

City Strategy Committee Meeting 9 February 2015

15STRAT002 Appletree Grove Estate, West Wallsend - Draft Amendment to Lake Macquarie Local Environmental Plan 2014 and Development Control Plan 2014

Council Ref: F2014/00876/04 - D07036639
Report By: Strategic Land Use Planner - Tahlia Alexander

Précis:

In 2012, the Hunter and Central Coast Joint Regional Planning Panel (JRPP) approved the subdivision of Appletree Grove Estate, adjacent to the existing township of West Wallsend, a former mining town with heritage significance. A condition of approval required new dwellings in the subdivision to comply with the Heritage and Urban Design Guidelines prepared specifically for the estate.

Under the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*, dwellings can be approved through the Complying Development process without regard to covenants that require compliance with specific development controls, such as the Heritage and Urban Design Guidelines.

The Department of Planning and Environment approved a temporary exclusion from Complying Development for the Appletree Grove Estate. The temporary exclusion was granted to allow Council time to undertake a Heritage Study to determine whether the Appletree Grove Estate has merit to be included in the West Wallsend Heritage Conservation Area, thereby excluding the subject land from Complying Development provisions in the *Codes SEPP*.

This report seeks a resolution to amend *Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)* by amending the Heritage Map to include the Appletree Grove Estate in the West Wallsend Heritage Conservation Area. In addition, it is proposed to incorporate the principles of the Heritage and Urban Design Guidelines into the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans of Lake Macquarie Development Control Plan 2014 (LMDCP 2014).

Recommendation:

Council resolves to:

- A. Prepare a Planning Proposal to amend *Lake Macquarie Local Environmental Plan 2014* by changing the Heritage Map (Sheet HER _008B) to include the Appletree Grove Estate in the West Wallsend Heritage Conservation Area, as shown in Attachment 1.
- B. Request a Gateway determination from the Department of Planning and Environment pursuant to the *Environmental Planning and Assessment Act 1979* in relation to the Planning Proposal (Attachment 2).
- C. Prepare an amendment to the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans of Lake Macquarie Development Control Plan 2014 (LMDCP 2014) to incorporate the requirements of the Heritage and Urban Design Guidelines for the Appletree Grove Estate, as shown in Attachment 3.
- D. Place the Planning Proposal and proposed amendment to LMDCP 2014 on exhibition for a minimum period of 28 days, subject to the outcome of the Gateway

City Strategy Committee Meeting 9 February 2015

determination.

- E. Notify stakeholders and affected landowners of the Gateway determination and public exhibition of the Planning Proposal and draft amendment to LMDCP 2014.

Background:

West Wallsend is an example of a nineteenth century mining town. Holmesville, located in close proximity to West Wallsend, owes its existence to the same historical mining activity of West Wallsend. West Wallsend and Holmesville include a number of listed Heritage Items and most of the established areas of West Wallsend are located within the West Wallsend Heritage Conservation Area (HCA) under the *LMLEP2014*. In addition, some areas of West Wallsend and Holmesville are located within a Heritage Precinct under 'Part 11- Heritage Area Plans – West Wallsend and Holmesville' of LMDCP 2014.

Development Application

In February 2011, Council received a Development Application (DA/113/2011) for a 375 lot residential subdivision, in nine stages, known as the Appletree Grove Estate. The development surrounds the existing residential areas of West Wallsend and Holmesville and directly adjoins the West Wallsend HCA. The consent authority for the DA was the JRPP. The assessment process for the subdivision was complex due to a range of issues including European heritage, Aboriginal heritage, ecological impacts, and visual impacts.

When the DA was first reported to the JRPP in November 2011, the JRPP resolved to defer the matter and requested the applicant address a number of issues. One of the issues was detailed building and urban design guidelines for the estate to mitigate heritage and visual impacts.

In July 2012, the JRPP approved of the subdivision subject to conditions. One of the conditions of the consent is that a public positive covenant be registered on the title of all lots, to require all dwellings within the estate to comply with the Heritage and Urban Design Guidelines (HUDG) prepared by RobertsDay, dated June 2012. A map of the subject land and a staging plan of the approved subdivision is shown in Figure 1.

