

4.1 DA 315/2006 - Proposed Residential Flat Development at Mardi

TRIM REFERENCE: DA/315/2006 - D02514828

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SUMMARY

An application has been received for a residential flat development containing 88 units, communal facilities and associated carparking at No 1A Woodbury Park Drive, Mardi. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

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|-----------------------------|---|
| Applicant | Woodbury Park Estates Pty Ltd C/- Andrews.Neil Pty Ltd |
| Owner | Woodbury Park Estates Pty Ltd |
| Application No | DA/315/2006 |
| Description of Land | Lots 622 and 623 DP 877750, No 1A and 1B Woodbury Park Drive, Mardi |
| Proposed Development | Residential flat development consisting of two residential towers of 8 and 10 storeys above two levels of carparking (10 and 12 storeys overall). |
| Site Area | 9,015 m ² |
| Zoning | 2(c) – Medium Density Residential Development and 7(a) – Conservation Zone |
| Existing Use | Vacant |
| Estimated Value | \$20.75 million |

RECOMMENDATION

- 1** *That Council refuse consent, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, subject to the reasons detailed in the schedule attached to the report.*
- 2** *That Council advise those who made written submissions of its decision.*

PRECIS

- The proposal is to construct two residential towers of 10 and 12 storeys (including two levels of parking) containing 88 units.
- 679 submissions were received objecting to the proposal following the initial advertising period.

- Clause 42E of Wyong Local Environmental Plan, 1991 (WLEP 1991) permits the development of residential towers to a height of 33.5 and 29 metres on the site, within two identified building footprints.
- DCP 2005 Chapter 96 – Woodbury Apartments specifically applies to the subject site.
- Recommended for refusal by Central Coast Design Review Panel (CCDRP) based on the lack of compliance with the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65).
- Amended plans were submitted in response to concerns raised with non-compliance with the height limits set by WLEP, Asset Protection Zones (APZ) for bush fire protection, privacy, access and parking.
- The amended plans were re-advertised with a further 29 submissions received.
- The revised design was referred to an independent Architect and Urban Design Consultant, who concurred with the recommendation of the CCDRP.
- The proposal relies on bushfire APZ's and a fire trail being located on Council Community Land.
- The applicant has been given the opportunity to withdraw the development application, although no response has been received.
- The application is recommended for refusal.

INTRODUCTION

The Proposed Development

A development application has been lodged for the construction of a residential flat development at Woodbury Park Drive, Mardi. The proposed development includes:

- The construction of two residential towers of 10 and 8 storeys above a two storey podium, giving a total of 12 and 10 storeys;
- 88 residential units as follows:

| | | | |
|------------------|-------------------------------------|----------|----------------|
| Western building | 10 storeys (plus podium parking) | 48 units | 19 x 3 bedroom |
| | | | 20 x 2 bedroom |
| | | | 9 x 1 bedroom |
| Eastern building | 8 storeys (plus podium parking) | 40 units | 15 x 3 bedroom |
| | | | 17 x 2 bedroom |
| | | | 8 x 1 bedroom |

- 133 car parking spaces for residents and visitors within the two storey podium;
- Communal facilities including an indoor pool, gymnasium and meeting rooms;
- Landscaped communal open space; and
- Construction of a six (6) metre wide fire trail and a ten (10) metre wide bushfire APZ on Council Community Land.



Figure 1: Proposed development as viewed from Woodbury Park Drive

The Site

The subject site is known as Lots 622 and 623 in DP 877750 and has frontage to Woodbury Park Drive, Mardi. The site is a large irregular shaped parcel of land situated at the entrance to Woodbury Park Estate off Woodbury Park Drive. The site is located approximately 100 metres north of Wyong Road and the Westfield Shopping Centre at Tuggerah. The site has a frontage of 21.4 metres to Woodbury Park Drive and an area of 9,007m².

The site slopes steeply towards Woodbury Park Drive and is currently vacant. Lot 622 has previously been cleared of vegetation and contains a mown grassed area along the frontage of the site with scattered trees particularly along the eastern boundary. Lot 623 has also been cleared of its understorey and contains a dense canopy of trees. Dense vegetation contained within a Council owned 7(a) Conservation Zone, is located to the north, south and west of the site with low density residential development comprising single dwellings and dual occupancy development adjoining the site immediately to the east as shown in the photograph below.



Figure 2: Subject site and surrounds

Summary

Lot 622, on which the residential flat buildings would be located, is zoned Residential 2(c) – Medium Density Residential. Clause 42E of the WLEP 1991 applies specifically to this site and includes a Building Height Map identifying a 33.5 metre and a 29 metre height limit for the western and eastern buildings respectively. Lot 623, which is zoned 7(a) Conservation Zone, was created to maintain a bushfire buffer between the Council land and the subject site. No building works are proposed on Lot 623.

A site specific DCP also applies to the proposed development, which contains guidelines for building design, setbacks, height, site coverage, density, open space and amenity, landscaping and road works. While the proposal complies with the site specific controls, many of the planning and design controls contained within the DCP are contrary to SEPP No 65 - Design Quality of Residential Flat Development, which provides design principles aimed at improving the design of residential flat development. This has resulted in the CCDRP and an independent Urban Design Consultant providing advice strongly opposing the development. There has also been significant public objection to the proposal and it is recommended that the application is refused.

VARIATIONS TO POLICIES

| | |
|-----------|---|
| Clause | 2.2.3 |
| Standard | Southern boundary setback to be minimum 10 metres |
| LEP/DCP | DCP 96 – Woodbury Apartments |
| Departure | Up to 1.5 metre or 15% variation to the southern setback of the podium. |

| | |
|-----------|---|
| Clause | 2.4 |
| Standard | Structures including lift wells and elements of the roof form should generally not exceed the ceiling height by more than 4 metres. |
| LEP/DCP | DCP 96 – Woodbury Apartments |
| Departure | 0.05m or 1.2% variation to the height of roof structures. |

HISTORY

- On 14 May 2003, Council resolved that draft amendment No 147 to WLEP 1991 to set the 33.5 metre and 29 metre height limits applying to the site, be forwarded to the Minister for Planning requesting that the plan be made. The Council also resolved that the draft DCP and draft Contributions Plan be adopted and public notification be given following the gazettal of the draft plan.
- Clause 42E of WLEP 1991, which permits the proposed development, was gazetted on 5 March 2004.
- On 7 April 2004, site specific DCP Chapter 96 – Woodbury Apartments became operational.
- A preliminary application was lodged in July 2005 for a proposed residential flat development on the subject site.
- The current development application was lodged on 3 March 2006.
- At a meeting on 19 April 2006, the CCDRP recommended that Council refuse the development application based on the ten (10) Quality Design Principles of SEPP No 65 – Design Quality of Residential Flat Development.
- In December 2007, the application was referred to an independent Architect and Urban Design Consultant, GMU Design. This advice confirmed the recommendation of the CCDRP, that the development application should not be supported.
- The applicant was given the opportunity to address the issues raised by the independent Urban Design Consultant, although no response was forthcoming. Council has made a number of requests for the application to be withdrawn but no response has been received.
- Council cannot legally “reject” the development application and accordingly, must make a determination of the development application to reach a finality.

PERMISSIBILITY

The proposed building is located on Lot 622, which is zoned 2(c) Medium Density Residential Zone under WLEP. The proposed development, defined as a residential flat building, is permissible with development consent in the 2(c) Medium Density Residential Zone. Clause 42E of WLEP also applies to the site, which permits medium or high-rise development.

42E Erection of medium or high-rise building at Woodbury Park Drive, Mardi

This clause applies specifically to Lot 622, DP 877750, Woodbury Park Drive, Mardi and states the following:

“The Council may consent to the erection of a medium or high-rise building on the land to which clause applies, but only if it is satisfied that:

(a) when viewed from public spaces, the proposed building will generally be framed by the trees on the ridge to the north of the site, and

(b) any roof structure over and above the height nominated for the land beneath it on the building height map is designed and incorporated into the building in a way that is both interesting and attractive, and

(c) due regard has been given in the design of the building to any other matters that may be specified in a development control plan applying to the land.

(3) For the purposes of this clause:

*a **building height** is the vertical distance from natural ground level at any point within a building to the top-most ceiling of the building directly above that point.*

***medium or high-rise building** means a building with a building height greater than 10 metres but no building height of which at any point exceeds the height nominated for the land at that point on the building height map”.*

The Building Height Map for the site includes a 33.5 metre and a 29 metre height limit as shown below. The height of the western tower, including the roof structure, falls entirely within the nominated height limit. For the eastern tower, a false ceiling would be constructed within the plant room below the 29 metre height limit to ensure compliance with the Building Height Map resulting in only a small portion of the roof structure extending over the height limit, which is permitted by both the WLEP 1991 and the DCP for the site.

Lot 623 is proposed to be used for an APZ and does not contain any building work. Lot 623 is zoned 7(a) conservation zone, in which ‘bushfire hazard reduction’ is permissible with consent.

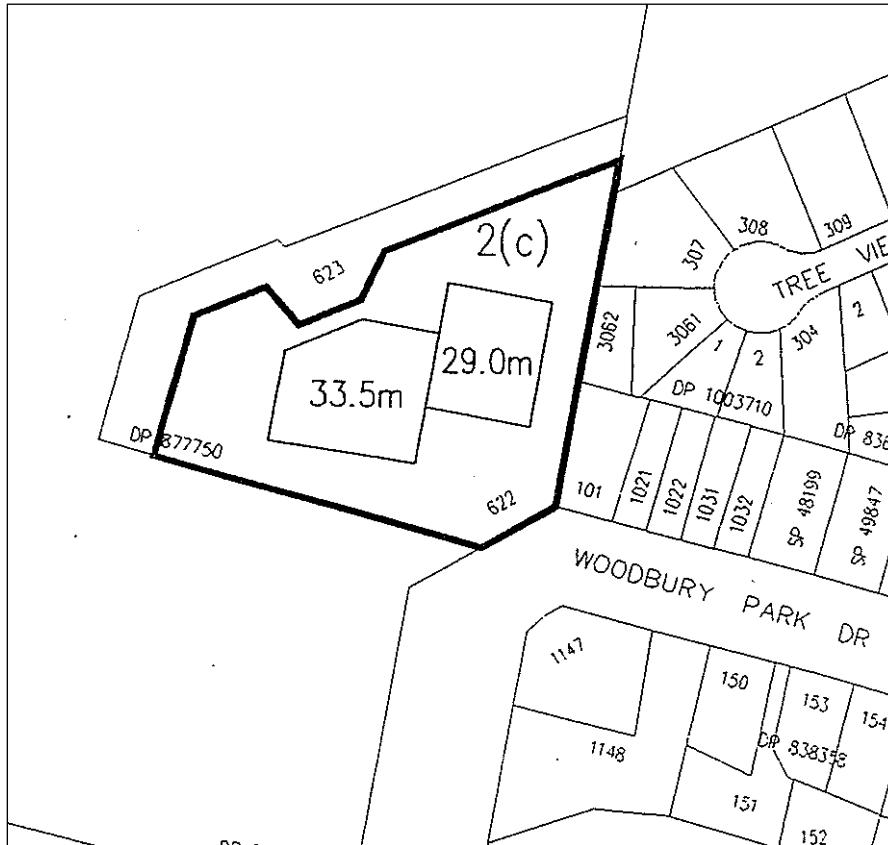


Figure 3: Extract of WLEP 1991 Building Heights Map.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX)
- State Environmental Planning Policy No 11 – Traffic Generating Development (now repealed and replaced by SEPP (Infrastructure) 2007)
- State Environmental Planning Policy (Major Development) 2005
- Wyong Local Environmental Plan 1991
- Wyong Shire Development Control Plan 2005
 - Chapter 96 – Woodbury Apartments
 - Chapter 70 – Notification of Development Applications
 - Chapter 69 – Guidelines for Site Waste Management
 - Chapter 67 – Engineering Requirements for Development
- Landscape Policy and Guidelines L1
- Tuggerah/Wyong Planning Strategy
- S94 Contribution Plan Wyong/Rural West

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is not inconsistent with the principles.

The proposed development can incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered as part of the assessment of the application. This assessment has included consideration of such matters as potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought and flood; as well as how the proposed development may cope / combat / withstand these potential impacts.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 and other statutory requirements and Council's policies, the assessment has identified the following key issues, which are elaborated upon for Council's consideration.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development

SEPP No 65 – Design Quality of Residential Flat Development aims to improve the design quality of residential flat development by establishing Design Review Panels and introducing design quality principles for residential flat development.

In determining a development application subject to SEPP 65, the following must be taken into consideration:

- (a) the advice of the design review panel, and
- (b) the design quality of the residential flat development when evaluated in accordance with the design quality principles of the SEPP, and
- (c) the publication Residential Flat Design Code (a publication of the Department of Planning (DoP), September 2002).

The proposed development was considered by the CCDRP on 19 April 2006 having regard to the design quality principles and the Residential Flat Design Code.

The Panel recommended that the application be refused and provided the following advice:

As an independent, expert Panel appointed by the Premier's Department, our role is to advise Council on design quality issues and assist Council to avoid approving designs that fail to meet quality urban and architectural design principles. The Panel believes that the subject proposal does not comply with the primary or secondary objectives of the SEPP 65 or the RFDC and therefore cannot support this development application.

Notwithstanding the applicant's claims of compliance with the site specific DCP, the Panel cannot support the proposed design for the reasons stated below.

Context

- *The Panel believes that the proposal is out of context with the existing and likely future character of the adjoining single dwelling residential development to the east of the site. The proposal is also out of character with the adjoining Conservation Zoned land in ownership of Council.*
- *The photomontages and model that have been provided confirm that the proposal will have detrimental impact on views of the site from multiple surrounding locations and view points.*
- *A reasonable proposal would fit wholly within the tree line of the site and not be visible from the south or west.*

Scale

- *It is reiterated that the height proposed is excessive for the site and The Panel believes that a better solution would be a low rise built form of more shallow depth consisting of 4-5 storeys stepping down the site, and following site contours. This would be more sympathetic to the attributes of the setting and not exceed the top of the adjoining tree canopies.*

Built Form

- *The podium of the design is unacceptable. The above ground podium exposing car parking and vehicular entries is visually disconnected to the towers above. Any future re-design must provide a highly resolved connection at ground level without recourse to a projecting podium structure. The single podium for the two buildings produces a poor design result that is visually bulky and of non-pedestrian scale.*
- *The proposal does not comply with RFDC building separation distances between the towers. The space is visually tight and would result in amenity conflicts.*

Density

- *The density is excessive for the site in its context and has resulted in an overdevelopment.*

Resource, Energy and Water Efficiency

- *No comment*

Landscape

- *A report by a qualified Arborist is required to ensure negative impacts do not occur to existing trees on site that are to be retained and the surrounding bush land, particularly to the south. Changes to drainage across the site, due to the scale of the excavation, coupled with the extensive overshadowing that would occur to the bushland to the south, would be likely to have a detrimental impact upon it and cause tree loss. There is also potential for fauna to be affected, and as such an ecological assessment of impacts to the southern bushland should be considered. These issues, and possible impacts on Council owned land zoned for conservation, need to be fully investigated.*
- *The footprint of the proposed excavation of the site is unacceptable and should be reduced to the footprint of the primary building. The height of the retaining wall on the western boundary and the excavation required to achieve the visitor parking in this area is far too excessive on visual and environmental grounds.*

Amenity

- *The proposal is unacceptable because of its impact on visual and solar access amenity of the adjoining residential properties.*

Safety and Security

- *No comment*

Social Dimensions

- *There is an existing pedestrian link through the site which should be incorporated within the site planning.*

Aesthetics

- *See comments under Built Form.*

After receiving the comments from the CCDRP and following some changes to the design, Council referred the application to GMU Design, an independent Architect and Urban Design Consultant. The conclusion of GMU Design was that:

Based on the assessment against the requirements of the various State and Local Government Instruments and provisions we advise that the Development Application cannot be supported by GMU Design in terms of Urban Design criteria and based on SEPP 65 grounds and the Residential Building Flat Code. GMU Design concurs with the comments provided by the Central Coast Design Review Panel.

Whilst the proposal complies with most numeric provisions of the site specific DCP prepared for the site and Wyong LEP 1991 requirements, the development is considered to be inappropriate in terms of the local context of the site and adjoining lands based on good urban design outcomes.

A copy of the consultant's assessment against the principles of SEPP 65 and recommended design changes are included as an enclosure. The applicant was given the opportunity to address the report prepared by GMU design, although no response was received.

The recommendations made by the CCDRP are supported, particularly in relation to the comments made in response to the context, scale, built form, density, amenity and aesthetics. In this regard, it should be noted that SEPP 65 is a legally binding document in the hierarchy of development controls and has greater statutory weight than both the WLEP 1991 and Council's DCP, which include site specific provisions for the subject site. The hierarchy of development controls is summarised in the diagram below.

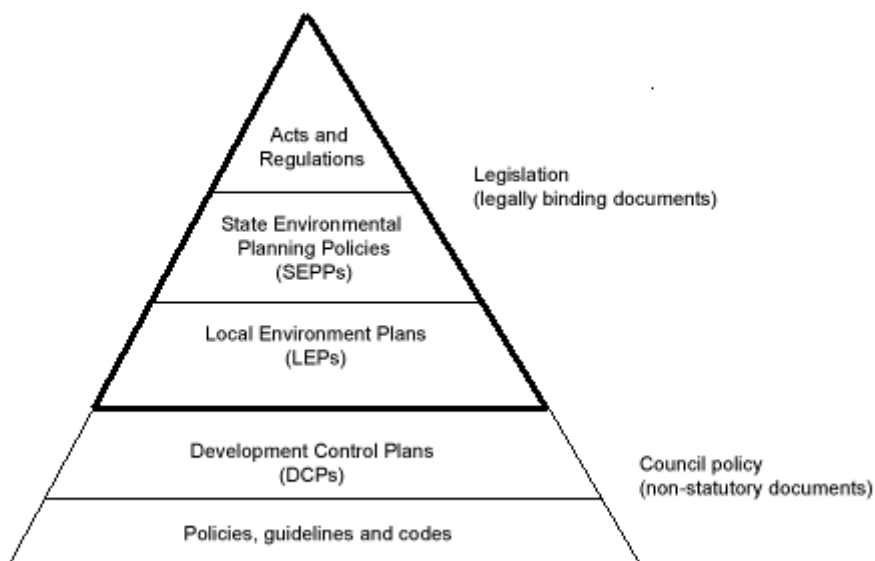


Figure 4: Hierarchy of Development Controls

State Environmental Planning Policy (Building Sustainability Index: BASIX)

A BASIX Certificate has been submitted as required by the SEPP.

State Environmental Planning Policy No 11 – Traffic Generating Development (now repealed)

In accordance with Schedule 2 of SEPP 11 development applications for the erection of a residential flat building comprising 75 or more dwellings and that have either direct access to an arterial road, or have access within 90 metres of an arterial road, require referral to the local Traffic Authority. The subject site is within 90 metres of Wyong Road, which is an arterial road within the meaning of SEPP 11 and therefore the application was referred to the Local Development Committee (LDC). The LDC comprised of representatives from the Roads and Traffic Authority (RTA) the NSW Police and Wyong Council.

The Committee originally objected to the development and requested additional information. Following the receipt of the requested information, the proposal was reconsidered and a number of conditions relating to pedestrian facilities; line marking and signage; traffic calming devices; a right turn storage lane; and internal access and parking design have been recommended, should the application be approved.

Since the application was lodged, SEPP 11 has been repealed with the referral requirements for traffic generating development are now included in SEPP (Infrastructure) 2007. However, as the subject application was lodged prior to the commencement of SEPP (Infrastructure) and remains undetermined, the provisions of SEPP (Infrastructure) do not apply as per the saving provisions of SEPP (Infrastructure).

State Environmental Planning Policy (Major Development) 2005

Development with a capital investment value of more than \$10 million are described as regionally significant development under the provisions of SEPP (Major Developments) and would usually be determined by the Hunter Central Coast Joint Regional Planning Panel (JRPP). However, in terms of the assessment of the current application, the SEPP contains savings and transitional provisions, which exclude development applications lodged prior to the commencement of the SEPP (Major Projects) Amendment (Joint Regional Planning Panels) 2009, being determined by the JRPP. As the current development application was lodged in March 2006, the provisions of the SEPP relating to the JRPP are not applicable to the current application and Council remains the consent authority.

Wyong Local Environmental Plan 1991

Clause 10 – Zone Objectives and Development Control Table

As previously discussed, the site of the proposed building is zoned 2(c) Medium Density Residential Zone, in which residential flat buildings are listed as being permissible with consent. Clause 10 also states that:

Except as otherwise provided by this plan, the Council must not grant consent to the carrying out of development on land to which this plan applies unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.

The zone objectives are:

- (a) *to cater primarily for residential flat buildings generally not exceeding a height of 3 storeys (except as otherwise provided for by clause 42B), and*
- (b) *to provide for other uses which:*
 - (i) *are compatible with the residential environment and afford services to residents at a local level, and*
 - (ii) *are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential uses, and*

(c) to provide home-based employment where such will not:

- (i) involve exposure to view from any public place of any unsightly matter, or raw material, equipment, machinery, product or stored finished goods, or
- (ii) have a material adverse impact on residents.

However, by virtue of Clause 42E of WLEP 1991, Council does not need to be satisfied that the proposed development is compatible with the zone objectives. Notwithstanding this, it should be noted that the proposed development is considered to be inconsistent with the objectives of the 2(c) zone in terms of the incompatibility of the proposed development with the adjoining low density residential uses and its likelihood to adversely affect residential amenity.

Clause 15 – Development on Land containing acid sulphate soils

WLEP 1991 requires special assessment to be given to certain development on land being subject to actual or potential acid sulphate soils. The site is identified as Class 5 (within 500m of Class 4 land) on the Acid Sulphate Soils Planning Map. For Class 5 land, any works that are likely to lower the water table in an adjacent Class 1, 2, 3 or 4 land to any point below 1 metre AHD, require more detailed assessment. No free groundwater was encountered during the geotechnical investigations for the site and therefore, no further assessment of acid sulphate soils is required.

Clause 28 – Tree Management

This clause requires development consent to be granted for the removal of trees or native vegetation. The site has previously been cleared with the proposed development requiring minimal removal of vegetation. Mature trees have been identified on the frontage to Woodbury Park Drive and the eastern boundary of the site. These trees would be retained under the proposed development. Requirements for the APZ's include maintaining a clean and mown understorey, separating the tree canopy and shrub connectivity and maintaining tree canopies and shrubs so that they are clear of the tower buildings by at least five metres.

Clause 29 – Services

This clause requires all new development to have an adequate water supply and facilities for the removal or disposal of sewage and drainage. Water, sewer and stormwater connections are all available from services in Woodbury Park Drive. Monetary contributions for both water supply and sewerage are applicable to the development in accordance with the Water Management Act 2000.

Clause 42E – Erection of medium or high-rise building at Woodbury Park Drive, Mardi

The specific provisions of clause 42E of WLEP 1991 have been addressed previously in the discussion regarding permissibility.

Development Control Plan 2005, Chapter 96 – Woodbury Apartments

On 14 May 2003, Council resolved that a DCP for the subject site be adopted following the gazettal of the WLEP 1991 amendment to permit development to a maximum height of 33.5 metre and 29 metres on the subject site. On 7 April 2004, the site specific DCP Chapter 96 – Woodbury Apartments became operational.

The DCP aims to achieve the following:

- Design of the completed building(s) and surrounds to provide an important visual landmark to enhance the aesthetic qualities of the locality.
- A residential development which increases the range of housing choices close to recreation, employment, retail and transport opportunities in the Tuggerah precinct.
- Integration and co-ordination of landscape works with the adjoining land.
- Restriction of development within Lot 623 to maintain an open space corridor between Council land and the development.

