

# AMENDED ITEM

10 February 2016  
To the Ordinary Council Meeting

Director's Report  
Property and Economic Development

## 2.2 Outcomes of the Public Exhibition of draft Wyong Local Environmental Plan (LEP) 2013 - Major Amendment 1

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TRIM REFERENCE: F2013/01345 - D12182585

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### SUMMARY

This report seeks Council's endorsement of draft Wyong Local Environmental Plan (LEP) – Major Amendment 1. This will enable a submission to be provided to the Department of Planning & Environment (DP&E) requesting that the Minister for Planning make the draft LEP. The draft LEP was exhibited from 18 November 2015 to 18 December 2015. This report outlines the findings of the public exhibition period, recommends minor amendments to the Planning Proposal to address submissions received, and outlines the next steps to finalise the draft plan.

### RECOMMENDATION

- 1 ***That Council submit the Planning Proposal for Major Amendment 1 to the Department of Planning and Environment (DP&E) recommending that the Minister for Planning proceed with the steps for drafting and making of the amendment to Wyong Local Environmental Plan (LEP) 2013.***
- 2 ***That Council advise all those who made a submission of Council's decision.***

### BACKGROUND

On 23 December 2013, WLEP 2013 was made by a delegate of the then Minister for Planning & Infrastructure. Under Section 73 of the EP&A Act, Councils are required to keep their local environmental plans under regular review to ensure the objectives of the EP&A Act continue to be achieved. Accordingly, Council commenced preparation of Major Amendment 1 to the Wyong LEP 2013 in 2014. Major Amendment 1 is predominantly a housekeeping exercise, with the bulk of the proposed amendments involving rectification of anomalies and errors arising from the process of preparing Wyong LEP 2013. The remainder of the proposed amendments involve the incorporation of provisions from adopted Strategies/Plans that were not finalised in time to be incorporated into Wyong LEP 2013.

Council at its meeting held 23 July 2014:

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

- 1 ***That Council initiate the Local Environmental Plan “Gateway” process by the preparation of a Planning Proposal, pursuant to Section 55 of the Environmental Planning and Assessment Act, 1979.***

## 2.2 Outcomes of the Public Exhibition of draft Wyong Local Environmental Plan (LEP) 2013 - Major Amendment 1 (contd)

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- 2 That Council forward the Planning Proposal to the Department of Planning and Environment requesting a “Gateway” determination, pursuant to Section 56(1) of the Environmental Planning and Assessment Act, 1979.
- 3 That Council advise the Department of Planning & Environment that it does not intend to apply for plan making delegations for the rezoning, pursuant to Section 23 of the Environmental Planning and Assessment Act, 1979.
- 4 That Council refer the project to appropriate public authorities for comment, subject to the determination of the Gateway Process, pursuant to Section 56(2) of the Environmental Planning and Assessment Act, 1979.
- 5 That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process, pursuant to Section 57 of the Environmental Planning and Assessment Act, 1979.
- 6 That Council direct the General Manager to submit a further report to Council to report on the results of the public authorities’ consultation and community consultation phase.
- 7 That Council update its Section 149 Certificates accordingly.”

### CURRENT STATUS

In accordance with the DP&E revised Gateway Determination dated 22 June 2015, consultation with the following Public Authorities was conducted:

- Central Coast Aero Club;
- Civil Aviation Security Authority;
- Darkinjung Local Aboriginal Land Council (S117 Direction 2.3 Heritage Conservation);
- Delta Electricity;
- Mine Subsidence Board (S117 Direction 4.2 Mine Subsidence and Unstable Land);
- NSW National Parks and Wildlife Services;
- NSW Trade and Investment – Resources and Energy (S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries);
- NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection);
- Office of Environment and Heritage (S117 Direction 2.1 Environment Protection Zones & Direction 2.3 Heritage Conservation);
- Government Property NSW;
- Transport for NSW;
- Transport for NSW – Roads and Maritime Services; and
- Transport for NSW – Regional Air.

The responses of the above Authorities were taken into account and resulted in minor variations to the Planning Proposal. The following table provides a summary of the agency concerns and Council’s actions to ensure the progression of the Planning Proposal.

