

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



CORPORATE & STRATEGY

cw-CS1 Planning Proposal to amend WLEP 2010 to rezone part of Lot 1 DP 1105017, 25 Retford Road Bowral, from RE1 Public Recreation to R2 Low Density Residential and apply a minimum lot size of 700sqm.

Reference: PN1271400, 5901
Responsible Officer: Group Manager Strategic and Assets

PURPOSE

The purpose of this report is to present to Council a submission to correct a drafting error in the zoning of Lot 1 DP 1105017, 25 Retford Road Bowral, by rezoning the RE1 Public Recreation portion of the site to R2 Low Density Residential and applying a minimum lot size of 700sqm to that portion of the site to reflect the zoning and minimum lot size controls across the remainder of the site.

DESCRIPTION OF PROPOSAL

BACKGROUND

The subject site is located at 25 Retford Road Bowral on the eastern side of the town as indicated on Figures 1 and 2 below.



Figure 1 – Regional Location of the Subject Site.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

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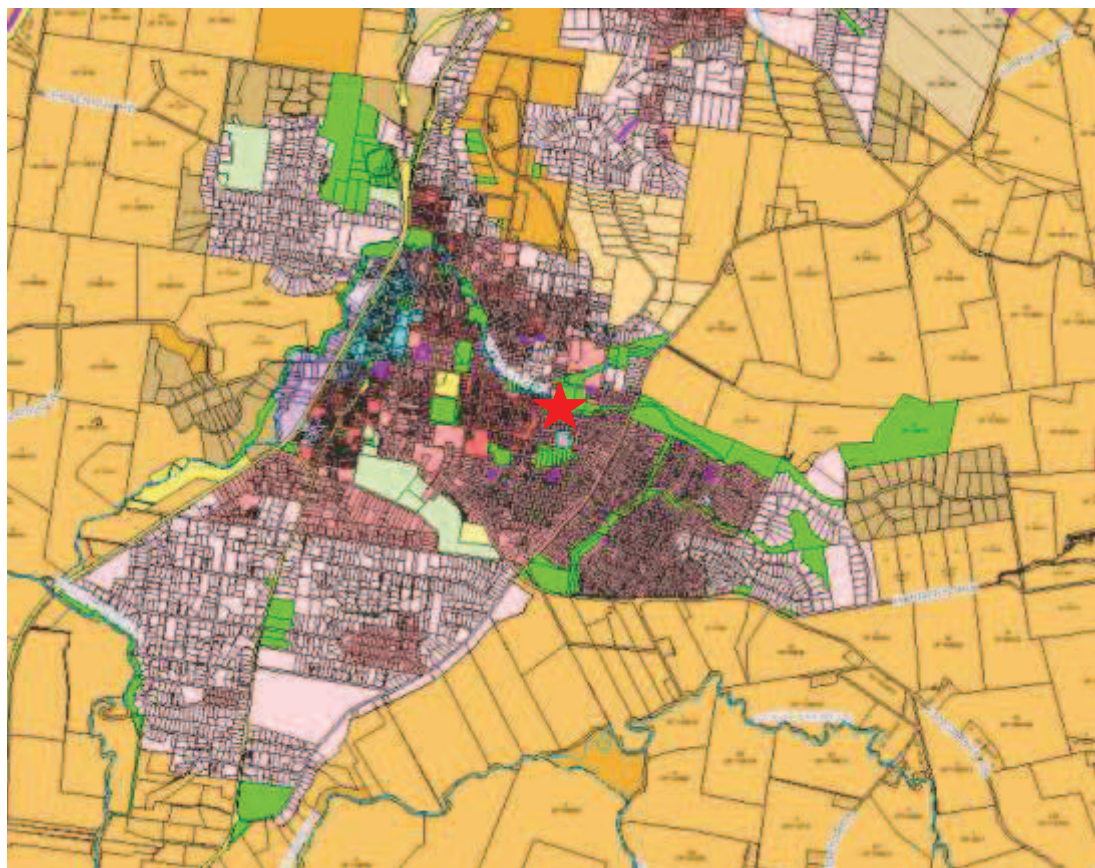


Figure 2 – Location of the Subject Site within Bowral.

The site is zoned part R2 Low Density Residential and part RE1 Public Recreation as indicated below. The RE1 portion is bordered to the south by Stephens Park.

