

Planning Proposal

To amend Wingecarribee Local Environmental Plan 2010 to enable enforcement of Purchasers' Agreements over land at Retford Park West, Bowral.

Prepared by Strategic Land Use Planning Branch
Wingecarribee Shire Council
Version 4 for Public Exhibition

October 2021

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Attachments which form part of this Planning Proposal

1	Planning Proposal – v4 for Public Exhibition
2	Retford Park West Design Guidelines
3	Gateway Determination
4	Agency Response - WaterNSW
5	Local Clause Draft Map
6	Report to Ordinary Meeting of Council 14 July 2021
7	Resolution of Ordinary Meeting of Council 14 July 2021

Location & Description of the Subject Land

Location of the Subject Land – the subject land is identified as being the 26.63ha of land comprising the western portion of the residential estate bounded by Old South Road Bowral, David Wood Playing Fields and Lot 221 DP1206897.

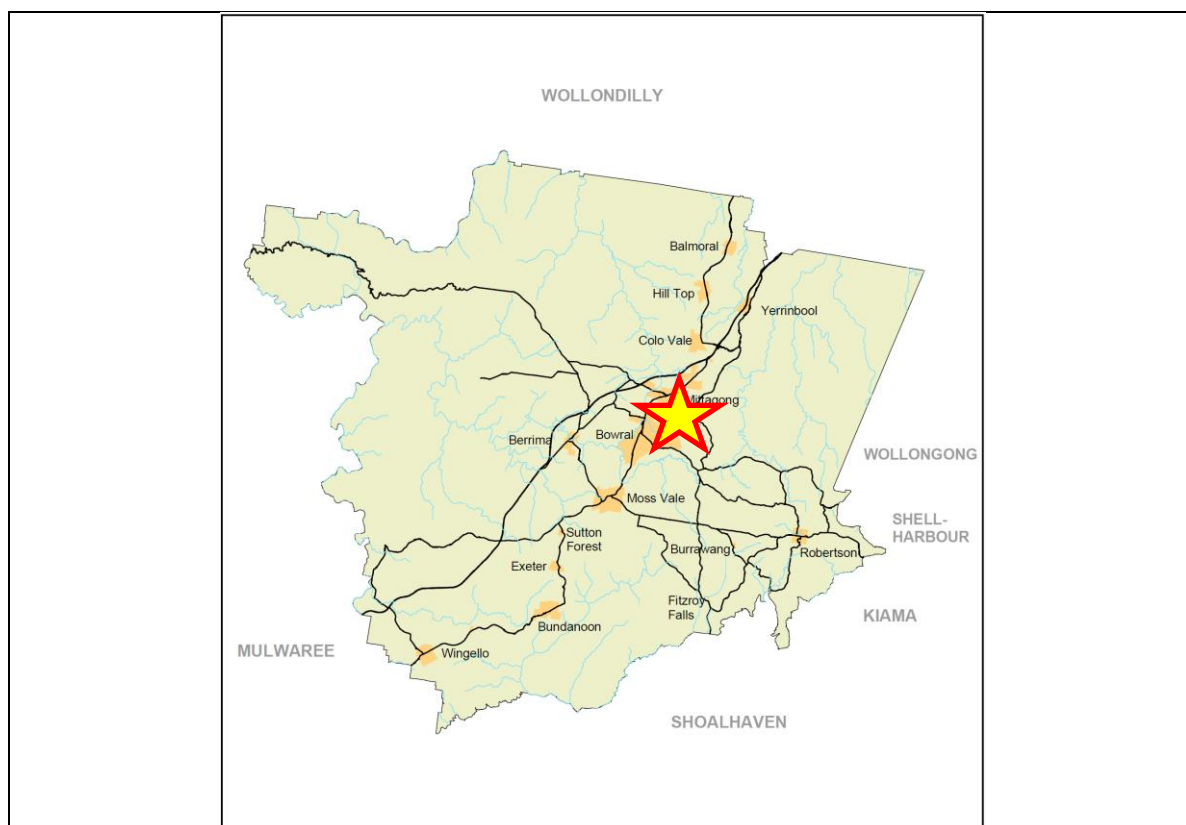


Figure 1 Site Location

Description of the Subject Land

The land which is the subject of this Planning Proposal is located on the north east edge of Bowral Township as indicated in **Figure 2** below.

