

<b>Regional panel reference No.</b>	2013STH002
<b>DA No.</b>	LUA12/0921
<b>Proposed development</b>	Demolition of existing structures and 2 lot subdivision.
<b>Applicant</b>	Urban Growth NSW
<b>Report by</b>	Regional Panels Secretariat
<b>Report date</b>	29 April 2013

## Crown DA Summary Report

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This Crown development application (DA) has been referred to the Joint Regional Planning Panel (regional panel) under section 89 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The applicant is taken to be the Crown for the purposes of Part 4, Division 4, of the EP&A Act, as it is a public authority (not being a council).

Section 89(1)(a) of the EP&A Act states that a consent authority must not refuse its consent to a Crown DA, except with the approval of the Minister. In this case, council has resolved to refuse the DA and refer the application to the regional panel. The DA relates to the demolition of existing structures and a 2 lot subdivision of 82 Bong Bong Road at the locality of Renwick in Mittagong.

If the regional panel does not determine the DA within 50 days, the DA may be referred to the Minister for Planning and Infrastructure for determination.

The regional panels secretariat (secretariat) has summarised the issues for the regional panel's consideration. Council has prepared an assessment report for the JRPP to consider. The council report details the process to date and provides the assessment report put to council recommending approval, as well as the council resolution to refuse the DA.

### 1. BACKGROUND

A development application (DA) was lodged on 30 October 2012 by UrbanGrowth NSW (the applicant) to demolish the existing buildings known as Challoner House and subdivide the site into 2 lots for residential use.

The proposed development is permissible with consent under the Wingecarribee Local Environmental Plan 2010 (LEP).

The application was placed on public exhibition between 2 November and 21 November 2012 with no submissions received.

On 13 February 2013, the elected council determined to approve the DA subject to conditions as recommended by the council assessment report. This decision was rescinded by the elected council at a meeting on 27 February 2013. The reason for this rescission stated it was:

*“based on its heritage significance and close relation to the Farm Homes and that Council proceed to prepare a planning proposal to heritage list the building under WLEP 2010”.*

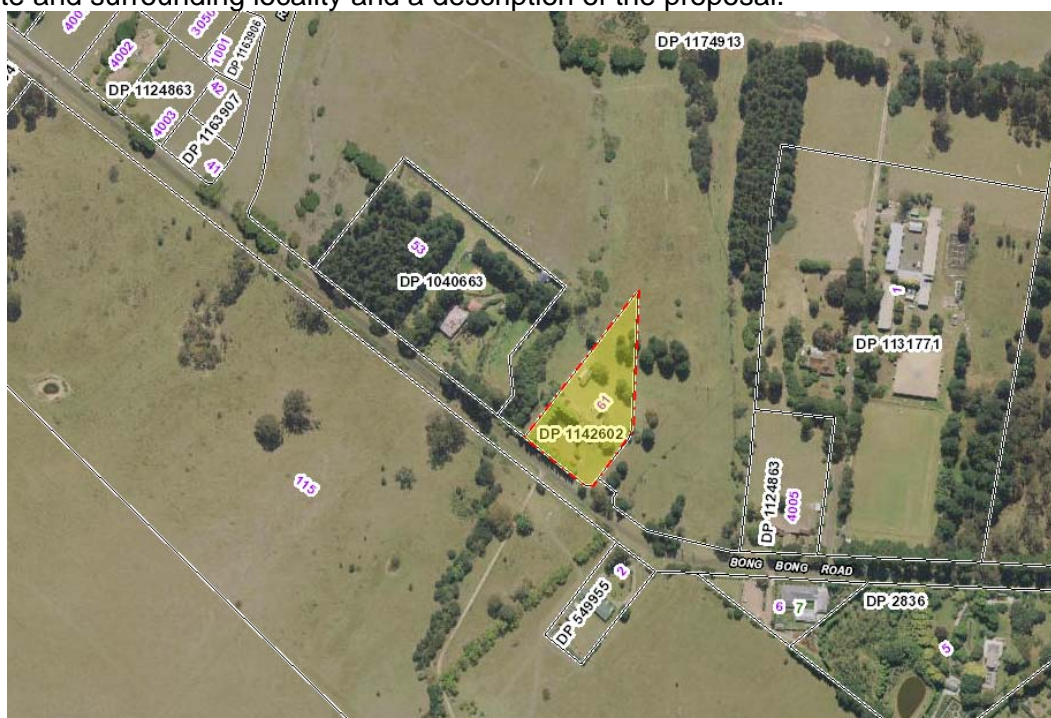
On 5 March 2013 council referred the DA to the regional panel under section 89(1)(a) owing to the fact that a consent authority must not refuse its consent to a Crown DA, except with the approval of the Minister.

On 2 April 2013 all necessary documents were received by the secretariat.

## 2. SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is located at 82 Bong Bong Road, Mittagong in the Wingecarribee local government area. The locality is known as Renwick, and the formal description of the site is Lot 61, DP 1142602. Refer to **Figure 1**.

Refer to council's assessment report (see Appendix 1: Attachment A) for a full description of the site and surrounding locality and a description of the proposal.



