in the *Local Government (General) Regulation 2005* at clauses 240 and 253, and incorporated in Council's Code of Meeting Practice.

It is Council's practice that the minutes of a Legal Committee Meeting are prepared after the meeting and submitted to the next Ordinary Meeting of the Council, held the following month.

The reports from the Legal Committee, included in the business papers for the Ordinary Meetings, contain very little or no information regarding the matters which have been under consideration by the Committee, and recommendations brought forward for adoption. The Committee minutes, as a general rule, only state the recommendation from the meeting in procedural terms, e.g. that the item be adopted or deferred, or noted.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

The subsequent minutes of the Ordinary Meetings usually state merely that the recommendations as detailed in the minutes of the Legal Committee meeting have been adopted, and little or no information on the item is provided in the minutes of the Ordinary Meetings.

The Department of Local Government's Circular to Councils, No 07/08, headed *Closed Council Meetings*, and issued on 11 April 2007, provides the following guidance:

While discussions during a closed meeting must remain confidential, the resolution must allow the public to know what the council has decided during the closed part of the meeting, but without revealing confidential information. A recommendation such as "Resolved as recommended in the report" does not adequately inform the public of the decision of the Council

The circular stated that the department regularly saw minutes of closed council meetings that failed to comply with the Act. To assist councils in preparing minutes for closed meetings that comply, the circular attached examples of model council minutes for a closed council meeting.

██████████, other ratepayers, and/or any other interested person would have no knowledge that matters were being considered, and deliberated upon, at the Council or at Committee.

7. CONCLUSIONS

7.1 Council's investigation of the complaints about the application of increased charges

The fundamental flaw

The evidence gathered during our investigation highlighted that there has been a fundamental administrative flaw in Council's procedures in the application of contributions for water and sewerage under the *Water Management Act*. The standard text it used for the relevant condition of development consent did not comply with the requirements of clause 4.3 of the 1997 Developer Contributions Plan and clause 5.3.2 of the subsequent 2007 Development Servicing Plan, in that the text did not include the required notation stating that the rate of contribution payable is the rate applicable at the date of payment, and that the rate may change by a change in the Consumer Price Index or the introduction of a new plan. The text was inadequate in that it only provided a statement of the contribution rate under the plan, the number of lots applicable and the total amount of contributions payable.

A reasonable reading of these conditions is that the amount specified is and will remain the amount payable.

The administrative flaw had not come to Council's attention until ██████████ complaint in March 2007, which was one of the early and significant instances where the considerably increased rates of contributions had been imposed by Council. Prior to the 2007 Plan, any variation of the level of contributions from that quoted in the condition of consent were CPI related, and relatively minor.

Council appropriately and promptly sought legal advice from its solicitor, ██████████, regarding the complaint that Council had applied new increased rates of contribution retrospectively.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Council appropriately also took prompt action to revise and correct its flawed standard text for the relevant condition of development consent, and submitted a revised text for [REDACTED] opinion. This was the first occasion that Council had sought advice on the 1997 and 2007 Plans and related matters.

[REDACTED] advised Council on 27 April and 25 June 2007, in the clearest of terms, that it could not apply the rate of contributions in the 2007 Plan to development consents granted prior to 1 January 2007. [REDACTED] suggested minor changes be made to the wording of the standard text to comply fully with clause 5.3.2 of the Plan.

In the light of [REDACTED] advisings in April and June 2007, in July 2007 Council's senior staff prepared a report for consideration by the Legal Committee, on Council's practice and procedures in relation to the Development Servicing Plan, and on the legal advices Council had received.

The staff report was comprehensive. It gave the background and history of the Plan. It advised that the calculation of new rates of contributions were based on predicted future development over a thirty year period, and that the formula for the calculation did not factor in those developments for which consent had already been granted. The report warned that if Council continued applying the new charges retrospectively, it was likely it would be challenged in the Land and Environment Court. It warned further that if this happened, and the legal advice obtained from [REDACTED] was confirmed by the Court, Council would receive adverse publicity which it could not afford at that particular time. Council, at the time of preparation of the staff report, had capitalised on the situation, requiring the payment of increased rates of contributions under the 2007 Plan on development consents granted prior to the introduction of the plan. The increase in the rates of contributions had netted an additional \$175,500 up to that point in time.

The report was considered at the meeting of the Legal Committee on 25 July 2007. The supplementary report tabled at the meeting gave an update of the financial implications involved in the matter, viz that if Council continued to apply the rate under the 1997 Plan (as set out in the condition of consent) the overall income to Council would be Water Supply \$2.4M and Sewerage \$3.9M, whereas under the 2007 Plan it would be increased to \$3.4M and \$4.8M. In other words, if Council continued to apply the increased rate of contribution under the 2007 Plan, notwithstanding the legal advice that it should not, Council would increase its contributions income by a total of \$1.9M.

The Legal Committee recommended that further legal advice be obtained from [REDACTED] for consideration at the next committee meeting. [REDACTED] was in attendance at the Committee meeting when the recommendation was made.

On 28 August 2007 [REDACTED] provided a third advising, and it is this advising on which Council states it has relied.

[REDACTED] advice can only be read in general terms. He advised that the rate of contributions for water and sewer was applicable as at the date of the certificate of compliance, as the development consent makes it quite clear that contributions may increase due to regular review. He stressed that the relevant condition of consent should specifically refer to the contributions rate payable as being the rate applicable at the date of payment, and not as at the date of consent.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

In other words, [REDACTED] advice in relation to the rate of contribution applicable being the rate at the date of payment, is contingent on the development consent making it clear that contributions may increase due to their regular review.

The situation was, and the Committee and Council were well aware, that consents granted prior to 1 January 2007 did not make it clear that contributions may increase due to regular review. Council had realised that the text for the relevant condition was flawed, and in April 2007 had proposed a revised text for [REDACTED] approval. Therefore the Committee and Council could not assume that [REDACTED] advice could be applied to consents granted prior to 1 January 2007, or in fact to consents granted thereafter up until Council revised its standard text to comply with clause 5.3.2 of Plans.

The Legal Committee met again on 26 September 2007 by which time Council needed to address the serious situation which had arisen. Council had before it several legal advices from its solicitor – to the effect that Council could not apply the 2007 Plan to development consents it had granted prior to 1 January 2007, that development consents must include specific notations regarding the rate of contributions payable (as outlined above), and that the standard text of the relevant condition of consent be reworded (in the terms required in both the 1997 and 2007 plans).

By the date of this meeting, there were 14 subdivision developments where the developer had been required by Council to pay the increased rate of water and sewerage contribution prior to the granting of a certificate of compliance, including [REDACTED] payment on 28 August 2007, on which he was seeking legal advice. Council was continuing to capitalise on the situation, requiring increased contributions prior to the release of the certificate of compliance.

Council had also sought and obtained another advice from [REDACTED] dated 5 September 2009 which outlined its position in the event of any Court action, providing an argument which Council could put to the Court. He concluded that the issue was essentially one of the construction of the development consent and the words used in the relevant consent condition.

No further staff report was prepared on the further advisings obtained from [REDACTED], and the report to the committee meeting of 25 July 2007 together with the tabled supplementary paper, remained the only records of Council's deliberations. There are no records of the deliberations of the Committee. [REDACTED] recollection is that the Committee resolved that the new Plans would apply to those developments for which consent was granted prior to 1 January 2007.

It is later recorded by means of the Legal Committee minutes that there was an error in the minutes of the Committee meeting of 26 September 2007 which stated that the Committee had recommended that it consider the advice from Council Solicitor. The Committee minutes with the aforementioned recommendation, albeit with a most significant error, were adopted at the next Ordinary Meeting on 10 October 2007.

The Legal Committee met again on 24 October 2007 when it brought forward the recommendation that Council reconfirm the current monetary contributions as set out in the adopted Development Servicing Plans. There was no elaboration of what was precisely intended by such a recommendation, but [REDACTED] recalled the Committee's intention that the new

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges**ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council****Investigation into Wingecarribee Shire Council****Sensitive: Legal**

Plans would apply to development consents granted prior to 1 January 2007. The minutes of the Committee were submitted to the Ordinary Meeting of 28 November 2007 when the matter was deferred to the meeting of 12 December 2007. Ultimately at the December meeting, the minutes of the Legal Committee were adopted.

The deliberations on this important matter regarding the application of water and sewerage developer charges were continually, and in my view unreasonably delayed by the Legal Committee. The deliberations by the Council were also delayed from July 2007 when the comprehensive staff report was submitted to the Committee, until the adoption of the Committee minutes and its recommendation, on 12 December 2007.

In my view, the Committee and ultimately the Council were unreasonable in recommending and resolving to apply the increased rate of water and sewerage contributions under the new Plans to consents granted prior to 1 January 2007, notwithstanding the advices from Council's solicitor in April, June and August 2007 that in effect it should not do so. I note in this regard the staff recommendation that Council heed the legal advice and pointing out the likely repercussions if it did not.

The advices from the solicitor were clear that the 2007 Plans should not be applied to development consents granted prior to 1 January 2007. In addition staff had reported fully and clearly on the matter, and an error in interpretation cannot be envisaged. It is therefore difficult to come to the view that the Councillors had simply made an innocent error in their interpretation of the solicitor's advices at the Committee level and at the Ordinary meeting.

