

AMENDED REPORT

23 June 2010
To the Ordinary Meeting

Director's Report
Shire Planning Department

3.2 Comprehensive Local Environmental Plan Review Project

TRIM REFERENCE: F2009/00680 - D02204479

AUTHOR: PB

SUMMARY

Reporting on the implications of the delay in the preparation of the North Wyong Shire Structure Plan (NWSSP) and the Central Coast Regional Conservation Plan (CCRCP), and the impacts upon Council's Comprehensive Local Environmental Plan (CLEP) Review project.

RECOMMENDATION

- 1 ***That Council continue to progress the Comprehensive Local Environmental Plan Review Project in accordance with Option 4 outlined within this report.***
- 2 ***That Council continue to lobby the Department of Planning and Department of Environment, Climate Change and Water regarding the importance of finalising the North Wyong Shire Structure Plan and Central Coast Regional Conservation Plan.***

BACKGROUND

At its meeting held on 11 November 2009, Council considered a report on the implications of the potential delay in the gazettal of Wyong Local Environmental Plan (WLEP) 1991. At that meeting, Council resolved as follows:

"RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor VINCENT:

- 1 *That Council note that current spot rezoning proposals that will facilitate significant employment generating developments are being processed as a high priority with the aim to include these as an amendment to Wyong LEP 1991.*
- 2 *That Council exclude those spot rezoning proposals not included in No 1 above as an amendment to Wyong LEP 1991 at this stage.*
- 3 *That Council re-assess this situation early in 2010 following the completion of the North Wyong Shire Structure Plan and Central Coast Regional Conservation Plan.*

FOR: COUNCILLORS BEST, MATTHEWS, MCBRIDE, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL

COUNCILLOR GRAHAM RESUMED THE CHAIR"

In relation to Resolution No 3 above, an assessment of the delays to the progression of the NWSSP and CCRCP and the impacts upon Council's own strategic planning processes, namely the CLEP Review Project has been undertaken. The findings of the assessment and options to progress with the CLEP Review Project are contained within this report.

NWSSP and CCRCP

The preparation of the NWSSP and CCRCP were recognised as key actions out of the State Government's Central Coast Regional Strategy (CCRS), 2008.

Currently being prepared by the Department of Planning (DoP), the NWSSP will ascertain appropriate locations to accommodate the designated dwelling and employment targets contained within the CCRS. It will also provide a staging and sequencing plan to inform both State and Local Government planning. The CCRCP being prepared by the Department of Environment, Climate Change and Water (DECCW), will identify regional conservation priorities for the Central Coast and detail an off-set strategy for land contained within the NWSSP Study Area.

Project History and Delays

Initially scheduled for finalisation in 2008, concerns regarding the continuing delays to the release of the NWSSP and CCRCP were formally expressed by Council on 9 September 2009, and again on, 24 February 2010.

On 9 September 2009, Council resolved as follows:

"RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor WYNN:

That taking into account recent verbal advice from the Department of Planning (DoP) and Department of Environment Climate Change (DECCW) regarding the delays associated with the preparation of the North Wyong Shire Structure Plan (NWSSP) and Central Coast Regional Conservation Plan (CCRCP):

- 1 That Council express its concerns to DECCW and the Minister for Climate Change regarding delays associated with the preparation of the CCRCP.*
- 2 That Council recognise that any delay will impact upon the timing of the completion of the Shirewide Settlement Strategy, and consequently the gazettal of Wyong LEP 2011.*
- 3 That Council request that DoP, DECCW and the two relevant Ministers to publicly exhibit the draft NWSSP and draft CCRCP concurrently to ensure that the Wyong Shire community is made fully aware of the content of both documents and is given an opportunity to comment on both documents at the same time.*
- 4 That Council also raise its concerns that should the two documents not be finalised concurrently, the implications of this will be that Council will be faced with the responsibility of assessing the environmental attributes of a development site on a case-by-case (i.e. individual development application) basis, thereby putting conservation outcomes at risk and placing additional cost to the development industry.*

3.2 Comprehensive Local Environmental Plan Review Project (contd)

- 5 That Council thank the Members for Wyong and Swansea for their support on the issue.
- 6 That Council staff report on the implications of the delays of the gazettal of Wyong LEP 2011, in particular in bringing forward appropriate spot rezonings.'

