

**Item No:** 3.2  
**Title:** Planning Proposal RZ/8/2015 North Road, Wyong  
**Department:** Environment and Planning

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27 April 2020 Ordinary Council Meeting

Reference: RZ/8/2015 - D13771993  
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Executive: Scott Cox, Director Environment and Planning

### **Report Purpose**

This report has been amended in consideration of the impacts of COVID-19 (Coronavirus). A decision of Council is required for the Planning Proposal to cease or progress. The impact on the proposal without a resolution of Council is as follows:

- Staff do not have delegation to refuse a Planning Proposal and therefore the Planning Proposal cannot be finalised without a resolution of Council.
- The Planning Proposal has a Gateway expiration of 16 February 2020. If the Planning Proposal is to proceed a Council resolution is required to seek a Gateway extension from the Department of Planning, Industry and Environment (DPIE). It should be noted that two previous Gateway extensions have been provided for this Planning Proposal and the DPIE is unlikely to issue a further extension.

The subject land contains lots bounded by North Road, Owen Avenue and Ingram Street, Wyong including the former Wyong Grove Community and Cultural Hub. The request seeks to rezone the land from R2 Low Density Residential to R3 Medium Density Residential and increase density to enable a 5 storey residential development of approximately 500 dwellings.

This report recommends that Council refuse the request to amend the *Wyong Local Environmental Plan 2013*.

### **Recommendation**

***That Council refuse the request to amend the Wyong Local Environmental Plan 2013 on Lots 11-17 (1-5 Ingram Street & 15-17 Owen Avenue, Wyong), Lots 10-18 DP 36475 (1-13 Owen Avenue & 3-5 North Road, Wyong), and Lots 1 & 2 DP 1223082 (1 & 1R North Road, Wyong) for the following reasons:***

- a) No justification has been provided to support the claim that the rezoning of the subject land from R2 Low Density Residential to R3 Medium Density Residential will achieve improved planning outcomes.***

- b) No analysis has been undertaken to address the transition from the proposed R3 Medium Density Residential development to surrounding R2 Low Density Residential development. The proposal in its current form would increase the potential for land use conflict with adjoining lower density residential development.***
- c) Insufficient information has been submitted to address traffic issues associated with the proposed development. No detailed design has been provided for the road upgrades required to accommodate the proposed development, and no funding mechanism has been prepared to provide monetary contribution from the developer towards the road upgrades.***
- d) Insufficient information has been submitted to address flooding issues associated with the proposed development. The current concept plan is inconsistent with Planning Direction 4.3 Flood Prone Land as it proposes an intensification of residential land use on flood prone land.***
- e) Insufficient information has been submitted to support and justify the proposed development. The Planning Proposal was lodged with the former Wyong Shire Council in December 2015 and numerous requests for additional information since that time have not been met.***
- f) The proposal has exceeded the second extension to the Gateway Determination timeframe of 16 February 2020.***

## **Background**

A request to amend the *Wyong Local Environmental Plan 2013* (WLEP 2013) was lodged in December 2015, seeking to rezone 1 North Road, Wyong from R2 Low Density Residential to R3 Medium Density Residential. The proposal also sought to amend the Floor Space Ratio (FSR) map to apply an FSR of 2:1 and amend the height of buildings map to increase height to 16m, to facilitate the construction of a 5 storey residential development on the site.

The original site, known as No.1 North Rd, Wyong, formerly contained the Wyong Grove Public School until its closure in 2013. In May 2014, the former Wyong Shire Council entered into a 2-year lease with the Department of Education and Communities (DEC) to lease the site as the Wyong Grove Community and Cultural Hub, to house the Wyong Drama Group and Wyong Musical Theatre Company. The site sold on 27 October 2015 and the lease finished on 10 May 2016.

Following preliminary consultation with adjoining landowners, Council considered that the request presented an opportunity to facilitate a more strategic approach to rezoning and resolved to expand the area subject to the rezoning to include land on the eastern side of Owen Avenue and south of Ingram Street.

