

PLANNING PROPOSAL

To

Correct identified anomalies / errors and improve the
operation of Warringah Local Environmental Plan
2011

Prepared by Warringah Council, September 2012



Introduction

The planning proposal seeks to correct the identified anomalies / errors and improve the operation of Warringah LEP 2011 (WLEP 2011). The proposal relates to all land within Warringah. However, several amendments are specific to certain land. Council's instructions to the Department of Planning & Infrastructure (Department) in respect of the required amendments are detailed in Part 2 Explanation of Provisions.

1 Objectives or intended outcomes

The intended outcomes of the proposed draft local environmental plan are to correct the identified anomalies / errors and improve the operation of WLEP 2011.

2 Explanation of provisions

The planning proposal involves several amendments to WLEP 2011 through the creation of a draft local environmental plan.

The planning proposal requires the following amendments to WLEP 2011:

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

An amendment is required to the land use table to permit 'boat building and repair facilities' in the IN1 General Industrial zone.

2.2 Registered clubs located on public land

As a preferred option, Council requests that the draft local environmental plan:

- Amend the land use table to prohibit "registered clubs" in the RE2 Private Recreation zone, and
- Re-zone Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club RE1 Public Recreation, and
- Insert Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club into Schedule 1 Additional Permitted Uses, making "registered clubs" a permitted use on these sites.

Alternatively, a draft local environmental plan could as a least preferred option:

- Prohibit "registered clubs" in the RE2 Private Recreation zone within the land use table, and
- Insert Long Reef Golf Club; Manly Vale Bowling Club; North Manly Bowling Club and Wakehurst Golf Club into 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.

2.3 Height of Buildings Map

An amendment is required to the Height of Buildings Map - Sheet HOB_009 to reduce the maximum height from 11 metres to 8.5 metres, for land in Narrabeen that is bound by Pittwater Road and Narrabeen, Ocean and Albert Streets. Please refer to Attachment 1 for location purposes.

2.4 Land Reservation Acquisition Map

An amendment is required to the Land Reservation Acquisition Map to omit Lot 1 DP960506 (17B Crown Road, Queenscliff) from the map. A subsequent mapping amendment is not required to the Land Zoning Map, as the land is zoned RE1 Public Recreation under WLEP 2011.

2.5 Schedule 1 Additional Permitted Uses

Amendments are required to Schedule 1 Additional Permitted Uses and Additional Permitted Uses Map Sheets APU_003 – APU_010A. In addition new map sheets have been created (APU_001 and APU_009). No change is required to the land to which Schedule 1 applies.

Map area references are to correspond to the Item number within Schedule 1, for ease of reference. Where there is multiple area references for an Item number, Council would prefer the use of capitalised letters to denote additional area references.

Please make the following amendments to Schedule 1 Additional Permitted Uses:

1 Use of certain land at 8 Aperta Place, Beacon Hill

Lot 7 DP236335 (8 Aperta Place, Beacon Hill) should be mapped as “Area 1” on Map Sheet APU_008A.

Please insert “shown as “Area 1” on the Additional Permitted Uses Map” into Item 1(1).

2 Use of Certain land at 5 Hews Parade, Belrose

Lot 6 DP 834036 (5 Hews Parade, Belrose) should be mapped as “Area 2” on Map Sheet APU_007.

Please insert “shown as “Area 2” on the Additional Permitted Uses Map” into Item 2(1).

3 Use of certain land at corner of Mona Vale Road and Forest Way, Belrose

The existing “Area 2” should be mapped as “Area 3” on Map Sheets APU_003 and APU_007.

Please insert “shown as “Area 3” on the Additional Permitted Uses Map” into Item 3(1).

4 Use of certain land in the vicinity of Ashworth and Haigh Avenues, Belrose and McBrien Place, Davidson and John Oxley Drive, Frenchs Forest

The existing “Area 5”, “Area 6” and “Area 7” should be mapped as “Area 4A”, “Area 4B” and “Area 4C” on Map Sheets APU_003, APU_004 & APU_008.

Please insert “shown as “Area 4A”, “Area 4B” and “Area 4C” on the Additional Permitted Uses Map” into Item 4(1).

5 Use of certain land in the vicinity of Pittwater Road and Roger Street, Brookvale

The existing “Area 9” should be mapped as “Area 5” on Map Sheets APU_008A and APU_010A.

Please insert “shown as “Area 5” on the Additional Permitted Uses Map” into Item 5(1).

