

# ADDITIONAL ITEM

12 June 2013  
To the Ordinary Council Meeting

Director's Report  
Development and Building Department

## 2.6 Amendments to draft Wyong Local Environmental Plan 2012

---

TRIM REFERENCE: F2008/00774-06 - D03401052

MANAGER: Martin Johnson, Manager Strategic Development

AUTHOR: Kathryn Heintz; Senior Strategic Planner

### SUMMARY

On 8 May 2013, Council endorsed the draft Wyong Local Environmental Plan (LEP) 2012, subject to amendments recommended in response to the public exhibition period. The draft Wyong LEP 2012 and draft Settlement Strategy has since been finalised, and on 31 May 2013, a submission was made to the Department of Planning & Infrastructure (DP&I) subject to Section 68 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (as amended). Council has now requested that the Minister for Planning & Infrastructure make the draft Wyong LEP 2012.

However, since this time further necessary amendments to the draft Wyong LEP 2012 have been identified, as described in more detail later in this report. This report seeks Council's endorsement of these additional recommended amendments.

### RECOMMENDATION

- 1 That Council endorse the amendments to the draft Wyong Local Environmental Plan 2012, approved by the General Manager in consultation with the Mayor, as set out within this report.**
- 2 That Council request the approval of the Director-General of the Department of Planning & Infrastructure (or his delegate) to present an updated Section 68 submission under the provisions of Section 69 of the Environmental Planning and Assessment Act 1979 (as amended).**

### BACKGROUND

Planning Reforms implemented by the former State Government require each Council in NSW to prepare a new LEP that is consistent with the Standard Instrument. The Standard Instrument prescribes standard definitions, zones, zone objectives, and mandates clauses, and permitted and prohibited land uses.

In March 2009, Council endorsed the preparation of the draft Wyong LEP 2012 and draft Settlement Strategy. In December 2011, these documents were provided to public authorities and agencies for comment under Section 62 of the EP&A Act (as amended). On 26 October 2012, Council submitted all relevant documentation to the DP&I and formally requested that a certificate be issued under Section 65 of the EP&A Act (as amended), to enable the public exhibition of the draft Wyong LEP 2012 and draft Settlement Strategy. On 28 November 2012, the DP&I issued a Section 65 certificate to Council, which was conditional upon the following key changes to draft Wyong LEP 2012:

- (a) *Change zoning of the proposed rural-residential area north of Sandra Street, Jilliby from R5 Large Lot Residential to a zone that is equivalent to its current zoning under Wyong LEP 1991.*
- (b) *Change zoning of the proposed new RU6 Transition sites that are outside of the North Wyong Shire Structure Plan area to a zone that is equivalent to its current zoning under Wyong LEP 1991.*
- (c) *Change zoning of the proposed Warnervale Town Centre to align with the adopted State DCP for this site.*
- (d) *Identify a height limit for all mapped key sites on the Height of Building maps and a maximum height limit that can be achieved for each site through application of Clause 7.8 on the Key Sites maps.*

On 12 December 2012, Council endorsed the draft Wyong LEP 2012 and supporting documentation, as certified by the DP&I, to be placed on public exhibition for a minimum of 6 weeks pursuant to Section 66 of the EP&A Act (as amended). As a result, the draft Wyong LEP 2012, draft Settlement Strategy and draft Wyong DCP 2012 were exhibited from 9 January 2013 to 20 February 2013. This represents a 42-day exhibition period, longer than the minimum 28-day period prescribed by Clause 13 of the *Environmental Planning & Assessment Regulation, 2000* (as amended). In addition, submissions continued to be accepted and considered until 12 April 2013.

### **CURRENT STATUS**

On 8 May 2013, Council endorsed the draft Wyong LEP 2012 and draft Settlement Strategy subject to amendments in response to the public exhibition period, resolving on the motion of Councillor EATON and seconded by Councillor BEST as follows:

