

SOUTHERN REGIONAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSTH-252 |
| DA Number | DA23/1070 (PAN-318835) |
| LGA | Wingecarribee Shire Council |
| Proposed Development | Demolition works, construction of a 3-storey residential flat building containing 50 apartments above one level of basement parking with 73 car spaces, with subsequent strata subdivision. Forty (40) of the apartments are to be dedicated for affordable housing. |
| Street Address | 1-5 Rainbow Road, MITTAGONG <ul style="list-style-type: none"> • Lot 141 DP 531051 • Lot 142 DP 531051 • Lot 32 DP 9299 |
| Applicant/Owner | Applicant – Matthew Blissett Owner – TBG Senior Living Services Pty Ltd Owner – Ardlin Pty Ltd atf Blissett Family (No1) Discretionary Trust |
| Date of DA lodgement | 19 April 2023 |
| Number of Submissions | Public Notification <ul style="list-style-type: none"> • First notification: 5 May 2023 – 2 June 2023 <ul style="list-style-type: none"> ○ Six (6) submissions, including one petition with 59 signatures • Second notification: 16 November 2023 – 30 November 2023 <ul style="list-style-type: none"> ○ Three (3) submissions • Third notification: 5 May 2024 – 5 June 2024 <ul style="list-style-type: none"> ○ Two (2) submissions |
| Recommendation | Approval subject to conditions of consent |
| Regional Development Criteria (Schedule 6, Clause 5 of State Environmental Planning Policy (Planning systems) 2021) | Capital Investment Value (CIV) exceeds \$5 million for private infrastructure and community facilities (\$13,721,864.14) |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979;</i> • <i>Environmental Planning and Assessment Regulation 2021;</i> • <i>State Environmental Planning Policy (Planning Systems) 2021;</i> • <i>State Environmental Planning Policy (Resilience and Hazard) 2021;</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i> • <i>State Environmental Planning Policy (Housing) 2021;</i> • <i>State Environmental Planning Policy (Biodiversity and Conversation) 2021;</i> • <i>Wingecarribee Local Environmental Plan 2010; and</i> • <i>Mittagong Township Development Control Plan.</i> |

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| List all documents submitted with this report for the Panel's consideration | 1. Architectural Plans and Design Response Letter 2. SEPP 65 Report 3. Landscape Plans and Design Statement 4. Flora and Fauna Report 5. Heritage Impact Statement and Heritage Response Letter 6. Geotechnical Investigation Report 7. Arboricultural Impact Assessment 8. Water and Sewer Modelling Report 9. BCA Report 10. Social Impact Statement 11. Traffic Report 12. Bushfire Risk Assessment 13. Crime Prevention Report 14. Operational Waste Management Plan 15. Civil Engineering Plans 16. Statement of Environmental Effects 17. DCP Compliance Table 18. NSW ADG Compliance Table 19. External & Internal Response Table 20. Draft Conditions of Consent |
| Report prepared by | Hugh Halliwell – Independent Town Planning Consultant on behalf of Council |
| Report date | 9 August 2024 |

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarized in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.

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2. Landscape Plans
3. Civil Engineering Plans
4. Statement of Environmental Effects
5. DCP Compliance Table
6. External & Internal Response Table
7. Draft Conditions of Consent

1. PURPOSE OF REPORT

The purpose of this report is to seek the Southern Regional Planning Panel (the Panel) determination of a Development Application (DA) proposing demolition works, construction of a 3-storey residential flat building containing 50 affordable rental housing apartments above one level of basement parking with 73 car spaces, with subsequent strata subdivision at 1-5 Rainbow Road, Mittagong.

The Panel is the determining authority for this DA as, pursuant to Part 2.4 of State Environmental Planning Policy (Planning System) 2021 and Part 2.15 of the Environmental Planning and Assessment Act 1979, the capital investment value (CIV) of the proposed development is \$13,721,864.14 which exceeds the CIV threshold of \$5 million for private infrastructure and community facilities.

2. SUMMARY OF RECOMMENDATION

That the Panel determine DA23/1070 consisting of demolition works, construction of a 3-storey residential flat building containing 50 apartments (40 apartments dedicated for affordable housing) above one level of basement parking with 73 car space, with subsequent strata subdivision by way of approval pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* in line with the recommended conditions of consent outlined in this report.

3. EXECUTIVE SUMMARY

Council is in receipt of a Development Application from Matthew Blissett submitted on 19/04/2023, seeking approval for demolition works, construction of a 3-storey residential flat building containing 50 apartments (40 apartments dedicated for affordable housing) above one level of basement parking with 73 car space, with subsequent strata subdivision at 1-5 Rainbow Road, Mittagong.

The proposed development consists of the following works:

- Demolition of existing structures on 1-5 Rainbow Road, Mittagong;
- Lot consolidation;
- Construction of 50 apartments across three (3) levels (40 to be dedicated for affordable housing);
- Construction of a single level of basement parking consisting of 73 car spaces;
- Provision of landscaping and associated works.

The site is commonly known as 1 – 5 Rainbow Road, Mittagong and legally described as Lot 141 in DP531051, Lot 142 in DP531051 and Lot 32 in DP9299.

The site is zoned R3 Medium Density Residential Environmental Management under the provisions of Wingecarribee Local Environmental Plan 2010 (WLEP). Residential flat buildings are permitted with consent under the provisions of WLEP 2010.

The application was publicly notified on three separate occasions, as follows:

- First notification: 5 May 2023 – 2 June 2023
 - Six (6) submissions, including one petition with 59 signatures
- Second notification: 16 November 2023 – 30 November 2023

- Three (3) submissions
- Third notification: 5 May 2024 – 5 June 2024
 - Two (2) submissions

A total of six (6) unique submissions were received across the three notification periods. A detailed response to the issues raised in the submissions is provided in this report.

The application is classed as Integrated Development under s100B of the *Rural Fires Act 1997*, as the proposal includes subdivision of land for residential purposes.

An assessment of the development has been undertaken against the following relevant environmental planning instruments:

- *Environmental Planning and Assessment Act 1979*;
- *Environmental Planning and Assessment Regulation 2000*;
- *State Environmental Planning Policy (Planning Systems) 2021*;
- *State Environmental Planning Policy (Resilience and Hazard) 2021*;
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*;
- *State Environmental Planning Policy (Biodiversity and Conversation) 2021*;
- *Wingecarribee Local Environmental Plan 2010*; and
- *Mittagong Township Development Control Plan*.

The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, including likely impacts, the suitability of the site for the development, and the public interest.

The assessment has found that the proposed development is consistent with the objectives and provisions of the relevant environmental planning instruments. The application is supported by sufficient information to demonstrate the site is suitable for the proposed development. The proposal will not result in any adverse impacts on the built or natural environment. The development is therefore considered to be in the public interest.

Considering the above, it is recommended that the Southern Regional Planning Panel determine the Development Application pursuant to Section 4.16(1) of the *Environmental Planning and Assessment Act 1979* by way of approval in line with the recommended conditions of consent outlined in this report.

4. BACKGROUND

Application Background

The site is commonly known as 1-5 Rainbow Road, Mittagong and legally described as Lot 141 in DP531051, Lot 142 in DP531051 and Lot 32 in DP9299.

The site is zoned R3 Medium Density Residential under the provisions of Wingecarribee Local Environmental Plan 2010 (WLEP) in which residential flat buildings are permitted with consent.

The application was lodged with Council on 19 April 2023.

A site inspection was conducted on 18 May 2023.

A briefing with the Southern Regional Planning Panel (SRPP) was undertaken on 9 August 2023. Following the briefing with the SRPP, a Request for Information (RFI) was prepared and issued to the applicant on 23 August 2023. The RFI raised the following issues:

1. NSW Apartment Design Guideline

a. Floor Space Ratio

- i. The site is subject to a maximum FSR control of 0.5:1. Pursuant to Clause 17(1)(a)(i) of the Housing SEPP, the proposal benefits from additional FSR, being 0.5:1. It is noted from the documentation that the FSR complies with the maximum FSR control of 1:1, being 0.99:1.

Plan detail is to be provided demonstrating the allocation of GFA across the development.

The application notes that 30 units will be allocated to affordable housing. The application is to confirm that percentage of GFA allocated to affordable housing.

b. Building separation

- i. A minimum 12m building separation is to be provided between balconies up to 4 storeys. It is noted from the plans that 11m is provided between balconies on the first floor. The proposal is to be amended to comply.

c. Side and rear setbacks

- i. Side setbacks are to maximise deep soil areas, retain landscaping and support mature vegetation consolidated across sites. The proposal fails to provide for sufficient deep soil areas while retaining and providing for landscaping, including mature vegetation.

d. Public domain interface

- i. The ground floor apartments fronting onto Rainbow Road are partially sunken below street level, creating concerns relating to the transition between the private and public domain, including safety and security. The proposal does provide direct access from the street to the ground floor apartments. Due to the sunken nature of these apartments, it is not possible to provide opportunity for overlooking of the street to improve surveillance and safety.

