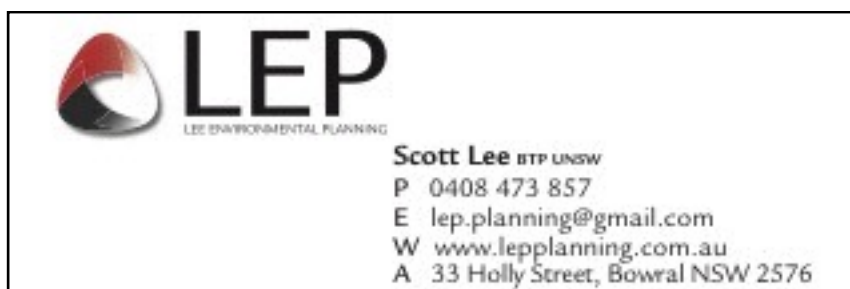


Statement of Environmental Effects  
for  
two (2) lot subdivision (boundary  
adjustment)  
of  
Lot 6 DP12732 and Lot 4 DP339390  
36 Kangaloon Road, Bowral  
May 2021

prepared by



# Introduction

This Statement of Environmental Effects has been prepared at the request of the owner of the subject land to support the lodgement of a Development Application for the subdivision of the land.

The subdivision is in effect a boundary adjustment between two existing adjoining lots.

The application has been made pursuant to 4.12 of the *Environmental Planning and Assessment Act 1979*.

The proposed development, being subdivision, is permissible under the provisions of the *Wingecarribee Local Environmental Plan 2010*.

The development is of a local scale, it is not state significant or designated  
Wingecarribee Shire Council is the consent authority.

In addition to this Statement, the Development Application is supported by:

- Survey Plan of existing lot boundaries prepared by JMG Surveyor
- Proposed Plan of Subdivision prepared by JMG Surveyor
- Civil engineering plan prepared by Civil Development Solutions

The proposal has considered other relevant matters.

The site is suitable for the proposed subdivision (boundary adjustment), the lots proposed can accommodate both the existing dwelling house upon one of the new lots and future development upon the new vacant lot, in an appropriate manner.

Development will continue to be consistent with the development pattern of the locality and there are no adverse impacts arising from the proposal.

Support for the development is requested.

An approval is sought with the imposition of any relevant conditions noting that Clause 54(4) of the *Environmental Planning and Assessment Regulation 2000*, does not allow Council to require information at Development Application stage that is required to be attached to an application for a Construction Certificate, including a subdivision construction certificate. The Regulation is very precise in setting out the reason for this, which is to ensure a consent authority does not oblige an applicant to provide such details until such time as a development consent is issued. In this case, no work is actually required to create the new lot boundaries but there will be in due course work required to construct the new driveway within the existing access handle to service the internal lot.

# Subject Site

The land is legally described as Lot 6 DP12732 and Lot 4 DP339390.

The existing dwelling house has a street address of 36 Kangaloon Road, Bowral.

The site is approximately 1 kilometres south east of the Bowral town centre.

The site sits on the north side of Kangaloon Road approximately 175 metres east of its intersection with Bendooley Street.

The locality is an established residential area with a mixed character of single dwellings and multi dwelling developments, predominately seniors housing developments. Immediately to the east of the site is Kenilworth Gardens Retirement Village. Along the sites western boundary are four individual small lot residential properties, 34, 34A, 34B and 34C Kangaloon Road.

The site comprises two separate land parcels under one ownership.

Lot 6 DP12732 accommodates an established dwelling house. It is set back approximately 27 metres off Kangaloon Road. There is a circular driveway to provide access at both the eastern and western edges of the site. This lot is approximately 1892 square metres

Lot 4 DP3399390 is vacant. It is a battle axe lot with its 6 metre wide handle running along the western boundary of Lot 6 before opening up to an open grassed area behind the dwelling house. It has an area of approximately 1138 square metres.



