

## Planning and Assessment

IRF19/6686

### Gateway determination report

<b>LGA</b>	Wingecarribee
<b>PPA</b>	Wingecarribee Shire Council
<b>NAME</b>	Heritage item and conservation area at Aitken Road and Kangaloon Road, Bowral (0 homes, 0 jobs)
<b>NUMBER</b>	PP_2019_WINGE_005_00
<b>LEP TO BE AMENDED</b>	Wingecarribee Local Environmental Plan 2010
<b>ADDRESS</b>	12-30 Aitken Road, Bowral 25-43 Aitken Road, Bowral 56, 58 and 60 Kangaloon Road, Bowral
<b>DESCRIPTION</b>	Refer to section 1.3 of this report
<b>RECEIVED</b>	4 November 2019 (v1.1)
<b>FILE NO.</b>	IRF19/6686
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend the Wingecarribee Local Environmental Plan 2010 by adding a new heritage item and a new conservation area concerning land at Aitken Road and Kangaloon Road, Bowral.

### 1.2 Background

In October 2018, a development application was lodged with Wingecarribee Shire Council for a residential care facility (seniors housing) on a property at 39-41 Aitken Road, Bowral (DA 19/0574). The application proposed the demolition of all buildings on site and removal of 37 trees.

Following community concern about this proposal, and information about the heritage significance of the site and neighbouring properties, on the advice of its heritage officer Council placed an Interim Heritage Order (IHO) over the property and four of its neighbours on 18 January 2019.

This precinct defined by the IHO was called the 'Aitken Road Bowral Group' and comprised five neighbouring properties on the eastern side of Aitken Road, including nos. 25 to 27 (known as 'Glenfarne'), 29, 31, 33-37 (known as 'Grantham') and 39-41 (known as 'Barkfold').

At its meeting of 10 July 2019, Council considered a heritage assessment report prepared in-house on the significance of the Aitken Road Bowral Group. This report recognised the local heritage significance of some of the Aitken Road houses that were subject of the IHO and the unique character of the street.

Council resolved to prepare a planning proposal to heritage list three out of five of the houses subject of the IHO as a new heritage item group (called the 'Aitken Road Interwar Housing Group' comprising nos. 25 to 27, 33 to 37 and 39 to 41 Aitken Road, Bowral), and create a new heritage conservation area called the 'Aitken Road Conservation Area' covering the surrounds.

This report provides an assessment of the planning proposal prepared in response to Council's resolution of 10 July 2019.

The applicant has appealed the issuing of the IHO and deemed refusal of the development application. These matters will be considered separately by the NSW Land and Environment Court (NSW LEC). Given that this proposal could directly affect the outcome of the case, a gateway condition has been included requiring the planning proposal to be updated to include a reference to a savings provision to apply to any development application lodged but not determined.

### **1.3 Site description**

The site sits on the southern edge of Bowral adjoining Burradoo in the Wingecarribee local government area (LGA). The site is located to the south of Bowral High School between Westwood Drive and Kangaloon Road, Bowral (Figure 1).

The site is comprised of approximately 23 lots located along Aitken Road, Bowral and 3 lots located along Kangaloon Road, Bowral. The lots are legally described as:

- Lot 10 DP 1098108 – 12 Aitken Road;
- Lot 61 DP 1192648 – 14 Aitken Road;
- Lot 62 DP 1192648 – 16 Aitken Road;
- Lot 7 DP 11348 – 18 Aitken Road;
- Lot 8 and Lot 9 DP 11348 – 20 to 22 Aitken Road;
- Lot 10 DP 11348 – 24 Aitken Road;
- Lot 1 DP 316408 – 26 Aitken Road;
- Lot 2 DP 316408 – 28 Aitken Road;
- Lot 3 DP 316408 – 30 Aitken Road;
- Lot 24 and Lot 25 DP 11348 - 25-27 Aitken Road ('Glenfarne');
- Lot 23 DP 11348 – 29 Aitken Road;
- Lot 22 DP 11348 – 31 Aitken Road;
- Lots 19 to 21 DP 11348 – 33-37 Aitken Road ('Grantham');
- Lot 11 DP 633966 – 39-41 Aitken Road ('Barkfold');
- Lot 1 DP 1151362 – 43A Aitken Road;
- Lot 2 DP 1151362 – 43 Aitken Road;

- Lot 13 DP 11348 – 56 Kangaloon Road;
- Lot 14 DP 11348 – 58 Kangaloon Road; and
- Lot 2 DP 842038 – 60 Kangaloon Road.

