

cw-CS5 Planning Proposal to amend WLEP 2010 to permit development for the purposes of a cemetery on a portion of Lot 33 DP 751286, 'Craigenbrae', 1020 Tugalong Road, Canyonleigh.

Reference: PN 1509300, 5901
Responsible Officer: Group Manager Strategic and Assets

PURPOSE

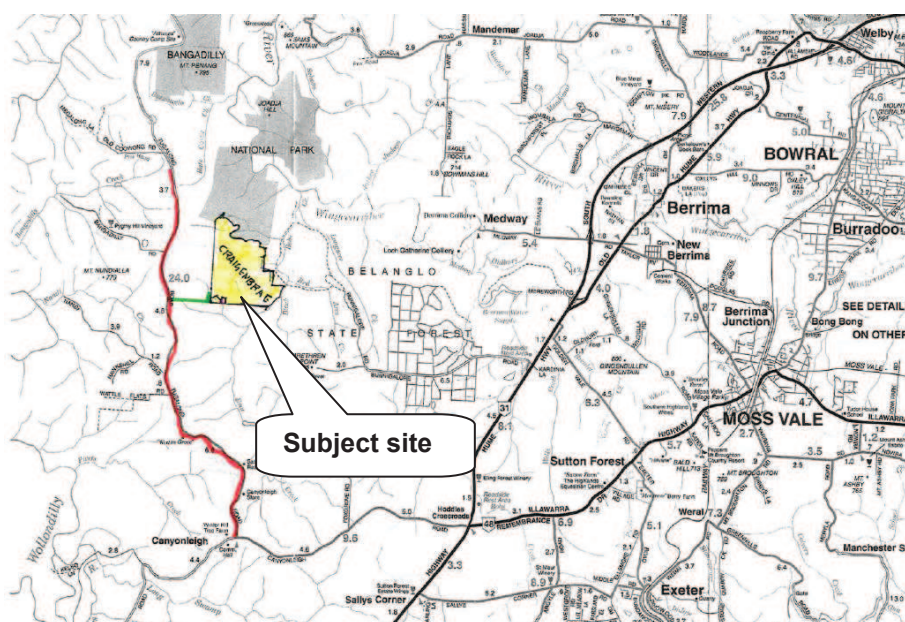
The purpose of this report is to present to Council a submission to amend WLEP 2010 to permit development for the purposes of a cemetery in the form of a natural burial ground on a portion of Lot 33 DP 751286, 'Craigenbrae' 1020 Tugalong Road, Canyonleigh. It is recommended that the Planning Proposal be supported.

DESCRIPTION OF PROPOSAL

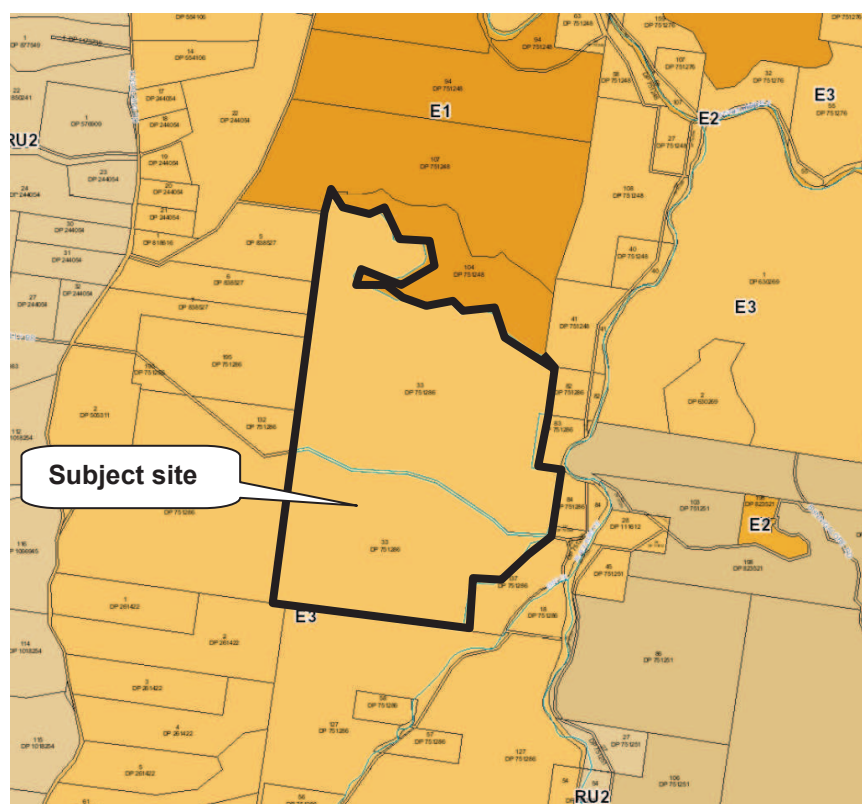
BACKGROUND

The subject site is located at Canyonleigh in the western part of the Shire as indicated in the following figures.

