

# Planning Proposal Welby Garden Centre

to amend Wingecarribee Local Environmental Plan 2010 with regard to Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107, Nos. 10 & 12-14 Old Hume Highway, Welby to rezone from R2 Low Density residential to B5 Business Development.

Version 3 for Public Exhibition

Prepared by Wingecarribee Shire Council (Strategic Land Use Planning),  
based on Version 1 for Council Assessment provided by Hogan Planning  
PO Box 2257, Bowral NSW 2576 (November 2020)

November 2021

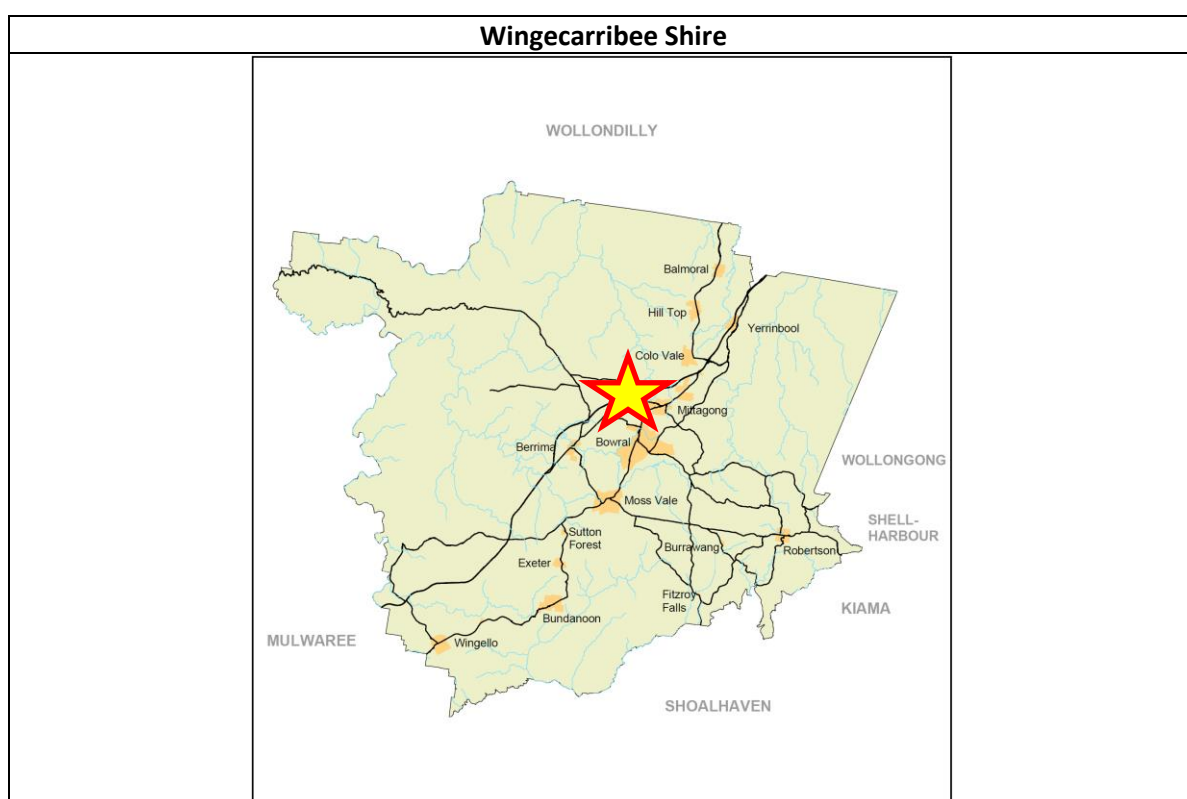
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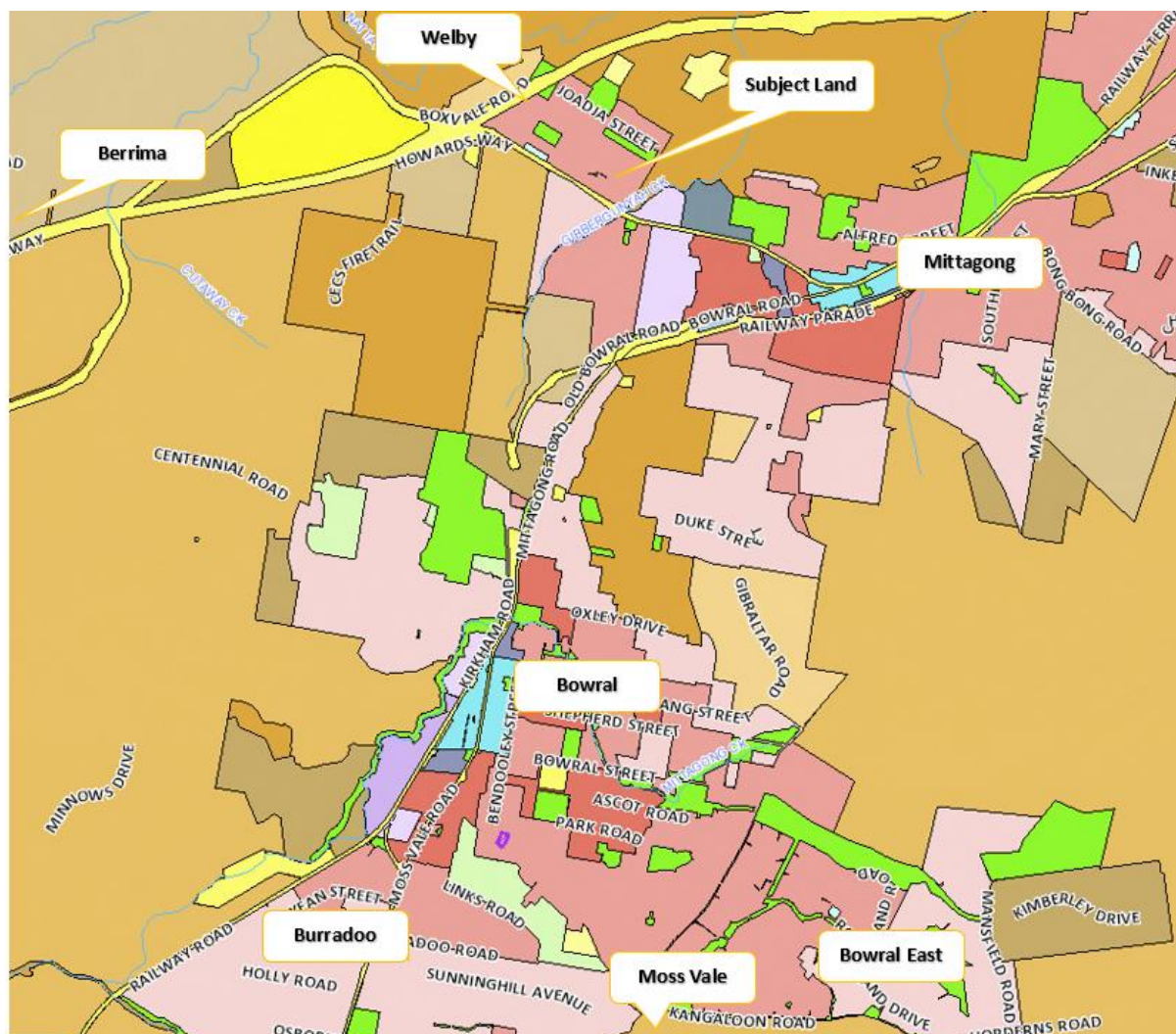
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## Location of the Subject Land