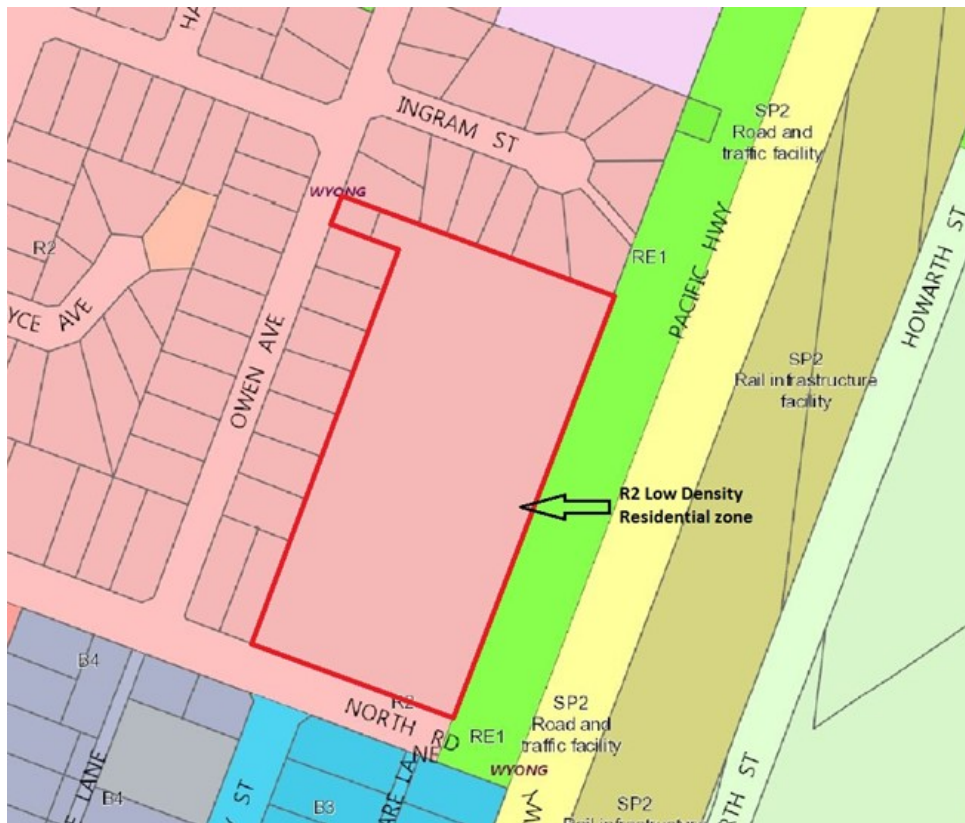


Figure 1 – Original site subject to rezoning



Figure 2 – Expanded site subject to rezoning

At its meeting of 26 October 2016, the Central Coast Council resolved:

*RESOLVED on the motion of Mr REYNOLDS:*

- 402/16      *That Council consult with landowners of properties listed in item 2 below to seek their support to be included in the revised planning proposal as recommended by Staff.*
- 403/16      *That Council prepare a planning proposal to amend Wyong Local Environmental Plan 2013 (WLEP), pursuant to Section 55 of the Environmental Planning and Assessment (EP&A) Act 1979 to:*
- a)      *rezone the following lots to R3 Medium Density Residential and apply a maximum building height of 16m and a maximum Floor Space Ratio of 2.0:1:*
- *Lot 11 DP219825, 5 Ingram Street Wyong*
  - *Lot 12 DP219825, 4 Ingram Street Wyong*
  - *Lot 13 DP219825, 3 Ingram Street Wyong*
  - *Lot 14 DP219825, 2 Ingram Street Wyong*
  - *Lot 15 DP219825, 1 Ingram Street Wyong*
  - *Lot 16 DP219825, 17 Owen Avenue Wyong*
  - *Lot 17 DP219825, 15 Owen Avenue Wyong*
  - *Lot 10 DP36475, 13 Owen Avenue Wyong*
  - *Lot 11 DP36475, 11 Owen Avenue Wyong*
  - *Lot 12 DP36475, 9 Owen Avenue Wyong*
  - *Lot 13 DP36475, 7 Owen Avenue Wyong*
  - *Lot 14 DP36475, 5 Owen Avenue Wyong*
  - *Lot 15 DP36475, 3 Owen Avenue Wyong*
  - *Lot 16 DP36475, 1 Owen Avenue Wyong*
  - *Lot 18 DP36475, 3 North Road Wyong*
  - *Lot 17 DP36475, 5 North Road Wyong, and*
  - *The northern part of Lot 18 DP 219825 and Lot 1 DP 123075, No.1 North Road, Wyong*
- b)      *retain the southern part of Lot 18 DP 219825 and Lot 1 DP 123075, No.1 North Road, Wyong with the R2 Low Density Residential zoning and apply a land reservation acquisition map to that portion of the site*
- 404/16      *That Council forward the planning proposal to the Department of Planning and Environment requesting a gateway determination, as well as delegation for Council to finalise and make the draft Local Environmental Plan, pursuant to Section 56(1) of the EP&A Act, 1979.*
- 405/16      *That Council undertake community and government agency consultation in accordance with the requirements of the gateway determination.*

