
9.5 Housekeeping Planning Proposal - Wingecarribee Local Environmental Plan 2010

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PURPOSE

To undertake certain amendments to the Wingecarribee Local Environmental Plan 2010 to:

- 1 – List *secondary dwellings* as permitted with consent in the R2 Low Density Residential zone.
- 2 – Include the closure of Council own land as a form of exempt development, not requiring a DA as is currently the case.

The matter was considered at the Wingecarribee Local Planning Panel Meeting of Wednesday 6 August 2025 with the following outcome:

PANEL'S ADVICE

The Panel support the two proposed amendments of the Planning Proposal Wingecarribee Local Environmental Plan 2010 as described below for submission for a Gateway Determination in accordance with s.3.34 of the Environmental Planning & Assessment Act 1979.

- 1. To list secondary dwellings as permitted with consent in the R2 Low Density Residential zone.*
- 2. To include the closure of Council roads as a form of exempt development, not requiring a DA as is currently the case, to reflect changed requirements from the NSW Land Registry Services (LRS).*

PANEL'S REASONS:

The Panel agrees with the Officer's report and item 1 will reaffirm that secondary dwellings are a permitted land use in the R2 zone and agrees in relation to item 2 that the amendment will facilitate the efficient operations of Council.

The Panel agreed with the assessment report in respect to item 3 for Group Homes.

Voting: 4/0

OFFICER'S RECOMMENDATION

THAT the attached Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 as described within BE SUPPORTED and be submitted for a Gateway Determination in accordance with s.3.34 of the *Environmental Planning & Assessment Act 1979*.

REPORT

PLANNING PROPOSAL

Introduction

This is one of potentially three 'Housekeeping' Planning Proposals being considered by Council as part of a review of various current provisions within the Wingecarribee Local Environmental Plan (WLEP) 2010. This approach is preferred to a single large 'Housekeeping' Planning Proposal which may become difficult to manage going forward if one matter is delayed for any reason.

The two proposed amendments included in the Planning Proposal are:

1 – To list *secondary dwellings* as permitted with consent in the R2 Low Density Residential zone.

2 – To include the closure of a Council road as a form of exempt development, not requiring a DA as is currently the case to reflect changed requirements from the NSW Land Registry Services (LRS).

The report also considers the merit of removing Group Homes as permitted with consent from the R5 Large Lot Residential zone, concluding that this amendment would not achieve the desired outcome due to the overriding provisions of the *State Environmental Planning Policy (Housing) 2021*.

Each matter is addressed in turn.

1 – To list secondary dwellings as permitted with consent in the R2 Low Density Residential zone

Currently, under WLEP 2010 secondary dwellings are an innominate prohibited use in the R2 Low Density Residential zone under the WLEP 2010. An innominate use refers to a land use that is not specifically listed in a land use table within a Local Environmental Plan (LEP) or similar document. Therefore, in the case of secondary dwellings in the R2 Low Density zone land use table, secondary dwellings are prohibited because they are not listed as permitted with consent.

Secondary dwellings are permissible in all residential zones where dwelling houses are permissible in accordance with Chapter 3 part 1 of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* and *Housing SEPP* allows secondary dwellings as complying development under certain conditions. Therefore, currently the provisions of WLEP 2010 are contrary to those state provisions which override the LEP.

It is unclear how secondary dwellings came to be prohibited in the R2 zone under WLEP, however, in response to community enquiries and suggestions, the matter is being addressed through this Housekeeping Planning Proposal.

Listing of secondary dwellings as permitted with consent in the R2 zone under WLEP will reaffirm to the community that secondary dwellings are a permitted land use in the R2 zone and, thereby, may encourage the kind of diverse, affordable infill development opportunities encouraged within the adopted Wingecarribee Local Housing Strategy.

2 – To include the closure of a Council road as a form of exempt development under Schedule 2 of WLEP 2010

This amendment applies to *Schedule 2 Exempt Development* of WLEP 2010 and seeks to include the closure of council public roads as exempt development, i.e. not requiring a Development Application (DA) provided the road closure is undertaken in accordance with the *Roads Act 1993*, Part 4, Division 3. Under this legislation Council may close a Council Public Road if:

- a) the road is not reasonably required as a road for public use (whether for present or future needs), and
- b) the road is not required to provide continuity for an existing road network, and

- c) if the road provides a means of vehicular access to particular land, another public road provides lawful and reasonably practicable vehicular access to that land.

This proposed amendment is sought because, until recently, NSW Land Registry Services (LRS) would accept a Plan of Road Closure prepared by a surveyor and signed by Council as property owner on the Deposited Plan (DP) Administration Sheet.

However, LRS requirements now state that, whilst still signing the Plan as property owner, Council must also sign the Subdivision Certificate on the DP Administration Sheet as the Consent Authority and for that 'Consent' to be obtained, a DA is required. This process adds to the time and cost associated with closing a Council Road. The proposed amendment would replace the DA pathway with an exempt development pathway, improving efficiency and reducing additional demands on the DA team.

The proposed wording reflects wording used by other Councils in their Local Environmental Plan, including the Camden LEP 2010 and the Bega Valley LEP 2013:

Schedule 2 Exempt Development

Subdivision of council public roads

Must relate to land comprising a council public road proposed for closure under the Roads Act 1993 Part 4, Division 3.

Schedule 2 of WLEP 2010 notes that, with regard to all exempt development:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 specifies exempt development under that Policy. The Policy has State-wide application. This Schedule contains additional exempt development not specified in that Policy.*
- *Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners' property rights and the common law still apply.*

3 - Group Homes in the R5 Zone

Consideration was also given to the inclusion of an amendment to WLEP 2010 to remove *group homes* as permitted with consent from the R5 Large Lot Residential zone.

This consideration commenced with a review of relevant state legislation, specifically *Part Two Group homes* of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*.

Section 61 of the *Housing SEPP* confirms that development for the purposes of a *group home* may occur with or without consent, provided it is within a *prescribed zone*.

Section 60 of the *Housing SEPP* defines the term *prescribed zone*. Section 60(a) lists a number of specific zones and this list does not include R5, however section 60(b) captures the R5 zone through its reference to *another zone in which development for the purposes of dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument*. WLEP 2010 is an environmental planning instrument that permits *dwelling houses* with consent in the R5 Large Lot Residential Zone. Therefore, under the *Housing SEPP*, *group homes* are permitted with consent.

WLEP 2010, and virtually all LEPs across the State, are based on the *Standard Instrument (Local Environmental Plans) Order* introduced in 2006. This *Standard Instrument Order* mandates *dwelling houses* as permitted with consent in the R5 zone. Therefore, to prohibit group homes in the R5 zone, WLEP2010 would need to prohibit dwelling houses in the R5 zone and the Standard Instrument excludes that option.

The removal of *group homes* from the R5 land use table of WLEP 2010 would not have any effect on Council's obligation to accept and assess a group home application. And if the group home will contain 10 bedrooms or less, under section 64 of the *Housing SEPP*, it may progress as complying development.

It is concluded therefore that there is no merit in removing *group homes* from the R5 Large Lot Residential zone and that the most effective mechanism is to ensure that the Wingecarribee Development Control Plan contains appropriate controls against which to assess such development under a DA pathway.