

Draft Planning Proposal

LOCAL GOVERNMENT AREA: Wollongong City Council

NAME OF DRAFT LEP: 47 – 49 Boronia Avenue Windang

ADDRESS OF LAND: 47 - 49 Boronia Avenue Windang (Lot 102 DP1078687 & Lot 51 DP5544443)

BACKGROUND:

The site was previously used as the Neel's Squash and Tennis Centre. In 2005, DA-2005/1643 for a 2 storey, 80 unit senior's housing development was lodged with Council. The applicant lodged an appeal in the Land and Environment Court against a deemed refusal of the application. The Land and Environment Court subsequently approved the application (Neate vs Wollongong City Council LEC No.11377 of 2005).

The seniors living project was commenced with the excavation of the site, but has not been completed as the property owner has gone into administration and the property fund that invested in the project is in liquidation. The vacant site has been subject to numerous complaints, including fencing and asbestos concerns, the excavated holes being a hazard and breeding ground for mosquitoes. The site currently offers poor amenity to surrounding residents.

Council has issued a number of notices, including clean up notices and these notices have been complied with however the receivers are unwilling to spend large amounts of money to restore the site, and Council is unable to issue an order for this to occur.

The rezoning submission originally sought to enable residential development in the form of medium density, generally within the same building envelope as the approved seniors' housing development but not confined or limited to seniors.

The original rezoning submission requested a R2 Low Density Residential zone, a floor space ratio of 0.75:1, an increase in height from 9m to 12m and a minimum lot size of 449m².

Following a community meeting held at Windang Bowling Club on 17 April 2012 organised by the proponent Dean-Willcocks Shepard Recovery and Strategy (DWS Recovery), the proposal was scaled back. The rezoning submission was amended to no longer seek a height or floor space ratio increase. The revised rezoning submission sought a rezoning to R2 Low Density Residential with a minimum lot size 449m², and a floor space ratio of 0.5:1. The height controls would remain at 9m. This proposal would allow for approximately 20-25 dwellings to occupy the site, subject to development consent. This was argued to be consistent with the land to the east and north and to the school to the south.

The rezoning submission included a letter which noted the difficult circumstances applying to the land (receivership) and that in favourably considering the rezoning proposal, Council would be facilitating a constructive consideration of the issues faced by the receiver and managers of the land within the statutory planning framework. They submit that the multiple investors in the failed development scheme and local residents who currently have to co-exist next to an excavated (but otherwise undeveloped site) have a reasonable expectation that a constructive approach would be adopted by Council to find a solution for its development future. They proposed that the solution would be to rezone the site to R2 Low Density Residential.

The receivers have the option of proceeding with the seniors living development approved by the Land and Environment Court. This approval included complex conditions of consent relating to flood evacuation planning. In order to make the site more saleable the proponents are requesting a rezoning to allow some residential development.

The receiver has advised that 1,093 investors invested \$38.3 million into the property fund (TEYS Property Funds Ltd). This fund then advanced/loaned \$7.4 million to the owner of the subject site (Colys Holdings Pty Limited) for purchase and development expenses. This loan represents

approximately 19% of the investors' initial investment in the fund. Of the investors in the fund, ten (10) were from the Wollongong Local Government Area and three (3) were from the Kiama Local Government Area. The Wollongong investors individually contributed between \$7,796.28 and \$50,000 with a combined total of \$249,075.91. The Kiama investors contributed a total of \$38,157.95.

The total invested by individuals does not reflect the investment into this specific project but rather the total investment into the fund. Each investor is entitled to receive a share of any recovered value from the sale of assets in proportion to their total investment.

For example, should a sale of this property yield \$3.8 million, each investor would be entitled to a capital repayment of approximately 10% of their initial investment.

On the 12 November 2012 Council considered a report on the requested rezoning of the site, which recommended that a planning proposal should not proceed for the site. The report also outlined options available to the Council should they chose not to adopt the recommendation.

One of these options included an E4 Environmental Living zone, a minimum lot size of 1,000m² and a floor space ratio of 0.5:1. Council resolved that:

A report be submitted to Council for consideration in regard to the preparation of a draft Planning Proposal for 47-49 Boronia Avenue, Windang (Lot 51 DP 554443 and Lot 102 DP 1078687) to rezone from RE2 Private Recreation to E4 Environmental Living with a minimum lot size of 1,000m² and floor space ratio of 0.5:1 which would only allow single dwellings with no further development potential.

