

Tamworth Regional LEP 2010 Amendment No 3

Proposal Title : **Tamworth Regional LEP 2010 Amendment No 3**

Proposal Summary : **This Planning Proposal aims to reinstate opportunities for development applications to be approved for dwellings in the RU1 Primary Production and RU4 Primary Production Small Lots zones that may have been removed by the publication of the Tamworth Regional Local Environmental Plan (TRLEP) 2010. The Planning Proposal addresses circumstances where such dwelling permissibility or 'entitlement' has been limited by changes in minimum lot sizes, existing holding provisions and /or concessional allotment provisions.**

PP Number : **PP_2013_TAMWO_001_00** Dop File No : **12/20688**

Proposal Details

Date Planning Proposal Received :	20-Dec-2012	LGA covered :	Tamworth Regional
Region :	Northern	RPA :	Tamworth Regional Council
State Electorate :	TAMWORTH	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :
 Suburb : City : **Tamworth Regional** Postcode :
 Land Parcel : **This Planning Proposal applies to all land within the former Barraba, Manilla, Parry and Nudle LGAs.**

DoP Planning Officer Contact Details

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RPA Contact Details

Contact Name : **Andrew Spicer**
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DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	Yes
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment : No meetings or other communications have been held with Registered Lobbyists in regards to this Planning Proposal.			

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The Planning Proposal aims to address the concerns of rural property owners relating to the change of planning provisions implemented by the publication of the TRLEP 2010. The effect of the changes was that a significant number of rural properties lost dwelling "entitlements".**

The intended outcome of this Planning Proposal is to provide the opportunity for affected landowners to act on dwelling 'entitlements' that existed immediately prior to the publication of the TRLEP 2010. However the Planning Proposal does not propose to amend the TREL P 2010 Lot Size Maps and so does not affect the subdivision potential of rural lands in the Tamworth Regional Local Government Area.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objectives and intended outcomes of the Planning Proposal are adequately expressed in relation to the proposed reinstatement of of dwelling entitlements that may have been affected by the publication of the Tamworth Regional Local Environmental Plan 2010.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The Planning Proposal provides an adequate explanation of the intended provisions to achieve its objectives. Council also acknowledges that the Department of Planning and Infrastructure may identify alternative mechanisms to facilitate the reinstatement of**

dwelling entitlements to achieve the objectives of the planning proposal.

The amendment to the LEP as proposed by Council will not entirely achieve the aims of the Planning Proposal. It is recommended that Council liaise with the Regional Planning Team prior to public exhibition to develop an appropriate mechanism to achieve the desired outcome, whether this be through an amendment to an existing clause or changes to the LEP map series.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

3.5 Development Near Licensed Aerodromes

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

3.6 Shooting Ranges

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 30—Intensive Agriculture

e) List any other matters that need to be considered :

The New England North West draft Strategic Regional Land Use Plan was publicly exhibited in early 2012 and applies to the Tamworth Regional LGA.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

The Planning Proposal is considered to be consistent with all relevant SEPPs and the England North West draft Strategic Regional Land Use Plan.

The inconsistencies with relevant section 117 Directions are considered to be of minor significance and are discussed below.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The Planning Proposal includes appropriate mapping showing affected lands. As submitted by Council, the Planning Proposal does not propose to amend any LEP maps at this stage, however following the recommended liaison with the Regional Team there may be a need to amend some LEP maps. These will be prepared prior to exhibition if needed and included in a revised Planning Proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

No specific community consultation details are provided in the current Planning Proposal. Council does propose that an extensive community consultation strategy would be implemented in accordance with any prospective gateway determination with the aim of consulting the widest possible range and number of stakeholders connected with this issue.

