



### 13.4 Planning Proposal to amend WLEP 2010 by revising the Minimum Lot Size of Lot 1 & 2 DP 788609 Patuna Avenue Moss Vale from 700 sqm to 450 sqm

Reference: 5901/47 PN 1678200  
Report Author: Land Use Planner  
Authoriser: Acting Group Manager Strategic & Assets  
Applicant: WR Gardner  
Owner: WR Gardner  
Link to Corporate Plan: Provide for higher density development within the towns of Mittagong, Bowral, Moss Vale and Bundanoon

#### PURPOSE

The purpose of this report is to present to Council a submission to amend Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to reduce the Minimum Lot Size of Lot 1 and Lot 2 DP 788609 19 Patuna Avenue Moss Vale from 700 square metres (sqm) to 450 sqm.

It is recommended that Planning Proposal be supported for Gateway Determination.

#### RECOMMENDATION

1. **THAT** the Planning Proposal to amend WLEP 2010 by revising the Minimum Lot Size of Lot 1 and Lot 2 of DP 788609, 19 Patuna Ave Moss Vale from 700 sqm ('Q') to 450 sqm ('G') be prepared and forwarded to the NSW Department of Planning and Environment for a Gateway Determination under Section 55 of the *Environmental Planning & Assessment Act, 1979*.
2. **THAT** should a Gateway Determination be supported Council prepare a site specific component in the Moss Vale Town Development Control Plan containing a Masterplan for the subject site.
3. **THAT** the applicant be advised of Council's decision.

#### REPORT

##### **BACKGROUND**

Council has received a submission from the owner of Lot 1 and Lot 2 DP 788609, 19 Patuna Avenue Moss Vale (Figure 1) to revise the Minimum Lot Size from the existing 700 sqm down to 450 sqm.

The site is currently zoned R2 Low Density Residential under WLEP 2010 with a Minimum Lot Size of 'Q' that equates to 700 sqm.

There is no amendment proposed to the existing R2 Low Density Residential zoning.

The site is also identified on Council's WLEP 2010 Urban Release Area map (URA\_007A) shown below in Figure 2.

