

cw-CS1 Planning Proposal to Provide Access Road through Community Land to Retford Park on Part of Lots 1 and 2 DP 1138229 Boardman Road, East Bowral (West of David Wood Playing Fields)

Reference: PN1768640, PN1768650, 5901
Responsible Officer: Coordinator Strategic Planning

PURPOSE

The purpose of this report is to inform Council of the Planning Proposal process required to enable road access to Retford Park through community land to the west of David Wood Playing Fields, Boardman Road, East Bowral.

This report recommends that Council prepares a Planning Proposal for submission for a Gateway Determination with the Department of Planning and Environment.

DESCRIPTION OF PROPOSAL

BACKGROUND

At the Planning and Strategic Peak Committee of the Whole Meeting held on 9 April 2014, Council made the following resolution:

1. *THAT in accordance with Section 59 of the Environmental Planning and Assessment Act 1979 and the Guide to Preparing Local Environmental Plans, Council proceed with the making of the amendment to WLEP 2010 for the properties identified as Retford Park, Lot 22 and Lot 23 DP1163429, Old South Road Bowral, to:*
 - a. *to rezone the eastern part of Lot 22 DP1163429 to R5 Large Lot Residential with an 8000m² minimum lot size;*
 - b. *to rezone the western part Lot 22 DP1163429 to R2 Low Density Residential with minimum lot sizes of 1000m²;*
 - c. *amend the Schedule 5 'Property Description' for "Retford Park" house, grounds and outbuildings to – Lot 23 DP1163429 by deleting 'Lot 1, DP 860647; Lot 20, DP1001806';*
 - d. *include the western part of Lot 22 DP 1163429 on the Urban Release Area Maps; and*
 - e. *Remove Lot 22 DP1163429 from the Heritage Maps.*
2. *THAT a Site Specific Development Control Plan be brought to Planning & Strategic Peak Committee of the Whole for consideration following finalisation of a subdivision Masterplan in negotiation with the applicant.*
3. *THAT the applicant be advised of Council's decision.*
4. *THAT submission makers be advised of Council's decision.*

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In respect of the above resolution Council's Strategic Planning Team is currently preparing the Section 59 Report and relevant amendments to WLEP 2010 maps to finalise the making of the WLEP 2010 amendment.

The latest subdivision layout is shown in **Figure 1** over page. The subdivision layout has some updates from the version provided for the approved Planning Proposal, however the road access from Boardman Road remains the same.

The most recent updates are part of Voluntary Planning Agreement negotiations between Council's Strategic and Assets Staff and the Developers. Once finalised they will be reported to Council and help inform a Draft Development Control Plan (DCP) for the site.

However the focus of this report is the access to Boardman Road only, which is detailed in the following section.

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Figure 1 – Latest Revision of Subdivision Plan



