

Planning Proposal Attachment 2

Lot 21 DP 654119, Lots 24 -25 DP 25373

Council Report & Minutes dated 14 April 2010

14 April 2010

To the Ordinary Meeting

Director's Report

Shire Planning Department

3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah

TRIM REFERENCE: F2004/00526 - D02199252

AUTHOR: SA; KH; JM

SUMMARY

Reporting on the receipt of three priority rezoning applications requesting the insertion of enabling clauses into Schedule 2 of the Wyong Local Environmental Plan (WLEP) 1991 to permit:

- A service station development at North Wyong.
- A plant hire establishment at Berkeley Vale.
- Commercial premises at Tuggerah.

Desktop assessments have been undertaken for each proposal, having regard for local and state strategies and policies, in addition to applicable legislative requirements. These desktop assessments have identified that the proposals have merit and should be supported.

Rezoning Application:	RZ/18/2009
Applicant:	Doug Eaton
Owner:	A Van Stappen Pty Ltd
Description of Land:	Lot 1 DP 1100416, 1 London Drive, North Wyong
Proposed Development:	Enabling Clause under Schedule 2 of <i>Wyong Local Environmental Plan 1991</i> to permit 'Service Station' development
Site Area:	Approximately 10,630m ²
Zoning:	4(a) (General Industrial)
Existing Use:	Light industrial, storage and vehicle parking.
Rezoning Application:	RZ/19/2009
Applicant:	R B Smyth (Smyth Planning)
Owner:	Hereford Properties Pty Ltd
Description of Land:	Lots 9 and 10 DP 255990, 15 and 13 Hereford Street, Berkeley Vale
Proposed Development:	Enabling Clause under Schedule 2 of <i>Wyong Local Environmental Plan 1991</i> to permit 'Plant hire establishment' activities
Site Area:	2,625m ² and 2,575m ² respectively
Zoning:	4(a) (General Industrial)
Existing Use:	General industrial - Storage of larger-size hire items including large plant machines, road barriers and portable toilets
Rezoning Application:	RZ/20/2009
Applicant:	Mariners FC Unit Trust
Owner:	Wyong RSL Sub Branch Club Pty Ltd and Wyong Shire Council
Description of Land:	Lot 21 DP 654119, Lot 24-25 DP 25373 and Lots 80-84 DP 8004 1 Bryant Drive, Tuggerah
Proposed Development:	Enabling Clause under Schedule 2 of <i>Wyong Local</i>

**3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1
Bryant Drive, Tuggerah (contd)**

Site Area:	<i>Environmental Plan 1991 to permit commercial premises</i> 7.44ha
Zoning:	4(b) (Light Industrial), 1(c) (Non-Urban Constrained Land) and 5(a) (Special Uses – Sewerage Buffer)
Existing Use:	Club Tuggerah, a registered sporting club with associated sporting fields, tennis courts, amenities, car parking and landscaping.

RECOMMENDATION

- 1** *That Council prepare planning proposals to insert the following into Schedule 2 - Development for Certain Purposes of Wyong Local Environmental Plan 1991:*
 - a** *Lot 1 DP1100416, 1 London Drive, North Wyong as shown edged heavy black on the map marked "Wyong Local Environmental Plan 1991 – 'Service Station'".*
 - b** *Lots 9 and 10 DP 255990 – Hereford Street, Berkeley Vale as shown edged heavy black on the map marked "Wyong Local Environmental Plan 1991 – 'Plant Hire Establishment'".*
 - c** *Use of up to 3,500m² for the purposes of commercial premises on Lot 21 DP 654119 and Lots 24–25 DP 25373 Bryant Drive, Tuggerah.*
- 2** *That Council, subject to the determination of the Gateway process and Director General's approval, undertake community consultation regarding the planning proposals.*
- 3** *That Council, subject to there being no objections received that cannot be resolved by minor amendments to the planning proposals, request the Department of Planning (DoP) to prepare the draft Local Environmental Plan Instruments and the Minister be requested to make the plans.*

REZONING REQUEST RZ/18/2009 – 1 LONDON DRIVE, NORTH WYONG

Locality Plan



Rezoning Description

This Local Environmental Plan (LEP) Amendment request seeks to introduce an enabling clause to permit the development of a service station on Lot 1, DP 1100416, 1 London Drive, North Wyong.