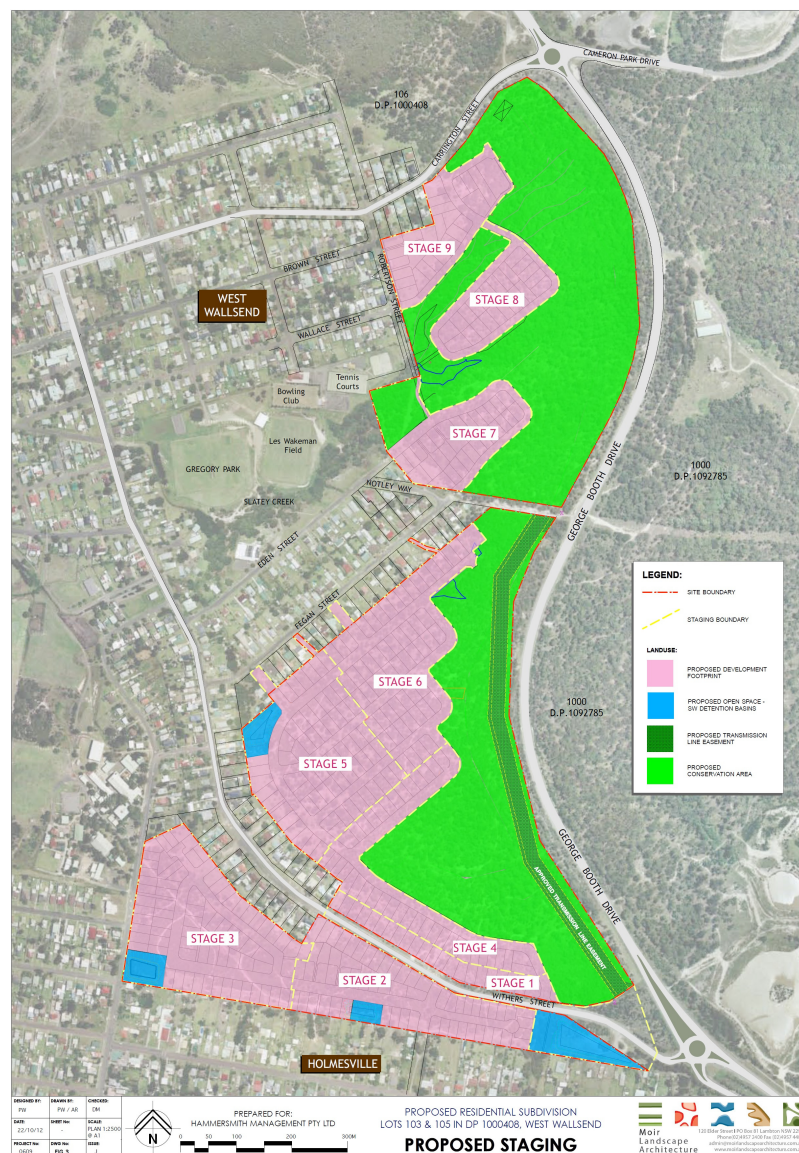


Figure 1 – Appletree Grove Estate Staging Plan

Complying Development Issues

While there is a legal obligation under the *Conveyancing Act 1919* for owners of the residential lots created by subdivision to ensure that their new dwellings complied with HUDG, this was not supported by the *Codes SEPP*, which at the time, allowed Principal Certifying Authorities, such as private certifiers, to lawfully issue Complying Development Certificates for new dwellings without regard to the *HUDG*.

