

AGENDA

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

Wednesday 7 September 2022

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

Table Of Contents

1 OPENING OF THE MEETING	5
2 ACKNOWLEDGEMENT OF COUNTRY	5
3 APOLOGIES.....	5
4 DECLARATIONS OF INTEREST	5
5 PLANNING PROPOSALS	6
5.1 PP-2022-933 Amendment To The Minimum Lot Size Of Land At Villiers Road And Hill Road Moss Vale - Post Exhibition	6
5.2 Planning Proposal To Amend Wingecarribee Local Environmental Plan 2010 With Regard To Clause 7.2 - Requirements For Subdividing Dual Occupancies In Zones R2 And B1 - Post Exhibition (PP-2022-1055).....	13
5.3 Planning Proposal To Enable Additional Dwelling Lots At 12-22 Oldbury Street Berrima.....	19
6 DEVELOPMENT APPLICATIONS	37
6.1 Development Application 22/0258 - Seniors Housing, Lot 1 DP1273409, 48 Old Wingello Road, Bundanoon.....	37
6.2 Development Application 22/1462 - Subdivision Of Land To Create Three Lots, Lot 15 DP258713, No 42 Lytton Rd Moss Vale	109
7 MEETING CLOSURE.....	127

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

Recording and Webcasting of Local Planning Panel Meetings

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

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

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

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

The meeting must not be recorded by others.

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

The Council Chamber has 24 Hour Video Surveillance.

1 OPENING OF THE MEETING

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

2 ACKNOWLEDGEMENT OF COUNTRY

The Chairperson acknowledged country:

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

3 APOLOGIES

Nil at time of print.

4 DECLARATIONS OF INTEREST

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

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

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

Council’s Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

5 PLANNING PROPOSALS

5.1 PP-2022-933 Amendment to the minimum lot size of land at Villiers Road and Hill Road Moss Vale - Post Exhibition

Report Author: Strategic Land Use Planner

Authoriser: Executive Manager Strategic Outcomes

PURPOSE

The purpose of this report is to detail the outcomes of the public exhibition and to seek Council endorsement to finalise the Planning Proposal to reduce the minimum lot size for land at Villiers Road (Lot 8 DP 875224, Lot 9 DP 875224 and Lot 5 DP 844943) and Hill Road (Lot 3 DP 844943 and Lot 4 DP 844943) in Moss Vale from 8,000m² to 2,000m².

Applicant / Proponent	Wingecarribee Shire Council
Owner	Various (5 affected lots)
Consultants	N/A
Notification	Public Exhibition held Wednesday 6 July to Friday 5 August 2022 (inclusive)
Number Advised	89
Number of Submissions	Nil
Current Zoning	R5 Large Lot Residential
Proposed LEP Amendment/s	To achieve the intended outcomes of the Planning Proposal the following amendments to WLEP 2010 maps will be required: Amend Lot Size Map LSZ_007H to modify the current minimum lot size provisions applied to the subject land from 8000m ² to 2000m ²
Department's PP Reference	PP-2022-933
Political Donations	Nil
Recommendation	Finalisation of the Planning Proposal BE SUPPORTED.

OFFICER'S RECOMMENDATION

1. **THAT** the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to reduce the minimum lot size provisions for land at Villiers Road and Hill Road Moss Vale from 8,000m² to 2,000m² be endorsed; and
2. **THAT** the Planning Proposal be finalised in accordance with s.3.36 of the Environmental Planning & Assessment Act 1979.

REPORT

PLANNING PROPOSAL

Background

A Planning Proposal to amend the minimum lot size provisions from 8,000m² to 2,000m² for land situated at Villiers Road (Lot 8 DP 875224, Lot 9 DP 875224 and Lot 5 DP 844943) and Hill Road (Lot 3 DP 844943 and Lot 4 DP 844943) in Moss Vale was considered at the Local Planning Panel meeting of 2 February 2022. The proposal sought to address the anomaly in lot sizes between the Chelsea Gardens Urban Release Area (URA) to the immediate south of the subject land and the previous township boundary.

Following consideration by the Local Planning Panel, the matter was reported to the Extraordinary Meeting of Council on 16 February 2022 where it was resolved:

THAT the Planning Proposal be submitted to the Department of Planning Industry and Environment for Gateway determination under section 3.34 of the Environmental Planning and Assessment Act 1979.

A Gateway Determination was received on 12 April 2022 and required Council to consult with the following public authorities:

- Water NSW
- NSW Rural Fire Service
- Transport for NSW
- DPE – Environment and Heritage Division

Each agency was provided with a copy of the Planning Proposal and relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

Despite the Gateway Determination not requiring consultation with the Department's Biodiversity and Conservation Division, an agency referral was additionally sought due to a small area of Endangered Ecological Community (EEC) and Threatened Ecological Community (TEC) being situated on the western edge of 37 & 39 Villiers Road Moss Vale.

Further, the Gateway Determination required the Planning Proposal to be placed on public exhibition for a minimum of 20 business days. The Planning Proposal and supporting material was therefore publicly exhibited between Wednesday 6 July and Friday 5 August 2022 (inclusive).

No submissions were received during the exhibition period.

Planning Proposal

The Planning Proposal aims to amend the minimum lot size provisions from 8,000m² to 2,000m² for land situated at Villiers Road (Lot 8 DP 875224, Lot 9 DP 875224 and Lot 5 DP 844943) and Hill Road (Lot 3 DP 844943 and Lot 4 DP 844943) in Moss Vale (see **Figures 1 and 2** below). The proposal seeks to address the anomaly in lot sizes between the Chelsea Gardens Urban Release Area (URA) to the immediate south of the subject land and the existing residential development to the north.

The rezoning of the Chelsea Gardens URA effectively extended the town boundary, resulting in an anomaly in lot sizes over the subject land, which previously provided a transition between the residential development to the north and the (previously) rural land to the south. The subject land in

relation to the Chelsea Gardens URA is shown in **Figure 1**, and the existing minimum lot size provisions are shown in **Figure 2** below.



Figure 1 – Location of Subject Land and Chelsea Gardens Coomungie Master Plan



Figure 2 – Minimum Lot Size Provisions

The Planning Proposal therefore seeks to rectify the anomaly and provide a more logical and consistent lot size pattern for the subject land reflective of the current zoning to the north and south.

To achieve the intended outcomes of the Planning Proposal the following amendments to WLEP 2010 maps will be required:

- Amend Lot Size Map LSZ_007H to modify the current minimum lot size provisions applied to the subject land from 8000m² to 2000m².

No amendment to the WLEP 2010 instrument would result from this Planning Proposal.

Consultation

External Referrals

In accordance with the Gateway Determination, Council consulted with the following public authorities who were provided with a copy of the Planning Proposal and relevant supporting material and given at least 30 days to comment on the proposal.

- Water NSW
- NSW Rural Fire Service
- Transport for NSW
- DPE – Environment and Heritage Division

Despite the Gateway Determination not requiring consultation with the Department's Biodiversity and Conservation Division, an agency referral was additionally sought due to a small area of Endangered Ecological Community (EEC) and Threatened Ecological Community (TEC) being situated on the western edge of 37 & 39 Villiers Road Moss Vale.

A summary of the feedback received is provided in the Table below.

Referrals	Advice/Response/Conditions
Transport for NSW	No objections were raised.
DPE – Environment and Heritage Division	No objections were raised.
DPE – Biodiversity and Conservation Division	<p>In summary the Biodiversity and Conservation Division recommended that:</p> <ul style="list-style-type: none"> • <i>The issue of wastewater management be discussed further with Water NSW.</i> • <i>Council establish an appropriate mechanism to deliver the building envelope footprint prior to finalising the PP. Once gazetted, development applications can be lodged, and certainty will be in place on the issue of vegetation retention and building footprints.</i> <p>Council Officer's Comment:</p> <p>Council acknowledges that there is an area of Endangered Ecological Community (EEC) and Threatened Ecological Community (TEC) situated on the western edge of 37 & 39 Villiers Road Moss Vale.</p> <p>The Department's recommendation is noted, however the creation of building envelopes on those lots capable of potential subdivision would require an amendment to the Moss Vale Township Development Control Plan and would need to be based on an extensive site assessment. Council believes this would better be undertaken at the DA stage when it would be possible to assess a specific development design and site layout for each site in the context of the DA submitted for assessment. In view of the EEC and TEC communities, Council confirms it would require appropriate studies to address them and how they would be avoided in any future development proposal. Therefore, it is concluded that appropriate building envelopes would best be identified and enforced at the DA stage.</p> <p>Furthermore, as stated above, due to various constraints, these lots are the least likely to be further subdivided.</p>
Water NSW	<p>Water NSW commented on an earlier version of this Proposal on 5 April 2022. In that correspondence they indicated that they did not support the Planning Proposal, with their main concerns including:</p> <ul style="list-style-type: none"> • <i>The capacity of the Moss Vale Sewerage Treatment Plant (STP).</i> • <i>There being significant land in the Moss Vale area already zoned 'residential'.</i> • <i>That the Proposal (as it then was) did not adequately demonstrate how servicing of sewer and water would be achieved or staged having regard to the development of the neighbouring Chelsea Gardens Commungie Urban Release Area (URA).</i> <p>Water NSW met with relevant Council staff on 2 June 2022 to discuss this Proposal. Council confirmed that the intent of the Proposal was not to add the area to the URA but to simply align the MLS to that of the surrounding area.</p>

	Based on the information contained in the exhibited Proposal and supporting information received, Water NSW provided written confirmation that it has no objection to the change in the minimum lot size as proposed. A copy of the most recent WNSW response is attached as this was received after completion of the exhibition period.
NSW Rural Fire Service	No objections were raised, and NSW RFS note that any proposed future development on the subject land will be assessed under the Development Application process.

Internal Referrals

No internal referrals were undertaken.

Public Exhibition

The Planning Proposal and supporting material were placed on public exhibition in accordance with the Gateway Determination for a period of 32 days from Wednesday 6 July to Friday 5 August 2022.

Notification letters were sent to 89 property owners in the vicinity of the subject land and details of the exhibition were published on the Community Update page of Council's website throughout the exhibition period. The Planning Proposal was also notified on the What's On Exhibition page of Council's website and documentation could also be viewed on Council's Your Say Wingecarribee website and the NSW Planning Portal. A hard copy of the Planning Proposal was also made available to view at Council's Customer Service Centre in the Civic Centre at Moss Vale.

No submissions were received during the exhibition period.

SUSTAINABILITY ASSESSMENT

- **Environment**

An area of Southern Highlands Shale Woodlands, being both an Endangered Ecological Community (EEC) under the NSW Biodiversity Conservation Act 2016 and a Threatened Ecological Community (TEC) under the Environment Protection and Biodiversity Conservation Act 1999 situated on the western edge of 37 & 39 Villiers Road. It is unlikely that any additional lot yield can result from this area of the subject land due to other constraints, especially bushfire, access and slope. Therefore, it is not considered that these provisions would adversely impact any environmentally sensitive areas including critical habitat or threatened species, populations or ecological communities, or their habitats.

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

RELATIONSHIP TO CORPORATE PLANS

No other Corporate Plans are affected by the Planning Proposal.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with the Planning Proposal.

RELATED COUNCIL POLICY

No other Council Policies are affected by the Planning Proposal.

CONCLUSION

The Planning Proposal seeks to address the resulting anomaly in lot sizes between the Chelsea Gardens Coomungie Urban Release Area and the previous township boundary by amending the minimum lot size of the subject land from 8,000m² to 2,000m² under WLEP 2010. This amendment will provide a consistent lot size pattern for the subject land reflective of the current zoning to the north and south. The amendment is highly unlikely to enable any more than three additional residential allotments.

ATTACHMENTS

1. Planning Proposal - Villiers Rd & Hill Rd Moss Vale - Public Exhibition - P P-2022-933 [5.1.1 - 25 pages]
2. Agency Response - Water NSW August [5.1.2 - 5 pages]

5.2 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 with regard to Clause 7.2 - Requirements for subdividing dual occupancies in Zones R2 and B1 - Post Exhibition (PP-2022-1055)

Report Author: Senior Strategic Land Use Planner

Authoriser: Executive Manager Strategic Outcomes

PURPOSE

The purpose of the Planning Proposal is to amend Clause 7.2 of the Wingecarribee Local Environmental Plan 2010 to remove an inconsistency between *Clause 7.2 Requirements for subdividing dual occupancies in Zones R2 and B1* and *Clause 4.2F Minimum subdivision lot sizes for dual occupancies in certain zones*.

Applicant / Proponent	Wingecarribee Shire Council
Owner	N/A
Consultants	N/A
Notification	Public Exhibition held Wednesday 20 July to Friday 19 August 2022 (inclusive)
Number Advised	Shire Wide
Number of Submissions	One (1)
Current Zoning	N/A
Proposed LEP Amendment/s	To amend clause 7.2 – Requirements for subdividing dual occupancies in Zones R2 and B1
Department's PP Reference	PP-2022-1055
Political Donations	N/A
Recommendation	Finalisation of the Planning Proposal BE SUPPORTED

OFFICER'S RECOMMENDATION

1. **THAT** the Planning Proposal to amend clause 7.2 of Wingecarribee Local Environmental Plan 2010 to the following wording be endorsed, and
2. **THAT** the Planning Proposal be finalised in accordance with s.3.36 of the *Environmental Planning & Assessment Act 1979*.

REPORT

Background

A Planning Proposal is to amend Clause 7.2 of the Wingecarribee Local Environmental Plan 2010 to remove an inconsistency between *Clause 7.2 Requirements for subdividing dual occupancies in Zones R2 and B1* and *Clause 4.2F Minimum subdivision lot sizes for dual occupancies in certain zones* was considered at the Local Planning Panel meeting of 2 February 2022.

Following consideration by the Panel, The matter was reported to the Extraordinary Meeting of Council on 16 February 2022 where it was resolved:

THAT the Planning Proposal be submitted to the Department of Planning Industry and Environment for Gateway determination under section 3.34 of the Environmental Planning and Assessment Act 1979.

A Gateway Determination was received on 4 May 2022 and required Council to consult with the following public authorities:

- Water NSW
- NSW Rural Fire Service

Both agencies were provided with a copy of the Planning Proposal and relevant supporting material and given at least 30 days to comment on the proposal.

Further, the Gateway Determination required the Planning Proposal to be placed on public exhibition for a minimum of 20 business days. The Planning Proposal and supporting material was publicly exhibited between Wednesday 20 July and Friday 19 August 2022 (inclusive).

Council received one (1) submission in response to the public exhibition.

Planning Proposal

Clause 7.2 was introduced into the Wingecarribee Local Environmental Plan (WLEP) 2010 to enable the subdivision of dual occupancies in certain circumstances, where subdivision was not otherwise permissible under the minimum lot size provisions in order to provide additional opportunities for infill housing.

A copy of Clause 7.2 is provided below (**bold** added for emphasis, these being the terms which will be amended):

7.2 Requirements for subdividing dual occupancies in Zones R2 and B1

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

(a) to provide opportunities for housing on smaller lots in suitable locations on land in

Zone R2 Low Density Residential and Zone B1 Neighbourhood Centre,

(b) to protect the heritage significance of the historic village of Berrima.

*(2) **Despite any other provision of this Plan**, development consent may be granted for the subdivision of a lawfully erected dual occupancy in Zone R2 Low Density Residential, **only if** the development—*

(a) is on a corner allotment of not less than 1,000 square metres, and

(b) has access to a reticulated town water supply and sewerage system.

*(3) **Despite subclause (2)**, development consent must not be granted for the subdivision of a lawfully erected dual occupancy on land in Zone R2 Low Density Residential or Zone B1*

Neighbourhood Centre if the land is located within the Berrima Conservation Area as shown on the Heritage Map.

The original intent of the wording ‘*despite any other provision of this plan*’ in clause 7.2 was to overcome the minimum lot size provisions otherwise applicable to the site and which would thereby prevent such development. It is noted that Berrima was excluded from the operation of the clause due to its high heritage status.

On 1 July 2020, *amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* came into effect in the Wingecarribee Shire, which enabled the erection and subdivision of dual occupancies as complying development under the SEPP.

In response to these changes to the Codes SEPP, Council introduced two (2) new clauses into WLEP 2010, to ensure that dual occupancy developments were consistent with the established lot sizes and character of our towns and villages. The recently introduced Clauses include 4.2E and 4.2F.

Although the provisions of the Codes SEPP enable the subdivision of dual occupancies as complying development in accordance with Clause 4.2F, the current wording of clause 7.2 creates an inconsistency between the two approval pathways thereby encouraging applicants to utilise the complying development option.

Therefore, the Planning Proposal seeks to amend Clause 7.2 to ensure that the wording of that clause does not override Clause 4.2F or conflict with it in any other way.

Because the Code SEPP provisions for dual occupancy apply to both the R2 Low Density and R3 Medium Density zones, Council is also seeking to amend Clause 7.2 to apply to both of these zones, but not to the B1 Neighbourhood Centre zone as is currently the case. It is noted that the Department of Planning and Environment is currently undertaking a transition of all B (Business) zones across to E (Employment) zones and the removal of the references to the current B1 zone avoids further future confusion and potential conflict.

The proposed Clause 7.2, with changes shown in red, is provided below.

7.2 Requirements for subdividing dual occupancies in Zones R2 and ~~B1~~ R3

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

- (a) to provide opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone ~~B1 Neighbourhood Centre~~ R3 Medium Density Residential,
- (b) to protect the heritage significance of the historic village of Berrima.

(2) Despite any other provision of this Plan, development consent may be granted for the subdivision of a lawfully erected dual occupancy in Zone R2 Low Density Residential and ~~Zone B1 Neighbourhood Centre~~ R3 Medium Density Residential, ~~only if where the development –~~

- (a) is on a corner allotment of not less than 1,000 square metres, and
- (b) has access to a reticulated town water supply and sewerage system.

(3) Despite subclause (2), development consent must not be granted for the subdivision of a lawfully erected dual occupancy ~~on land in Zone R2 Low Density Residential or Zone B1 Neighbourhood Centre~~ if the land is located within the Berrima Conservation Area as shown on the Heritage Map.

The proposed changes to Clause 7.2 will:

- Remove the overlap of clauses in WLEP 2010

- Allow the subdivision of dual occupancy development in accordance with Clause 4.2F **and** Clause 7.2
- Provide consistency across approval pathways
- Provide for infill development in accordance with the Planning Priorities outlined in the Wingecarribee Local Housing Strategy.

Consultation

In accordance with the requirements of the Gateway Determination, consultation occurred with the following agencies and a summary of their comments are provided below:

Referrals	Advice/Response/Conditions
NSW Rural Fire Service	No response was received from NSW RFS.
Water NSW	<p>Water NSW commented on the Planning Proposal on 30 May 2022 and raised no objections to the proposed amendment. In summary their correspondence noted that:</p> <ul style="list-style-type: none">• The Proposal improves consistency across approval pathways and the alignment of clauses 4.2F and 7.2 with respect to the subdivision of dual occupancy development. It also allows dual occupancy subdivision under clause development to occur under clause 7.2 as well as clauses 4.2E and 4.2F.• As clauses 4.2E, 4.2F and 7.2 will now all relate to dual occupancy in R2 and R3 zones, Council may wish to later consider merging the provisions into one overarching clause for dual occupancies. This would provide a 'one-stop-shop' in the WLEP for such matters. Exploration of this approach should not, however, inhibit this proposed amendment from proceeding.• The Planning Proposal provides a reasoned consideration of the amendment and how it relates to s9.1 Ministerial Direction 3.3 Sydney Drinking Water Catchment. <p>Council Officer's Comment:</p> <p>The Department's recommendation regarding the later amalgamation of clause 4.2E, 4.2F and 7.2 is noted and will be considered in a future Planning Proposal.</p>

Further, the Planning Proposal and supporting material were placed on public exhibition in accordance with the Gateway Determination for a period of 32 days from Wednesday 20 July to Friday 19 August 2022.

Details of the exhibition were published on the Community Update page of Council's website throughout the exhibition period. The Planning Proposal was also notified on the What's On Exhibition page of Council's website and documentation could also be viewed on Council's Your Say Wingecarribee website and the NSW Planning Portal.

Council received one (1) submission in response to the public exhibition.

The submission urges the NSW Government and Council to champion residential development issues relating to solar orientation, encouraging the use of sustainable building materials, the design of roof surfaces, gas-free zones, energy efficiency, public infrastructure and quality public spaces that support the community.

While Council acknowledges the comments raised in the submission, it is not relevant in the context of the Planning Proposal.

Internal Referrals

Referrals	Advice/Response/Conditions
Town Planners	The experience of the Town Planners in assessing development applications utilising the current provisions of clause 7.2 assisted in formulating the Planning Proposal.

Public Exhibition

In accordance with the Gateway Determination the Planning Proposal was placed on public exhibition for a period of 32 days from Wednesday 20 July to Friday 19 August 2022.

Council received one (1) submission in response to the public exhibition.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental impacts in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

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

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

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

RELATIONSHIP TO CORPORATE PLANS

No other Corporate Plans are affected by the Planning Proposal.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with the Planning Proposal.

RELATED COUNCIL POLICY

No other Council Policies are affected by the Planning Proposal.

CONCLUSION

This report recommends that Council proceed to finalise the Planning Proposal to adopt the amendment to Clause 7.2 of the Wingecaribee Local Environmental Plan 2010 to remove an inconsistency between *Clause 7.2 Requirements for subdividing dual occupancies in Zones R2 and B1* and *Clause 4.2F Minimum subdivision lot sizes for dual occupancies in certain zones*.

ATTACHMENTS

1. P P-2022-1055-v 3-for Exhibition [5.2.1 - 19 pages]

5.3 Planning Proposal – PP-2022-1417 – For a 3-lot subdivision at 12-22 Oldbury Street Berrima

Report Author: Senior Strategic Land Use Planner
Authoriser: Executive Manager Strategic Outcomes

PURPOSE

The purpose of this report is to consider a Planning Proposal to allow for a three lot residential subdivision at 12-22 Oldbury Street Berrima.

Applicant / Proponent	Lee Environmental Planning
Owner	Ballyna Hinch Properties Pty Ltd
Consultants	Lee Environmental Planning
Notification	N/A
Number Advised	N/A
Number of Submissions	N/A
Current Zoning	C3 Environmental Management
Proposed LEP Amendment/s	Amend the minimum lot size from 1 hectare to 4,000m ² to enable re-subdivision of the land into a total of three (3) separate allotments, each with its own dwelling entitlement.
Political Donations	Nil
Recommendation	That the Planning Proposal NOT BE SUPPORTED

OFFICER'S RECOMMENDATION

THAT the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to amend the minimum lot size for land at 12-22 Oldbury Street Berrima from 1 hectare to 4,000m² to enable re-subdivision of the land into a total of three (3) separate allotments NOT BE SUPPORTED.

REPORT

PLANNING PROPOSAL

The subject land is located at 12-22 Oldbury Street Berrima as indicated in **Figure 1** below.

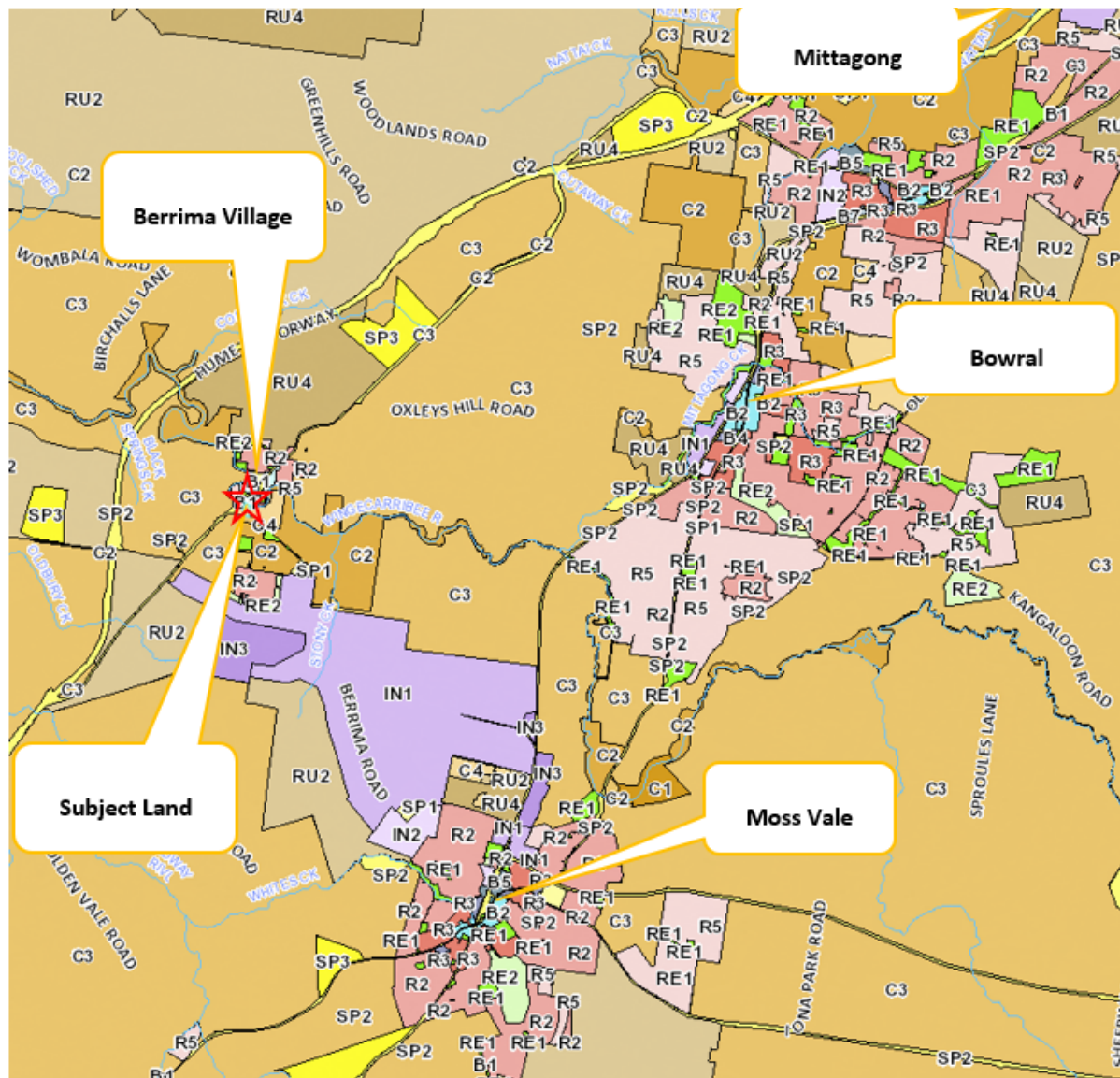


Figure 1 Location of the subject land

The site currently comprises six (6) rectangular shaped lots, being Lots 73 to 78 in DP 818592, with a collective area of approximately 1.56 hectares with the Wingecarribee River forming their northern boundary.