Agency	Comments	Council Response	Action Taken
CASA	No input into proposal. Council should consult with helicopter operators at Wyong Hospital when considering DAs in the vicinity of the hospital. Council may wish to consider the impact of the proposed Central Coast Regional Airport.	Noted	No further action.
Transport for NSW	No objection.	Noted	No further action.
NSW RFS	No objection.	Noted	No further action.
Delta Electricity	Object to rezoning of 80 Highview Ave, San Remo (Camp Breakaway) from RE2 Private Recreation to RE1 Public Recreation. Would prefer the site to be zoned SP2 Infrastructure.	Future expansion of Camp Breakaway would be prohibited under the SP2 zone, however, development for electricity generating purposes is prohibited in the RE1 zone under the Infrastructure SEPP (as RE1 is deemed a 'conservation zone' for which the SEPP does not apply). Preferred zone is to remain RE2 which enables expansion of Camp Breakaway and allows for electricity generating works under the Infrastructure SEPP.	<p><b>Site removed from the Planning Proposal.</b></p> <p>Site will remain zoned RE2 Private Recreation.</p> <p>This approach agreed to by DP&amp;E and Delta Electricity.</p>
	Request to rezone Vales Point Outlet Canal from RE1 Public Recreation to SP2 Infrastructure.	Agreed, however, as this site was not part of the gateway determination the rezoning cannot proceed under this LEP.	Site to be rezoned under draft Wyong LEP Miscellaneous Amendment 2.
	Request to rezone Vales Point Inlet Canal from RE1 Public Recreation to SP2 Infrastructure.	Agreed, however, as this site was not part of the gateway determination the rezoning cannot proceed under this LEP.	Site to be rezoned under draft Wyong LEP Miscellaneous Amendment 2.
	Request to rezone a small portion of Vales Point Ash Dam from E2 Environment Conservation to SP2 Infrastructure.	Agreed by Council's Ecologist, however, as this site is not part of the gateway determination the rezoning cannot proceed under this LEP.	Site to be rezoned under draft Wyong LEP Miscellaneous Amendment 2.

<b>Agency</b>	<b>Comments</b>	<b>Council Response</b>	<b>Action Taken</b>
Department of Industry – Resources & Energy	No resource issues to raise in relation to the Planning Proposal.	Noted	No further action.
RMS	No objection provided the Land Reservation Acquisition maps are included to incorporate the RMS requirements for road widening in the proposed amendments.	Noted. Some additional properties not identified in the original RMS maps, and not included in the gateway determination, will be included as part of draft Wyong LEP Miscellaneous Amendment 2.	New properties not identified in the gateway determination for this LEP will be included as part of draft Wyong LEP Miscellaneous Amendment 2.
OEH	Council should be satisfied that development within the environmental zoned portion of the site that forms Wadalba Corridor complies with the assumed concurrence consent area.	The drainage corridor was previously zoned residential until the E2 Environmental Conservation Zone was introduced with Wyong LEP 2013. The E2 zone should have referenced the drainage corridor dimensions specified in the development approval which was based on a more detailed analysis of flood constraints, rather than the earlier drainage corridor concept for the site. The Planning Proposal seeks to correct this issue.	No further action.
	Object to inclusion of an enabling clause to allow development for recreational purposes on Council land zoned SP2 Infrastructure at 121 Church Rd, Tuggerah (Mariners Centre for Excellence).	The enabling clause for this site was amended to remove Lots 60-64, 71-75 & 84-89 DP 4008 from the subject site. The proposed enabling clause now only applies to Lots 80, 81, 82, & 83 DP 4008, where the existing sporting field is located.	The enabling clause was amended to only apply to the existing sporting field.  <b>Subsequently OEH removed their objection to the Planning Proposal.</b>
	Object to rezoning of 14W Tirriki Cl, Buff Point from SP2 Infrastructure to R2 Low Density Residential due to potential impacts on biodiversity and flooding constraints.	Agreed. Site has ecological and flooding constraints which require further investigation to determine an appropriate zone for the site.	Site removed from Planning Proposal.  <b>Subsequently OEH removed their objection to the Planning Proposal.</b>

Agency	Comments	Council Response	Action Taken
	A number of sites within the LEP are floodprone, however, this can be adequately addressed at subdivision or DA stage.	Noted	No further action.
	An assessment of Aboriginal cultural heritage values should be undertaken for land subject to the draft LEP.	This request related to 121 Church Rd, Tuggerah and 14W Tirriki Cl, Buff Point. Given the above proposed amendments to these sites OEH have confirmed that no Aboriginal cultural heritage assessments are required for this planning proposal.	No further action.
Darkinjung Local Aboriginal Land Council	A number of properties (approximately 55) with areas of undisturbed land and/or vegetation should undergo an Aboriginal cultural heritage survey.	This issue can be addressed at DA stage if necessary. The amendments proposed under this Planning Proposal are to rectify errors or anomalies created during the preparation of Wyong LEP 2013. The majority of sites are already developed and the proposed changes are minor and will have limited impact on land uses permitted. To undertake an Aboriginal cultural heritage assessment on each property affected by the proposal would be a costly and timely exercise and is an inefficient use of Council resources given the minor nature of the proposed amendments.	No further action.

Table 1: Agency Consultation List

### CONSULTATION

The Planning Proposal was placed on public exhibition in accordance with the Gateway Determination and all affected landowners were notified in writing seeking their comments between 18 November 2015 to 18 December 2015. The exhibition was conducted via Council's website with a copy of the Planning Proposal and supporting documentation also available at all Council libraries and administration building.

