

o-EP7	Planning Proposal to Amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 to Permit a Dwelling House on Lot 3 DP 1014433, 76 Drapers Creek Road, Colo Vale
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Environment

Reference: 5901

Responsible Manager: Manager Strategic and Community Development

PURPOSE

The purpose of this report is to present to Council an application to prepare a Planning Proposal to amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to permit a dwelling house on Lot 3 DP 1014433, 76 Drapers Creek Road, Colo Vale.

SUMMARY

Council granted approval in 1993 for construction of a health retreat on the subject site. Development commenced and then ceased. The applicant now seeks permission to construct a dwelling house on the site. The site is zoned E3 Environmental Management under WLEP 2010 with a minimum lot size of 40 hectares. A Planning Proposal is required because, although dwelling houses are permissible with consent in the E3 zone, the subject site, being 21.1 hectares, is below the minimum lot size.

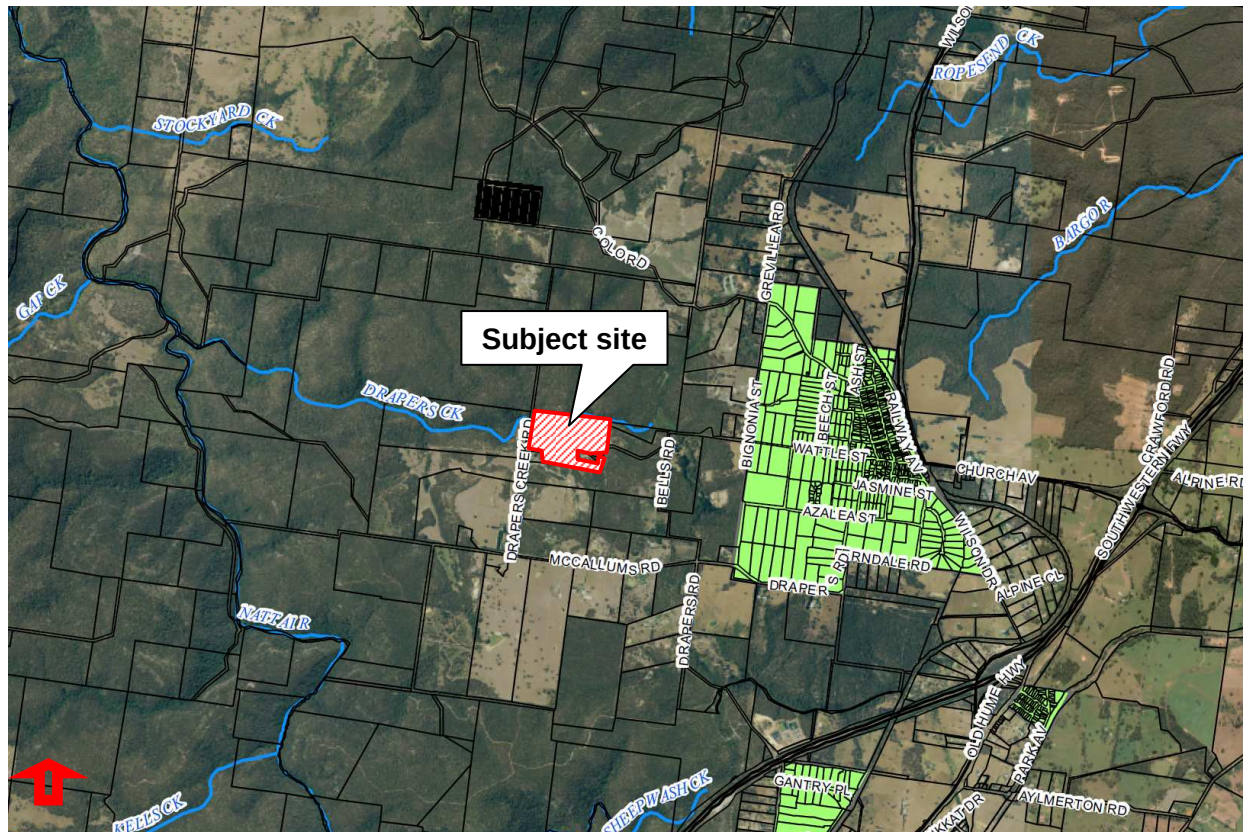
DESCRIPTION OF ITEM

BACKGROUND

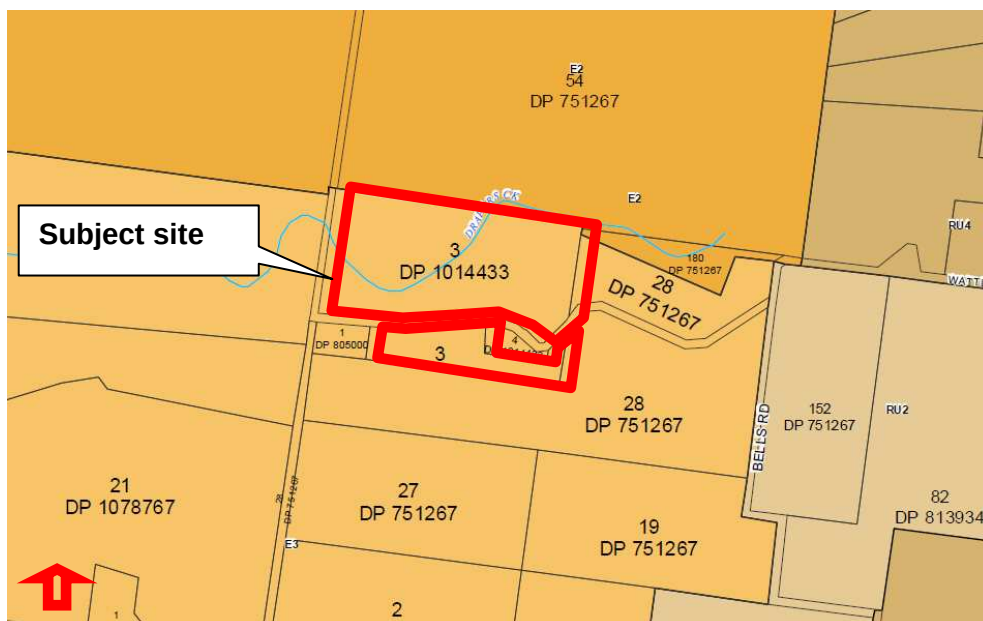
The subject site is located on Lot 3 DP 1014433, 76 Drapers Creek Road, Colo Vale, to the west of the village of Colo Vale, as indicated on the regional map on the following map.

The site is zoned E3 Environmental Management under WLEP 2010 with a minimum lot size of 40 hectares.

The total area of the site is 21.1 hectares, but is divided into two portions by Drapers Creek Road with 4.27 hectares on the southern side of the road and the remaining 16.83 hectares on the northern side, as indicated on the detailed site map following the regional map.