<b>Legal Description</b>	Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107
<b>Property Address</b>	Nos. 10 & 12-14 Old Hume Highway, Welby
<b>Description</b>	The subject land is described as the 'Welby Garden Centre' (WGC) plant nursery. It is operated by the Incorporated Association 'Challenge Southern Highlands' as a Not-for-Profit community-based charitable organisation. The business has operated continuously since 1989 from the subject site at the corner of the Old Hume Highway and Bendooley Street in Welby. The business has customer access via Berrima Street to the north of the site, and a staff/deliveries entrance situated on Bendooley Street.





**Figure 1: Surrounding Localities – based on zoning map to assist with clarification**



**Figure 2: The subject land Nos. 10 & 12-14 Old Hume Highway, Welby (Image source: Six Maps).**



**Figure 3: The subject land Nos. 10 & 12-14 Old Hume Highway, Welby includes Lots 1,2,3,8,9 & 10 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107 for a combined land area of approximately 1.3 hectares (Image source: Six Maps).**

## Part 1: Objectives or Intended Outcomes

The intended outcomes of this Planning Proposal are to enable the ongoing operation and potential growth of the Welby Garden Centre plant nursery which has been operated by the Incorporated Association 'Challenge Southern Highlands' as a Not-for-Profit community-based charitable organisation since 1989.

## Part 2: Explanation of the Provisions

- To achieve the intended outcomes of the Planning Proposal, the following amendments to the WLEP 2010 instrument would be required:

The deletion of Item 28 from Schedule 1 (Additional Permitted Uses) of the WLEP 2010, which reads as follows:

### **28 Use of certain land at Old Hume Highway, Welby**

- (1) This clause applies to land at Old Hume Highway, Welby, being Lots 3 and 8, Section 6, DP 759070 and Lot 2, DP 1019107.



(2) Development for the purposes of landscaping material supplies and a plant nursery is permitted with consent.

- To achieve the intended outcomes of the Planning Proposal, the following amendments to WLEP 2010 maps would be required:
  - Land Zoning Map LZN\_007F – remove the R2 Low Density Residential zone from the subject and apply the B5 Business Development zone.
  - Lot Size Map LSZ\_007F - remove the 700m<sup>2</sup> minimum lot size from the subject site.
  - Local Clauses Map, Schedule 1 Map CL1\_007C – remove Item 28 (Lots 3 and 8 Section 6 DP 759070 and Lot 2 DP 1019107).
  - Height of Buildings Map - Sheet HOB\_007C– apply a building height of 8 metres to the subject site.
  - Floor Space Ratio Map - Sheet FSR\_007B – apply a floor space ratio of 0.9 to the subject site.

Draft maps accompany the Planning Proposal.

## Description of the Subject Land



**Figure 4: The subject land looking east from the intersection of Bendooley Street with the Old Hume Highway (Image source: Google Maps).**



**Figure 5: The subject land looking north from the Old Hume Highway (Image source: Google Maps).**



**Figure 6: Looking east into the Bendooley Street deliveries and staff entrance to the subject site (Image source: Google Maps).**





**Figure 7: Berrima Street customer entrance looking south into the subject site (Image source: Google Maps).**

The Welby Garden Centre (WGC) website states that the facility provides employment opportunities for 40 plus staff who have intellectual disabilities in the following primary areas as an Australian Disability Enterprise:

- Retail Nursery
- Wholesale Nursery
- Garden Maintenance
- Work Crews.

