

Attachment 2: Wyong LEP 1991 – Planning Provision Select Extract

Zoning

The Wyong Local Environmental Plan (WLEP) 1991 is the principal Environmental Planning Instrument applying to the subject land.

The land is currently within Zone No 2(e) (Urban Release Area Zone) under the provisions of the WLEP.

Permissibility

The provisions of Clause 10 regarding the 2(e) (Urban Release Area Zone) of the WLEP states in part:

Zone No 2 (e) (Urban Release Area Zone)

1 objectives of zone

The objectives are:

- (a) to cater for a range of housing types appropriate to a greenfield urban release area and not exceeding a height of 2 storeys, and*
- (b) to provide for other uses which:*
 - (i) are compatible with the residential environment and afford services to residents at a local level and*
 - (ii) are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential uses, and*
- (c) to provide home-based employment where such will not:*
 - (i) involve exposure to view from any public place of any unsightly matter, or any raw material, equipment, machinery, product or stored finished goods, or*
 - (ii) have a material adverse impact on residents, and*
- (d) to ensure development includes appropriate water sensitive urban design.*

2 Without development consent

Home occupations.

3 Only with development consent

*Advertisements; agriculture ; boarding houses; bushfire hazard reduction; child care centres; communications facilities; community facilities; detached dual occupancies; drainage; dual occupancy buildings; dwelling-houses; education establishments; exhibition homes; flood mitigation works; **general stores**; group homes; home businesses; hospitals; housing for older persons or people with a disability; motels; nutrient control facilities; palliative day care centres; places of worship; recreation areas; residential flat buildings; tourist accommodation; transitional group homes; utility installations.*

4 Prohibited

Any purpose other than a purpose included in item 2 or 3 of the matter relating to this zone.

The 2(e) zone permits "general store" as a form of retailing under the WLEP, based on the following definition:

general store means a shop which sells a variety of small consumer goods.

The WLEP separately defines the following forms of development each of which are not listed as permissible forms of development under the 2(e) zone as follows:

large scale retail establishment means a building or place, or part of a building or place, which has a minimum gross floor area of 200m² and is used for retail sales as a single retail outlet by an individual occupant, but does not include such a building or place used for the purposes of:

- (a) a supermarket or other foodstuffs or produce sales (excluding that sold by a restaurant), and clothing sales or display (other than clothing essential for sporting activity and sold in conjunction with sporting goods).
- (b) Clothing sales or display (other than clothing essential for sporting activity and sold in conjunction with sporting goods).

and

service station means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products whether or not the building or place is also used for any one or more of the following purposes:

- (a) the hiring of trailers,
- (b) the retail selling or the installing of spare parts and accessories for motor vehicles,
- (c) washing and greasing of motor vehicles,
- (d) repairing and servicing of motor vehicles involving the use of hand tools (other than repairing and servicing which involves top overhaul of motors, body building, panel beating or spray painting), and
- (e) retail selling or hiring of small consumer goods.

and

shop means a building or place used for the purpose of the selling (whether by retail or auction), hiring or displaying for the purpose of selling or hiring of items (whether goods or materials), but does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause.

As such, the proposed form of development which includes a large scale retail establishment and service station as defined above, are not permitted. It is noted that an enabling Clause has been included within the WLEP which is discussed below

Relevant Clause under WLEP

The provisions of Clause 59 of the WLEP enable certain forms of retail development on land in the 2(e) zone and located within Wadalba based on the following:

59 Local shopping centres-Blue Haven, Warnervale East and Wadalba

- (1) Council must not grant consent for the development of more than one local shopping centre within each of the areas of land within Zone No 2 (e) being at:
 - a) Haven, generally bounded by the Pacific Highway, Wallarah Creek, McKellar Boulevarde and the motorway linking the Sydney-Newcastle Freeway with the Pacific Highway, and
 - b) a, as shown on Sheet No 2 of the map marked "Wyong Local Environmental Plan 1991 (Amendment No 2)".

- (2) Council must not grant consent for the development of more than two local shopping centres on land within Zone No 2 (e) at Wamervale East, as shown on Sheet No 1 of the map marked "Wyong Local Environmental Plan 1991 (Amendment No 2)".
- (3) Notwithstanding any other provision of this plan, a person may, with the consent of the Council, carry out development for the purpose of a local shopping centre on land on which development is restricted by subclause (1) or (2) where:
 - a) The gross floor area of any building or buildings used for the purposes of a shop does not exceed 1,000 square metres and
 - b) The gross floor area of any building or buildings used for the purposes of commercial premises does not exceed 200 square metres.
- 4) The Council must not grant consent to the carrying out of development for the purposes of any local shopping centre on any such land unless the Council has:
 - a) first requested, and considered, a report (provided by the applicant for the consent) assessing retail and commercial demand for the development, and
 - b) considered the appropriateness of the location of the development relative to other development in the urban release area in which it is situated.

It is noted that a Coles supermarket which is some 1,500 square metres in area, is considered to be the local shopping centre in Wadalba. As there is an existing supermarket (local shopping centre) in Wadalba, a further supermarket (local shopping centre) is not permitted, as per Clause 59 (1)(b) of the WLEP.

