

VISITOR ITEM

OPERATIONS

v-OP1 Proposed Mixed Use Development, Lot 1 DP406617, Lot 15 DP 740276, Lot 6 DP Sec E DP 3807 and Lot 1 DP 513337, corner Moss Vale Road, Bowral Street and Holmhale Street, Bowral

Reference: **LUA2012/0193**
Responsible Officer: **Manager Environmental Assessment**

Applicant: **Bureaucracy Busters Town Planning Consultants**
Owner: **AA, RL, G and MEM DeAngelis**

PURPOSE OF REPORT

This report is about a development application for the K Mart proposal which involves the demolition of the existing Gardens R Us nursery and single residence, and the construction of a retail/commercial premise comprising of a K Mart department store, 7 specialty shops and 5 residential dwellings (See Attachment 1 – Location Map).

The proposal was the subject of an initial widespread notification/advertising in March/April 2012, with further notification of amended plans during December 2012/January 2013. This was accompanied by a Public Forum on 30 January 2013 at which the community was given the opportunity to obtain information about the latest proposal prior to the close of the submission period on 6 February.

In between, Council was notified that an appeal had been lodged in the Land and Environment Court against a deemed refusal of the development application.

Despite this, there is nothing preventing Council from determining its position in respect of this development. As the concurrence of the SCA has not been received, Council is unable to approve the development application although it can indicate its support of the proposal subject to certain matters being addressed.

Alternatively, Council is able to refuse the development application, and this is recommended.

The applicant and a representative of the objectors have been invited to address Council on the proposal.

REPORT

Background

Recent Events

For reasons that will be evident, this report is substantially the same as the report considered by Council at its meeting on 24 October 2013.

Immediately before that meeting, the applicant requested deferral of the application “to enable revised drawings to be prepared” and that “work will commence immediately and (they) should be available for submission to Council within 2 – 3 weeks”.

In response to this request, Council resolved:

1. *THAT Council agree to the request for a further deferral of the current proposal as shown in development application LUA12/0193 for the demolition of an existing Garden Nursery and single residence and the construction of retail/commercial/residential premises comprising of a new Kmart Department Store, seven (7) Specialty Shops and five (5) Residential Dwellings within the consolidated area of Lot 1 DP 406617, Lot 15 DP 740276, Lot 6 DP 3807 Sec E and Lot 1 DP 513337 corner of Moss Vale Road, Bowral Street and Holmhale St, Bowral.*
2. *THAT Council again reiterate that the proposal is not an appropriate form of development on a Gateway site to Bowral Town Centre and should be along the lines of the mixed used commercial/retail/residential development on the South Eastern corner of Mittagong Road and Victoria Street, Bowral, wherein there is a much higher proportion of residential accommodation and the design of the development compliment both streetscapes by having commercial/retail and residential directly fronting the streets and there is a smooth transition between commercial/retail and residential areas.*
3. *THAT consideration of the development application be deferred for a period of four (4) weeks to enable the applicant to submit an amended proposal AND THAT a further public exhibition of amended plans take place with the final determination of the proposal by Council in February 2013 with no further deferrals.*
4. *THAT during the public exhibition phase, Council conducts a Public Forum at a venue to be determined allowing two (2) hours for presentations by the applicant and addresses by objectors.*
5. *THAT the forum be for information and questions only and Councillors attend as observers.*
6. *THAT legal advice be obtained in relation to the permissibility for the proposed KMart development in relation to Council’s planning provisions and the Environmental Planning & Assessment Act.*

Subsequent to this, 2 meetings were held with the applicant and property owners.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 27 February 2013

REPORT OF DEPUTY GENERAL MANAGER OPERATIONS



At the first meeting on 13 November 2012, the applicant presented plans which showed some improvements to the Moss Vale Road façade and to part of the Bowral Street façade.

At the second meeting on 29 November 2012, the amended plans showed the only changes that were made were confined to cosmetic treatments of the Bowral and Holmhale Street facades.

At this time, it became clear that further amendments were not possible under the current scheme to address the fundamental issues which had been identified from the outset, such as the bulk and scale of the building, its impact on the streetscape (particularly Holmhale Street) and the lack of an effective transition between the B2 Local Centre zone to the north and the R3 Medium Density Zone to the east and south.

The plans presented at this meeting were lodged the following week as the applicant's final version of the proposal, and they were notified/advertised until early February 2013.

On 14 December 2012, an appeal was lodged in the Land and Environment Court against the deemed refusal of the development application.

