

o-EP8 Planning Proposal to amend the Land Use Table in Wingecarribee Local Environmental Plan 2010

Environment

Reference: 5901

Responsible Officer: Manager Strategic and Community Development

PURPOSE

The purpose of this report is to recommend to Council that a Planning Proposal be prepared to amend the Land Use Table for various zones in WLEP 2010 as a result of amendments to the Standard Instrument in accordance with the Standard Instrument (Local Environmental Plans) Amendment Order 2011.

SUMMARY

The amendments to the Standard Instrument notified on the NSW Legislation website on 25 February 2011 took effect in WLEP 2010 on 25 June 2011. The Standard Instrument amendments included new land use definitions which have initially been incorporated into the WLEP land use table as 'prohibited' in order to allow Council the opportunity to decide the level of permissibility preferred for each zone. These land use table amendments would then be implemented through a Planning Proposal.

DESCRIPTION OF ITEM

BACKGROUND

On 25 February 2011 the Standard Instrument on which WLEP 2010 is based was amended by the NSW Department of Planning and Infrastructure. These amendments took effect in WLEP 2010 on 25 June 2011. The Standard Instrument amendments included a number of new land uses or changes in the status of individual land uses in relation to 'group' land use terms.

New land uses have been 'prohibited' by DOPi in all zones to allow Council to determine in which zones they may be permitted. Council has reviewed these new land uses and has considered the implications of the change in status of some land uses. Council has also taken this opportunity to remove certain land uses from zones where Council now believes their inclusion to be incompatible with the objectives of the zone. A Planning Proposal would then be prepared to implement these amendments.

NEW LAND USE DEFINITIONS

The following new land uses, all of which are currently prohibited under WLEP 2010, were reviewed. The Standard Instrument Dictionary definitions and any other relevant extract from the Standard Instrument are included (in *italics*).

Ecotourist facility - *means a building or place that:*

- (a) *provides temporary or short-term accommodation to visitors on a commercial basis, and*
- (b) *is located in or adjacent to an area with special ecological or cultural features, and*

(c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Note. See clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.

Clause 5.13 Ecotourist facility *[This clause is mandatory when ecotourist facilities are permitted]*

1. *The objectives of this clause are to:*

- a) encourage the inclusion of educational and interpretative elements as part of the facility;*
- b) maintain the existing environmental and cultural values of the land on which the ecotourist facility is located;*
- c) provide carefully designed and managed ecotourist facilities having minimal environmental impact both on and off site;*
- d) distinguish this form of development from 'tourist and visitor accommodation'.*

2. *Before determining a development application for an 'ecotourist facility' development, the consent authority must be satisfied that the development:*

- a) enhances appreciation of the environment and/or cultural context;*
 - b) will be constructed, managed and maintained so as to protect and preserve the natural environment on the same and adjoining lot/s;*
 - c) is sensitively designed and located to minimise the physical footprint and ecological and visual impacts including that it;*
 - i) promotes positive environmental outcomes and minimises impacts on waterbodies, soil quality, heritage and indigenous flora and fauna, preferably with development confined to land already cleared;*
 - ii) maintains (or regenerates where necessary) the site to ensure that protection of the natural resource is continuous and enhanced wherever possible;*
 - iii) avoids waste generation during construction and operation and removes waste appropriately;*
 - iv) is located to avoid visibility above ridgelines and against escarpments and to minimise visual intrusion through choice of design, colours, materials and landscaping with locally indigenous flora;*
 - v) provides servicing without significant modification to the existing environment;*
 - vi) provides power requirements through the use of passive heating/cooling, and renewable energy wherever possible;*
 - d) will not adversely affect existing agricultural productivity of adjoining land;*
 - e) contains and applies on-going detailed management strategies to minimise impacts to the natural environment including strategies to:*
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- i) address intergenerational equity, conservation of biological diversity and ecological integrity together with measures to remove any threats of serious or irreversible environmental damage; and*
- ii) restore, where other than pristine, habitat areas on the land; and*
- iii) minimise energy, water use and waste output; and*
- iv) monitors and reviews the effects of the development on the natural environment and addresses impacts by undertaking improvement on a continuous basis sufficient to demonstrate compliance with relevant ISO14000 standards.*

This land use, with the protections provided by the Heads of Consideration clause 5.13, offers Council the opportunity to provide holiday accommodation of a type and scale well suited to the Shire. Suitable zones would be RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, RE2 Private Recreation, SP3 Tourist, E3 Environmental Management and E4 Environmental Living.