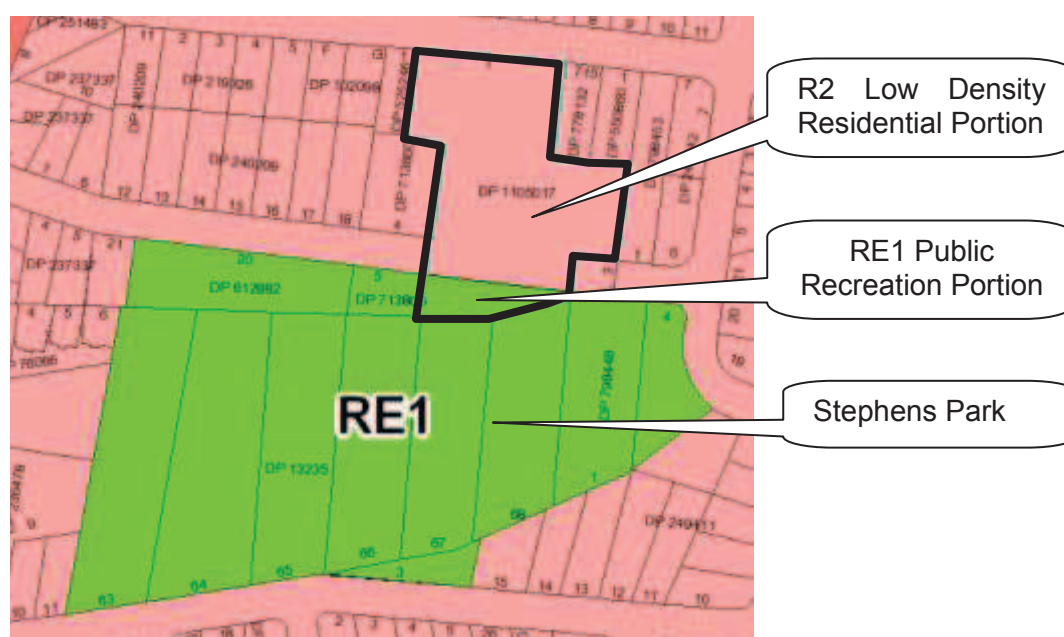


Figure 3 – Zoning of the Subject Site.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

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A minimum lot size of 700sqm applies to the R2 Low Density Residential portion of the site. The RE1 Public Recreation portion does not have a minimum lot size in keeping with the standard format for the RE1 zone under WLEP 2010.

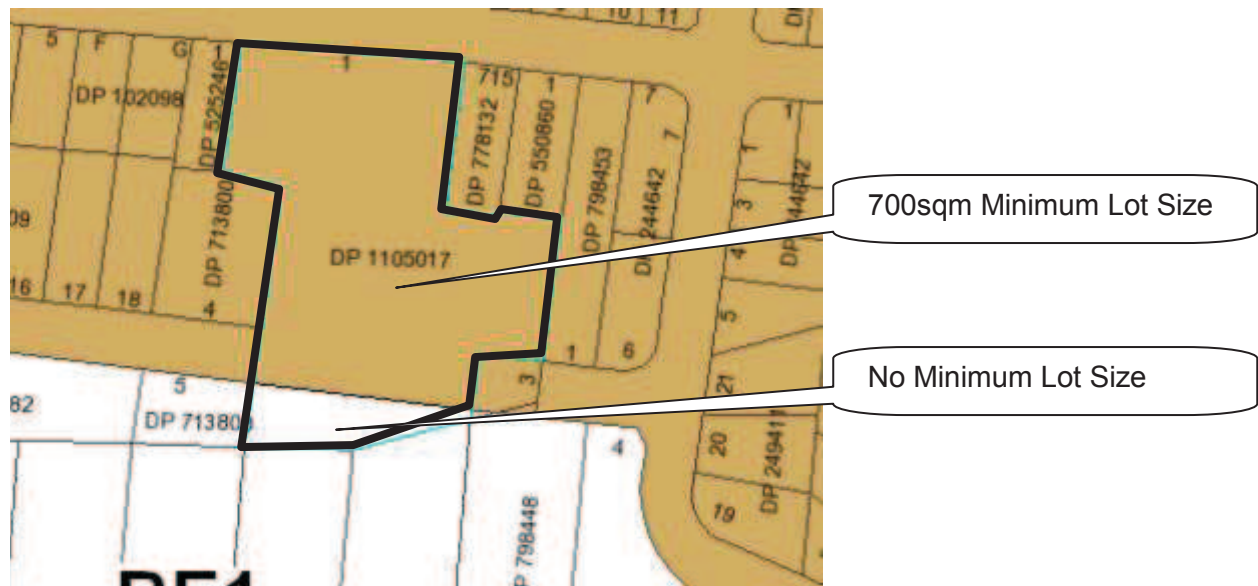


Figure 4 – Minimum Lot Size.

