

17 September 2021

Dear Panel Member,

You are kindly requested to attend the **Extraordinary Local Planning Panel** of Wingecarribee Shire Council to be held remotely using audio visual link on **Wednesday 22 September 2021** commencing at **3.30pm**.

Yours faithfully

Malcolm Ryan
Interim Deputy General Manager



Business

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

- 5. DEVELOPMENT APPLICATIONS**
 - 5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral 2
 - 5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon Road Bowral..... 73
- 6. MEETING CLOSURE**

Our Mission, Our Vision, Our Values

OUR MISSION

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

OUR VISION

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

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

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

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

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

OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality



Council Chambers

Recording and Webcasting of Independent Advisory Planning Assessment Panel Meetings

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

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

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

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

The meeting must not be recorded by others.

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

The Council Chamber has 24 Hour Video Surveillance.



ACKNOWLEDGEMENT OF COUNTRY

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

APOLOGIES

Nil at time of print.

DECLARATIONS OF INTEREST

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

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

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

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

5 DEVELOPMENT APPLICATIONS

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

Reference: DA21/0257.01
Report Author: Consultant Planner
Authoriser: Manager Development Assessment

PURPOSE

This report of this report is to consider a Review of Determination of Development Application 21/0257.01 which seeks development consent for a two lot subdivision of land at Lot 313 DP 1245164, 27 Kimberley Drive, Bowral. The subject application was determined by way of refusal at the Independent Advisory Planning Assessment Panel on 7 April 2021.

Consultants:	Scott Lee, LEP Planning
Applicant:	Tujilo Pty Ltd
Land owner:	Dobler Properties Pty Ltd
Land zoning:	E3 Environmental Management
Applicant's estimated cost of proposed development:	Nil
Notification period:	26 June – 17 July 2021
Number of submissions:	16 submissions objecting to the Review of Determination
Political donations:	None identified
Reason for referral to Panel:	Review of Determination where original decision made by Independent Advisory Planning Assessment Panel

RECOMMENDATION

THAT the Local Planning Panel determines Review of Determination DA 21/0257.01 – Proposed Two (2) Lot Subdivision of Land at Lot 313 DP 1245164 being 27 Kimberley Drive, Bowral by APPROVAL, subject to the recommended conditions of consent specified in Attachment 1 to the report.

REPORT

Executive Summary

An 8.2 review of determination has been lodged by the applicant to the refusal of Development Application (DA) 21/0257.01 for the subdivision of land into 2 of Lot 313 DP 1245164, 27 Kimberley Drive, Bowral.

On 7 April 2021 the Independent Advisory Planning Assessment Panel considered the determination of the DA and resolved to refuse the application for the following reasons:



1. *One of the proposed lots does not comply with the minimum lot size of 40 hectares, contrary to clause 4.1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010).*
2. *Pursuant to the provisions of clause 4.2(D) the proposal is not permitted because the Panel is not satisfied that:*
 - (a) *The subdivision is necessary for the ongoing operation of the permissible use(s);*
 - (b) *The uses relied on are currently permissible uses;*
 - (c) *The subdivision is appropriate having regard to the natural and physical constraints of the land.*
3. *The proposal does not represent orderly and economic development in circumstances where the proposed dwelling house Lot (Lot 1) will contain the existing on-site waste water treatment pumping station and treatment/maturation pond for proposed Lot 2.*
4. (a) *The proposal fails to satisfy clause 5.10(4) of WLEP 2010 that requires consideration of the impact of the development on the heritage significance of the heritage item, as listed in Schedule 5 of WLEP 2010. A heritage management document (Heritage Impact Statement) was not submitted with the development application;*
 - (b) *On the information provided the Panel is not satisfied that the proposal meets the objective 5.10(1) of WLEP 2010, in particular with regards to an assessment of the curtilage, setting and views of the heritage item. It is noted that the heritage listing covers part of proposed Lot 2;*
 - (c) *The panel concurs with the views of the Heritage Council of NSW that “the reasons for the proposed subdivision provided in the Statement of Environmental Effects are ambiguous and insufficient”.*
5. *Insufficient information has been provided in the application to identify the site of the original approval of the villas and any implications of the development on existing consents.*

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

The review of determination was notified between 26 June and 17 July 2021 and 16 submissions were received objecting to the application.

On balance, the review of determination is recommended for approval for the following reasons:

- The proposed development satisfies Clause 4.2(D) of WLEP 2010, in particular the subdivision is necessary for the ongoing operation of the uses including Village 2;
- The proposed development relies upon currently permissible uses including the approval of Village 2;
- The subdivision is appropriate having regard to the natural and physical constraints of the land.



- The proposal represents an orderly and economic development of the land notwithstanding that Lot 1 will contain the existing on-site waste water treatment pumping station and treatment / maturation pond for proposed Lot 2. The systems were originally approved in 1984 and were designed to service the entire Milton Park property, including Milton Park Hotel, Village 1 and Village 2. The systems already have in place appropriate easements to facilitate the servicing of these existing lots and this will continue to occur and proposed in the new subdivision.
- The applicant has submitted a Heritage Statement that satisfactorily addresses Clause 5.10 of WLEP and the Heritage Council of NSW has issued its general terms of approval.

Site Description and Locality

The subject site (**the site**) is legally described as Lot 313 DP 1245164, and known as 27 Kimberley Drive, Bowral.

Milton Park is located at the eastern end of Hordens Road Bowral. It is approximately 8.5 kilometres east of the Bowral Town Centre.

The site and surrounding land contain the heritage listed Milton Park House, grounds and outbuildings, significant for their association with the Hordern family.

Milton Park Cultural Landscape was included on the State Heritage Register on 25 September 2020. Included within that listing are several items situated on part of the subject property, Lot 313 DP 1245164, and classed as 'rural outbuildings and cottages'. They comprise the Carriage House/Stables building and Carriage Master's cottage, the artificial insemination (AI) facility and the machinery shed/Hayloft and Stable Manager's Cottage.

Figures 1 and 2 illustrate the site's location and context (see also **Attachment 3**).

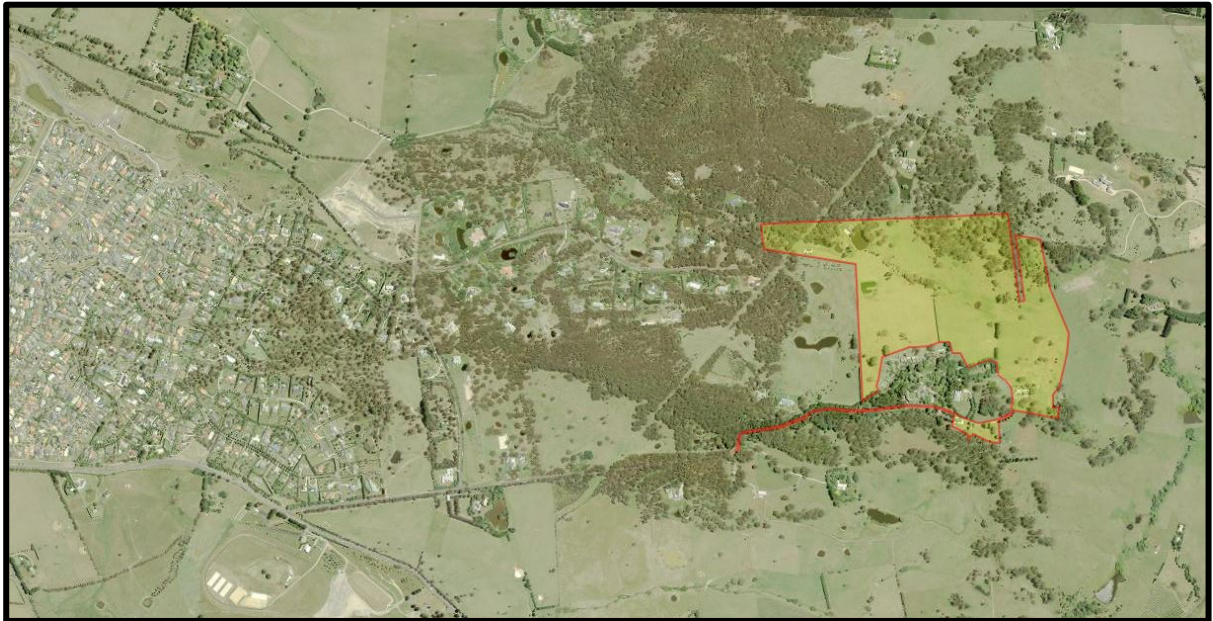


Figure 1: Locality Map (Attachment 3(Source: Six Maps))



Figure 2: Aerial Photo of Subject Site (Attachment 3 (Source: Six Maps))



History of the Site

The Milton Park site has a long history. Development consent DA32/27 /3182/84 was issued over thirty-five years ago.

Stage 1 (dated 06/11/1984) granted consent to Tourist facilities, Hotel, Conference Centre and Associated Facilities. Restaurant/Conference centre, Amphitheatre, Three (3) Residences for proprietor/Management, Storage Facilities.

Stage 2 (dated 02/07/1985) granted consent for 44 Strata Title Villa Units and Arts and Craft Centre.

DA5039 DI & D2 - 575/89 (dated 14/09/1989) granted consent for alterations and additions to existing hotel, Tourist Facility including 18-hole golf course, Golf Lodge Hotel, Highlands House Hotel, equestrian centre, polo fields, tennis courts, swimming pools and main entry gates. Whilst works were carried out to form the golf course, this consent has not proceeded.

The approved Strata Titled Arts and Craft Centre comprises The Hay Loft, The Carriage House, two (2) adjacent Manager's Cottages and the AI Centre, all of which are original historic elements of the Milton Park estate and all of which are being utilised in accordance with the original consent.

The original consent has been commenced and remains as an active consent.

As a result of the development proceeding in various stages over many years, through various subdivisions and ownership patterns, the original development site now comprises:

- Lot 310 DP 1191798, being the 8-hectare site of the Milton Park Country House Hotel and Spa;
- Strata Plan SP32202 being the Village 1 villas;
- Lot 313 DP 1245614 being the 53-hectare north paddock and development site for Village 2 villas, which was previously Lot 309 and Part lot 312 DP 1104165 and a registered Strata Plan SP 78022; and
- Lot 314 DP 1245614 being the 40-hectare south paddock.

The already constructed twenty strata titled villas are situated within SP 32202 and is referred to as Village 1.

Village 2 villas have been subject to the approval issued to LUAI/0869 that modified the original development consent 32/27 /3182/84. A Construction certificate has been issued relating to LUA 11/0869 and work has commenced.



The location for the Village 2 villas mirrors the original 1984 Concept Plan Layout. These villas are clustered to the east of the Milton Park Country House Hotel and Garden and are separate to the existing cluster of the Village 1 villas. This general arrangement has always been accepted as part of the original master plan.

The land known as lot 313 DP 1245614 lies to the north and east of the Milton Park Country House and Hotel. Lot 313 is the subject of this review of determination to subdivide Lot 313 to provide proposed Lot 1 to have an area of 40 hectares which would have contained one of the existing approved villas and proposed Lot 2 was to have an area of 13 hectares and was intended to provide a lot for the strata management of the proposed "Village 2".

In August 2020, Council conducted an Information Session in relation to development matters at Milton Park. Councillors heard presentations from representatives of Village 1, Milton Park Country Hotel, Local Historical Society, representatives of Tujillo Pty Ltd and Council's Legal Representative Chris Shaw (Shaw & Reynolds).

The conclusion of the session as summarized by Council's Legal Representative, was that there is no impediment to proceeding with the finalization of the original development approved under DA32/27/3182/84 Stage 2 through the process of modifying that original development consent.

The development site is currently undergoing transformation with work being undertaken in accordance with a Construction certificate associated with LUA 11/0869.

The extent of the work so far includes:

- The formation of access roads including the placement of lower course base material and final surface;
- The formation and shaping of all building envelopes, including retaining walls for the approved villas plus the approved pool and tennis court, including necessary retaining walls; and
- The provision of services (electricity, water, gas, telecommunications).

There is also road upgrade works in progress from the main Milton Park entrance gate at the end of Horderns Road, to the boundary of the Village 2 site.

Figures 3, 4 and 5 are aerial photos of Village 2, Village 1 and overall land holding. **(see also Attachment 4).**



Figure 3: Aerial Photo of Village 2 (Attachment 4 (Source: Near Map))



Figure 4: Aerial Photo of Village 1 (Attachment 4 (Source: Near Map))



Figure 5: Aerial Photo of Land Holding (Attachment 4 (Source: Near Map))

DA Background

DA 21/0257 which sought development consent for a two-lot subdivision was originally considered by Council on 24 February 2021.

Council resolved on 24 February 2021:

“That Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be DEFERRED pending an inspection of the site to enable all Councillors to understand the issues and concerns relating to the proposal.”

On 10 March 2021 Councillors attended the site for a site inspection.

The DA was considered by the Interim Administrator at the Council Meeting of 24 March 2021 where it was resolved:

“That Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be DEFERRED for the matter to be determined by the Independent Advisory Planning Assessment Panel at its meeting of 7 April 2021.”



On 7 April 2021 the Independent Advisory Planning Assessment Panel considered the determination of the DA and resolved to refuse the application for the following reasons:

1. *One of the proposed lots does not comply with the minimum lot size of 40 hectares, contrary to clause 4.1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010).*
2. *Pursuant to the provisions of clause 4.2(D) the proposal is not permitted because the Panel is not satisfied that:*
 - (a) *The subdivision is necessary for the ongoing operation of the permissible use(s);*
 - (b) *The uses relied on are currently permissible uses;*
 - (c) *The subdivision is appropriate having regard to the natural and physical constraints of the land.*
3. *The proposal does not represent orderly and economic development in circumstances where the proposed dwelling house Lot (Lot 1) will contain the existing on-site waste water treatment pumping station and treatment/maturation pond for proposed Lot 2.*
4. (a) *The proposal fails to satisfy clause 5.10(4) of WLEP 2010 that requires consideration of the impact of the development on the heritage significance of the heritage item, as listed in Schedule 5 of WLEP 2010. A heritage management document (Heritage Impact Statement) was not submitted with the development application;*
 - (b) *On the information provided the Panel is not satisfied that the proposal meets the objective 5.10(1) of WLEP 2010, in particular with regards to an assessment of the curtilage, setting and views of the heritage item. It is noted that the heritage listing covers part of proposed Lot 2;*
 - (c) *The panel concurs with the views of the Heritage Council of NSW that “the reasons for the proposed subdivision provided in the Statement of Environmental Effects are ambiguous and insufficient”.*
5. *Insufficient information has been provided in the application to identify the site of the original approval of the villas and any implications of the development on existing consents.*



Application for Review of Determination

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

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

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

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

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

Additional information, including Heritage Statement, was provided by the applicant to address reasons for refusal.

Description of Proposed Development

The proposed development is a two-lot subdivision of Lot 313 DP 1245164.

Proposed Lot 1 is a 40-hectare parcel that is to the north of the Milton Park Country House Hotel and gardens and north of the existing Village 1 villas. It will accommodate an existing dwelling house that was approved by Council under LUA03/0812. This dwelling is situated in the north west corner of proposed lot 1 and has vehicular access off the eastern end of Kimberley Drive Bowral.

Apart from the dwelling, proposed Lot 1 is open grazing land. It also accommodates the existing on-site waste water treatment pumping station that services Village 1, Milton Park and Village 2 currently under construction. This infrastructure is accommodated within appropriate easements as described upon the Plan of Proposed Subdivision.

Proposed Lot 2 is approximately 13-hectare parcel that is situated to the east of the Milton Park Country House and gardens. This lot reflects the approved development area for the Village 2 villas. Within proposed Lot 2, work has commenced that reflects the approval issued by Council under LUA11/0869, for which a Construction Certificate has been issued.



Figure 6: Aerial Photo prepared by Applicant detailing Subdivision and Key Items

Assessment Against Reasons for Refusal

1. *One of the proposed lots does not comply with the minimum lot size of 40 hectares, contrary to clause 4.1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010).*

Comment:

The proposed subdivision relies upon Clause 4.2(D) which enables the subdivision of land in rural areas including the E3 Environmental Management zone to create lots of an appropriate size to meet the needs of permissible uses other than for the purposes of dwelling houses or dual occupancies.

It is acknowledged that if the proposed development does not satisfy clause 4.2(D) of the LEP then Clause 4.6 of the LEP cannot be used to provide an exception to the development standard specified in Clause 4.1.



2. Pursuant to the provisions of clause 4.2(D) the proposal is not permitted because the Panel is not satisfied that:

(a) The subdivision is necessary for the ongoing operation of the permissible use(s);

Comment:

The applicant states:

- The development that will sit upon Proposed Lot 2 is approved by both the original development consent (DA32/27/3182/84) and the amendment issued by Council under 11/0689. It is under construction through a Construction Certificate CC395/18 issued by Building Certification Associates Pty Ltd.
- For the purposes of consideration under Clause 4.2D(4)(b), the permissible use in this case is "Village 2", which is a component of the original approval issued under DA32/27/3182/84. The villas within the approved development were always intended to be strata titled – this is clear and not in dispute. This outcome has been achieved already for the Village 1 villas --- Refer to SP32202. In this case, the creation of the smaller of the proposed two lots in the subdivision is necessary because it will form the basis for the strata subdivision of the approved villas when construction is complete. This then enables efficient and economical management of the strata development that is not relevant to the land and the dwelling house that is outside of the approved site area of Village 2.
- The 40ha lot is used for the grazing of cattle, which is a permissible and suitable use for a 40 hectare rural lot. This is a different use to that of the balance of the future strata scheme, which is of a purely residential/tourist nature. Keeping this larger rural lot within the strata scheme creates difficulties with the preparation of an application/strata by-laws and increases the chances of conflict within the strata scheme. Strata title is designed to create separate entities within a development that have a commonality of interest – in this case it would be villas within Village 2. Enforcing the 40 hectare rural lot to be part of the strata lot is not necessary for the strata lot to function properly, whereas allowing the 40 hectare rural lot to be a stand alone Torrens Title lot enables efficient and economical use of the land for agriculture.
- On 8th August, 2003 WSC Approved a combined DA/CC (LUA 03/0812) for a Single Dwelling House on Lot 304 DP 1040419 comprising slightly in excess of 40Ha at Kimberley Drive, Bowral. This lot, while part of the broader Milton Park Estate, is distinct from the rest of the Milton Park estate and it has its own individual access.
- The 40ha lot and the existing dwelling upon it, is of significantly more value than what would be the value of the villas in the strata scheme, but it would not have direct access to the proposed facilities within the strata scheme. This would result in a situation where the 40ha lot is paying significantly higher strata contributions without the benefit of the facilities, again increasing the chance of conflict within the scheme. One of the foundation objectives of the Environmental Planning and Assessment Act 1979, is to promote the orderly and economic use and development of land. The subdivision will facilitate this.