In addition to the above primary areas, the WGC provides the following commercial services to local businesses:

- Light Packaging – machine wrapping of the Highlands Post free local newspaper;
- Secure Document Destruction.

Other employment generating activities carried out at the site include the assembly of timber pallets, manufacturing spacers for transmitters, soap making and woodworking. The WGC is assisted by sponsorship from local businesses and the Council and receives additional financial assistance from public donations.

Challenge Southern Highlands continues to explore new employment opportunities and has outgrown the restriction to landscape materials supplies and a plant nursery, both activities being permitted over part of the subject land under Item 28 of Schedule 1 (Additional Permitted Uses) of WLEP 2010.

## 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?

The Planning Proposal is not the result of any strategic study.

An assessment of the Planning Proposal was prepared by Council's Strategic Land Use Planning staff and considered by the Independent Advisory Planning Assessment Panel at its meeting on 7 April 2021. The Panel recommended as follows:

#### PANEL ADVICE

**THAT a Planning Proposal be prepared under Section 3.33 of the Environmental Planning & Assessment Act 1979:**

- To amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 to remove Item 28, and
- Rezone from R2 Low Density Residential to B5 Business Development and remove the 700m<sup>2</sup> minimum lot size of land at Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107, Nos. 10 & 12 -14 Old Hume Highway, Welby, being the Welby Garden Centre, and
- Apply a Maximum Building Height of 8 metres, and
- Apply a Maximum Floor Space Ratio of 0.9:1.

The Recommendation was moved at the Ordinary Meeting of 21 April 2021 and declared carried by the Interim Administrator, as indicated below:

#### MN 112/21

**MOTION** moved by Interim Administrator V May PSM

**THAT a Planning Proposal be prepared under Section 3.33 of the Environmental Planning & Assessment Act 1979:**

- To amend Schedule 1 of Wingecarribee Local Environmental Plan 2020 to remove Item 28, and
- Rezone from R2 Low Density Residential to B5 Business Development and remove the 700m<sup>2</sup> minimum lot size of land at Lots 1,2,3,8,9 & 10 Section 6 in DP 759070, Lot 1 in DP 1006005 & Lot 2 in DP 1019107, Nos. 10 & 12 -14 Old Hume Highway, Welby, being the Welby Garden Centre, and
- Apply a Maximum Building Height of 8 metres, and
- Apply a Maximum Floor Space Ratio of 0.9:1.

**DECLARED CARRIED BY THE INTERIM ADMINISTRATOR**

The report to the Panel and the relevant Resolutions accompany the Planning Proposal.



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

A Planning Proposal is the only mechanism to amend WLEP 2010. The proposed amendments will enable the subject land to continue to develop its business operations through amendments to zoning, minimum lot size, building height and floor space coverage. The Planning Proposal will also enable that portion of the subject land within Schedule 1 (Additional Permitted Uses) (Item 28) of WLEP 2010 to be removed.

**Section B – Relationship to the 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 South East and Tablelands Regional Plan 2036 is the relevant sub-regional strategy. In broad terms, the Strategy seeks to cater for continued growth within the region, without impacting adversely upon local character. A stated objective within the Regional Plan for the Wingecarribee area that is of relevance to the Planning Proposal is to:

*‘Facilitate employment growth in nominated centres (including Bowral, Mittagong, Moss Vale, Robertson and Berrima) including home based employment.’*

This Planning Proposal does not contradict the Strategy’s further broad aim of protecting the sensitive elements of the natural environment as the site is not sensitive from an ecological or environmental perspective. There are no parts of the site that contain remnant native vegetation or watercourses.


The nature and scale of the Planning Proposal raise no issues of inconsistency concerning the Regional Strategy and is consistent in that it fosters employment generation, specifically for those members of the community who have intellectual disabilities. The Planning Proposal to rezone the land to reflect commercial, employment-generating activities is a localised amendment to the local planning controls that will assist in achieving the stated aims.

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

**4.1 Wingecarribee Local Housing Strategy**

The Wingecarribee Local Housing Strategy (WLHS) supports residential development through an appropriate supply of residential zoned land to facilitate residential growth. The subject site, although zoned residential land has not been used as such since 1989 when the WGC commenced operations as a Not for Profit business and as a charitable organisation.

The proposed zoning change from R2 Low Density Residential to B5 Business Development would be consistent with the WLHS in that the subject land does not form part of the current or proposed future housing stock of the Wingecarribee Shire. It is noted that the site has operated as a plant



nursery and landscape materials supply business for the past 31 years, commencing operations in 1989.

#### **4.2 Wingecarribee Local Strategic Planning Statement**

The village of Welby is located on the western edge of Mittagong township. There is no specific reference to the village in the Wingecarribee Local Strategic Planning Statement (WLSPS) but the Strategy does identify Mittagong as *‘one of our three major towns within the Shire, located to the north of Bowral. The town contains a mix of local businesses with traditional anchor stores including larger scale retail offerings and bulky goods outlets are located ‘out of town’ at the Mittagong Marketplace to the west of the town centre’*.