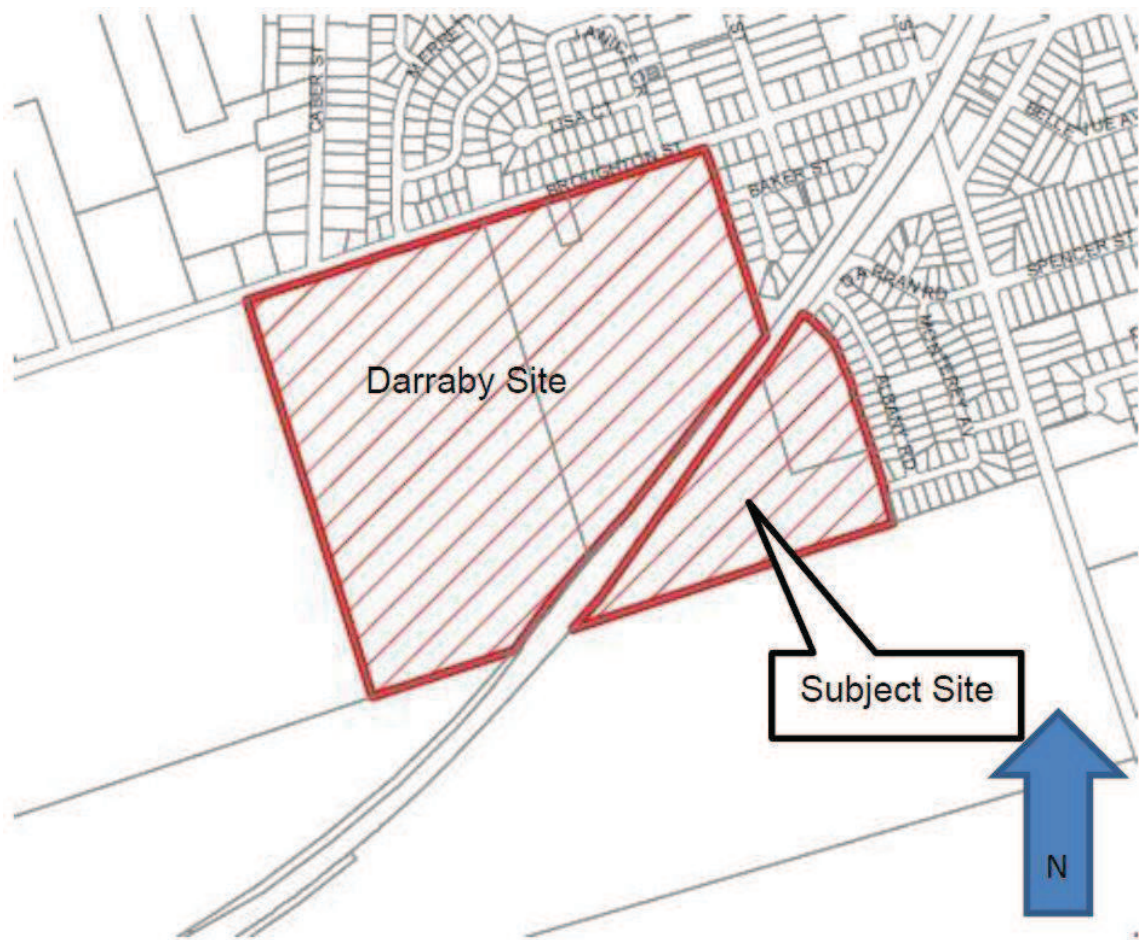


Figure 2 extract from WLEP 2010 Urban Release Area map

### **DETAILS OF PROPOSAL**

The proponent requests that Council amend the Minimum Lot Size of the subject site from 'Q' (700 sqm) down to 'G' (450 sqm). Figure 3 identifies the existing Minimum Lot Size of the site and its proximity to 'Darraby' and indicates that the Darraby site has a Minimum Lot Size of 'I' (500 sqm).

