

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 December 2012

REPORT DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



cw-CS11 Planning Proposal to permit Emergency Service Facilities in the E2 Environmental Conservation zone

Reference: 5901/10
Responsible Officer: Manager Strategic and Assets

PURPOSE

The purpose of this report is to advise Council of submissions received in response to the exhibition of a Planning Proposal to amend the land use table of the E2 Environmental Conservation zone in the Wingecarribee Local Environmental Plan 2010 (LEP 2010) to include an *Emergency Services Facility* (ESF) as 'Permitted with consent'.

SUMMARY

This report discusses the submissions that are relevant to the Planning Proposal. The Planning Proposal was instigated because it was found that a development application, endorsed by Council and lodged by the Rural Fire Service, for an *Emergency Services Facility* was prohibited under the E2 Environmental Conservation zone on a site at Welby (see figure 1). A Planning Proposal is required, as outlined above, to amend the Wingecarribee LEP 2010 to allow Council to consider the development application. Consideration of the Planning Proposal is therefore over and above the specific development application proposed for the subject site and impacts on all E2 Environment Conservation zone land across the Shire. Many of the submissions however relate to the detailed aspects of the development application relating to the Welby site. The submissions that are addressed in this report are therefore only those that are relevant to the Planning Proposal.

The current Planning Proposal came about on advice from the Department of Planning & Infrastructure (DP&I) as outlined in the 'Background' section of this report. Council originally resolved on 11 May 2011 to support the Planning Proposal by amending Schedule 1 (*Schedule of additional permitted uses*) of the Wingecarribee LEP 2010 for the specific site (shown in figure 1). The Planning Proposal was forwarded to the Department of Planning & Infrastructure (DP&I) on 23 September 2011 as a proposal to rezone the site to SP2 Infrastructure. Rezoning the site to SP2 Infrastructure would have allowed consideration of the development application under *State Environmental Planning Proposal (Infrastructure) 2007*. Neither of the above options were supported by the DP&I and confirmed by a Gateway Determination issued on 6 February 2012.

The Gateway Determination provided Council two options to proceed as follows:

- *Insert 'Emergency services facilities' as permissible with consent in the E2 land use table;*
or
- *rezone the site to E3 Environmental Management and insert 'Emergency Services facilities' as permissible with consent in the E3 land use table*

In Wingecarribee LEP 2010, the E3 Environmental Management zoning has been allocated to privately owned land. Therefore the 2nd option would be inconsistent with how E3 is utilised in

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Wingecarribee LEP 2010. Thus, the PP has proceeded with option 1 to make *Emergency Services Facilities* as permissible with consent in the E2 land use table.

It is recommended that Council proceed with the Planning Proposal.

DESCRIPTION OF PROPOSAL

Background

27 May 2009: Council at its Ordinary Meeting resolved to provide land to the Rural Fire Service (RFS) for the purpose of a proposed Training facility at Welby as follows:

1. *THAT Council request the Department of Lands process its application for the closure of part of the unformed Nattai Street and part of the unformed Berrima Street, Welby.*
2. *THAT the Lots created by the closure of the unformed parts of Nattai Street and Berrima Street, Welby be consolidated with the Reserve being part of Crown Plan 33 – 206.*
3. *THAT Council request the Department of Lands consent to the change of use of Reserve to “Community Purposes”.*
4. *THAT Council enter into a Licence Agreement with Rural Fire Service for a period of ten (10) years, with the consent of the Minister for Lands.*
5. *THAT the Licence Fee payable for the use of part of the Reserve by the Rural Fire Service be \$1 per annum, if demanded.*
6. *THAT the General Manager and Mayor be delegated authority to execute any Licence Agreement and/or documentation required to give effect to these resolutions.*

7 October 2009 Council forwards request for Road Closure and reclassification of reserve to ‘Community’ lands to the Land & Property Management Authority (LPMA)

There has been no correspondence received from the Department of Land and Property Management that this request is being processed. This is being followed up through Council’s Property Officer.

23 March 2011 Council reports unauthorised works to the Office of Environment & Heritage (OEH) – illegal clearing undertaken by the Rural Fire Service.

