

2.3 Planning Proposal: RZ/5/2009 - Palmdale Lawn Cemetery & Memorial Park, Palmdale.

TRIM REFERENCE: RZ/5/2009 - D03217667

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SUMMARY

Council has received a planning proposal for the Palmdale Lawn Cemetery and Memorial Park to rezone Lot 3 DP 549272 from 7(b) Scenic Protection to SP2 Special Purpose – Cemetery and E2 Environmental Conservation. The issues requiring attention and consideration in relation to the planning proposal are addressed in the planning proposal report provided in Attachment 1. Following a detailed assessment, it is considered that the planning proposal has merit and should therefore be supported.

RECOMMENDATION

- 1 That Council initiate the Planning Proposal to amend Wyong Local Environmental Plan (WLEP) 1991 in accordance with Section 55 of the Environmental Planning and Assessment Act 1979, by endorsing the planning proposal prepared by the applicant.**
- 2 That Council forward the Planning Proposal to the Director General, Department of Planning and Infrastructure requesting a 'Gateway' determination, pursuant to Section 56(1) of the Environmental Planning and Assessment Act 1979.**
- 3 That Council request the Director General, Department of Planning and Infrastructure to issue an Authorisation to exercise delegation under Part 3 of the Environmental Planning and Assessment Act, 1979 and advise the Department that the plan is to be made by sub-delegation to the relevant Council Officer.**
- 4 Subject to the Director General's approval, that Council undertake community consultation on the Planning Proposal, in accordance with the Gateway Process and Director General's direction.**
- 5 Subject to the Director General's approval, Council prepare the draft Local Environmental Planning Instrument in consultation with the Office of the Parliamentary Counsel (PCO) where Written Authorisation to exercise delegation has been issued to Council, and that Council make the plan subject to there being no objections received that cannot be resolved by minor amendments to the Planning Proposal.**

THE PROPOSAL

Council has received a planning proposal on behalf of Palmdale Lawn Cemetery & Memorial Park to prepare a draft Local Environmental Plan in respect of Lot 3 DP 549272. The planning proposal relates to land located at 41 Palmdale Road, Palmdale within the Lawn Cemetery and Memorial Park.

The planning proposal seeks to amend *Wyong Local Environmental Plan 1991* (WLEP 1991) by rezoning the land from 7(b) Scenic Protection to SP2 Special Purpose – Cemetery and E2 Environmental Conservation. The proposed rezoning will enable the cemetery to extend its operations into the south-east portion of the site. In the short term, the proponent seeks to utilise the existing dwelling on the subject site as an office for Creightons Funeral Services. Creightons is owned by Palmdale Lawn Cemetery and Memorial Park and currently operates at an office located within the existing Memorial Park. In the long term the subject site will provide low scale memorial walls, plaques, and landscaping; it is considered that this use will have minimal impact on the environment and neighbouring properties.

Initially, the proponent sought to rezone the land from 7(b) Scenic Protection to SP1 – Special Activities (Cemetery) and E2 Environmental Conservation as identified in the enclosed planning proposal. This was a result of the Department of Planning and Infrastructure LEP practice note PN 08-002 issued 7 March 2008 which stated that cemeteries should be zoned SP1 – Special Activities. This direction changed under PN 10-001 issued 14 December 2010 with cemeteries to be zoned SP2 – Infrastructure. The proponent has now agreed that the most appropriate zoning for the subject site is SP2 Special Purpose – Cemetery and E2 Environmental Conservation. A plan indicating the proposed zone boundaries is attached.

Whilst the proposed rezoning is included in draft *Wyong Local Environmental Plan 2012* (DWLEP 2012), the proponent has requested that the rezoning proceed as a planning proposal seeking to amend WLEP 1991 in order to gain some certainty and facilitate the move by Creightons at the earliest opportunity.

SITE CONTEXT

The site is located within a predominantly rural area with much of the land currently zoned 1(f) Forestry, 7(a) Conservation, and 7(b) Scenic Protection. Located to the north of the cemetery is Ourimbah State Forest which is dense with vegetation. Rural residential properties are located to the west and south of the site, while adjacent land to the east is owned by Roads and Maritime Services (RMS), Lot 2 DP 1012816 adjacent the RMS site is owned by Wyong Shire Council.