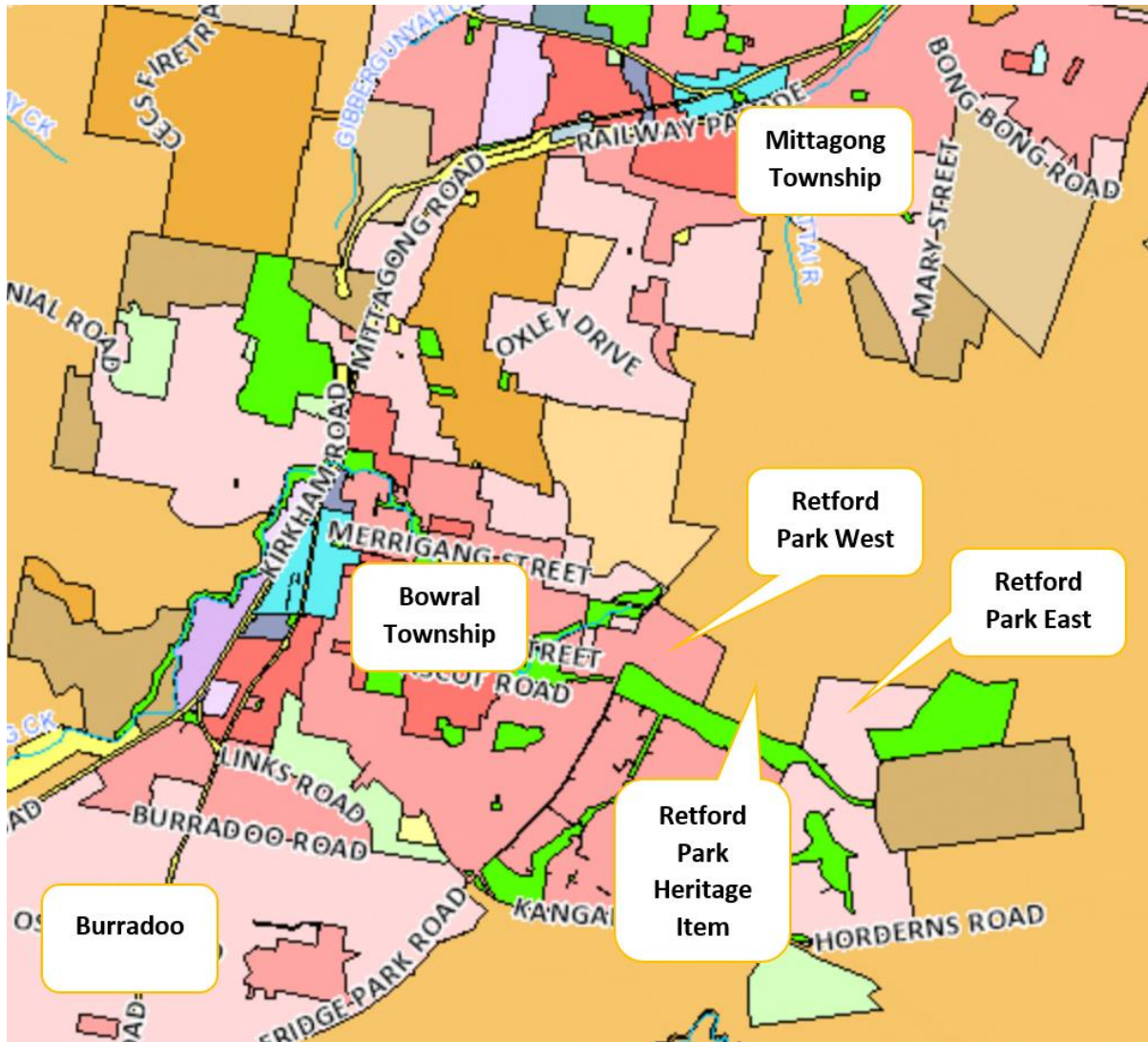


Figure 2 – Location Map

The subject land was originally part of the Retford Park property, an Item of Local Heritage listed in Schedule 5 of Wingecarribee Local Environmental Plan (WLEP) 2010. The Retford Park house was built in 1887 for Samuel Horden (1849-1909), a merchant and stockbreeder. The property was purchased in 1964 by James O. Fairfax AC and was gifted to the National Trust of Australia (NSW) in 2016.

Prior to transfer to the National Trust, Amendment 23 to WLEP 2010 (12 September 2014), was Notified resulting in land to either side of a 'residual' heritage lot containing the house, outbuildings and gardens being rezoned from E3 Environmental Management to R5 Large Lot Residential with a minimum lot size of 8,000m² to the east of the residual lot, and to R2 Low Density with a minimum lot size of 1,000m² to the west of the residual lot. The registration of DP1206897 in 2015 enabled the formalisation of the three lots and Amendment 23, with the creation of Lot 222 in DP1206897 containing both the eastern and western residential portions, and Lot 221 in DP1206897 containing the residual heritage item.

The eastern portion was subsequently further subdivided into 31 lots and the western portion was subsequently further subdivided into 157 lots, as indicated in **Figure 3** below.