6 April 2011 Land Use Application (LUA 2011/0294) lodged by RFS for: 1.8 metre chain-wire (Cyclone mesh) fence, concrete helipad, 2 x 20ft sea containers, ‘Car Training Prop’ area, ‘Power Pole Training Prop’ area and two (2) x 8 metre gates in the north west corner of the subject site.

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The Land & Property Management Authority are the owners of the land. Owners consent to lodging the application has been received.

- 21 April 2011 Council requested additional information for the LUA including:
- Detailed site plans
 - Statement of Environmental Effects
 - Acoustic and Noise Assessment
 - Flora and Fauna Assessment
- 11 May 2011 Council at its Ordinary meeting considered a report regarding LUA11/0294 and made the following resolution:
1. THAT Council defer any assessment of the Planning Proposal to consider rezoning the subject property or amending Schedule 1 of Wingecarribee Local Environmental Plan 2010 ('WLEP 2010') to allow for an "emergency services facility" to be included as an additional permitted use with consent within Lot 7307 DP 146411 Colo Street, Welby ('the Planning Proposal') pending the outcome of investigations into the illegal land clearing contra to WLEP 2010 and the Threatened Species Act.
 2. THAT the Planning Proposal be forwarded to Council for further consideration following the investigations which need to be concluded expeditiously.
- 11 July 2011 Illegal clearing investigation concluded: 'The remediation program, proposed by the Rural Fire Service, be carried out in consultation with Council natural resources staff experienced in regeneration of natural vegetation.' This will be actioned following conclusion of the Planning Proposal process.
- 23 September 2011 The Planning Proposal (requesting the site be rezoned to SP3 Infrastructure) was forwarded to the Department of Planning & Infrastructure for Gateway Determination.
- 14 December 2011 Council at its Ordinary meeting considered a report regarding LUA11/0294 and made the following resolution.
1. THAT Council proceed with the Planning Proposal to amend Schedule 1 of Wingecarribee LEP 2010 to enable Emergency Services Facilities on the subject land with the consent of Council.
 2. THAT the additional information requested by the Department of Planning and Infrastructure be prepared and forwarded as soon as practicable.
 3. THAT the Rural Fire Service be informed of Council's decision.
- 6 February 2012 Gateway Determination issued by the Department of Planning & Infrastructure. Planning Proposal can proceed subject to conditions *inter alia* that Council include *Emergency Services Facility* in the land

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use table of the E2 Environmental Conservation zone under the Wingecarribee Local Environmental Plan 2010 as 'Permitted with consent'.

- 15 February 2012 Council's LEP Steering Committee resolved to comply with the requested amendment by including the proposed use in the land use table of the E2 Environmental Conservation zone in the Wingecarribee Local Environmental Plan 2010.
- 4 – 18 June 2012 Planning Proposal exhibited over a 14 day period by way of notification letters, Local Newspaper advertising and information posted on Council's website.
- 25 Jun - 9 Jul 2012 Exhibition of Planning Proposal for an additional 14 days by way of notification letters, Local Newspaper advertising and information posted on Council's website.

This report discusses the submissions received in response to the Public Exhibition period for the Planning Proposal.

Details Of Proposal

Subject Site and Locality

The subject site has an area of 2 hectares (2 Ha) and is identified as part Lot 7307 Deposited Plan 1146411 (location map below). It is located on the unformed Nattai Street at Welby between the Gibbergunyah Creek, the Welby Garden Centre and the Roads and Maritime Service Office (Motor Registry Offices).

The proposed use of the site is for the purpose of a Rural Fire Service Training Facility. This use is defined under WLEP 2010 as:

Emergency Services Facility means a building or place (including a helipad) used in connection with the provision of emergency services by an emergency services organisation. ***Emergency Services Facilities*** are developments that are carried out by State Government & Local Councils. It can be expected therefore that the establishment of any further such developments would employ a high degree of environmental consideration in planning & site selection.