It could well be argued that the Committee and the Council were influenced by financial considerations. If Council did not apply the 2007 Plan to consents granted prior to 1 January 2007, this would represent a loss of additional revenue of \$1.9M, as outlined in the staff report tabled at the Committee meeting on 25 July 2007.

7.2 The drafting and issuing of development consents for subdivisions

As stated earlier, having received [REDACTED] complaint in March 2007, Council immediately sought to revise and reword its standard text for condition '5103' in relation to water and sewerage contributions to comply with the Development Servicing Plans. Council submitted a proposed text to [REDACTED] for comment in April 2007 and again in September 2007. Council amended the standard text for condition '5103' in October 2007, and again in April and October 2008.

The new standard text appears to adequately address the problem in the old standard text in that it properly and clearly states that the amount to be paid is to be calculated as at the date of payment, not the date of consent.

7.3 Meeting practice

Council has conducted all meetings of its Legal Committee in closed session without complying with the relevant mandatory requirements of section 10A of the *Local Government Act*. This is against the founding principles of the Act of openness, transparency and accountability.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Council does not give Notice of the meetings of the Legal Committee as required under section 9 of the *Local Government Act*. The only indication that a meeting has been held is by the cryptic reports on the Committee's recommendation, submitted to the Ordinary Meeting for adoption. The minutes do not record on what subsection of section 10A(2) of the Act the Committee had relied upon to close the meeting to the public.

The Department of Local Government has given clear guidance to Councils in relation to the conduct of closed meetings which have not been given any regard by the Council.

Council has not complied with the Act, the Regulation and its own Code of Meeting Practice in this matter.

8. FINDINGS

- (1) **I find** that the conduct of the Wingecarribee Shire Council in deciding on 12 December 2007 to adopt the recommendation of its Legal Committee, to apply the increased rate of contributions under the Development Servicing Plans which commenced on 1 January 2007 to development consents granted prior to 1 January 2007, was unreasonable and oppressive, based wholly or partly on irrelevant considerations, and otherwise wrong, in terms of sections 26(1)(b),(d) and (g) respectively, in that

- . Council failed to properly consider and accept the clear and reasonable advice of its solicitor that it should only apply the provisions of the 2007 Development Servicing Plans to development consents granted after 1 January 2007
- . Council failed to properly consider the clear and reasonable advice from its senior staff that it should accept the advice of Council's solicitor and only apply the 2007 Development Servicing Plan to consents granted after 1 January 2007
- . Council resolved to apply the increased contributions under the Plan notwithstanding its clear understanding that the standard condition of consent attached to all subdivision development consents granted prior to 1 January 2007 in relation to water and sewerage contributions was flawed in that they did not comply with the requirements of the 1997 Developer Contributions Plans and the subsequent 2007 Development Servicing Plans
- . Council was also aware when making its decision that unless the level of contributions required by Council were paid, it would not release a Certificate of Compliance for the relevant subdivision. The only course of action would be for the developer to make an application to the Land and Environment Court seeking a declaration that all conditions of consent had been satisfied, and seeking an Order that Council issue the Certificate of Compliance. Council would be aware that developers would be reluctant to commence such action in the Court.
- . Council made its decision to apply the increased rate of contributions under the 2007 Development Servicing Plan to consents granted prior to 1 January 2007 in the knowledge that it

Sensitive: Legal

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



Investigation into Wingecarribee Shire Council

Sensitive: Legal

would increase its development servicing plan funds by \$1.9M. In seeking this financial gain, Council acted against the clear and reasonable advice from its solicitor that it should only apply the provisions of the 2007 Development Servicing Plans to development consents granted after 1 January 2007.

(2) I find that the conduct of the Wingecarribee Shire Council in its management of its Legal Committee has been contrary to law, and otherwise wrong, in terms of sections 26(1)(a) and (g) respectively, in that

Council has continually breached sections 9 and 10 of the Local Government Act, and its Code of Meeting Practice, in relation to the conduct and meeting practice of the Legal Committee, in failing to give proper notice of the meetings of the Committee, in closing such meetings from the public unilaterally, in failing to record the relevant sub-sections of section 10 on which it has relied in closing the meetings, and failing to minute the decisions to close the meetings.

9. RECOMMENDATIONS

- 9.1 I recommend that Council immediately reviews its resolution of 12 December 2007 and reconsiders and accepts the legal advices provided by its solicitor, and reconsiders and adopts the staff report prepared for the Legal Committee meeting of 25 July 2007, namely, that the provisions of the 2007 Development Servicing Plans be applied only to development consents granted after 1 January 2007
- 9.2 I recommend that Council refund to [REDACTED] the amount of the increase in contributions it required him to pay under the 2007 Development Servicing Plan prior to the issue of the Certificate of Compliance, over and above the amount specified in his 2004 development consent.
- 9.3 I recommend that Council also refund [REDACTED] the amount of the increase in contributions it required them to pay under the 2007 Development Servicing Plans prior to the issue of the Certificate of Compliance, over and above the amount they would reasonably have been required to pay in relation to their 2005 development consent
- 9.4 I recommend that Council refund all other developers who hold consents granted prior to 1 January 2007, who have been required to pay increased contributions under the 2007 Development Servicing Plans, the amount of such increase over and above the amounts specified in their development consents
- 9.5 I recommend that Council note its records so that the remaining holders of subdivision development consents granted prior to 1 January 2007 will not be required to pay the increased rate of contribution under the 2007 Development Servicing Plans
- 9.6 I recommend that Council formally apologises to [REDACTED], [REDACTED], and all other holders of development consents granted prior to 1 January 2007 who were required to pay increased contributions under the 2007 Development Servicing Plans
- 9.7 I recommend that Council immediately reviews its meeting practice in relation to the conduct of the Legal Committee, the closure of meetings to the public, and reporting



Investigation into Wingecarribee Shire Council

Sensitive: Legal

of the items and decisions, and that it amends its practices to comply with sections 9 and 10 of the *Local Government Act*, the Regulation and its own Code of Meeting Practice.

I require Council to report to me on compliance with the recommendations in this report within three (3) months of the date of the report.

Redacted for Tabling



Investigation into Wingecarribee Shire Council

Sensitive: Legal

Appendix 5: Council response to 2020 statement of provisional findings and recommendations

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12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



lindsaytaylorlawyers
planning • environment • local government

Confidential

20 July 2020

Our ref: WIN18001
Your ref: C/2008/5322;C/2018/5774

NSW Ombudsman
Level 24, 580 George Street
SYDNEY NSW 2000

Attention: [REDACTED]

Email

Dear Sir,

Investigation into Wingecarribee Shire Council**Introduction**

- 1 I refer to the *Statement of provisional findings and recommendations: Investigation into Wingecarribee Shire Council* dated June 2020 (**Statement**) and the covering letter sent to Council on 26 June 2020. I act for Council and am instructed to respond to the Statement on Council's behalf.
- 2 Council has considered that Statement in detail, and is of the view that it contains a number of significant legal errors. There are also significant practical problems associated with the implementation of the proposed recommendations, which suggest that the recommendations should be revisited.
- 3 Council requests that the preliminary findings and recommendations be reconsidered in line with the issues raised in this letter.

Legal errors

- 4 The Statement includes a number of errors of law that impact upon the findings in relation to each of the three concerns identified in the Statement.

Amount of the DSP Charges

- 5 The decision of the Court of Appeal in *Nash Bros Builders Pty Ltd v Riverina Water County Council* [2016] NSWCA 225 (**Nash Bros**) clearly is to the effect that a water supply authority has **no power** to require a developer to pay development servicing charges (**DSP Charges**) under s64 of the *Local Government Act 1993 (LG Act)* and s306 of the *Water Management Act 2000 (WM Act)* before that developer applies for

lindsaytaylorlawyers
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

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12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



a certificate of compliance under the WM Act. This is correctly accepted at page six of the Statement.

- 6 The Statement however states that the Court of Appeal in *Nash Bros* did not consider whether a condition of development consent could set the amount of the fees, and is distinguishable as the appellant in the case had not applied for a certificate of compliance, whereas [REDACTED] had.
- 7 It is clear from the Court of Appeal judgment in *Nash Bros* that the relevant development consent contained a condition to the effect that a compliance certificate would be required, and quoted the fee to be paid (in an advisory condition). However, there was a finding that no application for a certificate of compliance under the WM Act had been made.
- 8 It is important to note that [REDACTED] applied for her certificate of compliance many years after the grant of her development consent (**Consent**).
- 9 [REDACTED] circumstances are not different from the circumstances in *Nash Bros* in any way which would have led the Court of Appeal to a different conclusion – the conclusion of the Court of Appeal would have been that the DSP Charges were to be determined when she made her application for a certificate of compliance. The Statement does not include any proper legal analysis as to why it says the fact that she applied for a certificate is distinguishing.
- 10 Given the form of the condition in *Nash Bros*, the Court of Appeal judgment must be read as finding that there is no power to set fees in a development consent. There was no need for the Court of Appeal to say explicitly, given its finding that the charges cannot be required until an application for a certificate of compliance is made, as “**the power of the respondent to impose fees may be found in Div 5**” (of Part 2 of the WM Act). That conclusion is wholly inconsistent with there being a power to impose fees in a development consent.
- 11 In addition to the Court of Appeal finding that the source of power to require DSP Charges is the WM Act, it is also clear from other caselaw and the *Environmental Planning and Assessment Act 1979 (EPA Act)* that there is no power to impose DSP Charges in a development consent for the following reasons:
- 11.1 a consent authority cannot fetter the discretion which it exercises when determining whether any DSP Charges are payable, by determining the amount of DSP Charges before it receives an application for a certificate of compliance;
- 11.2 that discretion must be exercised having regard to the circumstances, and the DSP that exists at the date of the determination to issue a certificate of compliance;
- 11.3 there is no source of power in the EPA Act for imposing such a condition; and
- 11.4 a condition on a development consent setting the DSP Charges would contravene the prohibition in s7.11 of the EPA Act on requiring development contributions under the EPA Act for the purposes of water infrastructure.
- 12 It is also not agreed that the condition imposed on the Consent is unreasonable or misleading.