As a result, Council staff wrote to the NSW Department of Planning and Infrastructure (now Department of Planning and Environment) requesting a local exclusion for Complying Development for the Appletree Grove Estate from the *Codes SEPP*. In August 2013, the Department of Planning and Environment (DoPE) permitted a temporary exclusion from Part 3 General Housing Code of the *Codes SEPP* for the estate. In their letter to Council, DoPE stated:

Although a certifying authority may issue a complying development certificate for development that is not consistent with the public positive covenant, the requirements of the covenant still apply. Each owner must still ensure that any development undertaken on their lot conforms to the Heritage and Urban Design Guidelines and that their obligations under the covenant are met. However, the department is currently finalising an amendment to the Codes SEPP that will include provisions that suspend covenants that mandate development standards in conflict with those specified in the Codes SEPP. This is consistent with the approach under the Standard Instrument Order and will ensure that where a lot meets the requirements for complying development, an owner can use the Codes SEPP to erect a single or two-storey dwelling house.

Given these factors, the department is agreeable to allowing a temporary exclusion to be inserted into the Codes SEPP for the West Wallsend subdivision, which will preclude complying development under Part 3 General Housing Code of the Codes SEPP. This exclusion will be included into the upcoming amendment to the Codes SEPP and cease on 30 November 2015. This temporary exclusion is being made to allow Council time to undertake a study into the West Wallsend subdivision and assess whether it would be more appropriate to include the area as a heritage conservation area in their Standard Instrument Local Environmental Plan.

The Codes SEPP was amended on 22 February 2014 by inserting Clause 1.20, which suspends covenants that require compliance with standards more stringent than its own, such as the HUDG for Appletree Grove Estate. Consequently, there would be no obligation for landowners within the estate to comply with the public positive covenant through the Complying Development approval process after the temporary exclusion from the Codes SEPP expires.

Exclusions to Complying Development - Options Investigated

Council staff investigated a number of possible options for precluding the estate from Complying Development under the Codes SEPP to ensure that development is carried out in accordance with the HUDG thereby protecting the heritage significance of West Wallsend.

Land can be excluded from complying development under the Codes SEPP in two key ways:

1. Local Exclusions

Councils may seek local exclusions through a nomination process outlined by the DoPE. These can be either zone based, contained within an environmental planning instrument, or be a precinct in a policy or plan as having particular unique attributes that may require a merit-based assessment through a DA. Where there is an area that Council would like to be excluded from Complying Development, a council may nominate the area and seek approval from the Minister for Planning for the local exclusion, but applications can only be made when the DoPE calls for local exclusion nominations. The Local Exclusion and Variations Panel review the nominations and a recommendation is made to the Minister for Planning.

Enquiries have been made with the DoPE on whether there would be a call for local exclusion nominations in the next 12 months. The DoPE advised that are unable to give a timeframe for the next call for local exclusion nominations. As a result, this option cannot be pursued now.

City Strategy Committee Meeting 9 February 2015

2. *Clause 1.19 of Codes SEPP*

Clause 1.19 of the *Codes SEPP* identifies that Complying Development cannot be carried out where:

- Land is within a HCA (Heritage Conservation Area) or draft HCA.
- Land is reserved for a public purpose.
- Land is mapped as containing Class 1 or 2 Acid Sulfate soils.
- Land is subject to a Biobanking Agreement.
- Land is identified as being affected by a coastline hazard, coastal hazard, coastal erosion hazard or land within a foreshore area.
- Land is affected by aircraft noise (higher than 25 ANEF contour).
- Land is unsewered.
- Land is identified in an environmental planning instrument as being within a buffer area, river front area, ecologically sensitive area, protected area or environmentally sensitive land.

The estate is not currently affected by any of the land-based exclusions stipulated in Clause 1.19 of the *Codes SEPP*. The only land-based exclusion that could apply to the subject land, aside from land being within a HCA, is 'environmentally sensitive land'. There is no definition or criteria for what land constitutes 'environmentally sensitive land', however existing land mapped as environmentally sensitive land in LMLEP 2014 predominantly comprises land that is of high ecological value.

The subdivision's visual impact on the built environment was identified as an issue during the assessment of the DA and mitigated through the application of the HUDG which specifies the required tree planting, colour palates, and fence materials for all dwellings within the Appletree Grove Estate. Advice was sought from the local DoPE office regarding the proposal to include the estate as 'environmentally sensitive land'. The DoPE advised that it would be difficult to justify including the areas as 'environmentally sensitive land'.