6 Use of certain land at Cottage Point

Lot 1 DP 930591, Lot 1 DP922754, Lot 3 DP 929708 and Lot 4 DP 929708 should be mapped as “Area 6” on Map Sheet APU_001.

Please insert “shown as “Area 6” on the Additional Permitted Uses Map” into Item 6(1).

7 Use of certain land at 2 Anderson Place, Cottage Point

Lot 23 DP 819003 (2 Anderson Place, Cottage Point) should be mapped as “Area 7” on Map Sheet APU_001.

Please insert “shown as “Area 7” on the Additional Permitted Uses Map” into Item 7(1).

8 Use of certain land at 30 Campbell Avenue, Cromer

Lot 1 DP 227969 (30 Campbell Avenue, Cromer) should be mapped as “Area 8” on Map Sheet APU_009.

Please insert “shown as “Area 8” on the Additional Permitted Uses Map” into Item 8(1).

9 Use of certain land at Pittwater Road, Dee Why

Lot 1 DP 706230 (Pittwater Road, Dee Why) should be mapped as “Area 9” on Map Sheet APU_010A.

Please insert “shown as “Area 9” on the Additional Permitted Uses Map” into Item 9(1).

10 Use of certain land at Melwood Avenue, Forestville

Lot 2589 DP 752038 and Lot 31 DP 366454 (Melwood Avenue, Forestville) should be mapped as “Area 10” on Map Sheet APU_008.

Please insert “shown as “Area 10” on the Additional Permitted Uses Map” into Item 10(1).

11 Use of certain land at corner of Warringah Road and Cook Street, Forestville and land on Pittwater Road, North Manly

The existing “Area 3” and “Area 4” should be mapped as “Area 11A” and “Area 11B” on Map Sheets APU_008 and APU_010.

Please insert “shown as “Area 11A and Area 11B” on the Additional Permitted Uses Map” into Item 11(1).

12 Use of certain land at 39 Frenchs Forest Road East, Frenchs Forest

Lot X DP405206 (39 Frenchs Forest Road East, Frenchs Forest) should be mapped as “Area 12” on Map Sheet APU_008A.

Please insert “shown as “Area 12” on the Additional Permitted Uses Map” into Item 12(1).

13 Use of certain land at Lumsdaine Drive, Freshwater

The existing “Area 10” (Lot 100 DP 1136132 and Lot 2 DP 579837 (Lumsdaine Drive, Freshwater)) should be mapped as “Area 13” on Map Sheet APU_010.

Please insert “shown as “Area 13” on the Additional Permitted Uses Map” into Item 13(1).

14 Use of certain land at 29 Moore Road, Freshwater

Lots 1-5, Section 1, DP 7022 and Lot 13, Section 1, DP 7022 (29 Moore Road, Freshwater) should be mapped as “Area 14” on Map Sheet APU_010.

Please insert “shown as “Area 14” on the Additional Permitted Uses Map” into Item 14(1).

15 Use of certain land at 80 Undercliff Road, Freshwater

Lot B DP 329073 (80 Undercliff Road, Freshwater) should be mapped as “Area 15” on Map Sheet APU_010.

Please insert “shown as “Area 15” on the Additional Permitted Uses Map” into Item 15(1).

16 Use of certain land at 1260 Pittwater Road, Narrabeen

Lots 1 and 2 DP 1094308 (1260 Pittwater Road, Narrabeen) should be mapped as “Area 16” on Map Sheet APU_009.

Please insert “shown as “Area 16” on the Additional Permitted Uses Map” into Item 16(1).

17 Use of certain land Aumuna Road, Terrey Hills

Lot 6 DP 739456 (2 Aumuna Road, Terrey Hills) should be mapped as “Area 17” on Map Sheet APU_006.

Please insert “shown as “Area 17” on the Additional Permitted Uses Map” into Item 17(1).

Please insert “educational establishments, garden centres, hospitals, hotel or motel accommodation, places of public worship, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), registered clubs and restaurants or cafes” into Item 17(2).

18 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills

The existing “Area 1” should be mapped as “Area 18” on Map Sheet APU_006.

Please insert “shown as “Area 18” on the Additional Permitted Uses Map” into Item 18(1).

2.6 Clause 6.1 Acid Sulfate Soils

An amendment is required to WLEP 2011 to omit clause 6.1 Acid Sulfate Soils and insert the Department’s latest model local provision 7.1 Acid Sulfate Soils, as detailed in Attachment 2.

3 Justification

Section A - Need for the planning proposal.

1. Is the planning proposal a result of any strategic study or report?

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.