Fettering of Discretion

- 13 It is well established that a public authority does not have power to fetter the exercise of its own discretion by binding itself to exercise that discretion in a particular way: *Ansett Transport Industries (Operations) Pty Ltd v Commonwealth* (1977) 139 CLR 54.
- 14 This stems from the principle that a government must determine how to exercise its discretion having regard to the needs of the community at the time when the need to

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



exercise that discretion arises: *Rederiaktiebolaget Amphitrite v. The King* (1921) 3 KB 500, at p 503.

- 15 Barring some express provision to the contrary, a statutory power must be exercised having regard to the situation that exists as at the date of the exercise of the power: *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286; [2008] HCA 31 (*Shi*).
- 16 There is no express provision in the WM Act that would authorise Council to have regard to the situation existing at any earlier time than the application for the certificate of compliance, when setting DSP Charges. As stated by Ward JA in *Nash Bros* at [90]:
- I see nothing in the text of the section, read in the context of the Act as whole, that indicates an intention on the part of the legislature to empower a water supply authority in effect to anticipate the making of an application for a compliance certificate and call for a contribution to the cost of any water management works simply because there is a prospect of such an application.*
- 17 Therefore, Council cannot exercise its discretion at any time earlier than on application for a certificate of compliance. Often, as in [REDACTED] case, there is an extensive period of time between the grant of development consent and the application for a certificate of compliance.
- 18 So far as it is suggested in the Statement that a condition in a development consent could set the amount of DSP Charges, such a result would inevitably prevent Council from imposing DSP Charges that meet the needs of the community for water infrastructure when the time for the exercise of the power arises (on application for the certificate).
- 19 Imposition of a condition of development consent fixing the DSP Charges would therefore be an unlawful fetter on the lawful exercise of the Council's discretion to determine the amount of the DSP Charges as a precondition to the grant of the certificate. The suggested approach in the Statement is therefore contrary to law.
- 20 Indeed, the need to determine DSP Charges having regard to the situation after receipt of an application for a compliance certificate is even more important when it is considered that DSP Charges ought to reflect the cost to the community of the provision of infrastructure. As set out in the *2016 Developer Charges Guidelines for Water Supply, Sewerage and Stormwater* (Department of Primary Industries- Water, 2016) (**Guidelines**):
- The underlying principle is that the new development should meet the full cost of assets serving the development...*
- 21 Council must take into account the circumstances, and the development servicing plan (**DSP**) that exists as at the date of its decision to require DSP Charges (at certificate of compliance stage), and determine the amount payable as at that date.
- 22 The approach referred to in the Statement effectively requires the Council to ignore the current DSP and merely apply the DSP Charges outlined in the Consent. Such an approach requires Council to act unlawfully by ignoring a relevant consideration.
- 23 Furthermore, and in [REDACTED] case, it requires the Council to determine the DSP Charges payable at a date some 11 years before the application for a compliance certificate. This is fundamentally inconsistent with the decision of the High Court in *Shi*, and consequently would again require the Council to act unlawfully. It is also contrary to the Guidelines as it prevents Council from recovering the full cost of assets serving the development.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



No Power in the EPA Act to Impose Condition

- 24 Any conclusion that a Council can set the amount of DSP Charges in a development consent would be inconsistent with the EPA Act.
- 25 Conditions of consent must be of a kind authorised by the EPA Act. There is no power to impose a condition requiring the payment of money under the EPA Act other than:
- 25.1 under s7.11 in respect of monetary contributions for public amenities and services and in accordance with a contributions plan made under the EPA Act (which is not a DSP);
- 25.2 under s7.12 in respect of fixed levies in accordance with a contributions plan (again under the EPA Act, not a DSP);
- 25.3 by the Minister administering the EPA Act under s7.24 where the land is in a special infrastructure contributions area; and
- 25.4 in some specific circumstances set out in the EPA Act in respect of security for damage to public works and long service levy payment.
- 26 The caselaw is to the effect that there is **no other power** to require payment of money under the EPA Act.
- 27 In respect of contributions towards public amenities and services, s7.11 of the EPA Act is **the sole source of power** to require such contributions: *Fairfield City Council v N & S Olivieri Pty Ltd* [2003] NSWCA 41, at [22] *Australian International Academy of Education Inc v The Hills Shire Council* [2013] NSWLEC 1, at [48].
- 28 Relevantly, s7.11 of the EPA Act states that public amenities or public services **do not** include water supply or sewerage services. This creates a clear demarcation between development contributions under the EPA Act and DSP Charges under the WM Act.
- 29 There is therefore simply no power under the EPA Act for Council to impose a condition requiring DSP Charges to be paid, and any condition relating to DSP Charges can only be read as advisory.

Interpretation of Condition

- 30 In [REDACTED] case, the relevant condition of the Consent is expressed to be advisory. It clearly states that the recipient is 'advised' that Council will require payment of a contribution. Furthermore, it:
- 30.1 is, respectively, in so far as it indicates that Council 'shall require' a payment towards water and sewer facilities required to serve the development;
- 30.2 indicates that the payment is to be 'in accordance with Division 5 of Part 2 Chapter 6 of the Water Management Act 2000 (WM Act) as amended'; and
- 30.3 indicates that the rates specified are 'current rates of contribution applicable (Effective 23/0797)' with the obvious implication that such 'current' rates may change.
- 31 To read the condition as setting in stone a particular amount would be to adopt an interpretation that is inconsistent not only with the law on unlawful fettering of discretion and the EPA Act, but also with the plain words of the condition.
- 32 The words in a development consent are required to be given their natural and ordinary meaning, having regard to their context and purpose: *Baulkham Hills Shire Council v Ko-veda Holiday Park Estate Ltd* [2009] NSWCA 160, at [99].
- 33 Reading the condition as setting the amount of the DSP Charges ignores the plain meaning of the words 'advised' and 'shall require'. Those words are plainly intended

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



to indicate that the condition is advisory and prospective, rather than binding as at the date of the grant of consent.

- 34 This is even more so when viewed in context. Throughout the subject Consent, Council uses markedly different language to distinguish an obligation imposed by the Consent itself from future obligations. The Consent variously says that the developer 'is to' take certain action (as in conditions 22 and 23), and 'shall' do something (for example condition 20, 24, and 25, 26, 27, 28, 29, 31, 32, 36, 40, 44).
- 35 The Statement's construction also ignores the legislative context. Given the scheme of the EPA Act and WM Act, the condition must be advisory.
- 36 At no other point in the Consent does Council use the language that the developer is 'advised', or that Council 'shall require' certain action. Such suggests, consistently with the ordinary meaning of the words, that the condition is intended to have a different effect to other binding conditions. It is advisory.
- 37 For these reasons, the suggestion in the Statement that despite *Nash Bros*, a consent authority can set the amount of DSP Charges in a development consent is incorrect as a matter of law.

Fairness

- 38 Given the scheme of the LG Act and the WM Act, and the inability of a development consent to fix DSP Charges, it is inherent that different developers who are granted development consents at the same time, may end up paying different, and in some cases, vastly different, DSP Charges, if the costs of delivering the assets varies over time, and the time at which they seek a certificate of compliance varies.
- 39 A developer who developed shortly after they were granted a consent pre-2007 would likely have been required to pay the DSP Charges advised in their consent. However, ██████ came to develop her land some 11 years after her Consent was granted. The difference in the amount required to be paid results from changes to DSPs over time, which reflect increased and changed costs and factual circumstances on the ground.
- 40 It is not unlawfully discriminatory—the difference is in respect of changed costs over time for the provision of infrastructure to service her development.
- 41 Council acted entirely in accordance with the law in requiring ██████ to pay a different amount to that noted in the Consent.
- 42 The Statement must reflect the true legal position, based on the caselaw regarding the interpretation of conditions of consent and the power to impose DSP Charges.