The land is zoned C4 Environmental Living with a minimum lot size of 1 hectare as indicated in **Figure 2** below. The land is also located within the Berrima Heritage Conservation Area which in turn adjoins the Berrima Landscape Conservation Area which surrounds the entire village.

It is noted that both reticulated water and sewer are available to the site and there are existing dwellings in the immediate vicinity. There is clear road access to and from the subject land on to Oldbury Street.



Figure 2 Zoning & Heritage context

The intent of the Planning Proposal is to reduce the minimum lot size of the subject land from one (1) hectare to 4000m² to enable re-subdivision of the land into a total of three (3) separate allotments, each with its own dwelling entitlement. Currently, one dwelling entitlement applies to the whole of the subject land.

The Planning Proposal was accompanied by a Heritage Impact Statement prepared by Dr Caroline Cosgrove and a Bushfire Assessment Report prepared by Bushfire & Evacuation Solutions. The Planning Proposal forms **Attachment 1** to this report.

STRATEGIC ASSESSMENT

Strategic Merit

The Proposal references the South East & Tablelands Regional Plan as well as the Wingecarribee Local Strategic Planning Statement (LSPS)2040 and the Wingecarribee Local Housing Strategy (LHS)2040.

The Planning Proposal notes that it is broadly consistent with the Regional Plan to the extent that it supports *delivery of greater housing supply and choice (Direction 24)*, the *location of housing in areas that utilise existing infrastructure and services (Direction 25)* and the *management of rural lifestyles (Direction 28)*.

The Planning Proposal does not reference or address *Direction 23 – to protect the region’s heritage, or the most relevant associated Action, conserve heritage assets during local strategic planning & development (23.3)*.

The adopted Wingecarribee LHS 2040 forms the template for the provision of housing throughout the Shire and provides the strategic merit framework for any such development. The subject land is not included within the LHS, nor is any land within, or adjacent to, the Berrima Village. While it is acknowledged that this Planning Proposal is not seeking to create a new living area, Berrima Village is a unique location, not only within the Shire, but within the region. The Berrima Precinct Plan within the Wingecarribee LSPS 2040 identifies the Village as being of particular historic significance and high heritage value and identifies Berrima as having a “*high sensitivity to change*”, noting that:

The undeveloped nature of the village and its rural surrounds strengthens its cultural significance. The community of Berrima places a great deal of value on its character as a sparsely populated heritage village surrounded by a sparsely populated and undeveloped rural/bushland landscape. Protection of the village goes beyond the urban area with the landscape conservation area being highly valued to the Berrima community.

Any future development in Berrima will be tightly controlled to reflect the unique heritage character and retain the charm of the place. (LSPS, p76)

The Berrima Village Development Control Plan (DCP), at A13.10 South of the River precinct (No.9) notes that, with regard to Oldbury Street,

The Southern Entry sub-precinct is a crucially important entry to Berrima from the south and is characterised by a lack of development and formal planting which is in distinct contrast to the formally developed core of the Village on the other side of the bridge. Built elements that influence the character are two early verandahed dwellings sited directly on the Old Hume Highway and St Francis Xavier Catholic Church. (from p9 of the Heritage Impact Statement)

The Precinct objectives include: *(d) The Southern Entry shall retain its open natural landscape setting.*

In view of the above, it is considered that the Planning Proposal lacks strategic merit.

Site Specific Considerations

Heritage and Cultural Landscape

As **Figure 3** below indicates, the current lot layout for the subject land retains the original 1834 Hoddle Plan. It is noted that the Planning Proposal would alter this original subdivision pattern by seeking consolidation of the original sites, however, it is noted that the manner in which the consolidations are proposed would allow the original Hoddle town plan to still be discerned.

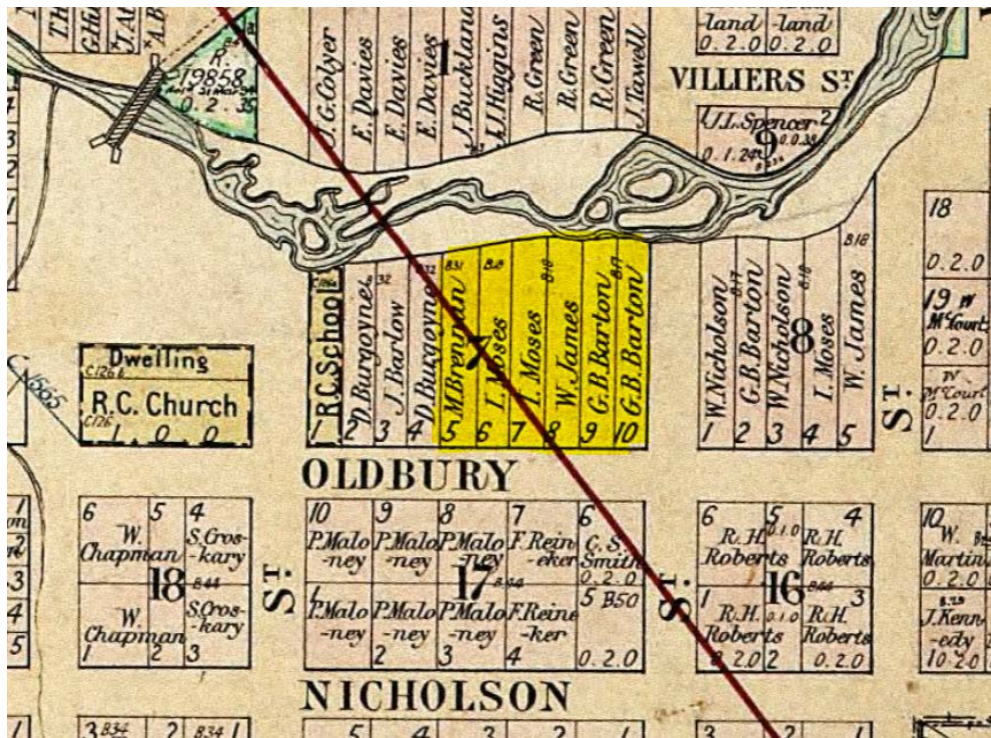


Figure 3 1881 Parish Map showing the subject sites highlighted

As noted above, the subject land is located within the Berrima Heritage Conservation Area (BHCA), towards the southern boundary which in turn adjoins the Berrima Landscape Conservation Area. The Berrima Landscape Conservation Area in turn surrounds the entire Heritage Conservation Area as indicated in **Figure 4** below.

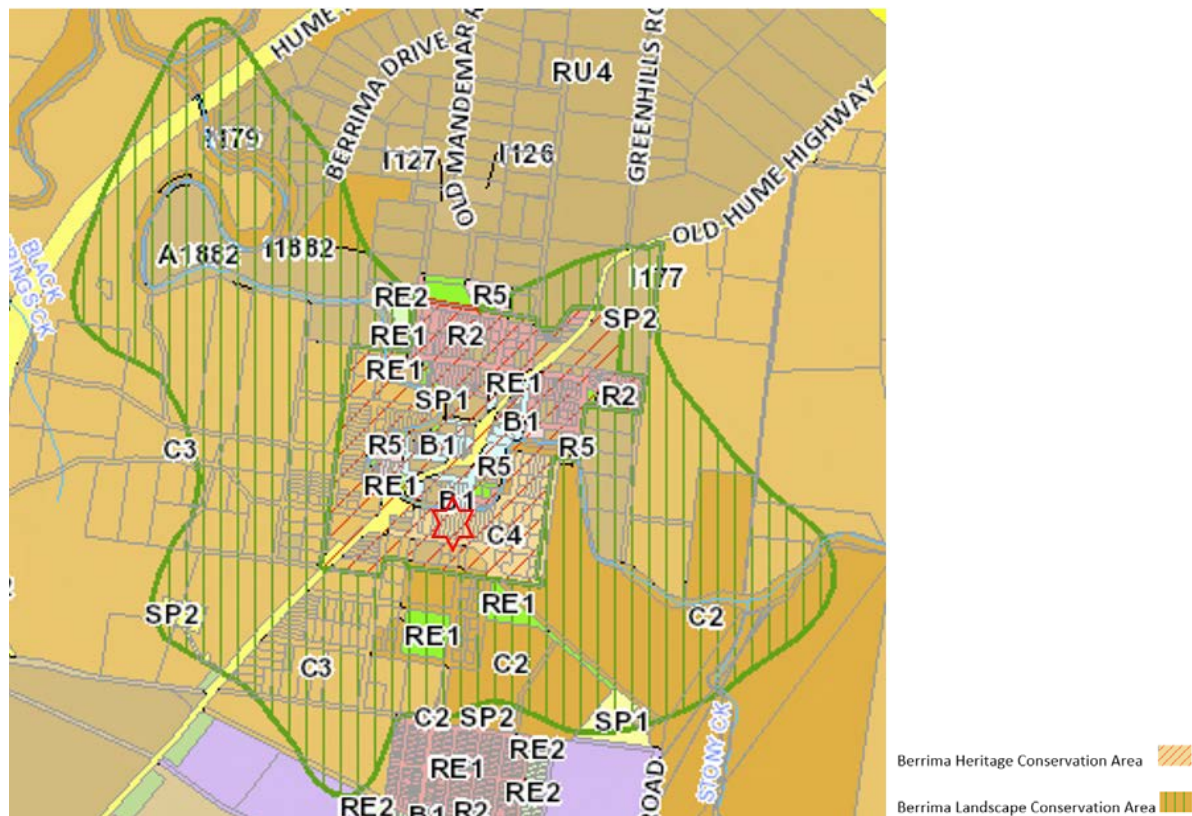



Figure 4 Heritage areas – subject area indicated as 

Several Items of Heritage are located near to the entrance to Berrima Village as indicated in **Figure 5** below. These include a ‘slab cottage and associated outbuildings’ (I230 on Figure 5) which date from 1840 are located opposite the site at 7-9 Oldbury Street. St Francis Xavier Roman Catholic Church (I120), an Augustus Pugin design which dates from 1849, is located further along Oldbury Street.

Visible from the main Berrima Market Place, although obscured by vegetation across the northern section side of the land, are several additional early buildings – Makin Cottages (I227), White Horse Inn (I123), Nurse’s Cottage (I228) and Magistrate’s Cottage (I125), all of which are of State Heritage Significance.

The Heritage Impact Statement notes that:

The area is exposed to view from the Market Place and the historic centre of Berrima. It has views across the river to the rear of significant heritage buildings, in particular the Whitehorse Inn. (p.9), and

The proposed reduction in the minimum lot size of the property could impact negatively on the existing visual catchment of the Berrima Conservation Area if it impedes existing views or allows new housing development to detract from the existing views. However, the vegetation cover on the existing property will assist in screening views to and from any new development on the proposed three subdivided properties. The existing property is distant from Stone Quarry Walk on the northern

side of the riverbank and is also largely obscured by vegetation from the commencement of this Walk. (p11)

The importance of retaining this vegetation is discussed later in the report.



Figure 5 Neighbouring & Nearby Items of Heritage

Figure 6 below provides an aerial view of the subject land and its surrounds.



Figure 6 Current aerial view

Images below, **Figures 7,8 & 9**, are from the Planning Proposal and provide a current 'street view'.



Figure 7 The site looking north from Oldbury Street towards Berrima village centre in the background



Figure 8 The subject land looking east across the unmade road reserve towards adjacent development



Figure 9 The upper portion of the subject land looking north towards Berrima village centre

The Planning Proposal description accompanying these photographs states:

When travelling west along Berrima Road from Moss Vale towards Berrima, the surrounding residential development makes it evident when the rural undeveloped area ends and the residential village of Berrima commences. Conversely, when travelling east heading towards Moss Vale, it is similarly evident when you have left the village boundaries. It is noteworthy that the site is within the defined village boundaries that are described within Council's planning controls. The character of the locality is urban, not rural, because the site is surrounded by single residential dwellings, the majority of which are situated upon lots ranging between 2000- 4000 sqm site area. Some of these dwellings are older, representing a more historic development pattern, whereas there are many that are more contemporary, representing recent development approvals.

While there are dwellings along this section of Oldbury Street, as confirmed in **Figure 6** above, settlement is irregular and vegetation remains prominent, as the photographs indicate, creating a gradual rural-residential transition down into Berrima village itself from the east and out of the village from the west.

This landscape is particularly noted in the Berrima Village DCP with a specific objective to retain it. The rural-residential transitions into the Village are specifically noted in the LSPS and recognised for the important role they play in setting the semi-rural the context for the Village itself. Although the site currently permits one additional dwelling with consent, it is considered that to introduce three

new dwellings on to the site would alter this irregular pattern of development and the contribution it makes to the Berrima context.

As mentioned, the Heritage Impact Statement confirms that the subject property forms part of the visual catchment of the BHCA and can be seen from parts of the main Berrima Village on the northern side of the Wingecarribee River.

This visibility is due to its slope. The subject land, while relatively flat in the southern most section closest to Oldbury Street, falls away steeply to the Wingecarribee River to the north and especially sharply along the riverbank itself. As indicated in **Figure 10** below, the Oldbury Street frontage shows an approximate 15% slope across the main part of the site, sloping more steeply to the Wingecarribee River, thereby limiting any development to the southern section of the site.



Figure 10 Contour Map of the Site

It is also noted that the location of a sewer main running east-west midway through the site, as indicated in **Figure 11** below, further restricts any future development to that portion of the site closest to Oldbury Street, an area of some 2,000m².

Although the Heritage Impact Statement does not consider the proposed development would adversely affect the Oldbury Street entrance due to the DCP provisions and the proposed lot sizes, although the limited actual development potential of the site may not have been recognised.



Figure 11 Sewer Line Location (red)

In addition to these constraints, there is another key consideration relevant to the achievement of a successful development outcome. This relates to bush fire management of vegetation on the site and potential consequent adverse environmental and heritage impacts.

Bush Fire Requirements

In assessing the Planning Proposal, the independent Bush Fire Assessment Report, prepared in accordance with Rural Fire Service (RFS) Planning for Bushfire Protection (PBP) Guideline 2019, has been reviewed.

The Report identified the principal fire ‘hazard’ as Forest (Dry sclerophyll forest) which extends from the embankment of the Wingecarribee River up and across the site for approximately 70 metres. This vegetation is classified by the NSW Rural Fire Service (RFS) as ‘Category 1’ vegetation, “*considered to be the highest risk for bush fire. This vegetation category has the highest combustibility and likelihood of forming fully developed fires including heavy ember production*” (RFS Guide for Bushfire Prone Land Mapping, 2015).

The Bush Fire Assessment Report used the extent and type of vegetation, together with the slope of the land, to determine the necessary Asset Protection Zone (APZ) for the site, the APZ being the necessary buffer zone to be located between the bush fire hazard (the vegetation) and any buildings or potential dwellings, in order to mitigate the risk to life and property. The Report includes the following table (p18).

Table 2.0: Minimum Required APZ – PBP

Vegetation Formation	Slope (under hazard)	Radiant heat exposure	Minimum/ Required APZ (PBP Table A1.12.2)
Forest (north)	>10 - 15° d/slope	≤29kW/m	45 metres
Remnant	>10 - 15° d/slope	≤29kW/m	23 metres

Based on this table, the Report confirmed that, under the current vegetation ‘load’, a minimum APZ of 45 metres would be necessary as indicated in **Figure 12** below.

To achieve an APZ of 45 metres it would be necessary to reduce the vegetation ‘hazard’ from the current 70 metres to 36 metres, from the rear of the estimated dwelling location. This would result in an estimated loss of some 34 metres, or 48.57% of the total current vegetation area.



Figure 12 APZ under current ‘forest’ vegetation load (p18 of the Bush Fire Assessment Report)

An alternative would be to ‘reduce’ the existing ‘forest’ vegetation category to ‘remnant’, an option that would also necessitate some clearing and thinning of that vegetation to a corridor of less than 50 metres as indicated in **Figure 13** below.



Figure 13 APZ under alternative 'remnant' vegetation load (p18 of the Bush Fire Assessment Report)

This second option does enable retention of at least 50 metres of existing vegetation, which would have to be 'reduced', although exactly by how and by how much is not specified. Even so, this option still requires a clearance of all vegetation within the 23 metre APZ. It is further noted that both options also require the clearing of all vegetation along the Oldbury Street frontage.

It was the recommendation of the Bush Fire Assessment Report that any future planning for residential development on the site be undertaken with *due consideration of the hazard reduction works required to reduce the hazard to the north to a 'remnant' classification* (i.e. requiring a 23 metre APZ) (p19).

Informal referral of the APZ diagrams to the RFS Strategic Assessment team concluded in the proposal being considered 'borderline', particularly if additional risk factors, such as an angle of potential fire threat other than 90 degrees, were factored in.

The ultimate width of the bushfire hazard is of further significance because it is not clear is how a reduced APZ, even at 'less than 50 metres', can be achieved while also meeting the requirement under clause 7.4 of WLEP 2010 that a Category 1 Environmental Corridor (in this case the Wingecarribee River which forms the northern boundary of the subject land) retain a minimum riparian corridor of 50 metres.

The bush fire report itself does not appear to reference the WLEP 2010 standard, referring instead to the Natural Resources Access Regulator standard of 30 metres for 'category 3' watercourses based on the NRAR Guidelines for controlled activities on waterfront land – Riparian corridors (2018).

Hazard reduction for bush fire management was discussed with Council's Environment & Sustainability team. One aspect of concern is potential slippage through even a minimal reduction in

vegetation due to the significant slope of the land down to the river. Such slippage is the cause of several adverse environmental impacts across all waterways in the Shire, but Council is acutely aware that any removal of vegetation along the Wingecarribee River and its tributaries can have significant impacts on, not only the vegetation communities themselves, but also on water quality and fauna habitat adjacent to and within the river. Such impacts have already left much of the river in a highly-degraded state.

Council is a funding partner in the Wall to Wollondilly (W2W) Project which aims to protect, maintain and restore the natural environment between the Wingecarribee Reservoir and the point where the Wollondilly and Wingecarribee Rivers meet. This commitment obliges Council to consider the environmental implications of any potential development along these watercourses.

Of particular concern with regard to the Wingecarribee River itself is platypus habitat. The Wingecarribee River is recognised as prime platypus habitat and recent assessments of the extent and quantity of platypus species across the state have resulted in the recommendation that the platypus be listed as a threatened species under Australian and NSW environmental legislation.

Increasingly, Council must address these environmental implications in assessing planning proposals. The Wingecarribee community expects nothing less of Council. Recent community engagement in the preparation of an Environment and Climate Change Strategy found that 53% of participants cited 'protection of flora and fauna' as the primary reason climate change action was necessary, with 38% citing an urgent need for a reduction in vegetation clearing.

The potential impacts of the bush fire protection requirements for the removal of vegetation have impacts not just for the vegetation itself, but also for land stability and water quality along the river and for habitat protection. It is acknowledged that it is not intended to completely clear all vegetation and that not all the vegetation species are native or in good condition, but it is not possible to be more precise in this regard because the Planning Proposal does not provide a Biodiversity Study.

With the resolution of Council to prepare an Environment and Climate Change Strategy and Council's ongoing funding commitments to wildlife and biodiversity protection, genuine consideration must be given to these matters in such strategic assessments.

Both bush fire APZ options require some clearing of existing vegetation over the highest sections of the site including the Oldbury Street frontage, where any future development would be most visible, and this has implications not only for the vegetation itself, but there are also heritage implications on Oldbury Street, as well as within the Village itself, as referenced in the Heritage Impact Statement.

With particular regard to heritage impacts, the Heritage Impact Statement's support for the proposal relies in part on existing vegetation limiting that visual impact, noting:

The proposed reduction in the minimum lot size of the property could impact negatively on the existing visual catchment of the Berrima Conservation Area if it impedes existing views or allows new housing development to detract from the existing views. However, the vegetation cover on the existing property will assist in screening views to and from any new development on the proposed three subdivided properties. The existing property is distant from Stone Quarry Walk on the northern

side of the riverbank and is also largely obscured by vegetation from the commencement of this Walk. (p11)

But if that vegetation were removed or even reduced, so too would the visual protection it affords. In order to minimise these impacts, it would be highly desirable to retain, and indeed enhance the current vegetation pattern across the site. This however, would be contrary to the necessary bush fire management requirements just discussed. The Planning Proposal does not address or seek to reconcile these two competing factors.

Concluding Comments

The Planning Proposal is described by the proponent as

an owner-initiated proposal that is based upon the contention that the land has a capacity for development that is not reflected in the current planning controls and that those existing controls are in fact unreasonable in the context of the subject site and its surrounds.

The Planning Proposal notes that there are existing dwellings on Oldbury Street on 2,000m² lots in the immediate vicinity of the subject land. This is acknowledged, as is the fact that there are also dwellings on 4,000m² lots and not all of the 2,000m² lots have the same frontage width to Oldbury Street, making them appear larger from the street than they actually are.

The effect is an irregular development pattern, typical of early settlements and well suited to the semi- rural edge of the Village. This is recognised in the LSPS.

The undeveloped nature of the village and its rural surrounds strengthens its cultural significance (i.e. heritage significance). The community of Berrima places a great deal of value on its character as a sparsely populated heritage village surrounded by a sparsely populated and undeveloped rural/bushland landscape. Berrima has a distinct identity and heritage significance, being its greatest strength together with the natural rural surrounds provided by mature trees and the Wingecarribee River.

The Heritage Impact Statement relies on the Berrima DCP to protect the cultural and heritage integrity of the Village in assessing any future development within the Village. The semi-rural edge of the Village is also supported in the DCP, with the specific objective of *The Southern Entry shall retain its open natural landscape setting.*

The role of the DCP is to manage development permitted under Wingecarribee Local Environmental Plan 2010. It is the role of the LEP to ensure that any development it enables can be managed satisfactorily through the DCP and any other relevant controls. In the case of the subject land, the site-specific assessment indicates that there are significant constraints to future development of the site with potential impacts on local heritage and biodiversity.

The site has a dwelling entitlement and it would be an appropriate response at the DA stage to endeavour to manage these constraints to enable that entitlement to be realised. The constraints, when spread across a 1.5 hectare site and seeking to achieve a single dwelling development, will be

much easier to address and resolve than addressing the same constraints across three individual sites each with a separate owner and set of expectations. It is not the role of strategic planning to create such a situation.

Both the current South East and Tablelands Regional Plan 2036 and the draft 2041 Plan contain specific references to the need to protect and preserve the Region's cultural heritage. The Regional Plan is a broad-ranging document and efforts to implement its Directions and Actions require a balanced approach within which any strategic change is measured against those benefits and disadvantages most relevant to a particular site, intention and potential outcome.

One reason the Department of Planning & Environment's LEP Making Guide now includes the requirement that a site-specific assessment be included in a Planning Proposal is to ensure such a balanced approach is considered and that potential constraints and their implications are identified and addressed at this strategic stage.

In view of this intent and Council's assessment of the Planning Proposal, it is concluded that the Planning Proposal is not supported and that the current controls over the land are not "unreasonable".

CONSULTATION

Pre-lodgement Scoping Meeting

The proponent met with Strategic Land Use Planning staff and was provided with initial feedback. The Planning Proposal was then assessed as a Scoping Proposal as recommended in the Department of Planning & Environment's LEP Making Guideline 2021 and written advice was provided to the proponent.

External Referrals

Referrals	Advice/Response/Conditions
Rural Fire Service Strategic Assessment	Informal referral to the RFS Strategic Assessment team concluded in the proposal being considered 'borderline', particularly if additional risk factors, such as potential fire threat coming from an angle other than 90 degrees, were factored in.

Internal Referrals

Referrals	Advice/Response/Conditions
Environment & Sustainability	<p>The Planning Proposal was discussed with the Environment & Sustainability Team which expressed concerns with the Proposal. The first concern was potential slippage due to even minimal reduction of vegetation due to the significant slope of the land down to the river. Such slippage is the cause of several adverse environmental impacts across all waterways in the Shire.</p> <p>Of particular concern with regard to the Wingecarribee River itself is platypus habitat. The Wingecarribee River is recognised as prime platypus habitat and degradation of the river bank was considered to be a prime cause of degradation of platypus habitat.</p>

SUSTAINABILITY ASSESSMENT

- **Environment**

Potential environmental impacts included vegetation loss, riverbank degradation and potential impact on platypus habitat.

- **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 proposal has been addressed within the cultural heritage context of Berrima Village.

- **Governance**

The Planning Proposal has been considered in accordance with the Department of Planning & Environment's LEP Making Guideline 2021.

RELATIONSHIP TO CORPORATE PLANS

The Planning Proposal does not affect any Corporate Plan.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications associated with this report.

RELATED COUNCIL POLICY

There are no related policies associated with this report.