Figure 1: Site locality map (Source Sixmaps)



Figure 2: Aerial view of site (Source Sixmaps)



Figure 3: Closer aerial view of site





Figure 4: View of site from Kangaloon Road



Figure 5: View of the existing dwelling house and driveway



Figure 6: Rear of existing dwelling where boundary will be realigned to better integrate with the existing courtyard



Figure 7: View of the rear yard (existing Lot 4) looking towards the existing dwelling  
SEE Kangaloon Road Bowral



# Description of Proposed Development

The proposed development is for the subdivision (boundary adjustment ) of the site to create two new lots in lieu of the existing two lots.

There are no additional lots or dwelling entitlements being created. The existing dwelling house will be retained on one of the new lots and the subdivision will address an existing encroachment of the dwelling onto the access handle of the rear lot. This is an issue that is required to be addressed as a legal necessity. The rear lot provides the opportunity for a new dwelling be constructed consistent with surrounding development.

The existing lot boundaries are described upon a plan prepared by JMG Surveyor. This shows the current encroachment of the dwelling on Lot 6 onto the access handle of Lot 4.

The proposed subdivision (boundary adjustment) is described upon the proposed plan of subdivision prepared by JMG Surveyor. This plan identifies both the existing and the proposed boundaries to be created from the two existing lots. Refer to Figure 8.

The proposed dwelling lot will change from a site area of 1892sqm to 1986sqm. The increased site area ensures the current encroachment of the dwelling onto the adjoining lot is addressed. It will continue to accommodate the existing dwelling house and be served by the dual driveways onto Kangaloon Road and the circular driveway.

The new rear lot will change from a total site area of 1138sqm to 1056sqm. It will be vacant and can accommodate future residential development upon the cleared grassed area to the rear of the existing dwelling with no impediments to future development being in accordance with the land use zoning and development design controls.

It will continue to have the advantage of the access handle direct to Kangaloon Road, but this handle will no longer be encroached by the existing dwelling. Although the driveway within the access handle is not constructed, the point of driveway access onto Kangaloon Road is existing. A future construction certificate will be required to construct the driveway in due course, to Council specification.

In effect the proposal is simply making the two currently existing lots more suitable residential properties. The dimensions and orientation of the existing dwelling lot is not altered to any significant degree other than avoiding the exiting encroachment into the access handle and the provision of an improved rear boundary alignment.

For the rear vacant lot, the access handle is maintained while the building area of the site is not impacted. Although this lot is smaller, it can accommodate future residential opportunity of a style and scale consistent with neighbouring properties.

The development will have no impacts upon the consistency of the site within the streetscape pattern of the locality.

The site has access to town water and sewer.