These ‘out of town’ outlets are located within the B5 Business Development zone, the same zone as proposed for the subject land. Although the two B5 zones would remain separated by a long established IN2 Light Industrial zone, the proposed rezoning of the subject to B5 would reinforce the connection with the western edge of the Mittagong township as well as better reflecting current and proposed land uses.

Planning Priority 3.1 of WLSPS is that *‘our Shire supports businesses and attracts people to work, live and visit’*. The Rationale behind this Priority is:

Wingecarribee Shire Council is committed to developing and promoting the Southern Highlands as a destination in which to live, work, invest, play, learn, visit and enjoy. Our Shire has a healthy and diverse economy, driven by the health, tourism, education, manufacturing, agriculture, construction and professional industry sectors. Our proximity to Sydney, Canberra and Wollongong provides a strong base for economic development, and our natural areas, rural landscapes and vibrant towns and villages will continue to support our visitor economy.

The Planning Proposal supports this priority by reinforcing the valuable ongoing function of the Welby Garden Centre in providing employment for residents with disabilities as well as providing garden products and gardening services for residents across the Shire.

Planning Priority 3.2 of WLSPS is that *‘Local business is supported through a connected community’*. The Rationale behind this Priority is:

A strong community forms the foundation on which to build a sustainable local economy.

The Wingecarribee Shire has a diverse range of businesses across a broad spectrum of the economy. Some 98% of all businesses within the Shire are 'small businesses' often owned, operated and staffed by locals. These existing businesses (both small and large) are the foundation of our economy providing local jobs and services to meet the needs of our community.

Council can and will support local businesses to grow through regular engagement, supporting and promoting innovation, and promoting the Wingecarribee as a destination to live, work, learn and play. However, successful business and economic development requires a strong and connected business community, working together with Council to deliver positive outcomes for both the community and the industry.

The Planning Proposal supports this priority by enabling community members with disabilities to remain active and engaged with a sense of purpose. This in turn strengthens the values and connections within and across the community.

#### 5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

##### SEPP No 21 – Caravan Parks

(1) The aim of this Policy is to encourage -

- (a) the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and
- (b) the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and
- (c) the provision of community facilities for land so used, and
- (d) the protection of the environment of, and in the vicinity of, land so used.

**Assessment – Consistent-** The Planning Proposal seeks to rezone land to B5 Business Development, a zone which would prohibit caravan parks.

##### SEPP No 33 - Hazardous & Offensive Development

This Policy aims—

- (a) to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and
  - (b) to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Policy, and
- (c) to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and



- (d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and
- (e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and
- (f) to require the advertising of applications to carry out any such development.

**Assessment – Consistent-** – No intended development of the subject land would be impacted by this Policy.

#### SEPP No 36 – Manufactured Home Estates

- (1) The aims of this Policy are—
- (a) to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements, and
  - (b) to provide immediate development opportunities for manufactured home estates on the commencement of this Policy, and
  - (c) to encourage the provision of affordable housing in well-designed estates, and
  - (d) to ensure that manufactured home estates are situated only in suitable locations and not on land having important resources or having landscape, scenic or ecological qualities that should be preserved, and
  - (e) to ensure that manufactured home estates are adequately serviced and have access to essential community facilities and services, and
  - (f) to protect the environment surrounding manufactured home estates, and
  - (g) to provide measures which will facilitate security of tenure for residents of manufactured home estates.

**Assessment – Consistent** – The SEPP does not apply to land within a water catchment (as prescribed by Schedule 2). The subject land is within the Sydney Drinking Water Catchment Area, and therefore the SEPP does not apply.

#### SEPP No 50 – Canal Estate Development

This Policy aims to prohibit canal estate development as described in this Policy in order to ensure that the environment is not adversely affected by the creation of new developments of this kind.

**Assessment – Consistent-** No intended development of the subject land would be impacted by this Policy.

#### SEPP No 55 - Remediation of Land

- (1) The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.
- (2) In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—
  - (a) by specifying when consent is required, and when it is not required, for a remediation work, and
  - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
  - (c) by requiring that a remediation work meet certain standards and notification requirements.

**Assessment – Consistent-**The proposal does not trigger the need for investigation into the potential for contamination and remediation of land. Any future development of the subject land for an alternative land use activity would need to be accompanied by a Preliminary Site Assessment to determine if there are any potential contamination issues.

#### SEPP No 64 – Advertising & Signage

- (1) This Policy aims -
  - (a) to ensure that signage (including advertising):
    - (i) is compatible with the desired amenity and visual character of an area, and
    - (ii) provides effective communication in suitable locations, and
    - (iii) is of high-quality design and finish, and
  - (b) to regulate signage (but not content) under Part 4 of the Act, and
  - (c) to provide time-limited consents for the display of certain advertisements, and
  - (d) to regulate the display of advertisements in transport corridors, and
  - (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

**Assessment – Consistent-** – Any future development of the subject land would require demonstration of compliance with this Policy.