Closure of Council meeting

- 43 The Statement concludes that Council acted contrary to law in closing part of its meeting of 22 May 2019.
- 44 That conclusion cannot be sustained on the facts and circumstances referred to in the Statement and having regard to the LG Act.
- 45 Council's power to close a meeting to the public is set out in s10A of the LG Act. That section provides relevantly that:
 - (1) *A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises—*
 - (a) *the discussion of any of the matters listed in subclause (2), or*
 - (b) *the receipt or discussion of any of the information so listed.*

...

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



- 46 One matter listed in subclause (2) is the consideration of legal advice which would be privileged from production in legal proceedings (s10A(2)(g)). As the meeting was to consider legal advice this ground was available to Council.
- 47 Section 10B of the LG Act then requires a '**council ... to be satisfied**' that discussion in open council of the matter would be contrary to the public interest, in order for the meeting to remain closed for consideration of the matter.
- 48 The Statement acknowledges that the Council did form the requisite degree of satisfaction as it states that the minutes and recordings of the meeting note that '*Council considers that it would be on balance contrary to the public interest to consider this information in Open Council*'.
- 49 It is irrelevant that the authors of the Statement come to a different view as to whether it was in the public interest to close the meeting. The reference to the Council's satisfaction in s10B is an indication that it is the subjective opinion of the Council which is relevant. Had the legislature intended that third parties could determine whether a matter was in the public interest, and therefore whether the closure of the meeting was lawful, then the section would not refer to Council's satisfaction, but would simply state that a meeting must not remain closed if it is not in the public interest for it to remain closed. That is not what s10B says.
- 50 Council relied on s10A(2)(g) of the LG Act to close the meeting, and formed the requisite opinion under s10B. Its actions in closing the meeting were therefore completely consistent with the LG Act and lawful.
- 51 Whilst there may have been a breach of s10D arising from a failure by Council to properly record its explanation of why it considered closure to be in the public interest, that failure of process does not infect the decision itself to close the meeting, and does not make the closure of the meeting unlawful.
- 52 Section 374 of the LG Act provides that a failure to comply with the *Code of Meeting Practice* (which includes provisions which reflect s10D) does not invalidate proceedings at the meeting.

Alleged breach of agreement

- 53 On 22 July 2009, Council resolved in response to an earlier investigation by the NSW Ombudsman:
- 'THAT Council immediately inform the Ombudsman that it accepts the recommendations contained within the Statement of Preliminary findings and Recommendations into the complaint received from [REDACTED] and indicates its willingness to action those recommendations as a matter of priority.'*
- 54 Subsequently, on 11 November 2009, Council made a further resolution specifying the steps that it would take. That resolution stated in part:
- 'THAT upon review of Council's Water and Sewer Development Servicing Plans, Council write to the applicants of all consents with unpaid water and sewer contributions informing them of impending price increases.'*
- 55 In this regard, it is well established that a later resolution will override a previous inconsistent resolution: *Attorney-General ex rel Goddard v North Sydney Municipal Council* [1971] 2 NSWLR 373, at 379. It is therefore the November resolution, and not the July resolution, which is the operative resolution and sets out what action Council proposed to take in response to the then Ombudsman's recommendations.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



- 56 Council's position in respect of price increases has been clear and publicly available since November 2009. It cannot be suggested that Council has acted unreasonably by reference to what occurred in 2009.
- 57 Council's decision in 2019 in respect of how to deal with the latest investigation in relation to [REDACTED] complaint was made having regard to legal advice received by Council regarding the *Nash Bros* case and the proper interpretation of the condition making powers under the EPA Act. The legal advice Council had received when making its resolutions in 2007 and 2009 was different, and predated the decision of the Court of Appeal in *Nash Bros*.
- 58 It is entirely appropriate and lawful for Council to have regard to the law as clarified by the Court of Appeal in *Nash Bros* in making its later decisions.

Response to Recommendations

Recommendations 1-3

- 59 The key recommendations in the Statement are that [REDACTED] should be refunded the DSP Charges she has paid in excess of those noted in her Consent, and other developers who were granted development consents pre 2007 should also only pay the DSP Charges noted in their consents, which may result in further refunds.
- 60 I have discussed above the legal issues regarding why Council's actions have been lawful, and why the recommendation effectively requires Council to act unlawfully.
- 61 These recommendations, if implemented, would also lead to inequity.
- 62 There would be developers who have obtained development consents in the last few years whose developments may proceed now or shortly, and are competitors in the market with [REDACTED] and other developers with pre-2007 consents who are developing now.
- 63 Those developers with consents granted recently will be required to pay the full DSP Charges in the 2017 DSP. [REDACTED] and developers with older consents will, if only required to pay the pre-2007 DSP Charges, receive a significant financial advantage over those developers with recent consents, which will give them an unfair advantage in the market.
- 64 In addition, developers who have already developed and paid the higher DSP Charges would have presumably passed those charges on, as a cost of development, to end-purchasers of subdivided lots or houses. For those developers to now receive a refund will lead to a windfall for those developers.
- 65 Refunding [REDACTED] and other developers in similar circumstances will also clearly create a funding shortfall for Council's water and sewer funds, given that DSPs are developed having regard to costs based on financial modelling.
- 66 As set out above, Council is satisfied that its process of imposing DSP Charges is consistent with the relevant legislation and the Guidelines. However, Council has and continues to make improvements to its processes and procedures in this regard, over and above its legislative requirements.
- 67 In addition to updating the standard conditions of development consent, Council continues to improve its systems and processes to ensure the contributions system is open and transparent. Council's 2017 DSP was prepared in accordance with the relevant legislation and the Guidelines, including notifying the relevant industry bodies and all applicants with a development consent was issued within the preceding six (6) months.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a
Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into
Wingecarribee Shire Council



- 68 Council is in the process of developing a General Manager's Practice Note and Procedures, which will outline the process for Council staff when amending the DSP in the future. Under the proposed Practice Note and Procedures, Council staff will be required to write to the applicants and landowners of all active development consents (with outstanding developer charges) for a period of five (5) years, to advise them of the exhibition of a draft DSP and the impending change in developer charges. It is noted that this is significantly over and above the legislative requirements.
- 69 In 2014, Council updated its information and technology systems, which can now provide an accurate data set of all applicants and landowners of active development consents with outstanding developer charges. This information is critical in ensuring Council can notify all applicants and owners in accordance with the proposed General Manager's Practice Note and Procedures outlined above.
- 70 Given the above steps Council is taking, it is not considered that any further action is required in respect of Council's approach to DSP Charges.

Recommendation 4

- 71 Council will ensure it properly records its reasons when determining to close meetings to the public under the LG Act.
- 72 However, as noted above, the closure of the meeting of 22 May 2019 did not breach the LG Act, and was authorised by s10A(1)(g) and s10B.
- 73 There is no need to change Council's practice in respect of closing meetings, other than to ensure the proper recording of reasons.

Recommendation 5

- 74 Again, as stated above, the findings of the Statement in respect of the closure of the 22 May 2019 meeting misrepresented the law. Council was satisfied it was in the public interest to close the meeting and the fact that the authors of the Statement considered otherwise is not relevant. It is therefore not clear what would be reported to the Office of Local Government other than that on one occasion Council closed a meeting lawfully, but the Ombudsman took a different view regarding the public interest.

Reconsideration

- 75 Council urges you to reconsider his preliminary findings and recommendations.
- 76 Most significantly, the final findings must reflect the true legal position.
- 77 Council acted lawfully in imposing the DSP Charges it has required [REDACTED] to pay. That is clearly the case based not only on the decision of *Nash Bros*, but the general law regarding the fettering of discretion, and the proper construction of the EPA Act. The findings must be amended to reflect the true position at law, and not a position that requires Council to act contrary to law.
- 78 Council also acted lawfully when closing its meeting of 22 May 2019. Council had grounds to close the meeting under s10A(1)(g) of the LG Act and formed the requisite opinion regarding the public interest under s10B.
- 79 Proper consideration also needs to be given to the recommendations in light of the proper interpretation of the law, and the context of other development within Council's local government area and the costs of servicing that development.

12.5 NSW Ombudsman's Determination and Final Report of the Investigation of a Complaint Relating to Development Servicing Plan Charges

ATTACHMENT 1 NSW Ombudsman Final Report - Investigation into Wingecarribee Shire Council



80 If you would like to discuss this matter further, please contact me on 02 8235 9703.

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Redacted for Tabling



13 GENERAL MANAGER

13.1 Legal Report

Reference:	107/22
Report Author:	General Counsel
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to update Council on the status of legal proceedings reported at the ordinary meeting of Council on 25 November 2020.

THIS REPORT WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

1. **THAT** the information relating to ongoing legal costs in Attachment 1 to the report be noted.
2. **THAT** the status of the legal proceedings involving Council be considered in Closed Council – Item 19.2.

This report is confidential in accordance with section 10A(2) of the Local Government Act 1993, under section 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Note: *The Council, or a committee of the Council, may allow member of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed (15.9 – Code of Meeting Practice).*

Where the matter has been identified in the agenda of the meeting under clauses 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 15.9, members of the public must first make an application to the Council in the approved form. Applications must be received by close of business (4.30pm) two (2) business days prior to the meeting at which the matter is to be considered (15.11 – Code of Meeting Practice).