In response to this Council has filed a Statement of Facts and Contentions which sets out Council's current position on the proposed development (See Attachments 10a – Facts and Attachment 10b - Contentions).

The Court has set the following timetable for the appeal:

1. The matter is adjourned until 1 March 2013 to allow the applicant to address contentions that involve insufficient information;
2. The applicant is to provide Council with any additional information by 18 February 2013;
3. Council may file a notice of motion requesting leave to amend its Statement of Facts and Contentions by 27 February 2012; and
4. The parties have liberty to restore on 2 working days' notice.

On 30 January 2013, a Public Forum was held in the Bowral Memorial Hall to give the community the opportunity to obtain further information prior to the close of the submission period on 6 February 2013.

Earlier Background

The subject property was previously zoned 2(b) Residential under the provisions of Wingecarribee Local Environmental Plan 1989, and this did not permit retail developments.

The site however has been rezoned to B4 Mixed Use in Wingecarribee Local Environmental Plan 2010.

Pre-lodgement discussions were undertaken between the developer and Council staff, Council's response to the proponent is included as Attachment 2.

Apart from dealing with technical issues, such as traffic, car parking, utility services, the purpose of this letter was to direct the proponent to the form of development that had then recently been approved by the JRPP at the northern entry to the Bowral Town Centre.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 27 February 2013

REPORT OF DEPUTY GENERAL MANAGER OPERATIONS



The site of this development, on the corner of Mittagong Road and Victoria Street is in a similar situation to the current site, namely in a B4 zone which is a transition from the B2 Local Centre zone of the Bowral Town Centre to Residential.

The Victoria Street development is substantially residential, with a component of retail/commercial, and was supported by Council and subsequently approved by the JRPP as an appropriate form of development in the B4 Mixed Use transition zone (See Attachment 7).

When the K Mart development application was lodged in March this year, it was not for a mixed use.

It was comprised of:

- the K Mart department store, with a leaseable floor area of 3,986m²;
- seven (7) specialty shops, with a total leaseable floor area of 688m; and
- A basement carpark with 173 parking spaces.

There was no residential component to it, and while the fronting of the specialty shops to Moss Vale Road presented a reasonable (but improvable) façade, the appearance from Bowral and Holmhale Streets was basically that of a "box".

The inclusion of a residential component was discussed at the pre-lodgement meeting and in the subsequent letter to the proponent.

An assessment of the proposal was undertaken, it was referred to external agencies (RMS, SCA) and it was widely notified and advertised.

Arising from this, the proponent was advised that there were a number of issues to be addressed, and these can be summarised as follows:

- The proposed development constitutes primarily one land use of the B4 Mixed Use zone and therefore does not provide a transition between residential and commercial development.
- The development fails to provide any evidence of how it has regard to the character and amenity of adjacent and nearby residential development, as the submitted information assumes no impact.
- The proposed development does not integrate an adequate variety of suitable permitted land uses in the Residential sub-area as described in the DCP, such as a mixed use Residential Flat Building/Commercial Retail premises.
- The proposed development is not complimentary to adjoining residential development as it fails to provide a transition between residential and commercial development. Specifically the proposed development would create a hard boundary between residential and commercial development, which is contrary to the DCP.

The notification/advertising of the development application resulted in excess of 250 letters of objection and a petition with over 1,500 signatures opposing the proposal.

The grounds for objection and opposition to the development were also provided to the applicant.

On 21 June 2012 an amended proposal was submitted.

Details of Proposal

The current proposal is for:

- A K Mart department store, with a leaseable floor area of 3,986m²;
- Areas ancillary to the department store (eg warehouse and storage areas) with a floor area of 917m²;
- Seven (7) specialty stores fronting Moss Vale Road, with a total leaseable area of 688m²;
- 5 residential dwellings (three 2 bedroom dwellings and two 1 bedroom dwellings), located above the specialty stores; and
- A basement car park with 173 car parking spaces (these spaces include spaces for residential use and disabled parking. The facility does not generate the need for any on street parking spaces as an excess number of off street car parking spaces is proposed.

The residential dwellings are proposed as “Affordable Housing”.

Access arrangements are for:

- All public access to be via Bowral Street to the basement car park; and
- All service vehicle access to be from Holmhale Street and exiting onto Moss Vale road.

A traffic island is proposed on Bowral Street to prevent public vehicles turning right and a traffic island is also proposed on Moss Vale Road to prevent service vehicles turning right upon exiting the site.

