



IRF24/1554

## Gateway determination report – PP-2024-1411

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Amend clause 4.2F of the Wingecarribee Local Environmental Plan 2010 to exclude land from Berrima Heritage Conservation Area from certain dual occupancy subdivision provisions

July 24



Published by NSW Department of Planning, Housing and Infrastructure

[dpie.nsw.gov.au](https://dpie.nsw.gov.au)

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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 - June 2024 (Version 2)
Wingecarribee Shire Council Report – 21 June 2023
Wingecarribee Shire Council Resolution – 21 June 2023

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Wingecarribee</b>
<b>PPA</b>	Wingecarribee Shire Council
<b>NAME</b>	Amend clause 4.2F of the Wingecarribee Local Environmental Plan 2010 to exclude land from Berrima Heritage Conservation Area from certain dual occupancy subdivision provisions
<b>NUMBER</b>	PP-2024-1411
<b>LEP TO BE AMENDED</b>	Wingecarribee Local Environmental Plan 2010
<b>ADDRESS</b>	Land zoned R2 Low Density Residential and R3 Medium Density Residential within the Berrima Heritage Conservation Area
<b>DESCRIPTION</b>	Land zoned R2 Low Density Residential and R3 Medium Density Residential within the Berrima Heritage Conservation Area
<b>RECEIVED</b>	28/06/2024
<b>FILE NO.</b>	IRF24/1554
<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 clause 4.2F of the Wingecarribee Local Environmental Plan 2010 (Wingecarribee LEP 2010) to exclude land in the Berrima Heritage Conservation Area (BCA) from certain dual occupancy subdivision provisions to preserve the character of Berrima Village.

## 1.3 Explanation of provisions

To achieve the objectives of the planning proposal it is proposed to amend Clause 4.2F(6) of the Wingecarribee LEP 2010 as shown below.

### **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) ~~(a)~~ does not apply to land in the Berrima Conservation Area as shown on the Heritage Map.*

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 applies to land in the BCA zoned R2 Low Density Residential and R3 Medium Density Residential in the Wingecarribee LEP 2010.

## 1.5 Mapping

No LEP maps would be amended as part of the planning proposal.

## 2 Need for the planning proposal

The planning proposal is needed to protect and preserve the character, integrity, and heritage significance of Berrima.

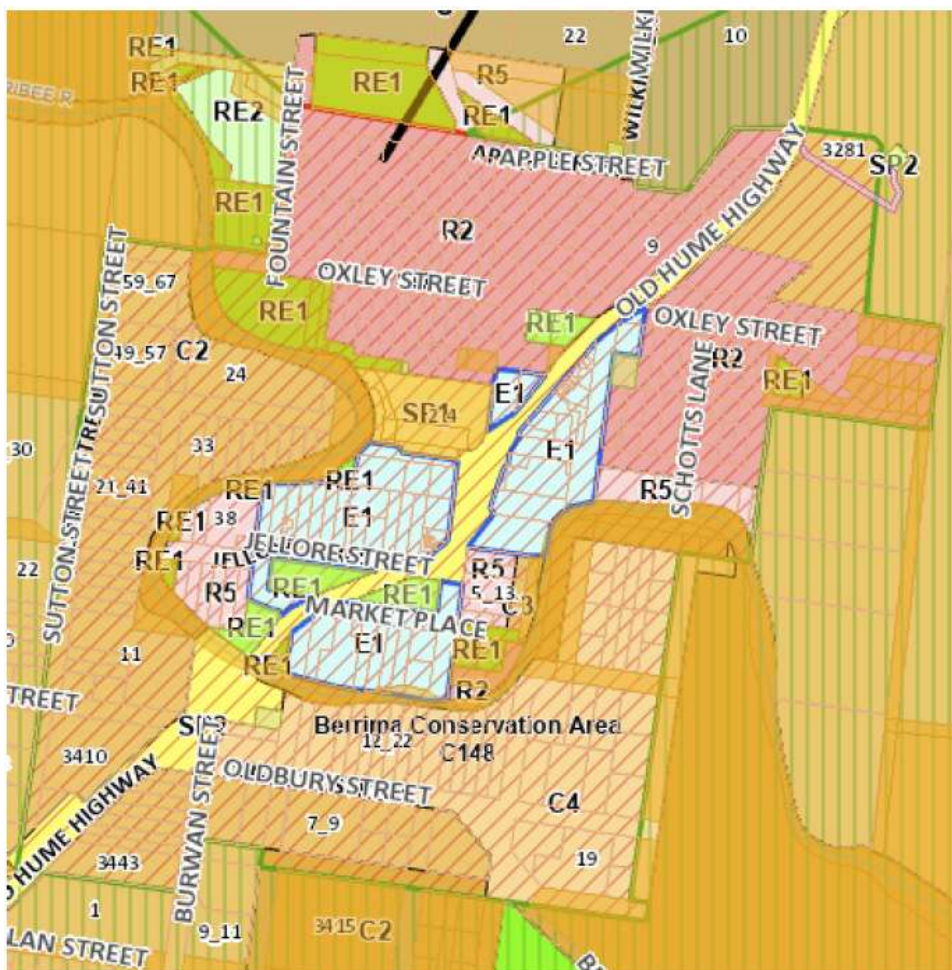
Council notes the original 1831 Hoddle subdivision plan for the Berrima Village remains largely intact and delineates the Berrima Conservation Area containing many individual Items of Heritage, several of which are of State significance.