Aitken Road is a wide (20m) street characterised by low-density residential houses set on large allotments (four of which are double or larger allotments) surrounded by landscaped gardens and mature trees. The street trees comprise a mix of species including cherries and English oak.



**Figure 1: Site Plan**

#### **1.4 Existing planning controls**

The site is currently zoned R2 Low Density Residential and has minimum lot sizes varying from 700m<sup>2</sup> to 2,000m<sup>2</sup> under the Wingecarribee LEP.

#### **1.5 Surrounding area**

The site is surrounded by (Figure 1):

- Bowral High School (zoned R2 and listed as a local heritage item (no. 1503) in the Wingecarribee LEP) and Westwood Drive to the north;
- low density (zoned R2) residential properties to the east;
- low density (zoned R2) residential properties to the west; and
- Kangaloon Road and low-density (zoned R2) residential properties to the south.



## 1.5 Summary of recommendation

It is recommended that the planning proposal proceed as submitted as it is consistent with local and regional strategic planning objectives to protect heritage.

## 2. PROPOSAL

### 2.1 Objectives or intended outcomes

The objectives of the planning proposal are to update Schedule 5 of the Wingecarribee LEP to include:

- a new single local heritage item known as the 'Aitken Road Interwar Housing Group' comprising nos. 25 to 27 Aitken Road ('Glenfarne'), 33 to 37 Aitken Road ('Grantham') and 39 to 41 Aitken Road ('Barkfold'), Bowral; and
- a new heritage conservation area, known as the 'Aitken Road Conservation Area', comprising nos. 12 to 30 Aitken Road, 25 to 43 (including 43A) Aitken Road and 56, 58 and 60 Kangaloon Road, Bowral.

The proposed heritage item and conservation area are illustrated in Figure 2 below.



**Figure 2:** Proposed heritage item and conservation area

### 2.2 Explanation of provisions

The planning proposal is clear in identifying the relevant provisions and Heritage Map in the Wingecarribee LEP that will require amendment to achieve the objectives and intended outcomes of the planning proposal, including:

- Schedule 5 – Environmental Heritage, Part 1 - Heritage items;
- Schedule 5 – Environmental Heritage, Part 2 - Heritage conservation areas; and
- Heritage Map – Sheet HER\_007D

### **2.3 Mapping**

The planning proposal will require amendment to the relevant Heritage Map/s in the Wingecarribee LEP. Council has included draft maps in the planning proposal which are considered appropriate for exhibition purposes.

## **3. NEED FOR THE PLANNING PROPOSAL**

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The planning proposal is needed to protect the heritage significance of properties located on the subject site (refer to Section 1.2 of this report) in line with local and regional strategic planning objectives.

The planning proposal is supported by an in-house heritage assessment prepared by Council. The heritage assessment found that properties on the subject site represent an excellent example of an Interwar housing estate containing fine examples of local Interwar and Interwar Old English architecture and buildings. The assessment also found that a prominent Sydney architect designed one of the buildings and a renowned local builder both erected some of the dwellings and lived in one.

The report recommends (inter alia):

- the three interwar houses at 25 to 27, 33 to 37 and 39 to 41 Aitken Road, Bowral be listed as a local heritage item in the Wingecarribee LEP; and
- nos. 12 to 30 Aitken Road, 25 to 43 Aitken Road and 56, 58 and 60 Kangaloon Road, Bowral be incorporated as a new conservation area in the Wingecarribee LEP.

Council noted a planning proposal is the only way to obtain statutory listing of a local heritage item and conservation area.

The Department agrees a planning proposal is the only way to achieve the intended objectives and outcomes.

## **4. STRATEGIC ASSESSMENT**

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### **4.1 South East and Tablelands Regional Plan**

The planning proposal seeks to protect the heritage significance of properties located on the subject site.

Key directions and actions of the Regional Plan relevant to this planning proposal include:

- Direction 23: Protect the region's heritage; and
- Action 23.3: Conserve heritage assets during local strategic planning and development.