Schedule 2 (Development for certain additional purposes) of WLEP 1991 enables development which is not ordinarily permissible on certain land due to zoning to be carried out. These clauses are commonly referred to as enabling clauses.

Figure 1: LEP Amendment Request Site Plan



Strategic Context

The subject site is irregular (but essentially rectangular) in shape and has a total area of approximately 10,630 square metres. The site is relatively flat, clear of any significant vegetation and contains general industrial, storage and vehicle parking development/uses. The site is well provisioned in relation to service infrastructure. It has good vehicular access due to abutting the Pacific Highway.

Electricity, sewer, water supply and telecommunications infrastructure are available at the site.

The subject lands are approximately:

- 1.6 kilometres from the nearest service station on the opposite side of the Pacific Highway (to the south-west).

3.4

Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah (contd)

- 2.3 kilometres from the nearest service station on the same side of the Pacific Highway (to the south-west).
- 3.40 kilometres from the next nearest service station (approved and currently under construction) on the same side of the Pacific Highway (to the south-west).
- 4.40 kilometres from another service station on the same side of the Pacific Highway (in Wyong Township).
- The nearest service station to the north of the subject lands is at Charmhaven, approximately 7 kilometres away.
- Within 3 kilometres of the residential suburbs of Hamlyn Terrace, Woongarra and Wadalba residential suburbs (to the north and east) and Wyong and Watanobbi (to the south and west).

The surrounding land uses include:

- A variety of general industrial uses to the north and west.
- Low density residential uses to the north, south and east.

The site is located within a general industrial area (i.e. North Wyong Industrial Estate) and has good regional connections, via the Pacific Highway.

Discussion

This LEP Amendment request, in respect of Wyong Local Environmental Plan (WLEP) 1991, for the purpose of introducing an enabling clause to permit the development of a service station on Lot 1, DP 1100416, 1 London Drive, North Wyong, has been assessed and is supported by Council Staff. Initial discussions with staff at the local office of the Department of Planning (DoP) have indicated that the DoP does not have any major concerns with the proposal.

This request is supported on the basis that:

- It provides for an employment generating development of a service station, employing 11.7 full-time/long term equivalent positions.
- It is consistent with all of Council's locational criteria for service station development/use, which was recommended by Council's consultant on retail matters.
- It is consistent with town planning practice in regard to service stations being permissible developments/uses in a general industrial zone, as evidenced by service station development/use being '*Permitted only with development consent*' in the neighbouring local government areas of Newcastle, Lake Macquarie, Cessnock and Gosford.
- The subject lands are not unreasonably affected by any significant hazards that could not be mitigated.
- The subject lands do not possess any known significant environmental sensitivities that could not be mitigated.
- It supports the development/use of a 24 hour service station, which would provide support for surrounding land uses without unacceptable adverse impact(s) and passive security surveillance for the industrial area in which it is located.
- The subject lands have access to all relevant infrastructure and services.
- The subject lands can be provided with adequate access arrangements.

**3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1
Bryant Drive, Tuggerah (contd)**

- The future development/use of a service station on the subject lands could comply with all the relevant Chapters of Wyong Development Control Plan (DCP) 2005.
- The future development/use of a service station on the subject lands could comply with all the relevant provisions of the Wyong Retail Centres Strategy.
- It is consistent with all relevant State Environmental Planning Policies (SEPPs).
- It is consistent with all relevant s117 (Ministerial) Directions.
- It is consistent with key components of the Central Coast Regional Strategy.
- It is consistent with all of the DoP's criteria for spot rezonings.
- Given there is no proposal to establish a stand alone fast food development there is no inconsistency with Council's endorsed Retail Strategy and DCP.