The subject land covers an area of some 12,783sqm and is the location of the aged housing facility known as 'Anthem'. Approved developments to date provide for the construction of 44 assisted living units and associated facilities accommodated within two (2) buildings which were completed in March 2009 and March 2013, respectively. Further approval has been granted for the construction of a dementia specific residential care facility accommodating 14 beds and associated facilities within a separate building and a separate Land Use Application is currently being prepared for the expansion of 'Anthem' through the construction of an interconnected building joining the others. The Anthem development faces on to Retford Road.

DETAILS OF PLANNING PROPOSAL

Through a drafting error in the preparation of maps for WLEP 2010, the portion of the subject site which adjoins Stephens Park to the south was zoned RE1 Public Recreation. However, this is incorrect as this portion of the site is in private ownership and there is no intention by Council to acquire it.

A Planning Proposal is required because the portion of the subject site zoned RE1 Public Recreation needs to be rezoned to R2 Low Density Residential and a minimum lot size of 700sqm needs to be applied in order for this portion of the site to comply with the remainder.

STATUTORY PROVISIONS

Wingecarribee LEP2010 (WLEP 2010)

In order to amend WLEP 2010 a Planning Proposal is required under the Gateway process introduced in July 2009. The gateway process contains the following steps:

Planning Proposal - the relevant planning authority (Council) is responsible for the preparation of

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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 Director-General of the Department of Planning 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.

Assessment - The relevant planning authority (Council) considers public submissions and the Proposal is 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).

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

Development Control Plans (DCPs)

This Planning Proposal does not require any amendment or reference to any DCP provisions.

State Environmental Planning Policies (SEPPs)

Several SEPPs apply to the subject site as follows:

SEPP 44 Koala Habitat Protection

All land within the Wingecarribee Shire Local Government Area is covered by the provisions of SEPP 44. Because this Planning Proposal is to correct a drafting error when WLEP 2010 was prepared, it is considered to be consistent with the SEPP.

SEPP Sydney Drinking Water Catchment 2011

The Sydney Drinking Water SEPP applies to the site as it is located within the Sydney Drinking Water Catchment and all Planning Proposals must seek comment from the Sydney Catchment Authority (SCA) prior to being forwarded to DP&I. SCA is unlikely to have any objection, as the purpose of the Planning Proposal to correct a drafting error when WLEP 2010 was prepared.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

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on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



Section 117 Directions

The Minister for Planning, under section 117(2) of the 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.
7. Metropolitan Planning

The relevant Directions which apply to this Planning Proposal are considered below

6.1 Approval and Referral Requirements

This Direction applies to all Planning Proposals. The Planning Proposal is considered consistent with this Direction as it will not create designated development or allow development that will require significant concurrence, consultation or referral to the Minister of Planning and Infrastructure.

6.3 Site Specific Provisions

This Direction requires that a Planning Proposal must not require further development standards under the environmental planning instrument to be imposed on the sites that are the subject of the planning proposal. As the Planning Proposal will not amend any development standards on the subject sites, it is considered to be consistent with this direction.

Relevant State Legislation

No other State legislation is relevant at this stage.

CONSULTATION

External Referrals

The Gateway Determination would identify what referrals to public authorities are required.

Internal Referrals

Initial consultation has occurred with Environmental Assessment staff to confirm current approvals over the subject site.

Community Consultation

Community consultation will occur as set out in the Gateway Determination.

SUSTAINABILITY ASSESSMENT

• Environment

The correction of the drafting error will have no environmental impacts on the subject site or the adjoining land as that portion which appears to be part of Stephens Park is in fact part of the adjoining lot.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



- **Social**

The correction of the drafting error will have no social impacts on the subject site or the adjoining land except to the extent that if the rezoning did not occur the further development of the Anthem aged care facility could be delayed with consequent impacts on the community.

