

Planning Proposal

Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to insert two clauses to permit (1) split zone subdivisions and (2) permit subdivision below the minimum standard with existing development consent.

Version 1 – For Gateway Determination

April 2014



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ATTACHMENTS WHICH FORM PART OF THIS PLANNING PROPOSAL
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0	Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to insert two clauses to permit (1) split zone subdivisions and (2) permit subdivision below the minimum standard with existing development consent.
1	'Attachment 4' Evaluation Criteria for Delegation of Plan Making Functions.
2	Report to Council – Wattle Ridge – 10 July 2013.
3	Resolution of Council - Wattle Ridge – 10 July 2013.
4	Report to Council – Sallys Corner – 10 July 2013.
5	Resolution of Council – Sallys Corner – 10 July 2013.
6	Subdivision Clauses Report to Council – 12 February 2014.
7	Subdivision Clauses Resolution of Council – 12 February 2014.
8	P&I response to Wattle Ridge Planning Proposal
9	P&I response to Sallys Corner Planning Proposal

LOCAL GOVERNMENT AREA : WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND : SHIRE WIDE.

The proposed clauses will apply across the Shire.

PART 1 : OBJECTIVES OR INTENDED OUTCOMES

The purpose of this Planning Proposal is to permit two forms of subdivision, as follows, by means of a Development Application instead of a Planning Proposal:

1. the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1 in a manner that promotes suitable land use and development.
2. 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 occupancy.

PART 2 : EXPLANATION OF THE PROVISIONS

On advice from Planning and Infrastructure NSW, it is proposed to insert the following two (2) clauses into WLEP 2010 to meet the intended outcomes of the Planning Proposal. No map amendments are required.

Draft 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

- b) all of the land in all other zones that was in the original lot 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:
 - 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.

Draft 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).

PART 3 : JUSTIFICATION OF OBJECTIVES, OUTCOMES & PROCESS

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

No. The Planning Proposal is the result of two submissions made to Council which formed the basis of Reports to Council and subsequent Resolutions to proceed with site specific Planning Proposals.

One submission requested a Planning Proposal be prepared to permit subdivision of land at Wattle Ridge Road Hill Top to which both the RU4 Primary Production Small Lots and E3 Environmental Management zones apply.

The second submission requested a Planning Proposal be prepared to permit subdivision of E3 Environmental Management zoned land in accordance with an approved Master Concept Plan on land at Sallys Corner Exeter.

In the case of the Wattle Ridge Road Hill Top resolution, Council also resolved to explore inserting a clause into WLEP 2010 to permit such subdivision rather than requiring a Planning Proposal each time.

In response to the Wattle Ridge Road Planning Proposal, the Department recommended to Council on 6 November that it proceed with inserting the clause into WLEP 2010 rather than proceeding with the site specific Planning Proposal. That recommendation was reported to Council on 12 February 2014 at which time Council resolved to prepare a Planning Proposal to insert the clause.

In response to the Sally's Corner Planning Proposal, the Department sought advice from Council on 14 November 2013 as to whether it would be prepared to address the matter by inserting a clause into WLEP 2010 to permit such subdivision. That option was reported to Council on 12 February 2014 at which time Council resolved to prepare a Planning Proposal to insert the clause.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The current provisions of WLEP 2010 do not permit either form of subdivision.

It is considered by Council that there are sufficient split zone properties to warrant amending WLEP 2010 to insert that proposed clause.

Alternatives with regard to Clause 1 are:

- Rezone the 'aberrant' zone (the E3 zone in the case of Wattle Ridge Road) to reflect the surrounding zoning. This is not considered appropriate as it would expose the land, which has been zoned E3 in recognition of its environmental sensitivity, to potential further development.
- Apply a minimum lot size to that portion of the site currently below the development standard to enable it to be subdivided from the remainder of the land. This is not considered appropriate as it would isolate the land and render it either useless, or subject to pressure to rezone or further reduce the minimum lot size provisions. Such an arrangement would not provide any flexibility in the future subdivision of the entire site.