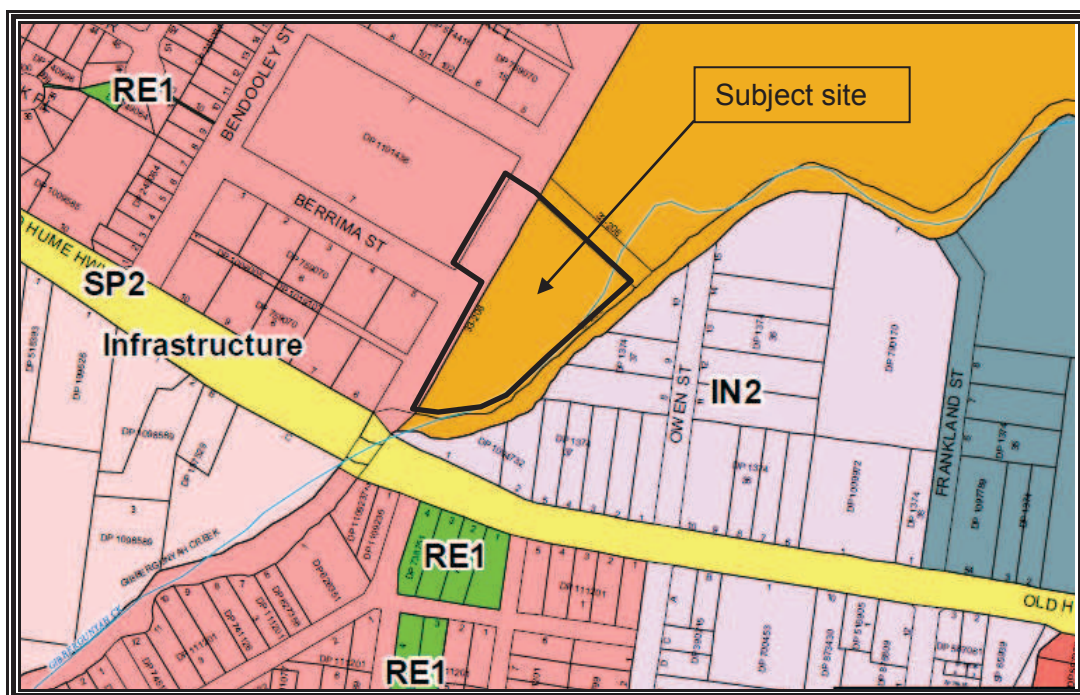


Figure 1 Subject site location map

CONSULTATION

Agency Referrals

The Planning Proposal was referred to the Sydney Catchment Authority (SCA) and the Rural Fire Service (RFS) (Headquarters (Granville) and the Mittagong Branch) on the 23 April 2012 and 24 April 2012 respectively. The Sydney Catchment Authority raised concerns regarding the Planning Proposal while the Rural Fire Service raised no concerns. These are discussed later in this report.

Internal Referrals

An outline of the Planning Proposal was presented to Council's *Environment and Sustainability Committee* on 18 July 2012.

Following the presentation, the Environment and Sustainability Committee resolved:

THAT the Committee raise significant concerns regarding the change to the land use table of the E2 zoned land to allow Emergency Services and the implications this may have on this sensitive zone land.

This resolution was adopted by Council on 28 November 2012.

No further action was required from the E&S Committee.

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Community Consultation

The Department of Planning & Infrastructure, via the Gateway Determination, considered the Planning Proposal to be *low impact* and only required 14 days public exhibition.

Public exhibition of the Planning Proposal commenced on 4 June 2012 until 18 June 2012. Neighbour notification letters were sent to over 900 Mittagong and Welby residents as per Figure 1. An advertisement was also placed in the Southern Highlands News on 30 May 2012.