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: NIL

In response to Resolution No 3 above, DoP and DECCW acknowledged that there had been delays to the progression of the NWSSP and CCRCP. Furthermore, Council was advised that the relevant Departments supported Council's proposal to simultaneously exhibit the draft Plans. Copies of the correspondence are provided as Attachment 1 and 2.

As part of the resolution associated with the adoption of the quarterly review of the Management Plan on 24 February 2010, Council resolved:

"RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCBRIDE:

- 3 That Council write to the Minister for Planning and Mr David Harris, MP Parliamentary Secretary for the Central Coast expressing Council's concern at the continuing delay in the release of the CCRCP and NWSSP which in turn impinges Council's ability to progress the Shirewide LEP and conduct future planning for our Shire."

Subsequent discussions with staff from DoP's Central Coast Regional Office indicate that the finalisation of the NWSSP has further been delayed and is now not expected to be exhibited until the 'third-quarter of 2010.' While it is understood that this recent delay is due to the loss of the consultant engaged to prepare the NWSSP; Council has been advised that the DoP are undertaking the necessary processes to engage a replacement consultant to finalise the NWSSP.

No commitment has been received from DECCW as to the scheduling of the public exhibition of the CCRCP. However, despite initial assurances that the CCRCP would be exhibited concurrently with the NWSSP; officers from DECCW have advised that the exhibition of Regional Conservation Plan will commence 2-3 months after the exhibition of the NWSSP.

CLEP Review Project

On 25 March 2009, Council resolved to commence the CLEP Review project in response to Planning Reforms initiated by the NSW Government. For Wyong Shire, the CLEP Review will culminate in the delivery of three primary project outputs, namely a Shirewide Settlement Strategy; draft Wyong LEP (WLEP) 2011 and Wyong DCP (WDCP) 2011.

In addition to providing a new planning framework for Wyong Shire, the CLEP Review project will facilitate the implementation of the NWSSP and CCRCP by supporting State Government objectives within the Shirewide Settlement Strategy, and incorporating land use controls within WLEP 2011 and WDCP 2011. A flow-chart depicting the relationship between the CLEP Review and various State Government Plans, including the NWSSP and CCRCP is provided in Attachment 3.

A discussion of the each of the CLEP Review project deliverables is provided below.

Settlement Strategy

The Settlement Strategy was identified in Council's Management Plan as a Key Focus Area in 2008, with its completion identified as a priority action within the adopted Shire Strategic Vision, *Our Shire, Our Future*.

Examining how Council can sustainably manage population growth, increase local employment opportunities, and provide access to a range of infrastructure, including community and recreational facilities over the next 25 years; the Settlement Strategy will ensure that the desired environmental qualities of Wyong Shire be maintained.

In reaffirming its commitment to the delivery of the Settlement Strategy, Council, on 25 March 2009, considered a schedule of indicative timeframes for the completion of the CLEP Review project milestones. In this regard, and to coincide with the public exhibition of the NWSSP, the Settlement Strategy was to be publicly exhibited in March 2010. It was further anticipated that the Settlement Strategy would be adopted by Council in June 2010.

Relationship of the Settlement Strategy to the NWSSP and CCRCP

Further to the flow-chart provided in Attachment 3, the Settlement Strategy will ensure that the required actions of the CCRS, and its subsequent plans, including the NWSSP and CCRCP, are considered and implemented through the provisions of Wyong Shire's new planning framework.