Therefore, the appropriate option to preclude the estate from Complying Development is to include the subject land in the West Wallsend HCA, which is discussed in the following section of this report.

West Wallsend and Holmesville Background Heritage Study

In June 2013, prior to DoPE granting a temporary exclusion to the *Codes SEPP*, Council made an application to the Heritage Division of the NSW Office of Environment and Heritage for funding to undertake a heritage background study. The purpose of the West Wallsend and Holmesville Background Study (Heritage Study) was to commence a process to review the existing planning controls in West Wallsend and Holmesville.

Council was successful in receiving funding and engaged a Heritage Consultant to prepare the Heritage Study. Given the application for grant funding was made prior to the Complying Development issues with the Appletree Grove Estate coming to Council staff's attention, the scope of work for the Heritage Study largely focuses on reviewing the planning controls of West Wallsend and Holmesville in a broader manner. As such, the

City Strategy Committee Meeting 9 February 2015

preparation of the Heritage Study was not focused on the Complying Development issues associated with the Appletree Grove Estate and any resulting potential adverse impacts.

The Heritage Study has now been finalised and recommends that stage 1, stage 9 and part of stage 2 are included in the West Wallsend HCA as shown in Figure 2. The areas of the Appletree Grove Estate that are recommended to be included in the HCA are primarily located at the two main entry points to the town; Withers Street and Carrington Street. The Heritage Study's justification and recommendation for the proposed West Wallsend HCA is included below:

11.3.5 Recommendations for Boundaries of the Conservation Area – West Wallsend

- 1. All those precincts assessed and mapped in Carste STUDIO's Heritage Background Study should be included in the conservation area.*
- 2. New subdivision areas Stage 1 and parts of Stage 2 are recommended for inclusion in the West Wallsend Heritage Conservation Area. These subdivisions are assessed as important in their location and the potential to impact on the conservation area and precinct WW4. Stage 1 and parts of Stage 2 subdivision are located at the southern entrance to West Wallsend on a main axial street within West Wallsend, Withers Street. The views from Withers Street, both the internal following the curvilinear form of this street and distant vistas of Sugarloaf are assessed as significant within the conservation area. Hence any new development in Stage 1 and identified parts of Stage 2 has the potential to enhance or detract from these important views and significance values of Precinct WW4.*
- 3. New subdivision area Stage 9 is recommended for inclusion in the West Wallsend Heritage Conservation Area. This subdivision is assessed as important in its location and has the potential to impact on the conservation area. Stage 9 subdivision is located at the eastern entrance to West Wallsend and is an extension of Carrington Street, a main axial street at this eastern entrance and through West Wallsend. The views from Carrington Street approaching West Wallsend, both internal townscape and distant vistas of Sugarloaf have been assessed as significant. Hence any new development in Stage 9 has the potential to enhance or detract from these important views and significance values of Precinct WW2.*
- 4. The proposed West Wallsend Heritage Conservation Area is shown on West Wallsend Precinct Map and Heritage Conservation Area in Appendix B.*

In consultation with Council's Heritage Planner – Heritage Focus, the Heritage Study's recommendation regarding the Appletree Grove Estate have been reviewed. It is considered that the potential visual impact on the existing HCA would be mitigated if all dwellings within the estate were constructed in accordance with the HUDG.

However, the provisions of the HUDG to lessen the impact on the HCA will not be enforceable after 30 November 2015, when Complying Development will again be permissible. The impact of the development in remaining stages of the estate on the HCA will then be significantly increased. Using this rationale, it is considered that development in all stages of the estate would have a potential adverse visual impact on the heritage character of West Wallsend.

The impact of the whole estate on the West Wallsend HCA was subject to extensive assessment and conditional determination of the JRPP requiring the HUDG to be registered as a public positive covenant on all lots within the estate. Relevant excerpts from the subdivision DA documents are included below:

City Strategy Committee Meeting 9 February 2015

Council Heritage Referral – 1 March 2011

Page 3:

Appropriate controls for subsequent future housing are not assured as the current housing SEPP provisions are not in line with the values of the area and do not meet the objectives of the West Wallsend / Holmesville Heritage Precinct and the objectives for managing impacted heritage items and provisional heritage items. It is therefore considered necessary to require specific development controls for this subdivision, backed where necessary by a set of appropriate covenants, to be able to achieve and implement provisions for appropriate housing forms.

