



13.4 Planning Proposal to Amend Certain Clauses and Maps in WLEP 2010

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Services
Link to Corporate Plan: Strengthen the connectivity, liveability and vibrancy of
towns and villages

PURPOSE

The purpose of this report is to recommend certain administrative amendments to *Wingecarribee Local Environmental Plan 2010* to provide a stronger and clearer strategic framework for land use planning and the assessment of Development Applications.

RECOMMENDATION

THAT a Planning Proposal to undertake certain administrative amendments to *Wingecarribee Local Environmental Plan 2010* as described in this report be prepared and submitted to the Department of Planning and Environment for a Gateway Determination under s.56 of the *Environmental Planning and Assessment Act 1979*.

REPORT

BACKGROUND

Wingecarribee Local Environmental Plan 2010 (WLEP 2010) was 'notified' on the NSW Legislation website (formerly known as 'gazetted') on 16 June 2010. Since then several amendments have been made through the process of a Planning Proposal. This report outlines a set of proposed administrative amendments which, based on experience in working with WLEP over the past five years, would strengthen and clarify the strategic framework within which land use planning and development assessments can occur. These matters would be addressed in a single Planning Proposal. The proposed amendments are discussed below.

REPORT

Proposed amendments are considered under the following headings:

1. Amendments to Existing Clauses
2. Proposed New Clauses
3. Amendments to the Land Use Table

4. Flood Maps
5. Site Specific Amendments

1. Amendments to Existing Clauses

In order to provide a context for discussion of each proposed amendment, the relevant section of the current clause is provided.

- **Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones**

- (1) *The objectives of this clause are as follows:*
 - (a) *to minimise the introduction of unplanned rural residential development, and*
 - (b) *to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural zones.*
- (2) *This clause applies to land in the following zones:*
 - Zone RU1 Primary Production,*
 - Zone RU2 Rural Landscape,*
 - Zone RU4 Primary Production Small Lots,*
 - Zone E3 Environmental Management,*
 - Zone E4 Environmental Living.*
- (3) *Development consent must not be granted for the erection of a dwelling house or dual occupancy on a lot in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot is:*
 - (a) *a lot that is at least the minimum lot size specified for that lot by the [Lot Size Map](#), or*
 - (ab) *a lot created under clause 4.2C (3) (a) or clause 4.2C (5) (b), or*
 - (b) *a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or*
 - (c) *a lot resulting from a subdivision for which development consent (or its equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (d) *an existing holding.*

Discussion: This clause permits residential development on certain rural and environmental protection zones. Currently, the clause does not address an undersized lot created under WLEP 2010. Such an allotment can be created under the provisions of clause 4.6(6)(b), which states “Development consent must not be granted under this clause



for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard."

The effect of this subclause is to create an allotment which is below the minimum lot size (being only 90% thereof), however without reference to that outcome in clause 4.2A, it is not clear that a dwelling house could be erected on the lot as intended.

Proposed amendment: It is proposed 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).

• **Clause 4.2B Boundary changes between lots in certain rural, residential and environment protection zones**

- (1) *The objective of this clause is to permit the boundary between 2 lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.*
- (2) *This clause applies to land in any of the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone RU3 Forestry,*
 - (d) *Zone RU4 Primary Production Small Lots,*
 - (e) *Zone R5 Large Lot Residential,*
 - (f) *Zone E2 Environmental Conservation,*
 - (g) *Zone E3 Environmental Management,*
 - (h) *Zone E4 Environmental Living.*
- (3) *Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 adjoining lots, being land to which this clause applies, if the subdivision will not result in:*
 - (a) *an increase in the number of lots, and*
 - (b) *an increase in the number of dwelling houses, secondary dwellings or dual occupancies on, or dwelling houses, secondary dwellings or dual occupancies that may be erected on, any of the lots, and*
 - (c) *a lot that is less than 2 hectares.*

Discussion: The purpose of this clause is to enable boundary adjustments between lots which are already below the minimum lot size by means of a Development Application (DA) instead of a Planning Proposal.