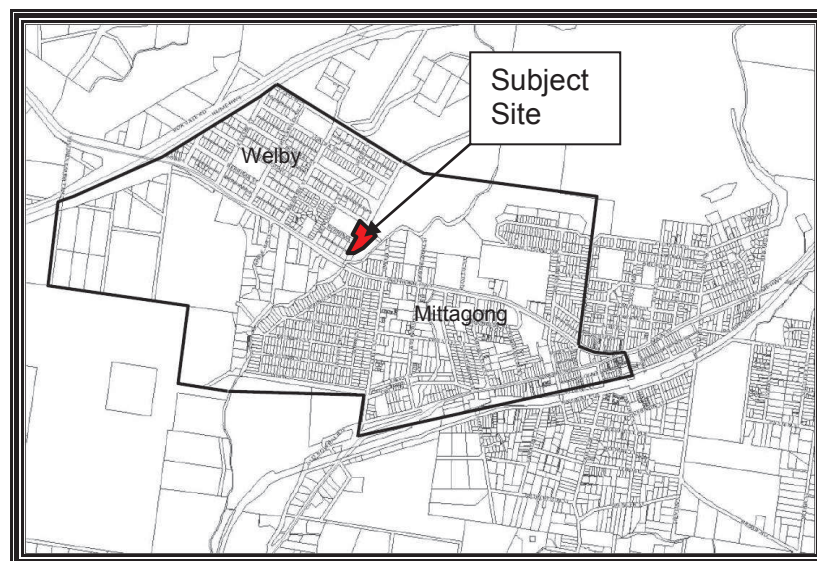


Figure 2 Notification Area

The notification and advertisement directed readers to the following information available at Council's Civic Centre and on Council's website during the exhibition period:

- Planning Proposal revised to amend the land use table of the E2 Environmental Conservation to permit *Emergency Services Facilities* to be permissible with consent.
- Council report dated 11 May 2011
- Council resolution dated 11 May 2011
- DoP&I Gateway Determination
- SCA comments 16 May 2012
- Neighbour Notification letter dated 4 June 2012
- Neighbour Notification map

Further, due to Community concerns regarding the 14 day duration of the public exhibition period and a minor mapping error, the exhibition period was extended from 25 June 2012 until the 9 July (a further 14 days).

A total of 36 submissions were received as follows:

- 31 submissions objecting to the Planning Proposal.
- 1 written submission in support of the Planning Proposal
- 2 written submission in relation to the initial notification letters
- 2 written submission in relation to the Illegal Clearing of EEC vegetation

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The majority of submissions relate to detailed aspects of the development application over the specific Welby site however the Planning Proposal relates to the amendment of permissible land uses in the E2 Environment Conservation of the Wingecarribee LEP 2010 which covers the whole of the shire.

All submissions are addressed as follows with those that relate to the development application noted below:

ASSESSMENT OF SUBMISSIONS

Agency Submissions	Issue	Comment
Environment & Sustainability Committee (E&S Committee)	<i>The Committee raise significant concerns regarding the change to the land use table of the E2 zoned land to allow Emergency Services Facilities and the implications this may have on this sensitive zone land.</i>	- The concerns raised are with respect to the site characteristics and the implications of the proposal. These however will be considered with the development application.
Rural Fire Service (RFS)	No objection	- Noted
Sydney Catchment Authority (SCA)	- Wastewater generated on the site be collected and disposed of via the reticulated sewer system - That stormwater and runoff be managed by incorporating endorsed Current Recommended Practices - Any proposed development retain any intact vegetation particularly along the creek line (of Gibbergunyah Creek) - SCA supported Council's choice of retaining the E2 Environmental Conservation zoning of the site, rather than rezoning the land E3 Environmental Management - Proceeding by amending Schedule 1 of Wingecarribee LEP 2010 would maintain the integrity of the E2 Environmental Conservation zone across the Shire. - SCA assessment of Strategic Land and Water Capability Assessment Data show that much of the site is highly constrained and has a low capability for development. - Development would pose a high risk to water quality without adequate controls and measures - Any future development must meet or exceed the Neutral or Beneficial	- Addressed at DA stage - Addressed at DA stage - Addressed at DA stage - Noted. - Not an option due to the Gateway Determination. -Noted - Addressed at DA stage - Addressed at DA stage