Page 8:

The proposal adversely affects culturally significant elements of the place including its setting of semi-rural bushland and its visual separation from expanding suburban areas, the Withers Street Gateway, internal and external views, its historic relationship, and separation between West Wallsend and Holmesville subdivision pattern.

The integrity of historic edge and curtilage of the place are compromised and adversely impacted. Inadequate measures are proposed to protect the WWHCA curtilage and to ameliorate the impact of new built forms.

Council Staff Planning Assessment Report – 3 November 2011

Pages 1 -2:

The Joint Regional Planning Panel refused a previous application for a 4 into 465 lot residential subdivision on 26 August 2010. A total of 17 reasons for refusal were specified in the determination. From these reasons for refusal, it is evident that the application fundamentally failed to satisfactorily address and respond to biodiversity and heritage constraints posed by the site and the surrounding townships. The current application has addressed the reasons for refusal given by the panel. Some of the more significant changes incorporated in the current proposal include:

- *A reduced development footprint and lot yield*
- *The incorporation of perimeter roads*
- *A complete Species Impact Statement and biodiversity offsets package*
- *Heritage Design Guidelines, to control built outcomes*
- *Heritage Interpretation Strategy*
- *Inclusion of small lot housing*

Page 14:

Clause 44 *Protection of heritage items and heritage conservation areas*

The Heritage & Urban Design Guidelines provide building controls on lots that may impact heritage or landscape significance and are considered to be adequate design measures to ensure the protection of the West Wallsend character, landscape and heritage significance.

Clause 47 *Assessment of heritage significance*

City Strategy Committee Meeting 9 February 2015

Adequate measures are proposed to conserve the heritage significance of the place and its setting in the form of Heritage & Urban Design Guidelines to provide control over lots impacting the existing West Wallsend Subdivision.

Page 16:

The Visual Impact Assessment prepared by Moir Landscape Architecture, reference 0676 dated 27/01/2011 provides a comprehensive analysis of the visual impact of the proposed development in accordance with LMCC Scenic Quality Guidelines. The report has identified and considered 22 viewpoints of significance and produced four photomontages.

The report has concluded that residential development of the existing bushland area will have an adverse visual impact. However, with the incorporation of proposed mitigation measures such as ridgeline protection, street trees, setbacks, and controls on building materials the resultant visual impact is considered low and acceptable for the context and the underlying zoning.

As highlighted in the DA documentation, without the implementation of the HUDG, new development within the estate would compromise the integrity of the historic curtilage of the West Wallsend HCA and impact on the setting of the place. Therefore, it is considered that all stages of the Appletree Grove Estate have substantial merit to be included in the West Wallsend HCA.

Proposal:

It is proposed that Council resolves to:

- Prepare a Planning Proposal to amend *LMLEP 2014* by amending the Heritage Map (Sheet HER _008B) to include all stages of the Appletree Grove Estate in the West Wallsend HCA, as shown in Attachments 1 and 2.
- Prepare an amendment to DCP2014 to incorporate the principles of the Appletree Grove Estate HUDG into the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans, as shown in Attachment 3.
- Place the Planning Proposal and proposed amendment to LMDCP 2014 on exhibition for a minimum period of 28 days, subject to the outcome of the Gateway determination.

Amendment to *LMLEP 2014*

It is proposed to amend Heritage Map (Sheet HER _008B) of *LMLEP 2014* to include all stages of the Appletree Grove Estate in the West Wallsend HCA. The justification for including the estate in the West Wallsend HCA is discussed in the preceding section of this report.

Amendment to LMDCP 2014

It is proposed to amend the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans of the LMDCP 2014 to include the requirements of the HUDG. It is proposed to restructure the Heritage Area Plan into three separate parts.