#### SEPP No 65 – Design Quality of Residential Apartment Development

- (1) This Policy aims to improve the design quality of residential apartment development in New South Wales.
- (2) This Policy recognises that the design quality of residential apartment development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high-quality design.
- (3) Improving the design quality of residential apartment development aims:
  - (a) to ensure that it contributes to the sustainable development of New South Wales:
    - (i) by providing sustainable housing in social and environmental terms, and
    - (ii) by being a long-term asset to its neighbourhood, and
    - (iii) by achieving the urban planning policies for its regional and local contexts, and
  - (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and
  - (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and

<ul style="list-style-type: none"> <li>(d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and</li> <li>(e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and</li> <li>(f) to contribute to the provision of a variety of dwelling types to meet population growth, and</li> <li>(g) to support housing affordability, and</li> <li>(h) to facilitate the timely and efficient assessment of applications for development to which this Policy applies.</li> </ul> <p>(4) This Policy aims to provide:</p> <ul style="list-style-type: none"> <li>(a) consistency of policy and mechanisms across the State, and</li> <li>(b) a framework for local and regional planning to achieve identified outcomes for specific places.</li> </ul>
<p><b>Assessment – Consistent-</b> The proposed B5 Business Development zoning would not permit residential flat development.</p>
<p><b>SEPP (Affordable Rental Housing) SEPP</b></p>
<p>The aims of this Policy are as follows—</p> <ul style="list-style-type: none"> <li>(a) to provide a consistent planning regime for the provision of affordable rental housing,</li> <li>(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,</li> <li>(c) to facilitate the retention and mitigate the loss of existing affordable rental housing,</li> <li>(d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,</li> <li>(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,</li> <li>(f) to support local business centres by providing affordable rental housing for workers close to places of work,</li> <li>(g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.</li> </ul>
<p><b>Assessment – Consistent-</b> No intended development of the subject land would be impacted by this Policy.</p>

<p><b>SEPP (Building Sustainability Index: BASIX) 2004</b></p>
<ul style="list-style-type: none"> <li>(1) Regulations under the Act have established a scheme to encourage sustainable residential development (<i><b>the BASIX scheme</b></i>) under which:             <ul style="list-style-type: none"> <li>(a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and</li> <li>(b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.</li> </ul> </li> <li>(2) The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.</li> </ul>



(3) This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

**Assessment – Consistent** – Any future development of the subject land would require demonstration of compliance with this Policy.

#### SEPP (Educational Establishments & Child Care Facilities) 2017

The aim of this Policy is to facilitate the effective delivery of educational establishments and early education and care facilities across the State by—

- (a) improving regulatory certainty and efficiency through a consistent planning regime for educational establishments and early education and care facilities, and
- (b) simplifying and standardising planning approval pathways for educational establishments and early education and care facilities (including identifying certain development of minimal environmental impact as exempt development), and
- (c) establishing consistent State-wide assessment requirements and design considerations for educational establishments and early education and care facilities to improve the quality of infrastructure delivered and to minimise impacts on surrounding areas, and
- (d) allowing for the efficient development, redevelopment or use of surplus government-owned land (including providing for consultation with communities regarding educational establishments in their local area), and
- (e) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and
- (f) aligning the NSW planning framework with the National Quality Framework that regulates early education and care services, and
- (g) ensuring that proponents of new developments or modified premises meet the applicable requirements of the National Quality Framework for early education and care services, and of the corresponding regime for State regulated education and care services, as part of the planning approval and development process, and
- (h) encouraging proponents of new developments or modified premises and consent authorities to facilitate the joint and shared use of the facilities of educational establishments with the community through appropriate design.

**Assessment – Consistent-** No intended development of the subject land would be impacted by this Policy.

#### SEPP (Exempt & Complying Development Codes) 2008

This Policy aims to provide streamlined assessment processes for development that complies with specified development standards by—

- (a) providing exempt and complying development codes that have State-wide application, and
- (b) identifying, in the exempt development codes, types of development that are of minimal environmental impact that may be carried out without the need for development consent, and
- (c) identifying, in the complying development codes, types of complying development that may be carried out in accordance with a complying development certificate as defined in the Act, and
- (d) enabling the progressive extension of the types of development in this Policy, and
- (e) providing transitional arrangements for the introduction of the State-wide codes, including the amendment of other environmental planning instruments.

**Assessment – Consistent-** The provisions of the SEPP would apply at any subsequent Development Application stage.

#### **SEPP (Infrastructure) 2007**

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by—

- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and
- (b) providing greater flexibility in the location of infrastructure and service facilities, and
- (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and
- (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and
- (e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and
- (f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and
- (g) providing opportunities for infrastructure to demonstrate good design outcomes.

**Assessment – Consistent-** The provisions of the SEPP would apply at any subsequent Development Application stage.

#### **SEPP (Koala Habitat Protection) 2020 & 2021**

This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

**Assessment – Consistent-** The land is not identified as being existing or potential koala habitat.

#### **SEPP (Mining, Petroleum Production & Extractive Industries) 2007**

The aims of this Policy are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries -

- (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and
- (b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and
- (b1) to promote the development of significant mineral resources, and
- (c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and
- (d) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development -
- (i) to recognise the importance of agricultural resources, and
- (ii) to ensure protection of strategic agricultural land and water resources, and
- (iii) to ensure a balanced use of land by potentially competing industries, and
- (iv) to provide for the sustainable growth of mining, petroleum and agricultural industries.

**Assessment – Consistent-** The land is not identified as containing mineral, petroleum or extractive material resources.

#### SEPP – Primary Production & Rural Development (2019)

The aims of this Policy are as follows—

- (a) to facilitate the orderly economic use and development of lands for primary production,
- (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,
- (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
- (d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,
- (e) to encourage sustainable agriculture, including sustainable aquaculture,
- (f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,
- (g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.