- 406/16 *That Council prepare and exhibit an amendment to Wyong Development Control Plan to incorporate appropriate planning controls.*
- 407/16 *That Council prepare and exhibit an amendment to the Wyong Section 94 Contributions Plans (if required)/or a Voluntary Planning Agreement (if required) to support the development of the land subject to this planning proposal.*
- 408/16 *That Council consider a further report on results of the agency and community consultation.*

The compulsory acquisition application for the southern part of the site was lodged with the Minister for Local Government on 28 January 2016. Gateway Determination was issued by the Department of Planning, Industry and Environment (DPIE) on 27 May 2017. The Gateway Determination required that Council '*update the Planning Proposal to remove the proposed provisions and discussion regarding land reservation and compulsory acquisition over part of the site and apply the R3 Medium Density Residential Zone over the whole site*'. On 2 August 2017 the Central Coast Council advised the Office of Local Government that it no longer wished to proceed with the acquisition of part of this site and withdrew its original application.

#### **Reasons for Refusal**

The proposal did not provide sufficient justification to support the requested amendment to the *Wyong Local Environmental Plan 2013* (WLEP 2013) and additional information was requested from the proponent on 9 August 2017. The information was not provided by the Gateway expiry of 16 February 2018. The Traffic Impact Assessment was submitted on 9 May 2018 with the associated SIDRA data provided on 19 September 2018. The Flood Risk Assessment Report was submitted on 7 March 2018. A revised Gateway was issued by the DPIE on 26 June 2018 providing an extension of time to 23 February 2019 to complete the Planning Proposal.

Internal staff and external agency review of the studies was conducted in August to October 2018. The reviews raised several concerns with the proposal and the proponent was requested to address agency comments on 17 October 2018. With the additional information not submitted within 4 months, the proponent was requested to withdraw the application on 28 February 2019. The proponent advised on 4 March 2019 that he was not prepared to withdraw the application and indicated he would provide further information to address agency concerns by 30 June 2019.

A second Gateway extension was issued on the 13 May 2019 requiring that the Planning Proposal be completed by 16 February 2020. The Gateway timeframe has now expired, and the proponent has failed to submit the required information or satisfactorily address internal staff and external agency comments. Therefore, this report has been prepared recommending refusal of the application.

### The Site

The site has a southern frontage to North Road and western frontage to Owen Avenue. The former Wyong Grove site contains several former school and community buildings generally surrounded by single detached dwelling houses, a number of which are owned by NSW Land and Housing Corporation (LAHC). The northern portion of the site is undeveloped with a scattering of trees and grass ground cover. A portion of the eastern side of the site is affected by flooding. Immediately to the east is land zoned RE1 Public Recreation which separates the site from the Pacific Highway.

In compliance with resolution 402/16 above, a letter dated 16 November 2016 was sent to the landowners within the expanded site. The LAHC supported the proposed R3 Medium Density zone (together with the increased height and FSR) to apply to their landholdings. One landowner submitted an objection to the proposed rezoning, in particular the proposed increase in the maximum height limit to 16m to enable 5 storey development on the site.