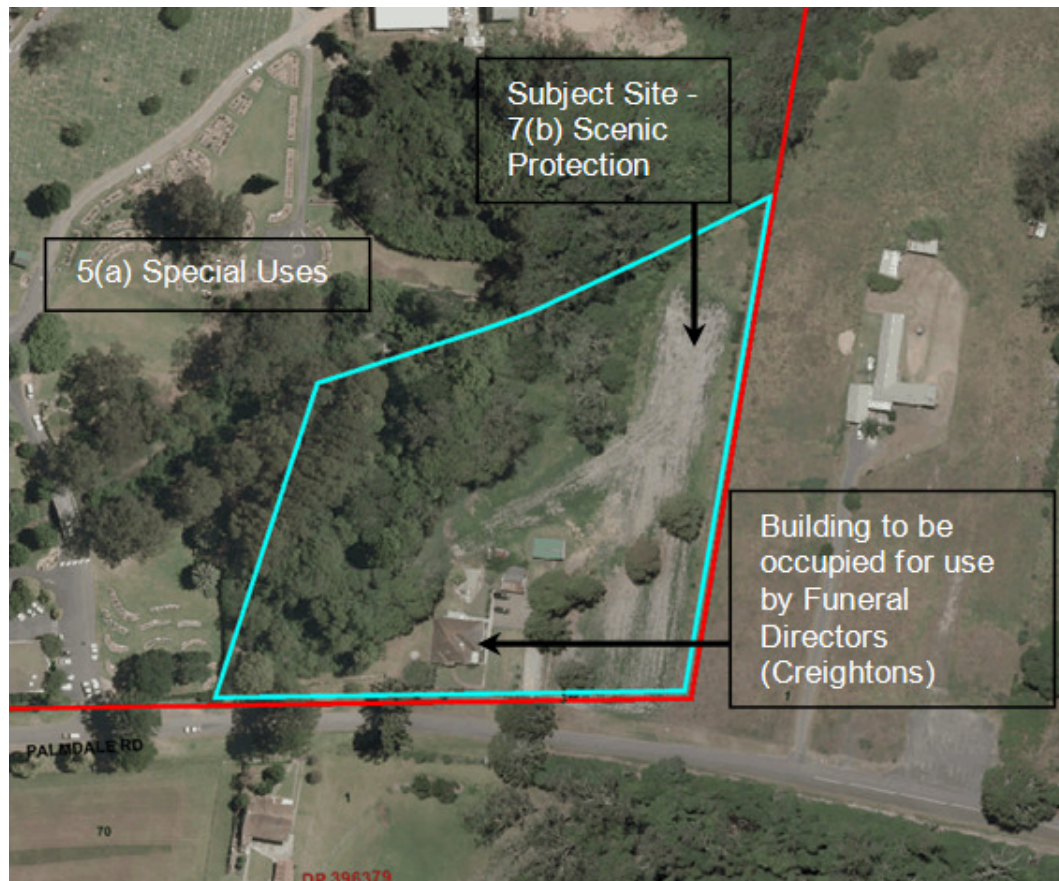


Figure 1: Site Plan

STRATEGIC CONTEXT

Central Coast Regional Strategy (CCRS)

One of the key regional challenges identified in the CCRS is population growth and immigration by retirees relocating from the Greater Metropolitan Region. The proportional increase of the over 65 population in the Shire is predicted to increase substantially over the next 25 years. Such changes in the age demographic will increase the number of infrastructure needs related to ageing within the Shire.

The CCRS recognises the need for social infrastructure which is amenable to such changes; the proposed extension of the Palmdale Cemetery compliments the objectives and requirements of the CCRS in that it will provide infrastructure to accommodate the changing age demographic within Wyong Shire. Council currently manages five (5) cemeteries on behalf of the Department of Lands. Future demand and growth of cemeteries will be based on a Plan of Management (POM) for cemeteries in the Shire.

Environmental Planning and Assessment Act, 1979: Applicable Section 117 Ministerial Directions***S117 Ministerial Directions – 4.3 Flood Prone Land***

The proposed rezoning of the south-eastern portion of Palmdale Cemetery from 7(b) Scenic Protection to SP2 Special Purpose - Cemetery conflicts with the objectives of the section 117 ministerial directions and the NSW Flood Prone Land Policy and Development Manual by proposing to rezone an environmental zone to a special use zone in a flood planning area.

