Submission

to the

Public Consultation Draft
of the Environmental
Planning and Assessment
Amendment Bill 2017
WINGECARRIBE SHIRE

Wingecarribee Shire is located on the NSW Southern Highlands and covers an area of some 2,700 square kilometres. It forms part of the Sydney Catchment Area with 97% of the total area of the Shire being within the Catchment Area.

Over 75% of the Shire is environmentally sensitive land, being zoned E1 National Parks and Nature Reserves, E2 Environmental Conservation or E3 Environmental Management under Wingecarribee Local Environmental Plan 2010. The Shire also contains extensive agricultural land with 12% of the Shire zoned RU1 Primary Production or RU2 Rural Landscape.

The Shire is of high conservation value with some 16 Heritage Conservation Areas covering an area of 1,600 ha. Schedule 5 (Part 1) of WLEP 2010 contains 328 Items of Heritage, 41 of which are of State significance. A further 81 properties are the subject of a Planning Proposal for inclusion in Schedule 5 of Wingecarribee Local Environmental Plan (WLEP) 2010.

Council’s Community Strategic Plan 2031+, completed in 2010, confirms that the Wingecarribee community values these qualities for the contribution they make to the residential amenity of the Shire and to its tourist-based economic potential. The Community Strategic Plan is currently being reviewed and updated.

Therefore, by several measures, Wingecarribee is unique and it is from this perspective that the draft Amendments to the Environmental Planning and Assessment Act have been reviewed and this submission prepared.

SUMMARY OF COUNCIL RESPONSES & RECOMMENDATIONS

Council is generally supportive of the proposed amendments. Council is mindful however of the resources needed to develop and implement these Plans and would welcome state government assistance to achieve these outcomes.

In addition to general comments on several aspects of the Draft Bill contained in this submission, the following specific recommendations are made:

- that the minimum 14 day exhibition requirement for local development be amended to make provision for any public holidays which may fall during the exhibition period, extending the time frame accordingly.

- that an approved s96 modification should be notified in the same context as the original application and that reasons be provided especially if the modification results in the removal of any condition of the original consent.

- that a private certifier not be able to assess certain types of development within heritage conservation areas or involving items of heritage, or the newer forms of complying development such as medium density housing.
REVIEW OF PROPOSED AMENDMENTS

Objects of the Act

The updated Objects of the Act are noted and supported by Council.

With regard to the promotion of ‘good design’, Council would hope to see some conversation and guidelines around what constitutes ‘good’ design, particularly with regard to infill development within localities of high heritage value. The 2015 release of the Department of Planning and Environment’s ‘Apartment Design Guide’ and the current ‘Draft Medium Density Design Guide’ are noted and are being considered by Council in the context of reviewing its Development Control Plans.

Enhancing Community Participation

Council places a high value on community engagement and supports the introduction of a Community Participation Plan. Council does have a Community Engagement Strategy, developed initially for the Wingecarribee 2031+ Community Strategic Plan and will need to determine to what extent this Plan could be amended to meet the new proposal, or whether a new Plan will be needed. Council is aware of the significant resources which will be required to develop such a Plan and would welcome an indication as to whether the state government will be providing assistance in this regard and in what form.

Council is also mindful of the difficulties of effectively engaging with the community at the strategic level alone. Council’s experience is that, despite the obvious advantages of engaging the community at the strategic level, it is particularly difficult for the community to do so. Council is particularly concerned that it is difficult for younger people to conceptualise at a strategic level. Also, in communities experiencing high growth through in-migration, newer populations may not have the same opportunity for strategic engagement unless this is undertaken on a more frequent basis than traditionally occurs.

Council supports an “evidence-based” approach to decision-making. Council believes that such ‘evidence’ would need to be in the form of regional and sub-regional datasets, preferably delivered through state government authorities. The Strategic Land and Water Capability Assessments (SLWCA) undertaken by the Sydney Catchment Authority are one example of such data delivery which is of assistance to Council. Further data of this type would reduce the time delays and expense to developers which the preparation of independent studies currently requires for such issues as flood and bushfire risk, traffic implications and heritage impacts. Council could then focus its limited resources on improved strategic community participation.