Part 1 contains general provisions relating to West Wallsend and Holmesville. Part 2 contains specific provisions for West Wallsend and Holmesville that are largely unchanged from the existing development controls in the Heritage Area Plan. Part 3, the new section, contains specific objectives and controls for development within the Appletree Grove Estate. The objectives and controls of Part 3 are based on, and

City Strategy Committee Meeting 9 February 2015

consistent with, the principles of the HUDG. Development Applications within the Appletree Grove Estate will be assessed in accordance with the provisions of the Heritage Area Plan. A summary of the proposed changes to the existing Heritage Area Plan is included in Attachment 5.

In addition, by incorporating the principles of the HUDG in to the Heritage Area Plan, it will assist in ensuring landowners, prospective landowners, real estate agents and other relevant parties are more aware of the specific development controls that apply to Appletree Grove Estate.

Consultation:

Internal Consultation

The Development Assessment and Compliance (DAC) department have been consulted on the proposed amendments to *LMLEP 2014* and *LMDCP 2014*. Council's Development Planner – Heritage Focus concurs with the proposed amendment to *LMLEP 2014* to include all stages of the Appletree Grove Estate in the West Wallsend HCA. DAC staff have also highlighted the importance of ensuring all development within the estate complies with the HUDG.

External Consultation

The proponent of the subdivision has had the opportunity to comment on the draft Heritage Area Plan and these comments have been taken into account. The proponent was also advised of the proposed *LMLEP 2014* amendment.

Public Exhibition

Should Council resolve to exhibit the amendments and a favourable gateway determination is issued, the Planning Proposal and proposed *LMDCP 2014* amendment will be exhibited together. Council staff propose to consult with the community and stakeholders during public exhibition. Council staff will also consult with relevant government agencies.

Implications:

Policy Implications:

Lower Hunter Regional Strategy (LHRS)

The Planning Proposal seeks to protect the heritage significance of West Wallsend, which is consistent with outcomes of section 12 'Heritage' of the LHRS. The Appletree Grove Estate land is identified in the LHRS as a proposed urban area. The Planning Proposal does not impact on the housing target of the LHRS given the site already has subdivision approval.

Lifestyle 2030 Strategy (LS2030)

The specific aims of the LS2030 that relate to the proposal are:

- *Develop attractive and liveable areas in the LGA, which reflects its physical and natural environment, and visual character.*
- *Manage the City's heritage and economic resources, in a way that protects the value of these resources and enhances the City's character.*

City Strategy Committee Meeting 9 February 2015

The proposal is consistent with the relevant aims of LS2030 in that the proposal seeks to protect the heritage significance of West Wallsend.

State Environmental Planning Policies (SEPPs)

Complying Development for new dwellings under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* does not apply to land located in a HCA. In addition, some exempt development under the *Codes SEPP* does not apply to land located within a HCA.

Other relevant SEPPs will continue to apply in West Wallsend and Holmesville.

Section 117(2) Ministerial Directions

The Planning Proposal is generally consistent with the applicable Ministerial Directions. Details are contained in the Planning Proposal included in Attachment 2.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

The proposed amendment to *LMLEP 2014* are set out in the 'Proposal' section of this report.

Lake Macquarie Development Control Plan 2014 (LMDCP 2014)

The proposed changes to LMDCP 2014 are set out in the 'Proposal' section of this report.

Environmental Implications:

Heritage

The proposed amendment to *LMLEP 2014* and LMDCP 2014 will ensure that new development within the Appletree Grove Estate is sympathetic to the character and heritage significance of West Wallsend through the assessment of a DA.

Social Implications:

The DA for the subdivision was subject to considerable community concern, with one of the main points for objection being the impact on the strong heritage culture of the area. A condition of the subdivision approval was for all dwellings within the estate to comply with the HUDG, which were prepared to mitigate heritage issues. Given this condition, it is considered that the community may expect that all dwellings in the estate would be constructed in accordance with the HUDG. By amending the *LMLEP 2014* to include all stages of the Appletree Grove Estate in the West Wallsend HCA, all dwellings within the estate will be required to comply with the HUDG and LMDCP2014. The proposal will ensure that the heritage significance of the area is maintained.