The proposal cannot be supported, and the plans are required to be reviewed and amended demonstrating consistency with Part 3C of the NSW ADG in relation to public domain interface.

e. Communal and public open space

- i. The proposal provides a centrally located communal open space between buildings. Due to the location of the northern building, the COS will not achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 2pm on June 21.

Considering the likely overshadowing of the central courtyard between 9am and 2pm, it is questionable whether any considerable and meaningful landscaping, including turf would have an opportunity flourish in this location, resulting in an adverse impact on the site's ability to provide landscaping and amenity for residents. On this basis, the proposal cannot be supported.

- ii. While the proposal includes a single BBQ, this is not considered adequate and further facilities/activities are to be provided for a range of ages.

f. Deep soil zones

- i. Concern is raised with regards to the lack of deep soil zones provided along the side boundary. The proposal is not supported in its current form and consideration is to be given to providing meaningful deep soil areas, particularly along the side boundaries and adjacent to the neighbouring heritage item (refer to Point 4 below).

g. Visual privacy

- i. Concern is raised in relation to visual privacy, particularly the sites to the northern rear and western side boundaries.

The proposal provides 6-8m separation from the first and second floor balconies to the rear boundary and vegetation to the rear boundary.

The separation from the first and second floors to the side western boundary is unclear and appears non-compliant in some areas.

The proposal should consider other design solutions to minimise opportunity for overlooking and impacts on privacy. These may include, but are not limited to, solid balustrades and screening devices.

h. Pedestrian access and entries

- i. Due to the level change between the street and the site, is not considered that the building access areas are clearly visible and identifiable from the public domain.

The proposal is to be amended to provide for a clearly identifiable and visible access area from the public domain.

i. Solar and daylight hours

- i. Plan detail is to be provided showing the apartments that:
 - Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid-winter, and

- A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.
- ii. Elevation shadow diagrams of the northern elevation for Units 2, 3, 4, 5, 6 and 8 at 9am, 12pm and 3pm are to be prepared and submitted.

j. Natural ventilation

- i. Plan detail is to be provided showing the apartments that achieve the following:
 - At least 60% of apartments are naturally cross ventilated.

k. Common circulation and spaces

- i. Objective 4F-1 of the NSW ADG requires the following:

The maximum number of apartments off a circulation core on a single level is eight.

The proposal provides for a single circulation core, and it is unclear whether the proposal can satisfy the design guidance under Part 4F. At present, the proposal cannot be supported, and it is recommended that the common circulation be reviewed, and an additional circulation core be provided.

l. Ground floor apartments

- i. The proposal does not provide direct street access to ground floor apartments.

Street frontage activity is reduced due to the ground floor apartments being located below street level.

The submitted plans are not supported and the presentation and relationship of the ground floor apartments fronting onto Rainbow Road is to be reviewed.

m. Landscape design

- i. The proposal is reliant upon tree retention outside the site boundaries, which is not supported. The planting is considered deficient and is not supported. A minimum 1 large tree or 2 medium trees per 80m² of deep soil zone is to be provided.

From review of the plans, it is unlikely that the proposal can satisfy this requirement.

- ii. A Landscape Design Statement is required to be prepared and submitted. The statement is to demonstrate the impact of the proposal on streetscape amenity, how the landscape design integrates with the existing streetscape, the impact of the proposal on the neighbouring properties, and how the landscape design considers and addresses this.
- iii. A deep soil plan is to be provided demonstrating the soil volumes can accommodate the proposed planting.

2. Crime Prevention Through Environmental Design (CPTED)

A CPTED report, prepared by a suitably qualified professional is to be prepared and submitted.

3. Social Impact Statement

A Social Impact Statement, prepared by a suitably qualified professional is to be prepared and submitted.

4. Subdivision

The proposal includes strata subdivision of the development.

A draft plan of Strata subdivision is to be prepared and submitted. The plan is to demonstrate proposed lot sizes, common property and any easements or restrictions.

5. Wingecarribee DCP – Section 17 Medium Density Precinct

- a. Clause C17.2 of the DCP stipulates that the mature landscape character of Mittagong including both street trees and private gardens is to be maintained.

The proposed landscape outcome is considered deficient and further consideration is to be given to providing meaningful landscaping, in particular canopy trees to replace the significant native canopy trees which are proposed for removal.

In this regard, the proposal is not supported.

- b. Clause C17.3 requires that the heritage significance, visual prominence and landscape setting, and vistas to and from heritage items and other contributory buildings, structures and place are maintained.

Further consideration is to be given to the proposal's relationship with the adjoining heritage item, in particular its visual prominence and landscape setting.

In addition to this, consideration is to be given to the retention of existing landscape features, including mature canopy trees that contribute positively to streetscape quality.

In this regard, the proposal is not supported in its current form.

6. Heritage and Landscaping

The site is located adjacent to the Chalybeate Spring site to the east.

The applicant must address the potential impact on the spring as it is vitally important to the heritage values of the place that the spring continues to flow. This needs to be investigated and determined at DA stage, as it is not satisfactory to conclude: *"The proponent should ...take all due care to avoid tapping/disturbing the aquifer that feeds the spring"*.

Relevant expert hydrological and geotechnical advice is required to be obtained concluding that the proposal will not adversely affect the spring.

The spring is set in a relatively natural landscape setting, a setting that includes the canopies of trees on the subject site. The plans show the removal of all existing trees along the boundary with the Chalybeate Springs site. Only three new trees are proposed along this boundary – two Silver Birch and one Evergreen Ash.

In order to have a buffer of tree canopy in the immediate setting of the heritage item site, the number of trees must be greatly increased along the shared boundary, and consideration should be given to retaining existing trees. This is particularly important given the scale of the proposal and its visual impact on the adjoining heritage site. Given the 3-storey height, new trees must be large with a mature height at least equal to that of the height of the proposed new building. It is unclear whether the proposed deep soil zone along the eastern boundary is sufficient to accommodate suitably sized trees and root zones.

The proposed excavation has potential to impact on the root zones of existing trees on the adjoining Chalybeate Spring site. These trees have not been included in the AIA report. The AIA is to be amended to include all trees on the adjoining site that have the potential to be severely impacted by the proposed excavation.

The plans referred to in the AIA (pages 9 – 10) do not appear to reflect the submitted architectural plans. In particular, the proposed driveway locations (including vehicle crossovers) and impervious areas in the front setback, as well as a proposed footpath are inconsistent with the architectural plans. The tree locations, including TPZ and SRZ are to be overlaid onto the architectural plans and the AIA amended accordingly.

7. Ecology

A Flora and Fauna Assessment Report is to be prepared and submitted.

The FFA should:

- Address relevant Council assessment guidelines,
- Include 'Assessments of Significance' where the proposal has any potential impacts upon threatened species, populations, or ecological communities or their habitats,
- Address relevant NSW and Commonwealth legislation and survey guidelines in relation to the assessment of impacts on biodiversity and threatened species.

Applicants must ensure all direct and potential indirect impacts to biodiversity are addressed in the report including consideration of impacts arising from any required bushfire hazard Asset Protection Zones or proposed alterations in drainage and run off into adjoining bushland.

8. Waste management

- a. A demolition and construction waste management plan are to be prepared and submitted.

- b. A communal waste storage area is proposed. Design specifications, including dimensioned floor plan, elevations, and cross section drawings of the room, along with materials and finishes to be used are to be provided.

9. Engineering

- a. Civil Engineering plans have proposed a drainage easement burdened Lot 106 DP 236894 benefited the subject site (Lot 32 DP 9299, Lot 141 DP 531051, and Lot 142 DP 531051) for the conveyance of stormwater. The proposed easement is 2m wide. The applicant must submit the owner's consent from the owners of Lot 106 DP 236894 granting such drainage easement, prior to the DA determination. No owner's consent has been provided yet.
- b. The proposal provides for two vehicle access points. Two access points are not supported, as this creates an additional conflict point along Rainbow Road which is unnecessary. Consideration is to be given to a single access point located so to minimise impact on existing canopy trees as well as reduce conflict points.
- c. The applicant has proposed to have a garbage bin storage area and will be transported to street frontage for collection purposes by private contractor (SOEE). However, it is unclear how many bins are there will be transported to street. Council wants to avoid having 98 potential bins located on kerb side at once. Please amend the SEE to clarify the number of bins.

