

NSW GOVERNMENT
Department of Planning

Office of the Director-General

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Mr Kerry Yates
General Manager
Wyong Shire Council
PO Box 20
WYONG NSW 2259

Our ref: C09/00001
Your ref: F2007/01960

Dear Mr Yates

Re: Section 54(4) Notification – Draft Amendment (178) Wyong LEP 1991

I am writing in response to your Council's letter dated 6 January 2009 advising, under section 54(4) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'), of the Council's decision to prepare a draft local environmental plan ('LEP') to rezone sites within the Wyong centre from 2(c) Medium Density Residential Zone and 5(a) Special Uses Zone (RSL, Govt purposes and public building) to 3(a) Business Centre Zone; and to rezone from 2(a) Residential Zone and 2(b) Multiple Dwelling Residential Zone to 2(c) Medium Density Residential Zone.

The Council may now continue with the preparation of the draft LEP.

I have determined that there is no need for an environmental study to be prepared for this draft LEP. Therefore sections 57 and 61 of the EP&A Act will not apply. While I have determined that an environmental study is not required, it would be appropriate for any existing studies and supporting material to be brought together for exhibition with the draft LEP.

Council will need to justify the commercial viability of the proposed LEP amendments prior to exhibition, including justification for the proposed height and floor space ratio controls in the draft instrument. Council should also detail whether the proposed zoning changes (and height and FSR controls) would provide sufficient dwellings and employment capacity to satisfy the levels required by the Central Coast Regional Strategy.

Consultation with the Department under section 62 of the Act is not required for this plan, however consultation should occur with Railcorp and the Ministry of Transport.

You will be aware that an instrument of delegation for my LEP making functions was executed on 16 February 2006. Use of the delegation for a draft LEP is conditional on receipt by Council of a Written Authorisation to Exercise Delegation.

Council should ensure that relevant section 117 Directions are adequately addressed and any necessary approvals or opinions sought prior to exhibition of the draft plan. In this regard, Council has incorrectly considered s117 Direction 2.2 *Coastal Protection* by asserting that it does not apply when the Wyong centre lies within the coastal zone. The proposed draft LEP may also be inconsistent with s117 Direction 6.2 *Reserving Land for Public Purposes* as

Council proposes to rezone land for a public purpose (Council car parks and Australia Post Office building) to a commercial zone.

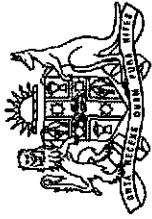
I have now issued an Authorisation, together with guidelines on its use, which is attached. This will enable Council to certify the draft LEP once the amendments and considerations, requested above, are made. This should be done in consultation with the Department's Regional Team.

Please forward a copy of the section 65 certificate, the draft plan and any other information to be publicly exhibited with the draft LEP, to the Regional Office with advice to the Department as required under section 64 of the Act prior to the exhibition of the draft LEP.

Should you have any queries in regard to this matter please contact the Regional Office of the Department.

Yours sincerely


Sam Haddad
Director-General
4/2/2009.



NSW GOVERNMENT
Department of Planning

WRITTEN AUTHORISATION TO EXERCISE DELEGATION

This is a *Written Authorisation to Exercise Delegation* ('**Authorisation**') made under the instrument of delegation executed by the Director General of the Department of Planning ('**Director General**') on 16 February 2006 ('**Delegation**').

Subject to the Delegation and the terms and conditions specified in Schedule 1 to this Authorisation, the following functions are delegated to Wyong Shire Council ('**Council**') for the draft local environmental plan the subject of notification by Council to the Director General under section 54(4) of the Environmental Planning and Assessment Act 1979 ('**EP&A Act**') dated 6 January 2009, being Draft Amendment No. 178 to Wyong LEP 1991 ('**Draft LEP**') to rezone sites within the Wyong centre from 2(c) Medium Density Residential Zone and 5(a) Special Uses Zone (RSL, Govt purposes and public building) to 3(a) Business Centre Zone; and to rezone from 2(a) Residential Zone and 2(b) Multiple Dwelling Residential Zone to 2(c) Medium Density Residential Zone.

- Section 65(1)
- Section 69(1)

Dated 4th day of February 2009

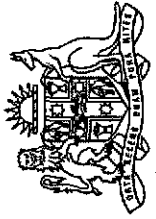
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Sam Gabriel Haddad
DIRECTOR GENERAL
Department of Planning

Schedule 1

The exercise of the function(s) under the Delegation is subject to:

1. consultation with Railcorp and the Ministry of Transport under section 62 of the EP&A Act; and
2. the Draft LEP complying with any relevant Ministerial Direction issued pursuant to section 117 of the EP&A Act; and
3. the Draft LEP not being the subject of an unresolved objection by a public authority or body; and
4. the Draft LEP not containing provisions suspending laws pursuant to section 28 of the EP&A Act; and
5. compliance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 entitled, 'LEPs and Council Land - Guideline for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council'; and
6. compliance with instructions issued by the Director General with respect to the preparation and content of reports prepared pursuant to section 69 of the EP&A Act.



GUIDANCE IN THE USE OF THE

WRITTEN AUTHORISATION TO EXERCISE DELEGATION

- The Authorisation attached means that Council is able to exercise the Director General's functions specified on the Authorisation in respect of the nominated draft LEP, and subject to the terms and conditions contained in the Authorisation.
- The Authorisation only applies to, and in respect of, the draft LEP referred to in the Authorisation.
- A copy of the Authorisation should be placed on exhibition with the section 65 certificate and other required material including relevant section 117 directions and the statement required by section 66(1)(b)(iii) of the Act, when exhibiting the draft LEP.
- Where any applicable section 117 direction requires the Director-General to form an opinion or be satisfied as to certain matters, you need to ensure that this is done before exercising functions under the delegation.
- Council is to ensure that all proper care is exercised in undertaking functions pursuant to the delegation as any invalid exercise of delegation will necessarily affect the validity of the resulting LEP. Please note that the delegation may be subject to amendment or revocation at any time (in which case the Council will be notified in writing).
- A copy of the Authorisation should be attached to Council's information when an Opinion is being sought from the Parliamentary Counsel and when sending the section 69 Report to the Minister.