

## 13.4 Public Exhibition of Administrative Planning Proposal

Reference:	5901/50
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
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 inform Council on the exhibition of the Planning Proposal to undertake certain administrative amendments to *Wingecarribee Local Environmental Plan 2010* in order to provide a stronger and clearer strategic framework for land use planning and the assessment of Development Applications.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

### RECOMMENDATION

1. **THAT** Council resolve to proceed with the making of the amendments to WLEP 2010 contained within the Planning Proposal as exhibited.
2. **THAT** Council continue to liaise with Rural Fire Service to seek to resolve that outstanding matter.
3. **THAT** Council seek an amended Gateway with regard to the outstanding matters.

### REPORT

#### **BACKGROUND**

*Wingecarribee Local Environmental Plan 2010* (WLEP 2010) was made on 16 June 2010 and may be amended as required through the process of a Planning Proposal. This report outlines a set of proposed amendments, mostly administrative, intended to strengthen and clarify the strategic framework within which land use planning and development assessments can occur. The proposed amendments are of five types:

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1. Amendments to Existing Clauses
2. Proposed New Clauses
3. Amendments to the Land Use Table
4. Flood Maps
5. Site Specific Amendments

Council resolved on 14 December 2016 to prepare a Planning Proposal for a Gateway Determination to proceed with a Planning Proposal to amend WLEP 2010 as follows for the intended benefits described:

	Proposed Amendment	Intended Benefit
<b>A</b>	<b>Amendments to Existing Clauses</b>	
<b>A1</b>	<b>Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones</b> - to insert a new subclause (3) (ac) with wording to be confirmed in consultation with the Parliamentary Counsel's Office, but which would have the effect of enabling a dwelling entitlement on a lot subdivided in accordance with Clause 4.6(6)(b).	The effect of this subclause is to clarify that an allotment created under clause 4.2A which is below the minimum lot size (being only 90% thereof), also enables the erection of a dwelling house on that lot, as the clause intends.
<b>A2</b>	<b>Clause 4.2B Boundary changes between lots in certain rural, residential and environment protection zones</b> - to amend subclause (3)(c) to state <b><i>"a lot that is less than 2 hectares, unless one or both of the lots is already below 2 hectares."</i></b>	<p>The proposed amendment will ensure that any lot already at or below 2ha in area can use this clause to effect a boundary adjustment.</p> <p>All applications under this clause would be merit assessed in accordance with subclause (4) which addresses site constraints, adjacent land uses and amenity. Particular attention would be paid with lots below 2 hectares to ensure that only minimal and justifiable boundary adjustments were supported.</p>
<b>A3</b>	<b>Clause 7.1 Development on existing lots in Zones R2, R3 and R5</b> - to amend subclause (1) remove the wording <b><i>were created before the commencement of this Plan and</i></b> so that subclause (1) would read:  <b><i>This clause applies to lots in Zone R2 Low Density Residential, Zone R3</i></b>	The intent of this clause is to limit the construction of dwellings on existing lots to those that comply with the provisions of subclause (1)(a-d) with non-compliant lots being denied a dwelling entitlement. Legal opinion regarding this clause is that, because of the way it is currently written, the clause actually has the opposite effect in exempting non-