The proposed development generally complies with the DCP, with the exception of minor variations to a setback and the height of roof structures as summarised previously in the report. The level of compliance with the specific requirements of the DCP is outlined in the table below.

| Clause | Required | Proposed | Compliance |
|--|---|--|------------|
| 2.1 Building Design | DA to be prepared by a suitably qualified Architect in association with a Landscape Architect listed in Category 3 under Council's Landscape Policy. | Registered architect provided design verification and landscape architect is listed under Council's landscape policy. | Yes |
| | Where development is proposed for a medium or high rise building within the meaning of Clause 42E of Wyong LEP 1991, the preferred form of development is a combination of at least two residential tower elements to minimise the impact of the bulk of the buildings. | Two residential towers are proposed although this is not supported by the SEPP 65 Design Review Panel. | Yes |
| 2.2 Setbacks | The minimum setback required along Woodbury Park Drive for any building(s) is 10m and only landscaping will be permitted within the setback. | Only landscaping and the vehicular access to the site are proposed within the front 10 metre setback. | Yes |
| 2.2.1 Woodbury Park Drive Setback | The building setback to Woodbury Park Drive for any structures in excess of 10m is 17.5m. | No part of the building is within 17.5m of Woodbury Park Drive. | Yes |
| 2.2.2 Existing Residential Development (Eastern Boundary) | The setback to the eastern boundary for any building(s) is 10m. Carparking integrated with landscaping may be provided within this setback. | 10 metres (min) proposed | Yes |
| 2.2.3 7(a) Conservation Land | The setback of any building(s) along the boundary of Lot 623 shall be an average of not less than 15m and for medium or high rise building(s) in excess of 10 m high, the minimum setback is 5m. | The podium comes within 5 m of the boundary although the component of the building that exceeds 10 m is setback more than 5 m. | Yes |
| | The building setback along the southern | 1.5 metre encroachment of the | 15% |

| Clause | Required | Proposed | Compliance |
|--|---|---|---------------------------|
| | boundary adjoining the 7(a) land for medium or high rise building(s) and any podium level is 10m. Car parking integrated with landscaping may be provided within this setback. | podium in the south western corner of the site. | variation in SW corner. |
| 2.2.4 Balconies | Balconies may encroach on the eastern and southern side setbacks only where it can be demonstrated that the encroachment is essential to the building design to provide articulation of facades, it will not lead to loss of privacy for adjoining development and the encroachment is no more than half the width. | No encroachment proposed. | Yes |
| 2.3 Articulation of Wall Design | Monotonous and unbroken lengths of walls are to be generally avoided. Any unbroken length of wall is not to exceed 10m. | No unbroken walls in excess of 10 metres. | Yes |
| | Suitable design elements shall be incorporated to provide architectural interest and relief. This may include such devices as massing of different materials, stepping of walls, pergolas and verandah roofs. | Articulation of walls, balconies and screens provided to create architectural interest. | Yes |
| 2.4 Height | The building height map indicates a maximum height of 33.5m for the tower on the west whilst a maximum height of 29.0m for the tower on the east. The height of the building at any point shall be measured from the existing natural ground level to the ceiling of the topmost storey. | West tower = max. 33.5m East tower = max 29 m | Yes |
| | Structures including lift wells and elements of the roof form should generally not exceed the ceiling height by more than 4m. | Roof structures approximately 4.05 m | 1.2% variation. |
| 2.5 Site Coverage | Lot 623 shall be retained as landscaped area. | The visitor parking has been removed from this area and no works are proposed within Lot 623. | Yes |
| | A minimum of 25 % of Lot 622 shall be retained as landscaped area = 1732m ² Maximum site coverage for buildings shall be: - for a podium level up to 10m high a maximum of 45%; and - for medium or high rise residential buildings a maximum of 20%. | Approximately 1800 m ² Approximately 45% Approximately 17% | Yes Yes Yes |
| 2.6 Density | Previous DCP 64 as referenced in DCP 96: The required site area per dwelling type (m ²) | Proposed: 34 x 3 bed = 2822 37 x 2 bed = 2220 | Yes |

| Clause | Required | Proposed | Compliance |
|--|--|--|--|
| | <p>1 Bed 43 2 Bed 60 3 Bed 83</p> <p>Under the current provisions, the FSR for high rise development is 1.5:1 = 13510.5m²</p> | <p>17 x 1 bed = 731</p> <p>Total required = 5773 m² Based on the number of dwelling types, the proposal requires a site of 5773 m². Lot 622 has an area of 6928 m² and Lot 623 has an area of 2079 m² The total site area is 9007 m².</p> <p>GFA is approximately 10,710 m².</p> | |
| 2.7 Materials and Colours | <p>A variety of materials are encouraged as part of the overall design provided continuity is maintained. However, reflective glass is not to be used.</p> <p>Both materials and colours should assist the integration of the development into its landscape context.</p> | Materials board provided. | Yes |
| 2.8 Roof Form | <p>Without compromising the intent of the restriction on the height of buildings, any medium or high rise residential buildings shall have a roof form which is designed and integrated with the building in a way that is both interesting and attractive. The use of curved profiles, colour, parapets and individual roof elements will be required to create an interesting roof form.</p> | <p>The roof pitch is related to the building envelope being formed by natural ground level.</p> <p>The roof form uses monopitch forms to create interest and screen roof structures. The use of curved profiles, colour and parapets has not been adopted as this would be likely to exaggerate the perceived bulk and height of the buildings.</p> | Yes |
| 3.0 Site Amenity 3.1 Open Space | <p>The development shall incorporate communal open space at a minimum rate of 10 square metres per dwelling and with a minimum width of 5m. This space may be provided on a podium level. 86 units x 10m² = 860m²</p> | <p>A total of 1,540 m² of communal open space is provided. Indoor communal facilities are also proposed including a gym, meeting rooms and a pool.</p> | Yes |
| | <p>Private open space to units above ground level shall be provided by balconies with a minimum area of 10m², with a minimum dimension of at least 2m.</p> | <p>Each unit has a terrace, balcony or loggia that meets the minimum dimensions.</p> | Yes |
| | <p>The communal open space is to be landscaped and may include such items as barbeque facilities, outdoor seating, tennis courts, playground equipment and swimming pool as appropriate to the scale of the development.</p> | <p>Barbecue facilities and seating are provided on the podium level. An indoor swimming pool and gymnasium are provided in addition to open space.</p> | Yes |
| | <p>Storage facilities for ground maintenance equipment such as garden tools should be provided.</p> | <p>Provided within parking levels.</p> | Yes |
| 3.2 Sunshine & Amenity | <p>Council requires the preparation and submission of shadow diagrams in order to determine the impact of a proposal on</p> | <p>Shadow diagrams are provided, which show that adjoining properties will start to be impacted</p> | <p>Information submitted, although</p> |

| Clause | Required | Proposed | Compliance |
|--|---|---|---|
| | <p>buildings and landscaped areas on site and the adjoining land.</p> <p>This information is required as part of the development application, showing impact on the subject property and adjoining properties from shadow casting at 9am, 12 noon and 3pm on June 21 with the diagrams based on a survey of the relevant site and adjoining development.</p> | <p>from approximately 1 pm onwards in mid winter, which is acceptable.</p> <p>Within the development, units with a northern orientation (i.e. approx. 60% in each building) would receive good levels of sunlight during mid winter. Approx 20% of units within the eastern tower block would receive morning sunlight with approx 20% of units within the western block receiving afternoon sunlight that equates to less than 3 hours in mid winter. The other 20% of units in both buildings will receive poor levels of sunlight as these units face towards the centre of the site and have a south easterly or south westerly aspect. Therefore the proposal does not appear to satisfy the 70% rule of thumb required by the RFDC.</p> | <p>less than 70% of units receive at least 3 hours direct sunlight during mid winter.</p> |
| 3.3 Landscape Works | <p>The key elements of the landscape design themes are:</p> <ul style="list-style-type: none"> - Integrate proposed works with the adjoining reserve. - Undertake landscape works in the road reserve such as street tree planting and paving, to tie in with the proposed development. - Focus site works to create an integrated residential development in a parkland setting. | <p>A Category 3 Landscaping Report has been provided which provides for a natural transition between the rear of the site and the reserve, the retention of the existing tree at the entrance from Woodbury Park Drive and opportunities for outdoor recreation by the residents.</p> | <p>Yes</p> |
| 4.0 Traffic and Access 4.1 Car Parking Requirements | <p>Carparking requirements to be in accordance with Council's DCP No 61. However, carparking rates for residential flat buildings has been updated as part of DCP 64, which will be used in stead of DCP 61.</p> <p>The following number of units are proposed: 34 x 3 bed = 51 @1.5/unit 37 x 2 bed = 44.1 @1.2/unit 17 x 1 bed = 17 @1/unit Visitors = 17.6 @1/5 units</p> <p>112 resident spaces + 18 visitor spaces = 130 spaces.</p> | <p>133 on-site carparking spaces provided.</p> | <p>Yes</p> |
| 4.2 Road Works | <p>Access will be via Woodbury Park Drive which is a main collector road. Access to the site shall be provided generally in accordance with the intersection layout shown in Figure 4</p> | <p>The proposed access arrangement is in keeping with (but not identical) to the plan contained within the DCP. No concerns have been raised by Councils' engineer or LDC.</p> | <p>Yes</p> |
| | <p>Any development application is to include a traffic management plan for this section of Woodbury Park Drive.</p> | <p>A Traffic Impact Assessment has been submitted</p> | <p>Yes. Subject to recommend</p> |

| Clause | Required | Proposed | Compliance |
|--|---|---|---|
| | | | ations of LDC. |
| 5.0 Other Development Considerations | The development is to be connected to the water and sewer system with any costs of upgrading to be met by the development. | Both water and sewer available. | Yes |
| 5.1 Services | | | |
| 5.2 Section 94 and Works in Kind | <p>Council has an adopted Contributions Plan No.1 – Wyong District and Part Rural West District, for this locality which identifies the need for the following public works and services:</p> <ul style="list-style-type: none"> - Community facilities – land and facilities. - Open space – embellishment. - Roadworks – intersection improvements. <p>Council may consider any proposal for work in kind such as upgrading the adjoining reserve in the vicinity of the development in accordance with its policy.</p> | Standard contributions apply. | Yes |
| 5.3 Water Sensitive Urban Design | <p>The site drains via pipes under Woodbury Park Drive into the main stormwater system. The site drainage system shall:</p> <ul style="list-style-type: none"> - incorporate permanent pre-treatment water quality devices which will remove both litter and coarse bedload sediments prior to discharge to the Woodbury Park drive piped drainage; - include a series of catch drains as necessary to ensure that no runoff leaves the development area other than via water quality control structures; and - where practicable, include harvesting of on-site surface runoff for retention and reuse, particularly for irrigation of landscaping. | Stormwater plan submitted | Yes (subject to conditions relating to detailed design) |
| | In addition, all fixtures including toilet cisterns, showerheads and sink/basin aerator taps shall have an 'AAA' rating. | Now achieved through BASIX assessment. | Yes |
| 6.0 Relationship to Surrounding Development | The site is bounded by areas of conservation land on the northern and western boundaries. Any design proposal is not to be inconsistent with Council planning for these areas. | Council has no current plans for the adjoining land. | N/A |
| 6.1 Reserve Improvements | | | |
| 6.2 Pedestrians and Cycleways | Provision for cycleways and pedestrian pathways have been incorporated in the overall master plan for Woodbury Park Estate. The development is to ensure that these are retained. | The proposed development does not alter or interrupt the existing cycleways. | Yes |
| | Pedestrian access across Woodbury Park Drive shall be provided generally as illustrated in Figure 4. | Pedestrian access along the street frontage will be provided generally in accordance with Figure 4 and in accordance with LDC requirements. | Yes |
| 7.0 | DA to be prepared by a suitably | DA prepared by Andrews. Neil | Yes |

| Clause | Required | Proposed | Compliance |
|---|---|---|------------|
| Development Application Requirements 7.1 Professional Presentation | qualified architect with experience in multistorey residential development. All site works, proposals for reserve embellishment and works in the road reserve are to be prepared by a Category 3 consultant for the purposes of Council's Landscape Policy. | who are experienced in architecture, planning, landscape, environment and urban design. | |
| 7.2 Supporting Documentation | DA to include: <ul style="list-style-type: none"> • A site analysis which includes details of the site's physical characteristics (topography, vegetation etc), existing development and adjoining development likely to be affected by the proposed development. • Shadow Diagrams • A SEE including measures taken to mitigate any likely adverse environmental impact. • Concept plan for any remaining stages not included in the initial proposal. • Bushfire management strategy | All required supporting information submitted as part of the DA. | Yes |

Despite the proposals general level of compliance with the requirements of the DCP, there are significant conflicts between the provisions of the DCP and the design quality principles of SEPP 65. As a result, many of the design flaws identified by the CCDRP and the independent consultant appear to be a result of the proposal being designed in accordance with the DCP requirements and its inconsistencies with SEPP 65.

Specifically, the DCP encourages development in the form of two residential tower elements to the height indicated on the WLEP 1991 Building Height Map and the incorporation of a podium up to 10 metres high. In this regard, the DRP is of the opinion that the height is excessive for the site and that the podium is unacceptable resulting in a poor design that is visually bulky and of non-pedestrian scale. The DRP also raised concerns in relation to the two towers and the building envelopes, which do not comply with separation distances as recommended in the Residential Flat Design Code.

It should be noted that the DCP was not reviewed by the CCDRP prior to its adoption and that the more recent design quality controls of SEPP 65 must be given greater weight than the provisions of a DCP in the assessment process.

Development Control Plan 2005, Chapter 64 – Medium Density Residential Development

This DCP Chapter states that where there is any inconsistency between the provisions of this DCP and any site specific DCP, the provisions of the site or locally specific DCP shall apply. The proposal is generally consistent with the DCP Chapter 64, as well as the site specific DCP as detailed above.

Development Control Plan 2005, Chapter 69 – Waste Management

A Waste Management Plan for the construction and ongoing use of the building has been submitted in accordance with the DCP.

Development Control Plan 2005, Chapter 67 – Engineering Requirements for Development

The proposed civil works would need to be undertaken in accordance with Council's DCP Chapter 67. Should the application be approved, compliance with relevant standards can be dealt with via conditions of consent.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):***The relationship to the regional and local context and setting***

The site is located at the corner of Woodbury Park Drive, which is accessed from a major roundabout off Wyong Road. The interface of Woodbury Park Drive is created by a significant bushland pocket which is Council owned Community land. This land is zoned 7(a) Conservation and therefore will remain bushland in the foreseeable future. Being located at the bend in Woodbury Park Drive, the site is a visual focus for vehicle and pedestrian movement both from Wyong Road going north and also from Woodbury Park Drive heading east/west along Wyong Road.

The site is surrounded immediately to the north, south and west by dense vegetation and by low density single dwellings to the east. The Westfield shopping centre at Tuggerah is located to the south, across Wyong Road, the F3 Freeway is located approximately 450 metres to the west of the site and Tuggerah Railway Station is approximately 1.1 km to the east. The site therefore provides an opportunity for greater density, although pedestrian connectivity is compromised due to the car dominated environment.

Woodbury Park Drive is a residential street with the remainder of the street comprised of low scale 1-2 storey dwellings and dual occupancies. The streetscape is composed of lawns, street tree planting, green verges and the dwellings themselves. Council's Urban Design Consultant has identified the rhythm of the street as being created by the lot frontage widths which create the 'grain' of the street and also dictate the solid to void ratio of housing enclosure and side boundary landscape. Given the low density environment, it is considered important that any development on this site responds sensitively to the grain of the area and its lower scale character.

Council's Urban Design Consultant has identified the following key contextual considerations:

- The low scale dwelling development to the east.
- The bushland character and retaining its dominance in the entry experience into Woodbury Park Drive.
- The importance of retaining the green ridge when viewed from public places and within distance views.
- The role of the site in terminating the axial view into Woodbury Park Drive from the roundabout with Wyong Road.
- The immediate proximity of the two dual occupancy dwellings adjacent to the site.
- The finer grain and human scale of the rest of the street.

The access, transport and traffic management measures

The subject site is well situated for commuters, being located close to bus services, Tuggerah Railway Station and the F3 Freeway.

External Roads

Vehicular access to the site is from Woodbury Park Drive, which is a local road in good condition. However, the access to the site is within 90 metres of an arterial road (Wyang Road) and given the number of apartments proposed, a referral to the LDC was required in accordance with SEPP 11. Should the application be approved, a range of external road works would be required as recommended by the LDC:

- Right turn storage lane required on Woodbury Park Drive at the entry to the development
- Pedestrian facilities linking the development to Westfields Shopping Centre and local Public School.
- A pedestrian refuge on Woodbury Park Drive approximately 20-30m east of entry point.
- Footpaths along the full frontage of the development in Woodbury Park Drive to connect with the proposed refuge and the existing footpath on the northern and southern sides of Woodbury Park Drive.
- Signposts directing pedestrians to the appropriate crossing facilities.
- A sign and linemarking plan including “No Stopping” restrictions on both sides of Woodbury Park Drive from Wyong Road to the development access point.
- Identify location and facilities required for a bus zone in the vicinity of the proposed development
- Enclose/fill in existing refuge area on western leg of roundabout on Wyong Rd.
- Raised thresholds to be installed on Woodbury Park Drive in both directions (northbound approximately 50-100m north Wyong Rd, westbound approximately 50m east of development entry).

Internal Access Arrangements

The vehicle access would need to be constructed to accommodate two-way traffic movements to service the basement car parking areas, loading dock and refuge areas. The access will include the provision of a traffic calming device to ensure low speeds are maintained adjacent the pedestrian pathways and lobby areas. The circular one-way entry/exit around the existing Blackbutt tree would need to be conditioned to incorporate a porous pavement system to maintain air and water flow to the drip zone. Minor amendments to the car parking area would also be required to ensure safety for the users of the disabled carparking spaces.

Carparking

Carparking requirements have been calculated in accordance with DCP Chapter 64, which provides the most up to date rates for residential flat buildings (note DCP Chapter 61 – Carparking has not been updated to be consistent with DCP Chapter 64). Based on the following, 130 carparking spaces are required:

| | |
|----------------------|--------|
| 34 x 3 bed @1.5/unit | = 51 |
| 37 x 2 bed @1.2/unit | = 44.1 |
| 17 x 1 bed @1/unit | = 17 |
| Visitors @1/5 units | = 17.6 |

Total = 130 spaces (including 18 visitors and 112 resident spaces)

The proposal incorporates 133 spaces within the two storey podium, although proposes 23 visitor spaces and 110 resident spaces. While the total number of spaces complies, a number of minor modifications would be required to ensure compliance with Australian Standard 2890.1, which could be addressed through conditions of consent.

The impact on the public domain (recreation, public open space, pedestrian links)

The application proposes the construction of a 1.2m wide pedestrian footpath along the northern side of Woodbury Park Drive to provide pedestrian access to and from the development to the existing pedestrian over bridge to Westfield shopping centre and towards Tuggerah Railway Station. Additional pedestrian facilities have also been recommended by the LDC.

The impact on utilities supply

Water is available to the site from an existing 100 mm water main that is located on the northern alignment of Woodbury Park Drive.

Sewer is available to the site via Line “1” that gravitates to the Sewerage Pump Station WS8 catchment area. The existing system could accommodate the proposed loading. Should consent be granted, the application would need to apply to Council for details of the requirements under the Water Management Act 2000, relating to both water and sewer services.

The applicant has also advised that electricity, telephone and natural gas services are also available to the site.

The effect on heritage significance.

There are no items of heritage significance within the vicinity of the site.

Any effect on other land resources.

The site does not contain any valuable land resources such as minerals, extractive resources or agricultural land.

Any impact on the conservation of water.

The preliminary stormwater drainage details submitted with the application are satisfactory subject to the appropriate conditions and minor amendment of the contour drainage system. All stormwater drainage diversion and collection structures and pipelines controlling up stream overland stormwater flow are to be located within the subject site. Discharge into Woodbury Park Drive is to be made via a 375mm diameter pipeline into the main channel.

The stormwater drainage management system for the site will incorporate rain water re-use tanks in accordance with BASIX requirements to service landscaping, laundry use and toilet flushing and the collection/discharge of hardstand runoff with the appropriate trash/pollutant retention devices.

Any effect on the conservation of soils or acid sulphate soils.

A preliminary geotechnical investigation was undertaken by Douglas Partners Pty Ltd to provide information on the subsurface conditions for the assessment of geotechnical issues relevant to the design of excavations, retaining systems and foundations associated with the proposed development. The investigation comprised the drilling of test bores; supplemented by in-situ testing.

Site levels fall from RL 41 – 38 m AHD at the ridge to RL 8 m AHD at the boundary with Woodbury Park Drive in the south eastern corner. Levels over the area of the proposed building envelope range from RL 25 m AHD to approximately RL 10 m AHD. The preliminary investigation was undertaken on the assumption that maximum excavation depths would be approximately 11 m (to as low as RL 10 m AHD) along the northern and north-western sides of the building footprint, grading to zero towards the southern side of the site. The preliminary geotechnical investigation confirmed the presence of colluvial and residual soils overlying extremely low strength sandstone/siltstone. Based on the results of the preliminary investigation, the anticipated foundation material is considered adequate to support the proposed construction subject to sound engineering design. The report also identified that the majority of excavated material would need to be disposed of off-site and therefore would need to be classified prior to disposal.

The excavation required for the construction of the development, has the potential to result in soil erosion and sediment runoff, particularly given the slope of the site. The stormwater plans submitted with the application address erosion and sediment runoff and conditions could be imposed to ensure adequate measures are in place.

Any effect on quality of air and microclimate conditions.

The proposed development is unlikely to have a detrimental impact on air quality or microclimate conditions.

Any effect on the flora and fauna.

The site contains a number of trees around the perimeter as well as one large tree at the front of the site. The large tree at the front of the site has been identified as a Blackbutt (*Eucalyptus pilularis*) and is proposed to be retained as part of the development. It has a height of approximately 30 metres and would assist in providing scale to the proposed buildings. An arborist's report, prepared by Advanced Treescape Consulting was submitted with the application to assess the likelihood of retention following construction.

Compliance with the recommendations of the Arborist's report would be required as a condition if the application is approved.

The CCDRP also commented on the potential for the proposed development to impact vegetation on the adjoining site to the south, particularly in terms of an altered stormwater regime, overshadowing and the extent of excavation and retaining proposed. As a result of design changes during the assessment of the application, the proposed excavation of the site has been reduced by eliminating all parking from Lot 623, which is now proposed to remain as a natural buffer area and managed asset protection zone. In terms of the surrounding bush land to the south of the site, the stormwater design has been modified to maintain existing flows to this area, noting that surface water is currently diverted from the subject site through a series of channels. The overshadowing impacts on natural vegetation is also expected to be minimal as this area is on the southern side of the ridge and currently experiences overshadowing.

The provision of waste facilities.

Garbage chutes for each floor are proposed on the southern side of the lift core in each building. There are two garbage chutes, one for recyclable waste and one for non-recyclable waste. Both chutes are located in rooms that are enclosed which would increase the amenity of the lift core and reduce odour.

Two garbage collection points are located in the basement to cater for each building. Garbage would be collected by the maintenance team and taken to the loading dock for garbage collection. The development is capable of being serviced by Council's waste collection contractors.

Whether the development will be energy efficient.

A BASIX Certificate has been issued for the proposal, which certifies that the energy and thermal comfort targets can be achieved.

Whether the development will cause noise and vibration.

Some noise would be generated from the site at the construction phase as well as ongoing noise from air conditioners, mechanical ventilation and plant rooms. Should the application be approved, it is recommended that a report from a suitably qualified acoustic consultant be submitted to identify noise sources that could potentially impact adjoining properties to the east of the site. The report would also be required to identify how these impacts can be mitigated.

Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).

A Bushfire Protection Assessment Report was submitted with the application, as the site is located within a Vegetation Category 1 Bushfire Prone Area. The subject site has previously been cleared of vegetation and contains mown grass and scattered remnant Open Forest vegetation. The land to the east and southeast is occupied by existing residential development and the surrounding land to the north, northwest, west and southwest contains unmanaged vegetation within land owned by Council (classified as Community Land).

The proposal does not require a Bushfire Safety Authority under section 100B of the Rural Fires Act, as it does not include subdivision, although the application was referred to the NSW Rural Fire Service (RFS) as part of the assessment in anticipation that the building would be strata subdivided if approved and constructed. The RFS has recommended a number of conditions, should the application be approved.