## 2.2 Outcomes of the Public Exhibition of draft Wyong Local Environmental Plan (LEP) 2013 - Major Amendment 1 (contd)

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Ten (10) submissions were received during the Public Exhibition period. The issues raised in the submissions are summarised below. Two (2) minor changes are proposed to the Planning Proposal following review of the submissions.

### 1. 61 Alambee Crescent, Blue Haven

No objection to the proposed inclusion of the subject property within the Foreshore Building Line LEP map.

**Comment:**

Noted.

### 2. 370 Pacific Highway, North Wyong

Acknowledgement from the landowner that road widening may affect the subject property. The submission seeks Council confirmation that the road widening:

- will not diminish opportunities for left-in, left-out vehicle access to the site;
- adequate compensation will be received;
- will not impose a condition of consent requiring dedication of the land should it be developed prior to the road widening;
- will not restrict the redevelopment of the site and the existing gross area and dimensions of the site will remain “as is”; and
- will consider the potential for right-turn queuing and entry into the site as part of any road realignment.

**Comment:**

The inclusion of this site in the Planning Proposal has been undertaken at the request of the RMS to allow for potential future road widening/realignment of the Pacific Highway. A small portion of this property is included within Council’s Land Reservation Acquisition (LRA) LEP map and is proposed to be rezoned to SP2 Infrastructure – Classified Road. As the Pacific Highway is a State Road the design and timing of the road widening/realignment is at the discretion of the RMS. Given this, Council is not in a position to agree to the requests above from the landowner. This submission will be forwarded to the RMS for their consideration and action.

### 3. 1 Youngs Road, Ourimbah

Supports the proposed rezoning of a portion of the land from E2 Environmental Conservation to E3 Environmental Management to enable retention of a dwelling entitlement for the site (refer to Figure 1). However, requests that a larger portion of E3 land, reducing the portion of E2 land, be rezoned to enable a suitable building envelope to be established on the site (refer to Figure 2).

**Comment:**

Council’s Senior Ecologist has reviewed the submission and agrees to the extension of the E3 land as requested noting the following:

*“The ‘triangle’ in the E2 zone appears to be roughly mapped perhaps to the tree shadow, rather than the large tree on the fence line. Therefore I have no objection to changing the shape of the E2 zone as proposed in the submission. The intent of the zoning mapping and of the proposed placement of the dwelling envelope is to retain the large and mature tree (which would have historically formed part of the EEC) by both Council and the landowners.*”

2.2

Outcomes of the Public Exhibition of draft Wyong Local Environmental Plan (LEP) 2013 - Major Amendment 1 (contd)

Therefore the proponents should be aware of not impacting significant tree root zones when considering development potential of the site.”

It is therefore recommended that the draft LEP Major Amendment 1 be amended to rezone the subject site in line with that requested in the submission.