Comment:

On balance and having regard to the long history of the site, the proposed subdivision is considered necessary for the ongoing operation of the permissible uses for the following reasons:

- In particular the subdivision is considered necessary to define a lot that encompasses Village 2 and the other buildings in a similar way to the way Village 1 is defined.
- The creation of a 40 hectare lot separated from Village 2 is seen as necessary to the ongoing operation of the permissible use.
- The existing dwelling on proposed Lot 1 is separate with its own distinct road access and has no physical relationship with the Milton Park estate buildings.
- The applicant has provided sufficient detail to be considered necessary for the ongoing operation of the permissible uses.

(b) *The uses relied on are currently permissible uses;*

Comment:

As detailed in the history section of this report, Village 2 has a valid DA and CC approval, and work has commenced.

(c) *The subdivision is appropriate having regard to the natural and physical constraints of the land.*

The applicant states:

- *in this case, the subdivision follows on from development already approved, whereas it is far more common for subdivision of land to facilitate the future development of that land. In this case, the reverse is true.*

The subdivision is following on from the already approved and under construction development of Village 2 villas. It is being put forward so that development can be viable and properly funded with good title being provided to the stakeholders and the Strata Plan for Village 2 being economically and effectively managed in the long term.

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



Comment:

On balance and having regard to the long history of the site, the proposed subdivision is appropriate having regard to the natural and physical constraints of the land.

In particular Lot 1 will be accessed via Kimberley Drive which is physically different to access to Lot 2 which will contain Village 2 with access provided through the Milton park estate.

Of note, no works are proposed as part of this subdivision and all work that has impacted on the natural and physical characteristics of the land has valid DA approval and the subdivision does not further impact on these characteristics.

3. *The proposal does not represent orderly and economic development in circumstances where the proposed dwelling house Lot (Lot 1) will contain the existing on-site waste water treatment pumping station and treatment/maturation pond for proposed Lot 2.*

Comment:

The existing on-site waste water treatment pumping station and treatment/maturation pond was originally approved on 6 November 1984 (DA 32/27/2182/84). The systems were designed to service the entire Milton Park property, including Milton Park Hotel, Village 1 and Village 2 (under construction).

All current and future owners at Milton Park have, or will have, legal easement rights to utilise the system.

Whilst having the on-site waste water treatment pumping station and treatment/maturation pond on separate lots to the land it is servicing is not ideal, this arrangement already exists and subject to the appropriate easements in place does represent an orderly and economic development of the land in the current circumstances having regard to the long history of the site.

4. (a) *The proposal fails to satisfy clause 5.10(4) of WLEP 2010 that requires consideration of the impact of the development on the heritage significance of the heritage item, as listed in Schedule 5 of WLEP 2010. A heritage management document (Heritage Impact Statement) was not submitted with the development application;*

Comment:

The applicant has lodged a heritage statement prepared by Dr Caroline Cosgrove, dated 28 May 2021.

- (b) *On the information provided the Panel is not satisfied that the proposal meets the objective 5.10(1) of WLEP 2010, in particular with regards to an assessment of the curtilage, setting and views of the heritage item. It is noted that the heritage listing covers part of proposed Lot 2;*



Comment:

As detailed above, the applicant has lodged a heritage statement prepared by Dr Caroline Cosgrove, dated 28 May 2021 which addresses the impacts of the proposed development including curtilage, setting and views and is considered acceptable.

- (c) *The panel concurs with the views of the Heritage Council of NSW that “the reasons for the proposed subdivision provided in the Statement of Environmental Effects are ambiguous and insufficient”.*

Comment:

Additional information has been provided by the applicant and a detailed history has been undertaken and provided in the history section of this report.

5. *Insufficient information has been provided in the application to identify the site of the original approval of the villas and any implications of the development on existing consents.*

Comment:

A detailed review has been undertaken of the history of the site which of note details that Village 2 has a valid DA and CC approval to undertake works which have been substantially commenced. Further details of the history of the site is provided in the history section of this report.

Assessment

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

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

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. After undertaking a desktop search using Council’s Property and Rating database, Council is satisfied the land is not a site of possible contamination and therefore no further assessment is required.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The catchment SEPP aims:

- (a) *‘to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.*



- (b) *to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.*
- (c) *to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.'*

Whilst the development is a Module 1 under the NorBE Guidelines, and Council has assumed concurrence to consider water quality, Water NSW have provided input into the assessment and provided suggestions to Council for imposed conditions of consent. In accordance with clause 10 of the Catchment SEPP, the NorBE Tool has been used to determine that the carrying out of the proposed development would have a neutral or beneficial effect on water quality subject to conditions of consent that have been provided in the draft conditions as described in **Attachment 1** to the report.

Wingecarribee Local Environmental Plan 2010 (the LEP)

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

Clause	Control	Discussion	Compliance
1.2 – Aims of Plan	Subclause (2) sets out the LEP’s particular aims.	The proposed development is considered satisfactory with respect to the LEP’s particular aims.	Yes.
2.3 – Zone objectives and Land Use Table	<p>The land is zoned E3 Environmental Management and the objectives of the zone are:</p> <ul style="list-style-type: none"> • To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. • To provide for a limited range of development that does not have an adverse effect on those values. • To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns. • To minimise the proliferation of buildings and other structures in these sensitive landscape areas. • To provide for a restricted range of development and land use activities that provide for rural 	The proposed development is permissible with consent, and the proposed development satisfies the objectives of the zone, noting that the proposed subdivision does not propose any works.	Yes.

AGENDA FOR THE EXTRAORDINARY LOCAL PLANNING PANEL

Wednesday 22 September 2021

DEVELOPMENT APPLICATIONS



	<p>settlement, sustainable agriculture, other types of economic and employment development, recreation and community amenity in identified drinking water catchment areas.</p> <ul style="list-style-type: none"> • To protect significant agricultural resources (soil, water and vegetation) in recognition of their value to Wingecarribee’s longer term economic sustainability. 		
2.6 – Subdivision Consent Requirements	Subdivision of land requires development consent.	The application satisfies the provisions of Clause 2.6.	Yes.
4.1 – Minimum subdivision lot size	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 on the LEP Lot Size Map in relation to that land. The Lot Size Map identifies the subject site as having a 40 hectare minimum lot size.	Proposed Lot 1 is 40 hectares and complies. Proposed Lot 2 is 13 hectares and relies upon Clause 4.2D.	No. Relies upon Clause 4.2D.
4.2D – Exceptions to minimum subdivision lot sizes for certain rural subdivisions	<p>Applies to E3 Environmental Management zone land.</p> <p>Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under any existing development consent for the land.</p> <p>(4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the subdivision will not adversely affect the use of the</p>	<p>As detailed in Assessment of the Reasons for refusal section of this report it is considered that the applicant has provided sufficient additional information to demonstrate that the DA</p> <ul style="list-style-type: none"> • Will not adversely affect the use of the surrounding land for agriculture, • The subdivision is necessary for the ongoing operation of the permissible uses, and • The subdivision is appropriate having 	Yes.

AGENDA FOR THE EXTRAORDINARY LOCAL PLANNING PANEL

Wednesday 22 September 2021

DEVELOPMENT APPLICATIONS



	<p>surrounding land for agriculture, and</p> <p>(b) the subdivision is necessary for the ongoing operation of the permissible use, and</p> <p>(c) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.</p>	<p>regard to the natural and physical constraints affecting the land.</p> <p>See the Assessment of the Reasons for Refusal section of this report for further discussion.</p>	
<p>5.10 - Heritage Conservation</p>	<p>(2) Development consent is required for any of the following—</p> <p>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—</p> <p>(f) subdividing land—</p> <p>(i) on which a heritage item is located or that is within a heritage conservation area, or</p> <p>(4) The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.</p> <p>(5) The consent authority may, before granting consent to any development—</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the</p>	<p>The applicant has submitted a Heritage Statement that satisfactorily addresses Clause 5.10 of WLEP and the Heritage Council of NSW has issued its general terms of approval.</p> <p>Sufficient information has been provided to satisfy Clause 5.10, noting no physical works are proposed and the subdivision makes logical sense having regard to the long history of approvals on site.</p>	<p>Yes</p>



	<p>carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>		
<p>7.5 – Natural Resources Sensitivity - Water</p>	<p>Before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the following—</p> <ul style="list-style-type: none"> (a) the natural flow regime, (b) the water quality of receiving waters, (c) the waterway’s natural flow paths, (d) the stability of the waterway’s bed, shore and banks, (e) the flow, capacity and quality of groundwater systems. <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <ul style="list-style-type: none"> (a) the development is designed, sited and managed to avoid any potential adverse environmental impact, or (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact. 	<p>The proposed development does not propose any works and will not impact on any categorised streams.</p> <p>In addition, no controlled activity permit is required.</p>	<p>Yes</p>



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

No draft instrument is relevant to the proposed development.

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

The Rural Lands DCP is the applicable DCP which has been considered in this review of determination which are:

Part A—Managing our Rural Lands

Section 2—Classification and Distribution of Rural Lands

Section A2.4—Agricultural Land Classification

Section A2.5.4—Environmental Management (E3)

Section A2.7—Subdivision of Rural Land.

Section A2.7.1—Allotment Sizes

Section 3—Ecologically Sustainable Development

Section A3.2—Development in Sydney’s Drinking Water Catchments Section 8—Heritage and Landscape Conservation.

Section A8.4—Development in the Vicinity of Heritage Items.

The proposal is not considered to be inconsistent with these sections of the DCP subject to the imposition of conditions as recommended.

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

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

Section 4.15 (1) (a) (v)—The provisions of the regulations (to the extent that they prescribe matters for the purposes of this paragraph) that apply to the land

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

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

The impacts of the proposed development are discussed in the Assessment Against Reasons for Refusal section of this report.



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

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

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

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

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

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

Internal and external communication and consultation

<u>Internal Referrals</u>	Comments
Development Engineer	No objection, subject to appropriate conditions of consent.
Development Engineer – Water & Sewer	I concur with the Planning Panel's original decision. The proposal does not represent appropriate management for sewer. The system currently is fine for a combined lot development, however subdivision and separate ownership of the system to the lots serviced presents current and further complications for maintenance and operational responsibility.
Environmental Health Officer (OSSM)	No objection, subject to appropriate conditions of consent.

AGENDA FOR THE EXTRAORDINARY LOCAL PLANNING PANEL

Wednesday 22 September 2021

DEVELOPMENT APPLICATIONS



<u>External Referrals</u>	Comments
NSW Rural Fire Service (integrated development)	The RFS has provided their General Terms of Approval, under Division 4.8 of the Environmental Planning and Assessment Act 1997, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1997 dated 20 October and 8 August 2021 subject to conditions that are included in the draft notice of determination.
Natural Resources Access Regulator	A controlled activity permit is not required.



<p>Heritage Council of New South Wales</p>	<p>The Heritage Council of New South Wales has provided their General terms of Approval for the land inside of the State Heritage Register listing boundary, in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, dated 16 November 2020 subject to conditions that are included in the draft notice of determination.</p> <p>The review of determination was referred back to the Heritage Council and below is their comments received on 24 August 2021:</p> <ul style="list-style-type: none">• A Heritage Statement prepared by Dr Caroline Cosgrove, dated 28 May 2021, has been submitted with the s.8.2 Review documentation.• The SHR listing is for 'Milton Park Cultural Landscape', the site being significant as an outstanding example of a Federation and Inter-War period hill station property in the Southern Highlands; significant views are thus not only from the house, but also from other areas within the site, including the ring paddock which is a high point.• The Heritage Statement notes that 'the site of the approved Village 2 villas is separate to and at a lower level than the SHR item, that Milton Park House is surrounded by tall trees and shrubs and is not visible from the subject lot, and that the subdivision would therefore not have impacts on views from the heritage listed building or the surrounding gardens'.• The Heritage Statement also explains that other than the works approved under DA32/27/3182/84 and modification LUA11/0869, no further construction is planned for Proposed Lot 2. It should be noted that these approvals pre-dated the listing of the site on the State Heritage Register on 25 September 2020, and therefore Heritage NSW does not object to those (existing/approved) works.• As no construction is proposed as part of this application, impact on significant views has not been considered at this stage. It is requested that if any further development is proposed in future within the visual catchment of the SHR item, it be referred to the Heritage Council for comment.• The majority of the land being subdivided is outside the SHR curtilage, with Council being the sole consent authority for that land. The land containing the SHR listed outbuildings is already separate to the rest of the SHR item. This relationship is not being affected.
---	--

AGENDA FOR THE EXTRAORDINARY LOCAL PLANNING PANEL

Wednesday 22 September 2021

DEVELOPMENT APPLICATIONS



	<ul style="list-style-type: none">• While the documents submitted as part of this s.8.2 review do not fully clarify issues raised in the comments provided by Heritage NSW as part of the GTAs letter, these are matters for Council to consider.• No change is required to the GTA's previously issued.
--	---

Public Notification

The review of determination was publicly notified in accordance with Council's Community Participation Plan from 28 June 2021 to 19 July 2021. Council received 16 submissions, objecting to the proposed development.

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

AGENDA FOR THE EXTRAORDINARY LOCAL PLANNING PANEL

Wednesday 22 September 2021

DEVELOPMENT APPLICATIONS



Issues	Response
<p>The applicant has not provided any compelling arguments in its rebuttal of the Panel's reasons. In addition, there are strong arguments against its rebuttals.</p>	<p>The applicant has provided a detailed response to the Panel's original reasons for refusal.</p>
<p>The Applicant, in order to satisfy the condition that the 19 Villas comprising Village Two, and possibly the Demonstration House, are part of a registered strata scheme, needs to register a strata scheme including those villas.</p>	<p>A detailed history of the DA approvals for the site is provided in this report. It is noted that Village 2 includes a number of conditions and it is the intention of the applicant to register a strata scheme for Village 2.</p>
<p>If the Applicant proceeded with registering a strata scheme just for Village Two in accordance with the 1984 Approval and the intent of the original developers, it could then proceed to combine proposed Lot 1 with the remaining land from proposed Lot 2 and any parts of the land from the South Paddock it and its associates want to keep. This would satisfy the minimum 40ha requirement of the WLEP so long as Council was prepared to register the strata plan on the basis referred to.</p>	<p>A merit assessment has been undertaken of the proposed subdivision including satisfaction of Clause 4.2D of the LEP. This detailed discussion is provided in the body of this report.</p>
<p>It is not the intent of the Applicants as they wish for proposed Lot 1 to be created and create proposed Lot 2 which contains not only Village Two but what is not included from proposed Lot 1 plus parts of the South Paddock which were previously subdivided. To achieve the Applicant's objective, it is asking Council to exercise its discretion under clause 4.2D of the WLEP. The Applicant has not adequately explained why Council should do so.</p>	<p>The applicant has provided additional information in support of their application and satisfaction of Clause 4.2D.</p> <p>A merit assessment of the application has been undertaken it is considered that the application satisfies clause 4.2D. See the body of the report for further discussion.</p>
<p>The reason that proposed Lot 2 is smaller than the permitted 40ha is solely the consequence of the Applicant's prior subdivisions and its own desires. It is in effect saying that it has ignored the WLEP in making its prior subdivisions and this application and now want Council's help to fix its problem, which is one it has created for itself, without adequately explaining why.</p>	<p>The applicant has provided additional information in support of their application and satisfaction of Clause 4.2D.</p> <p>A merit assessment of the application has been undertaken it is considered that the application satisfies clause 4.2D. See the body of the report for further discussion.</p>

AGENDA FOR THE EXTRAORDINARY LOCAL PLANNING PANEL

Wednesday 22 September 2021

DEVELOPMENT APPLICATIONS



The notification documents were not available on Council's website during the notification process.

All information has been available on Council's website.

Conclusion

Following a review of the information submitted by the applicant in support of the Review of Determination, it is considered that the proposed development is satisfactory with respect to the matters specified by Section 4.15 (1) of the Environmental Planning and Assessment Act 1979. It is recommended that the Panel determines the application by granting development consent, subject to the conditions specified in **Attachment 1**.

ATTACHMENTS

1. Attachment 1 - Draft Conditions
2. Attachment 2 - Proposed Subdivision Plan
3. Attachment 3 - Locality Map and Aerial Photo of Subject Site
4. Attachment 4 - Aerial Images of Site
5. Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



21/0257, Part Lot 313 DP 1245164

SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

ADMINISTRATION CONDITIONS

1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Subdivision – 2 Lots.

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

2. Development in Accordance with Plans and Documents

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Plan of Subdivision of Lot 313 DP 1246164	Ref: 13147	Richard Cox	13-05-2016
Plan of Subdivision of Lot 313 DP 1246164	Ref: 13147, Sheet 2	Richard Cox	13-05-2016
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	August 2020
Bushfire Report	Ref: 3813	Harris Environmental Consulting	29/07/2020

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

3. Inconsistency between documents

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

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

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

4. Application for a Subdivision Works Certificate

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



21/0257, Part Lot 313 DP 1245164

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

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

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

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

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

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

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

- Water Services
- Stormwater services
- Sewerage services

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



21/0257, Part Lot 313 DP 1245164

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK

7. Notice of Commencement

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

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

Reason: *Statutory requirement.*

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

8. Principal Certifier (PC) Sign

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifier (PC) by showing the name, address and telephone number of the Principal Certifier (PC);
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

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

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Advice: *Where Council is the PCA, signage is available from Council.*

Reason: *Statutory requirement.*



21/0257, Part Lot 313 DP 1245164

9. **Subdivision Works Certificate & Appointment of Principal Certifier (PC)**

Subdivision work in accordance with a consent must not commence until:

- (a) A Subdivision Works Certificate has been issued.
- (b) The person having the benefit of the development consent has appointed the Principal Certifier (PC).
- (c) The Principal Certifier (PC) (if not Council) has, no later than two (2) days before the subdivision work commences, notified the Council (or other consent authority where applicable) of the Principal Certifier's (PC) appointment.
- (d) The person having the benefit of the consent has given at least two (2) days' notice to the Council of the person's intention to commence the subdivision work.