10. Miscellaneous

- a. Key detail, including room allocations within several apartments (Units 1, 2, 7, 8, 9 – 17) on the ground floor is missing. The plans are to be updated.

The Applicant subsequently issued a response to the above items with revised documentation submitted to Council on 9 February 2024 and 30 March 2024.

An assessment briefing was held with the SRPP on 5 June 2024 to provide the Panel with an update on the application and amended documentation. At the conclusion of this meeting, the Panel noted the following outstanding concerns:

- Mitigation measures available should unexpected hydrological conditions be encountered during the excavation of the basement levels.
- Confirmation of all trees being retained and removed and the establishment times of the replacement trees with a specific reference to those along the eastern boundary.
- Further information and justification on access to public transport and the number of parking spaces to be provided.
- Waste removal including whether the waste trucks would be front or side loading.

The Applicant responded to these matters raised by the Panel with amended documentation submitted to Council on 12 July 2024. The amended documentation includes:

- Amended Arboricultural Impact Assessment
- Amended Traffic Impact Assessment
- Amended Stormwater Plan
- Groundwater Mitigation Measures

The amended documentation responded directly to the above matters raised by the SRPP on 5 June 2024 with the following responses:

1. Mitigation measures available should unexpected hydrological conditions be encountered during the excavation of the basement levels.

The following additional groundwater mitigation measures are provided for increased groundwater volumes:

- **Monitoring:** Site manager to maintain monitoring register with daily inflow and dewatering rates. If dewatering rates reach 70 percent of the DMP rate (1,784 L/s) or are increasing at an elevated rate, excavation works must stop, and the project geotechnical engineer and hydrogeologist should be notified. Subject Matter Experts (SME) to provide updated site-specific work methods based on inspection results.
- **Supervision:** Progressive inspections by the site manager of the excavated rock faces to document structural features and points of groundwater seepage, ie fractures, cracks, joints, and porous layers. If groundworks intercept significant structures with enhanced groundwater seepage or free flowing groundwater, stop excavation works and notify the project geotechnical engineer and hydrogeologist. Subject Matter Experts (SME) to provide updated site-specific work methods based on inspection results.
- **Dewatering:** Pending outputs from inspection reports. SME to develop remedial works methods and enhanced dewatering plan to manage inflows, including but not limited to:
 - Dewatering – install additional boreholes to intercept groundwater inflows, and facilitate dewatering to reduce inflows in the excavation zone; o
 - Grouting – Reduce inflows to the excavation by sealing structures in the rock. SME to develop site specific grouting methodology informed by the angle, size and distribution of discharge features. Conventional methods include injecting cement bentonite grout or polymers into a network of drill holes at the discharge area, to fill voids within the rock structure. Several experienced contractors are available in the local area, as required. Final methods to be informed by the site conditions, drilling angles relative to discharge features.
 - Interim Controls – Where further dewatering is required for interim management pending installation of bores or grouting operations, a larger capacity sump pump may be employed in conjunction with DMP mitigation measures.

2. Confirmation of all trees being retained and removed and the establishment times of the replacement trees with a specific reference to those along the eastern boundary.

The Arboricultural Impact Assessment authored by “Truth About Trees” dated 12th July 2024 has been amended to clearly identify the trees that will be removed and trees to be retained, a summary of the statistics from page 17 are as follows:

76 trees have been assessed the majority are within the property with adjoining trees adjacent to the site boundary also being included in the assessment. The trees are not

included to increase the number of trees to be retained following the development but rather to ensure that their health is considered as part of the development. It is not our intention to “borrow” these trees for the development, it is however noted that the trees in the adjacent Council land do soften the built form of our development. It is our intention to request Council for permission to carry out minor works to improve the condition of these trees by removing noxious and invasive woody weeds from the under storey and ivy growing to a trunk height of over 60%.

In summary there are three main points from the report:

76 trees were surveyed.

24 trees will be retained and protected throughout the development. Improvement to building setbacks have increased areas of deep soil zones have space to minimise the impact for existing trees and created additional space for new planting.

5 trees will be removed due to their potentially hazardous defects and structural condition.

47 trees will be removed to enable the development to proceed in its current form. This includes 3 trees located on the northeastern adjoining property (180 Old Hume Highway Mittagong) owners consent has been granted to remove the trees and create a stormwater easement.

Tree Growth:

The species of eucalypt tree selected is defined in the report, the tree will be advanced with a size equivalent to a 100 litre pot and be approximately 3 to 4 metres when planted. At this size it is expected to grow vigorously with a yearly growth rate of 1.0 metre.

3. Further information and justification on access to public transport and the number of parking spaces to be provided.

The traffic report has been reviewed by our consultants Transport and Traffic Planning Associates Dated June 2024 Version G.

Car Parking available:

- 73 Spaces are available including;
- 9 Shared spaces
- 9 Visitors spaces

SEPP Requirement:

The SEPP requires the provision of 26 car spaces.

DCP Requirement:

The Mittagong DCP requires the provision of 72 car spaces.

The justification for providing the additional car spaces is as follows:

Most Tenants from the affordable rental apartments will be new immigrants to the country who have secured a regional visa. Regional visas are used by the Department of Immigration to support rural and regional communities with access to a quality workforce. Many Australian Nationals leave these communities looking for opportunities in the main cities making it increasingly difficult to find staff for the service and manual trade industries. Our current tenants predominantly work in hospitality, retail, trades such as mechanical services and a very high percentage in Healthcare both Acute and Aged care.

Many of the fields of employment require shift work or have unusual working patterns. Examples of these are health staff who work a rotational 3 shifts per day roster and hospitality staff that work into the evening in local clubs and restaurants.

The Southern highlands does have an existing public transport network but it based on a traditional work pattern and school pick up times. It provides connections for the community to fit a 9 to 5 job plus the standard “school runs”. Even through these peak times the utilisation of the transport is quite low and it is uneconomical for the private operators to provide further services. It can be seen from the bus timetables that there are no bus services available on a Sunday.

An advantage for the Rainbow Road site is that it is located 1.2km from the Mittagong Railway Station being a 15 min walk. Therefore, even though there maybe limited bus services the train station is relatively close being a 15-minute walk. A further advantage is that the site is a 5 minute walk to the Mittagong Public School, Mittagong Town Centre, Mittagong bus interchange and bulky goods outlets.

The concept for providing the additional car parking even though the site is well located for day to day requirements of supplies and family functions is due to the need to have independent transport for work, specifically shift work. It is noted that tenants do carpool to improve efficiency of transport and reduce transportation costs but fundamentally there are few bus services at 11.30 pm on a Sunday night or 5.30 am Monday morning. It is on this basis that we want to provide a car space for each apartment to ensure that residents do not resort to on-street parking and negatively impact street amenity.

A noteworthy observation is the financial journey of the cohort of immigrant communities, the capacity to own a new car is one of the early signs of growing financial prosperity. Our current affordable housing project has many new Mitsubishi / Kia etc SUV’s and the like, very few luxury brands but entry price new vehicles.

4. Waste removal including whether the waste trucks would be front or side loading.

The concepts of waste management were detailed in the Waste Management report prepared by “LID”, Low Impact Development Consulting dated the 27/09/2022. As detailed in this initial report waste removal will be as follows;

- (a) Tenants will collect and sort waste in their apartments and then take it down to the basement to place in the appropriate colour waste receptacle.
- (b) Maintenance staff will then co-ordinate with the waste collection contractor to have the bins at the kerb side ready for the bulk waste removal truck. The general waste will be

picked up by a front lift truck. The truck will park parallel to the kerb enabling vehicles to safely pass in the remaining lane. This section of Rainbow Road is straight and flat providing a safe line of sight for vehicles to pass safely. removed by employed or contracted gardening staff. Specialised waste such as garden waste, soft plastic and E-waste will be picked up by side lift bins on as needs basis.

The Site and Locality

The subject site is located on the northern side of Rainbow Road approximately 80m to the east of the intersection of Rainbow Road and Brewster Street, and approximately north-west of the intersection of Rainbow Road and Henderson Avenue. Rainbow Road ends in a cul-de-sac to the east. The site is commonly known as 1,3 and 5 Rainbow Road, Mittagong and legally described as Lot 141 DP 531051, Lot 142 DP 531051, and Lot 32 DP 9299.

Lot 141 in Deposited Plan No. 531051 (No. 5) Rainbow Road in Mittagong maintains a land area of 1274.46m² and supports a single dwelling with landscaped garden surrounds.

Lot 142 in DP 531051 (No. 3) Rainbow Road at Mittagong maintains a land area of 1274.46m² and supports a single dwelling with landscaped garden surrounds.

Lot 32 in DP 9299 (No. 1) Rainbow Road at Mittagong maintains a land area of 2550.89m² and supports a single dwelling with landscaped garden surrounds.