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Project Architect
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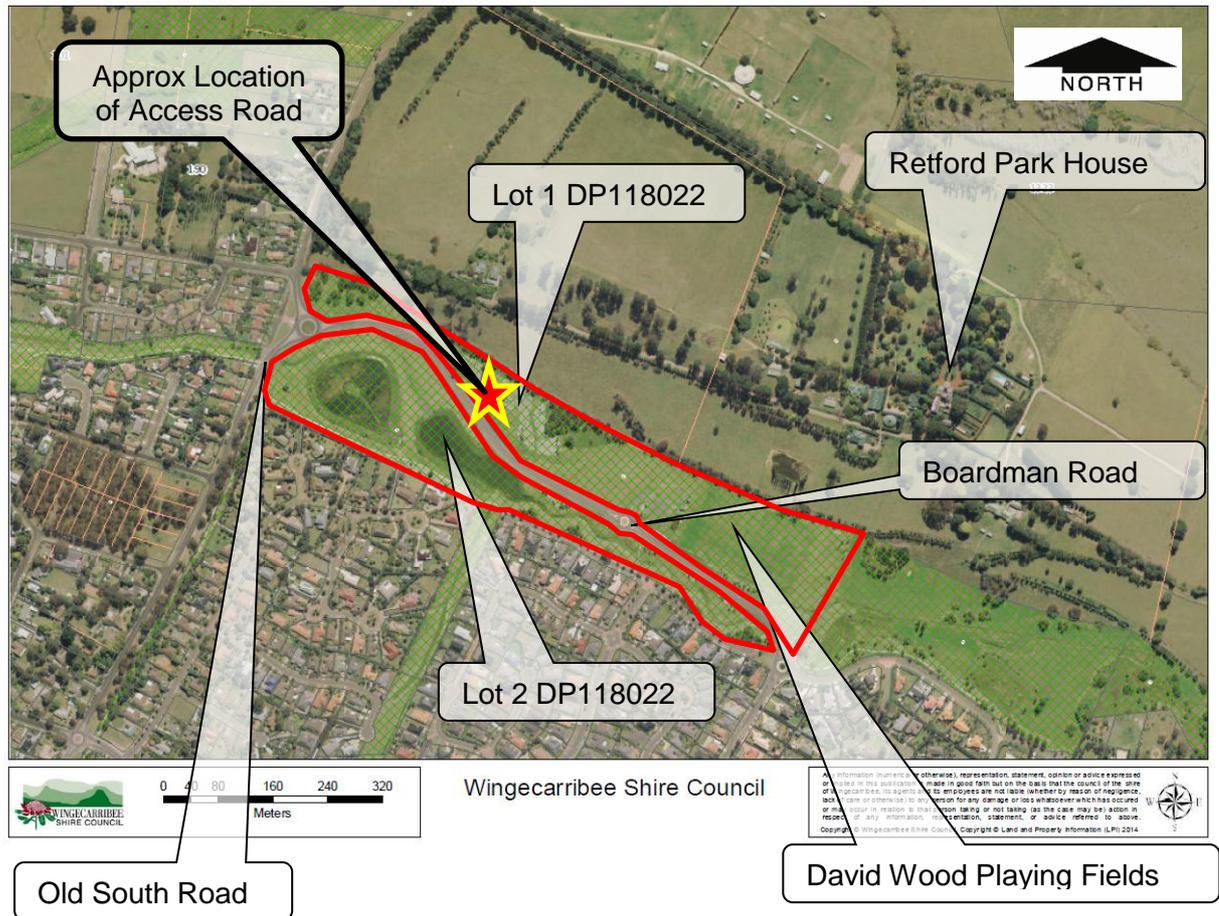
Lead Development Solutions
 2008 Waterloo Road, Concord NSW 2015
 Ph: 0433 1277

NO	DESCRIPTION	DATE	BY
1	1st Issue Approved	1/10/05	MP-01
2	2nd Issue Approved	1/10/05	MP-01
3	3rd Issue Approved	1/10/05	MP-01
4	4th Issue Approved	1/10/05	MP-01