At the Public Access Forum during the Council meeting the representatives of the proponent expressed support for an E4 Environmental Living option.

It should be noted that the original planning proposal is submitted with Council's draft Planning Proposal report and this documentation includes the letter requesting that Council scale back the proposal as per the outcome of the meeting held 17 April 2012.

The outcome of the Council resolution from the 12 November 2012 is not represented in the Planning Proposal submitted by the applicant.

Part 1: OBJECTIVES OR INTENDED OUTCOMES OF THE PLANNING PROPOSAL:

What is the purpose of the Planning Proposal?

The purpose of the planning proposal is to rezone the land from a majority of RE2 Private Recreation to E4 Environmental Living to enable the redevelopment of the site for the purposes of residential development whilst acknowledging the sensitive nature of the environmental constraints (flood prone land)

Part 2: EXPLANATION OF THE PROVISIONS OF THE PLANNING PROPOSAL:

How are the objectives of the Planning Proposal to be achieved? How will the LEP be changed?

The amending of the Zoning Maps and the FSR Maps in the Wollongong Local Environmental Plan 2009 to allow the development by:

1. Changing the Land Zoning map for Lot 102 DP1078687 from part R2 Low Density Residential and part RE2 Private Recreation to E4 Environmental Living
2. Changing the Land Zoning map for Lot 51 DP554443 from RE2 Private Recreation to E4 Environmental Living.
3. Change the Floor Space Ratio map for both Lot 102 DP 1078687 and Lot 51 DP554443 to 0.5:1.
4. Change the Minimum Lot Size map for both Lot 102 DP 1078687 and Lot 51 DP554443 to 1000m².

No change is required to the Height of Building map as the site is currently permitted a maximum building height of 9m.

Part 3: JUSTIFICATION FOR THE PLANNING PROPOSAL:

Section A – Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?	The proposal is not a result of a strategic study or report. In 2005, DA-2005/1643 for a storey 80 unit senior's housing development was lodged with Council. The applicant lodged an appeal to the Land and Environment Court against a deemed refusal on the application. The Land and Environment Council subsequently approved the application (Neate vs Wollongong City Council LEC No. 11377 of 2005). The senior's living development commenced with excavations of the site but has not been completed and the property owner has gone into administration and the property fund that invested in the project is in liquidation. The site has since been subject to a number of complaints and currently offers poor amenity to surrounding residents. It is considered by Council that this rezoning would provide a way forward to allow development of the site without significant impacts on residents and improve the outcomes on the site.
2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	Alternatives considered included: 1) Medium density development similar to that approved by the court but not limited to seniors living. This option was not supported due to amenity impact, flood constraints and traffic as well as strong objection from surrounding residents. 2) R2 Low Density Residential development similar to adjoining properties. The increased development opportunity was in high flood risk area and was not supported. 3) Not proceeding with any planning proposal with development under the SEPP for seniors living remaining permissible. Council felt this option was not progressing towards a solution for the site and nearby residents.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional	The Illawarra Regional Strategy does not specifically mention this site. It mentions the importance of delivering housing in the Illawarra however Windang is
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strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?	not identified as an urban consolidation area nor is the rezoning of the site is not considered necessary in order to meet housing targets.
5. Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?	The draft planning proposal is not inconsistent with the Wollongong 2022 Strategic Plan in that it provides development and supports the economy.
6. Is the planning proposal consistent with applicable State Environmental Planning Policies?	The proposal is not inconsistent with any of the State Environmental Planning Policies.
7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?	The proposal is generally consistent with all directions with the exception of Direction 4.3 Flood Prone Land. The land is in a high risk area however it is noted that all of Windang is flood affected and that the adjoining properties have been developed for residential purposes furthermore a Court approval exists for the site that permits seniors living residential units. It is considered that the proposal for E4 Environmental Living in combination with larger minimum lot size will allow for dwelling houses to be established on blocks that are large enough so as to not significantly impact flooding on adjoining properties.