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Agency Submissions	Issue	Comment
	Effect (NorBE) test	
Hawkesbury Nepean Catchment Management Authority (HNCMA)	- Concerns regarding the Planning Proposal. Specifically, they consider that proceeding with the Planning Proposal by including the defined use <i>Emergency Services Facilities</i> in the E2 Environment Conservation zone may diminish the integrity of the E2 zone over the whole of the LGA (Local Government Area). - Allowing <i>Emergency Services Facilities</i> as 'permissible with consent' is inconsistent with the objectives of the zone - The development application for the RFS Emergency Services Facility may provide a solution to an immediate problem however there may be longer term implications of making the proposed amendment to this zone. - HNCMA suggest that an audit of sensitive or environmentally important values such as Endangered Ecological Communities (EEC), wildlife corridors, threatened species habitat etc should be undertaken on all E2 Environmental Conservation zoned land. - They also consider that it is pertinent to know how much of the E2 Environmental Conservation zone land is of environmental significance or of high conservation value so that	<i>Allowing the proposed use as permitted with consent will allow consideration of each proposal on its merits via the development application process. Thus the E2 won't be diminished because environmental constraints for each development application would be considered and addressed.</i> <i>It must be noted that 'permissible with consent' does not mean automatic approval. Council must still assess individual applications in accordance with the Zone Objectives. Therefore any development approved on E2 lands should not destroy, damage or have any adverse impact on areas of high ecological, scientific, cultural or aesthetic values.</i> <i>Each development application would be considered in more detail at the development assessment stage</i> <i>This is a significant exercise likely to cost a significant sum of money which Council is, at this time unable to fund.</i> <i>Each Development Application would be subject to such a study for each individual site.</i>

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Agency Submissions	Issue	Comment
	longer term implications can be considered. - Part 3 Section C of the Planning Proposal only assesses environmental impacts for the Nattai Street Welby site and not all land zoned E2 Environmental Conservation under Wingecarribee LEP 2010. - The HNCMA advise that the Native Vegetation Act 2003 applies to the site	- Each development application would be considered in more detail at the development assessment stage. - Addressed at DA stage
Office of Environment & Heritage (OEH)	- OEH also supports Council's original approach to the Planning Proposal by amending Schedule 1 of the WLEP 2010 - The OEH also support an alternative approach including a split zoning of SP2 on the subject site with E2 Environmental Conservation over the remainder (referring to the balance of the public land covering Mount Alexandra).	- Noted – not an option due to Gateway Determination. - This option was not made available in the Gateway Determination.
Public Submission	Issue	Comment
24 Submissions	Impact on Flora and Fauna (wombats, wallabies, swamp wallabies and koalas & lyrebirds)	- This has been requested and will be addressed at DA stage
17 Submissions	Inconsistent with the Threatened Species Conservation Act, 1995.	- Addressed at DA stage
17 Submissions	The amendment should be site specific (not affecting the whole of Mount Alexandra). The proposed development should be somewhere else (an alternative site should be chosen).	- This option was not made available with the Gateway Determination
16 Submissions	There will be reduced confidence that E2 Environmental Conservation zones would be protected against inappropriate development.	- The integrity of the zone objectives is considered at the development application stage
16 Submissions	Only remaining wildlife corridor between Gibbergunyah and Mount Alexandra	- The impact on the wildlife corridor is considered at the DA stage
12 Submissions	Apparent inconsistency with objectives of the E2 Environmental	- This will be considered at the DA stage.

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Agency Submissions	Issue	Comment
12 Submissions	- Conservation zone. - Reduced protection to all E2 Environmental Conservation zones.	Each development application in E2 zones would consider the scale of each proposal and would be considered on its merit.
10 Submissions	- Impact of development on Residential areas - Air pollution - Soil Pollution - Water Pollution - Noise - Vegetation disturbance - Loss of open space - Loss of koala habitat - Traffic - Amenity and value	These issues can be addressed at DA stage by submission of additional information.
7 Submissions	There should be a very high level of protection of E2 Environmental Conservation zones.	The E2 Zones objectives provide a very high level of protection and would be considered during the DA process along with matters for consideration under Section 79C of the EP&A Act, 1979.
5 Submissions	Intensity of land use.	To be considered at DA stage.
2 Submissions	Inconsistent with environmental objectives of the regional and subregional strategy and the HNCMA Action Plan 2007-2016.	The planning proposal is consistent with the HNCMA Action Plan 07-16, however this plan is called upon at the development assessment stage.
2 Submissions	2 weeks exhibition too short.	The exhibition period was extended for a further 14 days.
2 Submissions	Mapping error.	This was corrected in the subsequent notification letter.
1 Submission	Threat of the development to remaining vegetation and the designation of the site as an Endangered Ecological Community (EEC) (WIRES).	The impact on remaining vegetation and the EEC would be clarified in flora and fauna report and assessed at the DA stage.
1 Submission	Currently used by passive recreationalists.	Passive recreation will still be available on the