- **Broader Economic Implications**

The correction of the drafting error will have no economic impacts on the subject site or the adjoining land except to the extent that if the rezoning did not occur the further development of the Anthem aged care facility could be delayed with consequent impacts on the local economy.

- **Culture**

The correction of the drafting error will have no social impacts on the subject site or the adjoining land.

- **Governance**

The correction of the drafting error is necessary to good governance which requires Council to maintain an accurate LEP with regard to features, including zoning and minimum lot size.

RELATIONSHIP TO CORPORATE PLANS

There are no Corporate Plan implications associated with this correction of the drafting error in WLEP 2010.

BUDGET IMPLICATIONS

There are no budget implications as this Planning Proposal is the result of a drafting error and will be processed by Council staff.

RELATED COUNCIL POLICY

There are no related Council Policies other than those already considered.

OPTIONS

Two (2) options are available to Council:

Option 1

Resolve to not proceed with the Planning Proposal to rezone the subject site as outlined in the report.

Comment: This option is not recommended as it does not address the drafting error.

Option 2

Resolve to proceed with a Planning Proposal to rezone and apply a minimum lot size to the subject site as outlined in the report.

Comment: This option is recommended as it corrects the drafting error and allows ongoing development of the site.

CONCLUSION

This matter is a straightforward correction of a drafting error which occurred during the preparation of WLEP 2010 and should be corrected through the mechanism of a Planning Proposal as soon as practicable.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



ATTACHMENTS

There is one (1) attachment to this report:

1. Planning Proposal to amend Lot 1 DP 1105017, 25 Retford Road Bowral. James Lovell and Associates. 30 October 2013.

RECOMMENDATION

1. **THAT** the Planning Proposal to rezone part of Lot 1 DP 1105017, 25 Retford Road Bowral, from RE1 Public Recreation to R2 Low Density Residential and apply a minimum lot size of 700sqm to that portion of the site be prepared and forwarded to the NSW Department of Planning and Infrastructure for a Gateway Determination under section 55 of the Environmental Planning and Assessment Act 1979.
2. **THAT** the applicant be advised of Council's decision made in 1 above.

(Voting on the Motion)

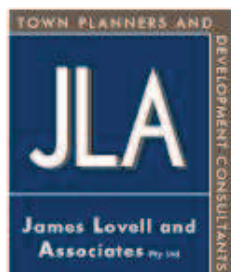
AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



ATTACHMENT 1



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30 October 2013

The General Manager
Wingecarribee Shire Council
PO Box 141
MOSS VALE NSW 2577

Dear Sir/Madam,

LOT 1 IN DEPOSITED PLAN 1105017

Introduction

This submission has been prepared to explain the intended effect of, and justification for, a Planning Proposal in relation to a portion of Lot 1 in Deposited Plan 1105017 ("the allotment"). The allotment is located between Retford Road and *Stephens Park*, Bowral.

The majority of the allotment is currently zoned R2 - Low Density Residential pursuant to the Wingecarribee Local Environmental Plan (LEP) 2010. The southern portion of the allotment is currently zoned RE1 - Public Recreation ("the subject land").

The allotment encompasses a total area of approximately 12,783m², and the subject land has an area of approximately 1,232m². The whole of the allotment (including the subject land) has been held in private ownership by the current owners since 2001, and by the prior owners since approximately at least the 1950's.

The primary purpose of the Planning Proposal is to regularise the zoning of the whole of the allotment, and to remove the effective anomaly between the private ownership of the subject land, and its current zoning for public recreation purposes. That is, the land is not available for use for public recreation purposes, and accordingly, its current zoning is anomalous.

In the circumstances, this submission has been prepared to accompany a formal request that Council prepare a Planning Proposal to amend the Wingecarribee LEP 2010 to rezone the subject land from RE1 - Public Recreation to R2 - Low Density Residential.

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AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

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on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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Background

Lot 1 in Deposited Plan 110517 was created by the consolidation of four (4) allotments extending between Retford Road to the north and *Stephens Park* to the south. A small portion of the consolidated allotment was "unzoned", presumably to accommodate the possible extension of the eastern end of Park Road through to Hansen Street.

The extension of the roadway was effectively abandoned by Council in 2002 when it was resolved to adopt the *Wingecarribee Our Future (WOF) Strategic Plan*, and to amend the (then) Wingecarribee LEP 1989 to incorporate the strategies, actions and policies included in the *WOF Strategic Plan*.