Section C – Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	No
9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	The site is identified as being within a High Flood Risk Precinct according to the Lake Illawarra Floodplain Risk Management Study and Plan based primarily on the depth of flooding and isolation/evacuation problems. These risks are detailed in the Lake Illawarra Floodplain Risk Management Study endorsed by Council on 14 May 2012. Intensification was considered unsuitable. The E4 Environmental Living zone may result in less residential development than the court approved seniors' housing development and as such it may be likely that the flood impacts may not be as significant. The Lake Illawarra Floodplain Risk Management Plan recommends the review of current land zonings where the cumulative effects of any intensification of use (i.e.

	increase in population) could impact on emergency responses and evacuation given the known isolation hazard for the Windang Peninsula. The study recommends that the R2 Low Density Residential zoned land should be rezoned to E4 Environmental Living. The E4 Environmental Living zone would still permit dwelling houses but would prohibit dual occupancy and other more intensive residential development. The rezoning of R2 Low Density Residential land to E4 Environmental Living would limit any future growth of the Windang population. Should the planning proposal proceed, further information in relation to contamination, remediation and flooding would be required.
10. How has the planning proposal adequately addressed any social and economic effects?	It is anticipated that there would be minimal impact on both social and economic factors with the exception of impacts on the amenity of the area which should improve as the site is developed/improved and the economic benefit to the administrators.

Section D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?	The proposal is unlikely to have significant impacts on infrastructure other than that already existing in the area.
12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?	It may be necessary to consider views of the Office of Environment and Heritage in relation to flooding and the Lake Illawarra Authority as part of the formal exhibition.