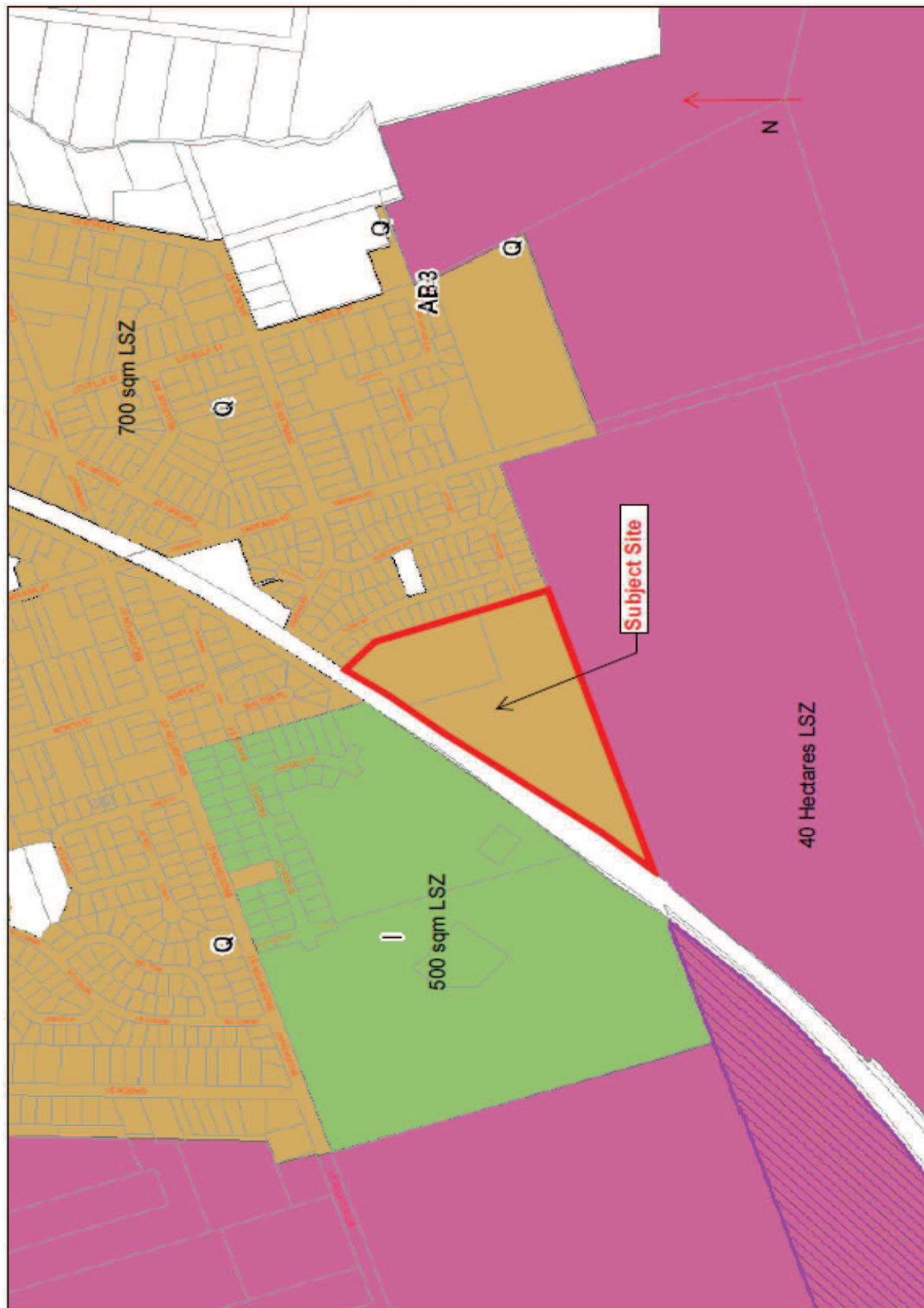


Figure 3: Subject site showing existing Minimum Lot Size of 'Q' (700 sqm). The Proposal is to amend this to 'G' (450 sqm).

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A concept subdivision plan proposing 96 residential lots has been submitted with the Planning Proposal request and is attached – **Attachment 1**. The Masterplan of subdivision provides a good mix of residential lot sizes from 1334sqm down to 450sqm.

The lot size ranges are provided in the following table reproduced from the applicant's submission:

| Lot Size m <sup>2</sup> | Number of Lots |               | Proportion of Lots |               |
|-------------------------|----------------|---------------|--------------------|---------------|
|                         | Darraby        | Patuna/Darran | Darraby            | Patuna/Darran |
| 450-499                 | -              | 28            | -                  | 29%           |
| 500-599                 | 59             | 51            | 19%                | 53%           |
| 600-699                 | 100            | 8             | 33%                | 8%            |
| 700+                    | 147            | 9             | 48%                | 9%            |
| Total                   | 306            | 96            | 100%               | 100%          |

Note that the applicant has compared the proposal with the approved Nattai Ponds subdivision which contains lots down to 450sqm. In the case of this proposal the percentage of 450sqm lots is lower than that of Nattai Ponds. The bulk number of lots is in the 500sqm to 600sqm lot size range similar to the Darraby Subdivision on the northern side of the Main Southern Rail Line.

It can also be noted from the Master Plan of subdivision that larger lots are located on the southern boundary of the development abutting the E3 Environmental Management zone. This layout will continue the existing subdivision pattern of Patuna Avenue as visible on approach to Moss Vale on Yarrawa Road.

## STATUTORY PROVISIONS

### Wingecarribee LEP2010

In order to amend the WLEP 2010 to reduce the minimum lot size from 700 sqm to 450 sqm, a Planning Proposal is 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 preparation of a planning proposal, which explains the effect of and justification for the plan and submits to the Department of Planning and Environment for Gateway Determination.

**Gateway** – The Minister (or delegate) determines whether the planning proposal is to proceed. The 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.

**Community Consultation** – Occurs with government agencies and the public. The proposal is publicly exhibited for a minimum of 14 days (usually 28 days). A person who makes a submission objecting to the Planning Proposal may also request a public hearing be held. The Consultation process concludes following Council's consideration of the post exhibition report presenting any issues raised in submissions.

**Assessment** – The relevant planning authority considers public and agency submissions and the Proposal is varied accordingly. Clause 58 of the EP&A Act 1979 allows Council with the approval of the Minister to vary, at any time, a Planning Proposal as a consequence of its consideration of any submission or report. Council may also resolve not to proceed with the Planning Proposal under this clause, noting that the Minister has final determination.



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

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

#### **Review of Decisions**

On October 29 2012, the Minister for Planning and Infrastructure announced that proponents seeking an amendment to the Local Environmental Plan 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 decisions by councils and the department in the following situations:

##### **(1) Pre Gateway reviews**

If a proponent (eg, developer, landowner) has requested that a Council prepare a Planning Proposal for a proposed instrument, the proponent may request 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

##### **(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 (DCP)**

The subject site is identified in Council's *Urban release area* maps under WLEP 2010. Under Clause 6.2 of WLEP 2010 a DCP is required to be prepared addressing the requirements of Clause 6.2(2). It is recommended that such a DCP be prepared and inserted in the Moss Vale Town Centre DCP should Gateway approval be received.

#### **State Environmental Planning Policies**

State Environmental Planning Policies (SEPP's) are a set of Environmental Planning Instruments with which Council must comply, where relevant, when considering amendments to WLEP 2010.

The following SEPP's are relevant to the Planning Proposal:

##### **State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011**

The *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* came into force on 1 March 2011 and applies to all land in Wingecarribee Shire. The SEPP requires that a consent authority must not grant consent to any development under Part 4 of the EP&A Act, 1979 unless it is satisfied that the development will have a neutral or beneficial effect on water quality.

