

10 September 2014
To the Ordinary Council Meeting

Director's Report
Property and Economic Development

2.4 Wyong Local Environmental Plan 2013 - Major Amendment 1 - Further Amendments

TRIM REFERENCE: F2013/01345 - D11676631

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SUMMARY

On 23 December 2013, Wyong Local Environmental Plan (LEP) 2013 was made by the Director General of the then Department of Planning & Infrastructure, as delegate of the then Minister for Planning & Infrastructure. In January 2014, Council commenced preparation of Major Amendment 1 to the new Wyong LEP 2013.

On 23 July 2014, Council approved the formal commencement of the proposed Wyong LEP 2013 – Major Amendment 1 under Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act), including endorsement of a suite of amendments as listed in that report. However, since this time further necessary amendments to Wyong LEP 2013 have been identified, as described in more detail later in this report. This report seeks Council's endorsement of these additional recommended amendments.

RECOMMENDATION

That Council endorse further amendments to Wyong Local Environmental Plan 2013, as set out within this report.

BACKGROUND

On 23 December 2013, Wyong LEP 2013 was made by the Director General of the then Department of Planning & Infrastructure, as delegate of the then Minister for Planning & Infrastructure. Under Section 73 of the EP&A Act, Councils are required to keep their local environmental plans and development control plans under regular review for the purpose of ensuring that the objectives of the EP&A Act continue to be achieved. Accordingly, Council commenced preparation of Major Amendment 1 to the new Wyong LEP 2013, in January 2014. Major Amendment 1 is predominantly a housekeeping exercise, with the bulk of the proposed amendments involving rectification of anomalies and errors arising from the process of preparing Wyong LEP 2013. The remainder of the proposed amendments involve the incorporation of provisions from adopted Strategies/Plans that were not finalised in time to be incorporated into Wyong LEP 2013. These strategies include the Affordable Housing Study and Retail Study.

On 23 July 2014, Council approved the formal commencement of the proposed Wyong LEP 2013 – Major Amendment 1 under Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act). However, since this time further necessary amendments to Wyong LEP 2013 have been identified.

At the Employment and Economic Development Committee on 2 July 2014, the Committee resolved unanimously as follows:

2.4 Wyong Local Environmental Plan 2013 - Major Amendment 1 - Further Amendments (contd)

- 1 *That the Committee receive the report on Wyong Local Environmental Plan 2013 - Major Amendment 1.*
- 2 *That the Committee recommend a further report to Council on the Delta/Camp Breakaway land around the need to rezone to RE1.*
- 3 *That the Committee recommend that Council clarify the National Park boundary re-adjustments with respect to Council's The Entrance/ Toukley (Magenta) Cycleway proposal.*
- 4 *That the Committee recommend the addition of 1 or 2 trial sites of affordable housing around Council recreation facilities."*

This report addresses Parts 2 and 4 of this resolution.

THE PROPOSAL

Camp Breakaway

In relation to Resolution Number 2, as Delta Electricity is a Government Corporation under the *State Owned Corporations Act 1989*, it is considered that the zoning of this portion of the site to RE2 Private Recreation was an error, as the land is not privately owned. It is therefore proposed that the zoning be changed to RE1 Public Recreation.

Further Amendments

In relation to Resolution Number 4, submission of the Planning Proposal to the Department of Planning and Environment has been delayed. In addition, since this resolution a number of other amendments have been identified that can now be incorporated into Wyong LEP 2013 – Major Amendment 1 as a result of this delay. The following further amendments (including 2 affordable housing trial sites) are now proposed to be added to Wyong LEP 2013 – Major Amendment 1:

#	Keyword	Summary	Recommendation
MAPPING			
Land Reservation Acquisition			
1	Iconic Development Site No.24 (Wyong Swimming Pool & Tennis Club Site	Certain sites were excluded from the Iconic Development Site No.24 (Wyong Swimming Pool & Tennis Club Site) in error as part of preparation of Wyong LEP 2013. As this key site is currently being reviewed under a Masterplan, it is important that these sites are incorporated into the Key Site map under Wyong LEP 2013	Add the following sites to the key sites map (incorporate into wider key site area at Baker Park, Wyong): - Rose Cottage, 7 Rose Street WYONG (Lot 103 DP 788404). - Wyong Scout Hall, 10 Levitt Street WYONG (Lot 102 DP 635277). - SES State Emergency Service, 8 Levitt Street WYONG (Lot 1011 DP 831978).
Land Zoning			
1	1 Drovers Way, Wadalba (Lot 2603 DP 1119536):	The E2 Environmental Conservation zone boundary is not consistent with the approved residential subdivision which is now under construction.	Amend zone from E2 to R2 Low density Residential only for the portions of the property that are included in the residential subdivision. Remainder of the E2 zoned area to remain. Minimum lot size will also need to be

