

ITEM 3 PUBLIC EXHIBITION - PLANNING PROPOSAL - WOLLONGONG LEP 2009 - MINOR AMENDMENTS TO CLAUSES

A review of the Wollongong Local Environmental Plan (LEP) 2009 has identified the need to update the content of some clauses to correct anomalies so they remain contemporary.

It is recommended that Council resolve to prepare and exhibit a Planning Proposal to make minor amendments to various clauses in the Wollongong LEP 2009.

RECOMMENDATION

- 1 A Planning Proposal be prepared to make the following minor amendments to various clauses in the Wollongong Local Environmental Plan 2009:
 - a Clause 1.8 – include the repeal of Wollongong LEP 1990
 - b Clause 4.1A – include the missing reference to C4 Environmental Living
 - c Various clauses – update the reference to State legislation and agencies
- 2 The Planning Proposal be submitted to the NSW Department of Planning, Housing and Infrastructure for a Gateway Determination.
- 3 If a Gateway Determination is issued, the Planning Proposal be exhibited for a minimum period of 28 days.
- 4 The NSW Department of Planning, Housing and Infrastructure be advised that Council wishes to use its delegations to finalise the Planning Proposal.

REPORT AUTHORISATIONS

Report of: David Fitzgibbon, Manager City Strategy (Acting)
 Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

There are no attachments for this report.

ACRONYMS USED IN REPORT

Abbreviation	Meaning
DPHI	Department of Planning, Housing and Infrastructure
LEP	Local Environmental Plan
LGA	Local Government Area
SEPP	State Environmental Planning Policies

BACKGROUND

The Wollongong Local Environmental Plan (LEP) 2009 commenced on 26 February 2010 and has been amended 65 times by Council and 53 times by the NSW Department of Planning, Housing and Infrastructure (DPHI).

A review of the LEP is continuous. The LEP is updated to -

- Implement Council’s adopted Strategies, such as the Housing, Retail and Business Centres, Industrial Lands and Tourism Accommodation Strategies.
- Release more land for housing in the West Dapto Urban Release Area.
- Progress supported applicant-led / submitted Planning Proposal requests.
- Ensure it remains contemporary.

PROPOSAL

A review of the LEP has identified the need to make some minor housekeeping amendments to various clauses.

1 Amend Clause 1.8 Repeal of planning instruments applying to land

Upon commencement in February 2010 the Wollongong Local Environmental Plan (LEP) 2009 repealed the application of the Illawarra Planning Scheme Ordinance (1968) and Wollongong City Centre LEP 2007. The LEP overrode the Wollongong LEP 1990 for the majority of the Local Government Area (except Dapto and West Dapto).

In May 2010, the Wollongong (West Dapto) Local Environmental Plan (LEP) 2010 commenced and overrode the application of Wollongong LEP 1990 for Dapto and stages 1 and 2 of the West Dapto Release Area. Wollongong LEP 1990 still applied to stages 3, 4 and 5 of the West Dapto Urban Release Area.

In 2014 the West Dapto LEP 2010 was incorporated into the Wollongong LEP 2009.

The Wollongong LEP 1990 was subsequently phased out through the introduction of Wollongong LEP 2009 (Amendment Nos. 7 and 36), the later in 2018.

Wollongong LEP 1990 has not applied to any land within the LGA since the commencement of Wollongong LEP 2009 (Amendment No. 36) in 2018.

Wollongong LEP 2009 (Amendment No 36) (2018) for the Yallah Marshall Mount area, did not include a provision to list Wollongong LEP 1990 in clause 1.8 of the Wollongong LEP 2009 which lists repealed planning instruments. Accordingly, Wollongong LEP 1990 still appears on the legislation website as an "in force" LEP, which creates confusion.

Since 2018, the NSW Department of Planning, Housing and Infrastructure (DPHI) has made seven (7) administrative amendments to the Wollongong LEP 1990 which have not been required, as the LEP does not apply anywhere.

Recommendation:

To correct this administrative oversight, it is recommended that clause 1.8 of Wollongong LEP 2009 be amended to include in the note -

d Wollongong Local Environmental Plan 1990

2 Amend Clause 4.1A – Minimum lot sizes for certain split zones

Clause 4.1A Split zones was prepared to enable subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1 as the different zone areas do not meet the mapped standard. The clause allows the zone area of one lot in a subdivision to comply with one minimum lot size standard, and be less than the second minimum lot size standard. The clause was added to Wollongong LEP in 2012. The clause applies to the LGA.