PART 4: MAPS, WHERE RELEVANT, TO IDENTIFY THE INTENT OF THE PLANNING PROPOSAL AND THE AREA TO WHICH IT APPLIES

Proposed Planning Controls –



Figure 1 - Aerial Photo of Subject Site

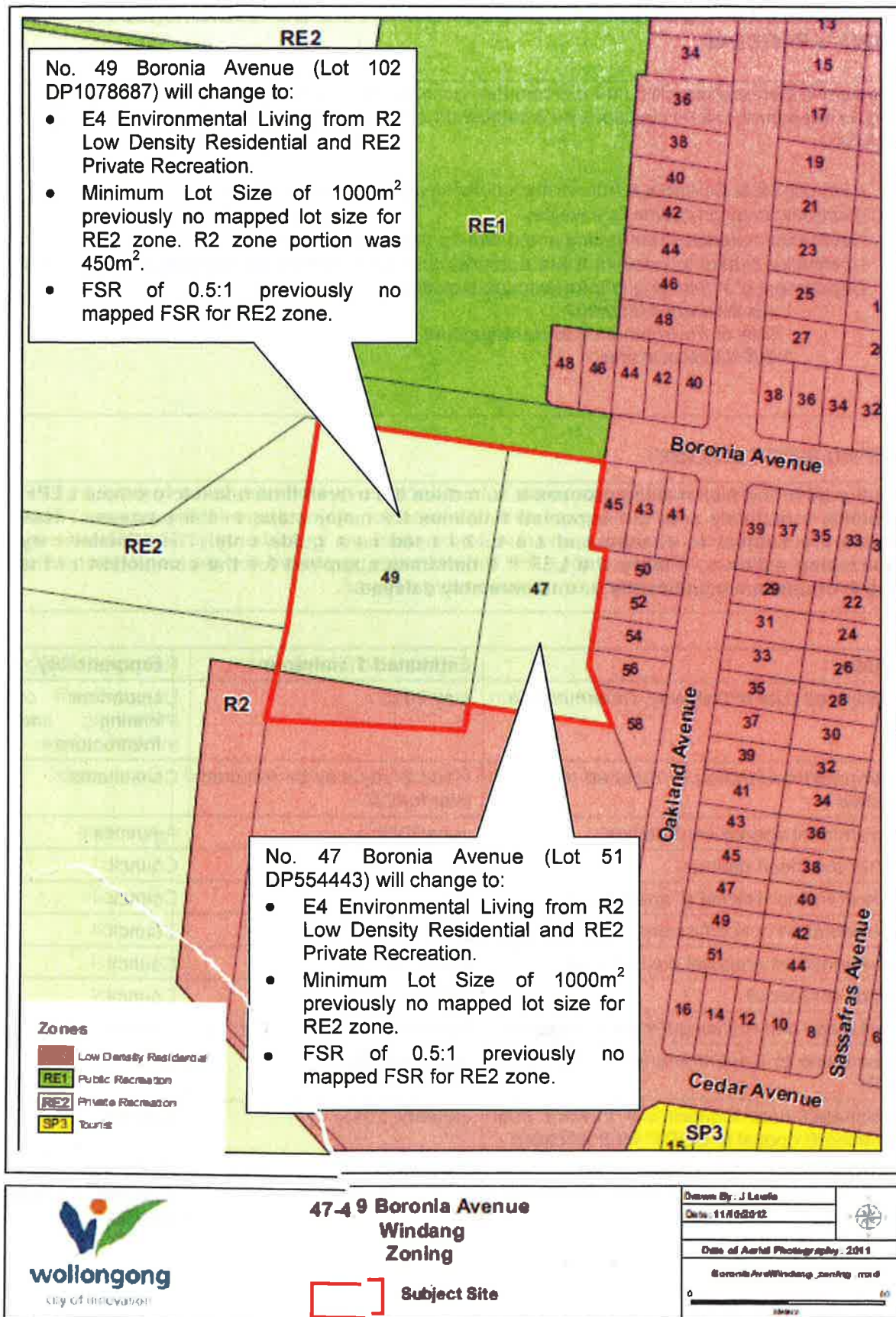


Figure 2 – Current and Proposed Planning Controls

Part 5: DETAILS OF COMMUNITY CONSULTATION TO BE UNDERTAKEN ON THE PLANNING PROPOSAL:

Any Gateway Determination will confirm community consultation requirements. If the Planning Proposal is supported, the Proposal will be exhibited for a minimum period of *twenty-eight (28) days*, and include:

- Hard copies at Council's Administration building and relevant Libraries;
- Electronic copy on Council's website;
- Notification letters to surrounding and nearby property owners; and
- Notification letters to relevant State agencies and other authorities nominated by the NSW Department of Planning and Infrastructure including:
 - Lake Illawarra Authority,
 - Office of Environment and Heritage, and
 - NSW Office of Water.

Part 6: PROJECT TIMELINE

A primary goal of the plan making process is to reduce the overall time taken to produce LEPs. This timeline tentatively sets out expected timelines for major steps in the process. These timeframes are subject to change and are to be used as a guide only. The Minister may consider taking action to finalise the LEP if timeframes approved for the completion of the Planning Proposal are significantly or unreasonably delayed.

#	Action	Estimated Timeframe	Responsibility
1	Anticipated date of Gateway Determination	May 2013	Department of Planning and Infrastructure
2	Anticipated completion of required technical studies	Flood Study may be required later for DA	Consultants
3	Government agency consultation	June 2013	Agencies
4	Public exhibition period	June 2013	Council
5	Date of Public Hearing (<i>if applicable</i>)	NA	Council
6	Consideration of submissions	July 2013	Council
7	Assessment of proposal post-exhibition	August 2013	Council
8	Report to Council	October 2013	Council
9	Final maps and Planning Proposal prepared	November – December 2013	Council
10	Submission to Department for finalisation of LEP	November 2013	Council
12	Anticipated date Council will forward final Planning Proposal to DOP&I for notification	January 2013	Council
13	Anticipated date LEP will be notified	Unknown	Parliamentary Counsel and DOP&I

