

12 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

12.1 Post Exhibition Report - Planning Proposal for a New Heritage Item and Change in Minimum Lot Size at 102-104 Old Wingello Road, Bundanoon ('Rochester Park')

Reference:	5901/69
Report Author:	Strategic Land Use Planner (Heritage)
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Identify, protect and promote places of significant cultural heritage

PURPOSE

The purpose of this report is to inform Council of the outcome of the public exhibition and the subsequent re-exhibition of the Planning Proposal for 'Rochester Park', 102-104 Old Wingello Road, Bundanoon. The Planning Proposal seeks to heritage list the site and to change the minimum lot size to reduce opportunities for subdivision.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

1. **THAT** Council endorse the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to add a new heritage item called "Rochester Park' house and garden" at 102-104 Old Wingello Road, Bundanoon (Lot 32 DP 1205423) into Schedule 5 (Environmental heritage) Part 1 (Heritage items); and increase the minimum lot size of this property from 700m² to 1 hectare on the Lot Size Map.
2. **THAT** the Planning Proposal be forwarded to the Department of Planning, Industry and Environment for completion.

REPORT

BACKGROUND

The subject site, known as 'Rochester Park', is located at 102-104 Old Wingello Road, Bundanoon, and is described as Lot 32 in Deposited Plan (DP) 1205423. The site is 15,094m² (1.5 hectares) in size and is zoned R2 Low Density Residential with a minimum lot size of 700m². **Figure 1** shows the location of the subject site in the context of Bundanoon. This aerial image is reproduced in **ATTACHMENT 1**. **Figure 2** shows a recent aerial photo of 'Rochester Park' highlighting the mature trees which are a feature of the property.

In October 2018 a development application (DA 19/1088) was lodged for a 12 lot subdivision. This application proposed to retain the 'Rochester Park' house on a 3,821m² lot and create 11 other lots throughout the garden area, which would result in the loss of many of trees throughout the site and the tree-lined driveway.

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Due to concern raised about this proposal by staff and the community, Interim Heritage Order (IHO) No. 10 was placed over the property on 22 February 2019 on the advice of Council's Heritage Advisor.