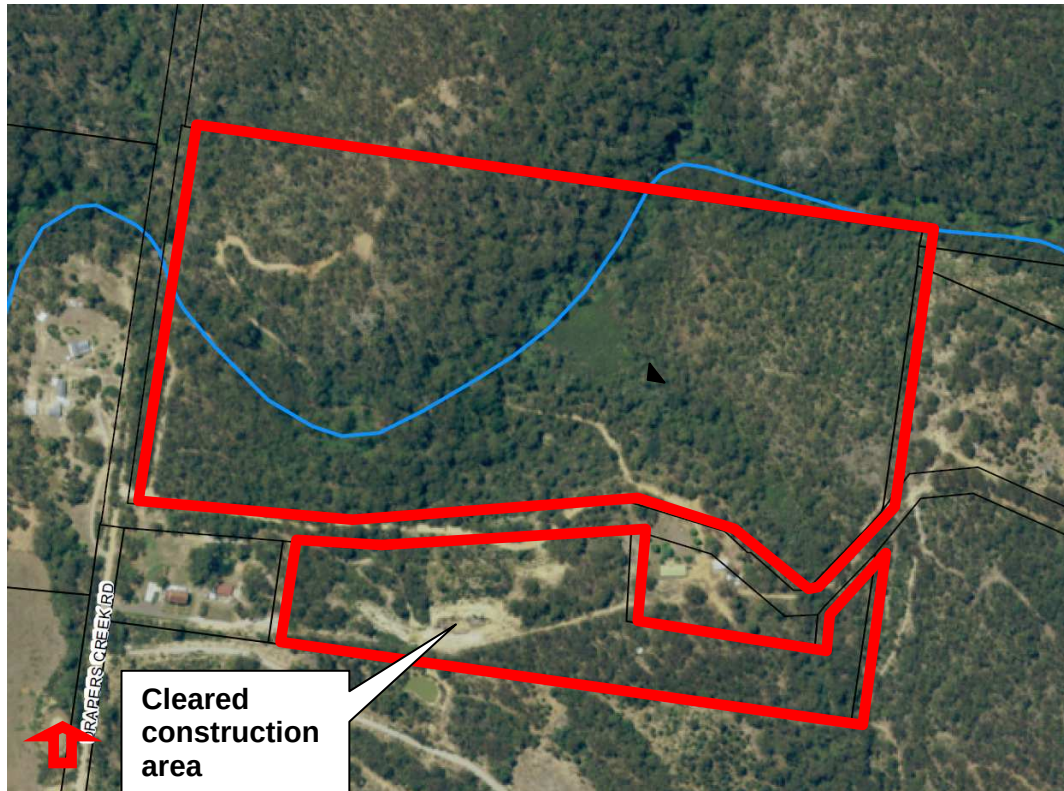


Regional Location Map (Direction of North indicated by the red arrow).



Location & Zoning Map (Direction of North indicated by the red arrow).

In 1993, Council granted approval for construction of a health retreat on the southern portion of the property. Works subsequently ceased, but the cleared area and works remain and may be seen on the aerial photograph below.



Aerial Photograph (2009) (Direction of North indicated by the red arrow).

PROPOSAL

The applicant seeks to amend Schedule 1 of WLEP 2010 to permit the construction of a dwelling house on the subject site. Dwelling houses are permissible with consent in the E3 zone provided the minimum lot size is met, or the site had an existing dwelling entitlement when WLEP 2010 was made. In this case, all previous dwelling entitlements had been used. Because the site is below 40 hectares, a Planning Proposal would be required.

Normally, the Department of Planning and Infrastructure would require Council to amend the minimum lot size map rather than facilitate development through an amendment to Schedule 1. However, it is noted that WLEP 2010 currently does not contain a minimum lot size option of 20 hectares. The closest option of 10 hectares would theoretically permit subdivision of the property, although this would be difficult to achieve given the fact that Drapers Creek Road intersects the property.

It is noted that the northern portion of the site is heavily vegetated and contains a watercourse which is designated as requiring a Category 3 (bank stability and water quality) Riparian Corridor of 10 metres under WLEP 2010. The commenced works are located on the southern portion of the property within a cleared area of the site.

CONCLUSION

Council does not normally support the construction of dwelling houses on undersized allotments, particularly in rural and environmental zones, however the fact that the site already contains a partly constructed development is a relevant factor.

The impact of a dwelling house on surrounding properties and the road network could be expected to be less than that of the approved health retreat development. Part of the site has already been cleared and construction has commenced, but there has been no further work for some years. Therefore, the site has remained effectively a construction site during that time with detrimental amenity to the adjoining properties, both of which contain dwelling houses.

There are foundations and some walls in place. If this site were used for the proposed dwelling and the existing construction works incorporated as far as practicable into the proposed dwelling construction, there would be no additional environmental impacts.

This condition would particularly ensure that the vegetation on the northern side of Drapers Creek Road was not threatened by the development proposal. It would also ensure that the land that has already been cleared on the southern side of Drapers Creek Road is utilised and, as far as practicable, existing construction incorporated into the new development.

To this end, Council has requested and received from the property owners, a Positive Covenant over the property, the terms of which are:

“That no dwelling shall be erected or be permitted to remain on the land the subject of this covenant unless it shall be constructed within that area of the site where development has already commenced; and

“That any new development shall incorporate as much of the existing construction approved under Development Application of the Wingecarribee Shire Council numbered DA 540/92 as is deemed practicable by Wingecarribee Shire Council.”