The surrounding area consists of the following:

- North – Low density residential development within R3 zoned land and E3 zoned land on the opposite side of Old Hume Highway forming the “Mittagong Marketplace” and associated commercial uses.
- South – Low density residential development within R3 zoned land.
- East – The Aboriginal Cultural Centre and Chalybeate Spring.
- West – Low density residential development within R3 zoned land. Henley Brae Retirement Village further west.

The site’s location and context is detailed in Figures 1 and 2 below.

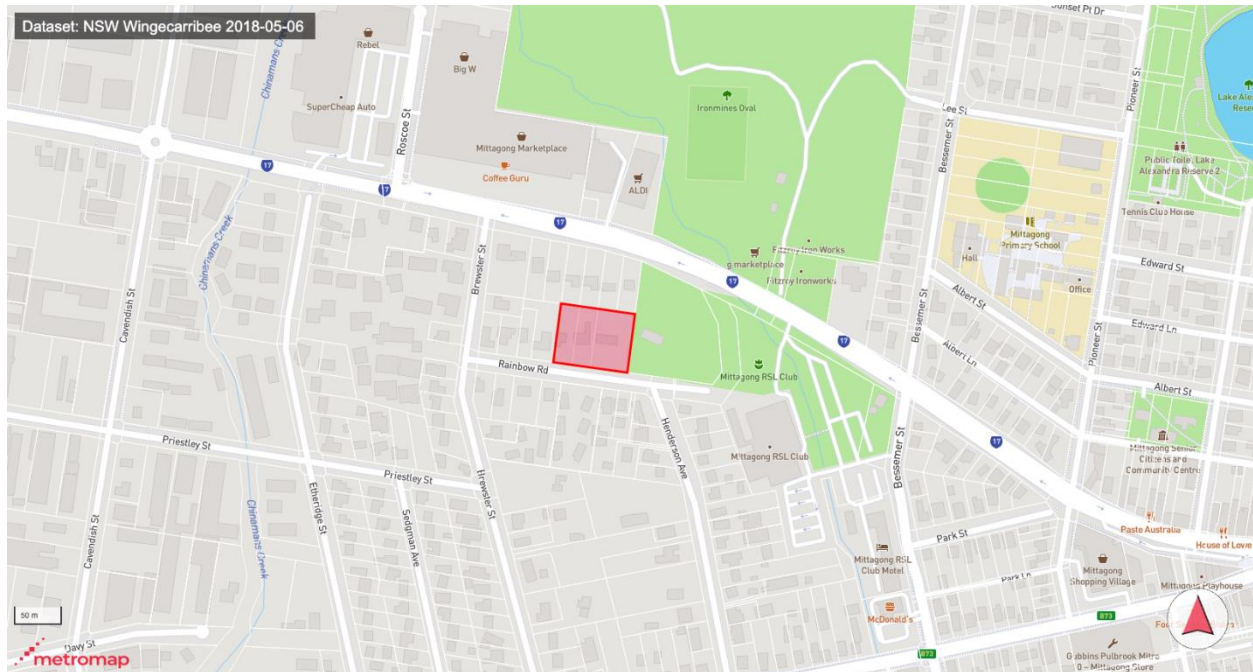


Figure 1 – Locality Plan (Source MetroMap)



Figure 3 – Site Aerial (Source: MetroMap)

The site is zoned R3 Medium Density Residential under the provisions of Wingecarribee Local Environmental Plan 2010 (WLEP). Residential flat buildings are permitted with consent in the R3 zone under WLEP 2010.

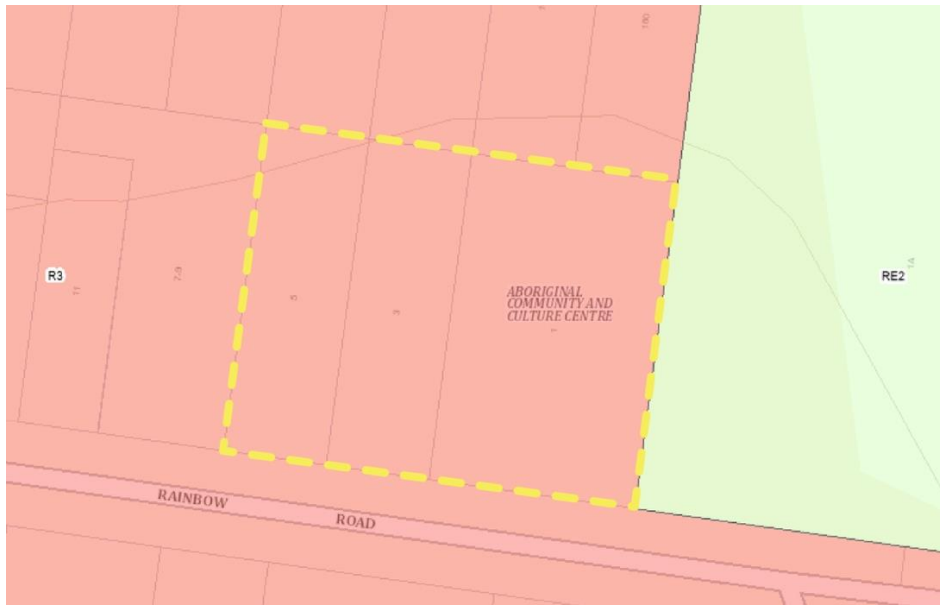


Figure 4 – Zoning Map (Source: NSW Spatial Viewer)

The Subject Application

The subject application was submitted to Wingecarribee Shire Council on 19 April 2023 seeking consent for demolition works, construction of a 3-storey residential flat building containing 50 affordable rental housing apartments above one level of basement parking with 79 car space, with subsequent strata subdivision at 1-5 Rainbow Road, Mittagong.

Notification and Referrals

The subject application is classed as Integrated Development under Clause 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and was referred to the relevant authorities for concurrence, as follows:

- NSW Rural Fire Service – Subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes (*Rural Fires Act 1997*).

In addition, the application was referred to a number of other internal and external agencies (refer **Attachment 6**).

The application was publicly notified from 5 May 2023 to 2 June 2023. A total of six (6) submissions, including one petition with 59 signatures were received. The application was notified for a second period from 16 November 2023 to 30 November 2023. A total of three (3) submissions were received. The application was notified for a final time from 5 May 2024 to 5 June 2024. A total of two (2) submissions were received.

A detailed response to the issues raised in the submissions is provided in this report.

Panel Briefing

The Panel was briefed on the application on 9 August 2023. The key items discussed at the briefing consisted of:

- Presentation as a 3-storey building. The applicant indicated the proposed roof pitch is typical for the area and is required to accommodate the bonus FSR with the dormers accommodating the additional floor space.
- Percentage of GFA proposed to be available for affordable units/housing.
- Requested the applicant demonstrate which units are affordable housing.
- The relationship of the proposed development at its interface with neighbors, the heritage item, and the adjoining park.
- Tree removal (56 low value trees proposed to be removed and 17 retained) and deep soil zones, particularly at the interface with adjoining properties.
- Usability of communal space. The applicant clarified that it was intended to create usable open areas for families likely to occupy the proposed type of development. Utilizing of basement parking to allow for larger communal areas and deep soil zones.
- Solar access compliance for the communal area.
- Social impact assessment. The applicant outlined a separate assessment has not been completed. Acknowledged a demand and requirement for this type of housing.
- Public consultation process completed by applicant with members of the community (letter box drops and formal meetings at the RSL) and how the feedback has been incorporated into the design).
- Inclusion of excess parking in the FSR calculations.

5. THE PROPOSAL

Following an RFI issued to the applicant on 23 August 2023, the applicant revised the scheme, making the following amendments.

Gross Floor Area

- Reduction of 97.93m² GFA from 5,101.63m² (0.991:1 FSR) to 5,003.70m² (0.971:1 FSR)
- Reduction of building footprints, primarily to east and western ends to achieve greater side setbacks, open space with direct sunlight and increased deep soil zones.
- Redesign of Apartments to achieve reduction, primarily to GF and FF levels.
- Reduction in basement size to follow ground floor footprint. Redesign to carparking and storage.
- Removal of Central Circulation core between buildings. Replacement with two circulation cores central to each building. Redesign of apartments to accommodate new circulation cores within buildings.
- GFA and footprint reduction results in increase to total open space area of 96.84m² from 2,994.29m² (0.58:1) to 3,091.13m² (0.60:1)

Lifting of Southern Building

- Southern Building lifted to improve connection with street. Floor level at centre of southern building now sits at grade of existing land.
- Engineered retaining walls removed. Minor landscaping required only.
- Northern and southern buildings resituated 475mm to east to ensure side setbacks comply.
- Front entry steps and accessible ramp reduced due to height decrease.