DETAILS OF PROPOSAL

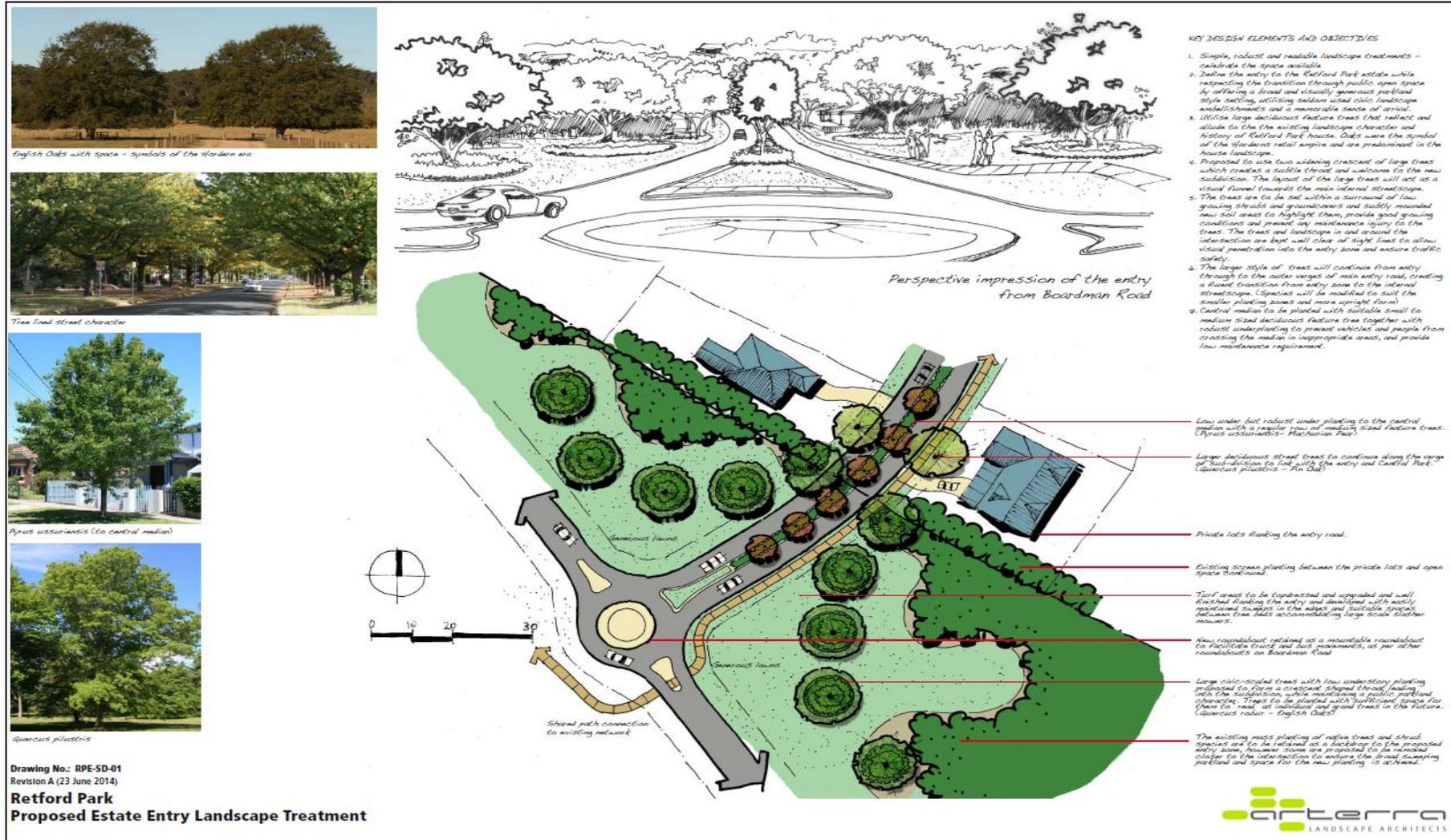
This Planning Proposal involves community land to the north and south of Boardman Road, being Lots 1 and 2 DP 1189022, as shown in Figure 2 as follows:

Figure 2 – Community Land subject of Planning Proposal (Red Outline)



The purpose of the Planning Proposal is to enable access through community land to the development site as shown in **Figure 1**. The section of land required for the access road is conceptually detailed in **Figure 3** over page (as proposed by the Developer) and a survey is provided in **Figure 4** (overpage). Note only the proposed Lots to be used for road purposes shown in **Figure 4** need to be reclassified as operational and not the entirety of the existing Lots 1 and 2 DP118022.