**Assessment – Consistent-** The site does not contain rural land and is not identified for primary production and does not adjoin any such land.

#### SEPP (State & Regional Development) 2011

The aims of this Policy are as follows—

- (a) to identify development that is State significant development,
- (b) to identify development that is State significant infrastructure and critical State significant infrastructure,
- (c) to identify development that is regionally significant development.

**Assessment – Consistent-** The Planning Proposal is not of State or Regional significance.

#### SEPP (Sydney Drinking Water Catchments) 2011

The aims of this Policy are -

- (a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and
- (b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and
- (c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.

**Assessment – Consistent-** The subject site is located within the catchment area, and the SEPP has application to the site. Water NSW has no objection to the Planning Proposal and agrees that the Proposal responds to and is consistent with the SEPP.



WaterNSW noted that any future development of the site will need to have a neutral or beneficial effect on water quality as required by the SEPP and incorporate WaterNSW's current recommended practices (CRPs). The 2010 Nursery Industry Water Management Best Practice Guidelines are relevant in this regard.

#### SEPP (Urban Renewal) 2010

The aims of this Policy are -

- (a) to establish the process for assessing and identifying sites as urban renewal precincts,
- (b) to facilitate the orderly and economic development and redevelopment of sites in and around urban renewal precincts,
- (c) to facilitate delivery of the objectives of any applicable government State, regional or metropolitan strategies connected with the renewal of urban areas that are accessible by public transport.

**Assessment – Consistent-** The provisions of this Policy do not apply to this land.

## 6. Is the Planning Proposal consistent with applicable Section 9.1(2) Directions?

### 1. Employment & Resources

#### 1.1 Business & Industrial Zones

This Direction applies when a planning proposal affects land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary). The objectives of this Direction are:

- (a) encourage employment growth in suitable locations,
- (b) protect employment land in business and industrial zones, and
- (c) support the viability of identified centres.

**Assessment – Consistent-** The Planning Proposal seeks to change the land zoning from residential to business, thus acknowledging & reinforcing the current business activities of the site. These business activities are fostered by a community charitable organisation that creates employment opportunities for persons who are intellectually disabled and is consistent with objective (a) of the Direction.

#### 1.2 Rural Zones

This Direction applies when a planning proposal affects land within an existing or proposed rural zone (including the alteration of any current rural zone boundary). The objective of this Direction is to protect the agricultural production value of rural land. This Direction applies when a Planning Proposal will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

**Assessment – Consistent-** The subject site does not contain rural zoned land.

#### 1.3 Mining, Petroleum Production & Extractive Industries

This direction applies when a planning proposal would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or

(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

The objective of this Direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

**Assessment – Consistent-** The proposed development would not impact upon potential mining activity.

#### 1.4 Oyster Aquaculture

**Assessment – Consistent** – This Direction does not apply to Wingecarribee Shire.

#### 1.5 Rural Lands

This Direction applies when a planning proposal:

- (a) will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or
- (b) changes the existing minimum lot size on land within a rural or environment protection zone.

**Note:** Reference to a rural or environment protection zone means any of the following zones or their equivalent in a non-Standard LEP: RU1, RU2, RU3, RU4, RU6, E1, E2, E3, E4.

The objectives of this Direction are to:

- (a) protect the agricultural production value of rural land,
- (b) facilitate the orderly and economic use and development of rural lands for rural and related purposes,
- (c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State,
- (d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,
- (e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land
- (f) support the delivery of the actions outlined in the New South Wales Right to Farm Policy.

**Assessment – Consistent** -The subject site does not contain rural lands.

## 2. Environment & Heritage

### 2.1 Environmental Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas. A planning proposal must include provisions that facilitate the protection and conservation of ecologically sensitive areas. A planning proposal that applies to land within an environmental protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.

**Assessment – Consistent-** The subject land is currently zoned residential and is proposed to be rezoned to business. The site does not contain land that is zoned environment protection.

## 2.2 Coastal Management

**Assessment – Consistent** – This Direction does not apply to Wingecarribee Shire.

## 2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. A planning proposal must contain provisions that facilitate the conservation of (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, concerning the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

**Assessment – Consistent** - There are no heritage impacts associated with the Planning Proposal.

## 2.4 Recreation Vehicle Areas

The objective of this Direction is to protect sensitive land or land with significant conservation values from adverse impacts of recreation vehicles.

**Assessment – Consistent** - No provision for recreation vehicles has been made in the Planning Proposal.

## 2.5 Application of E2 & E3 Zones and Environmental Overlays in Far North Coast LEPs.

**Assessment – Consistent** – This Direction does not apply to Wingecarribee Shire.

## 2.6 Remediation of Contaminated Land

The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

**Assessment – Consistent-** The subject land is used for the purposes of horticulture, a land-use activity known to be associated with the potential to support land contamination through horticultural chemical usage. The Planning Proposal seeks to change the land-use zoning from residential to business, a land-use zone that is more appropriate for the management of the potential land contamination.



### 3. Housing, Infrastructure and Urban Development

#### 3.1 Residential Zones

The objectives of this Direction are:

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,
- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- (c) to minimise the impact of residential development on the environment and resource lands.