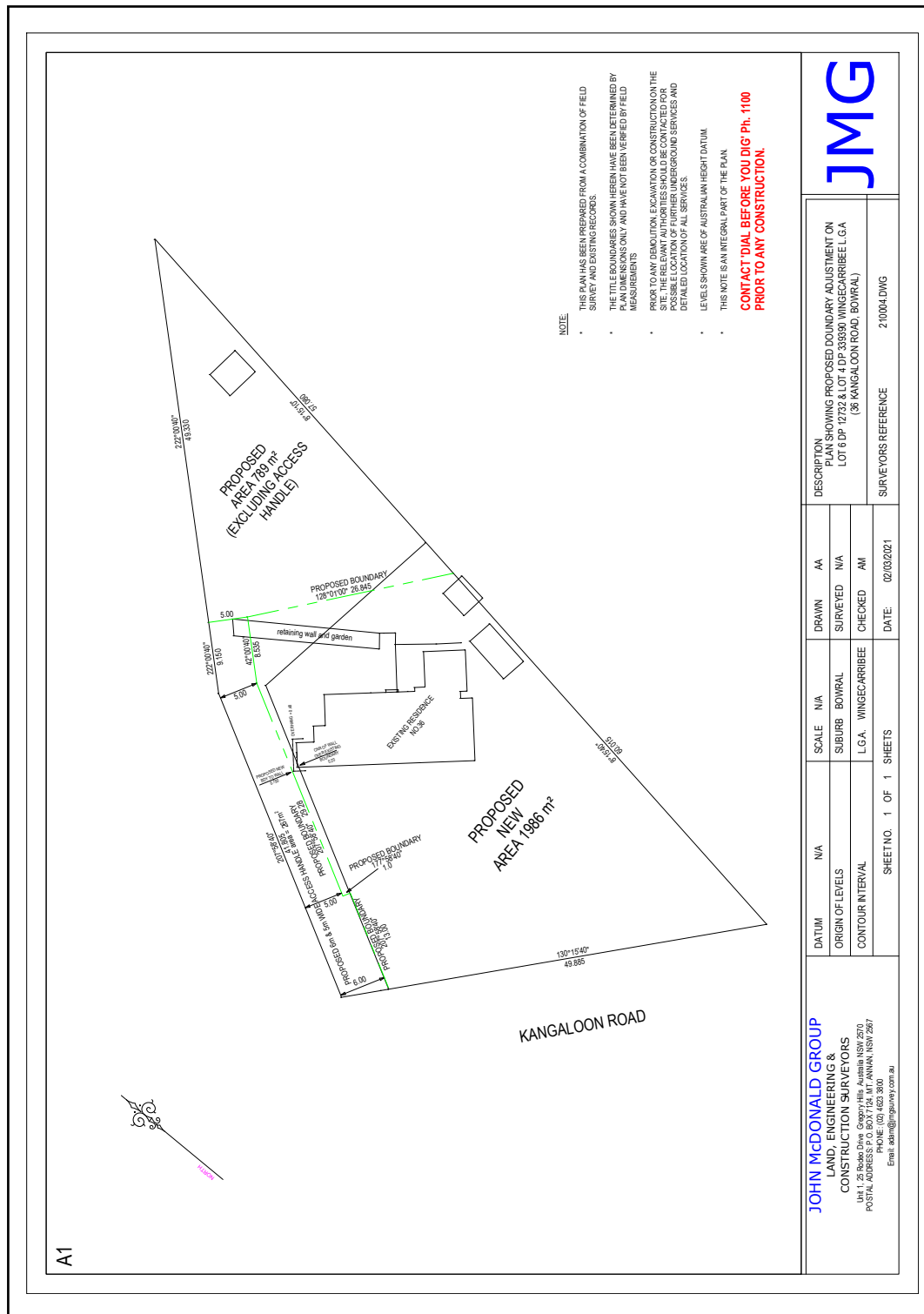


Figure 8: Proposed Plan of Subdivision prepared by JMG Surveyor



# Assessment of Environmental Impacts

Every Development Application is subject to assessment under the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*. In relation to the matters that are of relevance to this particular development application, the following comments are provided.

## Federal and State Legislation

### Rural Fires Act 1997

The land is not bushfire prone land.

### Biodiversity Conservation Act 2016

The purpose of this Act is to conserve biodiversity and to do so by establishing a method of assessing potential impacts of development upon biodiversity values when development is proposed.

In this case, there is no significant native vegetation on the site, there is no loss of any native vegetation and therefore there is no need for any particular assessment under the provisions of the *Biodiversity Conservation Act 2016*.

### State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 has been considered. It requires the consent authority to be satisfied that the development would have a neutral or beneficial impact on water quality. The Guidelines to the State policy say that:

*It is safe to assume that a development will have no identifiable potential impact on water quality if the development is unlikely to result in:*

*a concentration of flow of water*

*the impedance of flow of water*

*discharge of effluent, dust pollutants or stormwater, and*

*other matters considered to result in a water quality impact, such as the potential contamination*

*In this case, the neutral or beneficial effect test is satisfied and consent can be issued with respect to water quality, without further detailed assessment regardless of the development type.*

With reference to the *Neutral or Beneficial Effect on Water Quality Assessment Guideline 2015*, the proposed development would fall within Module 1. The site is serviced by reticulated sewer with any new residential development able to connect. In this case, the

Council can be satisfied that the development will have no identifiable impact on water quality.