Advice: *Crown work certified in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 is exempted from the above requirements.*

Reason: *Statutory requirement.*

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

10. **Subdivision Certificate**

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

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

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

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

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

11. **Legal Instruments**

All instruments setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B of the *Conveyancing Act 1919* that were applicable to Lot 313 DP 1245164 shall be carried through and be placed on the proposed Lots 1 and 2

Reason: *To ensure proper land management under the Act.*

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



21/0257, Part Lot 313 DP 1245164

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

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

13. Wastewater Treatment and Effluent Management Systems

To maintain the functionality and effectiveness of the wastewater treatment system, maturation ponds, effluent pond and irrigation systems over the long term the following is required:

- (a) An Operation Environmental Management Plan (OEMP) detailing the location of all aspects of the wastewater and effluent management systems; procedures and responsibilities for inspection, maintenance and management of the systems. The OEMP shall be distributed to all lots owners/strata corporations that benefit or are burdened from the systems, and
- (b) Plan of subdivision showing all easements (benefitting or burdened) related to all components of the wastewater treatment and management systems including Lot 310 DP 1191798, SP 32232 and the proposed Lot 1 requiring easements over the proposed Lot 2 to irrigate treated wastewater.

Reason: *To maintain the functionality and effectiveness of the wastewater treatment and effluent management system.*

14. Existing Services - Reticulation

An easement (Section 88B of the *Conveyancing Act 1919*) shall be created in favour of Lot 2 over the following assets:

- (a) Private sewer main and wastewater treatment system; and
- (b) Private water service

Located centrally within that easement.

Details of registration of the above easement shall be submitted to Council prior to the release of the Subdivision Certificate.

Reason: *Statutory requirement.*

15. Construction of Water Service

Each lot in the subdivision shall have its own dedicated water service prior to the issue of the Subdivision Certificate.

In the case that a new water service is required Council's application form shall be completed by the developer and the appropriate fee paid.

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

INTEGRATED DEVELOPMENT CONDITIONS



21/0257, Part Lot 313 DP 1245164

16. **General Terms of Approval – Heritage Council of NSW**

General Terms of Approval have been granted by the Heritage Council of NSW for the development pursuant to section 4.47 of the *Environmental Planning and Assessment Act 1979*. The conditions provided by the Heritage Council of NSW are provided below:



Our ref: DOC20/835842

Ross Jauncey
 Development Assessment Planner
 Wingecarrabee Shire Council

By email: ross.jauncey@wsc.nsw.gov.au

Dear Mr Jauncey

**HERITAGE COUNCIL OF NSW – GENERAL TERMS OF APPROVAL
 INTEGRATED DEVELOPMENT APPLICATION**

Address: 27 Kimberley Drive, Bowral 2576 NSW
SHR item: Milton Park Cultural Landscape (SHR no. 02026)
Proposal: Two lot subdivision
IDA application no: IDA/2020/110, received 12 October 2020

As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application.

The majority of the land subject to the proposed subdivision is located outside of the State Heritage Register (SHR) listing boundary. The Heritage Council does not have the authority to grant general terms of approval in relation to development to the land outside of that SHR listing boundary. Therefore, the below general terms of approval only apply to the land within this boundary.

In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following general terms of approval are granted (for the land inside of the State Heritage Register listing boundary):

APPROVED DEVELOPMENT

1. Development must be in accordance with:

a) Subdivision drawings, prepared by Richard R Cox as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: Plan of Subdivision of Lot 313 DP 1245164			
Sheet 1	N/A	12/05/16	N/A
Sheet 2	N/A	13/05/16	N/A

b) *Statement of Environmental Effects for Proposed Subdivision of Lot 313 DP 1245164 at Milton Park Horderns Road Bowral*, prepared by LEP, dated August 2020.

EXCEPT AS AMENDED by the following general terms of approval:

COMPLIANCE

2. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

Level 6, 10 Valentine Ave Paramatta NSW 2150 ■ Locked Bag 5020 Paramatta NSW 2124
 P: 02 9873 8500 ■ E: heritagemailbox@environment.nsw.gov.au



21/0257, Part Lot 313 DP 1245164

SECTION 60 APPLICATION

3. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

COMMENTS ON PROPOSED SUBDIVISION OUTSIDE SHR CURTLAGE:

The reasons for the proposed subdivision provided in the Statement of Environmental Effects are ambiguous and insufficient. The proposed Lot 2 is significantly larger than the original Lot conceived for Village 2 and includes additional land and significant historic outbuildings. The area added to the original Lot 2 is significant due to historic view lines. It is recommended that these views be retained in any future development on the proposed Lot 2.

A number of historic outbuildings that are part of Milton Park Cultural Landscape (SHR no. 02026) are also included in the proposed Lot 2. The applicant should be advised that:

- *Any development within the SHR curtilage will require an approval under the Heritage Act 1977; and*
- *Any development in the vicinity of these historic outbuilding (outside the SHR curtilage) must consider potential impacts upon the heritage significance of the SHR item.*

Section 148 of the *Heritage Act 1977* (the Act), allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

Right of Appeal

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions regarding these general terms of approval, please contact Veerle Norbury, Senior Heritage Assessment Officer, at Heritage NSW, on 9873 8616 or veerle.norbury@environment.nsw.gov.au.

Yours sincerely


Rajeev Maini
 Senior Team Leader
 Regional Heritage Assessments South
 Heritage NSW
 Department of Premier and Cabinet
As Delegate of the Heritage Council of NSW
 16 November 2020


17. General Terms of Approval - NSW Rural Fire Service

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



21/0257, Part Lot 313 DP 1245164





NSW RURAL FIRE SERVICE

Wingecarribee Shire Council
 PO Box 141
 MOSS VALE NSW 2577

Your reference: 21/0257 (CNR-12067)
 Our reference: DA20201016003791-Original-1

ATTENTION: Elizabeth Garner
ATTENTION:

Date: Tuesday 20 October 2020

Dear Sir/Madam,

Integrated Development Application
 s100B – Subdivision – Torrens Title Subdivision
 27 Kimberley Drive Bowral NSW 2576, 313//DP1245164, 314//DP1245164, 313//DP1245164

I refer to your correspondence dated 14/09/2020 seeking general terms of approval for the above Integrated Development Application.

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

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

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the site around the existing building on proposed Lot 1 must be managed as an inner protection area (IPA), in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*, for a distance of 15 metres. When establishing and maintaining an IPA the following requirements apply:

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

Postal address	Street address	
NSW Rural Fire Service Locked Bag 17 GRANVILLE NSW 2142	NSW Rural Fire Service 4 Murray Rose Ave SYDNEY OLYMPIC PARK, NSW 2127	T (02) 8741 5555 F (02) 8741 5550 www.rfs.nsw.gov.au

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part
 Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
 ATTACHMENT 1 Attachment 1 - Draft Conditions



21/0257, Part Lot 313 DP 1245164

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

Access - Property Access

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

2. Property access roads must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- property access roads are two-wheel drive, all-weather roads;
- minimum 4m carriageway width;
- in forest, woodland and heath situations, rural property access roads have passing bays every 200m that are 20m long by 2m wide, making a minimum trafficable width of 6m at the passing bay;
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches;
- provide a suitable turning area in accordance with Appendix 3;
- curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress;
- the minimum distance between inner and outer curves is 6m; the crossfall is not more than 10 degrees;
- maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads.

Note: Some short constrictions in the access may be accepted where they are not less than 3.5m wide, extend for no more than 30m and where the obstruction cannot be reasonably avoided or removed.

Water and Utility Services

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

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

General Advice - Consent Authority to Note

Future development applications lodged on lots created within this subdivision may be subject to further assessment under the *Environmental Planning & Assessment Act 1979* and the requirements of *Planning for Bush Fire Protection 2019*.

For any queries regarding this correspondence, please contact Adam Small on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
 Manager Planning & Environment Services
 Planning and Environment Services

2





21/0257, Part Lot 313 DP 1245164



BUSH FIRE SAFETY AUTHORITY

Subdivision - Torrens Title Subdivision
27 Kimberley Drive Bowral NSW 2576, 313/DP1245164
RFS Reference: DA20201016003791-54-55-1
Your Reference: 21/0257.01 (CNR-24265)

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

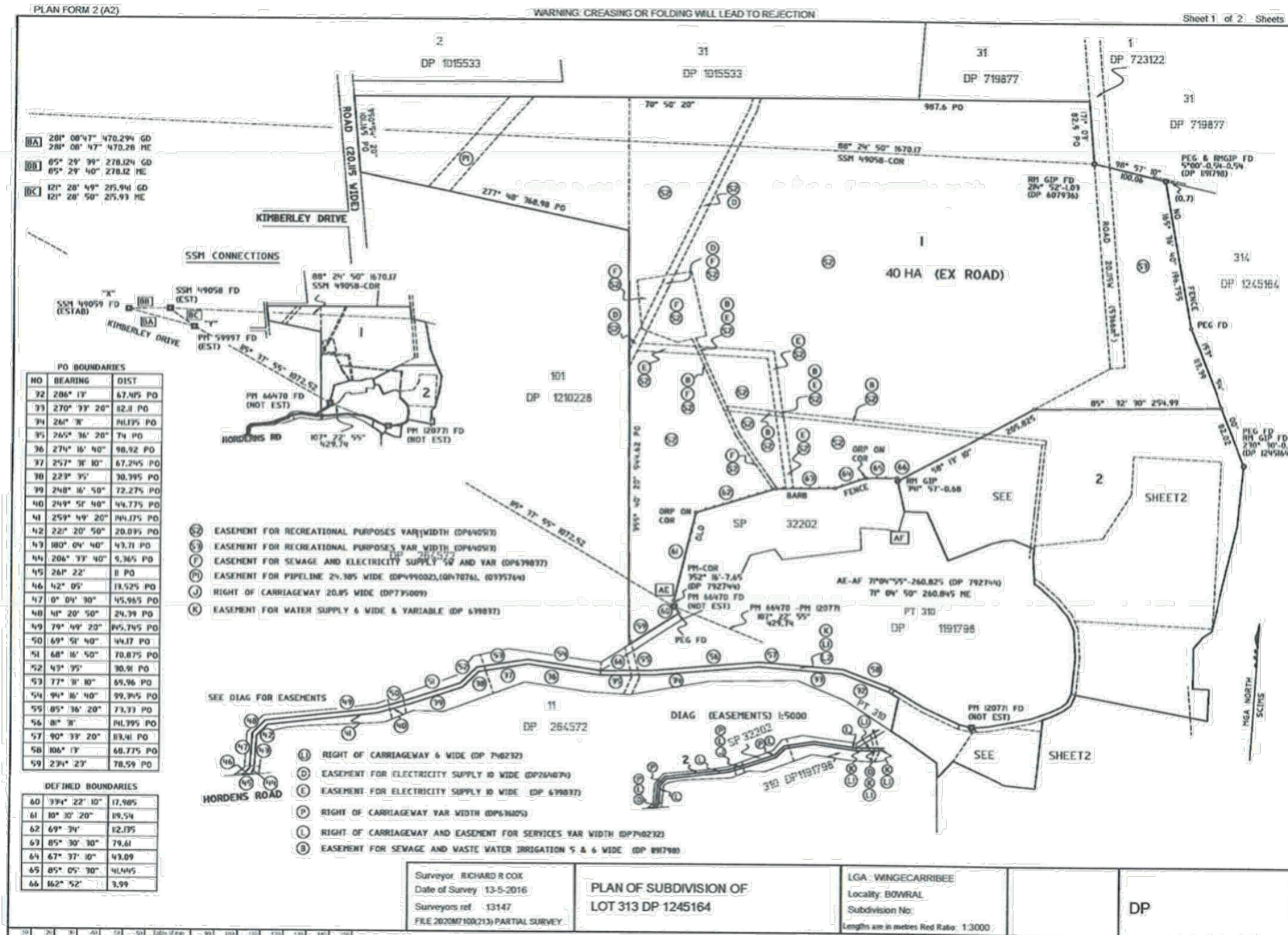
This authority supersedes the previous Bush Fire Safety Authority DA20201016003791-Original-1 issued on 20/10/2020 and confirms that, subject to the attached reissued General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.

Nika Fomin
Manager Planning & Environment Services
Built & Natural Environment

Sunday 8 August 2021

END OF CONDITIONS

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
 ATTACHMENT 2 Attachment 2 - Proposed Subdivision Plan





5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
ATTACHMENT 3 Attachment 3 - Locality Map and Aerial Photo of Subject Site











AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



5 DEVELOPMENT APPLICATIONS

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral

Reference: 21/0257
 Report Author: Development Assessment Planner
 Authoriser: Manager Development Assessment
 Applicant: Tujilo Pty Ltd
 Owner: Dobler Properties Pty Ltd
 Link to Community Strategic Plan: Conserve the key natural resources of the Shire and minimise the impact from development

PURPOSE

The purpose of this report is to present Development Application 21/0257 involving a two lot subdivision of land for determination and recommends **APPROVAL** subject to the conditions specified in (Attachment 1).

Consultants	Scott Lee LEE ENVIRONMENTAL PLANNING Richard Cox Surveyor
Notification Period	04/09/20 to 25/09/20
Number of Properties Notified	59
Number of Submissions	8 submissions objecting to the proposed subdivision
Zoning	E3 Environmental Management
Site Area	Lot 1 40 hectares Lot 2 13 Hectares
Political Donations	None Identified
Reason for Referral to Panel	Deferred by Interim Administrator to Panel for determination.

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral**ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021****AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING**

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS**RECOMMENDATION**

THAT Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be **APPROVED** subject to conditions as described in Attachment 1 to the report.

REPORT***Previous Consideration of Application.***

Development Application DA21/0257 was considered by Council at its meeting of 24 February 2021 when Council resolved:

THAT Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be **DEFERRED** pending an inspection of the site to enable all Councillors to understand the issues and concerns relating to the proposal.

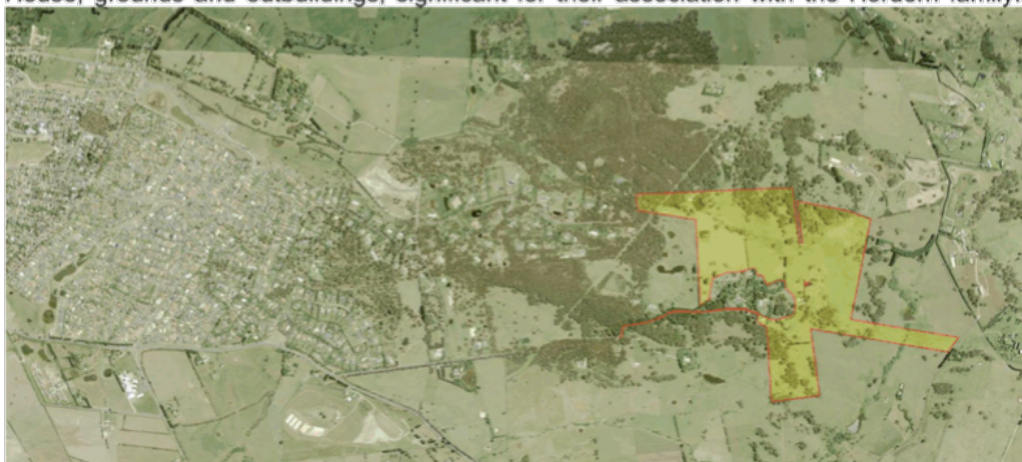
Councillors attended the site on Wednesday 10 March 2021 for the purpose of a site inspection. Having fulfilled the resolution of Council, the matter is now being put to the local planning panel for determination due to the suspension of Council (Councillors).

Development Application DA21/0257 was considered by the Interim Administrator at the Council Meeting of 24 March 2021 where it was resolved:

THAT Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be **DEFERRED** for the matter to be determined by the Independent Advisory Planning Assessment Panel at its meeting of 7 April 2021.

Subject Site and Locality

Milton Park is located at the eastern end of Horderns Road Bowral. It is approximately 8.5 kilometres east of the Bowral Town Centre. The site contains the heritage listed Milton Park House, grounds and outbuildings, significant for their association with the Hordern family.





AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Figure 1: Locality Map (Attachment 3) (Source: Six Maps)



Figure 2: Aerial image (Attachment 4) (Courtesy Nearmap)

History of Site

The Milton Park site has a long history to which this latest subdivision proposal is related.

Development consent DA32/27/3182/84 was issued over thirty-five years ago and since that time there have been substantial progress in completing elements of the original approval. This included tourist and recreational uses and the retention and restoration of a number of historically important buildings on the site, all of which have some historical link to the site and its occupation and use by the Hordern family.

In addition to the main Milton Park former residence that now operates as the Milton Park Country House Hotel, a number of these smaller buildings are all actively utilised for a variety of functions as envisaged in the original overarching development approval, including tourist related accommodation.

The original approval being DA32/27/3182/84, issued in July 1985, allowed, amongst other things, 44 strata titled villas on the Milton Park site, to be set out in two groups, or 'villages'. The original 1985 approval was not specifically detailed and the approval was more reliant upon 'Master Plans'. In essence, Village 1 was located to the north of the Milton Park home and gardens and Village 2 was located to the east.

To date, twenty (20) of these villas have been constructed, being the 'Village 1' that was part of the overall master plan. These villas sit within Strata Plan SP32202. They were constructed shortly after the original approval was granted and they sit just to the north of and adjacent to the Milton Park Hotel and gardens, which is within Lot 3 DP 1191798. These villas are utilised as both permanent residences and shorter stay rental/visitor accommodation.

The remaining twenty-four (24) villas that constitute Village 2 have not yet been built and have been considered by Council under various subsequent applications, all of which have been lodged under the auspices of the original approval.

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part
Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered
by Panel on 7 April 2021



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

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



A Construction Certificate has been issued and work commenced associated with development approval, LUA11/0869 (a modification to DA32/27/3182/84), that was issued by Council in October 2011.

The boundaries of the submitted subdivision application is consistent with the location approved for Village 2.

The subdivision has a direct purpose of providing a parcel of land for the approved Village 2 development in exactly the same way that Village 1 sits within its own Strata plan separate from the Milton Park home and gardens.