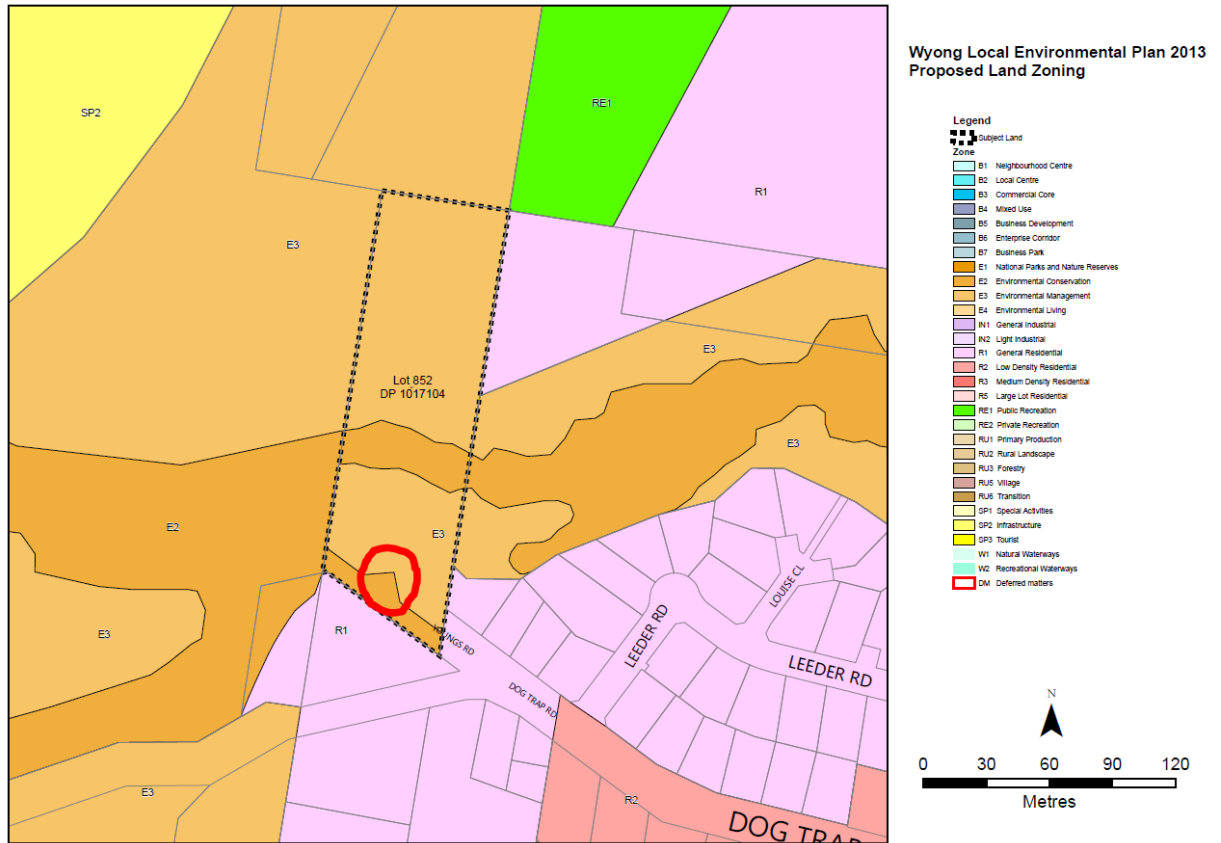


Figure 1 – Original proposed rezoning of 1 Youngs Rd, Ourimbah

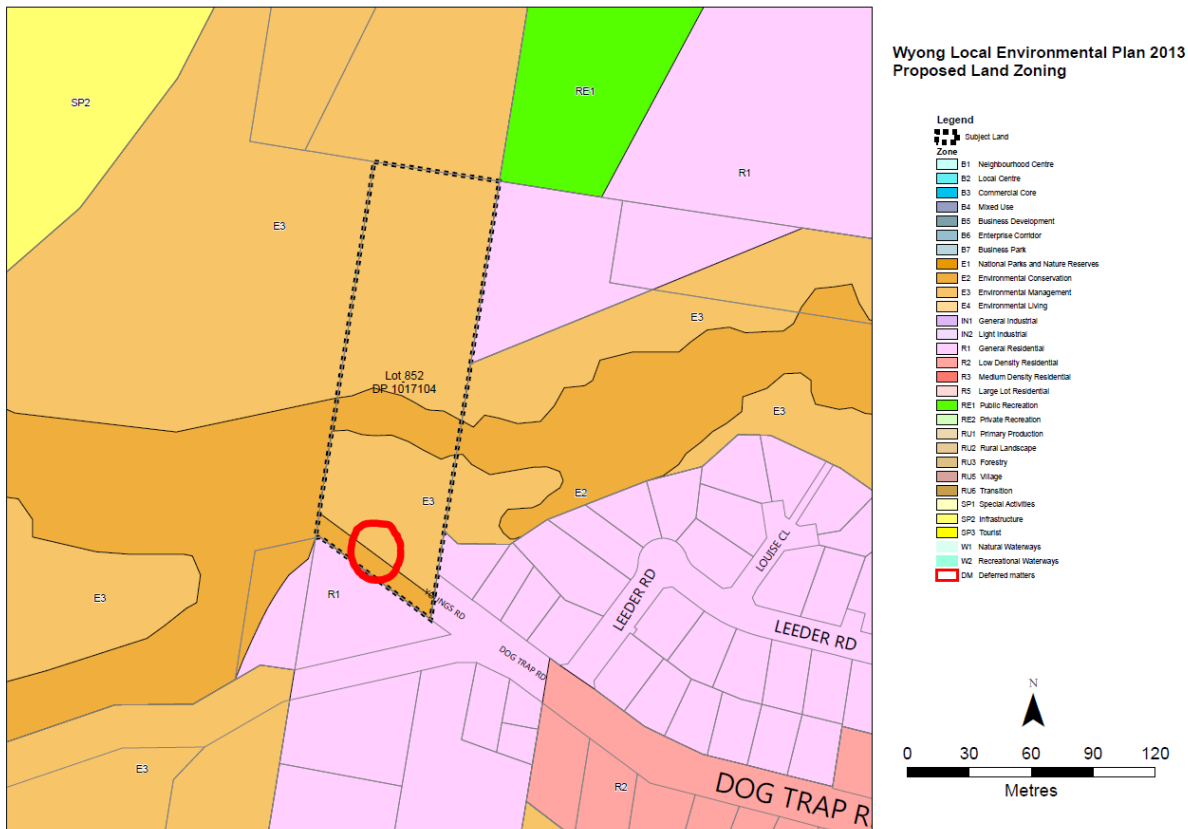


Figure 2 – Proposed amended rezoning of 1 Youngs Rd, Ourimbah

#### 4. 16 Turner Close, Blue Haven

Objection to the inclusion of 16 Turner Close, Blue Haven within Council's Foreshore Building Line (FBL) LEP map. The property was recently purchased in April 2015 and the 149 Planning Certificate did not note this restriction over the property which will impact the redevelopment potential of the site. The property is subject to the flooding provisions under Wyong LEP 2013 which are adequate to ensure a safe setback from the foreshore.