Protecting the Wingecarribee Shire's valued heritage assets is also identified as a specific priority for the Wingecarribee LGA in the Regional Plan.

Council noted the Regional Plan seeks to provide greater housing supply and choice while protecting areas of high cultural heritage value. Council has identified that the subject site has heritage values.

The Department is satisfied the planning proposal is consistent with heritage protection and conservation objectives of the Regional Plan.

#### **4.2 Wingecarribee Local Planning Strategy**

The Department has endorsed Council's Local Planning Strategy (LPS), excluding Chapter 4 – Managing Housing Needs, because sufficient potential greenfield housing release areas to meet housing needs across the LGA were not identified.

Council noted Chapter 6 of the Local Planning Strategy (Managing Our Built Environment) reinforces the strong heritage conservation focus of the LGA and reiterates the controls for heritage conservation under clause 5.10 of the Wingecarribee WLEP.

The planning proposal seeks to introduce a new heritage item and conservation area in the Wingecarribee LEP.

The Department is satisfied the proposal is consistent with the heritage conservation and management focus of the LPS.

#### **4.3 Section 9.1 Ministerial Directions**

The planning proposal has identified applicable section 9.1 Directions.

Directions of particular relevance are discussed below:

##### Direction 2.3 – Heritage Conservation

This Direction seeks to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The Direction states (inter alia) planning proposals must contain provisions to facilitate the conservation of heritage items and/or precincts.

The planning proposal seeks to insert new controls in the Wingecarribee LEP to protect the heritage significance identified by Council of properties located on the subject site (refer to Section 1.2 of this report) in line with local and regional strategic planning objectives.

The proposal is therefore considered to be consistent with this Direction.

##### Direction 3.1 Residential Zones

This Direction applies to planning proposals affecting residential zones and other zones on which significant residential development is permitted or proposed.

The Direction aims to encourage housing to meet local demand, ensure new housing makes efficient use of existing infrastructure and services and minimise the impact of residential development on the environment.

The planning proposal does not seek alter the residential zoning applying to the subject site. While the proposed heritage controls may somewhat restrict the design and development of future residential development, these impacts are considered to be outweighed by need to protect the heritage value of the item and conservation area in line with local and regional strategic planning objectives.

The Secretary's delegate may therefore be satisfied that any potential inconsistency with this Direction is of minor significance.

#### Direction 4.4 Planning for Bushfire Protection

Some houses within the proposed conservation area are located approximately 320m to the north-east of land mapped as bushfire prone.

Consultation has not occurred with the NSW Rural Fire Service (NSW RFS) and consistency with Direction 4.4 remains unresolved at this stage. A Gateway condition has therefore been recommended requiring consultation the NSW RFS.

#### Direction 5.2 Sydney Drinking Water Catchment

This Direction aims to protect water quality in Sydney's Drinking Water Catchment, including land within the Wingecarribee LGA.

This Direction requires consultation with the Sydney Catchment Authority (now Water NSW) prior to Gateway determination.

Council noted the planning proposal would maintain the existing zoning and land use of the subject site, thereby helping to protect water quality.

Notwithstanding this, the planning proposal is currently inconsistent with the Direction because Council has not yet consulted with Water NSW. It is recommended that Council consult with Water NSW and provide further information demonstrating it has addressed the requirements of this Direction, prior to finalising the planning proposal.

#### Direction 5.10 Implementation of Regional Plans

This Direction gives legal effect to the vision, directions and actions contained in regional plans. Planning proposals must be consistent with the relevant Regional Plan.

As identified earlier in this report, the planning proposal is consistent with the South East and Tablelands Regional Plan and this Direction.

### **4.4 State environmental planning policies (SEPPs)**

The planning proposal identifies State Environmental Planning Policies (SEPPs) applying to the site. Key relevant SEPPs are detailed below.

#### State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

As noted earlier in this report, Council noted the planning proposal would maintain the existing zoning and land use of the subject site, thereby helping to protect water quality.

The Department considers the proposal is likely to have a neutral or beneficial impact on water quality consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

Notwithstanding this, Council has not yet consulted with Water NSW and potential water quality/catchment issues remain unresolved and will require further justification. A condition has therefore been included on the Gateway Determination requiring consultation with Water NSW.