Development consent DA32/27/3182/84 was issued over thirty five years ago.

Stage 1 (dated 06/11/1984) granted consent to Tourist facilities, Hotel, Conference Centre and Associated Facilities. Restaurant/Conference centre, Amphitheatre, Three (3) Residences for proprietor/Management, Storage Facilities.

Stage 2 (dated 02/07/1985) granted consent for 44 Strata Title Villa Units and Arts and Craft Centre.

DA5039 D1 & D2 – 575/89 (dated 14/09/1989) granted consent for alterations and additions to existing hotel, Tourist Facility including 18-hole golf course, Golf Lodge Hotel, Highlands House Hotel, equestrian centre, polo fields, tennis courts, swimming pools and main entry gates. Whilst works were carried out to form the golf course, this consent has not proceeded.

The approved Strata Titled Arts and Craft Centre comprises The Hay Loft, The Carriage House, two (2) adjacent Manager's Cottages and the AI Centre, all of which are original historic elements of the Milton Park estate and all of which are being utilised in accordance with the original consent.

The original consent has been commenced and remains as an active consent.

As a result of the development proceeding in various stages over many years, through various subdivisions and ownership patterns, the original development site now comprises:

- Lot 310 DP 1191798, being the 8-hectare site of the Milton Park Country House Hotel and Spa;
- Strata Plan SP32202 being the Village 1 villas;
- Lot 313 DP 1245614 being the 53-hectare north paddock and development site for Village 2 villas, which was previously Lot 309 and Part lot 312 DP 1104165 and a registered Strata Plan SP 78022; and
- Lot 314 DP 1245614 being the 40-hectare south paddock.

The already constructed twenty strata titled villas are situated within SP 32202 and is referred to as Village 1.

Village 2 villas have been subject to the approval issued to LUA11/0869 that modified the original development consent 32/27/3182/84. A Construction Certificate has been issued relating to LUA 11/0869 and work has commenced.

The location for the Village 2 villas mirrors the original 1984 location with the largest layout having been modified over several applications.

These villas are to be clustered to the east of the Milton Park Country House Hotel and Garden and are separate to the existing cluster of the Village 1 villas. This general arrangement has always been accepted as part of the original master plan.

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

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS

The land included in this application is lot 313 DP 1245614. It lies to the north and east of the Milton Park Country House and Hotel as identified in the map in Figure 2.

The development site is currently undergoing transformation with work being undertaken in accordance with a Construction Certificate associated with LUA 11/0869.

The extent of the work so far includes:

- The formation of access roads including the placement of lower course base material and final surface;
- The formation and shaping of all building envelopes, including retaining walls for the approved villas plus the approved pool and tennis court, including necessary retaining walls; and
- The provision of services (electricity, water, gas, telecommunications).

There are also road upgrade works in progress from the main Milton Park entrance gate at the end of Horderns Road, to the boundary of the Village 2 site.

Proposed Development

The proposed development is a two-lot subdivision of Lot 313 DP 1245164. This existing lot was created as a consequence of an approved two lot subdivision of Lot 3 DP 740232, that was granted by Council under development consent LUA00/0898.

Proposed Lot 1 is a 40-hectare parcel that is to the north of the Milton Park Country House Hotel and gardens and north of the existing Village 1 villas. It will accommodate an existing dwelling house that was approved by Council under LUA03/0812. This dwelling is situated in the north west corner of proposed lot 1 and has vehicular access off the eastern end of Kimberley Drive Bowral.

Apart from the dwelling, proposed Lot 1 is open grazing land. It also accommodates the existing on-site waste water treatment pumping station and treatment/maturation pond that is an integral part of the original site development process. This infrastructure is accommodated within appropriate easements as described upon the Plan of Proposed Subdivision.

Proposed Lot 2 is approximately 13-hectare parcel that is situated to the east of the Milton Park Country House and gardens. This lot reflects the approved development area for the Village 2 villas. Within proposed Lot 2, work has commenced that reflects the approval issued by Council under LUA11/0869, for which a Construction Certificate has been issued.

The proposed subdivision represents a more logical and relevant property boundary for ongoing management of land associated with an approved development outcome at Milton Park and a single 40-hectare parcel that accommodates a single residential dwelling house.



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING
Wednesday 07 April 2021
DEVELOPMENT APPLICATIONS



Figure 3: Aerial view of proposed Lot 2 showing the building pads and roads constructed pursuant to LUA11/0869. (Attachment 5)



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING
Wednesday 07 April 2021
DEVELOPMENT APPLICATIONS



Figure 4: Aerial view of Village 1 that sits in its own Strata Plan. (Attachment 6)



Figure 5: Aerial view of existing dwelling that will be accommodated on the 40-hectare proposed Lot 1. (Attachment 7).



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



STATUTORY PROVISIONS

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

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. After undertaking a desktop search using Council's Property and Rating database, Council is satisfied the land is not a site of possible contamination and therefore no further assessment is required.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The catchment SEPP aims:

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

Whilst the development is a Module 1 under the NorBE Guidelines, and Council has assumed concurrence to consider water quality, Water NSW have provided input into the assessment and provided suggestions to Council for imposed conditions of consent. In accordance with clause 10 of the Catchment SEPP, the NorBE Tool has been used to determine that the carrying out of the proposed development would have a neutral or beneficial effect on water quality subject to conditions of consent that have been provided in the draft conditions as described in **Attachment 1** to the report.

Local Environmental Plans

Wingecarribee Local Environmental plan 2010

The relevant provisions of the LEP are discussed as follows.

Clause 1.2—Aims of Plan

The proposed development is considered satisfactory with respect to the particular aims specified by clause 1.2 (2).

Clause 2.3—Zone objectives and Land Use Table

The land is zoned E3 Environmental Management. Development of the Milton Park site would not be permissible development within the E3 zone that now applies to the land.

However, the original development to which this application is connected, was lawfully approved under the provisions of Wingecarribee Local Environmental Plan – Amendment No. 84, dated 15 April 1985, which permitted, amongst other things, 44 strata titled villas on the land.

The original Development Application was subsequently issued (DA32/27/3182/84) to reflect that LEP amendment.

In relation to the objectives of the E3 Environmental Management zone that now applies to the land, it is again noted that the proposed subdivision is giving effect to an existing development consent which is in force, a substantial part of which has been completed.

The original development approval specifically set aside underlying zoning of the land as it applied at that time, in favour of the development proposal under DA32/28/3182/84.



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Having said that it is still instructive to measure the proposed subdivision against the zone objectives which are expressed as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns.*
- *To minimise the proliferation of buildings and other structures in these sensitive landscape areas.*
- *To provide for a restricted range of development and land use activities that provide for rural settlement, sustainable agriculture, other types of economic and employment.*
- *Development, recreation and community amenity in identified drinking water catchment areas.*
- *To protect significant agricultural resources (soil, water and vegetation) in recognition of their value to Wingecarribee's longer term economic sustainability.*

With regard to these specific objectives of the E3 Environmental Management Zone:

- ❖ The development does not preclude appropriate management of the site, in fact it facilitates it;
- ❖ There is no ecological significance associated with the portion of the site upon which the development will proceed that is compromised by the new lot boundaries;
- ❖ There is no view impact associated with the development;
- ❖ There is no impact upon the values of the site, including upon the historic values of the site which have been faithfully retained and restored;
- ❖ The application does not propose a proliferation of buildings because it is a subdivision that requires no work nor does it allow for any further buildings that have not already been approved.

Clause 2.6—Subdivision—consent requirements

Clause 2.6 (1) effectively specifies the land may be subdivided only with development consent.

Clause 4.1—Minimum subdivision lot size

With reference to the Minimum Lot Size Maps of the WLEP2010 that are referenced in Clause 4.1(3), the minimum lot size for subdivision in this locality is 40 hectares.

Proposed Lot 1 is 40 hectares and therefore compliant.

Proposed Lot 2 is approximately 13 hectares and is therefore non-compliant with this numerical standard.



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Clause 4.2 – Exceptions to minimum subdivision lot sizes for certain rural subdivisions.

This clause provides for some alternative lot size outcomes outside of the regular 40-hectare standard.

The objective of the clause is set out in Subclause (1) as follows:

- (1) *The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of permissible uses other than for the purpose of dwelling houses or dual occupancies.*

In this case, the subdivision is not proposed for the purpose of creating entitlements for dwelling houses or dual occupancies. On proposed lot 1 there will an existing dwelling house, but this lot is the required 40 hectares and can be considered a fully compliant parcel.

The purpose of Proposed Lot 2 is to describe a development parcel that aligns with a previous development approval that has already been activated with that development now under construction.

Subclause (2) makes clear that it applies to land within the E3 Environmental Management Zone.

Subclause (3) states that it is possible for Council to grant consent to subdivide land and create a lot less than the minimum lot size.

- (3) *Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under any existing consent for the land.*

In this case, the proposed subdivision will not lead to any change of land use.

Propose Lot 1 is a compliant 40-hectare site. It will accommodate an approved and constructed dwelling house.

For Proposed Lot 2, which is less than the standard 40 hectares, it will facilitate the management of land in accordance with approvals that have been granted, dating back to DA32/27/3182/84 and more recently LUA11/0869. The approved use upon proposed Lot 2 is not a dwelling house or a dual occupancy.

Subclause (4) sets out the matters that Council, as the consent authority, must be satisfied of, if it is to grant consent under Clause 4.2D. The matters are:

- (a) *The subdivision will not adversely affect the use of the surrounding land for agriculture; and*
 (b) *The subdivision is necessary for the ongoing operation of the permissible use; and*
 (c) *The subdivision is appropriate having regard to the natural and physical constraints affecting the land.*

In relation to proposed Lot 1, its 40-hectare site area is compliant with the minimum standard and as a larger land holding, it has capacity for agriculture if that was a desired land use. The Lot already accommodates an existing dwelling house. All surrounding land is typical of the locality, with land parcels of different sizes and a range of low-key agriculture, mainly stock grazing. There are large homes enjoying a rural residential amenity. Lot 1 is completely consistent with this existing character.

Proposed Lot 2 is much smaller, deliberately so, because it has the specific purpose of establishing a parcel that relates to the Village 2 villas that have been approved and are



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



now under construction. The boundary definition of this 'development parcel' will ensure that the approved Village 2 development area is clear, and Village 2 can be readily managed and that surrounding lands are not impacted.

The proposed subdivision is appropriate having regard to the natural and physical constraints of the land because it will provide two lots, both of which will be 'fit for purpose'.

Proposed Lot 1 will accommodate an existing dwelling house on a large rural lot that will be completely consistent with all surrounding large rural lots.

Proposed Lot 2 will accommodate the approved Village 2 villas in the same way that the Village 1 villas are completely contained within their own parcel, being SP32202.

Clause 5.10—Heritage Conservation

Part 5 of WLEP2010 deals with miscellaneous provisions, one of which is Clause 5.10, Heritage conservation.

Milton Park (house, grounds and outbuildings), are listed as an item of environmental heritage in Schedule 5 of WLEP2010 and as a consequence, Clause 5.10 of the WLEP 2020 is relevant.

Council's heritage inventory sheets, that provide some background to the listing of items, does not contemplate the entire Milton Park site as heritage significant. It is generally considered that the significant heritage precinct is contained within what is now Lot 310 DP1191798, although there are physical remnants of individual original buildings across the site. As noted previously, these other buildings are now in good condition having been restored and are being utilised for a variety of uses in accordance with the original development consent DA32/27/3182/84.

The current Schedule 5 heritage listing is reflected in the heritage maps of the WLEP2010. With reference to the maps it can be seen that proposed Lot 1 is outside of the heritage area, whereas proposed Lot 2 is within the heritage precinct as depicted on the maps.

Clause 5.10(5)(c) is relevant. This sub clause deals with development on land within the vicinity of a heritage item and may, in some circumstances, require the preparation of a heritage management document that assesses the extent to which a development may affect the heritage significance of an item.

The proposed development does not contemplate any work to the Milton Park house, grounds, gardens or any outbuildings. This is because the subdivision requires no work and is necessary only to facilitate the ongoing management of development that is already built (dwelling house on Proposed Lot 1) or under construction (Village 2 villas on Proposed Lot 2).

In previous considerations of the matter, Council had been concerned in regard to potential heritage impacts, in particular the potential for visual impact when viewed from Milton Park house and gardens. With no building work proposed or facilitated by the subdivision and with Proposed Lot 2 creating a parcel of land in the location that was identified for Village 2 in the original development consent, there is no heritage impact upon the listed item. As can be seen from the change that has occurred between the legal property descriptions listed in Schedule 5 and the legal property descriptions that currently exist, it is not the property boundaries that affect the heritage characteristics of the broader Milton Park Estate. It is the retention of the original homestead, gardens and associated outbuildings and none of these are impacted by the proposed subdivision.

Clause 7.4 and 7.5—Biodiversity and Water



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Clauses 7.4 and 7.5 relating to natural resources sensitivity for both biodiversity and water. The site is not affected by the biodiversity wildlife corridor but there are a number of Category 3 streams that traverse the site. However, as previously described, the subdivision does not contemplate work, nor does it facilitate any additional future development.

Clause 7.10—Public utility infrastructure

Provided all recommended consent conditions are complied with, the proposed development will have access to water supply, electricity supply and sewerage infrastructure.

Development Control Plans

Rural Lands Development Control Plan

The applicable sections of the Rural Lands DCP have been considered in this assessment:

Part A—Managing our Rural Lands

Section 2—Classification and Distribution of Rural Lands

Section A2.4—Agricultural Land Classification

Section A2.5.4—Environmental Management (E3)

Section A2.7—Subdivision of Rural Land.

Section A2.7.1—Allotment Sizes

Section 3—Ecologically Sustainable Development

Section A3.2—Development in Sydney's Drinking Water Catchments

Section 8—Heritage and Landscape Conservation.

Section A8.4—Development in the Vicinity of Heritage Items.

The proposal is not considered to be inconsistent with these sections of the DCP subject to the imposition of conditions as recommended.

Section 4.15 Evaluation

(1) Matters for consideration—general

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

(a) the provisions of:

(i) any environmental planning instrument, and

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

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

Not applicable.



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



(iii) any development control plan, and

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

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Provided all recommended consent conditions are complied with, the likely impacts of the proposed development are considered acceptable.

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

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

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

Refer to the Consultation section of this report.

(e) the public interest.

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

CONSULTATION

Pre-lodgement Meeting

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

External Referrals

Referrals	Advice/Response/Conditions
NSW Rural Fire Service (integrated development)	The RFS has provided their General Terms of Approval, under Division 4.8 of the <i>Environmental Planning and Assessment Act 1997</i> , and a Bush Fire Safety Authority, under section 100B of the <i>Rural Fires Act 1997</i> dated 20 October 2020 subject to conditions



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Referrals	Advice/Response/Conditions
	that are included in the draft notice of determination.
Natural Resources Access Regulator	Controlled Activity not required.
Heritage Council of New South Wales	The Heritage Council of New South Wales has provided their General terms of Approval for the land inside of the State Heritage Register listing boundary, in accordance with Section 4.47 of the <i>Environmental Planning and Assessment Act 1979</i> , dated 16 November 2020 subject to conditions that are included in the draft notice of determination.

Internal Referrals

Referrals	Advice/Response/Conditions
Development Engineer	No objection, subject to various recommended consent conditions.
Development Engineer – Water & Sewer	No objection, subject to various recommended consent conditions.
Environmental Health Officer (OSSM)	No objection, subject to various recommended consent conditions.

Neighbour Notification (or Advertising)/Public Participation

The development application was Neighbour Notified from 04/09/20 to 25/09/20 and Council received 8 submissions, objecting to the proposed development. The issues raised in the submissions have been summarised and are considered below:

Issues	Response
The development of Milton Park was intended to carefully follow the master plan approved in 1984.	The proposed 2 lot subdivision is to provide a small allotment to cater for the strata subdivision of village 2 that is under construction under DA11/0869.
The existing dwelling house constructed nearly a kilometre away and built as a demonstration home has a combined area of 500 square metres and is significantly larger than the dwellings in the strata.	The application under consideration is purely for subdivision and is to cater for the future strata subdivision of village 2.
Unlike the buildings for Village 2 in the approved Master Plan, the buildings for Village 2 will be visible from our villa for a period of About 4 months spanning winter and spring.	The proposed 2 lot subdivision is to provide a small allotment to cater for the strata subdivision of village 2 that is under construction under LUA11/0869.
The location of village 2 was firmly established in 1984. The design and location of the proposed villas have no relationship to their design and location in the approved master plan.	The proposed 2 lot subdivision is to provide a small allotment to cater for the strata subdivision of village 2 that is under construction under LUA11/0869.



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Issues	Response
The existing dwelling which is included in proposed Lot 1 was not a part of the original approval for Milton Park and was undertaken separately by the applicant.	The dwelling was constructed under an approved development consent.
If it is suggested that this development application is only for the subdivision of land and the development of village 2 has nothing to do with it then such an argument is not supported by the application.	Village 2 is under construction under LUA11/0869 and the current application is only for subdivision.
Council should consider if the use is permissible for multi dwelling housing.	The application is permissible for a 2-lot subdivision. The villas are under construction under LUA11/0869.
Milton Park is a heritage item and the application should be assessed by the Heritage Council of NSW.	The application was referred to the Heritage Council of NSW who have provided their General Terms of Approval.
The Hotel should not be accountable for the ongoing usage costs of this development.	The application is for a subdivision only and does not involve building works therefore there are no ongoing costs to the Hotel.
The proposed subdivision allows for further fragmentation of lots against the objectives of the DCP. All the outbuildings should be kept together with a parcel of rural land to ensure no further break-up of the estate.	The estate has been fragmented in past approvals and this subdivision application is to provide for the strata subdivision of the land to accommodate the previously approve village 2.
Water metering and costs need to be addressed to avoid Yufan paying the usage costs for the entire site and is a solution that should be resolved by Council.	The water usage and water metering on the entire site is for the owners of the land to resolve.
Council approved the application for Village 2, which was significantly different from the Masterplan and allowed 6 villas to be outside the allocated land	This application is for subdivision only and the construction of the Villas was approved under LUA 11/08659.
The masterplan did not envisage this subdivision. This would allow the applicant to sell off the "Lake House" with 40 hectares of land.	The masterplan did not provide restrictions on title that prevent the subdivision of land.
It is obvious that another tourist resort on the state was never considered in 1985, especially one that would compete with the Hotel an degrade the heritage of the Milton Park House and grounds that it was meant to protect.	This is incorrect and in fact DA5039 D1 & D2 – 575/89 (dated 14/09/1989) granted consent for alterations and additions to existing hotel, Tourist Facility including 18-hole golf course, Golf Lodge Hotel, Highlands House Hotel, equestrian centre, polo fields, tennis courts,



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



Issues	Response
	swimming pools and main entry gates. Whilst works were carried out to form the golf course, this consent has not proceeded.
It has been our experience that Council in general, and perhaps through financial means, does not prioritise and ensure compliance of the law, and we are concerned that these buildings will be used incorrectly without such clarification.	Council has Compliance Officers that ensure strict compliance with development consents and land usage. The usage of the villas as approved in the future is not the subject of this application.
I support the sub-division of this land provided the following rights are protected: <ul style="list-style-type: none"> • The recreational leases current and maintained and protected for residents of SP32202 	The current leases and restrictions over the current land will be carried across to the new lots.