This direction applies when a planning proposal affects land within:

- (a) an existing or proposed residential zone (including the alteration of any current residential zone boundary),
- (b) any other zone in which significant residential development is permitted or proposed to be permitted.

**Assessment – Consistent-** The current zoning of the land is residential, a land use zoning considered inappropriate for the commercial land use activities of the site. Rezoning of the land as proposed to a business zone will correct the land use anomaly.

#### 3.2 Caravan Parks & Manufactured Home Estates

The objectives of this Direction are:

- (a) to provide for a variety of housing types, and
- (b) to provide opportunities for caravan parks and manufactured home estates.

**Assessment – Consistent** – The Planning Proposal intends to rezone the land to B5 Business Development. Caravan Parks and Manufactured Home Estates are prohibited within the zone.

#### 3.3 Home Occupations

The objective of this Direction is to encourage the carrying out of low impact small businesses in dwelling houses. Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.

**Assessment – Consistent** - The Planning Proposal does not seek to amend the current provisions of WLEP 2010 concerning home occupation.

#### 3.4 Integrating Land Use & Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

This Direction applies when a planning proposal creates, alters or removes a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

**Assessment – Consistent-** The Planning Proposal seeks to rezone land that is currently zoned residential; however as the site does not support any residential development there will be no impact under the objectives of the direction.

### 3.5 Development Near Regulated Airports and Defence Airfields

The objectives of this Direction are:

- (a) to ensure the effective and safe operation of regulated airports and defence airfields;
- (b) to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and
- (c) to ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

**Assessment – Consistent** – There are no airports or airfields in the vicinity of the subject land.

### 3.6 Shooting Ranges

The objectives are:

- (a) to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range,
- (b) to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land,
- (c) to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.

**Assessment – Consistent** -There are no shooting ranges in the vicinity of the subject land.

### 3.7 Reduction in non-hosted short term rental accommodation period

**Assessment – Consistent** – This Direction does not apply to Wingecarribee Shire.

## 4. Hazard & Risk

### 4.1 Acid Sulphate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.

**Assessment – Consistent** – There currently appear to be no mapped acid sulphate soils within Wingecarribee Shire.

### 4.2 Mine Subsidence and Unstable Land

The objective of this Direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.

**NB1:** When a planning proposal would permit development on land that is within a Mine Subsidence District a relevant planning authority must: (a) consult the Mine Subsidence Board to ascertain: (i) if the Mine Subsidence Board has any objection to the draft Local Environmental

Plan, and the reason for such an objection, and (ii) the scale, density and type of development that is appropriate for the potential level of subsidence, and (b) incorporate provisions into the draft Local Environmental Plan that are consistent with the recommended scale, density and type of development recommended under (4)(a)(ii), and (c) include a copy of any information received from the Mine Subsidence Board with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.

**NB2:** A planning proposal must not permit development on land that has been identified as unstable in a study, strategy or other assessment undertaken: (i) by or on behalf of the relevant planning authority, or (ii) by or on behalf of a public authority and provided to the relevant planning authority.

**Assessment – Consistent** -The subject land is not identified as subject to mine subsidence or unstable.

#### 4.3 Flood Prone Land

The objectives of this Direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

**NB:** A planning proposal must not rezone land within any flood planning area from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodway's or high hazard areas), roads or exempt development.

**Assessment – Consistent**-The subject land is not identified as flood-prone.

#### 4.4 Planning for Bushfire Protection

The objectives of this Direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

**Assessment – Consistent** - The subject land is identified as bushfire prone. Referral to NSW RFS resulted in a response which concluded that on the basis of the information provided, no specific objections to the proposed amendment are raised at this time. It should be noted that no master plan, indicative building layout, building envelope or any information addressing the relevant sections of Planning for Bush Fire Protection (PBP) 2019 has been provided with the referral. As such, any future development application associated with the subject site must be supported by a

bush fire report, prepared by a suitably qualified consultant, demonstrating compliance with the requirements of relevant section(s) of PBP 2019.

## 6. Regional Planning

### 5.1 Implementation of Regional Strategies

**Assessment – Consistent** – The above Direction has been revoked.

### 5.2 Sydney Drinking Water Catchment

The objective of this Direction is to give effect to protect water quality in the Sydney Drinking Water Catchment. The relevant requirements of the Direction include for the relevant planning authority to ensure that the proposal is consistent with the SEPP and to consider the outcomes of the Strategic Land and Water Capability Assessment (SLWCA).

**Assessment – Consistent** – The subject land is located within the catchment area. WaterNSW has responded to the Proposal noting that although the current use of the site is to remain, given the proposed change in zoning, WaterNSW has produced a SLWCA for Retail and Commercial uses of the site as allowed by the rezoning (Attachment 1). The SLWCA reveals that the water quality risk varies from LOW to MODERATE indicating that the land has HIGH to MODERATE capability for the uses allowed by the rezoning.

### 5.3 Farmland of State and Regional Significance on the NSW Far North Coast

### 5.4 Commercial and Retail Development along the Pacific Highway, North Coast

### 5.5 Development in the Cessnock LGA

### 5.6 Sydney to Canberra Corridor

### 5.7 Central Coast

### 5.8 Second Sydney Airport – Badgerys Creek

### 5.9 North West Rail Link Corridor Strategy

**Assessment – Consistent** – The above Directions have either been revoked or do not apply in Wingecarribee Shire.

### 5.10 Implementation of Regional Plans

The objective of this Direction is to give legal effect to vision, land use strategy, goals, directions and actions contained in Regional Plans. The Planning Proposal must demonstrate consistency with the SE & Tablelands Regional Plan.