In drafting the clause, Council specified that it should not result in a lot less than 2 hectares in area. However, the R5 zone generally, and some rural or environmental zoned land, is already less than 2 hectares and therefore Clause 4.2B cannot be used in those situations to achieve a boundary adjustment.

Proposed amendment: It is proposed to amend subclause (3)(c) to state “**a lot that is less than 2 hectares, unless one or both of the lots is already below 2 hectares.**” 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.

The option of removing R5 from the clause was considered, but, this would still not address rural and environmental zoned lots which are already below 2 hectares. With no other mechanism under WLEP 2010 or the Exempt and Complying State Environmental Planning Policy (SEPP) to enable even a small boundary adjustment in these situations, such adjustments would require a Planning Proposal.

• **Clause 7.1 Development on existing lots in Zones R2, R3 and R5**

- (1) *This clause applies to lots in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and R5 Large Lot Residential that were created before the commencement of this Plan and:*
 - (a) *have an area that is at least the minimum lot size specified for that lot on the Lot Size Map, or*
 - (b) *on which the erection of a dwelling house was permissible immediately before that commencement, or*
 - (c) *if located in Zone R2 Low Density Residential at Hill Top, have:*
 - (i) *an area of not less than 700 square metres, and*
 - (ii) *a width of not less than 20 metres at the front alignment of the dwelling house, or*
 - (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.*
- (2) *Despite any other provision of this Plan, development consent may be granted for the erection of a dwelling house, dual occupancy development or multi dwelling housing on a lot to which this clause applies, if the development is permissible with consent on the land.*
- (3) *Development consent may only be granted under this clause for development on lots referred to in subclause (1) (d) if the lots, in the opinion of the consent authority, are suitable for such a purpose having regard to:*
 - (a) *the availability of vehicular access to the land, and*
 - (b) *the availability of public utility services to the land, and*
 - (c) *the physical, geotechnical, drainage, flooding and bush fire risk characteristics of the land.*



Discussion: 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-compliant lots from the operation of subclauses (2) and (3).

Proposed amendment: To rectify this situation and provide a clause which operates as originally intended, it is proposed to amend subclause (1) remove the wording ~~were created before the commencement of this Plan and~~ so that subclause (1) would read:

This clause applies to lots in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and R5 Large Lot Residential that:

- (a) have an area that is at least the minimum lot size specified for that lot on the Lot Size Map, or***
- (b) are on land on which the erection of a dwelling house was permissible immediately before that commencement, or***
- (c) if located in Zone R2 Low Density Residential at Hill Top, have:***
 - (i) an area of not less than 700 square metres, and***
 - (ii) a width of not less than 20 metres at the front alignment of the dwelling house, or***
- (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.***

• **Clause 7.3 Earthworks**

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

- (a) to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land,*
- (b) to allow earthworks of a minor nature without separate development consent.*

(2) Development consent is required for earthworks unless:

- (a) the work does not alter the ground level (existing) by more than 800 millimetres, or*
- (b) the work is exempt development under this Plan or another applicable environmental planning instrument, or*
- (c) the work is ancillary to other development for which development consent has been granted.*

Discussion: Subclause (2)(a) is inconsistent with the provisions of the Exempt and Complying State Environmental Planning Policy which limits the extent of alteration to the ground level to 600 millimetres. Amending this subclause brings it into line with the SEPP.

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Subclause (2) does not consider flood prone land and the potential for earthworks to impact overland flow. By including such land in subclause (2), an application to undertake earthworks on flood prone land needs to be assessed by Council.

Proposed amendment: To rectify these issues it is proposed to insert a new subclause (2)(aa) and to amend subclause (2)(a) as follows:

(2) (aa) the land is not shown as “Flood Planning Area” on the Flood Planning Area Map, and

(2) (a) the work does not alter the ground level (existing) by more than 800 600 millimetres, or...

