

# Planning Proposal

to amend Wingecarribee Local Environmental Plan 2010 with regard  
to Clause 4.2F – Subdivision of land for dual occupancies in Zone R2  
or R3

Prepared by Wingecarribee Shire Council in accordance with  
the Local Environmental Plan Making Guideline (September 2022)

Council has categorised the Planning Proposal as *Standard*

Version 2 for Gateway Determination

June 2024

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## Part 1 – Objectives & Intended Outcomes of the Planning Proposal

The objective of the Planning Proposal is to reinstate protection of the Berrima Heritage Conservation Area from dual occupancy subdivision provided for under Clause 7.2(3) of the Wingecarribee Local Environmental Plan 2010, other than through minimum lot size provisions, when it was originally made in 2010 and to expand that protection to exclude any land in Berrima from the dual occupancy subdivision provisions which were introduced through Clause 4.2F on 26 June 2020 (Amendment 53) and the subsequent amendment to Clause 4.2F on 12 May 2023 (Amendment 67).

Clause 7.2 originally (16 June 2010) stated:

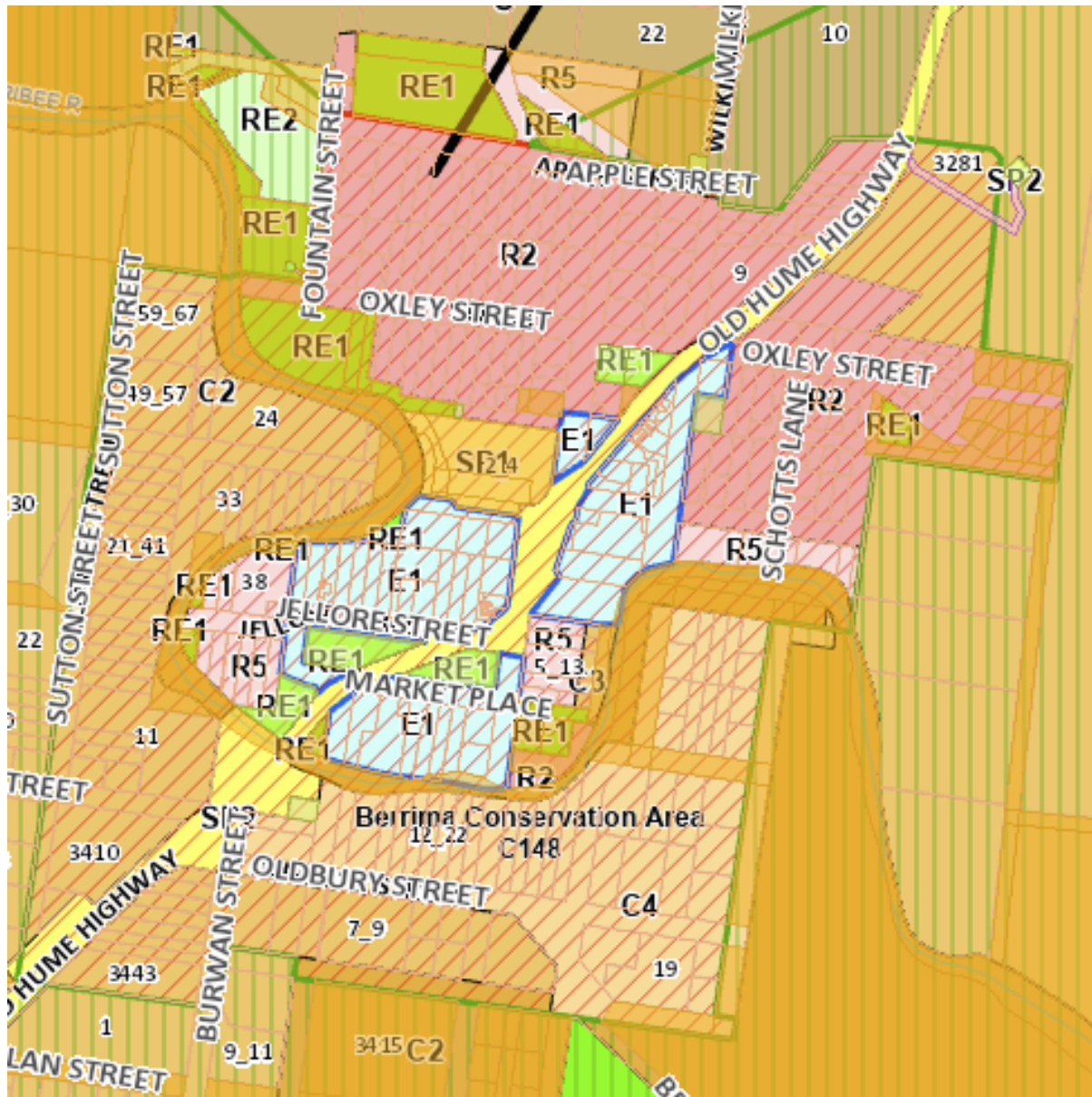
### **7.2 Requirements for subdividing dual occupancies in Zones R2 and B1**

