

AGENDA FOR PLANNING & STRATEGIC PEAK COMMITTEE OF THE WHOLE MEETING

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 12 February 2014

REPORT – ACTING DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



cw-CS3 Planning Proposal to amend WLEP 2010 to facilitate subdivision through the insertion of two new clauses.

Reference: 5901

Responsible Officer: Group Manager Strategic and Assets

PURPOSE

The purpose of this report is to present to Council recommendations with regard to inserting two (2) clauses into Wingecarribee Local Environmental Plan (WLEP) 2010. One clause would permit the subdivision of a property with two zones. The other clause would permit the subdivision of land for a purpose other than residential development subject to a valid development consent. Both proposed clauses result from advice from the Department of Planning & Infrastructure (DP&I) following submission of a Planning Proposal by Council.

CLAUSE 1 - TO PERMIT SUBDIVISION OF A PROPERTY WITH TWO ZONES

BACKGROUND

Some properties within the Shire are covered by two zones (referred to in planning terms as a 'split zone' property). This usually means that the only way such a property can be subdivided is by means of a Planning Proposal.

An example is the property at 15 Wattle Ridge Road, Hill Top, which was the subject of a report to Council on 10 July 2013 to prepare a Planning Proposal to allow subdivision of the property. At its meeting on 10 July 2013 Council resolved, inter alia, as follows:

3. ***THAT consideration of inserting a new clause into Wingecarribee Local Environmental Plan 2010 to permit subdivision of split lot zones without the need for a Planning Proposal be brought before the Local Planning Strategy Steering Committee Sunset Working Group.***

In accordance with this resolution, the matter was considered by the Local Planning Strategy Steering Committee Sunset Working Group at its meeting on 20 November 2013 at which time it was recommended that a report be brought to Council for consideration. The recommendation was moved by Cllr McLaughlin and seconded by Cllr Turland. The other Councillors in attendance were Cllrs Gair, Scandrett and Clark.

PLANNING CONSIDERATIONS

The property at 15 Wattle Ridge Road is zoned part RU4 Primary Production Small Lots and part E3 Environmental Management as indicated below.

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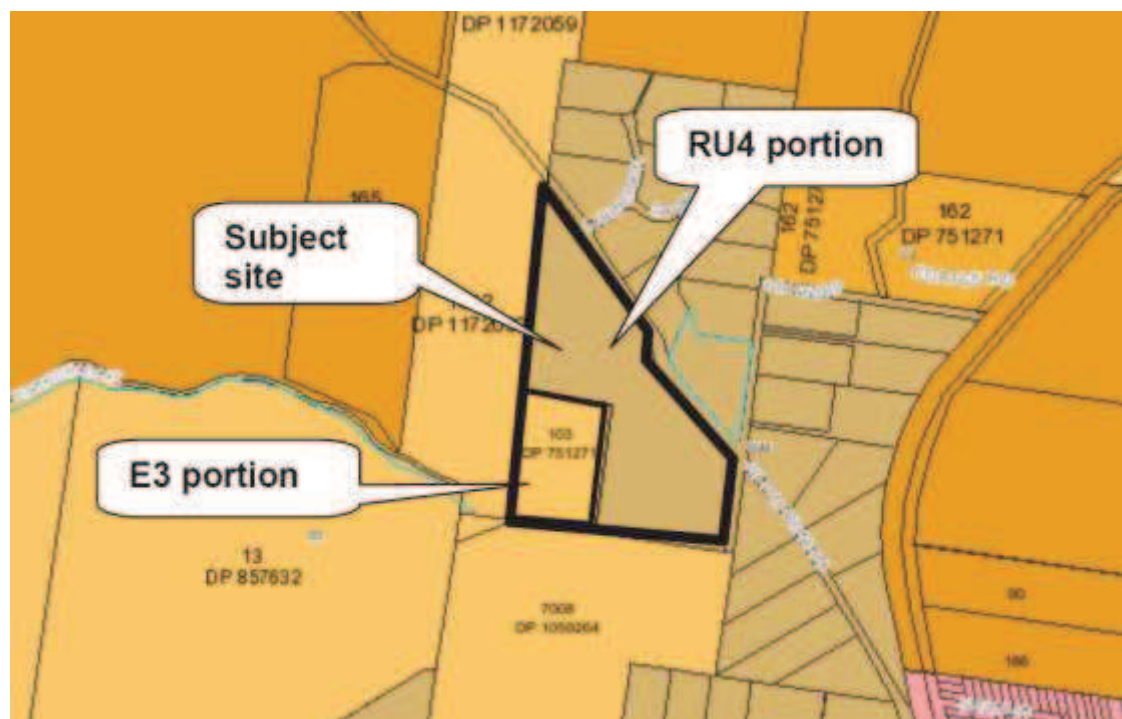


Figure 1 – Example of a 'split zone' property.