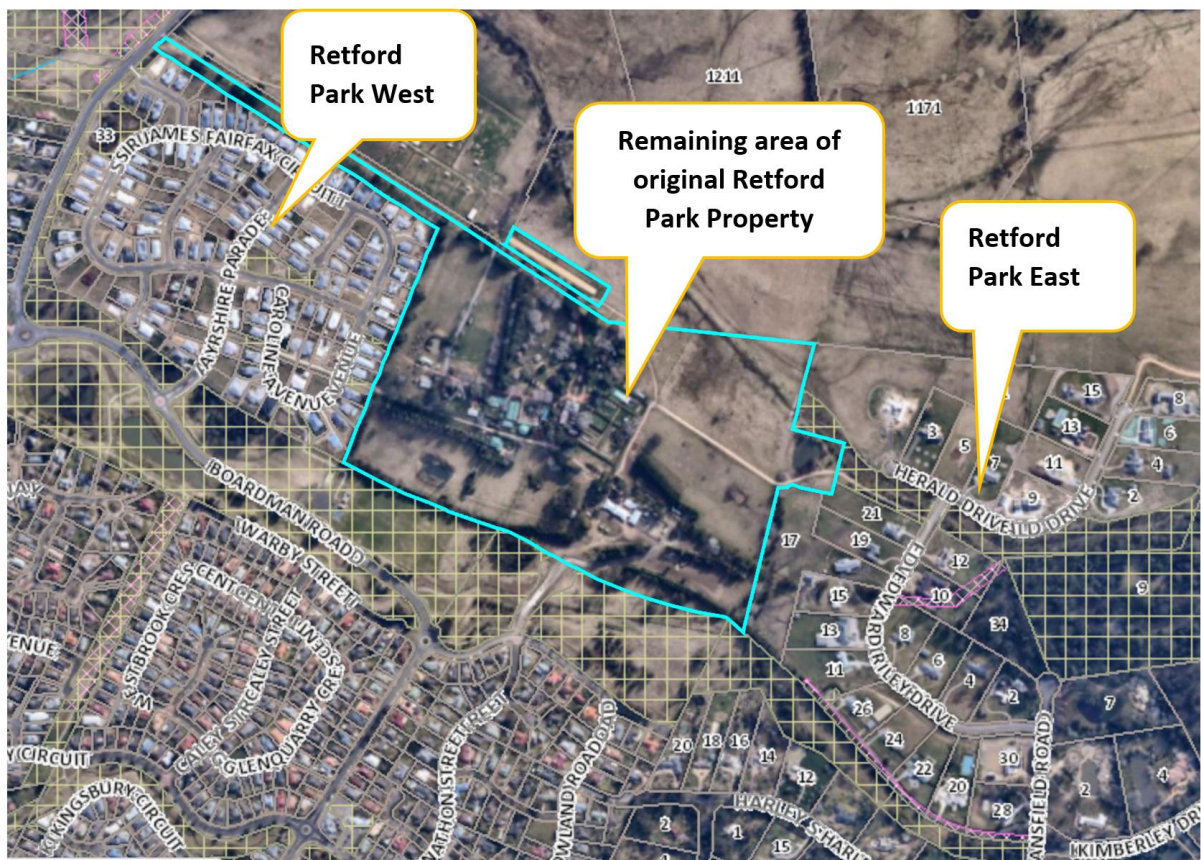


Figure 3 - Location of Lots

It is the western portion that is the subject of this Planning Proposal and because Lot 222 no longer exists, having been subsequently re-subdivided, the area, which occupies some 26.63ha, is described for the purposes of this Planning Proposal as Retford Park West as indicated in **Figure 3** above.

Part 1: Objectives or Intended Outcomes

The intended outcome of the proposed amendment is to 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 with the Executors of the Estate of the Late James O. Fairfax AC (the Executors).

The intent of the Agreements was to establish and maintain a consistent standard of development within the Estate through a set of Design Guidelines. The Agreement requires every purchaser to abide by the Design Guidelines and ensure that any person they sell on to also enters into a Further Purchaser's Deed of Agreement with the Executors.

The Design Guidelines were completed in 2015 so that incoming purchasers of housing lots would be fully aware of the expectations of development before they entered into binding contracts for purchase of lots. The stated aims of the Design Guidelines are to:


- understand the existing Retford Park heritage character and how it is valued by the local community;
- provide guidance on how new buildings can be developed to complement and
- contribute to this character;
- provide confidence and certainty about how neighbouring dwellings, and the overall subdivision, will be developed;
- create a memorable place that is in harmony with the heritage character of the area;
- balance community and private interests - by having a common vision; and
- accommodate a range of lifestyles for the residents for idyllic country living.

The Design Guidelines also set out a basis for purchaser values being:

- to live within an authentic community with shared lifestyle values;
- to be part of a unique Southern Highlands enduring legacy;
- to express individual architectural and landscape design that is of a consistent quality;
- to retain the value of investment and 'to delight in a relaxed country lifestyle'.

The Design Guidelines set out numerous standards for development, addressing a range of matters such as building heights, boundary setbacks, roof materials, facades, colour palettes, the interrelation of public and private areas, and secondary buildings, as well as a procedure for designing and gaining approval for a proposed development within the Estate.

The Design Review Panel was made up of two local firms of architects, both of which comprise qualified and experienced architects, and were selected by Mr Fairfax's representatives from a number of applicants. The review work was allocated approximately half to each firm, and if one of the firms had prepared the plans then the other was the reviewer. From time to time owners have sought clarification of, or variations to, the Design Guidelines and each has been dealt with by the Design Review Panel and complied with by the relevant purchaser.



The same process applies to subsequent purchasers of lots within Retford Park. Every purchaser who buys a lot from an initial purchaser enters into a Further Purchaser's Agreement under which the new owner is obliged to follow the same process of Design Panel assessment in the development of their properties. A copy of the Design Guidelines accompanies this Planning Proposal.

At its Ordinary Meeting of 9 September 2020 Council considered a petition (Petition 5/2020) objecting to an application for a dual occupancy development within the Retford Park West residential estate which had been considered by Council at its Ordinary Meeting of 11 March 2020.

The Executors advised Council that this proposal was contrary to the Further Purchaser's Agreement which had been entered into by the owner of the land on which the DA was proposed.

Accompanying the petition was correspondence from Hicksons Lawyers on behalf of the Executors of the Estate of the Late James O. Fairfax AC noting that it the Executors found themselves unable to enforce the Agreements because their operation was suspended under Clause 1.9A of Wingecarribee Local Environmental Plan (WLEP) 2010 and requesting that Council resolve to amend WLEP 2010 to include the Design Guidelines.

Clause 1.9A (1) addresses the suspension of covenants, agreements and instruments and states:

For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Subclause (2) lists those covenants, agreements and instruments to which subclause (1) does not apply. If WLEP 2010 were amended to include the Retford Park West Design Guidelines in subclause (2), then, it was argued, the Agreements would remain enforceable.

