

48. ECO-INFORMATION

PURCHASING PROPERTY IN WYONG SHIRE – 149 CERTIFICATE INFORMATION

Adopted 01/10/03

WYONG COUNCIL RECOMMENDS THAT A COPY OF THIS FACT SHEET BE GIVEN TO EACH PROSPECTIVE LAND PURCHASER BY THEIR CONVEYANCING PROFESSIONAL AND THAT TIME BE TAKEN TO DISCUSS EACH POINT RAISED IN THIS FACT SHEET IN CONJUNCTION WITH THE PURCHASER'S 149 CERTIFICATE.

OBJECTIVES

This Fact Sheet aims to provide information for individuals purchasing property who may not have previously had exposure to the terminology and legal implications of planning law. In addition, it answers questions that are often asked concerning property information available through Council for prospective property owners. It is not intended to be a thorough description of the conveyancing process.

Council encourages the use of qualified professionals for conveyancing due to the complexities of property transfer. Potential purchases should rely on their conveyancer to review with them the issues raised in this fact sheet as well as any other information relevant to the title transfer.



INFORMATION ON PROPERTIES

Relevant information that Council has about each allotment of land is available on a "Planning Certificate". These are commonly called "149 Certificates" after the section of planning legislation that they are formed under. 149 Certificates come in two versions. A shorter 149 (2) Certificate and a 149 (5) Certificate that contains more extensive information. Council recommends that a prospective land purchaser always obtains a 149 (5) Certificate as part of conveyancing even though it costs slightly more.

In addition, Council recommends that all prospective land purchasers obtain a

"Building Certificate" and "121ZP Certificate" from Council. These are explained later in this fact sheet.

A 149 Certificate must be written in accordance with planning legislation. It can therefore be confusing to the lay person and appear overly legalistic. It is nevertheless, very important that any prospective land purchaser understand the certificate and its implications for the land being purchased. In addition, it is important to understand the limitations of 149 Certificates and to make any additional enquiries for information, especially regarding nearby property whose development may impact yours. The following are commonly asked questions regarding 149 Certificates.

The number heading each question relates to the sub-heading numbers on any 149 Certificate.

1. What are Zoning and Local Environmental Plans (LEP)?

In NSW plan making is regulated by the Environmental Planning and Assessment Act, 1979. Each Council operates under their own individual plan which is referred to as a "Local Environmental Plan". A Local Environmental Plan is the State approved instrument that Council must uphold to ensure the orderly development of land within the Shire. Wyong Shire Council operates under one Local Environmental Plan (Local Environmental Plan 1991).

Zonings are contained within the Local Environmental Plan. They classify each parcel of land for a particular type of development. The zoning describes a range of uses within that zone, which are permissible and also uses which are prohibited. While zonings help to clarify what is permissible on any given property they can be overridden on occasion, by State Environmental Planning Policies, or

Regional Environmental Planning Policies.

Zonings can also be changed over time by Council although the process is lengthy and involves public exhibition that must be advertised in local papers. It is therefore important that landowners keep up to date with their zoning and the zoning on nearby land.

As stated in the 149 Certificate Council strongly recommends that intending purchasers familiarise themselves with the nature and scope of development which is permissible not only on the subject land but on all adjoining and nearby land as well.

4. What are State Environmental Planning Policies (SEPPs)?

State Environmental Planning Policies (SEPPs) deal with important State wide issues. They are prepared by the State Government to ensure that Government Policies are implemented in an orderly manner throughout the State. They cover a diverse range of issues and policies such as specific guidelines for the protection of our coastline (SEPP No 71 – Coastal Protection) or housing criteria for aged and disabled persons (SEPP No 5 – Housing for Older People or People with a Disability).

They can override the controls set out in a Local Environmental Plan. For example, they can allow units for aged and disabled individuals in residential areas normally restricted to single residential type or dual occupancy development.



6. What are Regional Environmental Plans?

A Regional Environmental Plan (REP) is proposed, either by the Minister for Planning or the Director-General of the Department of Infrastructure, Planning and Natural Resources. The Department prepares a draft plan and invites community consultation. REPS can include a wide range of issues such as environmental conservation, infrastructure development and coal mining.



8. What are the minimum area standards for dwellings and can the property be subdivided?

Minimum area standards for the erection of a dwelling refers to Clause 18 of the LEP and relates only to land zoned Rural 1 (c). Your Certificate will clearly identify if the land is affected by Clause 18 which would require the amalgamation of allotments as indicated on the Planning Scheme Map in order to permit the erection of a dwelling. If your Certificate refers to your property as being affected by Clause 18 you should contact Council for further details.

Should you require any information with regard to the possibility of subdivision, you need to contact Council as minimum area requirements for subdivision differ in each zone. Generally, in residential zones, subdivision is difficult and discouraged below 450 m² sized lots. Site conditions may make any subdivision virtually impossible.