**Assessment – Consistent** – The Planning Proposal is consistent with the goals and actions of the South East & Tablelands Regional Plan as discussed in section B3 above.

### 5.11 Development of Land Council Land

The objective of this direction is to provide for the consideration of development delivery plans prepared under State Environmental Planning Policy (Aboriginal Land) 2019 when planning proposals are prepared by a planning proposal authority.

**Assessment – Consistent** – Currently this Direction does not apply to Wingecarribee Shire.



## 6. Local Plan Making

### 6.1 Approval & Referral Requirements

The objective of this Direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

**Assessment – Consistent** - The Planning proposal seeks to rezone land from residential to business and remove a minimum lot size control consistent with the current and proposed business activities of the WGC.

### 6.2 Reserving Land for Public Purposes

The objectives of this Direction are:

- (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and
- (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

**Assessment – Consistent** - The Planning Proposal will not have an impact on public services and facilities.

### 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site-specific planning controls.

**Assessment – Consistent** – The Planning Proposal in part seeks to remove the subject site from Schedule 1 of the WLEP 2010, which otherwise would become an unnecessarily restrictive and site-specific planning control.

## 7. Metropolitan Planning

### 7.1 - 7.10

**Assessment – Consistent** – These Directions do not apply to Wingecarribee Shire.

## 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?

The predominant land use of the site is that of a retail / wholesale plant nursery. There is no known critical habitat or threatened species, populations or ecological communities on the subject land. It is considered, therefore, that there will be no adverse environmental effects resulting from the Planning Proposal.

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

It is considered that there will be no other adverse environmental effects resulting from the Planning Proposal.

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

It is considered that the Planning Proposal will have a positive social and economic effect in that it will foster further employment opportunities for persons with an intellectual disability through an appropriate Business Land Use Zoning for the WGC.

### Section D – State and Commonwealth Interests

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

Existing public infrastructure is adequate for the current operations of the WGC, and the Planning Proposal will not have any detrimental impact upon service delivery.

## Part 4: Mapping

Draft amendments to the zoning and minimum lot size maps for the subject land will be included with the exhibition material.

## Part 5: Consultation

- **Agency referrals** - Council undertook the following agency referrals as required by the Gateway Determination.

### WaterNSW

Referral to WaterNSW resulted in the following comments. The WaterNSW response accompanies this Planning Proposal.

*Water NSW has no objection to the Planning Proposal and agrees that the Proposal responds to and is consistent with the SEPP. WaterNSW noted that any future development of the site will need to have a neutral or beneficial effect on water quality as required by the SEPP and incorporate WaterNSW's current recommended practices (CRPs). The 2010 Nursery Industry Water Management Best Practice Guidelines are relevant in this regard. WaterNSW further noted that although the current use of the site is to remain, given the proposed change in zoning, it produced a SLWCA for Retail and Commercial uses of the site as allowed by the rezoning (Attachment 1). The SLWCA reveals that the water quality risk varies from LOW to MODERATE indicating that the land has HIGH to MODERATE capability for the uses allowed by the rezoning.*

### NSW Rural Fire Service

Referral to the NSW Rural Fire Service resulted in the following comments. These comments are noted and the additional information required would be provided to RFS at the Development Application stage. The NSW RFS response accompanies this Planning Proposal.

*On the basis of the information provided, it is advised that no specific objections to the proposed amendment are raised at this time. It should be noted that no master plan, indicative building layout, building envelope or any information addressing the relevant sections of Planning for Bush Fire Protection (PBP) 2019 has been provided with the referral. As such, any future development application associated with the subject site must be supported by a bush fire report, prepared by a suitably qualified consultant, demonstrating compliance with the requirements of relevant section(s) of PBP 2019.*

#### **DPIE – Biodiversity & Conservation**

Referral to this agency resulted in an email confirmation of ‘no issues’. The response accompanies this Planning Proposal.

#### **DPIE – PSI assessment**

The Gateway required preparation of a Preliminary Site Investigation by the proponent. This was provided, and forms part of the exhibition material. DPIE has viewed the report and deemed it suitable for exhibition. The report and Department response accompany the Planning Proposal.

#### ○ **Community Consultation**

The Planning Proposal and associated documentation are on public exhibition for a period of 31 days from Wednesday 10 November to Friday 10 December 2021.

All submissions must be received by Council before **4.30pm on Friday 10 December** and quote the PP file reference PP-2021-3571.

## **Part 6: Timeline**

<b>MILESTONE</b>	<b>INDICATIVE /ACTUAL DATE</b>
Gateway Determination	June 2021
Agency Consultation & Completion of Gateway Requirements	October 2021
Public Exhibition	November-December 2021
Post exhibition Report to Advisory Panel & Council	February 2022
Drafting of Opinion	February 2022
Making of WLEP 2010 Amendment	March 2022



## Delegation

The Planning Proposal is 'Delegated' to Council which means that Wingecarribee Shire Council is authorised to exercise the functions of the Minister for Planning under s.3.36 of the *Environmental Planning & Assessment Act 1979* as have been delegated to it with regard to the Planning Proposal.

**END OF PLANNING PROPOSAL**