- 1 *That Council endorse the recommendations contained in Enclosures 1 and 2 and as set out within this report, and also include the additional amendments set out in Annexure 3 now added, in response to the public exhibition of the draft Wyong Local Environmental Plan 2012, draft Settlement Strategy and draft Wyong Development Control Plan 2012.*
- 2 *That Council note the findings of the Public Hearings held under Section 29 and 47G(2) of the Local Government Act 1993 and Section 68 of the Environmental Planning and Assessment Act 1979 in relation to the reclassification of public land and the public exhibition of the draft Wyong Local Environmental Plan 2012 and draft Settlement Strategy, as detailed in Enclosure 3.*
- 3 *That Council endorse the recommendations in response to the Public Hearings, as detailed in this report.*
- 4 *That Council resolve that re-exhibition of the amended draft Wyong Local Environmental Plan 2012, draft Settlement Strategy and draft Wyong Development Control Plan 2012 is not required as the amendments are in response to submissions made during public exhibition or to meet legislative requirements, and are not significant.*
- 5 *That Council resolve to submit draft Wyong Local Environmental Plan 2012, as amended in accordance with the matters raised in this report and within Enclosures 1 and 2, and also include the additional amendments set out in Annexure 3 now attached, to the Director-General of the Department of Planning and Infrastructure, in accordance with Section 68 of the Environmental Planning and Assessment Act 1979.*
- 6 *That Council request the Director-General of the Department of Planning and Infrastructure to submit a report under the provisions of Section 69 of the*

*Environmental Planning and Assessment Act 1979 recommending that the Minister for Planning and Infrastructure make the draft Wyong Local Environmental Plan 2012.*

- 7 *That Council endorse the draft Wyong DCP 2012 – Development Provisions for Wyong Shire, as amended in accordance with the matters raised in this report and within Enclosures 1 and 2, and also include the additional amendments set out in Annexure 3 now attached, and give appropriate public notice within 28 days that the draft DCP will come into effect on the date the draft Wyong LEP 2012 comes into effect.*
- 8 *That Council endorse the draft Settlement Strategy, as amended in accordance with the matters raised in this report and within Enclosures 1 and 2 and also include the additional amendments set out in Annexure 3 now attached.*
- 9 *That all persons who lodged a submission be advised of Council’s resolution in relation to draft Wyong Local Environmental Plan 2012, draft Settlement Strategy and draft Wyong Development Control Plan 2012.*
- 10 *That Council forward a copy of draft Wyong Development Control Plan 2012 to the Director General of the NSW Department of Planning & Infrastructure within 28 days of the draft DCP coming into effect.*
- 11 *That Council note Section 149 Certificates as to the adoption of draft Wyong Development Control Plan 2012.*
- 12 *That Council resolve that the General Manager, in consultation with the Mayor, may make other minor alterations to the draft Wyong Local Environmental Plan 2012, draft Settlement Strategy and draft Wyong Development Control Plan 2012, as deemed necessary.*
- 13 *That Council endorse a review of Policy P1 Potentially Contaminated Land to require any development application for residential, educational, recreational, child care purposes, or for a hospital to be assessed in accordance with Clause 7 of State Environmental Planning Policy 55 – Remediation of Land.*

#### ANNEXURE 3

- 1 *Ecotourism facilities be included as a permissible uses in the E2 –Environment Conservation zone as dictated by the zone objectives.*
- 2 *Properties currently zoned 2b Multi Dwelling Residential zone at North Entrance be zoned R1 - General Residential as a direct conversion zone and in response to numerous submissions.*
- 3 *All land in Precinct 16 of the NWSSP to be included in RU6 - Transition Zone including that part of No 78-92 Carters Road within precinct 16 and that the Settlement Strategy allow for flexibility in timing of development of all Precincts dependant on demand and infrastructure. This change is in response to numerous submissions.*
- 4 *The INI General Industrial Zone include as a permissible use Recreation Facilities (Major) in response to the submission of Darkinjung Land Council.*
- 5 *Nos 475-481 The Entrance Road, No 3 Lake Street and No 8 Minto Street be zoned B6 (Enterprise Corridor) in response to a submission on this land.*
- 6 *Orchard Road Kangy Angy – note to be added that ‘subject to a significantly improved access in flooding being available, Council is prepared to remove the lot amalgamation provisions in Amendment 1 to the DLEP’ in response to numerous submissions.*