**Figure 1 – Site Location**

Source: Six Maps, NSW Land & Property Information

## 3. VIEWS OF COUNCIL

The views of council assessment staff and elected council are summarised below.

### 3.1 Council - Assessment Report

The council assessment report recommended the application be approved and was submitted to council for determination.

The report identified that the proposed development is consistent with the aims and objectives of the relevant environmental planning instruments. Please refer to Appendix 1:

Attachment A for detailed analysis, and Appendix 2 for the recommended conditions of consent.

### **3.2 Council – Elected Council**

After considering the DA at a council meeting on 13 February 2013 whereby the elected council approved the DA, on the 27 February 2013 council rescinded this decision and resolved to refuse the DA for the following reasons:

- Council considers that the existing building on site known as Challoner House to be of heritage significance, and demolition would remove physical evidence of the chronological history and use of the Renwick locality. Council also considers Challoner House to share a relationship with the surrounding Farm Homes.
- Council considers that the proposed demolition does not satisfy Clause 5.10(5) of the Wingecarribee Local Environmental Plan 2010 being:

*The consent authority may, before granting consent to any development:*

*(a) on land on which a heritage item is located, or*

*(b) on land that is within a heritage conservation area, or*

*(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

For these reasons, the elected council has referred the DA to the regional panel with a recommendation for refusal. Refer to Appendix 1: Attachment B for details of councils' rescission motion.

## **4. VIEWS OF THE APPLICANT**

The applicant does not support the elected councils' reasons for refusal and has prepared a detailed response, refer to Appendix 3.

The applicant has reviewed councils' recommended conditions of consent, and has advised that they are accepted without amendment. Draft conditions of consent are found at Appendix 2.

## **5. SUMMARY OF KEY ISSUES**

1. There are two conflicting heritage opinions. A Heritage Impact Statement (HIS) prepared by Artefact Heritage August 2012 for the applicant (refer to Appendix 4: Attachment C) considers the demolition and subdivision to be acceptable with certain recommendations.

Heritage advice prepared by Black Mountain Projects for Wingecarribee Shire Council (found within Appendix 1: Attachment A2) recommends retention and reuse of Challoner House.

2. Council's assessment report accepts the findings within the Statement of Environmental Effects (SEE) submitted with the DA and accepts the proposed demolition and subdivision.

The elected council after initially approving the DA, rescinded this motion and have recommended refusal with a view to heritage list Challoner House.

3. Councils' reasons for refusal states that while Challoner House is not listed as an item of heritage or within a Heritage Conservation area under the applicable LEP, nor listed within the State Heritage Register, council considers it to be of heritage significance. Council considers any demolition to have an adverse impact on heritage items within close proximity and this impact does not satisfy Clause 5.10(5) of the Wingecarribee LEP 2010.

The applicant notes that council has had several opportunities to heritage list Challoner House yet has chosen not to do so (2005, 2010 & 2012, see Appendix 3, Section 3.1). The applicant disagrees with councils resolution that Clause 5.10(5) of Wingecarribee LEP 2010 is not satisfied. See Appendix 3, Section 3.2 of the HIS.

4. The Heritage advice prepared for council recommends that Challoner House would be suitable for an adaptive reuse if repairs were made with some additional alterations.

The applicant submitted a Building Condition Report with the DA. Costs associated with renovating the building to be fit-for-purpose are considered to be \$1,276,800 which is considered to be economically unfeasible (see Appendix 3, Section 3.3). The applicant also notes that the site has been available for sale in the past without success (see Appendix 4).

## **6. CONCLUSION**

Council assessment staff have undertaken an assessment of the DA and recommended it for approval. The elected council have reviewed the advice of staff and recommended the DA be refused because of heritage significance of Challoner House and its relationship with the locality.

The applicant has provided a detailed response to councils' resolution to refuse the DA.

Pursuant to section 89 of the EP&A Act, if the regional panel wishes to impose a condition that is not agreed to by the applicant, or to refuse consent, the regional panel must refer the DA to the Minister for Planning and Infrastructure. Should the applicant agree to the imposition of conditions the regional panel may proceed to determine the application without referral to the Minister.

Should the regional panel determine to approve the application, council has provided draft conditions of consent for consideration by the regional panel (see Attachment 2). The applicant has agreed to the draft conditions of consent as provided by council (see Attachment 3).

Prepared by:



Dean Hosking  
**Planning Officer**  
**Regional Panels Secretariat**

## **LIST OF APPENDICES AND ATTACHMENTS**

1. Council staff assessment report prepared for the regional panel
  - Attachment A: Council staff assessment report prepared for elected council
  - Attachment A2: Heritage advice prepared for Wingecarribee Council
  - Attachment A3: Council assessment of Section 79C EP&A Act provisions
  - Attachment B: Council minutes detailing rescission of approval and reasons for refusal
2. Councils recommended conditions of consent
3. Applicants detailed response to draft conditions of consent and councils' resolution for refusal
4. Statement of Environmental Effects
5. Sydney Catchment Authority concurrence
6. Development application forms