### Assessment

The request seeks to amend the WLEP 2013 to allow the construction of a 5-storey residential development, by rezoning the subject land from R2 Low Density Residential to R3 Medium Density Residential and increasing the maximum building height to 16 metres and the maximum floor space ratio to 2:1 across all sites. The land currently does not have a mapped height or FSR under WLEP2013, however, Wyong Development Control Plan (DCP) 2013 Chapter 2.1 Dwelling Houses, Secondary Dwellings and Ancillary Development generally provides for two storey development up to 10m in height with a maximum site coverage of 50%.

The indicative development concept accompanying the Planning Proposal (see figure 3) is very basic and does not address matters such as privacy, overshadowing and visual impact. Council requests for a more detailed concept plan to demonstrate how the proposed built form responds to site constraints (such as flooding) have not been met. No details have been provided as to how the requested zone of R3 Medium Density Residential Zone is appropriate and achievable for the site in compliance with the Department of Planning, Industry & Environment's (DPIE) *Apartment Design Guide* and *State Environmental Planning Policy (SEPP) No 65 – Design Quality of Residential Apartment Development*.

The proponent has not addressed the requirement under the Gateway Determination to "provide further justification for the proposed development standards, including consideration of the transition between the R3 and adjoining R2 zones". The proponent has also not addressed Council's resolution of 26 October 2016, which required that an amendment to Wyong DCP 2013 be prepared to incorporate appropriate planning controls for the site.