The submitted plans form Civil Development Solutions have shown the alignment of the existing sewer, the concept drainage plan and the erosion and sediment control plan that would relate to the construction of a proposed driveway.

### State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

One of the purposes of this State Policy is for minor development to avoid the need to seek any form of development approval.

Part 2 of the Policy is the Exempt Development Codes.

Division 1 Subdivision 38 Clause 2.75 deals with Subdivision and sets out when a subdivision of land may be exempt from the need for any development approval. A realignment of boundaries can be considered as exempt development.

To be exempt, the realignment must meet the requirements as set out in Clause 2.75. The proposal satisfied all of the requirements, including being within a 10% change between the existing and proposed lot sizes.

Clause 2.75(b)(iii) also allows for new lots less than the minimum lot size standard in an environmental planning instrument if the existing lots are less than the minimum.

However, the Development Application has been lodged in order to secure approval and ensure that the new lots, in particular the vacant rear lot, are not denied their rightful dwelling entitlement. Further comment on this issue is made in relation to Clause 7.1 of Wingecarribee Local Environmental Plan 2010.

## **the provisions of any environmental planning instrument**

The relevant environmental planning instrument for consideration of this Development Application is the *Wingecarribee Local Environmental Plan 2010* (the WLEP2010).

The land on the southern side of Shepherd Street, inclusive of the subject site is within the R2 Low Density Residential zone of the WLEP2010, whereas the land on the northern side of Shepherd Street is within the R2 Low Density Residential zone. Refer to Figure 9.

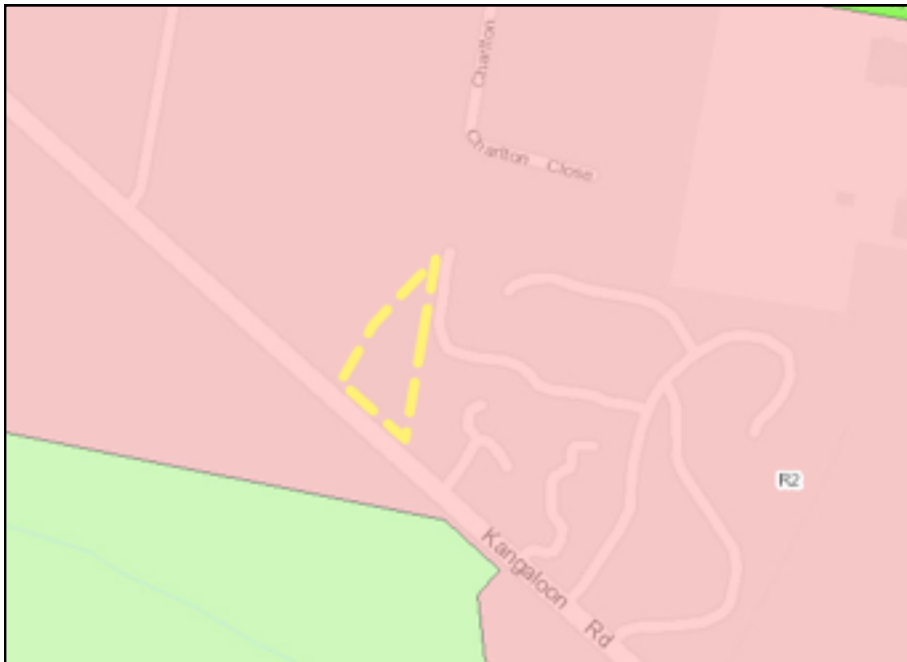


Figure 9: Extract from NSW Planning Portal showing land zoning

Clause 2.6 confirms that the subdivision of land is a type of development permissible with the consent of Council. A boundary realignment is a form of subdivision.