Alternatives with regard to Clause 2 are:

- Rezone the site to a zone which permits the range of developments and to which no minimum lot size applies, such as a Business or Industrial zone. This is not considered appropriate as it would be difficult to always find a zone where a broad range of activities would all be permitted.
- A second alternative would be to amend the minimum lot size map for the subject site to apply a suitable minimum lot size to each portion to be subdivided as approved under the Master Conceptual Plan. This option is not supported because the range of proposed lots varies from 7000m² to almost 16 hectares and it would be difficult to apply such a range of lots across the site prior to subdivision.
- A third alternative would be to amend the minimum lot size map for the subject site to remove the minimum lot size. This option is not supported because it could potentially expose the subject site to unsuited development and environmental sensitivities.

Further, all of these options are site specific and it is considered that a clause would be preferable to a site specific solution as supported by Planning & Infrastructure in correspondence regarding the Wattle Ridge Road and Sally's Corner Planning Proposals.

Section B – Relationship to strategic planning framework

3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including draft strategies)?

The proposed new clauses in this Planning Proposal are consistent with all regional, sub-regional and local strategies because they do not seek to vary the development standards currently applicable under WLEP 2010, but rather seek to provide flexibility in the development of sites or appropriate purposes.

The proposed Clause 2 supports the Sydney Canberra Corridor Regional Strategy because it facilitates the development of land for a range of business uses which provide employment opportunities.

4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Clause 1 of the Planning Proposal is considered consistent with all regional, sub-regional and local strategies because it does not seek to vary the development standards currently applicable under WLEP 2010.

Similarly, Clause 2 of the Planning Proposal supports many of the goals of the Wingecarribee Community Strategic Plan 2031+ including all of the Economic goals.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

With regard to Clause 1, the following SEPP assessments apply:

SEPP1 – Development Standards	The Planning Proposal is consistent with this SEPP because it does not seek to vary the development standards by means of the SEPP but rather by amending WLEP 2010.
SEPP44 – Koala Habitat Protection	The Planning Proposal is considered consistent with the SEPP because the development outcomes would be no different from those currently permitted under WLEP 2010. Further assessment would occur during assessment of any LUA lodged for subdivision of any land in accordance with the provisions of the proposed clause.
SEPP (Rural Lands) 2008	The Planning Proposal is consistent with this SEPP because it does not seek to vary the development standards currently applicable to the site under WLEP 2010.

With regard to Clause 2, the following SEPP assessments apply:

SEPP1 – Development Standards	The proposed variation to development standards, namely the minimum lot size is being applied through this Planning Proposal rather than through seeking a SEPP1 variation. No other variations to development standards are proposed, therefore this Planning Proposal is considered consistent with the SEPP.
SEPP44 – Koala Habitat Protection	The proposed clause will apply to an approved Master Conceptual Plan and all appropriate referrals and assessments would have been made when that Plan was

	approved. Any subsequent LUA lodged with Council following subdivision of the site would be further assessed with regard to the specific development proposed. Therefore, it is considered that this Planning Proposal is consistent with SEPP44.
SEPP (Rural Lands) 2008	The Planning Proposal is considered justifiably consistent with this SEPP because although the clause would vary the current development standards, prior assessment as part of the Master Concept Plan would have identified any inappropriate impacts.

6. Is the Planning Proposal consistent with applicable Section 117 Directions?

With regard to Clause 1, the following s.117 Directions apply:

5.1 Implementation of Regional Strategies.	It is considered that the Planning Proposal is consistent with the Sydney Canberra Corridor Regional Strategy for the reasons discussed at Section B3 above.
5.2 Sydney Drinking Water Catchment	No consultation with the SCA has occurred as yet due to the fact that the clause is merely facilitating a subdivision already permitted under the current provisions of WLEP 2010. Therefore, this clause, which enables subdivision only rather than actual development, is considered consistent with this Direction. Comment from the SCA will be sought in accordance with the Gateway Determination.
6.1 Approval and Referral Requirements	The Planning Proposal is considered consistent with this Direction because no concurrence is required.
6.3 Site Specific Provisions	The Planning Proposal is considered consistent with this Direction because no site specific provisions apply.