CONCLUSION

The subject land is identified as having several features and constraints which limit development potential. These are discussed in the report with the conclusion being that the current controls should remain and that the Planning Proposal not be supported.

ATTACHMENTS

1. P P-2022-1417- V 1 for Cncl Assess - Oldbury St Berrima.docx [5.3.1 - 37 pages]

6 DEVELOPMENT APPLICATIONS

6.1 Development application 22/0258 - Seniors housing, Lot 1 DP1273409, 48 Old Wingello Road, Bundanoon

Report Author: Senior Development Assessment Planner
Authoriser: Acting/Director Communities and Place

PURPOSE

The purpose of this report is to present development application 22/0258 for the Panel's consideration. It recommends determination by REFUSAL of consent for the reasons specified in Attachment 1.

Consultants	MD&A Architects PL K.F. Williams & Associated Pty Ltd Lee Environmental Planning Arboriculture Consultancy Australia Civil Development Solutions Urban Water Solutions.
Notification Period	2 September to 2 October 2021.
Number of Submissions	29.
Zoning	R2 Low Density Residential.
Political Donations	None declared.
Reason for Referral to Panel	Advertisement and notification of the application attracted 29 submissions.

OFFICER'S RECOMMENDATION

THAT the Wingecarribee Local Planning Panel determines development application 22/0258 for erection of buildings and carrying out of works for the purpose of seniors housing (22 independent living units) by REFUSAL of consent for the reasons specified in Attachment 1 to this report.

EXECUTIVE SUMMARY

1 Executive summary

Council's previous development consent 20/1144 permitted development of 48 Old Wingello Road, Bundanoon for the purpose of seniors housing, including 28 independent living units. The consent permitted removal of some mature trees and required retention of all others. However, since works in the development commenced, Council has received numerous allegations of trees being removed in contravention of development consent 20/1144 and has taken appropriate compliance action in response.

Development application 22/0258 now proposes development of the land for the purpose of seniors housing including 22 independent living units. The proposed development is an extension of the abovementioned development the subject of development consent 20/1144.

Council requested the applicant provide additional information to accompany the application. The applicant's response contemplated amendment of the application; Council did not agree to the proposed amendment and advised the applicant of its intention to determine the application based on the information accompanying it thus far, unless the application was withdrawn beforehand.

Advertisement and notification attracted 26 valid submissions by way of objection to the proposed development. The valid grounds for objection relate to removal of landscaped open space and flora/fauna impacts, vehicular traffic and parking, pedestrian infrastructure, and proposed side boundary setbacks.

The application was referred to various Council officers for review and comment, as well as to Water NSW (a concurrence authority). Council's Arboriculture Consultant considers the application unsatisfactory.

The proposed development is considered unsatisfactory with respect the relevant provisions of:

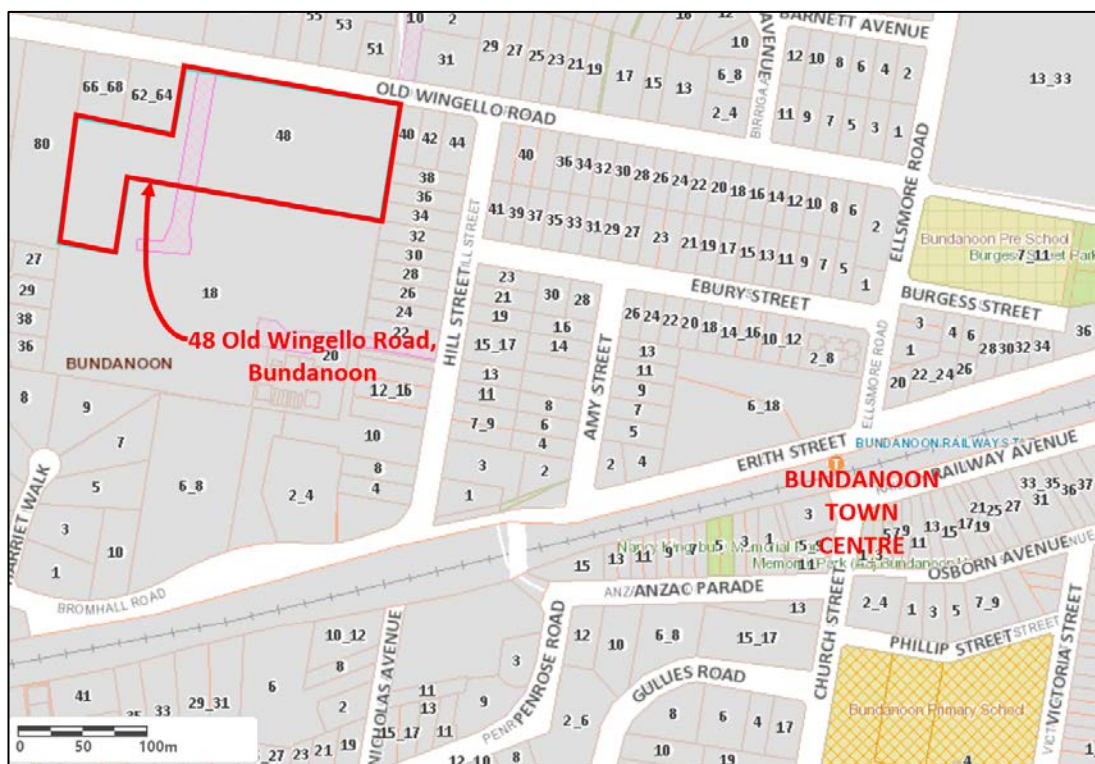
- State Environmental Planning Policy (Housing) 2021
- Wingecarribee Local Environmental Plan 2010
- Council's Bundanoon Town Plan Development Control Plan.

The proposed development is also considered likely to have various significant negative environmental and social impacts in the locality, and the land is considered unsuitable for the proposed development. Advertisement and notification attracted significant objection with valid grounds, and there is not considered to be any overriding public interest in favour of the proposed development.

Given the above, the proposed development is considered unsatisfactory with respect to the matters for consideration specified by section 4.15 (1) (a) (i) & (iii), (b), (c), (d) and (e) of the Environmental Planning and Assessment Act 1979.

2 Site Description and Locality.

Figures 1 and 2 illustrate the land's location and layout (see also **Attachments 2 and 3**). It is a 2.14ha low density residential lot under development on the southwestern side of Old Wingello Road in Bundanoon, around 500m northwest of the town centre. The land is accessible by vehicle from Old Wingello Road.



Figure

1: Locality Map (see also Attachment 2).



Figure 2: Aerial image (see also Attachment 3).

The land slopes gently-moderately from southwest to northeast, towards Old Wingello Road. It is under development for the purpose of seniors housing (discussed in section 3 of this report). Its

eastern majority has been substantially excavated since the latter part of 2021, resulting in removal of many of the scattered mature native and exotic trees that used to occupy the land. **Figure 3** illustrates vegetation on the land in August 2021, before works commenced (see also **Attachment 4**). Vegetation in the western remainder of the land includes some scattered mature native trees.



Figure 3: Aerial image as at 17 August 2021 (see also Attachment 4).

Properties to the land's west, north and east are generally developed for the purpose of low density residential accommodation among mature native and exotic trees. Land at 18 and 20 Hill Street, immediately to the land's south, is occupied by a retirement village and a nursing home.

Photographs taken during inspection of the land on 24 February 2022 are included in **Attachment 5**.

3 Historical notes

(a) Development consent 18/0022 and associated approvals

On 20 April 2018 Council granted development consent 18/0022 for subdivision of Lot 31 DP1015355, 18 Hill Street, Bundanoon to create two lots, including the subject land, as illustrated in **Figure 4**. Notably, condition 1 of the consent specified the consent did not operate to permit any tree removal:

1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of a 2 lot subdivision. No approval is granted by this development consent for the removal of trees.

Reason: To clarify the description of the development.

Council modified development consent 18/0022 on 2 October 2018 by granting modified development consent 18/0022.01. The modification comprised amendment and deletion of engineering related conditions of the original consent.



On 1 May 2019 Council granted activity approval 18/0022.03 under section 68 of the Local Government Act 1993 to carry out sewerage and stormwater drainage works on Lot 31 DP1015355, associated with the subdivision permitted by modified development consent 18/0022.01. Council modified the activity approval on 24 February and 3 July 2020 by granting respective modified activity approvals 18/0022.03.01 and 18/0022.03.02 to carry out sewerage work on Lot 31 DP1015355. An extract from the most recent modified approval drawings is reproduced in **Figure 5**. The drawings indicate sewerage work in proximity to trees on the land, but there is no apparent indication of any proposed or approved tree removal.

AGENDA OF THE LOCAL PLANNING PANEL WEDNESDAY 7 SEPTEMBER 2022

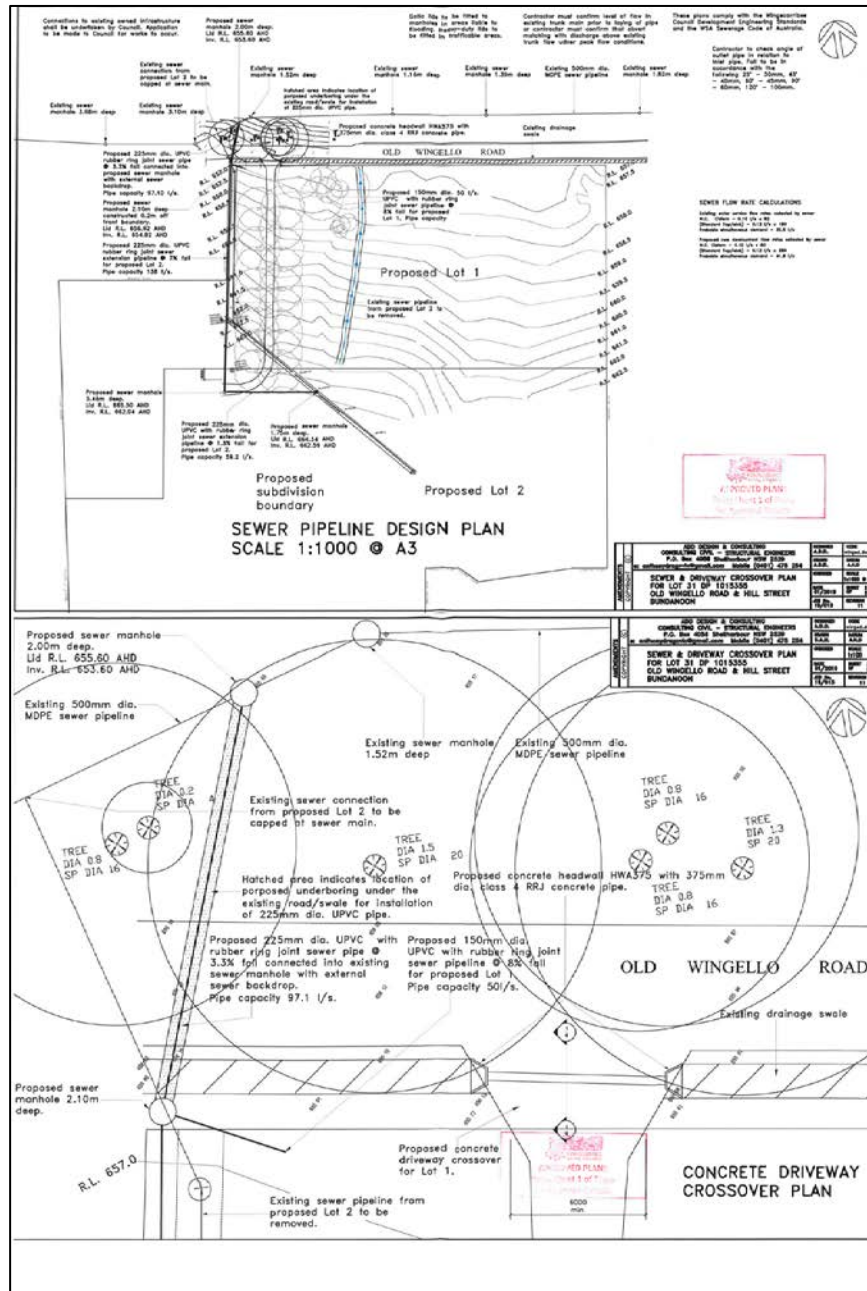


Figure 5: Extract from modified activity approval 18/0022.03.02 drawings.

Also, on 1 May 2019, Council granted approval 18/0022.04 under section 138 of the Roads Act 1993 for driveway construction works and sewer related work adjacent to Lot 31 DP1015355, again associated with the subdivision permitted by modified development consent 18/0022.01. An extract from the approval drawings is reproduced in **Figure 6**. The drawings do not indicate any proposed or approved tree removal. Conditions 13 and 14 of the approval specify as follows:

13. Street Trees

All existing street trees (unless otherwise notified) are to be retained and protected in accordance with AS2970-2009 Protection of Trees of Development Sites, with no excavation works to occur within 3 metres of any tree trunk without prior Council approval.

14. Drip line of any street tree

Where any works are approved within the drip line of any existing street tree, no roots over 50mm in diameter are to be cut without prior consultation with Councils Tree and Vegetation Maintenance Officer of an AQF Level 5 Consulting Arborist. Where such roots are approval for removal they are to be cleanly cut and not ripped.

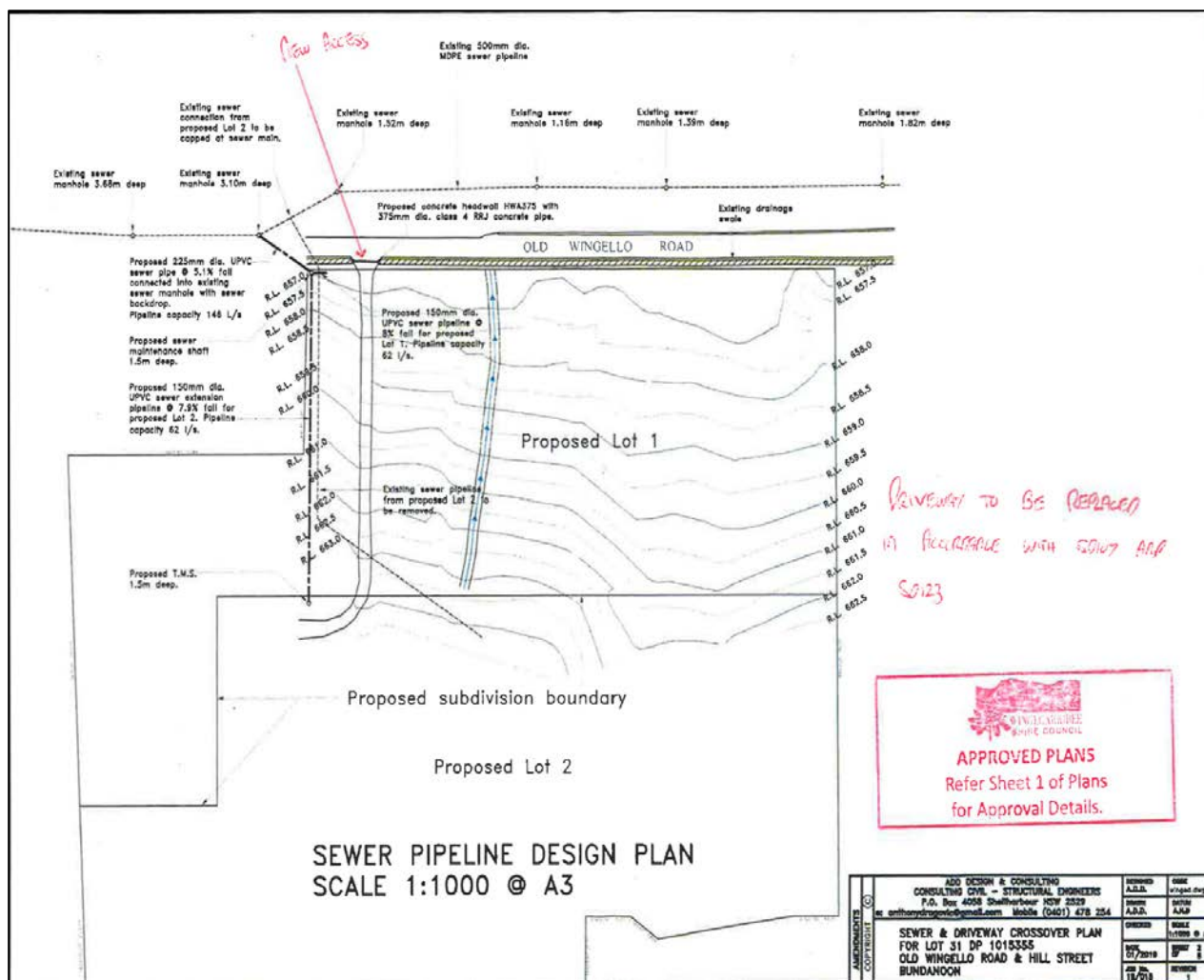


Figure 6: Extract from Roads Act 1993 approval 18/0022.04 drawings.

On 6 July 2020 Council granted another approval under section 138 of the Roads Act 1993 – approval 18/0022.05 – for driveway construction work and sewer construction work adjacent to Lot 31 DP1015355, associated with the subdivision the subject of modified development consent 18/0022.01. Extracts from the approval drawings are reproduced in **Figure 7**. The drawings do not indicate any proposed or approved tree removal. Conditions 13 and 14 of the approval specify as follows:

13. Street Trees

All existing street trees (unless otherwise notified) are to be retained and protected in accordance with 454970-2009 Protection of Trees on Development Sites, with no excavation works to occur within 3 metres of any tree trunk without prior Council approval.

14. Drip line of any street tree

Where any works are approved within the drip line of any existing street tree, no roots over 50mm in diameter are to be cut without prior consultation with Councils Tree and Vegetation Maintenance Officer of an AQF Level 5 Consulting Arborist. Where such roots are approved for removal they are to be cleanly cut and not ripped.

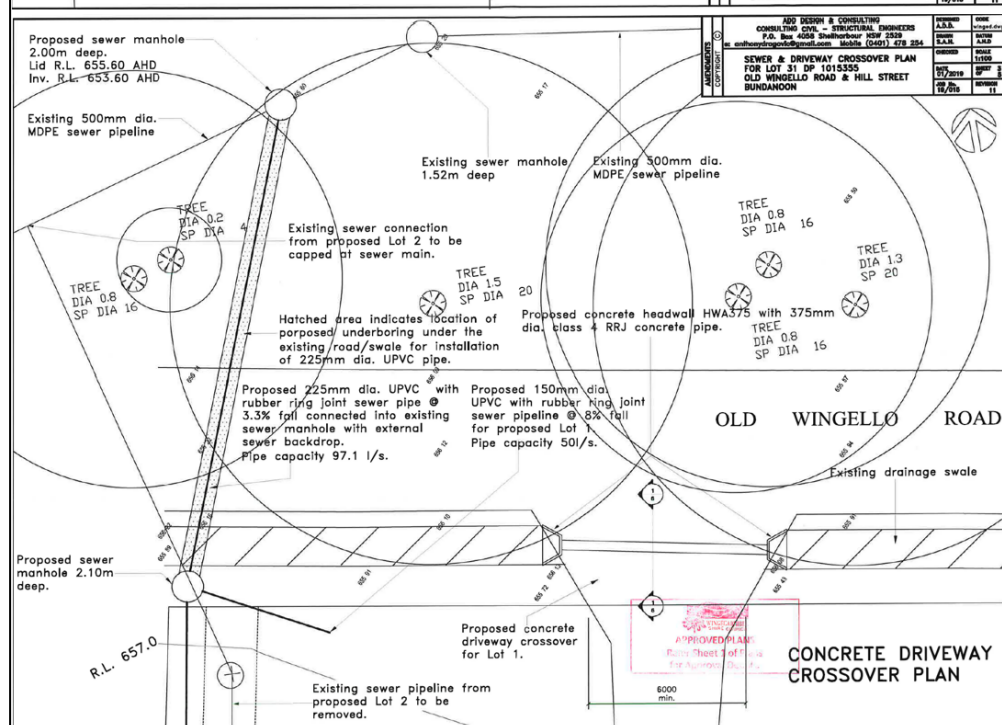


Figure 7: Extracts from Roads Act 1993 approval 18/0022.05 drawings.

On 11 October 2021 Council granted a third approval under section 138 of the Roads Act 1993 – approval 18/0022.08 – for driveway construction work adjacent to Lot 31 DP1015355, associated with the subdivision the subject of modified development consent 18/0022.01. Conditions 13 and 14 of the approval specify as follows:

13. Street Trees

All existing street trees (unless otherwise notified) are to be retained and protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with no excavation works to occur within 3 metres of any tree trunk without prior Council approval.

14. Drip line of any street tree

Where any works are approved within the drip line of any existing street tree, no roots over 50mm in diameter are to be cut without prior consultation with Councils Tree and Vegetation Maintenance Officer of an AQF Level 5 Consulting Arborist. Where such roots are approved for removal they are to be cleanly cut and not ripped.

(b) Development consent 20/1144 and associated approvals

On 23 December 2020 Council granted development consent 20/1144 for development of Lot 31 DP1015355, 18 Hill Street, Bundanoon for the purpose of seniors housing including 28 dwellings. An extract from the consent drawings is reproduced in **Figure 8**, with trees required to be retained and permitted to be removed shaded in yellow and red, respectively.

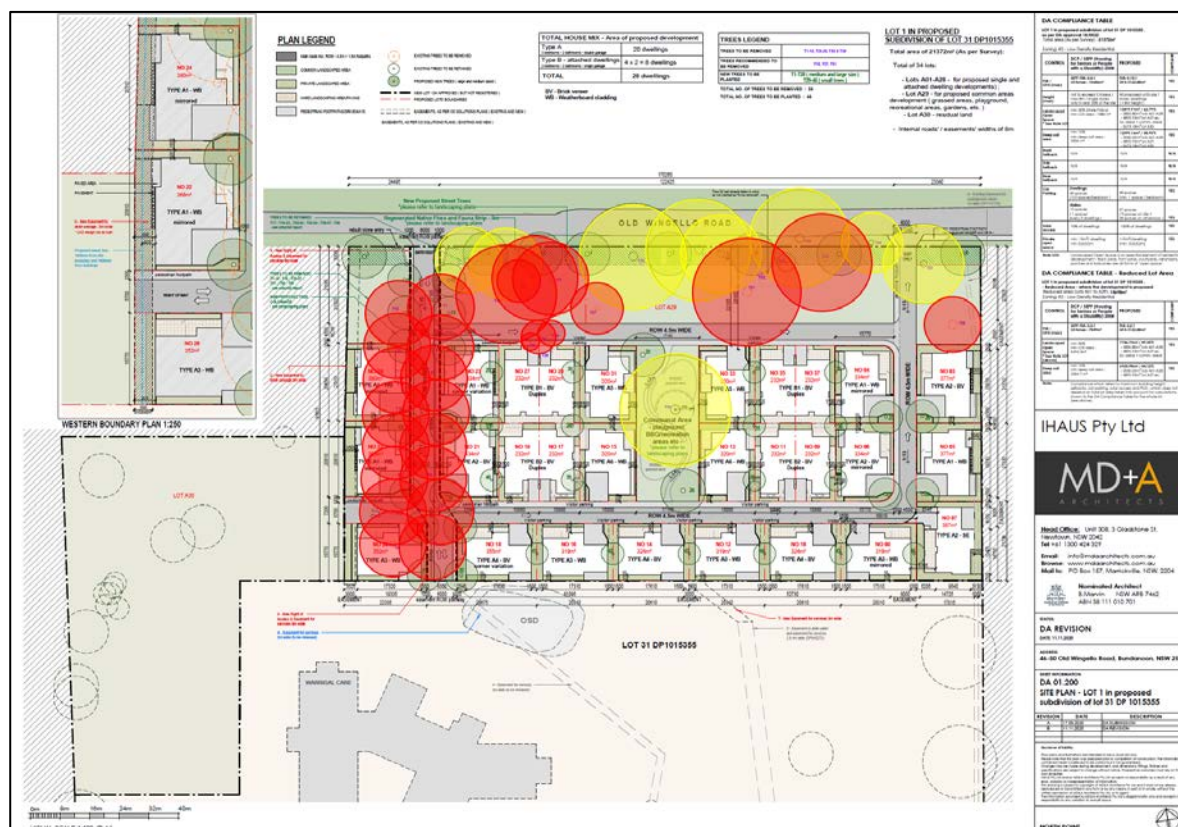


Figure 8: Extract from development consent 20/1144 drawings. Trees required to be retained are shaded yellow. Trees permitted to be removed are shaded red.

Development consent 20/1144 was subject to a deferred commencement condition requiring registration of the subdivision of land permitted by development consent 18/0022, discussed above. Notable other conditions of consent, once operational, include conditions 18, 22 and 55:

18. Private waste Management

The site does not provide provision for a safe kerbside collection nor are the private roads suitable for Council's waste service vehicles to safely access the site. All waste and recyclable material generated on site is to be managed and collected by a private waste contractor, at the sole expense of the owners. No reduction in Council rates will be provided by the Council as a consequence of the private collection of waste and recyclable materials.

The body corporate or property manager must engage, and keep engaged at all times, a licenced private waste contractor to service the development and collect both waste and recycling from each residential dwelling. Collection vehicles must be able to legally and safely perform collections.

The waste collection shall include:

- Green waste collection;*
- Recyclable waste collection;*
- Putrescible waste collection*

A copy of the executed contract containing the specified days and time for waste collection shall be provided to Council prior to issue of the Construction Certificate.

Reason: *To ensure the provision of appropriate waste services for residents and protect community health, and to ensure efficient collection of waste by collection contractors.*

22. Tree Retention

Road design and construction shall ensure preservation of existing roadside vegetation. All trees proposed to be removed within the road reservation shall be clearly identified by survey and submitted to Council for approval prior to issue of Construction Certificate.

