

6.2 TAMWORTH REGIONAL LOCAL ENVIRONMENTAL PLAN 2010 – RURAL DWELLING ENTITLEMENT PLANNING PROPOSAL – FILE No SF5533

DIRECTORATE: PLANNING AND COMMUNITY SERVICES

AUTHOR: Andrew Spicer, Strategic Planner (Section 94)



6.2 CONFIDENTIAL
ENCLOSURE - TAMWORTH

CONFIDENTIAL ENCLOSURE ENCLOSED

RECOMMENDATION

That Council resolve to forward the enclosed “Rural Dwelling Entitlement Planning Proposal” to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979.

SUMMARY

This report seeks Council's endorsement of a planning proposal to amend the *Tamworth Regional Local Environmental Plan (TRLEP 2010) 2010* as it relates to rural dwelling permissibility in the Tamworth Regional Council (TRC) Local Government Area (LGA). The aim is to allow for the reinstatement of dwelling permissibility in rural zones where they have been removed or limited by several provisions of the *TRLEP 2010* when it was published on 21 January 2011.

The planning proposal has been formulated in response to concerns from a number of property owners relating to the effect of *TRLEP 2010* provisions limiting the opportunity to lodge a development application for the construction of a dwelling in rural areas of the LGA. The relevant *TRLEP 2010* provisions are those relating to minimum lot size, existing holdings and concessional allotments.

The proposal aims to reinstate these opportunities while still promoting the agricultural viability of rural land in the LGA. The terms of the planning proposal do not provide for increased subdivision of rural lands in the Tamworth Regional Council LGA.

Refer to CONFIDENTIAL ENCLOSURE for Item 6.2 for the complete *Rural Dwelling Entitlement Planning Proposal*.

BACKGROUND

When the *TRLEP 2010* was published, lot size provisions were adjusted upward for much of the rural zoned land in the LGA. The quantum increase was generally from a minimum lot size of 200ha to either 400ha or 800ha. There was also an increase from 400ha to 800ha across a significant area in the former Parry Shire. Whilst the primary objective was to protect larger agricultural holdings from small lot subdivision, the increased lot size provisions also limited potential dwelling construction on existing smaller lots in these rural lands. The potential to erect a dwelling on 'existing holdings' as defined in the LEP was limited to a 'sunset' period of two years from the date of publication of the *TRLEP 2010*. This period will expire on 21 January 2013. The provisions of the LEP also resulted in the potential to erect a dwelling on 'concessional allotments' being removed altogether.

Council is in receipt of submissions from a number of rural landholders seeking the reinstatement of dwelling entitlements that were removed by the application of the increased lot size provisions and other provisions of the *TRLEP 2010*. A petition of 105 signatures from landholders in the Weabonga area and other concerned citizens was received and tabled at

the Ordinary Council Meeting of 27 September 2011. The petition relates to circumstances where owners and occupiers are concerned about loss of potential dwelling permissibility potentially resulting in reduced property value and marketability as well as compromised land management and lifestyle opportunities.

COMMENTARY

Council has the option under *Section 56* of the *Environmental Planning and Assessment Act (EP&A Act) 1979* to prepare and submit a planning proposal for gateway determination with the objective of changing the planning controls over the subject lands. The proposed subject lands cover all land zoned *RU1 – Primary Production* and *RU4 – Primary Production Small Lots* in the former Parry, Manilla, Barraba and Nundle Shires that are contained in the TRC LGA.

The planning proposal provides for development applications to be lodged relating to the construction of dwelling in circumstances where such application could have been made up to the date of publication of the *TRLEP 2010* on the basis of minimum lot size, existing holding and concessional allotment grounds. No prescribed sunset clause is proposed under the terms of the planning proposal. Provision is not made for the reinstatement or creation of dwelling entitlements on any other grounds.

It is acknowledged that the 'life' of the *TRLEP 2010* is not foreseeable and that a future review under the New South Wales (NSW) planning legislation in force at that time may result in limitation of dwelling permissibility in the subject lands.

It is important to note that dwelling entitlement/permissibility does not confer as 'right' to construct a dwelling. A development application process is required which will analyse the merit of the construction of a dwelling in the circumstances of a particular case. A key element of the planning proposal is that further subdivision of rural land is not to be facilitated and therefore the *TRLEP 2010* Lot Size maps will not be amended. This aims to guard against the fragmentation of rural lands which may affect the agricultural viability of holdings in the Tamworth Regional Council LGA.

(a) Policy Implications

Nil

(b) Financial Implications

Nil

(c) Legal Implications

Any amendment to *Tamworth Regional Local Environmental Plan 2010* changes the legal basis for the use of all affected land.

(d) Community Consultation

Council is in receipt of submissions from a number of rural landholders seeking the reinstatement of dwelling entitlements lost by the application of increased lot size provisions and other provisions of the *TRLEP 2010*. A petition of 105 signatures from landholders in the Weabonga area and other concerned citizens was received and tabled at the Ordinary Council Meeting of 27 September 2011.

Further enquiries and representations have been made and Council officers have met with affected parties and undertaken field inspections of specific areas of the Tamworth Regional Council Local Government Area. Written advice and updates have been provided to interested parties.

A consultation strategy, tailored to address the characteristics of the *Rural Dwelling Entitlement Planning Proposal*, will be implemented in accordance with the terms of a gateway determination received from the Department of Planning and Infrastructure.

CONCLUSION

The *Rural Dwelling Entitlement Planning Proposal* is the first step in the gateway plan-making process and explains the effect of, and justification for, the initiative. The gateway process will determine whether the proposal should proceed and specify the requirements for public exhibition. It is recommended that the *Rural Dwelling Entitlement Planning Proposal* be referred to the Minister for Planning and Infrastructure for a gateway determination.

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MOTION

Moved Cr Webb/Cr Wilson

383/12

RESOLVED

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