The Bushfire Protection Assessment submitted with the application identifies the need for APZ's and a fire trail for access. However, the proposed APZ's extend outside the subject site and are proposed to be located partially over the Council owned Community land immediately to the south of the site. This area of land also contains a 10 metre wide easement for twin water pipes, which runs along the boundary of Council's land as indicatively shown below:

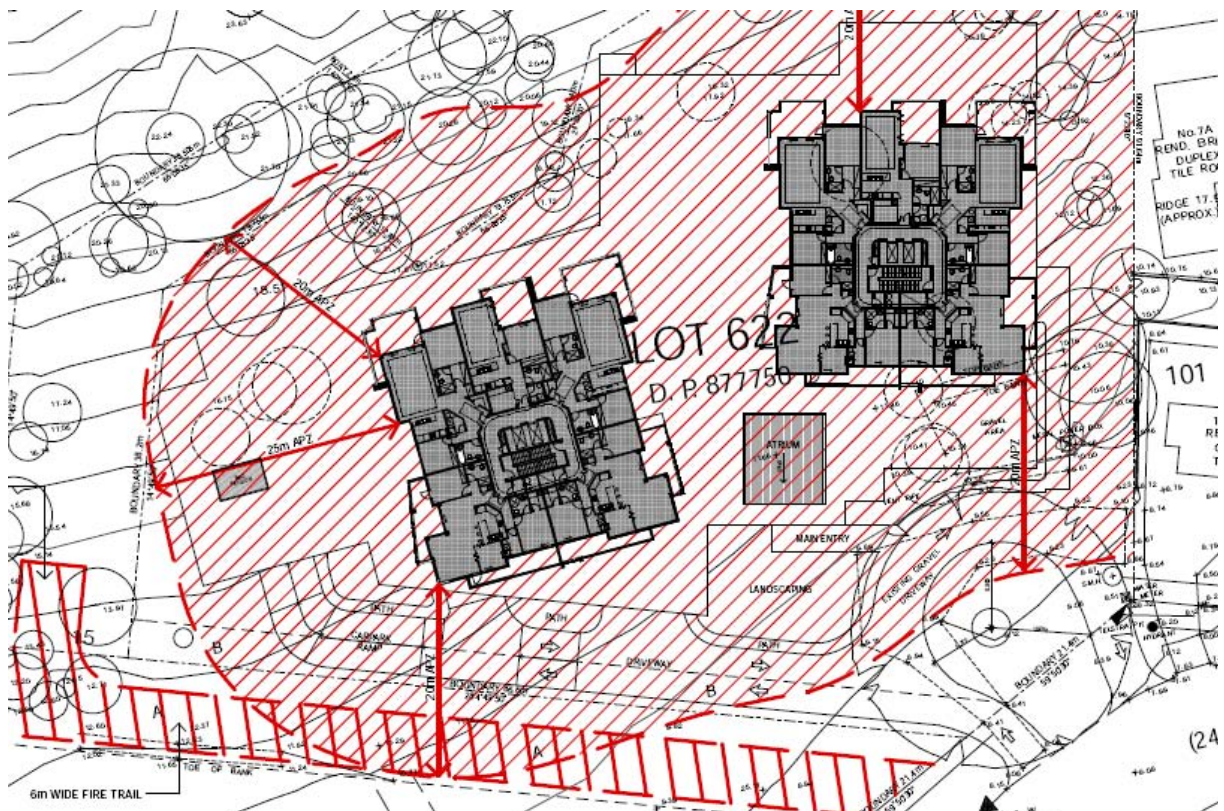
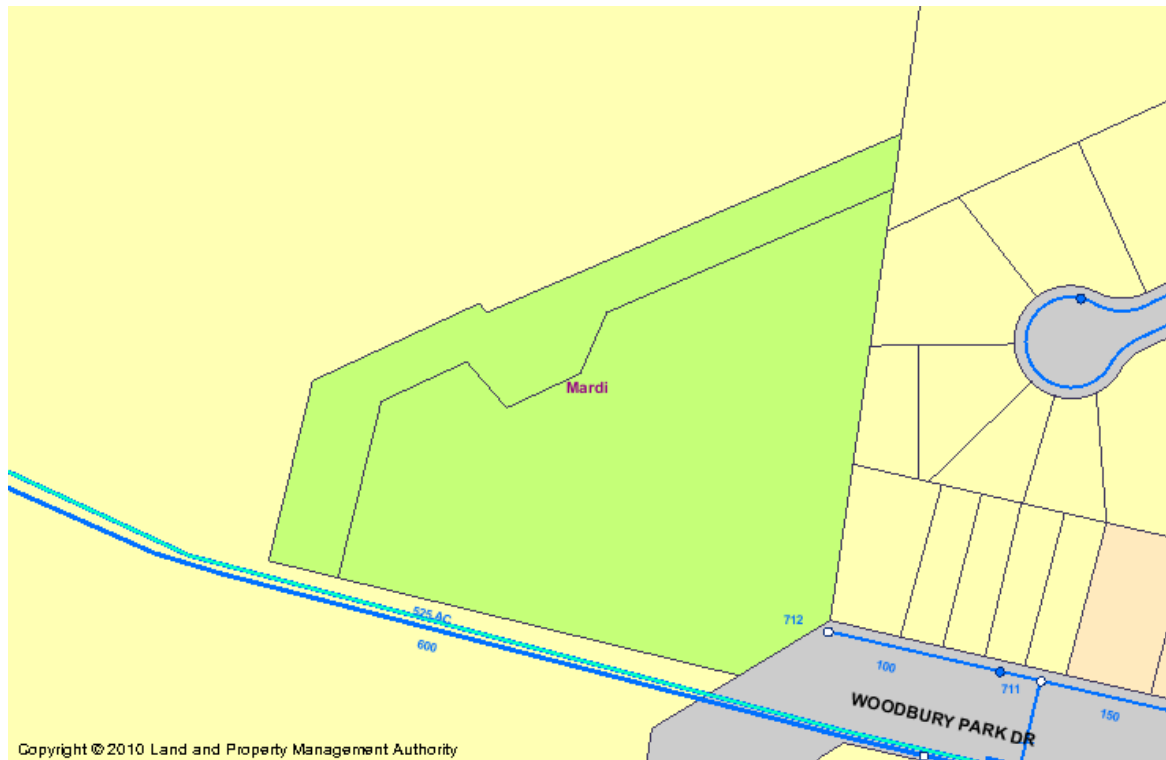


Figure 5: Proposed fire trail over Council Community land and extent of APZ's.



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Figure 6: Approximate location of twin water supply pipes.

In considering whether the use of Community land for the purpose of a private APZ is appropriate, a number of issues were considered. These included:

1. Issues of liability for the maintenance of the APZ and terms and conditions of the necessary easements;
2. The provisions of the site specific DCP, which sets building footprints, setbacks and other design criteria, which would not be able to be achieved if the APZ is to be contained completely within the site;
3. The public interest; and
4. The need to maintain Council access to an existing water easement and the integrity of the pipeline.

Given the issues that have been identified with the overall design of the proposal and considering the number of public submissions objecting to the development, it is not considered appropriate to utilise Community land for the purpose of a private APZ in this instance. In addition, the construction of the proposed fire trail has the potential to impact on the existing water mains, which poses a risk to the Council's infrastructure and water supply.

Should the application be approved, compliance with the recommendations of the bushfire assessment report and the RFS would need to be included as a condition of consent. It would also be necessary for the applicant to enter into a legal agreement with Council (as both the land owner and the water authority) in relation to the design and construction of the fire trail and the maintenance of the APZ.

Any risks from technological hazards.

There are no known technological hazards affecting the site. The high voltage power line, which parallel the F3 Freeway are located approximately 350 metres to the west of the site.

Whether the development provides safety, security and crime prevention.

A Crime Risk Assessment prepared in accordance with the principles of Crime Prevention through Environmental Design (CPTED) was submitted with the application, which recommended the implementation of lighting, CCTV cameras, access cards, and graffiti resistant transparent materials in specific locations.

In accordance with Council's Crime Risk Assessment Protocol, the application was also referred to the NSW Police, Tuggerah Lakes Local Area Command (LAC), who made a number of recommendations aimed at reducing criminal offences such as break, enter and steal, stolen motor vehicles and vandalism. Should the application be approved, the recommendations of the NSW Police should be included as conditions of consent.

Any social impact in the locality.

The locality is characterised by low and medium density housing and therefore the proposed development would introduce a greater mix of housing choice.

Any economic impact in the locality.

The proposed development is unlikely to have any detrimental economic impact in the area.

Any impact of site design and internal design.

When the application was lodged, a number of areas of non-compliance were identified with the design. This included the height of the building which was proposed to be 11 and 13 storeys, which exceeded the height limit map adopted under WLEP 1991. As such, an objection to the development standard was lodged under SEPP No 1 – Development Standards, which sought to use SEPP 1 to vary the permissible height limit. This was not supported and the applicant provided revised plans reducing the development to 10 and 12 storeys, which complies with the building height limits. The revised plans also addressed a number of other issues with the original design including the removal of all carparking and associated works from within Lot 623, and providing additional information in relation to bushfire protection, privacy and overshadowing. With the exception of a minor variation to the southern setback and the roof structure, the proposal now complies with the prescriptive requirements of the local planning policies for the site, including the WLEP 1991 and DCP Chapter 96 – Woodbury Apartments.

However, despite the high level of compliance with the relevant controls, significant design flaws have been raised by Council, the Central Coast Design Review Panel, an independent architect and urban design consultant, as well as the public.

Any impacts of construction activities (construction site management, protection measures).

The construction phase of the development has the potential to cause noise, dust and traffic impacts. If the application is approved, standard conditions of consent would need to be applied to address these issues.

Any cumulative impacts.

No further issues identified.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):

As previously discussed in the report, the proposed development is out of character with the existing development to the east of the site and the surrounding bushland areas, which are zoned 7(a) Conservation.

The building footprint is also excessive when considering the site constraints given that the required APZ cannot be provided for within the development site.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):***Any submission from the public.***

The development application was placed on public exhibition for six (6) weeks, between 24 March and 2 May 2006. During that time a number of community organised meetings were held (Council staff not attending) and there was wide spread media coverage. A total of 1102 submissions, including 904 form letters were received opposing the development, although this included a number of duplicates. After identifying the duplicate letters, 678 submissions were received. This included 195 letters from unidentifiable sources (i.e. the name was not legible or no address was provided) and 65 petitions. The majority of letters received were form letters. Following the receipt of amended plans, the application was re-advertised for a period of two weeks and previous objectors were notified. A further 29 submissions were received. However, as the majority of the submissions initially received objected to high rise development in general within the Mardi area, it is considered that the amended plans have not satisfied their concerns and that their objections are still applicable to the current design.

In summary, the issues raised included:

| Summary of Issues | Response |
|--|---|
| Height - No other developments in the area over 2 storeys and this is out of character. | It is acknowledged that the building proposed is a substantial departure from the scale and form of development that currently exists in Mardi. Despite the WLEP 1991 permitting development to a height of 29 and 33.5 metres, the design of the proposed development does not satisfy the design principles of SEPP 65 particularly in terms of context, scale and amenity (privacy) to neighbours. |
| Character - Out of character with the existing area of low residential properties. | Agreed. Refer to comments above and SEPP 65 discussion in report. |
| Privacy – Windows and balconies will overlook private yards and homes surrounding area. | Privacy has been addressed by the applicant through design changes including the selection of the size and orientation of the window alignment, privacy screening to the balcony areas and the alignment of the two building structures. However, the impact on neighbouring properties is still of concern as included in SEPP 65 discussion. |

| | |
|--|--|
| Overshadowing – reduced sunlight to adjoining properties. | The shadow diagrams submitted with the application demonstrate that the proposed buildings would only impact adjoining properties in the afternoon and complies with Council's DCP. |
| Road safety and increased traffic – Woodbury Park Drive and roundabout at Wyong Road already overloaded. Cars also speed along Woodbury Park Drive past the childcare centre. | Traffic generated by the development can be accommodated by the existing road network and safety can be addressed through the provision of raised thresholds, a right turn lane and pedestrian refuges. A number of conditions would be required if the development is approved. |
| Infrastructure – Wyong Shire does not have the infrastructure for such development e.g water supply, medical services, and police. | The NSW Department of Planning's Central Coast Regional Strategy identifies the need for additional housing within Wyong Shire. |
| Loss of Bushland Views | The development would require some clearing although some trees would remain on the site. The trees surrounding the site to the north and west would not be impacted by the proposal. |

Any submission from public authorities.

Local Development Committee

SEPP 11 – Traffic Generating Development has now been repealed and superseded by SEPP (Infrastructure). In accordance with SEPP 11, the application was referred to the Local Development Committee (LDC), which included representatives from the RTA, NSW Police and Council). The Committee originally objected to the development and requested additional information. Following the receipt of the requested information, the proposal was reconsidered and a number of conditions were recommended.

NSW Police

The NSW Police Tuggerah Lakes Local Area Command have made a number of recommendations aimed at reducing recommended criminal offences such as break, enter and steal, stolen motor vehicles and vandalism. Should the application be approved, appropriate conditions would be required.

NSW Rural Fire Service

The RFS has recommended conditions of consent, should the application be approved. The RFS has also advised that any subsequent strata title subdivision of the development would be excluded under section 46A of the Rural Fires Regulation 2002, from the requirements for a bushfire safety authority.

The RFS also recommended that Council develop a plan for the ongoing management of vegetation on Lot 621 DP 877750.

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.
Wyong Tuggerah Planning Strategy

The subject site is not located within the strategy area and therefore is not applicable to this development application.

OTHER MATTERS FOR CONSIDERATION

Section 94 Contributions

Wyong/Rural West Section 94 Contributions Plan applies to the subject. As the application was lodged prior to the commencement of the Shire Wide Contribution Plan, it is not applicable. If the application is approved, Section 94 contributions must be levied on the basis of Development Units (DU's), which is determined by the number of units proposed and the number of bedrooms within each unit. For this application, the following would be applicable:

34 x 3 bedroom units = 34 DU
37 x 2-bedroom units = 27.01 DU
17 x 1 bedroom units = 8.84 DU
Total = 69.85 DU

In addition to the above, a search of the property history has identified that Council holds a bank guarantee for \$96,991.23 dated 1 April 1998 for the payment of section 94 contributions and water and sewer charges associated with DA No 471/1996, which was the subdivision which created the current parcels being, Lots 622 and 623 in DP 877750. Consequently, an amount of \$118,530.12 (as indexed to February 2011) remains outstanding against DA/471/1996 for the subject site, which was based on the rate for 1DU and a Net Developable Area (NDA) of 6928 m² for Lot 622. If this were to be paid, a 1DU credit would apply to the proposed residential flat development and the bank guarantee could be released.

Deed of Agreement

Should the application be approved, a deed of agreement or similar would need to be entered into in relation to the use of Council's land for an APZ and the ongoing maintenance of the APZ.

Section 88B Notations

The property title identifies that a right of carriageway, restriction on use and a positive covenant have been registered against the subject site. The right of carriageway provides legal access to Lot 623 through Lot 622 and has not impact on the proposed development.

The restriction on use is registered against lot 623 and states that Lot 623 shall not be used for any purpose other than bushfire hazard management, which is consistent with the proposed development. Further to this, the positive covenant requires Lot 622 and Lot 623 to be retained in the same ownership and for Lot 623 to remain as a fire fuel free zone. These restrictions have not impact on the proposed development.

CONCLUSION

While the proposal generally complies with the site specific controls, many of the planning and design controls contained within the DCP are contrary to State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Flat Development, which provides design principles aimed at improving the design of residential flat development. This has resulted in the Central Coast Design Review Panel and an independent Urban Design Consultant providing advice strongly opposing the development.

In addition to the design merits of the proposal, the development also relies on the use of Community Land to achieve the minimum requirements for bushfire protection. Based on the design issues that have been identified and the public objection to the proposal, it is not considered appropriate to utilise Community Land for the purpose of an APZ and fire trail to permit the proposed development.

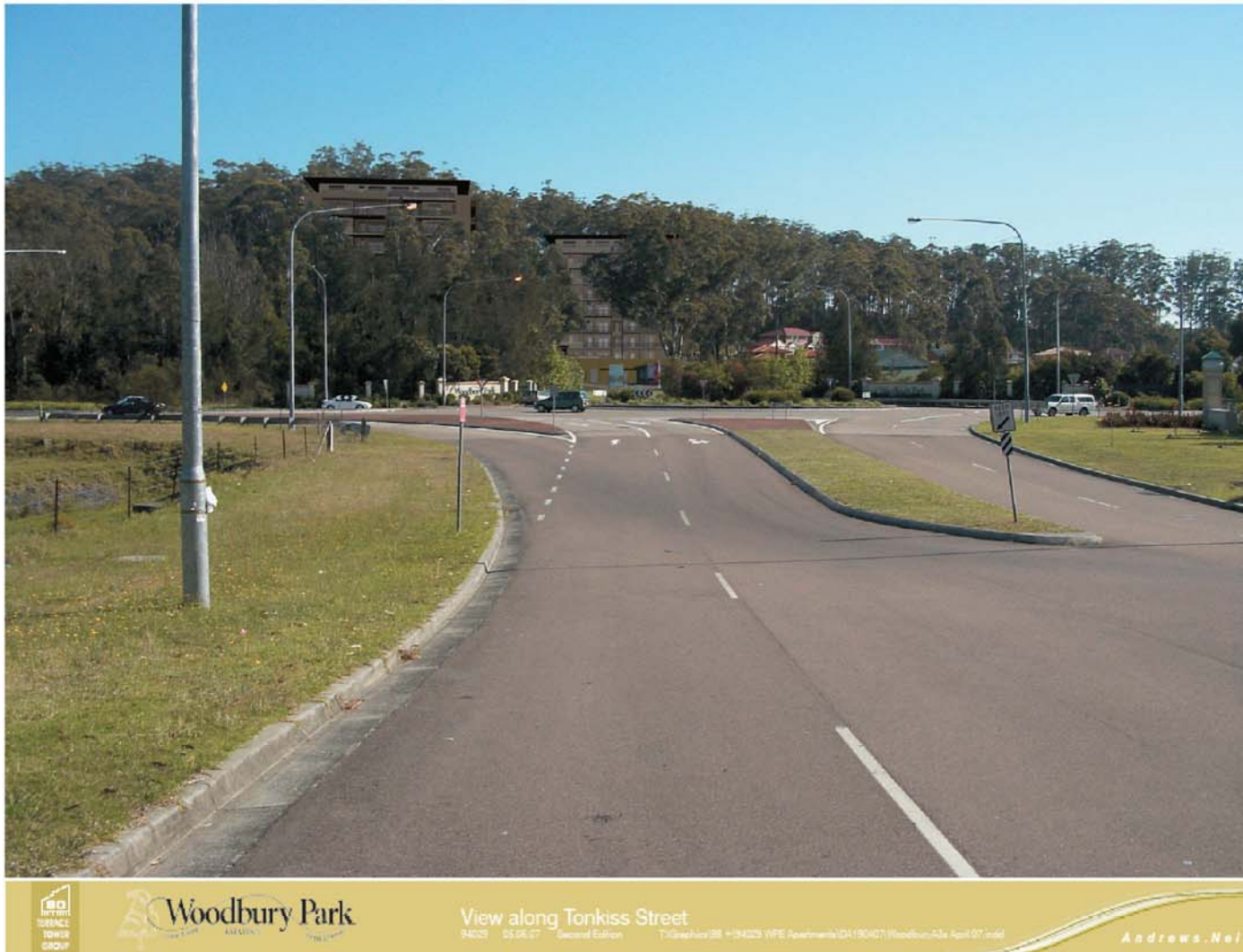
On the basis that the proposed development represents a poor design outcome, is not in the interests of the greater community and relies on the use of Community Land for adequate bushfire protection, the application is recommended for refusal.

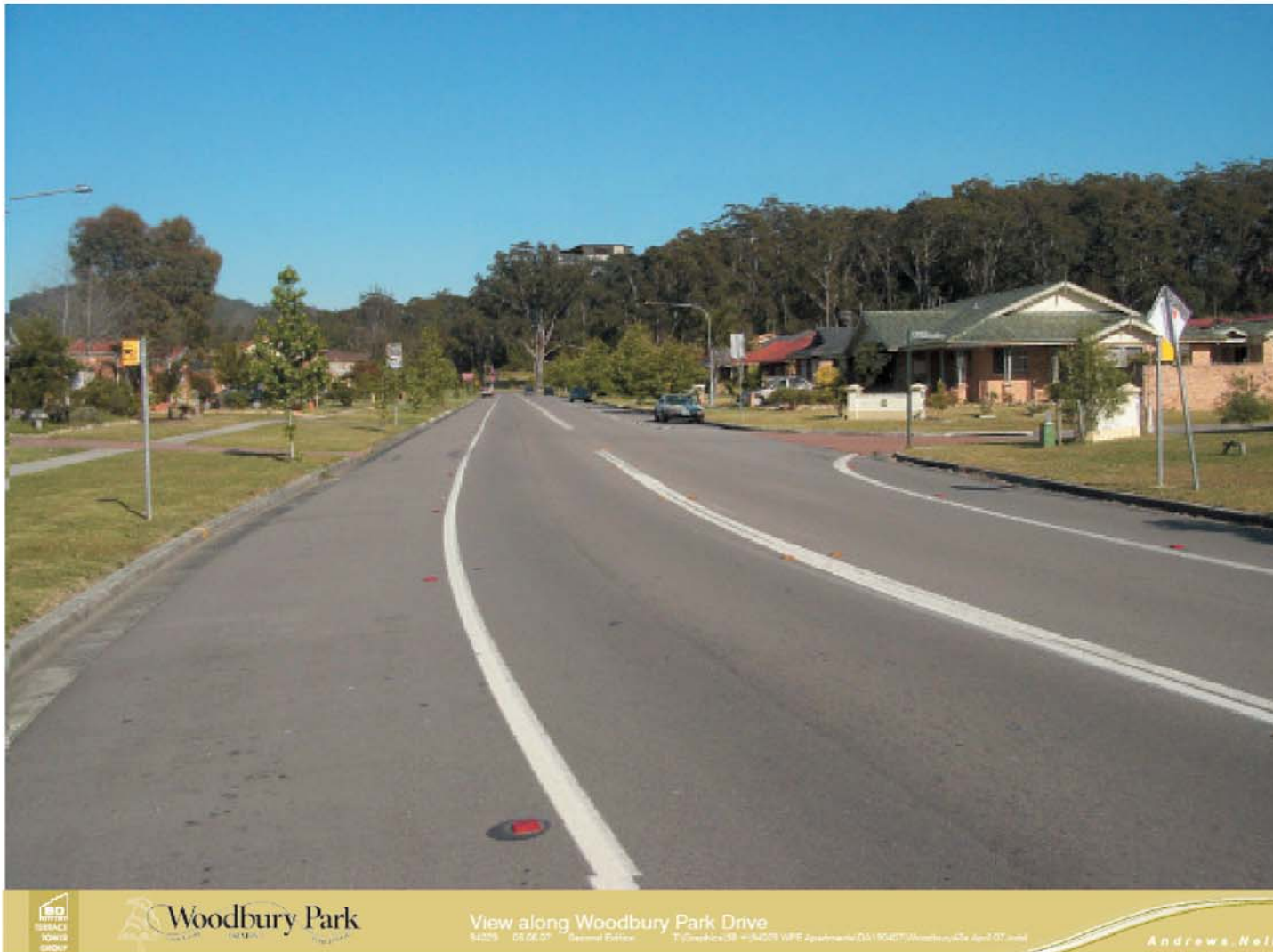
ATTACHMENTS

| | | | |
|---|---|-----------|-----------|
| 1 | Proposed Reasons for Refusal | | D02536792 |
| 2 | Photomontages | | D02536851 |
| 3 | Architectural Plans | Enclosure | D02543327 |
| 4 | Landscape Plans | Enclosure | D02543315 |
| 5 | Shadow Diagrams - Colour | Enclosure | D02543292 |
| 6 | GMU Design Report - Woodbury Park Drive | Enclosure | D01082396 |

Proposed Reasons for Refusal

1. The proposed development fails to adequately address the design quality principles of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development, is inconsistent with the Residential Flat Design Code and received a recommendation from the Design Review Panel that the application be refused (Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979).
2. The proposed development fails to comply with Wyong Shire Development Control Plan 2005 Chapter 96 – Woodbury Apartment of in terms of the southern setback (Section 79C(1)(a)(iii) Environmental Planning and Assessment Act, 1979).
3. The proposed development is likely to have a detrimental impact on the local character and amenity of the streetscape (Section 79C(1)(b) Environmental Planning and Assessment Act, 1979) .
4. The proposed development is likely to have a detrimental impact on the local context having regard to the scale (bulk, height and mass), form, density and design (Section 79C(1)(b) Environmental Planning and Assessment Act, 1979).
5. The proposed development is unsuitable for the site as it is unable to provide the necessary Bushfire Asset Protection Zones and fire trail within the subject site (Section 79C(1)(c) Environmental Planning and Assessment Act, 1979).
6. The proposed development does not adequately address issues raised in public submissions relating to the height of the proposed buildings, the existing character of the locality and the loss of privacy to adjoining and nearby properties (Section 79C(1)(d) Environmental Planning and Assessment Act, 1979).
7. The use of Community Land for the purpose of providing an Asset Protection Zone and fire trail for the proposed development is not in the interests of the community or the Council (Section 79C(1)(e) Environmental Planning and Assessment Act, 1979).