Each zone has a different minimum lot size applicable to it. The RU4 portion has a minimum lot size of 2 hectares and the E3 portion has a minimum lot size of 40 hectares as shown on the following figure.

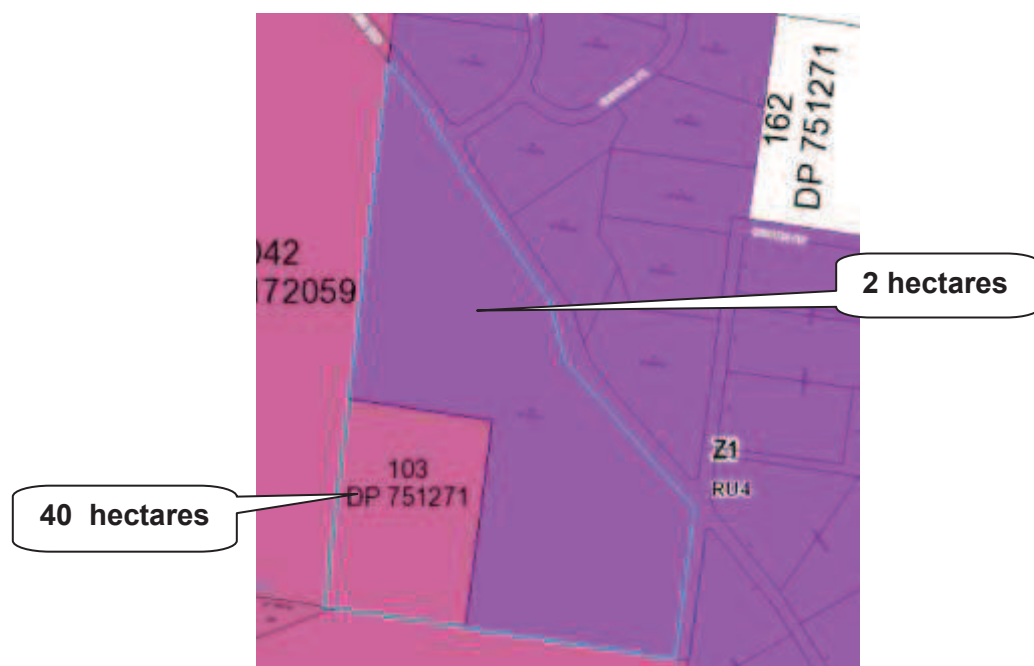


Figure 2 – Example of a property with two minimum lot sizes.

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If the area of one of the zones is less than the minimum lot size applicable to it, none of the site can be subdivided except by means of a Planning Proposal. In the case of 15 Wattle Ridge Road, the E3 portion of the site, with a minimum lot size of 40 hectares, cannot be included in any subdivision plan because it is only 6.6 hectares in area. Therefore, even though the RU4 portion is 18.6 hectares with a minimum lot size is 2 hectares, it cannot be subdivided without a Planning Proposal.

The primary purpose of a Planning Proposal is to amend WLEP 2010 to implement a change in Council's planning policy, such as the rezoning of certain land following adoption of a new local planning strategy. It should not be the mechanism for permitting a subdivision which would otherwise be permissible were it not for a portion of the land being differently zoned from the remainder. One way to permit such subdivisions without the need for a planning proposal, but still ensuring that certain considerations are addressed, is to insert a local clause such as the following:

DRAFT LOCAL CLAUSE

Minimum subdivision lot sizes for split zones

- 1) The objectives of this clause are as follows:
 - a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,
 - b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.
- 2) This clause applies to each lot (an **original lot**) that contains land in more than one zone.
- 3) Despite clause 4.1, development consent must not be granted to subdivide an original lot to create other lots (the **resulting lots**) unless:
 - a) one of the resulting lots will contain:
 - I. land in a residential zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and
 - II. all of the land in all other zones that was in the original lot, and
 - b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.
- 4) For the purposes of calculating an area of land under subclause (3), any access handle used for the purpose of providing vehicular access from the lot to a road is not to be included.
- 5) Despite subclause (3), development consent may be granted to subdivide an original lot if:

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- a) the lots to be created from the subdivision will each contain land in one zone, or
 - b) the lots to be created from the subdivision will each contain land in more than one zone and any land in a residential zone that will have an area not less than the minimum size shown on the Lot Size Map in relation to that land.
- 6) A lot created under subclause (5) (b) must not be subdivided under this clause.