WLEP 2011

As the primary catalyst for the CLEP Review Project, the preparation of WLEP 2011 is required by the State Government Planning Reforms initiated in 2004. Council formally resolved to commence the preparation of draft WLEP 2011 under Section 54 of the Environmental Planning and Assessment Act, 1979 (EP&A Act, 1979) on 25 March 2009.

The timeframes presented within Council's Report of 25 March 2009 proposed that the following key milestones would need to be achieved in order for Council to adhere to the deadlines imposed by the State Government, initially established as March 2011.

- Section 62 (Government Agency) Consultation: August 2010
- Public Exhibition: December 2010
- Preparation of Section 68 Report (at completion of exhibition): March 2011
- Adoption, gazettal and implementation: Dependent on DoP

Reprioritisation Survey

In April 2009, Council received correspondence from DoP highlighting its proposal to reprioritise the Standard Instrument LEP Program for NSW and which affirmed that 'progress in implementing the program had not been as quick as initially anticipated.' The correspondence, provided in Attachment 4, required individual Councils to justify why their respective LEPs should be progressed as matters of priority and ultimately be gazetted within a two-year timeframe.

In light of Council's resolution to commence the CLEP Review project and consideration that the finalisation of the NWSSP and CCRCP would assist detailed strategic planning to complement the comprehensive review of WLEP 1991 Wyong Shire should be recognised as a Priority Local Government Area (LGA). Council responded that On 10 August 2009, the former Minister for Planning, the Hon. Kristina Keneally and the Minister for Local Government, the Hon. Barbara Perry, confirmed that Wyong Shire was one of 67 LGAs nominated to complete their Standard Instrument LEPs by June 2011. A copy of the correspondence is provided in Attachment 5.

Following receipt of this advice, Council was provided with an indicative work program which would facilitate the delivery of WLEP 2011. In October 2009, Council staff raised concerns with the DoP that the work program and allocated timeframes for the completion of key milestones were unable to be achieved due to the continual delays with the release of the NWSSP and CCRCP. A realistic, albeit, tight schedule to achieve the State Government deadline was provided to the DoP by Council staff. To date, no response has been received.

Relationship of WLEP 2011 to the NWSSP and CCRCP

Illustrated by the flowchart provided in Attachment 3, both DoP and DECCW intend to utilise the provisions of Wyong LEP 2011 to implement their respective plans. At this point in time, Council staff are in discussions with DoP and DECCW as to how to implement the provisions of the NWSSP and CCRCP through WLEP 2011.

WDCP 2011

In December 2005, Councils within NSW were advised that changes to the EP&A Act, 1979 had introduced a requirement 'that only one DCP (per planning authority) may apply to the same land.' In response to the changes, a consolidated DCP (known as DCP 2005) was prepared and came into effect on 6 January 2005.

In conjunction with the resolution to prepare WLEP 2011 under Section 54 of the EP&A Act, 1979, Council resolved to commence preparing WDCP 2011 on 25 March 2009.

Relationship of Wyong DCP 2011 to the NWSSP and CCRCP

The flowchart provided in Attachment 3 illustrates the relationship between the State Government's CCRS, NWSSP and CCRCP; and Council's own plans and policies. The establishment of new planning directions by the Shirewide Settlement Strategy, in addition to the revised provisions of WLEP 1991, substantiates a major review of DCP 2005.

Implications of Delays to the CLEP Review Project

At a Councillor Briefing in March this year, the relationship between the CLEP Review project deliverables and the State Government's NWSSP and CCRCP were discussed. In particular, consideration was given to the implications of achieving the June 2011 deadline imposed by the NSW Minister for Planning.

At that time, it was recognised that the finalisation of the Settlement Strategy was ultimately dependent upon the completion of the NWSSP and CCRCP by DoP and DECCW, and that these delays have a consequential impact upon the 'comprehensive' review of Council's existing primary planning instruments. In light of the advice contained within this report, particularly in relation to the scheduling of the public exhibition of the NWSSP and CCRCP later in 2010; an assessment of Council's available options has been undertaken.