In particular, the *WOF Strategic Plan* recommended the (then) unzoned section of the abandoned roadway extension be zoned Residential 2(a) to reflect the zoning of the balance of the allotment to the north. The proposed rezoning did not ultimately proceed in light of the subsequent decision of Council to implement a new LEP consistent with the Standard Instrument (Local Environmental Plans) Order 2006.

In that regard, the Wingecarribee LEP 2011 came into force on 16 June 2010, and the unmade section of the abandoned roadway is now zoned R2 - Low Density Residential. As such, the remaining zoning anomaly is limited to the small portion of the allotment located to the south of the abandoned roadway.

A series of Development Consents (and amendments) have been granted by Council in relation to the whole of the consolidated allotment, which collectively provide for the staged construction of an aged housing facility known as *Anthem*.

The approved development/s generally provide for the construction of 44 assisted living units and associated facilities accommodated within two (2) buildings identified as *Buildings A* and *B*. *Buildings A* and *B* were completed in March 2009 and March 2013, respectively.

Further, approval has been granted for the construction of a dementia specific residential care facility accommodating 14 beds and associated facilities, within a separate building identified as *Building D*. A separate Development Application is currently being prepared for the expansion of *Anthem* in the form of an interconnected building to be known as *Building C*, which will interconnect to *Buildings B* (existing) and *D* (approved).

Legislative Context

Section 55(1) of the Environmental Planning and Assessment Act 1979 specifies that before an environmental planning instrument is made, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument, and sets out the justification for its making ("the Planning Proposal").

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

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on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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Section 55(2) specifies that the Planning Proposal is to include a statement of the objectives and intended outcomes of the proposed instrument, an explanation of the provisions that are to be included in the proposed instrument, the justification for those objectives, outcomes and provisions, maps to be adopted by the proposed instrument, and details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Further, the Department of Planning published "*A Guide to Preparing Planning Proposals*" (July 2009), to explain the format and content of a Planning Proposal to be prepared by the relevant planning authority.

1. Objective or Intended Outcomes

The objective or intended outcome of the Planning Proposal is to rezone the subject land from RE1 - Public Recreation to R2 - Low Density Residential. The proposed rezoning will remove the effective anomaly between the private ownership of the subject land, and its current zoning for public recreation purposes.

Further, the rezoning will enable a Development Application to be submitted to Council facilitating the future use of the land for residential purposes associated with the aged housing facility (*Anthem*) occupying the remainder of the allotment.

A substantial landscaped buffer will be maintained along the southern boundary to ensure an appropriate transition with the sporting fields and associated facilities located within *Stephens Park*. Further, the Applicant/owner has committed to installing drainage along the southern boundary to assist with the drainage of the adjacent sporting fields.

2. Explanation of Provisions

The provisions of the Planning Proposal comprise an amendment to the Wingecarribee LEP 2010 Land Zoning Map to rezone the subject land from RE1 - Public Recreation to R2 - Low Density Residential.

3. Justification

Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

The Planning Proposal is not a result of a specific strategic study or report, but is intended to remove the effective anomaly between the private ownership of the subject land, and its current zoning for public recreation purposes.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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Further, the rezoning will enable a Development Application to be submitted to Council facilitating the future use of the land for residential purposes associated with the aged housing facility (*Anthem*) occupying the remainder of the allotment.

In that regard, the *Wingecarribee Demographic and Housing Study 2012* ("the Study") notes that "Population forecasts prepared by the NSW Department of Planning and Infrastructure indicate that the number of residents aged 55 years and over is expected to grow by more than 70 percent between 2011 and 2036. Over the same period, the number of residents aged over 85 is expected to more than triple...Using DoPI population projections and in the absence of additional aged care facilities, SGS forecast a shortfall in the future supply of housing specifically for older residents".

Further, the *Wingecarribee Our Future Strategic Plan 2002* ("the Strategic Plan"), notes that "The level of public open space in Bowral is relatively high at approximately 8 hectares per 1000 people".

In the circumstances, the Planning Proposal is consistent with the relevant strategic studies on the basis that it will assist in addressing a forecast shortfall in the future supply of housing specifically for older residents, in a locality already well serviced by public open space.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The Planning Proposal is considered the most appropriate means of achieving the objective or intended outcome.