The intent of subclause (3)(a) is to allow any lot that contains both a residential zone and another zone (for example, an Environmental zone) to be subdivided to create a residential allotment (at the minimum lot size) and another lot incorporating the remainder of the lot covered by the other zone. This ensures that the non-residential part of the site is maintained by being tied to a residential allotment. Subclause (3)(b) ensures that any other residential zoned part of the site not covered by subclause (a) is also subject to the minimum lot size.

Subclause (5)(a) provides for two other scenarios for split zoned lots. The first is where an applicant wants to subdivide along the zone boundary to create a residential zoned lot and, say, an environment zoned lot. It is noted that unless the residential zoned part of the lot met the minimum lot size there would be no dwelling entitlement associated with the new residential lot. Subclause (5)(b) allows an applicant to subdivide a lot to create new split zoned lots, but requires any residential part of those split zoned lots to meet the minimum lot size.

The inclusion and application of such a clause in WLEP 2010 would not result in any additional lots or dwelling entitlements other than those permitted under the current controls. In particular it would not create a separate dwelling entitlement on any portion which is below the minimum lot size. In the case of the Wattle Ridge Road site, the maximum potential yield from the RU4 portion is 9 lots (18.6 hectares area divided by 2 hectare minimum lot size), comprising 8 lots zoned RU4 and 1 lot zoned part RU4 and part E3. This would be the maximum yield regardless of whether the subdivision was achieved by means of the Planning Proposal or the application of the proposed clause. The use of the proposed clause would, however, be a more efficient method for the Council and a less expensive method for the applicant.

CLAUSE 2 - TO PERMIT SUBDIVISION BELOW THE MINIMUM STANDARD WITH EXISTING DEVELOPMENT CONSENT

At its meeting on 10 July 2013 Council resolved to prepare a Planning Proposal to amend Schedule 1 to permit the subdivision of land at Sally's Corner in accordance with an approved Master Conceptual Plan. In response to the lodgement of a Planning Proposal with DP&I, the Department advised that Parliamentary Counsel would be unlikely to support such an amendment to Schedule 1 because subdivision is already permissible on the subject site under the minimum lot size provisions of the E3 Environmental Management zone which applies over the site. The Department has suggested that Council consider inserting a local clause into WLEP 2010 to permit the type of development the Planning Proposal sought to achieve.

The matter was considered by the Local Planning Strategy Steering Committee Sunset Working Group at its meeting on 20 November 2013 at which time it was recommended that a report be brought to Council for consideration, but that the application of the clause be limited to the RU1, RU2 and E3 zones only. The recommendation was moved by Cllr Clark and seconded by Cllr McLaughlin. The other Councillors in attendance were Cllrs Gair, Scandrett and Turland.

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It is recommended that the following clause be considered for insertion into WLEP 2010:

DRAFT LOCAL CLAUSE

Exceptions to minimum lot sizes for certain rural subdivisions

- 1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of permissible uses other than for the purpose of dwelling houses or dual occupancies.
- 2) This clause applies to land in the following zones:
 - a) Zone RU1 Primary Production,
 - b) Zone RU2 Rural Landscape,
 - c) Zone E3 Environmental Management.
- 3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, where the consent authority is satisfied that the use of the land after the subdivision will be the same use permitted under the existing development consent for the land (other than for the purpose of a dwelling house or a dual occupancy).

It is emphasised that this clause only permits subdivision where an existing consent is in place. By way of example of the application of this clause, in the case of the Sally's Corner development from which the Department's direction originated, this clause would allow subdivision of the site for the purposes of development under the approved Master Conceptual Plan for the site. Should the applicant want to vary this, a new Master Conceptual Plan would need to be approved before any application for subdivision under the clause could commence. Once subdivision is approved any proposed land use would need to obtain separate DA approval through lodgement of a Land Use Application with Council.

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.

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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.