- (1) *The objectives of this clause are as follows—*
  - (a) *to provide opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone B1 Neighbourhood Centre,*
  - (b) *to protect the heritage significance of the historic village of Berrima.*
- (2) *Despite any other provision of this Plan, development consent may be granted for the subdivision of a lawfully erected dual occupancy in Zone R2 Low Density Residential, only if the development—*
  - (a) *is on a corner allotment of not less than 1,000 square metres, and*
  - (b) *has access to a reticulated town water supply and sewerage system.*
- (3) *Despite subclause (2), development consent must not be granted for the subdivision of a lawfully erected dual occupancy on land in Zone R2 Low Density Residential or Zone B1 Neighbourhood Centre if the land is located within the Berrima Conservation Area as shown on the Heritage Map.*

At the time, clause 7.2 was the only provision within WLEP 2010 which permitted dual occupancy subdivision other than the minimum lot size provisions. The intent of the clause was to provide discrete opportunities for dual occupancy subdivision on corner lots of at least 1000m<sup>2</sup> in the R2 and (then) B1 zones where reticulated water and sewer were available. This provision did not extend to land within the Berrima Heritage Conservation Area because the original 1831 Hoddle subdivision plan for the village remains largely intact and delineates the Berrima Conservation Area containing many individual Items of Heritage, several of which are of State significance. Because no other provision apart from the minimum lot size provisions enabled dual occupancy subdivision, by excluding Berrima from clause 7.2, the entire village was protected from dual occupancy subdivision.

Since the original making of WLEP in 2010, subsequent amendments to the LEP in response to state legislative changes (detailed in Part 3) have resulted in this exclusion of Berrima from any form of dual occupancy subdivision, other than the minimum lot size provisions, being removed, much to the concern of Council and residents who value the Shire's heritage, especially that of Berrima. This Planning Proposal seeks to reinstate the exclusion of Berrima from all forms of dual occupancy

subdivision other than through the minimum lot size provisions. It is not intended to amend any other dual occupancy provisions currently allowed under WLEP 2010.



The Berrima Heritage Conservation Area is identified (red hatched) on the map above.

## Part 2 - Explanation of the Provisions

To achieve the intended outcomes of the Planning Proposal the following amendment to the WLEP 2010 instrument would be required:

### **4.2F Subdivision of land for dual occupancies in Zone R2 or R3**

- (1) The objectives of this clause are as follows—
  - (a) to ensure development for the purposes of dual occupancies is compatible with the character of existing development in the surrounding area,*
  - (b) to provide opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone R3 Medium Density Residential,*
  - (c) to protect the heritage significance of the historic village of Berrima.**
- (2) This clause applies to land in the following zones—
  - (a) Zone R2 Low Density Residential,*
  - (b) Zone R3 Medium Density Residential.**
- (3) Land on which a dual occupancy is, or will be, erected may be subdivided if the consent authority is satisfied—
  - (a) for land that is a corner lot—the lot has an area of at least 1,000m<sup>2</sup>, or*
  - (b) otherwise—the area of each lot resulting from the subdivision will be—
    - (i) at least 50% of the minimum lot size shown for the land on the Lot Size Map, and*
    - (ii) at least 600m<sup>2</sup>.***
- (4) Development consent must not be granted to the subdivision of land under subclause (3) unless the consent authority is satisfied—
  - (a) there will be no more than 1 dwelling on each resulting lot, and*
  - (b) each resulting lot will be serviced by a water reticulation system and sewage reticulation system.**
- (5) Subdivision permitted under this clause must not occur before an occupation certificate is issued for each dwelling forming part of the dual occupancy.*
- (6) Subclause (3) ~~to~~ does not apply to land in the Berrima Conservation Area as shown on the Heritage Map.*

This amendment would result in the Berrima Conservation Area (BCA) being excluded from all of subclause (3), thereby reinstating both the exclusion of corner lots within Berrima from dual occupancy subdivision (as per the now repealed clause 7.2) as well as all land within Berrima, by virtue of the fact that, prior to the introduction of clause 4.2F on 26 June 2020, no other provision enabled dual occupancy subdivision anywhere in the Shire other than through the minimum lot size provisions.

## Part 3 - Justification of Strategic & Site-specific Merit

### Strategic Merit

On 2 February 2022, the Wingecarribee Local Planning Panel (WLPP) considered a report to amend Clause 7.2 of the Wingecarribee Local Environmental Plan 2010 to remove an inconsistency, created by the introduction on 26 June 2020 of *Clause 4.2F*, between that clause and *Clause 7.2- Requirements for subdividing dual occupancies in Zones R2 and B1* and *Clause 4.2F-Minimum subdivision lot sizes for dual occupancies in certain zones*.

Clause 7.2 was contained within WLEP from its initial gazettal on 16 June 2010. The intent of the clause was to enable the subdivision of dual occupancy development in certain circumstances where subdivision was not otherwise permissible under the minimum lot size provisions. However, the provisions of the clause excluded land within the mapped Berrima Heritage Conservation Area, due to the locality's high heritage value.