Attachment 3 contains Site Plans and Elevations (larger plans will be provided to Councillors as a separate Attachment and will also be displayed at the Council meeting).

The Surrounding Area

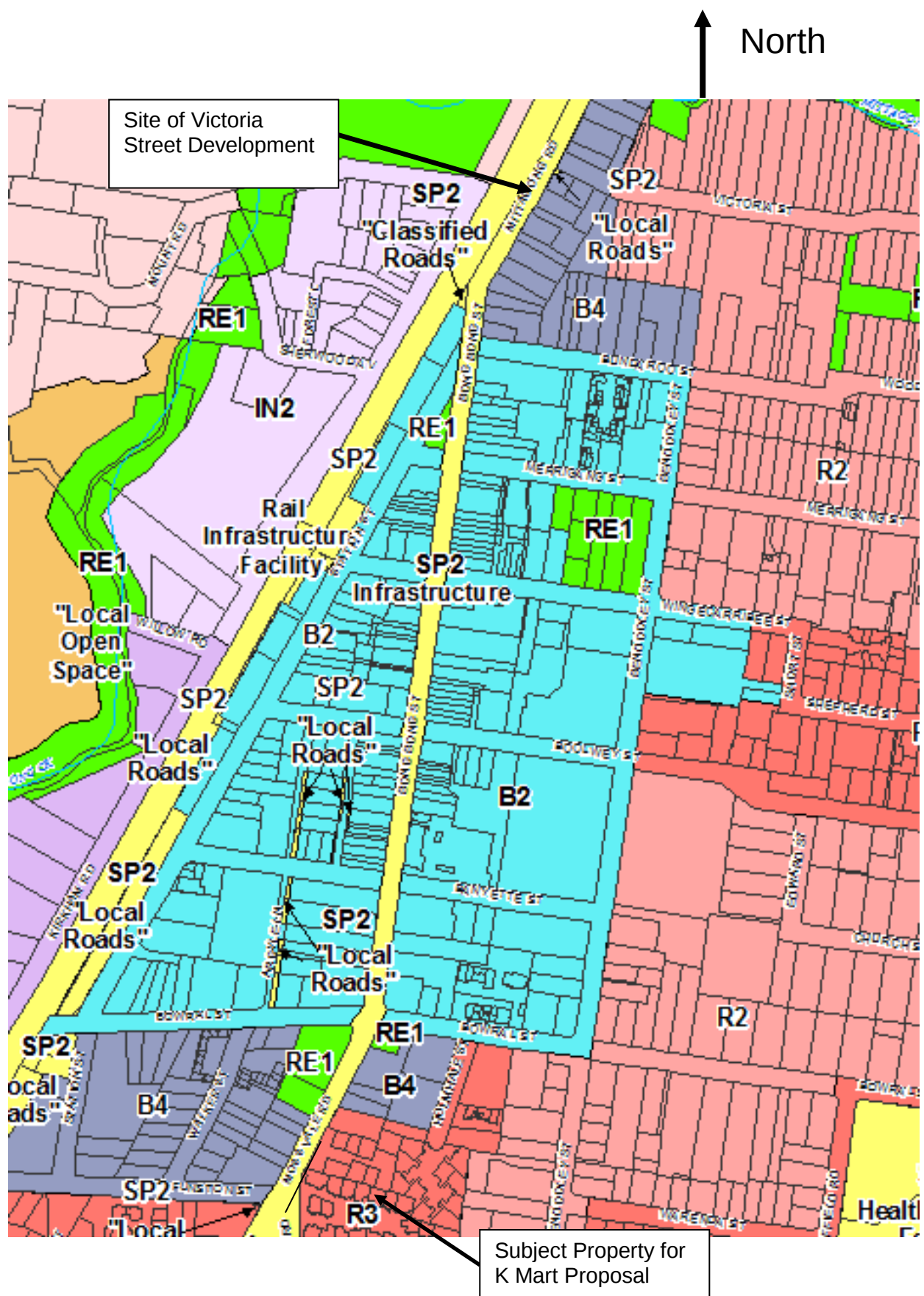
On the corner of Moss Vale Road and Bowral Street (and surrounded by the proposed development) is Manyard Park, which has an area of approximately 635m² and is zoned RE1 Public Recreation.

Across Moss Vale Road to the west is Lions Park, which is also zoned RE1.

