



IRF24/1465

## Gateway determination report – PP-2024-1360

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Enable public events on bushfire prone public land as  
exempt development

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal - 25 June 2024 (Version 3)
Wingecaribee Shire Council Report – 15 March 2023
Wingecaribee Shire Council Resolution – 15 March 2023
Wingecaribee Local Planning Panel Report – 23 February 2023
Wingecaribee Local Planning Panel Minutes – 23 February 2023
Wingecaribee Shire Council – Closure of Public Facilities Due to Bushfire Risk – Operational Management Standard – Updated 25 June 2024

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	Wingecarribee
<b>PPA</b>	Wingecarribee Shire Council
<b>NAME</b>	Exempt public events on public bushfire prone land
<b>NUMBER</b>	PP-2024-1360
<b>LEP TO BE AMENDED</b>	Wingecarribee Local Environmental Plan 2010
<b>ADDRESS</b>	Public land in the Wingecarribee local government area
<b>DESCRIPTION</b>	Public land in the Wingecarribee local government area
<b>RECEIVED</b>	2/07/2024
<b>FILE NO.</b>	IRF24/1465
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to amend Schedule 2 – Exempt Development, of the Wingecarribee Local Environmental Plan 2010 (Wingecarribee LEP 2010) to enable events on public bushfire prone land as exempt development, subject to requirements.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend Schedule 2 – Exempt Development, of the Wingecarribee 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, and*

~~*(c) must not be located on bush fire prone land*~~

*(c) must not involve overnight accommodation*

Council has advised that the proposed amendments reflect early advice received from the NSW Rural Fire Service (NSW RFS) on the planning proposal.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The planning proposal is not site-specific, but rather would apply to all Council-owned land in the Wingecarribee Local Government Area where public events can be held.

## 1.5 Mapping

No LEP maps are proposed to be amended as part of the planning proposal.

## 2 Need for the planning proposal

The current wording of Schedule 2 – Exempt Development of the Wingecarribee LEP 2010 regarding public events, requires a Development Application (DA) for proposed public events on bushfire prone land.

The planning proposal reflects Council's ongoing commitment to supporting community events and local businesses in response to frustrations about the resource intensive DA process.

The intent of the proposal is to make Council-owned land more easily available for the public to book for events that benefit the community and the local economy, whilst also ensuring appropriate safety measures are in place in case of adverse bushfire conditions.

The Department supports the balanced intent of Council's planning proposal and notes the NSW RFS raised no objections to the proposed wording, subject to the drafted plans and guidelines provided by Council (e.g. Council's *Closure of Public Facilities Due to Bushfire Risk – Operational Management Standard*).

A planning proposal of this nature is considered the best means for achieving the intended outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

#### South East and Tablelands Regional Plan 2036

The planning proposal does not include an assessment of consistency against the South East and Tablelands Regional Plan 2036 (Regional Plan).

A Gateway condition is therefore recommended requiring the planning proposal to be updated prior to public exhibition to address consistency with the Regional Plan.

Key strategic directions outlined in the Regional Plan relevant to the proposal include:

- Direction 5: Promote agricultural innovation, sustainability and value-add opportunities

- Direction 9: Grow tourism in the region
- Direction 12: Promote business activities in urban centres
- Direction 16: Protect the coast and increase resilience to natural hazards

The planning proposal is consistent with the above directions as it would help grow tourism and the regional economy. The public events (including food events or farmers markets) would encourage more visitors to the Wingecarribee Shire and enhance public spaces whilst also being cognisant of potential bushfire hazards and their proper management.

#### Draft South East and Tablelands Regional Plan 2041

Key strategic objectives outlined in the Draft South East and Tablelands Regional Plan 2041 (Draft Regional Plan) relevant to the proposal include:

- Objective 3: Support diverse, vibrant and socially active communities
- Objective 7: Build resilient places and communities
- Objective 12: Promote a year round visitor economy
- Objective 13: Promote innovation and sustainability in agriculture and aquaculture industries
- Objective 15: Promote business and employment opportunities in strategic locations

For the reasons key outlined above, the planning proposal is considered consistent with the relevant objectives of the Draft Regional Plan.

## 3.2 Local

The planning proposal states that it is consistent with the following key local strategies outlined in **Table 3** below.

**Table 3: Local strategic planning assessment**

Local Strategies	Justification
Wingecarribee Local Strategic Planning Statement (LSPS)	<p>The planning proposal notes Council considers the proposed LEP amendment falls outside the main remit of its LSPS. However, Council considers the proposal consistent with the LSPS as it seeks to facilitate the efficient management of Council's business to the benefit of the community.</p> <p>Council believes the planning proposal is a good example of serving the community as efficiently and effectively as possible.</p>
Community Strategic Plan – Wingecarribee 2041 (CSP)	<p>Council believes the planning proposal aligns with several key goals of its CSP, including:</p> <ul style="list-style-type: none"> <li>• Goal 2.2 - an inclusive community where everyone can participate in community life;</li> <li>• Goal 5.1 - people want to visit, live and invest in the Shire; and</li> <li>• Goal 5.4A - a supported and connected local business community.</li> </ul> <p>Council notes the planning proposal seeks to make it easier for communities to gather and celebrate and for businesses to build awareness and customer base.</p> <p>It is noted that the process for planning public events on bushfire prone land will continue to require all necessary approvals to ensure community safety but will remove the current impediment of a resource-intensive DA process.</p>

The Department is satisfied the planning proposal is not inconsistent with the key local strategies.