REPORT

BACKGROUND

This report updates the current status and costs paid from November to January 2021 for legal proceedings involving Council in the Land and Environment Court, including those matters completed since the last report to Council.

REPORT

On 17 April 2013, Council resolved: *THAT the legal costs as detailed in the Legal Affairs Report be made public in the Business Paper on an ongoing basis.*

The report on the status of legal affairs involving Council contains information and advice that is privileged on the grounds of legal professional privilege and contains information that, if disclosed, could confer a commercial advantage on parties with whom Council is conducting business (including opposing parties in litigation). Therefore, it is recommended that the report be considered by Council in Closed Committee pursuant to section 10A(2)(g) of the *Local Government Act 1993*.

For the purpose of preserving privacy, some matters in **Attachment 1** may be described in general terms. **If a Councillor has a specific enquiry regarding the costs reported, they should raise it in Closed Council.**

Consultants' Fees

At the Council meeting on 8 March 2017, Council resolved that the Legal Affairs Report include a separate column for fees paid to consultants in legal proceedings. Consultants are engaged in all cases concerning development consents in the Land and Environment Court as the Court requires the parties to provide expert evidence to assist in the determination of the issues in the case.

These consultants prepare reports for the Court and give evidence if the matter goes to hearing on such matters as site density, building layout, traffic, drainage, noise, light and any other relevant issue.

The consultants are always engaged by the external law firm acting for Council.

Usually, their fees are paid by the law firm and recouped from Council through an invoice from the law firm. In that case, the consultants' fees have been included in the monthly Legal Costs report to Council.

There were consultants' fees for legal proceedings paid in the November and December 2020 and January 2021 – refer to **Attachment 1**.

COMMUNICATION AND CONSULTATION

Community Engagement

Nil

Internal Communication and Consultation

Staff and management provide information, as required, to assist the progress of the matters reported.

External Communication and Consultation

Solicitors from Council's Legal Panel provide advice and conduct legal proceedings on Council's behalf.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report. However, some legal proceedings may deal with unauthorised works or activities which have had or could have an environmental impact.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There is a strong community expectation in relation to enforcement and compliance actions by Council. Actions taken are in line with Council's Compliance and Enforcement Policy.

RELATED COUNCIL POLICY

Council's Compliance and Enforcement Policy.

ATTACHMENTS

1. Legal Costs November 2020 to January 2021



Fees Recovered - November 2020 to January 2021

Attachment 1

Legal Matter	Legal Expenditure Nov-20	Consultant Expenditure Nov-20	Legal Expenditure Dec-20	Consultant Expenditure Dec-20	Legal Expenditure Jan-21	Consultant Expenditure Jan-21	Legal Expenditure Year to Date (YTD)	Consultant Expenditure Year to Date (YTD)	Total Expenditure Life to Date (LTD)
Kieran Thomas Zube Cordeaux Street Willow Vale	-	-	-	-	\$2,960	-	\$2,960	-	\$2,960
Feldkirchen Old Hume Highway Mittagong	\$2,130	-	\$1,440	-	-	-	\$3,570	-	\$3,570
Jenny Stock Greenhills Road Werai	\$3,996	-	-	-	\$2,076	-	\$6,072	-	\$6,072
Lasovase Myra Vale Road Wildes Meadow	\$18,030	\$6,675	\$43,662	\$0	\$968	-	\$115,420	-	\$160,951
ERF Hospice Edward Street Bowral	\$26,085	\$17,918	\$7,908	\$22,225	-	-	\$69,642	-	\$139,535
Bowral Garage Development Bong Bong Street Bowral	-	-	\$15,143	-	-	\$9,750	\$18,916	-	\$35,852
Woodbine Park Nominees Wombeyan Caves Road High Range	-	-	\$2,043	-	\$903	-	\$7,781	-	\$21,009
Toptact Pty Ltd v. WSC Lot 1 Funston Street, Bowral	-	-	-	-	-	-	\$16,411	-	\$20,042
Mittagong Central Developments Station Street Mittagong	\$1,949	-	\$18,356	-	\$1,774	-	\$41,811	-	\$90,513
Frank Maly v. WSC	-	-	-	-	-	-	\$8,000	\$371	\$8,371
Total Expenditure	\$52,190	\$24,593	\$88,552	\$22,225	\$8,681	\$9,750	\$290,583	\$371	\$488,875

Note: This report includes proceedings where legal and/or consultancy costs have been incurred in the 2020/21 Financial Year. It is important to note that the figure reported to the Finance Committee on a quarterly basis is projected expenditure for the entire financial year. The figure reported to the Finance Committee also includes non-development related legal expenditure.

Fees Recovered – November 2020 to January 2021

Legal Matter	Fees Recovered Nov-2020	Fees Recovered Dec-2020	Fees Recovered Jan -2021	Fees Recovered YTD	Fees Recovered LTD
O'Shanassy	\$750	\$250.00	\$750.00	\$4,964	\$24,442
Garry Turland	-	-	-	\$20,000	\$25,000
Michael Brown Planning	-	-	\$68,500	\$68,500	\$68,500
Total Recovery	\$750	\$250	\$69,250	\$93,464	\$117,942

Notes:

O'Shanassy - \$93,500 penalty (OSR recovery) plus Council has been awarded by the Supreme Court of NSW a costs order of \$379,000 plus \$4,999.23 being Council's costs in order to undertake the costs assessment.



13.2 Memorandum of Understanding Between Wingecarribee Shire Council and Transport Asset Holding of NSW

Reference: 7457
Report Author: Group Manager Corporate and Community
Authoriser: Deputy General Manager Corporate, Strategy and Development Services

Link to Community Strategic Plan: Effective financial and asset management ensure Council's long term sustainability

PURPOSE

The purpose of this report is to provide Council with the Memorandum of Understanding between Wingecarribee Shire Council and Transport Asset Holdings Entity of New South Wales for the Station Street Upgrade Project.

THIS REPORT WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

THAT the Memorandum of Understanding Between Wingecarribee Shire Council and Transport Asset Holding of NSW be considered in Closed Council – Item 19.1p.

This report is confidential in accordance with section 10A(2) of the Local Government Act 1993, under section 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Note: *The Council, or a committee of the Council, may allow member of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed (15.9 – Code of Meeting Practice).*

Where the matter has been identified in the agenda of the meeting under clauses 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 15.9, members of the public must first make an application to the Council in the approved form. Applications must be received by close of business (4.30pm) two (2) business days prior to the meeting at which the matter is to be considered (15.11 – Code of Meeting Practice).

ATTACHMENTS

There are no attachments to this report.

13.3 Exclusion of a Question with Notice and a Notice of Motion from Business Paper on 10 March 2021

Reference:	503/60
Report Author:	Group Manager Corporate and Community
Authoriser:	Acting General Manager
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

To advise Council of the exclusion of one Question with Notice and one Notice of Motion from the Ordinary Meeting of Council dated 10 March 2021.

The Code of Meeting Practice (adopted 12 June 2019) Clause 3.20 states: *“the General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is, or the implementation of the business would be, unlawful. The General Manager must report, without giving details of the item of business, any such exclusion to the next meeting of Council”.*

As required, the Acting General Manager advises that a submitted Question with Notice was excluded in accordance with Clause 3.20 above. This is because the Question with Notice offends Clause 3.15 of Council’s Code of Meeting Practice, i.e.

“A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.”

As such, the Acting General Manager determined it would be unlawful to include the Question with Notice on the agenda.

The Acting General Manager also advises that a submitted Notice of Motion was excluded in accordance with Clause 3.20 above. This is because the Notice of Motion commits an act of disorder under 16.11(d) of Council’s Code of Meeting Practice:

“A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:

(d) insults or makes personal reflections on or imputes improper motives to any other council official, or alleges a breach of the council’s code of conduct,”

As such, the Acting General Manager determined it would be unlawful to include the Notice of Motion on the agenda.

ATTACHMENTS

There are no attachments to this report.

Barry W Paull
Acting General Manager
Wednesday 3 March 2021

16 COMMITTEE REPORTS

16.1 Management Advisory Committee Reports

Reference: 107/1
Report Author: Committee Coordinator

PURPOSE

This report provides the Minutes of the following Committee Meetings, copies of which will be tabled:

1. Moss Vale Senior Citizens & Community Centre Hall Committee held 11 December 2020
2. Moss Vale Senior Citizens & Community Centre Hall Committee held 15 February 2021
3. Hill Top Community Centre Committee held 18 February 2021

RECOMMENDATION

THAT the information contained in the following Committee Reports be noted:

1. Moss Vale Senior Citizens & Community Centre Hall Committee held 11 December 2020
2. Moss Vale Senior Citizens & Community Centre Hall Committee held 15 February 2021
3. Hill Top Community Centre Committee held 18 February 2021

ATTACHMENTS

There are no attachments to this report.

16.2 Minutes of the Finance Committee Meeting held on 17 February 2021

Reference:	107/21
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

This report provides the Minutes of the Finance Committee Meeting held on 17 February 2021.

THIS REPORT WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

THAT recommendations Nos FC1/21 to 7/20 – as detailed in the Minutes of the Finance Committee Meeting held on 17 February 2021 be adopted, save for any items which have budgetary implications AND THAT any item with budgetary implications and which is unfunded, be referred to the Finance Committee for consideration.