Options to progress with CLEP Review

1 Cease working on the CLEP Review project until the NWSSP and CCRCP are released.

An option available to Council is to cease working on the CLEP Review project until such time that the NWSSP and CCRCP are released and finalised. After adoption of the NWSSP, the CCRCP and subsequently, the finalisation of the Settlement Strategy, work on preparing draft WLEP 2011 and WDCP 2011 would recommence.

Adopting Option 1 would enable Council to prepare and adopt a Shirewide Settlement Strategy which is sympathetic to the desired visions of the Wyong LGA and is consistent with the objectives and strategies associated with the NWSSP and CCRCP. In addition, it would holistically consider the designated dwelling targets established by the CCRS, 2008 and would assist the DoP in its upcoming review of the Strategy.

Delaying the preparation of WLEP 2011 would allow Council to prepare and have gazetted a planning instrument which appropriately provides land use controls and therefore certainty for environmental and development outcomes within the northern part of Wyong LGA. Option 1 would enable the State Government to progress and resolve issues associated with additional amendments to the EP&A Act, 1979 prior to WLEP 2011 being gazetted and would enable the concurrent and comprehensive review of DCP 2005.

However, identifying Option 1 as the most appropriate course to proceed with the CLEP Review project, will not guarantee that the NWSSP and CCRCP will be exhibited in late 2010 nor prevent the identification of additional issues that would require resolution prior to their adoption. Delaying the preparation of a new environmental planning instrument will also extend the current level of uncertainty to the development industry and landowners and will prevent the implementation of rezonings identified by adopted Town Centre Planning Strategies.

Perhaps the biggest risk relates to the consequences of not preparing WLEP 2011 by the State Government's imposed deadline of June 2011. Although unlikely, under the provisions of the EP&A Act, 1979, the Minister for Planning can remove Council's planning powers and appoint an independent planning panel to oversee its decision-making functions. This risk would be mitigated by requiring the Ministers for Planning and Local Government to agree to the removal of Wyong Shire from the Priority LEP list established in 2009.

As the State Government cannot guarantee dates for the public exhibition of the NWSSP and CCRCP; a revised indicative timeframe for the completion of the CLEP Review cannot be established.

In summary, Option 1 is not considered preferable.

2 Continue to progress with the CLEP Review Project

Council can continue to progress with the CLEP Review Project and attempt to deliver the three project deliverables in a manner which is consistent with the timetable reported to Council in March 2009.

One benefit associated with adopting Option 2 includes progressing the Shirewide Settlement Strategy to enable public exhibition and commence consultation with the relevant State Government Agencies under Section 62 of the EP&A Act, 1979 in regard to draft WLEP 2011.

However, Council's Settlement Strategy is unable to be finalised until the NWSSP and CCRCP is released by DoP and DECCW. In addition, the Strategy cannot consider land located within the NWSSP study area boundary or appropriately reflect environmental attributes on a Shirewide scale. Furthermore, Council would be required to amend, re-exhibit and adopt the Settlement Strategy upon completion of the NWSSP and CCRCP to ensure consistency with the State Government Plans, and that Shirewide issues, including the management of population growth, are considered in a broader context.

As previously discussed, WLEP 2011 and WDCP 2011 have been nominated as the vehicles to implement the NWSSP and CCRCP. Commencing legislated consultations with State Government Agencies prior to the finalisation of the NWSSP and CCRCP is considered premature and Council would be required to repeat these processes once the relevant plans are adopted.

Council is unable to determine a revised anticipated timeframe for the gazettal of WLEP 2011 given that the implementation plans and associated mechanisms for the NWSSP and CCRCP have not been determined.

In summary, Option 2 is not considered desirable.

3 Prepare a Conversion LEP

As a final option and having regard for the deadline imposed by the NSW State Government for the gazettal of WLEP 2011, Council can revisit the CLEP Review project by resolving to progress with an LEP which directly converts or translates the provisions of WLEP 1991 in line with the Standard Instrument.