#### **Comment:**

Properties within the Blue Haven area have been subject to a Foreshore Building Line (FBL) restriction since 1978. This restriction was established via a Council resolution.

A FBL LEP map was recently introduced as part of the comprehensive Wyong LEP 2013, however, due to an administrative error the Blue Haven properties were not identified on the FBL LEP map when it was finalised in December 2013. It is now proposed to rectify this error.

The restriction would not have previously been identified in a 149 (2) Planning Certificate as this contains basic LEP information only. A more detailed 149 (2) and (5) Planning Certificate contains both basic and additional information, including additional planning controls outside of the LEP, and would have noted the FBL restriction.



The FBL restriction does not seek to address flooding constraints but aims to ensure that development within the foreshore area will not impact on natural foreshore processes (e.g. erosion) and will not affect the significance and visual amenity of the area. As such, it is recommended that this property remain on the FBL LEP map to ensure consistency with surrounding properties and require that any redevelopment of the site does not impact on the amenity of the foreshore or neighbouring views.

### **5. Crangan Bay Quarry**

Two (2) submissions have been received requesting rezoning of the Crangan Bay Quarry, Lots 2-7 DP 249281 and Lot 11 DP 598580 475-535 Pacific Highway Crangan Bay, from E3 – Environmental Management to RU1 Primary Production. The submission argues that the zoning of E3 Environmental Management under Wyong LEP 2013 was erroneous.

#### **Comment:**

The subject site was rezoned from 7(b) Scenic Protection Zone under Wyong LEP 1991 to E3 Environmental Management under Wyong LEP 2013. The zoning was informed by Council's Environmental Management Framework (EMF) which was developed to investigate the most appropriate conversion zones for environmental land under Wyong LEP 2013. The EMF identified that the E3 zone was the most appropriate general conversion zone for 7(b) land. The E3 zone prohibits land uses within this zone that have potentially significant environmental impacts. It is considered that the E3 zone is appropriate for the subject site as it contains areas of ~~Endangered Ecologically Communities (EECs)~~ and environmental constraint due to the continuing operations of the quarry which will require careful management and rehabilitation prior to other uses being developed on the site.

This request was previously considered as part of the finalisation of Wyong LEP 2013 and the main justification for the request to change the zone was to include extractive industries as a permissible land use. To address that issue Council included extractive industries as a permitted use for the site under Schedule 1 Additional Permitted Uses of Wyong LEP 2013.

As previously advised to the landowner by both Council and the DP&E, the rezoning of the site to E3 Environmental Management under Wyong LEP 2013 was not in error and was in accordance with the zoning assessment under the EMF. As such, including the site within Major Amendment 1 is not the appropriate process as this draft LEP is a housekeeping exercise to correct errors and anomalies.

Council could consider a future specific land use for the site that is currently prohibited under the E3 zone; however, any such proposal would require a new planning proposal accompanied by the relevant fees and supporting documentation. Such documentation would need to justify the suitability of the site for the proposed land use or zone based on the constraints and opportunities available to the site.

### **6. 91 Tumbi Road, Tumbi Umbi**

Request a change in the zone boundary for the site to increase the E3 Environmental Management zone and reduce the E2 Environmental Conservation zone.

#### **Comment:**

This request was previously considered as part of the finalisation of Wyong LEP 2013. Council's Senior Ecologist inspected the site and it was found to contain an EEC. The E2 zone has been applied over the particularly sensitive environmental lands to prevent any significant increase in the extent and intensity of agricultural uses on the site. The E3 zone already applies to an appropriate portion of the site to permit a dwelling.

As such, it is not recommended that the zone boundary be changed between the E2 Environmental Conservation and E3 Environmental Management zones for this site.

**7. 195 Birdwood Drive, Blue Haven**

Concern raised regarding the variation in the Foreshore Building Line (FBL) for properties at Blue Haven. Neighbouring blocks have variations of up to 6 metres. Also concern as to incorrect labelling of creeks with Spring Creek labelled as Wallarah Creek. Request clarification on how the amalgamation with Gosford Council will affect Wyong LEP 2013.

**Comment:**

At its meeting on 11 October 1978 Council adopted a FBL requiring buildings to be setback a minimum distance of 20m from the high water mark of any lake or river. However, conflict arose in the application of the policy at Bluehaven where many lots had insufficient area to satisfy both the front boundary setback and the FBL, and still retain sufficient area to site a dwelling. Furthermore, a substantial number of structures had previously been erected in the foreshore setback prior to the implementation of Council's FBL policy.