SUSTAINABILITY ASSESSMENT

• **Environment**

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

• **Social**

There are no social issues in relation to this report. • **Broader Economic Implications**

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

There are no cultural issues in relation to this report. • **Governance**

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

COUNCIL BUDGET IMPLICATIONS

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

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 07 April 2021

DEVELOPMENT APPLICATIONS



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

RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010* and the Rural Lands Development Control Plan. No other Council policies apply to the subject development

OPTIONS

The options available to Council are:

Option 1

That the Council determines Development Application 21/0257 by granting consent, subject to the conditions specified by **Attachment 1**.

Option 2

That the Council determines Development Application 21/0257 by refusing consent and specifies the reasons for its determination.

Option 1 is the recommended option to this report.

CONCLUSION

It is recommended Development Application 21/0257 which seeks approval for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be supported subject to conditions.

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

ATTACHMENTS

1. DA21/0257 - Draft Condition of Consent
2. Plan of Subdivision - *circulated under separate cover*
3. DA/0257 - Locality Map - *circulated under separate cover*
4. DA21/0257 - Aerial image - *circulated under separate cover*
5. DA21/0257 - Aerial view of proposed Lot 2 - *circulated under separate cover*
6. DA21/0257 - Aerial view of Village 1 - *circulated under separate cover*
7. DA21/0257 - Aerial view of existing dwelling that will be accommodated on proposed Lot 1 - *circulated under separate cover*

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313
DP1245164, 27 Kimberley Drive Bowral
ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



TBA

TUJILLO PTY LIMITED
PRIVATE BAG 1
BOWRAL NSW 2576



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

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

APPLICATION NO:	21/0257
APPLICANT:	TUJILLO PTY LIMITED
OWNER:	TUJILLO PTY LIMITED
PROPERTY DESCRIPTION:	Part Lot 313 DP 1245164
PROPERTY ADDRESS:	27 KIMBERLEY DRIVE BOWRAL NSW 2576
PROPOSED DEVELOPMENT:	Subdivision - 2 Lots
DETERMINATION:	Approval subject to conditions
CONSENT TO OPERATE FROM:	TBA
CONSENT TO LAPSE ON:	TBA

Rights of Appeal

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

Review of Determination

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

Ross Jauncey
Development Assessment Planner

TBA
Date of Determination

Working with you

WSC.NSW.GOV.AU

WINGECARRIBEE - A COAL MINING FREE SHIRE

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021

AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313
DP1245164, 27 Kimberley Drive Bowral
ATTACHMENT 1 DA21/0257 - Draft Condition of Consent

21/0257, Part Lot 313 DP 1245164

SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

ADMINISTRATION CONDITIONS

1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Subdivision – 2 Lots.

Reason: To confirm the use of the approved development.

2. Development in Accordance with Plans and Documents

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Plan of Subdivision of Lot 313 DP 1246164	Ref: 13147	Richard Cox	13-05-2016
Plan of Subdivision of Lot 313 DP 1246164	Ref: 13147, Sheet 2	Richard Cox	13-05-2016
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	August 2020
Bushfire Report	Ref: 3813	Harris Environmental Consulting	29/07/2020

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

3. Inconsistency between documents

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

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

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

4. Application for a Subdivision Works Certificate

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

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
 ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
 PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

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

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

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

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

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

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

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

- Water Services
- Stormwater services
- Sewerage services

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

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021

AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313
DP1245164, 27 Kimberley Drive Bowral

ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK**7. Notice of Commencement**

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

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

Reason: *Statutory requirement.*

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

8. Principal Certifier (PC) Sign

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifier (PC) by showing the name, address and telephone number of the Principal Certifier (PC);
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

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

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Advice: *Where Council is the PCA, signage is available from Council.*

Reason: *Statutory requirement.*

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021

AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313
DP1245164, 27 Kimberley Drive Bowral
ATTACHMENT 1 DA21/0257 - Draft Condition of Consent

21/0257, Part Lot 313 DP 1245164

9. Subdivision Works Certificate & Appointment of Principal Certifier (PC)

Subdivision work in accordance with a consent must not commence until:

- (a) A Subdivision Works Certificate has been issued.
- (b) The person having the benefit of the development consent has appointed the Principal Certifier (PC).
- (c) The Principal Certifier (PC) (if not Council) has, no later than two (2) days before the subdivision work commences, notified the Council (or other consent authority where applicable) of the Principal Certifier's (PC) appointment.
- (d) The person having the benefit of the consent has given at least two (2) days' notice to the Council of the person's intention to commence the subdivision work.

Advice: *Crown work certified in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 is exempted from the above requirements.*

Reason: *Statutory requirement.*

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

10. Subdivision Certificate

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

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

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

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

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

11. Legal Instruments

All instruments setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B of the *Conveyancing Act 1919* that were applicable to Lot 313 DP 1245164 shall be carried through and be placed on the proposed Lots 1 and 2

Reason: *To ensure proper land management under the Act.*

12. Section 68 Local Government Act Final

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
 ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
 PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313
 DP1245164, 27 Kimberley Drive Bowral
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

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

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

13. **Wastewater Treatment and Effluent Management Systems**

To maintain the functionality and effectiveness of the wastewater treatment system, maturation ponds, effluent pond and irrigation systems over the long term the following is required:

- (a) An Operation Environmental Management Plan (OEMP) detailing the location of all aspects of the wastewater and effluent management systems; procedures and responsibilities for inspection, maintenance and management of the systems. The OEMP shall be distributed to all lots owners/strata corporations that benefit or are burdened from the systems, and
- (b) Plan of subdivision showing all easements (benefiting or burdened) related to all components of the wastewater treatment and management systems including Lot 310 DP 1191798, SP 32232 and the proposed Lot 1 requiring easements over the proposed Lot 2 to irrigate treated wastewater.

Reason: *To maintain the functionality and effectiveness of the wastewater treatment and effluent management system.*

14. **Existing Services - Reticulation**

An easement (Section 88B of the *Conveyancing Act 1919*) shall be created in favour of Lot 2 over the following assets:

- (a) Private sewer main and wastewater treatment system; and
- (b) Private water service

Located centrally within that easement.

Details of registration of the above easement shall be submitted to Council prior to the release of the Subdivision Certificate.

Reason: *Statutory requirement.*

15. **Construction of Water Service**

Each lot in the subdivision shall have its own dedicated water service prior to the issue of the Subdivision Certificate.

In the case that a new water service is required Council's application form shall be completed by the developer and the appropriate fee paid.

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

INTEGRATED DEVELOPMENT CONDITIONS

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
 ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
 PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

16. General Terms of Approval – Heritage Council of NSW

General Terms of Approval have been granted by the Heritage Council of NSW for the development pursuant to section 4.47 of the *Environmental Planning and Assessment Act 1979*. The conditions provided by the Heritage Council of NSW are provided below:



Ross Jauncey
 Development Assessment Planner
 Wingecarribee Shire Council
 By email: ross.jauncey@wsc.nsw.gov.au

Dear Mr Jauncey

**HERITAGE COUNCIL OF NSW – GENERAL TERMS OF APPROVAL
 INTEGRATED DEVELOPMENT APPLICATION**

Address: 27 Kimberley Drive, Bowral 2576 NSW
SHR item: Milton Park Cultural Landscape (SHR no. 02026)
Proposal: Two lot subdivision
IDA application no: IDA/2020/110, received 12 October 2020

As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application.

The majority of the land subject to the proposed subdivision is located outside of the State Heritage Register (SHR) listing boundary. The Heritage Council does not have the authority to grant general terms of approval in relation to development to the land outside of that SHR listing boundary. Therefore, the below general terms of approval only apply to the land within this boundary.

In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following general terms of approval are granted (for the land inside of the State Heritage Register listing boundary):

APPROVED DEVELOPMENT

1. Development must be in accordance with:
 - a) Subdivision drawings, prepared by Richard R Cox as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: Plan of Subdivision of Lot 313 DP 1245164			
Sheet 1	N/A	12/05/16	N/A
Sheet 2	N/A	13/05/16	N/A
 - b) Statement of Environmental Effects for Proposed Subdivision of Lot 313 DP 1245164 at Milton Park Horizons Road Bowral, prepared by LEP, dated August 2020.

EXCEPT AS AMENDED by the following general terms of approval:

COMPLIANCE

2. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

Level 6, 10 Valentine Ave Parramatta NSW 2150 Locked Mail Bag 5020 Parramatta NSW 2124
 P: 02 9873 8500 E: the.heritage@wsc.nsw.gov.au

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral
 ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
 PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

SECTION 60 APPLICATION

3. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

COMMENTS ON PROPOSED SUBDIVISION OUTSIDE SHR CURTILAGE:

The reasons for the proposed subdivision provided in the Statement of Environmental Effects are ambiguous and insufficient. The proposed Lot 2 is significantly larger than the original Lot conceived for Village 2 and includes additional land and significant historic outbuildings. The area added to the original Lot 2 is significant due to historic view lines. It is recommended that these views be retained in any future development on the proposed Lot 2.

A number of historic outbuildings that are part of Milton Park Cultural Landscape (SHR no. 02026) are also included in the proposed Lot 2. The applicant should be advised that:

- Any development within the SHR curtilage will require an approval under the *Heritage Act 1977*; and
- Any development in the vicinity of these historic outbuilding (outside the SHR curtilage) must consider potential impacts upon the heritage significance of the SHR item.

Section 148 of the *Heritage Act 1977* (the Act) allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

Right of Appeal

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions regarding these general terms of approval, please contact Veerle Norbury, Senior Heritage Assessment Officer, at Heritage NSW, on 9873 8616 or veerle.norbury@environment.nsw.gov.au.

Yours sincerely

Rajeev Maini
 Senior Team Leader
 Regional Heritage Assessments South
 Heritage NSW
 Department of Premier and Cabinet
 As Delegate of the Heritage Council of NSW
 16 November 2020

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

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

5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164




NSW RURAL FIRE SERVICE

Wingecarribee Shire Council
 PO Box 141
 MOSS VALE NSW 2577

Your reference: 21/0257 (CNR-12067)
 Our reference: DA20201016003791-Original-1

ATTENTION: Elizabeth Garner
 ATTENTION:

Date: Tuesday 20 October 2020

Dear Sir/Madam,

Integrated Development Application
 s100B - Subdivision - Torrens Title Subdivision
 27 Kimberley Drive Bowral NSW 2576, 313/DP1245164, 314/DP1245164, 313/DP1245164

I refer to your correspondence dated 14/09/2020 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1993, are now issued subject to the following conditions:

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

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the site around the existing building on proposed Lot 1 must be managed as an inner protection area (IPA), in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019, for a distance of 15 metres. When establishing and maintaining an IPA the following requirements apply:

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

Postal address	Street address	
NSW Rural Fire Service Locker Bag 17 GRANDVILLE NSW 2242	NSW Rural Fire Service 4 Murray Street SYDNEY NSW 2000 NSW 2227	T (02) 8741 5055 F (02) 8741 5050 www.rfs.nsw.gov.au



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT
 PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313
 DP1245164, 27 Kimberley Drive Bowral
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

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

Access – Property Access

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

2. Property access roads must comply with the general requirements of Table 5.3b of Planning for Bush Fire Protection 2019 and the following:

- property access roads are two-wheel drive, all-weather roads;
- minimum 4m carriageway width;
- in forest, woodland and heath situations, rural property access roads have passing bays every 200m that are 20m long by 2m wide, making a minimum trafficable width of 6m at the passing bay;
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches;
- provide a suitable turning area in accordance with Appendix 3;
- curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress;
- the minimum distance between inner and outer curves is 6m; the crossfall is not more than 10 degrees;
- maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads.

Note: Some short constrictions in the access may be accepted where they are not less than 3.5m wide, extend for no more than 30m and where the obstruction cannot be reasonably avoided or removed.

Water and Utility Services

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

3. The provision of water, electricity and gas must comply with Table 5.3c of Planning for Bush Fire Protection 2019.

General Advice – Consent Authority to Note

Future development applications lodged on lots created within this subdivision may be subject to further assessment under the Environmental Planning & Assessment Act 1979 and the requirements of Planning for Bush Fire Protection 2019.

For any queries regarding this correspondence, please contact Adam Small on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
 Manager Planning & Environment Services
 Planning and Environment Services



5.1 S8.2 Review of DA21/0257.01 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No. 27 Kimberley Drive, Bowral

ATTACHMENT 5 Attachment 5 - DA 210257 Assessment Report considered by Panel on 7 April 2021



AGENDA FOR INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL MEETING

Wednesday 7 April 2021

5.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral

ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

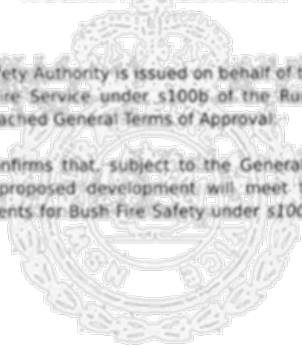


BUSH FIRE SAFETY AUTHORITY

Subdivision - Torrens Title Subdivision
27 Kimberley Drive Bowral NSW 2576. 313/DP1245164. 314/DP1245164. 313/DP1245164
RFS Reference: DA20201016003791-Original-1
Your Reference: 21/0257 (CNR-12067)

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

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.



Nika Fomin

Manager Planning & Environment Services
Planning and Environment Services

Tuesday 20 October 2020

END OF CONDITIONS

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon Road Bowral

Reference: 21/1840
Report Author: Senior Development Assessment Planner
Authoriser: Manager Development Assessment

PURPOSE

This report presents Development Application 21/1840 for the Panel's consideration, and recommends approval subject to conditions specified in **Attachment 1**.

Consultants:	Scott Lee – LEP Planning
Applicant:	Scott Lee – LEP Planning
Land Owner:	V J and R Vella
Land Zoning:	R2 Low Density Residential under Wingecarribee LEP 2010
Applicant's estimated cost of development:	\$nil (subdivision/boundary adjustment only)
Notification period:	28 May to 21 June 2021
Number of submissions:	Nil
Reason for Referral to Panel:	Development proposes a variation of greater than 10% from controls in an environmental planning instrument.

RECOMMENDATION

THAT the Wingecarribee Local Planning Panel determines development application 21/1840 for the subdivision/boundary adjustment between two lots at Lot 4 DP339390 and Lot 6 DP12732, No 36 Kangaloon Road, Bowral, by **APPROVAL** subject to conditions specified in **ATTACHMENT 1** to this report.

REPORT

Executive Summary

Development Application (DA) 21/1840 seeks consent for a subdivision/boundary adjustment between two existing lots. The purpose of the DA is to correct an encroachment of the existing dwelling over the common boundary.

The subject site contains 2 registered lots both with a street address of No 36 Kangaloon Road Bowral. The site is zoned R2 Low Density Residential under Wingecarribee LEP (WLEP) 2010 and is subject to a minimum lot size of 2000m². The lot sizes proposed to be created from the subdivision/boundary adjustment do not comply with the minimum lot size – Lot 4 is proposed to be 1986m² (0.7% variation) and Lot 6 is proposed to be 1056m² (47.2% variation).



It is noted that the existing 2 lots comprising the subject site also currently do not comply with the prescribed 2000m² minimum lot size.

A request for variation under Clause 4.6 WLEP 2010 has been submitted by the applicant. This is assessed in detail in the body of the report.

The DA was notified to neighbours in accordance with Council's Community Participation Plan, and no submissions were received. The DA has also been referred to a number of officers within and external to Council. No objections were raised from these referral officers. Further details on these processes are also provided in the body of the report.

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

REPORT

Site Description and Locality

The subject site is legally described as Lot 6 DP12732 and Lot 4 DP339390, with both lots having a street address of No 36 Kangaloon Road, Bowral. The land is located mid-block between Bendooley Street and Aitken Road on the northern side of Kangaloon Road, Bowral. The site is approximately 1.3km south of Bowral railway station.

Both lots comprising the site are irregular in shape. Lot 6 (the existing front lot) has a frontage of 48.905m to Kangaloon Road and a site area of 1891m². Lot 4 is a battle-axe lot at the rear with 6.096m frontage (access handle) to Kangaloon Road and a site area of 1132m² (including access handle).

The site contains a detached dwelling with detached outbuildings (on the front lot 6), and a shed on the otherwise-vacant rear lot 4. The land has a gentle, even slope from the rear of the site to the street. Both properties contain several trees and shrubs in a landscaped setting.

Surrounding development is low-density residential in nature (predominantly single detached dwellings) consistent with the R2 Low Density zoning of the subject and adjoining sites.

