

7 ADMINISTRATOR MINUTES

8 GENERAL MANAGER

8.1 Planning Proposal to Amend Schedule 2 of WLEP 2010 Regarding Public Events on Bush Fire Prone Land

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PURPOSE

The purpose of this report is to seek endorsement of a Planning Proposal to remove the requirement for a Development Application for certain events on public land that is bushfire prone.

While the Planning Proposal would remove the need for a Development Application, the assessment of the suitability of a public event on bushfire prone land would still occur through Council's lease / licencing processes for the use of public land.

THIS MATTER WAS CONSIDERED AT THE LOCAL PLANNING PANEL MEETING OF 22 FEBRUARY 2023

OFFICER'S RECOMMENDATION

THAT:

- 1. The Planning Proposal to amend Schedule 2 (Exempt development) of Wingecarribee Local Environmental Plan 2010 to amend the exclusion of bush fire prone land from the provisions of exempt development for events on public land be supported,**
- 2. The Planning Proposal be submitted for a Gateway determination under s.3.34 of the *Environmental Planning & Assessment Act 1979* and processed in accordance with the Gateway requirements.**
- 3. Documentation to support the Planning Proposal, as endorsed by the NSW Rural Fire Service, be exhibited concurrently with the Planning Proposal.**

LOCAL PLANNING PANEL ADVICE

The matter was considered by the Wingecarribee Local Planning Panel on 22 February 2023 and the following advice was provided:

- 1. The Panel supports in principle the Planning Proposal to amend Schedule 2 (Exempt development) of Wingecarribee Local Environmental Plan 2010 to remove*

the exclusion of bush fire prone land from the provisions of exempt development for events on public land be supported; and

2. The Panel recommends the Council formally consult with Rural Fire Service on the Planning Proposal prior to requesting a Gateway determination.

3. Council prepare a Bushfire Risk Assessment for each site to which the Planning Proposal applies, considering relevant guidelines contained in Part 8 of Planning for Bushfire Protection 2019.

4. Council develop a licencing policy that incorporates, among other matters, the results of the Bushfire Risk Assessment and requires each licence application to include a Risk Management Plan that includes, among other matters, a Bushfire Risk Management Plan in accordance with relevant provisions of Planning for Bushfire Protection 2019.

5. The draft policy referred to in 4 above:

- a. Be referred to Rural Fire Service for comment prior to requesting a Gateway determination and*
- b. Be exhibited concurrently with the Planning Proposal*

6. Subject to the support of the Rural Fire Service, the Planning Proposal be submitted for a Gateway determination under s.3.34 of the Environmental Planning & Assessment Act 1979 and processed in accordance with the Gateway requirements.

This advice is noted and is generally supported by Council officers. However, it is recommended that the Planning Proposal proceed to Gateway determination now, and the documents required to support the Planning Proposal be prepared while the Planning Proposal is being considered by the Department of Planning and Environment for Gateway determination. This would ensure that the Planning Proposal is not subject to the significant delays that would occur if the additional documents were required to be finalised prior to the Gateway process.

REPORT

BACKGROUND

Schedule 2 of the Wingecarribee Local Environmental Plan (WLEP) 2010 contains exempt development provisions additional to those specified within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. One of these additional provisions relates to public events and states:

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.

It is noted that these exempt development provisions exclude events on bush fire prone public land thereby requiring a Development Application (DA) in these circumstances. A significant portion of the Shire is mapped as 'bush fire prone' land, resulting in many small-scale community events requiring a Development Approval before the event can proceed. Council is deeply aware of the frustration and expense this can create for community groups, as well as the consequent impact on staff resources.

Council is also aware that the provisions of the Exempt and Complying State Environmental Planning Policy (SEPP) and a number of Codes within that SEPP have less restrictive provisions for activities on bush fire prone land than are currently contained in Schedule 2 of WLEP2010.

It is within this broader context that Council seeks to also amend the public events provisions of Schedule 2 of the Wingecarribee Local Environmental Plan (LEP) 2010 as indicated below.

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, accompanied by a bush fire risk assessment and evacuation plan if located on bush fire prone land,*
- (c) must not involve overnight accommodation.*

The Planning Proposal forms **Attachment 1** to this report.

