

ATTACHMENT 1 - COUNCIL REPORT & RESOLUTION - 9 DECEMBER 2015

9 December 2015
To the Ordinary Council Meeting

Director's Report
Property and Economic Development

3.7 Wyong Local Environmental Plan 2013 - Miscellaneous Amendment 2

TRIM REFERENCE: F2014/01690 - D12065455

MANAGER: Steven Mann, Manager

AUTHOR: Wesley Folitarik; Section Manager

SUMMARY

This report recommends the formal commencement of the proposed Wyong Local Environmental Plan (WLEP) 2013 – Miscellaneous Amendment 2 under Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act). Miscellaneous Amendment 2 will address issues that have arisen during the operation of WLEP 2013 and correct minor errors and anomalies.

RECOMMENDATION

- 1 That Council initiate the Local Environmental Plan “Gateway” process by the preparation of a Planning Proposal, pursuant to Section 55 of the Environmental Planning and Assessment Act, 1979.
- 2 That Council forward the Planning Proposal to the Department of Planning and Environment requesting a “Gateway” determination, pursuant to Section 56(1) of the Environmental Planning and Assessment Act, 1979.
- 3 That Council advise the Department of Planning & Environment that it does not intend to apply for plan making delegations for the rezoning, pursuant to Section 23 of the Environmental Planning and Assessment Act, 1979.
- 4 That Council refer the Planning Proposal to appropriate public authorities for comment, subject to the determination of the Gateway Process, pursuant to Section 56(2) of the Environmental Planning and Assessment Act, 1979.
- 5 That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process, pursuant to Section 57 of the Environmental Planning and Assessment Act, 1979.
- 6 That Council request the Department of Planning and Environment to prepare a relevant Local Environmental Plan amendment, and that the Minister be requested to make the Plan, subject to there being no significant objections that cannot be resolved by making minor amendments to the Planning Proposal.
- 7 That Council update its Section 149 Certificates accordingly.

ORDINARY MEETING HELD 9 DECEMBER 2015

Councillor Vincent declared a non-pecuniary insignificant interest in the matter for the reason that he is an employee of Delta Electricity and participated in consideration of this matter.

Councillor Vincent stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because my employment is not related to Delta's Rezoning nor is my employment based on property related matters."

Councillor Webster declared a non-pecuniary insignificant interest in the matter for the reason that she has signed the special disclosure of pecuniary interest and participated in consideration of this matter.

Councillor Webster stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty."

Councillor Best declared a pecuniary interest in the matter for the reason that he has property in the areas intended for amendment. Councillor Best left the chamber at 6.34 pm, took no part in discussion, did not vote and returned to the meeting at 6.37 pm.

Councillor Eaton submitted a special declaration form for this item.

Councillor Greenwald submitted a special declaration form for this item.

Councillor Matthews submitted a special declaration form for this item.

Councillor Taylor submitted a special declaration form for this item.

Councillor Troy submitted a special declaration form for this item.

Councillor Vincent submitted a special declaration form for this item.

Councillor Webster submitted a special declaration form for this item.

**Scanned copies of special declarations for item 3.7, Wyong Local Environmental Plan 2013 - Miscellaneous Amendment 2, have been placed at the end of this minutes document.*

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

1317/15 That Council initiate the Local Environmental Plan "Gateway" process by the preparation of a Planning Proposal, pursuant to Section 55 of the Environmental Planning and Assessment Act, 1979.

1318/15 That Council forward the Planning Proposal to the Department of Planning and Environment requesting a "Gateway" determination, pursuant to Section 56(1) of the Environmental Planning and Assessment Act, 1979.

1319/15 That Council advise the Department of Planning & Environment that it does not intend to apply for plan making delegations for the rezoning, pursuant to Section 23 of the Environmental Planning and Assessment Act, 1979.

1320/15 That Council refer the Planning Proposal to appropriate public authorities

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for comment, subject to the determination of the Gateway Process, pursuant to Section 56(2) of the Environmental Planning and Assessment Act, 1979.

1321/15 *That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process, pursuant to Section 57 of the Environmental Planning and Assessment Act, 1979.*

1322/15 *That Council request the Department of Planning and Environment to prepare a relevant Local Environmental Plan amendment, and that the Minister be requested to make the Plan, subject to there being no significant objections that cannot be resolved by making minor amendments to the Planning Proposal.*

1323/15 *That Council update its Section 149 Certificates accordingly.*

FOR: DE EATON, B G GRAHAM, KG GREENWALD, LM MATTHEWS, LT TAYLOR, AT TROY,
DV VINCENT AND LW WEBSTER

AGAINST: NIL

BACKGROUND

On 23 December 2013, WLEP 2013 was made by a 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 under regular review to ensure the objectives of the EP&A Act continue to be achieved. Accordingly, a revised Gateway Determination was issued on 22 June 2015 for Major Amendment 1, a predominant housekeeping LEP to rectify errors and anomalies arising from the finalisation of WLEP 2013. The Planning Proposal is currently undergoing consultation with various State Government agencies.

