

ITEM 8.5	PLANNING PROPOSAL TO AMEND WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011
REPORTING MANAGER	GROUP MANAGER STRATEGIC PLANNING
TRIM FILE REF	2012/275511
ATTACHMENTS	1 Narrabeen Height of Buildings - Land Application Map (Excluded from Agenda) 2 Letter from the Department of Planning and Infrastructure Dated 18 June 2012

EXECUTIVE SUMMARY

PURPOSE

To report to Council the results of a staff investigation into various anomalies present within Warringah Local Environmental Plan 2011 (WLEP 2011) and to recommend resolution of these matters.

SUMMARY

WLEP 2011 was made on 9 December 2011. Since the making of WLEP 2011, Council has become aware of several anomalies within the plan.

It is recommended that Council resolve to prepare a Planning Proposal to correct the identified anomalies / errors and improve the operation of WLEP 2011.

FINANCIAL IMPACT

The work will be undertaken by staff within the existing budget allocation.

POLICY IMPACT

Various amendments to WLEP2011 and if required, amendments to the Warringah Development Control Plan (WDCP) to ensure that appropriate development controls apply to the subject land in accordance with the amending WLEP 2011.

RECOMMENDATION OF DEPUTY GENERAL MANAGER ENVIRONMENT

That Council:

- A. Prepare a Planning Proposal for amending WLEP 2011 and refer this to the Minister for Planning and Infrastructure (Minister) that will:
 - a. Permit boat building and repair facilities in the IN1 General Industrial zone.
 - b. Delete "registered clubs" as a permitted use in the RE2 Private Recreation zone and
 - i. Zone Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club RE1 Public Recreation.
 - ii. Add Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club to Schedule 1 Additional Permitted Uses, making
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“registered clubs” a permitted use on these sites.

- c. Reduce the maximum building height for land in Narrabeen that is bound by Pittwater Road and Narrabeen, Ocean and Albert Streets (see attachment 1), from 11 metres to 8.5 metres.
 - d. Omit Lot 1 DP960506 from the Land Reservation Acquisition Map.
 - e. Map all properties listed within Schedule 1 Additional Permitted Uses of WLEP 2011.
 - f. Omit clause 6.1 Acid Sulfate Soils and insert the latest Model Local Provision 7.1 Acid Sulfate Soils.
 - g. Amend the Land Zoning Map to accurately record the boundaries of National Parks within the Local Government Area.
- B. Should the Minister require additional information to enable the amending WLEP 2011 to proceed, endorses Council staff to respond as required.
- C. Upon receipt of the NSW Minister for Planning and Infrastructure Gateway Determination, and in accordance with any directions contained therein, authorises the public exhibition and consultation requirements to progress the Planning Proposal.
- D. If the Minister supports the Planning Proposal, endorses Council staff to review and if required prepare amendments to the WDCP.
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REPORT

BACKGROUND

WLEP 2011 was made on 9 December 2011. Prior to the making of WLEP 2011, Council notified the Department and the Department acknowledged, that for various reasons there were several issues with the plan. The Department advised Council that in the interests of expediency, the plan should be made and a Planning Proposal be submitted to the Department to rectify the issues, following gazettal. The purpose of this Council report is to address the identified anomalies present within the plan.

PLANNING PROPOSAL

The Planning Proposal is proposed to address the following matters:

Permissibility of boat building and repair facilities in the IN1 General Industrial zone

Boat building and repair facilities are prohibited in all zones under WLEP 2011. This was not Council's intention when translating WLEP 2000 into WLEP 2011. In WLEP 2000, boat building and repair facilities were defined as 'industry'. Under WLEP 2011, 'boat building and repair facilities' are given their own definition, but this was not captured in the translation process. This issue was identified in a submission during the public exhibition of WLEP 2011. At its meeting of 8 June 2010, Council's resolution (at 4.1V (xi)(b)) addressed this matter as follows:

V. That following the making of the Warringah Local Environmental Plan 2009 by the Minister for Planning, Council include the following as part of the future review of WLEP 2009:

(xi) Consider the amendment of WLEP 2009 as follows:

(b) The Land Use Table be amended by deleting boat repair facilities as an Item 4 Prohibited use in the IN1 General Industrial zone.

