

CORPORATE & STRATEGY

**THE FOLLOWING REPORT WAS DEFERRED FROM THE
ORDINARY MEETING OF COUNCIL HELD ON WEDNESDAY,
24 JULY 2013**

**cw-CS1 Planning Proposal to Amend WLEP 2010 to Permit
Development for the Purposes of Tourist and Visitor
Accommodation and a Recreation Facility (Indoor) on
Lot 100 DP 1006276, Round Hill, 341 Compton Park
Road, Berrima**

Reference: PN1707766, 5901
Responsible Officer: Group Manager Strategic and Assets

PURPOSE

The purpose of this report is to present to Council a submission to amend Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to permit development for the purposes of tourist and visitor accommodation and a recreation facility (indoor) on Lot 100 DP 1006276, Round Hill, 341 Compton Park Road, Berrima. The intent of the LEP amendment is to facilitate the establishment of a cricket academy on the subject site. It is recommended that the Planning Proposal be supported.

The investigation of the environmental matters are detailed in the Legal Issues report in Closed Council (refer cc-GM2).

DESCRIPTION OF PROPOSAL

BACKGROUND

Council has received a submission on behalf of the owner of Lots 100 and 101, DP 1006276, Round Hill, 341 Compton Park Road, Berrima seeking to amend WLEP 2010 to permit tourist and visitor accommodation and a recreation facility (indoor) with the intent of establishing a cricket academy on Lot 100 (subject site). A copy of the applicant's submission accompanies this report as ATTACHMENT 1.

The property is located to the north west of the village of Berrima as indicated in Figures 1 and 2 below. The subject site is zoned E3 Environmental Management under WLEP 2010 with a minimum lot size of 40 hectares. It is noted that the adjoining Lot 101 to the immediate north is zoned RU2 Rural Landscape. Figure 3 provides a 2009 aerial photograph.

The site may be accessed off Compton Park Road from either from the north via Greenhills Road, or from the south via Old Mandemar Road. There is one main access way off Compton Park, but in the case of that access being blocked, alternative access is available through the adjacent Lot 101 to the north also owned by the applicant.

The subject site covers an area of 43.9 hectares.



Figure 1 – Shire Map

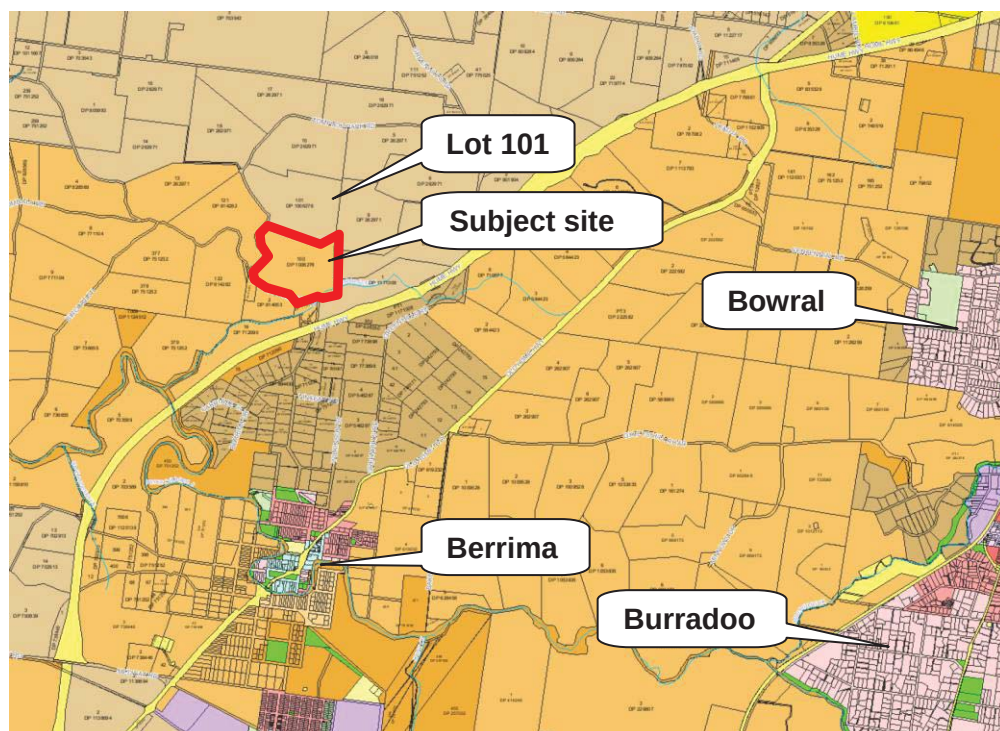


Figure 2 – Regional Zoning Map



Figure 3 – Aerial Photograph (2009)

DETAILS OF PROPOSAL

The proponent seeks to develop a cricket academy on Lot 100 which already contains a cleared area with an existing cricket oval and provision for parking as indicated above and below.



Figure 4 – Cricket oval and surrounding area

The proposed accommodation and indoor recreation area are to be located on the northern border between the two lots. It is intended to provide short-term accommodation for up to 25 people with communal kitchen and dining facilities. To provide year-round usage, an indoor recreation facility is also proposed.

PLANNING CONSIDERATIONS

Neither proposed development is currently permitted within the E3 Environmental Management zone. The proponent's submission identifies two methods of addressing this issue. One would be to rezone the site to SP3 Tourist. Council has certain criteria for assessing the suitability of a site for the SP3 Tourist zone. These are:

- 1) Covering an area of at least 20 hectares.
- 2) Adjacent, or near to a major access road.
- 3) Access to adequate water and sewer infrastructure.
- 4) Free of extensive areas of Ecologically Endangered Community (EEC) vegetation which might be impacted by the development proposal.
- 5) Free of other environmentally sensitive constraints as identified under WLEP 2010 which may be impacted by the development proposal.
- 6) Free of significant bushfire or flooding threat which cannot be adequately addressed through design considerations.
- 7) Continuously operating as a tourist establishment for at least three (3) years.
- 8) Within 5km of a town or village.

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Although the subject land meets some of these criteria, the low scale of the proposed development in relation to the site and the location of the site within a rural area, suggest that a preferred option would be to seek to have the proposed development listed in Schedule 1 (Additional Permitted Uses) of WLEP 2010. Council is mindful that the Department of Planning and Infrastructure (DP&I) is generally reluctant to use Schedule 1 unless sound planning arguments can be provided to demonstrate that no other option is available. It is believed that an adequate argument can be presented.

The Flora and Fauna Assessment which accompanies the submission notes that “the development as proposed is located within ‘modified’ and disturbed land (but) it is likely that there will be minimal impacts (on) flora and fauna. However the development will require the removal of a mature specimen of Grey Gum *E. punctata* providing several small hollows suitable for Threatened Species of fauna. The removal of this tree will therefore require the preparation of an Assessment of Significance to address the loss of this habitat. Given the presence of tree hollows within larger areas of habitat in good condition within the study area, it is likely that an Assessment of Significance will conclude that the impact on ‘threatened species’ will not be significant.”

The Flora and Fauna report also notes that the vegetation on the site may represent Core Koala Habitat. A thorough assessment of the environmental factors of the site will occur at the LUA stage. It is noted that the proposed development is to be located in a relatively cleared area and the existence of the large oval between the proposed development and the southern and western areas of vegetation should provide a buffer between the development and any wildlife habitat or circulation routes.

A preliminary traffic assessment has also been included with the submission. The assessment report considered traffic impacts on both routes – entering Compton Park Road from either Old Mandemar Road to the south, or Greenhills Road to the north.

Based on 25 attendees a week, the assessment concludes that the potential traffic generation of the proposal is minimal and will not require any road upgrades, however, the report notes that Council may require re-grading of Compton Park Road to enable two-way traffic. The consultant recommends factoring this into the proposal. Further assessment of the traffic implications will occur at the LUA stage.

STATUTORY PROVISIONS

Wingecarribee LEP2010 (WLEP 2010)

In order to amend Schedule 1 of WLEP 2010, a Planning Proposal would be required under the Gateway process introduced in July 2009. The gateway process contains the following steps:

Planning Proposal - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister (rather than the local council which is mostly the case) the Minister can appoint the Director-General of the Department of Planning or a joint regional planning panel to be the relevant planning authority.

Gateway - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A

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community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

Community Consultation - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.

Assessment - The relevant planning authority (Council) considers public submissions and the Proposal is varied as necessary. It is noted that clause 58 of the EP&A Act allows Council to vary, at any time, its Proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. Council may also resolve to not proceed with the Planning Proposal under this clause.

If the Planning Proposal does proceed, Parliamentary Counsel then prepares a draft local environmental plan (the legal instrument).

Decision - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW Legislation website.

Review of Decisions

On 29 October 2012, the Minister for Planning and Infrastructure announced that proponents seeking a rezoning can now request an independent review of decisions through the local Joint Regional Planning Panel. These changes came into effect on 2 November 2012 and allow an independent body to review some decisions by councils and the department, in the following situations:

(1) Pre-Gateway reviews

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request accompanied by the required information.

(2) Gateway reviews

A council or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- a. the planning proposal should not proceed,
- b. the planning proposal should be resubmitted to the Gateway, or
- c. imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

Development Control Plans (DCPs)

If the Planning Proposal were supported, the Sutton Forest Village DCP would be amended to include the subject site.

State Environmental Planning Policies (SEPPs)

All relevant SEPPs must be considered in preparing a Planning Proposal. The following apply to the proposed LEP amendment:

SEPP Rural Lands 2008

The Rural Lands SEPP applies principles to development of rural land. It is considered that the Planning Proposal would comply with this SEPP.

SEPP Sydney Drinking Water Catchment 2011

The Sydney Drinking Water SEPP applies to the site as it is located within the Sydney Drinking Water Catchment and all Planning Proposals must seek comment from the Sydney Catchment Authority (SCA) prior to being forwarded to DP&I. It is considered that the Planning Proposal would comply with this SEPP.

SEPP 44 Koala Habitat Protection

The Flora and Fauna report identifies vegetation on the site as being potential Core Koala Habitat. The location of the oval between the proposed development and the southern and western areas of vegetation should provide a buffer between the development and any wildlife habitat or circulation routes.

Section 117 Directions

The Minister for Planning, under section 117(2) of the EP&A Act issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. Employment and Resources
2. Environment and Heritage
3. Housing, infrastructure and urban development
4. Hazard and risk
5. Regional planning
6. Local plan making.
7. Metropolitan Planning

Relevant Directions are considered below.

2.1 Environment Protection Zones

This Direction is relevant because the draft clause applies to Environment Protection zoned land. Council must ensure that the environmental protection standards that apply to the land will not be reduced. The Rural Lands DCP would apply to assessment of the proposed development ensuring compliance with the Direction.

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4.4 Planning for Bushfire Protection

This Direction requires that, following Gateway Determination, the Planning Proposal is to be referred to the NSW Rural Fire Service (NSW RFS) for comment.

5.2 Sydney Drinking Water Catchment

This Direction applies as the subject land is located within the Sydney drinking water catchment. The application will be referred to the SCA prior to being submitted for a Gateway Determination should Council resolve to support the Planning Proposal.

6.3 Site Specific Provisions

This Direction requires that a Planning Proposal must not require further development standards under the environmental planning instrument to be imposed on the sites that are the subject of the planning proposal. Any future subdivision resulting from this Planning Proposal would be subject to a Land Use Application which would address all site-specific matters.

Relevant State Legislation

No other State legislation is relevant at this stage.

CONSULTATION

External Referrals

No external consultation has yet occurred, however, should the Proposal be supported, the Gateway Determination will advise what external consultation is to occur.

Internal Referrals

The matter was referred to the Local Planning Strategy Sunset Steering Committee Working Group on 17 April 2013 at which time it was recommended that a site inspection be conducted. This occurred on 8 May 2013 and the matter was again reported to the Committee on 15 May 2013 at which time it was recommended to report the matter to Council. The property owners and their consultants addressed the Committee on the first occasion.

Community Consultation

None has occurred to date, however community consultation would occur should the Proposal be supported and a positive Gateway Determination be received.

SUSTAINABILITY ASSESSMENT

ENVIRONMENT

The subject site contains extensive area of Mittagong Sandstone Woodland which is not an Endangered Ecological Community (EEC) but might provide koala habitat. The location of the large oval between the proposed development and the southern and western areas of vegetation should provide a buffer between the development and any wildlife habitat or circulation routes.

SOCIAL

The provision of youth oriented sporting facilities on the site could bring additional opportunities for young people both within the local community and beyond.

BROADER ECONOMIC IMPLICATIONS

The provision of services for visiting groups can have a multiplier effect across the Shire's economic base.

CULTURE

No cultural impacts are anticipated from the development.

GOVERNANCE

Should a positive Gateway Determination be issued by the DP&I, compliance with the requirements of the Environmental Planning & Assessment Act 1979 (EP&A Act), EP&A Regulations and the requirements of the Gateway Determination will ensure that due process is followed by Council in implementing the proposed amendment to WLEP 2010.

RELATIONSHIP TO CORPORATE PLANS

Goal 2.1 of the Wingecarribee Shire Community Strategic Plan 2031+ seeks to ensure that *"The Wingecarribee community has access to a variety of cultural, recreational and sporting opportunities"*.

BUDGET IMPLICATIONS

Planning Proposals are subject to an application fee as per Council's adopted Fees and Charges.

RELATED COUNCIL POLICY

There are no additional related Council Policies other than those discussed in this report.

OPTIONS

There are 2 options available to Council with regard to the Planning Proposal:

Option 1

Not support the submission.

Option 2

Support the submission by preparing a Planning Proposal and lodging it with the DP&I for a Gateway Determination.

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Option 2 is recommended because the proposal appears to be a low impact development with potential benefits for encouraging sport among young people and for enhancing the district's cricketer associations.

CONCLUSION

It is concluded that the subject land is suitable for the proposed development as a Cricket Academy. Environmental impacts appear to be manageable and traffic implications minimal. It is recommended that, in order to facilitate the development, Schedule 1 of WLEP 2010 be amended to permit, with consent, tourist and visitor accommodation and indoor recreation facility on the subject site.

ATTACHMENTS

There is one (1) attachment to this report which has been circulated under separate cover:

1. Planning Proposal for the Michael Clarke Cricket Academy, Berrima.

RECOMMENDATION

1. THAT the Planning Proposal to amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 to permit with consent development for the purposes of tourist and visitor accommodation and recreation facilities (indoor) on Lot 100 DP 1006276, 341 Compton Park Road, Berrima, be prepared and forwarded to the NSW Department of Planning and Infrastructure for a Gateway Determination under section 55 of the Environmental Planning & Assessment Act 1979.
2. THAT the applicant be informed of Council's decision.

(Voting on the Motion)