4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong

TRIM REFERENCE: DA/1340/2010 - D02540467
AUTHOR: Peter Meloy; Development Planner
MANAGER: Peter Fryar; Manager Development Assessment

SUMMARY

An application as been received for the demolition of existing structures, removal of six trees & construction of a dwelling, machinery shed & inground swimming pool at 93 Alison Road, Wyong (Lot 2 DP 1067114). The application has been assessed having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

| | |
|-----------------------------|---|
| Applicant | Mr M J Lusted & Mrs B J Lusted |
| Owner | Mr M J Lusted & Mrs B J Lusted |
| Application No | DA/1340/2010 |
| Description of Land | Lot 2, DP 1067114, No 93 Alison Road, Wyong |
| Proposed Development | Demolition of Existing Structures, Removal Of Six Trees & Construction Of Dwelling, Machinery Shed & Inground Swimming Pool |
| Site Area | 5030m ² |
| Zoning | 1(c) Non Urban Constrained Lands |
| Existing Use | Dwelling and outbuildings |
| Estimated Value | \$600,000 |

RECOMMENDATION

- 1 That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, refuse the application subject to the reasons for refusal detailed in the schedule attached to the report.**
- 2 That those who made written submissions be advised of the decision.**

PRECIS

- The application seeks approval for the demolition of existing structures on the site, removal of six trees and construction of a dwelling, machinery shed and inground swimming pool.
- The site is zoned 1(c) Non Urban Constrained Lands under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling is permissible with consent.

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

- The site is wholly flood affected.
- The property is located within the High Hazard Floodway and High Hazard Flood Storage Area. Under the Lower Wyong River Floodplain Risk Management Plan structures, including buildings and filling, are deemed “unsuitable” for development on land within the 1(c) Non Urban Constrained Lands Zone.
- 1% Annual Exceedance Probability (AEP) flood level for this property is RL 5.81m above Australian Height Datum (AHD) with an average ground level of 4.3m AHD resulting in flood depths of up to approximately 1.5m.
- The applicant has requested Council to use the provisions of State Environmental Planning Policy No 1 (SEPP 1) to vary the minimum allotment size for dwellings under Clause 16 of the WLEP. The area variation is 1/80th of the required minimum area of 40 hectares.

INTRODUCTION

The Site

The site is located at 93 Alison Road, Wyong (Lot 2 DP 1067114), on the southern side of that road and adjacent to the Wyong River which forms the southern and eastern boundaries of the site. The site is an irregular-shaped allotment of approximately 5030m². The lot has vehicular access to Wyong Road via a 10-metre-wide, 40-metre-long battle-axe handle extending along the western side of the site. The site is elevated approximately 3.5 metres above Wyong River and generally contains a gentle 1 metre fall from the western boundary towards the north-eastern boundary, with an average ground level of around 4.3m AHD (refer Figure 1).

The site currently contains a part one and part two-storey cottage located in approximately the same position as the proposed dwelling and there are numerous outbuildings all of which are proposed to be demolished as part of this application. The majority of the site is covered in Alluvial Riparian Blackbutt Forest being within the Ecologically Endangered Community of Riverflat Eucalypt Forest – a number of trees are proposed to be removed from this area.

The site is surrounded by Wyong River to the south and east, a recently constructed dwelling with a finished floor level of 6.29m AHD (DA/2863/2003) to the west, numerous vacant allotments to the north and the Wyong Christian Community School to the north-west. The entire area is flood affected (refer to Figure 3).



FIGURE 1: Aerial photograph of 93 Alison Road, Wyong and surrounds (including locality insert).

The Proposed Development

The proposal consists of a part one and part two-storey dwelling development involving the following aspects:

- Four-bedroom dwelling (approx 400m²) comprised of:
 - Cellar (floor level 3.68m AHD);
 - Three-car garage (floor level 4.52m AHD), laundry, studio and sauna (floor level 4.67m AHD);
 - Lower foyer (floor level 4.94m AHD);
 - Study, lounge, living, dining, kitchen and upper foyer (floor level 6.38m AHD);
 - Master bedroom and ensuite (floor level 7.19m AHD);
 - Bedrooms 2, 3, 4, bathroom and family room (floor level 7.64m AHD);

Construction material: mixture of glazing, prefinished expressed panels and precast concrete panels with metal roofing.

- Swimming pool;
- Two-storey machinery shed:
 - Ground floor machinery storage (floor level 4.22m AHD);
 - Mezzanine flood-free storage (floor level 7.64m AHD);

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

Construction materials: precast concrete panels, prefinished expressed panels, fixed blade ventilation louvres, metal roofing with a maximum ridge height of 8m;

- 6 underground rainwater tanks with total 75,000-litre capacity; and
- Removal of six trees although subsequent assessment confirms seven trees are to be removed.

The plans of the proposed development can be seen in Attachment 4.

Summary

Flood Hazard

The entire site is flood liable – the land has an average ground level of 4.3m AHD and the 1% AEP flood level for the site is RL 5.81m AHD. On 27 October 2007 Council adopted the *Lower Wyong River Floodplain Risk Management Plan* (hereafter referred to as “the Plan”) in accordance with the NSW Government’s NSW Floodplain Development Manual. The Plan identified the subject site as being either in the category of High Hazard Flood Storage or High Hazard Floodway. The Plan identifies that for “structures, including buildings and filling” both categories of hazard are “unsuitable for development”.

Variation to Minimum Lot Size

Clause 16 (1) of WLEP permits the erection of a dwelling house on land in the 1(c) Non Urban Constrained Zone only if the land has a minimum area of 40 hectares or was in existence on 15 February 1991. The subject land has an area of only 5030m² and was created in 2004. In recognition of the fact that the proposal does not satisfy the development standard contained in Clause 16(1) the applicant has submitted a formal objection to the standard together with supporting arguments as to why Council should vary the standard in this instance, as is required under the provisions of State Environmental Planning Policy No 1 – Development Standards.

Compensatory Flood Storage

The development application did not include a flood risk assessment when lodged. Council requested a flood risk assessment be prepared and this assessment was submitted in February 2011. The assessment, in part, proposes that the development should include, as one option, that 300m³ of compensatory flood storage be provided (to be created by excavating part of the site) if the dwelling is to be sited within the High Hazard Flood Storage area. However, the assessment has provided no details of where this excavation is to occur on site, the storage’s dimensions or potential impact on acid sulphate soils, ground water and trees. This aspect of the development has also not been considered by the NSW Office of Water (NOW).

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

VARIATIONS TO POLICIES

| | |
|-----------------|---|
| Standard | Clause 16 – Minimum lot size (40ha) |
| Policy | Wyong Local Environmental Plan 1991 |
| Departure basis | Allotment created after the appointed day and does not meet the 40ha minimum area to erect a dwelling |

| | |
|-----------------|--|
| Standard | Figure 12 – Structures, including buildings and filling are “unsuitable ” for development” |
| Policy | Lower Wyong River Floodplain Risk Management Plan |
| Departure basis | Proposes to site dwelling in High Hazard Flood Storage area and High Hazard Floodway |

| | |
|-----------------|---|
| Standard | Section 5.2.2 – Setback from side boundary (10m) |
| Policy | Wyong DCP Chapter 100 Quality Housing |
| Departure basis | Proposed to site dwelling minimum of six metres from western boundary |

| | |
|-----------------|--|
| Standard | Section 5.2.2 – Setback from top of bank (40m) |
| Policy | Wyong DCP Chapter 100 Quality Housing |
| Departure basis | Proposed to site dwelling minimum of 18.345 metres from western boundary |

HISTORY

- 05.06.2003: Council grants consent to a two-lot subdivision (boundary adjustment) to create current lot.
- 23.04.2004: The boundary adjustment (creating subject lot) registered with Land Titles Office.
- 27.04.2010: Council provides detailed flood advice with regards to development of the subject property.

PERMISSIBILITY

The subject site is zoned 1(c) (Non Urban Constrained Lands) under the WLEP. A dwelling-house is permissible with consent. However, Clause 16(1) of WLEP permits the erection of a dwelling-house in the 1(c) zone only if the lot has an area of greater than 40 hectares or was in existence at the appointed day (15 February 1991). The lot was created in 2004 and has an area of 5030m². The applicant has submitted an objection to this development standard, made under the provisions of State Environmental Planning Policy No 1 – Development Standards. The objection is considered in detail in a later section of this report.

The three objectives of the 1 (c) Non Urban Constrained Zone are:

- (a) to limit the development of land that may be affected by flooding, coastal erosion, slope, and other physical constraints (including lack of adequate water supply and sewerage), and*

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

(b) to prohibit development that is likely to prejudice the present and future environmental quality of the land, and

(c) to ensure that development is carried out in a manner that minimises risks from natural hazards and does not detract from the scenic quality.

In regards to Objective (a), the property is located within the High Hazard Floodway and High Hazard Flood Storage Area where the 1% Annual Exceedance Probability (AEP) flood level is RL 5.81m AHD. The site has an average ground level of 4.2m AHD resulting in flood depths of up to 1.68m. Despite there being an existing dwelling on site, the existing dwelling has a possible construction life of 40 years whereas the proposed dwelling will have a average construction life of 70 years resulting in a further 30 years of residency on an allotment which is affected by flooding. This is inconsistent with the objective of limiting the development of land that is affected by flooding.

In regards to Objective (b) it is considered that the proposal prejudices the environmental quality of the land by proposing the excavation of 300m³ of soil to enable the development to occur without reducing currently available high hazard flood storage on site. The proposed excavation's potential environmental impacts such as acid sulphate soils, ground water interception and loss of trees, has not been considered or quantified by the applicant.

In regards to Objective (c) it is considered that the proposal, by being sited within a High Hazard Flood Storage area and a High Hazard Floodway, does not minimise risk but increases the risk of danger to future occupants of the dwelling.

Clause 10(3) of the Wyong Local Environmental Plan 1991 states:

(3) Except as otherwise provided by this plan, the Council must not grant consent to the carrying out of development on land to which this plan applies unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.

Taking the above into account, it is considered that the proposed detached dwelling does not satisfy the objectives of the 1(c) Non Urban Constrained Lands Zone.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- State Environmental Planning Policy 1 – Development Standards
- State Environmental Planning Policy 71 – Coastal Protection
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Lower Wyong River Floodplain Risk Management Plan
- F5 – Flood Prone Land Development Policy

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal is considered to be inconsistent with the following ESD Principles:

- The precautionary principle – the proposal does not adequately account for inundation as a consequence of flooding.
- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment and injury or loss of life to occupants and others.

Taking the above into consideration the proposal is considered to be inconsistent with the Ecologically Sustainable Development (ESD) principles.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other statutory requirements and Council's policies the assessment has identified the following key issues, which are elaborated upon for Council's information.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):

State Environmental Planning Policy 1 (Development Standards)

The applicant proposes to demolish an existing dwelling and, in part, erect a new dwelling on the subject site. The subject allotment was created in 2004 through a realignment of boundaries of two existing lots and has an area of 5030m².

Clause 16 (1) of WLEP states:

“16(1) Except as otherwise provided by this plan, one dwelling-house only may be erected, with the consent of the Council, on an allotment of land that was in existence on the appointed day or with an area not less than the applicable minimum area specified in clause 14 (2) or (3) (b), within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e), 7 (f), 7 (g) or 10 (a).”

Given the requirements of Clause 16(1), the proposed development does not comply with the 40ha minimum lot size requirement and can only be approved through the use of the provisions of State Environmental Planning Policy No 1 – Development Standards (SEPP 1). SEPP 1 provides flexibility in the application of planning controls of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Act, which are to encourage proper and appropriate land management within the natural environment.

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Clause 6 of SEPP 1 allows for a written objection to be submitted with a development application. The written objection is required to state that compliance with a specific development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection. Clause 7 of SEPP 1 allows the consent authority to grant consent to a development application notwithstanding the non-compliance with the development standard referred to in Clause 6 of SEPP 1. It is incumbent upon the consent authority to seek the concurrence of the Director General of the Department of Planning (DOP), however, in most cases concurrence is delegated to consent authorities to determine the SEPP No. 1 Objection. However, in this case, the concurrence of the Director General is required if Council determines that the application should be granted consent.

Clause 8 of SEPP No. 1 identifies the following matters which are required to be taken into consideration in deciding whether concurrence should be granted or not:-

“8. (a) Whether non-compliance with the development standard raises any matter of significance for State or Regional Environmental Planning, and

(b) The public benefit of maintaining the Planning controls adopted by the Environmental Planning Instrument”.

Matters to be considered in the use of SEPP No. 1 are also detailed in the DOP's Circular No. B1 which states: -

“If the development is not only consistent with the underlying purpose of the Standard, but also with the broader Planning Objectives of the locality, strict compliance with the Standard would be unnecessary and unreasonable”.

In *Winten Property v North Sydney* (2001) NSWLEC 46 Justice Lloyd sets out a five-part test for considering SEPP 1 objections. The applicant has submitted an objection to the development standard and provided written arguments as to why the development standard should be varied in this instance. The following considers those arguments against that five-part test:

1. Is the planning control in question a development standard?

The applicant notes that Clause 16(1) of the WLEP is a provision within the applicable environmental planning instrument for the subject site which regulates the subdivision of land and the permissibility for the erection of a dwelling-house on that allotment of land by imposing a minimum site area or acknowledging that the “dwelling-house” enjoys existing development rights if it were in existence on the appointed day (15 February 1991). It is therefore a development standard pursuant to Section 4 of the EP&A Act 1979.

Comment:

It is agreed with the applicant that the 40ha minimum lot size is a development standard. However, Clause 16(1) permits the erection of a dwelling house on a lot in existence at the appointed day (15 February 1991) regardless of the lot's area, subject to consent being granted.

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

2. What is the underlying object or purpose of the standard?

The applicant has argued that the purpose of Clause 16(1) is to provide existing dwelling-houses, as at the appointed day, the right to enjoy existing development rights, and to limit the extent of new subdivisions or new dwelling-houses on land which was not previously developed as such on the appointed day, other than for lots with a minimum area of 40ha in the 1(c) Non Urban Constrained Zone. The applicant believes that the underlying purpose of the standard is achieved because the application is for the replacement of an existing dwelling-house which was in existence on the appointed day and was subsequently reaffirmed in the 2004 subdivision approval. No new dwelling-houses are sought under this application.

The applicant concludes that this application is consistent with the zoning objectives and does not propose any development which is inconsistent with that of the surrounding lots and recognises the constraints of the land.

Comment:

The applicant's arguments are not agreed with. The purpose of the standard is to ensure that development on land containing site constraints (in this case flooding), has sufficient area to address those constraints that may affect the land. An allotment which was in existence on 15 February 1991 (the appointed date) maintains the right to have a dwelling house erected on it despite not satisfying the minimum site requirements.

3. Is compliance with the development standard consistent with the aims of the policy and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the EP&A Act?

The applicant has argued that the subject dwelling was in existence on the appointed day, on an allotment size significantly less than the 40ha minimum as prescribed in Clause 16(1) of WLEP. As such, the dwelling-house was in compliance with the provisions of the WLEP as the dwelling-house was in existence on the appointed day.

The applicant points out that in 2004, a subdivision approval was granted by Council, which was a realignment of boundaries between two allotments within the 1(c) zone, each well below the 40ha minimum and both in existence on the appointed day. The subject dwelling-house remained wholly on one of the newly created allotments and the other original parent allotment was granted a subsequent development consent for a new dwelling house after the appointed day. That consent has since lapsed.

The applicant then considers the proposal against the objects of the Act and notes that Clause 3 of SEPP 1 states that non-compliance with a development standard must not hinder the attainment the objects specified in Section 5(a) (i) and (ii) of the EP&A Act 1979. The objectives of the Act are to encourage:

- "i. *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and the environment;*

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

ii. the promotion and co-ordination of the orderly and economic use and development of the land.”

In the applicant's view, the proposed non-compliance with Clause 16 (1) of WLEP would not hinder the attainment of the objectives of the Act and in this instance, strict compliance with Clause 16(1) would be unreasonable for the following reasons:

- No additional lots, dwelling-houses or demand on existing services are sought by this application;
- No existing agricultural land, minerals, cities, towns or villages are proposed to be affected by the proposal;
- The proposed development is not likely to have a significant effect on threatened species, populations or ecological communities or their habitats;
- An improved on-site wastewater treatment system is proposed which will reduce the impact of the existing residential use of the site on the natural ecosystem, particularly the river in regards to water quality;
- The redevelopment of the same uses on the site with no increase in demand on either the environment or local infrastructure, is considered an economic and orderly use and development of the land;
- The proposal will complement the residential use of the surrounding area; and
- There is no increase on traffic generation, social, infrastructure or population density anticipated as a result of the proposal.

Comment:

While several of the applicant's points are not disagreed with, those same points are also not particularly relevant to the question of whether non-compliance with the standard would tend to hinder the attainment of the objectives of the Act. It is considered that compliance with the development standard is necessary as it ensures compliance with Section 5(a) (i) and (ii) of the EP&A Act in that it prevents development on an allotment with a significant flood hazard.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant states that the subject site already has an existing dwelling-house (currently below flood level) which was in existence on the appointed day. The subsequent boundary realignment granted by Council in 2004 recognised the existence of the dwelling-house. To refuse the replacement of the existing dwelling house with a new dwelling house and shed with habitable floor levels and flood-free storage areas above the flood level and an on-site wastewater treatment system which reduces the impact on the environment, in order to comply with a development standard, would be unreasonable in this instance.

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Comment:

In the applicant's view, it is unreasonable to maintain a standard to prevent a new dwelling from replacing the existing dwelling house. A new dwelling that would be more appropriately constructed and serviced by a better sewage treatment system in the Applicant's view.

In this instance it is considered that compliance with the development standard is reasonable and necessary to prevent unsustainable development which is highly likely to be affected by flooding.

5. Is the objection well founded?"

The applicant believes that the objection is considered well founded because the dwelling-house which currently exists on the subject site was in existence on the appointed day even though a boundary realignment was granted subsequent to that day which did not increase the number of dwelling-houses or allotment number as part of the consent.

Comment:

The Council need to consider whether a development which complies with the development standard is unreasonable or unnecessary in the circumstances. The assessment of SEPP 1 objections was given significant consideration by Chief Judge Preston in *Wehbe v Pittwater Council* (2007) NSWLEC 827 wherein the Chief Judge provided clarification of the criteria to be used when assessing a SEPP No. 1 Objection. The criteria set by Preston CJ are as follows:-

- "1. *The Court must be satisfied that "the objection is well founded" (Clause 7 of SEPP No. 1). The objection is required to be in writing and be an objection that "compliance with that development standard is unreasonable or unnecessary in the circumstances of the case", and specify "the grounds of that objection" (Clause 6 of SEPP No. 1).*
2. *The Court must be of the opinion that "granting of consent to that Development Application is consistent with the Aims of this policy as set out in Clause 3" (Clause 7 of SEPP No. 1). Further clarification is provided by the statement that the Aims and Objects of SEPP No. 1 set out in Clause 3 are to provide "flexibility in the application of Planning controls operating by virtue of Development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Act".*
3. *The Court must be satisfied that a consideration of the matters in Clause 8 (a) and (b) of SEPP No. 1 justifies the upholding of the SEPP No. 1 Objection. The matters in Clause 8 (a) and (b) are:-*
 8. (a) *Whether non-compliance with the development standard raises any matter of significance for State or Regional Environmental Planning, and*
 - (b) *The public benefit of maintaining the planning controls adopted by the environmental planning instrument".*

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Preston CJ set the following five criteria to establish the way in which an objection under SEPP No. 1 may be well founded and be consistent with the Aims set out in Clause 3 of the Policy.

These criteria are as follows:-

- "1. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the Development standard are achieved notwithstanding non-compliance with the standard.*
- 2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- 3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- 4. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the Standard is unnecessary and unreasonable.*
- 5. Establish that the zoning of the particular land was unreasonable or inappropriate so that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary".*

In regards to the above criteria, the following responses are provided:

- The objective of the development standard is not achieved if the standard is not maintained as it will permit the building of a dwelling house in on a site that is subject to significant flooding.
- The underlying objective is relevant to the development as the standard prevents the dwelling from being sited on flood liable land.
- The underlying objective would not be thwarted if the standard was maintained.
- The land is zoned 1(c) Non Urban Constrained Land and is considered to be appropriately zoned given its significant flood liability.

It is concluded that the SEPP 1 objection submitted by the applicant is not considered to be well founded and does not satisfies the test in Winten Property. It is concluded that it is both necessary and reasonable to maintain the 40ha minimum lot size development standard in this instance.

State Environmental Planning Policy 71 – Coastal Protection

The provisions of SEPP No 71 Coastal Protection requires Council to consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the DOP with the subject property falling within this zone.

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The aims of the policy are:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) to ensure that the visual amenity of the coast is protected, and*
- (f) to protect and preserve beach environments and beach amenity, and*
- (g) to protect and preserve native coastal vegetation, and*
- (h) to protect and preserve the marine environment of New South Wales, and*
- (i) to protect and preserve rock platforms, and*
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991, and*
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (l) to encourage a strategic approach to coastal management.*

The development is considered to be inconsistent with objective (j) because the proposal does not accord with the principles ecologically sustainable development as previously discussed and (l) because the proposal is inconsistent with Lower Wyong River Floodplain Risk Management Plan which provides a strategic approach to the management of those areas within the Plan that are also within the operation of SEPP 71.

Furthermore, the proposal has been considered against the matters listed under Clause 8 as shown in Attachment 2. That assessment shows that the proposal fails to satisfy the matters:

- Clauses 8 (a) owing to its inconsistency with the abovementioned objectives;
- Clause 8 (d) owing to it being considered not suitable development because its type, location and design and its relationship with the surrounding area.
- Clause 8 (j) owing to the likely impact of the development on the coastal processes through removal of trees (extent unknown), site excavation (extent unknown), filling, potential impact on acid sulphate soils and potential impact on groundwater.

It is concluded that the proposal is inconsistent with several aims of SEPP 71 and does not satisfy certain matters listed under Clause 8 of SEPP 71.

Wyong Local Environmental Plan 1991

Clause 15 Development on land containing acid sulphate soils

Clause 15(2) states:

“15(2) A person must not, without the consent of the Council, carry out works described in the following Table on land of the class or classes specified for those works in that Table and shown on the Acid Sulfate Soils Planning Map, except as provided by subclause (4).”

The subject site contains Class 4 soils where works beyond 2 metres below the natural ground surface or works by which the watertable is likely to be lowered to any point beyond 2 metres below the natural ground surface require further investigation.

The Flood Risk Assessment submitted by the applicant includes, as part of that risk assessment, the proposal for 300m³ of excavation to be undertaken to provide for compensatory floods storage. The assessment provides no details of the excavation in regards to its location on the site or its dimensions including the proposed depth of excavation.

This excavation might have any combination of dimensions including possible dimensions of 10m long x 10m wide x 3m deep which may have a significant impact on the acid sulphate soils if they are found to be present. At this stage the applicant has provided insufficient information to allow this issue to be properly assessed.

Clause 16 Dwelling-houses

Clause 16 states:

“16(1) Except as otherwise provided by this plan, one dwelling-house only may be erected, with the consent of the Council, on an allotment of land that was in existence on the appointed day or with an area not less than the applicable minimum area specified in clause 14 (2) or (3) (b), within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e), 7 (f), 7 (g) or 10 (a).”

The proposal does not comply with the 40ha development standard that applies to the site. The applicant's SEPP 1 objection to the development standard has been assessed, as discussed in a previous section of this report, as being not well founded.

Clause 19 – Development near lakes, rivers and creeks

Clause 19 requires Council, for any land adjoining Wyong River to consider the impacts that any development may have on water quality and quantity, existing vegetation, fish aquatic life and the location of the watercourse. In addition, The clause also requires a consideration of the development's effect on water supply and any detrimental effects on the watercourse through erosion, sedimentation or the emission of pollutants. The clause further requires Council to consider if the development incorporates best practice water sensitive urban design techniques.

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

In most regards, the proposal is assessed as satisfying the matters raised in Clause 19. However, in respect of vegetation, water quality and erosion, the applicant initially identified the need to remove six (now confirmed as seven to be removed) trees in order for the development to proceed. This removal has been assessed and found to be satisfactory subject to the imposition of certain conditions including their replacement of trees on a one-to-one basis.

Subsequent to this assessment the applicant now proposes to excavate 300m³ from the site to provide compensatory flood storage. The applicant has provided no details on the location or dimensions of this excavation which may have significant ramifications for existing vegetation and on water quality potentially affected by acid sulphate soils. The applicant has not provided any information on these matters when proposing the 300m³ of flood storage so Council is unable to properly assess the impacts on the river as required by Clause 19.

Clause 23 – Flood Prone Lands

Clause 23 requires the applicant to seek development consent for the erection of a building or carrying out of works on flood prone land in a number of zones including the 1 (c) Non Urban Constrained Lands Zone. The applicant has complied with this requirement.