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	<p><b>Medium Density Residential and R5 Large Lot Residential that:</b></p> <p><b>(a) have an area that is at least the minimum lot size specified for that lot on the Lot Size Map, or</b></p> <p><b>(b) are on land on which the erection of a dwelling house was permissible immediately before that commencement, or</b></p> <p><b>(c) if located in Zone R2 Low Density Residential at Hill Top, have:</b></p> <p><b>(i) an area of not less than 700 square metres, and</b></p> <p><b>(ii) a width of not less than 20 metres at the front alignment of the dwelling house, or</b></p> <p><b>(d) if located in R5 Large Lot Residential west of Cumberteen Street, Hill Top, have an area of not less than 4,000 square metres.</b></p>	<p>compliant lots from the operation of subclauses (2) and (3).</p> <p>The proposed amendment will rectify this situation.</p>
A4	<p><b>Clause 7.3 Earthworks</b> to insert a new subclause (2)(aa) and to amend subclause (2)(a) as follows:</p> <p><b>(2) (aa) the land is not shown as “Flood Planning Area” on the Flood Planning Area Map, and</b></p> <p><b>(2) (a) the work does not alter the ground level (existing) by more than 800 600 millimetres, or...</b></p>	<p>These amendments will ensure that WLEP 2010 is consistent with the Exempt and Complying State Environmental Planning Policy which limits the extent of alteration to the ground level to 600 millimetres.</p>
A5	<p><b>Schedule 2 Exempt Development - Public events</b> – to remove (c) from the clause and amend Council's standard licence or hire agreement to incorporate a Risk Management Evaluation Plan.</p> <p><i>Use of public land (including a public reserve or public road) for public events, including stalls, meetings, exhibitions, entertainment or similar community, cultural or commercial purposes:</i></p> <p><b>(a) proposed event must be consistent with any applicable plan of management</b></p>	<p>The intent of the proposed amendment is to remove the requirement for the lodgement of a DA for even the smallest community gathering, requiring instead a Risk Management Evacuation Plan provided by the applicant as part the licence or hire agreement referred to in (b).</p>

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	Proposed Amendment	Intended Benefit
	<p><i>under the Local Government Act 1993 for the land,</i></p> <p><i>(b) development must be carried out in accordance with a licence or hire agreement granted by the Council,</i></p> <p><i>(c) must not be located on bush fire prone land.</i></p>	
<b>B</b>	<b>Proposed New Clauses</b>	
<b>B1</b>	<p><b>4.1A Minimum subdivision lot size for strata plan schemes in certain rural and residential zones</b></p> <p><i>(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.</i></p> <p><i>(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:</i></p> <p><i>(a) Zone RU1 Primary Production,</i></p> <p><i>(b) Zone RU2 Rural Landscape,</i></p> <p><i>(c) Zone RU4 Primary Production Small Lots,</i></p> <p><i>(d) Zone R5 Large Lot Residential.</i></p> <p><i>(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 <u>Strata Schemes (Freehold Development) Act 1973</u> or <u>Strata Schemes (Leasehold Development) Act 1986</u>) is not to be less than the minimum size shown on the <u>Lot Size Map</u> in relation to that land.</i></p> <p><i>Note. Part 6 of <u>State Environmental</u></i></p>	<p>The intent of this proposed clause is to ensure that the subdivision of any land under strata title is limited to the minimum lot size applicable under WLEP 2010.</p>

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	<i>Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.</i>	
<b>B2</b>	<p><b>4.1AA Minimum subdivision lot size for community title schemes</b></p> <p><i>(1) The objective of this clause are as follows:</i></p> <p style="padding-left: 40px;"><i>(a) to ensure that land to which this clause applies is not fragmented by subdivision that would create additional dwelling entitlements.</i></p> <p><i>(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:</i></p> <p style="padding-left: 40px;"><i>(a) Zone RU1 Primary Production,</i></p> <p style="padding-left: 40px;"><i>(b) Zone RU2 Rural Landscape,</i></p> <p style="padding-left: 40px;"><i>(c) Zone RU4 Primary Production Small Lots,</i></p> <p style="padding-left: 40px;"><i>(d) Zone R5 Large Lot Residential.</i></p> <p><i>(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.</i></p>	The intent of this proposed clause is to ensure that the subdivision of any land under community title is limited to the minimum lot size applicable under WLEP 2010.
<b>C</b>	<b>Amendments to Land Use Tables</b>	
<b>C1</b>	<p><b>SP3 Tourist Zone</b></p> <p>Include as <i>permitted with consent</i> 'Extensive agriculture' and 'Intensive plant agriculture' (thereby excluding</p>	The proposed amendments will increase the range of agricultural based land uses within the SP3 Tourist zone as recommended in the Wingecarribee Local Planning Strategy 2015-2031