Opposite in Bowral Street to the north of the subject property is land zoned B2 Local Centre which contains a Service Station, Motor Cycles Sales Yard and a Medical Centre.

The land to the south and east is zoned R3 Medium Density Residential and currently contains a mixture of single residences and multi unit complexes.

The Wingecarribee Local Environmental Plan 2010 zoning map below shows the zoning of the subject property (B4) and land in the locality. The zoning map also shows the area for Victoria Street locality to illustrate the similarities between this precinct on the northern entry to Bowral, and the subject land on the southern entry.



STATUTORY PROVISIONS

Wingecarribee LEP 2010

The subject property is zoned B4 Mixed Use, and “commercial premises”, “dwellings” and “shop top housing” are permissible with consent.

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in assessable locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas.*

See the *Discussion of Key Issues* section of this report for comments relating to how the proposed development does/does not satisfy these objectives.

Clause 4.3 Height of buildings

(1) *The objectives of this clause are as follows:*

- (a) *to identify maximum heights of buildings,*
- (b) *to ensure that the heights of buildings are compatible with the character of the existing development within the surrounding area.*

(2) *the height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

Council’s *Height of Building Map* permits a maximum building height of 9 metres within the subject property and no part of the building is to exceed this.

The proposed development has a maximum building height of 9 metres therefore complies with Clause 4.3.

Clause 4.4 Floor space ratio

(1) *The objectives of this clause are as follows:*

- (a) *to identify maximum floor space ratios in major centres,*
- (b) *to ensure that floor space ratios provide development opportunities that are compatible with building heights,*
- (c) *to encourage development in locations readily accessible to public transport and services that will provide increased employment opportunities.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*

Council's *Floor Space Ratio Map* permits a maximum floor space ratio of 1.1:1 within the subject property.

The proposed development complies with the permitted floor space ratio.

Bowral Town Plan DCP

The subject site falls within the Southern Entrance Precinct, which is addressed by Section 15 of the DCP.

B15.1 Location and Description

The DCP states:

"The Bowral Southern Entrance Precinct is at the southern entrance to Bowral and is a transition zone between the R3 Medium Density Residential zone further south and the B2 local Centre zone to the north which forms the Bowral CBD."

B15.2 Preferred Development Outcomes

Figure B15.2, of the DCP depicts the subject site as a Residential sub-area. The DCP states in respect of the Residential sub-area:

"The Residential sub-area is located on the eastern side of Moss Vale Road where medium density development adjoins the area on the east and south. Residential flat buildings are permitted with consent in the adjoining R3 zoned land. Council would encourage redevelopment of the sub-area through site amalgamation and development which integrates with and complements surrounding development. Such development would also provide the opportunity for Landscaped Private Open Space to be integrated with the public parkland currently located there."

B15.2.1 Development Controls

The DCP provides the following development controls:

- (a) All development shall comply with the relevant controls of Parts A, B and C of this Plan.
- (b) All development shall comply with the preferred development outcomes identified in this section of the Plan.
- (c) All car parking provided in conjunction with any development must be provided on-site.
- (d) In the case of residential development on the eastern side of Moss Vale Road, attention shall be given to the integration of private open space with Maynard Park.
- (e) In the case of a combined residential and commercial development, the residential component shall be located directly above a lawful development located at ground level on the same land.
- (f) For the purpose of development on land to which subclause (b) applies, the Council may grant consent for the strata subdivision of business

centre apartment housing pursuant to the provisions of the Strata Schemes (Freehold Development) Act 1973.

(g) Nothing in this clause requires any occupier of a residence in a mixed use development to have any association or conjunction with the commercial development at ground level on the same land.

See the *Discussion of Key Issues* section of this report for comments relating to the above objectives.

SEPP (Drinking Waters Catchment)

The development proposal has been referred to the Sydney Catchment Authority (SCA) for assessment.

The Authority has been advised of the fundamental concerns that Council's assessment staff have with the proposal and has therefore not provided final comments in relation to this application.

In the event that Council determines to support the proposal, final comments/conditions will need to be sought from the Authority before any consent may be issued.

SEPP (Remediation of Land)

The subject property is identified on Council's contaminated land register as a result of the site being used as a retail plant nursery since 1986.

A preliminary contamination assessment report has not been requested from the applicant at this stage due to Council staff having fundamental concerns with the proposal and wishing to avoid putting the developer through any unnecessary additional costs.

A contamination assessment report would be required to determine the potential contamination risk as a result of developing the site prior to any consent issued.