In addition, Clause 23 allows Council to set a minimum floor height to a building or work to reduce the incidence of flooding if it determines to grant consent and in making that determination is to consider the effect of the proposed development on flooding. This effect is considered in under the heading “Lower Wyong River Floodplain Risk Management Plan” in a later section of this report.

Clause 28 – Tree Management

The proposed clearing of the six trees has been assessed as not likely to significantly impact soil stability, water quality, amenity, vegetation systems or fauna habitats, and recommendations have been made to further mitigate the impact of the proposed clearing.

However, as noted previously, the lack of information concerning the proposed 300m³ of compensatory flood storage and its potential impact on vegetation does not allow Council to make a proper assessment of the importance of the vegetation that may be removed in relation to: soil stability, land degradation, water quality, scenic and environmental quality, and vegetation systems and wildlife habitats.

Clause 29 – Services

Clause 29 of WLEP prohibits Council from granting consent to development unless satisfactory water, sewer and drainage services are available to the development. The site is serviced by reticulated water and is proposed to be serviced by an on-site aerated sewage treatment system.

The applicant submitted a wastewater management report which concluded that the site had a high capacity for on-site wastewater management owing to the high quality of the soils, excellent turf cover, moderate climate and good exposure to the sun and prevailing winds. A review of this report found the 5% AEP flood level had been mistaken as 4.6m AHD rather than the actual 5% AEP flood height of 5.2m AHD. However, the review also found that the error did not significantly change the assessment.

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

The inlets of all sanitary fixtures must be raised above the 1% AEP flood height of 5.81m and all non-flood compatible electrics be positioned above the 1% AEP flood height plus 500mm (6.31m AHD).

The applicant proposes to install six rainwater tanks around the perimeter of the cellar but within the external walls of the dwelling. The accompanying BASIX certificate requires these tanks to have a minimum cumulative volume of 50,000 litres. This water is to be used for toilet flushing, landscaping and topping up of the swimming pool. All water entering the tanks must first pass through screening devices to exclude gross pollutants.

Wyong Local Development Control Plan 2005

Development Control Plan 2005, Chapter 67 (Engineering Requirements)

Chapter 67 lists specifications which set out minimum standards and guidelines for the engineering works required for developments within Wyong Shire. The detailed design, construction and any engineering requirements contained within any consent will be based on this specification. The chapter also notes that where no reference exists within the specification for particular design and construction details, Council will determine the requirements in accordance with best industry practice and appropriate standards.

Development Control Plan 2005 – Chapter 69 (Waste Management)

A site waste management plan was submitted with the development application. A condition of consent is recommended requiring the management of waste during construction to be managed in accordance with that plan.

Development Control Plan 2005 – Chapter 100 (Quality Housing)

Clause 3.8.3. of Chapter 100 states:

Requirements are to be applied in accordance with Council's Floodprone Lands Development Policy.

As already noted in previous sections of this report, the development does not comply with Council's Lower Wyong River Floodplain Risk Management Plan (being the most up-to-date flood study).

In addition, Clause 5.2.2 requires a minimum side setback of 10m and a minimum setback to a creek line of 40m. The proposed development provides a 6 metre setback to the western boundary and 18.345m setback to Wyong River representing a 40% and 54% non-compliance respectively. The proposal's non-compliance with the side setback is not considered to be significant. This side setback non-compliance was the issue raised in the single submission received as a result of the exhibition of the application. This issue is considered in detail and in the context of the submission in a later section of this report.

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

In regard to the proposal's non-compliance with the 40m setback, the non-compliance is considered to be significant – setting the dwelling back 40m from the river would not reduce the extent or frequency to which the dwelling would be flooded but would reduce the distance that would have to be travelled to and from the proposed dwelling to a place of safety in the event of an emergency evacuation. A complete assessment against Chapter 100 has been provided at Attachment 3.

Lower Wyong Rover Floodplain Risk Management Plan

Flood Liability

The development is located at the confluence of two significant upstream catchments. The principle source of flooding is from Wyong River with an upstream catchment of approximately 360 square kilometres and the secondary source from Porters Creek with an upstream catchment approximately 55 square kilometres. The property is considered to be fully flood affected by the 1%, 2% and 5% Annual Exceedance Probability (AEP) design flood events.

The 1% Annual Exceedance Probability (AEP) flood event is defined as the probability or likelihood that a location will experience a flood of a particular size, in any one year. If a location has a 1% chance of a particular sized flood occurring each year, then it can also be expressed as having a chance of that particular sized flood occurring once in 100 years. However, this does not mean that if a location experiences that particular size flood one year, it will definitely not experience the same sized again flood for the next 99 years. Nor, if it has not experienced a flood of a particular size for 99 years, will it necessarily occur the next year.

The predicted 1% AEP flood event (100 year ARI) affects the development to a level of 5.81 metres AHD, which is approximately 1.5 metres above the natural surface level at the location of the proposed dwelling. The average flood velocity during this event is 0.84m/s. The predicted 5% AEP flood event (20 year ARI) affects the development to a level of 5.20m AHD, which is approximately 0.9 metres above the natural surface level at the proposed dwelling. The average velocity during this event is 1.0 m/s.

Plotting the abovementioned 1% and 5% AEP flood characteristics on the Provisional Hydraulic Hazard Category matrix within the NSW Floodplain Development Manual conclusively defines the development as High Hazard for both events discussed, as can be seen in Figure 2 below.

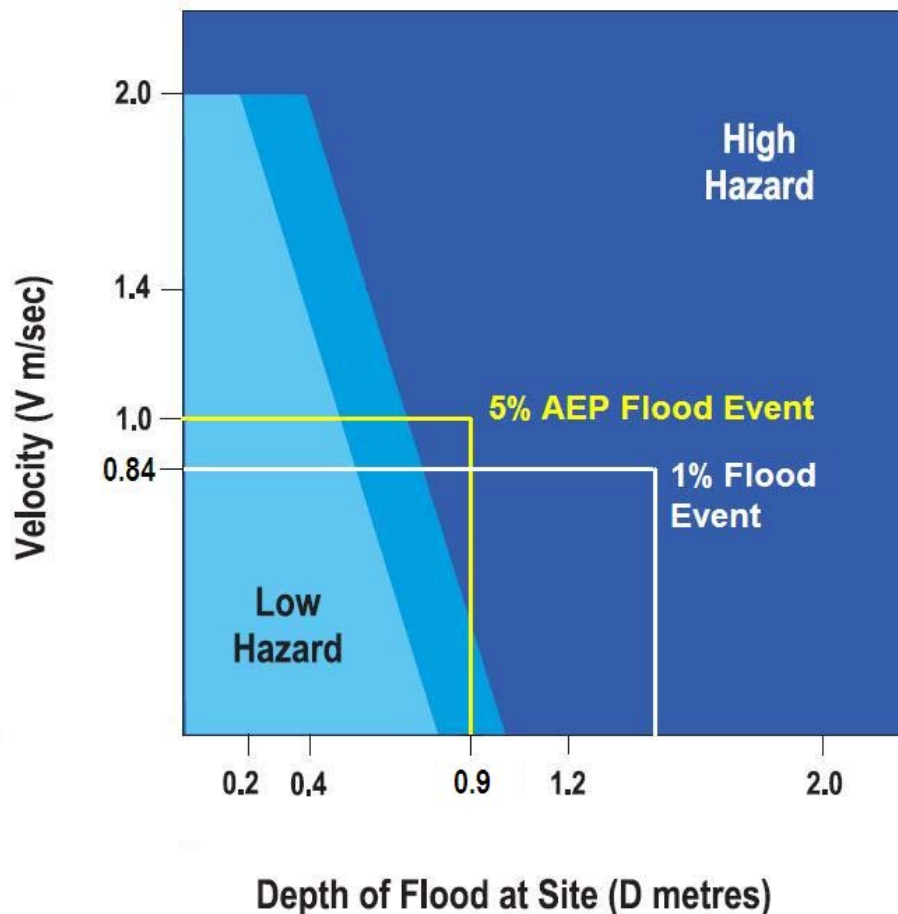


Figure 1 - Provisional Hydraulic Hazard Flood Risk Category

The potential for fast rates of rise of flood waters and long duration of high hazard conditions is likely due to the confluence of Porters Creek and Wyong River catchments adjacent to this site. The critical duration of flooding in Porters Creek is 9 hours, and that of Wyong River is 36 hours. As such, the site may experience a fast rate of rise of floodwaters due to flooding in Porters Creek and then prolonged elevated water levels as the peak of Wyong River will take approximately 27 hours to reach the site.

The *Lower Wyong River Floodplain Risk Management Plan* further refines this provisional hazard categorisation by assessing all factors that influence flood hazard, such as the size of the flood; effective warning time; flood readiness; rate of rise of floodwaters; duration of flooding; evacuation problems; effective flood access and type of development.. These factors determine the Adopted or final Flood Hazard categories for a floodplain.

The Adopted Flood Hazard mapping for the Lower Wyong River catchment confirms that the property is classified as both high hazard floodway and high hazard flood storage during a 1% AEP design flood event. An extract of the mapping is shown in Figure 3 below.

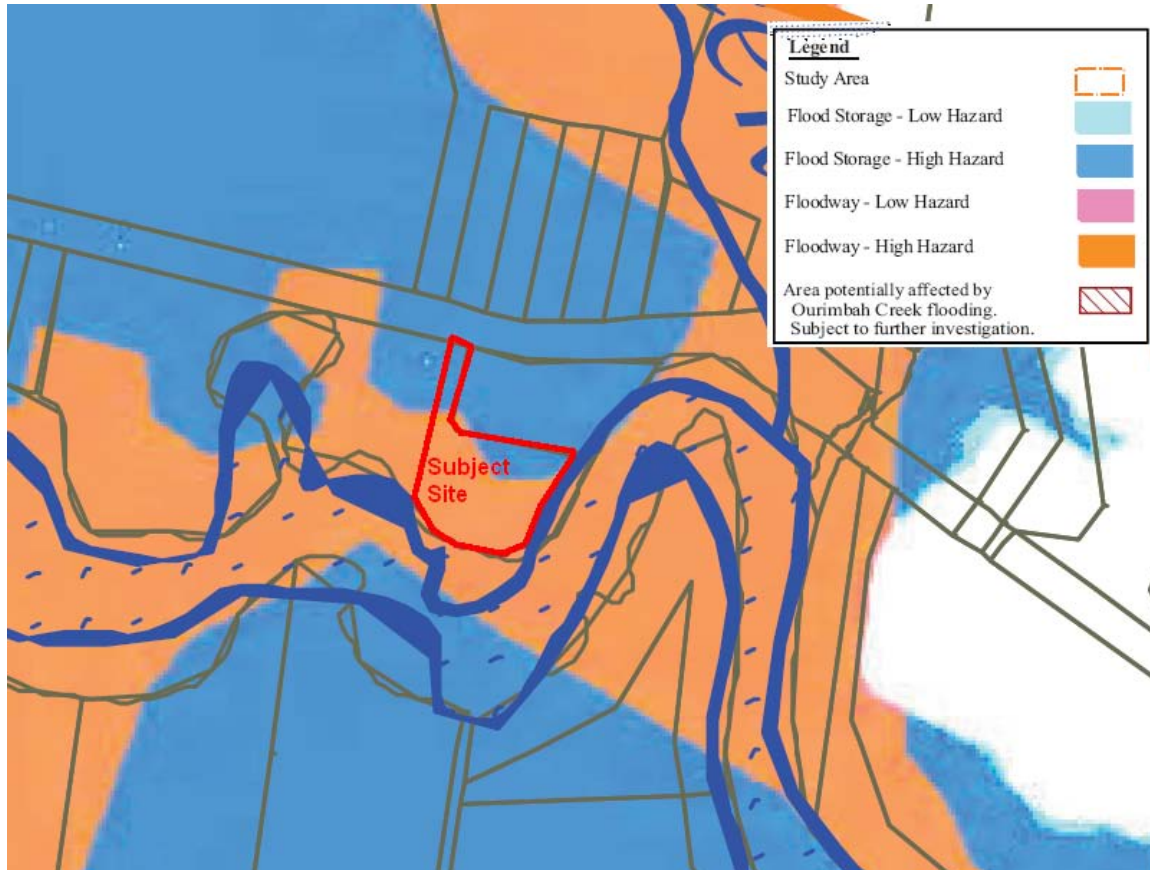


FIGURE 3 - Hazard Mapping Extract – Lower Wyong River Flood Risk Management Plan (Figure 12)

Floodways = those areas where a significant volume of water flows during floods which, even if only partially blocked, would cause a significant redistribution of flow.

Flood storage = those areas which provide temporary storage of floodwaters and flow velocities are generally low.

In considering the above figure, the applicant has concluded that the boundaries of the flood hazard categories are incorrect. This conclusion is based on the fact that the property boundaries do not exactly align with the hazard mapping at this location in Figure 3 above (that is, the actual boundary of the floodway category differs to the cadastral river boundaries). The Flood Risk Assessment completed on behalf of the applicant also queries the boundary between the floodway and flood storage areas on the site. The consultant is of the view that the discrepancy could be in the order of 30 to 40 metres and that the majority of the site is flood storage, however, no updated mapping was produced by the consultant to support this argument.

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong (contd)

It is acknowledged that there may be discrepancies between the hazard category boundaries. It is considered that the discrepancies are primarily due to the size of the grid mapping used in the Lower Wyong River Floodplain Risk Management Plan and the finer detail provided as part of the ground survey carried out by the applicant as part of their development application process.

However, irrespective of the extent of any discrepancy between the proposed and actual boundaries between floodway and flood storage on this site, the site is still classified as a “high hazard floodway” or “high hazard flood” storage classification. As such, the assessment of the development application in terms of floodplain risk management has been considered on this basis.

The June 2007 flood event is the largest flood event experienced at this location in recent times. The flood caused significant disruption and damage within this local catchment, with approximately 75% of the subject property inundated by flood waters during this event which reached a flood level of approximately 4.26m AHD at this location.

It is difficult to precisely estimate the annual exceedance probability of the June 2007 flood event because the peak levels experienced were significantly less than the most frequent flood event analysed in the Lower Wyong River Flood Study – the 5% AEP flood event. A review of the upstream rain and stream gauges from the actual flood event, and relevant parameters in the Flood Study indicate that the June 2007 event was approximately a 10% AEP flood event at this location.

The image shown in Figure 4 below shows the Alison Road crossing of Wyong River approximately 1.5km west of the subject site, looking eastward, on 9 June 2007. The actual Wyong River crossing is in the back of the photo – the foreground of the photo is the overland flow of Wyong River, as it overtopped its banks further upstream and travelled overland for approximately 1.5 kilometres where the floodwaters merged with Deep Creek. The depth of water across Alison Road in the photo is estimated at approximately 1 metre deep as reported by a post-flood survey prepared on behalf of Council by ADW Johnson (TRIM Ref: D01498563).

The velocity was not recorded but the water surface turbulence that can be seen in the photo confirms significant flood velocities were experienced at this location. This image provides a representation of the likely appearance of flood waters on the subject site during an event of approximately equal to or less than the 5% AEP flood event.

The 1% AEP flood level at this location is predicted to be 2.6m higher than the water level shown.



FIGURE 4—Observing Alison Road river crossing approximately 1.5km west of the development, looking eastward, on 9 June 2007. The predicted 1% AEP flood level is 2.6m higher than the water level pictured.

Development Controls of the Lower Wyong River Floodplain Risk Management Plan

The flood-related development controls relevant to the site are contained within the *Lower Wyong River Floodplain Risk Management Plan (the Plan)*, which Council adopted at its Ordinary Meeting on the 27 October 2010. The adoption of the Plan, and thus the flood-related development controls contained within it, lead to the replacement of the development controls and requirements contained within Council's Policy F5 - *Flood Prone Land Development* for the Lower Wyong River catchment by those listed in the Plan.

The Plan was completed in accordance with the *NSW Floodplain Development Manual (2005)*. Following initial data collection, the *Lower Wyong River Floodplain Risk Study* was completed in 1991. The study analyses the Lower Wyong River catchment to determine flood flow characteristics. Based upon this technical assessment, the *Lower Wyong River Floodplain Risk Management Study* was prepared in 2009 to assess and map the flood hazards for the Lower Wyong River catchment and examine a range of flood mitigation options to manage or reduce the flood risk. Following consideration of all of the flood mitigation options presented in the Study, the *Lower Wyong River Floodplain Risk Management Plan* was prepared in 2009. The Plan identifies which mitigation options Council chose to improve floodplain management of the Lower Wyong River floodplain. Public consultation was completed with both the Risk Management Study and the Plan prior to adoption.

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With the bulk of flood-labile land within the Lower Wyong River catchment already developed, the Plan concentrates on land use planning and development controls to mitigate future flood risk. These controls seek to balance social, economic, environmental and flood risk parameters to ascertain whether a particular development or use within the floodplain is appropriate and sustainable. An extract of the development controls applicable to the Lower Wyong River catchment has been reproduced in Figure 5 below.

| Type of Development ⁽⁷⁾ | Flood Hazard Categories | | | | | |
|---|-------------------------|-------------|---------------|----------------------------|----------------------------|----------------------------|
| | Flood Fringe | | Flood Storage | | Floodway | |
| | Low Hazard | High Hazard | Low Hazard | High Hazard | Low Hazard | High Hazard |
| LAND ZONED RECREATION, OPEN SPACE, CONSERVATION ZONE, NON URBAN CONSTRAINED LANDS, SPECIAL USES⁽¹⁾⁽²⁾⁽³⁾⁽⁴⁾⁽⁵⁾⁽⁶⁾ | | | | | | |
| Structures, including buildings and filling | On Merits | On Merits | On Merits | Unsuitable for Development | Unsuitable for Development | Unsuitable for Development |
| Other developments permissible in zone, i.e wetlands, playing fields, parks, walkways, etc... | On Merits | On Merits | On Merits | On Merits | On Merits | On Merits |

Figure 2 - Extract of Development Controls Table for the Lower Wyong River catchment

The development of a floodplain risk management plan enables the cumulative impacts of developments in floodplains to be considered, including the filling of land and the construction of structures. The resultant development controls for the Lower Wyong River catchment indicate that introducing additional fill and/or structures into the Lower Wyong River floodplain, particularly in the high hazard areas, is not a desirable outcome, and these areas have been assessed as “unsuitable for development”.

Based upon the proposed development being located upon land zoned ‘Non-Urban Constrained Lands’ and located within high hazard flood storage and high hazard floodway, the resultant development controls of the Plan do not support the proposed residential development.

Flood Risk Assessment

The NSW Floodplain Development Manual defines ‘risk’ as the “*chance of something happening that will have an impact. It is measured in terms of consequences and likelihood*”. The applicant has submitted a *Flood Risk Assessment* report in support of the development.

The report included consideration of many economic, social/health, safety and environmental factors. In considering each of these factors the report identified flood risks associated with these factors and completed a qualitative assessment of each risk identified. In addition, a quantitative assessment was also completed to assess the combined/total flood risk and competing priorities between the factors identified. The author concluded that:

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“the proposed redevelopment of the site is in accordance with the aims of the NSW Government Floodplain manual provided that it is undertaken in accordance with development controls introduced by Council and specialist consultants”.

The report has been reviewed and it is considered that the assessment did not adequately identify, manage or reduce flood risks to an acceptable and sustainable level. A summary of the difference in assessment of each sub category is provided below;

1. Safety

As previously mentioned, the most frequent event analysed in the *Lower Wyong River Flood Study* was the 5% AEP (once-in-20-year average reoccurrence interval) design flood. It has been determined that high hazard conditions exist during this relatively frequent event. It follows that the ‘last chance’ opportunity for self-sufficient low hazard evacuation passes significantly before the design 5% AEP conditions occur.

As demonstrated below in Figure 6, evacuation by wading or by vehicle is considered unsafe/unstable significantly before peak flows from a 5% AEP flood event occur. The occupants of the proposed dwelling or rescuers would be forced to employ high hazard style evacuation methods by flood boats in fast moving, debris-loaded flood waters or by aerial evacuation. The development design has not catered for high hazard evacuation.

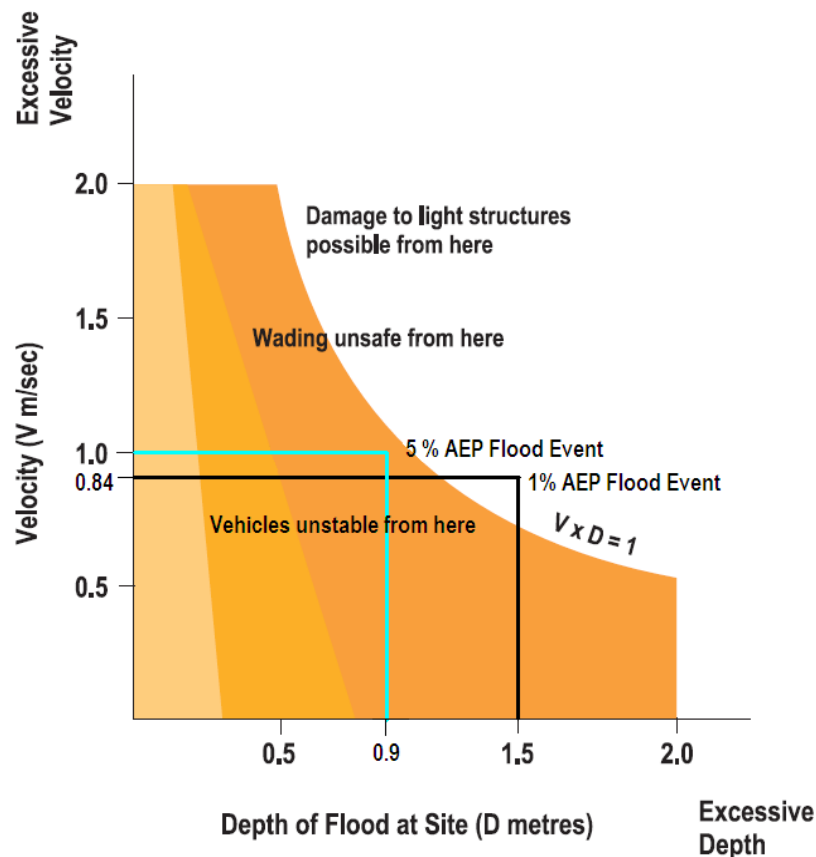


FIGURE 6 - Velocity and Depth Relationship

This situation is unchanged from that of the existing dwelling, however, the assertion within the Northrop report is that safe harbourage during the design flood event is sufficient to protect human life and property. The report also provides support for the proposed dwelling based upon the ability to structurally design the dwelling to withstand the flood forces and debris loading for the design 1% AEP flood event.

It is agreed with the Northrop report to the extent that the immediate hazard is reduced, however, the service life of a dwelling on this site in high-hazard conditions is increased by replacement of the existing dwelling with a new dwelling, thereby increasing the long-term risk. Also, the increased ability to “shelter in place” for the proposed development can lead to an induced potential for the State Emergency Services (SES) to place rescuers at risk during a flood event, as the occupants of the dwelling have an increased, and false, sense of security to shelter in place rather than decide on early evacuation from the property.

Interruption to services such as potable water, on-site sewer treatment, telephone, gas, electricity and road access during flood times must be expected with the predicted flood events and recovery periods. This may make the decision to remain in the proposed dwelling unsustainable for any extended periods of time.

The adopted Lower Wyong River Flood Risk Management Plan has identified this locality (combined zoning and flood hazard) as unsuitable for any structures. If the development controls are applied as written, the dwellings within this locality will in time incrementally exceed their service life and be removed. The existing dwelling was built approximately 50 years ago and would be considered to be approaching the end of its service life. The building materials and construction types associated with the proposed dwelling would result in the use of this land to sustain a dwelling for the long term to likely exceed 100 years.

Consideration must also be given to the scenario where the 1% AEP design flood is exceeded. The Lower Wyong River Flood Study indicates the largest flood that could occur – the Probable Maximum Flood (PMF) - would reach a level of 6.53m AHD at this site. This level exceeds the main living area floor level of the dwelling by approximately 150mm and the water depth would be approximately 2.2 metres above natural surface level.

While peak flooding characteristics are used for numerical flooding assessments and determination of flood planning levels, due consideration must be given to the full range of factors that influence the flooding at a particular location. The issues of concern regarding this site on Alison Road is that it is located at the confluence of two major catchments and this results in an increased likelihood of prolonged flood inundation as well as an increased frequency of flood inundation.

Additionally, climate change predictions indicate an increase in rainfall intensity is expected in future years. Increases in rainfall intensity have not been quantified at this point in time. Any increase in rainfall intensity will further increase likelihood frequency and severity of flood inundation of this property.