Garden centre - means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may, if ancillary to the principal purpose for which the building or place is used, include a restaurant or cafe and the sale of any the following:

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,*
- (b) pets and pet supplies,*
- (c) fresh produce.*

Note. Garden centres are a type of **retail premises**.

It is noted that Garden centres are mandated permissible with consent in the B2 Local Centre, B4 Mixed Use and B5 Business Development zones.

Council does consider that Garden centres would also be an appropriate land use in the B7 Business Park zone.

Council considers that the bulk and scale of a garden centre makes it a potentially unsuitable development for the B2 zone, however it is unlikely that DOPI will remove garden centres from the mandated 'permissible with consent' classification within the B2 land use table.

The Development Control Plans for those towns and villages which contain the B2 Local Centre zone will be revised to address such development should an application be received.

Heavy industrial storage establishment - means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and that requires separation from other development because of the nature of the processes involved, or the goods, materials, plant or machinery stored, and includes any of the following:

- (a) a hazardous storage establishment,*
- (b) a liquid fuel depot,*
- (c) an offensive storage establishment.*

This land use is a new group term incorporating (a), (b) and (c) above. Each of these is prohibited in all zones except IN3 Heavy Industry where all are permissible with consent. Council considers this level of permissibility appropriate and no further amendment to WLEP 2010 is required.

High technology industry - means a building or place predominantly used to carry out an industrial activity that involves any of the following:

- (a) electronic or micro-electronic systems, goods or components,
- (b) information technology (such as computer software or hardware),
- (c) instrumentation or instruments of a scientific, industrial, technological, medical or similar nature,
- (d) biological, pharmaceutical, medical or paramedical systems, goods or components,
- (e) film, television or multi-media technologies, including any post production systems, goods or components,
- (f) telecommunications systems, goods or components,
- (g) sustainable energy technologies,
- (h) any other goods, systems or components intended for use in a science or technology related field,

but does not include a building or place used to carry out an industrial activity that presents a hazard or potential hazard to the neighbourhood or that, because of the scale and nature of the processes involved, interferes with the amenity of the neighbourhood.

Note. High technology industries are a type of **light industry**.

The Standard Instrument mandates the group term Light Industry as permissible with consent in the B7 Business Park, IN1 General Industrial and IN2 Light Industrial zones and, under WLEP 2010, Light Industry is also permissible with consent in the B4 Mixed Use and B5 Business Development zones. Council considers this level of permissibility appropriate and no further amendment to WLEP 2010 is required.

Industrial Training Facilities - means a building or place used in connection with vocational training in an activity (such as forklift or truck driving, welding or carpentry) that is associated with an industry, rural industry, extractive industry or mining, but does not include an educational establishment, business premises or retail premises.

The DOPI has mandated this land use as 'permissible with consent' in the IN1 and IN2 zones. Council considers this level of permissibility appropriate and no further amendment to WLEP 2010 is required.

Landscaping material supplies - means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

Note. Landscaping material supplies are a type of **retail premises**.

This is a new definition, along with Plant nursery, introduced to replace Landscaping and garden supplies and has already been inserted into the land use table where Landscape & garden supplies were previously shown – mandated as permissible with consent in the B2 Local Centre, B4 Mixed Use and B5 Business Development zones under the Standard Instrument, as well as also being permissible with consent under WLEP 2010 in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, B7

Business Park, IN1 General Industrial, IN2 Light Industrial, and E4 Environmental Living zones.

It is considered inappropriate to retain Landscaping material supplies in the E4 Environmental Living zone therefore it is proposed that they be removed from this zone.

Plant nursery - means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

Note. Plant nurseries are a type of **retail premises**.