- **Schedule 2 Exempt Development**

Public events

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:

- (a) proposed event must be consistent with any applicable plan of management under the Local Government Act 1993 for the land,*
- (b) development must be carried out in accordance with a licence or hire agreement granted by the Council,*
- (c) must not be located on bush fire prone land.*

Discussion: The intent of subclause (c) is to ensure community safety by requiring that a Development Application (DA) be lodged if the event is to be held on bushfire prone land. However, this requires the lodgement of a DA for even the smallest community gathering. In these cases a Risk Management Evacuation Plan provided by the applicant as part the licence or hire agreement referred to in (b) would be sufficient.

Proposed amendment: Remove (c) from the clause and amend Council’s standard licence or hire agreement to incorporate a Risk Management Evaluation Plan.

2. Proposed New Clauses

The following new clauses are proposed for inclusion in WLEP 2010 as discussed below.

- **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 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 are 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.*

Discussion: The intent of both proposed clauses 4.1A and 4.1AA is ensure that the subdivision of any land under a strata or community title scheme is limited to the minimum lot size applicable under WLEP 2010. The need for such a clause is because of the wording of clause 4.1(4). Clause 4.1 states:

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.*

By excluding strata and community title scheme subdivisions from the provisions of clause 4.1, it could be interpreted that subdivision below the minimum lot size is permitted for strata and community title schemes. The proposed new clauses clarify the development standard with regard to strata and community title subdivisions.

3. Amendments to the Land Use Table

The land Use Table within WLEP provides, for each zone, a set of objectives together with a list of land uses which are *Permitted without consent*, *Permitted with consent* or *Prohibited*. It is proposed to amend the land use table for the following zones are described below.

• SP3 Tourist Zone

The Wingecarribee Local Planning Strategy 2015-2031, adopted by Council on 23 March 2016, included recommendation 5.5 - *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.*

It is proposed to action this recommendation as part of this Planning Proposal. To give effect to the recommendation the following amendments to the SP3 Tourist land use table are required:

- Include as *permitted with consent* 'Extensive agriculture' and 'Intensive plant agriculture' (thereby excluding them from the group term 'Agriculture' which is *prohibited*).
- Include as *permitted with consent* 'Agricultural produce industry' (thereby removing it from the group term 'Rural Industries' which is *prohibited*).
- Remove 'Farm buildings' from *prohibited* (thereby making them *permitted with consent*)

WLEP 2010 defines the above terms as follows:

- **agriculture** means any of the following:
 - (a) aquaculture,



- (b) *extensive agriculture,*
- (c) *intensive livestock agriculture,*
- (d) *intensive plant agriculture.*
- **agricultural produce industry** means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.
- **extensive agriculture** means any of the following:
 - (a) *the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,*
 - (b) *the grazing of livestock for commercial purposes,*
 - (c) *bee keeping,*
 - (d) *a dairy (pasture-based).*
- **farm building** means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.
- **intensive plant agriculture** means any of the following:
 - (a) *the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),*
 - (b) *horticulture,*
 - (c) *turf farming,*
 - (d) *viticulture.*
- **rural industry** means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:
 - (a) *agricultural produce industries,*
 - (b) *livestock processing industries,*
 - (c) *composting facilities and works (including the production of mushroom substrate),*
 - (d) *sawmill or log processing works,*
 - (e) *stock and sale yards,*
 - (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*



- **B5 Business Development**

In reviewing the land use tables within WLEP 2010 it became apparent that '*Educational Establishments*' are *prohibited* in the B5 Business development zone. This prohibition is contrary to the provisions of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).

As the SEPP takes precedence over WLEP 2010, it is proposed to remove '*Educational Establishments*' from the *prohibited*, category of the B5 Business development land use table, thereby making them *permitted with consent* in accordance with the SEPP.

WLEP 2010 defines ***Educational Establishments*** as meaning a building or place used for education (including teaching), being:

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

4. Flood Maps

A number of Flood Studies and Plans have been adopted by Council since WLEP 2010 was first made and these should be included on the Flood Planning Maps which form part of the LEP.