Taking into account the amount of work expended on preparing the Shirewide Settlement Strategy, Council could postpone its exhibition until the NWSSP and CCRCP are progressed by DoP and DECCW. The Settlement Strategy can then be exhibited and adopted once the NWSSP and CCRCP are complete. Deferring the Settlement Strategy will enable Council and State Government resources to focus on progressing WLEP 2011; avoid duplicating the steps required to finalise the Settlement Strategy; and by first establishing priorities, ensure consistency between both State and Local plans.

While adopting Option 3 may ultimately facilitate Council achieving the NSW State Government deadline, it is emphasised that this approach retains its significance and would allow Council to rectify over 300 mapping anomalies; rescind provisions that are now redundant due to new state environmental planning instruments; and facilitate the implementation of a number of Planning Strategies, including The Entrance Peninsula; Wyong/Tuggerah; and Toukley Planning Strategies.

It is important to note, that in the Councillor Briefing held in March, the possibility of progressing the CLEP Review in line with Option 3 was raised. At this time, it was agreed that Council staff would commence discussions with the DoP as to the possibility of preparing a 'conversion LEP.'

Due to delays with the exhibition of the NWSSP, the Central Coast Regional Office of the DoP has advised that they would be 'supportive of (an) ... LEP which implements the Standard Instrument, with a subsequent amendment to incorporate the Settlement Strategy.' A copy of this advice is provided as Attachment 6.

Council and the DoP will need to re-establish the timeframes associated with the completion of key milestones to ensure WLEP 2011 is gazetted. In addition, the DoP and Council need to agree on a method for dealing with development and conservation issues for areas located within the NWSSP.

Option 3 is considered desirable, as it addresses the State Government's timeframe; minimises risks associated with not completing WLEP 2011 and respects the community's expectation of the project.

4 Process the LEP Concurrently with the NWSSP

On the 18 June 2010 Council's General Manager, Director of Shire Planning and the Acting Manager of Future Planning met with the Director General of DoP, Sam Haddad to discuss a number of priority issues in relation to planning within Wyong Shire. One of the issues discussed was Council's comprehensive LEP and the difficulties faced by Council in taking the LEP forward due to the ongoing delays with the NWSSP. Several options (including those outlined above) were discussed as a means of progressing the LEP to gazettal. The most productive and appropriate option discussed incorporated a programme to be agreed upon between Council and DoP which would progress both the LEP and the NWSSP such that both documents would be exhibited concurrently at the end of 2010.

The advantages of this option would be that:

- The LEP would be a comprehensive review of existing zoning controls,
- The document would incorporate future employment and settlement precincts throughout the Shire, i.e.; including the area covered by the NWSSP.
- The LEP would be consistent with the NWSSP;
- The need to prepare a further comprehensive LEP for the northern part of the Shire at a later date once the NWSSP is finalised would be eliminated;
- The gazettal date of June 2011 may still be achievable.

In order to progress both the Settlement Strategy and comprehensive LEP such that both documents will be capable of being exhibited concurrently with the NWSSP at the end of 2010, Council will be faced with additional costs and the need for additional resources. As part of the discussion with Sam Haddad, Council was invited to lodge a submission with the Director General of DoP seeking funding assistance to ensure that Council is able to meet the above timeline.

It is considered that Council should adopt this option as the preferred way of moving forward with the comprehensive LEP and that as part of implementing this option Council staff prepare a funding submission for the Director General's consideration.

Associated Considerations***Rezoning Requests Strategy***

Councillors would recall that the Rezoning Requests Strategy, adopted in March 2009, enabled specific rezoning proposals to be considered under the context of the Shirewide Settlement Strategy and where appropriate, implemented through the first version, or subsequent amendments to WLEP 2011.

In accordance with the State Government planning direction the Rezoning Requests Strategy does not apply to land located west of the F3 Freeway; nor does it apply to a future urban release area precinct identified by the Residential Development Strategy, 2008 or an area identified by a local Town Centre Planning Strategy as these areas will automatically be considered as part of the Comprehensive LEP.

