

cw-CS8 Planning Proposal to amend Schedule 1 of WLEP 2010 to permit subdivision of Lot 10 DP 811912, 61 Sally's Corner Road, Exeter

Reference: PN1702134, PN1706106, 5901
Responsible Officer: Group Manager Strategic and Assets

PURPOSE

The purpose of this report is to present to Council a submission to amend WLEP to enable subdivision of the various lots which comprise an approved development on the subject site under section 88B of the Environmental Planning & Assessment (EP&A) Act. Subdivision provides a mechanism for enabling each activity to be independently developed and operated by appropriate industry specialists. It is recommended that the submission be supported.

DESCRIPTION OF PROPOSAL

BACKGROUND

Location

The subject land is located on the north east corner of the intersection of Sally's Corner Road and Hume Highway to the west of Exeter as indicated on the Figures 1 and 2 below.



Figure 1 – Shire Map



Figure 2 – Aerial Map

The subject site was included in Amendment Number 1 to WLEP 1989, gazetted on 31 August 1990, to permit development for the purposes of a highway service centre or a highway service centre integrated with a recreation attraction on the subject land. This permissibility was transferred WLEP 2010 through Clause 26 of Schedule 1 (Additional Permitted Uses) of WLEP 2010 which states;

- (1) This clause applies to land at Sutton Forest service centre, Hume Highway, being Lots 7 and 10 DP 811912 and Lot 11 and part Lot 12 DP 857127.
- (2) Development for the purposes of a caravan park (with holiday cabins), highway service centre, hotel or motel accommodation, information and education facility, markets, neighbourhood shop and recreation area is permitted with consent.

On 28 June 2006 Council granted approval to LUA 07/0890 for the construction of a 'Fast Food Court'. A Modified Consent for this development was issued on 20 November 2012. Work in accordance with this modified consent has recently commenced.

Council, at its meeting on 13 April 2011 approved a Master Conceptual Plan over the subject site under LUA 09/0518. The Master Conceptual Plan contains the following elements:

Stage 1	Fast Food Court Modified Consent issued on 20 November 2012 (discussed above).
Stage 1A	Additional car parking adjoining the approved Fast food Court.
Stage 2A	Transport service centre.
Stage 2B	Market Stall Area.
Stage 3	Hotel/motel.
Stage 4	Caravan Park.
Stage 5	Car, bike and truck museum.

A copy of the Master Conceptual Plan follows and a larger version is provided with the submission which is attached.