It is noted however that the only development proposed over Lot 3 DP 549272 is the extension of Palmdale Cemetery and Memorial Park, including plots and memorial gardens but excluding any filling of the floodplain or the erection of structures. The flood impact assessment prepared by the proponent's consultant, in support of the application, concludes that the land is categorised as a low hazard floodway and that (provided no filling is involved) the extension of the cemetery and memorial park would not have a significant impact on flood levels.

It is therefore considered that the relevant sub clause of the s117 Direction applies and the planning proposal may be inconsistent with this direction and still proceed as the proposal is of minor significance.

S117 Ministerial Directions – Implementation of Regional Strategies

The planning proposal is largely consistent with the actions and outcomes of the CCRS, with the exception of objective 6.11 where LEP's are to implement the NSW coastal policy, the NSW Flood Prone Land Policy and plans prepared in accordance with these documents.

A draft LEP can be inconsistent with this direction where the extent of inconsistency with the regional strategy is of minor significance, or where the draft LEP achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions. The inconsistency of the draft LEP with the regional strategy is considered to be of minor significance and achieves the overall intent of the regional strategy.

State Environmental Planning Policies (SEPP's)

The planning proposal is consistent with the relevant State Environmental Planning Policies.

Economic Considerations

Nil.

Environmental Considerations***(a) Flooding***

The land is identified as being partly flood affected on Council's mapping system and is affected by the 1% Annual Exceedance Probability (AEP). The south-east corner of Palmdale Cemetery comprising Lot 3 DP 549272 is predominantly affected by the 1% AEP.

F5 Flood Prone Land Development

Council's Flood Prone Land Policy stipulates the following in relation to prohibited development:

- For all high hazard areas and for low hazard floodways, no rezoning of the land will be permitted except to rezone the land as floodway, special use drainage or for open space purposes.
- For low hazard flood fringe and flood storage areas, no rezoning of the land will be permitted except to rezone the land to a zoning that permits a lesser density usage (e.g. rezoning from Residential to Rural).

The applicant has undertaken a Flood Hazard Assessment of the site. Council's Waterways and Asset Management Unit is in support of the rezoning application based on the information submitted, provided that no filling on land is proposed over the site. Should filling occur on the site, the applicant would be required to consider the relevant construction requirements associated with cemeteries (i.e. burial plots) over flood prone areas).

(b) Bushfire Prone Land

The subject site is identified as being bushfire prone on Council's mapping system. Under Section 117 Direction 4.4 – Planning for Bushfire Protection, Council must consult with the Rural Fire Service. Consultation must be undertaken in accordance with section 62 of the Environmental Planning and Assessment Act, 1979. It is considered that the proposed rezoning could be made compliant with the objectives and standards detailed in Planning for Bushfire Protection (2006) with regard to the existing development and any general expansion of existing activities. The extension of grave sites into the current 7(b) (Scenic Protection Zone) is permissible within the Asset Protection Zone provided there is an access lane for emergency vehicles.

(c) Significant vegetation, Endangered Ecological Communities & environmental populations

Endangered Ecological Communities (EEC's) are present within the south-western portion of the site; the EEC community is identified on Council's mapping system as River Flat Eucalypt Forest.



Figure 2: EEC's present on the subject site

To reduce the potential impacts to the EEC's an environmental buffer zone is proposed which has regard to the extent of natural vegetation and EEC's present on site. A "7 part test" was undertaken by Peak Land Management on behalf of the applicant which supports the provision of an environmental buffer zone, and recommends a vegetation management plan be prepared for the riparian zone. The "7 part test" has been reviewed by Council and it is considered that the proposal is unlikely to constitute a significant impact on any NSW or nationally listed threatened or protected migratory species, population or ecological community, provided the environmental buffer is created, and a vegetation management plan is prepared for the riparian zone.

(d) Traffic and Transport

Palmdale Cemetery abuts Palmdale Road which is located just west of the Pacific Highway and F3 Freeway. A Traffic and Transport Study would be required where further building works are proposed. The current planning proposal indicates that no building works will be undertaken on Lot 3 DP 549272 as the cemetery operations will utilise the existing building in the short term, with the site to be used for interments and memorial gardens in the long term.