It is also noted that Wingecarribee Shire Council is named as the only authority empowered to release, vary or modify the Covenant.

This Covenant would form part of the Planning Proposal should Council resolve to support it.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed dwelling house will not adversely impact on vegetation provided the existing development site and construction works are utilised.

- **Social**

There are no social implications.

- **Culture**

There are no cultural implications.

- **Broader Economic Implications**

There are no economic implications.

- **Governance**

There are no governance implications.

RELATIONSHIP TO CORPORATE PLANS
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There are no policy implications associated with this Proposal.

BUDGET IMPLICATIONS

The relevant fee for the preparation of the Planning Proposal would be charged if Council resolved to support it.

ATTACHMENTS

There is one attachment to this report:

1. Positive Covenant Applicable to the site.

RELATED COUNCIL POLICY

The Planning Proposal would apply to Wingecarribee LEP 2010.

RECOMMENDATION

1. THAT Council resolve to prepare a Planning Proposal, in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979, to amend Wingecarribee Local Environmental Plan 2010 to permit development for the purposes of a dwelling on Lot 3 DP 1014433, 76 Drapers Creek Road, Colo Vale.
 2. THAT the applicant be advised of Council's decision in relation to 1 above.
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ATTACHMENT 1

Form: 13PC
Release: 2.3
www.lpm.nsw.gov.au

POSITIVE COVENANT
New South Wales
Section 88E(3) Conveyancing Act 1919

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **TORRENS TITLE** FOLIO IDENTIFIER 3/1014433

(B) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Reference: 	PC
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(C) **REGISTERED PROPRIETOR** MICHAEL JOHN DeBOER and ALISON GABRIEL DeBOER

(D) **LESSEE MORTGAGEE or CHARGE**

Of the above land agreeing to be bound by this positive covenant		
Nature of Interest	Number of Instrument	Name
NOT APPLICABLE	N.A.	N.A.

(E) **PRESCRIBED AUTHORITY** WINGECARRIBEE SHIRE COUNCIL

(F) The prescribed authority having imposed on the above land a positive covenant in the terms set out in annexure 'A' hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.

DATE

(G) **Execution by the prescribed authority**
I certify that an authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness: Signature of authorised officer:
Name of witness: Name of authorised officer:
Address of witness: Position of authorised officer:

(H) **Execution by the registered proprietor**
I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Signature of witness: Signature of Registered Proprietor:
Name of witness: Name of authorised officer:
Address of witness: Position of authorised officer:

(I) **Consent of the N.A.**
The N.A. under N.A. No. N.A. agrees to be bound by this positive covenant.
I certify that the above N.A. who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness: Signature of N.A.:
Name of witness:
Address of witness:

Annexure 'A' to Positive Covenant made between

Michael John DEBOER and Alison Gabriel DEBOER

Registered Proprietor

and

Wingecarribee Shire Council

Prescribed Authority

Terms of Positive covenant:

- i) That no dwelling shall be erected or be permitted to remain on the land the subject of this covenant unless it shall be constructed within that area of the site where development has already commenced; and
- ii) That any new development shall incorporate as much of the existing construction approved under Development Approval of the Wingecarribee Shire Council numbered DA 540/92 as is deemed practicable by Wingecarribee Shire Council

Name of authority empowered to release vary or modify the above Positive Covenant:

Wingecarribee Shire Council

I certify that the registered proprietor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this document in my presence.

Witness
Signature of Witness

NAME: CRAIG BAKER
F.W. Name of Witness (Block Letters)
28 BRITANNIC CRESCENT
F.W. Address of Witness PARADISE POINT, 4216.

Certified correct for the purposes of the Real Property Act by the registered proprietor.

Signature of registered proprietor:

MJD: [Signature]
P62: [Signature]

Signed for and on behalf of Wingecarribee Shire Council by its duly authorised officer(s):

Signature(s):

Name of authorised officer:

Designation and Authority: