

Planning Proposal

Planning Proposal to amend Clause 4.2A
of Wingecarribee Local Environmental
Plan 2010 to include dual occupancy.

Version 2 – For Gateway Determination – March 2014

File No. 5901/38

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ATTACHMENTS WHICH FORM PART OF THIS PLANNING PROPOSAL
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1. Report to Planning and Strategic Peak Committee 12 March 2014.
2. Resolution of Planning and Strategic Peak Committee 12 March 2014.
3. Sydney Catchment Authority Comments.
4. Delegation Request Form

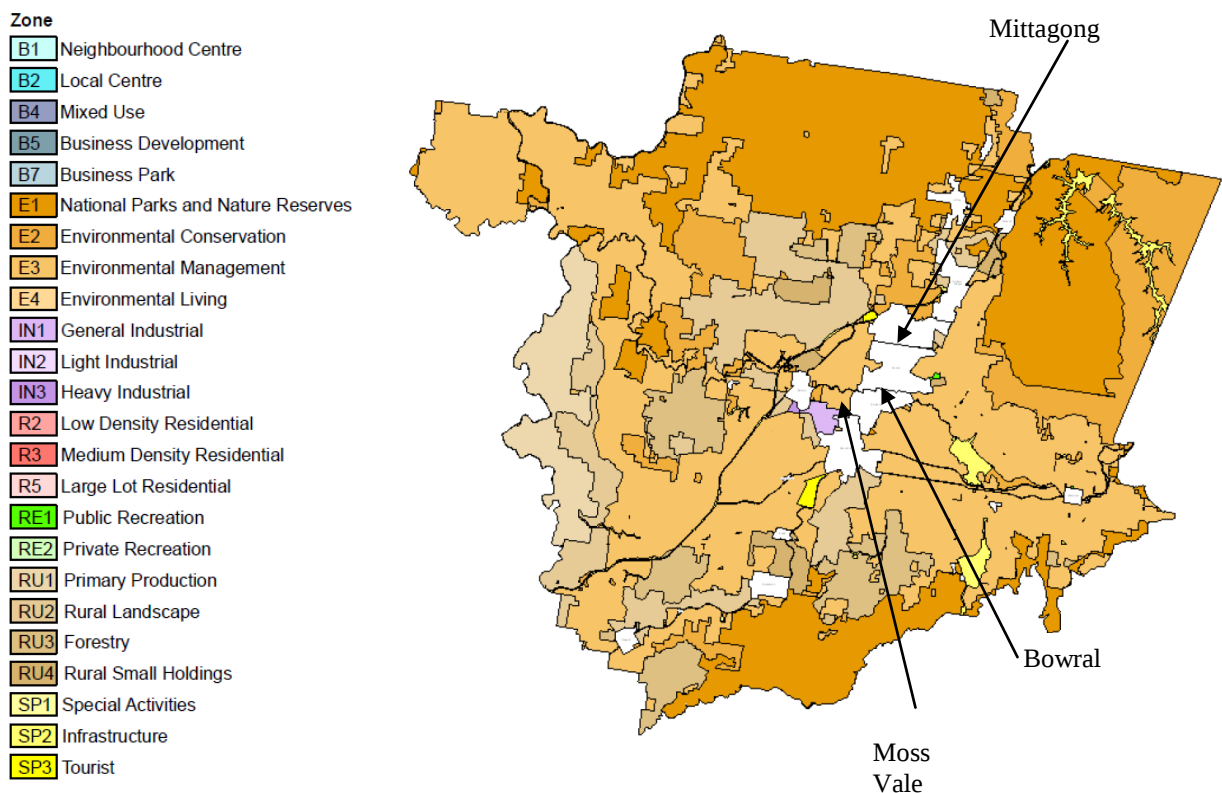
PLANNING PROPOSAL

LOCAL GOVERNMENT AREA: WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND: Shirewide – applying to all land within the following zones under Wingecarribee Local Environmental Plan 2010 (WLEP 2010):

- Zone RU1 Primary Production
- Zone RU2 Rural Landscape
- Zone RU4 Primary Production Small Lots
- Zone E3 Environmental Management
- Zone E4 Environmental Living

Figure 1 – Zone Map of Wingecarribee LGA



PART 1 - OBJECTIVES OR INTENDED OUTCOMES OF PLANNING PROPOSAL

The purpose of the Planning Proposal is to prohibit dual occupancy development on undersized allotments.

PART 2 – EXPLANATION OF PROVISIONS

The provisions of the Planning Proposal will amend Wingecarribee Local Environmental Plan 2010 as follows:

Map to be amended	Detail of amendment
Nil	Nil

Clause to be amended	Detail of amendment
Clause 4.2A	To provide the same level of prohibition to dual occupancy as currently applies to dwelling houses under Clause 4.2A of WLEP 2010.

PART 3 - JUSTIFICATION

Clause 4.2A currently prohibits dwelling houses on undersized lots, as described by the Lot Size Map, within the following zones of WLEP 2010:

- Zone RU1 Primary Production
- Zone RU2 Rural Landscape
- Zone RU4 Primary Production Small Lots
- Zone E3 Environmental Management
- Zone E4 Environmental Living

Clause 4.2A does not make any reference to dual occupancies. Therefore it can be argued that Clause 4.2A does not apply to dual occupancies, hence there are no minimum lot sizes applying to dual occupancies in rural and environmental protection zones. It may seem illogical that a dual occupancy is permitted where a dwelling house is not, but it is the case under WLEP 2010 as a dwelling house and a dual occupancy are separately defined types of residential accommodation.

One of the objectives of Clause 4.2A is to minimise the introduction of unplanned rural residential development. This objective cannot be achieved if dual occupancies remain permissible where dwelling houses are prohibited on undersized lots in rural and environmental protection zones. It is not logical planning practice, which requires an amendment to Clause 4.2A of WLEP 2010 remove the inconsistency.

Section A – Need for the Planning Proposal

1. Is the Planning Proposal the result of any strategic study or report?

The Planning Proposal is result of a report to and resolution of Council which form Attachments 1 and 2 to this Planning Proposal.

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

The intended outcome of the Planning Proposal is to prohibit dual occupancy development on undersized allotments in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, E3 Environmental Management and E4 Environmental Living zones of WLEP 2010. Without amending clause 4.2A of the LEP Council must rely on the arguments that such development does not meet the objectives of the zone or the relevant development standards. Council would prefer to not receive such applications in the first place and amending clause 4.2A to apply the same level of prohibition to dual occupancy as applies to dwellings houses is considered the only means of achieving this outcome.

Section B – Relationship to strategic planning framework

3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including draft strategies)?

The Planning Proposal is considered consistent with the objectives and actions contained in the *Sydney-Canberra Corridor Regional Strategy 2006-31* as follows:

Rural Lands and Primary Industry

Actions (page 21): (relevant to Planning Proposal)

- *Local Environmental Plans will:*
 - *Include minimum subdivision standards for rural and environmental protection zones*
 - *Include provisions to limit dwellings in the rural and environmental protection zones.*
 - *Not include provisions to permit concessional allotments in accordance with the Rural Lands SEPP.*

Comment: Currently, Clause 4.2A of WLEP 2010 does not meet the above objective as it does not include provisions to limit dual occupancy development, being a type of dwelling, in the rural and environmental zones of the Wingecarribee LGA. By amending Clause 4.2A to include dual occupancies, the above objective of the Sydney Canberra Corridor may be met.

Housing and Settlement

Actions (page 39 & 40): (relevant to Planning Proposal)

Settlement and Housing

- *The local environmental plan for Wingecarribee will identify and appropriately zone land that provides a clear separation between the urban areas of Mittagong and Bowral; and Bowral and Moss Vale.*

Rural Residential

- *Additional development areas will only be considered if justified by local settlement strategy that assesses the net economic and social benefit of additional rural residential land against the loss of the potential development of the land for agricultural activities.*
- *Planning for rural residential land must be integrated with the supply of relevant infrastructure and transport services.*

Comment: Whilst the land between Mittagong and Bowral; and Bowral and Moss Vale is appropriately zoned under WLEP 2010, the current version of Clause 4.2A as contained in the WLEP 2010 has the potential to erode the rural landscape separation between these towns by pseudo rural residential development of dual occupancies on undersized lots in rural and environmental protection zones. Further, the potential of unplanned rural residential development in the form of dual occupancies is likely to erode the status of any adopted settlement strategy and is likely to reduce the viability of land for agricultural activities; and place ‘unplanned’ demand on infrastructure and transport services.

Cultural Heritage

Actions (page 50): (relevant to Planning Proposal)

- *Local environment plans will include appropriate provisions to protect significant towns and villages such as Braidwood and Berrima, associated with natural and cultural landscapes and curtilages. The aim will be to protect conservation values, Aboriginal cultural values, visual character and setting to reinforce the economic base for tourism.*

Comment: Clause 4.2A of WLEP 2010 does not currently include appropriate provisions to protect the visual character, setting and curtilage of Berrima, as the village is surrounded by several historically undersized allotments within environmental protection and rural zones. Therefore, there is potential for Council to receive a significant number of development applications for dual occupancies on all of the undersized lots surrounding Berrima, where dwelling houses are currently not permitted. Thus there is some potential for the historic value of Berrima to be compromised by the proliferation of dual occupancy developments within the landscape conservation and heritage conservation areas of the village.

Therefore, by amending Clause 4.2A to include dual occupancies in the same manner as it currently applies to a dwelling house, the above objectives and actions of the Sydney Canberra Corridor will be met.

4. Is the Planning Proposal consistent with a council’s local strategy or other local strategic plan?

The potential proliferation of dual occupancy development on undersized lots in rural and environmental protection zones is contrary to many of the goals and objectives of the Wingecarribee Community Strategic Plan 2031+ as follows:

Leadership

- 1.1.1 *Ensure systems and processes are in place to achieve mutual trust and collaboration.*

Comment: Currently, the fact that dwelling houses are not permissible and dual occupancies are on under sized lots in rural and environmental protection zones has the potential to break down trust and collaboration between Council, the community and developers. The breakdown in trust could result from dual occupancy developments occurring where no residential development was thought to be permissible.

People

2.3 Services and facilities are provided locally to meet the needs of our community.

Comment: Council's services and facilities for the community are planned around identified growth areas, such as infill residential development, green field residential release areas and some planned rural residential development. Unplanned rural residential development on a significant number of historically undersized lots in rural and environmental protection zones in the form of dual occupancies, has the potential to compromise the funding ability of planned services and facilities. Funding could be compromised through Council responding to the need to upgrade 'unplanned' services and facilities such as roads, water and sewer services to meet the demand created by 'unplanned' rural residential development, thus diverting funds from planned growth areas.

Places

3.2.1 Retain the rural landscape between towns and villages

Comment: Unplanned rural residential development has significant potential to erode the rural landscape between the towns and villages of Wingecarribee Shire. The proliferation of dual occupancy developments on many of the historically undersized lots located within the rural and environmental protection zones between the Shire's towns and villages would create undesirable in-fill residential development, which was thought not to be permissible in these locations.

Environment

4.1 Wingecarribee's distinct and diverse natural environment is protected and enhanced

Comment: The proliferation of unplanned rural residential development in rural and environmental protection zones has the potential to create negative impacts on the natural environment. Such impacts could include increased risk to water quality through an increasing number of onsite sewage systems servicing the dual occupancies; increased risk of the loss of biodiversity through the removal of vegetation to cater for dual occupancy dwellings and the provision of adequate bushfire protection. Other potential impacts are increased loss of native fauna via increase traffic on rural roads – animal strikes by vehicles etc.

Economy

5.2 The 'Southern Highlands' is a recognised tourist destination throughout Australia.

Comment: Unplanned rural residential development in rural and environmental zones has the potential to erode the unique rural landscapes. These landscapes are part of the Shire's tourism attractiveness. Thus a significant factor to attracting tourism business to the local economy could be significantly eroded or lost over time.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Yes. The Planning Proposal is consistent with the following applicable State Environmental Planning Policies (SEPPs) as discussed below.

SEPP (Rural Lands) 2008

The aims of the SEPP are:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

In its current form Clause 4.2A does not meet the above aims of the SEPP, as the proliferation of dual occupancies developments on undersized lots in rural and environmental protection zones has the potential to:

- undermine strategically planned orderly and economic development of rural lands,
- has no regard to the development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,
- has no ability to prevent land use conflicts, as unplanned rural residential development can occur in the form of dual occupancies on any lot size in rural and environmental protection zones,
- has no regard to environmental considerations, especially in respect of onsite waste disposal as many undersized lots in rural and environmental protection zones are not serviced by Council's reticulated sewerage systems.

Thus, by amending Clause 4.2A to include dual occupancies in the same manner as it currently applies to a dwelling house, WLEP 2010 will be consistent with the aims of the SEPP.

SEPP (Sydney Drinking Water Catchment) 2011

This SEPP requires that development consent cannot be granted unless the proposal will have a neutral or beneficial effect on water quality. Notwithstanding, the cumulative impact of unplanned rural residential development, has the potential to impact on water quality as many of the dual occupancies that are likely to be approved on undersized lots in rural and environmental protection zones will be reliant on on-site sewage disposal systems. Any current development application lodged with Council for such development will require assessment by the Sydney Catchment Authority (SCA).

Notwithstanding, the Planning Proposal has been reviewed by the SCA who made the following comments:

“The SCA has no objection to the Planning Proposal by suggests Council consider including all new dwelling types under this clause, as the intent of the amendment is to minimise unplanned rural residential development on undersized lots in rural and environmental protection zones. This matter is of interest to the SCA due to the potentially high risk to water quality from unplanned residential development in unsewered areas of the drinking water catchment.

The SCA recommends that the term “dwelling”, defined in LEP Dictionary as “a room or suite of rooms occupied or used or so construed or adapted as to be capable of being occupied or used as a separate domicile,” is added to Clause 4.2A in addition to dwelling houses and dual occupancies.”

6. Is the Planning Proposal consistent with applicable section 117 Directions?

The following underlined Directions issued by the Minister for Planning to relevant planning authorities under section 117(2) of the *Environmental Planning and Assessment Act 1979* apply to this Planning Proposal.

1. Employment and Resources

- 1.1. Business and Industrial Zones – Not relevant
- 1.2. Rural Zones – this planning proposal is consistent with this direction as it does not propose to rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
- 1.3. Mining, Petroleum Production and Extractive Industries – Not relevant
- 1.4. Oyster Aquaculture – Not relevant
- 1.5. Rural Lands – This Planning Proposal is considered to be consistent with this direction, as it will enable WLEP 2010 to be more consistent with the provisions of the SEPP (Rural Lands) 2008 by prohibiting dual occupancy development from undersized lots in rural and environmental protection zones.

2. Environment and Heritage

- 2.1. Environment Protection Zones - This Planning Proposal is considered to be consistent with this direction, as it will enable WLEP 2010 to be more consistent with the provisions of the SEPP (Rural Lands) 2008 by prohibiting dual occupancy development from undersized lots in rural and environmental protection zones.
- 2.2. Coastal Protection – Not relevant
- 2.3. Heritage Conservation – Not relevant
- 2.4. Recreation Vehicle Areas – Not relevant

3. Housing, Infrastructure and Urban Development

- 3.1. Residential Zones – Not relevant
- 3.2. Caravan parks and Manufactured Home Estates – Not relevant
- 3.3. Home Occupations – Not relevant
- 3.4. Integrated Land Use and Transport – Not relevant
- 3.5. Development Near Licensed Aerodromes – Not relevant
- 3.6. Shooting Ranges – Not relevant

4. Hazard and Risk

- 4.1. Acid Sulfate Soils – Not relevant

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- 4.2. Mine Subsidence and Unstable Land – Not relevant
 - 4.3. Flood Prone Land – Not relevant
 - 4.4. Planning for Bushfire Protection – Not relevant
 - 5. Regional Planning
 - 5.1. Implementation of Regional Strategies – The Planning Proposal is considered consistent with this direction, as it has been assessed as being consistent with the Sydney-Canberra Corridor Regional Strategy under Section B (3) of his report.
 - 5.2. Sydney Drinking Water Catchment – The Planning Proposal was forward to the SCA for comment. The SCA comments are provided in Section 5 above. Essentially the SCA is supportive of the Planning Proposal and recommends all dwelling types be restricted by an amendment to Clause 4.2A
 - 5.3. Farmland of State and Regional Significance of the NSW Far North Coast – Not relevant
 - 5.4. Commercial and Retail Development along the Pacific Highway, North Coast – Not relevant
 - 5.5. Revoked
 - 5.6. Revoked
 - 5.7. Revoked
 - 5.8. Second Sydney Airport: Badgeries Creek – not relevant
 - 6. Local Plan Making
 - 6.1. Approval and Referral Requirements – The Planning Proposal is considered to be consistent with this direction as the proposed amendment to Clause 4.2A will not create any provisions requiring concurrence, consultation or referral of development applications to a Minister or public authority. In fact the effect of the proposed amendments will result in less developments applications requiring other public authority concurrence, especially in respect of the SCA and NSW RFS.
 - 6.2. Reserving Land for Public Purposes – The Planning Proposal is consistent with this direction does not create, alter or reduce existing zonings or reservations of land for public purposes.
 - 6.3. Site Specific Provisions – Not relevant
 - 7. Metropolitan Planning
 - 7.1. Implementation of the Metropolitan Plan for Sydney 2036 – Not relevant

Section C – Environmental, social and economic impact

7. 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 Planning Proposal?

No. The proposed amendment to Clause 4.2A will significantly reduce the likely hood of unplanned rural residential development in rural and environmental protections zones throughout the Wingecarribee LGA, as dual occupancies will be restricted in the same manner that dwelling houses are currently restricted under Clause 4.2A. It is anticipated that the amendment will result in the further preservation of critical habitat, threatened species, populations or ecological communities and their habitats by reducing the potential of development in proximity to their locations.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No. refer to Item 7 above.

9. Has the Planning Proposal adequately addressed any social and economic effects?

The effect of the amendment of Clause 4.2A to restrict the proliferation of dual occupancy development in rural and environmental zones will be less pressure on social and economic factors, as unplanned rural residential development will be significantly limited.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

Yes. The reduction in unplanned rural residential development will enable Council's existing public infrastructure to be maintained and expanded according to strategic planning, rather than responding to ad-hoc unplanned rural residential development.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Further public authority consultation will occur through the exhibition period as required in the Gateway Determination.

PART 4 – MAPPING

The Planning Proposal does not recommend any proposed changes to the Maps applying to WLEP 2010.

PART 5 – COMMUNITY CONSULTATION

It is recommended that the Planning Proposal be publicly exhibited for a period of 14 days only.

Council does not believe that any other public authority consultations will be required.

Council intends to place the planning proposal on public exhibition by advertising in the local newspaper and making it available on Council's website.

PART 6 – PROJECT TIMELINE

ACTION	INDICATIVE DATE
Gateway Determination	April 2014
Public Exhibition/Consultation with government agencies	May 2014

Report to Council on exhibition of Planning Proposal.	June 2014
Documents to DP&I & PCO.	June 2014
Approximate completion date	September 2014

DELEGATIONS

Council is applying to use its delegation to complete this proposal and an Evaluation Form has been attached for consideration.