Due to the nature of the proposal, it is considered appropriate that the community be notified and invited to comment on the proposal. An exhibition period of 28 days is recommended.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Council has included a Project Time Line within the Planning Proposal. It indicates a 6 month timeframe to complete the LEP Amendment. This appears to be optimistic given the nature of the proposed amendment. It is recommended that a 9 month timeframe to complete the LEP Amendment be included in the Gateway Determination.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Tamworth Regional LEP 2010 is a standard instrument LEP that was notified on 21 January 2011.**

Assessment Criteria

Need for planning proposal :

The TRLEP 2010 was notified on 21 January 2011. At that time minimum lot size provisions were adjusted upward for much of the rural zoned land in the LGA. This increase was the result of a detailed strategic planning process between Council's elected officials and staff and Government Agencies including the former Department of Planning, NSW Agriculture and Department of Water and Energy and Department of Conservation and Climate Change. The outcome from the process was the identification of areas and appropriate minimum lot sizes based on current land use patterns, the fragmentation of rural lands, the potential for rural land use conflict, natural and physical constraints and access to services. It resulted in the rural minimum lot sizes ranging from 10ha to 800ha depending on their existing characteristics, location, and future intended use. The identification of the minimum lot sizes was consistent with the Rural Planning Principles and Rural Subdivision Principles contained within the Rural Lands SEPP 2008. The increased lot size provisions limited potential dwelling construction on these rural lands.

The potential to erect a dwelling on 'existing holdings' as defined in the LEP was also limited by a 'sunset' period of two (2) 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 existing approved 'concessional allotments' being removed altogether.

Council has utilised the provisions for clause 4.6 Exceptions to Development Standards of the TRLEP 2010 to provide a degree of flexibility in the application of development standards to approve dwellings in the rural zones that do not meet the minimum lot size.

Council is in receipt of submissions from rural landholders seeking the reinstatement of dwelling entitlements lost by the application of increased lot size provisions and other provisions of the TRLEP 2010. Owners are concerned about reduced property value and marketability as well as compromised land management and lifestyle opportunities.

The Regional Office considered that the blanket return to pre-TRLEP 2010 dwelling house development standards would negate several aspects of the strategic planning work undertaken by Council and Government Agencies to identify the current minimum lot sizes. Further justification is required prior to the introduction of such a wide ranging change to dwelling house development standards

Consistency with strategic planning framework :

The Planning Proposal is considered to be consistent with all relevant SEPPs.

The New England North West Strategic Regional Land Use Plan was released in September 2012. The Planning Proposal is considered to be consistent with the provisions of this Plan.

The Tamworth Regional Development Strategy was prepared by Council and approved by the Director General in April 2008. Chapter 6 of the Strategy – Supporting and Protecting Rural Futures includes the following recommendations:

- **Provide for the economic growth of the rural area and maintain and enhance rural job opportunities.**
- **Promote sustainable management of natural resources for Primary Production.**
- **Prepare management guidelines for land uses in rural areas.**
- **Protect agricultural land resources.**
- **Minimise land use conflict and ensure farmers/producers can carry out farming activities with long term security.**
- **Maintain viable farm sizes, the capacity to continue farming practices, minimise the fragmentation of the agricultural land resource and encourage the consolidation of small holdings.**
- **Minimise the impact of Poultry Farms and ensure environmentally sustainable development.**
- **Support equine industry development and promote sustainable management of its development.**
- **The preservation and protection of mineral resources.**
- **Protect and enhance forestry resources.**
- **Promote the forestry industry in Tamworth with regard to maintaining and enhancing job opportunities in forestry.**

Council has identified that the Development Strategy acknowledges that the existing land use pattern needs to be supported to sustain and strengthen the viability of rural lands to achieve land management outcomes and support agricultural operations of different types including family-run businesses. Family businesses provide a balance to corporate agricultural businesses which appear to be on the increase.

The Development Strategy does not include specific comments or recommendations that the permissibility of dwellings should reflect the former LEP provisions. However it is considered that the proposal is not inconsistent with the Strategy.