All trees shown on the development consent as being retained shall be appropriately marked and protected during construction works with fencing that shall be maintained throughout construction activities.

Reason: *To ensure retention and preservation of local vegetation.*

55. Restriction on User

Prior to the issue of any occupation certificate, a Section 88B instrument must be registered on title requiring that a private waste contractor service the development at all times.

The Applicant must ensure that the Section 88B Instrument contains the following:

The registered proprietor of the Burdened Lot, or where the Burdened Lot includes a Strata Scheme, the Owners Corporation of the Burdened Lot:

- *Is responsible for providing all waste and recycling services for the residents of the building or Strata Scheme;*
- *Must ensure waste and recycling services for the development are to be provided and undertaken by a private waste and recycling contractor (not Council);*
- *Must not access Council's household clean up service or waste/recycling service;*
- *Indemnifies Council in respect of any claim regarding the non-provision by Council of waste services.*

This restriction cannot be altered or extinguished without Council's consent:

Reason: *To ensure ongoing access for servicing of waste facilities.*

On 27 July 2021 Council received notification that the subdivision the subject of development consent 18/0022 had been registered as Deposited Plan 1273409 on 10 June 2021, creating the subject land, and that the deferred commencement condition of development consent 20/1144 was thus satisfied.

On 27 September 2021 Council granted activity approval 20/1144.02 under section 68 of the Local Government Act 1993 to carry out stormwater drainage work on the subject land in association with development the subject of development consent 20/1144. An extract from the approval drawings is reproduced in **Figure 9**. The drawings are inconsistent with the development consent 20/1144 drawings in their indication of trees permitted to be removed. This may raise some question as to the validity of activity approval 20/1144.02 with respect to permitted tree removal.

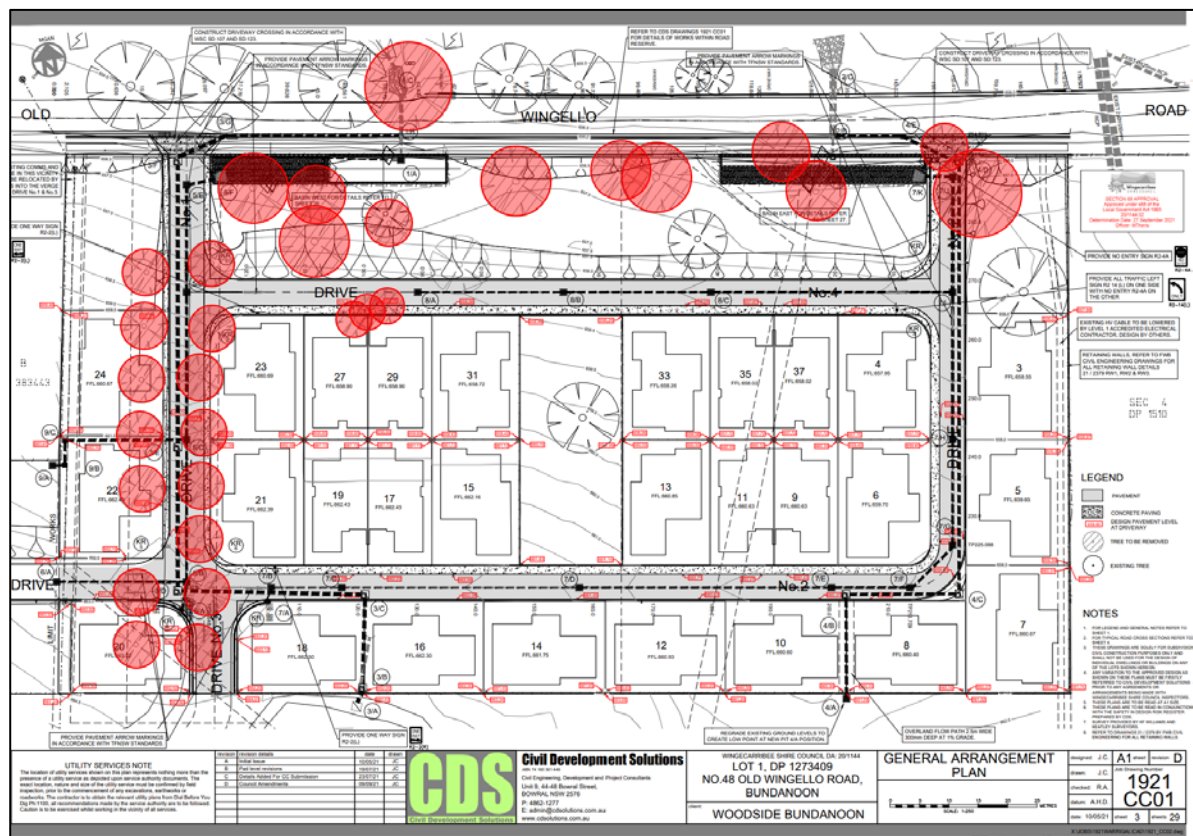


Figure 9: Extract from activity approval 20/1144.02 drawings. Trees permitted by the approval to be removed are shaded red.

On 13 October 2021 Council granted construction certificate 20/1144.01 for driveway, stormwater and footpath works on the subject land, associated with development the subject of development consent 20/1144. The construction certificate drawings, reproduced in **Figure 10**, are inconsistent with the development consent 20/1144 drawings in their indication of trees permitted to be removed adjacent to Old Wingello Road. This may raise some question as to the validity of construction certificate 20/1144.01 with respect to permitted tree removal.

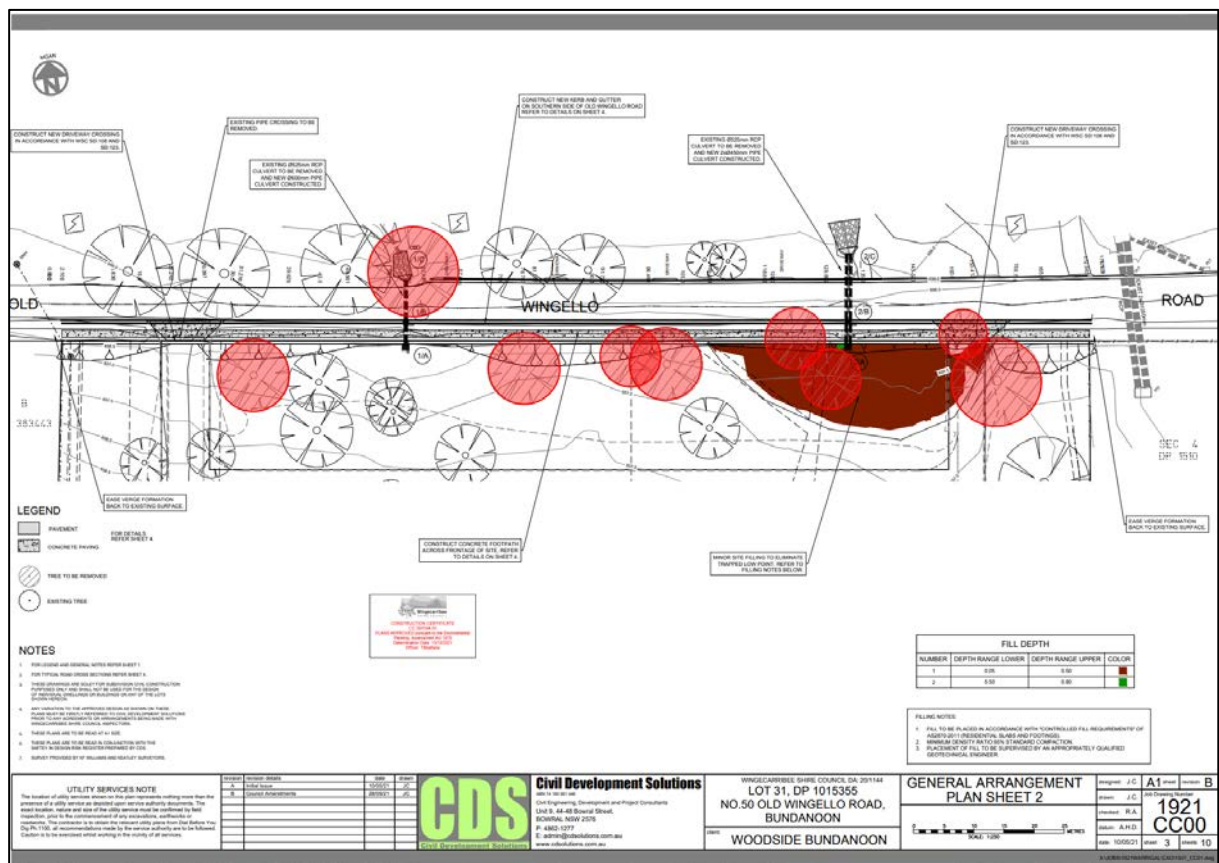


Figure 10: Extract from construction certificate 20/1144.01 drawings. Trees permitted to be removed are shaded red.

On 11 November 2021 Council was notified of an intention to commence tree removal, as permitted by development consent 20/1144, on 12 November 2021. Since then, Council has received numerous allegations of development consent 20/1144 being contravened, particularly through removal of vegetation required by the consent to be retained.

On 3 March 2022 Council wrote to the owner of the land, referring to a recent inspection of the land revealing building works were not in accordance with development consent 20/1144. Attached to Council's correspondence was written notice to the owner of the land of Council's intention to serve an order under the Environmental Planning and Assessment Act 1979 requiring compliance with development consent 20/1144 generally and condition 22 of the consent (regarding tree retention) specifically.

On 18 May 2022 Council granted activity approval 20/1144.03 for the carrying out of water supply and sewerage works on the subject land, associated with development the subject of development consent 20/1144. Extracts from the approval drawings are reproduced in **Figure 11**. The approval drawings are inconsistent with the development consent 20/1144 drawings in their indication of trees retained and removed: two of the drawings, respectively entitled “Site Hydraulics: Water Supply” and “Site Hydraulics: Sanitary Drainage” (respectively dated 16 May 2022 and 12 August 2021), indicate considerably fewer trees being retained on the land than required by development consent 20/1144, while a third drawing, entitled “Stage 1 Fire Hydrant System Design”, indicates a significantly greater number of trees scattered across the land than have actually been present since at least as early as 2014. This may raise some question as to the validity of activity approval 20/1144.03 with respect to permitted tree removal.

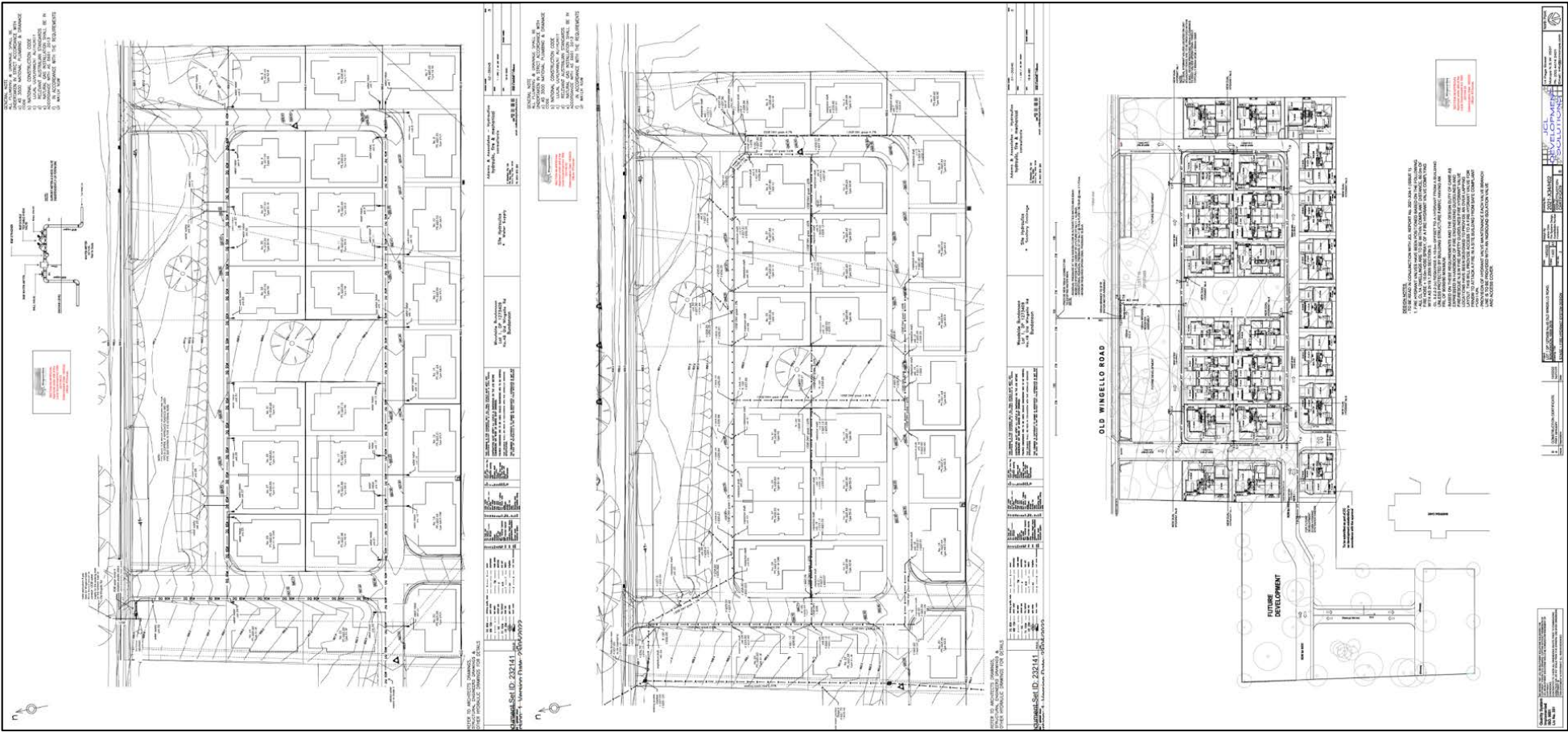


Figure 11: Extracts from activity approval 20/1144.03 drawings.

4 Proposed development

The application proposes erection of buildings and carrying out of works for the purpose of seniors housing comprising 22 independent living units (twelve three-bedroom single storey dwelling houses as well as five single storey buildings containing two two-bedroom dwellings each). The proposed development also includes internal access roads, communal outdoor facilities and landscaping. It is intended as an extension of development the subject of Council's development consent 20/1144, discussed in section 3 of this report.

The completed application form indicates the proposed development includes removal of two trees, but information accompanying the application indicates it involves removal of a considerably greater number.

Information accompanying the application also contemplates Strata Title subdivision of the land and proposed development, but the completed application form itself indicates subdivision is not proposed.

The application and its accompanying information (22 BASIX certificates excluded for brevity) are reproduced in the confidential **Attachment 6**.

5 Application background

The application was made to Council on 10 August 2021. It was subsequently referred internally to relevant Council officers and externally to Water NSW (a concurrence authority).

Responses to internal referrals identified additional information required to accompany the application in order to allow its informed determination. Accordingly, on 23 September and 26 October 2021 Council requested the applicant provide additional information no later than 18 November 2021.

On 22 November 2021 Council extended the period for the applicant to provide the additional information requested on 23 September and 26 October 2021, to 16 December 2021.

On 2 December 2021 the applicant provided additional information in response to Council's request of 23 September 2021. However, on 20 December 2021 the applicant still had not provided any of the additional information requested by Council on 26 October 2021, so Council advised the applicant that they were taken to have notified Council that the outstanding requested information would not be provided, and that Council intended to deal with the application accordingly.

On 21 December 2021 the applicant provided additional information in response to Council's request of 26 October 2021.

On 8 February 2022 Council officers met with the applicant. The applicant informed Council officers that the additional information provided on 21 December 2021 contemplated amendment of the proposed development. Council officers advised Council would confirm its agreement or disagreement to the proposed amendment after receiving a response to referral of the additional information to Council's Arboriculture Consultant.

On 13 March 2022 Council's Arboriculture Consultant indicated the proposed development's likely arboricultural impacts were considered unacceptable. On 22 March 2022 Council conveyed that advice to the applicant, confirmed Council did not agree to amendment of the application as discussed on 8 February 2022, and advised the applicant that Council intended to determine the application based on the information accompanying it thus far, unless withdrawn beforehand.

6 Notification

Council advertised the application and notified it to owners and occupants of surrounding properties, inviting submissions between 2 September and 2 October 2021. Advertisement and notification attracted 29 submissions, which are reproduced in the confidential **Attachment 7**.

27 of the submissions are by way of objection to the proposed development, but one of those does not specify the grounds for objection and is therefore invalid. The remaining two submissions query particular aspects of the proposed development. The stated grounds for objection and the queries made are identified, discussed and addressed in the following table.

1 Stated grounds for objection		
Issue	Discussion	Response
(a) Removal of landscaped open space, and flora/fauna impact	22 submissions express concern that the proposed development will reduce landscaped open space in the development the subject of Council's development consent 20/1144 (discussed in section 3 of this report), remove native vegetation, and unacceptably reduce habitat for native fauna.	The proposed development involves removal of mature native trees remaining on the land after the carrying out of development the subject of Council's development consent 20/1144. Those remaining trees are considered to positively contribute to the character and amenity of the streetscape and the locality, and their proposed removal is considered a negative cumulative impact of the proposed development. The grounds for objection are considered valid.
(b) Vehicular traffic and parking	Seven submissions suggest the proposed development will have significant negative impacts in the locality by way of vehicular traffic generation, and that the proposed development does not include sufficient off street car parking facilities.	The proposed development includes a sufficient number of off street car parking spaces, but many of them do not satisfy applicable design requirements. Discounting the proposed noncompliant parking spaces unacceptably reduces their number. The grounds for objection are considered valid.
(c) Pedestrian infrastructure	Three submissions express concern that the locality lacks adequate pedestrian footpaths to provide adequate	The proposed development makes provision for a pedestrian footpath in Old Wingello Road and Hill Street. Whilst a public

	access for residents of the proposed development to local services and facilities.	bus route includes the intersection of Old Wingello Road and Hill Street, that bus service is not available during school holidays and public holidays, and there is no scheduled stop or physical bus stop within 400m of the land. The grounds for objection are considered valid.
(d) Scale of proposed development	Two submissions assert that the scale of the proposed development, which will increase the number of dwellings permitted on the land from 28 to 50, is inconsistent with the locality's existing and desired character and amenity.	The proposed development satisfies applicable scale and density controls.
(e) Residential density	Five submissions suggest the overall residential density of the proposed development, and development the subject of Council's development consent 20/1144 (discussed in section 3 of this report), will not facilitate adequate amenity for residents and is incompatible with the locality's existing and desired character and amenity.	The proposed development satisfies applicable density controls.
(f) Side setback	One submission objects to the proposed development's setback from the land's side boundaries and suggests it, in combination with the height of proposed dwellings in relation to adjoining properties, may reduce neighbour privacy.	The proposed development does provide unusually small side and rear boundary setbacks – as small as 730mm in one instance, which is unlikely to comply with Building Code of Australia requirements. The grounds for objection are considered valid.
(g) Proposed dwelling orientation	One submission asserts the orientation of some dwellings in the proposed development renders it incompatible with the locality's existing and preferred character and amenity.	The proposed dwellings' orientations are considered to make satisfactory provision for solar access and energy efficiency, and are not considered to contradict the orientations of other residential accommodation developments in the locality.

(h) Stormwater management	One submission expresses concern that the proposed development may increase surface stormwater runoff from the land, to the detriment of downslope properties.	Council's Development Engineer raises no objection to proposed means of stormwater drainage, subject to conditions of consent (if granted) aimed at ensuring post-development discharges do not exceed pre-development discharges.
2 Queries		
Issue	Discussion	Response
(a) How far are proposed buildings set back from adjoining property boundaries?	One submission specifically asks how far buildings in the proposed development will be set back from the submitter's adjoining property boundary.	As discussed above, the proposed development's side and rear boundary setbacks are unusually small and unlikely to achieve compliance with Building Code of Australia requirements.
(b) How many proposed dwellings are adjacent to adjoining property boundaries?	One submission specifically asks how many dwellings in the proposed development are located adjacent to the submitter's adjoining property boundary.	The submitter might have inspected the proposed development drawings, which were available throughout the submissions period. That aside, the proposed development includes one dwelling adjacent to 40-44 Hill Street, three dwellings adjacent to 62-64 Old Wingello Road, three dwellings adjacent to 66-68 Old Wingello Road, four dwellings adjacent to 70-80 Old Wingello Road and five dwellings adjacent to 20 Hill Street.
(c) What is the proposed development's setback from Wingello Road?	One submission seeks confirmation as to how far the proposed development is set back from Old Wingello Road.	The submitter might have inspected the proposed development drawings, which were available throughout the submissions period. That aside, the distance between the land's Old Wingello Road boundary and the nearest proposed dwelling is around 6.7m.
(d) What type of boundary fencing is proposed ?	One submission asks what fencing is proposed to the land's boundaries.	Information accompanying the application does not include details of any proposed fencing. A recommended condition of consent (if granted) can specify Council's consent does not permit erection of any fencing other than specified by an environmental planning

		instrument as not requiring consent, e.g. exempt development.
(e) Is there an easement from adjoining land into the proposed development?	One submission specifically asks whether an easement burdens the submitter's adjoining property and the subject land.	The land is burdened by various easements. A recommended condition of consent (if granted) can requiring extinguishment of any easement rendered redundant by the proposed development.
(f) Will a proposed footpath upgrade in Old Wingello Road, include provision of a gutter or gutters in the road?	One submission asks whether provision of an upgraded footpath in Old Wingello Road will incorporate provision of guttering to the road.	Council's Development Engineer does not specify any requirement for provision of kerb and gutter.
(g) Is there a report on how the proposed development will impact stormwater flows?	One submission asks whether the application is accompanied by details of proposed stormwater management methods and also seeks information as to their expected effects.	Information accompanying the application indicates the proposed methods of draining the land. Council's Development Engineer raises no objection to the proposed drainage methods, subject to recommended conditions of consent (if granted).

7 Referrals

The application was referred internally to relevant Council officers and externally to Water NSW (a concurrence authority). The referral responses are summarised in the table below and are reproduced in full in **Attachment 8**.

Internal Council referrals			
Internal Council referee	Date referred	Date response received	Summary of response
Accredited Certifier	1 September 2021	29 October 2021	Recommended conditions of consent.
Development Engineer	1 September 2021	18 November 2021	Recommended conditions of consent.
Water & Sewer Development Engineer	1 September 2021	17 September 2021	Additional information required (details of water and sewer modelling).
	3 December 2021 (additional information received 2 December 2021)	17 February 2022	Recommended conditions of consent.

Transport Engineer	1 September 2021	18 November 2021	Recommended conditions of consent incorporated in Development Engineer’s referral response.
Arboriculture Consultant	1 September 2021	18 October 2021	Additional information required (arboricultural impact assessment and ecological study to identify retention value and ecological significance of trees to be impacted, and to identify any association as a protected ecological community and koala feed trees).
	20 December 2021 (applicant taken to have notified Council that requested additional information would not be provided)	13 March 2022	Application considered unacceptable – inadequate and inconsistent information accompanying application.
	11 January 2022 (additional information received 21 December 2021)		
External referrals			
External referee	Date referred	Date response received	Summary of response
Water NSW (concurrence authority)	2 September 2021	8 October 2021	Concurrence advice.

State Environmental Planning Policy (Biodiversity and Conservation) 2021			
Chapter 4—Koala habitat protection 2021			
AGENDA OF THE LOCAL PLANNING PANEL Part 4.4—Savings and transitional provisions WEDNESDAY 7 SEPTEMBER 2022			
Provision	Control		Compliance
Section 4.16—Existing development applications	A development application made in relation to land, but not finally determined before Chapter 4 applied to the land, must be determined as if Chapter 4 had not commenced in its application to the land.	The application was made before Chapter 4 of the Policy commenced. Immediately before Chapter 4 commenced, the land was subject to State Environmental Planning Policy (Koala Habitat Protection 2021). Consideration of the application with respect to the now-repealed Policy is discussed later.	Yes.
Chapter 8—Sydney drinking water catchment			
Part 8.1—Preliminary			
Provision	Control	Discussion	Compliance
Section 8.1—Aims of Chapter	<p>The aims of Chapter 8 are—</p> <p>(a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and</p> <p>(b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and</p> <p>(c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.</p>	As discussed below, Water NSW considers the proposed development able to achieve a neutral or beneficial effect on water quality, and concurs to Council granting consent for the proposed development, subject to specified conditions. The proposed development is therefore considered satisfactory with respect to the aims specified by section 8.1.	Yes.
Part 8.2—Assessment and approval of development and activities			
Provision	Control	Discussion	Compliance
Section 8.7—Recommended practices and performance standards of Water NSW	Any development or activity proposed to be carried out on land to which this Chapter applies should incorporate Water NSW's current recommended practices and standards.	Council referred the application to Water NSW. Water NSW responded that it considers the proposed development able to achieve a neutral or beneficial effect on water quality and that it concurs to Council granting consent for the proposed development, subject to specified conditions. The proposed development is therefore considered satisfactory with respect to the matters specified by sections 8.7, 8.8 and 8.9.	Yes.
Section 8.8—Development consent cannot be granted unless neutral or beneficial effect on water quality	A consent authority must not grant consent to development unless satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.		
Section 8.9—Development that needs concurrence of Regulatory Authority	A consent authority must not grant consent to development on land in the Sydney drinking water catchment except with the concurrence of the Regulatory Authority.		