CONCLUSION

It is considered that the LEP Amendment request RZ/18/2009 should be supported for assessment via the Gateway Process (see below for a description of this process) and the following wording be inserted into Schedule 2 - Development for Certain Purposes (Clause 52 - WLEP 1991):

'Lot 1 DP 1100416, 1 London Drive, North Wyong as shown edged heavy black on the map marked WLEP 1991 – Service Station.'

REZONING REQUEST RZ/19/2009 -13-15 HEREFORD STREET, BERKELEY VALE

Locality Plan



Rezoning Description

This LEP Amendment request seeks to introduce an enabling clause to permit '*plant hire establishment*' activities within Lots 9 and 10 DP 255990, 15 and 13 Hereford Street, Berkeley Vale.



Figure 1: LEP Amendment Request Location Plan

Strategic Context

The subject sites (Lots 9 and 10 DP 255990) are relatively flat and essentially rectangular in shape and comprise total respective areas of approximately 2,625m² and 2,575m². The subject lands are clear of any significant vegetation and are well provisioned in relation to service infrastructure. The sites have good regional connections, via Wyong Road and Enterprise Drive.

Access to both sites is currently obtained via Hereford Street. Electricity, sewer, water supply and telecommunications infrastructure are available at the site. Lot 9 DP 255990 is bounded to the east by Hereford Street, a frontage of approximately 37m. The site has no secondary frontage, however the property is proposed to be used in conjunction with the adjacent Lot 10 DP 255990, a corner allotment with frontages to both Hereford Street (41m) and Craftsman Avenue (60m).

Purpose of the Proposal

The subject sites are located centrally within a larger 4(a) (General Industrial zone) within Berkeley Vale industrial area, in close proximity to Wyong Road. The surrounding land uses therefore include a variety of general industrial uses. The subject sites are currently used for general industrial purposes (i.e. storage of larger-size hire items including large plant machines, road barriers and portable toilets). Both allotments are under the ownership of a single landowner.

Plant hire establishment activities (Coates National Hire) are currently lawfully carried out on Lot 10 DP 255990, subject to existing use rights that apply to the site. On 8 April 2009, a development application (DA/297/2009) for the adjacent Lot 9 DP 255990 was lodged with Council. DA/297/2009 applied for permission to operate a 'Warehouse' for the storage of hire equipment and construction of associated outbuildings, in association with the Coates National Hire business operation on Lot 10 DP 255990. This application was withdrawn on 21 July 2009, as the proposed use was considered to be closer to the definition of a 'Plant Hire Establishment' than a 'Warehouse' subject to WLEP 1991. Plant hire establishments are not permissible in the 4(a) (General Industrial zone).

Therefore, the applicant is now requesting that an enabling clause be inserted into Schedule 2 of the WLEP 1991 to enable the additional use of plant hire establishments on Lot 9 DP 255990. Lot 10 DP 255990 has been included in this rezoning application in the event that existing use rights legislation changes in the future and the permissibility of the plant hire establishment use within this allotment becomes unlawful.

Discussion

This LEP Amendment request, in respect of *WLEP 1991*, for the purpose of introducing an enabling clause to permit 'plant hire establishment' activities on Lot 9 DP 255990 – 15 Hereford Street, Berkeley Vale, is supported.

This request is supported on the basis that:

- It provides for an employment generating development of a plant hire establishment, employing 16 full-time/long term equivalent positions.
- The subject lands are not unreasonably affected by any significant hazards that could not be mitigated.
- The subject lands do not possess any known significant environmental sensitivities where impacts arising from the development could not be mitigated.
- The subject lands have access to all relevant infrastructure and services.
- The subject lands can be provided with adequate access arrangements.
- The proposed future development on the subject lands can comply with all the relevant Chapters of Wyong Development Control Plan 2005.
- The proposed future development on the subject lands would comply with all the relevant provisions of the Wyong Retail Centres Strategy.
- It is consistent with all relevant SEPPs.
- It is consistent with all relevant s117 (Ministerial) Directions.
- It is consistent with key components of the Central Coast Regional Strategy and REDES.
- It is consistent with all of the DoP's Criteria for Spot Rezoning.