In response to amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* which enabled the erection and subdivision of dual occupancies as complying development, Council introduced Clauses 4.2E and 4.2F into WLEP2010 through Amendment 53 made on 26 June 2020 to ensure that such dual occupancy developments were consistent with the established lot sizes and character of our towns and villages.

On 21 October 2022, Amendment 66 to WLEP resulted in the following amendment to clause 7.2:

*(2) This clause applies to land in the following zones—*

- (a) Zone R2 Low Density Residential,*
- (b) Zone R3 Medium Density Residential.*

*(3) Subdivision of land to which this clause applies for the purposes of dual occupancies is permitted with development consent if the land—*

- (a) is on a corner lot of at least 1,000m<sup>2</sup>, and*
- (b) has access to a reticulated town water supply and sewerage system.*

*(4) This clause does not apply to land in the Berrima Conservation Area as shown on the Heritage Map.*

However, this amendment created an inconsistency with clauses 4.2E and 4.2F introduced through Amendment 53 which the NSW Department of Planning & Environment sought to address directly with PCO resulting in Amendment 67 being made on 12 May 2023 to further amend clauses 4.2E and 4.2F. This also resulted in the removal of clause 7.2 altogether. This Planning Proposal seeks to reinstate the full protection from dual occupancy subdivision afforded Berrima village in the initial WLEP 2010, both through the exclusion of the village from clause 7.2 and with no other mechanism available other than through minimum lot size provisions.



The Planning Proposal will not dilute the general provisions of clauses 4.2E and 4.2F which support opportunities for dual occupancy development and subdivision as provided for within those clauses. The only change to these provisions is the exclusion of the Berrima Heritage Conservation Area from undersized dual occupancy subdivision, thereby reinstating the original protection.

Further supporting strategic merit is provided by the NSW Land and Environment Court (NSWLEC) decision 1239 (handed down 9 May 2024) which dismissed an appeal against Council's refusal to approve development application No 23/0891 seeking consent for tree removal, demolition of an existing retaining wall and construction of a single storey dwelling house containing 3 bedrooms and an attached carport, resulting in a detached dual occupancy on the site, on the land at 11 Oxley Street, Berrima.

The judgement noted the provisions of clauses 4.2E and 4.2F of WLEP 2010 and that both clauses *"operate the dual occupancy development on a lot of this size, and permit the subdivisions of the same into lots of a size as such those two lots proposed"*.

However, the judgement references several clauses within the DCP and in the context of those clauses, concludes that, in this case, the proposed subdivision would *"set an unfortunate precedent"*. The judgement references the following extracts from the Berrima DCP.

***"A8.1.1 Existing Subdivision Pattern***

*The Village of Berrima is laid out as a Georgian village based on a grid pattern of streets with a central focal and open market place of mixed commercial and residential character. Allotments are regular and rectangular in shape leading out into the surrounding rural area. The minimum lot size for R2 Low Density residential land in Berrima is 2,000m<sup>2</sup> although there is a small pocket of R2 zoned land already subdivided and developed on Mortimer and Lennox Roads (east of Oxley Street) which has a 700m<sup>2</sup> minimum lot size. The minimum lot size for R5 Large Lot Residential land is 4,000m<sup>2</sup>."*

***"A9.1.2 Existing Subdivision Pattern***

*Berrima remains an iconic Village, within easy reach of Sydney. Berrima is not a ghost town. Its population is growing and it is subject to continuous development pressure from Sydney. The approach taken by this plan is to encourage the highest quality conservation and new infill work so as to best preserve and enhance the heritage character of Berrima..... the visual character of Berrima cannot afford to have development or planning mistakes. This plan therefore deliberately sets out to avoid a "death by a thousand cuts" for Berrima, of small mistakes in development that would have a disastrous cumulative effect over time."*

In dismissing the appeal, the Court would appear to be relying more on the DCP controls than on LEP permissibility, and in Council's view, it is preferable to ensure that both the LEP and the DCP align and seek to enable the same outcomes. The judgement in this case suggests that the LEP is out of alignment with the DCP, with the latter providing the more compelling justification. Council considers that this judgment provides a strong strategic merit argument for the proposed amendment.

## Site-specific Merit

The Planning Proposal is not site specific except to the extent that it applies to the already mapped Berrima Heritage Conservation Area. As stated above, the intent of the Planning Proposal is to reinstate that protection of the Berrima Heritage Conservation Area from dual occupancy subdivision which was contained within the original Wingecarribee Local Environmental Plan 2010.