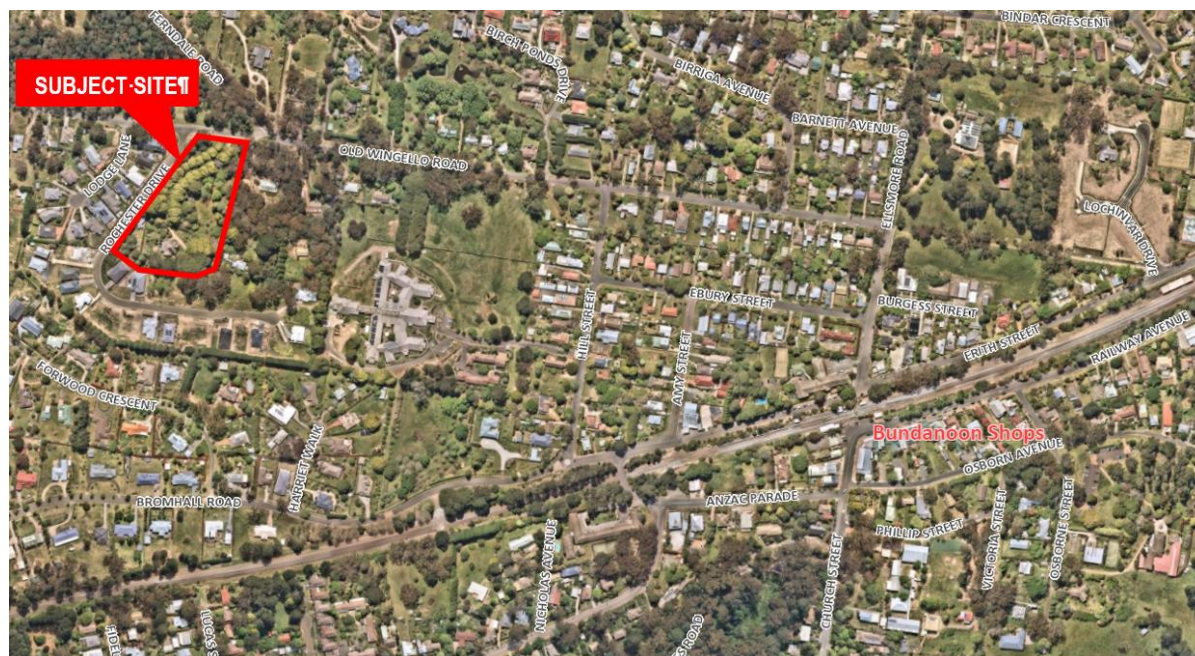


Figure 1—The location of ‘Rochester Park’ in the context of Bundanoon

DA 19/1088 was withdrawn by the applicant in July 2019.

On 14 August 2019, Council considered a report on the heritage assessment of ‘Rochester Park’ and the report recommended that the site be listed as a heritage item and that the minimum lot size be increased to prevent further subdivision of the site. Council supported the staff recommendation and resolved as follows:

MN 382/19

1. THAT Council supports the proposed heritage listing of “Rochester Park’ house and garden” at 102-104 Old Wingello Road, Bundanoon, comprising Lot 32 DP 1205423.
2. THAT Council supports the proposed change in minimum lot size of ‘Rochester Park’ from 700m² to 1 hectare (ha).
3. THAT a Planning Proposal be prepared under section 3.33 of the Environmental Planning & Assessment Act 1979 to amend Schedule 5 of the Wingecarribee Local Environmental Plan 2010 and the Heritage Map to add “Rochester Park’ house and garden” at Lot 32 DP 1205423 as a new heritage item and to amend the Minimum Lot Size map in relation to Lot 32 DP 1205423 from 700m² to 1ha.
4. THAT the Planning Proposal be sent to the Department of Planning, Industry and Environment with a request for a Gateway Determination in accordance with section 3.34 of the Environmental Planning & Assessment Act 1979.
5. THAT Council staff consult with Government stakeholders and engage with the community on the Planning Proposal in the manner prescribed in the Gateway Determination.
6. THAT Council consider a report after the conclusion of consultation and community engagement on the Planning Proposal.
7. THAT Interim Heritage Order No. 10 is extended until 22 February 2020 to allow for the preparation and processing of the Planning Proposal.

8. *THAT the property owner and objectors to the development application (DA 19/1088) be advised of Council's decision.*



Figure 2—'Rochester Park' site at 102-104 Old Wingello Road, Bundanoon
(Source: Nearmap, photo date 5 October 2020)

REPORT

Lapsing of the Interim Heritage Order and Subsequent Development Applications

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The IHO lapsed in February 2020 before the Planning Proposal was prepared. The applicant withdrew their subdivision development application (DA 19/1088) but lodged another similar development application (DA 20/1139) in April 2020, for a twelve (12) lot subdivision. The applicant then commenced proceedings in the Land and Environment Court on the deemed refusal of this application.

In August 2020, a further subdivision application was lodged (DA 21/0291) for a 5 lot subdivision with a private road.

The Planning Proposal

The Planning Proposal was prepared and sent to the Department of Planning, Industry and Environment (NSWDPIE) with a request for a Gateway Determination in August 2020.

A Gateway Determination was received dated 17 September 2020 and it gave permission for Council to proceed to public exhibition of the Planning Proposal subject to compliance with the terms of the Gateway Determination. A copy of the Gateway Determination is contained as **ATTACHMENT 2**.

The Gateway Determination required referral of the Planning Proposal to Heritage NSW, WaterNSW, and the NSW Rural Fire Service prior to public exhibition.