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Agency Submissions	Issue	Comment
1 Submission	Access to Mt Alexandra for recreationalists.	<i>remainder of the site.</i> - Addressed at DA stage
1 Submission	Gibbergunyah Creek supports aquatic wildlife.	- Addressed at DA stage
1 Submission	Will create exclusion zone and perceived barrier.	- Addressed at DA stage
1 Submission	Site unsuitable.	- This would be determined at the DA stage.
1 Submission	Amending land use table is inappropriate mechanism.	- Amending the land use table was the only mechanism made available via Gateway.
1 Submission	Inconsistent with WSC Biodiversity Strategy objectives 2.2, 2.3 & 2.4.	- The amendment to the land use table is not considered inconsistent with these objectives.
1 Submission	- Inconsistent with SEPPs - SEPP 44 – Koala Habitat Protection. - SEPP 33 – Hazardous and Offensive Development - SEPP 19 – Bushland in Urban Areas	- This SEPP will be applied at the development assessment stage. - Not applicable (Not a hazardous industry or storage establishment) - Not applicable (this SEPP does not apply in Wingecarribee)
1 Submission	- Inconsistent with State Plans - OEH Koala Recovery Plan - EEC	- The presence of Koalas on the site would need to be confirmed at the DA stage. - The direct impact on EEC will be assessed at the DA stage
1 Submission	Inconsistent with 117 Directions.	- The Planning Proposal has justifiable inconsistencies with 117 Directions – these have been addressed in the Planning Proposal.
1 Submission	Inconsistent with Natural Resource Sensitivity Map LEP 2010.	- Addressed at DA stage
1 Submission	Site has value to the community as part of natural heritage	- The subject site is not listed as an item of natural heritage
1 Submission	Loss of Recreational, educational and scientific resource	- Addressed at DA stage
1 Submission	Distractive to motorists	- DA can assess Traffic

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Agency Submissions	Issue	Comment
1 Submission	• Use of site 'training' unclear definition	<i>Impacts and comments can be sought from Roads and Maritime Services (RMS)</i> - <i>The proposed use is defined under the Standard Instrument LEP.</i>

Considering the above issues raised, the subject Planning Proposal should proceed. Consideration of the issues raised with regard to development application (LUA11/0294) can be addressed separately by either requesting additional information or by requesting the current development application be withdrawn. It should be emphasised that further assessment against state environmental legislation, including the Threatened Species Conservation Act 1995 and the Native Vegetation Act 2003, will be required as part of the development assessment process. Any additional information required to address the issues raised above will be required to be submitted prior to any development application being further considered by Council.

Assessment - Key Issues

While it is considered that there are issues with respect to the impacts of the proposed land use on the subject site, supporting the inclusion of an *Emergency Services Facility* in the E2 Environmental Conservation zone does not mean that the development application is approved. There will still be three possible outcomes following the development assessment process: Refusal, Approval (with conditions) or withdrawal by the applicant.

The implications of supporting the development application, with respect to the integrity of the E2 Environmental Conservation zone, are not insignificant however issues raised in submissions relate more to the impacts of the proposed development on the site (the presence of EEC, the watercourse and potential flora and fauna impacts); the location with respect to surrounding land uses (residential); the location of the proposal and types of activities being considered for the site.

If the Planning Proposal is supported, a comprehensive assessment of the Land Use Application under Section 79C of the Environmental Planning & Assessment Act, 1979 will be undertaken. This assessment would have specific regard to:

- the objectives of the E2 Environmental Conservation zone under Wingecarribee LEP 2010,
- Council's Development Control Plans and
- other relevant State Environmental Planning Policies and
- legislation, including but not limited to,
- Threatened Species Conservation Act 1995 and
- Native Vegetation Act 2003.

Further, the development assessment process will require referral of the development application to relevant state government agencies, including the Hawkesbury Nepean Catchment Management Authority.