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 2000 square metres. Refer to Figure 10.

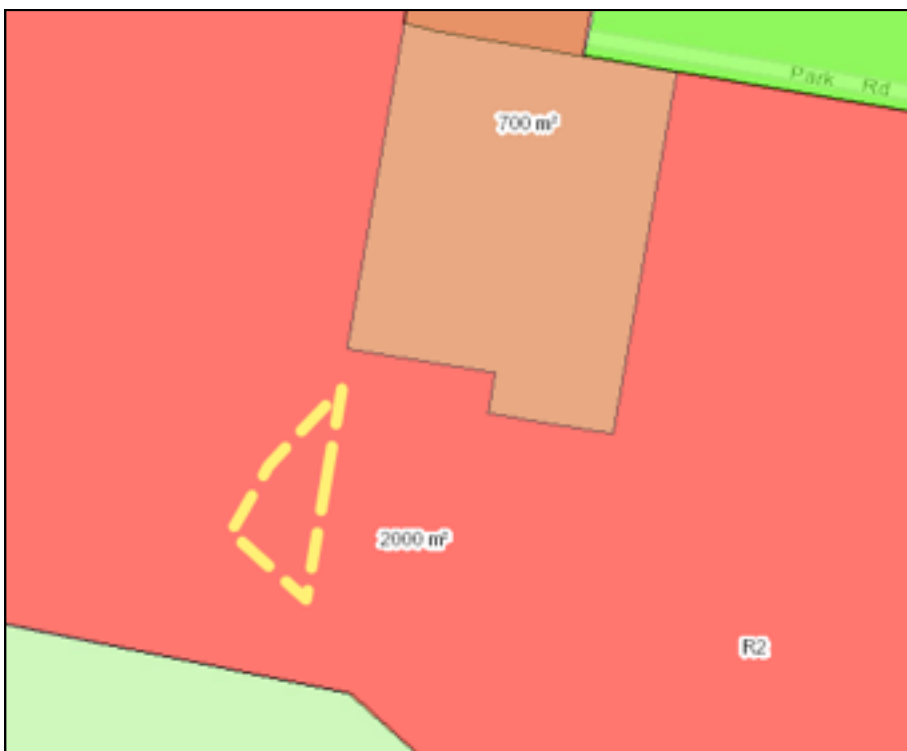


Figure 10: Extract from NSW Planning Portal showing minimum subdivision lot size



Presently, both existing lots are less than the WLEP2010 minimum lot size of 2000sqm. Lot 4 is 1892sqm and Lot 6 to the rear, is 1138sqm.

Following the proposed subdivision, both lots will still be less than the minimum requirement, being 1986sqm and 1056sqm respectively.

Clause 4.6 deals with variations to development standards and in this case, despite the two lots already being less than the minimum lot size, a formal variation request for the two new proposed lots has been provided.

Clause 5.10 Heritage conservation, is not critically relevant.

Clause 5.10 has the following objectives:

**(1) Objectives**

*The objectives of this clause are as follows:*

- (a) to conserve the environmental heritage of Wingecarribee,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

The site is not within a conservation area, it is not a Schedule 5 listed property and it is not in immediate proximity to any listed item. The proposed development does not offend the objectives of heritage conservation.

Clause 7.1 deals with Development on existing lots, including those in the R2 Low Density Residential zone. It acknowledges that in some circumstances a lot may not be of the minimum lot size for the creation of new lots but notwithstanding this it therefore recognises the rights to erect a dwelling house upon such a lot.

In this case, both existing Lots are below the minimum lot size for the creation of new lots which is set at 2000sqm. A dwelling exists upon Lot 6, the street frontage lot and a dwelling could be erected upon Lot 4, the rear lot, in its current configuration. The boundary adjustment therefore is not resulting in a situation where a 'new' dwelling entitlement is being created.