THE PROPOSAL

This report recommends preparation of a Planning Proposal to address a range of issues identified with the operation of the WLEP 2013.

These amendments are minor housekeeping matters that will address issues that have arisen during the operation of WLEP 2013 and correct a number of minor errors and anomalies. A complete list of proposed amendments and a brief summary of their objective is included in Attachment 1.

Future reviews of WLEP 2013 will address environmental, rural and land classification matters however these are more complex and will be progressed independently of these minor amendments.

The Planning Proposal will be referred to the NSW Department of Planning & Environment seeking that a Gateway Determination be issued to allow the amendment to proceed to agency and community consultations.

STRATEGIC LINKS

Wyong Shire Council Strategic/Annual Plan

The project is consistent with Wyong Shire Council Strategic Plan 2013-2017. The Strategic Plan notes that Council will undertake a major renovation of the WLEP 2013 “as the leading document in determining development potential in Wyong Shire”. WLEP 2013 replaced the 20 year old WLEP 1991, and modernises the controls over use and flexibility of all land in the Shire to promote development.

Adoption of the WLEP 2013 is identified in the Wyong Shire Council Strategic Plan 2013 – 2017 as a ‘Major Project’ for Council. WLEP 2013 was gazetted on 23 December 2013, however under Section 73 of the EP&A Act, Councils are required to keep their local environmental plans under regular review for the purpose of ensuring that the objects of the EP&A Act continue to be achieved. Miscellaneous Amendment 2 will assist Council in ensuring that the WLEP 2013 continues to respond “to current challenges and opportunities, as well as establishing direction for the Shire for the next 20 years”, in accordance with the Strategic Plan.

Contribution of Proposal to the Principal Activity

Nil

Long term Financial Strategy

Nil

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Asset Management Strategy

Nil

Workforce Management Strategy

Nil

Link to Community Strategic Plan (2030)

Nil

Budget Impact

Nil, with the exception of costs associated with carrying out the public exhibition period.

CONSULTATION

The proposal has been referred to a cross section of Council staff representing diverse specialty areas. Comments received have informed the configuration of proposed amendments. Future community and government agency consultation requirements will be outlined by the Gateway Determination, should a positive Gateway Determination be made.

GOVERNANCE AND POLICY IMPLICATIONS

Amending WLEP 2013 will be undertaken by way of preparation of a Planning Proposal, and progressing of that Planning Proposal under Sections 55-59 of the EP&A Act. This process is in accordance with Council's adopted procedures.

Section 55 requires Council to prepare a Planning Proposal that explains the intended effect of the amendment to the LEP and sets out the justification for the amendment. Section 55 specifies matters to be included in the Planning Proposal.

Section 56 provides that Council submit the Planning Proposal to the Minister for Planning & Environment (or his delegate) for a Gateway Determination. Council will then be advised whether or not the matter should proceed (with or without variation), and may specify further studies or modifications to the Proposal, community and government agency consultation requirements and any other matters deemed relevant.

MATERIAL RISKS AND ISSUES

Corporate risks to be addressed for the Planning Proposal are:

1. Infrastructure Provision and/or Service Capacity:
 - a) Ensure future development of any land affected by this Planning Proposal is subject to an updated Contribution Plan under Section 94 of the EP&A Act; OR
 - b) Ensure existing water and sewer headworks and mains have capacity to cater for the increased load.

2. Political
 - a) Ensure the community consultation process is open and transparent; AND
 - b) Ensure Councillors are adequately briefed.
3. Certification/Governance
 - a) Ensure appropriate consultation with other public authorities during the consultation phase; AND
 - b) Ensure legislative procedures for Planning Proposals are followed.

CONCLUSION

This report seeks Council's endorsement to prepare a Planning Proposal for the suite of amendments proposed as part of WLEP 2013 – Miscellaneous Amendment 2. This report also seeks endorsement to submit this Planning Proposal to the Department of Planning & Environment.

The Planning Proposal for Miscellaneous Amendment 2 will address issues that have arisen during the operation of WLEP 2013 and correct minor errors and anomalies.

ATTACHMENTS

- 1 Wyong Local Environmental Plan 2013 Miscellaneous Amendments D12102416

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Wyong Local Environmental Plan 2013 – Miscellaneous Amendments