After considering the report, Council resolved (MN367/20) at its Ordinary Meeting of 9 September 2020 as follows:

1. THAT Petition 5/2020 relating to Retford Park Estate be received and noted by Council.

2. THAT a report come to Council to prepare a Planning Proposal to amend clause 1.9(A)(2) of Wingecarribee LEP 2010 by adding the following:

(h) to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of Lot 222 DP1206897.

In response to Resolution MN367/20, a further report was considered by Council at its Ordinary Meeting of 14 October 2020 at which Council resolved as follows:

THAT a Planning Proposal be urgently prepared and submitted to the Department of Planning, Industry and Environment for a Gateway Determination under section 3.33 of the Environmental Planning and Assessment Act 1979, to amend clause 1.9A(2) of the Wingecarribee Local Environmental Plan 2010 by adding the following:

(h) to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of the estate bounded by Old South Road Bowral, David Woods Playing Fields and Lot 221 DP1206897 known as Retford Park.

The Planning Proposal was prepared and submitted to the NSW Department of Planning, Industry and Environment (the Department) on 22 October 2020.

Council subsequently received an informal response from the Department advising that it (the Department) *“is uncertain the Proposal would obtain support from the Parliamentary Counsel’s Office or the Governor”*. The Department further noted that *“it is preferable to not use the LEP to enforce what is essentially a private matter between a developer and purchaser.”*

In response, a report was considered by the Independent Planning Advisory Panel at its Meeting of 7 July 2021. The staff recommendation to that report was that, in view of the Department’s advice, the Planning Proposal be withdrawn.

Prior to the Meeting, Panel members were given a briefing by Council staff. The Panel noted that it recognises the unique nature of the Retford Park precinct and understands the desire of the residents to seek a mechanism to enforce the detailed design guidelines which were part of the vision of the late Sir James O Fairfax AC.

The Panel informed Council staff that there is precedent for proposed amendment to clause 1.9A in at least one other Local Environmental Plan, namely Mosman LEP 2012, and that staff should seek a further review of the Planning Proposal by the Department. Staff supported this suggestion and the Recommendation of the Panel as follows:

THAT

- 1. Council continue to seek a formal Gateway Determination for the Planning Proposal,***
- 2. Council provide the Mosman Local Environmental Plan 2012 as an example of a similar amendment to clause 1.9A(2),***
- 3. Should a Gateway determination recommend the Planning Proposal not proceed, Council investigate and pursue alternative options to enforce the site specific design guidelines over the subject area.***

This Recommendation was reported to the Ordinary Council Meeting of 14 July 2021 and carried.

Part 2: Explanation of the Provisions

It is the primary intent of this Planning Proposal to respond to the Resolution of Council of 14 July 2021 as discussed above, being to include the Design Guidelines for the Retford Park West residential estate into subclause (2) of clause 1.9A of WLEP 2010 as resolved by Council on 14 October 2020:

THAT a Planning Proposal be urgently prepared and submitted to the Department of Planning, Industry and Environment for a Gateway Determination under section 3.33 of the Environmental Planning and Assessment Act 1979, to amend clause 1.9A(2) of the Wingecarribee Local Environmental Plan 2010 by adding the following:

(h) to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of the estate bounded by Old South Road Bowral, David Woods Playing Fields and Lot 221 DP1206897 known as Retford Park.

It is noted that the initiative for this Planning Proposal is a Resolution of Council to seek to amend clause 1.9A(2) of WLEP 2010 as outlined above. However, the Department of Planning, Industry and Environment (DPIE) has also asked Council to explore the option of incorporating the Design Guidelines into a 'site-specific' Development Control Plan (DCP). In this case, to be consistent with the standard 'township' DCP format, that would mean including them into the Retford Park Precinct within the Bowral Township DCP, supported by the drafting of a Local Clause for inclusion into WLEP 2010 to the effect of requiring any development within the subject land to abide by those DCP Guidelines.

The following draft clause therefore formed part of the Planning Proposal for the purposes of a Gateway Determination. The draft clause would also form part of the agency referral and community consultation process. Should the draft clause be retained, a final draft WLEP 2010 amendment would subsequently be reported to the Planning Advisory Panel.

7.12 Development of land at Retford Park West

- (1) This clause applies to Lot, as shown edged heavy black and marked "Retford Park West" on the [Local Clauses Map](#).*
- (2) Despite any other provision of this Plan, consent may not be granted for land to which this clause applies unless the development is deemed by Council to meet the relevant standards contained within the Retford Park West Precinct of the Bowral Township Development Control Plan.*

It is noted however, that Council's preferred option, and the original Resolution for this Planning Proposal, is to amend clause 1.9A(2) of WLEP 2010.

Part 3: Justification of Objectives, Outcomes & Process

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. The Planning Proposal is in response to a specific circumstance which Council has resolved to address as discussed previously.

At the Independent Planning Advisory Panel Meeting of 7 July 2021, the Panel directed Council to the Mosman Local Environmental Plan 2012, where a similar exclusion from the operation of clause 1.9A(1) was listed in clause 1.9A(2), namely *“the restrictive covenants imposed ... on land at Markham Close previously owned by the Sydney Harbour Federation Trust”*


It is noted that real estate marketing from the time of the release of the third and final stage of lots in Markham Close Mosman in 2006 referred to the “unique character and heritage” of this street located above Balmoral. The Sydney Harbour Federation Trust is a statutory agency established in 1998 and tasked with *“rehabilitating former Defence and other Commonwealth lands around Sydney Harbour, conserving their natural and built heritage, and returning them to the people of Australia”* (www.harbourtrust.gov.au).