Figure 3 – Access Road Treatment proposed by the Developer



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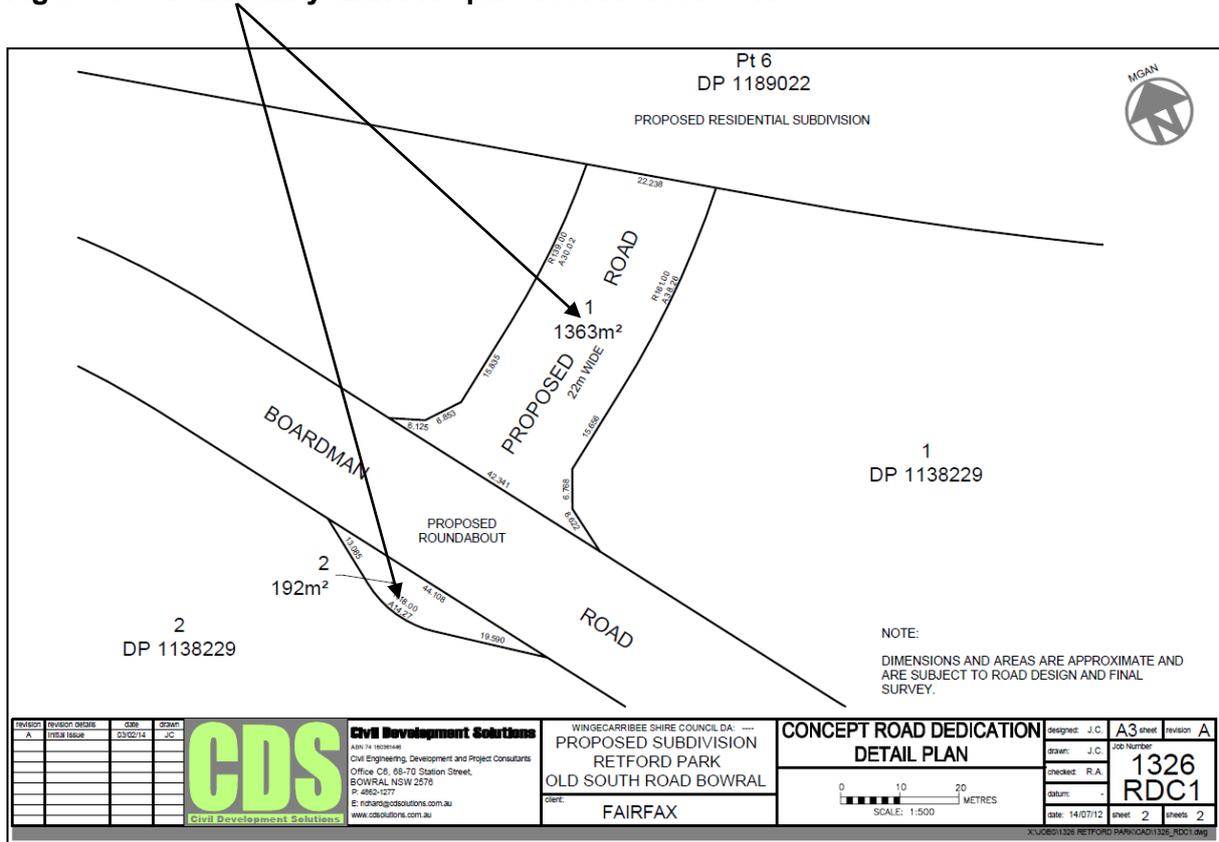


PLANNING CONSIDERATIONS

As the land required for the access road is classified as ‘community’ land, a Planning Proposal is required to reclassify the land as ‘operational’ in order for Council to subdivide off the sections required for the access as ‘road reserve’.

As shown in **Figure 4**, 1,363m² of land is required from Lot 1 and 192m² of land is required from Lot 2 for the access road.