**3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1
Bryant Drive, Tuggerah (contd)**

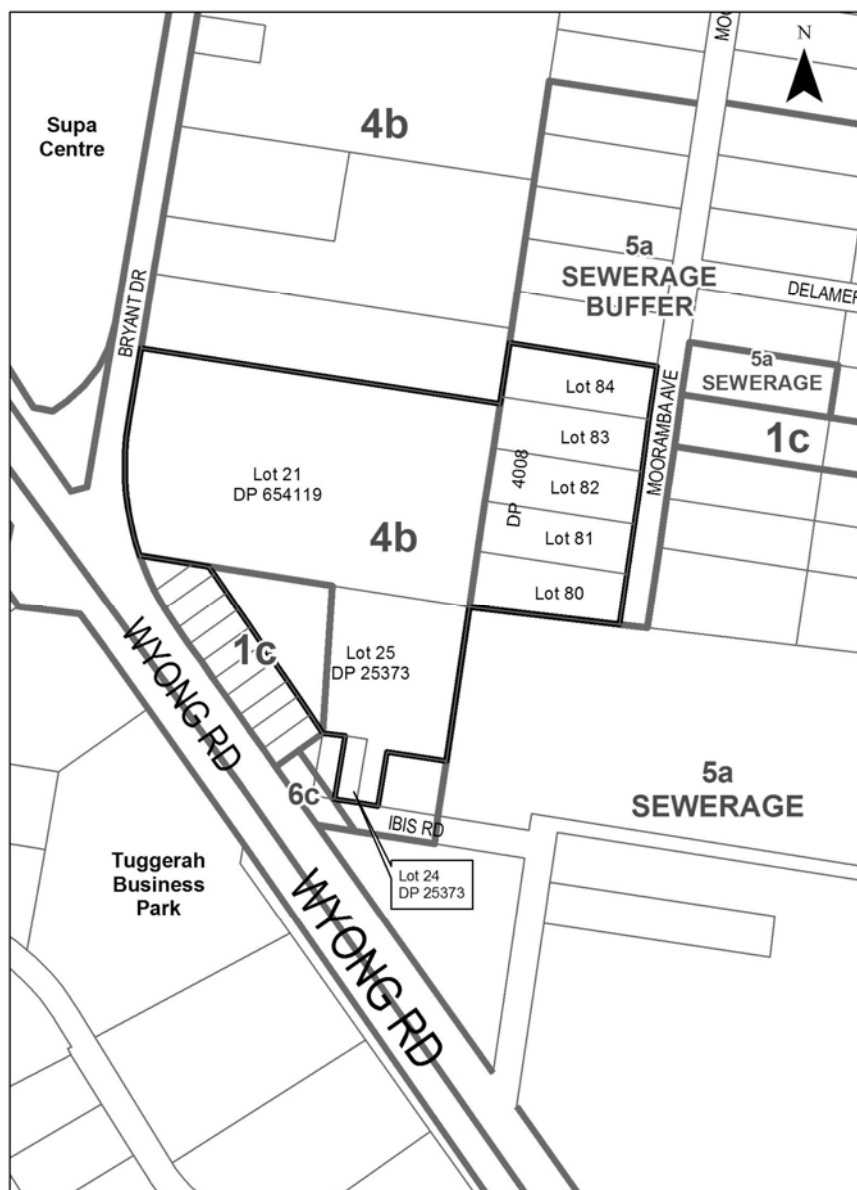
CONCLUSION

It is considered that the LEP Amendment request RZ/19/2009 should be supported for assessment via the Gateway Process (see above for a description of this process) and the following wording be inserted into Schedule 2 - Development for Certain Purposes (Clause 52 - WLEP 1991):

'Lots 9 and 10 DP 255990 – Hereford Street, Berkeley Vale as shown edged heavy black on the map marked WLEP 1991 – Plant Hire Establishment.'