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Therefore, should the Planning Proposal proceed, such use would only be permitted 'with consent', meaning they must first address the matters of consideration under Section 79C of the Environmental Planning & Assessment, Act 1979 before being determined by Council.

SUSTAINABILITY ASSESSMENT

- **Environment**

The environmental sustainability assessment of the Planning Proposal must contain itself to consideration of the proposed amendment in terms of the objectives of the zone. Environmental sustainability is about effectively managing the site in terms of environmental impacts. It must also be reiterated that, if supported, the proposed amendment would only allow assessment of *Emergency Services Facility*. Council then has the opportunity to consider the environmental context (site characteristics and compliance with relevant legislation) of each proposal.

The action, and process, of amending the Wingecarribee Local Environmental Plan 2010 to include *Emergency Services Facilities* in the 'permitted with consent' table alone would have no impact on habitat, biodiversity or riparian quality. The direct and indirect environmental impacts of the development application can then be considered and addressed at the development assessment stage.

- **Social**

There have been significant social issues raised with regard to the potential impacts of the operations of the facility including helicopter flight paths, noise, loss of amenity and recreational opportunities. However these will be considered as part of the development assessment process.

Further, supporting the subject Planning Proposal would allow Council to consider other sites within the shire, including those zoned E2 Environmental Conservation. This would allow Council to consider a greater range of locational options if the LUA proposal is not supported on the subject site and the recommendation of this report is supported.

- **Broader Economic Implications**

The Planning Proposal will not have any adverse impacts on economic matters.

- **Culture**

The Planning Proposal will not have any adverse impacts on either indigenous or non-indigenous culture.

- **Governance**

The Planning Proposal is being made in accordance with the Gateway Determination made by the Department of Planning & Infrastructure.

RELATIONSHIP TO CORPORATE PLANS

The Planning Proposal itself is considered consistent with point 5.1.3 to '*expand further educational and training institutes and opportunities available to leverage these to attract related public and private sector research bodies*' in the Wingecarribee Community Strategic Plan 2031+. Council is an advocate for this goal and lists government agencies as a stakeholder.

BUDGET IMPLICATIONS

There are no budget implications for the subject Planning Proposal.

RELATED COUNCIL POLICY

There are no other Council policies associated with this Planning Proposal other than those already discussed.

OPTIONS

There are three (3) options available:

- | | |
|-----------------|---|
| Option 1 | That the Planning Proposal continues with issues raised in submissions addressed by way of additional information submitted for the development application. |
| Comment | This option is the preferred option. Continuing with the Planning Proposal does not imply support for the development application. Considering the significant issues raised in submissions, and the directions imposed by the Office of Environment and Heritage (OEH), there is a clear need for further detailed information to be provided before assessment of the development application can proceed. Recommending the Rural Fire Service withdraws the subject development application would allow sufficient time for owners consent to be formally provided by the Land and Property Management Authority (LPMA). |
| Option 2 | That the Planning Proposal is not supported |
| Comment | This option is not favoured as it excludes other sites across the Wingecarribee Shire zoned E2 Environmental Conservation from future consideration of <i>Emergency Services Facilities</i> development that may be suitable in the E2 Environmental Conservation zone. The development application could not be determined however the illegal clearing would need to be rehabilitated in accordance with the OEH recommendations. |
| Option 3 | Defer the Planning Proposal. |
| Comment | This is the least favoured option as it would delay the assessment of the development application and remediation of the illegal clearing. |

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ATTACHMENTS

There are no attachments to this report.

RECOMMENDATION

1. **THAT** Council proceed with the Planning Proposal to amend the permissible with consent land use table of the E2 Environmental Conservation zone of the Wingecarribee Local Environmental Plan 2010 to include ESF.
2. **THAT** A report is prepared for the NSW Department of Planning and Infrastructure requesting that Wingecarribee LEP 2010 be amended accordingly under section 59 of the Environmental Planning and Assessment Act, 1979.
3. **THAT** the Rural Fire Service be requested to withdraw the current development application so that a review of the issues raised in this report with regard to certain aspects of LUA11/0294 can be addressed in detail.
4. **THAT** all submission makers be notified of Council's decision.

Voting on the motion