3. *Is there a net community benefit?*

The Planning Proposal will provide a net community benefit on the basis that:

- the proposed rezoning will remove the effective anomaly between the private ownership of the subject land, and its current zoning for public recreation purposes;
- the proposed rezoning will facilitate the future use of the land for residential purposes associated with the aged housing facility (*Anthem*) occupying the remainder of the allotment;
- a substantial landscaped buffer will be maintained along the southern boundary to ensure an appropriate transition with the sporting fields and associated facilities located within *Stephens Park*;
- the Applicant/owner has committed to installing drainage along the southern boundary to assist with the drainage of the adjacent sporting fields;
- the intended use of the subject land will generate significant social and economic benefits in terms of the provision of housing specifically for older residents, and generate local employment with significant direct and "flow on" economic benefits to the local community;

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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- the intended use of the subject land will assist in addressing a forecast shortfall in the future supply of housing specifically for older residents; and
- the intended use of the land for the purposes of aged housing will have no impact on the amenity of any surrounding land.

Relationship to strategic planning framework

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

The *Sydney-Canberra Corridor Regional Strategy* ("the SCCRS") was prepared by the NSW Department of Planning and Infrastructure in 2008. The SCCRS provides the framework to manage and direct growth in housing and employment, and to protect the environment to 2031. The Region's population is projected to be 183,350 by 2031, a growth of 46,350 people, requiring an additional 25,200 dwellings and 27,800 jobs.

The SCCRS notes that the Wingecarribee Local Government Area (LGA) is projected to grow by almost 40 percent from 42,300 to 58,700 people by 2031. Further, Bowral is identified as a "major centre" and the preferred location for infill development, providing developments with a greater range of housing choices.

In the circumstances, the Planning Proposal will ultimately contribute to additional housing growth, contribute to a greater range of housing choice, and assist in addressing a forecast shortfall in the future supply of housing specifically for older residents.

5. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The *Wingecarribee Demographic and Housing Study 2012* ("the Study") notes that "Population forecasts prepared by the NSW Department of Planning and Infrastructure indicate that the number of residents aged 55 years and over is expected to grow by more than 70 percent between 2011 and 2036. Over the same period, the number of residents aged over 85 is expected to more than triple...Using DoPI population projections and in the absence of additional aged care facilities, SGS forecast a shortfall in the future supply of housing specifically for older residents".

Further, the *Wingecarribee Our Future Strategic Plan 2002* ("the Strategic Plan"), notes that "The level of public open space in Bowral is relatively high at approximately 8 hectares per 1000 people".

In the circumstances, the Planning Proposal is consistent with the relevant strategic studies on the basis that it will assist in addressing a forecast shortfall in the future supply of housing specifically for older residents, in a locality already well serviced by public open space.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

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on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



James Lovell and Associates

6. *Is the planning proposal consistent with applicable state environmental planning policies?*

State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land, generally aims to promote the remediation of contaminated land for the purpose of reducing the risk to harm to human health or any other aspect of the environment.

The SEPP is not specifically relevant to the Planning Proposal on the basis that the subject land has evidently not been used for any purpose referred to in Table 1 of *Managing Land Contamination - Planning Guidelines* (Department of Urban Affairs and Planning, 1998).

SEPP (Housing for Seniors or People with a Disability) 2004 generally aims to increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.

The future development of the subject land for the purposes of aged housing will be carried out in accordance with the relevant provisions of the SEPP. Irrespective, "seniors housing" is permissible in the relevant R2 - Low Density Residential pursuant to the provisions of the Wingecarribee LEP 2010.

7. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The relevant Section 117(2) Directions (as amended) comprise Direction 3.1 - Residential Zones, Direction 3.4 - Integrating Land Use and Transport, Direction 5.1 - Implementation of Regional Strategies, Direction 6.1 - Approval and Referral Requirements, and Direction 6.2 - Reserving Land for Public Purposes.

Direction 3.1 - Residential Zones

Direction 3.1 generally aims to encourage a variety and choice of housing types, make efficient use of existing infrastructure, and minimise impacts on the environment and resource land.

The Direction specifies that a Planning Proposal must contain a requirement that residential development is not permitted until the land is adequately serviced (or satisfactory arrangements have been made to service it), and must not reduce the permissible residential density.

The Planning Proposal will ultimately contribute to additional housing growth within an established residential precinct, contribute to a greater range of housing choice, and assist in addressing a forecast shortfall in the future supply of housing specifically for older residents.