Agency Referrals

The referrals to Heritage NSW, WaterNSW and the Rural Fire Service were undertaken on 21 September 2020 and in accordance with the Gateway Determination Council provided a copy of the Planning Proposal to those agencies and gave them 21 days in which to provide a response.

WaterNSW responded on 7 October 2020 and their response:

- acknowledged the limitation of opportunities for exempt and complying development should the site be heritage listed which would enable a more rigorous assessment of future development (through the development application process),
- recommended two amendments to the Planning Proposal in relation to ensuring that future development would need to have a neutral or beneficial effect on water quality under the SEPP, and that the site is sewered and that reduction of subdivision potential would have a corresponding protection of water quality.

The requested amendments were made to the Planning Proposal prior to the commencement of public exhibition.

Heritage NSW responded on 13 October 2020 and their response:

- acknowledged Council's heritage assessment that the property met the heritage assessment criteria for heritage listing at a local level,
- reminded Council to ensure that all necessary due diligence, assessments and notifications are undertaken.

The NSW Rural Fire Service (RFS) responded on 28 October 2020 and they raised no concerns or issues in relation to bush fire in relation to the Planning Proposal.

Public Exhibition

The Gateway Determination required a public exhibition period of a minimum of 28 days. Public exhibition commenced on Wednesday 14 October 2020 and concluded on Tuesday

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17 November 2020, providing an exhibition period of 34 days, in excess of the 28 day minimum public exhibition period required by the Gateway Determination. Due to an inadvertent omission from the version of the Planning Proposal as exhibited, the Planning Proposal was amended and re-exhibited between 18 November 2020 and 20 January 2021. The re-exhibition period was over 9 weeks (or 41 days excluding the period between 20 December and 10 January as required by Council's Community Participation Plan).

There was a total of 4 submissions and all but one were submitted to the first exhibition period. Two of the submissions were from or on behalf of the property owner and objected to aspects of the Planning Proposal, particularly in relation to procedure and the proposed minimum lot size. The two community submissions supported the Planning Proposal. A summary of the submissions to the Planning Proposal is contained as **ATTACHMENT 3**.

Letters notifying the property owner and surrounding neighbours and property owners were sent at the commencement of both public exhibitions via mail and/or email. Weekly advertising in Council's Community Update (sent to subscribers via email) for the duration of the exhibition period was also undertaken throughout both periods of exhibition.

Determination of DAs and Court Judgment

Council determined the application for a 12 lot subdivision (DA 20/1139) by way of refusal on 14 October 2020.

The Land and Environment Court gave the applicant permission to amend the 12 lot subdivision on which deemed refusal was based (DA 20/1139) to a 5 lot subdivision submitted to Council as DA 21/0291. On 28 October 2020 the Land and Environment Court approved a modified 4 lot subdivision under DA20/1139 of the Rochester Park site.

DA 21/0291 (5 lot subdivision) has not yet been determined by Council and will be the subject of an upcoming separate report to Council.

Effect of the Planning Proposal

The effect of the Planning Proposal is to create a new heritage item ('Rochester Park' house and garden) by amending the Wingecarribee Local Environmental Plan (WLEP) 2010 in the following manner:

- a) Include in Schedule 5, Part 1 (Heritage items) the following new item:

Suburb	Item Name	Address	Property description	Significance	Item No.
Bundanoon	'Rochester Park' house and garden	102-104 Old Wingello Road	Lot 32, DP 1205423	Local	I1200

- b) Add the new heritage item to the Heritage Map. The amended map will show the new heritage item coloured brown (indicating a general item). The following WLEP 2010 Heritage Map sheet will require amendment:

Map(s) to be Revoked	Map(s) to be Adopted
Heritage Map – Sheet HER_008A 8350_COM_HER_008A_020_20170123	Heritage Map – Sheet HER_008A (as amended)