The clause is often used in subdivisions in the West Dapto Urban Release Area, where the area of the C3 Environmental Management zone may be less than the 40-hectare minimum lot size standard. The residual C3 Environmental Management zoned land forms part of a residential lot that complies with the 449m²/299m² minimum lot size.

In the finalisation of the LEP clause there was an oversight where the E4 (now C4) Environmental Living zone is listed in part (2)(a) of the clause, but was not included in part (3)(a)(i) – see below. The exhibited version and the post exhibition and Council report both included the reference to E4 (now C4) Environmental Living.

The NSW Department of Planning, Housing and Infrastructure (DPHI) has advised that given the passage of time, section 3.22 of the *Environmental Planning and Assessment Act 1979* (expedited amendments to rectify misdescriptions and errors) cannot be used and a Planning Proposal is required.

4.1A Minimum lots sizes for certain split zones

- (1) *The objectives of this clause are as follows—*
- (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
 - (b) *to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.*
- (2) *This clause applies to each lot (an **original lot**) that contains—*
- (a) *land in a residential, employment or mixed use zone, Zone C4 Environmental Living or Zone W4 Working Waterfront, and*
 - (b) *land in a rural zone or Zone C2 Environmental Conservation or Zone C3 Environmental Management*
- (3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if—*
- (a) *one of the resulting lots will contain—*
 - (i) *land in a residential, employment or mixed use zone, **Zone C4 Environmental Living** or Zone W4 Working Waterfront, that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) *all of the land in a rural zone, Zone C2 Environmental Conservation or Zone C3 Environmental Management that was in the original lot, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*

Recommendation:

To correct this administrative oversight, it is recommended that “**Zone C4 Environmental Living**” be added to part (3)(a)(i) of the clause.

3 Update references to legislation and State agencies

A review of the references in the LEP to Acts, Regulations, SEPPs, and State agencies has been undertaken, which highlighted that a number of references are outdated and require updating.

Recommendation:

It is recommended that the following out-dated references to legislation and agencies be updated as indicated in the following table -

LEP Clause	Current wording	Proposed wording (proposed change in red font)
1.9 Application of SEPPs	(2A) <i>State Environmental Planning Policy No 71—Coastal Protection</i> does not apply to land within the Wollongong city centre.	(2A) <i>State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 2—Coastal Protection</i> does not apply to land within the Wollongong city centre.
1.9A Suspension of covenants, agreements and instruments	2(d) to any Trust agreement within the meaning of the <i>Nature Conservation Trust Act 2001</i> , or	2(d) to any Trust agreement within the meaning of the <i>Biodiversity Conservation Act 2016</i> , or
1.9A Suspension of covenants, agreements and instruments	(e) to any property vegetation plan within the meaning of the <i>Native Vegetation Act 2003</i> , or	(e) to any property vegetation plan within the meaning of the <i>Local Land Services Act 2013</i> , or

LEP Clause	Current wording	Proposed wording (proposed change in red font)
1.9A Suspension of covenants, agreements and instruments	(f) to any biobanking agreement within the meaning of Part 7A of the <i>Threatened Species Conservation Act 1995</i> , or	(f) to any biobanking agreement within the meaning of Part 7A of the <i>Biodiversity Conservation Act 2016</i> , or
1.9A Suspension of covenants, agreements and instruments	(h) to any land vested in the Lake Illawarra Authority under the <i>Lake Illawarra Authority Act 1987</i> .	(h) to any land vested in the <i>Crown</i> under the <i>former Lake Illawarra Authority Act 1987</i> . [Trade and Investment Cluster Governance (Amendment and Repeal) Act 2014 No 26 - NSW Legislation]
3.3 Environmentally sensitive areas excluded	(2)(d) land reserved as an aquatic reserve under the <i>Fisheries Management Act 1994</i> or as a marine park under the Marine Parks Act 1997 ,	(2)(d) land reserved as an aquatic reserve under the <i>Fisheries Management Act 1994</i> or as a marine park under the <i>Marine Estate Management Act 2014</i> ,
3.3 Environmentally sensitive areas excluded	(2)(ja) land identified as containing an endangered ecological community under the <i>Fisheries Management Act 1994</i> or the <i>Threatened Species Conservation Act 1995</i> ,	(2)(ja) land identified as containing an endangered ecological community under the <i>Fisheries Management Act 1994</i> or the <i>Biodiversity Conservation Act 2016</i> ,
4.2A Erection of dwelling houses on land in certain rural and conservation zones	Note after clause (2) Note. A dwelling cannot be erected on a lot created under clause 9 of <i>State Environmental Planning Policy (Rural Lands) 2008</i> or clause 4.2.	Note. A dwelling cannot be erected on a lot created under <i>Schedule 4 Part 2 of State Environmental Planning Policy (Primary Production) 2021</i> or clause 4.2.
5.19 Pond-based, tank-based and oyster aquaculture	(7) Definitions extensive aquaculture has the same meaning as in the <i>Fisheries Management (Aquaculture) Regulation 2017</i> .	extensive aquaculture has the same meaning as in the <i>Fisheries Management (Aquaculture) Regulation 2024</i>
7.2 Natural resource sensitivity—biodiversity	(5)(a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the <i>Native Vegetation Act 2003</i> or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or	(5)(a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the <i>Local Land Services Act 2013</i> or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or