## Section A – Need for the Planning Proposal

### 1 - Is the Planning Proposal a result of an endorsed LSPS, strategic study or report?

The Wingecarribee LSPS, adopted in 2021, identifies the following contributory elements contributing to Berrima's character:

- Existing Heritage listed items and conservation areas (National/State/local significance)
- High standards of development relevant to an area of significant heritage
- Rustic village character like soft road edges and pathways
- Rural landscapes, undeveloped and natural areas surrounding the village
- Formal heritage trails / walks
- Continue to promote Berrima as a heritage tourism experience

Opportunities for improvement include:

- Enhance existing and establish new heritage trails / walks
- Activation of public domain to support the viability of the centre
- Review of the Berrima Landscape Conservation Area
- Review and strengthen development controls for the village and surrounds

It is classified as having a high sensitivity to change and the 'way forward' is 'to protect' through the following actions:

- Continue to promote Berrima as a heritage tourism experience
- Enhance existing and establish new heritage trails / walks
- Activation of public domain to support the viability of the centre
- Review of the Berrima Landscape Conservation Area
- Review and strengthen development controls for the village and surrounds

Council considers that reinstating all the protections under WLEP 2010 to prevent under-sized dual occupancy subdivision which were in place when the LEP was originally made, would be the best way to protect and preserve the character, integrity and heritage significance of Berrima.

The Planning Proposal is also informed by the judgement of *Poppelwell v Wingecarribee Shire Council*, [2024] NSWLEC 1239.

### 2 - Is the Planning Proposal the best means of achieving the objectives?

The Planning Proposal is the only means of achieving this outcome. This assessment is based on advice from the Department of Planning, Housing & Infrastructure and the Parliamentary Counsel's Office.

## Section B – Relationship to the Strategic Planning Framework

### 3 - Will the Planning Proposal give effect to the objectives and actions of the SE & Tablelands Regional Plan (including any draft plans or strategies)?

#### 1. South East & Tablelands Regional Plan 2036

Direction 23 of the SE&T Regional Plan 2036 is to Protect the region's heritage. This Direction notes that *"Cultural and historic heritage provides tangible connections to the past and attracts tourists, and Heritage is irreplaceable and should be appreciated, valued and protected for the benefit of current and future generations."* (p47).

Council considers the protection of the 1831 Hoddle Plan as fundamental to the protection of the Berrima Heritage Conservation Area, a village of key state and local significance of high appeal to residents and visitors.

#### 2. Draft South East & Tablelands Regional Plan 2041

Objective 4 of the draft SE&T Regional Plan 2041 is *"preserve the heritage and character of the region's towns and villages"* with this section of the Plan noting that *"understanding the story, significance and community values of heritage early in the planning process provides the greatest opportunity for conservation, management and activation that will address cumulative impacts on heritage"* (p42). While Berrima, regrettably, is not mentioned at all, the intent of the proposed amendment does seek to achieve the broader objectives articulated in the Plan.

### 4 - Is the Planning Proposal consistent with Council's adopted and endorsed Local Strategic Planning Statement and Local Housing Strategy?

The Planning Proposal is considered to be consistent with the Wingecarribee Local Housing Strategy 2020, specifically, Planning Priority 1 – *Promote infill development and increased densities in appropriate locations, and facilitate a greater mix of housing types, to ensure our housing stock is reflective of the needs of our community* (p.21). The proposed amendment to Clause 4.2F does not restrict the provision of infill development other than within the Berrima Heritage Conservation Area which is recognised within the LSPS as being of high heritage value and an important contributor to local tourism.

### 5 - Is the Planning Proposal consistent with any other applicable State and regional studies or strategies?

No other state or regional studies apply to the Planning Proposal.



## 6 - Is the Planning Proposal consistent with applicable SEPPs?

| SEPP (Housing) 2021  | <i>The intent of this SEPP is to deliver a sufficient supply of safe, diverse and affordable housing</i> |
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| <p><b>Assessment – Consistent</b></p> <p><i>The principles of this Policy are:</i></p> <ul style="list-style-type: none"> <li><i>(a) enabling the development of diverse housing types, including purpose-built rental housing,</i></li> <li><i>(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</i></li> <li><i>(c) ensuring new housing development provides residents with a reasonable level of amenity,</i></li> <li><i>(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</i></li> <li><i>(e) minimising adverse climate and environmental impacts of new housing development,</i></li> <li><i>(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,</i></li> <li><i>(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,</i></li> <li><i>(h) mitigating the loss of existing affordable rental housing.</i></li> </ul> <p><i>The Planning Proposal will not dilute the general provisions of the Housing SEPP on which clauses 4.2E and 4.2F are based. These clauses support opportunities for dual occupancy development and subdivision. The only change to these provisions is the exclusion of the Berrima Heritage Conservation Area which has always been excluded from under-sized dual occupancy subdivision since 2010 due to the acknowledged high heritage status of this area.</i></p> |  |

| SEPP (Transport and Infrastructure) 2021  | <i>The intent of this SEPP is to provide well-designed and located transport and infrastructure integrated with land use</i> |
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| <p><b>Assessment – Consistent</b></p> <p><i>The key intentions of this SEPP include:</i></p> <ul style="list-style-type: none"> <li><i>(a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and</i></li> <li><i>(b) providing greater flexibility in the location of infrastructure and service facilities, and</i></li> <li><i>(c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and</i></li> <li><i>(d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and</i></li> <li><i>(e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and</i></li> <li><i>(f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and</i></li> <li><i>(g) providing opportunities for infrastructure to demonstrate good design outcomes.</i></li> </ul> <p><i>The Planning Proposal is considered consistent with this SEPP in that it does not impact the provisions transport and infrastructure to Berrima.</i></p> |  |