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	Proposed Amendment	Intended Benefit
	<p>them from the group term 'Agriculture' which is <i>prohibited</i>).</p> <p>Include as <i>permitted with consent</i> 'Agricultural produce industry' (thereby removing it from the group term 'Rural Industries' which is <i>prohibited</i>).</p> <p>Remove 'Farm buildings' from <i>prohibited</i> (thereby making them <i>permitted with consent</i>)</p>	<p>which included recommendation 5.5 - <i>Initiate a Planning Proposal to permit with consent in the SP3 Tourist zone the following land uses – Extensive agriculture, Intensive plant agriculture, Agricultural produce industry and Farm buildings.</i></p>
<b>C2</b>	<p><b>B5 Business Development</b></p> <p>Remove 'Educational Establishments' from the <i>prohibited</i>, category of the B5 Business development land use table (thereby making them <i>permitted with consent</i>).</p>	<p>This amendment will ensure that WLEP 2010 is consistent with the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).</p>
<b>D</b>	<b>Inclusion of Adopted Flood Study Maps</b>	
<b>D1</b>	<p>Include adopted flood studies on the WLEP 2010 Flood Planning Maps.</p>	<p>To ensure that WLEP 2010 accurately reflects Council's adopted Flood Study data.</p>
<b>E</b>	<b>Site Specific Amendments</b>	
<b>E1</b>	<p>Remove a portion of Lot 3 DP 1114582 (The Old Milk Factory, 33-37 Station Street, Bowral) from the Land Reservation Acquisition Map as it is no longer relevant.</p>	<p>The Land Reservation Acquisition designation for the site was removed under WLEP 2010 Amendment #4 but the relevant map was not amended as it should have been.</p>
<b>E2</b>	<p>Rezone Lot 2 DP 1149654 (4 Tyree Place Braemar) from IN1 General Industrial to IN2 Light Industrial.</p>	<p>The zoning of the subject land to IN1 under WLEP 2010 effectively removed the consent already granted under WLEP 1989 (06/0843). This amendment will reinstate that approved land use.</p>
<b>E3</b>	<p>Amend the heritage listing on Lot 1 DP 181535 (20 Warreeah Lane Kangaloon) and Lot 1 DP 903442 (Uniting Church and cemetery) to cover the Church and cemetery only.</p>	<p>A drafting error with the making of WLEP 2010 included Lot 1 DP 181535 in the Heritage Listing of the Uniting Church and Cemetery when only that property should be listed.</p>

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The purpose of this report is to inform Council of the progress of the Planning Proposal which includes agency referrals and public consultation.

## **REPORT**

A Planning Proposal was prepared and lodged with the Department of Planning and Environment (the Department) for a gateway Determination on 8 February 2017.

The Planning Proposal included all matters contained in the Report to Council of 14 December 2016 as considered above as well as an outstanding Resolution of Council from 13 March 2013 to include the properties Braemar Garden World and Nattai Ponds on the relevant Urban Release Area Map of WLEP 2010.

A Gateway Determination to proceed with the Planning Proposal was issued by the Department on 9 May 2017. Council also received written authorisation to exercise delegation in regard to this matter.

The Planning Proposal has progressed in accordance with the Gateway Determination as reported in the Consultation section below.

## **CONSULTATION**

### **Internal Consultation**

Internal consultation occurred with the Town Planners and Accredited Certifiers prior to the report to Council of 14 December 2016 on which the Planning Proposal was based.

### **External Consultation**

Prior to placing the Planning Proposal on public exhibition the Gateway Determination required Council to consult with the following agencies:

- Water NSW
- NSW Rural Fire Service
- Office of Environment & Heritage

This was done and the following responses were received.

#### **Water NSW**

- No objection to any proposed amendment, however it was suggested that, with regard to the earthworks amendment, the following be included:

*Development consent is required for earthworks greater than 2,500m<sup>2</sup> in areas within the Sydney Drinking Water Catchment.*

Council has no objection to this suggested inclusion.

- Directed Council to relevant obligations at the DA stage. These are noted.
- Requested involvement in preparation of DCPs associated with inclusion of the Braemar Garden World and Nattai Ponds Urban Release Areas on the relevant WLEP 2010 maps.