The Berrima Village Development Control Plan (DCP) references the significance of the existing subdivision pattern in the Berrima Village which is laid out as a Georgian village based on a grid pattern of streets with a central focal and open marketplace of mixed commercial and residential character. Allotments are regular and rectangular in shape leading out into the surrounding rural area. The DCP refers to the minimum lot size for R2 Low Density Residential zoned land in Berrima being 2,000m<sup>2</sup> besides some small pockets that are already subdivided and developed.

Council would like to ensure clause 4.F of the Wingecarribee LEP aligns with the DCP and seeks to achieve the same conservation outcomes regarding the significance of the subdivision pattern and associated minimum lot sizes within Berrima.

The Department is supportive in principle of proposals to protect local heritage identified by Councils and recommends the planning proposal should proceed.

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



**Figure 1 – Berrima Heritage Conservation Area in red hatched and underlying land zoning.**

## 3 Strategic assessment

### 3.1 Regional Plan

#### South East and Tablelands Regional Plan 2036

**Table 3** provides an assessment of the planning proposal against key relevant aspects of the South East and Tablelands Regional Plan 2036 (Regional Plan).

**Table 3 Regional Plan assessment**

Regional Plan Objectives	Justification
Direction 23 – Protect the region's heritage	<p>The planning proposal seeks to protect the heritage significance of Berrima Village. Council notes the planning proposal is consistent Direction 23 of the Regional Plan. Council considers protection of the 1831 Hoddle Plan as fundamental to the protection of the BCA.</p> <p>Protecting the Wingecarribee Shire's valued heritage assets is also identified as a specific priority for the Wingecarribee LGA in the Regional Plan.</p> <p>Consistent. The Department is satisfied the planning proposal is consistent with heritage protection and conservation objectives of the Regional Plan</p>
Direction 24 – Deliver greater housing supply and choice	<p>Not inconsistent. Although the planning proposal may impact the development potential of sites for dual occupancy subdivision/housing in Berrima, the Department considers some impact to be reasonable in the context of protecting the heritage significance of Berrima for the broader community.</p> <p>It is also noted the narrative provided under this Direction in the settlement planning principles speaks to consideration of protecting areas with high environmental value and/or cultural heritage value when deciding on suitable locations for new housing.</p>

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

**Table 4** provides an assessment of the planning proposal against key relevant aspects of the Draft South East and Tablelands Regional Plan 2041 (Draft Regional Plan).

**Table 4 Draft Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 4 - preserve the heritage and character of the region's towns and villages	Consistent. For the key reasons outlined in Table 3, the planning proposal is consistent with heritage protection and conservation objectives of the Draft Regional Plan
Objective 17 – plan for housing supply in appropriate locations	Not inconsistent. For the key reasons outlined in Table 3, the planning proposal is not inconsistent with housing delivery objectives of the Draft Regional Plan.