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| <b>SEPP (Primary Production)</b>   | <i>The intent of this SEPP is to support and protect the productivity of important agricultural lands. They enhance rural and regional economies through a sustainable, diverse and dynamic primary production sector that can meet the changing needs of a growing NSW.</i> |
| <p><i>The key aims of this SEPP are:</i></p> <ul style="list-style-type: none"> <li><i>(a) to facilitate the orderly economic use and development of lands for primary production,</i></li> <li><i>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</i></li> <li><i>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</i></li> <li><i>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</i></li> <li><i>(e) to encourage sustainable agriculture, including sustainable aquaculture,</i></li> <li><i>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</i></li> <li><i>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</i></li> </ul> <p><i>The Planning Proposal is considered consistent with this SEPP, because it does not impact any of these objectives and outcomes.</i></p> |  |

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| <b>SEPP (Biodiversity and Conservation) 2021</b>  | <i>The intent of this SEPP is to preserve, conserve and manage NSW's natural environment &amp; heritage</i> |
| <p><b>Assessment – Consistent</b></p> <p><i>The aims of this SEPP are:</i></p> <ul style="list-style-type: none"> <li><i>(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and</i></li> <li><i>(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.</i></li> </ul> <p><i>It is noted that 2.3(1)(b) of the SEPP identifies land within the R3 Medium Density Residential zone as land to which the SEPP applies.</i></p> <p><i>The Planning Proposal is considered consistent with this SEPP. Excluding land within the Berrima Heritage Conservation Area from dual occupancy subdivision will also assist in protecting existing biodiversity.</i></p> |   |

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| <b>SEPP (Resilience and Hazards) 2021</b>  | <i>The intent of this SEPP is to manage risks and building resilience in the face of hazards</i> |
| <p><b>Assessment – Consistent</b></p> <p><i>The key aims of that part of the SEPP applicable to the Shire include:</i></p> <ul style="list-style-type: none"> <li><i>(d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and</i></li> <li><i>(e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact</i></li> </ul> <p><i>The Planning Proposal is considered consistent with this SEPP because it does not impact any of these provisions.</i></p> |  |

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| <b>SEPP (Industry and Employment) 2021 –</b>  | <i>The intent of this SEPP is to grow a competitive and resilient economy that is adaptive, innovative and delivers jobs</i> |
| <p><b>Assessment – Consistent</b></p> <p><i>The provisions of Chapter 3 (Advertising &amp; Signage) are the only part of this SEPP applicable to land in Wingecarribee Shire.</i></p> <p><i>The Planning Proposal is considered consistent with this SEPP because it does not impact any of these provisions.</i></p> |  |

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| <b>SEPP (Resources and Energy) 2021</b>  | <i>The intent of this SEPP is to promote the sustainable use of NSW's resources and transitioning to renewable energy</i> |
| <p><b>Assessment – Consistent</b></p> <p><i>The provisions of Chapter 2 (Mining, petroleum production &amp; extractive industries) are the only part of this SEPP applicable to land in Wingecarribee Shire.</i></p> <p><i>The Planning Proposal is considered consistent with this SEPP because it does not impact any of these provisions.</i></p> |   |

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| <b>SEPP (Planning Systems) 2021</b>  | <i>The intent of this SEPP is to provide a strategic and inclusive planning system for the community &amp; the environment</i> |
| <p><b>Assessment – Consistent</b></p> <p><i>The provisions of this SEPP address State significant development and land owned by an Aboriginal Land Council and are therefore not relevant to this Planning Proposal.</i></p> |  |

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| <b>SEPP (Regional Precincts) 2021</b>   | <i>The intent of this SEPP is to consider State significant precincts, Activation precincts and other specific precincts including the Southern Highlands Regional Shooting Complex</i> |
| <p><b>Assessment – Consistent</b></p> <p><i>The only provisions of this SEPP which apply to Wingecarribee Shire relate to the Southern Highlands Regional Shooting Complex and is therefore not relevant to this Planning Proposal.</i></p> |   |