Given this, at its meeting on 24 November 1982, Council resolved to vary the FBL for properties at Blue Haven. It was resolved that the FBL setback for each vacant lot would be the average setback of the existing development on the two (2) adjoining lots, or if the adjoining lot was vacant a setback of 20m would be applied. A schedule of the FBL setbacks was adopted, which remains the same setbacks proposed for inclusion in the FBL LEP map under this draft LEP.

The identification of Wallarah Creek is based on information given to Council by the Geographic Names Board.

Given that the proposed amalgamation with Gosford Council is still in the early planning stages it is yet to be determined just what impact this will have on Council's Wyong LEP 2013.

**8. 1 Scenic Dr, Budgewoi**

Request that this property be rezoned from R2 Low Density Residential to R1 General Residential in line with adjoining properties to the west.

**Comment:**

The Planning Proposal rezones approximately 70 properties between Scenic Drive and Tenth Avenue/Michael Street/Natuna Avenue as per the recommendation of Council's Budgewoi Masterplan (refer to Figure 3). The purpose of the rezoning is to encourage greater intensity of residential density along Tenth Avenue, which will provide a greater degree of surveillance and activity for the Village Link and connect the two commercial centres.

The submission is considered to have merit given the strategic location of 1 Scenic Drive between the two commercial centres and directly adjacent to the properties subject to the rezoning. The site is currently vacant and the majority of the site is outside of the 1 in 100 year flood level.

It is therefore recommended that the draft LEP Major Amendment 1 be amended to rezone the subject site to R1 General Residential (refer to Figure 4).

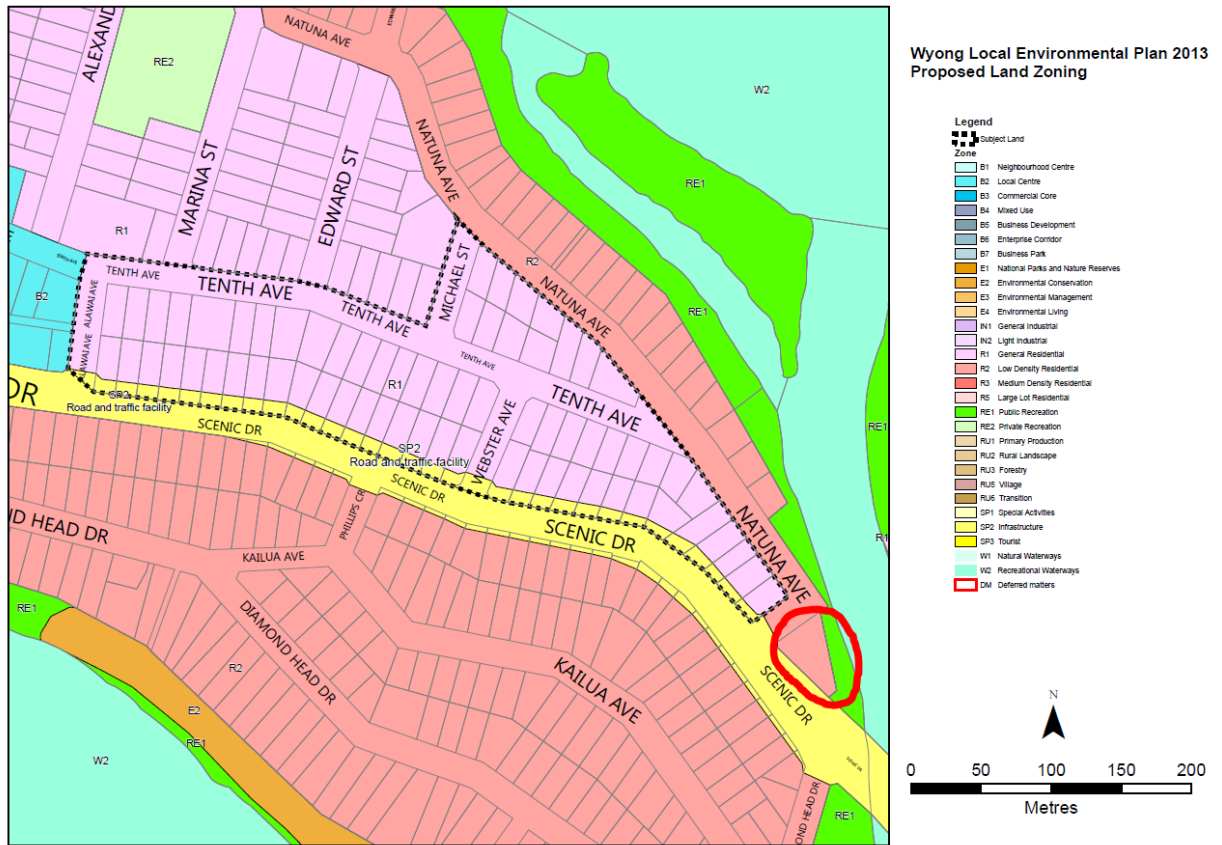
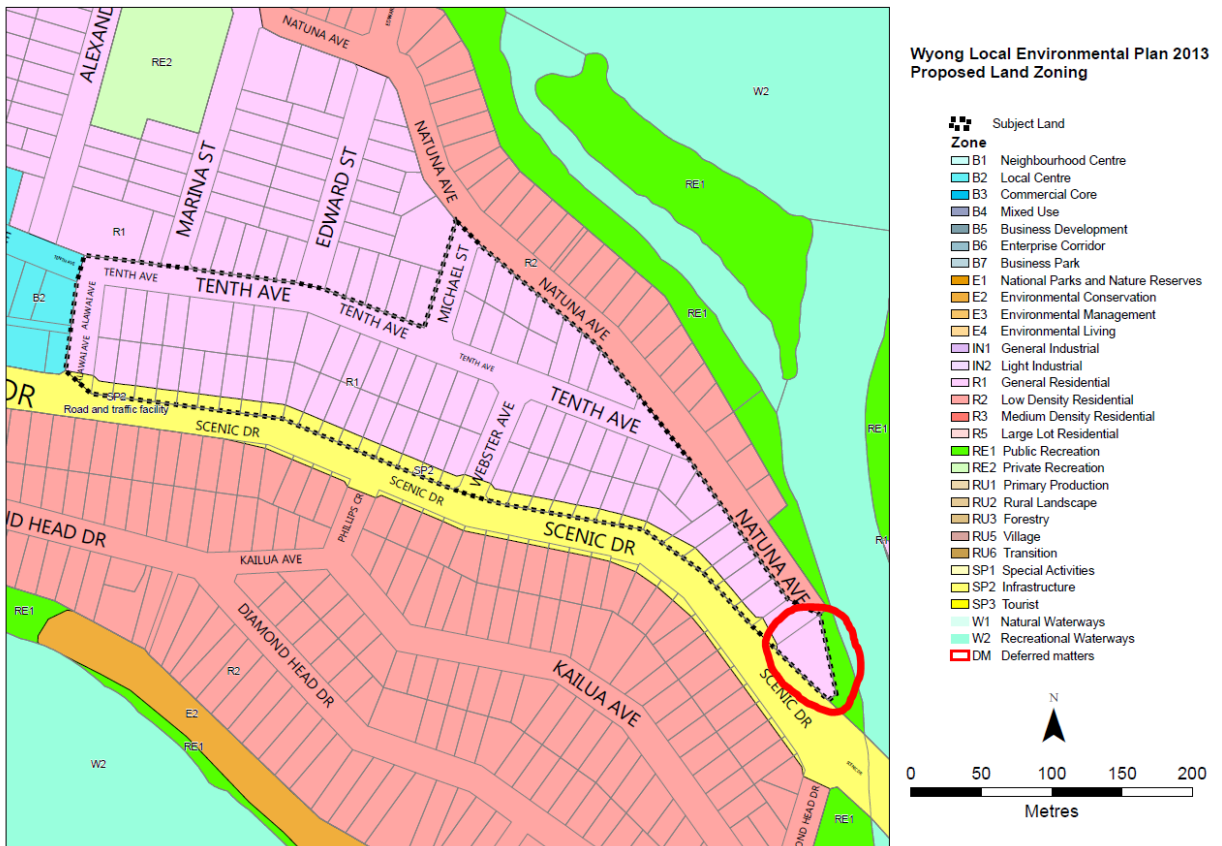