This will ensure potential/residual water quality/catchment issues are resolved prior to the plan being finalised.

It is concluded that the planning proposal is not inconsistent with relevant SEPPs.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social and Economic**

The planning proposal acknowledges it could result in social and economic impacts on individual property owners due to heritage listing and the creation of a conservation area.

Council states that properties which are protected by heritage listing can attain a level of prestige, particularly when surrounded by a heritage conservation area, and can be in demand. This could result in positive economic effects.

Heritage controls also provide certainty to landowners that development will be sympathetic to, and will not erode, the character of the area.

Conversely, heritage controls can also restrict the freedom of property owners to do what they like with their property, potentially causing negative economic impacts.

Some economic loss can also be balanced with opportunities for external funding through heritage grants and conservation incentives.

Council considers some individual economic and social impact is reasonable in the context of protecting the heritage significance of the area.

### **5.2 Environment and Heritage**

#### Environment

The planning proposal applies to existing low density residential zoned land which has previously been developed for residential purposes. As such, no adverse environmental impacts are anticipated.

#### Heritage

As noted earlier in this report, an in-house heritage assessment was prepared by Council which gave rise to the need for the planning proposal.

The Department has reviewed the heritage assessment which finds that properties on the subject site represent an excellent example of an Interwar housing estate containing fine examples of local Interwar architecture and buildings. The assessment also found that a prominent Sydney architect designed one of the buildings and a renowned local builder both erected some of the dwellings and lived in one.

The Department is supportive in principle of proposals to protect local heritage items and conservation areas identified by Councils.

To ensure Council's heritage assessment is in accordance with the relevant heritage guidelines, the Department has recommended a Gateway condition is included requiring Council to update the planning proposal and accompanying heritage assessment in consultation with the Department of Premier and Cabinet (Heritage), prior to public exhibition.

### **5.3 Infrastructure**

The planning proposal would not result in any additional public infrastructure burden.



## **6. CONSULTATION**

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### **6.1 Community**

Council has proposed a 28-day community consultation period which is considered adequate having regard to the nature of the planning proposal.

Considering the potential social and economic impacts of the proposal, the Department has recommended a Gateway condition requiring Council to write to all landowners within and adjoining the proposed conservation area providing notice of the proposal and public exhibition and explaining the effects of the proposed changes.

### **6.2 Agencies**

It is recommended that agency consultation is undertaken with the following government agencies:

- Department of Premier and Cabinet (Heritage);
- NSW Rural Fire Service; and
- Water NSW.

This would ensure that any potential outstanding heritage, bushfire and water quality issues are suitably resolved prior to the plan being made.

## **7. TIME FRAME**

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Council anticipates a 7-month time frame to finalise the LEP. It is recommended that a 12-month period be provided to enable a buffer in case issues arise during consultation or any other part of the process.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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The Department has considered Council's request to be the local plan-making authority. While the proposed listing is primarily a local matter, it has been determined not to condition the Gateway for Council to be the local plan-making authority for the following reasons:

- there is a dispute between at least one landowner and Council in relation to the heritage listing; and
- retaining the plan making function will allow the Department to independently finalise the proposal taking into consideration all views.

## **9. CONCLUSION**

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The planning proposal is consistent with local and regional strategic planning objectives to protect heritage.

It is therefore recommended that the planning proposal should progress as submitted.

## 10. RECOMMENDATION

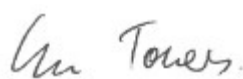
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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 3.1 Residential Zones is minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection and Direction 5.2 Sydney Drinking Water Catchment remain unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal and accompanying heritage assessment are to be updated in consultation with the Department of Premier and Cabinet (Heritage) to ensure the requirements of the relevant heritage guidelines are met.
2. Prior to public exhibition, the planning proposal is to be updated to include a reference to a savings provision to apply to any development application lodged but not determined.
3. As part of the public exhibition, Council is to write to all landowners within and adjoining the proposed conservation area providing notice of the proposal and public exhibition and explaining the effects of the proposed changes.
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
5. Consultation is required with the following public authorities prior to public exhibition:
  - Department of Premier and Cabinet (Heritage);
  - NSW Rural Fire Service; and
  - Water NSW.
6. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
7. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



27/11/19

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29/11/19

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