- *Burradoo BU2 Catchment*
- *Mittagong Rivulet*
- *Whites Creek*
- *Wingecarribee River*

The WLEP 2010 Flood Planning Maps will be amended to include the maps which form part of these adopted studies.

5. Site Specific Amendments

Three (3) site specific amendments are proposed as discussed below:

- **The Old Milk Factory, Bowral**

Amendment No 4 to WLEP 2010, made on 11 May 2012, included an amendment to the Land Zoning Map to remove the SP2 Infrastructure zone from a portion of Lot 3 DP 1114582 (The Old Milk Factory, 33-37 Station Street, Bowral) as it was no longer required for the Station Street realignment. At that time, the Land Reservation Acquisition Map should have also been similarly amended. The proposed amendment to the Land

Reservation Acquisition Map would rectify this. The location of the land acquisition affectation to be removed is indicated in yellow on **Figure 1** below.



Figure 1 Location of Land Reservation Acquisition affectation to be removed

- **No. 4 Tyree Place Braemar**

The subject land forms part of the Bunnings Warehouse (No. 2) and Tenancy (No. 4) located in Tyree Place Braemar as indicated in **Figures 2 and 3** below.

The Development Application (06/0843) was approved on 9 February 2007 under Wingecarribee Local Environmental Plan 1989 (WLEP 1989). Bunnings 'warehouse' was subsequently erected and commenced trading in early 2008. The bulky goods warehouse ('tenancy') was also erected and, although substantially completed, has never received an Occupation Certificate and remains empty. Condition 5 of 06/0843 required that a separate DA would need to be submitted for the fit out and use of the tenancy.

On 16 June 2010, WLEP 2010 came into effect, replacing WLEP 1989. The Bunning sites were incorporated into the broader Northern Gateway IN1 General Industrial zone which prohibits 'Bulky Goods Premises'. (The main Bunnings site operates under the definition of 'Warehouse or Distribution Centre' which is permitted with consent in the IN1 General Industrial zone.)