Clause 7.1 is set out in full below:

**7.1 Development on existing lots in Zones R2, R3 and R5**

*(1) This clause applies to lots in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and R5 Large Lot Residential that were created before the commencement of this Plan and:*

- (a) have an area that is at least the minimum lot size specified for that lot on the Lot Size Map, or*
- (b) on which the erection of a dwelling house was permissible immediately before that commencement, or*
- (c) if located in Zone R2 Low Density Residential at Hill Top, have:*
  - (i) an area of not less than 700 square metres, and*
  - (ii) a width of not less than 20 metres at the front alignment of the dwelling house, or*
- (d) if located in R5 Large Lot Residential west of Cumberteen Street, Hill Top, have an area of not less than 4,000 square metres.*

(2) Despite any other provision of this Plan, development consent may be granted for the erection of a dwelling house, dual occupancy development or multi dwelling housing on a lot to which this clause applies, if the development is permissible with consent on the land.

(3) Development consent may only be granted under this clause for development on lots referred to in subclause (1) (d) if the lots, in the opinion of the consent authority, are suitable for such a purpose having regard to:

- (a) the availability of vehicular access to the land, and
- (b) the availability of public utility services to the land, and
- (c) the physical, geotechnical, drainage, flooding and bush fire risk characteristics of the land.

Subclause (1)(b) confirms that the Clause applies on land where the erection of a dwelling house was permissible before the coming into force of Wingecarribee Local Environmental Plan 2010 (WLEP2010). Prior to WLEP2010, the relevant planning instrument was the Wingecarribee Local Environmental Plan 1989 and under that plan, dwelling houses were permissible with consent on the land. The land was within the standard 2(a) Residential zone. Refer to Figure 11. This map shows the existence of the two subject parcels.

Subclause (2) then confirms that despite any other provision of WLEP2010, including minimum lot sizes, development consent can be granted for the erection of a dwelling house, if development for a dwelling house is permissible with consent. Within the R2 Low Density Residential zone, dwelling houses are permissible with consent. In fact they are the dominate land use type in this zone.

Therefore it is open for Council to consider a dwelling house upon the land, notwithstanding the fact that the site areas of the two lots is less than what would now be required within this residential locality.



Figure 11: Extract from WLEP1989 showing the two existing lots within the general 2a residential zone

#### Clause 7.4 Natural resource sensitivity – Biodiversity:

The subject site has not been identified as being within a regional wildlife habitat corridor locality.

#### Clause 7.5 Natural resource sensitivity – water:

The subject site is not identified as being affected by any mapped water course.

### **the provisions of any development control plan**

Because the land is within the R2 Low Density Residential zone, the Bowral Township Development Control Plan applies.

Because the development proposal does not involve the creation of any additional lots or the actual construction of any new dwellings or structures, or does not involve the change of use of any of the land, there is limited applicability of the DCP to this Development Application.

The proposed subdivision (boundary adjustment) certainly does not offend any of the objectives of the DCP nor raises any issues requiring detailed assessment.

The boundary adjustment is a minor one that does not not fundamentally change the ability of a future development to successfully address the provisions of the DCP to create a built form that will be compatible and suitable in the existing streetscape.

The character of the locality is a mix of single dwellings on a variety of lot sizes, most of which are less than the prescribed minimum for new lots, or are multi dwelling developments.

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

Because the development proposal does not involve the creation of any additional lots or the construction of any new dwellings or structures at this time, or does not involve the change of use of any of the land, there are no particular impacts upon the built or natural environment.

Relevant comments have been made in previous sections of this Statement in relation to the range of issues that would normally be associated with likely impacts. The existing dwelling house will continue to be accommodated upon the front lot, while the rear lot can readily accommodate a new dwelling house within the parameters set by the Bowral DCP to be consistent with and respectful of its neighbours. This rear lot is fully serviced and enjoys an existing access handle to provide vehicular access to Kangaloon Road.