Table A - Checklist of State Environmental Planning Policies

State Environmental Planning Policy		Compliance	Comment	
State policies				
SEPP No. 1	Development Standard	Not affected	Clause 6 and parts 3 and 4 of SEPP were repealed by Wollongong LEP 2009	
SEPP No. 4	Development Without Consent and miscellaneous Exempt and Complying Development			
SEPP No. 6	Number of Storeys in a Building	Not affected		
SEPP No. 14	Coastal Wetlands	Not affected	No littoral rainforests identified by the policy in the Wollongong LGA	
SEPP No. 15	Rural Land Sharing Communities	Does not apply to Wollongong		
SEPP No. 19	Bushland in Urban Areas	Does not apply to Wollongong		
SEPP No. 21	Caravan Parks	Not affected		
SEPP No. 22	Shops and Commercial Premises	Not affected		
SEPP No. 26	Littoral Rainforests			
SEPP No. 29	Western Sydney Recreational Area	Does not apply to Wollongong		
SEPP No. 30	Intensive Agriculture	Not affected		
SEPP No. 32	Urban Consolidation (Redevelopment of Urban Land)	Not affected		
SEPP No. 33	Hazardous and Offensive Development	Not affected		
SEPP No. 36	Manufactured Home Estates	Not affected		
SEPP No. 39	Spit Island Bird Habitat	Does not apply to Wollongong		
SEPP No. 41	Casino/Entertainment Complex	Does not apply to Wollongong		
SEPP No. 44	Koala Habitat Protection	Does not apply to Wollongong		
SEPP No. 47	Moore Park Showground			
SEPP No. 50	Canal Estate Development	Does not apply to Wollongong		
SEPP No. 52	Farm Dams, Drought Relief and Other Works			
SEPP No. 55	Remediation of Land	Does not apply to Wollongong		
SEPP No. 56	Sydney Harbour Foreshores and Tributaries			
SEPP No. 59	Central Western Sydney Economic and Employment Area	Does not apply to Wollongong		
SEPP No. 60	Exempt and Complying Development	Not affected		
SEPP No. 62	Sustainable Aquaculture	Not affected		
SEPP No. 64	Advertising and Signage	Not affected		
SEPP No. 65	Design quality of residential flat development	Not affected		
SEPP No. 70	Affordable Housing (revised schemes)	Does not apply to Wollongong		
SEPP No. 71	Coastal Protection	Not affected		
SEPP	Housing for Seniors or People with a Disability 2004			
SEPP	Building Sustainability Index: BASIX 2004	Not affected		
SEPP	Major Projects 2005	Not affected		
SEPP	Development on Kurnell Peninsular 2005	Does not apply to Wollongong	Previous DA was for seniors housing but not completed.	

State Environmental Planning Policy		Compliance	Comment
SEPP	Sydney Region Growth Centres 2006	Does not apply to Wollongong	
SEPP	Mining, Petroleum Production and Extractive Industries 2007	Not affected	
SEPP	Infrastructure 2007	Not affected	
SEPP	Temporary Structures 2007	Not affected	
SEPP	Kosciuszko National Park – Alpine Resorts 2007	Does not apply to Wollongong	
SEPP	Rural Lands 2008	Does not apply to Wollongong	
SEPP	Affordable Rental Housing 2009	Not affected	
SEPP	Western Sydney Employment Lands 2009	Does not apply to Wollongong	
SEPP	Exempt and Complying Development Codes 2008	Not affected	
SEPP	Western Sydney Parklands 2009	Does not apply to Wollongong	
Deemed SEPPS(former Regional Plans)			
Illawarra REP 1	Illawarra	Repealed within Wollongong	
Illawarra REP 2	Jamberoo	Does not apply to Wollongong	
Greater Metropolitan REP No.2	Georges River catchment	Does not apply to Wollongong	

Table B - Checklist of Section 117 Ministerial Directions

Ministerial Direction		Comment
1. Employment and Resources		
1.1	Business and Industrial Zones	NA
1.2	Rural Zones	NA
1.3	Mining, Petroleum Production and Extractive Industries	NA
1.4	Oyster Aquaculture	NA
1.5	Rural Lands	NA
2. Environment and Heritage		
2.1	Environment Protection Zone	NA
2.2	Coastal Protection	NA
2.3	Heritage Conservation	NA
2.4	Recreation Vehicle Areas	NA
3. Housing, Infrastructure and Urban Development		
3.1	Residential Zones	Consistent
3.2	Caravan Parks and Manufactured Home Estates	NA
3.3	Home Occupations	NA
3.4	Integrating Land Use and Transport	NA
3.5	Development Near Licensed Aerodromes	NA
3.6	Shooting Ranges	NA
4. Hazard and Risk		
4.1	Acid Sulfate Soils	NA
4.2	Mine Subsidence and Unstable Land	NA
4.3	Flood Prone Land	Inconsistent - however Council notes that there is a previous court approval for seniors living development.
4.4	Planning for Bushfire Protection	NA
5. Regional Planning		
5.1	Implementation of Regional Strategies	Not inconsistent
5.2	Sydney Drinking Water Catchments	NA
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable to Wollongong
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable to Wollongong
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Not applicable to Wollongong
5.8	Second Sydney Airport: Badgerys Creek	Not applicable to Wollongong
6. Local Plan Making		
6.1	Approval and Referral Requirements	NA

6.2 Reserving Land for Public Purposes NA

6.3 Site Specific Provisions NA

7. Metropolitan Planning

7.1 Implementation of the Metropolitan Plan for Sydney 2036 Not applicable