- c) Amend the minimum lot size on the Lot Size Map. The amended map will show the site coloured purple and marked "Y" to indicate a 10,000 square metres (or 1 hectare) minimum lot size. The following WLEP 2010 Lot Size Map sheet will require amendment:

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Map(s) to be Revoked	Map(s) to be Adopted
Lot Size Map – Sheet LSZ_008A (8350_COM_LSZ_008A_020_20140410)	Lot Size Map – Sheet LSZ_008A (as amended)

- d) Include a sub-clause in clause 1.8A of the WLEP 2010 (Savings provisions relating to development applications) to include reference to the Rochester Park amendment. The effect of this clause will be that any development application on the subject land lodged but not determined will be assessed in accordance with the development controls in force at the time of lodgement.

Figures 3 and 4 show the proposed changes to the maps.

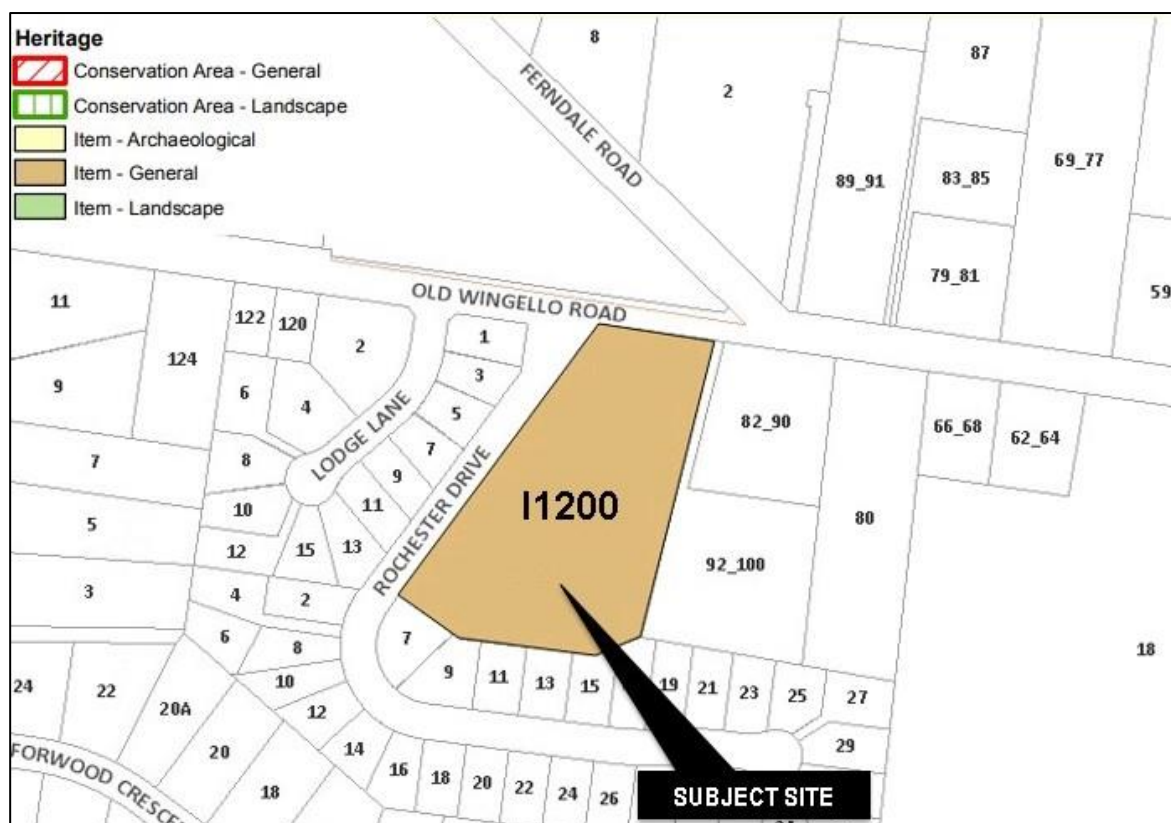


Figure 3—Proposed amendment to WLEP 2010 Heritage Map for 'Rochester Park'