REZONING REQUEST RZ/20/2009 – 1 BRYANT DRIVE, TUGGERAH

Locality Plan



Purpose of the Proposal

The enabling clause has been requested by the applicant to further support the uses approved under Development Application (DA) 612/2009: *Central Coast Mariners Football Club and Supporting Community Centre* and DA 1114/2009: *Training field, carparking and vehicular access*.

The current zoning of the site is considered to be too restrictive in terms of the range of uses which can be undertaken with Council consent. This is the particular problem for retail and commercial activity within the 4(b) Light Industrial zone and car parking within the 1(c) Non Urban Constrained Land zone. Whilst development consent has been issued for land uses as described by DAs 612/2009 and 1145/2009 provided these uses remain ancillary, any amendments will be problematic in the future, and could impose limitations to the viability of the development of the centre as a whole.

This rezoning will facilitate between 150 and 200 additional jobs on the Mariners' complex site which is in addition to the estimated 600 jobs covered by the current consent.

Measures to Resolve Issues

In order to alleviate this issue in the short term, an amendment to WLEP 1991 to better reflect the approved use of the site is considered appropriate. This would require an amendment to Clause 52 (Additional Permissible Uses) of WLEP 1991. This clause effectively expands the range of permissible uses on certain land beyond those which would otherwise be permissible under the zone tables (Clause 10). These additional uses are identified through Schedule 2 of WLEP 1991.

The proposed enabling clause will allow commercial premises not associated with the Mariners Football Club to utilise approximately 3,500m² of the site within the administration building (approved under DA/612/2009). The introduction of the enabling clause would remove this constraint to changes proposed to those approved uses over time. Furthermore, the proposed LEP amendment would alleviate funding implications for the development as a whole.

For the purposes of this proposed LEP amendment, it is important to note that Condition 88 of the Development Consent for DA/612/2009 required the consolidation of Lot 21 DP 654119 and Lot 24-25 DP 25373 prior to the Occupation Certificate being issued. Having regard for these requirements, any amendment to WLEP 1991 to permit additional uses on Lot 21 DP 654119 should also be enabled on Lot 24-25 DP 25373.

CONCLUSION

Given that the primary constraint to the effective operation of the centre is the inability to adequately provide for non-ancillary commercial premises and carparking, it is recommended that a planning proposal is prepared to enable the use of up to 3,500m² of commercial use on Lot 21 DP 654119 and Lots 24-25 DP 25373 and for the proposal to be forwarded to the DoP for Determination by the Gateway.

REZONING PROCESS - THE GATEWAY PROCESS

The Gateway Process was introduced into the LEP making process through changes to the *Environmental Planning and Assessment Act* (EP&A Act), 1979. These changes became effective as of 1 July 2009. The process has been implemented in order to streamline the plan making process, reduce timeframes for undertaking LEP amendments and increase the transparency of the process.

The introduction of the Gateway process has resulted in a number of changes to terminology and processes involved in LEP amendments. In short, any submission a Council makes to the DoP to amend an existing LEP must be supported by a Planning Proposal (formally a rezoning request) prepared in accordance with the DoP "Guide to Preparing Planning Proposals." Planning proposals under this process must document the objectives, proposed provisions, justification and proposed community consultation processes to be undertaken for each proposal.

Prior to community consultation being undertaken, the Proposal must be supported by the local DoP office, the LEP Review Panel and the Gateway (generally the Minister). The Gateway determination can endorse the proposal, require amendments to the proposal or refuse the proposal in its entirety. If endorsed for consultation, the Gateway will also determine timeframes for completing procedures within the process. Council no longer has delegation to approve a draft LEP for public exhibition.

The legislative amendments also provide for a feedback loop to the Gateway should a Council decide to amend a Planning Proposal for any reason. This enables the Gateway to determine any additional consultation requirements if considered necessary.