- 7 *No 4 Rose Street Wyong – to be zoned B4 - Mix Use noting its isolated nature as a residential zoning and its surrounding by carpark, commercial and racecourse and noting its proximity to the rail station and town centre, and in response to submissions on the site.*
- 8 *Nos 309-311 The Entrance Road and No 23 Anzac Road to be zoned B4 (Mix Use) noting much of this site is currently wrongly zoned part 5(a) Club (RE2 Private Recreation under the draft Plan), and this is a discrete parcel adjoining Diggers Club and fronting the Central Coast Highway and in response to submissions on the site.*
- 9 *Lot 2 Louisiana Road – the boundary line between the RU6 (Transition) and E2 Environmental Conservation zone be adjusted generally eastwards to reflect historic planning and conservation agreements in relation to this land and surrounds generally and in response to submissions (as shown on the attached plan).*
- 10 *Mingara Recreation Club – Add childcare centre and health services facilities to permissible uses in Schedule 1 in recognition of these existing permissible uses and in response to submissions.*
- 11 *11W Lake Haven Drive Gorokan (Alfred Greentree Reserve) not proceed with the reclassification of this land from community to operational in response to the submissions received.*

FOR: COUNCILLORS BEST, EATON, GRAHAM, NAYNA, TROY AND WEBSTER  
 AGAINST: COUNCILLORS GREENWALD, MATTHEWS AND VINCENT

On 31 May 2013, the draft Wyong LEP 2012, draft Settlement Strategy, and supporting documentation were finalised as part of Council's submission to the DP&I subject to Section 68 of the EP&A Act (as amended). Council has now requested that the Minister for Planning & Infrastructure make the draft Wyong LEP 2012.

## THE PROPOSAL

At the 8 May 2013 Ordinary Meeting of Council described above, Item 12 of Council's resolution delegated the ability to make minor alterations to the draft Wyong LEP 2012, in consultation with the Mayor.

A number of issues have been identified since the meeting of 8 May 2013. The issues, which are set out below for Council's endorsement, have been considered and approved by the General Manager, in consultation with the Mayor, in accordance with Item 12 of the 8 May 2013 resolution:

### 1. Clause 7.2 – Flood Planning

Clause 7.2 has been amended in response to Council's request to add a hatched area to the Flood Planning Area maps, denoting those parts of the LGA that are now identified within the Flood Planning Area, as the Flood Planning Area now incorporates land up to Possible Maximum Flood (PMF), inclusive of a climate change allowance. The Flood Planning Area maps have also been amended to refer to Flood Planning Area 1 and Flood Planning Area 2. The clause has been amended as follows (deleted text identified by ~~strikethrough~~, new text identified in red):

## 7.2 Flood Planning

- (1) The objectives of this clause are as follows:
  - (a) to minimise the flood risk to life and property associated with the use of land,
  - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
  - (c) to avoid significant adverse impacts on flood behaviour and the environment.
- (2) This clause applies to:
  - (a) land identified as "Flood planning area 1" and "Flood planning area 2" on the Flood Planning Map, and
  - (b) other land at or below the flood planning level.
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
  - (a) is compatible with the flood hazard of the land; and
  - (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
  - (c) incorporates appropriate measures to manage risk to life from flood, and
  - (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
  - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.
- (5) In this clause:
 

**flood planning area 1** means the land shown as "Flood planning area 1" on the Flood Planning Map, and includes land up to 1% Annual Exceedance Probability.

**flood planning area 2** means the land shown as "Flood planning area 2" on the Flood Planning Map, and includes land up to Possible Maximum Flood (PMF) inclusive of a climate change allowance.

~~**flood planning area** means the land shown as "Flood planning area" on the Flood Planning Map.~~

**flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

## 2. Clause 7.13 – Type 3 Airport

Clause 7.13 has been amended to change the name of the clause as well as other minor wording changes, as follows (deleted text identified by ~~strikethrough~~, new text identified in red):

### 7.13 ~~Type 3 Airport~~ **Central Coast Regional Airport – Essential Transport Infrastructure**

- (1) The objective of this clause is to identify land ~~that is identified as a potential site of a Type 3 Airport (limited service airport with a single runway of length of up to 2,600 metres).~~ **as a potential site for a Central Coast Regional Airport and ancillary services and industries that support a regional airport.**

- (2) *This clause applies to land shown as ~~Airport Type 3~~ **Central Coast Regional Airport – Essential Transport Infrastructure** on the Wyong Local Environmental Plan 2012 ~~Airport Type 3~~ **Central Coast Regional Airport Map**.*
- (3) *In this clause:  
~~Type 3 Airport~~ **Central Coast Regional Airport** means ~~land identified as Airport Type 3 on the Airport Type 3 Map~~ **a serviced airport with runways having a length of approximately 2,600 metres and ancillary uses such as, but not limited to, Aviation maintenance, Aviation training and support industries, Aviation logistics, Transport logistics, Warehousing and distribution, Offices, Retail uses, Manufacturing, Commodity processing and Factory Outlets.***

### 3. Foreshore Building Line maps

Wyong LEP 1991 has an existing foreshore building line along the Lake Macquarie foreshore in Charmhaven, Mannering Park and Summerland Point that has not been carried over into draft Wyong LEP 2012. This is a mapping error, and the foreshore building line maps have been amended to reinstate the Foreshore Building Line to relevant properties.