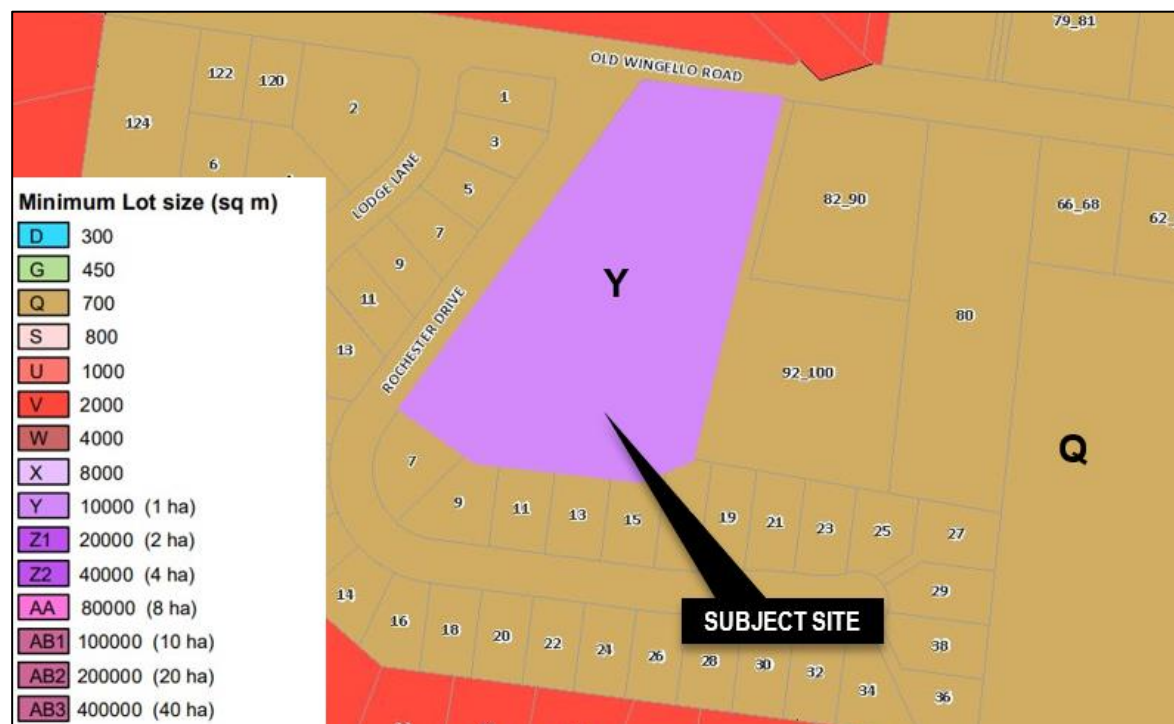


Figure 4—Proposed amendment to WLEP 2010 Lot Size Map for ‘Rochester Park’

COMMUNICATION AND CONSULTATION

Community Engagement

Community engagement has been undertaken in accordance with all requirements of the Gateway Determination, Departmental guidelines and the relevant provisions of the Environmental Planning & Assessment Act 1979. Submissions made during the exhibition periods are summarised and responded to in **ATTACHMENT 3**.

Internal Communication and Consultation

Internal communication was undertaken with planners in Council's Planning, Development and Regulatory Services Department as well as Council's consultant Heritage Advisor.

External Communication and Consultation

Agency consultation was undertaken in accordance with the Gateway Determination. Consultation with the community was undertaken as detailed in this report.

SUSTAINABILITY ASSESSMENT

- **Environment**

The heritage listing of the site will provide additional protection for the original house and its landscape, even in the event that the Court approved subdivision goes ahead.