In a similar way, the Executors of the Estate of the Late James O. Fairfax AC seek to conserve the ‘unique character and heritage’ of the Retford Park Estate for current and future generations. In 2016 Mr Fairfax gifted Retford Park to the National Trust of Australia. It was the largest individual gift ever received by the NSW Trust. Mr Fairfax died the following year.

During his lifetime Mr Fairfax was a prominent art collector and philanthropist, a Life Governor of the Art Gallery of New South Wales and the National Gallery of Australia. Both the Art Gallery of NSW and the Art Gallery of South Australia have acknowledged Mr Fairfax’s gifts with galleries in his name. Mr Fairfax was appointed an Officer (AO) of the Order of Australia in 1993 in recognition of service to the arts and to the community and a Companion of the Order (AC) in 2010 for *‘eminent service to the community through support and philanthropy for the visual arts, conservation organisations and building programs for medical research and educational facilities’*.

The intent of the Planning Proposal and the inclusion of Retford Park West within the provisions of clause 1.9A(2) is to seek to protect the natural and built heritage of the Retford Park Estate as well as reinforce the strong connection between Mr Fairfax’s generous philanthropic legacy and the ongoing intent of utilising The Old Dairy building on the Estate for the establishment of the ‘Ngununggula’ Southern Highlands Regional Gallery which was officially opened in early October 2021.

It is also important to note that the subject land is at the northern Bowral urban-rural interface and as such, the density, scale and quality of residential development within the estate should respect this



interface. The subject land is highly visible from the north travelling south on Old South Road, itself an Item of Local Heritage.

There has been strong community interest in the development of the Retford Park Estate and the Design Guidelines were expected to offer the community some reassurance as to the standard and style of development. The provisions of the Planning Proposal seek to respect and meet that expectation from the broader community as well as the expectations of purchasers of lots.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Legal opinion obtained by Hicksons Lawyers advises that there is no other way of enforcing the Purchaser's Agreements or Further Purchaser's Agreements without amending clause 9.1A(2) to include the subject land, i.e. amend the subclause to include:

(h) to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of the estate bounded by Old South Road Bowral, David Wood Playing Fields and Lot 221 DP1206897 known as Retford Park.

As stated above, the Department did suggest that Council also explore the option of incorporating the Design Guidelines into a site-specific precinct in the Bowral Township Development Control Plan (DCP). A draft Local Clause was also prepared to the effect of requiring any development within the subject land to abide by the DCP Guidelines for Retford Park West.

Therefore, if the amendment to clause 1.9A(2) is not supported, Council would seek to have the draft Local Clause 7.12 as described above inserted into WLEP2010. Should the Planning Proposal result in the above draft clause 7.12 being pursued, the final wording of the clause would be determined in consultation with the Parliamentary Counsel's Office.

Either draft clause would require an amendment to WLEP 2010 which can only be achieved through a Planning Proposal. However it is believed that Council's original intent of amending Clause 1.9A(2) remains the preferred option, being considered the most efficient and effective means of achieving the desired outcome, for the following reasons:

- a) Legal opinion advises that there is no other way of enforcing the Purchaser's Agreements or Further Purchaser's Agreements without amending clause 9.1A(2) to include the subject land. The Agreements are legal documents in their own right and their inclusion in Clause 1.9A(2) is the most direct means of ensuring their legal enforcement.
- b) Council has formally resolved to amend Clause 1.9A(2) on two separate occasions.
- c) If the amendment of clause 1.9A(2) were not supported, a formal Resolution of Council to proceed with the alternative draft clause would be required. At this stage, Council does not believe that the alternative clause would have the same legal strength.

- d) If the alternative clause were supported, a further Resolution of Council to amend the Bowral Township Development Control Plan would also be required to incorporate the Design Guidelines, together with the necessary public exhibition process in accordance with the relevant Regulations.

Section B – Relationship to the Strategic Planning Framework

3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including draft strategies)?

The South East and Tablelands Regional Plan 2036 is the relevant sub regional strategy. In broad terms, the Strategy seeks to cater for continued growth within the region, without impacting adversely upon the character of the region. This Planning Proposal supports that broad objective.

Direction 23 of the Strategy is to *Protect the Region's Heritage*. Specific Actions include *Conserve heritage assets during local strategic planning and development & Acknowledge cultural heritage assets where appropriate and consider how these assets can add value to a development*.

The Planning Proposal is consistent with this Direction and Actions. The Guidelines effectively operate as a form of 'conservation area', ensuring a consistent standard of development which respects the community expectations and the urban/rural interface as well as contributing to the heritage listed Retford Park property.

Direction 24 of the Strategy is to *deliver greater housing supply and choice*, noting that local housing strategies need to consider community aspirations. This Planning Proposal supports this objective by acknowledging and reinforcing community aspirations through the enforcement of Design Guidelines intended to enable and maintain an agreed standard of urban development and residential design.

4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

4.1 Wingecarribee Community Strategic Plan

The *Wingecarribee 2031 Community Strategic Plan* (CSP) (June 2017) reflects the community's aspirations and priorities for the future. Wingecarribee Shire's CSP, known as Wingecarribee 2031, is informed by relevant information relating to five key areas – Leadership, People, Places, Environment and Economy. The community's vision for Wingecarribee 2031 is *"A healthy and productive community, learning and living in harmony, proud of our heritage and nurturing our environment"*.