SEPP (Affordable Rental Housing)

The 5 residential dwellings proposed as part of this DA have been included under the provisions of the Affordable Rental Housing SEPP. Full assessment of these dwellings has not been undertaken by Council staff with regard to the SEPP due to the fundamental concerns staff have with the merits of proposal which must first be addressed. A full assessment will need to be undertaken prior to any consent being issued by Council.

It should be acknowledged however that Clause 16A of the SEPP states that "*a consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area*".

It is considered by staff that the proposed development is not compatible with the character of the local area for the reasons outlined in the Discussion of Key Issues section of this report.

CONSULTATION

Community Engagement (Amended/Final Proposal)

The amended/final proposal was notified as on the previous occasion with letters sent out to around 500 local residents and businesses, with the submission period commencing on 12 December 2012 and closing on 6 February 2013.

It was also advertised in the local newspaper, with notices appearing on 12 and 19 December 2012, and 9 and 23 January 2013.

These notices also advised that a Public Forum would be held on 30 January 2013 in the Bowral Memorial Hall.

The purpose of the Forum was to enable the community to obtain further information about the current proposal ahead of the close of the submission period.

The attendance sheets show that 165 people attended.

Those attending were given the opportunity to ask questions of Council staff – Manager Environmental Assessment, Manager Strategic and Assets and Transportation Planning Engineer.

All Councillors attended, but only as observers and they were not involved in any discussion of the proposed development.

By the close of the Public Forum, 32 Question sheets had been collected, and these contained the total of 51 questions which had been asked of staff and answered.

The issues raised in these questions are set out in Attachment 8.

At the close of the submission period on 6 February 2013, Council had received a further 38 individual letters and the issues raised by these are also set out in Attachment 8.

Council also received 29 pro-forma letters of objection, and a petition with 566 signatures opposing the proposed development.

The issues raised both at the Public Forum and in submissions was substantially the same as raised in the initial notification/advertising as described in the following section.

Two polls were undertaken, with the first being during the Public Forum, and the second after the Public Forum during the last week of the submission period.

The results of these polls are included as Attachments 9a and 9b respectively.

Community Engagement (Initial proposal)

Initially the application was exhibited from 15 March 2012 till 5 April 2012, and in response to significant public interest this notification period was extended till 19 April 2012.

Exhibition included forwarding letters to over 500 local residences and businesses, and notices being placed in Council's notices section of the local paper.

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REPORT OF DEPUTY GENERAL MANAGER OPERATIONS



Arising from the exhibition period, Council received a significant number of public submissions.

The initial application was scheduled for Council's meeting of 13 June 2012 to determine if Council was supportive of the general location for such a substantial development.

The developer however requested that the report not be presented and that they be given the opportunity to prepare amended plans.

Amended plans were submitted to Council on 21 June 2012, with the development being essentially the same as initially submitted, except with the addition of five (5) residential units described in the developer's words as being "appropriately designed as affordable housing".

The amended plans were exhibited from 4 July 2012 till 1 August 2012.

In total 435 individual submissions were received which objected to the proposal and a petition including over 2000 signatures was submitted also objecting to the development. One submission has been received in support of the application.

The submissions raised concerns in relation to the following potential issues:

- Traffic concerns particularly within school hours;
- Impact on existing amenity "loss of Bowral charm", "façade of building out of character with area";
- Inappropriate location due to existing medical centre and nearby hospital. "Development will hinder emergency vehicles";
- Impacts on pedestrian safety;
- Noise particularly resulting from the intended hours of operation from 8am to 10pm seven days a week, air conditioning units and rubbish removal etc;
- Negative economic impact on existing commercial premises within Bowral; and
- Negative Impact on local tourism.

See the *Discussion of Key Issues* section of this report for comments relating to the above issues.

Internal Referral

The subject application was referred internally to Council's Strategic Planning, Traffic Engineers and Economic Development Officer.

Council's Strategic Planning Branch has provided lengthy comments objecting to the proposed development on the grounds that the proposal conflicts with the aims and objectives of WLEP 2010 and the Bowral Town Development Control Plan. These comments are included in the *Discussion of Key Issues* section of this report.

Council's Traffic Engineers have undertaken a technical assessment of the proposal and its potential traffic impacts on the surrounding locality. In summary the Traffic Engineers have stated that, subject to the provision of a continuous median between Bong Bong Street and Holmhale Street, plus a roundabout at the junction of Bowral Street and Holmhale Street being installed, plus appropriate medians to prevent right turns from the loading dock in Moss Vale Road being provided, then the vehicular traffic issues have been addressed.