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

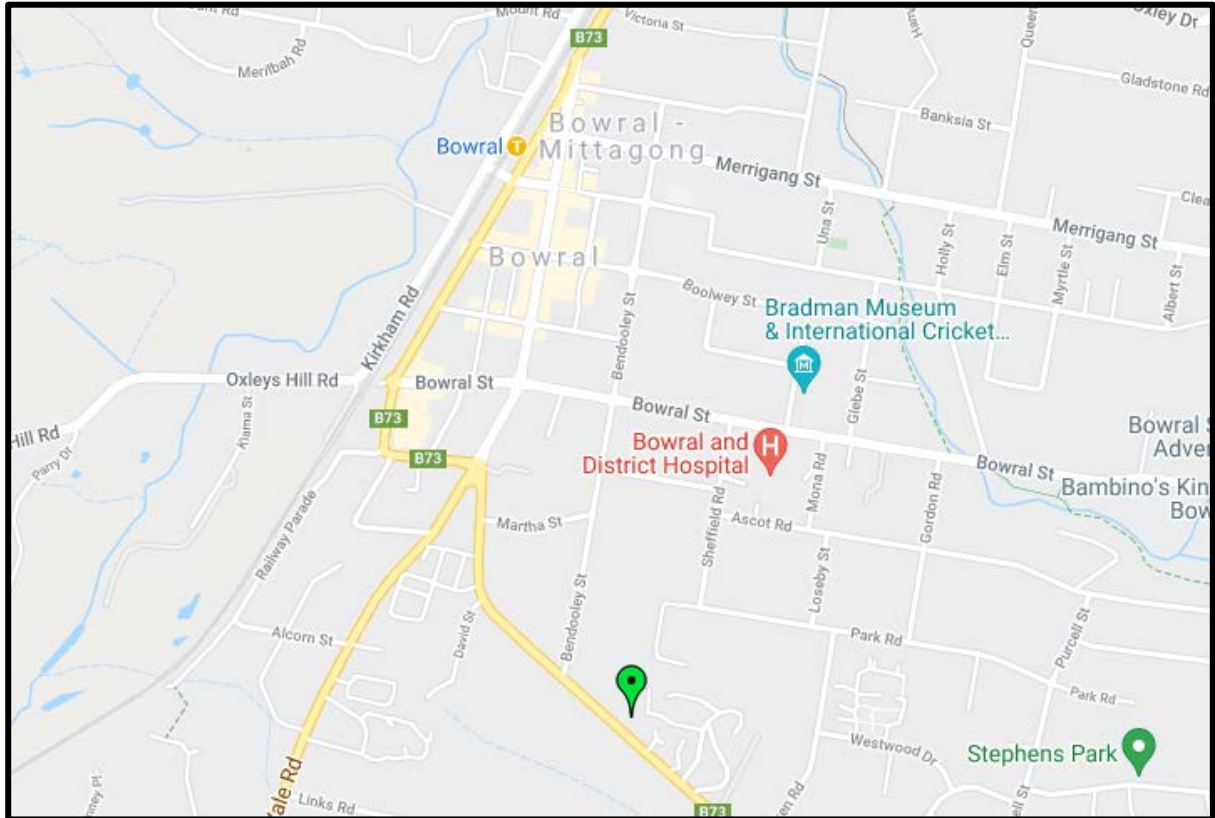


Figure 1: Locality Map (subject site shown by green tag)



Figure 2: Aerial Image (subject site shown by green tag)

Description of Proposed Development

The DA seeks consent for a subdivision/boundary adjustment between the two properties that comprise the subject site.

The main purpose of the boundary adjustment is to correct an encroachment of the existing dwelling (on front lot 6) over the boundary with Lot 4 – which encroaches into the access handle. The proposal also provides additional land area to the rear of the front lot, allowing an existing retaining wall/garden to be included in the area of the front lot.

The table below summarises the existing and proposed lot sizes involved in the boundary adjustment:

Site	Existing Lot Size (as per DP)	Proposed Lot Size
Lot 6 DP12732	1891m ²	1986m ²
No 4 DP339390	1132m ² (incl access handle)	789m ² (excl access handle); 1056m ² (incl access handle)

The plan of the proposed subdivision/boundary adjustment is provided below (**Figure 3**).

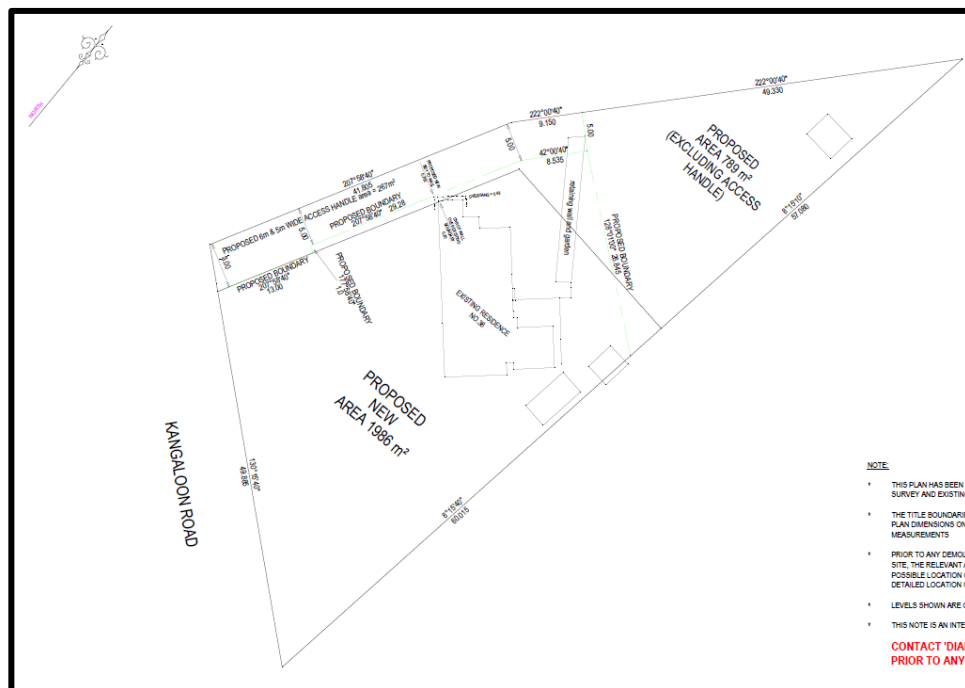


Figure 3 – Plan of Proposed Subdivision/Boundary Adjustment

PLANNING ASSESSMENT

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

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



State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. For most of its history, the land appears to have been used for residential purposes. Council is satisfied that the land is not a site of possible contamination and therefore no further assessment of contamination is required.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is within the Sydney Catchment and therefore the Catchment SEPP is applicable to the assessment of the application. The application is a Module 1 development for the purposes of the Neutral or Beneficial Effect on Water Quality Assessment Guideline and therefore Council has delegated authority to determine water quality. A NorBE assessment has been completed for the development with standard sediment and erosion conditions subject to delegated approval.

State Environmental Planning Policy (Koala Habitat Protection) 2021

SEPP (Koala Habitat Protection) 2021 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

Clause 12 of this SEPP provides as follows:

Development assessment process—other land

A council is not prevented from granting consent to a development application for consent to carry out development on land if—

- (a) the land does not have an approved koala plan of management applying to the land, or*
- (b) the council is satisfied that the land is not core koala habitat.*

Comment: The subject site does not have a koala plan of management; and is not core koala habitat. The site is in the town area of Bowral and contains predominantly landscaped gardens. The proposed development is also only for a boundary adjustment subdivision and does not involve removal of any vegetation. Accordingly, the proposal is acceptable in terms of SEPP (Koala Habitat Protection) 2021.

Wingecarribee Local Environmental Plan 2010

WLEP 2010 contains several provisions applicable to the proposed development, and these are discussed and assessed in the Table below:



Wingecarrabee Local Environmental Plan 2010

Clause	Control	Assessment	Compliance
2.3 Zone Objectives and land use table	<i>Provides objectives and permissible/prohibited landuses for the various zones under WLEP 2010</i>	The site is zoned R2 Low Density Residential and the proposed development is permissible with development consent. The proposal is consistent with the aims and objectives of the zone, as demonstrated and discussed throughout this report.	Yes
2.6 Subdivision – consent requirements	<i>Requires consent for subdivision</i>	A development application has been lodged for the proposed subdivision.	Yes
4.1 Minimum subdivision lot size	<i>Prescribes minimum lot sizes. The minimum lot size for this property is 2000m² (V).</i>	Proposed Lot 4 = 1986m ² Proposed Lot 2 = 1056m ² Neither lots comply – however this is a boundary adjustment of existing lots which also do not presently comply with minimum lot sizes. See discussion below	No, but acceptable
4.6 Exemptions to Development Standards	<i>Provides for exceptions to development standards to be considered</i>	The applicant has submitted a request for variation under cl 4.6 WLEP 2010 to support the requested variation to the minimum lot size. See discussion below.	Yes

Clause 4.6 – Exceptions to Development Standards

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 2000m² for the subject site. The DA seeks a variation to the minimum lot size in respect of both lots – Lot 4 proposes an area of 1986m² (0.007% variation), and Lot 2 proposes an area of 1056m² (47.2% variation). 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 clause 4.6 request for variation is included **Attachment 3** 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 2000m².

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:

In relation to the specific request to vary the minimum lot size development standard, the specific environmental planning grounds to justify the breach of the standard are outlined as follows.

- *the proposed development is a positive response to Council's long held strategic vision for low density residential development in this locality. Allowing a two-lot subdivision of a parcel that is, for all intents and purposes, compliant with the objectives of the required minimum lot size threshold, will give effect to established strategic objectives and this is a valid environmental planning grounds.*
- *the allowable 2000m² minimum lot size envisages development of the type proposed. The proposed boundary adjustment between two existing lots does not lead to development density that is greater than could have been anticipated having regard to the characteristics of the locality. While it could not be said that the development standard has been abandoned, it is reasonable to say that it is of lesser significance in this locality than it may be in other localities that display a different land use pattern. The noncompliance will be indistinguishable in terms of overall site area to other adjacent lots, most of which are less than the 2000sqm minimum. The larger of the two lots, because it already has residential development built on it, will maintain an appropriate relationship with all other adjoining lots so it will not be perceived as a smaller lot than its partners. The smaller lot, being the internal lot, will have no impact upon the character of the area.*
- *A development that strictly complies with the minimum lot size standard would be indistinguishable from a non-compliant lot but will result in a less than optimum outcome. If the proposed development was compliant with the lot size standard, it*



would not be a different outcome when viewed from any adjoining property or from any public place.

The proposed development:

- *maintains the objectives of the lot size standard;*
- *maintains the objectives of the R2 Low Density Residential zone; and*
- *provides a greater opportunity for appropriate long-term management of an important residential resource.*
- *results in an outcome where the performance-based controls of Council's DCP for the built form (setbacks, height, floor area etc) can readily be achieved. The building area available for the proposed rear lot is large enough and located appropriately to allow development to proceed without major constraints.*

Assessment Officer's comment: The applicant's comments regarding consistency with the objectives of clause 4.1 are noted and generally supported.

It should be recognised that this proposal is a boundary adjustment between two existing lots, neither of which currently comply with the 2000m² minimum lot size prescribed for this location. The only reason for the proposal is to correct an encroachment in relation to built structures relative to the existing boundaries.

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 considered that there are enough 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 also not particularly relevant to the development. It is not possible to require or achieve compliance with the minimum lot size for this subdivision, given that the existing lots also do not comply with the minimum lot size. The proposed development does not seek to create new non-compliant allotments.

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: Council has generally been consistent in maintaining the 2000m² minimum lot size for subdivisions in this location. Whilst some (existing) lots in the immediate vicinity may be less than the 2000m² minimum lot size, these are generally older lots which pre-date the current planning controls which prevail in this location.

Test 5 - The zoning of the 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 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.

Conclusion – Assessment of Clause 4.6 Request for Variation

As discussed in the preceding assessment, the proposed development is considered to be acceptable in terms of the proposed lot sizes, despite the non-compliance with the numerical control prescribed in clause 4.1 of WLEP 2010.

In summary, the proposal is acceptable because it only involves a boundary adjustment subdivision between existing allotments which do not comply with the minimum lot size standards in WLEP 2010.

Bowral Township Development Control Plan

The development is subject to the Bowral Township DCP. The controls for Subdivision (ie including Boundary Adjustments) are included in Part A Section 7 of this DCP. An assessment of the proposal against the relevant sections of the DCP follows:

Section	Control	Assessment	Compliance
A7.1.1 Minimum Lot Sizes	<i>Minimum Lot Sizes Prescribes Minimum Lot sizes (consistent with WLEP 2010)</i>	As stated above, the proposal does not comply with the WLEP 2010 minimum lot size for each proposed lot – however neither do the existing lots and this proposal is only for a boundary adjustment.	No, but acceptable.
A7.1.2 Building Envelopes	<i>States that building envelopes may need to be considered for various planning reasons.</i>	Boundary adjustment only. Lot 6 has an existing dwelling, no proposal to demolish/replace. Lot 4 is vacant. No reason why building envelope would be required. Building envelopes are not considered necessary.	Yes
A7.1.3 Noxious and Environmental Weeds	<i>Noxious weeds to be eradicated as part of any subdivision proposal</i>	Site contains no noxious weeds	Yes
A7.1.4 Landscape Embellishment	<i>Landscape embellishment generally to be required as a condition of consent.</i>	There are no landscaping issues requiring submission of a landscape plan or provision of landscaping.	Yes



Section	Control	Assessment	Compliance
A7.1.5 Street Trees	<i>Street tree planting may be required to provide a unified theme for the villages.</i>	There are no street trees along the frontage of Kangaloon Road. Therefore this application would not require additional street tree planting to embellish the existing street tree corridor	Yes
A7.1.6 Lighting	<i>Standard street lighting required where new streets created as part of the subdivision.</i>	No new street lighting is required from the proposed subdivision. There is existing street lighting provided on the opposite side of the road.	Yes

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

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

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

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

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

The likely impacts of the development have been discussed throughout this report. The proposed subdivision/boundary adjustment would have minimal negative impact on the environment. The proposal would correct an encroachment of the existing dwelling over the common internal boundary between the two lots forming this site, and therefore it is a beneficial impact that the proposed boundary adjustment would resolve this issue.

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, below.

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



Having regard to the circumstances of the case, approval of the proposed subdivision is in the public interest, as it resolves the boundary encroachment issue previously identified and therefore prevents any future issues if either lot is sold.

Community Consultation

Neighbouring property owners/occupiers were notified of the application in accordance with Council's Community Participation Plan for a minimum period of 28 May to 21 June 2021. No submissions were received.

Internal and External Communications

Referral Comments:

Development Engineer: Initially, the Development Engineer raised concerns that the proposed access handle did not comply with the minimum Council requirement of 6m width. However, after a meeting between the Development Engineer, the assessment officer and the Manager Development Assessment, it was agreed that as the lots are existing, and the purpose of the proposal is to correct an encroachment of the existing dwelling into over the lot boundary, the proposal could be supported.

Appropriate conditions of consent were provided for inclusion in the consent.

Manager – Environment & Sustainability: Advised that there is no native tree or native vegetation on the site. Had no comment from a biodiversity perspective.

Conclusion

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

Though the proposal involves a non-compliance with the minimum lot size prescribed under clause 4.1 WLEP 2010 (2000m²), this is acceptable on the basis that the existing lots also do not comply with this minimum lot size, and the proposal only involves a boundary adjustment between existing lots.

The applicant has submitted the requisite request for variation under Clause 4.6 WLEP 2010 to the minimum lot size requirement. The clause 4.6 request for variation is worthy of support.

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

ATTACHMENTS

1. Draft Conditions - 36 Kangaloon
2. Plan of Subdivision - 36 Kangaloon
3. Clause 4.6 Request - 36 Kangaloon



#DATE

LEE ENVIRONMENTAL PLANNING
33 HOLLY STREET
BOWRAL NSW 2576



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

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

APPLICATION NO:	21/1840
APPLICANT:	LEE ENVIRONMENTAL PLANNING
OWNER:	VJ VELLA & R VELLA
PROPERTY DESCRIPTION:	Lot 6 DP 12732; Lot 4 DP 339390
PROPERTY ADDRESS:	36 KANGALOO ROAD BOWRAL NSW 2576
PROPOSED DEVELOPMENT:	Subdivision - Boundary Adjustment
DETERMINATION:	Approval subject to conditions
CONSENT TO OPERATE FROM:	#DATE
CONSENT TO LAPSE ON:	#DATE + 5 years

Rights of Appeal

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

Review of Determination

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



Chris Young
Senior Development Assessment Planner

DATE
Date of Determination

Working with you

WSC.NSW.GOV.AU

WINGECARRIBEE - A COAL MINING FREE SHIRE

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon

21/1840, Lot 6 DP 12732
Lot 4 DP 339390

SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

ADMINISTRATION CONDITIONS**1. Development Description**

Development consent has been granted in accordance with this notice of determination for the purposes of Subdivision – boundary adjustment (between 2 existing lots).

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

2. Development in Accordance with Plans and Documents

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

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Plan showing proposed boundary adjustment	210004.dwg Sheet 1 of 1	John McDonald Group	02/03/2021
Concept Drainage Plan; Concept Erosion & Sediment Control Plan;	2104 CD01 Sheet 1-3	Civil Development Solutions	07/05/2021
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	May 2021

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

3. Inconsistency between documents

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

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

4. Dwelling Entitlement – Existing/Original Lots

The existing/original Lots comprising the subject land (Lot 6 DP 12732; Lot 4 DP 339390) are noted to enjoy dwelling entitlements in accordance with Clause 7.1(1) of Wingecarribee LEP 2010. The clause 4.6 variation granted for the subject application (subdivision – boundary adjustment) enables Council to consider a further Clause 4.6 variation accompanying any future applications for dwellings upon the approved lots.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE**5. Amendments to Approved Documentation**

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

The following amendments to the approved documentation are required prior to submission of Subdivision Works Certificate:

The proposed access handle of Lot 4 DP 339390 shall be narrowed down to 5m at the dwelling encroachment section only, not the whole length of access handle as shown on plan.

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

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

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

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

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

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

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

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

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

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

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

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

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

Reason: *To ensure that Council's assets are protected.*

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

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

- Stormwater Drainage Works

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

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

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

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

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

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon



Road Bowral

ATTACHMENT 1 Draft Conditions - 36 Kangaloon

21/1840, Lot 6 DP 12732
Lot 4 DP 339390

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

Reason: *Statutory requirement.*

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

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

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

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

12. **Detailed Stormwater Drainage System Design**

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

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

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

Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the *Roads Act 1993*, must be obtained from Council prior to the commencement of works. The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 of the *Roads Act 1993* applies.