Development Control Plans (DCPs)

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

State Environmental Planning Policies (SEPPs)

No SEPPs are affected by the proposed clauses except for referral to the SCA which is obligatory. All Planning Proposals must seek comment from the Sydney Catchment Authority (SCA) prior to being forwarded to DP&I. SCA is unlikely to have any objection.

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:

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

Being a Planning Proposal to insert clauses into WLEP 2010 rather than a site specific matter, the Planning Proposal will comply with the Section 117 Directions.

Relevant State Legislation

No other State legislation is relevant at this stage.

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CONSULTATION

External Referrals

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

Internal Referrals

Initial consultation has occurred with Environmental Assessment staff to confirm current approvals over the subject site.

Community Consultation

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

SUSTAINABILITY ASSESSMENT

• **Environment**

The insertion of the proposed clauses will have no environmental impacts. Any application under either clause will need be assessed on its merits and any environmental implications considered.

• **Social**

The insertion of the proposed clauses will have no social impacts. Any application under either clause will need be assessed on its merits and any social implications considered.

• **Broader Economic Implications**

The insertion of the proposed clauses will have no economic impacts. Any application under either clause will need be assessed on its merits and any economic implications considered.

• **Culture**

The insertion of the proposed clauses will have no cultural impacts. Any application under either clause will need be assessed on its merits and any cultural implications considered.

• **Governance**

The insertion of the proposed clauses will have no governance impacts.

RELATIONSHIP TO CORPORATE PLANS

There are no Corporate Plan implications associated with this proposal.

BUDGET IMPLICATIONS

The Planning Proposal would be processed by Council staff.

RELATED COUNCIL POLICY

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

OPTIONS

Two (2) options are available to Council:

Option 1

Resolve to not proceed with the Planning Proposal to insert the proposed clauses into WLEP 2010.

Comment: This option is not recommended as, in both cases, the proposed clauses were recommended by the Department.

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Option 2

Resolve to proceed with a Planning Proposal to insert the proposed clauses.

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

CONCLUSION

Both clauses result from the lodgement of Planning Proposals with the Department of Planning and Infrastructure and the consequent recommendation from DP&I that local clauses be used instead of the method proposed in each Planning Proposal. This however requires the inclusion of appropriate clauses into WLEP 2010 to enable future similar proposals to be considered by means of a development application without the need for a site specific Planning Proposal on each occasion.

ATTACHMENTS

There are no attachments to this report.

RECOMMENDATION

1. **THAT** a Planning Proposal to insert the following two (2) clauses into Wingecarribee Local Environmental Plan 2010 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:

Local Clause 1 - Minimum subdivision lot sizes for split zones

- 1) The objectives of this clause are as follows:

- a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1
- b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.

- 2) This clause applies to each lot (an *original lot*) that contains land in more than one zone.

- 3) Despite clause 4.1, development consent must not be granted to subdivide an original lot to create other lots (the *resulting lots*) unless:

- a) one of the resulting lots will contain:
 - I. land in a residential zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and
 - II. all of the land in all other zones that was in the original lot, and

- b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

- 4) For the purposes of calculating an area of land under subclause (3), any access handle used for the purpose of providing vehicular access from the lot to a road is not to be included.

- 5) Despite subclause (3), development consent may be granted to subdivide an original lot if:

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- a) the lots to be created from the subdivision will each contain land in one zone,
or
 - b) the lots to be created from the subdivision will each contain land in more
than one zone and any land in a residential zone that will have an area not
less than the minimum size shown on the Lot Size Map in relation to that
land.
- 6) A lot created under subclause (5) (b) must not be subdivided under this clause.

Local Clause 2 - Exceptions to minimum lot sizes for certain rural subdivisions

- 1) The objective of this clause is to enable the subdivision of land in rural areas to
create lots of an appropriate size to meet the needs of permissible uses other
than for the purpose of dwelling houses or dual occupancies.
 - 2) This clause applies to land in the following zones:
 - a) Zone RU1 Primary Production,
 - b) Zone RU2 Rural Landscape,
 - c) Zone E3 Environmental Management.
 - 3) Land to which this clause applies may, with development consent, be
subdivided to create a lot of a size that is less than the minimum size shown on
the Lot Size Map in relation to that land, where the consent authority is satisfied
that the use of the land after the subdivision will be the same use permitted
under the existing development consent for the land (other than for the purpose
of a dwelling house or a dual occupancy).
2. THAT the proponents whose submissions initiated the Proposal to include the subject
clauses into WLEP2010 be advised of Council's decision.

(Voting on the Motion)