Proposed Schedule of Changes

No	Provision/Property	Issue Summary	Recommended Change
1	44 Thomas Walker Dr, Chittaway Bay	Mapping anomaly – The site was previously zoned 2(a) Residential Zone under WLEP 1991 and was erroneously rezoned RE1 Public Recreation under WLEP 2013. The site is privately owned and is not identified for acquisition by Council for open space and the residential zoning should be restored.	Amend the Land Zoning Map to rezone the subject land to R2 Low Density Residential.
2	Lots 11 & 12 DP 1083233 Ourimbah	Mapping anomaly – site is not included on the minimum lot size map as 'AB2' despite its E3 Environmental Management zoning. All E3 zoned land across the Shire has a minimum lot size of 40 hectares.	Amend the Minimum Lot Size Map to show the subject land as AB2 – minimum lot size of 40 hectares.
3	Lot 202 DP1126914, Lots 1 & 3 DP 259306	Mapping anomaly – site is not included as 'AB2' despite its RU6 Transition zone. All RU6 zoned land across the Shire has a minimum lot size of 40 hectares.	Amend the Minimum Lot Size Map to show the subject land as AB2 – minimum lot size of 40 hectares.
4	Clause 4.1B – Subdivision of existing dual occupancies in R2 zone	Currently under Clause 4.1B dual occupancy can be subdivided to create lots less than those on the Lot Size Map but only if the DA subdivision is done at the same time as the dual occupancy. Therefore existing dual occupancies cannot be subdivided.	Amend Clause 4.1B to facilitate the subdivision of existing lawfully created dual occupancies.
5	Clause 7.11 Key Sites	Reinforcement of intent of DCP Chapter 6.1 Key Sites within WLEP 2013	Amend Clause 7.11 to include requirement for increased public benefit in return for increased development potential on the nominated Key Sites.
6	Land Reservation Acquisition Maps	Amend the Land Reservation Acquisition (LRA) maps to identify land required by the RMS for road widening.	Amend the Land Reservation Acquisition Maps to incorporate those properties

No	Provision/Property	Issue Summary	Recommended Change
			identified by the RMS as being required for road widening.
7	Vehicles Repair Stations	Vehicle Repair Stations were previously prohibited in the 4(c) Business Park but are now permitted under the B7 Business Park zone.	Amend the B7 zone to prohibit vehicle repair stations in the B7 zone.
8	Lot 26 and 27 DP 1182724	Mapping anomaly – part of both sites are zoned R2 Low Density Residential but are (in part) included in the Minimum Lot Size Map as 'AB2' with minimum area of 40 hectares.	Amend the Minimum Lot Size map to show these lots as wholly having a minimum lot size of 450m2.
9	34 Albert Warner Drive, Warnervale	Rezone part of the site from RE1 Public Recreation to R2 Low Density Residential as land is no longer required under the Porters Creek IWCM for the purposes of wetlands and storage. Remove site from LRA map.	Amend the Land Zoning Map to rezone the site to R2 Low Density Residential Land. Remove the site from the Land Reservation Acquisition Map. Amend the Minimum Lot Size map to show the site as having a minimum lot size of 450m2
10	145 Pacific Hwy, Ourimbah	Mapping anomaly - the portion of the site zoned R2 Low Density Residential has been incorrectly identified on the Minimum Lot Size map as 'AB2' with a minimum area of 40 hectares.	Amend the Minimum Lot Size map to show this portion of the site as having a minimum lot size of 450m2.
11	Lot 72 DP 7091 & Lot 101 DP 829060	Land is currently zoned RE1 Public Recreation but is no longer needed for recreation purposes.	Amend the Land Zoning Map to rezone the site areas zoned RE1 Public Recreation to SP2 Stormwater Management.
12	Lot 1 DP 31313	Land is currently zoned SP2 Infrastructure (Emergency Services Facility). It comprises a former fire station that has since been sold to a private buyer. The prevailing land use pattern in the locality is R2 – Low Density Residential. It is considered appropriate that the site be rezoned as such. This	Amend the Land Zoning Map to rezone the subject site to R2 – Low Density Residential. Amend the Lot Size Map to allocate a minimum lot size of 450m2 consistent with

No	Provision/Property	Issue Summary	Recommended Change
		will allow the owner to seek development consent for a broader range of uses consistent with the surrounding uses.	surrounding lands. Consider options to ensure dwelling entitlement is provided.
13	Lot 1 DP 1191698 (19 Roper Road, Blue Haven)	DA/919/2012 approved the development of the site as an Aldi Supermarket. Accordingly the existing R2 Residential Zone does not reflect the intended future use of the site.	Amend the Land Zoning Map to rezone the subject site to B1 Neighbourhood Centre.
14	Lot 1 DP 1195202 (Vales Point Outlet Canal)	Rezone site from RE1 Public Recreation to SP2 Infrastructure at request of Delta Electricity during agency consultation for Major Amendment 1.	Amend Land Zoning Map to rezone the land to SP2 Infrastructure – Electricity Generating Purposes.
15	Lot 1 DP 1198253 (Vales Point Inlet Canal)	Rezone site from RE1 Public Recreation to SP2 Infrastructure at request of Delta Electricity during agency consultation for Major Amendment 1.	Amend Land Zoning Map to rezone the land to SP2 Infrastructure – Electricity Generating Purposes.
16	Lot 1 DP 562143 & Lot 109 DP 755266	Rezone part of the site from E2 Environmental Conservation to SP2 Infrastructure at request of Delta Electricity during agency consultation for Major Amendment 1. Council's ecologist has inspected the site and determined that "the vegetation within the E2 zone is not considered consistent with the definition of an endangered ecological community" and the rezoning to SP2 Infrastructure is supported.	Amend Land Zoning Map to rezone the land to SP2 Infrastructure – Electricity Generating Purposes.