This is a new definition, along with Landscaping material supplies, introduced to replace Landscaping and garden supplies and has already been inserted into the land use table where Landscape & garden supplies were previously shown – mandated as permissible with consent in the RU4 Primary production Small Lots, B2 Local Centre and B4 Mixed Use zones under the Standard Instrument, as well as also being permissible with consent under WLEP 2010 in the RU1 Primary Production, RU2 Rural Landscape, R3 Medium Density Residential, R5 Large Lot Residential, B5 Business Development, B7 Business Park, IN1 General Industrial, IN2 Light Industrial and E4 Environmental Living zones.

Council considers that plant nurseries may also be a suitable form of development within the B1 Neighbourhood Centre zone provided the scale of development remains appropriate.

Controls would be placed in the Development Control Plans for those locations with a B1 zone to manage such potential development.

It is considered inappropriate to retain Plant nurseries in the E4 Environmental Living zone therefore it is proposed that they be removed from this zone.

Open cut mining - means mining carried out on, and by excavating, the earth's surface, but does not include underground mining.

This is a new definition to replace the previous land use of 'Mining'. A new definition of Underground Mining has also been included, but the Standard Instrument directs that only Open Cut Mining is to be included in the land use table.

Currently, Open cut mining is permitted with consent in the RU1 Primary Production, R3 Medium Density Residential, R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local Centre, B4 Mixed Use, B5 Business Development, B7 Business Park, IN1 General Industrial, IN2 Light Industrial, IN3 Heavy Industrial and SP3 Tourist zones.

Councils consider that Open cut mining should be prohibited in all zones and seeks to amend WLEP 2010 accordingly.

Respite day care centre - means a building or place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.

DOPI has mandated that a Respite care centre must be permitted wherever a Child care centre is permitted in the Land Use Table – i.e. in the R3 Medium Density, B1 Neighbourhood Centre, B2 Local Centre, B4 Mixed Use, B5 Business Development and B7 Business Park zones. Council considers that this current level of permissibility is adequate and no further amendment to WLEP 2010 is required.

LAND USES WITH CHANGED STATUS

Animal boarding and training establishments – This is now a stand-alone definition, rather than a form of Agriculture and can therefore be considered for inclusion in zones other than rural or environmental zones.

Permitting this land use, with consent, in the IN1 Industrial zone would offer potential operators the opportunity to locate such establishments in locations away from rural areas where, traditionally, noise has been a problem. Council seeks to include animal boarding and training establishments as permissible with consent in the IN1 General Industrial zone.

Camping grounds – *means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.*

Camping grounds was an undefined land use within Caravan parks prior to the 2011 Standard Instruments amendments. It is now a stand-alone land use and separately defined.

Camping grounds are currently permissible with consent in the IN1 General Industrial, IN2 Light Industrial, SP3 Tourist, RE1 Public Recreation and RE2 Private Recreation zones.

Council considers that such development would not be suitable in the IN1 General Industrial and IN2 Light Industrial zones and seeks to have Camping grounds designated as 'prohibited' in these zones.

Rural Industry - *means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:*

- (a) agricultural produce industries,*
- (b) livestock processing industries,*
- (c) composting facilities and works (including the production of mushroom substrate),*
- (d) sawmill or log processing works,*
- (e) stock and sale yards,*
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

Note. Rural industries are not a type of **industry**.

It is noted that Rural Industry includes Agricultural produce industry which is defined as - *a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.*

The removal of Rural Industry from the group term, Industry, means that Rural industry is no longer mandated prohibited in the E3 Environmental Management zone. This provides the opportunity to permit, with consent, Agricultural produce industries, which includes Wineries, in the E3 zone. Other forms of Rural Industry would remain prohibited in the E3 zone.

HIGHWAY SERVICE CENTRES

In reviewing the land use table, Council noted that Highway service centres are currently permitted with consent in the following zones – R3 Medium Density Residential, R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local centre, B4 Mixed Use, B5 Business Development, B7 Business Park and SP3 Tourist. Council considers that such development is not appropriate in these zones and will also use the Planning Proposal as an opportunity to prohibit such development within all zones.