LEP Clause	Current wording	Proposed wording (proposed change in red font)
7.2 Natural resource sensitivity— biodiversity	(5)(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i>) that is authorised by a development consent under the provisions of the <i>Native Vegetation Conservation Act 1997</i> as continued in force by that clause, or	(5)(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i>) that is authorised by a development consent under the provisions of the <i>Local Land Services Act 2013</i> as continued in force by that clause, or
7.2 Natural resource sensitivity— biodiversity	(5)(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserves under the <i>Forestry Act 1916</i> , or	(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserves under the <i>Forestry Act 2012</i> , or
7.2 Natural resource sensitivity— biodiversity	(5)(d) action required or authorised to be done by or under the <i>Electricity Supply Act 1995</i> , the <i>Roads Act 1993</i> or the <i>Surveying Act 2002</i> , or	(5)(d) action required or authorised to be done by or under the <i>Electricity Supply Act 1995</i> , the <i>Roads Act 1993</i> or the <i>Surveying and Spatial Information Act 2002</i> , or
7.2 Natural resource sensitivity— biodiversity	(5)(e) plants declared to be noxious weeds under the <i>Noxious Weeds Act 1993</i> .	(5)(e) plants declared to be noxious weeds under the <i>Biosecurity Act 2015</i> .
Schedule 6 Pond-based and tank-based aquaculture Part 1 – Division 2	6 Definition <i>intensive aquaculture</i> has the same meaning as it has in the <i>Fisheries Management (Aquaculture) Regulation 2017</i> .	<i>intensive aquaculture</i> has the same meaning as it has in the <i>Fisheries Management (Aquaculture) Regulation 2024</i> .

Some of the references above are contained in the Standard LEP template and Council officers have discussed these with staff from NSW Department of Planning, Housing and Infrastructure. Supporting these amendments outside of a State-wide template update, will be a consideration in issuing the Gateway Determination.

Wollongong Local Planning Panel

On 1 July 2025 the Wollongong Local Planning Panel considered the matter and provided the following advice for Council’s consideration -

The Panel advises that the proposed housekeeping amendment to tidy up various clauses in the LEP to keep the LEP contemporary is supported. The Panel support the recommendation for the report to proceed to Council for its decision.

CONSULTATION AND COMMUNICATION

The NSW Department of Planning, Housing and Infrastructure was consulted on the proposed reference changes and whether they had a program to update the references. Council was advised that they had no current plans to update the references to other legislation contained in the LEP.

If Council resolves to prepare a Planning Proposal, it will be referred to the NSW Department of Planning, Housing and Infrastructure for a Gateway Determination. If a Gateway Determination is issued the Planning Proposal will be exhibited for community comment. Following the exhibition, a post-exhibition report will be prepared for Council’s consideration.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong Our Future 2035 Goal 2 – “We have well planned, connected, and liveable places”. It specifically delivers on the following:

Community Strategic Plan 2035	Delivery Program 2025-2029
Strategy	Service
2.1 Urban areas are planned and well maintained to provide a healthy and safe environment for our community to live, work and play.	Land Use Planning

CONCLUSION

A review of the Wollongong LEP 2009 written instrument has identified the need to make minor updates to some clauses.

It is recommended that Council resolve to prepare a Planning Proposal to make the required amendments to the Wollongong LEP 2009 and seek a Gateway Determination to enable the exhibition of the Planning Proposal.