Detailed consideration for pedestrians needing to cross at the legs of the Bowral Street/Bong Bong Street roundabout would need to be submitted for further consideration. Should the proposal be deemed inadequate, then the option to install traffic signals should be considered and then all traffic effects would be then reassessed and evaluated. The full comments can be seen in Attachment 4.

Council's Economic Development Officer raised no objection to the proposed development.

External Referral

The subject application was referred to Roads and Maritime Services (RMS) for concurrence.

RMS has advised that the application in its current form is not supported, and Attachment 5 is a copy of the letter from RMS outlining its concerns with the proposed development.

The subject application was referred to the SCA for concurrence. The Authority has been advised of the fundamental concerns that Council's assessment staff have with the proposal, and has therefore not provided final comments in relation to this application.

In the event that Council determines to support the proposal, final comments / conditions will need to be sought from the Authority before any consent may be issued.

SUSTAINABILITY ASSESSMENT

- **Environment**

The subject property is identified on Council's contaminated land register therefore further development of this site may lead to potential contamination risks to surrounding properties.

A contamination assessment report would however be required to determine the potential contamination and to manage any risks prior to any consent issued.

No significant vegetation will need to be removed as a result of the proposed development.

The proposed development has the potential to affect local water quality. All potential impacts on water quality are however being assessed by the SCA. Any consent issued would include conditions of consent provided by the Authority which minimise any impact on water quality.

- **Social**

The provision of five *affordable* dwellings as proposed would provide a positive social impact in catering to a range of prospective owners/tenants within easy walking distance to the Bowral Town Centre.

However, the inappropriate design and scale of the proposed development is likely to lead to a significant amenity and social impact on the existing surrounding residential properties.

- **Culture**

No significant cultural impacts are expected as a result of the proposed development.

- **Broader Economic Implications**

The investment in the redevelopment of this site (with a Capital Investment Value of about \$9 million for the current proposal) is expected to have a positive economic impact through the creation of employment during the construction phase as well as in long term employment.

- **Governance**

The development application has been considered in accordance with WLEP2010, the EP and A Act and any matters relevant to the development.

RELATIONSHIP TO CORPORATE PLANS

The proposed development does not have any relationship to any corporate plans.

POLICY IMPLICATIONS

There are no direct policies affecting this matter.

COUNCIL BUDGET IMPLICATIONS

There will be a budget implication to Council as a result of the appeal in the Land and Environment Court against a deemed refusal of the development application. As there is unlikely to be common ground on a compromise, a full hearing is likely and the cost of this to Council is not known.

DISCUSSION OF KEY ISSUES

Wingecarribee LEP 2010

Clause 2.3(2) of the WLEP states:

“The consent authority must have regard to the objectives for the development in a zone when determining a development application in respect of land within the zone”.

The above clause requires Council to have regard to the objectives of the B4 Mixed Use zone that the development is proposed.

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in assessable locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas.*

Bowral Town Plan DCP

The subject site of the proposed development falls within the Southern Entrance Precinct, which is addressed by Section 15 of the DCP.

B15.1 Location and Description

The DCP states:

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The applicant has provided the following comments in support of the proposed development in relation to satisfying the above objectives of the B4 Mixed use zone and the Bowral Development Control Plan.

- *The design has sufficient flexibility to accommodate a variety of uses. The seven specialty retail shops are capable of accommodating office uses, consulting room & the like.*
- *The proposal provides a mixture of compatible land uses. The objective of the zone does NOT stipulate a specific ratio of mixed uses to be provided, nor does the objective require that some land be retained to provide further opportunity to increase the mixture of permissible of uses in that zone.*
- *Transition between residential development to the south and east of the site toward the main commercial B2 Local Centre zone to the North and West has been satisfied.*
- *The streetscape character when viewed from Moss Vale Road will be consistent to the transition of the recently approved development under construction at the northern end of town. The development has addressed the streetscape character along Moss Vale Road. This elevation is compatible to shops with shop top housing.*
- *The site is well serviced by public transport and is in close proximity to the main shopping area to facilitate walking to the location. Pedestrian friendly facilities are capable of being implemented to enable safe pedestrian access to the site from the town centre. Furthermore, the location of the site is*

convenient for patrons to walk to the site from the residential land located to the south and east of the site. The development will retain the patronage of those residing in the area and will prevent escape spending by retaining those currently going to K Mart stores in adjoining Local Government Areas. This will thus strengthen the viability of Wingecarribee's business centres as central places for investment, employment and cultural activity. The development will provide employment growth in an area that is better accessed by public and private transport.

