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Our ref: PP_2012_WINGE_002_00 (12/01886)
Your ref: 5901/14

Mr Jason Gordon
General Manager
Wingecarribee Shire Council
PO Box 141
MOSS VALE NSW 2577

Dear Mr Gordon ,

Re: Planning Proposal to amend the land use table in the Wingecarribee LEP 2010 in accordance with the directions of the Standard Instrument (Local Environmental Plans) Amendment Order 2011

I am writing in response to your Council's letter dated 25 January 2012 requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend the land use tables for the RU1, RU2, RU4, R3, R5, B1, B2, B4, B5, B7, IN1, IN2, IN3, SP3, RE1, RE2, E3 and E4 Zones in the Wingecarribee LEP 2010 in accordance with the directions of the Standard Instrument (Local Environmental Plans) Amendment Order 2011.

As delegate of the Minister for Planning and Infrastructure, I have now determined that the planning proposal should proceed subject to variations as required by the conditions in the attached Gateway Determination.

It is noted that Council proposes to prohibit 'Open cut mining' in the RU1 Primary Production, IN1 General Industrial, IN2 Light Industrial and IN3 Heavy Industrial zones. Council is advised that 'Open cut mining' is a mandated use in the RU1 Zone under the Standard Instrument by item '3 Permitted with Consent', and therefore the Department does not support the removal of the subject land use from the land use table. Therefore, Council is to amend the planning proposal to ensure consistency with the Standard Instrument template. In addition Council is also advised that the SEPP (Mining, Petroleum Production and Extractive Industries) 2007 permits development with consent for the purposes of 'mining' on land where development for the purposes of 'agriculture' or 'industry' may be carried out. Given the inconsistency of the proposed amendment with the Mining SEPP, Council is to remove reference to prohibiting 'Open cut mining' in the IN1 General Industrial, IN2 Light Industrial and IN3 Heavy Industrial zones to avoid conflicting permissibility between Councils LEP and the SEPP, and to ensure that land use controls are as open and transparent as possible. Council is to ensure these amendments are undertaken prior to the commencement of consultation.

In relation to the planning proposal's inconsistencies with S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries, Council is to consult with the NSW Department of Primary Industries – Minerals and Petroleum to undertaking community consultation. Council is to take into account any comments made and amend the planning proposal if necessary.

In relation to the planning proposal's inconsistencies with S117 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the Commissioner of the NSW Rural Fire Service prior to undertaking community consultation. Council is to take into account any comments made and amend the planning proposal if necessary.

In relation to the planning proposal's inconsistencies with S117 Direction 5.2 Sydney Drinking Water Catchments, Council is to consult with the Sydney Catchment Authority prior to undertaking community consultation. Council is to take into account any comments made and amend the planning proposal if necessary.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway Determination. Council's request for the Department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Jenna Tague of the Regional Office of the Department on 02 4224 9461.

Yours sincerely,


Sam Haddad
Director-General

9/3/2012.

Gateway Determination

Planning Proposal (Department Ref: PP_2012_WINGE_002_00): to amend the land use table in the Wingecarribee LEP 2010 in accordance with the directions of the Standard Instrument (Local Environmental Plans) Amendment Order 2011.

I, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Wingecarribee Local Environmental Plan 2010 to amend the land use tables for the RU1, RU2, RU4, R3, R5, B1, B2, B4, B5, B7, IN1, IN2, IN3, SP3, RE1, RE2, E3 and E4 Zones in accordance with the directions of the Standard Instrument (Local Environmental Plans) Amendment Order 2011 should proceed subject to the following conditions:

1. The prohibition of 'Open cut mining from the RU1 Primary Production, IN1 General Industrial, IN2 Light Industrial and IN3 Heavy Industrial zones is not supported by the Department as it is inconsistent with the Standard Instrument template and the SEPP (Mining, Petroleum Production and Extractive Industries) 2007. Therefore, Council is to retain 'Open cut mining' under item '3. Permitted with Consent' in the RU1 Primary Production zone and remove reference to inserting 'Open cut mining' under item '4 Prohibited' in the IN1 General Industrial, IN2 Light Industrial and IN3 Heavy Industrial zones. Council is to ensure compliance with this condition prior to public authority consultation.
2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of *A Guide to Preparing LEPs (Department of Planning 2009)*.
3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Hawkesbury - Nepean Catchment Management Authority
 - Office of Environment and Heritage
 - NSW Rural Fire Service
 - NSW Department of Primary Industries – Mining and Petroleum
 - Sydney Catchment Authority
 - Southern Rivers Catchment Management Authority

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

4. Further to Condition 3 above, Council is to consult with the NSW Department of Primary Industries – Minerals and Petroleum prior to undertaking community consultation and take into account any comments made and amend the planning proposal (if necessary) as per the requirements of S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries.

5. Further to Condition 3 above, Council is to consult with the Sydney Catchment Authority prior to undertaking community consultation and take into account any comments made and amend the planning proposal (if necessary) as per the requirements of S117 Direction 5.2 Sydney Drinking Water Catchments.
6. Further to Condition 3 above, Council is to consult with the Commissioner of the NSW Rural Fire Service prior to undertaking community consultation and take into account any comments made and amend the planning proposal (if necessary) as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection.
7. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
8. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated *9th* day of *March* 2012.

SHaddad

Sam Haddad
Director-General
Delegate of the Minister for Planning and
Infrastructure