### 3.3 Local planning panel (LPP) recommendation

The planning proposal was considered by the Wingecarribee LPP (LPP) on 22 February 2023. The LPP supported the planning proposal in principle and recommended:

- Council consults with the NSW RFS prior to requesting a Gateway determination;
- Council prepares 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*;
- Council develops 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*;
- The draft policy referred to above should:
  - be referred to the NSW RFS for comment prior to requesting a Gateway determination; and
  - be exhibited concurrently with the planning proposal
- Subject to the support of the NSW RFS, the planning proposal be submitted for a Gateway determination.

Council consulted the NSW RFS on the planning proposal, prior to requesting a Gateway determination. The proposed LEP wording was amended to reflect early advice received from the NSW RFS on the planning proposal in March 2023. This included adding requirements for a bushfire risk assessment and evacuation plan and ensuring events do not involve overnight accommodation.

Since the LPP review, Council has also amended its website to update the risk assessment process for the hiring of all Council owned properties. Council has also prepared and adopted an *Operational Management Standard (OMS) for the Closure of Public Facilities Due to Bushfire Risk* (Approved November 2023 and Updated November 2024).

The OMS covers Council assets that are in mapped bush fire prone land, are open to the public and either under Council's management or are managed by a delegated committee. The OMS includes a Bushfire Risk Assessment of public sites and outlines the procedures for the closure of public assets due to bushfire risk (closure triggers, closure actions and communication of closure actions etc).

In June 2024, NSW RFS reviewed the revised LEP wording, OMS and updated website details. The NSW RFS advised it had no objections.

Considering preliminary consultation has been undertaken several times with the NSW RFS who raised no objections, and the additional information prepared by Council since the LPP review, the Department is satisfied the planning proposal may proceed to public exhibition.

It is noted the NSW RFS would be reconsulted during public exhibition to ensure all bushfire issues are thoroughly considered and addressed, prior to making the LEP.

### 3.4 Section 9.1 Ministerial Directions

#### Direction 1.4 – Site Specific Provisions

The planning proposal is consistent with Direction 1.4 as it would reduce planning restrictions enabling more public events on public land whilst also ensuring appropriate risk management.

#### Direction 3.3 – Sydney Drinking Water Catchments

The entire Wingecarribee LGA is located within the drinking water catchment.



Direction 3.3 aims to protect water quality in Sydney's Drinking Water Catchment, including land within the Wingecarribee LGA.

Whilst the proposal is not expected to have any adverse impact on water quality or the drinking water catchment, Direction 3.3 requires consultation with WaterNSW, prior to Gateway determination.

Consultation has not occurred with WaterNSW on the planning proposal as required by Direction 3.3. The proposal's consistency with this Direction therefore remains unresolved.

A Gateway condition is therefore recommended requiring consultation with WaterNSW, prior to public exhibition.

#### Direction 4.3 Planning for Bushfire Protection

The planning proposal relates to holding public events bushfire prone public land.

As above, preliminary consultation has occurred with the NSW RFS as required by Direction 4.3 who raised no objections.

However, it is recommended that the NSW RFS be reconsulted prior to public exhibition to ensure all bushfire issues are thoroughly considered and addressed, prior to making the LEP.

The proposal's consistency with this Direction remains unresolved until formal consultation has occurred, and formal advice is received that the NSW RFS does not object to the progression of the planning proposal.

## 3.5 State environmental planning policies (SEPPs)

Consistency with relevant SEPPs is addressed in the planning proposal.

The Department is satisfied the planning proposal is not inconsistent with relevant SEPPs.

# 4 Site-specific assessment

## 4.1 Environmental

It is not anticipated that the proposed amendment would result in any adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats.

Council has advised that in identifying which sites are appropriate for community hire, the qualities of each site have been considered to ensure that all sites can be safely used by the community with no adverse environmental impacts.

## 4.2 Social and economic

The proposal would benefit the community and local economy by encouraging more public events and social interaction, whilst also ensuring appropriate risk management.

## 4.3 Infrastructure

No additional infrastructure impacts are anticipated because of the proposal.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The planning proposal is categorised as a standard under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

### 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- WaterNSW; and
- NSW RFS.

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard.

The Department recommends an LEP completion date of 22 April 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority (LPMA).

It is noted that the planning proposal is of minor local significance and categorised as standard, and therefore, the Department recommends that Council be authorised to be the LPMA for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following key reasons:

- it is not inconsistent with regional, district and local plans and their relevant objectives;
- there are no adverse social, economic or environmental impacts as a result of the proposed amendments; and
- it would benefit the community and local economy by encouraging more public events and social interaction, whilst also ensuring appropriate risk management.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 3.3 Sydney Drinking Water Catchments and 4.3 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to consult with:
  - (a) WaterNSW in accordance with Section 9.1 Direction 3.3 Sydney Drinking Water Catchments
  - (b) the NSW Rural Fire Service in accordance with Section 9.1 Direction 4.3 Planning for Bushfire Protectionand update the proposal as necessary to address any comments made.
2. Prior to public exhibition, the planning proposal shall be updated to address consistency with the South East and Tablelands Regional Plan 2036.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.
5. The LEP should be completed on or before **22 April 2025**.



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