Infrastructure Asset Implications:

The proposal is not likely to impact on Council's existing or proposed infrastructure assets.

Financial Implications:

There are minimal financial implication for Council as a result of the preparation and exhibition of the proposal. The cost of the public exhibition process will be met by existing budget allocations. Council received funding from the NSW Office of Environment and Heritage to engage the Heritage Consultant to carry out the West Wallsend and Holmesville Heritage Study.

Risk and Insurance Implications:

City Strategy Committee Meeting 9 February 2015

There are minimal legal risk and insurance implications to Council from the proposal. Relevant Council procedures for preparing LEP and DCP amendments have been followed during the preparation of the proposal. Public exhibition of the proposed *LMLEP 2014* and *LMDCP 2014* amendments will be carried out in accordance with the requirements of *EP&A Act 1979*. By following relevant procedures and statutory requirements, the risk implications associated with the exhibition of the proposed draft *LMLEP 2014* and *LMDCP 2014* amendments are minimised. Council's professional indemnity insurance coverage includes preparation of LEP and DCP's as a standard activity.

If Council does not resolve to endorse the proposal, there may be some risk to Council's reputation as residents may expect Council to ensure that new housing in the estate respects the heritage values of the area and complies with the HUDG.

Options:

1. Council resolves to:

- A. Amend the *LMLEP 2014* to all stages of the Appletree Grove Estate in the West Wallsend HCA in accordance with the recommendation of the Heritage Study, and
- B. Amend the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans of *LMDCP 2014* to include the requirements of the Appletree Grove Estate HUDG.

This is the recommended option.

2. Council resolves to:

- A. Amend the *LMLEP 2014* to include stage 1, stage 9, and part of stage 2 of the Appletree Grove Estate in the West Wallsend HCA in accordance with the recommendation of the Heritage Study, and
- B. Amend the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans of *LMDCP 2014* to include the requirements of the Appletree Grove Estate HUDG.

This is not the recommended option as the remaining stages of the estate could be eligible for Complying Development under the *Codes SEPP* after November 2015, which is contrary to the assessment undertaken by the JRPP and subsequent conditions of consent.

3. Council resolves to not amend the *LMLEP 2014* to include parts of the Appletree Grove Estate into the West Wallsend HCA and to not amend the *LMDCP 2014* to incorporate the requirements of the HUDG.

This is not the recommended option as the entire estate could be eligible for Complying Development under the *Codes SEPP* after November 2015.

Conclusion:

The JRPP approval of the Appletree Grove Estate subdivision was subject to numerous conditions, one of which included the requirement for all dwellings to comply with the HUDG to mitigate heritage and visual impact issues on the character of West Wallsend and Holmesville. However, due to recent legislative changes to the *Codes SEPP*, after

City Strategy Committee Meeting 9 February 2015

November 2015, Complying Development within the Appletree Grove Estate could be approved without regard to the HUDG.

If new development was to proceed outside the provisions of the HUDG, the Appletree Grove Estate will have a significant visual impact on the West Wallsend HCA. As supported by the extensive assessment process for subdivision of the estate, it is considered that the whole estate should be included in the West Wallsend HCA.

It is therefore recommended that the *LMLEP 2014* be amended to include the entire Appletree Grove Estate within the West Wallsend HCA. In addition, it is recommended that the West Wallsend and Holmesville Area Plan contained in Part 11 – Heritage Area Plans of LMDCP 2014 to include the requirements of the Appletree Grove Estate HUDG.

Manager - Integrated Planning - Sharon Pope

Attachments:

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| 1. Proposed West Wallsend Heritage Conservation Area Map | D07278187 |
| 2. Planning Proposal | D07278308 |
| 3. Draft Amendment to Lake Macquarie DCP 2014 D07102119 | Under separate cover |
| 4. Summary of Proposed DCP 2014 changes D07278463 | Under separate cover |