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

Yes, the planning proposal is the best means of achieving Council’s intended outcomes, for the following reasons:

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 for Planning & Infrastructure (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 Private Recreation zone and hence should not have been included contrary to Council's stated intention.

Height of Buildings Map

In translating WLEP 2000 into WLEP 2011 an error occurred on the Height of Buildings Map – Sheet HOB_009. 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. 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.

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.

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.

The Draft LEP Practice Note Schedule 1 Additional Permitted Uses (Draft LEP Practice Note) states that "Councils may choose to identify the land where additional permitted uses apply on an Additional Permitted Uses Map". The planning proposal is consistent with the Draft LEP Practice Note in that Council intends to map each item within Schedule 1.

Item 17 (Lot 6 DP 739456) (proposed Area 17) in Schedule 1 also forms part of Item 18 (proposed Area 18). To avoid any mapping confusion, Council proposes to insert the permissible land uses listed in Item 18 into Item 17. Item 17 is given its own Item reference in Schedule 1 independent of Item 18 to prevent 'pubs' being permitted throughout the proposed Area 18.

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.

3. Is there a net community benefit?

Correcting the identified anomalies / errors within WLEP 2011 will improve the operation of WLEP 2011, which will be of benefit to the wider community.

Section B - Relationship to strategic planning framework.

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is consistent with the objectives and actions of the Sydney Metropolitan Strategy and the Draft North East Subregional Strategy. However, the planning proposal is not related to an action area of either strategy.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with the Strategic Community Plan 2012. However, the planning proposal is not related to an action area of the Strategic Community Plan 2012.

6. Is the planning proposal consistent with applicable state environmental planning policies (SEPP's)?

The following table provides an assessment of the planning proposal with the relevant SEPP's:

SEPP title	Consistency
State Environmental Planning Policy No 6 – Number of Storeys in a Building	The planning proposal is consistent with this SEPP and does not contain provisions that contradict or hinder the application of this SEPP.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	The planning proposal is consistent with this SEPP and does not contain provisions that contradict or hinder the application of this SEPP.
State Environmental Planning Policy (Infrastructure) 2007	The planning proposal is consistent with this SEPP and does not contain provisions that contradict or hinder the application of this

	SEPP.
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7. Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

The following table provides an assessment of the planning proposal with the relevant s117 Directions:

s117 Direction	Consistency
Direction 1.1 Business and Industrial	The planning proposal is consistent with this direction, as permitting boat building and repair facilities in the IN1 General Industrial zone will encourage employment in this area.
Direction 4.1 Acid Sulfate Soils	The purpose of the amendment to clause 6.1 Acid Sulfate Soils is to expand the extent of works that may be carried out without development consent. This is an initiative of the Department of Planning and Infrastructure and is of minor significance.
Direction 4.3 Flood Prone Land	The planning proposal does not impact upon the flooding risk of land located in flood prone areas.
Direction 6.1 Approval and Referral Requirements	The proposal is consistent with this direction as there are no provisions that require the concurrence, consultation or referral of development applications to the Minister for Planning and Infrastructure or a public authority; and the planning proposal does not identify any development as being designated development.
Direction 6.2 Reserving Land for Public Purposes	The proposal is consistent with this direction, as Lot 1 DP960506 (17B Crown Road, Queenscliff) has been acquired by the Department and is therefore no longer required for acquisition.
Direction 7.1 Implementation of the Metropolitan Plan for Sydney 2036	The proposal is consistent with this direction and the Metropolitan Plan for Sydney 2036.

Section C - Environmental, social and economic impact.

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No threatened species, populations or ecological communities, or their habitats have been identified as being impacted by this planning proposal.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no likely environmental effects as a result of the planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

The purpose of the planning proposal is to address identified anomalies and errors present within WLEP 2011. This will improve the operation of WLEP 2011 and provide positive social and economic outcomes for the whole community.

Section D - State and Commonwealth interests.

11. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal does not generate any need to upgrade or improve public infrastructure.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Council has not consulted with any State or Commonwealth public authority regarding this planning proposal. Council will engage any such public authority in accordance with the Gateway Determination

4 Community consultation

Council has notified all affected residents in Narrabeen that are bound by Pittwater Road and Narrabeen, Ocean and Albert Streets, of the proposed change to the maximum building height on the Height of Buildings Map, prior to lodging the planning proposal with the Department.

In accordance with State Government legislation as well as Council's community engagement policy and community engagement matrix, Council will undertake community consultation by giving notice of the public exhibition of the planning proposal in the Manly Daily newspaper, on Council's website, by email to community groups and by notification to adjoining land owners.

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.