In response to Council's invitation, 15 rezoning proposals were received. Given the delays to the progression of the NWSSP and the impacts upon Council's CLEP Review, consideration as to how to progress these rezoning requests is required.

Council has committed to undertaking an assessment of the 10 rezoning proposals which are located in areas outside of the NWSSP study area boundary. Accordingly, it is recommended that the desktop assessments of individual applications be finalised and subject to Council's determination should be included within the WLEP 2011.

There are 5 rezoning requests located within the NWSSP study area boundary. Determination of how to proceed with these requests is subject to the release of the NWSSP and CCRCP by the State Government. In this regard, Council has no alternative, than to postpone assessment of these rezoning requests until such time as the NWSSP and CCRCP are released and the Settlement Strategy is finalised.

Priority LEP Amendments

Having regard for the Rezoning Requests Strategy and the need to support employment generating opportunities, Council, in considering the CLEP Review project, Council resolved at its meeting held on 25 March 2009 as follows:

“RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor WYNN:

- 9 That Council still consider rezoning proposals that facilitate significant employment generating developments as matters of priority.”*

FOR: COUNCILLORS BEST, EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL.

As previously highlighted, on 11 November 2009, Council considered a report on the implications of the potential delays in the gazettal of WLEP 1991, particularly on the progression of Priority LEP Amendments. Council resolved to progress current rezoning proposals which ‘facilitate significant employment generating developments as a matter of priority with the aim of including these as an amendment to WLEP 1991.’ As such, there are no impacts upon the progression of these amendments.

LEP Bundle 3

In accordance with Council’s Spot Rezoning Procedure, the next ‘bundled’ amendment to Wyong LEP 1991 is LEP Bundle 3. Generally, LEP Bundle 3 considers matters relating to LEP anomalies and is therefore supported for inclusion within the CLEP Review Project by both Council and DoP.

A separate Council report is currently being prepared which will identify the components of LEP Bundle 3 in more detail and recommend inclusion of the amendments with the preparation of Wyong LEP 2011.

CONCLUSION

Given the synergies between the NWSSP, the CCRCP and the CLEP Review Project, Council is unable to progress with a ‘comprehensive’ review of WLEP 1991 until such time as DoP and DECCW release their respective plans for public comment. Continued delays to the scheduling of the exhibition of the NWSSP and CCRCP impact upon Council’s ability to adhere to the deadline imposed by the NSW State Government for the gazettal of WLEP 2011.

An examination of the options available to prepare WLEP 2011 has been undertaken, and it is recommended that Council adopt Option 3. Preparing a conversion LEP in the first instance will enable the finalisation of the NWSSP and CCRCP prior to the adoption of the Shirewide Settlement Strategy. A major amendment to WLEP 2011 will be undertaken at this time.

ATTACHMENTS

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|---|--|-----------|
| 1 | Support Exhibition Draft Plans - North Wyong Shire Structure Plan
NWSSP - Wyong Shire Settlement Strategy - Department Environment
Climate Change and Water | D02100732 |
| 2 | Advise Intend Exhibit ASApp - North Wyong Structure Plan - Working
towards Concurrent Exhibition - Central Coast Regional Conservation
Plan - The Hon Kirstina Keneally MP | D02099686 |
| 3 | Flowchart - Central Coast Regional Strategy - 30-4-2010 | D02227691 |
| 4 | Reprioritisation Survey - Comprehensive LEP Review - F2008/00774 -
Letter from Minister for Planning - April | D02263025 |
| 5 | Response - Reprioritisation Survey - Comprehensive LEP Review -
F2008/00774 - Letter from Minister for Planning - 10 August 09
(D01997928) | D02263029 |
| 6 | Wyong LEP 2011 - Settlement Strategy - seeking comment from the
Department of Planning (D02221997) | D02267332 |