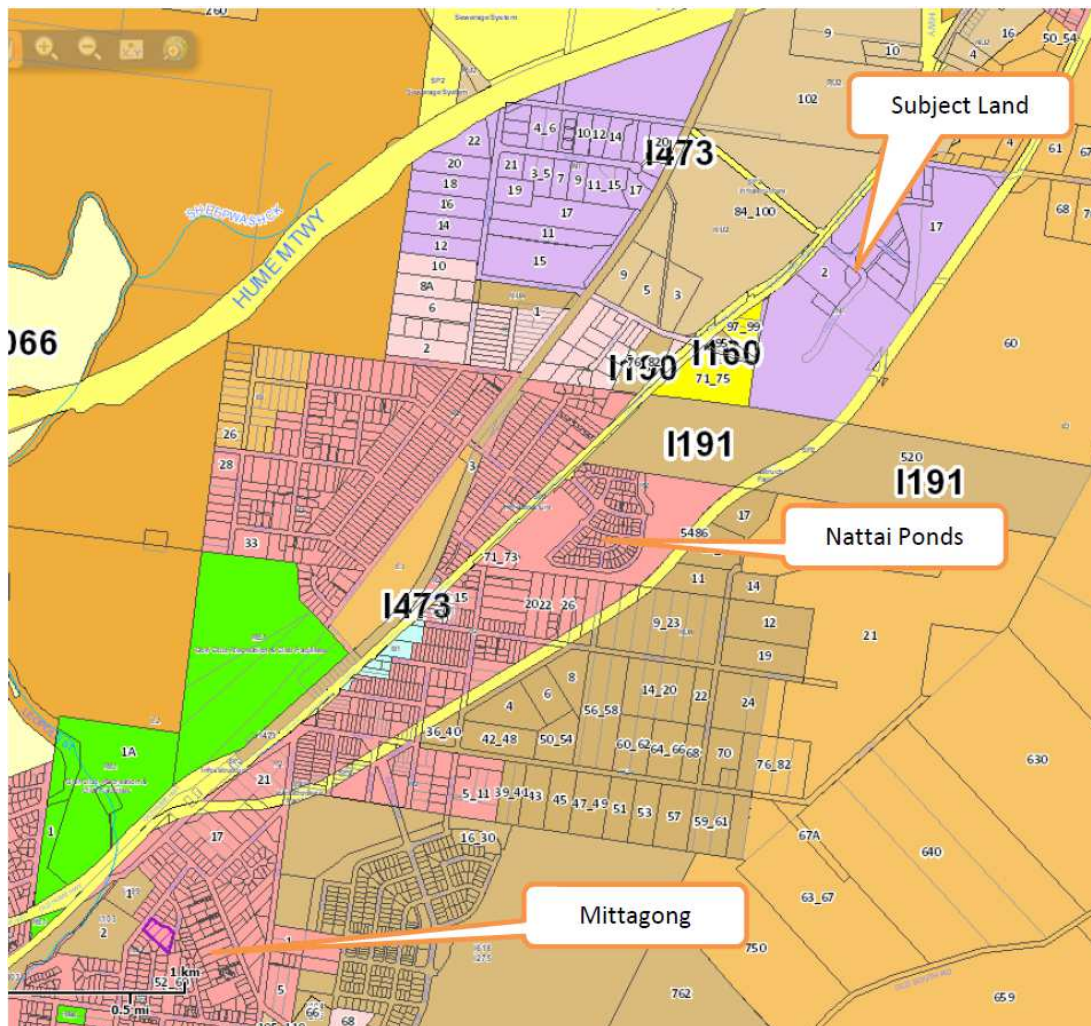


Figure 2 Location of the subject site on Old Hume Highway Braemar

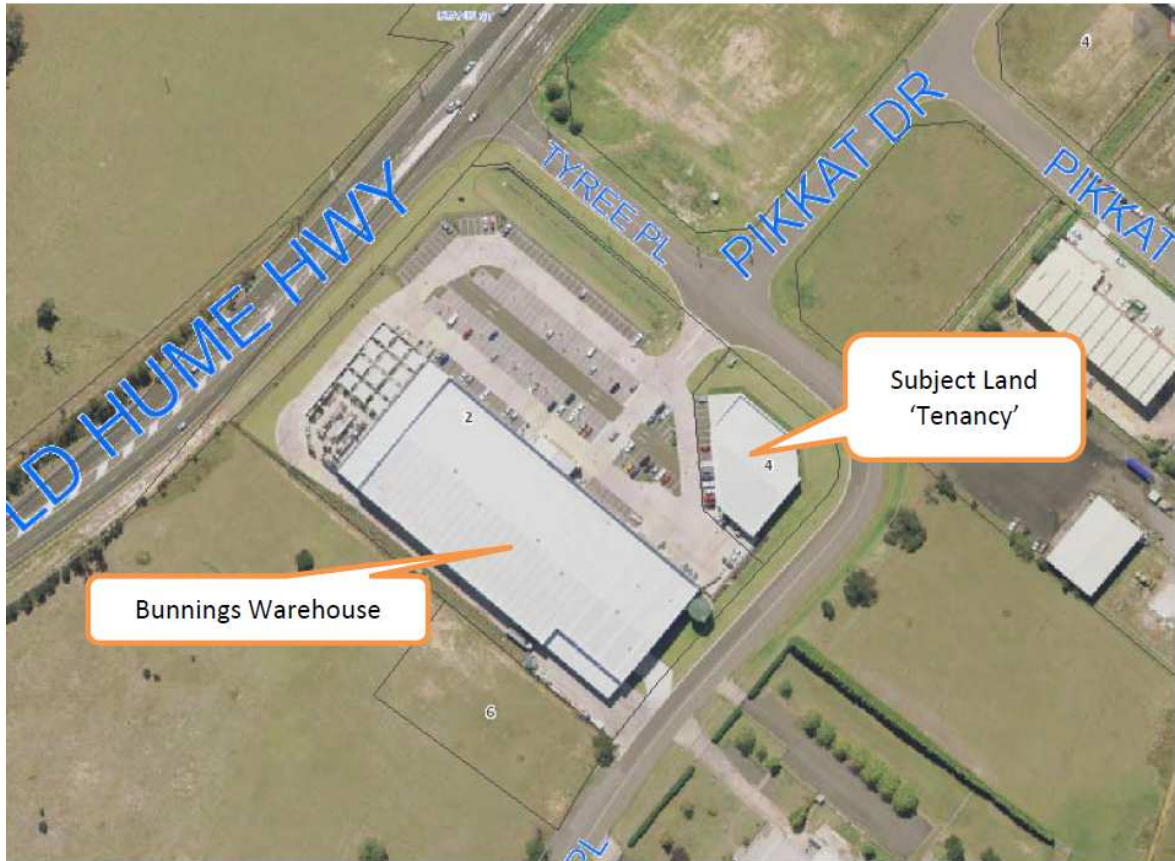


Figure 3 Location of the Bunnings 'Warehouse' and Approved 'Tenancy'

As a consequence of the rezoning to IN1 General Industrial, the 'tenancy' building, which received approval to operate as a "Bulky Goods Premises" under LUA06/0843, is now unable to do so. The building is not suitable for a more general industrial use.

During the preparation of the Wingecarribee Local Planning Strategy 2015-2031, a submission was received requesting that Council rezone the subject land to IN2 Light Industrial to permit use of the 'tenancy' building for the purposes of a 'bulky goods premises'.

At the Ordinary meeting of Council on 23 March 2016 it was resolved:

THAT the rezoning to IN2 of Lot 2 DP 1149654, 4 Tyree Place, Braemar to permit development for the purposes of a bulky good premises be supported for inclusion in the Braemar Precinct Plan of the Wingecarribee Local Planning Strategy 2015-2031.

The matter has been included in this administrative Planning Proposal because the prohibition of a Development Approval granted in 2007 has come about simply due to the intervening introduction of WLEP 2010 and not because of any underlying change in the circumstances prevailing when the application was initially assessed.

It is recommended that the administrative Planning Proposal include rezoning the subject land, No 4 Tyree Place Braemar (Lot 2 DP 1149654) from IN1 General Industrial to IN2 Light Industrial as resolved on 23 March 2016.

- **Lot 1 DP 181535, 20 Warreeah Lane Kangaloon**

The subject land is located on the corner of Warreeah Lane and Kangaloon Road Kangaloon. The land is adjacent to a much smaller parcel containing the Uniting Church and cemetery (Lot 1 DP 903442) which is listed as an Item of Heritage in Schedule 5 of WLEP 2010. These locations are identified on **Figures 4 and 5** below.