## 3.2 Local

The planning proposal addresses the key local strategies outlined in **Table 5** below.

**Table 5 Local strategic planning assessment**

Local Strategies	Justification
Wingecarribee Local Strategic Planning Statement (LSPS)	<p>Not inconsistent. Council notes the BCA is recognised in the LSPS as being of high heritage value and an important contributor to local tourism.</p> <p>The proposal effectively balances the need to protect of areas with cultural heritage and tourism value with the need to provide infill development in appropriate locations.</p>
Wingecarribee Local Housing Strategy (LHS)	<p>Not inconsistent. The LHS targets 50/50 split of infill and greenfield development to meet the housing needs of Wingecarribee Shire. The planning proposal does not restrict the provision of infill development other than dual occupancy subdivision within the BCA.</p> <p>As above, the proposal effectively balances the need to protect areas with cultural heritage and tourism value with the identified need to provide additional housing more broadly in Wingecarribee Shire.</p>

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

## 3.3 Local planning panel (LPP) recommendation

The Wingecarribee LPP considered the matter at a Panel meeting on 24 May 2023 and supported the staff recommendation for the planning proposal to be submitted to the Department seeking a Gateway determination.

## 3.4 Section 9.1 Ministerial Directions

Relevant Section 9.1 Directions have been identified in the planning proposal.

Key applicable Directions are discussed in detail below.

### 3.2 Heritage Conservation

This Direction seeks to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The Direction states planning proposals must contain provisions to facilitate the conservation of heritage items and/or precincts.

The planning proposal seeks to amend controls in the Wingecarribee LEP to protect the heritage significance of the BCA.

The proposal is therefore considered to be consistent with this 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.

The restriction of dual occupancy subdivision potential in the BCA is likely to reduce potential water quality and catchment impacts. 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 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.

#### 4.3 Planning for Bushfire Protection

Land zoned R2 and R3 within the BCA is mapped as bushfire prone land (Vegetation Category 1 and Vegetation Buffer).

Consultation has not occurred with the NSW Rural Fire Service (NSW RFS) on the planning proposal as required by Direction 4.3. The proposal's consistency with this Direction therefore remains unresolved.

A Gateway condition is therefore recommended requiring consultation with the NSW RFS, prior to public exhibition.

#### 6.1 Residential Zones

Key aims of Direction 6.1 are to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services.

The planning proposal is potentially inconsistent with this Direction as it would restrict dual occupancy subdivisions in the BCA, reducing infill development potential.

However, the Department considers the proposal effectively balances the need to protect the cultural heritage and tourism value of the BCA with the need to provide additional housing more broadly in Wingecarribee Shire.

The Secretary's delegate may be satisfied that any potential inconsistency of the planning proposal with Direction 6.1 is of minor significance.

### 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.

The proposal would result in positive environmental impacts by restricting dual occupancy subdivisions, and further protecting environmental heritage values, in the BCA.

### 4.2 Social and economic

Council believes the planning proposal will result in positive social impacts by protecting the heritage value of Berrima Village. This may in turn result in positive economic impacts through tourism.

It is acknowledged the planning proposal could result in slightly negative economic impacts to individual property owners in the BCA due to more restrictive subdivision controls.

Some individual economic impact is considered reasonable in the context of protecting the local heritage significance and tourism values of the BCA for the broader community.

## 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.

As stated in Section 3.4 of this report, consultation with both agencies should be undertaken prior to public exhibition.

# 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 because of the proposed amendments; and
- it would benefit the community and local economy by helping to preserve the heritage and associated tourism values of the BCA.

## 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 required to consult with the following public authorities:
  - WaterNSW– consultation is required following receipt of a Gateway Determination to justify consistency with Ministerial Direction 3.3 Sydney Drinking Water Catchments.
  - NSW Rural Fire Service – consultation with the Commissioner required following receipt of a Gateway Determination under section 3.34 of the Act to justify any potential consistency with Ministerial Direction 4.3 Planning for Bushfire Protection.
2. Prior to public exhibition, the planning proposal is to be revised to address Condition 1.
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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