SUMMARY OF RECOMMENDATIONS AND ACTIONS FOR COUNCILLORS' ATTENTION AND ADOPTION

Item 4 Adoption of Minutes of Previous Meeting

FC1/21

THAT the minutes of the Finance Committee Meeting held on Wednesday 18 November 2020 MN 21/20 to MN 25/20 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.

Item 6.1 Budget Review to 31 December 2020

FC 2/21

1. *THAT Council approve the budget variations reported at the December Quarterly Review as listed in Attachment 1 to the report.*
2. *THAT Council note the projected budget position for the 2020/21 Financial Year is a deficit of \$55,266.*
3. *THAT the deficit of \$55,266 at the December Quarterly Review be funded from the Capital Projects Reserve.*
4. *THAT the Acting General Manager issue a media release confirming the Civic Centre is on budget.*

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

COMMITTEE REPORTS



Item 6.2 Quarterly Progress Report Operational Plan 2020/21, 1 October 2020 to 31 December 2020

FC 3/21

1. *THAT the Operational Plan 2020/21 Quarterly Progress Report, 1 October 2020 to 31 December 2020, be noted.*
2. *THAT a copy of the Operational Plan Progress Report be forwarded to the Hon. Gladys Berejiklian Premier of NSW, the Hon. Shelly Hancock Minister of Local Government, the Member for Wollondilly the Hon. Nathaniel Smith and the Member for Goulburn the Hon. Wendy Tuckerman.*
3. *THAT a copy of the Operational Plan Progress Report be forwarded to the Southern Highlands Chamber of Commerce and local media outlets.*
4. *THAT Council formally write to its Federal and State members thanking them for their support in securing grant funding as outlined in the Operational Plan 2020/21 Quarterly Progress Report, 1 October 2020 to 31 December 2020.*

Item 6.3 Loan Borrowings 2020/21

FC 4/21

1. *THAT Council accept the Commonwealth Bank of Australia's offer to provide a \$6,310,000 General Fund loan for a term of 20 years.*
2. *THAT the Acting General Manager and his nominated delegate be authorised to negotiate the interest rate at draw down date.*
3. *THAT the Mayor and Acting General Manager be authorised to sign the necessary loan documentation under the Common Seal of Council.*

Item 6.4 Draft Permanent Road Closure and Road Lease Policy

FC 5/21

THAT Council adopt the Permanent Road Closure and Road Lease Policy as shown in Attachment 1.

Item 6.5 Request for Interest-Free Loan by Bowral Bowling Club

FC 6/21

THAT Council provide the Bowral Bowling Club an interest-free loan in the amount of \$30,000 payable over 5 years at a rate of \$500 per month and secured by a bank guarantee in favour of Wingecarribee Shire Council for \$30,000 to purchase the solar panels and the associated metering with the funding to be sourced from the Property Development Reserves.

Item 6.6 Request for Safety-Net Funding Agreement by Southern Highlands Bridge Club Inc

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

COMMITTEE REPORTS



FC 7/21

THAT Council provide the Southern Highlands Bridge Club a safety-net funding agreement in the amount of \$470,000 payable over 10 years to construct their clubhouse and carpark.

ATTACHMENTS

There are no attachments to this report.

17 QUESTIONS WITH NOTICE

17.1 Question with Notice 5/2021 - Riverview Cottage, Jellore Street, Berrima

Reference:	101/2
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager

From: Cllr L A C Whipper

Received: 10 February 2021

Subject: Riverview Cottage, Jellore Street, Berrima

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

Question:

Could the General Manager please provide answers to this four part question:

1. Why has Council approved DA20/1279, the demolition of the locally listed 1830's Riverview Cottage Complex in Jellore Street Berrima
2. What protections do Local Heritage Listing provide for significant heritage buildings such as Riverview Cottage?
3. How can DAs relating to Local Heritage Items be determined under delegation and not considered by full Council?
4. In Council's Flood Planning Study for Berrima, it was recommended that Council purchase the historic 1830s Riverview Cottage. Why was this option not pursued and put to Council for consideration?

Response:

1. Council determined DA 20/1279 by way of approval subject to conditions as the application had merit. Council's assessment of the proposal included the notification of the application to Council's Heritage Committee who provided support for the application and the proposal was referred to Council's heritage advisor who supported the application including demolition of existing structures subject to a number of amendments to the built form of the proposed dwelling on the site. The site currently has two original buildings in very dilapidated condition. The building closest to the street is Riverview Cottage and as part of the approved application will be reconstructed as a separate studio with bathroom. The building reconstruction is consistent with the Georgian style of architecture and scale of the current structure. The building sitting behind the cottage was a detached kitchen which will be reconstructed as an outdoor barbeque area.



The application was supported by a heritage impact statement that was prepared by a Heritage Consultant dated 17 April 2020. The report concluded that the local heritage listed Riverview Cottage and the kitchen outbuilding at 23 Jellore Street Berrima are in extremely poor condition and are continuing to deteriorate. The report further concluded that the proposal is considered to be an appropriate way to acknowledge the heritage significance of these structures given their state of decline, whilst maintaining the heritage character of the Berrima Heritage Conservation Area.

Council undertook a rigorous assessment of the proposal in accordance with section 4.15 of the *Environmental Planning and Assessment Act 1979* which concluded that the proposal could be supported.

2. It is noted that the subject property was until several years ago listed on the State Heritage Register. The State Heritage Listing was subsequently removed by the Heritage Office. The subject site remains listed as a local item of heritage under schedule 5 of the Wingecarribee Local Environment Plan 2010. Accordingly, the proponent is required to undertake a heritage impact assessment for Council's consideration as part of the assessment of the application. The application also is subject to additional assessment requirements including consideration of clause 5.10 under the LEP and also referral to Council's Heritage Advisor for assessment and comment. Heritage Listing does not prevent an owner of a structure seeking full or partial demolition, minor or major alterations rebuilding a structure subject to a full assessment against Council's planning policies. As stated in 1 above, the proposal was referred to the Heritage Committee and Heritage Advisor who were satisfied the proposal had heritage merit.
3. Development relating to local items of heritage under schedule 5 are assessed on merit and determined under delegation where such matters are not resolved to be determined by full Council or in the case of where two (2) Councillors have called the matter up for determination. The matter was listed in the DA's received business paper report being item 3 on 10 June 2020 and was nominated to be determined under delegation. No Council resolution was passed that required the matter to be reported to Council.

Council's assessment of the proposal did not trigger any criteria for the application to be forwarded to full Council for consideration.

4. Any recommendation for the purchase of land within a flood study is subject to the identification and allocation of appropriate funding sources as approved by Council. Council has no identified funding source to purchase the land at 23 Jellore Street Berrima.

RECOMMENDATION

THAT the information in relation to Question with Notice 5/2021 - Riverview Cottage, Jellore Street, Berrima - be noted.



17.2 Question with Notice 6/2021 - General Manager Contract

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager
From: Cllr I M Scandrett
Received: 15 February 2021

Subject: General Manager's Contract

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

Question:

Could Council confirm that the Standard LGA (NSW) contract will be offered to the new General Manager and provide a copy to this response, and detail any changes envisaged to such draft and why.

Response:

Yes, in accordance with the provisions of Section 338 of the *Local Government Act, 1993* the General Manager will be employed under the "*Standard Contract of Employment for General Managers of Local Government Councils*". A copy of the Standard Contract of Employment for General Managers of Local Councils in New South Wales can be accessed at <https://www.olg.nsw.gov.au/wp-content/uploads/Standard-Contract-of-Employment-General-Managers.pdf>

RECOMMENDATION

THAT the information in relation to Question with Notice 6/2021 - General Manager Contract - be noted.

17.3 Question with Notice 7/2021 - Councillor Dinners

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager

From: Clr G Turland

Received: 15 February 2021

Subject: Councillor Dinners

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

Question:

1. What are the dates of councillor dinners from February 2020 to February 15.2.21.
2. Who attended the Councillor dinners and who invited the councillors.
3. Who paid for these dinners after council meetings.

Response:

Sustenance is provided to Councillors in accordance with the *Expenses and Facilities for the Mayor and Councillors Policy* adopted on the 23 August 2017.

The Policy states appropriate refreshments will be available for Council meetings, Council Committee meetings, Councillor briefings, approved meetings and engagements, and official Council functions as approved by the General Manager.

No formal record was kept for the dates and attendance by Councillors for dinners after Council meetings during the COVID Pandemic period (February 2020 to February 2021). These dinners occurred when permitted; giving due consideration to the restrictions in place as a result of the COVID Pandemic. During periods of shutdowns, these dinners did not take place.

Council's financial records are maintained to account for the cost of Councillor sustenance. This includes sustenance during Councillor briefings and Councillor dinners. The total cost of Councillor sustenance for the period of this Council Term is provided in the table below:

Financial Year	Amount
2016/17	\$16,621.09
2017/18	\$18,161.77
2018/19	\$22,085.46
2019/20	\$13,660.47
2020/21 YTD	\$5,729.40

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

QUESTIONS WITH NOTICE



These amounts relate to Councillor sustenance only. Provisions are made as part of the Annual Budget for these expenses.