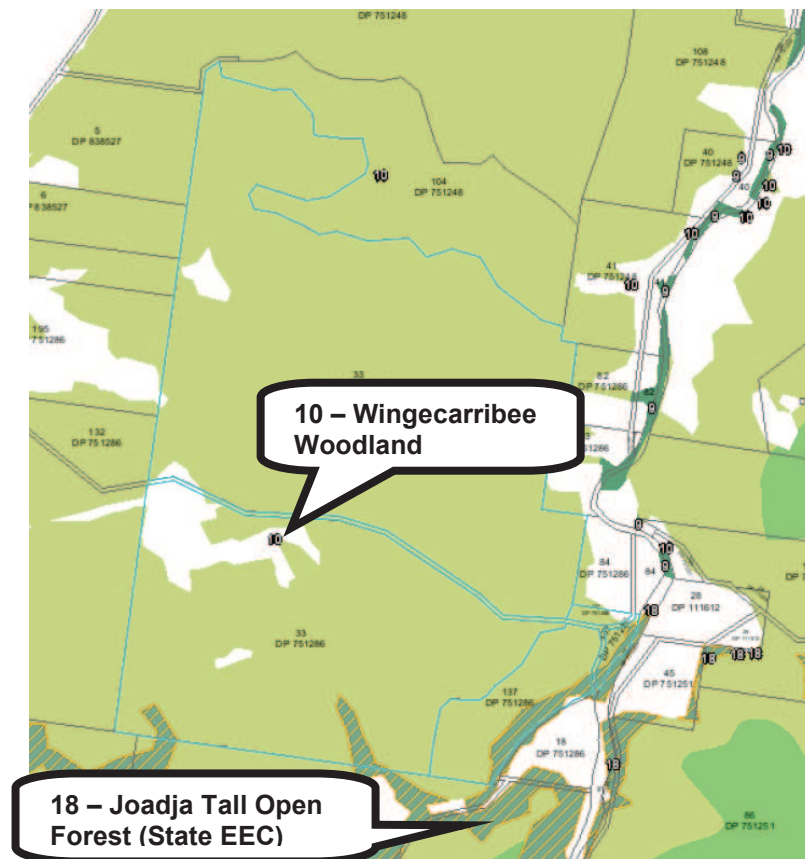




The site covers an area of 572 hectares and is zoned E3 Environmental Management under WLEP 2010. It adjoins the Bangadilly State Forest to the north. The entire site is within a Regional Wildlife Habitat Corridor under WLEP 2010.