Social Considerations

The rezoning of Palmdale Cemetery and Crematorium will have no adverse social impact and will allow additional land and infrastructure to be provided to accommodate the predicted increased demand for cemetery and crematorium facilities within the Shire in the near future. Additionally, the Shire's Council-owned cemeteries are capable of sufficiently accommodating future demand.

LEP AMENDMENT PROCESS (The Gateway Process)

The current LEP Amendment Process, known as the Gateway Process, was introduced via changes to the *Environmental Planning and Assessment Act* (EP&A Act) 1979, effective 1 July 2009. The process has been implemented in order to streamline the LEP amendment process, reduce timeframes for undertaking LEP amendments and increase the transparency of the process.

Any submission a Council makes to the Department of Planning and Infrastructure (DoPI) to amend an existing LEP must be supported by a Planning Proposal prepared in accordance with the DoPI guidelines.

Planning Proposals under this process must document the objectives, proposed provisions, justification and proposed community consultation processes to be undertaken for each proposal. A planning proposal for the proposed rezoning is provided in Attachment 1 of this report.

RECENT CHANGES TO LEP DELEGATIONS

Previously, the preparing and making of LEP's through the Gateway Process was undertaken by the Office of the Parliamentary Counsel (PCO) at the request of DoPI. On 2 November 2012 changes were made under Part 3 of the EP&A Act 1979 to permit certain LEP's to be routinely delegated to Council's, including spot rezonings which are consistent with an endorsed strategy and/or surrounding zones. Council cannot choose to accept the

delegation without the approval of the Council. Should Council accept the delegation Council will be responsible for the making of the LEP and will liaise with the PCO directly to draft the LEP instrument.

It is recommended that Council request Written Authorisation to exercise delegation to expedite the LEP. It is noted that consultation requirements will still be determined by DoPI as part of the gateway determination where Council is issued Written Authorisation.

OPTIONS

The operations at Palmdale Lawn Cemetery require that the land be rezoned to permit the extension of its business operations. No other options can be considered or pursued which would achieve the same result.

STRATEGIC LINKS

Wyong Shire Council Strategic/ Annual Plan

<i>Principal Activity</i>	<i>Service</i>	<i>Key Action and Objectives</i>	<i>Funding Source and Description</i>	<i>Impact on Key Performance Indicators/ Service Performance Indicators</i>
6 – Environment and Land Use	-	Finalise rezonings submitted prior to and during draft of WLEP 2012	N/A	Nil

Contribution of Proposal to the Principal Activity

The proposal contributes to the Principle Activity by progressing a rezoning application submitted prior to the draft of WLEP 2012.

CONSULTATION

The community consultation requirements for this planning proposal, including public exhibition timeframes, will be determined at the issuing of the Gateway determination. Under the Gateway process the State and Commonwealth public authorities to be consulted are nominated by the Gateway determination and the views of these authorities are, therefore, not known until after the initial Gateway determination.

GOVERNANCE AND POLICY IMPLICATIONS

The proposal is affected by the following:

- Environmental Planning and Assessment Act, 1979
- NSW Department of Planning and Infrastructure – A Guide to Preparing Planning Proposals
- NSW Department of Planning and Infrastructure – A Guide to Preparing Local Environmental Plans

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- Wyong Shire Council Planning Proposal procedure

The proposal will require formal approval under Part 3 of the Environmental Planning and Assessment Act, 1979. This process has been included in the report recommendations.

CONCLUSION

The use of the land as described in the planning proposal will not have significant impacts and will allow the logical extension of Palmdale Cemetery onto the adjoining lot which is currently owned and managed by Palmdale Lawn Cemetery and Memorial Park. The proposal to amend WLEP 1991 by rezoning the land from 7(b) Scenic Protection to SP2 Special Purpose – Cemetery and E2 Environmental Conservation is therefore supported.

ATTACHMENTS

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|---|--|-----------|-----------|
| 1 | Planning Proposal - Lot 3 DP 549272 Palmdale Rd Palmdale - RZ/5/2009 | Enclosure | D03206050 |
| 2 | Palmdale Cemetery - Proposed Zoning Map | | D03232062 |