- The development proposes a residential component and smaller tenancy areas that are adaptable to other non-retail permissible uses.*
- The Moss Vale Road elevation is two storey and provides an acceptable transition being commercial on the ground floor and residential on the first floor. Property to the south of the site along Moss Vale Road primarily consists of single storey dwelling houses that have been converted for commercial uses (eg: medical facilities, real estate agencies, professional rooms, etc). The northern façade adjoins a B2 zone and does not adjoin residential development.*
- The façade treatment provides a heritage character to achieve some compatibility to the remainder of the existing Bowral commercial area and to future development on the northern side of Bowral Street. The southern end of the development is excavated into the site. The height of the building above natural ground level reduces as it approached existing residential development and is compatible in scale at the southern boundary of the site thus providing a suitable transition.*
- Conditions of consent can be imposed that restrict delivery times and truck movements to limit any perceived loss of amenity to adjoining residential areas caused by noise or emission.*

However, it is considered that the proposed development does not meet the objectives of the B4 Mixed Use zone and Bowral Development Control Plan for the following reasons:

1. While the development as proposed is a mix of commercial, retail and residential, the proposed development utilises the majority of the B4 Zone on the south-eastern corner of Moss Vale Road and Bowral Street for commercial use. As such there would be no further opportunity to provide a mixture of compatible land uses permissible under that zone on that particular site. The proposed five residential dwellings appear as a token effort in an attempt to address the mixed use criteria, and this is evident in the design of the dwellings. For example, all proposed dwellings have a westerly orientation therefore limiting any opportunity for direct sunlight.
2. Essentially the intent of the B4 zone in this location is to create a transition between residential development to the south and east of the site toward the main commercial B2 Local Centre zone to the North and West. This intent is further elaborated on and supported by the *Wingecarribee Shire Council – Bowral Town Plan – Development Control Plan (DCP)*.
3. The proposed development does not provide a suitable transition as it is to be primarily a single use retail development that utilises the entire transition zone. Further, the proposed design of the development is a typical enclosed 'box' providing

long unbroken walls on 3 sides of the development, Bowral Street, Holmhale Street and along the southern boundary adjacent residential development. These unbroken walls provide no transition between the commercial precinct and the adjacent and nearby residential developments. The only broken frontage is on Moss Vale Road, providing staggered setbacks to window shop fronts and some landscaping. However, this frontage also does not provide sufficient transition from residential to commercial development, as it is proposing primarily one type of land use and structure.

4. There are also concerns for the amenity of the neighbouring residential developments, which would be subject to noise and emissions from adjacent forward and reverse truck movements. Noise from these movements would likely be amplified by the surrounding concrete structures (retaining wall and the building). This would have a significant impact on the amenity of adjacent and nearby residential developments if it was not mitigated appropriately. The submitted information does not address potential noise or emission impacts.
5. The proposed development does not integrate with, nor does it compliment surrounding development, as encouraged by the DCP, which clearly emphasises the use of the site for further residential/mixed commercial development. Conversely the proposed development is a large centrally focused, and primarily single use commercial retail development that does not integrate well with surrounding development and parklands. The only consistency with the DCP, is the amalgamation of the properties within the Residential sub-area.

In respect of the Residential sub-area the applicant states:

"The proposed development although not providing any residential component, remains complimentary with the dense residential development in the immediate vicinity."

No qualification is provided by the applicant of how the large scale commercial retail development *'remains complimentary'*.

It is considered that a 'box' style department store with three solid frontages is not complimentary to either the adjoining residential or commercial premises.

The existing developments adjacent and nearby mostly have frontages that address the street, via either open shop fronts, typical of Bowral Town Centre, or housing with landscaped front yards.

Essentially the proposed 'box' style of the development is out of context with current development within most of the Bowral Town Centre.

OPTIONS

The options to Council are as follows:

Option 1

In the absence of concurrences from RMS and SCA, Council is unable to approve the development application. However, Council could indicate its support of the proposal subject to certain matters being addressed.

Option 2

Council is able to refuse the development application, and the reasons for refusal could be drawn from the Contentions that have been identified as part of the defence of the LEC appeal (see Attachment 10b).

Option 2 is recommended.