Reason: *To ensure adequate storm water management.*

13. **Erosion and Sediment Control Plan**

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

- (a) Erosion and sediment controls are to be in place before the disturbance of any soils on the site, and are to be maintained during the works and for as long as necessary after the completion to prevent sediment and dirty water leaving the site and/or entering the surface water system outside the worksite boundaries.
- (b) Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping. Soil is to be retained within the property.

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK

14. Notice of Commencement

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

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

Reason: *Statutory requirement.*

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

15. Principal Certifier (PC) Sign

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifier (PC) by showing the name, address and telephone number of the Principal Certifier (PC);
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

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

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Advice: *Where Council is the PCA, signage is available from Council.*

Reason: *Statutory requirement.*

16. **Subdivision Works Certificate & Appointment of Principal Certifier (PC)**

Subdivision work in accordance with a consent must not commence until:

- (a) A Subdivision Works Certificate has been issued.
- (b) The person having the benefit of the development consent has appointed the Principal Certifier (PC).
- (c) The Principal Certifier (PC) (if not Council) has, no later than two (2) days before the subdivision work commences, notified the Council (or other consent authority where applicable) of the Principal Certifier's (PC) appointment.
- (d) The person having the benefit of the consent has given at least two (2) days' notice to the Council of the person's intention to commence the subdivision work.

Advice: *Crown work certified in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 is exempted from the above requirements.*

Reason: *Statutory requirement.*

17. **Developers Representative during Construction of Works**

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

Details to be submitted include:-

Name of Representative:

Company:

Position:

Contact phone:

Contact fax:

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

After Hours Contact:

Signature of Representative:

Signature & Acceptance of representative by the Developer:

Council requires that the nominated "Construction Supervisor" either hold qualifications acceptable for Corporate Membership of the Institute of Engineers, Australia, or be Approved by the Director and/or has proven experience and suitable relevant qualifications for the control, supervision and management of civil engineering works as required for carrying land development.

Prior to commencing any works on site the representative shall:

Inform Council in writing of their intention 7 days before entering the site.

Submit to Council a proposed Schedule of Works.

The Developer may be required to arrange for Council to peruse all other contract documentation prior to the contractor arriving on site to commence work (Schedule of Works, Specifications Bill of Quantity, traffic control plan and Soil and water management plan). Failure to comply with the requirements as set out above will result in an immediate stop work order.

Reason: Statutory requirement.

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

Prior to any works being undertaken within the road reserve, the Developer must obtain approval from Council (as the Roads Authority and / or as required under Section 138 of the *Roads Act 1993*).

Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the *Roads Act 1993*.

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

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

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

**5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon**

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

Reason: Statutory requirement.

19. Erosion and Sediment Control

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

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

CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

20. Approved Plans to be available on site

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

Reason: To ensure compliance with approved plans.

21. Stormwater – Construction

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

Reason: To assist in the prevention of erosion from the site from stormwater.

22. Stormwater – Discharge

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

Reason: To ensure that stormwater is appropriately disposed of.

23. Erosion and Sediment Control Plan Compliance

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

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

Reason: To ensure that the environment is protected.

24. Prevention of Nuisance

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

Reason: Health and amenity.

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

25. **Construction Management Plan**

All development activities and traffic movements shall be carried out in accordance with the approved Construction Management Plan. All controls in the Plan shall be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

Reason: *Compliance with condition of consent.*

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

26. **Subdivision Certificate Application**

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

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

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

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

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

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

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

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

28. **Section 138 Roads Act Final**

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

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

29. **Provision of Services**

A separate access, sewer connection, storm water drainage connection, water service and

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon

Road Bowral

ATTACHMENT 1

Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

electricity supply shall be provided to each allotment within the subdivision at the applicants expense prior to the issue of the Subdivision Certificate.

All property services shall be located within the lots that they serve in accordance with Wingecarribee Shire Council Engineering Design and Construction Specifications, Drawings and relevant Standards. The applicant shall provide to Council written confirmation of compliance.

Reason: *To ensure that all available services are provided to each lot within the subdivision.*

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

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

- (a) Right of carriageway and easement for services 6 metres wide over Lot 6 DP 12732 in favour of adjoining Lot 4 DP 339390. The length of the right of carriageway generally follows the existing circular driveway

Reason: *To protect infrastructure.*

31. **Access by Right of Carriageway**

The applicant shall submit to Council for approval the draft Section 88B Instrument under the *Conveyancing Act 1919* for the approved subdivision prior to issue of the Subdivision Certificate.

The Instrument shall include:

- Provision for on-going management/maintenance of the carriageway including clear details of obligations/responsibilities of the affected parties.
- Effective (legal) provision for access by all emergency and other essential service organisations over the private carriageway.

Reason: *To comply with Councils engineering requirements*

32. **Energy Service Provider Requirements**

The provision of underground electricity to service the development in accordance with the requirements of the Energy Service Provider. The Developer shall submit to Council documentary evidence from the Energy Service Provider qualifying that the requirements of that provider have been obtained in the form of a Notification of Arrangement (NOA). The requirements of the supply authority will need to be met prior to the issue of the Subdivision Certificate.

Reason: *To ensure appropriate infrastructure is provided to the development.*

33. **Certification of Internal Civil Works**

On completion of works and prior to issue of the Subdivision Certificate, certification from a practicing appropriately qualified engineer shall be submitted to Council detailing that all internal civil works (i.e. internal driveways, paths and stormwater drainage system including any onsite detention) are in accordance with approved plans and specifications.

Reason: *To comply with Councils requirements.*

**5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon****Road Bowral****ATTACHMENT 1****Draft Conditions - 36 Kangaloon**

21/1840, Lot 6 DP 12732
Lot 4 DP 339390

34. Stormwater Facilities Alterations

A "Restriction as to User" shall be included on the plan of subdivision and title of the proposed development to prevent any change in shape or alteration in structure of the proposed storm water facilities after the final approval of the structure has been given by Council. Details shall be provided for the approval of Council prior to the issue of the Subdivision Certificate.

Reason: To provide appropriate storm water management.

35. Storm water Facilities Maintenance

A "Positive Covenant" shall be included on the plan of subdivision and title of the proposed development and requiring that the proposed storm water facilities be maintained in a safe and functional manner. In addition, the Section 88B Instrument (*Conveyancing Act 1919*) shall make provision for Council to conduct maintenance on the subject storm water facilities at the owner's expense if the storm water facilities are not maintained to the agreed standard. Details shall be provided for the approval of Council prior to issue of the Subdivision Certificate.

Reason: To provide appropriate storm water management.

36. Construction of Accessway

Construction of an accessway surfaced with reinforced concrete for a minimum 3 metres wide within the lots, shall be completed prior to the issue of the subdivision certificate.

Reason: To ensure that adequate access is provided.

37. Civil Engineering works and services

All civil engineering works and services, including construction works within the road reserve, are to be constructed in accordance with the Wingecarribee Shire Council Engineering Design and Construction Specifications and Drawings, relevant Standards and approved engineering plans prior to the issue of the Subdivision Certificate.

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

38. Asset Management

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

The assets to be identified include:

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

Reason: To ensure appropriate asset management.

39. Provision of Reticulated Sewer to Each Lot

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral

ATTACHMENT 1 Draft Conditions - 36 Kangaloon



21/1840, Lot 6 DP 12732
Lot 4 DP 339390

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

Sewerage mains shall be constructed to serve the development.

Reason: To ensure that the development is serviced.

40. **Construction of Sewer Sidelines**

Sidelines and junctions shall be installed for sewer connections to the development by Council at the Developer's cost prior to the issue of the Subdivision Certificate.

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

If the sideline is to be extended from a sewer main in adjoining property, written permission of the affected landowner allowing work to be undertaken, shall be submitted with the application form.

Reason: To ensure that the development is serviced.

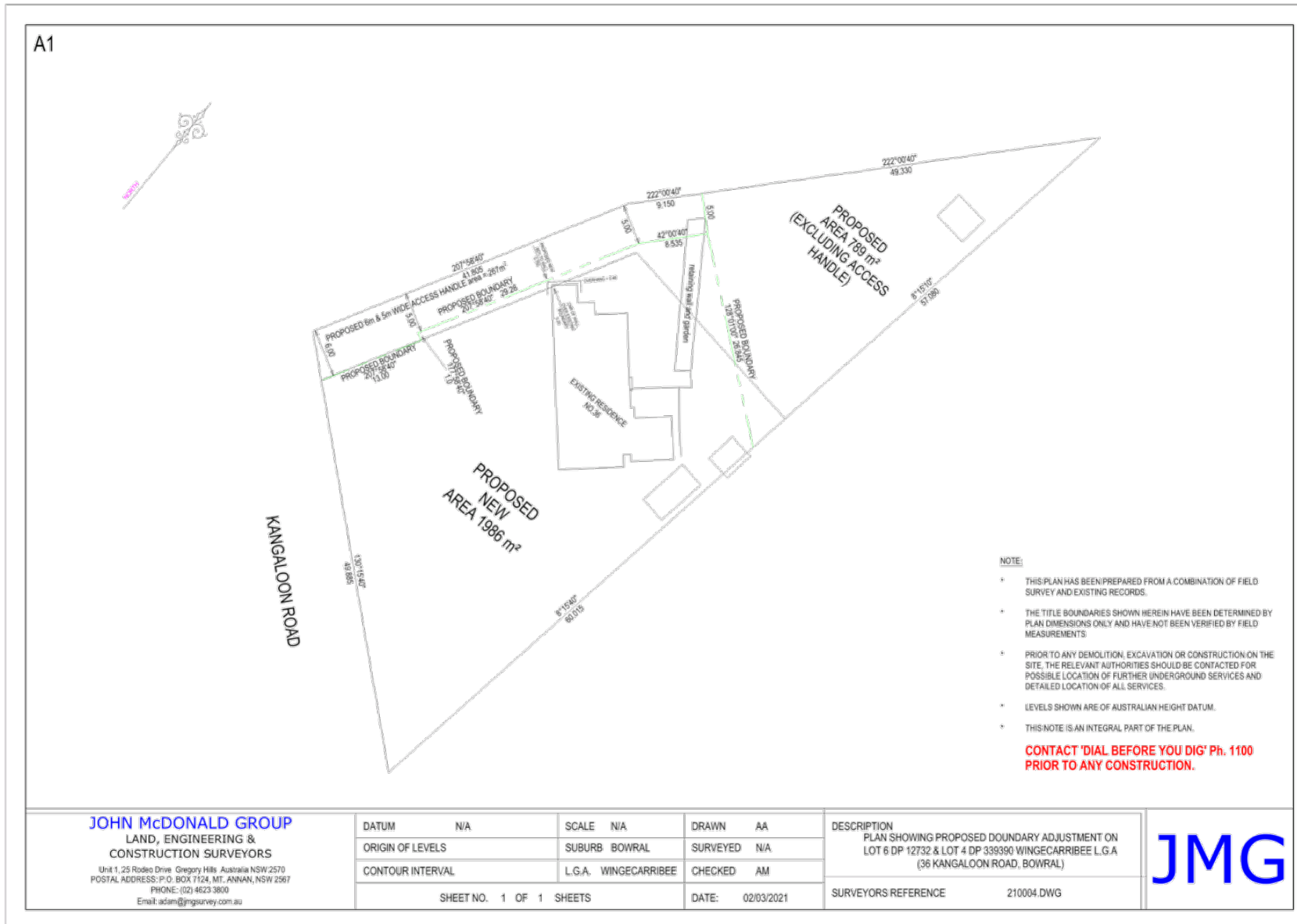
41. **Construction of Water Service**

A water service shall be installed to each lot in the subdivision prior to the issue of the Subdivision Certificate. Council's application form shall be completed by the Developer and the appropriate fee paid.

Reason: To ensure that the development is serviced.

END OF CONDITIONS

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon Road Bowral
 ATTACHMENT 2 Plan of Subdivision - 36 Kangaloon



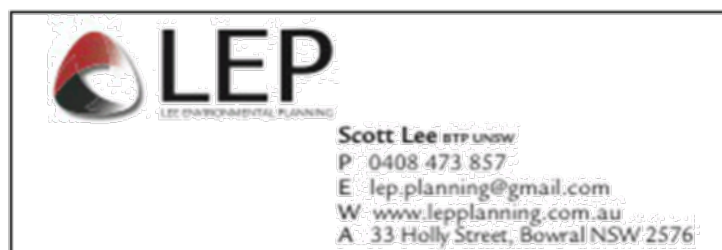
11/20/2021 10:58:11 AM

**Variation Request Pursuant to Clause 4.6
Wingecarribee Local Environmental Plan 2010
Minimum Lot Size Development Standard**

**Lot 6 DP12732
Lot 4 DP339390
36 Kangaloon Road
Bowral**

May 2021

prepared by



[Type text]

[Type text]

[Type text]

1

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral



ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon

Table of Contents	
1. Introduction	Page 3
2. Description and Extent of Variation	Page 5
3. Does the development remain consistent with the objectives of the standard and the zone	Page 7
4. Is compliance with the development standard unreasonable or unnecessary	Page 12
5. Are there sufficient environmental planning grounds to justify the variation	Page 16
6. Concurrence of the Secretary	Page 18
7. Conclusion	Page 19

[Type text]

[Type text]

[Type text]



1. Introduction

Wingecarribee Local Environmental Plan 2010 (WLEP2010) contains "Clause 4.6 Exceptions to development standards".

Clause 4.6 sets out the mechanism that allows for the proper consideration of a request to vary a development standard contained within the local environmental plan.

This document is a formal written request prepared in accordance with Clause 4.6(3) of WLEP2010 to support the submission of a Development Application for a two lot subdivision of land on Kangaloon Road, Bowral. It should be read in conjunction with:

- the submitted Statement of Environmental Effects, prepared by Lee Environmental Planning that supports that Development Application; and
- plan of proposed subdivision prepared by JMG Surveyor

This request has been prepared having regard to the NSW Department of Planning and Environment Guidelines to Varying Development Standards (August 2011).

It has also had regard to relevant decisions of the NSW Land and Environment Court, noting in particular two recent decisions being those of Dixon SC in *Brigham v Canterbury - Bankstown Council* [2018] NSWLEC 1406 and of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118.

Both of these decisions provide instructive information in relation to the matters required to be demonstrated within a written Clause 4.6 variation request and the structure of such requests. The judgement of Commissioner Dixon in particular has been considered in the way this written request specifically uses the exact wording of the various sub clauses of Clause 4.6 to assist Council in forming a view about their satisfaction of those issues. Other commonly referenced cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC90 and *Wehbe v Pittwater Council* [2007] NSW LEC827, have also been considered.

Section 2 of this request provides clarification around the variation being requested. Reference is made to the proposed plan of subdivision provided in support of the Development Application.

Section 3 shows the developments consistency with both the zone objectives and the objectives of the development standard. This Section will allow Council to be satisfied as required by Clause 4.6(4)(a)(ii).

Section 4 makes the case as to why the imposition of the standard is unreasonable and unnecessary in this case, thereby satisfying Clause 4.6(3)(a).

Section 5 explains that there are sufficient environmental planning grounds to justify contravening the development standard, thereby satisfying Clause 4.6(3)(b).

[Type text]

[Type text]

[Type text]

3

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral

ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon



Section 6 addresses whether contravention of the development standard raises any matter of significance for State or regional environmental planning and deals with the matter of concurrence of the Secretary.

Section 7 is a conclusion.

In the authors opinion, this written request satisfies both Clause 4.6 (3)(a) and (b) by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. In turn, this allows the Council as the consent authority to be satisfied as required under Clause 4.6(4)(a)(i).

Specifically, the request seeks approval to vary the minimum lot size standard contained within Clause 4.1 of *Wingecarribee Local Environmental Plan 2010*. It is noted that the minimum lot size development standard within the R2 Low Density Residential zone that applies to the subject land, is not a standard that is specifically excluded from the operation of Clause 4.6 and there is no limit placed upon Council's discretion pursuant to Clause 4.6(6).

For the subject site, the numerical minimum lot size has been set at 2000 square metres.

The requested variation in this case, if granted would allow for a minimum lot size, for one of the proposed lots, of 1986 square metres, a figure that represents 99% of the minimum lot size and for the second proposed lot of 1056sqm, 53% of the minimum lot size.

[Type text]

[Type text]

[Type text]

4



2. Description and Extent of Variation

The development relates to a proposed subdivision of land at 36 Kangaloon Road, Bowral.

The development is fully described within the Statement of Environmental Effects prepared by Lee Environmental Planning that has been submitted in support of the Development Application.

The *Wingecarribee Local Environmental Plan 2010* prescribes a minimum lot size for the creation of new lots of 2000 square metres for land in this locality through the provisions of Clause 4.1 and reference to the Lot Size Maps. Refer to Lot Size Maps Sheet LSZ_007F.

The variation to the minimum lot size development standard concerns a departure for both of the two lots within the proposed two lot subdivision. The lots will be 1986 square metres and 1056 square metres, rather than the required 2000 square metres.

The larger of the two proposed Lots (the street frontage lot) will accommodate the existing dwelling house and will continue to be serviced by the existing driveway access off Kangaloon Road in the same way it is now.

The smaller of the proposed Lots, the rear lot, will be vacant but has the advantage of the existing access handle to provide a suitable point of access onto Kangaloon Road.

Clause 4.6 of the WLEP2010 is similar to the long-standing *State Environmental Planning Policy No 1— Development Standards* (SEPP 1). It is used across the State in all local planning instruments.

SEPP 1 was the first State wide planning policy because it was always recognized that the planning system required a mechanism to exercise discretion. From its earliest days, it was established that SEPP 1 may be applied to vary development standards even when the variation could not be regarded as minor: *Michael Projects v Randwick Municipal Council* (1982) 46 LGRA 410, 415).

The Court of Appeal considered the issue in *Legal and General Life v North Sydney Municipal Council* (1990) 69 LGRA 201. In that matter, North Sydney Council had approved a SEPP 1 objection and the decision was subject to third party legal challenge.

The applicable floor space ratio control was 3.5:1, but, as a consequence of upholding the SEPP 1 objection, the approved floor space ratio was 15:1 (a variation to floor space of 329 per cent). The applicable height control was five storey, whereas the approved height was 17 storey (an variation of 240 per cent).

The Court of Appeal supported the following statement by the then Chief Judge of the Land and Environment Court (in *Legal and General Life v North Sydney Council* (1989) 68 LGRA 192, 203):

The discretion vested in councils under SEPP No 1 is wide and, subject to

[Type text]

[Type text]

[Type text]

5

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral



ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon

limitations found in the instrument itself and its relation to the Environmental Planning and Assessment Act 1979, is unconfined.