With regard to Clause 2, the following s.117 Directions apply:

1.1 Business & Industrial Zones	Although the clause applies to Rural and Environmental zoned land, the intended use of the land is likely to be for a range of business opportunities as identified in a Master Concept Plan. Because this Planning Proposal will facilitate implementation of that Plan it is considered to be consistent with this Direction.
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2.1 Environmental Protection Zones	The clause applies to Rural and Environmental zoned land, but within the context of an approved Master Concept Plan, therefore the clause is considered consistent with this Direction.
5.1 Implementation of Regional Strategies.	It is considered that the Planning Proposal is consistent with the Sydney Canberra Corridor Regional Strategy for the reasons discussed at Section B3 above.
5.2 Sydney Drinking Water Catchment	No consultation with the SCA has occurred as yet due to the fact that the clause is merely facilitating a subdivision already permitted under an approved Master Concept Plan. Therefore, this clause, which enables subdivision only rather than actual development, is considered consistent with this Direction. Comment from the SCA will be sought in accordance with the Gateway Determination.
6.1 Approval and Referral Requirements	The Planning Proposal is considered consistent with this Direction because no concurrence is required.
6.2 Reserving Land for Public Purposes	The Planning Proposal is considered consistent with this Direction because no public lands are affected.
6.3 Site Specific Provisions	The Planning Proposal is considered consistent with this Direction because no site specific provisions apply.

Section C – Environmental, Social & Economic Impacts

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Planning Proposal?

With regard to Clause 1, because the Planning Proposal does not seek to vary the current development standards under WLEP 2010 except to the extent of allowing subdivision in accordance with those provisions to proceed, it is considered that no adverse impacts on critical habitats or threatened species or ecological communities will result from it. Any future LUA for subdivision would be subject to its own assessment at that time.

With regard to Clause 2, because this Planning Proposal seeks to implement an approved Master Conceptual Plan, any implications on critical habitats or threatened species or ecological communities would have been addressed in approving the Plan. Any future LUA resulting from subdivision of any portion of the site would be subject to its own assessments at that time.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

With regard to Clause 1, because the Planning Proposal does not seek to vary the current development standards under WLEP 2010 except to the extent of allowing subdivision in accordance with those provisions to proceed, it is considered that no environmental effects will result from it. Any future LUA for subdivision would be subject to its own assessment at that time.

With regard to Clause 2, because this Planning Proposal seeks to implement an approved Master Conceptual Plan, any potential environmental implications associated with it would have been addressed in approving the Plan. Any future LUA resulting from subdivision of any portion of the site would be subject to its own assessments at that time.

9. Has the Planning Proposal adequately addressed any social and economic effects?

Both clauses seek to facilitate the development of land either under current development standards or in accordance with an approved Master Conceptual Plan.

Therefore it is considered that both clauses generate social and economic benefits. It is noted that without the provisions of clause 2, the economic potential of the proposed development is unlikely to be realised.

Section D – State and Commonwealth Interests

10. Is there adequate public infrastructure for the Planning Proposal?

Neither clause is considered to impact on public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

No consultation has occurred with regard to either clause of this Planning Proposal. Referrals will occur as directed in the Gateway Determination.

It is noted that neither clause is site specific and only the second clause relates to specific zones.

PART 4 – MAPPING

There are maps associated with this Planning Proposal.

PART 5 – COMMUNITY CONSULTATION

It is recommended that the Planning Proposal be publicly exhibited for a period of 28 days. During this period Council intends to advertise in the local newspaper and make the Planning Proposal available on its website, at the Customer Service Centre and in each of the Bowral, Mittagong and Moss Vale libraries.

PART 6 – TIMELINE

It is anticipated that the Planning Proposal will progress in accordance with the following key timeline milestones.

MILESTONE	INDICATIVE DATE
Gateway Determination	15 May 2014
Completion of technical studies if required	Not applicable
Consultation with government agencies	15 June 2014
Revised/updated Planning Proposal (if required)	15 June 2014
Public Exhibition	15 June – 15 July 2014
Public hearing – if required (if not exclude)	Not expected
Report to Council on exhibition of Planning Proposal.	12 August 2014
Documents to DP&I & PCO.	30 August 2014
Approximate completion date	30 September 2014

DELEGATIONS

Council is applying to use its delegations to complete this Proposal. The Evaluation Criteria for Delegation of Plan Making Functions has been attached for consideration.