Central Courtyard

- Northern building resituated 170mm to north to increase central courtyard width.
- Reduction in depth of southern terraces to first floor of northern building increase building separation to minimum 12 metre requirement.
- Southern building lift in levels results in level change to courtyard – improved sunlight access.

Single Access Driveway

- Separate entry and egress driveways removed from east and west side setbacks improve deep soil zones and open space to side boundaries.
- Single access driveway moved to existing location of driveway for 1 Rainbow Road removing need for tree removal at crossover.
- Single access driveway located under building to reduce built footprint. Results in removal of original Apartment 7. Ground floor apartment numbers reduced to total sixteen (16).
- Redesign to basement carpark entry and carparking generally.

Apartment Redesign

- Selected apartments redesigned to achieve total 50 apartments (increase of one apartment from original submission).
- Major Apartment redesign occurs on eastern and western ends of first floor of southern building, replacing two (2) single storey two bedroom apartments with four (4) single storey one bedroom apartments.
- Redesign to eastern and western ends of first floor northern building. Reduction in size of units and terraces to accommodate increase side setback distances.
- Minor Apartment redesign includes internal amendments to most two (2) and three (3) bedroom units involving removal of secondary bathrooms and replacement with study areas.

Side setback calculations

- Initial use of 'typical' side setback lines (i.e. DCP requirement 1.5m + building height) amended to accurately indicate existing gradient across site. Side setbacks calculated individually for each building corner height on each floor. Setback lines indicated in red on floor plans.

Visual Privacy/Overlooking

- Privacy screens incorporated on second floor balconies to east, west and northern facades.
- Privacy screens incorporated on first floor western facades. No privacy screens to first floor due to existing heavy screen planting on neighbouring boundary to be retained.

Tree Retention

- Retention of selected trees results in change to pedestrian pathways to side setbacks and front entry/street connections.

The application seeks development consent for the for demolition works, construction of a 3-storey residential flat building containing 50 apartments (40 apartments dedicated to affordable housing) above one level of basement parking with 73 car space, with subsequent strata subdivision at 1-5 Rainbow Road, Mittagong.

Specifically, the development will comprise of the following:

- Demolition of all existing structures on 1-5 Rainbow Road, Mittagong
- Lot consolidation to create one development site
- Construction of a 3-storey residential flat building containing 50 apartments (40 of which will be dedicated for affordable housing). The apartment breakdown is as follows:
 - 1-bedroom: 10 units
 - 2-bedroom: 35 units
 - 3-bedroom: 5 units

-

SECOND FLOOR

ACTUAL SETBACK LINE FOR GROUND FLOOR ABOVE EQL

LANDSCAPE AREA: 305.72 m²

BBQ AREA

COMMUNITY TERRACE

PLAY GROUND

STAIRCASE

ELEVATOR

UNIT 01 (53.97 m²)

UNIT 02 (53.97 m²)

UNIT 03 (53.97 m²)

UNIT 04 (53.97 m²)

UNIT 05 (53.97 m²)

UNIT 06 (53.97 m²)

UNIT 07 (53.97 m²)

UNIT 08 (53.97 m²)

UNIT 09 (53.97 m²)

UNIT 10 (53.97 m²)

UNIT 11 (53.97 m²)

UNIT 12 (53.97 m²)

UNIT 13 (53.97 m²)

UNIT 14 (53.97 m²)

UNIT 15 (53.97 m²)

UNIT 16 (53.97 m²)

UNIT 17 (53.97 m²)

UNIT 18 (53.97 m²)

15.02.2015

14.02.2015

21

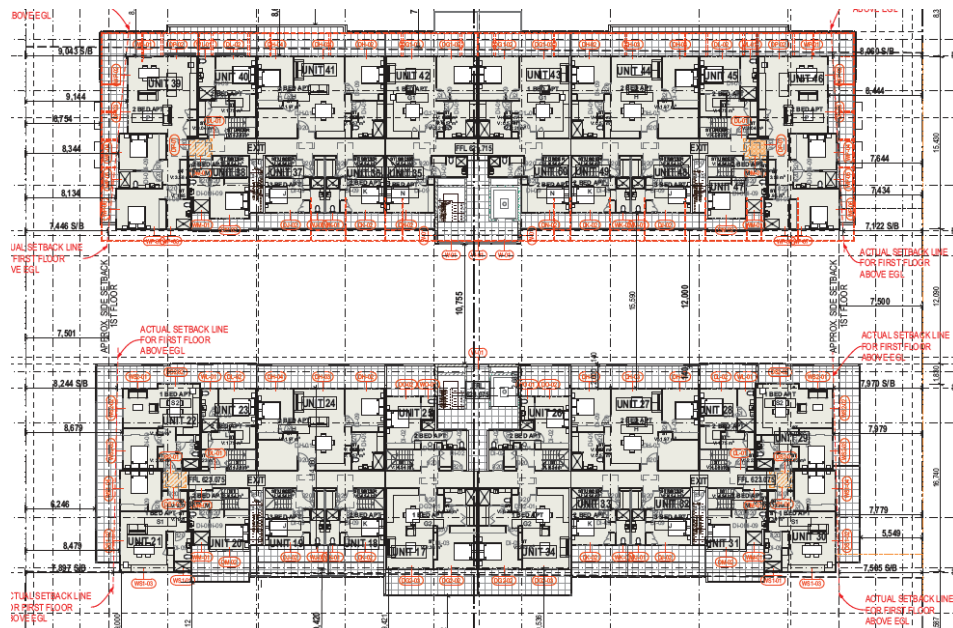


Figure 7 – Proposed First Floor Plan (Source: Coble Stephens Architects)

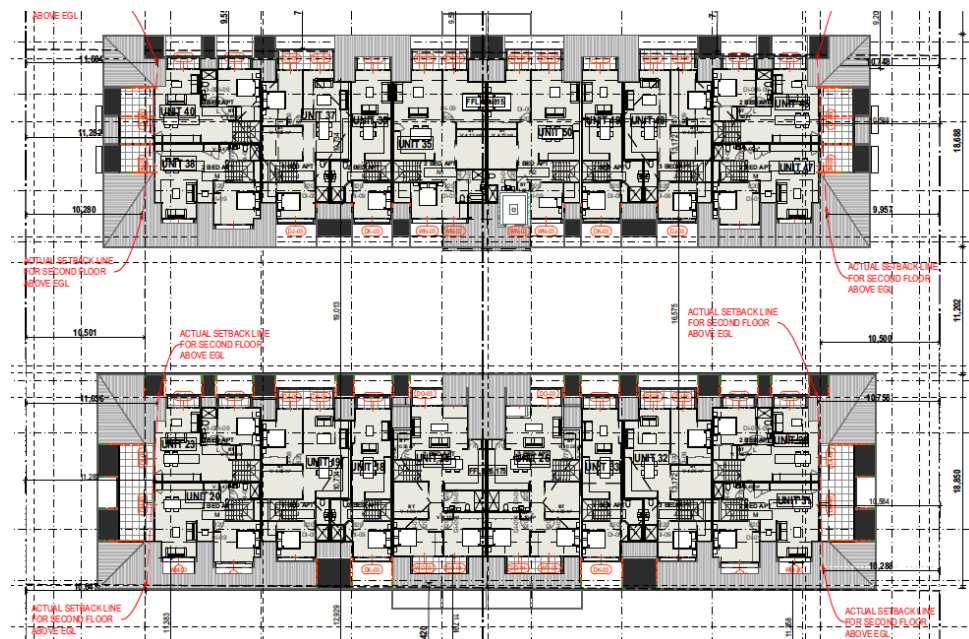


Figure 8 – Proposed Second Floor Plan (Source: Coble Stephens Architects)



Figure 9 – Proposed North and South Elevations (Source: Coble Stephens Architects)



Figure 10 – Proposed Internal North Elevation (Source: Coble Stephens Architects)



Figure 11 – Proposed Internal South Elevation (Source: Coble Stephens Architects)

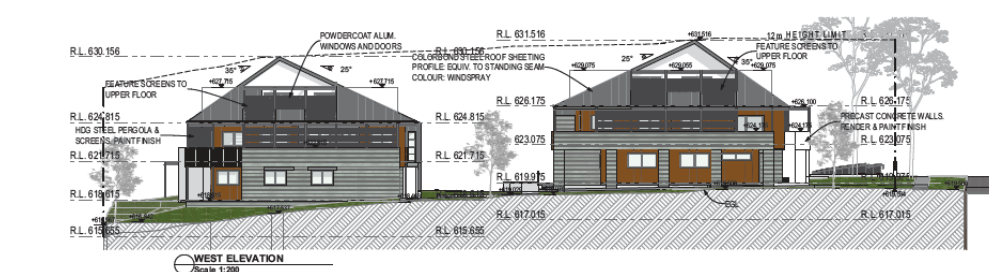


Figure 12 – Proposed West Elevation (Source: Coble Stephens Architects)