- **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**

Identifying, protecting and promoting places of significant cultural heritage is one of the strategies (strategy 3.2.3) identified in the Wingecarribee Community Strategic Plan, Wingecarribee 2031 (amended 2017) under goal 3.2 (Wingecarribee has maintained a distinct character and separation of towns and villages). Council is committed to ensuring that places of heritage significance are identified, assessed and listed, as appropriate. The endorsement of this report and the subsequent making of the amendment to the WLEP 2010 in part satisfies this goal and strategy.

- **Governance**

The Planning Proposal has been prepared in accordance with guidelines published by the Department of Planning, Industry and Environment and in accordance with the Gateway Determination issued in respect of the Planning Proposal.

COUNCIL BUDGET IMPLICATIONS

As this is a Council-initiated Planning Proposal, no Planning Proposal fees are applicable. The Planning Proposal has been prepared in-house using existing Council resources with voluntary historical input from the community.

RELATED COUNCIL POLICY

There are no related Council policies.

OPTIONS

The options available to Council are:

Option 1

Option 1 is to support the recommendation of this report, as follows:

1. ***THAT** Council endorse the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to add a new heritage item called “Rochester Park’ house and garden” at 102-104 Old Wingello Road, Bundanoon (Lot 32 DP 1205423) into Schedule 5 (Environmental heritage) Part 1 (Heritage items); and increase the minimum lot size of this property from 700m² to 1 hectare on the Lot Size Map.*
2. ***THAT** the Planning Proposal be forwarded to the Department of Planning, Industry and Environment for completion.*

The proposal to heritage list ‘Rochester Park’ and increase the minimum lot size from 700m² to 1 hectare is still considered appropriate taking into account local heritage considerations and despite the Court’s decision to allow subdivision within the site.

Option 2

Option 2 is to not support the recommendation or to only support part of the recommendation. This option is not recommended as it is considered that heritage listing of

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the site is appropriate and despite the Court's decision to allow further subdivision of the site, a minimum lot size that would prevent further subdivision is appropriate to have in place should the Court approved application lapse

Option 1 is the recommended option to this report.

CONCLUSION

In August 2019, Council supported the heritage assessment of the property known as 'Rochester Park' at 102-104 Old Wingello Road, Bundanoon, following an Interim Heritage Order which was placed over the property. The report recommended that the site be included as a heritage item within WLEP 2010 and that the minimum lot size be increased from 700m² to 1 hectare. The Planning Proposal to effect Council's resolution was prepared and exhibited in late 2020 and subsequently re-exhibited in late 2020 and early 2021. There were submissions from the owner that did not support aspects of the proposal and submissions from the Bundanoon community that supported the proposal. Despite a decision of the Land and Environment Court to approve a subdivision of the site, this report recommends proceeding with the heritage listing and the reduction in the minimum lot size to 1 hectare and that the Planning Proposal be endorsed by Council for finalisation.

ATTACHMENTS

1. 'Rochester Park' Location Plan (Figure 1).
2. Gateway Determination issued by the Department of Planning, Industry and Environment on 17 September 2020.
3. Summary of Submissions to Rochester Park Planning Proposal Exhibitions.



Figure 1—The location of 'Rochester Park' in the context of Bundanoon

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ATTACHMENT 2 Gateway Determination issued by the Department of Planning, Industry and Environment on 17 September 2020.



**Planning,
Industry &
Environment**

Gateway Determination

Planning proposal (Department Ref: PP_2020_WINGE_003_00): to amend Wingecarribee Local Environmental Plan 2010 by adding land at 102-104 Old Wingello Road, Bundanoon (Lot 32 DP 1205423) as a new heritage item and increasing the applicable minimum lot size controls.

I, the Director, Southern Region, at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Wingecarribee Local Environmental Plan (LEP) 2010 as described above should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be updated to include a reference to a savings provision to apply to any development application lodged prior to the date of this Gateway determination but not yet determined.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - Water NSW;
 - NSW Rural Fire Service; and
 - Department of Premier and Cabinet (Heritage).