Figure 3 – Original proposed rezoning of land in Scenic Dr/Tenth Ave/Natuna Ave



## 2.2 Outcomes of the Public Exhibition of draft Wyong Local Environmental Plan (LEP) 2013 - Major Amendment 1 (contd)

Figure 4 – Amended rezoning including 1 Scenic Dr, Budgewoi as R1 General Residential zone

### 9. Land between Thompson and Pacific Streets, Long Jetty

Submission that the rezoning of land at Long Jetty from R2 Low Density Residential to B2 Local Centre is premature and not sufficiently justified on the basis of Council's Retail Strategy alone. Expansion of Long Jetty is supported as a medium to long term strategy only and the expansion of The Entrance Town Centre should be achieved prior to any expansion of Long Jetty being permitted.

*Comment:*

The rezoning of this land (refer to Figure 5) has been identified in all of Council's recent strategic planning for this area including The Entrance Peninsula Planning Strategy (TEPPS, 2009), Iconic Development Sites (2011), Long Jetty Masterplan (2013) and Retail Strategy (2013). The zone change was excluded from the finalisation of Wyong LEP 2013 in error when both the Height of Buildings and FSR mapping was increased for this area.

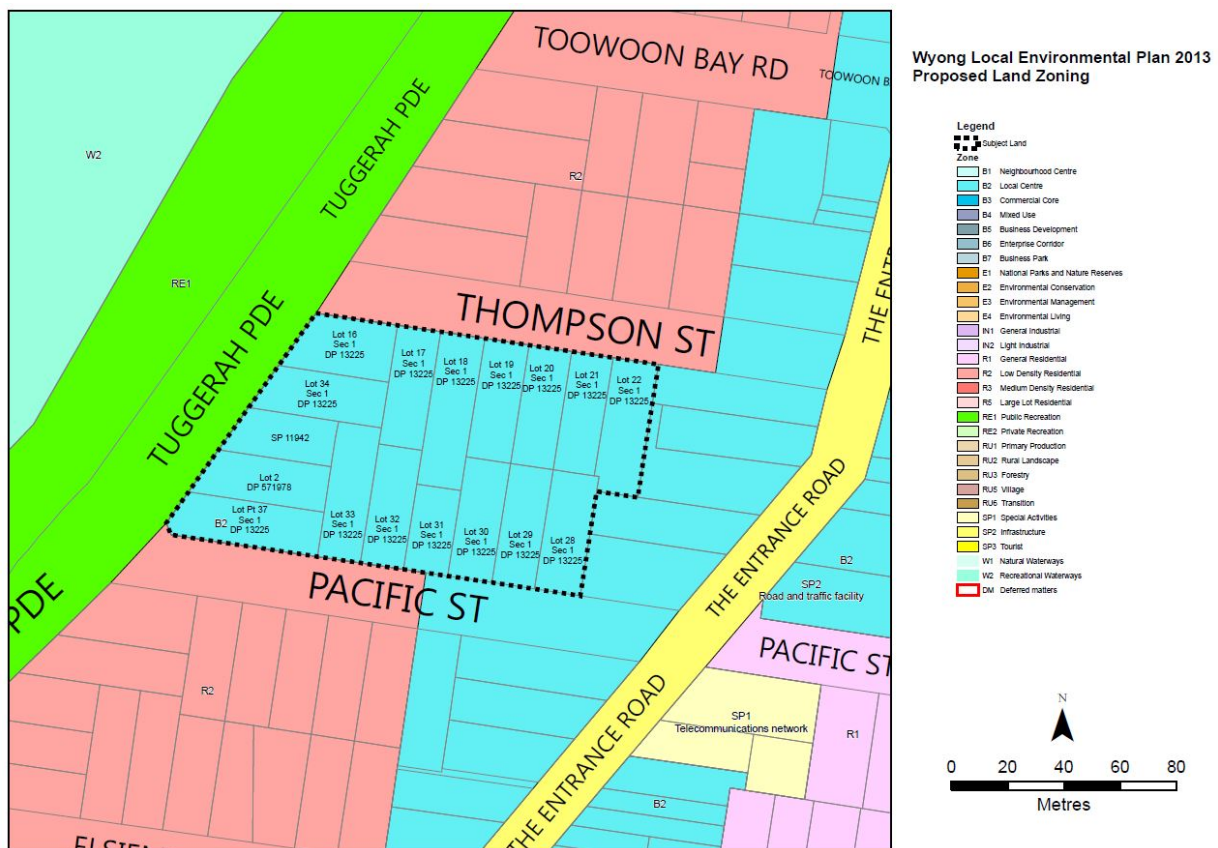


Figure 5 – Land subject to rezoning at Long Jetty (current zone R2 Low Density Residential, proposed zone B2 Local Centre)

Substantial justification for the rezoning is provided in each of the abovementioned planning strategies which propose the extension of the Long Jetty 'urban core' to enhance the connection to the foreshore. The Retail Strategy states:

*“The Long Jetty Centre currently turns its back on its relationship with the lake with all activity centred along the road spine through the centre. The provision of a small service centre appropriately located but which still relates to the centre as a whole could be provided without impacting on the tourist facilities provided in The Entrance.....based on our estimates of available expenditure and distribution of that expenditure it is considered that the centre is probably attracting in excess of that amount from its local catchment households. This suggests that there would be sufficient support if some additional convenience retail floorspace was included as part of the retail mix of the centre”.*

Given the above it is considered that adequate justification has been provided within Council’s Planning Strategies to support the rezoning of this land as part of this draft LEP.

#### **PROCEDURE FOR FINALISATION**

In order to progress finalisation of the plan Council will request that the DP&E seek Parliamentary Counsel opinion that the Plan can legally be made. Subsequently, the DP&E will issue a request to the Minister for Planning to make the Plan.

#### **CONCLUSION**

Council has prepared and exhibited a Planning Proposal to amend the WLEP 2013 to correct a number of minor errors and anomalies and incorporate provisions from adopted Strategies/Plans that were not finalised in time to be incorporated into Wyong LEP 2013. The requirements of the Gateway Determination have been fulfilled and NSW Agency matters have been resolved. Two (2) minor changes are proposed to the Planning Proposal to address submissions received. It is recommended that Council proceed to finalise Major Amendment 1 to the WLEP 2013.

#### **ATTACHMENTS**

*Nil.*