A thorough briefing on the new 'Gateway' process and its implications for current processes is proposed to be presented to Council later in the year. The above information is provided as a brief outline of the immediate impacts resulting from this legislative amendment, given the references within the recommendations of this report to this new procedure and processes.

ATTACHMENTS

Nil.

Ongoing Operation:

Time Limited Consent

- 44** *In accordance with Section 80A(1) (d) and 80A(1) (e) of the Environmental Planning and Assessment Act, 1979, this consent will expire 40 years from the date of issue of the consent, ie on 19 April 2050.*

At the expiry of this period the dwelling the subject of this consent shall be removed from the land and the land shall be regraded to approximately the levels existing as at the issue of this consent and turfed to prevent soil erosion.

Council may consider a modification to this condition of the consent, within a period not greater than 12 months prior to the expiry date, subject to the applicant lodging information to verify that the development complies with the then current Council and State Flood Policies.

- B** *That Council note that the life of the consent means that the 500mm freeboard over and above the current 1% AEP level is sufficient to meet State Government Climate Change Sea Level Rise Policy.*

FOR: COUNCILLORS EATON, GRAHAM, MCBRIDE, MCNAMARA, VINCENT AND WEBSTER
AGAINST: COUNCILLORS SYMINGTON AND WYNN

ELECTION OF CHAIR

RESOLVED *unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCBRIDE:*

That in the absence of both the Mayor and Deputy Mayor, Councillor McNamara assume the chair during consideration of Item 3.4.

FOR: COUNCILLORS EATON, GRAHAM, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN
AGAINST: NIL

3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah

Councillor Graham declared a pecuniary interest in the matter for the reason that he is a director on the board of the Central Coast Mariners Football Club which is involved with the property at 1 Bryant Drive, Tuggerah, left the chamber at 6.15 pm, took no part in discussion, did not vote and returned to the chamber at 6.16 pm.

Councillor Eaton declared a pecuniary interest in the matter for the reason that he is the applicant for RZ/18/2009, left the chamber at 6.15 pm, took no part in discussion, did not vote and returned to the chamber at 6.16 pm.

RESOLVED on the motion of Councillor MCNAMARA and seconded by Councillor WEBSTER:

- 1 That Council prepare planning proposals to insert the following into Schedule 2 - Development for Certain Purposes of Wyong Local Environmental Plan 1991:**
 - a Lot 1 DP1100416, 1 London Drive, North Wyong as shown edged heavy black on the map marked "Wyong Local Environmental Plan 1991 – 'Service Station'".**
 - b Lots 9 and 10 DP 255990 – Hereford Street, Berkeley Vale as shown edged heavy black on the map marked "Wyong Local Environmental Plan 1991 – 'Plant Hire Establishment'".**
 - c Use of up to 3,500m² for the purposes of commercial premises on Lot 21 DP 654119 and Lots 24–25 DP 25373 Bryant Drive, Tuggerah.**
- 2 That Council, subject to the determination of the Gateway process and Director General's approval, undertake community consultation regarding the planning proposals.**
- 3 That Council, subject to there being no objections received that cannot be resolved by minor amendments to the planning proposals, request the Department of Planning (DoP) to prepare the draft Local Environmental Plan Instruments and the Minister be requested to make the plans.**

FOR: COUNCILLORS MCBRIDE, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: NIL

The meeting ADJOURNED at 5.52 pm and RESUMED at 5.57 pm.

4.1 Contract CPA/137900 - Provision of Security Services at Various Council Facilities

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor SYMINGTON:

- 1 That Council exercise its option to extend the contract for one year effective from 8 August 2010 at an estimated contract price of \$176,990.00 (excl. GST).**
- 2 That Council approve an annual contract budget of \$194,689.00 (excl GST and including CPI adjustment) that provides for an annual contingency amount of \$17,698.00 (excl. GST), representing approximately 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project. Actual expenditure may vary slightly if the number of facilities to be secured changes during the course of the contract.**

FOR: COUNCILLORS EATON, GRAHAM, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: NIL