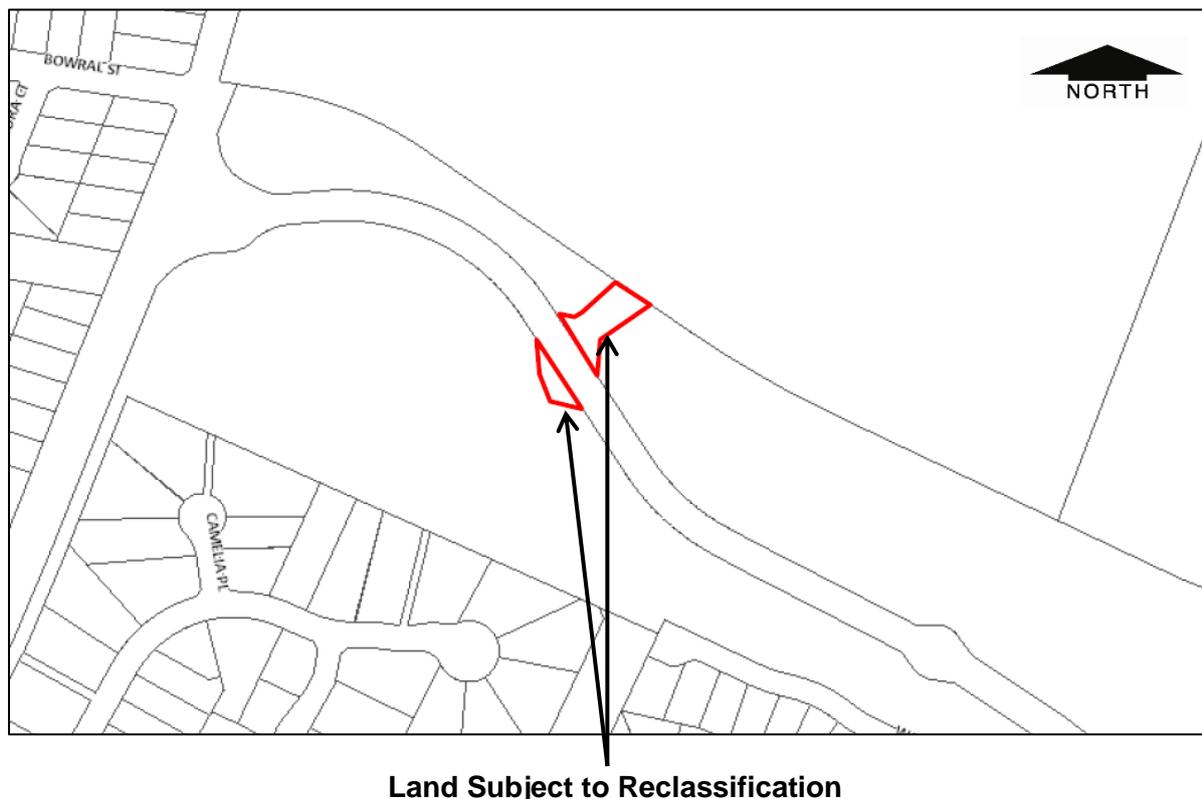
Figure 4 – ‘Community’ Land Required for Road Reserve



A Planning Proposal enables Council to only reclassify the land the subject of the proposed road in **Figure 4**, rather than reclassifying the entirety of Lots 1 and 2 DP18022 by introducing a Reclassification Map. The Reclassification Map would look similar to **Figure 5** over page:

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Figure 5 – Example of Reclassification Map (not to Scale – Red line Approximate)



STATUTORY PROVISIONS

LOCAL GOVERNMENT ACT 1993 (LG ACT)

There are restrictions under the LG Act in the way community land can be used, managed and dealt with. Under Section 35 of the LG Act the use and management of community land must be in accordance with:

- i. The plan of management (POM) applying to the land, (Note: there is no POM applying to this land)
- ii. Any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land, and
- iii. Division 2 of Part 2 of Chapter 6 of the LG Act.

Division 2 of Part 2 of Chapter 6 of the LG Act contains many provisions in respect of what a POM must identify and contain and means of dedicating community land as public road, specifically Section 47F, which does not restrict the dedication of land for the purposes of a road under Section 10 of the *Roads Act 1993* if the land is the subject of the Minister's order under Division 1 of Part 5 of the *Roads Act*.

Division 1 of Part 5 of the *Roads Act* allows the Minister administering the *Roads Act* to, by order published in the *Gazette*, declare the classification of public road or a proposed road as a main road, highway, freeway, controlled access road, secondary road, tourist road, tollway, transit way or state work.