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Water New South Wales (WNSW) (formerly Sydney Catchment Authority) is consulted in respect of the SEPP prior to Council seeking Gateway Determination for the Planning Proposal.

#### **Section 117 Directions**

The Minister for Planning, under Section 117(2) of the EP&A Act, 1979 issues directions that Council must follow when preparing a Planning Proposal. 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

It is considered that the subject Planning Proposal is able to demonstrate consistency with the above Directions. A comprehensive assessment of these Directions will be prepared as part of the Planning Proposal submission for Gateway Determination.

#### **CONSULTATION**

##### **External Referrals**

The Planning Proposal will be referred to WNSW prior to submission to the Department of Planning and Environment for a Gateway Determination. Further referrals will be done prior to the Community Consultation phase as required by the Gateway Determination.

##### **COMMUNITY ENGAGEMENT**

Community Engagement will occur as required in the Gateway Determination.

##### **Internal Referrals**

No internal referrals have yet occurred but will be undertaken during the Community Consultation phase, if Council resolves to proceed with the Planning Proposal.

##### **Pre-lodgement Meeting**

Several pre-lodgment meetings occurred with the Applicant and Council Staff prior the submission being made. These meetings resulted in the proposed Masterplan of subdivision supporting the Planning Proposal.

#### **SUSTAINABILITY ASSESSMENT**

- **Environment**

The subject land currently contains grasses used for grazing purposes. As such limited environmental impacts would result from any subsequent residential subdivision of the land. Notwithstanding, any future subdivision of the land will require a development application under which more rigorous assessment of environmental factors are undertaken.

- **Social**

It is considered that the proposed amendment to the WLEP 2010 will contribute to the provision of more affordable housing by creating more variety in the housing market for potential future buyers.

- **Broader Economic Implications**

The Planning Proposal will result in broader economic implications that are likely to be beneficial to the community in terms of greater density of housing closer to the town centre creating economic trickle down effects. Further a greater number of dwellings to be built will in the short term create a greater supply of construction jobs.

- **Culture**

The Planning Proposal has no effect on Aboriginal and non-Aboriginal heritage.

- **Governance**

Council is obliged to make a determination to either support or not support the Planning Proposal within 90 days of being received, otherwise the Applicant can seek a review via the Department of Planning and Environment. It is recommended that Council support the Planning Proposal for submission to the Gateway process.

## RELATIONSHIP TO CORPORATE PLANS

The Planning Proposal meets the following Goals and Strategies of the Wingecarribee 2031+ Community Strategic Plan:

Goal 3.1.5 – *Encouraging cycling and walking*; the subject Planning Proposal is within the urban boundary thereby encouraging cycling and walking to places within the urban context.

Goal 3.2 – *Wingecarribee has maintained a distinct character of separate towns and villages*; the subject site is contained within the existing urban area and thereby maintains the distinct character of the separate towns.

Goal 3.4 – *Wingecarribee housing options are diverse*; the intended amendment will provide for a greater diversity of housing options including smaller lot sizes and a range of lot sizes across the site. The edge of the urban boundary is clearly defined and thereby the rural landscape is retained. The growth of Moss Vale will not compromise the separation of the towns and villages.

## COUNCIL BUDGET IMPLICATIONS

Should the Gateway Determination be supported, the Applicant will be required to pay the appropriate Planning Proposal fee, as adopted in Council's Fee and Charges.

## RELATED COUNCIL POLICY

There are no related Council Policies other than those considered as part of this report.

## OPTIONS

There are two options available to Council:

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#### **Option 1**

Resolve not to proceed with the Planning Proposal and the Status quo remains.

#### **Option 2**

Resolve to proceed with the Planning Proposal.

Option 2 is the recommended option for the reasons discussed in this report.

#### **CONCLUSION**

The subject site is capable of supporting the proposed amendment to the Minimum Lot Size of the Wingecarribee LEP 2010. The Masterplan of subdivision, which contains a range of lot sizes, will be similar to those in Darraby to the north and also continue the existing residential pattern from Patuna Avenue. It is noted the site is irregular being triangular and the proposed Masterplan makes good use of the proposed road pattern to create regular shaped lots on the Western corner of the site, which will satisfactorily support future dwellings.

It is therefore considered that there is merit in the proposed amendment to the WLEP 2010 to reduce the Minimum Lot Size applicable to the subject site from 700 sqm to 450 sqm and that an amendment to the applicable Minimum Lot Size map proceed for Gateway Determination.

#### **ATTACHMENTS**

1. Concept Subdivision Plan (*a copy has been circulated to Councillors under separate cover*)



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ATTACHMENT 1 Concept Subdivision Plan