Residential amenity and protection of the Shire's heritage are strongly valued by the Wingecarribee community and this is specifically articulated through the following Goals & Strategies –

3.2.2 Identify and protect the unique characteristics of towns and villages to retain a sense of place

3.2.3 Identify, protect and promote places of significant cultural heritage

The Planning Proposal is considered entirely consistent with the CSP in seeking to establish and maintain a quality residential development, while enabling the heritage recognition and protection of the adjoining Retford Park property and its legacy through the establishment of the 'Ngununggula' Southern Highlands Regional Gallery.

4.2 Wingecarribee Local Strategic Planning Statement

Chapter 4 of the *Wingecarribee Local Strategic Planning Statement (LSPS)*, 'Our Housing' identifies three (3) Priorities and associated Actions. These are discussed below in the context of the Planning Proposal and its relevance to, and consistency with, the LSPS.

Planning Priority 4.1 - Promote infill development and increased densities in appropriate locations and facilitate a greater mix of housing types to ensure our housing stock is reflective of the needs of our community.

The Planning Proposal is consistent with this LSPS Planning Priority. The Retford Park residential release area provided two forms of housing choice to effectively extend the Bowral Township. Rural Residential development was achieved on land to the east of the Retford Park heritage property on land which would not be suitable for more intensive development due to flood potential.

Retford Park West provided a relatively higher density residential development, although still compatible with its location adjacent to an Item of Heritage as well as being at the northern Bowral urban-rural interface. Supporting this development was a set of Design Guidelines to provide an appropriate urban context for the adjoining heritage listed property. Such development is a legitimate form of 'housing choice' enabling residential development close to existing infrastructure and services within Bowral Township, while also providing a standard of urban design to which the community aspires and all residents willingly subscribed.

Specifically, the Planning Proposal aligns with the following Actions identified in the Wingecarribee LSPS:

- *Provide a diverse mix of housing types and choice to meet the needs of our community both now and into the future*
- *Promote good design that reflects the values of our communities and respects and enhances the character of our towns and villages*
- *Ensure the Wingecarribee planning framework facilitates a mix of housing types and lot sizes and provides certainty to the community and development industry*

Planning Priority 4.3 - Provide for well planned new release areas to meet the long-term housing needs of the community and ensure that our growing communities are supported by essential infrastructure.

The Planning Proposal is consistent with this LSPS Planning Priority because it specifically responds to it. The West Retford Park release area has delivered 157 new dwelling sites in an urban environment which respects both the Retford Park heritage property and the urban-rural interface to the north. Specifically, the development addresses the following priorities:

- *Provide land and housing development opportunities to meet the needs of our community*
- *Promote sustainability through the appropriate location and design of new living areas*
- *Achieve a mix of housing types and lot sizes in new living areas to ensure that new development meets the needs of our community*
- *Develop master plans for our new living areas, prior to rezoning, to provide for well planned, highly liveable communities into the future*

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

(NB: SEPPs which do not apply to Wingecarribee Shire have been excluded.)

SEPP No 21 – Caravan Parks

The aim of this Policy is to encourage the orderly and economic use and development of land used or intended to be used as a caravan park.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

SEPP No 33 - Hazardous & Offensive Development

This Policy aims, *inter alia*, to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

SEPP No 36 – Manufactured Home Estates

The aims of this Policy are, *inter alia*, to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements.

Assessment – Consistent – The SEPP does not apply to land within a water catchment (as prescribed by Schedule 2). The subject land is within the Sydney Drinking Water Catchment Area and therefore the SEPP does not apply.

SEPP No 50 – Canal Estate Development

This Policy aims to prohibit canal estate development as described in this Policy in order to ensure that the environment is not adversely affected by the creation of new developments of this kind.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

SEPP No 55 - Remediation of Land

(1) The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

SEPP No 64 – Advertising & Signage

This Policy aims to regulate advertising and signage.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

SEPP No 65 – Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of residential apartment development in New South Wales. This Policy recognises that the design quality of residential apartment development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.

Specific design aims compatible with the intent of the Planning Proposal are:

- to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and
- to contribute to the provision of a variety of dwelling types to meet population growth

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal. However, it is noted that several of the design aims of the SEPP are compatible with the aims of the Retford Park West Design Guidelines as included above.

SEPP (Affordable Rental Housing) SEPP

The aims of this Policy are, *inter alia*, to provide a consistent planning regime for the provision of affordable rental housing.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

SEPP (Building Sustainability index : BASIX) 2004

The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.

Assessment – Consistent – The provisions of the SEPP would have been applied during the dwelling assessment stage.

SEPP (Educational Establishments & Child Care Facilities) 2017

The aim of this Policy is to facilitate the effective delivery of educational establishments and early education and care facilities across the State.

Assessment – Consistent - The provisions of the SEPP do not apply to this Planning Proposal.

SEPP (Exempt & Complying Development Codes) 2008

This Policy aims to provide streamlined assessment processes for development that complies with specified development standards.

Assessment – Consistent – Residential approvals have occurred through Council’s standard DA assessment process in accordance with the voluntary agreements of purchasers and the relevant provisions of the Bowral Development Control Plan.

SEPP (Infrastructure) 2007

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State.

Assessment – Consistent - The provisions of the SEPP do not apply to this Planning Proposal, but it is noted that the location of the Retford Park West residential estate on the northern edge of Bowral Township is consistent with the SEPP.

SEPP (Koala Habitat Protection) 2020 & 2021

The SEPP (Koala Habitat Protection) 2020 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. The Policy applies to land within Wingecarribee Shire zoned RU1 Primary Production, RU2 Rural Landscape and RU3 Forestry.