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

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ATTACHMENT 2 Gateway Determination issued by the Department of Planning, Industry and Environment on 17 September 2020.



5. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination, being 17th September 2021.

Dated 17th day of September 2020.


XXXXXXXXXXXX

Sarah Lees
Director, Southern Region
Planning and Assessments
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces

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ATTACHMENT 3 Summary of Submissions to Rochester Park Planning Proposal Exhibitions.



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

Rochester Park, Bundanoon—Heritage Planning Proposal Summary of Public Exhibition Submissions

Public exhibition of the Rochester Park Planning Proposal commenced on Wednesday 14 October 2020 and concluded on Tuesday 17 November 2020. Due to an omission from the version of the Planning Proposal as exhibited, the Planning Proposal was amended and re-exhibited from Wednesday 18 November 2020 to Wednesday 20 January 2021.

There was a total of 4 submissions and all but one were submitted to the first exhibition. All persons were re-notified of the second exhibition. Two of the submissions were from, or on behalf of, the property owner and objected to aspects of the Planning Proposal, particularly in relation to procedure and the proposed minimum lot size. The two community submissions supported the Planning Proposal.

As the Planning Proposal was publicly exhibited twice, the submissions received are differentiated into first and second public exhibition, as some of the comments regarding the first public exhibition were rectified for the subsequent public exhibition. The content of each submission is summarised below and an officer comment is provided on each issue.

FIRST PUBLIC EXHIBITION (14 OCTOBER – 17 NOVEMBER 2020)

Submission from	Summary of submission	Council Response
1. Solicitor on behalf of 'Rochester Park' property owner.	<p><u>Exhibition error – lot size map</u></p> <p>a) Indicative minimum lot size map in Planning Proposal showed incorrect colouring; Different versions of the Planning Proposal were exhibited at different times in the exhibition.</p> <p>b) Any submissions made cannot confirm the version of the Planning Proposal on which comments are made.</p> <p>c) Proposal should be re-exhibited.</p>	<p>a) The mapping error was identified a couple of days after the commencement of public exhibition. The Planning Proposal was subsequently amended and the corrected version (version 2.2) was uploaded to the public exhibition page to replace the incorrect version (version 2) and printed copies at the Civic Centre were likewise amended. The wording of the proposed change to the minimum lot size (from 700m² to 1 hectare) was correct in both versions. This was not considered to</p>

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ATTACHMENT 3 Summary of Submissions to Rochester Park Planning Proposal Exhibitions.



Submission from	Summary of submission	Council Response
		<p>be a major issue. However, public exhibition was extended from 13 to 17 November to accommodate this error.</p> <p>b) As no submissions were received before the amended version of the Planning Proposal was uploaded, and none of the subsequent public exhibitions specifically referred to the minimum lot size, it is not considered necessary to disregard any submissions to the initial exhibition of the Planning Proposal.</p> <p>c) The Planning Proposal was re-exhibited from 18 November 2020 to 20 January 2021 with all aspects of the minimum lot size indicative map and wording correct.</p>
	<p><u>Re-exhibition</u></p> <p>a) Savings provision required by the Gateway Determination was not included in the Planning Proposal.</p> <p>b) Planning Proposal did not include updates on development applications and a Land and Environment Court determination.</p>	<p>a) Acknowledged. This was a further oversight, and the Planning Proposal was amended to include a reference to the required savings provision to apply to any development applications lodged but not determined.</p> <p>b) The re-exhibited version of the document, which made a number of updates (version 2.3), included a table of amendments (from previous version 2.2) and all changes to the document were indicated by coloured shading. This version included updated information about DAs applying to the site and the judgment by the Court.</p>
	<p><u>Objection to proposed minimum lot size</u></p> <p>a) Minimum lot size of 1 hectare considered to be excessive and contrary to heritage experts' opinions who agreed during Court proceedings that site is capable of subdivision.</p>	<p>a) The 1 hectare minimum lot size, which was recommended as part of the heritage assessment undertaken by Council staff and Heritage Advisor and reported to Council on 14 August 2019. That report demonstrated that in 2005 around two-thirds of the estate remaining at that time were subdivided to create over 30 lots. It was the expert opinion of Council's heritage officers that the subdivision potential of the site had already been realised and that further subdivision within the curtilage of the existing site and its gardens (Lot 32 DP 1205423) would result in a loss of heritage significance and intactness.</p>