RECOMMENDATION

THAT the information in relation to Question with Notice 7/2021 - Councillor Dinners - be noted.

17.4 Question with Notice 8/2021 - Station Street Budget

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager
From: Cllr G Turland
Received: 15 FEBRUARY 2021

Subject: Station Street Budget

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

Question:

1. When will council provide an updated budget cost for the Station Street project as per our councillor briefing of 9.12.20.
2. Why in the February Finance meeting is there not the new project budget costing.
3. Why has council removed items from the Finance February meeting all other statements made in other Finance meetings on Station Street works (Wattle Street carpark, Mittagong carpark, Kirkham Road)

Response:

1. Council is finalising the detailed design package for the Station Street Project. Ultimately; the final costings will not be known until the project's detailed design and scope are finalised and the project is put out to the competitive market via a tender process.
2. The budget estimate reported to the Finance Committee is the current (adopted) budget estimate. Only Council has the authority to amend a budget estimate and at this stage no recommendation has been presented to Council for consideration.
3. The purpose of the comments provided by Council officers in the major capital works report is to provide Councillors with an update on the project status at that point in time. Wattle Lane carpark and Kirkham Road construction works have been completed therefore no further updates were provided at the end of December. As the Mittagong Carpark project moves into the delivery phase, updates will be provided to Council via the Major Capital Works report.

RECOMMENDATION

THAT the information in relation to Question with Notice 8/2021 - Station Street Budget - be noted.

17.5 Question with Notice 9/2021 - Pavement along Old South Road, Mittagong

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager

From: Clr K J Halstead, OAM

Received: 1 MARCH 2021

Subject: Pavement along Old South Road, North

Question:

Please confirm that the failed road pavement on Old South Road north of Range Road, Mittagong is comprised of steel furnace slag and not asbestos related base-course material.

Response:

Council staff can confirm that the road pavement on Old South Road between Range Road and Bong Bong Road is comprised of a steel furnace slag overlay, not an asbestos related base-course material.

RECOMMENDATION

THAT the information in relation to Question with Notice 9/2021 - Pavement along Old South Road, Mittagong - be noted.

17.6 Question with Notice 10/2021 - Proposed Renaming of Eridge Park

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager

From: Clr K J Halstead, OAM

Received: 1 MARCH 2021

Subject: Proposed Renaming of Eridge Park

Question:

Please provide an up to date report on the current status of the proposed renaming of Eridge Park to John Fahey Memorial Sports Field.

Response:

Council received a formal request to consider a proposed name change from Eridge Park to John Fahey Memorial Sports Field in December 2020. The request was made by the Bradman Foundation.

Council staff have subsequently been in discussions with the Bradman Foundation and made the Foundation aware of the recent decision made by Chevalier College in relation to the naming of a new building precinct to be known as The John Fahey Education and Sport Centre.

The Bradman Foundation has since requested that Council staff place their request 'on-hold' pending a future board meeting of the Foundation.

The similar naming of two venues in close proximity to each other would present challenges for Council with respect to seeking approval from the Geographical Names Board.

RECOMMENDATION

THAT the information in relation to Question with Notice 10/2021 - Proposed Renaming of Eridge Park - be noted.

17.7 Question with Notice 11/2021 Covid Screens

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager
From: Cllr I M Scandrett
Received: 1 March 2021

Subject: Covid Screens

Question:

I request the following be provided by Council or obtained from the Contractor:

1. The dated invoice for the Councillor Covid screens (prices redacted);
2. The dated delivery docket for the screens;
3. Confirmation as to the actual time and date the screens arrived on site;
4. Covid safety plan that was in place w/c 15/2/21 and any updates since.

Response:

1. The COVID protection screens were not procured by Council, the screens were supplied by the Principal Contractor via a contract variation. Council does not therefore have an invoice for the screens.
2. See response to question 1 above.
3. Council has been advised by the Principal Contractors (Matrix Group Pty Ltd) that the COVID protection screens were picked up on Tuesday 23 February 2021 and were brought to the Civic Centre on Wednesday 24 February 2021.
4. The COVID safety plan is attached.

RECOMMENDATION

THAT the information in relation to Question with Notice 11/2021 Covid Screens - be noted.

ATTACHMENTS

1. Covid Safety Plan



Your COVID-19 Safety Plan

Office environment (including call centres)

Business details

Business name	Wingecarribee Shire Council (Civic Centre)
Business location (town, suburb or postcode)	68 Elizabeth Street Moss Vale NSW
Completed by	[REDACTED]
Email address	[REDACTED]
Effective date	10 December 2020
Date completed	14 December 2020

Wellbeing of staff and visitors

Exclude staff, volunteers and visitors who are unwell.

Communication with staff regularly and ongoing, do not come to work if sick. (Toolbox talks, emails, WSC COVID Staff pack) all saved on Council's Intranet. WSC COVID Video published on teams and issued to staff.

Posters on entrance to site.

Splinter Award in place for special leave entitlements.

Provide staff with information and training on COVID-19, including when to get

tested, physical distancing and cleaning.

Toolbox talk updates, all staff emails and TEAM positing on COVID. WSC COVID-19 flowchart established and issued to staff, what to do with a suspected case.

WSC COVID Staff pack issued

Online Infection control training (from Australian Department of health) undertaken by selected staff. Infection control training undertaken by staff.

Confirmed case checklist and COVID-19 workplace checklist to verify the effectiveness of controls and any stock shortages.

Make staff aware of their leave entitlements if they are sick or required to self-isolate.

Staff have individual log in access to leave entitlements.

Splinter award in place (Available on Council's intranet)

Staff provided with option for flu vaccinations for overall promotion of health

Communication to staff via email, toolbox talks and on Council's intranet.

Communicate regularly with staff to remind everyone that you should not attend work if unwell with respiratory symptoms or fever. Encourage testing of all staff with symptoms in line with advice from NSW Health.

Posters and communication via Council facebook page and media department to continue to use online resources where able. Posters sourced from NSW Health Australian Government and WHO and readily available on Council's intranet (WHS> COVID19)

Physical distancing

Assign workers to specific workstations. If this is not practical, workstations and shared office equipment should be wiped down with disinfectant surface wipes between users.

Workers assigned workstations where possible. Where shared, workers advised to wipe down areas.

Additional cleaning is undertaken through out the day at Civic Centre of all high touch point areas (taps, toilets, door knobs, customer service counters etc).

Use flexible working arrangements where possible, such as working from home or

other locations.

Working remotely procedure implemented (including WHS checklist). Information and factsheets on working from home provided.

A Staff COVID 19 pack developed for staff returning to work in the office for transition back to workplace. Never to exceed capacity in work areas if working from office.

From 4 January 2021 staff to return to normal place of work in line with public health order 14/12/2020.

Consider physical, distance or other controls to protect staff and visitors at physical interaction points such as counters or service desks, to maintain social distancing.

Floor stickers and sneeze screens in place in customer service to assist customer service staff interaction points. Increase daily touch point cleaning undertaken.

Capacity limits as posters (based on one person per four square metre rule) in place for all of Building.

Where reasonably practical, ensure staff maintain 1.5 metres physical distancing at all times (including at meal breaks).

Capacity limits sign posted - maintain 1.5 metre posters around building, chairs have been removed from lunch and meeting rooms so capacity not exceeded. Changed to one person per 2 square metres 07/12/2020.

Regular communication via toolbox messages to maintain social distancing.

Communication issued to staff on use of facemasks. Stock of Facemask issued in the event of being required to use. advice on facemasks if you can not socially distance, wear a mask.

Staff encouraged to limit numbers in vehicles where reasonably practicable.

Use telephone or video platforms for essential meetings where practical.

TEAMS portal available for staff meeting. As well as other online platforms such as zoom/skype.

Online meetings encouraged. Face to face meetings must have limits on numbers maintain social distancing and good hygiene practices.

Where reasonably practical, stagger start times and breaks for staff members to minimise the risk of close contact.

Roster systems in place for branches where required. Never to exceed capacity limits of areas within the buildings.
BCP to be implemented as per trigger points.

Review regular deliveries and request contactless delivery and invoicing where practical.

Contactless deliveries in place. Drop off points in foyer of building.

Ensure that people maintain physical distancing in lifts and lift waiting areas so far as reasonably practicable; display signs near lifts to advise and recommend physical distancing.

not applicable. lift would not allow more than one person at any one time.

Hygiene and cleaning

Provide alcohol-based hand sanitiser at multiple locations throughout the workplace, including entry and exit points.

hand sanitiser supplies kept on site. Additional hand sanitiser stations purchased and placed around the building in high traffic areas for use.

Customer service has hand sanitiser station for staff entering to use.

Hand sanitiser stations clearly sign posted with how to use hand sanitiser (WHO posters).

Provide disinfectant surface wipes to clean workstations and equipment such as phones, keyboard and mouse.

Disinfectant wipes or sprays available for workstations.

Toolbox talk issued to staff on cleaning practices.

Clean surfaces thoroughly, particularly all high contact areas such as doors, handles, kitchen surfaces, bathroom surfaces, printers and lifts with appropriate cleaning agents.