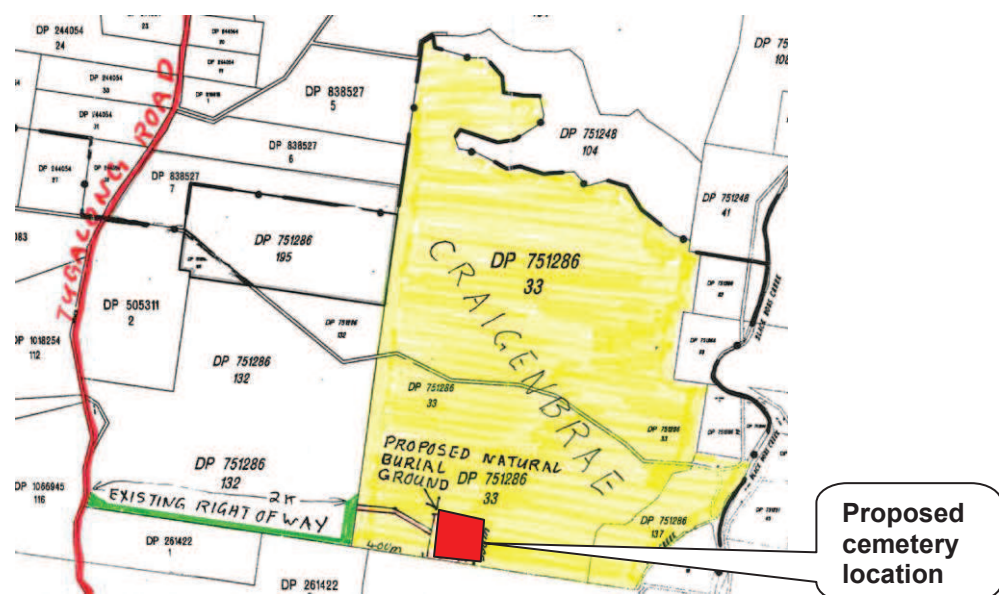


Most of the site is covered with Wingecarribee Woodland and the southern portion of the site contains a small pocket of Joadja Tall Open Forest (EEC) as indicated below.

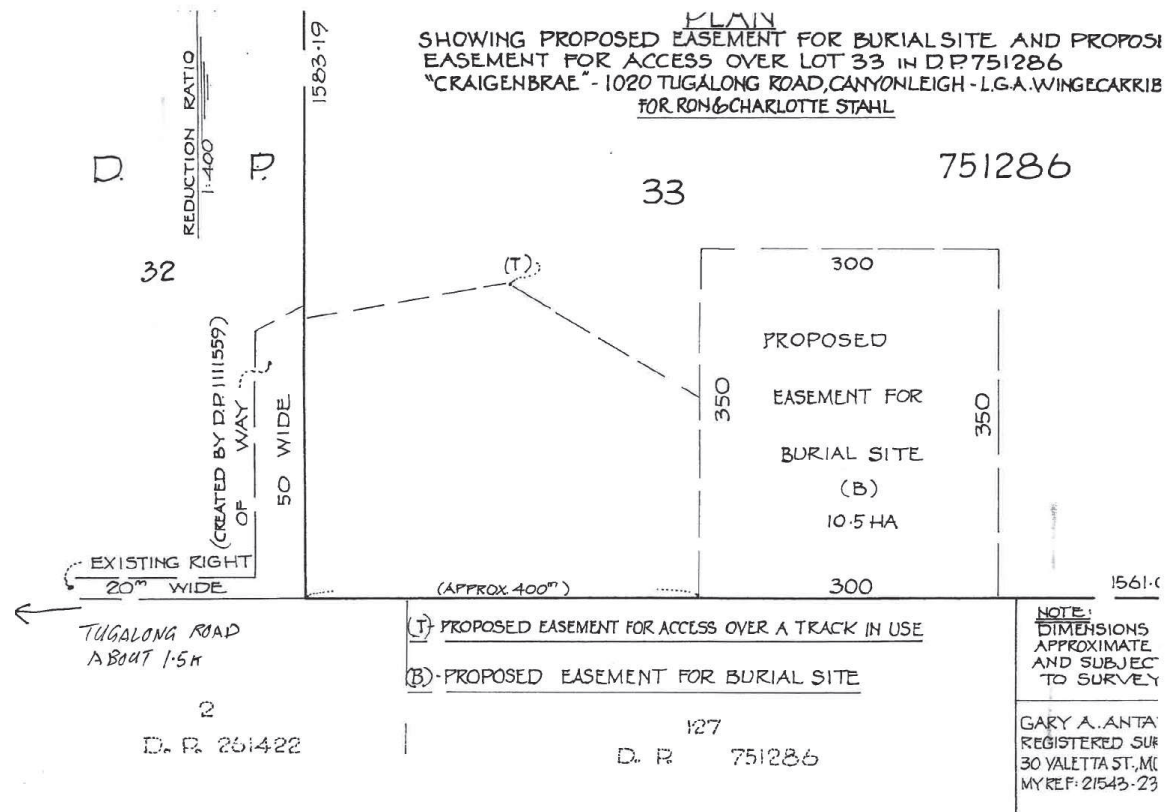


DETAILS OF PROPOSAL

The applicant seeks to establish a cemetery in the form of a natural burial ground on the southern boundary of the subject site as indicated in the figure below.



The proposed cemetery would cover an area of 10.5 hectares as indicated on the Survey Plan below.



PLANNING CONSIDERATIONS

The proposed land use is defined as a cemetery under WLEP 2010 – “a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services.” It is not the applicant’s intent to provide facilities for memorial services.