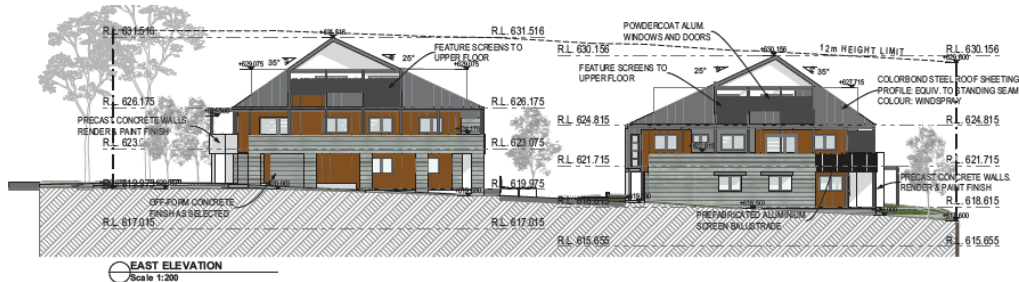


Figure 13 – Proposed East Elevation (Source: Coble Stephens Architects)

6. ASSESSMENT

An assessment against 4.15 of the Environmental Planning and Assessment Act 1979 is provided below.

Environmental Planning and Assessment Act 1979 – Section 4.15

In determining a DA, the consent authority is to take into consideration the following matter as are of relevance in the assessment of the DA on the subject property.

(a)(i) The Provisions of any Environmental Planning Instrument

The Environmental Planning Instruments that relate to the proposed development are:

- *Environmental Planning and Assessment Act 1979;*
- *Environmental Planning and Assessment Regulation 2021;*
- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazard) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
- *State Environmental Planning Policy (Housing) 2021;*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *Wingecarribee Local Environmental Plan 2010; and*
- *Mittagong Township Development Control Plan.*

An assessment of the proposed DA against the above instruments is detailed below.

Environmental Planning and Assessment Act 1979 (EP&A Act)

Section 4.46 of the EP&A Act defines integrated development as development that requires development consent and one or more approvals under other State Government Acts. In relation to the subject application the following Acts apply:

- NSW Rural Fire Service - The application is classed as Integrated Development under s100B of the *Rural Fires Act 1997*, as the proposal includes subdivision of land for residential purposes.

NSW RFS issued their General Terms of Approval (GTAs) on 28 February 2024.

Environmental Planning and Assessment (EP&A) Regulation 2021

The proposal does not contravene the Environmental Planning and Assessment Regulation.

NSW Rural Fires Act 1997

In accordance with Section 100B of the *Rural Fires Act 1997*, an application for subdivision of land for residential purposes is to be made to NSW Rural Fire Service.

The application was referred to the NSW RFS who issued their General Terms of Approval (GTAs) on 28 February 2024.

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Clause 5 under Schedule 6 Regionally Significant Development of the SEPP, the proposed development constitutes 'Regionally Significant Development' as it has a Capital Investment Value (CIV) of \$13,721,864 which exceeds the \$5 million threshold for private infrastructure for the purpose of providing affordable housing. Therefore, the consent authority is the Southern Regional Planning Panel.

State Environmental Planning Policy (Resilience and Hazard) 2021

Chapter 4 Remediation of Land

The SEPP requires Council to be satisfied that the site is suitable for its intended use (in terms of contamination) prior to granting consent.

In particular, *Chapter 4 Remediation of Land* contains a number of objectives that aim to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health and the environment:

- a) *By specifying when consent is required, and when it is not required, for a remediation work; and*
- b) *By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular; and*
- c) *By requiring that a remediation work meet certain standards and notification requirements*

Subject to Section 4.6 of the SEPP, a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated.

Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

This Policy aims to encourage the provision of housing (including affordable housing) that will—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,
- (h) mitigating the loss of existing affordable rental housing.

Pursuant to Clause 15C, Division 1 of the Housing SEPP, development for the purposes of in-fill affordable housing applies if:

- (a) the development is permitted with consent under Chapter 3, Part 4 or another environmental planning instrument, and
- (b) the affordable housing component is at least 10%, and
- (c) all or part of the development is carried out—
 - (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or
 - (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.

Development for the purposes of a residential flat building is permissible with consent under the Wingecarribee LEP 2010. The proposal provides 40 or 80% of the units as affordable housing, while the land on which the development is proposed is located within 800m walking distance of land in a relevant zone or an equivalent land use zone.

Clause 19 of the Housing SEPP outlines non-discretionary development standards that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. An assessment of the development against the non-discretionary development standards of the SEPP is provided in the table below.

| State Environmental Planning Policy (Housing) 2021 | | |
|--|---|--|
| Provision | Control | Compliance |
| 2(a) Minimum site area | A minimum site area of 450m ² | Complies The site area is 5,190.4m² . |
| 2(b) Minimum landscaped area | A minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area, | Complies <ul style="list-style-type: none"> • 35m² per dwelling (1750m²) • 30% of the site area (1557.12m²) |

| | | |
|---|---|--|
| | | The proposal includes a total of 1,833.54m² of landscaped area, therefore satisfying the control. |
| 2(c) Minimum deep soil zone | A deep soil zone on at least 15% of the site area, where— <ul style="list-style-type: none"> (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site, | Complies The proposal provides a total of 1833.54m² or 35.6% deep soil landscaped area. At least 65% of the deep soil zone is provided to the rear of the site. |
| 2(d) Solar access | Living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter. | Complies The proposal includes at least 70% (78% or 39 units) of living rooms and private open spaces in all dwellings that receive at least 3 hours of direct solar access between 9am and 3pm. |
| 2(e) Parking rate for dwelling used for affordable housing | The following number of parking spaces for dwellings used for affordable housing <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space, | Complies The proposal is required to provide a minimum 26 car spaces. The proposal provides a total of seventy-two (73) car spaces. |
| 2(i) Minimum floor areas | If paragraphs (g) and (h) do not apply, the following minimum floor areas— <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom—65m², (ii) for each dwelling containing 2 bedrooms—90m², (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms. | Complies <ul style="list-style-type: none"> • 1 Bedroom: 50.03m² – 74.71m² • 2 Bedroom: 70.13m² – 114m² • 3 Bedroom: 106m² – 117.16m² |

Clause 20(3) of the Housing SEPP states:

- (3) *Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—*
- (a) *the desirable elements of the character of the local area, or*
 - (b) *for precincts undergoing transition—the desired future character of the precinct.*

Having regard to the findings of this assessment, particularly in relation to the associated impacts on the integrity of the landscape setting and heritage character, the proposal is considered to be

inconsistent with the desired future character of the medium density precinct. The proposal preserves the distinctive, mature landscape character.

State Environmental Planning Policy (Biodiversity and Conversation) 2021

Chapter 6 – Water catchments

Chapter 6, Part 6.5 of SEPP Biodiversity and Conservations 2021 aims:

- (a) to provide for healthy water catchments that will deliver high quality water to the Sydney area while also permitting compatible development, and*
- (b) to provide for development in the Sydney Drinking Water Catchment to have a neutral or beneficial effect on water quality.*

The application was referred to Water NSW who responded on 11 March 2024. Water NSW makes the following comments:

Water NSW notes that the Water and Sewer Modelling report (dated 07/09/2022) from Urban Water Solutions states that the sewer system immediately downstream from the development location is not predicted to surcharge.

Additionally, the site hydrology for the basement excavation has been subject to a separate assessment. However, some of the conclusion on management of groundwater in Preliminary Groundwater Quality Screening (ref E35082PHrpt-rev1, dated 22 January 2024) prepared by JK Environments Pty Ltd during the basement excavation will also apply to stormwater ingress into the basement void during the construction phase.

Water NSW considers the quality of groundwater intake in the basement void should ensure that there is no detrimental impact on water quality if discharged on site.

Water NSW also notes the Mittagong Sewage Treatment Plant (STP) is at capacity and is planned to be upgraded, Water NSW recommends that occupation certificate for the development should not be granted until the upgraded Mittagong STP has been commissioned.

Above matters have been addressed in the attached conditions.

Based on the site inspection and the information provided, Water NSW is satisfied that the proposed development can achieve a neutral or beneficial effect (NorBE) on water quality provided appropriate conditions are included in any development consent and are subsequently implemented.

Wingecarribee Local Environmental Plan 2010

The Wingecarribee Local Environmental Plan (LEP) 2010 applies to the site and proposed development.