Additional cleaning schedule in place for high touch area points throughout the day with log book to record.



Ensure bathrooms are well stocked with hand soap and paper towels, and consider putting up posters with instructions on how to wash hands.

Bathrooms stocked and signage on how to wash hands displayed. Additional cleaning schedule in place for high touch area points throughout the day with log book to record.

Clean frequently used areas at least daily with detergent or disinfectant. Clean frequently touched areas and surfaces several times per day.

Cleaners trained and competent and cleaning practices communicated. SDS sheets available on intranet.

Maintain disinfectant solutions at an appropriate strength and use in accordance with the manufacturer's instructions.

Gloves are supplied and cleaning practices communicated.

Staff are to wear gloves when cleaning and wash hands thoroughly before and after with soap and water.

Cleaners provide safe systems of work on cleaning practices

In indoor areas, increase natural ventilation by opening windows and doors where possible, and increase mechanical ventilation where possible by optimising air conditioning or other system settings (such as by maximising the intake of outside air and reducing or avoiding recirculation of air).

Window open where able.

Record keeping

Keep a record of name, contact number and entry time for all staff, volunteers, visitors and contractors for a period of at least 28 days. Electronic collection (such as QR code) of contact details for each person is strongly encouraged.

Records being kept entirely in line with requirements.

QR Code in place for Customers. Staff access log used to identify staff movements in the building. As well as individual

Branch restoring systems and outlook calendars as required.

Ensure records are used only for the purposes of tracing COVID-19 infections and are collected and stored confidentially and securely. When selecting and using an electronic method of record collection, take reasonably practical steps to protect privacy and ensure the records are secure. Consider the 'Customer record keeping' page of nsw.gov.au

Records being kept entirely in line with requirements.

QR Code in place for Customers. Staff access log used to identify staff movements in the building. As well as individual

Branch restoring systems and outlook calendars as required.

Make your staff and visitors aware of the COVIDSafe app and its benefits to support contact tracing if required.

Communicated to staff of app - however poor reputation for the app does not see a strong uptake with staff.

App was made available for all council issued devices.

Cooperate with NSW Health if contacted in relation to a positive case of COVID-19 at your workplace, and notify SafeWork NSW on 13 10 50.

As per requirements and COVID Safe Plan and captured step in confirmed case checklist.

I agree to keep a copy of this COVID-19 Safety Plan at the business premises

Yes

17.8 Question with Notice 12/2021 - Civic Centre Total Cost

Reference: 101/2
Report Author: Administration Officer (Meetings)
Authoriser: Group Manager Corporate and Community
Link to Community Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

To: Acting General Manager
From: Clr G Turland
Received: 1 March 2021

Subject: Civic Centre Total Cost

Question:

1. The total Civic Centre cost against budget;
2. Total project projection cost to complete the project;
3. All cost and funding for the total project;
4. Has the fixout of the Chamber and front customer counter been included in the project budget cost allowance?

Response:

1. The current expenditure (cost) incurred by Council in relation to Civic Centre Refurbishment Project was provided to all Councillors by email on the 1 March 2020.
2. The total projected cost (the approved budget estimate) to complete Civic Centre Refurbishment Project was provided to all Councillors by email on the 1 March 2020.
3. The total cost and the funding for the total project was provided to all Councillors by email on the 1 March 2020. Councillors were also advised of the additional projects (budget allocations) included in the adopted budget in relation to the Civic Centre landscaping, library fit-out, renewal of the technology systems in the Council Chamber, and the installation of solar panels.
4. The fit-out of the Council Chambers and the customer service centre are included in the adopted (approved) budget estimate for the Civic Centre Refurbishment Project.

RECOMMENDATION

THAT the information in relation to Question with Notice 12/2021 - Civic Centre Total Cost - be noted.

18 NOTICES OF MOTION

18.1 Notice of Rescission Motion 1/2021 - Tender for Refurbishment of Bowral Memorial Hall

Reference:	100
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillors Turland, Whipper and Scandrett have given notice that it is their intention to move the following motion at the Ordinary Meeting of Council on 10 March 2021:

THAT the motion passed by Council on 24 February 2021, being item number 11.1 Tender for Refurbishment Bowral Memorial Hall MN 34/21 be rescinded.

1. *THAT in relation to the report concerning the Tender for Refurbishment Bowral Memorial Hall Refurbishment - Council adopts the recommendations contained within the Closed Council report – Item 19.1.*
2. *THAT Council accepts the tender from Belmadar Pty Ltd at a Lump Sum amount of \$5,825,050 (Inclusive of GST) to undertake the Refurbishment of Bowral Memorial Hall.*

RECOMMENDATION

Submitted for determination.

Should the above motion of rescission be carried, we hereby give notice of our intention to move the following motion:

1. **THAT Council convene a meeting at the Bowral Memorial Hall within fourteen (14) days with representatives of regular users of the hall to include the Southern Highlands Symphony Orchestra (SHSO) and Southern Highlands Concert Band (SHCB) to discuss the proposed works and their concerns with those plans.**

18.2 Notice of Motion 2/2021 Recruitment of General Manager

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillor Scandrett has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 February 2021:

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

Submitted for determination.

THAT the recruitment process for the new General Manager be suspended so as to be business for the new Council which is to be elected on September 4.

18.3 Notice of Motion 3/2021 Traffic and Parking Study Funston Street, Bowral

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillor Scandrett has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 February 2021:

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

Submitted for determination.

THAT Council accept the offer by the applicant to conduct a traffic and parking study into Funston Street and surrounding streets to be funded by the applicant, such study to be promptly reported to Council.

18.4 Notice of Motion 4/2021 Mittagong Playhouse and Bowral Memorial Hall Projects Community and Stakeholder Meeting

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 February 2021:

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

Submitted for determination.

THAT Council hold a community and stake holders meeting on the Mittagong Playhouse and the Bowral Memorial Hall Projects;

- The meeting is to be held on site with councillors, council staff, the architect, the community and stakeholders;
- The meeting is to be after working hours;
- The purpose is to engage with all users groups and to address their concerns re. the redevelopment of the Hall for the best use and budget.

18.5 Notice of Motion 5/2021 - Animal Fur and Skin Sales

Reference:	101/2
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillor Whipper has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 February 2021:

THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING

RECOMMENDATION

Submitted for determination.

1. That Council join with other Councils such as Inner West, Blue Mountains, City of Sydney and Canterbury Bankstown Councils and a growing number of governments around the world including the UK, Brazil, and the USA to ban the sale of animal fur and skin sales on Council land.
2. That Council also write to the State and Federal governments to enact a ban on the trade of these products.

19. CLOSED COUNCIL

MOVING INTO CLOSED SESSION

Section 10A of the *Local Government Act 1993*, empowers Council and Committees of which all the members are Councillors to close a part of a meeting in certain circumstances in accordance with the requirements of the Act, and relevant Regulations and Guidelines.

Subject to the provisions of Section 10 of the Act, so much of a meeting may be closed as comprises certain information as outlined in Section 10A(2).

However, the Act also contains the following provisions qualifying the use of Section 10A(2).

Section 10B

1. *[Time spent closed to be minimised] A meeting is not to remain closed during the discussion of anything referred to in section 10A(2):*
 - a. *Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and*
 - b. *If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret-unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.*
2. *[Qualification of 10A(2)(g)] A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A(2)(g) unless the advice concerns legal matters that:*
 - a. *are substantial issues relating to a matter in which the council or committee is involved, and*
 - b. *are clearly identified in the advice, and*
 - d. *are fully discussed in that advice.*
3. *[Qualification of 10A(3)] If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A(3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A(2)).*
4. *[Irrelevant matters] For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:*
 - a. *a person may misinterpret or misunderstand the discussion, or*
 - b. *the discussion of the matter may:*
 - (i) *cause embarrassment to the council or committee concerned, or to Councillors or to employees of the council, or*
 - (ii) *cause a loss of confidence in the council or committee.*

Attention is also drawn to provisions contained in Part 15 of Council's Code of Meeting Practice.

Section 10B(5) of the Act requires that council have regard to these guidelines when considering resolving into Closed Session.

RECOMMENDATION

1. **THAT Council moves into Closed Council in accordance with the requirements of Section 10A(2) of the *Local Government Act 1993* as addressed below to consider the following reports that are confidential for the reasons specified below:**

19.1 Memorandum of Understanding Between Wingecarribee Shire Council and Transport Asset Holding Entity of New South Wales

Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to provide Council with the Memorandum of Understanding between Wingecarribee Shire Council and Transport Asset Holdings Entity of New South Wales for the Station Street Upgrade Project.

THIS REPORT WAS MOVED FROM 24 FEBRUARY 2021 MEETING

19.2 Legal Report - Closed Council

Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to update Council on the status of legal proceedings reported to Council at the meeting of 25 November 2020.

THIS REPORT WAS MOVED FROM 24 FEBRUARY 2021 MEETING

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 March 2021

CLOSED COUNCIL



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2. **THAT the minutes of the Closed Council part of the meeting (being the Council's resolution) be made public.**

Barry W Paull
Acting General Manager

Wednesday 3 March 2021