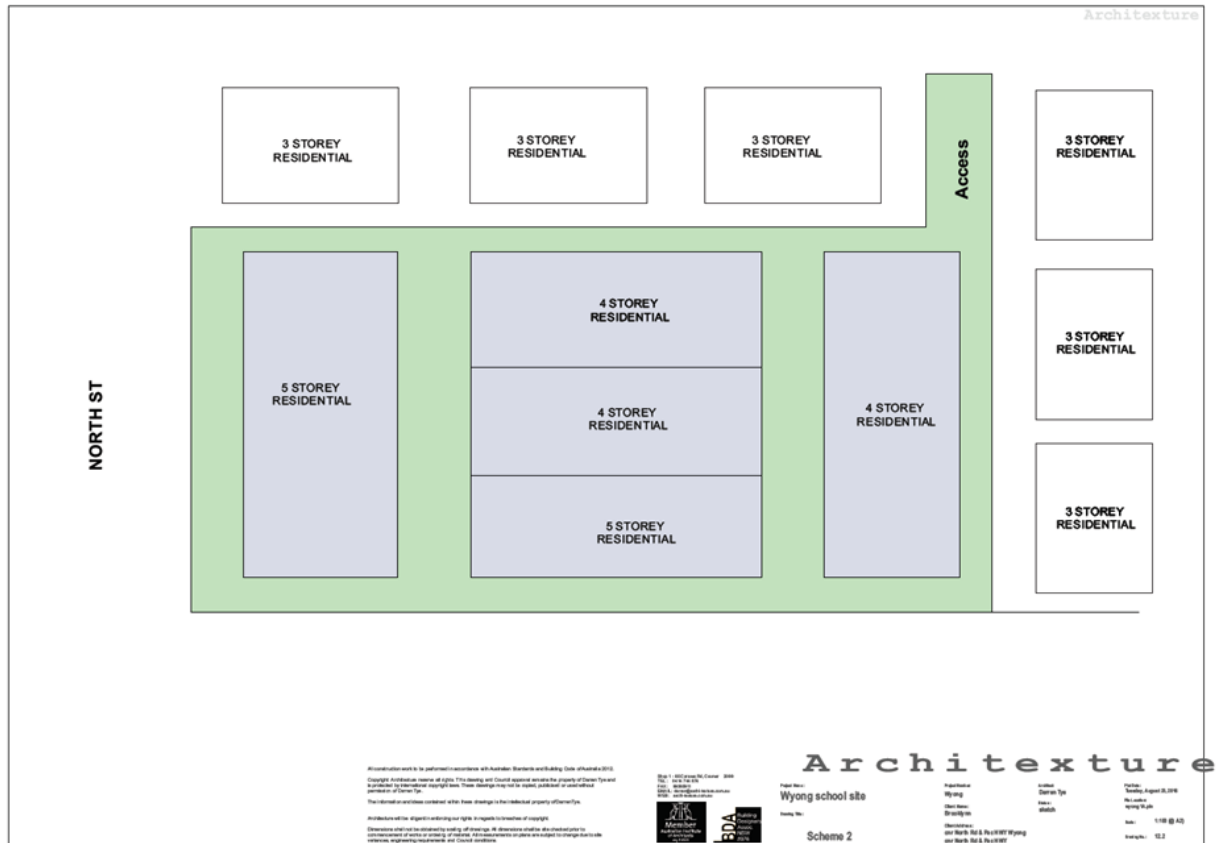


Figure 3 – Indicative concept plan

## Statutory Compliance and Strategic Justification

Following a desktop assessment and consideration of internal staff and external agency comments, it is considered that the proposed development in its current form:

- 1 Is inconsistent with the Council Resolution of 26 October 2016. The proposal does not address resolution 406/16 in that an amendment to Wyong DCP 2013 has not been prepared to incorporate appropriate planning controls for the site. The proposal also does not address resolution 407/16 in that an amendment to the Wyong Section 94 Contributions Plan and/or Voluntary Planning Agreement (VPA) has not been prepared to support the future development of the land.
- 2 Does not adequately address the requirements of the Gateway Determination issued by the Department of Planning, Industry and Environment (DPIE) on 27 May 2017. Specifically the requirement to *"provide further justification for the proposed development standards, including consideration of the transition between the R3 and adjoining R2 zones"*.
- 3 Does not provide sufficient strategic justification to support how the requested zone of R3 Medium Density Residential Zone is appropriate and achievable for the site in

compliance with DPIE's *Apartment Design Guide* and *State Environmental Planning Policy (SEPP) No 65 – Design Quality of Residential Apartment Development*.

- 4 Does not comply with *Section 9.1 Ministerial Direction 4.3 Flood Prone Land*, as the development proposed under the current concept plan will result in an intensification of land use within the flood prone portion of the site.
- 5 Does not satisfactorily address concerns raised by the Roads and Maritime Services (RMS) and the Office of Environment and Heritage (OEH) (refer to External Consultation below).

Given the above unresolved issues, it is recommended to refuse the rezoning request.

Should Council wish to progress the rezoning, a Planning Proposal would be prepared having regard for all State Environmental Planning Policies, Ministerial Directions and relevant guidelines set out within the *Central Coast Regional Plan 2036 (CCRP)*.

#### **Consultation**

##### **Internal Consultation**

###### *Traffic*

The proposal was reviewed by Council's Traffic Development Engineer who advised that the traffic modelling submitted with the request does not reflect the current status as the intersection of North Road/Pacific Highway is impacted by the current congestion through the Wyong Town Centre and has already failed. It was further noted that the proposed intersection upgrade of North Road/Pacific Highway by the Roads and Maritime Services (RMS) should have sufficient capacity to accommodate the traffic generated by the proposed rezoning, however there is no timeframe for the intersection upgrade. If the upgrade of the Highway does not occur prior to development of the site, RMS may raise an objection and/or require the proponent to forward fund the upgrade of the intersection to traffic signals (refer to External Consultation below).

Further, Council's Traffic Development Engineer advised that the RMS will not permit any direct vehicular access to the Pacific Highway and the proposed access to the site from Owen Avenue is not sufficient to accommodate a public road as the width of the lot was approximately 12m. The minimum width required for a public road would be 16.9 metres made up of a carriageway of 7.9 metres and 4.5 metre verges. Given that there may be the potential for up to 500 units on the site it was recommended that vehicular access be provided from both North Road and Owen Avenue.

The proponent was requested to update the concept plan to amend the site access. Any access to the site from North Road would be required to be located close to the western boundary of the site (with consideration as to how the access interacts with the Hely Street intersection and the Aldi carpark).



An amended concept plan has not been provided and the proponent has not satisfactorily addressed the issues raised above.

#### *Flooding*

The proposal was reviewed by Council's Flood Engineer who did not support the change in zoning to R3 Medium Density Residential on the eastern portion of the site for land within the Probable Maximum Flood (PMF) extent (refer to blue area in Figure 4 below). Further it was advised that any proposed access onto North Road should consider the flood hazard for flood events up to the PMF. Access to the site via Owen Street was recommended to enable safe access and egress.

