



New South Wales

Wyong Local Environmental Plan 1991 (Amendment No 186)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Infrastructure, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

MICHAEL WHITTAKER, GENERAL MANAGER, WYONG SHIRE COUNCIL
As delegate for the Minister for Planning and Infrastructure

2013 No 469

Clause 1 Wyong Local Environmental Plan 1991 (Amendment No 186)

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Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is Wyong Local Environmental Plan 1991 (Amendment No 186).

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to Lot 3, DP 549272, being land known as Palmdale Lawn Cemetery and Memorial Park at Palmdale Road, Palmdale.

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Part 6

Insert after Part 5:

Part 6 Palmdale site

122 Application of Part

- (1) This Part applies to the land shown distinctively coloured on the Land Zoning Map, referred to in this Part as the *Palmdale site*.
- (2) No other provision of this plan (other than clauses 7 (3) and 32) applies to the Palmdale site.

123 Interpretation

- (1) In this Part:
Council means the Council of the Shire of Wyong.
Land Zoning Map means the Wyong Local Environmental Plan 1991—Palmdale—Land Zoning Map.
- (2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*, unless it is otherwise defined in this Part.

124 Maps

- (1) A reference in this Part to a named map adopted by this Part is a reference to a map by that name:
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Part to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.

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- (4) For the purposes of this Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

125 Application of SEPPs

- (1) This Part is subject to the provisions of any State environmental planning policy that prevails over this Part as provided by section 36 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Part applies:
- State Environmental Planning Policy No 1—Development Standards*
- State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* (clause 6 and Part 3)
- State Environmental Planning Policy No 60—Exempt and Complying Development*

126 Repeal of other LEPs

Any local environmental plan or deemed environmental planning instrument that, immediately before the commencement of this Part, applied to the land to which this Part applies is repealed to the extent that it applies to that land.

127 Consent authority

The Council is the consent authority for the purposes of this Part.

128 Land use zones

For the purposes of this Part, land within the Palmdale site is within a zone as follows if the land is shown on the Land Zoning Map as being within that zone:

- (a) Zone SP2 Infrastructure,
- (b) Zone E2 Environmental Conservation.

129 Objectives of land use zones to be taken into account

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

130 Zone SP2 Infrastructure

- (1) The objectives of Zone SP2 Infrastructure are as follows:
- (a) to provide for infrastructure and related uses,

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- (b) to prevent development that is not compatible with or that may detract from the provision of infrastructure.
 - (2) Development for any of the following purposes is permitted without development consent on land within Zone SP2 Infrastructure:
nil.
 - (3) Development for any of the following purposes is permitted only with development consent on land within Zone SP2 Infrastructure:
roads; the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.
 - (4) Except as otherwise provided by this Part, development on land within Zone SP2 Infrastructure is prohibited unless it is permitted by subclause (2) or (3).

131 Zone E2 Environmental Conservation

- (1) The objectives of Zone E2 Environmental Conservation are as follows:
 - (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
 - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E2 Environmental Conservation:
environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation:
environmental facilities; roads; water supply systems.
- (4) Development for any of the following purposes is prohibited on land within Zone E2 Environmental Conservation:
business premises; hotel or motel accommodation; industries; multi dwelling housing; recreation facilities (major); residential flat buildings; restricted premises; retail premises; seniors housing; service stations; warehouse or distribution centres; any other development not specified in subclause (2) or (3).

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132 Subdivision—consent requirements

- (1) Land to which this Part applies may be subdivided, but only with development consent.
- (2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.

133 Infrastructure development and the use of existing buildings of the Crown

- (1) This Part does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development that is permitted to be carried out with or without consent or that is exempt development under *State Environmental Planning Policy (Infrastructure) 2007*.
- (2) This Part does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

134 Public utility infrastructure

- (1) Development consent must not be granted for development on land within the Palmdale site unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.
- (2) In this clause, **public utility infrastructure** includes infrastructure for any of the following:
 - (a) the supply of water,
 - (b) the supply of electricity,
 - (c) the supply of natural gas,
 - (d) the disposal and management of sewage.
- (3) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure referred to in this clause.

135 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

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- (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated.

136 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the Palmdale site, including biodiversity values, through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.
- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
 - (a) development consent, or

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- (b) a permit granted by the Council.
 - (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.
 - (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.
 - (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
 - (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
 - (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
 - (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,
 unless the Council is satisfied that the proposed activity:
 - (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and
 - (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 32 will be applicable to any such consent.
 - (8) This clause does not apply to or in respect of:
 - (a) the clearing of native vegetation:
 - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
 - (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
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- (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 2012*, or
- (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*, or
- (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

Note. Permissibility may be a matter that is determined by or under any of these Acts.

- (9) Subclause (8) (a) (ii) does not apply in relation to land in Zone E2 Environmental Conservation.

137 Bush fire hazard reduction

Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land within the Palmdale site without development consent.

Note. The *Rural Fires Act 1997* also makes provision relating to the carrying out of development on bush fire prone land.