## 7 - Is the Planning Proposal consistent with applicable s9.1 Ministerial Directions?

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| <b>Focus Area 1<br/>Planning Systems</b>   | <i>The intent of this Focus Area is to support the broader NSW planning framework, including its processes and collaborative approaches to strategic and land use planning and decision making. They seek to achieve long-term, evidence-based, strategically led planning that is inclusive, democratic, responsive to the community and the environment, and ensures decisions are transparent and prompt.</i> |
| <b>1.1 Implementation of Regional Plans</b>  |  |
| <p><b>Assessment – Consistent</b></p> <p><i>The objective of this Direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</i></p> <p><i>The Planning Proposal is considered consistent with this Direction because it does not restrict the overall operation of the Regional Plan.</i></p>   |  |
| <b>1.2 Development of Aboriginal Land Council land</b>   |  |
| <p><b>Assessment – Consistent</b></p> <p><i>The objective of this direction is to provide for the consideration of development delivery plans prepared under Chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.</i></p> <p><i>The Planning Proposal is considered consistent with this Direction because no Aboriginal Land Council land is involved.</i></p>                       |  |
| <b>1.3 Approval and Referral Requirements</b>  |  |
| <p><b>Assessment – Consistent</b></p> <p><i>The objective of this Direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</i></p> <p><i>The Planning Proposal is considered consistent with this Direction because it seeks to exclude the Berrima Heritage Conservation Area from the provisions of clause 4.2F thereby providing clear direction within the LEP rather than relying on DCP controls at the DA stage.</i></p> |  |
| <b>1.4 Site Specific Provisions</b>  |  |
| <p><b>Assessment – Consistent</b></p> <p><i>The objective of this Direction is to discourage unnecessarily restrictive site-specific planning controls.</i></p> <p><i>The Planning Proposal is considered consistent with this Direction because even though it seeks to exclude the Berrima Heritage Conservation Area from the application of clause 4.2F it is considered justified due to the high heritage status of the Area.</i></p>  |  |
| <b>1.5 – 1.22 – Planning Systems Place Based</b>   |  |
| <p><b>Assessment – Consistent</b></p> <p><i>None of these place-based Directions apply to Wingecarribee Shire.</i></p>   |  |

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| <b>Focus Area 2<br/>Design &amp;<br/>Place</b>                                    | <i>The intent of this Focus Area is to establish quality design approaches for new development, public spaces and the environment. They promote the design of places that are healthy, sustainable, prosperous, and supportive of people, the community and Country.</i> |
| <b>NB: This Focus Area is not included in the current Ministerial Directions.</b> |  |

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| <b>Focus Area 3<br/>Biodiversity<br/>&amp;<br/>Conservation</b> | <i>The intent of this Focus Area is to recognise the fundamental importance of protecting, conserving and managing NSW's natural environment and heritage. They help balance the needs of built and natural environments, respecting both the innate and economic value of the state's biodiversity and natural assets.</i> |
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### **3.1 Conservation Zones (previously 2.1 Environment Protection Zones)**

#### **Assessment – Consistent**

*The objective of this Direction is to protect and conserve environmentally sensitive areas.*

*The Planning Proposal is considered consistent with this Direction because excluding the Berrima Heritage Conservation Area from the application of clause 4.2F will also protect environmentally sensitive areas.*

### **3.2 Heritage Conservation**

#### **Assessment – Consistent**

*The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.*

*The Planning Proposal is considered consistent with this Direction. Excluding the Berrima Heritage Conservation Area from the application of clause 4.2F will directly contribute to protecting places of heritage significance.*

### **3.3 Sydney Drinking Water Catchments**

#### **Assessment – Consistent**

*The objective of this Direction is to provide for healthy catchments and protect water quality in the Sydney Drinking Water Catchment. This Direction requires that a Planning Proposal must be prepared in accordance with the general principle that water quality within the Sydney drinking water catchment must be protected, and in accordance with the following specific principles:*

- (a) new development within the Sydney drinking water catchment must have a neutral or beneficial effect on water quality (including groundwater), and*
- (b) future land use in the Sydney drinking water catchment should be matched to land and water capability, and*
- (c) the ecological values of land within a Special Area should be maintained.*

*The Direction also requires that, when preparing a Planning Proposal, Council must:*

- consult with WaterNSW, describing the means by which the planning proposal gives effect to the water quality protection principles of this direction, and*
- ensure that the proposal is consistent with Part 6.5 of Chapter 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, and*



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| <ul style="list-style-type: none"> <li>○ identify any existing water quality (including groundwater) risks to any waterway occurring on, or adjacent to the site, and</li> <li>○ give consideration to the outcomes of the Strategic Land and Water Capability Assessment prepared by WaterNSW, being the series of land use capability maps and GIS data prepared by WaterNSW and provided to councils in June 2009, and</li> <li>○ include a copy of any information received from WaterNSW as a result of the consultation process in its planning proposal prior to the issuing of a gateway determination under section 3.34 of the EP&amp;A Act.</li> </ul> <p><i>It is anticipated that the Gateway Determination will require referral to WaterNSW. No impacts are envisaged as resulting from the Proposal. In fact a reduction in potential for dual occupancy development in Berrima would reduce the potential for impacts on water demand and quality.</i></p> |
| <b>3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs</b>  |
| <b>Assessment – Consistent</b><br><i>This Direction is not applicable to Wingecarribee Shire.</i>   |
| <b>3.5 Recreation Vehicle Areas</b>   |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.</i><br><br><i>The Planning Proposal is considered consistent because it does not apply to this Direction.</i>   |