Council would welcome state government funding support to develop and implement electronic based systems whereby property owners can access on-line an integrated database providing details on zoning, development standards, development guidelines and infrastructure costs. Council especially hopes that any new system is a huge improvement on the presentation of the current LEP maps on the NSW Legislation website which causes considerable confusion within the community as well as among council staff.
Council sees considerable opportunity for use of the internet in engaging those sections of the community which are often not well represented in traditional community consultation efforts. Young people and people unable to attend public information sessions due to work or family commitments or accessibility limitations could all take part in on-line debates and consultation forums. This may well provide those residents with the confidence and interest to attend future consultation opportunities in person.

Council is also currently reviewing its Notification Policy. With regard to the minimum exhibition period, it is recommended that the minimum 14 day exhibition requirement for local development be amended to make provision for any public holidays which may fall during the exhibition period, extending the time frame accordingly.

**Early Consultation**

Council supports the proposal to require that consultation with neighbours occur before an application or modification of a current approval is lodged with Council.

**Local Strategic Planning Statements**

Council supports the preparation of local strategic planning statements.

Council’s recently completed Wingecarribee Local Planning Strategy 2015-2031 adopts a ‘narrative’ approach which reflects the proposed legislative framework of the local strategic planning statements telling the story of the local government area. Council’s Local Planning Strategy also sets out the strategic context within which the LEP has been developed, including the rationale behind the application of zones and development controls, as required under the proposed legislation. It also incorporates both the Regional Plan and the Wingecarribee Community Strategic Plan, both of which are currently being updated.

**Development Control Plans**

Council does not object to a standard DCP format and agrees that the content should remain a matter for Councils to determine. Council is currently undertaking an extensive review of its DCPs which will provide a relevant framework for the incorporation of a new format.

**Development Application Determinations**

Council notes the 40 day housing approval benchmark and supports the intention to update state government referral requirements and processes to facilitate meeting this expectation.

Such improvements in the referral process will be essential to enabling local government areas such as Wingecarribee to meet determination times. Referrals are frequently needed to Rural Fire Service, Water NSW, Roads and Maritime Services and Department of Primary Industries.
Misuse of Modifications & Enhanced Enforcement Provisions

Council is particularly supportive of proposed amendments to prevent planning authorities including the court from seeking retrospective approval for, or s96 modifications to, works already completed. Council also supports the proposal that planning authorities will be required to provide reasons to justify a decision to modify a consent, especially where that modification involves the removal of conditions.

- **Council recommends that an approved s96 modification should be notified in the same context as the original application and that reasons be provided especially if the modification results in the removal of any condition of the original consent.**

Council also supports ‘enforceable undertakings’ to improve compliance outcomes, particularly rectifying any harm which unauthorised activity has caused.

Complying Development

Council is particularly supportive of the proposal to limit the types of development which may be assessed by a private certifier. These would at least include certain types of development within heritage conservation areas or involving items of heritage, or newer forms of complying development such as medium density housing developments.

Council also supports the proposal that Councils will be able to issue a temporary stop work order for up to 7 days on a project against which “genuine complaints” have been made. Council is interested to know the criteria by which a ‘genuine’ complaint would be identified.

Planning Agreements

**Council supports a separate review of the current policy framework for the role and use of planning agreements in the planning system.**

Local Planning Panels

Council notes that Local Planning Panels are not mandated, however it is also noted that the Minister for Planning or Planning Secretary will have the power to direct a council to appoint a Panel in certain circumstances. Council would be concerned if this meant that local decisions were removed from council and determined instead by state authority.

Council supports efficiency and timely decision making, but not at the expense of appropriate planning outcomes supported by the local community. It is anticipated that the development of a Community participation Plan and its active application would remove the need for a Local Planning Panel.

Concluding Comments

Council remains fully committed to undertaking the community participation required to ensure the successful implementation of the updated planning legislation. To this end, a collaborative approach is required, between the Council, the applicant and the community,
and between the state and local levels of government, preferably collaboration which is matched with the resources required to implement it.

Council fully supports the proposed emphasis on strategic planning with genuine community engagement in the preparation of local strategic planning statements and associated Plans and Controls. Council is mindful however of the resources needed to develop and implement these Plans and would welcome state government assistance to achieve these outcomes.

Council appreciates the opportunity to comment on the proposed amendments to the Environmental Planning & Assessment Act.