It is recommended that the Planning Proposal delete boat building and repair facilities as a prohibited use in the IN1 General Industrial zone. Given that the IN1 General Industrial zone is an open zone, boat building and repair facilities will be innominately permitted within the zone.

Registered clubs located on public land

Within Warringah a number of registered clubs are located on publicly owned land and have been established as a component part of a recreation facility on that land. In recognition of this, it was Council's intention to permit registered clubs associated with a recreation facility in the RE1 Public Recreation zone. Contrary to Council's intention, with the making of WLEP 2011, registered clubs have been made prohibited in the RE1 Public Recreation zone.

It was also Council's intention to prohibit registered clubs in the RE2 Private Recreation zone, due to amenity impacts on nearby residents. In the making of WLEP 2011, four registered clubs have been zoned RE2 Private Recreation and registered clubs have been made a permitted use on all land zoned RE2 Private Recreation, inconsistent with Council's intent.

The Minister made WLEP 2011, zoning the four registered clubs on public land RE2 Private Recreation and permitting registered clubs (without any qualification requiring association with a recreation facility), in the zone. The Minister also made registered clubs prohibited in the RE1 Public Recreation zone.

WLEP 2011, as made by the Minister, is inconsistent with Council's intentions and warrants changing for the following reasons:

- It allows registered clubs, in their own right, to be established in close proximity to low density residential land.
- It is not consistent with the exhibited plan as the exhibited plan included a qualification within the land use table to ensure that registered clubs could not be established in their own right but only as a component part of a recreation facility.
- Registered clubs are not a compulsory land use in the Standard Instrument LEP for the RE2 zone and hence should not have been included contrary to Council's stated intention.

Resolution of this issue in a way that meets Council's planning intentions and also meets the Department's requirements can be achieved as follows:

- Making registered clubs prohibited in the RE2 Private Recreation zone and adding the four existing registered clubs located on public land to Schedule 1 Additional Permitted Uses, thereby confirming their 'permitted' status (irrespective of whether they are zoned RE1 or RE2), or
- Making registered clubs prohibited in the RE2 Private Recreation zone and allowing the "Existing Use" provisions of Part 4 Division 10 of the Environmental Planning and Assessment Act to prevail (irrespective of whether the existing registered clubs located on public land are zone RE1 or RE2).

As a preferred option, it is recommended that the Planning Proposal:

- Deletes "registered clubs" as a permitted use in the RE2 Private Recreation zone, and
- Zones Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club RE1 Public Recreation, and
- Adds Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club to Schedule 1 Additional Permitted Uses, making "registered clubs" a permitted use on these sites.

Alternatively, a Planning Proposal could as a least preferred option,;

- Delete "registered clubs" as a permitted use in the RE2 Private Recreation zone, and
 - Add Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club to Schedule 1 Additional Permitted Uses, making "registered clubs" a permitted use on these sites, or
 - Allow the "Existing Use" provisions of Part 4 Division 10 of the Environmental Planning and Assessment Act to prevail.

Height of Buildings Map

In translating WLEP 2000 into WLEP 2011 an error occurred on the Height of Buildings Map. Land in Narrabeen that is bound by Pittwater Road and Narrabeen, Ocean and Albert Streets was incorrectly given a value of 11 metres instead of the intended 8.5 metres (see attachment 1). This error was identified after Council adopted WLEP 2011 on 8 June 2010. In September 2010, Council notified the Department of the error and requested that an amendment be made. In a letter dated 7 December 2010, the Department stated that the requested change had been made to the plan. However, in a letter dated 11 December 2011 the Department stated:

"To ensure that the development controls for land in Narrabeen is retained as exhibited, Council's request to reduce the height limits has not been supported. However, if Council

wishes to amend the maximum height limit for land at Narrabeen, it may submit a planning proposal with its preferred position to the Department to provide the community with an opportunity to comment on the proposed changes."

An inconsistency exists between the 11 metre height limit in WLEP 2011 and the 2 storey height limit in WDCP relating to the said land. WLEP 2000 accurately identified the said land as having a maximum building height of 8.5 metres. The error that exists within WLEP 2011 occurred during the translation (map preparation) process. Council did not intend to introduce a (new) maximum height of 11 metres for the said land, nor was any planning analysis carried out to support such change. Therefore, an amendment is required to correct the 'Height of buildings' requirement of WLEP 2011 and reduce the risk attributable to Council.