A natural burial ground is a type of cemetery in which burials occur with minimal disturbance to the landscape. Any plaque would be horizontal to the ground and discrete. It is intended to limit works to an improved access road, car park and facilities block. These aspects of the proposed development are important due to the nature of the existing landscape and the fact that the land is within a Wildlife Corridor.

Access to the proposal burial site area would be via a designated right of way off Tugalong Road as indicated on the above plan.

The applicant has developed a business plan and intends for part of the proceeds to be set aside for the ongoing management of the cemetery.

A Planning Proposal is necessary because WLEP 2010 prohibits cemeteries in the E3 Environmental Management zone. It is considered that the most expeditious way of amending WLEP 2010 to enable consideration of a Land Use Application for a natural burial ground would be to rezone the designated area of the site to SP2 Cemetery.

STATUTORY PROVISIONS

Wingecarribee LEP2010 (WLEP 2010)

In order to amend WLEP 2010 a Planning Proposal is required under the Gateway process introduced in July 2009. The gateway process contains the following steps:

Planning Proposal - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister (rather than the local council which is mostly the case) the Minister can appoint the Director-General of the Department of Planning or a joint regional planning panel to be the relevant planning authority.

Gateway - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

Community Consultation - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.

Assessment - The relevant planning authority (Council) considers public submissions and the Proposal is varied as necessary. It is noted that clause 58 of the EP&A Act allows Council to vary, at any time, its Proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. Council may also resolve to not proceed with the Planning Proposal under this clause.

If the Planning Proposal does proceed, Parliamentary Counsel then prepares a draft local environmental plan (the legal instrument).

Decision - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW Legislation website.

Review of Decisions

On 29 October 2012, the Minister for Planning and Infrastructure announced that proponents seeking a rezoning can now request an independent review of decisions through the local Joint Regional Planning Panel. These changes came into effect on 2 November 2012 and allow an independent body to review some decisions by councils and the department, in the following situations:

(1) Pre-Gateway reviews

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or

- b) the council has failed to indicate its support 90 days after the proponent submitted a request accompanied by the required information.

(2) Gateway reviews

A council or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- a) the planning proposal should not proceed,
- b) the planning proposal should be resubmitted to the Gateway, or
- c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

Development Control Plans (DCPs)

This Planning Proposal does not require any amendment or reference to any DCP provisions.

State Environmental Planning Policies (SEPPs)

Several SEPPs apply to the subject site as follows:

SEPP 44 Koala Habitat Protection

All land within the Wingecarribee Shire Local Government Area is covered by the provisions of SEPP 44. The proposed development which this Planning Proposal would permit is specifically intended to have a minimum impact on the landscape. Therefore, it is considered to be consistent with the SEPP.

SEPP Sydney Drinking Water Catchment 2011

The Sydney Drinking Water SEPP applies to the site as it is located within the Sydney Drinking Water Catchment and all Planning Proposals must seek comment from the Sydney Catchment Authority (SCA) prior to being forwarded to DP&I.

SEPP 55 – Remediation of Land

SEPP 55 requires that any Planning Proposal consider whether the subject land is contaminated, and if so, how it is to be remediated. Initial investigations indicated that there are no contamination issues on the subject site, but this will be confirmed at the Land Use Application stage should the Planning Proposal be supported and the LEP amendment subsequently made.

Section 117 Directions

The Minister for Planning, under section 117(2) of the EP&A Act issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 11 September 2013

REPORT DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



1. Employment and Resources
2. Environment and Heritage
3. Housing, infrastructure and urban development
4. Hazard and risk
5. Regional planning
6. Local plan making.
7. Metropolitan Planning

Relevant Directions are considered below.

2.1 Environment Protection Zones

This Direction applies as the subject land is zoned E3 Environmental Management. Council must ensure that the environmental protection standards that apply to the land will not be reduced. Any Land Use Application (LUA) received as a result of this Planning Proposal must ensure that there are no adverse impacts on the locality or the environment.

4.4 Planning for Bushfire Protection

This Direction requires that, following Gateway Determination, the Planning Proposal is to be referred to the NSW Rural Fire Service (NSW RFS) for comment. It is noted that the subject land is substantially bushfire prone.

5.2 Sydney Drinking Water Catchment

This Direction applies as the subject land is located within the Sydney drinking water catchment. The application will need to be referred to the SCA should Council resolve to support the Planning Proposal.