State Environmental Planning Policy (Housing) 2021			
Chapter 1—Preliminary			
Provision	Control	Discussion	Compliance
Section 3—Principles of Policy	<p>The principles of the Policy are:</p> <p>(a) enabling the development of diverse housing types, including purpose-built rental housing,</p> <p>(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</p> <p>(c) ensuring new housing development provides residents with a reasonable level of amenity,</p> <p>(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</p> <p>(e) minimising adverse climate and environmental impacts of new housing development,</p> <p>(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,</p> <p>(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,</p> <p>(h) mitigating the loss of existing affordable rental housing.</p>	The proposed development is considered unsatisfactory with respect to the principles specified by section 3 (b), (d) and (e).	No.
Chapter 3—Diverse housing			
Part 5—Housing for seniors and people with a disability			
Division 1—Land to which Part applies			
Provision	Control	Discussion	Compliance
Section 79—Land to which Part applies	Part 5 applies to land in Zone R2 Low Density Residential.	The land is in Zone R2 Low Density Residential, so Part 5 of Chapter 3 applies to it.	Yes.
Section 81—Seniors housing permitted with consent	<p>Development for the purposes of seniors housing is permitted with consent—</p> <p>(a) on land to which Part 5 applies, or</p>	Development for the purpose of seniors housing is permitted on the land by virtue of Part 5 of Chapter 3 applying to the land. Additionally, the Land Use Table	Yes.

	(b) on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.	at the end of Part 2 of Wingecarribee Local Environmental Plan 2010 specifies development for the purpose of seniors housing is permitted with consent in Zone R2.	
Division 3—Development standards			
Provision	Control	Discussion	Compliance
Section 84— Development standards—general	<p>Development consent must not be granted for development to which this section applies unless—</p> <p>(a) the site area of the development is at least 1,000m², and</p> <p>(b) the frontage of the site area of the development is at least 20m measured at the building line, and</p> <p>(c) for development on land in a residential zone where residential flat buildings are not permitted—</p> <p style="padding-left: 40px;">(i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and</p> <p style="padding-left: 40px;">(ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and</p> <p style="padding-left: 40px;">(iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.</p> <p>The servicing equipment must—</p> <p>(a) be fully integrated into the design of the roof or contained and suitably screened from view from public places, and</p>	<p>The land satisfies the dimensional requirements of section 84.</p> <p>The Land Use Table at the end of Part 2 of Wingecarribee Local Environmental plan 2010 specifies development for the purpose of residential flat buildings is prohibited in Zone R2 and therefore on the subject land. Information accompanying the application indicates all proposed buildings are of single storey construction and less than 9.5m in height, and does not indicate any rooftop servicing equipment.</p>	Yes.

	<p>(b) be limited to an area of no more than 20% of the surface area of the roof, and</p> <p>(c) not result in the building having a height of more than 11.5m.</p>		
Section 85—Development standards for hostels and independent living units	<p>Development consent must not be granted for development for the purposes an independent living unit unless the independent living unit complies with the relevant standards specified in Schedule 4 to the Policy.</p>	<p>Consideration of the relevant standards specified in Schedule 4 to the Policy is detailed in Attachment 9. The proposed development does not comply with the standards specified by clauses 5, 8, 19 and 20 of Schedule 4 to the Policy, respectively relating to bedrooms, private car accommodation, laundries, and storage for linen. Section 85 of the Policy therefore effectively specifies consent must not be granted for the proposed development.</p>	No.
Section 88—Restrictions on occupation of seniors housing	<p>Development permitted under this Part may be carried out for the accommodation of only the following—</p> <p>(a) seniors or people who have a disability,</p> <p>(b) people who live in the same household with seniors or people who have a disability,</p> <p>(c) staff employed to assist in the administration and provision of services to housing provided under this Part.</p> <p>Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in subsection (1) will occupy accommodation to which the development relates.</p>	<p>Recommended conditions of consent (if granted) can specify:</p> <ul style="list-style-type: none"> • Council's consent permits the development to be carried out for the accommodation only of: <ul style="list-style-type: none"> ○ Seniors, being: <ul style="list-style-type: none"> ▪ People who are at least 60 years of age ▪ People who are resident at a facility at which residential care, within the meaning of the Aged Care Act 1997 of the Commonwealth, is provided ▪ People who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider 	Yes.

		<ul style="list-style-type: none"> ○ People who have a disability, being people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives ○ People who live in the same household with seniors or people who have a disability ○ Staff employed to assist in the administration and provision of services to housing provided under this Part. • No construction certificate shall be granted for any building work in the proposed development unless the certifying authority is satisfied by evidence accompanying the application for construction certificate that a restriction as to user has been registered against the title of the land, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of the proposed development to accommodation of: <ul style="list-style-type: none"> ○ Seniors, being: <ul style="list-style-type: none"> ▪ People who are at least 60 years of age ▪ People who are resident at a facility at which residential care, within the 	
--	--	--	--

		<p>meaning of the Aged Care Act 1997 of the Commonwealth, is provided</p> <ul style="list-style-type: none"> ▪ People who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider ○ People who have a disability, being people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives ○ People who live in the same household with seniors or people who have a disability ○ Staff employed to assist in the administration and provision of services to the proposed development. 	
Division 4—Site-related requirements			
Provision	Control	Discussion	Compliance
Section 93—Location and access to facilities and services— independent living units	(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—	The land is not located within 400m of any concentrated variety of facilities and services, and the proposed development does not include any such facilities or services.	No.

	<p>(a) by a transport service that complies with subsection (2), or</p> <p>(b) on-site.</p> <p>(2) The transport service must—</p> <p>(a) take the residents to a place that has adequate access to facilities and services, and</p> <p>(c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.</p> <p>(3) For the purposes of subsections (1) and (2), access is adequate if—</p> <p>(a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and</p> <p>(b) the distance is accessible by means of a suitable access pathway, and</p> <p>(c) the gradient along the pathway complies with subsection (4)(c).</p> <p>(4) In subsection (3)—</p> <p>(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and</p> <p>(b) the distance is to be measured by reference to the length of the pathway, and</p> <p>(c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—</p> <p>(i) 1:12 for a maximum length of 15m at a time, or</p>	<p>The application is accompanied by an Architect's Design Statement that indicates:</p> <p><i>"The site is approximately 850m and a 10m walk from the railway station which is generally considered the town centre of Bundanoon.</i></p> <p><i>"There is a bus route directly adjacent to the site passing the corner of Hill Street and OWR (Hail and ride no formal bus stop)...it is Route 813 Moss Vale to Bundanoon. Buses pass approximately 7 times a day with 5 of them being wheelchair accessible. The proposal is to create an accessible footpath from the Eastern exit from the site to this corner.</i></p> <p><i>"Southern Highlands Community Transport is funded to support residents who are frail, aged people with a disability. The service provides transport to various appointments, including social, recreation, visiting, medical and shopping.</i></p> <p><i>"There is also a courtesy bus from the hotel."</i></p> <p>The statement of environmental effects accompanying the application indicates:</p> <p><i>"There is a bus stop approximately 85 metres to the east, on Old Wingello Road, that is part of Route 813...which is the main service between Bundanoon and Moss Vale. This service would allow residents to catch the bus into</i></p>	
--	---	---	--

	<p>(ii) 1:10 for a maximum length of 5m at a time, or</p> <p>(iii) 1:8 for a maximum length of 1.5m at a time.</p> <p>(5) In this section—</p> <p>facilities and services means—</p> <p>(a) shops and other retail and commercial services that residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner.</p> <p>provide a booking service has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016, section 7.</p>	<p><i>Bundanoon centre if necessary but more importantly, onto Moss Vale to access the services of this major centre.”</i></p> <p>Berrima Buslines Route 813 services Tallong and Moss Vale via Wingello, Penrose, Bundanoon and Exeter. Figure 12 reproduces the relevant timetable, and the route in relation to the land.</p> <p>Route 813 includes the intersection of Old Wingello Road and Hill Street, around 70m east of the land. However, as indicated by the timetable, some of the route’s weekday services are only available on school days. That is, they are not available during school or public holidays. Furthermore, whilst a “hail and ride” bus service may be available, there is no scheduled stop or any physically identified bus stop facility within 400m of the land. The proposed development thus does not comply with section 93 of the Policy.</p>	
--	---	---	--

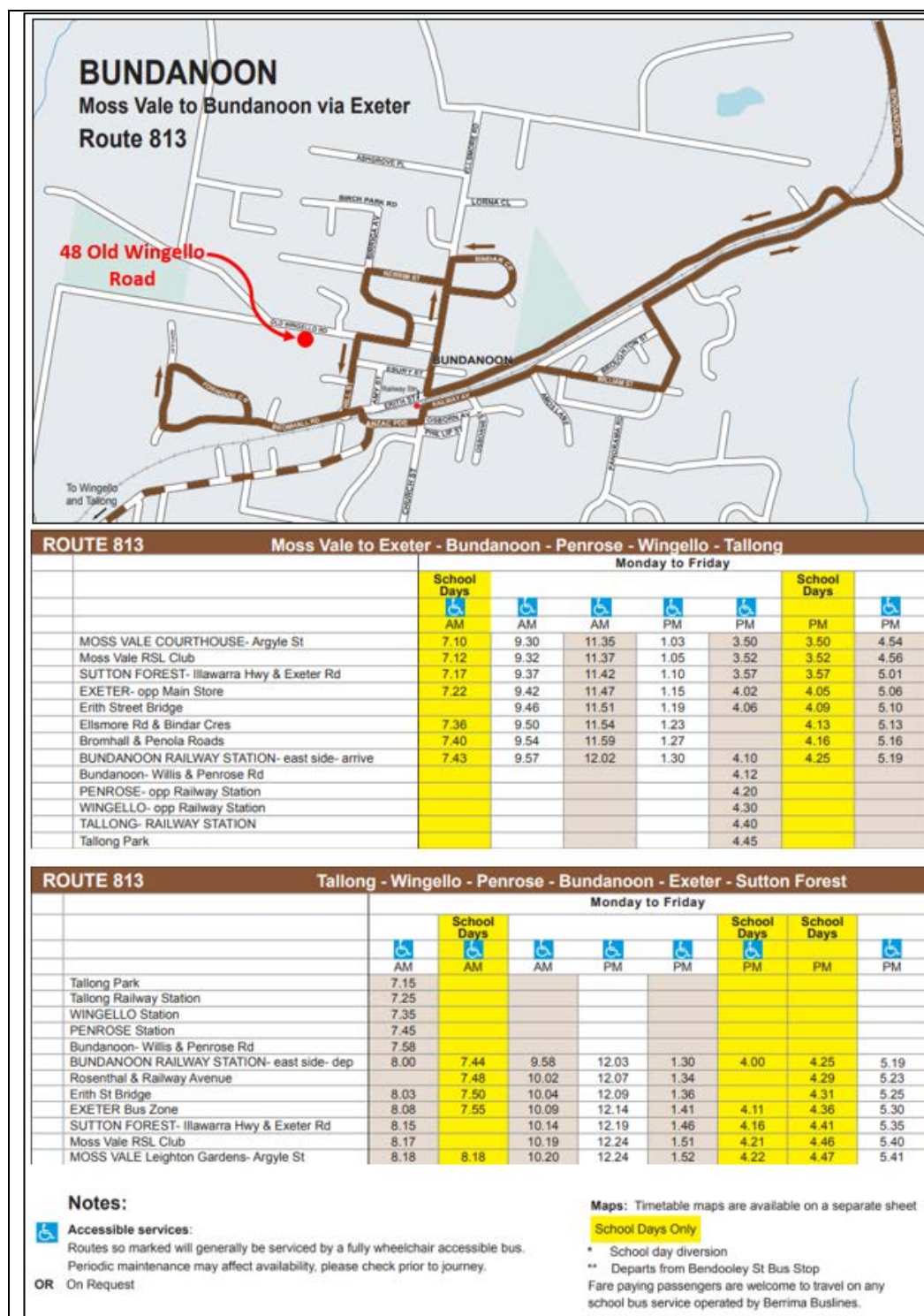


Figure 12: Berrima Buslines Route 813 within Bundanoon, and published route timetables.

Section 95—Water and sewer

A consent authority must not consent to development under this Part unless satisfied the seniors housing will

(a) be connected to a reticulated water system, and

Recommended conditions of consent (if granted) can specify requirements for connection of the proposed development to Council's available reticulated water supply and sewerage services.

Yes.

	(b) have adequate facilities for the removal or disposal of sewage.		
Division 5—Design requirements			
Provision	Control	Discussion	Compliance
Section 97—Design of in-fill self-care housing	In determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004, published on the Department's website.	The application has been considered with regard to the Seniors Living Policy, which is reproduced in Attachment 10 .	Yes.
Section 98—Design of seniors housing	A consent authority must not consent to development for the purposes of seniors housing unless the consent authority is satisfied that the design of the seniors housing demonstrates adequate consideration has been given to the principles set out in Division 6.	Consideration of the principles set out in Division 6 is discussed below.	Yes.
Division 6—Design principles			
Provision	Control	Discussion	Compliance
Section 99—Neighbourhood amenity and streetscape	<p>Seniors housing should be designed to</p> <p>(a) recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation, and</p> <p>(b) recognise the desirable elements of—</p> <p style="padding-left: 40px;">(i) the location's current character, or</p> <p style="padding-left: 40px;">(ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area, and</p> <p>(c) complement heritage conservation areas and heritage items in the area, and</p> <p>(d) maintain reasonable neighbourhood amenity and appropriate residential character by—</p>	<p>The proposed development is not for the purpose of a residential care facility, no heritage item or heritage conservation area is located in the land's immediate vicinity, and the land does not include any mapped riparian land. Subsections (a), (c) and (h) are therefore irrelevant.</p> <p>With respect to subsection (b), the proposed development is considered to recognise (albeit perhaps not sympathetically) the desirable elements of the location's current character.</p> <p>The proposed development is considered satisfactory with respect to subsections (d), (e) and (f).</p> <p>The proposed development is considered unsatisfactory with respect to subsection (g). An Arboricultural Impact Assessment report accompanying the application indicates 31 very low to</p>	No.

	<p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>(e) set back the front building on the site generally in line with the existing building line, and</p> <p>(f) include plants reasonably similar to other plants in the street, and</p> <p>(g) retain, wherever reasonable, significant trees, and</p> <p>(h) prevent the construction of a building in a riparian zone.</p>	<p>moderate retention value trees are adversely impacted by the proposed development and therefore not retainable, and 11 individual trees, including public lands and neighbouring trees, are able to be retained. However, one of the trees identified for retention by the Arboricultural Impact Assessment report (T15) conflicts with works in the proposed development and would therefore also need to be removed. The trees proposed or expected to be removed and retained are circled and shaded red and green respectively in Figure 13 and Attachment 11.</p> <p>All of the trees proposed to be retained, and one tree proposed to be removed, are on adjoining land. It may therefore be deduced that the remaining trees on the land are proposed to be removed, additional to the extensive tree removal previously permitted by Council's development consent 20/1144 and related approvals 20/1144.01, 20/1144.02 and 20/1144.03 (discussed in section 3 of this report). Existing mature trees make an important contribution to neighbourhood amenity and streetscape in the locality, arguably elevating the importance of retaining those remaining on the land.</p> <p>Given the above, the proposed development is considered unsatisfactory with respect to the provision of section 99 that seniors housing should be designed to retain significant trees where reasonable.</p>	
--	--	--	--



Figure 13: Proposed tree retention and removal.

<p>Section 100—Visual and acoustic privacy</p>	<p>Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and residents by—</p> <p>(a) using appropriate site planning, including considering the location and design of windows and balconies.</p>	<p>Overall, the proposed development is not expected to have a significant negative impact on the occupants of existing development on adjoining properties.</p>	<p>Yes.</p>
---	--	--	-------------

	<p>the use of screening devices and landscaping, and</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>		
Section 101—Solar access and design for climate	<p>The design of seniors housing should—</p> <p>(a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p>The proposed development is considered satisfactory with respect to the principles specified by section 101.</p>	Yes.
Section 102—Stormwater	<p>The design of seniors housing should aim to—</p> <p>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and</p> <p>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</p>	<p>The application was referred to Council's Development Engineer, who responded as follows regarding proposed stormwater drainage arrangements:</p> <p><i>"The applicant is proposing to utilize existing combined OSD/water quality basin. I have no issues with this as long as the applicant can make necessary arrangement to cater for stage 2. This has been conditioned."</i></p> <p>The Development Engineer raises no objection to proposed stormwater drainage methods, subject to recommended conditions of consent (if granted).</p>	Yes.
Section 103—Crime prevention	<p>Seniors housing should</p> <p>(a) be designed in accordance with environmental design principles relating to crime prevention, and</p>	<p>The proposed development is considered generally satisfactory with respect to the crime prevention principles specified by section 103.</p>	Yes.

		<p>(b) provide personal property security for residents and visitors, and</p> <p>(c) encourage crime prevention by—</p> <p>(i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and</p> <p>(ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and</p> <p>(iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>		
Section 104— Accessibility	<p>Seniors housing should—</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p>The proposed development includes a combined vehicle entry/exit point and a second vehicle exit point at its Old Wingello Road frontage. It is also proposed to provide a paved footpath from the proposed vehicle exit point nearest the eastern end of the land's road frontage to the intersection of Old Wingello Road and Hill Street, around 70m to the land's east. However, as discussed earlier regarding section 93, whilst that intersection is included in a local public bus route, some of the route's weekday services are only available on school days (not during school or public holidays), and there is no scheduled stop or any physically identified bus stop facility within 400m of the land.</p> <p>To increase the obviousness of pedestrian links to the intersection, a condition of consent (if granted) can require the proposed paved footpath to extend to the proposed development's westernmost</p>	No.	

		<p>vehicle entry/exit point. However, given the above, the pedestrian link would not provide satisfactory access to transport services or local facilities. The proposed development is thus considered unsatisfactory with respect to section 104 (a).</p> <p>Additionally, as discussed in Attachment 9, the proposed development does not comply with the private car accommodation requirements specified by clause 5 of Schedule 4 to the Policy. The proposed development is therefore not considered to facilitate convenient vehicle parking for residents, contrary to section 104 (b).</p>	
Section 105—Waste management	Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	As discussed in Attachment 9 regarding clause 21 of Schedule 4 to the Policy, drawings accompanying the application do not clearly indicate provision of a garbage storage area to each proposed dwelling. A recommended condition of consent (if granted) can specify no construction certificate shall be granted for any building work in the proposed development unless the certifying authority is satisfied by information accompanying the application for construction certificate that each dwelling in the development is provided with a garbage storage area in an accessible location.	Yes.
Division 7—Non-discretionary development standards			
Provision	Control	Discussion	Compliance
Section 108—Non-discretionary development standards for independent living units—the Act, s 4.15	The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.	<p>All of the proposed dwellings are of single storey construction and less than 9.5m in height.</p> <p>Proposed development drawings accompanying the application indicate none of the proposed buildings includes rooftop servicing equipment,</p>	No.

	<p>The following are non-discretionary development standards in relation to development for the purposes of independent living units—</p> <p>(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,</p> <p>(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—</p> <p style="padding-left: 40px;">(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and</p> <p style="padding-left: 40px;">(ii) is limited to an area of no more than 20% of the surface area of the roof, and</p> <p style="padding-left: 40px;">(iii) does not result in the building having a height of more than 11.5m,</p> <p>(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,</p> <p>(d) for a development application made by a social housing provider— at least 35m² of landscaped area per dwelling,</p> <p>(e) if paragraph (d) does not apply— at least 30% of the site area is landscaped,</p> <p>(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p> <p>(g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,</p> <p>(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—</p>	<p>and a condition of consent (if granted) can reinforce this.</p> <p>The land's area is 2.14ha, or 21,400m². Therefore, if the land were developed with a 0.5:1 floor space ratio, the resulting development would have a gross floor area of 10,700m². By measurement, the proposed development's gross floor area is approximately 2600m² and the development the subject of Council's development consent 20/1144, discussed in section 3 of this report, has a gross floor area of approximately 3400m². The proposed development would therefore result in the total gross floor area of development on the land being around 6000m², producing a floor space ratio of 0.28:1.</p> <p>The applicant is not a social housing provider. In the development the subject of Council's development consent 20/1144, around 13,000m², or 60%, of the land is landscaped or undeveloped. Buildings and works (such as internal roads) in the current proposed development would occupy approximately 5000m², reducing the land's landscaped area to around 8000m², or 37% of the land's area.</p> <p>The proposed development provides or retains two communal areas with a combined area of approximately 1541m², or 7.2% of the land's area. The remainder of the proposed development does not provide for a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and at least 65% of the deep soil zone is located at the rear of the site. The proposed development is therefore considered unsatisfactory with</p>	
--	--	---	--

	<p>(i) at least 15m² of private open space per dwelling, and</p> <p>(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,</p> <p>(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—</p> <p>(i) an area of at least 10m², or</p> <p>(ii) for each dwelling containing 1 bedroom—an area of at least 6m²,</p> <p>(j) for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings,</p> <p>(k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.</p>	<p>respect to section 108 (2) (f) of the Policy.</p> <p>The proposed dwellings' living rooms and private open spaces are expected to receive at least two hours of direct solar access between 9:00am and 3:00pm on the winter solstice.</p> <p>All proposed dwellings are of single storey construction. Drawings accompanying the application indicate provision to each proposed dwelling of one private open space area with minimum dimensions of 3.0m x 5.0m (15m²). However, the private open space areas provided to five proposed dwellings, numbered 02, 25, 28, 30, 32 on the drawings, are not directly accessible from a living room. The proposed development thus does not satisfy section 108 (2) (h) (ii) of the Policy.</p> <p>The application is not made by, or jointly with, a social housing provider. The proposed development includes 12 three-bedroom dwellings and 10 two-bedroom dwellings. Section 108 (2) (k) of the Policy therefore suggests the proposed development demands $(12 \times 1.5) + (10 \times 1) = 28$ off street car parking spaces for residents. The proposed development includes 56 spaces. As discussed in Attachment 9, this may be reduced to 44 spaces to increase compliance with clause 5 of Schedule 4 to the Policy, but 20 of those would remain non-compliant with AS/NZS2890.6 and may therefore be discounted. The proposed development would thus include 24 residents' car parking spaces complying with the Policy's provisions, which is four fewer than suggested by section 108 (2) (k).</p>	
--	---	--	--

State Environmental Planning Policy (Resilience and Hazards) 2021			
Chapter 4—Remediation of land			
Provision	Control	Discussion	Compliance
Section 4.1—Object of this Chapter	This Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	The proposed development is considered satisfactory with respect to the Policy’s object.	Yes.
Section 4.6—Contamination and remediation to be considered in determining development application	<p>A consent authority must not consent to development unless—</p> <p>(a) it has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</p> <p>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</p> <p>Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</p>	The land is not considered likely to be contaminated, nor to need remediation to be made suitable for the proposed development, and is not land specified in section 4.6 (4) of the Policy.	Yes.
(Repealed) State Environmental Planning Policy (Koala Habitat Protection) 2021 (considered pursuant to section 4.16 of State Environmental Planning Policy (Biodiversity and Conservation) 2021)			
Part 1—Preliminary			
Provision	Control	Discussion	Compliance
Clause 3—Aim of Policy	The Policy aims to encourage conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.	As discussed below regarding clause 9, the proposed development is expected to have low or no impact on koalas and koala habitat. It is therefore considered satisfactory with respect to the aim specified by clause 3.	Yes.
Clause 4—Definitions	core koala habitat means—	The land may include koala habitat, given the arboricultural	Yes.

	<p>(a) an area of land which has been assessed by a suitably qualified and experienced person in accordance with the Guideline as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or</p> <p>(b) an area of land which has been assessed by a suitably qualified and experienced person in accordance with the Guideline as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.</p> <p>koala habitat means koala habitat however described in a plan of management under this Policy or State Environmental Planning Policy No 44—Koala Habitat Protection, and includes core koala habitat.</p>	<p>impact assessment report accompanying the application indicates the presence of at least 25 koala use tree species on or near the land.</p>	
Part 2—Development control of koala habitats			
Provision	Control	Discussion	Compliance
Clause 9—Development assessment process—no approved koala plan of management for land	<p>(1) This clause applies to land to which this Policy applies if the land—</p> <p>(a) has an area of at least 1 hectare (including adjoining land within the same ownership), and</p> <p>(b) does not have an approved koala plan of management applying to the land.</p> <p>(2) Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.</p> <p>(3) If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.</p> <p>(4) If the council is satisfied that the development is likely to have a higher level of impact on koalas or koala habitat, the council must, in deciding whether to grant consent to the development application, take into</p>	<p>Clause 9 applies to the land because the land's area exceeds 1.0ha and no approved koala plan of management applies to the land. The arboricultural impact assessment report accompanying the application incorrectly indicates:</p> <p><i>"The [Policy] applies to the Local Government Area (LGA) of Wingecarribee. However, as the study area is less than one (1) hectare, and there is no approved koala plan of management applicable to the site, it is understood that no further application of this policy is required."</i></p> <p>The arboricultural impact assessment report indicates the proposed removal of 22 trees of koala use species. However, given the development currently underway on the land, and the scattered density of</p>	Yes.

	<p>account a koala assessment report for the development.</p> <p>(5) However, despite subclauses (3) and (4), the council may grant development consent if the applicant provides to the council—</p> <p>(a) information, prepared by a suitably qualified and experienced person, the council is satisfied demonstrates that the land subject of the development application</p> <p>(i) does not include any trees belonging to the koala use tree species listed in Schedule 2 for the relevant koala management area, or</p> <p>(ii) is not core koala habitat, or</p> <p>(b) information the council is satisfied demonstrates that the land subject of the development application</p> <p>(i) does not include any trees with a diameter at breast height over bark of more than 10 centimetres, or</p> <p>(ii) includes only horticultural or agricultural plantations.</p> <p>(6) In this clause—</p> <p>koala assessment report, for development, means a report prepared by a suitably qualified and experienced person about the likely and potential impacts of the development on koalas or koala habitat and the proposed management of those impacts.</p>	<p>trees on the land in comparison to denser mature native vegetation in its vicinity, the proposed development itself is considered likely to have low or no impact on koalas or koala habitat. Clause 9 (3) therefore permits Council to grant consent for the proposed development.</p>	
Wingecarribee Local Environmental Plan 2010 (the LEP)			
Provision	Control	Discussion	Compliance
Clause 1.2—Aims of Plan	Specifies 17 particular aims.	The proposed development is considered contrary to the particular aims specified by	No.