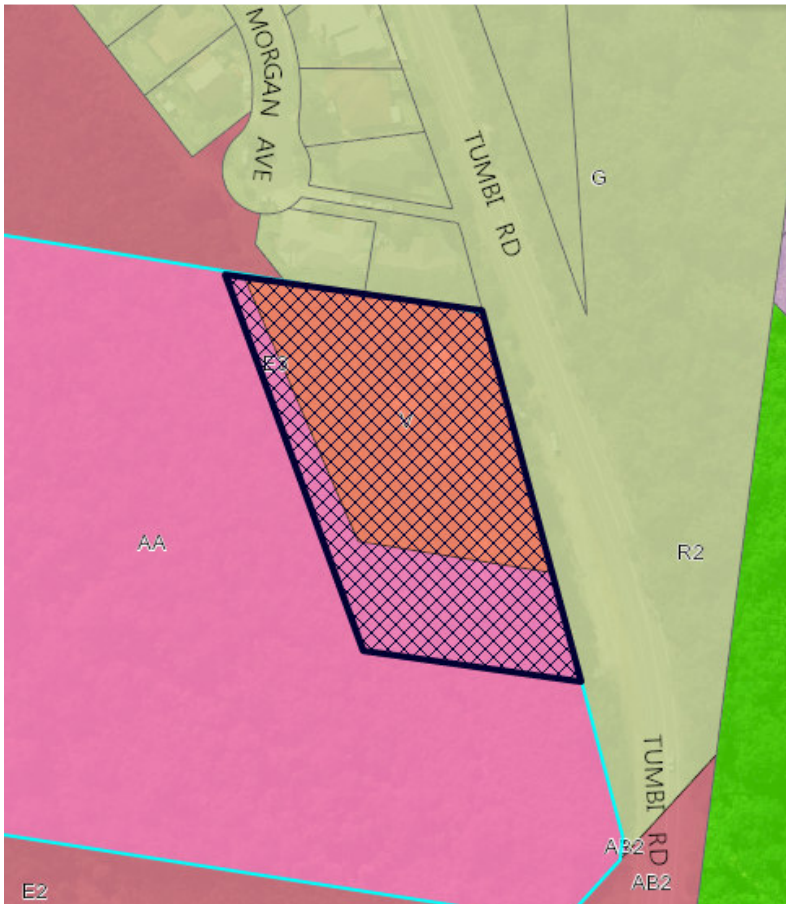
#	Keyword	Summary	Recommendation
			reduced to 450m2 for the land zoned to R2.
2	Wyong – Warnervale Link Road	The proposed Wyong – Warnervale Link Road extends into an area of RE1 Public Recreation zoned land at 1W Britannia Drive, Watanobbi (Lot 3 DP 793403).	Amend zoning of the part of this site that is within the Link Road boundary, from RE1 to SP2 Infrastructure – Roads & Traffic Facility. No minimum lot size amendment required.
3	155 Louisiana Road, Wadalba (Lot 1 DP 369486)	A recommendation of Council's recently adopted Affordable Housing Study was that further investigation be undertaken for the purpose of potential affordable housing development on Council-owned land. The study also identified potential sites based on size of parcel, current use and proximity to shops and public transport. While this site was not specifically identified, the site is appropriately located adjacent to the Wadalba Sporting Complex, Wadalba High School, and Wadalba Local Centre. This site has been selected due to the appropriateness of this site for the purpose of affordable housing. The site is currently zoned RE1 Public Recreation with an area within the north of the site zoned E2 Environmental Conservation. It is proposed to amend existing planning controls to make residential development permissible on the south-western section of the site (approximately 8,000m2), as shown below: 	Amend zoning of a small portion of this site from RE1 Public Recreation to R1 General Residential zone. No other amendments are required. The site is already classified as Operational Land.

Figure 1: Wadalba Sporting Complex with area proposed for rezoning identified with hatching.

#	Keyword	Summary	Recommendation
4	17W Moola Road, Buff Point	A recommendation of Council's recently adopted Affordable Housing Study was that further investigation be undertaken for the purpose of potential affordable housing development on land owned by Wyong Council. The study also identified potential partnership land based on size of parcel, current use and proximity to shops and public transport. While this site was not specifically identified, the site is appropriately located adjacent to the Buff Point Oval. This site has been selected due to the appropriateness of this site for the purpose of affordable housing development. The site is currently zoned RE1 Public Recreation. It is proposed to amend existing planning controls to make residential development permissible on the southern section of the site only (less than 13,000m²), as shown below:	Amend zoning of a small portion of this site from RE1 Public Recreation to R1 General Residential zone. No other amendments are required - The site is classified as Community Land, however it is not proposed to reclassify this site as part of this LEP amendment. Council is currently pursuing a simultaneous amendment to remove Community classification to all its properties.



Figure 2: Buff Point Oval with area proposed for rezoning identified with hatching.