Figure 4 Location of the subject land

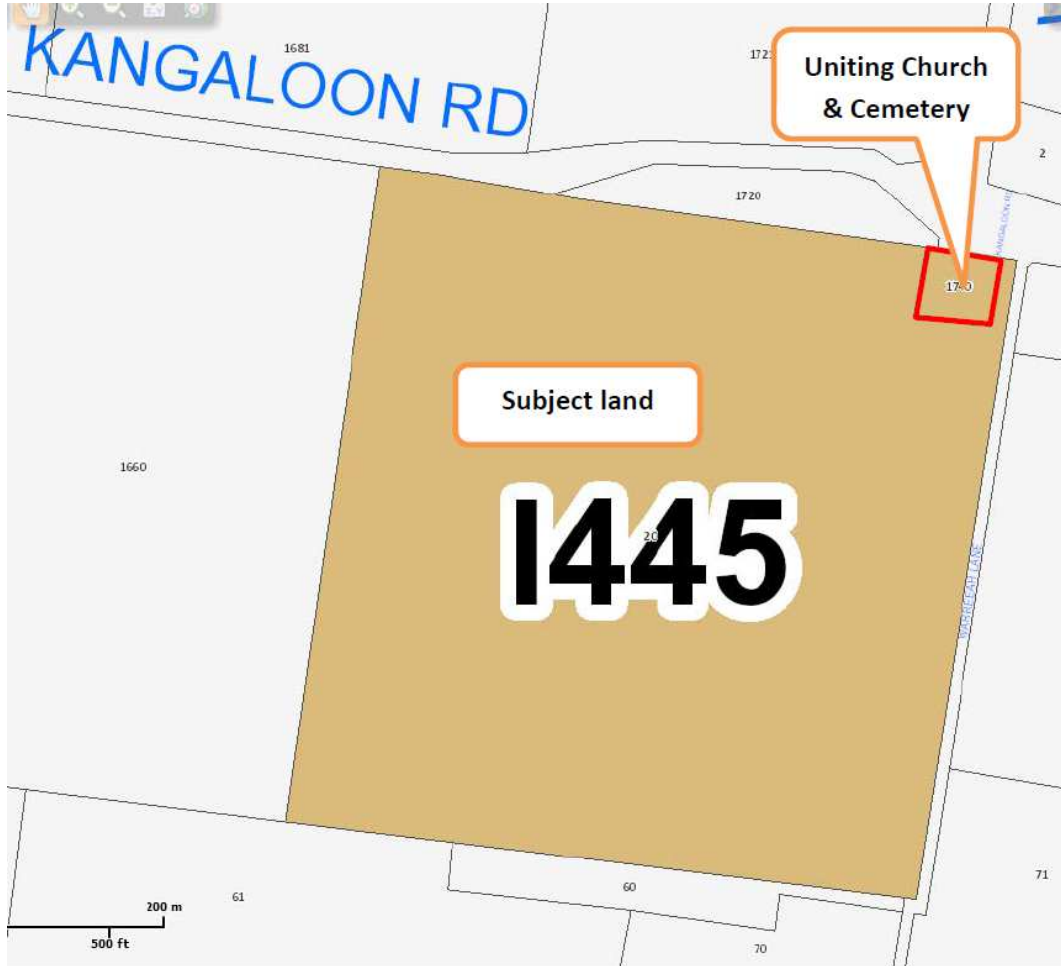


Figure 5 Location of the subject land in relation to the Uniting Church Item of Heritage

The heritage listing is intended to apply only to the Kangaloon Uniting Church and Cemetery (Lot 1 DP 903442). The incorrect listing of the subject land would appear to be a drafting error at the time of preparing the maps for WLEP 2010. There is no other justification for retaining the subject land within the Heritage listing.

It is proposed to amend the listing for the subject land in Schedule 5 to remove the subject land, but retain the Uniting Church and cemetery property, and amend the heritage map accordingly in order to correct this error.

IMPACT ON FIT FOR THE FUTURE PROPOSAL OUTCOME

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



CONSULTATION

Community Engagement

Should Council resolve to proceed with the Planning Proposal in whole or in part, 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 Consultation

Internal referrals would occur as relevant for each part of the Planning Proposal.

External Consultation

External referrals would occur as required by the Gateway Determination and would require consultation with Water NSW as a minimum.

SUSTAINABILITY ASSESSMENT

- **Environment**

Most amendments to existing clauses and the proposed new clauses will 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 ensure that WLEP 2010 remains consistent with State Planning Policies.

COUNCIL BUDGET IMPLICATIONS

There are no budget implications. The Planning Proposal will be undertaken by Council Strategic Planning staff.

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RELATED COUNCIL POLICY

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

OPTIONS

The options available to Council are:

Option 1

Not proceed with the Planning Proposal

Option 2

Proceed with some of the proposed amendments

Option 3

Proceed with the Planning Proposal as set out in this report

Option 3 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 seek to ensure that the LEP remains relevant and strong, serving the community well in ongoing land use management.

ATTACHMENTS

There are no attachments to this report.