

20 September 2021

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Our ref: *D2021/98882*

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Dear Ms Stannard,

RE: Planning Proposal to Include land known as Retford Park West into Clause 1.9A(2) of Wingecarribee LEP 2010 (PP-2021-4816)

Thank you for your referral of 1 September 2021 seeking to amend *Wingecarribee Local Environmental Plan 2010* (WLEP) to include land known as Retford Park West under clause 1.9A(2). We provide comments herewith based on an updated version of the Proposal forwarded to us on 8 September 2021 which further clarified the land in question via amendments to Figure 3.

We have no objection to the Planning Proposal proceeding.

The Planning Proposal implicates 26.63 ha of land identified as Retford Park West as depicted on Figure 3. The proposed WLEP amendment will enable the legal enforcement of a Purchaser's Agreement and Future Purchaser's Agreement (the Agreements) into which every purchaser of a lot within Retford Park West entered into with the Executors of the Estate of the Late James O. Fairfax AC (the Executors). The Agreements facilitate a consistent standard of development within the Estate through adherence to a set of Design Guidelines. We understand that the Amendment to the LEP is required because the Executors have been unable to enforce the Agreements due to the operation of clause 1.9A(1) of the WLEP which enables development to be conducted despite any agreement, covenant or other similar instrument, unless it the Agreement is specifically listed in clause 1.9A(2). It is therefore proposed to add a reference to 'any agreement or other instrument' as relevant to the Retford Park West area, under a clause 1.9A(2).

We note that the Department of Industry, Planning and Environment (DPIE) has asked the Council to explore incorporating the Design Guidelines into a 'site-specific' development control plan (DCP) chapter. To this end, an additional clause (clause 7.12) is also put forward as part of the Proposal. This clause would apply to the development of land at Retford Park West, give effect to the land area through an amendment to the Local Clauses Map, and require development on such land to meet the relevant standards contained within the Retford Park Precinct of the Bowral Township DCP. WaterNSW has no objection to this approach, but notes that the means by which the Agreements may be clarified or varied (e.g. via the Design Review Panel) is different to the process by which a DCP may be varied. There may also be the issue of keeping the DCP and Design Guidelines aligned over time. However, these are matters for DPIE and Council to resolve.

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

The Planning Proposal notes the healthy catchments and water quality aims of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (the SEPP). The Proposal states that it is consistent with the SEPP, noting that WaterNSW has supported the previous rezoning of the land and subdivision of the site. Any future DAs within the subdivided allotment are required to have a Neutral or Beneficial Effect (NorBE) on water quality under the SEPP. We see no inconsistency between the proposed provisions and the requirements of the SEPP.

Direction 5.2 Sydney Drinking Water Catchment

The Planning Proposal responds to Direction 5.2 noting that the objective of the Direction is to protect water quality in the Sydney Drinking Water Catchment. The Proposal notes that the subject land was assessed as being consistent with the Direction at the time of rezoning when the subdivision was assessed. To this end, WaterNSW issued concurrence to the subdivision on 10 September 2015, identifying that subdivision was able to achieve a NorBE on water quality provided that appropriate conditions were included in any development consent and that these were subsequently implemented. The Council consent for the subdivision issued by Council on 2 February 2016 and incorporates the WaterNSW concurrence conditions under Condition 52 of the consent.

Having regard to the provisions of Direction 5.2, we note that the land is not a 'Special Area' under the *Water NSW Act 2014* or *Water NSW Regulation 2020*. The proposed LEP changes also do not affect any requirement of the SEPP in requiring development to achieve a NorBE on water quality. We also note that Strategic Land and Water Capability Assessments are not appropriate in this circumstance as rezoning of the land has already occurred and as the Proposal does not involve increasing the types of permissible uses. We believe that the Proposal is consistent with Direction 5.2 as stated.

Should you have any questions on the above matters, please contact Stuart Little (stuart.little@waternsw.com.au).

Yours sincerely



ALISON KNIHA
Catchment Protection Planning Manager