#	Keyword	Summary	Recommendation
Lot Size			
1	91 Tumbi Road, Tumbi Umbi	The lot size polygon applied to this site does not align with the land zoning polygon for the E3 Environmental Management Zone. As a result, the 2,500m² minimum lot size only applies to a portion of the E3 Environmental Management zoned land. The hatched area below identifies the extent of the E3 Environmental Management Zone, as compared to the Lot Size which does not extend across the entire section of E3 land: 	Amend Lot Size map so that the entire E3 Environmental Management zone is covered by the 2,500m² minimum lot size for this site.
Figure 3: Area proposed for to be consistently mapped as 2,500m² minimum lot size.			
INSTRUMENT			
Part 4 - Principle Development Standards			
1	4.2B – Erection of dual occupancies and dwelling houses on land in certain rural and environment	This clause has been found to be difficult to interpret by Council's Development Planners. It is recommended that some minor amendments are made to make the intent of this clause clearer.	Amend the clause as follows (new text in Bold, deleted text in strikethrough): (1) The objectives of this clause are as follows: (a) to minimise unplanned rural residential development, (b) to enable the replacement of lawfully erected dual occupancies and dwelling houses in certain rural and environment protection zones. (2) This clause applies to land in the following

#	Keyword	Summary	Recommendation
	protection zones		zones: (a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone RU6 Transition, (d) Zone E3 Environmental Management. (3) Development consent must not be granted for the erection of a dual occupancy or dwelling house on land to which this clause applies unless the land: (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or (b) is a lot created before this Plan commenced and on which the erection of a dual occupancy or dwelling house was permissible immediately before that commencement, or (c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dual occupancy or dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or (d) is an amalgamated lot on which the erection of a dual occupancy or dwelling house was permissible immediately before this Plan commenced, or (e) would have been a lot referred to in paragraph (a), (b), (c) or (d) had it not been affected by: i. minor realignment of its boundaries that did not create an additional lot, or ii. a subdivision creating or widening a public road or public reserve or for another public purpose, or iii. a consolidation with an adjoining public road or public reserve or for another public purpose. Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

#	Keyword	Summary	Recommendation
			(3A) Development consent must not be granted for the erection of a dual occupancy on land to which this clause applies unless the land: (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or (b) is a lot created before this Plan commenced and on which the erection of a dual occupancy was permissible immediately before that commencement, or (c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or (d) is an amalgamated lot on which the erection of a dual occupancy was permissible immediately before this Plan commenced, or (e) would have been a lot referred to in paragraph (a), (b), (c) or (d) had it not been affected by: i. minor realignment of its boundaries that did not create an additional lot, or ii. a subdivision creating or widening a public road or public reserve or for another public purpose, or iii. a consolidation with an adjoining public road or public reserve or for another public purpose. (4) Development consent must not be granted under subclause (3) or (3A) unless: (a) in the case of a dwelling house, no dual occupancy or dwelling house has been erected on the land, and or (b) in the case of a dual occupancy, no dual occupancy or dwelling house has been erected on the land, and (c) if a development application has been made for development for the purpose of a dual occupancy or dwelling house on the land—the application has been refused or it was withdrawn before it was determined, and (d) if development consent has been

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			granted in relation to such an application—the consent has been surrendered or it has lapsed. (5) Development consent may be granted for the erection of a dual occupancy or dwelling house on land to which this clause applies if there is a lawfully erected dual occupancy or dwelling house on the land and the dual occupancy or dwelling house to be erected is intended only to replace the existing dual occupancy or dwelling house. (6) In this clause, amalgamated lot means land edged heavy red and identified as “Amalgamated Lots” on the Lot Amalgamation Map if that land is a single lot.
Schedule 5 - Environmental Heritage			
1	Sort sites by item number	Sites are currently listed alphabetically in the Schedule 6 table. It would be far more useful to Council if the item numbers were in consecutive order instead. This would help a great deal when searching heritage listings by listing number.	Sort item numbers in consecutive order.

CURRENT STATUS

A Planning Proposal has been prepared for this amendment, which will be submitted to the Department of Planning and Environment once approved by Council.

TIMEFRAMES

Due to the delays in sending the Planning Proposal to the Department of Planning and Environment, it is proposed that WLEP 2013 – Major Amendment 1 now progress in accordance with the following indicative timeframes:

Task	Duration	Start	Finish	Status
Phase 1 - Project Commencement (S.55)	51 days	03/03/14	14/05/14	Complete
Phase 2 - Preliminary Endorsement (S.55)	84 days	15/05/14	10/09/14	Underway
Phase 3 - Planning Proposal (S.56)	28 days	11/09/14	21/10/14	Not Started
Phase 4 - Public Authority Consultation (S.56)	42 days	22/10/14	18/12/14	Not Started
Phase 5 - Community Consultation (S.57)	45 days	19/12/14	25/02/15	Not Started
Phase 6 - Planning Proposal Amendments (S.58)	38 days	26/02/15	20/04/15	Not Started
Phase 7 - Making and Notification (S.59)	47 days	21/04/15	24/06/15	Not Started

Note: Comments in brackets refer to EP&A Act requirements.
Additional studies may be required. In this case, a new Phase 4 will need to be inserted, and may result in the timeframes for completion of this project being lengthened.

CONCLUSION

This report seeks Council's endorsement of further amendments to Wyong LEP 2013 – Major Amendment 1, in accordance with the matters raised in this report. Subject to

Council's approval, a Planning Proposal can now be forwarded to the Department of Planning and Environment to commence the Gateway Determination process.

ATTACHMENTS

Nil.

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