Council staff requested that the concept plan be amended to consider open space on the eastern flood prone parts of the site, and/or investigate opportunities to incorporate some fill across the eastern parts of the site through inclusion of compensatory earthworks to balance the flood storage volume. This is as per the recommendations of the Flood Assessment (Catchment Simulation Solutions, August 2019) submitted with the proposal and the advice provided by Council's Flooding Engineer.

An amended concept plan has not been provided and the proponent has not satisfactorily addressed the issues raised above. The concept plan in its current form proposes 5 storey residential development on the flood prone portion of the site.

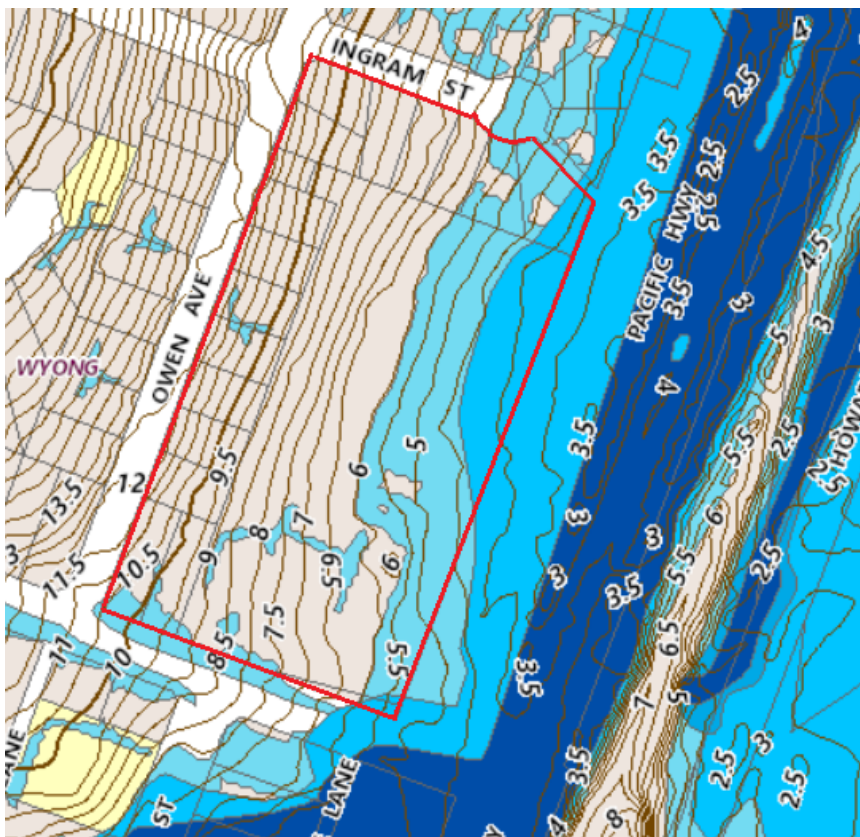


Figure 4 – Flooding extent

### External Consultation

Council undertook agency consultation commencing on 10 August 2018. The following responses were received:

#### *Roads & Maritime Services (RMS)*

The RMS noted that direct access to the Pacific Highway from the site is restricted. The RMS acknowledged that there are insufficient gaps for vehicles turning right out of North Road due to heavy volumes of traffic on the Pacific Highway. In 2015 the RMS exhibited a concept design for the upgrade of the Pacific Highway to a divided carriageway and included works to upgrade the Pacific Highway/North Road intersection to traffic control signals. This project is still in the planning stage and RMS do not have a committed delivery date and cannot provide certainty that the upgrade works will be completed prior to the delivery of the proposed development.

Therefore, the proponent is required to identify the design of any road upgrades required to accommodate the traffic generated by the proposed development. This should be submitted and considered prior to rezoning the land. Furthermore, the RMS advised that Council should ensure that an appropriate mechanism is in place to obtain monetary contribution from the developer towards the future road upgrades required to accommodate the development.