6.1 Approval and Referral Requirements

This Direction applies to all Planning Proposals. The Planning Proposal is considered consistent with this Direction as it will not create designated development or allow development that will require significant concurrence, consultation or referral to the Minister of Planning and Infrastructure.

6.3 Site Specific Provisions

This Direction requires that a Planning Proposal must not require further development standards under the environmental planning instrument to be imposed on the site that is the subject of the planning proposal. As the Planning Proposal will not amend any development standards on the subject site, it is considered to be consistent with this direction.

Relevant State Legislation

No other State legislation is relevant at this stage.

CONSULTATION

External Referrals

The Gateway Determination would identify what referrals to public authorities are required.

Internal Referrals

The matter has been twice referred to the Local Planning Strategy Steering Committee.

On 15 August 2012 it was recommended that the applicant be asked to provide additional information, specifically, the exact location of the proposed area, how the site will be accessed and what procedures will be established for the ongoing management of the site beyond the current owners so that Council does not become responsible for it into the future.

On 21 August 2013 it was recommended that the matter be reported to Council and that it coincide with a bus inspection on the day – moved Cllr McLaughlin, seconded Cllr Campbell. Supported by Cllrs Whipper, Clark, Scandrett, Gair and Turland.

Community Consultation

Community consultation would occur as set out in the Gateway Determination.

SUSTAINABILITY ASSESSMENT

- **Environment**

The low impact nature of a natural burial ground is not considered to create any adverse environmental impacts. Further assessment will occur at the LUA stage.

- **Social**

The provision of a wider range of burial options in a community with a relatively high proportion of elderly people is considered to be a social benefit.

- **Broader Economic Implications**

The applicants intend the cemetery to operate as a viable business to provide a fund for the ongoing management of the cemetery and the remaining site. The applicants also expect economic multiplier benefits from the development.

- **Culture**

There are no significant cultural impacts from this Planning Proposal. Further assessment will occur at the LUA stage.

- **Governance**

The Planning Proposal would be required to meet all relevant requirements under the EP&A Act and Regulations.

RELATIONSHIP TO CORPORATE PLANS

The following Goals and/or Strategies from the Wingecarribee 2031+ Community Strategic Plan can be met through the development of the site for a natural burial ground:

Goal 4.4.2 – Encourage residents and businesses to source goods locally – there are currently no natural burial ground type cemeteries within Wingecarribee and this development would offer residents the opportunity to be buried locally in an alternative environment to that currently offered.

Goal 5.4 – Sustainable business thrives in Wingecarribee. It is the intention of the applicants that the cemetery operate as a viable business with the potential for economic benefits within the broader community.

Goal 5.5.6 – If the Shire is to “turn grey into gold by attracting more retirees to the Shire”, then alternative burial options would be a benefit to that sector of the community.

BUDGET IMPLICATIONS

Planning Proposals are subject to an application fee as per Council's adopted Fees and Charges.

RELATED COUNCIL POLICY

There are no related Council Policies other than those already considered.

OPTIONS

The options available to Council are:

Option 1

Resolve to not proceed with the Planning Proposal to rezone the subject area to SP2 Cemetery.

Comment: This option is not recommended. There do not appear to be adverse environmental impacts associated with the proposed development which the Planning Proposal is intended to facilitate and there do appear to be potential benefits for the community in offering alternative burial arrangements.

Option2

Resolve to proceed with a Planning Proposal to rezone the subject area to SP2 Cemetery.

Comment: This option is recommended for the reasons outlined in this report.

CONCLUSION

The proposed natural burial ground is a form of cemetery with minimal environmental impacts. It also offers the community an alternative burial option to the traditional cemetery. Rezoning the area of the proposed cemetery to SP2 Cemetery clearly defines its location and use and limits the use of the land to that specific purpose subject to an approved LUA. Such a development on the subject site would appear to have merit.

ATTACHMENTS

There are no attachments to this report.

RECOMMENDATION

1. **THAT** the Planning Proposal to rezone part of Lot 33 DP 751286 from E3 Environmental Management to SP2 Cemetery be prepared and forwarded to the NSW Department of Planning and Infrastructure for a Gateway Determination under section 55 of the Environmental Planning and Assessment Act 1979.
2. **THAT** the applicant be advised of Council's decision made in 1. above.

(Voting on the Motion)