REPORT

It is noted that Council's Bush Fire Co-ordinating Committee signed off on the Wollondilly/Wingecarribee Bush Fire Risk Management Plan on the 16/05/2017. This plan is a strategic document that identifies community assets at risk and sets out a five-year program of co-ordinated multi-agency treatments to reduce the risk of bush fire to the identified assets. It is further noted that the bush fire danger status of all Council owned community halls on bush fire prone land is indicated on Council's website page for each facility. There is also a link on that page to the RFS website page which indicates current fire danger ratings and fire ban status across the State.

Council is also reviewing all aspects of the hiring of Council owned land and buildings to simplify the process for the community while ensuring that Council's and the community's risk is appropriately managed, including a greater consideration of bushfire threats. These revised processes would improve safety and risk management across all Council owned facilities and include a template for the preparation of a Bushfire Risk and Evacuation Management Plan in accordance with advice from the NSW Rural Fire Service and its publication *Planning for Bushfire Protection*.

This review will have the additional advantage of enabling the incorporation of specific requirements for Council facilities which are also Items of Heritage, such as Glebe Park in Bowral which are on the State Heritage Register such as the Market Place reserve at Berrima.

It is noted that the proposed amendments to *Schedule 2 Public Events* vary from those considered by the Local Planning Panel on 22 February 2023. These variations are based on advice from the NSW Rural Fire Service to reflect the requirement for the preparation of a bushfire risk assessment and evacuation plan if located on bush fire prone land as part of Council's hiring agreement, as indicated at (b) and to confirm that any event which involved overnight accommodation could not be considered as exempt development.

The NSW Rural Fire Service has advised that, subject to those provisions, it would not require further referral prior to Council submitting the Planning Proposal for a Gateway determination.

COMMUNICATION AND CONSULTATION

Community Engagement

If a Gateway Determination is received to proceed with the Planning Proposal, public exhibition would be undertaken for a period of at least 28 days with the Planning Proposal notified on Council's Your Say Wingecarribee website and included in other Council community communications. Any additional documentation required by RFS, as well as Council's draft policy and procedures regarding the leasing of Council owned facilities would also be included in the exhibition material.

Internal Communication and Consultation

Discussions have already occurred with relevant Council officers responsible for Council owned land and for the hiring of Council premises. These would continue throughout the processing of the Planning Proposal to ensure that an appropriate alternative system is developed which assists both customers and staff to more efficiently manage the venue booking and hiring process for events on public land.

External Communication and Consultation

Council has written confirmation from the NSW Rural Fire Service that it does not object to Council proceeding to Gateway on the basis of the draft amendments contained in the recommendations to this report. In accordance with the requirements of the LEP Plan-Making Guideline and as formally required under the Gateway Determination, the draft Planning Proposal and supporting documentation would be referred to the RFS again prior to public exhibition.

SUSTAINABILITY ASSESSMENT

Environment

The proposed amendment would enable events on bush fire prone public land subject to certain conditions to ensure that appropriate bush fire management procedures are in place to protect bush fire prone land and potential vegetation loss.

Social

The proposed amendment would be replaced by a more easily assessable booking and hiring process thereby facilitating more community events and social interaction without compromising public safety.

Broader Economic Implications

There are no broader economic implications in relation to this report.

Culture

There are no cultural issues in relation to this report.

Governance

The Planning Proposal would be processed in accordance with relevant legislation and Departmental guidelines.

COUNCIL BUDGET IMPLICATIONS

There may be potential budget implications for the preparation of the site-specific Bush Fire Risk Assessment and Evacuation Plans should these be undertaken by consultants.

RELATED COUNCIL POLICY

There are no related Council Policies

CONCLUSION

Currently, certain community events cannot be considered as exempt development because they are located on 'bush fire prone' public land. The purpose of the Planning Proposal is to enable events as exempt development, even on bush fire prone land if accompanied by a bush fire risk assessment, and evacuation plan and provided no overnight accommodation is involved. This approach would continue to manage public safety and protect environmentally sensitive land, while also providing an easier, less expensive pathway for event approvals on public land.

ATTACHMENTS

1. P P- Events on public land-v 1 Gateway [8.1.1 - 17 pages]