



ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
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Your Ref:

Our Ref:
Our Ref: 154.05:KC:KF

Contact:
K Callaghan

14 December 2010

Mr B Whitworth
Department of Planning
PO Box 5475
Wollongong. NSW 2520



Dear Sir

**RE: Young LEP 2010 - Planning Proposal 4 Subdivision Complying
Development Schedule 3.**

Council at the Meeting on 20 October 2010 resolved to prepare Planning Proposal 4 relating to Subdivision Complying Development Schedule 3. A copy is attached of the Report to Council and the planning proposal as adopted.

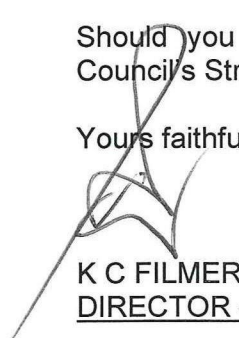
Council considers the attached planning proposal has been completed in accordance with Department of Planning document "A guide to preparing planning proposals.

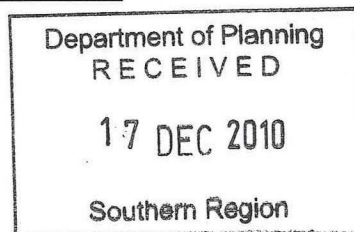
It is requested that they be examined and forwarded to the LEP Review Panel for Gateway Determination. Council trusts that the content of the documents is self-explanatory.

Given the minor nature and importance of the amendment, Council would appreciate early consideration of this matter.

Should you require any further information, please do not hesitate to contact Council's Strategic Planner or the undersigned by phoning (02) 6382-1200.

Yours faithfully


K C FILMER
DIRECTOR – PLANNING ENVIRONMENT & STRATEGIC SERVICES



ITEM CLICK & TYPE	YOUNG LEP 2010 - DRAFTING ERROR – PLANNING PROPOSAL REQUIRED
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Prepared by: Director Planning Environment and Strategic Services

File Number: F154

Purpose

To correct a drafting error that has been identified in Young LEP 2010 relating to the type of consent required for minor subdivision changes such as boundary adjustments and consolidation of lots.

Strategic Link

10. Strategic Planning –

To provide a comprehensive, informative and flexible framework of policies and controls to guide the public and developers alike, and to establish a future direction for the Shire, that is acceptable to the public as a whole.

- Formulation of legislative and policy documents that address those issues most relevant to the Shire
- Review legislative and policy documents as required to ensure that they are up to date and reflect the current best practice
- Ensure that public consultation is carried out whenever possible in the strategic planning process.

Background

Young LEP 2010 commenced on 2 August 2010. It has been found that confusion exists regarding the type of consent required for minor subdivision changes such as boundary adjustments and consolidation of lots.

A local environmental plan is, by nature, a complex document. Requirements such as clauses, schedules and definitions must be read and interpreted as an integrated whole and in conjunction with state policies and a multitude of other documents that are not in the LEP.

A drafting error occurred during preparation of the LEP whereby Parliamentary Counsel and Department of Planning Legal Branch appear to have misinterpreted the Young Shire Council intent and correction is needed.

If left unchanged, there is potential for wrongful use of the error.

Discussion

In Young LEP 2010, Schedule 3 Complying development Part 1 Types of development was intended to facilitate complying development for minor types of subdivision such as boundary adjustments and consolidation of lots. Clause 2.6 Subdivision – consent requirements of the LEP permits certain types of subdivision to be exempt from the need for any approval. Clause 2.6 is a mandatory provision of the Standard Instrument LEP that must be included. Clause 2.6 already does what Young Shire Council intended in Schedule 3 Part 1.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 also addresses the type of consent for subdivision and adds another dimension to confuse the issue.

To resolve the confusion (as it is merely a wrongly worded supplementary version of an existing provision) it is proposed to amend Young LEP 2010 by deleting Schedule 3 Part 1 Types of development and Part 2 Complying development certificate conditions. Subdivision is the only requirement in Schedule 3 Part 1. Deletion of Schedule 3 Part 2 is a logical consequential amendment.

Council planning staff intended that the Department of Planning's utilisation of the Environmental Planning and Assessment Act, Section 73A Expedited amendments of environmental planning instruments of the Environmental Planning and Assessment Act, should have been used to correct the drafting error. Department of Planning Legal Branch advised that a planning proposal is required.

In its present form, Part 1 of Schedule 3 and its enabling clause at its widest application would permit a two (2) lots subdivision of any lands within the Shire, with little or no merits assessment. This is entirely undesirable on the broader scale, especially when contemplating the two (2) lot subdivision considered by Council at the September 2010 Meeting, adjacent a Piggery.

It is recommended that Council resolve to prepare Planning Proposal No 4 Subdivision Complying Development Schedule 3 and take all actions necessary to expedite the issue.

The documentation for this is attached.

Consultation

The level of community consultation will be determined as part of the Gateway Determination provisions under the Environmental Planning and Assessment Act.

The amendment of the Young LEP 2010 identified in the Planning Proposal will reinstate community expectations and the requirements intended as part of the public exhibition at draft plan stage. Accordingly there may be no public exhibition or limited public exhibition, depending on the requirements at Gateway Determination.

Budget Implication

There are no capital budget implications for this minor amendment, only Staff time to monitor and respond to the procedural side of this matter.

Recommendation

That Council resolve as follows:

1. That Young LEP 2010 be amended by deleting Schedule 3 Complying development Part 1 Types of development and Part 2 Complying development certificate conditions;
2. That the Department of Planning be advised as mentioned above;
3. That Planning Proposal No 4 Subdivision Complying Development Schedule 3 be prepared to address the amendment and be processed in accordance with relevant provisions of the Environmental Planning and Assessment Act and procedures of the Department of Planning.

.Attachments

Attachment 1 Planning Proposal No 4 Subdivision Complying Development Schedule 3.

Attachment 2 Planning Proposal No 4 Subdivision Complying Development
Schedule 3.