Permissibility

The site is zoned R3 Medium Density Residential under the provisions of Wingecarribee Local Environmental Plan 2010 (WLEP). Residential flat buildings are permissible in the R3 zone.



Figure 11 – Zoning Map (Source: NSW Spatial Viewer)

Zone Objectives

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Officer Comment:

The proposed development satisfies the relevant objectives of the R3 Medium Density Residential zone in so far as it addresses the housing needs of the community by providing a variety of housing types and dwelling sizes.

Relevant Clauses

The DA was assessed against the following relevant clauses of the Wingecarribee LEP 2010.

| Clause | Requirement | Provided | Compliance |
|---|--|--|---|
| 4.1 Minimum subdivision lot size | The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land – 4ha | Clause 4.1 does not apply to a strata plan of subdivision under the <i>Strata Schemes Development Act 2015</i> . | N/A |
| 4.6 Exceptions to development standards | <p>(1) The objectives of this clause are as follows—</p> <p>(a) <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p>(b) <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p> | <p>The proposal seeks to vary Clause 17 of the Housing SEPP.</p> <p>Clause. 17 states the following with regard to FSR:</p> <p>(1) <i>The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of—</i></p> <p>(a) <i>if the maximum permissible floor space ratio is 2.5:1 or less—</i></p> <p>(i) <i>if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or</i></p> | Yes, refer below for Clause 4.6 assessment. |
| 5.10 Heritage conservation | <p>The objectives of this clause are as follows—</p> <p>(a) <i>to conserve the environmental heritage of Wingecarribee,</i></p> <p>(b) <i>to conserve the heritage significance of heritage items and heritage conservation areas,</i></p> | <p>The adjoining site to the east at 1A Rainbow Road contains a heritage item of local significance. The item is known as 'Chalybeate Spring' (Item No. I576).</p> <p>The proposal was reviewed by Council's Heritage Consultant. The proposal is not considered to satisfy the objectives and requirements of clause 5.10 of the Wingecarribee LEP 2010</p> | No |

| | | | |
|----------------|---|--|-----|
| | <p><i>including associated fabric, settings and views,</i></p> <p><i>(c) to conserve archaeological sites,</i></p> <p><i>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</i></p> | <p>and does not demonstrate satisfactory consistency with the provisions of the Mittagong Village DCP.</p> <p>The comments received by the heritage consultant are acknowledged. However, it is considered that the visual impact of the proposal on the adjoining heritage item is satisfactorily addressed through a compliant built form, including compliant building setbacks and building height, and provision of extensive planting on the eastern boundary. This is considered acceptable in managing the visual impact of the proposal on the heritage item.</p> <p>These comments can be found under Attachment 6.</p> | |
| 7.3 Earthworks | <p>To ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.</p> | <p>Earthworks are proposed to facilitate the proposed development. The proposed development will not affect environmental functions and processes, neighbouring uses or heritage items and features surrounding land.</p> <p>The application was referred to Councils Development Engineers who raised no objections with the proposed earthworks.</p> | Yes |

| | | | |
|------------------------------------|---|---|-----|
| 7.10 Public Utility Infrastructure | Development consent must not be granted for development on land to which this clause applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required. | The subject site is capable of being serviced by public utility that are essential for the development. | Yes |
|------------------------------------|---|---|-----|

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance

| | |
|--------------------------------------|-------------------|
| Development standard: | Floor space ratio |
| Requirement: | 1:1 |
| Proposed: | 1.19:1 |
| Percentage variation to requirement: | 19.35% |

Assessment of request to vary a development standard:

The following assessment of the variation to Floor Space Ratio control under Clause 17 of the Housing SEPP, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 17 development standard is not expressly excluded from the operation of this clause.

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request states that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case on the following grounds:

The proposed development achieves the objectives of the FSR control, notwithstanding the numerical variation that only arises if the additional car parking within the basement is included in the calculation of gross floor area.

The objectives and purpose of the FSR control remain relevant, and the proposed development achieves the objectives of the FSR control, notwithstanding the numerical variation that only arises if the additional car parking within the basement is included in the calculation of gross floor area.

The proposed development achieves the objectives of the FSR control, notwithstanding the numerical variation that only arises if the additional car parking within the basement is included in the calculation of gross floor area.

Further, strict compliance with the FSR control would require a reduction in the provision of off-street car parking and/or the relocation of the car parking within the basement to the ground floor level to the significant detriment of the overall quality of the proposed development.

The FSR control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has adopted an orderly and flexible approach to the implementation of development standards where the objectives of the control are achieved notwithstanding numerical variations.

Further, the objectives of Clause 4.6 of the LEP includes to provide "an appropriate degree of flexibility in applying certain development standards to particular development".

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the FSR control would require a reduction in the provision of off-street car parking and/or the relocation of the car parking within the basement to the ground floor level to the significant detriment of the overall quality of the proposed development.

Council Response

The excess parking and proposed FSR variation do not result in an unreasonable basement parking area with sufficient setbacks and deep soil areas to provide for dense, mature tree planting.

The additional gross floor area (GFA) is not unreasonable and unnecessary in the context of the site that is well-located to public transport infrastructure, notably nearby bus services. The proposal can adequately justify the additional GFA and why further car parking is essential to meeting the anticipated development needs for the future.

The additional GFA will not result in a proposal that will have a significant visual impact on adjoining land by virtue of its bulk and scale. The proposal is capable of off-setting the loss of tree canopy by dense planting along the site's boundaries leading to a development that is consistent with the desired character of the locality.

Having regard to the principles of the Housing SEPP, particularly the delivery of housing that provides residents with a reasonable level of amenity, the excess parking is reasonable in the circumstances where the proposal has been able to demonstrate a satisfactory landscape design and environmental outcome on the land. Further, the significant loss of this canopy coverage will not lead to detrimental impacts on the significance of the adjoining heritage item. The impact of the basement structure results in a proposal that is not inconsistent with the desired character of the precinct.

In doing so, the Applicant's written request is able to properly demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request argues, in part:

- the proposed development complies with the FSR control if the additional car parking within the basement is not included in the calculation of gross floor area;
- the proposed development complies with the FSR control if the car parking requirements in the Mittagong Township DCP are applied to the proposed development;
- the capacity of the Applicant to provide basement level car parking generates a very significant improvement (compared to a fully compliant scheme with ground level car parking) in relation to the provision of landscaped area, including deep soil landscaping;
- the SEPP requires a total landscaped area of 1,750m² (35m² per dwelling) and the proposed development provides a total landscaped area of 2,461.8m², representing 49.24m² per dwelling;
- the SEPP requires a deep soil landscaped area of 772.64m² (15% of the site area) and the proposed development provides a deep soil landscaped area of 1,833.54m², representing 35.6% of the site area;
- a fully compliant scheme could provide significantly less landscaped area, and the provision of ground level car parking would result in a material increase in hard stand paving relating to the associated driveways and car parking areas;

- the provision of basement level car parking provides opportunities to significantly increase the landscaped setbacks to the front, side and rear boundaries, and materially improve the landscaped setting of the site and surrounds;
- the provision of basement level car parking will materially reduce the impacts on the amenity of the adjoining properties arising from multiple vehicles using car parking facilities and access driveway at ground level;
- strict compliance with the FSR control would require a reduction in the provision of off-street car parking and/or the relocation of the car parking within the basement to the ground floor level to the significant detriment of the overall quality of the proposed development
- the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: “(g) to promote good design and amenity of the built environment”;
- the Council has adopted an orderly but flexible approach to the implementation of development standards, including when the objectives of the standard are achieved, notwithstanding numerical variations;
- the proposed development is consistent with, or not antipathetic to, the relevant objectives of the R3 – Medium Density Residential zone; and
- the proposed development achieves the objectives of the FSR notwithstanding the numerical variation that only arises if the additional car parking within the basement is included in the calculation of gross floor area.

Comment

This assessment agrees with the above comments.

Having regard to the above, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b). Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor Space Ratio’ of the WLEP 2010 are:

(1) The objectives of this clause are as follows:

(a) to identify maximum floor space ratios in major centres,

Comment:

The site is subject to a 1:1 maximum floor space ratio control.

(b) to ensure that floor space ratios provide development opportunities that are compatible with building heights,

Comment:

The floor space ratio is compatible with the proposed building height.

(c) to encourage development in locations readily accessible to public transport and services that will provide increased employment opportunities.

Comment:

The development site is located close-by to public transport infrastructure, including buses, and to nearby services and employment centres.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposal provides for a medium density development consisting of 40 units dedicated for affordable housing, consistent with the objective to provide for the housing needs of the community.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal development is for a residential flat building within a medium density residential zone, consistent with the objectives.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

Not applicable

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor Space Ratio Development Standard is assumed by the Southern Regional Planning Panel.