An order can be made on the recommendation of the Roads and Maritime Services ('RMS') via Council making application to the RMS, however it is unlikely the RMS would make such a recommendation to the Minister, as the proposed road will be a local road only; and that Old South Road (being an alternate but undesirable access) is not under the jurisdiction of the RMS. Hence the RMS has little to no interest in the matter.

However, Section 27 of the LG Act states that Council can reclassify public land by a local environmental plan, i.e. by amending WLEP 2010 via a Planning Proposal. The restrictions under the LG Act discussed above on the use, management and dealing with community land do not apply in the circumstances of amending an environmental plan.

Only a Public Hearing is required in respect of the proposed reclassification under Section 29 of the LG Act; and any other public exhibition required by the Gateway Determination.

Once the land is reclassified, Council can then open it as public road under the Roads Act by registration of plan of subdivision (Section 9 of the Roads Act), which would initially require a development application, as roads are permissible with consent in RE1 Public Recreation zones.

WINGECARRIBEE LEP2010 (WLEP 2010)

The site is currently zoned RE 1 Public Recreation under WLEP 2010. A Planning Proposal would be required to amend WLEP 2010 to reclassify Part of the land as discussed in the previous section under the Gateway process introduced in July 2009. No change of zoning is required, as Roads are permissible with consent under the RE1 zone.

The gateway process has the following steps:

Planning Proposal - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister (rather than the local council which is mostly the case) the Minister can appoint the Secretary of the Department of Planning & Environment or a joint regional planning panel to be the relevant planning authority.

Gateway - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

Community Consultation - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held, however in this case a Public Hearing will be mandatory under the LG Act.

Assessment - The relevant planning authority (Council) considers public submissions and the Proposal are varied as necessary. It is noted that clause 58 of the EP&A Act allows Council to vary, at any time, its Proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. Council may also resolve to not proceed with the Planning Proposal under this clause.

If the Planning Proposal does proceed, Parliamentary Counsel then prepares a draft local environmental plan (the legal instrument).

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REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



Decision - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW Legislation website.

REVIEW OF DECISIONS

On 29 October 2012, the Minister for Planning and Infrastructure announced that proponents seeking a rezoning can now request an independent review of decisions through the local Joint Regional Planning Panel. These changes came into effect on 2 November 2012 and allow an independent body to review some decisions by councils and the department, in the following situations:

(1) Pre-Gateway reviews

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request accompanied by the required information.

(2) Gateway reviews

A council or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- a) the planning proposal should not proceed,
- b) the planning proposal should be resubmitted to the Gateway, or
- c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

DEVELOPMENT CONTROL PLANS (DCPs)

Council has previously resolved for a DCP to be developed for Retford Park. Should the Planning Proposal be supported the DCP will be able to contain controls in respect to the design of the entrance road, i.e. roundabout design, landscaping, width of road and expected infrastructure.

These are also to be finalised as per of the Voluntary Planning Agreement.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

State Environmental Planning Policies (SEPPs) are a set of Environmental Planning Instruments with which Council must comply, where relevant, when considering amendments to WLEP 2010.

The following SEPPs are relevant to the Planning Proposal:

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* SEPP came into force on 1 March 2011 and applies to all land in Wingecarribee Shire. The SEPP requires that a consent authority must not grant consent to any development under Part 4 of the EPA Act unless it is satisfied that the development will have a neutral or beneficial effect on water quality.

The Sydney Catchment Authority (SCA) is consulted in respect of the SEPP prior to Council seeking Gateway Determination.

State Environmental Planning Policy No. 44 – Koala Habitat

SEPP 44 requires Council to consider, for any application where the SEPP applies, whether or not the land is a potential koala habitat. Flora and Fauna reports were conducted by Joy Hafey Environmental Consultant for the site to north (Retford Park) in September and October 2011 in respect to the approved Planning Proposal to rezone the land for residential purposes. The reports concluded that no Koalas or their habitat were found on the site.

SECTION 117 DIRECTIONS

The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. employment and resources
2. environment and heritage
3. housing, infrastructure and urban development
4. hazard and risk
5. regional planning
6. local plan making.