SUMMARY OF AMENDMENTS

To achieve the outcomes described above, it is proposed to amend the WLEP 2010 land use table as follows:

Zone	Proposed amendments
RU1 Primary Production	- o Insert Ecotourist facility under 3 Permitted with consent. - o Remove Open cut mining from 3 Permitted with consent.
RU2 Rural Landscape	o Insert <i>Ecotourist facility</i> under 3 Permitted with consent.
RU4 Primary Production Small Lots	o Insert <i>Ecotourist facility</i> under 3 Permitted with consent.
R3 Medium density Residential	- o Insert <i>Highway service centre</i> under 4 Prohibited. - o Insert <i>Open cut mining</i> under 4 Prohibited.
R5 Large Lot Residential	- o Insert <i>Open cut mining</i> under 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited.
B1 Neighbourhood Business	- o Remove <i>Plant nurseries</i> from 4 Prohibited. - o Insert <i>Open cut mining</i> under 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited.
B2 Local Centre	- o Insert <i>Open cut mining</i> under 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited.
B4 Mixed Use	- o Insert <i>Open cut mining</i> under 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited.
B5 Business Development	- o Insert <i>Open cut mining</i> under 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited.
B7 Business Park	- o Remove <i>Garden centres</i> from 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited. - o Insert <i>Open cut mining</i> under 4 Prohibited.

Zone	Proposed amendments
IN1 General Industrial	- o Insert <i>Camping grounds</i> under 4 Prohibited. - o Insert <i>Open cut mining</i> under 4 Prohibited. - o Remove <i>Animal boarding and training establishments</i> from 4 Prohibited.
IN2 Light Industrial	- o Insert <i>Camping grounds</i> under 4 Prohibited. - o Insert <i>Open cut mining</i> under 4 Prohibited.
IN3 Heavy industrial	o Insert <i>Open cut mining</i> under 4 Prohibited.
SP3 Tourist	- o Insert <i>Open cut mining</i> under 4 Prohibited. - o Insert <i>Highway service centre</i> under 4 Prohibited.
RE2 Private Recreation	o Insert <i>Ecotourist facility</i> under 3 Permitted with consent.
E3 Environmental Management	- o Insert <i>Agricultural produce industry</i> under 3 Permitted with consent. - o Insert <i>Ecotourist facility</i> under 3 Permitted with consent.
E4 Environmental Living	- o Insert <i>Ecotourist facility</i> under 3 Permitted with consent. - o Remove <i>Landscaping material supplies</i> from 3 Permitted with consent. - o Remove <i>Plant nurseries</i> from 3 Permitted with consent.

CONCLUSION

The amendments to the Standard Instrument have provided Council with an opportunity to review the land use table in WLEP2010 and amend it to both permit new land uses and to prohibit land uses within certain zones where Council considers those uses inappropriate.

In order to achieve these amendments to WLEP 2010, a Planning Proposal must be prepared and forwarded to the Department of Planning and Infrastructure (DOPI) for their support. Once Council receives permission to proceed with the Planning Proposal it will be placed on public exhibition for the period nominated in the Gateway Determination.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed land use changes will help protect and improve environmental amenity across the Shire.

- **Social**

The permissibility of certain land uses will help generate new employment opportunities.

- **Culture**

There are no significant cultural implications.

- **Broader Economic Implications**

The permissibility of certain land uses will help generate new employment opportunities, particularly with regard to tourism.

- **Governance**

The proposed amendments to the WLEP 2010 land use tables will strengthen the Wingecarribee Local Environmental Plan 2010 with regard to controlling development deemed inappropriate in certain zones.

RELATIONSHIP TO CORPORATE PLANS

The proposed amendments to the WLEP 2010 land use tables will assist Council to improve the management of future development across the Shire to achieve outcomes identified by the community in the 2031+ Strategic Plan.

BUDGET IMPLICATIONS

There are no budget implications associated with this Proposal. The Planning Proposal would be managed by Council staff.

ATTACHMENTS

There are no attachments to this report.

RELATED COUNCIL POLICY

The draft amendments will apply to Wingecarribee LEP 2010.

RECOMMENDATION

THAT Council proceed with a Planning Proposal in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 to amend the land use table of Wingecarribee Local Environmental Plan 2010 as detailed in this report.

Scott Lee
Director Environment & Planning

7 October 2011