Further, the subject land is adequately serviced by existing infrastructure, and the Planning Proposal will not reduce the permissible residential density.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



James Lovell and Associates

Direction 3.4 - Integrating Land Use and Transport

Direction 3.4 generally aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve improved accessibility, increased choice of transport, reduced travel demand, and efficient movement of freight.

The Direction specifies that a Planning Proposal must locate zones that are consistent with the aims, objectives and principles of "Improving Transport Choice - Guidelines for planning and development" (DUAP 2001), and "The Right Place for Business and Services - Planning Policy" (DUAP 2004).

The Planning Proposal is consistent with the aims and objectives relating to urban consolidation. The majority of the subject land is zoned for residential purposes, and the Planning Proposal will facilitate the use of the land for residential purposes associated with the aged housing facility (*Anthem*) occupying the remainder of the allotment.

Direction 5.1 - Implementation of Regional Strategies

Direction 5.1 generally aims to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

The Direction specifies that a Planning Proposal must be consistent with a regional strategy released by the Minister for Planning.

The *Sydney-Canberra Corridor Regional Strategy* provides the framework to manage and direct growth in housing and employment, and to protect the environment to 2031. The Region's population is projected to be 183,350 by 2031, a growth of 46,350 people, requiring an additional 25,200 dwellings and 27,800 jobs.

The Planning Proposal will contribute to the regional housing targets within an established residential environment.

Direction 6.1 - Approval and Referral Requirements

Direction 6.1 generally aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

The Direction specifies the general concurrence, consultation and referral mechanisms, and the Planning Proposal will satisfy those requirements.

Direction 6.2 - Reserving Land for Public Purposes

Direction 6.2 generally aims to facilitate the provision of public services and facilities, and facilitate the removal of reservations for land for public purposes where the land is no longer required for acquisition.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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The Direction specifies that a Planning Proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the Director-General of the Department of Planning, unless the land is no longer required for public purposes.

The Planning Proposal is intended to remove the effective anomaly between the private ownership of the subject land, and its current zoning for public recreation purposes. Further, the *Wingecarribee Our Future Strategic Plan 2002* ("the Strategic Plan"), notes that "The level of public open space in Bowral is relatively high at approximately 8 hectares per 1000 people".

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?*

The Planning Proposal will not affect any critical habitat or threatened species.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

There are no environmental effects likely to arise as a consequence of the Planning Proposal that cannot be adequately controlled as part of the development assessment process.

10. *How has the planning proposal adequately addressed any social and economic effects?*

The Planning Proposal will contribute to the regional housing targets within an established residential environment.

State and Commonwealth interests

11. *Is there adequate public infrastructure for the planning proposal?*

The site is serviced by all necessary public infrastructure.

12. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

Any comments from State and Commonwealth public authorities can be responded to if required.

4. Community Consultation

The community consultation process will be implemented in accordance with Section 57 of the Environmental Planning and Assessment Act 1979.

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



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Conclusion

The subject land (formally identified as part Lot 1 in Deposited Plan 1105017) is currently zoned RE1 - Public Recreation pursuant to the Wingecarribee LEP 2010. The subject land has been held in private ownership by the current owners since 2001, and by the prior owners since at least the 1950's.

The primary purpose of the Planning Proposal is to regularise the zoning of the whole of the allotment, and to remove the effective anomaly between the private ownership of the subject land, and its current zoning for public recreation purposes. That is, the land is not available for use for public recreation purposes, and accordingly, its current zoning is anomalous.

The proposed rezoning will enable a Development Application to be submitted to Council facilitating the use of the land for residential purposes associated with the aged housing facility (*Anthem*) occupying the remainder of the allotment.

A substantial landscaped buffer will be maintained along the southern boundary to ensure an appropriate transition with the sporting fields and associated facilities located within *Stephens Park*. Further, the Applicant/owner has committed to installing drainage along the southern boundary to assist with the drainage of the adjacent sporting fields.

The Planning Proposal will assist in addressing a forecast shortfall in the future supply of housing specifically for older residents, and the intended use of the land for the purposes of aged housing will have no impact on the amenity of any surrounding land.

I trust this submission is satisfactory for your purposes, however should you require any further information or clarification please do not hesitate to contact the writer.

Yours Sincerely,

James Lovell
Director
James Lovell and Associates Pty Ltd