### 4. Land Zoning maps

- a. *204 Tumbi Road, Tumbi Umbi:* The land zoning map has been amended to extend the area of E4 Environmental Living zone and introduce an E2 Environmental Conservation zone at the rear of the property. The minimum lot size map has been amended accordingly.
- b. *30 Jack Grant Avenue, Warnervale:* This site is part zoned 5(a) (Special Uses Zone – Education Establishment) under Wyong LEP 1991. In converting the zones as part of draft Wyong LEP 2012, the area of E2 Environmental Conservation zone was extended into the area of land currently zoned 5(a) (Special Uses Zone – Education Establishment), due to the location of a Property Vegetation Plan (PVP) in the vicinity. This zoning was consistent with the procedures under the endorsed Environmental Management Framework. However, Council is currently investigating options to relocate this PVP area, and as a result it is recommended that the land zoning map be amended to reinstate the general conversion zone of SP2 Infrastructure – Educational Establishment. An amended land zoning map can be viewed as Attachment 1. The minimum lot size map will need to be amended accordingly, as no minimum lot size applies to SP2 zoned land.

### 5. Height of Building maps

- a. *15-23 Hely Street, Wyong (Oasis Youth Centre):* The height of building map has been amended to increase maximum building height from 23m to 25m, a minor amendment.
- b. *5 Short St, The Entrance and 10 Denning St, The Entrance:* The height of building map has been amended to increase maximum building height from 23m to 31m. The exhibited height of building map for this site incorrectly stated 23m. It is considered that this increased height would be imperceptible from the baseline height of 28 metres as recommended in the supplementary report to The Entrance Peninsula Planning Strategy).
- c. *25 Yaralla Road, Toukley:* The height of building map has been amended to increase maximum building height from 21m to 25m, a minor amendment.

## 6. Land Use Table

- a. *Educational establishments*: It is recommended that educational establishments be added as a permissible use (with consent) in the B7 Business Park zone, as this use is currently permissible within the 4(c) (Business Park Zone) under Wyong LEP 1991.

## GOVERNANCE AND POLICY IMPLICATIONS

### Environmental Planning and Assessment Act 1979

Refer to the Business Paper for the Ordinary Meeting of Council dated 8 May 2013, for further detail in relation to Sections 54 – 66 of the EP&A Act (as amended).

On 31 May 2013, the draft Wyong LEP 2012 and draft Settlement Strategy were finalised as part of Council's submission to the DP&I subject to Section 68 of the EP&A Act (as amended). Section 68(9) of the EP&A Act (as amended), permits amendments to the draft Wyong LEP 2012 after submission to the DP&I, provided Council and the Director-General of the DP&I agree to the amendments. It is therefore recommended that Council request approval from the DP&I to submit these amendments as part of an updated Section 68 submission.

### TIMEFRAMES

The majority of the work required to prepare draft Wyong LEP 2012 is now complete. On 31 May 2013, the draft Wyong LEP 2012, along with supporting information, was submitted to the DP&I requesting the plan be made under Section 68 of the EP&A Act (as amended). Subject to Council's approval to lodge an updated Section 68 submission, the DP&I will review Council's amended submission and prepare a report to the Minister for Planning & Infrastructure under Section 69 of the EP&A Act (as amended). Draft Wyong LEP 2012 will become effective when the LEP is published on the NSW Legislation website.

### CONCLUSION

This report seeks Council's endorsement of further amendments to the draft Wyong Local Environmental Plan (LEP) 2012, in accordance with the matters raised in this report. Subject to Council's approval, an updated Section 68 submission incorporating these amendments will be provided to the DP&I.

### ATTACHMENTS

- 1 Amendments to draft Wyong Local Environmental Plan 2012 - Attachment 1

D03401874