2. Economic

The proposed dwelling is a substantial size, which includes four bedrooms, study, studio, generous living spaces, triple car garage, swimming pool, sauna, outdoor decks, sub-floor cellar and 11m x 13m (approximately, as the submitted plan is not dimensioned) machinery shed. Construction costs have been estimated at \$600,000 by the applicant.

By comparison, the existing dwelling is a modest part one and two-storey residence with double garage. It is estimated that the dwelling was constructed in the mid-1960s and is approaching fifty years of age. The applicant describes the dwelling as “run down and incompatible with surrounding rural residential development”. It is reasonable to deduce that the existing dwelling is nearly at the completion of its economic life.

The Applicant’s flood Risk Assessment report states that “*Risk of damage to proposed site decreases due to increased structural design controls*”. As discussed above, the economic risk is considered to be higher with redevelopment due to the existing dwelling imminently fulfilling its economic life and the substantial nature of the proposed dwelling.

3. Council Liability

Council has a duty of care to consider the residual risk to a development once any flood modification measures have been introduced or constructed. The development application has been demonstrated to be contrary to development controls under the *Lower Wyong River Floodplain Risk Management Plan* and is regarded as being unsuccessful in adequately managing or reducing flood risks to life and property to an acceptable and sustainable level.

It is concluded that the proposed development is not supported on engineering and floodplain management grounds. There have been insufficient arguments presented by the applicant regarding the residual flood risk to occupants of the proposed development, and an approval would be contrary to “good faith” of Council’s decision-making authority.

F5 – Flood Prone Land Development Policy

This Policy has the primary objective of reducing the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods using ecologically positive methods wherever possible.

In this instance, the recently adopted Lower Wyong River Flood Risk Management Plan (the Plan) provides detailed guidance for the assessment of the proposed development in order to achieve the primary objective of the Policy. The assessment of the proposed development against the Plan and the Policy is discussed in the previous section of this report.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

The relationship to the regional and local context and setting.

The proposed development is considered acceptable in its appearance and in relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

The access, transport and traffic management measures.

Vehicular access to the site is gained from Alison Road which provides suitable access to the proposed dwelling except during flood periods when this road is inundated.

The impact on the public domain (recreation, public open space, pedestrian links).

No issues to report.

The impact on utilities supply.

No significant impact on utilities in terms of demand but utilities will have to continue to be supplied and maintained through flood liable land if the dwelling is approved.

The effect on heritage significance.

No issues to report.

Any effect on other land resources.

No issues to report.

Any effect on the conservation of soils or acid sulphate soils.

The site is identified as having Class 4 soils according to the Acid Sulphate Soils Planning Map. In accordance with WLEP Clause 15, a preliminary site investigation is justified where works by which the watertable is likely to be lowered beyond 2 metres below natural surface. The applicant has now proposed that 300m³ of compensatory flood storage be provided on site but has provided no details of location or depth of excavation. Without this detail Council and without any acid sulphate spoils assessment being undertaken this issue can not be properly assessed.

Any effect on quality of air and microclimate conditions.

No issues to report.

Any effect on the flora and fauna.

The applicant submitted a Tree Assessment Report and Threatened Species Assessment. These documents have been assessed and following further consultation with the applicant who confirmed that seven trees would be removed, it was concluded that that it was unlikely that the proposed development would lead to a significant impact on threatened species, communities and their habitat. The loss of trees was to be compensated by replacement with an appropriate nominated species on a one-to-one basis.

However, following the initial assessment report, the applicant submitted the requested flood risk assessment which included the option of providing 300m³ of compensatory flood storage on site by excavating part of the site. No details of this excavation have been provided so it is unknown what impact this excavation may have on fauna and flora and can not be properly assessed on the information provided by the applicant.

The provision of waste facilities.

The proposed dwelling would continue to be serviced by Council's household waste and recycling collection services.

Whether the development will be energy efficient.

A BASIX Certificate accompanies the development.

Whether the development will cause noise and vibration.

One submission was received as a result of the development proposal being publicly notified. The submission raised concern that the dwelling was proposed to be sited only six metres from the common side boundary even though the minimum setback required by Chapter 100 was 10 metres. The concerns were that the variation would lead to an increase in noise and lessen the objector's privacy.

The objector noted that their own house was located only five metres from the common boundary although it is opposite the driveway into the subject lot.

Comment:

A review of the plans shows that the objector's dwelling is located well forward and over 30 metres from the proposed dwelling. It is also noted that the design of the proposed dwelling has the active rooms of the dwelling located on the opposite side of the dwelling and away from the objector's house. It is considered that the dwelling will not be a significant source of noise and that it does not represent a significant loss of privacy and that moving the dwelling four metres further from the boundary will achieve little, if anything, in regards to these two issues. In addition, moving the proposed dwelling four metres eastward would then move the dwelling to within 40 metres of the river which forms the eastern boundary thus creating a further variation to Council's setbacks.

It is concluded that the dwelling will not represent a significant loss of privacy or noise in its proposed location and that moving it four metres eastwards will not change that situation.

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Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).

1. Flooding

See assessment in previous section of this report.

2. Bushfire

The building is located within a bushfire prone area, accordingly the requirements of the NSW Planning for Bushfire Protection 2006 document requires consideration in the application. A Bushfire Assessment report has been submitted with the application and makes appropriate recommendations as to the construction level required for the dwelling.

Any risks from technological hazards.

No issues to report.

Whether the development provides safety, security and crime prevention.

As a result of a review of the initial plans submitted with the development Council raised a number of concerns over safety issues related to design aspects of the swimming pool and surrounds. The applicant responded to these concerns by preparing amended plans that addressed all issues raised by Council.

Any social impact in the locality.

The proposed development is likely to place both people and property vulnerable to flooding events and this is considered as having a negative social impact on the locality.

Any economic impact in the locality.

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood, in rectifying flood damaged property, and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

Any impact of site design and internal design.

The site design is not considered appropriate in that it proposes a dwelling within a High Hazard Floodway and High Hazard Flood Storage.

Any impacts of construction activities (construction site management, protection measures).

In respect of construction activities, appropriate conditions can be applied to developments, requiring appropriate site management measures be put in place prior to construction occurring to ensure that soil erosion and sedimentation do not occur. These site management measures can be required to be maintained throughout the duration of the construction.

Any cumulative impacts.

Consenting to new development in high hazard areas as identified in the Plan would result in undesirable cumulative impacts by placing increasing numbers of people and a higher value of developments at risk.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):

Whether the proposal fits in the locality.

The proposal would fit within the locality except for the site's flood liability.

Whether the site attributes are conducive to development.

As mentioned above, the low-lying nature of the site creates the potential for frequent future flooding and is therefore not conducive to the proposed development.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):

Any submission from the public.

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with one submission being received. The issues raised in the submission have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submission is detailed in the table below:

| Doc. No | Summary of Issues | Response |
|----------------|--|---|
| D02456235 | The dwelling is sited only six metres from the common side boundary resulting in loss of privacy. The dwelling should be sited 10 metres from the boundary in accordance with Council's setback. | The proposed dwelling, owing to its design, function and distance from the objector's dwelling, is not assessed as being a significant loss of privacy or source of noise. Moving the dwelling to achieve numerical compliance will not have a significant impact on likely noise generation or on privacy. |

Any submission from public authorities.

The application was referred to the previous NSW Office of Water (NOW) because development was proposed within 40 metres of the bank of the Wyong River. NOW has responded and advised that:

The proposed works are exempt from the need to obtain a Controlled Activity Approval under clause 39A of the Water Management (General) Regulation 2004.

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Clause 39A of the Act exempts certain developments from the need to obtain a Controlled Activity Approval and includes activities carried out in connection with the erection of a dwelling house. However, NOW's advice goes on to say:

Should the proposed development be varied in any way that results in "works" or more extensive 'works on waterfront land (i.e. land in or within 40 metres of the highest bank of the watercourse) the NSW Office of Water should be notified."

Since receiving that advice from NOW the applicant has proposed the excavation of 300m³ to provide compensatory flood storage on site. The applicant has provided no details of the location or depth of this excavation and the applicant may need to liaise with NOW as to whether the activity remains exempt.

In addition, the proposed excavation may not be exempt from requiring an aquifer interference licence depending on the depth of excavation proposed, its location and the results of any groundwater testing that may need to be undertaken. Again, the applicant will need to liaise with NOW to establish its requirements in this regard.

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.

The information currently available to Council shows that the site will be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies in particular the Lower Wyong River Floodplain Risk Management Plan. Having assessed the proposal in accordance with the Lower Wyong River Flood Risk Management Plan; the development is not considered suitable for the site. To permit the development on the basis may result in lives and property being placed under threat. As such, the proposal is not considered to be in the public interest.

OTHER MATTERS FOR CONSIDERATION

Deeds of agreement etc.

There are no deeds of agreement relevant to this proposed dwelling house.

CONCLUSION

The proposal has been assessed having regard to Section 79C of the EP&A Act, WLEP 1991, SEPP 71, DCP 2005 - Chapter 100 (Quality Housing), DCP 2005 - Chapter 69 (Waste Management), DCP 2005 - Chapter 67 (Engineering Requirements) and Lower Wyong River Floodplain Risk Management Study and is considered unsatisfactory for the reasons listed in Attachment 1 of this report.

ATTACHMENTS

| | | |
|----------|---|-----------|
| 1 | Reasons for Refusal | D02571855 |
| 2 | Plans of Proposed Development | D02568755 |
| 3 | SEPP 71 Compliance Table | D02571497 |
| 4 | DCP 2005 - Chapter 100 Compliance Table | D02571499 |

Date: 1 April 2011
Responsible Officer: Peter Meloy
Location: 93 Alison Road, WYONG NSW 2259
Lot 2 DP 1067114
UBD Reference:
Owner: Mrs B J Lusted and Mr M J Lusted
Applicant: Mr M J Lusted and Mrs B J Lusted
Date Of Application: 11 November 2010
Application No: DA/1340/2010
Proposed Development: Demolition of existing structures, removal of six trees & construction of dwelling, machinery shed & inground pool
Land Area: 5030.00
Existing Use: XXXX

Reasons for Refusal

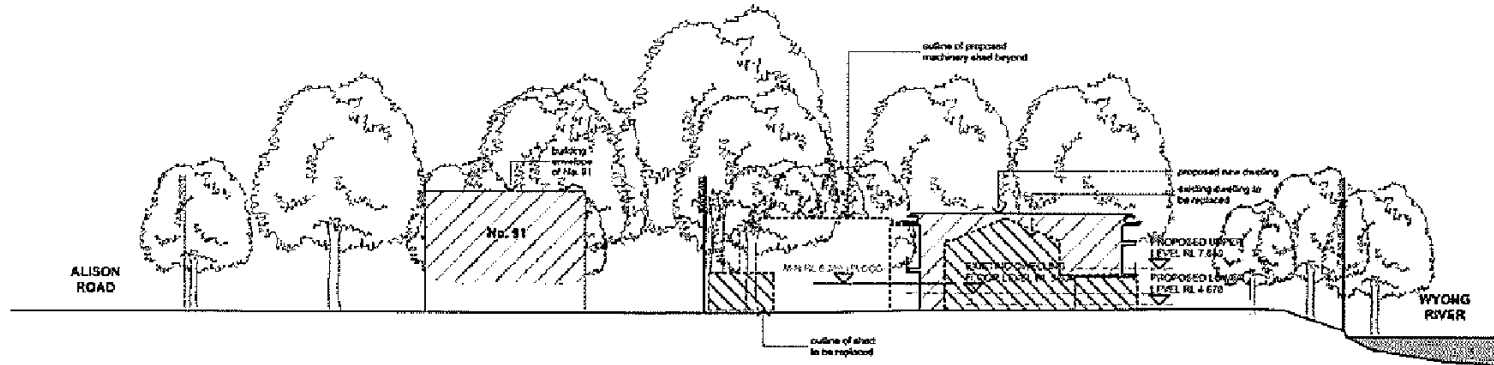
- 1 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 2 of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
 - a The proposed development fails to satisfy Aim 2(1)(j) in that it does not accord with the precautionary principle by proposing to site a dwelling in a high hazard flood area.
 - b The proposed development fails to satisfy Aim 2(1)(j) in that it does not promote inter-generational equity by proposing to site a dwelling in a high hazard flood area that may result in damage to the dwelling and injury or loss of life to future occupants.
 - c The proposed development fails to satisfy Aim 2(1)(k) in that it proposes to inappropriately locate a dwelling in a high hazard flood area which exposes the dwelling to damage and future occupants to danger.
 - d The proposed development fails to satisfy Aim 2(1)(k) in that the proposed development includes the excavation of 300m³ of which does not protect or improve the natural scenic quality of the surrounding area through removal of an unknown number of trees.
 - e The proposed development fails to satisfy Aim 2(1)(l) in that the proposed development does not encourage a strategic approach to coastal management by proposing to site a dwelling in a high hazard flood area in disregard for the Lower Wyong River Floodplain Management Plan which provides strategic advice on the development potential of land within the Lower Wyong River catchment. This Plan identifies this site as unsuitable for buildings or structures.
- 2 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 8 "Matters for consideration" of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
 - a The proposed development fails to satisfy Matters for consideration 8 (a) because it does not satisfy Aims 2(1)(j), 2(1)(k) and 2(1)(l) as explained 1 above.

- b The proposed development fails to satisfy Matters for consideration 8(d) because it proposes to site a dwelling house in a high hazard flood area.
 - c The proposed development fails to satisfy Matters for consideration 8(g) because the development proposes the excavation of 300m³ of soil from the site with insufficient information provided to determine that plants and animals are being conserved.
 - d The proposed development fails to satisfy Matters for consideration 8(i) because the development proposes the excavation of 300m³ of soil from the site with insufficient information provided to determine the impact on wildlife corridors.
 - e The proposed development fails to satisfy Matters for consideration 8(j) because the development proposes to site a dwelling where the likely impact of coastal processes (flooding) on the proposed dwelling and future occupants is classified as “high hazard” under the Lower Wyong River Floodplain Management Plan”.
 - f The proposed development fails to satisfy Matters for consideration 8(m) because the development proposes the excavation of 300m³ of soil from the site with insufficient information provided to determine the impact on potential acid sulphate soils and ground water.
- 3 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Wyong Local Environmental Plan 1991 Clause 2(g)(ii) because the proposed development seeks to locate a dwelling house in a flood prone area where it is likely to suffer damage and obstruct floodwaters.
- 4 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with the zone objectives (a), (b) and (c) of the 1(c) (Non Urban Constrained Lands Zone) in Clause 10 of Wyong Local Environmental Plan 1991:
- a The proposed development by proposing to site a dwelling in a high hazard flood area will not limit the development of the land.
 - b The proposed development by proposing to site a dwelling in a high hazard flood area and to excavate 300m³ of soil from the site is likely to prejudice the future environmental quality of the land.
 - c The proposed development by proposing to site a dwelling house in a high hazard flood area does minimise the risk from the hazard and by proposing to excavate 300m³ of soil from the site may detract from the scenic quality of the land through the removal of an unknown number of trees.
- 5 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 15 of Wyong Local Environmental Plan 1991 in that the proposed development proposes the excavation of 300m³ of soil from the site and there is uncertainty to the impact on potential acid sulphate soils because no details of this excavation or its potential impact have been provided.

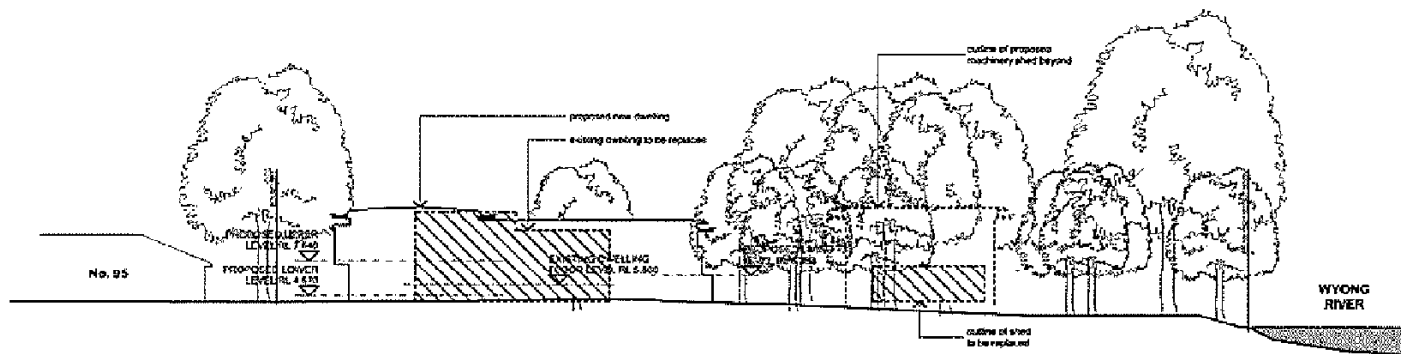
- 6 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 16(1) of Wyong Local Environmental Plan 1991 in that the proposed development proposes the erection of a dwelling house on land with an area of less than 40 hectares and strict compliance with the development standard has not been agreed as being unreasonable or unnecessary in the circumstances pursuant to the Applicant's SEPP 1 objection.
- 7 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 19(a) and (b) of Wyong Local Environmental Plan 1991 in that the proposed development proposes the excavation of 300m³ of soil from the site and there is uncertainty to the impact on water quality because no details of this excavation or its potential impact have been provided in regards to potential acid sulphate soils and ground water interception.
- 8 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 28(4)(b) of Wyong Local Environmental Plan 1991 in that the proposed development proposes the excavation of 300m³ of soil from the site and there is uncertainty to the impact on vegetation because no details of this excavation or its potential impact have been provided in regards to loss of trees.
- 9 Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Development Control Plan 2005: Chapter 100 Quality Housing Clause 3.8.3.b because the proposed development is inconsistent with Council's Floodprone Lands Development Policy which , in this area, is based upon the Wyong River Lower Floodplain Management Plan which identifies the site as unsuitable for buildings or structures.
- 10 Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Development Control Plan 2005: Chapter 100 Quality Housing Clause 5.2.2 because the proposed development proposes to site the dwelling less than 40 metres from the bank of the Wyong River thus siting the dwelling further from areas of rescue. .
- 11 Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act, 1979 the development is at risk of flooding; would have a negative social and economic impact; does not respond to the specific site attributes and would contribute to the cumulative adverse impact on the environment by way of its unsuitable design for flood prone land.
- 12 Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest given it does not adequately consider the impacts of flooding including the potential damage to the structure and the potential danger to future occupants and rescuers, and the development will set an undesirable precedent for the future.
- 13 Having regard to the above reasons of refusal, the proposal is contrary to the objectives of the Environmental Planning and Assessment Act 1979, as specified in Section 5(a) therein which requires the orderly and proper development of land and the siting of a dwelling in a high hazard flood area does not satisfy this objective.

The above plans and design contained herein are intended for use as a guide only. The drawings should not be used for construction without the approval of the Council. The drawings are not to be used for any other purpose without the written consent of the architect.

| Rev | Description | Date |
|-----|---|------------|
| DA | Development Application | 10/11/2010 |
| B | General amendments in accordance with revised DA documentation submitted as part of the response to council's letter dated 22/12/2010 | 07/02/2011 |

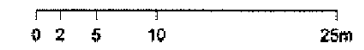


Site Cross Section L1



Site Long Section L2

Not For Construction



Andrew Dickson Architect
Architect Registration No. 7657 RAA

Lusted Residence

93 Alison Rd, Wyong, NSW

Lot 2, DP 1067114

Site Sections

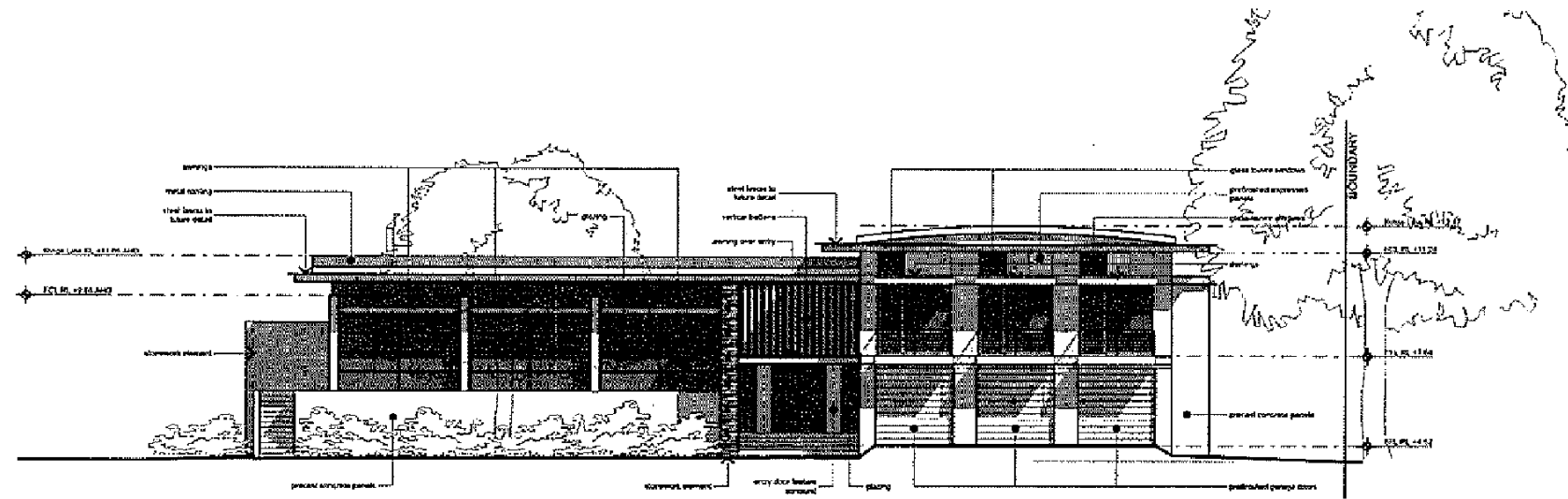
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| | | D101 |

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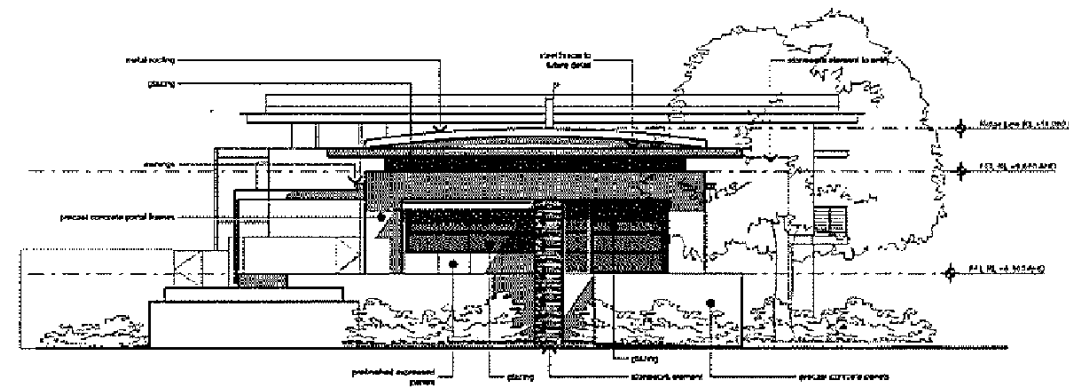
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This document is the property of the architect and is not to be used for any other purpose without the written consent of the architect. It is to be used only for the purposes stated on the drawings and is not to be used for any other purpose.

| Rev | Description | Date |
|-----|---|------------|
| DA | Development Application | 10.11.2010 |
| 0 | General amendments in accordance with revised DA documentation submitted as part of the response to council letter dated 22.12.2010 | 07.02.2011 |