(a)(ii) The Provision of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).

There is no draft Environmental Planning Instrument applicable to the proposed development.

(a)(iii) The Provisions of any Development Control Plan

Mittagong Township Development Control Plan

The site is zoned R3 Medium Density Residential under the provisions of Wingecarribee Local Environmental Plan 2010 (WLEP). Residential Flat Buildings are permissible in the R3 zone.

The Wingecarribee Development Control Plan – Mittagong Township applies to the site and to the development proposal by virtue of Part C Section 3 'Medium Density Development' and Section 17 'Medium Density Precinct'.

An assessment of the proposal against the relevant development controls applying to the subject site and development is provided in **Attachment 5**.

(a)(iiia) Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4.

Not Applicable

(a)(iv) The Regulations

The Regulations do not prescribe any additional matters that are relevant to the proposed DA.

(1)(b) The likely impacts of the proposed development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Natural and Built Environment Impacts

The proposed development is considered to result in adverse impacts on the natural and built environment for the following reasons:

- The proposed development is consistent with the existing and desired future character of the surrounding area. The design of the development provides for a high-level of amenity within the development site, including the provision of high-quality landscaping within the site to offset the loss of canopy trees as a result of the development. The development recognises the desirable elements of the location's current character and contributes to the quality and identity of the area by providing a built form, scale and density that is compatible with desired future character of the area.
- The proposed development has been sited and designed to provide adequate residential amenity for residents.
- The proposal results in an acceptable impact on the adjoining heritage item.

Social and Economic Impacts

The proposed development is not considered to result in adverse social and economic impacts on the surrounding area. The development will not result in adverse amenity impacts on existing development within the area thus impact on the residential amenity and quality of life for residents.

(1)(c) The suitability of the site

The site is considered to be suitable for the proposed development in its current form for the following reasons:

- The proposed development will result in a built form that is consistent with the desired future character of the area;
- The visual impact of the bulk and scale of the development, additional landscaping results in an acceptable level of impact on the adjoining heritage item; and
- Sufficient information has been submitted with the application to adequately demonstrate that the proposal will not result in an unreasonable impact on the landscape character of the land and the heritage significance of the adjoining land.

(1)(d) Any submissions made in accordance with this Act or the Regulations.

The application was publicly notified on three separate occasions:

- First notification: 5 May 2023 – 2 June 2023
 - Six (6) submissions, including one petition with 59 signatures
- Second notification: 16 November 2023 – 30 November 2023
 - Three (3) submissions
- Third notification: 5 May 2024 – 5 June 2024
 - Two (2) submissions

The issues raised in all received submissions are summarised and addressed below:

| Issue Raised | Response |
|---|--|
| Traffic, vehicular and pedestrian access, and congestion issues | <p>The concerns raised by the submission regarding traffic generation, safety and congestion are noted.</p> <p>The application has been reviewed by Council's Traffic Engineer.</p> <p>Notwithstanding, the proposed development is not inconsistent with the anticipated medium density character of the surrounding area. It is noted that the predominant character of the area consists of low-density residential dwellings with the proposed development the first in the precinct. In this regard, the precinct is likely to undergo further change in the future due to its zoning. It is considered that the proposed traffic generation is</p> |

| Issue Raised | Response |
|---|--|
| | <p>reasonable within the context of the site, surrounding area and existing infrastructure.</p> <p>Proposed vehicular and pedestrian access has been assessed and considered satisfactory.</p> |
| Trees and Landscaping | <p>The loss of existing site trees and impact on the landscape character of the area has been raised as an issue within several submissions.</p> <p>This assessment and Council's Tree and Vegetation Officer has found the proposal to result in an acceptable loss of tree canopy, not resulting in adverse impacts on the desired character of the precinct and adjoining sites, including the adjacent heritage item to the east.</p> |
| Heritage | <p>Several submissions raise concern regarding the impact of the proposed development on the adjoining heritage item. This concern is noted and echoed by Council's Heritage Consultant who has raised concern in relation to the extent of canopy tree loss and its impact on the heritage item and remains unsatisfied that the proposal will conserve the heritage significance of the item and result in minimal impact.</p> |
| Water and sewer | <p>Concerns have been raised in several submission regarding the impact of the development on existing water and sewer infrastructure. The DA was referred to Water NSW and Council's Water and Sewer Engineer who have reviewed the proposal. Both have determined that the proposal is satisfactory subject to conditions of consent.</p> |
| General bulk and scale, including building height | <p>Many submissions have raised concerns regarding the overall bulk and scale of the development being out of character with the area.</p> <p>However, it is noted that the area is zoned R3 Medium Density, and such development is anticipated in the area by virtue of the zoning and permitted development. The site is part of a wider precinct identified for future redevelopment to provide further housing in Mittagong.</p> <p>The bulk and scale of the development is commensurate with the desired future character of the area which is to undergo change due to its zoning.</p> |

(1)(e) The public Interest

The public interest is served through the detailed assessment of this DA under *the Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2021*, Environmental Planning Instruments, Development Control Plan and policies.

That assessment has demonstrated that the proposed development is in the public interest.

7. WINGECARRIBEE CONTRIBUTIONS PLAN

S7.11 and S64 Developer contributions are payable on the proposed development as follows:

| | No. of dwellings | s94 Ets | Water | Sewer | Stormwater |
|------------------------|------------------|--------------|--------------|--------------|---------------|
| 1 Bedroom Unit | 10 | 5 | 5 | 5 | |
| 2 Bedroom Unit | 35 | 23.45 | 23.45 | 23.45 | |
| 3+ Bedroom Unit | 5 | 4.5 | 4.5 | 4.5 | |
| Impermeable Area (m2) | 3255 | | | | 8.1375 |
| Existing lots (credit) | 3 | 3 | 3 | 3 | 3 |
| Total ETs | | 29.95 | 29.95 | 29.95 | 5.1375 |

| | Units | Rate | Amount Payable |
|--|--------------|--------------------|-----------------------|
| Contributions Levy | | | |
| Administration (Shirewide) | 29.95 | \$586.94 | \$17,578.92 |
| Central Library (Shirewide) | 29.95 | \$518.63 | \$15,532.95 |
| Open Space & Community (Acquisition) | 29.95 | \$108.23 | \$3,241.56 |
| Open Space & Community (Future Works) | 29.95 | \$1,918.26 | \$57,451.87 |
| Open Space & Community (Recoup) | 29.95 | \$906.36 | \$27,145.61 |
| Resource Recovery Centre (Shirewide) | 29.95 | \$307.83 | \$9,219.52 |
| Roads & Traffic (Mittagong) | 29.95 | \$802.89 | \$24,046.64 |
| Roads & Traffic (Shirewide - Future) | 29.95 | \$3,377.12 | \$101,144.81 |
| Roads & Traffic (Shirewide - Recoup) | 29.95 | \$18.95 | \$567.56 |
| S64 Sewer Compliance Certificate | 1.00 | \$255.00 | \$255.00 |
| S64 Stormwater Compliance Certificate | 1.00 | \$255.00 | \$255.00 |
| S64 Stormwater (Mittagong) | 5.14 | \$4,352.09 | \$22,369.72 |
| S64 Sewerage (Shirewide) | 29.95 | \$12,888.85 | \$386,021.18 |
| S64 Water Compliance Certificate | 1.00 | \$255.00 | \$255.00 |
| S64 Water (Shirewide) | 29.95 | \$13,294.82 | \$398,179.91 |
| Total | | | \$1,063,265.25 |

8. OTHER MATTERS

External and Internal Referrals

The subject DA was referred to a number of public agencies and their responses are summarised in **Attachment 6**.

In addition, the DA was referred to a number of internal officers and their responses are also summarised in **Attachment 6**.

9. CONCLUSION

A Development Application has been received seeking approval for demolition works, construction of a 3-storey residential flat building containing 50 apartments above one level of basement parking with 73 car spaces, with subsequent strata subdivision at 1-5 Rainbow Road, Mittagong. Forty (40 of the apartments are to be dedicated for affordable housing).

The proposed development is considered satisfactory with respect to the relevant provisions of:

- Wingecarribee Local Environmental Plan 2010
- Mittagong Township Development Control Plan.

Given the above, the proposed development is considered satisfactory with respect to the matters for consideration specified by section 4.15 (1) (a) (i) & (iii), (b), (c), (d) and (e) of the Environmental Planning and Assessment Act 1979.

10. RECOMMENDATION

That the Panel determine DA23/1070 consisting of the demolition of existing structures, lot Consolidation, the construction of a residential flat building and associated works by way of approval pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* in line with the accompanying draft conditions of consent.