The SEPP (Koala Habitat Protection) 2021 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

Assessment – Consistent – The subject land was rezoned and subdivided prior to the introduction of these SEPPs and therefore they do not apply to the Planning Proposal.

SEPP (Mining, Petroleum Production & Extractive Industries) 2007

The aims of this Policy include to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal, but would have been addressed at the time of rezoning and subdivision.

SEPP – Primary Production & Rural Development (2019)

The aims of this Policy are as follows—

(a) to facilitate the orderly economic use and development of lands for primary production,

- (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,
- (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
- (d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,
- (e) to encourage sustainable agriculture, including sustainable aquaculture,
- (f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,
- (g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal, but would have been addressed at the time of rezoning and subdivision. However, the land adjoins land which is still used for agricultural production and quality urban design provides a sensitive urban-rural interface.

SEPP (State & Regional Development) 2011

The aims of this Policy are as follows—

- (a) to identify development that is State significant development,
- (b) to identify development that is State significant infrastructure and critical State significant infrastructure,
- (c) to identify development that is regionally significant development.

Assessment – Consistent – The Planning Proposal is not of state significance.

SEPP (Sydney Drinking Water Catchments) 2011

The aims of this Policy are, *inter alia*, to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.

Assessment – Consistent – The initial rezoning of the subject land and subsequent subdivision were supported by Water NSW. The Planning Proposal was again referred to WaterNSW as required by the Gateway Determination. WaterNSW has no objection to the Planning Proposal proceeding, commenting as follows and the response accompanies this Planning proposal.

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.

SEPP (Urban Renewal) 2010

The aims of this Policy are, *inter alia*, to establish the process for assessing and identifying sites as urban renewal precincts.

Assessment – Consistent – The provisions of the SEPP do not apply to this Planning Proposal.

6. Is the Planning Proposal consistent with applicable Section 9.1(2) Directions?

1. Employment & Resources

1.1 Business & Industrial Zones

This Direction applies when a planning proposal affects land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary). The objectives of this Direction are:

- (a) encourage employment growth in suitable locations,
- (b) protect employment land in business and industrial zones, and
- (c) support the viability of identified centres.

Assessment – Consistent – The Planning Proposal does not apply to business or industrial zoned land.

1.2 Rural Zones

This Direction applies when a planning proposal affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). The objective of this Direction is to protect the agricultural production value of rural land. This Direction applies when a Planning Proposal will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

Assessment – Consistent – The subject land is zoned R2 Low Density Residential. The provisions of this Direction would have been addressed at the rezoning stage.

1.3 Mining, Petroleum Production & Extractive Industries

This direction applies when a planning proposal would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or

- (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

The objective of this Direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

Assessment – Consistent– The Planning Proposal would not impact on potential mining activity any more than any other residential development would create.

1.4 Oyster Aquaculture

Assessment – Consistent – This Direction does not apply to Wingecarribee Shire.

1.5 Rural Lands

This Direction applies when a planning proposal:

- (a) will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or
- (b) changes the existing minimum lot size on land within a rural or environment protection zone.

Assessment – Consistent – The subject land is zoned R2 Low Density Residential. The provisions of this Direction would have been addressed at the rezoning stage.

2. Environment & Heritage

2.1 Environmental Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas.

Assessment – Consistent – The subject land is currently zoned R2 Low Density Residential. The provisions of this Direction would have been addressed at the rezoning stage.

2.2 Coastal Management

Assessment – Consistent – This Direction does not apply to Wingecarribee Shire.

2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. A planning proposal must contain provisions that facilitate the conservation of:

- (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,
- (b) Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and
- (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

Assessment – Consistent – The Planning Proposal seeks to support and reinforce Guidelines to protect and enhance the heritage listed Retford Park property.

2.4 Recreation Vehicle Areas

The objective of this Direction is to protect sensitive land or land with significant conservation values from adverse impacts of recreation vehicles.

Assessment – Consistent – The provisions of this Direction do not apply to the Planning Proposal.

2.5 Application of E2 & E3 Zones and Environmental Overlays in Far North Coast LEPs.

Assessment – Consistent – This Direction does not apply to Wingecarribee Shire.

2.6 Remediation of Contaminated Land

The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

Assessment – Consistent – The provisions of this Direction would have been considered at the rezoning stage.

3. Housing, Infrastructure and Urban Development

3.1 Residential Zones

The objectives of this Direction are:

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,
- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- (c) to minimise the impact of residential development on the environment and resource lands.

This direction applies when a planning proposal affects land within:

- (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- (b) any other zone in which significant residential development is permitted or proposed to be permitted.

Assessment – Consistent– The subject land is zoned R2 Low Density Residential zone with a minimum lot size of 1,00m². The Planning Proposal seeks to enable enforcement of urban design standards to provide a quality of development appropriate to its heritage context and urban-rural interface and which would support the objectives of this Direction.

3.2 Caravan Parks & Manufactured Home Estates

The objectives of this Direction are:

- (a) to provide for a variety of housing types, and
- (b) to provide opportunities for caravan parks and manufactured home estates.

Assessment – Consistent– This Direction does not apply to the Planning Proposal.

3.3 Home Occupations

The objective of this Direction is to encourage the carrying out of low impact small businesses in dwelling houses. Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.

Assessment – Consistent – The Planning Proposal does not seek to amend the current provisions of WLEP 2010 with regard to *home occupation*.

3.4 Integrating Land Use & Transport

The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve key planning objectives. This Direction applies when a planning proposal creates, alters or removes a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

Assessment – Consistent – The Planning Proposal seeks to enforce agreed standards consistent with this Direction in order to maintain the integrity of the adjoining Retford Park Item of Heritage.