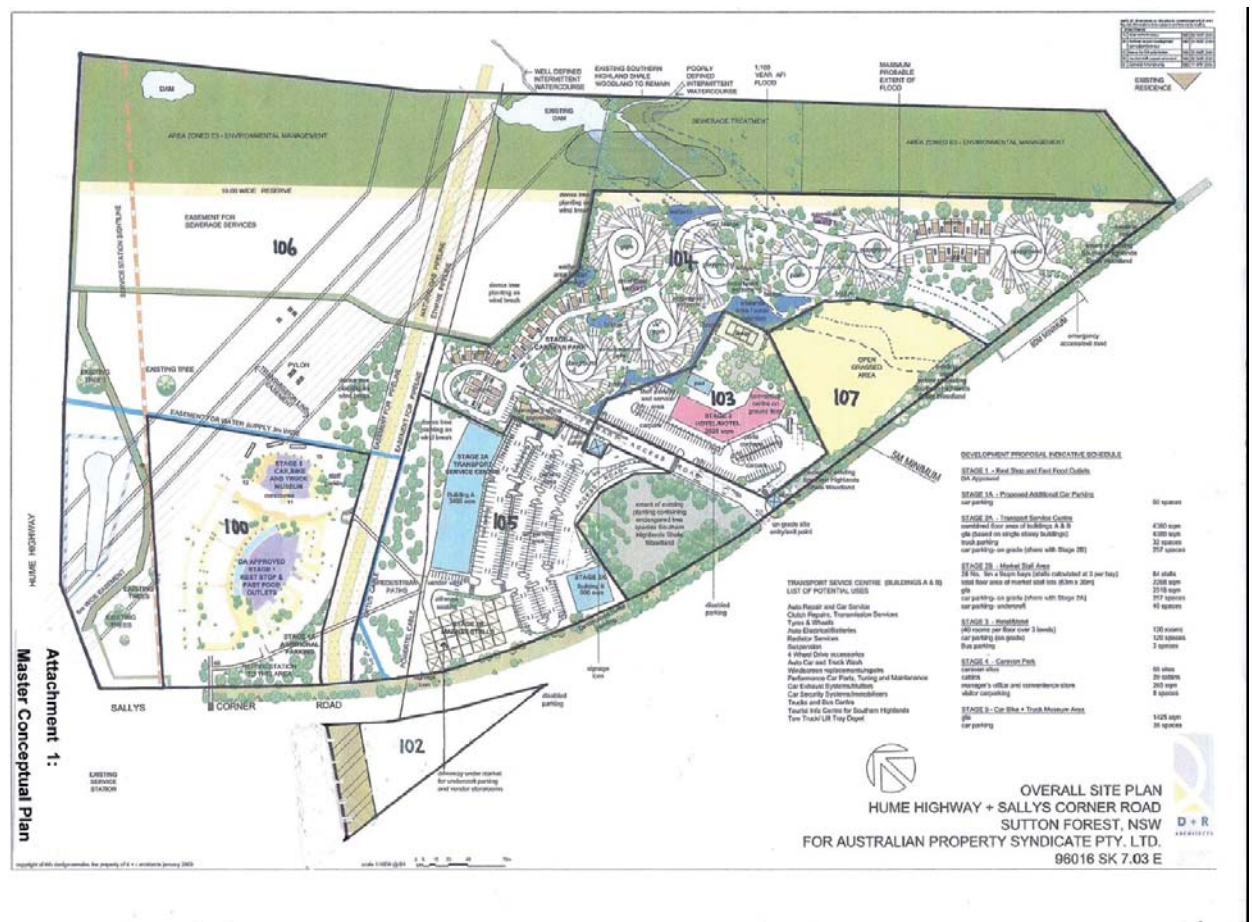


Figure 3 – Master Conceptual Plan

The Master Conceptual Plan was assessed in accordance with the provisions of section 83B of the Environmental Planning & Assessment Act (EP&A Act):

83B Staged development applications

- (1) For the purposes of this Act, a **staged development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 10 July 2013

REPORT - DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



- (2) A development application is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.
- (3) If consent is granted on the determination of a staged development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:
 - (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or
 - (b) the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.
- (4) The terms of a consent granted on the determination of a staged development application are to reflect the operation of subsection (3).

On 8 May 2013 Council received a submission on behalf of the owner of Lot 10 DP 811912 requesting that Council amend Clause 26 of Schedule 1 of WLEP 2010 to permit subdivision of the subject lot in accordance with the approved Master Conceptual Plan. This submission forms the basis of this report. A copy of the applicant's planning proposal is included as Attachment 1 to this report.

DETAILS OF PROPOSAL

The subject site is zoned E3 Environmental Management under WLEP 2010. The site is also subject to the provisions of Clause 26 of Schedule 1 (Additional Permitted Uses) of WLEP 2010, which permits a range of land uses not normally permitted in the E3 zone.

The owner of the subject site now seeks to subdivide the land so that each of the approved land uses can be separately sold to an entity with the specialist skills and finance needed to develop and operate each element of the Master Conceptual Plan. The minimum lot size of the subject land is 40 hectares, but the proposed subdivided lot sizes range from 7,000m² to almost 16 hectares. Therefore WLEP 2010 must be amended to permit subdivision of the site below 40 hectares.

By permitting subdivision of the subject site in accordance with the approved Master Conceptual Plan, each separate lot can then be marketed and sold for the purpose approved under the Master Plan. The new owner of each lot would then apply to Council under a separate LUA for specific development approval as required under the section 83B approval.

Because of the range of proposed lot sizes, the application of a single reduced lot size is not practical. The most expeditious way to achieve the proposed outcome is to amend Clause 26 of WLEP 2010 as follows (inserted wording in bold):

- (1) This clause applies to land at Sutton Forest service centre, Hume Highway, being Lots 7 and 10 DP 811912 and Lot 11 and part Lot 12 DP 857127.
- (2) Development **and subdivision** for the purposes of a caravan park (with holiday cabins), highway service centre, hotel or motel accommodation, information and education facility, markets, neighbourhood shop and recreation area is permitted with consent.

PLANNING CONSIDERATIONS

The approved Master Conceptual Plan allows for the development of designated areas of the subject site for an approved purpose. The subdivision of the site in accordance with the approved Master Conceptual Plan will create a set of separate lots which could then be developed by specialist operators qualified to undertake such a development.

The onus would be on each new owner to lodge a new Land Use Application with Council for development in accordance with the approved land use and LUA requirements and receive a new LUA approval for that development.

The subdivision of the land, if permitted through the Planning Proposal, would, in effect, enable implementation of the approved Master Conceptual Plan. Without the ability to subdivide the site, the only way the approved Master Conceptual Plan could be implemented would be if a single owner were prepared to develop all elements of the Master Plan as a single undertaking. Because each element requires specialist knowledge and experience, this is not a viable approach.

STATUTORY PROVISIONS

Wingecarribee LEP2010 (WLEP 2010)

A Planning Proposal would be required to amend Clause 26 of Schedule 1 of WLEP 2010 under the Gateway Process introduced in July 2009. This process comprises 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:

(3) 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.