Whilst the proponent has indicated a willingness to enter into a Voluntary Planning Agreement (VPA) with Council and the RMS to forward fund the intersection upgrade to traffic control signals, they have not prepared a VPA or provided any details on the proposed funding.

#### *NSW Land & Housing Corporation (LAHC)*

The LAHC outlined support for the Planning Proposal and the inclusion of their landholdings within the proposal. The LAHC requested that Council consider expanding the proposed R3 Medium Density Residential zone further north to include additional LAHC landholdings to the north of Ingram Street but south of Cutler Drive.

If the Planning Proposal were to progress, this proposed expansion to the R3 Medium Density Residential zone is not supported for the following reasons:

- Many of the properties immediately north of Ingram Street have recently been redeveloped as one and two storey villa/townhouse housing.
- The area north of Ingram Street is less accessible to Wyong Railway Station (beyond 800m up to 1200m).
- The area north of Ingram Street includes a large manufactured home estate (MHE) with a R1 General Residential zone, which is unlikely to benefit from a rezoning.

- A larger precinct extending to Cutler Drive would be better considered as part of a local strategic review that would also consider other areas to the north and west.

#### *Office of Environment and Heritage (OEH)*

OEH recommended that:

- 1 The Planning Proposal consider all floods up to and including the Probable Maximum Flood (PMF) event that may impact this site;
- 2 Zone boundaries should be revised following identification of flood prone land and consideration of the flood hazard for the full range of flood event; and
- 3 The Planning Proposal include consideration of emergency management requirement for all floods up to and including the PMF event. Any development is to ensure additional requirements are not placed on emergency services during flood events.

Further, OEH advised that the Planning Proposal should be consistent with Section 9.1 Ministerial Direction 4.3 Flood Prone Land and not result in an intensification of land use within the flood prone area of the site.

A revised concept plan has not been provided to detail site constraints and demonstrate how the proposed built form responds to this (i.e. no buildings within the PMF, appropriate zoning of the flood prone portion of the site, and adequate site access that enables safe evacuation from the site in the event of flooding). Therefore, the Planning Proposal in its current form is inconsistent with *Section 9.1 Ministerial Direction 4.3* as it proposes to intensify residential development on flood prone land.

#### **Financial Impact**

The direct cost to Council is the assessment of this application and Council's fee has been paid for this service.

#### **Social Impact**

Consideration needs to be given to the potential amenity impacts of the likely future development of the site upon adjoining residential properties located to the north and west of the site. Matters such as privacy, overshadowing and visual impact have not been addressed in the current proposal.

The eastern side of the study area is exposed to acoustic and potential vibration issues associated with the rail corridor and the existing and future Pacific Highway. These impacts together with recommended mitigation measures need to be considered and addressed.

Any future development of the site must comply with the Department of Planning, Industry & Environment's (DPIE) *Apartment Design Guide* and *State Environmental Planning Policy (SEPP) No 65 – Design Quality of Residential Apartment Development*.

The proponent has been requested to provide a more detailed concept plan to address these issues and ensure that appropriate design measures are put in place as part of the future development design for the site. This information has not been provided.

### **Environmental Impact**

There are no environmental impacts arising from the proposal.

### **Link to Community Strategic Plan**

Theme 4: Responsible

### **Goal I: Balanced and sustainable development**

I1: Preserve local character and protect our heritage and rural areas including concentration of development along transport corridors and around town centres.

### **Conclusion**

The proposal seeks to rezone land from R2 Low Density Residential Development to R3 Medium Density Residential Development and increase the maximum height to 16m and maximum floor space ratio (FSR) to 2:1 to facilitate the construction of a 5 storey residential development of approximately 500 dwellings.

The proposal in its current form does not adequately justify the requested change in zone and development controls. The development design does not respond to the site constraints including flooding, traffic and social impact. It also does not address DPIE requirements in the Gateway Determination or legislated *Apartment Design Guide* and *State Environmental Planning Policy (SEPP) No 65 – Design Quality of Residential Apartment Development*. Ongoing Council requests for additional information have not been met and the second extension to the Gateway timeframe to complete the Planning Proposal expired on 16 February 2020.

It is recommended that the Council does not proceed with the progression of a Planning Proposal for this site.

### **Attachments**

*Nil.*