3.5 Development Near Regulated Airports and Defence Airfields

The objectives of this Direction are to ensure the effective and safe operation of regulated airports and defence airfields.

Assessment – Consistent – There are no airports or airfields in the vicinity of the subject land.

3.6 Shooting Ranges

The objectives are:

- (a) to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range,
- (b) to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land,
- (c) to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.

Assessment – Consistent – There are no shooting ranges in the vicinity of the subject land.

3.7 Reduction in non-hosted short term rental accommodation period

Assessment – Consistent – This Direction does not apply to Wingecarribee Shire.

4. Hazard & Risk

4.1 Acid Sulphate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.

Assessment – Consistent – There currently appear to be no mapped acid sulphate soils within Wingecarribee Shire.

4.2 Mine Subsidence and Unstable Land

The objective of this Direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.

Assessment – Consistent – The subject land is not identified as unstable.

4.3 Flood Prone Land

The objectives of this Direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

Assessment – Consistent – The subject land is not identified as flood prone.

4.4 Planning for Bushfire Protection

The objectives of this Direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.

Assessment – Consistent – The subject land has already been assessed in this regard.

6. Regional Planning

5.1 Implementation of Regional Strategies

Assessment – Consistent – The above Direction has been revoked.

5.2 Sydney Drinking Water Catchment

The objective of this Direction is to give effect to protect water quality in the Sydney Drinking Water Catchment.

Assessment – Consistent – The subject land was assessed as consistent with this Direction at the time of rezoning and when the subdivision was assessed. The Planning Proposal was again referred to Water NSW as required under the Gateway Determination and the following comment received. The response accompanies this Planning Proposal.

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.

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

5.4 Commercial and Retail Development along the Pacific Highway, North Coast

5.5 Development in the Cessnock LGA

5.6 Sydney to Canberra Corridor

5.7 Central Coast

5.8 Second Sydney Airport – Badgerys Creek

5.9 North West Rail Link Corridor Strategy

Assessment – Consistent – The above Directions have either been revoked or do not apply in Wingecarribee Shire.

5.10 Implementation of Regional Plans

The objective of this Direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

Assessment – Consistent – The Planning Proposal is consistent with the SE & Tablelands Regional Plan as discussed in the body of this Planning Proposal.

5.11 Development of Land Council Land

The objective of this Direction is to provide for the consideration of development delivery plans prepared under State Environmental Planning Policy (Aboriginal Land) 2019 when planning proposals are prepared by a planning proposal authority.

Assessment – Consistent – Currently this Direction does not apply to Wingecarribee Shire.

6. Local Plan Making

6.1 Approval & Referral Requirements

The objective of this Direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

Assessment – Consistent – The Planning Proposal seeks to amend WLEP 2010 to enable legal enforcement of agreed Design Guidelines to achieve appropriate urban design outcomes.

6.2 Reserving Land for Public Purposes

The objectives of this Direction are (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

Assessment – Consistent – This Direction does not apply to this Planning Proposal .

6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls.

Assessment – Justifiably Inconsistent – The Planning Proposal seeks to support voluntary Purchaser Agreements pertaining to Design Guidelines. These have the support of the majority of existing residents and reflect community aspirations with regard to urban design outcomes within the Shire. They also seek to respect the heritage value of the adjoining Retford Park Estate.

7. Metropolitan Planning

7.1 -7.10

Assessment – Consistent – These Directions do not apply to Wingecarribee Shire.

Section C – Environmental, Social & Economic Impacts

7. 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 Planning Proposal?

The subject land has already been through the Development Assessment process. No critical habitat or threatened species, populations or ecological communities, or their habitats, were identified.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The subject land has already been through the Development Assessment process. No other environmental effects were identified.

9. Has the Planning Proposal adequately addressed any social and economic effects?

As stated previously, a key factor in the development of the Design Guidelines was the desire to ensure that residential development respected the adjoining Retford Park heritage property and the northern Bowral urban-rural interface.

Section D – State and Commonwealth Interests

10. Is there adequate public infrastructure for the Planning Proposal?

The subject land has already been through the Development Assessment process and all necessary infrastructure has been provided.

Part 4: Mapping

As required under the Gateway Determination a draft *Local Clauses Map* has been prepared and accompanies the Planning Proposal.

Part 5: Consultation – Agency Referrals

Council undertook Agency referrals in accordance with the Gateway Determination. These were to:

WaterNSW – no objection - response provided with this Planning Proposal.

NSW RFS – no response provided. It is noted that RFS was consulted at the initial rezoning and subsequent development of the site.

Part 5: Consultation - Community

Council is undertaking community consultation in accordance with the Gateway Determination from Wednesday 20 October to Friday 19 November 2021. The principal place of public exhibition will be Council's website, www.wsc.nsw.gov.au with copies of all documentation also available at the Customer Service Counter at the Civic Centre, 68 Elizabeth Street, Moss Vale, NSW 2577.

Part 6: Timeline

MILESTONE	INDICATIVE /ACTUAL DATE
Gateway Determination	August 2021
Agency Consultation	September 2021

Public Exhibition	October-November 2021
Report to Council on exhibition of Planning Proposal.	December 2021
S.3.36 Documents to DP&E & PCO.	January 2022
Approximate completion date	March 2022

Delegations

Council does not have delegation as the local plan-making authority as Department considers it likely that the Planning Proposal would require the Governor's approval to finalise.

END OF PLANNING PROPOSAL