		<p>clause 1.2 (2) (a), (b), (c), (d) (ii) & (iii), (e), (f), (k) and (l):</p> <p>(a) to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of Wingecarribee,</p> <p>(b) to maintain Wingecarribee's original settlement pattern of towns and villages dispersed throughout a rural and native vegetation landscape,</p> <p>(c) to encourage the efficient use and development of urban land, minimising the spread of urban areas into rural and native vegetation environments, thereby increasing the accessibility of the population to urban facilities and services,</p> <p>(d) to provide opportunities for development and land use activities that—</p> <p style="padding-left: 40px;">(ii) do not adversely impact on natural systems and processes and the overall quality of Wingecarribee's natural environment, and</p> <p style="padding-left: 40px;">(iii) retain the critical natural, rural and built environmental landscape elements that make up the scenic and cultural heritage value of Wingecarribee,</p> <p>(e) to provide opportunities for a range of new housing and housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities, including opportunities for the provision of adaptable and affordable housing,</p>	
--	--	---	--

		<p>(f) to provide for a range of living opportunities that address differing lifestyle needs without compromising the environmental quality of Wingecarribee, and the value of its natural resources such as water, biodiversity and agricultural land,</p> <p>(k) to protect areas of high scenic landscape value,</p> <p>(l) to develop an ecologically sustainable future for Wingecarribee through the conservation, rehabilitation and regeneration of native vegetation (particularly threatened species populations and ecological communities), soil, waterways, riparian land and water quality (surface and groundwater).</p>	
Clause 1.4—Definitions	Refers to Dictionary at end of LEP, which defines words and expressions for the LEP's purposes.	The proposed development comprises erection of buildings and carrying out of works for the purpose of seniors housing.	Yes.
Clause 2.3—Zone objectives and Land Use Table	<p>The Land Use Table at the end of this Part specifies for each zone—</p> <p>(a) the objectives for development, and</p> <p>(b) development that may be carried out without development consent, and</p> <p>(c) development that may be carried out only with development consent, and</p> <p>(d) development that is prohibited.</p> <p>The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</p>	The land is in Zone R2 Low Density Residential. The Land Use Table at the end of Part 2 of the LEP specifies development for the purpose of seniors housing is permitted with consent in Zone R2.	Yes.
Clause 7.3—Earthworks	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) the likely disruption of, or any detrimental effect on, existing</p>	A recommended condition of consent (if granted) can specify Council's consent does not permit the carrying out of any earthworks other than indicated by the stamped consent drawings, necessitated by	Yes.

	<p>drainage patterns and soil stability in the locality,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or of the soil to be excavated, or both,</p> <p>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material or the destination of any excavated material,</p> <p>(f) the likelihood of disturbing Aboriginal objects or other relics,</p> <p>(g) proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p>	conditions of consent, or specified by an environmental planning instrument as not requiring consent.	
Clause 7.10—Public utility infrastructure	Development consent must not be granted for development on land to which this clause applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.	Recommended conditions of consent (if granted) can specify requirements for provision of water supply, sewerage and electricity supply services to the proposed development.	Yes.

8 Assessment

The application has been considered with regard to the matters for consideration specified by section 4.15 (1) of the Environmental Planning and Assessment Act 1979, as discussed below.

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

The proposed development has been considered with regard to the relevant provisions of applicable environmental planning instruments, identified and discussed in the following table.

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

No proposed instrument is specifically applicable to the land.

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

The land is subject to Council's Bundanoon Town Plan Development Control Plan (the DCP). The proposed development has been considered with regard to the DCP's relevant provisions, as discussed in the following table.

Bundanoon Town Plan Development Control Plan			
Part A—Provisions applicable to all land			
Section 2—General objectives			
Provision	Control	Discussion	Compliance
Section A2.2—Objectives of this plan	Specifies objectives relating to economic function, urban function, heritage conservation, residential amenity, residential diversity, visual amenity, public views and vistas, environmental sustainability, and the public domain.	<p>As discussed regarding sections 93 and 108 (2) (k) of State Environmental Planning Policy (Housing) 2021, the proposed development is not considered to have adequate access to facilities and services via a transport service that complies with the Policy's requirements, and is not considered to provide satisfactory residents' off street car parking spaces. The proposed development is therefore considered unsatisfactory with respect to the urban function objectives specified by section A2.2.2 (a) and (d) of the DCP:</p> <p>(a) <i>Improvement of traffic and parking management within the town.</i></p> <p>(d) <i>Improvement of connections to public transport facilities.</i></p> <p>The proposed development involves</p>	No.

		<p>removal of vegetation remaining on the land after the carrying out of development the subject of Council's development consent 20/1144 (discussed in section 3 of this report). Existing mature native vegetation is considered to make an important positive contribution to the character and amenity of the streetscape and the locality. The proposed removal of remaining vegetation on the land is considered unsatisfactory with respect to the residential amenity objectives specified by sections A2.2.4 (a) & (b) and A2.2.6 (a) of the DCP:</p> <p>A2.2.4 Residential amenity</p> <p><i>(a) Conserve the unique characteristics of existing residential areas of the Bundanoon township.</i></p> <p><i>(b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character.</i></p> <p>A2.2.6 Visual amenity</p>	
--	--	--	--

		<p>...all new development should:</p> <p>(a) Demonstrate an appreciation of the existing streetscape.</p>	
Section 3—Biodiversity			
Provision	Control	Discussion	Compliance
<p>Section A3.2—Flora and fauna assessment report</p>	<p>Objectives</p> <p>(a) Provide additional information to the controls identified in the WLEP clause 7.4 and 7.5.</p> <p>(b) Retain and protect individual remnant native species that are found scattered throughout the Shire.</p> <p>(c) To retain, enhance or reconstruct native vegetation and the ecological functions of wildlife corridors.</p> <p>(d) To protect and promote the recovery of threatened species, populations and endangered ecological communities.</p> <p>(e) To ensure development responds to its adjacent surroundings and helps preserve and enhance the natural qualities of the environment.</p> <p>Controls</p> <p>a) A Flora and Fauna Assessment Report is required to be lodged with a Development Application under the following circumstances and must address the requirements in the Wingecarribee Shire Council Flora and Fauna Assessment Guidelines for Development Applications.</p> <p>(i) if the proposed development site:</p> <ul style="list-style-type: none"> contains native vegetation, which is defined as, “any species of vegetation that 	<p>The land is 2.14ha in area but the proposed development site itself has an area of approximately 8400m², i.e. less than 1.0ha. This aside, the proposed development involves removal of mature native vegetation remaining on the land after the carrying out of development the subject of Council’s development consent 20/1144 (discussed in section 3 of this report), and the application is not accompanied by a flora and fauna assessment report. The application is therefore unsatisfactory with respect to the controls specified by section A3.2 of the DCP.</p>	<p>No.</p>

	<p>existed in NSW before European settlement including trees, saplings, shrubs, scrub, understorey, groundcover or plants in a wetland”;</p> <ul style="list-style-type: none"> • contains remnant native trees; • is adjacent to native vegetation if the study area has been extensively cleared; and/or • contains sensitive environmental areas likely to contain important habitat resources for fauna such as watercourses, wetlands or swamps, and rocky outcrops, caves, cliffs. Or <p>(ii) if the proposed development:</p> <ul style="list-style-type: none"> • will directly or indirectly impact on native vegetation by clearing, runoff, waste-water irrigation, Bushfire Asset Protection • contain natural features that sustain native species; • may directly or indirectly have a significant impact on native vegetation or sensitive environmental areas that may contain habitat for threatened species, 		
--	--	--	--

	<p>populations or ecological communities; and/or</p> <ul style="list-style-type: none"> is likely to have a significant impact on matters of national environmental significance under the (Commonwealth) Environment Protection and Biodiversity Conservation Act 1999. <p>The potential occurrence of threatened species must be considered, even if the study area has been extensively cleared of native vegetation. If the study area is cleared, but lies adjacent to remnant native vegetation, survey work must be capable of assessing the site's actual or potential role as a corridor or linkage.</p> <p>If the study area exceeds one (1) hectare, the Flora and Fauna Assessment needs to identify whether 'potential koala habitat' or 'core koala habitat' is present, as outlined in State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44).</p>		
Section 4—Water management			
Provision	Control	Discussion	Compliance
Section A4.3—Development in Sydney's drinking water catchments	Refers to Chapter 8 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.	As discussed regarding Chapter 8 of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Water NSW considers the proposed development able to achieve a neutral or beneficial effect on water quality and concurs to Council granting consent for	Yes.

		the proposed development, subject to specified conditions.	
Section A4.5— Stormwater management plan	<p>A Stormwater Management Plan report will be required by Council for all development that will result in:</p> <p>(a) An increase in the impervious area of the site, or</p> <p>(b) A change in the direction of overland flow.</p> <p>The intent of the Stormwater Management Plan is to demonstrate that 'post development' overland water flows will not exceed 'pre development' flows in terms of:</p> <p>(a) Volume,</p> <p>(b) Quality (including nutrient content), and</p> <p>(c) Direction,</p> <p>The Stormwater Management Plan must be prepared in accordance with Council's Engineering Design and Construction Specification.</p>	<p>The application, with accompanying proposed drainage concept drawings., was referred to Council's Development Engineer. The Development Engineer raised no concerns regarding proposed stormwater drainage measures, subject to recommended conditions of consent (if granted) aimed at ensuring satisfactory stormwater drainage without increasing post-development discharges from the land.</p>	Yes.
Section A4.6— Erosion and sediment control plans	<p>Where building or earthworks are proposed, an Erosion & Sediment Control Plan must be provided to Council.</p>	<p>The application is accompanied by a proposed erosion and sediment control plan. Recommended conditions of consent (if granted) can specify no work in the development shall be permitted to commence unless erosion and sediment control measures have been installed in accordance with the erosion and sediment control plan, and all installed erosion and sediment control measures shall be maintained before, throughout and following the carrying out of the proposed development.</p>	Yes.

Section 6—Vegetation management and landscaping			
Provision	Control	Discussion	Compliance
Section A6.1—Preservation of trees and other vegetation	<p>The objectives of this Section of the Plan are to:</p> <p>(a) preserve the amenity, biodiversity and ecology of the Bundanoon township through the preservation of trees and other vegetation as described in Clause 5.9 of WLEP 2010.</p> <p>(b) preserve the amenity and heritage value of trees and other vegetation associated with Items of Heritage or within Heritage Conservation Areas.</p> <p>(c) clarify the meaning of Clause 5.9 of WLEP 2010.</p> <p>(d) define and explain the terms used in Clause 5.9 of WLEP 2010.</p> <p>(e) clarify the assessment criteria under which exemptions will be determined.</p> <p>In assessing applications for Council consent under clause 5.9 of WLEP 2010, Council's considerations will include, but not be limited to:</p> <p>(a) Whether the community interest has been taken into account.</p> <p>(b) Whether the proprietary interest of the applicant has been duly respected.</p> <p>(c) Whether the enjoyment of neighbouring land will be detrimentally affected.</p> <p>(d) Whether replacement planting is proposed.</p> <p>(e) Implications for biodiversity.</p> <p>(f) Whether there are issues of personal or public safety.</p> <p>(g) Whether a need is demonstrated for solar access to habitable rooms in buildings, solar appliances, clothes drying and outdoor living areas.</p>	<p>Clause 5.9 of the LEP used to relate to preservation of trees or vegetation but was repealed on 25 August 2017. Clause 5.9 of the LEP now relates to dwellings affected by natural disasters. This aside, the proposed development involves removal of trees remaining on the land after the carrying out of development the subject of Council's development consent 20/1144 (discussed in section 3 of this report), which is considered contrary to the objective specified by section A6.1.1 (a) of the DCP to :preserve the amenity, biodiversity and ecology of the Bundanoon township through the preservation of trees...".</p> <p>Existing mature native trees make a positive contribution to the character and amenity of the streetscape and locality, as well as to residents' enjoyment of properties therein. Removal of mature native trees remaining on the land after the carrying out of development the subject of Council's development consent 20/1144 (discussed in section 3 of this report) is considered contrary to that contribution.</p>	No.


	<p>(h) Whether there are more practical or desirable alternatives.</p> <p>(i) Whether the proposed work should be carried out and/or supervised by a suitably qualified person.</p> <p>(j) Whether the application should more properly be part of a wider development and/or building works.</p> <p>(k) Whether there is a justified need.</p> <p>(l) Whether adverse impacts of the proposal have been adequately identified and will be satisfactorily mitigated.</p>	<p>The proposed development is therefore considered unsatisfactory with respect to potential negative effects on the enjoyment of neighbouring land.</p> <p>The application is accompanied by proposed landscape plan drawings that indicate assorted native and exotic tree plantings. Whilst this is commendable, the proposed development's design does not appear to make any material provision to retain existing mature native trees, i.e. for proposed new tree plantings to supplement those mature native trees that might be retained. On balance, the proposed development is therefore considered unsatisfactory with respect to proposed replacement planting.</p>	
Section A6.2— Private landscaped open space	<p>Objectives</p> <p>In assessing a Land Use Application Council shall consider the extent to which the following Landscape objectives are met:</p> <p>(a) Provides a pleasant, vegetated environment for users of the site (workers or residents).</p> <p>(b) Contributes to the urban streetscape.</p> <p>(c) Provides a visual buffer between development and the surrounding neighbourhood.</p> <p>(d) Contributes to existing tree canopies and wildlife habitats.</p>	<p>The proposed development involves removal of mature native trees that positively contribute to the character and amenity of the streetscape and locality, in favour of planting new trees that will undoubtedly be less mature and of lesser stature for some years. It appears to make little provision for retention of existing mature native trees, supplemented by proposed additional plantings. The proposed development</p>	No.

	<p>(e) Provides adequate ground cover to prevent erosion and assist storm water infiltration.</p> <p>(f) Contributes where possible to the enhancement of key vegetation and topographical features.</p>	<p>is therefore considered unsatisfactory with respect to the objectives of contributing to the urban streetscape and existing tree canopies, and contribution to key vegetation features.</p>	
<p>Section A6.3—Controls (relating to private landscaped open space)</p>	<p>(a) A Landscape Plan, prepared by a person who is, in the opinion of Council, suitably qualified to prepare such a plan, indicating the location of proposed plantings and the botanical names of proposed plant species. The level of detail required will be determined by the type of development and size of the allotment.</p> <p>(b) Notwithstanding subclause (a) above, unless the development affects an Item of Heritage, is within the vicinity of an Item of Heritage, or is within a Heritage Conservation Area, a Landscape Plan will not be required for private landscaping associated with detached dwelling development</p> <p>(c) Landscape plantings will not overshadow neighbouring properties or block solar access.</p> <p>(d) Particular provision is to be made for the landscaping of uncovered parking areas, with adequate screening from the street where appropriate.</p> <p>(e) All plantings are sufficiently advanced to provide an immediate landscaping effect.</p> <p>(f) Provision is made to ensure that adequate landscape management systems are available to ensure that plantings can be properly maintained to allow them to not just survive, but flourish.</p> <p>(g) Adequate arrangements have been made for the restoration of the area of any public space, including a public footpath, pedestrian plaza adjoining the proposed development to the</p>	<p>The application is accompanied by a proposed landscape plan. Proposed landscape plantings are not expected to significantly reduce solar access to properties adjoining the land.</p> <p>The proposed development includes native trees (<i>Acacia melanoxylon</i>) adjacent to a number of its open car parking spaces, but many of those are confined by paved hard stand areas instead of deep planting areas, and may therefore be unlikely to thrive if they survive at all.</p> <p>Recommended conditions of consent (if granted) can require advanced landscape plantings, installation of suitable landscape management systems, restoration of Old Wingello Road adjoining the land, and provision or retention of street trees in Old Wingello Road adjoining the land in compliance with Council's Urban Street Tree Master Plan.</p>	<p>No.</p>

	<p>extent that such area has been damaged by the development.</p> <p>(h) Where no street tree is currently in the footpath or verge area adjoining the site, a street tree compatible with the predominant street tree species in the street is provided at the applicant's expense. This will assist in softening the appearance of new development while also improving the aesthetic appeal of the public space.</p>		
Section 8—Safer by design			
Provision	Control	Discussion	Compliance
Section A8.3—Crime prevention through environmental design	<p>Space management involves formal supervision, control and care of a development. All space needs to be effectively used and maintained to maximise community safety. Places infrequently used are commonly abused. There is a high correlation between urban decay, fear of crime and avoidance behaviour.</p> <p>Territorial Re-enforcement uses actual and symbolic boundary markers, spatial legibility and environmental cues to 'connect' people with space, to encourage communal responsibility for public areas and facilities, and to communicate to people where they should/not be and what activities are appropriate.</p> <p>Surveillance which relies on community-based observation and monitoring is less intrusive and often more effective than alternatives such as CCTV or security guards. Because it relies on regular users of open space observing behaviour and being seen to do so, its effectiveness requires appropriate building layout, orientation and location; the strategic use of design; landscaping and appropriate lighting.</p> <p>Access control treatments restrict, channel and encourage people and</p>	<p>The proposed development is considered to make adequate provision for space management, territorial reinforcement, casual surveillance and access control.</p>	Yes.

	<p>vehicles into, out of and around the development. Way-finding, desire-lines and formal/informal routes are important crime prevention considerations. Effective access control can be achieved by using physical and symbolic barriers that channel and group pedestrians into areas, therefore increasing the time and effort required for criminals to commit crime. Design-based access control includes the tactical use of landforms and waterways features, design measures including building configuration; formal and informal pathways, landscaping, fencing and gardens. As with surveillance, design solutions are less intrusive than alternatives such as gates or on-site security guards.</p>		
Section A8.4— Specific design requirements	<p>Council requires all development to demonstrate that it provides:</p> <p>(a) Well-defined building entrances which are clearly visible from the street. Narrow or splayed entrances are preferable to deep-set entrance ways.</p> <p>(b) Internal spaces must be open and visible, eliminating hidden corners.</p> <p>(c) Walkways and connecting paths must be open with good visibility.</p> <p>(d) Signs and vegetation should be located so that they do not create 'entrapment' points where people are hidden from view.</p> <p>(e) On-site garaging must provide clearly defined exit points and be lit at night, both inside the garaging and around the entrance/exit points. Such lighting should be movement-activated lighting that focusses on the access areas.</p> <p>f) Building entrances, walkways, connecting paths and garaging must be well lit in accordance with the provisions of Section A8 of this Plan to ensure that such lighting is down-ward focussed and effective without generating glare or</p>	<p>Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the specific design requirements specified by section A8.4.</p>	

	annoyance beyond the area being lit.		
Section 9—Construction standards and procedures			
Provision	Control	Discussion	Compliance
Section A9.3—Building near or over Council mains and easements	The building of structures over/adjacent to Council's water, stormwater and sewerage assets will be considered in accordance with technical guidelines in the Engineering Design and Construction Specifications, as well as Council's set of Standard Drawings.	<p>The land is traversed by a Council sewerage main as highlighted in red in Figure 14. The main is located within an easement of variable width to drain sewage, which coincides with an easement to drain water and a right of footway.</p> <p>The right of footway would lawfully permit pedestrians traffic between Old Wingello Road and 18 Hill Street, adjoining the land's southern boundary, via private open space areas in the proposed development and the development the subject of Council's development consent 20/1144. A recommended condition of consent (if granted) can therefore specify no construction certificate shall be granted for any building work in the proposed development unless the certifying authority is satisfied by evidence accompanying the application for construction certificate that the right of footway has been extinguished.</p> <p>The proposed development does not conflict with the</p>	Yes.

		easements for sewage and water drainage.	
			
Figure 14: Location of Council sewerage main traversing 48 Old Wingello Road.			
Section A9.8— Stormwater disposal	Specifies various acceptable stormwater disposal options.	<p>Council's Development Engineer notes:</p> <p><i>"The applicant is proposing to utilize existing combined OSD/water quality basin. I have no issues with this as long as the applicant can make necessary arrangement to cater for stage 2. This has been conditioned."</i></p>	Yes.
Section 11—Outdoor lighting			
Provision	Control	Discussion	Compliance
Section A11.2— Objectives	In assessing any land use application which includes the provision of external night lighting, Council will have due regard to the following objectives:	As discussed in Attachment 9 regarding clause 3 of Schedule 4 to State Environmental	Yes.

	<p>(a) Lighting for security purposes shall be adequate for that purpose without drawing unnecessary attention to the development;</p> <p>(b) Lighting shall not adversely impact on surrounding development;</p> <p>(c) Lighting shall not create 'twilight' impacts on the surrounding environment; and</p> <p>(d) Lighting shall not diminish the quality of the night sky.</p>	<p>Planning Policy (Housing) 2021, a condition of consent (if granted) can require provision of pathway lighting designed and located to avoid glare for pedestrians and adjacent dwellings while providing at least 20 lux at ground level. A further recommended condition could require all outdoor lighting in the proposed development to comply with Australian/New Zealand AS/NZS 4282:2019, <i>Control of the obtrusive effects of outdoor lighting</i>.</p>	
Section A11.3—Controls	<p>(a) Outdoor lighting must be a "full cutoff light fixture", i.e. a type of fixture with no light emitted above the horizontal and no light dispersion or direct glare to shine above a 90-degree, horizontal plane from the base of the fixture.</p> <p>(b) All outdoor lighting fixtures shall be designed, installed, located and maintained to avoid glare on to adjacent properties or streets</p> <p>(c) All direct illumination shall be kept within the boundaries of the subject property.</p> <p>(d) Accent lighting, when so approved, shall be directed downward on to the building or object and not toward the sky or on to adjacent properties. Direct light emissions shall not be visible above the roof line or beyond the building edge.</p> <p>(e) Spotlighting on landscaping and foliage shall be limited to 150 watts incandescent. The lamp shall be shielded and not create disabling or nuisance glare.</p> <p>(f) Timers shall be accurately set to ensure that lighting is used only when natural light is insufficient.</p>		
Part C—Provisions applicable to residential-zoned land			
Section 1—Introduction			
Provision	Control	Discussion	Compliance
Section C1.2—Objectives	This Part of the Plan aims to achieve:	The proposed development is	No.

	<p>(a) Conservation of the unique characteristics of the residential areas of Bundanoon, particularly in the case of the identified Conservation Areas,</p> <p>(b) New residential development which is sympathetic with existing streetscapes and neighbourhood character,</p> <p>(c) New residential development that is energy efficient, provides good amenity, and is safe and attractive.</p> <p>(d) Residential development which meets the needs of a range of community and demographic types, including smaller households, older people, people with a disability or people requiring group accommodation.</p>	considered unsatisfactory with respect to the objectives specified by section C1.2 (a), (b) and (d).	
Section 8—Seniors housing			
Section C8.2—General objectives	<p>The purpose of these controls is to encourage the provision of seniors housing, including residential care facilities that will:</p> <p>(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</p> <p>(b) make efficient use of existing infrastructure and services, and</p> <p>(c) be of good design.</p>	The proposed development is considered unsatisfactory with respect to the objectives specified by section C8.2 (a) and (c).	No.
Section C8.3—Neighbourhood amenity and streetscape	<p>The proposed development should:</p> <p>(a) recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area;</p> <p>(b) retain, complement and sensitively harmonise with Items of Heritage or Conservation Areas;</p> <p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <p>(i) providing building setbacks to reduce bulk and overshadowing,</p>	The proposed development – particularly its tree removal component – is considered unsatisfactory with respect to the principles specified by section C8.3 (a), (d) and (e).	No.

	<p>(ii) using building form and siting that relates to the site's land form,</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>(v) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>(d) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape,</p> <p>(e) retain, wherever reasonable, major existing trees,</p> <p>(f) be designed so that no building is constructed in a riparian zone.</p>		
Section C8.4—Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <p>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	Overall, the proposed development is considered to make adequate provision for visual and acoustic privacy of occupants of existing development on adjoining properties.	Yes.
Section C8.5—Solar access and design for climate	<p>The proposed development should:</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural</p>	The proposed development is considered to make adequate provision for solar access and energy efficiency.	Yes.

	ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.		
Section C8.6— Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>	The proposed development is considered to make adequate provision for crime prevention through environmental design.	Yes.
Section A8.7— Accessibility	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p>Whilst a local public bus route is less than 400m from the land, some of the route's weekday services are not available on public holidays or during school holidays and there is no scheduled stop or any physically identified bus stop facility within 400m of the land Therefore, no pedestrian link provides satisfactory access from the proposed development to transport services or local facilities.</p> <p>Additionally, the proposed development does not comply with applicable private car accommodation requirements. It is therefore not considered to facilitate</p>	No.