The Court upheld the validity of the Council's decision.

Clause 4.6 of the WLEP2010 is in similar terms to SEPP 1. Relevantly, like SEPP 1, there are no provisions that make it necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life* equally applicable to Clause 4.6. This means that there is no constraint on the degree to which a consent authority may depart from a numerical standard. In fact, a decision not to support a variation based solely on the basis of the requested percentage of the variation, would not be a valid consideration of the Clause 4.6 application.

Some examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 as it appears in the Standard Instrument, are as follows:

- △ In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court approved a floor space ratio variation of 187 per cent.
- △ In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a 38 per cent height exceedance over a 15-metre building height standard.
- △ In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a 28 per cent height exceedance over a 22-metre building height standard.
- △ In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a 21 per cent height exceedance over a 18-metre building height standard.
- △ In *Landco (NSW) Pty Ltd v Camden Council* [2018] NSWLEC 1252 the Land and Environment Court granted development consent for a land subdivision with clause 4.6 variations of between 47-51 per cent on the minimum 450m² lot size, allowing lots sizes ranging from 220 to 240m².

In short, Clause 4.6 is a performance-based Clause requiring consideration of both the facts and the merits, so it is possible and not uncommon, for large variations to be approved in the right circumstances. In this case the variation sought is numerically insignificant and of less importance than the sensible planning outcome it gives rise to.

[Type text]

[Type text]

[Type text]

6



3. Does the development remain consistent with the objectives of the R5 Large Lot Residential zone and of the minimum lot size development standard

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone within which the development is proposed to be carried out.

The proposed development is in the public interest. This is because it is consistent with the objectives for development within the zone on which the development is to be carried out and consistent with the objectives of the particular development standard.

What are the objectives of the zone and how does the proposed development meet them?

Zone R2 Low Density Residential Objectives	
<p><i>To provide for the housing needs of the community within a low density residential environment.</i></p>	<p>The proposed subdivision will allow the two existing lots to be improved through the removal of an existing encroachment of the dwelling house onto the access handle of the other lot and to create a better alignment of the rear boundary of the dwelling lot. The buildable area of the rear lot, upon which a new dwelling can be built is not compromised by the boundary adjustment. This vacant lot, whilst not compliant with the minimum lot size of 2000sqm that applies in this locality, is not out of character with surrounding residential development that is a mixture of dwellings on lots smaller than 2000sqm or takes the form of dwellings in a medium density setting.</p> <p>The larger front non compliant lot already accommodates an existing dwelling house and has two existing driveway access points onto Kanagaloon Road. The boundary adjustment will retain a low density outcome consistent with the development pattern of the locality. The resultant pattern of development is consistent with the pattern of development in the locality, including the immediately adjoining properties to the east, west and south of the subject site.</p>

[Type text]

[Type text]

[Type text]

7

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral



ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon

<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	Not relevant to this matter

[Type text]

[Type text]

[Type text]

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral



ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon

Clause 4.1 Minimum Lot Size Objectives	
<p><i>to identify minimum lot sizes,</i></p>	<p>The identified minimum lot size for the creation of new lots within a subdivision is 2000 square metres.</p> <p>Neither existing lot is compliant and the site has never had the overall lot size for two numerically compliant lots.</p> <p>However, the stated minimum lot size is not necessarily a figure that is completely consistent with the range of lot sizes that prevail within the locality and as a result, the proposal is not seeking a density of development above the sites capacity under the planning controls.</p> <p>The 'undersize' of the dwelling lot, at 99% of the minimum, is so minor as to be imperceptible.</p> <p>The rear lot, whilst numerically seeking a leger variation, already exists and a dwelling on tis lot would not be inconsistent with surrounding residential development.</p> <p>This smaller lot is clearly suitable to accommodate new residential development. It is set well back off Kangaloon Road, with an existing driveway access point. It will have no impact upon the Kangaloon Road streetscape that is important.</p> <p>It is of a lot size that is consistent with other surrounding development to the east, west and south.</p> <p>Therefore, both lots are 'fit for purpose' and will be compatible with the prevailing character of the locality.</p>

[Type text]

[Type text]

[Type text]

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral



ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon

<p><i>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.</i></p>	<p>The locality has a range of lot sizes and residential types, notwithstanding that the minimum lot size for new lots is 2000 square metres. This is common across all residential areas of the Shire that have evolved over a long period of time. This is unlike the new master planned urban release areas of the Shire, that tend to have a commonality of lot sizes because all of the lots are created at the same time under a small number of subdivisions.</p> <p>This proposed boundary adjustment would maintain a development pattern consistent with the locality in two ways.</p> <p>Firstly, the rear vacant lot, that already has a dwelling entitlement due to the provisions of Clause 7.1 of WLEP2010, will continue to provide a building envelope that can accommodate suitable residential development.</p> <p>This lot will maintain its point of access onto Kangaloon Road consistent with the prevailing streetscape.</p> <p>Secondly, there will be no visible change to the existing dwelling as it is viewed from the public spaces of Kangaloon Road. Neither will there be any change to its relationship with its neighbours. For adjoining lots, there will be no identifiable impacts because of the suitability of the new vacant lot to accommodate a future dwelling.</p> <p>Maintaining the existing presentation of the site as a single parcel presenting to the street is a key factor in maintaining compatibility and maintaining the perception of low density dwellings in a garden setting.</p>
---	--

[Type text]

[Type text]

[Type text]



What are the objectives of the development standard and how does the proposed development meet them?

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

The 2000 square metre standard applies to a defined area of Bowral, as well as other areas comprising many different localities across the Shire. The minimum lot standard for low density residential has not been planned at the scale of individual sites. Therefore dependent upon each site, the resultant development can provide a consistency without all lots having exactly the same site area.

This proposal, although seeking a variation to the numerical value of the minimum lot size for the two proposed lots, does not represent a departure from the general density of development that is evident across this locality. The two existing lots have been in existence for a considerable time and well in advance of the planning control that now seeks to limit future subdivision.

In terms of the built form, the development would not depart from the general layout of development that could be expected as a result of the implementation of the full range of planning controls put in place by Council for this locality.

As mentioned previously, the locality has a mixed residential character with the site immediately adjoining Kenilworth Gardens that provides a large number of detached dwellings in a medium density layout of approximately one dwelling per 600sqm of site area.

Immediately to the west, the original land parcel that was 34 Kangaloon Road of approximately 6300 square metres, now accommodates four individual dwellings on lots ranging of 2380sqm, 1950sqm, 1020sqm and 1005sqm.

Minimum lot size is just one of the controls utilised by Council and when the performance based outcomes of that standard can be shown to be positive, then the 'end product' that Council was planning for can be achieved and strict compliance with the numerical standard is less critical.

In this case, the numerical variation being sought is minor in its impact and the development simply reinforces the fact that both of the lots are suitable for their purpose given the existing development and the opportunity for new development.

[Type text]

[Type text]

[Type text]

11



4. Is compliance with the development standard under Clause 4.1 of WLEP2010 unreasonable or unnecessary

Clause 4.6(3)(a) requires that this Variation Request demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Such compliance is unreasonable or necessary in the circumstances of the case and the reasons for this are set out in the following paragraphs.

Thwarting a minimum lot size control objective

As explained above, clause 4.1(1)(b) of the WLEP2010 says that it is an object of the lot size control:

to ensure that the subdivision of land... is compatible with the character of the surrounding land...

The fundamental lot layout of a subdivision of the land is not affected by the variation sought. Regardless of the minimum lot size, the two proposed lots would be arranged similarly to that proposed, because it is what best suits the characteristics of the land and it can be done without environmental impact. In this case, the residential subdivision, while not numerically compliant for either lot, retains regularity of shape and efficiency of access to provide two effective parcels of land.

The non compliance of the lots does not give rise to any significant impacts on any adjoining properties. In this case the proposed vacant lot will maintain a suitable development area consistent with surrounding development without adverse impact to neighbours or to the streetscape of Kangaloon Road.

The street frontage lot, which will accommodate the existing dwelling on the site, can still be managed as an existing residential lot albeit with a marginally smaller site area than required. The existing dwelling maintains an appropriate setting, will maintain a high level of amenity and has suitable vehicular access.

There will be no greater or lesser impacts resulting from the non compliant lots than what can occur now. Once the existing vacant lot is accepted as being suitable for development in its own right pursuant to Clause 7.1 of WLEP2010, then the site area of the lots is less critical from a numerical compliance perspective.

In this case the fundamentals of appropriate vehicular access, site servicing, residential amenity and compatibility with residential neighbours, are not dependent upon the proposed Lots being 2000sqm. In this locality, lots that are fully compliant with the 2000sqm are the exception and not the norm.

If the lot size variation were to be rejected it would deny a boundary adjustment that would result in the benefits to the locality not being maximized as envisaged. This

[Type text]

[Type text]

[Type text]

12

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral

ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon



would be a worse impact on the site, rather than the superior outcome being proposed. It would sterilise a large portion of the site that Council should accept as having the capability to be suitable for residential development.

If the land cannot be utilized for residential purposes to its highest and best use, then some alternative use needs to be considered.

This would not necessarily ensure the suitable development of the site. That is, the lot size control would be thwarted. This is one of the ways in which the Court has explicitly said that an applicant may put forward an argument to establish that compliance with the lot size control is unreasonable or unnecessary (in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (at [46])).

This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.

[Type text]

[Type text]

[Type text]

13



Undermining objectives of the EP&A Act

Section 1.3 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) provides objectives of the planning legislation. Amongst others, it includes:

To promote the orderly and economic use and development of land...

In this case, requiring strict compliance with the minimum lot size development standard would undermine the achievement of this objective of the legislation.

The subject site currently accommodates a combination of an established residential use in the southern street frontage portion of the site with a vacant area to the north (rear). This area is clearly of a size and shape, with suitable access, ideal for residential activity.

The subdivision as proposed will facilitate appropriate ongoing management of the residential resource and remove an existing encroachment of one property onto the access handle of the other property. The proposed arrangement is what the land owners believe is the best possible land use arrangement - in other words it is orderly and economic use of land.

The proposal does not give rise to any adverse impacts. These two objectives relate to the proper management of land and the coordination of orderly and economic use of land. This site has a high degree of residential amenity, being reasonably close to the Bowral town centre. It offers an opportunity for a suitable development proposal to take advantage of an opportunity without trying to yield more from the site than the planning controls can allow. As a residential use it will stimulate activity within the town centre for the other land uses within the town.

If strict compliance of the minimum lot size was imposed, then it would not be supportive of the objectives of the Act. Town planning works with a range of development standards to generally guide development towards appropriate outcomes. However, they should never be given primacy over sensible decisions based on the facts of a case. In this case, the minimum lot size is 99% achieved for the dwelling lot, but not for the smaller rear lot. However, this lot already has an entitlement and future development will sit comfortably within the context of surrounding development.

Having regard to the existing improvements upon the land and the alignment of what constitutes a sensible property boundary, the request to vary the relevant development standard is both fair and reasonable in this case.

This is sufficient, by itself, to establish that requiring strict compliance with the minimum lot size development standard is unreasonable or unnecessary in the circumstances of the case.

[Type text]

[Type text]

[Type text]

14



Disproportionate burden on the community

The severity of the burden placed on members of the community, by requiring strict compliance, would be disproportionate to the consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at [15])).

The adverse consequences by requiring strict compliance have already been outlined. In brief terms, they are:

- Maintenance of an existing encroachment by one property onto another property
- The boundary adjustment allows the optimum alignment in terms of the land owners needs as they relate to the residential use of the land
- potentially a loss of the opportunity to provide highly desirable residential land that is ideal infill development, that then places increased pressure on other areas to provide supply

It is unreasonable to expect the community to bear these adverse consequences in circumstances where there are no significant adverse impacts from allowing the lot size variation.

This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.

[Type text]

[Type text]

[Type text]

15



5. Are there sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) requires that this Variation Request demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. It is the contention of this Variation Request that there are sufficient grounds to justify the variation.

The Statement of Environmental Effects prepared to support this DA, provides a more detailed and holistic assessment of the environmental planning grounds relevant to the proposed development. The SEE provides the general platform to allow Council to be satisfied that the development can be supported.

The minimum lot size control is both performance based and arbitrary. It aims to ensure some compatibility with adjoining development and to avoid negative impacts by ensuring new lots have sufficient site area within which the resultant development can attain the expectations of property owners.

Issues that are relevant to development outcomes, such as overshadowing, view loss and privacy can be measured and are therefore performance based.

Other considerations such as compatibility with character are not necessarily measurable. Rather, they are objective and more reliant upon the particular circumstances of any one location. In this case the minimum lot size for subdivision of the land has been determined by Council to be 2000sqm, but this is not the only lot size that relates to the prevailing subdivision pattern. Nor is the residential development type restricted to single dwellings on individual lots.

This is obvious from a cursory overview of the locality where there are a range of lots sizes, both larger and smaller than the 2000sqm 'standard'. Variation in lot size is common across Bowral regardless of the 'standard' sought to be imposed by the planning instrument. Dwelling types vary from single dwellings to medium density style.

In relation to the specific request to vary the minimum lot size development standard, the specific environmental planning grounds to justify the breach of the standard are outlined as follows.

- the proposed development is a positive response to Council's long held strategic vision for low density residential development in this locality. Allowing a two lot subdivision of a parcel that is, for all intents and purposes, compliant with the objectives of the required minimum lot size threshold, will give effect to established strategic objectives and this is a valid environmental planning ground
- the allowable 2000 square metre minimum lot size envisages development of the type proposed. The proposed boundary adjustment between two existing lots does not lead to development density that is greater than could have been anticipated having regard to the characteristics of the locality. While it could not be said that the development standard has been abandoned, it is reasonable to say that it is of lesser significance in this locality than it may be in other localities that display a different land use pattern. The non compliance will be indistinguishable in terms of overall site area to other adjacent

[Type text]

[Type text]

[Type text]

16

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral

ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon



lots, most of which are less than the 2000sqm minimum. The larger of the two lots, because it already has residential development built on it, will maintain an appropriate relationship with all other adjoining lots so it will not be perceived as a smaller lot than its partners. The smaller lot, being the internal lot, will have no impact upon the character of the area.

- A development that strictly complies with the minimum lot size standard would be indistinguishable from a non compliant lot but will result in a less than optimum outcome. If the proposed development was compliant with the lot size standard, it would not be a different outcome when viewed from any adjoining property or from any public place.

The proposed development:

- maintains the objectives of the lot size standard;
- maintains the objectives of the R2 Low Density Residential zone; and
- provides a greater opportunity for appropriate long term management of an important residential resource.
- results in an outcome where the performance based controls of Council's DCP for the built form (setbacks, height, floor area etc) can readily be achieved. The building area available for the proposed rear lot is large enough and located appropriately to allow development to proceed without major constraints.

It achieves these outcomes without any material impact on other properties or without undermining Council's strategic outcomes.

[Type text]

[Type text]

[Type text]

17



6. Concurrence of the Secretary

Clause 4.6(5)(a) requires the Secretary to consider whether contravention of the development standard raise matters of State or regional significance.

This Development Application does not raise any matters of significance for State or regional planning.

It is a site specific issue, with a set of circumstances peculiar to this application only.

Council has in place relevant planning controls that allow the proposed development. It has set a development standard that does not match the lot size of many existing parcels in this locality meaning that a variation to the minimum lot size does not result in a perverse outcome.

Council can determine the veracity of the variation request, which is based on achieving a superior residential outcome.

Clause 4.6(5)(b) requires the Secretary to consider the public benefit of maintaining the standard.

As set out in Section 4 of this Request Variation, there are public interest issues arising from this proposal in addition to the good administration of the planning system, that requires not only the establishment of reasonable controls based on sound logic, but also the flexibility to allow judgement to be exercised notwithstanding that numerical variations to standards may result.

There is no public benefit in requiring strict adherence of the development standard in this case.

There are no significant adverse impacts arising from the variation sought either upon any adjoining development or upon the public domain.

The proposal is consistent with the strategic aims of Council as they have been framed in the *Wingecarribee Local Environmental Plan 2010* that is to provide opportunity for low density residential subdivision at a density of lots envisaged by this proposal. Facilitating this outcome with a subdivision that respects the characteristics of the site should be seen as a public benefit, not a dis-benefit.

A decision made in relation to this particular Development Application will not have identifiable outcomes that could be said to be significant or prejudicial to matters of State or regional planning. There are no particular matters that are required to be taken into consideration by the Secretary of Department of Planning and Environment.

The Secretary can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18–003 Variations to development standards, dated 21 February 2018. This circular is a notice under Clause 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

[Type text]

[Type text]

[Type text]

18



7. Conclusion

This Clause 4.6 Variation Request demonstrates as required, that:

- strict compliance with the minimum lot size development standard pursuant to Clause 4.1 of WLEP2010 would be unreasonable and unnecessary in the circumstances of the case
- there are sufficient environmental planning grounds to justify the contravention of the development standard particularly having regard to the provisions of Clause 7.1 of WLEP2010 that already confer a dwelling entitlement upon the lots in their current configuration
- the ability of the lots to comply with the full suite of Council's relevant planning objectives and controls that would be relevant to a future dwelling house on the proposed rear lot, as well as the lack of any demonstrable impacts arising from the development as proposed
- notwithstanding the variation requested, the development remains consistent with the objectives of the minimum lot size development standard
- notwithstanding the variation requested, the development is consistent with the objectives of the R2 Low Density Residential zone and in fact actively supports those objectives
- there is no public benefit in maintaining compliance with the numerical standard in the context of this proposal
- the variation request does not raise questions or issues of State or regional planning significance

On the basis of the matters set out in this Variation Request, it is submitted that the Council exercise the discretion and flexibility afforded it by the provisions of Clause 4.6 of WLEP2010 and support the proposed development.

[Type text]

[Type text]

[Type text]

19

5.2 Development Application 21/1840 - Subdivision/Boundary Adjustment
Between Two Lots - Lot 4 DP 339390 & Lot 6 DP 12732, No 36 Kangaloon
Road Bowral

ATTACHMENT 3 Clause 4.6 Request - 36 Kangaloon



Malcolm Ryan

Interim Deputy General Manager

Friday 17 September 2021