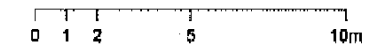


North Elevation



East Elevation

Not For Construction



Andrew Dickson Architect
Architect Registration No. 7657 RAlA

Lusted Residence

93 Allison Rd, Wyong, NSW

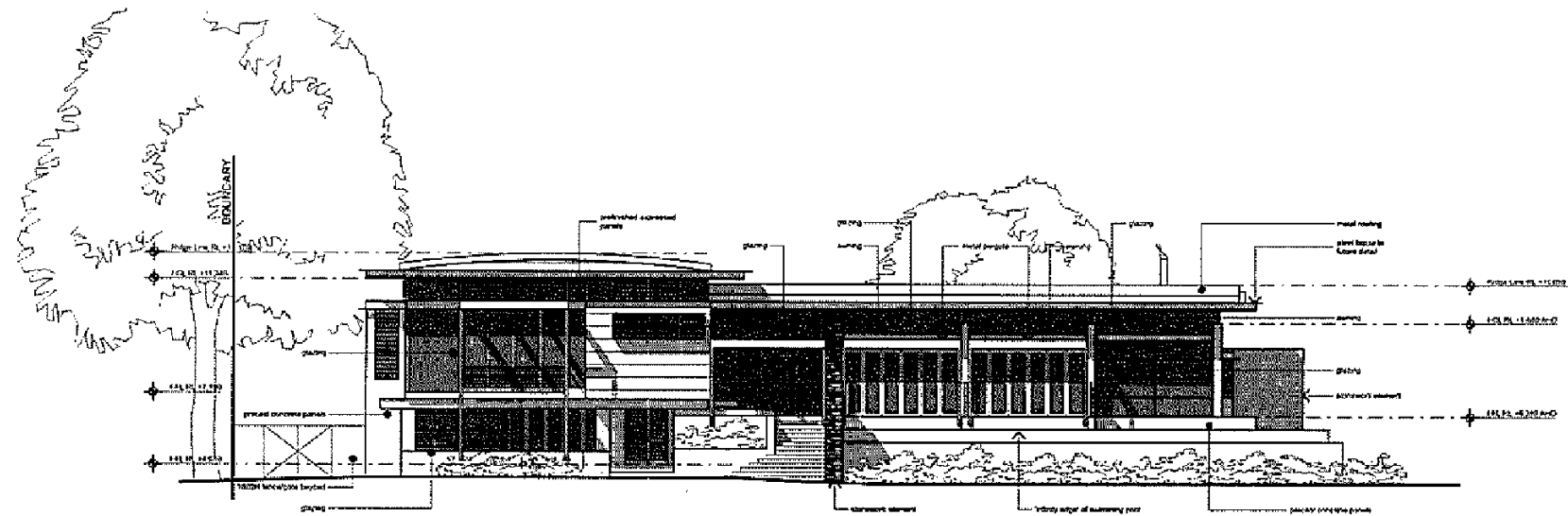
Lot 2, DP 1067114

Elevation

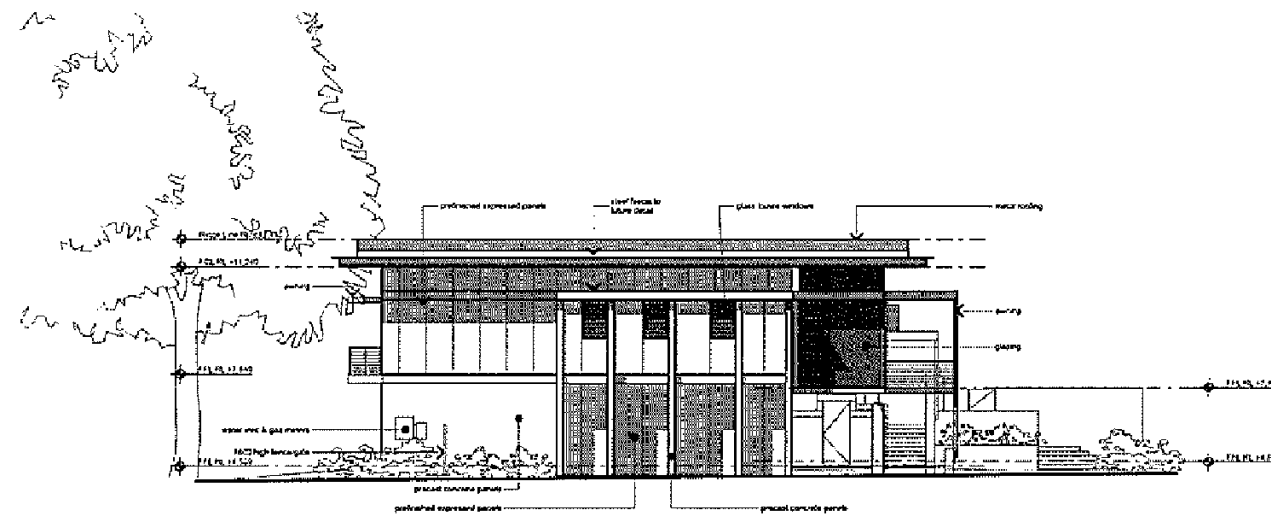
| Scale @ A3 | November 2010 | Issue: B |
|------------|---------------|----------|
| 1:200 | | D300 |

The drawings are intended for use as a guide only. They are not to be used for construction or any other purpose without the prior written consent of the architect. The drawings are not to be used for any other purpose without the prior written consent of the architect.

| Rev | Description | Date |
|-----|---|------------|
| DA | Development Application | 10.11.2010 |
| B | General amendments in accordance with revised DA documentation submitted as part of the response to Council's letter dated 22.12.2010 | 07.02.2011 |

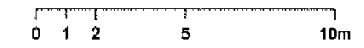


South Elevation



West Elevation

Not For Construction



Andrew Dickson Architect
 Architect Registration No. 7657 HAJA

Lusted Residence

93 Allison Rd, Wyong, NSW

Lot 2, DP 1067114

Elevation

| Scale @ A3 | November 2010 | Issue: B |
|------------|---------------|----------|
| 1:200 | | D301 |

SEPP 71 – Compliance Table

| SEPP 71 Clause 8 | Matters for Consideration | Proposed |
|---------------------|--|---|
| a | The aims of the Policy | As mentioned within the report, the proposal is inconsistent with objectives of the Policy. |
| b | Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved. | The proposal will not affect public access to nearby foreshore areas. |
| c | Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability. | The proposal does not provide new public access to the foreshore. |
| d | The suitability of development given its type, location and design and its relationship with the surrounding area. | The development is not considered suitable for the location given its location within a High Hazard Floodway. |
| e | Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore. | The proposal will have no impact on the amenity of the coastal foreshore and public places given the location of the site and the type of development proposed. |
| f | The scenic qualities of the New South Wales coast, and means to protect and improve these qualities. | The proposal will have no adverse impact on the scenic qualities of the coastline. |
| g | Measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats. | Unknown. No details provided by Applicant concerning the proposed 300m3 of excavation. |
| h | Measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats. | The proposal has no impact on the conservation of fish and marine vegetation or their habitat. |
| i | Existing wildlife corridors and the impact of development on these corridors. | Unknown. No details provided by Applicant concerning the proposed 300m3 of excavation. |
| j | The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards. | As mentioned within the body of the report, the proposal is likely to be affected by flooding . |
| k | Measures to reduce the potential for conflict between land-based and water-based coastal activities. | The proposal has no impact on water-based coastal activities. |
| l | Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals. | The subject site does not contain any aboriginal sites or relics, and there are no known sites within the immediate locality. |

| SEPP 71 Clause 8 | Matters for Consideration | Proposed |
|-----------------------------|--|---|
| m | Likely impacts of development on the water quality of coastal water bodies. | The proposal will not adversely affect the downstream water quality. |
| n | The conservation and preservation of items of heritage, archaeological or historic significance. | The site does not contain any and will have no impact on items of heritage, archaeological or historic value. |
| o | Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities. | Not applicable. |
| p(i) | The cumulative impacts of the proposed development on the environment. | The proposal is not considered to have any adverse cumulative impacts on the environment. |
| p(ii) | Measures to ensure that water and energy usage by the proposed development is efficient. | A BASIX certificate accompanies the application. |

DCP 2005 – Chapter 100 Compliance Table

| DCP 100 Development Standard | Required | Proposed | Compliance |
|--|--|--|--------------------------------------|
| 3.3.3.g Cut & Fill Boundary retaining wall Cut (>1300mm setback) Fill (>900mm setback) | 900mm 900mm DEB & max 600mm or 1:4 batter with 900mm setback | None Nil Minimal | Yes Yes Yes |
| 3.6.3.a Density (site coverage) | 60% (3018m ²) | 8% (400m ²) | Yes |
| 3.6.3.c Height | 2 storey (or 3 on steep sites) 7m wall height (from NGL) 11m ridge height (from NGL) | 2 storey 7m from NGL 8m from NGL | Yes Yes Yes |
| 3.6.3.d Bulk and Scale | Max 10m unbroken wall (min 450mm run for 1.5m) Ridgelines | Highly articulated design incorporating various construction materials and significant articulation | Yes |
| 3.6.3.h Bushfire | Comply with PBFP 2006 | Yes | Yes |
| 3.6.3.i Acoustic Design | Arterial road, airport, freeway or railway – acoustic report | N/A | N/A |
| 3.7.3.c Tree Removal | As per DCP 114 | Refer body of report | Refer to report re: Excavation |
| 3.8.3.b Flood affected | See report | See report | No |
| 3.8.3.e Fencing | Front – 1.2m Side and rear – 1.8m | None proposed | N/A |
| 3.8.3.f Carparking | Min 2 (1 covered 3m x 5.4m) Max 50% garage door (7.0m) Driveway – Min 2.5m | N/A – battle-axe allotment | N/A |
| 3.8.3.g Swimming pool | Not within front setback Min 1m setback (side & rear) Noise | Behind dwelling, large setbacks | Yes |
| 5.2.2 Rural & Rural Residential Dwellings | Front: 20 metres Side/Rear: 10 metres Creeklines: 40 metres from top of bank. | Battle-axe – N/A 6m 18.345m | N/A No No |

4.3 DA/1544/2010 - Proposed Secondary Dwelling at Killarney Vale

TRIM REFERENCE: DA/1544/2010 - D02567930
AUTHOR: Julie Garratley; Development Planner
MANAGER: Peter Fryar; Manager Development Assessment

SUMMARY

An application has been received for a secondary dwelling at 3 Oxley Road, Killarney Vale. The application has been examined having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

As a result of a directive by the Department of Planning (DoP) to all NSW Council's, any applications that rely on a State Environmental Planning Policy No 1 (SEPP 1) variation greater than 10% are required to be reported to full Council for determination. Following planning assessment the application is recommended for approval.

| | |
|-----------------------------|--|
| Applicant | Iobis Building Design |
| Owner | Cecille Rebecca Richards |
| Application No | DA/1544/2010 |
| Description of Land | Lot 32 DP 27040, No.3 Oxley Road, Killarney Vale |
| Proposed Development | Secondary Dwelling |
| Site Area | 594.4m ² |
| Zoning | 2(a) Residential |
| Existing Use | Residential |

RECOMMENDATION

- 1 That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, grant consent subject to the conditions detailed in the schedule attached to the report.***
- 2 That Council assume the concurrence of the Director General of the Department of Planning for the use of State Environmental Planning Policy No. 1 to vary the development standard of State Environmental Planning Policy (Affordable Rental Housing) Clause 22(3)(b) to permit the development.***

PRECIS

- The application is for the use of an existing structure as a secondary dwelling. The Building Code of Australia (BCA) requirements will be addressed under a Construction Certificate which is recommended as a requirement under a condition of consent.
- The site is zoned 2(a) Residential under the provisions of the Wyong Local Environmental Plan 1991 (WLEP).
- The secondary dwelling has been in existence for an unknown period of time. The building was originally approved as a garage and workshop which has been converted to a secondary dwelling without development consent.
- The proposal requires consideration using the provisions of SEPP1 to vary the development standard contained within Clause 22(3)(b) of the State Environmental Planning Policy (Affordable Rental Housing).
 - The area of the secondary dwelling is 93.24m² which exceeds the maximum 60m² as indicated in SEPP (Affordable Rental Housing) Clause 22(3)(b). This has resulted in a variation of 35.6%.
 - The proposal includes variations to the setback requirements under Schedule 1 of SEPP (Affordable Rental Housing).
 - The side setback to the secondary dwelling is 0.82m which is below the minimum of 0.9m as indicated in Schedule 1 Clause 9.
 - The rear boundary setback to the secondary dwelling is 0.65m which is below the minimum 3.0m as indicated in Schedule 1 Clause 10. This results in a variation of 21%.
- As a result of a directive by the Department of Planning (DoP) to all NSW Council's, any applications that rely on a SEPP 1 variation greater than 10% are required to be reported to full Council for determination.

INTRODUCTION

An application has been received for the use of an existing building as a secondary dwelling at No. 3 Oxley Road, Killarney Vale. The site is located within a low density residential area which permits secondary dwellings under the provisions of SEPP (Affordable Rental Housing).



The subject secondary dwelling was originally approved as a garage and workshop in 1986 (BA 888/1986). A condition of the development consent stated that approval was granted "subject to the garage/workshop not being for residential, industrial or commercial purposes". A search of Council's records indicates that the garage was converted to a habitable dwelling some time before 2006; however it is unknown exactly when. The current owners are in ill health and purchased the property to enable a permanent carer to be on site.

They have since carried out work to upgrade the building which has resulted in a secondary dwelling which presents well and is of high standard. Council's records indicate that a garage was originally approved in 1974 in the approximate location of the existing dwelling.

This garage was subsequently demolished to make way for a garage and workshop approved in 1986. At the time of purchase, the current owners believed the structure to be approved as a garage and flat and bought the property in good faith. The current application proposes to regularise the use of the structure as a secondary dwelling. A Building Certificate has been lodged with Council to ensure compliance with the Building Code of Australia (BCA).

Section 76A of the EP & A Act makes it clear that development consent cannot be granted retrospectively. However, there is a distinction between situations concerning the unlawful erection of structures and the unlawful use of land or a structure. Section 109A of the EP&A Act provides that:

"the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of development consent".

In these situations, development applications for consent must be assessed on their merits and the prior unlawful use should not be taken into consideration in this assessment.

Assessment of the secondary dwelling falls under the development control of SEPP (Affordable Rental Housing). The maximum permitted floor area for a secondary dwelling is 60m². The existing floor area of the secondary dwelling is 93.24m². The difference results in a variation of 35.65%. The DoP released a circular in November 2008 directing that all development applications utilising SEPP 1 to vary a development standard by greater than

10% be determined by full Council. The subject application has two variations greater than 10% and as such, is required to be determined by full Council.

SEPP No. 1 sets out the general principles that a development standard may be varied where strict compliance can be shown to be unreasonable or unnecessary in the circumstances. Numerical standards are often a crude reflection of intent when a development can achieve the underlying purpose and objectives of the standard. The intent of this SEPP No.1 objection is to vary the development standards of the SEPP (Affordable Rental Housing). Council may assume the Director's concurrence under SEPP No.1 for the purpose of the subject application.

The approval of the secondary dwelling will not create any adverse impact on adjoining properties. As such, it is recommended that the application be approved subject to conditions.

VARIATIONS TO POLICIES

| | |
|-----------------|---|
| Clause | Clause 22(3)(b) |
| Standard | 60m ² maximum floor area |
| LEP/DCP/SEPP | State Environmental Planning Policy (Affordable Rental Housing) |
| Departure basis | Floor area = 93.24m ² |
| Variation % | 35.6% |
| Schedule | Schedule 1, Part 2, Clause 9 (1)(a) |
| Policy | 3.0m rear setback |
| LEP/DCP/SEPP | State Environmental Planning Policy (Affordable Rental Housing) |
| Departure basis | Rear bdy = 0.65m |
| Variation % | 21.6% |
| Schedule | Schedule 1, Part 2, Clause 10 (1)(a) |
| Policy | 0.9m |
| LEP/DCP/SEPP | State Environmental Planning Policy (Affordable Rental Housing) |
| Departure basis | Side bdy = 0.82 |
| Variation % | 8.9% |

PERMISSIBILITY

The subject site is zoned 2(a) Residential. Secondary dwellings are permissible within the zone under the provisions of SEPP (Affordable Rental Housing).

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- Wyong Local Environmental Plan 1991 (WLEP)
- State Environmental Planning Policy 1 – Development Standards (SEPP 1)
- State Environmental Planning Policy – Affordable Rental Housing
- State Environmental Planning Policy 71 – Coastal Protection Zone

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the (EP& A Act) 1979 and other statutory requirements and Council's policies, the assessment has identified the following key issues, which are elaborated upon for Council's information.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):

Wyong Local Environmental Plan 1991

The aims and objectives of the WLEP include providing opportunity for the development of a wide range of housing commensurate with the Shire's changing population needs, and to encourage residential development that will achieve efficient use of existing physical and social infrastructure. The proposed use as a secondary dwelling is defined under the WLEP as a "detached dual occupancy". Consent for the use of the secondary dwelling is proposed under the provisions of the SEPP (Affordable Rental Housing).

State Environmental Planning Policy – Affordable Housing

The SEPP (Affordable Rental Housing) only permits secondary dwellings up to a maximum floor area of 60m². The secondary dwelling is an existing structure which was originally built as a garage and workshop and has a floor area of 93.24m².

In order to permit the use of the structure as a secondary dwelling, it is necessary for the applicant to rely upon the use of SEPP No.1 to vary the following relevant development standard of the SEPP (Affordable Rental Housing):

"22 (3) A consent authority must not consent to development to which this Division applies unless:

- (a) the total floor area of the principal dwelling and the secondary dwelling is not more than the maximum floor allowed for a dwelling house on the land under another environmental planning instrument, and*
- (b) the total floor area of the secondary dwelling is not more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area".*

The provisions of Clause 23 of SEPP (Affordable Rental Housing) apply to "complying development" for a secondary dwelling and requires compliance with the development standards set out in Schedule 1 of the SEPP. Although the standards contained within Schedule 1 of the SEPP do not strictly apply to the subject proposal which is submitted under Clause 22 of the SEPP, the standards are used by Council as "a guide" in assessment of secondary dwelling proposals.

The proposal involves a variation to the setback provisions contained within Schedule 1 and in particular the following:

- “ 9 (1) *Development for the purposes of a secondary dwelling must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah that is attached to such a building having a setback from a side boundary of less than the following:*
- 10(1) *Development for the purposes of a secondary dwelling must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah that is attached to such a building having a setback from a rear boundary of less than the following:*
- (a) *3 metres if the lot has an area of at least 450 square metres but less than 900 square metres.”*

The underlying purpose of the above provisions is to prevent excessive expansion of uses that may be undesirable or inappropriate in a particular zone and to permit gradual, controlled adaptations of those uses to those compatible with the zoning. Council may assume concurrence under SEPP No.1 in respect to the variations to the permissible floor area sought.

State Environmental Planning Policy No 1 – Development Standards

The aims and objectives of SEPP No. 1 are to provide “flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.

Under Clause 6 of SEPP No 1, the applicant must provide a written objection that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case, and must also specify the grounds of that objection.

The applicant has submitted a SEPP No 1 objection requesting Council's agree to exercise the powers available under SEPP No 1 to vary the standard to enable consent to be granted to the subject application for the use of a secondary dwelling. The submission contends that;

- *The proposed variations relate to an existing shed that has recently been the subject of internal renovations and external improvements for use as a secondary dwelling ;*
- *The shed has been in existence for over 30 years with negligible impacts to the natural or built environment ;*
- *The removal of existing trees and vegetation is not required to accommodate the proposed development;*
- *Existing stormwater disposal drains towards the drainage reserve adjoining;*
- *Residential amenity will be maintained and remain unchanged;*

- *Water, sewerage and all utility services are available to each dwelling;*
- *The proposed development will result in negligible impacts to adjoining lands and the environment.*

In addition to the SEPP, his Honour, Justice Lloyd, outlined five questions in *Winten Property Group Ltd v North Sydney Council* [2001] NSW LEC 24 that should be considered when preparing and considering a SEPP 1 objection. As such, Council, exercising its function as the consent authority, must be satisfied of all these matters before it upholds the SEPP 1 objection.

To ensure that a SEPP 1 objection is well founded and that compliance with a standard is unreasonable or unnecessary, the following questions identified within the *Winten Property Group Ltd v North Sydney Council*, [2001] NSWLEC 46 judgment need to be addressed. These questions and the appropriate answers have been addressed in the Applicants SEPP No 1 objection.

A copy of the Applicants SEPP1 objection is annexed to this report.

Assessment of SEPP 1 Submission:

The proposed variation relates to the permissible use of an existing secondary dwelling. The building has been in existence for over 30 years with negligible impacts to the natural or built environment. In an attempt to minimise disturbance to the external configuration and to capitalise on building sustainability, the existing floor area and boundary setbacks have been retained.

The secondary dwelling has a floor area of 93.24m² resulting in a 33.24 m² variation to the maximum 60m² development standard. The existing building encroaches on the side and rear setback requirements applied under Schedule 1 of SEPP (Affordable Rental Housing) which are deemed “development standards” for the purpose of a “complying development” secondary dwelling. However, the setback requirements under Schedule 1 in the case of the subject development application are not “development standards” and therefore do not require a SEPP 1 objection for Council to vary the provisions. It is noted that the applicant has considered the setback provisions to be development standards in the SEPP No 1 objection which is an incorrect assumption.

The setback encroachments will require upgrading of the premises to satisfy the requirements of the BCA. To overcome issues relating to the potential spread of fire should such an event occur, the landowners propose to line the northern external wall with fire rated wall sheeting together with toughened fire rated glass to window openings.

It is pertinent to note that the long-term existence of the building, negligible impacts created and significant improvements recently undertaken for the use of this building as a secondary dwelling, the obligation to prepare and submit this SEPP 1 Objection is merely to formalise an existing situation and to satisfy applicable statutory requirements. It is considered that the aim and intent of the development standard which this SEPP 1 objection relates is not to capture nor require strict compliance where it is clearly evident the variations sought create negligible impacts on the natural or built environment.

State Environmental Planning Policy No 71 – Coastal Protection

The site is located within the Coastal Protection Zone and therefore has been assessed against the matters contained within Clause 8 of SEPP 71. The proposal is considered to satisfy the requirements of the SEPP 71.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):***The relationship to the regional and local context and setting.***

The use of the structure is suitable for use as a secondary dwelling. It fits with the regional and local context and setting promoting diversity in residential housing. The proposal does not create any adverse impact with regard to the scale form, character, density and design of the development in the local area.

The access, transport and traffic management measures.

The proposed use does not affect access to the site and will utilise the existing vehicle access crossing. The proposed use of the existing structure as a secondary dwelling will create a negligible impact on the transport and traffic issues within the locality.

The impact on the public domain (recreation, public open space, pedestrian links).

The proposed use as a secondary dwelling will create a negligible impact on the public domain. The existing recreation, public open space and pedestrian links are considered to be sufficient for the additional residential use.

The impact on utilities supply.

The proposed use of a secondary dwelling will create a small impact on the existing utilities. As such, contributions are required to be paid to accommodate utility supply.

The effect on heritage significance.

The proposed use of the existing structure as a secondary dwelling will have no effect on heritage significance.

Any effect on other land resources.

The proposed use of the existing structure as a secondary dwelling will have no effect on other land resources.

Any impact on the conservation of water.

The proposal involves the use of water saving fixtures and a water tank on site to contribute to the conservation of water.

Any effect on the conservation of soils or acid sulphate soils.

The proposal does not involve any effect on the conservation of soils or acid sulphate soils.

Any effect on quality of air and microclimate conditions.

The proposal does not create any adverse affect on the quality of air or microclimate conditions.

Any effect on the flora and fauna.

The proposal will have a negligible impact on the existing flora and fauna.

The provision of waste facilities.

The secondary dwelling proposes to utilise the existing waste facilities provided by the council.

Whether the development will be energy efficient.

The development application relates to the use of the existing building and any upgrading requirements can only be applied to satisfy the provisions of the BCA. A BASIX certificate has been issued as part of the development application.

Whether the development will cause noise and vibration.

The proposed use of a secondary dwelling will provide a negligible impact with regard to noise and vibration.

Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).

The site of the proposed is free from risk of any natural hazards.

Any risks from technological hazards.

The proposed secondary dwelling is not likely to be affected by any technological hazards.

Whether the development provides safety, security and crime prevention.

The proposed use provides additional safety by providing enhanced surveillance to the site contributing to crime prevention.

Any social impact in the locality.

The proposed use of a secondary dwelling contributes to the social equity within the area by providing an alternative dwelling arrangement to those of lower economic ability and those disadvantaged and in need of permanent care. The use of the secondary dwelling can contribute to a person's sense of belonging and place in the community by enabling independent residential arrangements.

Any economic impact in the locality.

The use of secondary dwellings can contribute to a positive economic impact by creating greater economic viability to a single residential dwelling.

Any impact of site design and internal design.

The proposed use of a secondary dwelling is within the confines of an existing structure, as such the site is considered suitable for the use. The secondary dwelling is accessed by an existing concrete driveway and vehicle crossing. The proposed use will provide no additional impacts to the existing site.

Any impacts of construction activities (construction site management, protection measures).

The proposed use of a secondary dwelling is within the confines of an existing structure. As the dwelling is situated within the minimum boundary dimensions, there are various parts of the existing structure that will be required to be fire rated to achieve the recommended safety levels. A Building Certificate has been lodged, pending a favourable outcome from the development application process. Any remaining BCA issues will be dealt with by way of a Construction Certificate prior to the issue of a Building Certificate.