		<p>convenient vehicle parking for residents.</p> <p>The proposed development is considered unsatisfactory with respect to the matters specified by section A8.7.</p>	
Section C8.8—Standards for hostels and self-contained dwellings	<p>A development application made for the purpose of a self-contained dwelling shall comply with the following standards:</p> <p>(a) The size of the site must be at least 1,000 square metres.</p> <p>(b) The site frontage must be at least 20 metres wide measured at the building line.</p> <p>(c) If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.</p> <p>(d) If the whole of the site does not have a gradient of less than 1:10:</p> <p>(e) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and</p> <p>(f) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.</p> <p>(g) Where the site has a variable gradient, the principle identified in clauses (a) and (b) above applies. For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by clause (a).</p> <p>(h) If more than 50% of the site has a gradient greater than 1:10, development for the purposes of</p>	<p>Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the matters specified by section C8.8.</p>	Yes.

	seniors housing is unlikely to be possible.		
Section C8.9— Height controls	<p>The proposed development must comply with the standards specified below:</p> <p>(a) If the development is proposed in a residential zone where residential flat buildings are not permitted:</p> <ul style="list-style-type: none"> (i) the height of all buildings in the proposed development must be 8 metres or less, and (ii) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this control applies) must be not more than 2 storeys in height, and (iii) a building located in the rear 25% area of the site must not exceed 1 storey in height. <p>(b) Clauses (a) – (c) above do not apply to a development application made by the NSW Department of Housing, or any other social housing provider.</p>	The proposed development satisfies the standards specified by section C8.9.	Yes.
Section C8.10— Site design	<p>(a) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.</p> <p>(b) Pathway lighting must</p> <ul style="list-style-type: none"> (i) be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (ii) provide at least 20 lux at ground level. <p>(c) Letterboxes must</p> <ul style="list-style-type: none"> (i) be situated on a hard standing area and have wheelchair access and 	Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the standards specified by section C8.10.	Yes.

	<p>circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and</p> <p>(ii) be lockable, and</p> <p>(iii) be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.</p>		
<p>Section C8.11— On site car parking</p>	<p>If car parking (not being car parking for employees) is provided:</p> <p>(a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and</p> <p>(b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</p> <p>(c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</p>	<p>As discussed in Attachment 9 regarding clause 5 of Schedule 4 to State Environmental Planning Policy (Housing) 2021, each of the proposed dwellings numbered 1, 2, 25, 26, 28, 30, 32, 34, 36, 39, 41 and 47 on the drawings accompanying the application is provided with a double garage. Conditions of consent (if granted) and corresponding drawing amendments could require provision of one car parking space complying with AS/NZS2890.6— 2009 in each double garage, instead of two noncompliant spaces. However, none of the off street car parking spaces provided to proposed dwellings 38, 40, 42, 43, 44, 45, 46, 48, 49 can comply with AS/NZS2890.6. The proposed development is therefore considered unsatisfactory with respect to section C8.11 (a).</p> <p>Each of the ten proposed dwellings 38,</p>	<p>No.</p>

		<p>40, 42, 43, 44, 45, 46, 48, 49 and 50 is provided with two car parking spaces. Each of the 12 proposed dwellings 1, 2, 25, 26, 28, 30, 32, 34, 36, 39, 41 and 47 is provided with a 3.8m open parking space, additional to a double garage. Assuming one parking space complying with AS/NZS2890.6 is provided in the double garages for proposed dwellings 1, 2, 25, 26, 28, 30, 32, 34, 36, 39, 41 and 47, and putting aside the fact that none of the parking spaces provided to proposed dwellings 38, 40, 42, 43, 44, 45, 46, 48, 49 and 50 complies with AS/NZS2890.6, the proposed development includes 44 residents' car parking spaces, 12 (27%) of which are 3.8m wide.</p> <p>A condition of consent (if granted) can specify no construction certificate shall be granted for any building work in the proposed development unless the certifying authority is satisfied by information accompanying the application for construction certificate that each garage in the proposed development will have a power operated door, or will include a power point and an area for motor or control rods to enable a power-</p>	
--	--	---	--

		operated door to be installed at a later date.	
Section C8.12—Entry corridors	<p>(a) Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.</p> <p>(b) Widths of internal corridors and circulation at internal doorways must comply with AS 1428.1.</p>	<p>Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the requirements of section C8.12.</p>	Yes.
Section C8.13—Bedrooms	<p>At least one bedroom within each dwelling must have:</p> <p>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows:</p> <p style="padding-left: 40px;">(ii) in the case of a self-contained dwelling—a queen-size bed, and</p> <p>(b) a clear area for the bed of at least:</p> <p style="padding-left: 40px;">(i) 1,200 millimetres wide at the foot of the bed, and</p> <p style="padding-left: 40px;">(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and</p> <p>(c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</p> <p>(e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and</p> <p>(f) wiring to allow a potential illumination level of at least 300 lux.</p>	<p>A standard queen-size bed's dimensions are 1530mm wide x 2030mm long. Section C8.13 (a) (ii) and (b) therefore effectively requires at least one bedroom in each dwelling in the proposed development to include an area of at least 3230mm x 3530mm to accommodate a queen size bed and adjoining clear spaces. Nine of the 22 proposed dwellings, namely those numbered 01, 02, 25, 26, 28, 30, 32, 41 and 47 on the proposed development drawings, do not meet this requirement. The proposed development thus contravenes section C8.13.</p> <p>A recommended condition of consent (if granted) can specify no construction certificate shall be granted for any building work in the proposed development unless the certifying authority is satisfied by information accompanying the application for construction certificate</p>	No.

		<p>that where one or more bedrooms in any dwelling in the development satisfies the above dimensional requirements, at least one of those bedrooms in the dwelling concerned will have:</p> <ul style="list-style-type: none"> • At least two double general power outlets on the wall where the head of the bed is likely to be, and • At least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and • A telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and • Wiring to allow a potential illumination level of at least 300 lux. 	
Section C8.14—Bathrooms	<p>At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1:</p> <p>(a) a slip-resistant floor surface,</p> <p>(b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,</p> <p>(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future:</p>	<p>Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the requirements of section C8.14.</p>	Yes.

	<p>(i) a grab rail,</p> <p>(ii) portable shower head,</p> <p>(iii) folding seat,</p> <p>(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,</p> <p>(e) a double general power outlet beside the mirror.</p>		
Section C8.15— Other requirements	<p>(a) A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.</p> <p>(b) Balconies and external paved areas must have slip-resistant surfaces. Advice regarding finishes may be obtained from AS 1428.1.</p> <p>(c) Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.</p> <p>(d) Switches and power points must be provided in accordance with AS 4299.</p> <p>(e) The standards contained in subclause (e) to (n) below apply to any seniors housing consisting of self-contained dwellings and are in addition to the standards set out subclause (a) to (d) above.</p> <p>(f) A living room in a self-contained dwelling must have:</p> <p style="padding-left: 40px;">(i) a circulation space in accordance with clause 4.7.1 of AS 4299, and</p> <p style="padding-left: 40px;">(ii) a telephone adjacent to a general power outlet.</p> <p>(g) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.</p> <p>(h) A kitchen in a self-contained dwelling must have:</p> <p style="padding-left: 40px;">(i) a circulation space in accordance with clause 4.5.2 of AS 4299, and</p>	<p>Provided all recommended conditions of consent (if granted) are complied with, the proposed development is considered satisfactory with respect to the requirements of section C8.15 (a), (b), (c), (d), (f), (g), (h), (i) and (m).</p> <p>With respect to section C8.15 (k) and (l), and as discussed in Attachment 9 with respect to clauses 19 and 20 of Schedule 4 to State Environmental Planning Policy (Housing) 2021:</p> <ul style="list-style-type: none"> • The laundries in the nine proposed dwellings numbered 01, 02, 25, 26, 28, 30, 32, 41 and 47 on the proposed development drawings accompanying the application do not provide for minimum 1300mm clear space in front of appliances • Proposed dwellings 38, 39, 40, 42 and 44 are not provided with a linen storage. 	No.

	<p>(ii) a width at door approaches complying with clause 7 of this Schedule, and</p> <p>(iii) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299:</p> <ul style="list-style-type: none"> • benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a), (v) • a tap set (see clause 4.5.6), • cook tops (see clause 4.5.7), except that an isolating switch must be included • an oven (see clause 4.5.8), and • “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and <p>(ix) general power outlets:</p> <ul style="list-style-type: none"> • at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and • one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed. <p>(i) In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.</p> <p>(j) In a multi-storey building containing separate self-contained</p>	<p>The proposed development thus contravenes section C8.15 (k) (iii) and (l).</p>	
--	--	---	--

	<p>dwelling on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the Building Code of Australia.</p> <p>(k) A self-contained dwelling must have a laundry that has:</p> <ul style="list-style-type: none"> (i) a width at door approaches that complies with clause 7 of this Schedule, (ii) provision for the installation of an automatic washing machine and a clothes dryer, (iii) a clear space in front of appliances of at least 1,300 millimetres, (iv) a slip-resistant floor surface, (v) an accessible path of travel to any clothes line provided in relation to the dwelling. <p>(l) A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.</p> <p>(m) A garbage storage area must be provided in an accessible location.</p> <p>(n) Despite the provisions above, a self-contained dwelling, or part of such a dwelling, that is located above the ground floor in a multi-storey building does not have to comply with the requirements of those provisions if the development application is made by, or by a person jointly with, a social housing provider.</p>		
--	---	--	--

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

No provisions of Division 1 of Part 4 of the Environmental Planning and Assessment Regulation 2021 are relevant to the proposed development.

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

The proposed development is considered likely to have significant negative environmental impacts with respect to:

- Context and setting, particularly in terms of its relationship to scenic qualities and features of the landscape in the locality, and the locality's existing and desired character and amenity
- Site design and internal design, particularly in terms of landscaping (including proposed mature native tree removal)
- Access, transport and traffic, particularly in terms of accessibility of facilities and services to residents and adequacy of proposed off street car parking facilities
- Flora and fauna, particularly in terms of remnant vegetation impacts and the amount of vegetation disturbance and clearance.

The proposed development is considered likely to have significant negative social impacts with respect to:

- Accessibility of community facilities and links
- Interaction between new development and the community
- Social displacement.

The proposed development – particularly its vegetation removal component in the context of vegetation already removed in the carrying out of development the subject of Council's development consent 20/1144 (discussed in section 3 of this report) – is considered likely to have significant negative cumulative impacts in terms of individual impacts so close in space that the effects overlap ("space crowded" effects).

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

The land is not located in proximity to a transport service that will provide residents access to essential facilities and services with sufficient regularity. In addition, the proposed development lacks sympathy for the locality's existing and desired character and amenity, necessitating removal of trees remaining on the land after the carrying out of development currently underway. The land is therefore considered unsuitable for the proposed development.

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

Refer to section 6 of this report. Advertisement and notification of the application attracted 26 submissions by way of objection to the proposed development, with valid grounds relating to removal of landscaped open space and flora/fauna impact, vehicular traffic and parking, pedestrian infrastructure, and side boundary setbacks.

(h) Section 4.15 (1) (e) – The public interest

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

9 Conclusion

The proposed development is considered unsatisfactory with respect to the relevant provisions of:

- State Environmental Planning Policy (Housing) 2021
- Wingecarribee Local Environmental Plan 2010
- Council's Bundanoon Town Plan Development Control Plan.

The proposed development is also considered likely to have various significant negative environmental and social impacts in the locality, and the land is considered unsuitable for the proposed development. Advertisement and notification attracted significant objection with valid grounds, and there is not considered to be any overriding public interest in favour of the proposed development.

Given the above, the proposed development is considered unsatisfactory with respect to the matters for consideration specified by section 4.15 (1) (a) (i) & (iii), (b), (c), (d) and (e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

1. 22-0258 Att 01 - Draft reasons for refusal [6.1.1 - 5 pages]
2. 22-0258 Att 2 - Locality map [6.1.2 - 1 page]
3. 22-0258 Att 3 - Aerial image [6.1.3 - 1 page]
4. 22-0258 Att 4 Historical aerial image 17 Aug 2021 [6.1.4 - 1 page]
5. 22-0258 Att 5 24 Feb 2022 Site inspection photos [6.1.5 - 8 pages]
6. CONFIDENTIAL REDACTED - 22-0258 Att 6 - CONFIDENTIAL: Development application and accompanying information [6.1.6 - 191 pages]
7. CONFIDENTIAL REDACTED - 22-0258 Att 7 - CONFIDENTIAL: Submissions [6.1.7 - 57 pages]
8. 22-0258 Att 8 - Referral responses [6.1.8 - 20 pages]
9. 22-0258 Att 09 - Consideration of SEPP (Housing) 2021 Schedule 4 [6.1.9 - 12 pages]
10. 22-0258 Att 10 - Seniors Living Policy [6.1.10 - 20 pages]
11. 22-0258 Att 11 - Tree removal and retention [6.1.11 - 1 page]

6.2 Development Application 22/1462 - Subdivision of Land to Create Three Lots, Lot 15 DP258713, No 42 Lytton Rd Moss Vale

Report Author: Senior Development Assessment Planner

Authoriser: Acting Director – Communities and Place

PURPOSE

The purpose of this report is to consider Development Application 22/1462 for the Panel's consideration and recommends determination by REFUSAL of consent for the reasons specified in **Attachment 1**.

Consultants	Applicant: Mr Paul Brandon, Australian Survey Solutions (Planning Consultant: Mr Scott Lee – LEP Planning)
Notification Period	19 May to 3 June 2022
Number of Submissions	Two (2) submissions received.
Zoning	R2 – Low Density Residential under Wingecarribee LEP 2010
Political Donations	None disclosed
Reason for Referral to Panel	Development proposes variation of greater than 10% from controls in an environmental planning instrument (minimum lot size under Clause 4.1 WLEP 2010).

OFFICER'S RECOMMENDATION

THAT the Local Planning Panel determines development application 22/1462 for the subdivision of land to create three (3) lots at Lot 15 DP258713 No 42 Lytton Road Moss Vale by REFUSAL of consent for the reasons specified in Attachment 1 to this report.

1. Executive summary

Development Application (DA) No. 22/1462 seeks consent to subdivide the subject site into 3 lots.

The proposed subdivision does not comply with the minimum lot sizes prescribed under Wingecarribee Local Environmental Plan (WLEP) 2010 – which for this site is 700m². Lot 1 proposes a site area of 623m² (shortfall of 77m² or 11% variation). Both other lots in the subdivision are 700m² which complies with the minimum lot size.

The style of proposed subdivision is for the front lot (Lot 1 – 623m²) to have direct access to Lytton Road, with Lots 2 and 3 (both 700m²) to be accessed via a 6m wide right of carriageway along the western side.

Strong concerns are raised that the provision of a 6m wide right of carriageway in this manner effectively reduces the usable area (for the construction of a dwelling etc) of Lot 1 to 437.42m² and Lot 2 to 491.08m² - which are significantly less than the 700m² required under clause 4.1 WLEP 2010, and significantly less than the existing lots and the desired/expected future lot sizes in this location.

The DA has been referred to several officers within and external to Council. While most of those officers have raised no objection to the proposal – Council's Development Engineer has raised concerns regarding extension of the sewer main, and the width of the driveway. Although it is considered that these issues could be resolved via a request for information, such a request has not been made in this

instance – because this may falsely imply that if these issues are resolved then the DA is acceptable. These issues are discussed in more detail in the body of the report.

The DA has also been notified to neighbours in accordance with Council's Community Participation Plan – and 2 submissions were received. The issues of concern raised in the submissions included drainage disposal, non-compliance with the minimum lot size and over-development of the site. These issues of concern are valid and supported.

Strong concerns are raised in relation to this DA in terms of precedent. The subject site is identical in size to many other lots in this street (Lytton Road) and also Parkes Road to the south – and therefore any approval of this DA would create a precedent for further non-compliant subdivisions on other land in this location.

Council has generally been consistent in maintaining compliance with the minimum lot size for recent subdivisions in this location and across the Shire – both for DAs determined under officer delegation and by the Local Planning Panel. Any approval of this DA for a non-compliant subdivision would therefore also be inconsistent with such recent determinations.

The DA has been assessed under the heads of consideration listed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 and is not satisfactory. Refusal is recommended for the reasons specified in the Recommendation.

2. Site Description and Locality.

The subject site is legally described as Lot 15 DP 258713 with a street address of No 42 Lytton Road, Moss Vale. It is a mid-block site on the southern side of Lytton Road between Berrima Road and Beaconsfield Road, and approx. 850m north of Moss Vale railway station.

The site is regular (rectangular) in shape, with a 20.115m frontage to Lytton Road and a site area of 2023m² (by DP registered Aug 1978). The site contains a detached dwelling house towards the front of the site, and a detached shed near the center; and there are native and exotic trees at the front of the site, and grassed area in the back yard. The site has a gentle slope from the street towards the south-west corner of the site.

Surrounding development on neighbouring sites generally consists of detached dwelling houses and related outbuildings, with some secondary dwellings.

A visual presentation of the site is provided in the locality map (**Figure 1**), air photo (**Figure 2**) and street-view photo (**Figure 3**) below.

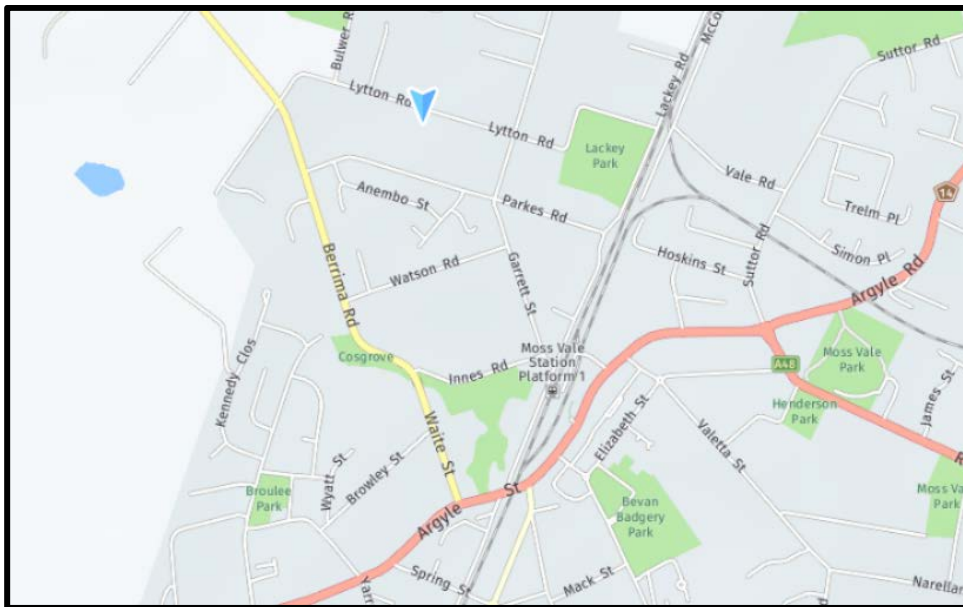


Figure 1: Locality Map – No 42 Lytton Rd Moss Vale (site shown by blue tag)



Figure 2: Air Photo - No 42 Lytton Rd Moss Vale



Figure 3: Street View Photo – No 42 Lytton Rd Moss Vale

3. Description of Proposed Development

DA22/1462 seeks consent to subdivide the site into 3 lots:

- Lot 1 (at front of the site) - area 623m² with direct frontage to Lytton Road. This Lot 1 is proposed to contain a right-of-way driveway along the western side.
- Lot 2 (centre of site) - area 700m², with access from Lytton Road via a 6m right of way (also servicing Lot 3).
- Lot 3 (rear of site) - area also 700m², with access to Lytton Road via a 6m right of way across Lots 1 and 2.

Due to the shape of the current site (which is a long rectangle 20.115m x 100.585m) - the 3 proposed lots are aligned in a row along the length of the site. The plan of proposed subdivision is provided below (Figure 4).

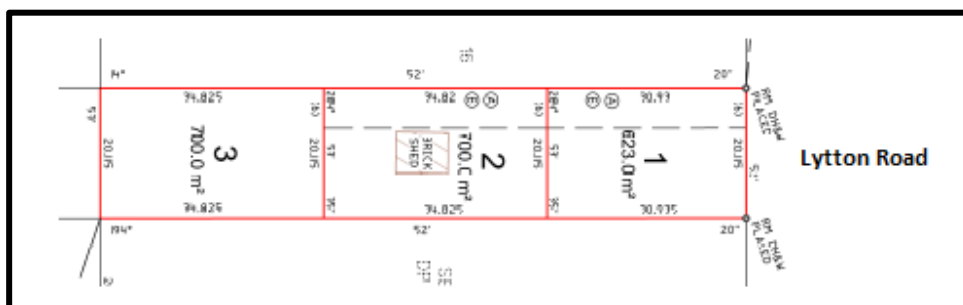


Figure 4: Plan of subdivision – No 42 Lytton Rd Moss Vale

Given the configuration of the subdivision and the shape of the existing lot, the provision of a 6m wide access (right-of-way) will reduce the effective size of Lots 1 and 2 (ie a boundary fence would need to be installed along the right of way to secure/enclose these lots). The effective usable area (for the construction of a dwelling etc) not including the area of the right of way is 437.42m² for Lot 1 and 491.08m² for Lot 2.

4. Background

The DA was lodged on 18 March 2022. Following an initial assessment (but prior to formal processing such as neighbour notification and internal/external referrals), on 29 April 2022 the applicant was advised that Council is not prepared to support the proposal given the non-compliance with the minimum lot sizes prescribed in clause 4.1 WLEP 2010 (for Lot 1, 623m²). Further, the style of the subdivision with a 6m wide right of carriageway (for access to Lots 2-3) effectively reduces the usable area of Lot 1 and 2 (as mentioned above).

The applicant was requested to either amend the proposal to a 2-lot subdivision, with effective lot sizes that comply with the 700m² minimum, or withdraw the current DA.

The applicant met with Council officers on 19 May 2022 to discuss Council's email and their intentions regarding the DA. On 25 May 2022, the applicant (through their planning consultant) made a formal submission response to Council's earlier email. The applicant response is provided in full as an attachment to this report. In summary, the applicant advised that they do not intend to withdraw the current DA or amend it to a 2-lot subdivision and requested Council to proceed with assessment/determination on the proposal as submitted. Further justification (in addition to the original DA documents) was provided in support of their position on why this is an acceptable subdivision outcome.

Shortly after, it was referred to several officers within and external to Council and notified to adjoining owners in accordance with Council's Community Participation Plan. Further details of these processes are discussed later in this report.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with Council's Community Participation Plan for a period from 19 May to 3 June 2022. Two (2) submissions were received.

The issues of concern are summarised and discussed in the following table.

Issue	Comment
Watercourse Runoff. Concern is raised that the driveway access will create additional runoff to properties to the west.	If the development is to be approved, appropriate conditions could be imposed to ensure that stormwater runoff is collected and conveyed to Council's drainage system (ie kerb/gutter or easement) without runoff nuisance to neighbouring properties.
Privacy. Concern is raised that there are no details of proposed buildings, and such new buildings would impact on neighbouring properties or require additional fencing to ameliorate such impacts.	There are no details of proposed dwellings submitted as part of the proposed subdivision. Privacy impacts would generally be expected to be typical of what would be expected in a low-density residential location such as the subject site. Further/detailed assessment would be made for any future dwelling if the subdivision is to be approved.
Minimum Lot Size. Concern is raised that the proposal does not comply with the minimum lot size and will therefore be out of character with this location. The resulting dwellings will be tightly packed on the site and will represent an over-development of the site.	These concerns are valid. Lot 1 is significantly less than the (700m ²) minimum lot size for this location (ie 623m ² which is greater than 10% less than the minimum lot size). In reality the effective area of each lot will be considerably smaller given that a 6m wide right of carriageway is provided as part of the lot area.

6. PLANNING ASSESSMENT

The DA has been considered using the heads of consideration listed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979, as detailed below.

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

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

State Environmental Planning Policy (Resilience and Hazards) 2021

This SEPP replaces the former *SEPP 55 – Remediation of Land* in relation to assessment of potential site contamination.

Chapter 4 of the Resilience and Hazards SEPP (clause 4.6) 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.

A review of Council's records and past air photos seems to indicate that the land has only been used for residential purposes in its history. It can be concluded that the land is not potentially contaminated and therefore no further assessment of contamination is required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

This SEPP replaces the former *SEPP (Sydney Drinking Water Catchment) 2011* and *SEPP (Koala Habitat Protection) 2021*.

Chapter 4 of the Biodiversity & Conservation SEPP contains provisions replacing the former 2021 Koala SEPP. Clause 4.10 in Chapter 4 of this SEPP applies as the land has an area of less than 1 hectare and does not have an approved Koala Plan of Management. This clause states that Council is not prevented from granting consent to a DA, if (a) the land does not have an approved koala plan of management; or (b) the Council is satisfied that the land is not core koala habitat.

The land is substantially cleared, is in an urbanised area, and is therefore unlikely to comprise core Koala Habitat.

The development is therefore satisfactory in terms of the provisions of Chapter 4 of the Biodiversity & Conservation SEPP.

Chapter 8 of the Biodiversity & Conservation SEPP contains provisions replacing the former SEPP (Sydney Drinking Water Catchment) 2011.


In terms of Sydney Drinking Water Catchment considerations, Water NSW have undertaken a NorBE assessment in relation to the water quality requirements of the SEPP and provided appropriate conditions of consent.

The NorBE assessment concludes that the development can achieve a Neutral or Beneficial Effect on water quality and is therefore satisfactory in terms of Chapter 8 of the SEPP.

Wingecarribee LEP 2010

WLEP 2010 contains several provisions applicable to the proposed development. These are discussed and assessed in the Table below.