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| <b>Focus Area 4<br/>Resilience &amp;<br/>Hazards</b> | <i>The intent of this Focus Area is to improve responses to natural and development-related hazards, and climate change. They support methods to consider and reduce risk. The principles promote healthy, resilient and adaptive communities, urban areas and natural environments.</i>  |
| <b>4.1 Flooding</b>                                  | <b>Assessment – Consistent</b><br><i>The objectives of this Direction are to:</i><br><i>(a) ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</i><br><i>(b) ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</i><br><br><i>The Planning Proposal is considered consistent with this Direction because it does not impact any of these objectives.</i> |
| <b>4.2 Coastal Management</b>                        | <b>Assessment – Consistent</b> - <i>This Direction is not applicable to Wingecarribee Shire.</i>  |

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| <b>4.3 Planning for Bushfire Protection (previously 4.4)</b>  |  |
| <b>Assessment – Consistent</b><br><i>The objectives of this Direction are to:</i><br><i>(a) protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</i><br><i>(b) encourage sound management of bush fire prone areas.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i> |  |
| <b>4.4 Remediation of Contaminated Land</b>   |  |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i>  |  |
| <b>4.5 Acid Sulphate Soils</b>  |  |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. There currently appear to be no mapped acid sulphate soils in Wingecarribee Shire.</i>   |  |
| <b>4.6 Mine Subsidence &amp; Unstable Land</b>  |  |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i>   |  |

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| <b>Focus Area 5<br/>Transport &amp;<br/>Infrastructure</b>   | <i>The intent of this Focus Area is to support innovative, integrated and coordinated transport and infrastructure, that is well-designed, accessible and enduring. They seek to optimise public benefit and value by planning for modern transport and infrastructure in the right location and at the right time.</i> |
| <b>5.1 Integrating Land Use and Transport</b>  |   |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</i><br><i>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</i><br><i>(b) increasing the choice of available transport and reducing dependence on cars, and</i><br><i>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</i> |   |

- (d) supporting the efficient and viable operation of public transport services, and  
(e) providing for the efficient movement of freight.

*The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.*

## **5.2 Reserving Land for Public Purposes**

### **Assessment – Consistent**

*The objectives of this Direction are to (a) facilitate the provision of public services and facilities by reserving land for public purposes, and (b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.*

*The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.*

## **5.3 Development Near Regulated Airports and Defence Airfields**

### **Assessment – Consistent**

*The objectives of this Direction are to:*

- (a) ensure the effective and safe operation of regulated airports and defence airfields;*
- (b) ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and*
- (c) ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.*

*The Planning Proposal is consistent because it does not impact the objectives of this Direction.*

## **5.4 Shooting Ranges**

### **Assessment – Consistent**

*The objectives of this Direction are to:*

- (a) maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range,*
- (b) reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land,*
- (c) identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.*

*The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.*

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| <b>Focus Area 6<br/>Housing</b>   | <i>The intent of this Focus Area is to foster long-term, strategic-led and evidence-based approaches to guide a strong supply of well-located homes. They support the delivery of safe, diverse, affordable and quality designed housing that meets the needs of Aboriginal and local communities.</i> |
| <b>6.1 Residential Zones</b>  |  |
| <b>Assessment – Consistent</b><br><i>The objectives of this Direction are to:</i><br><i>(a) encourage a variety and choice of housing types to provide for existing and future housing needs,</i><br><i>(b) make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</i><br><i>(c) minimise the impact of residential development on the environment and resource lands.</i><br><br><i>The Planning Proposal is considered consistent with this Direction because it will not dilute the general provisions of clauses 4.2E and 4.2F which support opportunities for dual occupancy development and subdivision as provided for within those clauses. The only change to these provisions is the exclusion of the Berrima Heritage Conservation Area which has always been excluded from dual occupancy subdivision due to the acknowledged high heritage status of this area.</i> |  |
| <b>6.2 Caravan Parks and Manufactured Home Estates</b>  |  |
| <b>Assessment – Consistent</b><br><i>The objectives of this Direction are to:</i><br><i>(a) provide for a variety of housing types, and</i><br><i>(b) provide opportunities for caravan parks and manufactured home estates.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i>  |  |

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| <b>Focus Area 7<br/>Resilient Economies</b>   | <i>The intent of this Focus Area is to support diverse, inclusive and productive employment opportunities across the state to make NSW more economically competitive. They promote the supply of strategic employment lands, innovative industries and centres as a focus for activity and accessibility.</i> |
| <b>7.1 Business and Industrial Zones</b>  |   |
| <b>Assessment – Consistent</b><br><i>The objectives of this Direction are to:</i><br><i>(a) encourage employment growth in suitable locations,</i><br><i>(b) protect employment land in business and industrial zones, and</i><br><i>(c) support the viability of identified centres.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i> |   |

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| <b>7.2 Reduction in non-hosted short-term rental accommodation period</b>           |
| <b>Assessment – Consistent</b><br><i>Not applicable to Wingecarribee Shire.</i>     |
| <b>7.3 Commercial and Retail Development along the Pacific Highway, North Coast</b> |
| <b>Assessment – Consistent</b><br><i>Not applicable to Wingecarribee Shire.</i>     |