10. What is a Development Control Plan (DCP)?

Development Control Plans are prepared by Council and provide specific, comprehensive guidelines for such things as Council policies, ie Tree Preservation or for particular types of development such as Medium and High Density Residential Development. A Development Control Plan may also relate to development criteria for a specific location.

Two Development Control Plans describe what type of simple development are “exempt” from the need to apply for a consent (eg some barbecues and children’s cubbies) as well as what forms of simple development can be approved through a quicker and cheaper approval system known as “complying” development.

12. When are Community Services provided under Section 94 contributions?

A Section 94 contribution is a monetary payment towards additional services or facilities required as a result of particular types of development such as subdivisions or residential flat developments. Charges are payable in accordance with Council’s Development Contributions Plans. Services are then built when the funds are available and in accordance with schedules in the Contribution Plan.

17. What is Mine Subsidence?

Many residential areas in Wyong Shire are underlain by existing or proposed coal mining. Special restrictions apply

to mining in such areas to minimising the potential for damage to buildings constructed. Approval from the Mine Subsidence Board is required for most substantial building works proposed in such areas. Certain construction standards may apply.

19. RESTRICTIONS DUE TO RISK

Flood Prone Land

Your 149 Certificate will identify whether your land is not affected by flooding, is partly affected by flooding or is fully affected by flooding with a 1 in 100 chance or less of occurring in any given year. Further information about flood affected properties, including details of minimum floor height levels, can be obtained by contacting Council.

Controlled Air Space

The maximum height of development may be limited by safety clearances for airplane traffic around Warnervale Airport. This is expressed as an elevation above sea level.

Bushfire Prone Land

If the property is affected by bushfire threat, this must be specified in the 149 Certificate. In some cases, this may restrict or even prevent some forms of development.

Acid Sulphate Soils

Acid Sulphate Soils are a type of soil which can occur on low-lying sites on the Central Coast. Council has produced an Eco-Info Sheet No. 2 – Acid Sulphate Soils which is available on Council’s website or a copy can be forwarded to you by telephoning 43505501.

OTHER COMMON QUESTIONS

What do the four points in the Land Use Table attached to the Certificate mean?

The Land Use Table(s) identifies the zone(s) affecting the property.

Item 1 indicates the objectives of that zone to achieve orderly development and compatible uses.

Item 2 outlines those uses permissible without requiring any further development consent. (Note that the Development Control Plan for exempt development allows additional minor development that does not require a Council approval).

Item 3 outlines those uses which are permissible but require the submission of a development application and further assessment by Council.

It is recommended that any purchaser review this list in detail with their conveyancer.

Item 4 outlines those uses which are prohibited within the zone.

To understand what each of these means you may need to review the definitions of each land use as described in the Local Environmental Plan. For example:

- ❖ Zone 2B – Multiple dwelling zone allows residential flat development of generally two storey such as town houses or villa homes.
- ❖ Zone 2C – Medium density residential allows residential flat development generally three storey or nine metres in height.

Again, a review of zonings on nearby land is advisable to understand the type of development that may be permissible in the immediate vicinity.

Are all the improvements on the property legally erected?

The zoning of land shown on a 149 Certificate indicate land uses to which the property may be put. The 149 Certificate does not identify whether current use is permitted or approved or whether buildings on the land have Council approval.

To clarify the status of development on a property you must apply to Council for a Building Certificate. This is issued only after a review of historic approvals and a site inspection. The certificate will clarify the

approval status, but will not identify if there are structural faults, insect damage, water problems or other such construction defects or damage. Private building inspections can be contracted to provide such internal building analysis.

Outstanding Orders

On occasion a property may have outstanding orders from Council to undertake certain works or change activities. These may relate to issues such as removing overgrown vegetation or repairing dangerous or hazardous structures. In extreme cases this can extend to the requirement to demolish.

When the property is sold, the new owner must still carry out the works specified in the Order.

A list of outstanding Orders against a property (if any) is available through Council. This is called a "121ZP Certificate" after the section of the legislation it is issued under.

MORE INFORMATION

Council is always willing to help land owners understand the controls that may impact their land.

All of Council's controls are available on our website at www.wyong.nsw.gov.au.

In addition, Customer Service Staff are available during office hours at Head Office, 16 Hely Street Wyong and Councils' Branch Offices at:

- Lake Haven Library (Ph: 43927843)
Lake Haven Shopping Centre
Goobarabah Avenue
LAKE HAVEN
- The Entrance Library (Ph: 43322256)
211a The Entrance Road
THE ENTRANCE
- Tuggerah Library (Ph: 43535666)
Westfield Shoppingtown
TUGGERAH

A qualified Planner is also on duty during office hours at Council's head office in Hely Street, Wyong (Telephone: 4350 5555).