Any cumulative impacts.

The cumulative impacts that may be generated from the use as a secondary dwelling are considered to be negligible. The dwelling is an existing structure which, although currently used illegally, has been used as a secondary dwelling in the past.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):***Whether the proposal fits in the locality.***

The proposal fits with the objectives of the residential locality and the objectives of the SEPP (Affordable Rental Housing).

The development is within a residential area that contains a number of single and multiple dwelling developments. The secondary dwelling creates a negligible impact to the site and surrounding area and promotes an orderly and economic use of the land.

Whether the site attributes are conducive to development.

The site attributes are conducive to the development. The secondary dwelling proposal will utilise the existing vehicle access crossing and driveway and use the footprint of the existing structure.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):

In accordance with the provisions of DCP 2005 Chapter 70 - Notification of Development Proposals, the application did not require notification.

Any submission from public authorities.

The application was not required to be submitted to any public authorities.

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.

The proposal of the secondary dwelling is considered to be of a positive community interest by sustaining a quality housing opportunity that is of a lower cost and maintenance. It promotes an orderly and economic use of the land and the opportunity for low cost housing.

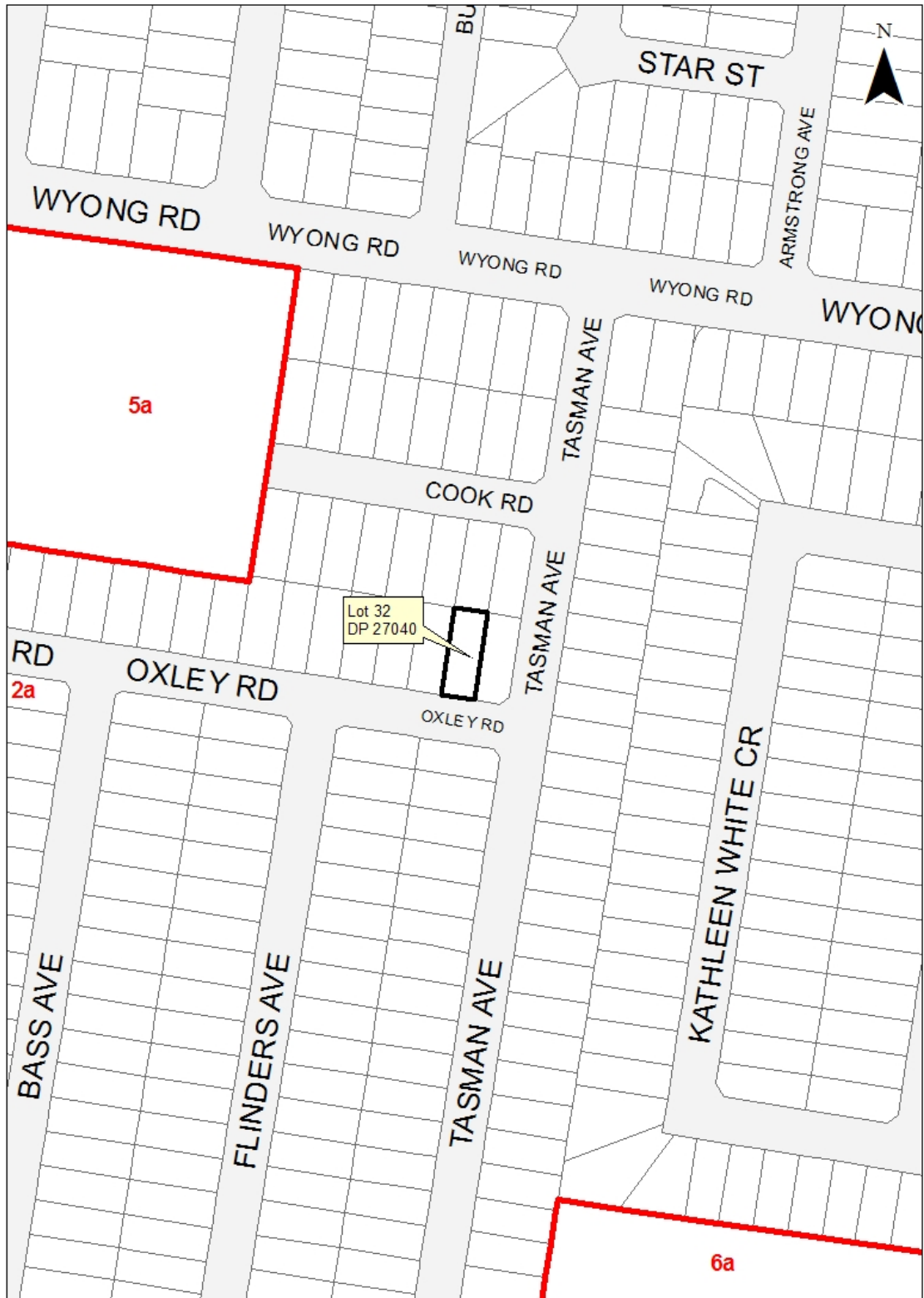
OTHER MATTERS FOR CONSIDERATION

There are no further matters for consideration.

CONCLUSION

The proposed development application is for the approval for the use of an existing building as a secondary dwelling. The building has been in existence for over 30 years. During that time, it is considered that the structure has had a negligible impact on the surrounding area. The development requires a SEPP 1 objection to vary the maximum floor area required development standard under the SEPP (Affordable Rental Housing). The SEPP 1 objection is supported given that compliance with the standard is considered unreasonable in the current case. The application is therefore recommended for approval subject to suitable conditions of consent.

Locality Plan



ATTACHMENTS

- | | | |
|---|--------------------------------------|-----------|
| 1 | Draft Proposed Conditions of Consent | D02542636 |
| 2 | Development Plan | D02567983 |
| 3 | SEPP 1 Objection from Applicant | D02568027 |

Date: 7 March 2011
Responsible Officer: Julie Garratley
Location: 3 Oxley Road, KILLARNEY VALE NSW 2261
Lot 32 DP 27040
Owner: Mr K A Boyd and Mrs E V Boyd
Applicant: Iobis Building Design
Date Of Application: 23 December 2010
Application No: DA/1544/2010
Proposed Development: Use existing building as detached secondary dwelling
Land Area: 594.40

PROPOSED CONDITIONS

- 1 The development taking place in accordance with the approved development plans reference number IOB-ric dated September 2010 except as modified by any conditions of this consent, and any amendments in red.

Certificates/Engineering Details

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

Prior to Release of Construction Certificate:

The following conditions must be satisfied prior to the release of the Construction Certificate. Conditions may require the submission of additional information with the Construction Certificate Application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.

No conditions

Prior to Commencement of Works:

The following conditions must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.

No Conditions

Prior to Release of Occupation Certificate:

The following conditions must be satisfied prior to the release of an Occupation / Subdivision Certificate.

Certificates/Engineering Details

- 3 Prior to the occupation of the building, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.
- 4 Prior to the issue of the Occupation Certificate completion of all works required under Building Certificate 148/2010.

Contributions

- 5 Prior to the issue of an Occupation Certificate, the payment to Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act and Council's Contribution Plan. Council's contributions are adjusted on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.

Water and Sewer Services/Infrastructure

- 6 All water and sewer works or works impacting on water and sewer assets are to be designed and constructed to the requirements of Wyong Shire Council as the Water Supply Authority under the Water Management Act 2000. The requirements of Section 306 of the Water Management Act, 2000 which apply to this development, are detailed in the Section 306 requirements letter attached to the consent.
- 7 The obtaining of a Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Wyong Shire Council as the Water Supply Authority prior to issue of the Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.

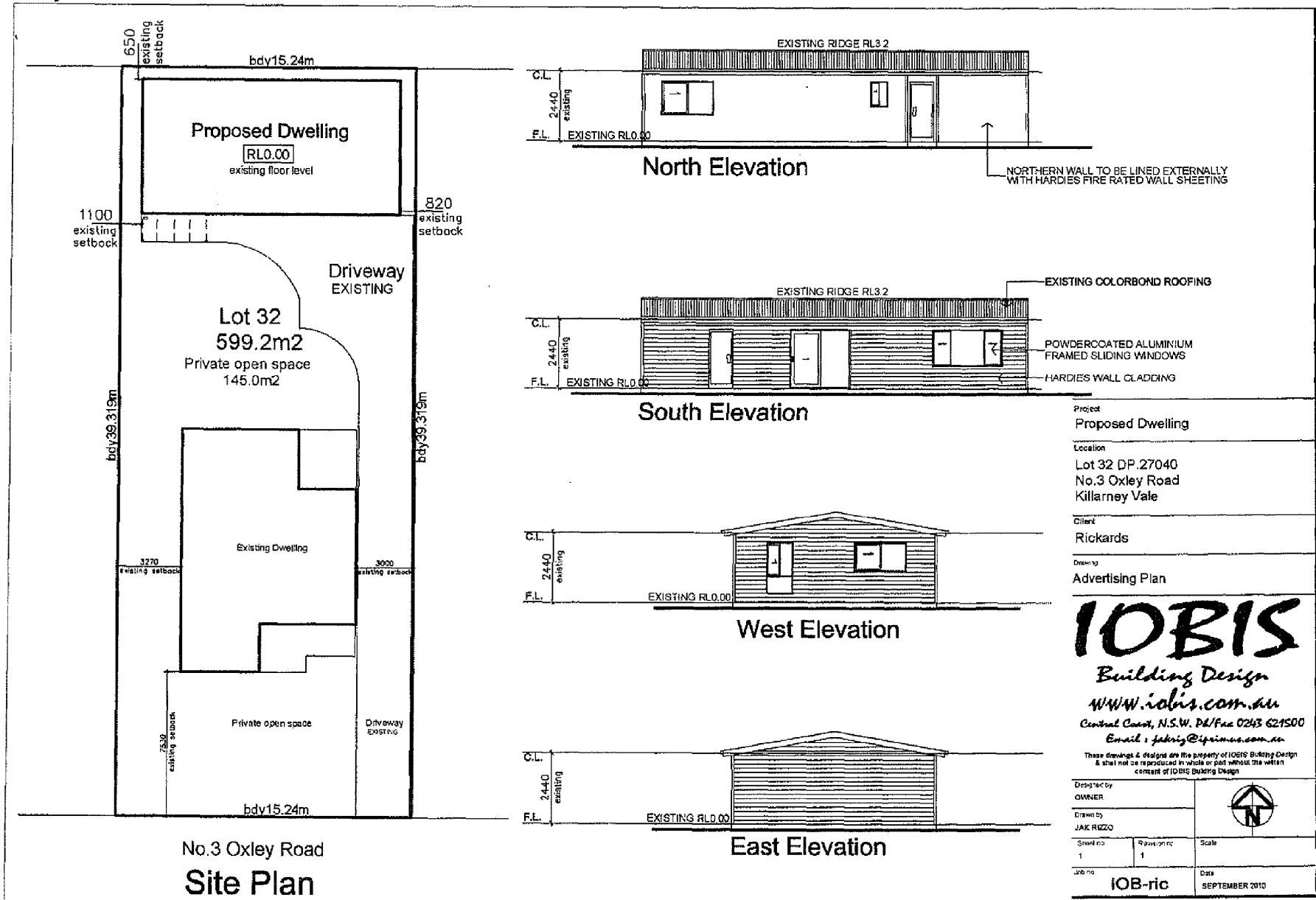
Ongoing Operation:


The following conditions must be satisfied during use / occupation of the development.

No Conditions

1 SCHEDULE OF CONTRIBUTIONS

| | |
|--|------------|
| Shire Wide Regional Open Space | \$117.75 |
| Shire Wide Cycleway Network | \$241.60 |
| Shire Wide Performing Arts Centre & Public Art | \$272.60 |
| Shire Wide Administration | \$52.30 |
| Southern Lakes District Open Space Works | \$2,768.35 |
| Southern Lakes Community Facilities Works | \$2,312.90 |
| Killarney/Berkeley/Tumbi/Chittaway Water DSP | \$1,148.05 |
| Killarney Vale Urban Sewer DSP | \$1,261.75 |



| | | |
|---|---|-------|
| Project Proposed Dwelling | | |
| Location Lot 32 DP 27040 No.3 Oxley Road Killarney Vale | | |
| Client Rickards | | |
| Drawing Advertising Plan | | |
| <h1>IOBIS</h1> <p>Building Design www.iobis.com.au Central Coast, N.S.W. Ph/Fax 0243 621500 Email: jakriz@iprimus.com.au</p> <p><small>These drawings & designs are the property of IOBIS Building Design & shall not be reproduced in whole or part without the written consent of IOBIS Building Design</small></p> | | |
| Designed by OWNER |  | |
| Drawn by JAK RIZZO | | |
| Sheet no 1 | Revisions 1 | Scale |
| Job no IOB-ric | Date SEPTEMBER 2010 | |

STATE ENVIRONMENTAL PLANNING POLICY (SEPP) No. 1
- OBJECTION TO DEVELOPMENT STANDARD -

1. Name and Address of Objector:

Mr Keith and Mrs Edith Boyd; and
Ms Cecille Rebecca Rickards
3 Oxley Road
KILLARNEY VALE NSW 2261

Phone: 4333 8998
Contact: Rebecca Rickards

2. Property Description:

Lot 32 in DP 27040
No. 3 Oxley Road, Killarney Vale.

3. Proposed Development and/or Use:

Development Application (DA) No. 148/2010 seeks consent for the use of an existing fibro shed as a secondary dwelling in accordance with SEPP (Affordable Rental Housing) 2009.

4. Brief History and Special Circumstances:

The said property was purchased by the landowners, Mr K A and Mrs E V Boyd and Ms C R Rickards in early 2010 with the understanding that consent had previously been granted by Council in 1972 for the erection of a detached garage and flat at the rear of the site. Whilst the aforementioned building was in need of major internal repairs and overall embellishment at the time of purchase, the existence of a kitchen, bathroom, toilet, laundry and bedroom coincided with the information provided by the Estate Agent together with the Identification Survey prepared by Evans and Smith Consulting Surveyors dated, 7 July 2006, being a structure approved for the purposes of a garage and flat. Satisfying the landowner's financial, social and medical requirements the property was purchased. A copy of the Identification Survey is attached as Appendix A. Furthermore, the principal residence and detached garage/flat are provided with separate electrical metering, water supply and sewage disposal to Council's reticulated system.

Contrary to the information provided to the landowners at the time of purchase, it has since been revealed that Council granted consent in 1972 for the erection of a shed. Consequently, consent is now required under Part 4 of the Environmental Planning and Assessment (EP&A) Act, 1979 for the use of the previously approved shed as a secondary dwelling in accordance with SEPP (Affordable Rental Housing) 2009.

Since purchasing the said land, substantial internal renovations have been carried out to render the approved shed fit for human habitation. Photographs, pre and post construction works are attached as Appendix B. As is evident from the photographs, the shed interior has been significantly improved and embellished beyond the minimum planning requirements. Apart from some minor modifications to conform with the current edition of the Building Code of Australia

for a habitable structure and this practical and logical use of SEPP No. 1, the existing structure and proposed use, conforms with all other applicable legislative controls with negligible impacts to the natural or built environment. In conjunction with painting of external walls and the establishment of gardens etc, a significantly enhanced and aesthetically pleasing secondary dwelling now accommodates the said land.

It is imperative that Council is presented with the exceptional circumstances associated with this proposal together with the primary purpose for purchasing the said parcel of land.

Due to failing health Mr and Mrs Boyd, residents of the principal dwelling, sold their property in Tinonee and sought to purchase a parcel of land on the Central Coast within close proximity to a Public Hospital, miscellaneous medical services and their family member, Ms Rickards (sister, sister in law and full-time carer) who will provide on site full-time care on a daily basis. Mr and Mrs Boyd requested the Estate Agent search for a property with a detached "flat" so as to provide accommodation for Ms Rickards. The said land was presented accordingly and purchased by the landowners in good faith with the understanding that Mr and Mrs Boyd would reside in the principal dwelling and Ms Rickards in the secondary dwelling.

Since relocating to the Central Coast Mr and Mrs Boyd are greatly benefiting from an improved sense of safety and security. The presence of a caring and committed relative living nearby and within earshot should assistance be required brings peace of mind and well-being.

Apart from the social and personal benefits described above, appropriately proportioning the costs to purchase and maintain the said land affords many financial benefits and in particular security in tenure for residents. Furthermore, the said land fulfills the specific requirements of the landowners and facilitates the retention of affordable housing.

Council has previously been furnished with correspondence from Mr and Mrs Boyd (landowners), Ms Rickards (landowner and full-time carer), Dr Johannes Bester (General Practitioner) and long-term friend, Mr D J Cole testifying to the personal and exceptional circumstances described above. Copies of the aforementioned correspondence are attached as Appendix C.

Council Officers, Mr Tony Maguire and Mr Gary Evans visited the site and inspected the renovations undertaken to the previously approved shed. Apart from minor modifications being required to conform with the current edition of the Building Code of Australia for a habitable structure, no other concerns were raised in this regard. Essentially, Mr Maguire and Mr Evans were impressed by the building improvements and overall embellishment of the land.

5. Environmental Planning Instrument which specifies the Development Standards:

State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009.

6. Development Standards which the Objection relates to:

Schedule 1 – Development Standards for secondary dwellings, Part 2 – Site Requirements, Clause 4 – Maximum floor area for principal and secondary dwelling, Sub-Clause 1 which states:

- (1) *The floor area of a secondary dwelling must not be more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

Schedule 1 – Development Standards for secondary dwellings, Part 3 – Building heights and setbacks, Clause 9(1) (a) which states:

- (1) *Development for the purposes of a secondary dwelling must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah that is attached to such a building having a setback from a side boundary of less than the following:*
- (a) *0.9 metres, if the lot has an area of at least 450 square metres but less than 900 square metres.*

Schedule 1 – Development Standards for secondary dwellings, Part 3 – Building Heights and setbacks, Clause 10(1) (a) which states:

- (1) *Development for the purposes of a secondary dwelling must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah that is attached to such a building having a setback from a rear boundary of less than the following:*
- (a) *3 metres, if the lot has an area of at least 450 square metres but less than 900 square metres.*

7. Proposed Variation to Development Standards:

The proposed variations relate to an existing shed that has recently been the subject of internal renovations and external improvements for use as a secondary dwelling. The shed has been in existence for over 30 years with negligible impacts to the natural or built environment. In an attempt to minimise disturbance to the external configuration and to capitalize on building sustainability, the existing floor area and boundary setbacks have been retained.

The shed maintains a total floor area of 90m² resulting in a 30m² variation to the 60m² development standard. The shed is setback from the eastern side boundary approximately 820mm resulting in a departure of 80mm to the 900mm development standard. The shed is setback from the rear, northern boundary approximately 650mm resulting in a departure of 2.35 metres to the 3 metre development standard. To overcome concerns relating to the potential spread of fire should such an event occur, the landowners propose to line the northern external wall with fire rated wall sheeting together with toughened fire rated glass to window openings. It will be observed during Council's assessment of this DA that a pergola (or similar) structure is situated on the northern adjoining property and maintains a negligible setback to the rear common boundary.

In assessing the abovementioned inconsequential non-compliances, it is pertinent to note that the long-term existence of the shed, negligible impacts created and significant improvements recently undertaken to facilitate the use of this shed as a secondary dwelling in conjunction with the special circumstances disclosed above, the obligation to prepare and submit this SEPP 1 Objection is merely to formalize an existing situation and to satisfy applicable "rules and regulations". Whilst compliance with the numerical controls can not be achieved without causing considerable emotional and financial hardship on the residents, it is considered that the aim and intent of the development standards which this Objection relates is not to capture nor require strict compliance where it is clearly evident the variations sought create negligible impacts on the natural or built environment.

In accordance with the procedure issued by the Land and Environment Court, the following is provided for Council's consideration.

1. *Is the planning control in question a development standard?*

In accordance with Schedule 1 – Development Standards for Secondary Dwellings, the planning controls specified under Item 6 above are development standards.

2. *What is the underlying object or purpose of the standards?*

Whilst the SEPP does not clearly specify the object or purpose of the abovementioned development standards, it is recognised that the building setback planning controls will facilitate compliance with the minimum requirements of the Building Code of Australia with particular regard to preventing the spread of fire to adjoining lands. Additionally, the planning outcomes sought in applying side and rear building setback controls typically seek to ensure a development does not excessively compromise privacy (both visual and aural), views and solar access of neighboring properties.

Whilst not clearly specified, it is considered that the underlying object or purpose of the maximum floor area development standard is to:

- provide reasonable controls to guide and achieve development of good design;
- reduce the likelihood for the over-development of land;
- protect and enhance resident amenity;
- ensure development sites and densities are appropriate in the zone and compatible with the local context;
- ensure building bulk and site coverage provisions are compatible with neighboring development; and
- to provide a consistent planning approach to the provision of affordable rental housing.

The proposed development is considered to fulfill the underlying object or purpose of the aforementioned development standards in that:

- the floor area and setbacks of the proposed secondary dwelling remain unchanged from that which has physically existed for more than 30 years;
- the dwelling improvements contribute positively to the local context and neighboring development;
- resident amenity is undoubtedly enhanced by means of embellishing the proposed secondary dwelling and subsequently the said land;
- the proposed secondary dwelling is capable of complying with the relevant provisions of the Building Code of Australia; and
- the proposed development clearly observes the aims of SEPP (Affordable Rental Housing) through the provision of diversity in housing choice by way of affordable housing as defined under the EP&A Act, 1979.

Accordingly, the lodgement of this SEPP No. 1 Objection adequately addresses the variations sought and shall enable assessment of the DA to advance toward a favourable determination.

3. *Does compliance with the development standards tend to hinder the attainment of the objects specified in Section 5 of the EP&A, Act 1979?*

The applicable objects listed under Section 5 of the Act must be taken into consideration when assessing a development proposal in conjunction with relevant matters specified under Section 79C. Strict compliance with the development standards with which this Objection seeks to vary would most certainly hinder the attainment of the relevant objects listed under Section 5. Specifically, compliance with the development standards would prevent the orderly and economic use and development of the land, the opportunity to promote the social and economic welfare of residents together with the provision and maintenance of affordable housing.

4. *Is compliance with the development standards unreasonable or unnecessary in the circumstances of the case?*

As is evident through physical inspection and observation of the subject site and surrounding lands together with the "exceptional circumstances" described above, the proposed development will result in negligible impacts on the natural or built environment and is considered to meet and comply with the objectives of the 2(a) – Residential zone and the aims of SEPP (Affordable Rental Housing) 2009.

The site is suitable to accommodate a secondary dwelling and will continue to offer a quality lifestyle for residents and encourage community interaction without compromising resident amenity or aesthetic and scenic values of the immediate locality.

Sufficient separation is available between the principal and secondary dwelling to enable the continuance of suitable vehicle access, adequate private open space, landscape replenishment and severance between built elements while retaining all vegetation on site. As is evident from the photographs attached as Appendix B, the secondary dwelling is not visually prominent from the street or adjoining areas and as such is not physically obtrusive.

The proposed development does not raise any matter of significance for regional or state planning. Other relevant planning controls will not be compromised nor will additional non-compliances transpire.

The intent and language of the development standards with which this Objection seeks to vary, is not considered to capture nor retrospectively seek to hinder a development that adequately demonstrates, beyond reasonable doubt, potential environmental and amenity impacts are negligible. In assessing this Objection Council's reasonableness is hereby requested where strict compliance with Schedule 1, Clauses 4, 9 and 10 of SEPP (Affordable Rental Housing) 2009 would be unreasonable and unnecessary in the circumstances of the case.

5. *Is the objection well founded?*

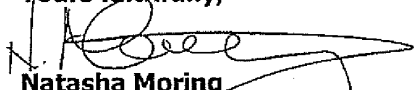
For the very pertinent and relevant reasoning provided above, this Objection is considered to be comprehensive and well founded.

While the proposal involves a considerable variation to Clauses 4 and 10 in particular, it is a common sense approach in terms of enabling the use of an existing building for the purposes of a secondary dwelling, ongoing social and economic benefits and building sustainability where impacts are of no consequence. It utilizes an already established building that has been significantly embellished by way of internal alterations and an external makeover that will continue to function adequately, as is presently the case.

- The proposal merely formalizes an existing and well functioning situation. It is therefore requested that Council, during the assessment of this Objection, take a logical and practical approach in applying the governing legislation.

This Objection should be read in conjunction with the supporting information attached as Appendices A to C together with the plans and information submitted with the Development Application.

Yours faithfully,



Natasha Moring
Development Planner
PH: (0418) 275 412