

13.4 Planning Proposal to Amend Certain Clauses in WLEP 2010

Reference:	5901
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Link to Community	
Strategic Plan:	Identify and protect the unique characteristics of towns and villages to retain a sense of place

PURPOSE

The purpose of this report is to seek a resolution of Council to amend draft clauses 4.1A and 4.1AA in Wingecarribee Local Environmental Plan (WLEP) 2010 to remove any inconsistencies with a recent amendment to Clause 4.1 of the Standard Instrument.

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

THAT a Planning Proposal be prepared under s.3.33 of the *Environmental Planning & Assessment Act 1979* to amend draft clauses 4.1A and 4.1AA to the WLEP 2010 as set out in this report.

REPORT

BACKGROUND

At its Ordinary Meeting of 14 December 2016 Council resolved to proceed with certain amendments to *Wingecarribee Local Environmental Plan 2010* (WLEP 2010). These amendments included the insertion of two new clauses into WLEP 2010, clause 4.1A and 4.1AA as follows:

- **4.1A Minimum subdivision lot size for strata plan schemes in certain rural and residential zones**

(1) *The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

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(2) This clause applies to land in the following zones that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone R5 Large Lot Residential.*

(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note. Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

• **4.1AA Minimum subdivision lot size for community title schemes**

(1) The objective of this clause is as follows:

- (a) to ensure that land to which this clause applies is not fragmented by subdivision that would create additional dwelling entitlements.*

(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone R5 Large Lot Residential.*

(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

A Gateway Determination was issued on 9 May 2017 and the Planning Proposal was exhibited from 8 November to 5 December 2017. At its Ordinary Meeting of 13 December 2017, Council resolved, *inter alia*:

1. **THAT Council resolve to proceed with the making of the amendments to WLEP 2010 contained within the Planning Proposal as exhibited.**

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Draft clauses 4.1A and 4.1AA as exhibited are currently with the Parliamentary Counsel's Office (PCO) for finalisation.

REPORT

On 20 April 2018, Clause 4.1 of the Standard Instrument was amended. This amendment automatically amends WLEP 2010 which is based on the Standard Instrument.

Prior to the amendment clause 4.1 read as follows:

4.1 Minimum subdivision lot size

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

- (a) to identify minimum lot sizes,*
- (b) to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.*

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

The amendment applies to subclause (4) which now states:

(4) This clause does not apply in relation to the subdivision of any land:

- (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
- (b) by any kind of subdivision under the Community Land Development Act 1989.*

This amendment makes it unambiguously clear that the minimum lot size standard does not apply to a subdivision created by the registration of a strata plan or community plan.

As a consequence of this amendment, the draft clauses 4.1A and 4.1AA which Council has resolved to include in WLEP 2010, and which are currently with PCO for finalisation, need to be amended to ensure that the current development standards in WLEP 2010 prevail.

The resulting proposed draft clauses are as follows with proposed amendments **highlighted**.

- **4.1A Minimum subdivision lot size for strata plan schemes in certain rural and residential zones**

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(1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

(2) This clause applies to land in the following zones that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone E3 Environmental Management,*
- (e) Zone E4 Environmental Living,*
- (f) Zone R5 Large Lot Residential.*

but does not apply to a subdivision by the registration of a community plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause applies despite clause 4.1.

Note. Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

• **4.1AA Minimum subdivision lot size for community title schemes**

(1) The objective of this clause is as follows:

- (a) to ensure that land to which this clause applies is not fragmented by subdivision that would create additional dwelling entitlements.*

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- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone E3 Environmental Management,*
- (e) Zone E4 Environmental Living,*
- (f) Zone R5 Large Lot Residential.*

but does not apply to a subdivision by the registration of a strata plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community

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Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause applies despite clause 4.1.

The effect of these amendments will be to ensure that draft clause 4.1A and 4.1AA will serve to maintain the current development standards for the nominated zones.

IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There are no implications for Council's Fit for the Future Improvement Plan resulting from this report.

COMMUNICATION AND CONSULTATION

Community Engagement

Should Council resolve to proceed with these amendments a new Planning Proposal will be prepared and a Gateway Determination will be sought from the Department of Planning and Environment. The Gateway Determination will stipulate the extent of community consultation. It is anticipated that a 28 day exhibition period would be nominated.

Internal Communication and Consultation

The draft clauses have been referred to Council's General Counsel for comment.

External Communication and Consultation

External referrals would occur as required by the Gateway Determination and would require consultation with Water NSW as a minimum. Referral to Water NSW is a Ministerial requirement under s 9.1 of *EP&A Act 1979*.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed amendments will ensure that the current development standards prevail in the environmentally sensitive zones.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

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- **Governance**

The proposed amendments will ensure that the current development standards in WLEP 2010 are maintained.**COUNCIL BUDGET IMPLICATIONS**

There are no budget implications.

RELATED COUNCIL POLICY

There are no other Council related policies.

OPTIONS

The options available to Council are:

Option 1

Proceed with the proposed amendments

Option 2

Not proceed with the proposed amendments

Option 1 is the recommended option to this report.

CONCLUSION

The Wingecarribee Local Environmental Plan 2010 is the principal statutory document governing development within the Shire. The proposed amendments will maintain the current development standards within WLEP 2010.

ATTACHMENTS

There are no attachments to this report.