REVIEW AND APPEAL RIGHTS

An appeal against the deemed refusal of the development application has been lodged in the Land & Environment Court.

CONCLUSION

WLEP Conclusion

The proposed development is not considered to meet the objectives of the B4 zone for reasons discussed above, which are summarised as follows:

- The proposed development constitutes primarily one land use of the B4 Mixed Use zone and therefore does not provide a suitable transition between residential and commercial development.
- The development fails to provide any evidence of how it has regard to the character and amenity of adjacent and nearby residential development, as the submitted information assumes no impact.

Therefore it is considered the proposed development, should not be supported as it does not meet the objectives of the B4 Mixed Use zone that the consent authority must have regard to under Clause 2.3(2) of the WLEP 2010.

DCP Conclusion

The proposed development is not considered to be in compliance with the DCP for the reasons discussed above, which are summarised as follows:

- The proposed development constitutes primarily one land use in the entirety of the identified Residential sub-area and therefore does not provide a transition between residential and commercial development.

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held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 27 February 2013

REPORT OF DEPUTY GENERAL MANAGER OPERATIONS



- The proposed development does not integrate an adequate variety of suitable permitted land uses in the Residential sub-area as described in the DCP, such as a mixed use Residential /Commercial Retail premises.
- The proposed development is not complimentary to adjoining residential development as it fails to provide a transition between residential and commercial development. Specifically the proposed development would create a hard boundary between residential and commercial development, which is contrary to the DCP.

The subject application requires additional approval from RMS, which does not support the application in its current form, as well as from the SCA, and therefore Council is not in a position to approve the development application until the necessary concurrences have been received.

While the provision of affordable housing and the economic benefits arising from the creation of investment and employment opportunities, it is considered that these do not have sufficient weight to result in support of the development in its current form.

The applicant has requested deferral of the application to enable an amended proposal to be submitted, and this is recommended.

In order to provide some guidance to the applicant in the re-design of the proposal, it is considered that the mixed used commercial/retail/residential development on the south eastern corner of Mittagong Road and Victoria Street, Bowral exhibits the appropriate characteristics of a Gateway site to the Bowral Town Centre including:

- a much higher proportion of residential accommodation;
- a design and form which compliments both streetscapes by having commercial/retail and residential directly fronting the streets; and
- a smooth transition between commercial/retail and residential areas.

The introduction of a larger residential element reduces the area required for on site carparking and increases landscape areas. The increase in residential also reduces traffic generation rates for a difficult site.

In reducing these impacts a future development is more likely to comply with both the zone and development control objectives. Increased landscape area is also important in terms of a gateway site location as it softens the appearance of larger scale developments. The introduction of landscape elements as opposed to carparking areas also reduces the amenity impacts on surrounding residential areas.

Summary

As indicated throughout this report, it is considered that significant amendments are required to achieve a satisfactory form of development, and the need to provide a floor area of around 4,000m² for K Mart is a significant constraint.

It is also considered that further amendments are not possible under the current scheme to address the fundamental issues which have been identified from the outset, such as the bulk and scale of the building, its impact on the streetscape (particularly Holmhale Street) and the lack of an effective transition between the B2 Local Centre zone to the north and the R3 Medium Density Zone to the east and south.

It is therefore recommended that Council refuse the development application.

ATTACHMENTS

There are ten (10) attachments to this report, which have been circulated under separate cover:

1. Location Map
2. Pre-lodgement response to proponent
3. Site Plans and Elevations
4. Council's Traffic Engineer Comments
5. Letter of objection from Roads and Maritime Services
6. Reasons for Refusal
7. Victoria Street development
8. Summary of Public Forum and latest Community Engagement issues.
- 9a. Results of poll undertaken during Public Forum
- 9b. Results of poll undertaken last week of submission period
- 10a. Statement of Facts
- 10b. Statement of Contentions

RECOMMENDATION

THAT development application LUA2012/0193 for the demolition of an existing garden nursery and single residence and the construction of a retail/commercial/residential premises comprising of a new K Mart department store, seven (7) specialty shops and five (5) residential dwellings within the consolidated area of lot 1 DP406617, Lot 15 DP 740276, Lot 6 DP Sec E DP 3807 and Lot 1 DP 513337, corner of Moss Vale Road, Bowral Street and Holmhale Street, Bowral, be refused for the reasons generally described as Contentions in Attachment 10b.

(Voting on the Motion)

Phil Marshall
Deputy General Manager Operations

22 February 2013