(4) 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)

No DCP controls are applicable to this Planning Proposal. Should the Planning Proposal be supported and subdivision subsequently occur, a new LUA would be required for the development of each new lot and that would be assessed in accordance with the relevant DCP controls.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policies (SEPPs) are a set of Environmental Planning Instruments with which Council must comply, where relevant, when considering amendments to WLEP 2010.

The *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* SEPP came into force on 1 March 2011 and applies to all land in Wingecarribee Shire. The SEPP requires that a consent authority must not grant consent to any development under Part 4 of the EPA Act unless it is satisfied that the development will have a neutral or beneficial effect on water quality.

Because the Planning Proposal is not altering any approved land use, it is not considered that any SEPPs apply to this Planning Proposal.

Section 117 Directions

The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979 (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.

Because the Planning Proposal is not altering any approved land use, it is not considered that any section 117 Directions apply to this Planning Proposal.

CONSULTATION

Should Council resolve to support the Planning Proposal, the resulting Gateway determination will advise the extent of public agency referrals and community consultation.

Should future LUAs be lodged as a result of the subdivision this Planning Proposal seeks to permit, further consultation would occur as part of the assessment of that LUA.

SUSTAINABILITY ASSESSMENT

- **Environment**

Because this Planning Proposal does not seek to vary the approved Concept Master Plan for the site, there are no environmental implications associated with it. Any future LUA resulting from subdivision of any portion of the site would be subject to its own environmental assessment at that time.

- **Social**

Because this Planning Proposal does not seek to vary the approved Concept Master Plan for the site, there are no social implications associated with it. Any future LUA resulting from subdivision of any portion of the site would be subject to its own assessment of the social implications at that time.

- **Broader Economic Implications**

Because this Planning Proposal does not seek to vary the approved Concept Master Plan for the site, there are no economic implications associated with it. Any future LUA resulting from subdivision of any portion of the site would be subject to its own assessment of the economic implications at that time.

- **Culture**

Because this Planning Proposal does not seek to vary the approved Concept Master Plan for the site, there are no cultural implications associated with it. Any future LUA resulting from subdivision of any portion of the site would be subject to its own assessment of the cultural implications at that time.

- **Governance**

Because this Planning Proposal does not seek to vary the approved Concept Master Plan for the site, there may be governance implications if Council resolved to not support it by virtue of making it very difficult for the approved Master Plan to be implemented.

RELATIONSHIP TO CORPORATE PLANS

This Planning Proposal relates to an already existing approved development and therefore has no impact on the Wingecarribee 2031+ Community Strategic Plan. However, the ability to subdivide the different land use activities will enable the development as a whole to progress.

BUDGET IMPLICATIONS

A fee is payable for processing of a Planning Proposal in accordance with Council's adopted schedule of fees and charges.

RELATED COUNCIL POLICY

No other related Council policies are affected.

OPTIONS

There are Two (2) options:

Option 1 – Resolve to not support amending WLEP 2010 to permit subdivision of the subject site.

This option is not recommended. Without the ability to subdivide the site, the only way the approved Master Conceptual Plan could be implemented would be if a single owner were prepared to develop all elements of the Master Plan as a single undertaking. In the current economic climate it is unlikely that a single business would be prepared to undertake the entire development. It is considered that to not permit subdivision of the subject site would render ineffective the approval granted under LUA 09/0518.

Option 2 – Resolve to support amending WLEP 2010 to permit subdivision of the subject site.

This option is recommended for the reasons outlined above.

CONCLUSION

The approved Master Conceptual Plan allows for the development of designated areas of the subject site for an approved purpose. The subdivision of the site in accordance with the approved Master Conceptual Plan will create a set of separate lots which could then be marketed and sold for the purpose approved under the Master Plan.

The purpose of the Planning Proposal is not to reassess a current approval, nor to pre-empt any future development assessment of each element of the Master Conceptual Plan. The purpose of the Planning Proposal is to give effect to the implementation of the staged Master Conceptual Plan approved under LUA 09/0518.

ATTACHMENTS

There is one (1) attachment to this report, which has been circulated under separate cover:

1. Planning Proposal – Reduction of lot Size Controls for Sutton Forest Highway Service Centre.

RECOMMENDATION

1. THAT a Planning Proposal be prepared and forwarded to the NSW Department of Planning and Infrastructure under Section 55 of the Environmental Planning and Assessment Act 1979 to amend clause 26 of Schedule 1 of Wingecarribee Local Environmental Plan 2010 to insert the words “and subdivision” into subclause (2) as follows: Development **and subdivision** for the purposes of a caravan park (with holiday cabins), highway service centre, hotel or motel accommodation, information and education facility, markets, neighbourhood shop and recreation area is permitted with consent.
2. THAT the applicant be advised of Council’s decision.

(Voting on the Motion)