It is recommended that Council staff prepare a Planning Proposal to reduce the maximum building height of the said land from 11 metres to 8.5 metres on the Height of Buildings Map.

Land Reservation Acquisition Map

Since the preparation of the Land Reservation Acquisition Map, Lot 1 DP960506 (17B Crown Road, Queenscliff) has been acquired by the Department for the purpose of public open space. There is no longer any reason to identify the land on the Land Acquisition Map. A subsequent mapping amendment is not required to the Land Zoning Map, as the land is zoned RE1 Public Recreation under WLEP 2011.

It is recommended that Council staff prepare a Planning Proposal to delete Lot 1 DP960506 from the Land Reservation Acquisition Map.

Schedule 1 Additional Permitted Uses

Schedule 1 of WLEP 2011 identifies properties by legal property description and, where multiple properties are involved, by precinct. The precincts are mapped on the Additional Permitted Uses map, which allows ready identification of such properties. However, the map is misleading in that the precinct numbers do not consecutively match the items within Schedule 1 and the properties that are not within a precinct, but are listed within Schedule 1 are not mapped. The mapping of all properties listed within Schedule 1 will ensure certainty of identification of all properties to which the schedule applies, in the event that the legal property descriptions change due to for example subdivision or consolidation of lots.

It is recommended that Council staff prepare a Planning Proposal to map all properties listed within Schedule 1 Additional Permitted Uses of WLEP 2011 and identify the properties on the map by a numbering system that corresponds to the relevant item in Schedule 1.

Clause 6.1 Acid Sulfate Soils

On 18 June 2012, the Department wrote to Council requesting that an amendment be made to clause 6.1 Acid Sulfate Soils of WLEP 2011 to insert the latest Model Local Provision 7.1 Acid Sulfate Soils (see attachment 2). The Department has amended the clause to clarify that, in subclause 7.1(6), a development consent is not required where the works will result in the displacement of less than 1 tonne of soil and are not likely to lower the watertable; and further information has been inserted into the 'General Information' that accompanies the clause.

It is recommended that Council staff prepare a Planning Proposal to satisfy the request of the Department.

National Parks

In preparing the Land Zoning Map, the boundaries of National Parks within the local government area were verified against the data source provided by the former National Parks and Wildlife

Service. Since that time, the National Parks and Wildlife Division of the Office of Environment and Heritage has updated its data base. As a result, several anomalies exist within the Land Zoning Map.

Council became aware of such anomalies through a submission of the former Department of Environment and Climate Change during the public exhibition of WLEP 2011. At its meeting of 8 June 2012, Council resolved (at 4.1V(ii)) to address the matter as follows:

V. That following the making of the Warringah Local Environmental Plan 2009 by the Minister for Planning, Council include the following as part of the future review of WLEP 2009:

(ii) Discussions with Department of Climate Change and Water regarding their advice on the revised boundaries of national parks.

It is recommended that Council prepare a Planning Proposal to amend the Land Zoning Map to accurately record the boundaries of National Parks within Warringah.

TIMING

Following Council's submission of the Planning Proposal to the Minister, a Gateway Determination will be issued by the Minister (or delegate) and this will specify whether the Planning Proposal is to proceed and if so, in what circumstances. Hence, Council cannot predict the timing of this process as it is dependant on the Department.

CONSULTATION

Consultation must be undertaken in accordance with the Gateway Determination. The Planning Proposal must be publicly exhibited for a minimum of 28 days and the Minister (or his delegate) may require Council to refer the Planning Proposal to public authorities for their consideration and comment. In addition to the required consultation under the Gateway Determination, it is recommended that in respect of the amendments to the Height of Building Map, Council notify all affected landholders in accordance with Council's Notification DCP 2012.

CONCLUSION

A Planning Proposal to make several amendments to WLEP 2011 is an appropriate course of action to improve the operation of WLEP 2011 and its interrelationship with other strategic planning documents. It is recommended that action be taken to address the items mentioned in the report due to the potential risks associated in not reviewing council's planning instrument.