Clause	Control	Assessment	Compliance
2.3 Zone Objectives and land use table	<i>Prescribes the zoning table and objectives for the various zones under WLEP 2010.</i>	<p>The site is zoned R2 Low Density Residential, and the proposed development is permissible with development consent.</p> <p>The proposal is not inconsistent with the aims and objectives of the zone, which will be demonstrated and discussed throughout this report.</p>	Yes
2.6 Subdivision – consent requirements	<i>Prescribes that development consent is required for subdivision.</i>	A development application has been lodged for the proposed subdivision.	Yes
4.1 Minimum subdivision lot size	<p><i>Prescribes a minimum allotment size for subdivisions.</i></p> <p><i>The minimum lot size under the LEP for the subject land is 700m² (Q).</i></p>	<p>The lot sizes proposed in this application are:</p> <ul style="list-style-type: none"> • Lot 1 – 623m² • Lot 2 – 700m² • Lot 3 – 700m² <p>Lot 1 (623m²) proposes a shortfall of 77m² or 11% variation to the 700m² minimum lot size</p> <p>Lots 2 and 3 comply.</p> <p>However, the provision of a 6m wide right of carriageway as proposed in this subdivision effectively reduces the usable area (for the construction of a dwelling etc) of Lot 1 to 437.42m² and Lot 2 to 491.08m² - which are significantly less than the 700m² required under clause 4.1 WLEP 2010, and significantly less than the existing lots and the desired/expected future lot sizes in this location.</p>	No
4.6 Exceptions to Development Standards	<i>Provides a framework for considering variations to development standards contained in the LEP.</i>	Given the non-compliance with the minimum lot size prescribed in clause 4.1 - a request for variation under Clause 4.6 of WLEP 2010 has been submitted. This is discussed in more detail below.	Yes, clause 4.6 request has been submitted. (Clause 4.6 request is not satisfactory as discussed in detail below).

5.21 Flood planning	<i>Provides development controls for flood prone land.</i>	Land is identified on Council's mapping system to be flood prone from Wingecarribee River (and/or its tributaries). The site is only affected by the Probable Maximum Flood (PMF) at the front portion of the site (see map extract below). Given the minor extent of flood affectation at this site, this constraint would not be an impediment to any approval of this DA.	Yes
 <p>Figure 6 – Flood Map showing flood affectation at the subject site.</p>			
7.10 – Public Utility infrastructure	<i>Provides controls and requirements relating to public utility and infrastructure.</i>	The site is connected to reticulated water and sewer. Provided all recommended consent conditions are complied with, the proposed development will have access to water supply, electricity supply and sewerage infrastructure.	Yes

Clause 4.6 - Exceptions to Development Standards Wingecarribee LEP 2010:

Detailed assessment of variation to Clause 4.1 Minimum Lot Sizes

Clause 4.1 of WLEP 2010 prescribes minimum lot sizes for subdivisions. Specifically, clause 4.1(3) states “the size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land”.

The relevant Lot Size Map prescribes a minimum lot size of 700m² for the subject site. The DA seeks a variation to the minimum lot size in respect of proposed Lot 1, which proposes an area of 623m² (or 11% variation). Lots 2 and 3 (both 700m²) comply with the minimum lot size.

However strong concern is raised that the provision of a 6m wide right of carriageway effectively reduces the usable area (for the construction of a dwelling etc) of Lot 1 to 437.42m² and Lot 2 to 491.08m² - which are significantly less than the 700m² required under clause 4.1 WLEP 2010, and significantly less than the existing lots and the desired/expected future lot sizes in this location.

Any request for variation to a statutory control can only be considered under clause 4.6 – exceptions to development standards of WLEP 2010.

Clause 4.6(1) provides the objectives of the Clause, which are “to provide an appropriate degree of flexibility in applying certain development standards to particular development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

Clause 4.6(3) of WLEP 2010 states that “Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating –

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.”

The applicant has submitted a request for variation under clause 4.6, in relation to the non-compliance with the minimum lot size prescribed in clause 4.1 – and this request is held as an Attachment to this report. The clause 4.6 request for variation is assessed as follows.

Is the planning control in question a development standard?

The minimum lot size under clause 4.1 WLEP 2010 is a development standard. The minimum lot size for the subject site is 700m².

What are the underlying objectives of the development standard?

The objectives of clause 4.1 (minimum lot sizes) are:

- (a) to identify minimum lot sizes,
- (b) to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.

Whether compliance is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)]

There have been several cases in the NSW Land and Environment Court that have established provisions to assist in the assessment of clause 4.6 statements to ensure they are well-founded and address the provisions of clause 4.6.

In *Wehbe v Pittwater Council* (2007 NSW LEC 827, Justice CJ Preston sets out the ways of establishing that compliance with a development standard is unreasonable or unnecessary, stating (inter alia):

“An objection under clause 4.6 may be well founded and be consistent with the aims of the policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

Justice Preston expressed the view that there are 5 different ways in which a clause 4.6 request may be well-founded and that approval of the request for variation may be consistent with the aims of Clause 4.6:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the (numerical) standard;*

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

An assessment of the Clause 4.6 request for variation is made in terms of the above tests – including the applicant's comments (where relevant) as well as the Assessment Officer's assessment.

Test 1 – The objectives of the standard are achieved notwithstanding non-compliance with the (numerical) standard.

The objectives of clause 4.1 have been provided above, and objective (b) is of most relevance to this DA.

Applicant comments: In their clause 4.6 request, the applicant has provided the following comments in relation to the development's consistency with the objectives of clause 4.1:

The numerical standard embedded into the WLEP2010 was based simply upon a broad based strategy to encourage low density residential development within certain residential areas of the Shire. It aimed to do this whilst maintaining a capacity for some new lots and residential development in areas with excellent utility services and access to other facilities, both commercial and community based.

The 700 square metre standard applies to the majority of the established residential areas of the Shire. However, the minimum lot standard for these existing low-density areas has not been planned at the scale of individual sites or localities.

Therefore, dependent upon each area or site, the resultant development of land that results from subdivision can provide a general consistency without being exactly the same.

This proposal, although seeking a variation to the numerical value of the minimum lot size for one of the three lots, does not represent a departure from the general density of development envisaged by Council's planning controls, nor from the general layout of development that was to be expected as a result of the implementation of the full range of planning controls put in place by Council for this locality.

This includes having regard to the prevailing subdivision pattern of various areas across the Shire.

It should also be noted that 3 dwellings are possible on the land through an alternative development type. Two lots could be created, being a compliant 700sqm lot and a residual 1220sqm lot. The larger lot could then be developed as a dual occupancy (compliant with Clause 4.2E) and subdivided into two new lots (compliant with Clause 4.2F). The end result is three lots with three dwelling houses.

Minimum lot size is just one of these controls and when the performance based outcomes of that standard can be shown to be positive, then the 'end' that Council was planning for can be achieved. In this case, the proposed development delivers on Council's planning intentions and strict compliance with the numerical standard is less critical.

In this case, the very minor numerical variation simply reinforces the fact that all of the lots are suitable for their purpose given the existing development and the opportunity for new development.

In addition to the above, following the meeting with Council officers (19 May 2022), the applicant provided the following comments by letter dated 25 May 2022 (summarised):

- *A strong case for the subdivision has been made in the Statement of Environmental Effects, including a strong case in the submitted Clause 4.6 request for variation.*
- *The proposed subdivision has both site-specific and broader strategic merit.*
- *The proposal supports the broader strategic planning goals in the Local Housing Strategy to increase housing supply through appropriate in-fill development.*
- *The development outcome of increased housing supply and in-fill development should be deemed more important than numerical compliance or “mathematics”.*
- *It is neither necessary nor reasonable to enforce the 700m² minimum lot size. This lot size applies across a broad area of residential land within the Shire, and within all those areas there is a range of lot sizes both greater and less than the stated minimum.*

The applicant's full request for variation under Clause 4.6, and their formal response to the meeting with Council officers dated 25 May 2022, are held as Attachments to this report.

Assessment Officer's comment: The applicant's comments regarding consistency with the objectives of clause 4.1 are not supported.

Whilst the applicant's comments claim that the broader strategic goals to increase housing supply through in-fill development are met through the proposed (3-lot) subdivision – this would also be the case with a compliant (2-lot) subdivision.

One important consideration in whether to support a request for variation under Clause 4.6 is whether there are any unique site characteristics. One distinguishing feature of the lot sizes in this street block (ie along the southern side of Lytton Street and the northern side of Parkes Road which is immediately to the south) is the consistency of large-sized allotments.

There have been very few subdivisions approved in this street block, and those subdivisions that have been approved have fully complied with the (700m²) minimum lot size. Whilst the subject site does have subdivision potential (the current size of 2023m² exceeds the minimum lot size of 700m²) - it is considered that any subdivision should be for a 2-lot subdivision which could fully comply with the minimum lot size.

Concern is also raised regarding the contention in the Clause 4.6 request that the land could accommodate 3 dwellings if it was firstly subdivided into a compliant 700m² lot and a residual 1220m² lot – with the larger lot then developed for a dual occupancy (which could itself be subdivided via clause 4.2F). The current DA has been lodged only for a land subdivision (ie no dwelling designs submitted). Also, the applicable clauses (4.2E and 4.2F in WLEP 2010) are specifically for the purpose of facilitating dual occupancy development and should not be used to circumvent the minimum lot size provisions of clause 4.1. The development is not for a dual occupancy – and therefore it would not be appropriate to seek to utilise these controls to justify why the proposed breach to the minimum lot size should be supported.

The proposed subdivision does not comply with the objective contained in clause 4.1(1)(b) which is to ensure that the subdivision to create new lots is compatible with the character of surrounding land.

Precedent Effect and Consistency with Recent Subdivision Determinations

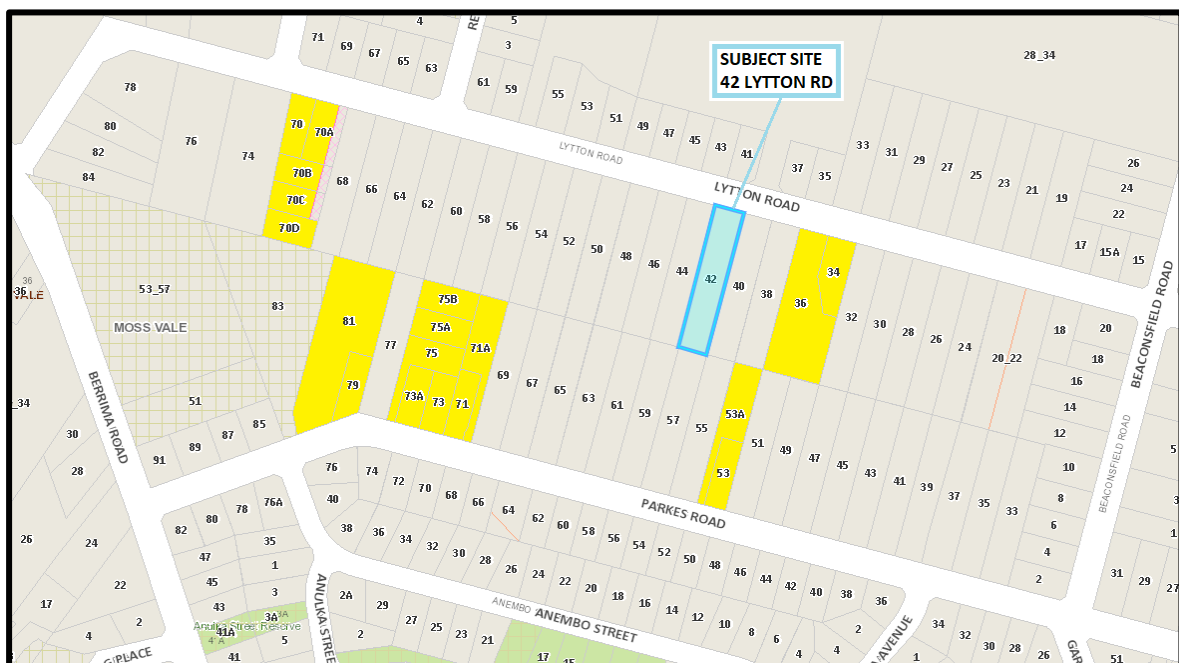
Particular concern is raised regarding the precedent effect of the proposed subdivision. In this regard, reference is made to the lot pattern immediately adjoining the subject site (see map below) - which

shows that the lots on the southern side of Lytton Road and the northern side of Parkes Road are generally uniform in size (around 2000m² – 2100m²), with very few recent subdivisions to create smaller lot sizes. Therefore, it is considered that any approval of this proposed (3-lot) subdivision would create a precedent example for other lots in Lytton Road and Parkes Road which would be extremely undesirable. Approval of this subdivision would undermine objectives and intent of the minimum lot size control.

The subdivision approvals that have occurred in Lytton Road and Parkes Road (shown highlighted in the map below) have all fully complied with the (700m²) minimum lot size prescribed by WLEP 2010. Any approval of this DA (involving lot size non-compliance) would therefore be inconsistent with subdivisions in the immediate vicinity which have fully complied with the 700m² minimum lot size.

These recent subdivisions in Lytton Road and Parkes Road are summarised below:

- 34-36 Lytton Road – DP1142120 registered 2009 with lot sizes of 939.7m² (Lot 2) and 3107m² (Lot 1);
- 70-70D Lytton Road – DP1223984 registered 2016 with lot sizes of 700m² (Lot 1), 953.2m² (Lot 2), 709.2m² (Lot 3), 709.1m² (Lot 4) and 699.7m² (Lot 5). Note: Lot 5 was shown to be 700m² in the approved DA plans but was finalised at 699.7m² due to surveying/drafting of the final plan of subdivision;
- 70 and 70A Parkes Road – DP1072353 registered 2004 with lot sizes of 700.1m² (Lot 121) and 1310m² (Lot 122);
- 73, 73A, 55, 75A, 75B Parkes Road – DP1276674 registered 2021 with lot sizes of 791m² (Lot 1), 791m² (Lot 2), 1037m² (Lot 3), 700m² (lot 4) and 700m² (Lot 5);
- 53-53A Parkes Road – DP860075 registered 1996 with lot sizes of 725.5m² (Lot 1) and 1290m² (Lot 2);
- 79-81 Parkes Road – DP1121167 registered 2007 with lot sizes of 723.1m² (Lot 82) and 4266m² (Lot 81).



There have also been several recent subdivision DAs refused by refusal at the Local Planning Panel, since its inception in March 2021, where proposing to create lots which did not comply with the applicable minimum lot size. These include No 10 Old Hume Highway Berrima – two separate DAs (DA21/1483 refused 7 July 2021, and DA22/0712 refused 1 Jun 2022), and No 77 Bowral Street

Bowral (DA21/1461 refused 6 Oct 2021). Therefore, any approval of this subdivision with non-compliant lots would also be inconsistent with other recent refusal determinations by the Local Planning Panel where non-compliant lots were proposed.

For the reasons enunciated above, it is considered that approval of this subdivision would be a poor planning outcome.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Assessment Officer's Comment: This Test is not particularly relevant to the proposed development. The objective/purpose of the minimum lot size standard is relevant to the development, and any proposed variation to the control needs to be rigorously assessed. In this instance, it is not considered that there are sufficient planning grounds to support a variation to the numerical control.

Test 3 - The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Assessment Officer's Comment: This Test is relevant to this proposal. It is possible to require and achieve compliance with the 700m² minimum lot size for this property – for a 2-lot subdivision, given that the existing land area is 2023m², however the current proposal for a 3-lot subdivision does not comply. A compliant (2-lot) subdivision would be likely to be supported by Council and could be approved under officer delegation.

Test 4 - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable.

Assessment Officer's Comment: As noted above, one distinguishing feature of the lot sizes in this street block (ie along the southern side of Lytton Street and the northern side of Parkes Road which is immediately to the south) is the consistency of large-sized allotments. There have been very few subdivisions approved in this street block, and those subdivisions that have been approved have created lots which fully complied with the (700m²) minimum lot size.

Therefore, the development standard has not been abandoned or destroyed by Council's actions in the immediate vicinity of the site – on the contrary, Council has been strict in maintaining the minimum lot size in this location.

Test 5 - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Assessment Officer's Comment: This Test is not particularly relevant to the proposed development – the subject site is appropriately within the R2 Low Density Residential zone under WLEP 2010. Further, the statutory control for the minimum lot size (700m²) is also appropriate for this immediate location, as there is a consistency of large-sized lots in this street block. Any subdivisions that have been approved have typically complied with the minimum lot size. This shows that there is subdivision potential in this location, provided the resulting lot sizes comply with the 700m² minimum lot size prescribed for this location.

Conclusion – Assessment of Clause 4.6 Request for Variation

As discussed in the preceding assessment, the proposed development is unacceptable for the following reasons:

1. The proposed subdivision will create Lots which are significantly smaller than both the older existing lots in this location; and, smaller than the lot sizes in the more recent subdivisions. Council has been consistent in maintaining the 700m² lot size for subdivisions in the vicinity of this site (ie the immediate street block).
2. Proposed Lot 1 (623m²) has a non-compliance greater than 10% from the 700m² minimum which is not numerically minor.
3. The configuration of the subdivision – with the provision of a 6m wide right of way for access to Lots 2 and 3 – effectively reduces the usable area (for the construction of a dwelling etc) of Lot 1 to 437.42m² and Lot 2 to 491.08m² - which are significantly less than the 700m² required under clause 4.1 WLEP 2010, and significantly less than the existing lots and the desired/expected future lot sizes in this location.
4. The proposed subdivision would have a strong precedent effect – especially given the large number of lots immediately adjoining the subject site which are of the same size. It is likely that approval of the subject DA would lead to further DAs for non-compliant subdivisions on other lots – given that the subject site has no unique features to distinguish it from other lots in this location.

The subject land has subdivision potential – a 2-lot subdivision could be achieved to fully comply with the minimum lot size for this location. However, the proposed 3-lot subdivision is unacceptable for the reasons discussed in the preceding assessment.

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

There are no relevant draft environmental planning instruments that apply to the land.

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

The Moss Vale Development Control Plan (DCP) applies to the subject site.

This DCP is structured to contain a range of general controls in Part A – All Land. These include:

- Section 1 – Introduction
- Section 2 – General Objectives
- Section 3 – Biodiversity
- Section 4 – Water Management
- Section 5 – Flood Liable Land
- Section 6 – Vegetation Management & Landscaping
- Section 7 – Subdivision, Demolition, Siting and Design (see detailed assessment below)
- Section 8 – Safer by Design
- Section 9 – Construction Standards and Procedures
- Section 10 – Signage and Outdoor Advertising
- Section 11 – Outdoor Lighting
- Section 12 – Development near Rail Corridors & Busy Roads
- Section 13 – Telecommunications and Radiocommunications Infrastructure.

Most of the above Sections are either not relevant to this proposal or they are general in nature, and the proposed development would generally be considered satisfactory in terms of these controls subject to conditions that may be imposed on any consent granted.

The controls for Subdivision are contained in Section 7 of the Moss Vale DCP. A more specific assessment of these controls is undertaken in the Table below:

Section	Control	Assessment	Compliance
A7.1.1 Minimum Lot Sizes	<i>Requires that the allotment sizes comply with the minimum lots size prescribed in WLEP 2010.</i>	The proposed lot sizes do not comply with the 700m ² minimum lot size prescribed in <i>Wingecarribee Local Environmental Plan 2010</i> – see assessment under WLEP 2010 above.	No
A7.1.2 Building Envelopes	<i>States that building envelopes may need to be considered as part of the subdivision</i>	Building envelopes have been provided on the site, to demonstrate where a dwelling house could readily be constructed.	Yes
A7.1.3 Noxious and Environmental Weeds	<i>Prescribes controls requiring any noxious or environmental weeds to be eradicated before release of the Subdivision Certificate.</i>	There are no known noxious weeds on the subject land.	Yes (NA)
A7.1.4 Landscape Embellishment	<i>Prescribes controls requiring landscape embellishment of lots and public roads.</i>	No street trees are considered necessary – Lytton Road already contains some street trees, but no uniform pattern of street tree planting.	Yes
A7.1.5 Street Trees	<i>Prescribes controls for street tree planting</i>	As above, street tree planting would not be considered necessary in this instance.	Yes
A7.1.6 Lighting	<i>Prescribes controls for street lighting</i>	No new street lighting is required because of the proposed subdivision – street lighting already exists at the front of the site.	Yes

Section 4.15 (1) (a) (iia)— Any planning agreement that has been entered into under section 7.4

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

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

All relevant provisions of the Environmental Planning and Assessment Regulation 2021 have been considered and satisfied in the assessment of this DA.

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

The likely impacts of the proposed development have been discussed throughout this report.

The proposed subdivision (itself) would have no impact on the natural or built environment given that minimal physical works are proposed. However, as it proposes lot sizes which do not comply with WLEP 2010 it would result in lots which are out of character with the surrounding lot pattern.

Further, Council's Development Engineer has raised concerns regarding the extension to the sewer main, shared driveway and subsoil drainage – see Referral Comments below.

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

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

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

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

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

Having regard to the circumstances of the case, approval of the proposed subdivision is not in the public interest, as it does not comply with the minimum lot size prescribed in Clause 4.1 of WLEP 2010.

7. Referral Comments:

The DA was referred to the following officers within and external to Council:

External Comments:

Water NSW: The DA was referred to Water NSW for concurrence under Chapter 8 of SEPP (Biodiversity and Conservation) 2021. Water NSW have returned the DA to Council – as the proposal is in "Module 1", and Council can undertake an assessment in terms of water quality issues using the NorBE tool. The proposed subdivision would not raise any issues of concern in terms of water quality, and any such issues could be addressed via conditions of consent.

Internal Comments:

Development Engineer: Council's Development Engineer has provided the following comments in relation to this DA:

- Concerns are raised in relation to the extension of the sewer main off Lytton Road and its location. The minimum easement for a sewer line needs to be 3.0m as per Council Engineering Design Specification D13 Section 3.4. In this 3 lot Subdivision, the sewer main runs under Lot 1. This is not supported from engineering, please request an amended plan to reflect Council Engineering Design Specifications mentioned in D13.
- Concerns are raised in relation to the proposed shared driveway accessing proposed lot 1, 2 and 3. As per Council's engineering standard drawing SD164, the minimum easement needs to be 6m wide at the minimum with the driveway being 4.5m wide minimum to service subdivision with less than 3 lots. The driveway proposed at 42 Lytton Road is only 4.0m wide in width. This is not supported from engineering, please request an amended plan to reflect SD164 requirements.
- Subsoil drainage will need to be provided at high side of road as per SD120.

Assessment Officer's Comment: These issues could be readily resolved via a request for information, or through assessment of the DA and imposition of consent conditions. However, such a request has not been made to date, because this may imply that if these issues are resolved, then the DA is able to be supported – which is not the case. As discussed throughout this report, there are fundamental issues of concern regarding non-compliance with the minimum lot size and the DA cannot be supported for this reason.

Development Engineer – Water and Sewer: The DA was referred to the Water and Sewer Development Engineer for comment in terms of any requirements for amplification of such infrastructure. No objections were raised, and appropriate conditions of consent could be imposed on any approval granted.

Developer Contributions: Contributions (s7.11 of the Environmental Planning & Assessment Act 1979) would be levied on any approval granted for this development – but have not been provided in this instance given the recommendation of refusal.

8. Conclusion

The proposed development has been assessed using the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979.

The DA is unsatisfactory as Lot 1 in the subdivision (623m²) does not comply with the minimum lot size prescribed in this location (700m²) and would be inconsistent with the existing and desired future lot sizes in the immediate vicinity of the site.

Further, the proposed provision of a 6m wide right of way (as proposed) effectively reduces the usable area (for the construction of a dwelling etc) of Lot 1 to 437.42m² and Lot 2 to 491.08m² - which are significantly less than the 700m² required under clause 4.1 WLEP 2010, and significantly less than the existing lots and the desired/expected future lot sizes in this location.

Strong concerns are raised in relation to this DA in terms of precedent. The subject site is identical in size to many other lots in this street (Lytton Road) and Parkes Road to the south – and therefore any approval of this DA would create a precedent for further non-compliant subdivisions on other land in this location.

Council has generally been consistent in maintaining compliance with the minimum lot size for recent subdivisions in this location and across the Shire – both for DAs determined under officer delegation and by the Local Planning Panel. Any approval of this DA for a non-compliant subdivision would therefore be inconsistent with such recent subdivisions.

9. RECOMMENDATION

THAT the Local Planning Panel determines development application 22/1462 for the subdivision of land to create three (3) lots at Lot 15 DP258713 No 42 Lytton Road Moss Vale by REFUSAL for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not satisfy the objectives of the minimum lot size as contained in Clause 4.1(1)(b) in Wingecarribee LEP 2010. In particular, the proposal will create new lots which are not compatible with the surrounding land.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not satisfy the minimum lot size prescribed in Clause 4.1(2) in Wingecarribee LEP 2010. In particular, Proposed Lot 1 (623m²) does not comply with the prescribed minimum lot size (700m²).

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is also unsatisfactory, as the provision of a 6m wide right of carriageway effectively reduces the usable area (for the construction of a dwelling etc) of Lot 1 to 437.42m² and Lot 2 to 491.08m² - which are significantly less than the 700m² required under clause 4.1 WLEP 2010, and significantly less than the existing lots and the desired/expected future lot sizes in this location.
4. Pursuant to Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, the proposed development as submitted is unsatisfactory in terms of Development Engineering considerations. Specifically:
 - Concerns are raised in relation to the extension of the sewer main off Lytton Road and its location. The minimum easement for a sewer line needs to be 3.0m as per Council Engineering Design Specification D13 Section 3.4. In this 3 lot Subdivision, the sewer main runs under Lot 1.
 - Concerns are raised in relation to the proposed shared driveway accessing proposed lot 1, 2 and 3. As per Council's engineering standard drawing SD164, the minimum easement needs to be 6m wide at the minimum with the driveway being 4.5m wide minimum to service subdivision with less than 3 lots. The driveway proposed at 42 Lytton Road is only 4.0m wide in width.
 - Subsoil drainage will need to be provided at high side of road as per Council's engineering standard drawing SD120.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning & Assessment Act 1979, in the circumstances of the case, approval of the proposed development is not in the public interest.

ATTACHMENTS

1. Subdivision Plan - 42 Lytton [6.2.1 - 1 page]
2. SEE - 42 Lytton [6.2.2 - 19 pages]
3. CI 4.6 - 42 Lytton [6.2.3 - 17 pages]
4. Applicant response 25 May 2022 - 42 Lytton [6.2.4 - 4 pages]

7 MEETING CLOSURE