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| <b>Focus Area 8<br/>Resources<br/>&amp; Energy</b>   | <i>The intent of this Focus Area is to promote the sustainable development of resources in strategic areas and a transition to low carbon industries and energy. They support positive environmental outcomes and work towards the net zero emissions target and continued energy security, while also promoting diversified activity in regional economies.</i> |
| <b>8.1 Mining, Petroleum Production &amp; Extractive Industries</b>  |  |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i> |  |

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| <b>Focus Area 9<br/>Primary<br/>Production</b>   | <i>The intent of this Focus Area is to support and protect the productivity of important agricultural lands. They enhance rural and regional economies through a sustainable, diverse and dynamic primary production sector that can meet the changing needs of a growing NSW.</i> |
| <b>9.1 Rural Zones</b>   |  |
| <b>Assessment – Consistent</b><br><i>The objective of this Direction is to protect the agricultural production value of rural land and identifies requirements for a Planning Proposal seeking to rezone Rural zoned land to a residential, business, industrial, village or tourist zone.</i><br><br><i>The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.</i>   |  |
| <b>9.2 Rural Lands</b>   |  |
| <b>Assessment – Consistent</b><br><i>This Direction applies when a Planning Proposal will either affect land within an existing or proposed rural or conservation zone or changes the existing minimum lot size on land within a rural or conservation zone. The objectives of this Direction are to:</i><br><i>(a) protect the agricultural production value of rural land,</i><br><i>(b) facilitate the orderly and economic use and development of rural lands for rural and related purposes,</i><br><i>(c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State,</i><br><i>(d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,</i> |  |



- (e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land,  
(f) support the delivery of the actions outlined in the NSW Right to Farm Policy.

*The Planning Proposal is considered consistent because it does not impact the objectives of this Direction.*

### **9.3 Oyster Aquaculture**

#### **Assessment – Consistent**

*The objectives of this direction are to:*

- (a) ensure that 'Priority Oyster Aquaculture Areas' and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, and  
(b) protect 'Priority Oyster Aquaculture Areas' and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

*The Planning Proposal is considered consistent because there are no 'Priority Oyster Aquaculture Areas' in Wingecarribee Shire.*

### **9.4 Farmland of State & Regional Significance on the NSW Far North Coast**

#### **Assessment – Consistent**

*The Planning Proposal is considered consistent because it is not applicable to Wingecarribee Shire.*

## **Section C – Environmental, Social & Economic Impacts**

### **8 - Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the Proposal?**

No, it is not considered that there would be any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, would be adversely affected because of the Proposal.

The intent of the Planning Proposal is to continue to support the Low Rise Housing Diversity Code, which applies to land within all existing towns and villages, other than Berrima, on land which already has a dwelling entitlement.

### **9 - Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?**

No, it is not considered that there will be any other likely environmental impacts.

#### **10 - Has the planning proposal adequately addressed any social and economic effects?**

Clause 4.2F will continue to support the application of the Low Rise Housing Diversity within existing town and villages, other than Berrima. This will protect the social value of Berrima's heritage.

#### **Section D – Infrastructure (Local, State & Commonwealth)**

#### **11- Is there adequate public infrastructure for the Planning Proposal?**

Clause 4.2F will continue to support the application of the Low Rise Housing Diversity within existing town and villages, other than Berrima, on land which generally has infrastructure and services.

#### **Section E – State and Commonwealth Interests**

#### **12 - What are the views of state and federal authorities and government agencies consulted in order to inform the Gateway determination?**

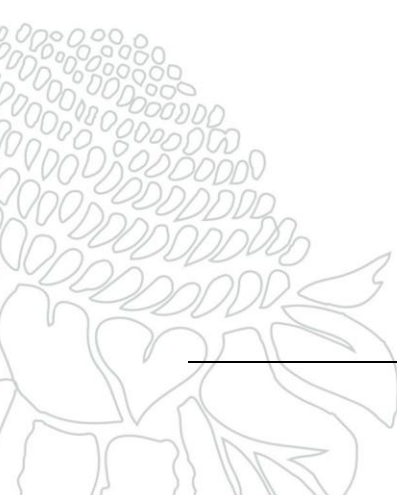
No other agencies have been consulted at this time. Agency referrals would be undertaken in accordance with the Gateway Determination.

### **Part 4 - Maps**

No map amendments are required for this Planning Proposal.

### **Part 5 - Community Consultation**

Community consultation will occur as required by the Department's Guidelines.



## Part 6 - Project Timeline

| MILESTONE  | INDICATIVE /ACTUAL DATE |
|--|-------------------------|
| Gateway Determination                              | July 2024               |
| Agency Consultation                                | August 2024             |
| Public Exhibition                                  | September 2024          |
| Post exhibition reporting to LPP & Council         | October-November 2024   |
| Drafting Request                                   | December 2024           |
| Notification Request & approximate completion date | January 2025            |

**END OF PLANNING PROPOSAL**