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#### Office of Environment & Heritage

- No objection to any proposed amendment.
- Directed Council to relevant obligations at the DA stage. These are noted.
- Requested involvement in preparation of DCPs associated with inclusion of the Braemar Garden World and Nattai Ponds Urban Release Areas on the relevant WLEP 2010 maps.

#### NSW Rural Fire Service (RFS)

Although the RFS had no objection to any other aspect of the Planning Proposal, it did object to the proposed amendment to Schedule 2 Exempt Development (Public Events) regarding the removal of sub clause (c) which would allow a public event to occur on bushfire prone land as exempt development.

The purpose of this proposed amendment was to relieve local organisation of the burden of preparing, lodging and paying for a Development Application each time they wanted to hold a small outdoor event on bushfire prone land.

The RFS concerns were not able to be resolved in a timely manner, therefore, in the interests of placing the Planning Proposal on public exhibition in time to report back to Council before the end of the year, this matter was excluded from the public exhibition and a note to that effect included in the exhibition material.

The Planning Proposal was updated to reflect these Agency Responses as indicated above.

It also contained two (2) Notations with regard to matters included in the Planning Proposal submitted for a Gateway Determination which were excluded for exhibition purposes, namely:

(1) Deferral of Amendment to Schedule 2 Exempt Development - Public Events (A5).

As explained above, this matter was deferred pending the resolution of discussions with the RFS regarding the subject clause and its proposed removal from WLEP 2010.

(2) Deferral of Inclusion of Braemar Garden World and Nattai Ponds on WLEP 2010 Urban Release Area Map (E4).

While it is noted that there is a resolution of Council to this effect, previous advice from the Department of Planning and Environment was inconclusive as to whether such a notation was warranted given the scale of the developments and the fact that site specific DCPs have been adopted by Council. In order to place the Planning Proposal on exhibition in a timely manner, it was decided to also defer this matter for further clarification from the Department.

#### Community Engagement

The Planning Proposal was placed on public exhibition for a period of 28 days from 8 November to 5 December 2017. Notices were placed in the Southern Highland News for each week of the exhibition period and copies of the Planning Proposal and all associated documentation were placed in Council's Customer Service Centre and all libraries. All exhibition material was also made available on Council's website via the 'What's On Exhibition' page.



### **Submissions Received**

One (1) submission has been received. It supports all of the proposed amendments.

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### **SUSTAINABILITY ASSESSMENT**

- **Environment**

Most of the proposed amendments to existing clauses and the proposed new clauses are intended to ensure that Rural and Environmental Protection zones in particular are protected from inappropriate subdivision and development. The incorporation of adopted flood studies into WLEP 2010 and the proposed amendments to Earthworks provisions will ensure the appropriate management of flood liable land within the Shire.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

Proposed amendments to the SP3 Tourist zone will enable the ongoing use of such land for agricultural purposes providing a stronger base for rural tourism opportunities.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Certain proposed amendments will improve the relevance of WLEP 2010 to current development pressures and ensure that it remains consistent with relevant State Environmental Planning Policies and Ministerial Directions.

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### **IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

There are no Fit for the Future implications associated with this report.

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### **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications. The Planning Proposal is being undertaken by Council Strategic Planning staff.

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### **RELATED COUNCIL POLICY**

There are no other related Council policies associated with this report.

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## OPTIONS

The options available to Council are:

### Option 1

Proceed with the Planning Proposal as exhibited and seek an Amended Gateway to exclude those matters which were deferred for subsequent resolution.

### Option 2

Not proceed with the Planning Proposal as exhibited.

Option 1 is the recommended option to this report.

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## CONCLUSION

The Wingecarribee Local Environmental Plan 2010 is the principal statutory document governing development within the Shire. The proposed clause and map amendments seek to ensure that WLEP 2010 remains up to date and consistent with Council's adopted studies and with State Environmental Planning Policies.

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## ATTACHMENTS

There are no attachments to this report.