An assessment of these broad categories will be undertaken and included in the Planning Proposal report to be submitted by Council for Gateway Determination.

CONSULTATION

EXTERNAL REFERRALS

A Gateway Determination will identify what referrals to public authorities are required, which is only likely to be the SCA.

INTERNAL REFERRALS

Staff from Council's Strategic and Assets Branch have been negotiating a Voluntary Planning Agreement with the Developer in respect to the access road and other aspects of the Development. Further, valuations have been sought through Council's Property Team to establish the cost of losing the community land for public road purposes.

Compensation for the loss of the community land for the public road to the benefit of the developer is being negotiated as part of the Voluntary Planning Agreement process.

COMMUNITY CONSULTATION

Community consultation will occur as set out in the Gateway Determination, which is likely to be 28 days and will definitely include a Public Hearing.

SUSTAINABILITY ASSESSMENT

- **Environment**

There is likely to be minimal environmental impacts resulting from the Planning Proposal, which will enable the access road to be provided. It is likely the Voluntary Planning Agreement will contain responsibilities upon the Developer to mitigate the loss of any flora within the road reserve through the planning of replacement species as per the landscape plans provided as **Figure 3**.

- **Social**

There is social impact in respect to the loss of community land for the purposes of a road reserve. However, due compensation will be negotiated as part of the Voluntary Planning Agreement for Retford Park, which is currently being negotiated with the Developer. Compensation is likely to be in the form of land dedications and park embellishments.

- **Broader Economic Implications**

The road access via the community land is required as direct access to Old South Road is undesirable for safety reasons. Contributing factors to safety are sight lines inhibited by the changing grades of Old South Road, the angle of approaches along Old South Road and the topography of the site itself along Old South Road. To remedy the safety issues would add substantial cost to the proposed development, which could render the development not feasible. This could result in the loss of investment in the Shire, which would have otherwise generated jobs and increased economic activity.

- **Culture**

There is unlikely to be any adverse impact upon European and Aboriginal Heritage as a result of the Planning Proposal.

- **Governance**

Should a positive Gateway Determination be issued by the Department of Planning & Environment, compliance with the requirements of the Environmental Planning & Assessment Act 1979 (EP&A Act), EP&A Regulations and the requirements of the Gateway Determination will ensure that due process is followed by Council in implementing the proposed amendment to WLEP 2010.

RELATIONSHIP TO CORPORATE PLANS

The Planning Proposal will not have any impact upon Council's Delivery Plan, and Operational Plans. The Developer will be responsible for all costs in respect of the Planning Proposal and delivering the access road and roundabout.

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BUDGET IMPLICATIONS

Planning Proposals are subject to an application fee as per Council's adopted Fees and Charges. These fees and charges will also cover the cost of an independent facilitator running the Public Hearing, as required by the LG Act.

RELATED COUNCIL POLICY

There are no other relevant Council policies other than those already discussed in the body of this report.

OPTIONS

There are only two options available in respect to this matter:

Option 1

Council proceeds to prepare a Planning Proposal to reclassify Part of Lots 1 and 2 DP 1138229 to Operational land for the purpose of creating a road reserve to enable access to the Retford Park residential development from Boardman Road; or

Option 2

Not support the Planning Proposal leaving the Developer no option but to use Old South Road for access, which is not ideal primarily for safety reasons.

Option 1 is recommended as it will allow the development to progress as originally conceived and; Voluntary Planning Agreement negotiations can be finalised in respect of reasonable compensation to the community for the loss of the land to be used as public road.

ATTACHMENTS

There are no attachments to this report.

RECOMMENDATION

1. **THAT** the Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to reclassify Part of Lots 1 and 2 DP 1138229, as per Figure 4 to the report, from community to operational land for the purposes of creating a road reserve for access to Lot 6 DP 1189022, be prepared and forwarded to the NSW Department of Planning & Environment for a Gateway Determination under Section 55 of the Environmental Planning & Assessment Act 1979.
2. **THAT** the applicant be informed of Council's decision.

(Voting on the Motion)