The boundary adjustment is minor in nature and could be considered as exempt development. The Development Application is to ensure that the new lots created retain their existing dwelling entitlements notwithstanding they will be less than the minimum requirement of 2000sqm site area.

It is not considered that the boundary adjustment will lead to a situation where an adverse environmental or built form outcome will result.

## **the suitability of the site for the development**

The boundary adjustment will not offend any of the stated objectives of the R2 Low Density Residential zone.

It will not impact upon the land use pattern of the locality, noting that this section of Kangaloon Road is developed with a variety of housing types which is not consistent with the 2000sqm minimum lot size as now set out in the WLEP2010.

The boundary adjustment simply allows for a more logical and useful residential settlement pattern and addresses the current problem of the dwelling encroachment into the existing access handle.

There will be no increase in the number of lots. There will be no increase in the number of dwelling houses that may be erected upon the land - no additional dwelling entitlements above those that already have been acknowledged by Council's statutory planning are created as a result of the boundary adjustment.

Both lots will provide adequate and appropriate areas for any existing or proposed dwelling houses that can be properly assessed through subsequent assessment processes.

Immediately adjoining development is a range of residential dwelling houses on a range of residential allotment sizes. The relationships between these existing dwellings and any future development upon the site will not be adversely impacted by the proposed boundary adjustment.

There will be no impact upon the predominant and/or preferred land uses in the vicinity. The locality is clearly a residential precinct with homes and associated ancillary uses. The land use pattern is well set and will not be altered by this boundary adjustment.

## **any submissions made in accordance with this Act or the regulations**

It is understood that the Development Application could be notified in accordance with the Council's standard procedures. Any issues arising from the public exhibition process will be addressed as necessary.

Council operates, with discretion, through its Notification of Development Proposals Policy. The objectives of the Policy include the opportunity for public participation that is appropriate to the type and form of the development proposed.

The Policy provides guidelines when notification should be undertaken. This development proposal does not trigger notification.

The Policy provides guidelines for when notification does not need to be undertaken. It allows the Council officer to assess an application without notifying it to neighbours when it is considered that there is no detrimental or uncontrollable impacts on adjoining properties.

Having regard to the nature of the development proposal there is no need, in accordance with Council Policy, to notify the development application in this case.

## **the public interest**

This Development Application is not considered to be of a type, or of such significance, that gives rise to issues of public interest. What is proposed is consistent with the planning controls for the site.

There are no impacts arising as a result of the boundary adjustment. The boundary adjustment simply represents a more efficient way to provide development opportunity for both lots that will minimise impacts and provide an outcome consistent with the character of the locality.

The boundary adjustment does not undermine the objectives of the zone or Council's planning controls, nor will it result in a change to the physical characteristics of the locality. This should be viewed as a positive outcome in terms of the public interest.

# Conclusion

The proposed boundary adjustment between the two existing lots is a reasonable development that will have no adverse impacts while providing a more suitable arrangement for the property owners. No additional lots are created and no dwelling entitlements over or above those already existing will result.

It is consistent with the provisions of the *Wingecarribee Local Environmental Plan 2010*. The variation to the development standard of 2000sqm minimum lot size for the creation of new lots has been addressed in the submitted Clause 4.6 Written Request for Variation submitted along with this Statement.

It is reasonable to expect support for the proposal on the basis that there are no additional lots being created, no additional dwelling entitlements and no change to the physical relationship between the existing dwelling house and adjoining residential development.

Both lots can be appropriately serviced and both will have suitable access to the public road system.

An approval is sought with the imposition of any relevant conditions noting that Clause 54(4) of the *Environmental Planning and Assessment Regulation 2000*, does not allow Council to require information at Development Application stage that is required to be attached to an application for a Construction Certificate, including a subdivision construction certificate. In this case, no work is actually required to create the new lot boundaries but there will be in due course work required to construct the new driveway within the existing access handle to service the internal lot.

Approval should be granted to enable the proposed new lots to be created.