12.1 Post Exhibition Report - Planning Proposal for a New Heritage Item and Change in Minimum Lot Size at 102-104 Old Wingello Road, Bundanoon ('Rochester Park')

ATTACHMENT 3 Summary of Submissions to Rochester Park Planning Proposal Exhibitions.



Submission from	Summary of submission	Council Response
	<ul style="list-style-type: none"> b) 900m² minimum lot size is considered to be more appropriate. c) Planning Proposal should be re-exhibited with 900m² minimum lot size. 	<ul style="list-style-type: none"> b) Given the above reasons, it is maintained that the 1 hectare minimum lot size is still appropriate. However, the owner now has Court approval to undertake a subdivision of the site. Should that approval lapse, it is considered appropriate that the 1 hectare minimum lot size be in place to prevent future subdivision proposals. c) The Planning Proposal would not be able to be re-exhibited with a change in minimum lot size without reconsideration by Council. Since Council officers do not support a reduced minimum lot size, a report to Council was not considered to be warranted.
2. Bundanoon History Group	<ul style="list-style-type: none"> a) Supports the heritage listing of the site. b) Assumes that heritage listing will protect the house, driveway, garden and trees in a larger area. Considers the curtilage to be important. c) Understands that the Interim Heritage Order will extend until the listing is final. d) Suggests a number of other properties in Bundanoon that should be heritage listed. 	<ul style="list-style-type: none"> a) Acknowledged. b) Heritage listing will protect the site and the heritage controls will ensure that changes to the property are appropriate in design and scale. However, since the Court has approved a further subdivision of the site, that consent is operable by the owner until such time as the consent were to lapse if not acted on. c) Unfortunately, the Interim Heritage Order has lapsed. However, the site is a draft heritage item and certain restrictions are now in place which help to protect the site until the Planning Proposal is finalised and the amendment to Wingecarribee Local Environmental Plan 2010 is published. d) Additional sites have been noted for future investigation.
3. Local property owner/resident	Supports the Planning Proposal for heritage listing as the site has heritage and environmental value and listing is long overdue.	Acknowledged.

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ATTACHMENT 3 Summary of Submissions to Rochester Park Planning Proposal Exhibitions.



SECOND PUBLIC EXHIBITION (18 NOVEMBER 2020 – 20 JANUARY 2021)

Submission from	Summary of submission	Council Response
4. Property owner	<p>a) Acknowledges the re-exhibition and the inclusion of the required savings provision.</p> <p>b) Submissions to the first exhibition should be disregarded for the purpose of the second exhibition because they were based on a set of inaccurate documents. The community might not have been aware of the status of DAs and Court decisions.</p> <p>c) Court recommended that 1000m² minimum lot size is acceptable and to pursue 1 hectare would be contrary to the agreement of independent experts and the findings of the Land and Environment Court. 900m² minimum lot size should be imposed on the site.</p>	<p>a) Noted.</p> <p>b) Disagree. None of the submissions from members and groups in the community referred to the minimum lot size or the Court proceedings (which were mentioned in the re-exhibition version of the Planning Proposal). In any case, all those that made submissions to the first exhibition were notified of the second exhibition and invited to re-examine the documents. None chose to make a further submission.</p> <p>c) This has been previously addressed. See "objection to minimum lot size" in submission number 1, above.</p>