The Planning Proposal is considered to be consistent with all applicable section 117 Directions, except in relation to Direction 1.2 Rural Zones, 3.5 Development in the vicinity of Licensed Aerodromes, 3.6 Shooting Ranges, and 4.3 Flood Prone Land as discussed below:

1.2 Rural Zones

The Proposal is considered inconsistent with this Direction as it contains provisions that will increase the permissible density of land within a rural zone. This inconsistency is considered as minor as the provisions relating to dwellings in rural zones would be returning to their previous level of density.

3.5 Development near Licensed Aerodromes

The Proposal is considered inconsistent with this Direction as it will create, alter or remove a provision relating to land in the vicinity of a licensed aerodrome. This inconsistency is considered to be minor and justified due to the nature of the potential change in the vicinity of licensed aerodromes and that other provisions exist within the TRLEP 2010 to control development in such areas.

3.6 Shooting Ranges

The Proposal is considered inconsistent with this Direction as it will create, alter or remove a provision relating to land adjacent to and/ or adjoining an existing shooting range. This inconsistency is considered to be minor due to the nature of the potential change in the

vicinity of existing shooting ranges.

4.3 Flood Prone Land

The Proposal is considered inconsistent with this Direction as it creates, removes or alters a provision that affects flood prone land. This inconsistency is considered as minor and justified as the provisions relating to dwellings in rural zones would be returning to their previous level of density and that other provisions exist within the TRLEP 2010 to control development in such areas.

4.4 Planning for Bushfire Protection

The Proposal is considered inconsistent with this Direction as it affects land mapped as bushfire prone land. It is recommended that Council consult with the Commissioner of the NSW Rural Fire Service to obtain written advice to the effect that, notwithstanding the noncompliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

Environmental social
economic impacts :

The Planning Proposal considers the environmental, social and economic impacts associated with the amendments to the LEP and identifies no adverse impact. The Planning Proposal concludes that a positive social and economic impact is expected with the proposed changes due to greater development opportunities.

The Planning Proposal does not automatically confer a right to establish a dwelling on a rural holding and matters including the effect on critical habitat or threatened species, population or ecological communities, or their habitats, are the matters to be considered during the development assessment process.

The Planning Proposal includes land that is both flood prone and subject to bush fire. Provisions within the existing TRLEP 2010 deal with these issues and they are also managed through the development application process.

Assessment Process

Proposal type : **Routine** Community Consultation **28 Days**
Period :

Timeframe to make **9 Month** Delegation : **DDG**
LEP :

Public Authority **NSW Rural Fire Service**
Consultation - 56(2)(d)

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **This Planning Proposal should proceed with consultation being undertaken with the NSW Rural Fire Service.**

Resubmission - s56(2)(b) : **Yes**

If Yes, reasons : **It is recommended that Council consult with the Regional Office to develop an appropriate mechanism to achieve the desired outcomes of the Planning Proposal while maintaining the integrity of previous strategic planning work undertaken by Council and Government Agencies.**

This action could be through a revised clause within the LEP or an additional LEP map series. This consultation is to take place prior to exhibition of the Planning Proposal.

Identify any additional studies, if required. :

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If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Letter - Submission of Rural Dwelling Entitlement Planning Proposal to Department.pdf	Proposal Covering Letter	Yes
Tamworth_Rural_Dwelling_Entitlements_Planning_Proposal_9_1_2013.pdf	Proposal	Yes
Ordinary_Council_Meeting_11_November_2012_Item_6.2.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 3.5 Development Near Licensed Aerodromes**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 3.6 Shooting Ranges**

Additional Information : **The Planning Proposal should proceed subject to the following conditions:**

1. The Department supports Council's intention to reinstate opportunities for development applications to be approved for dwellings in the RU1 Primary Production and RU4 Primary Production Small Lots zones that may have been removed by the publication of the Tamworth Regional Local Environmental Plan 2010, where appropriate. However, the proposed amendment to the clause 4.2B is not supported in its current form as it does not achieve the desired outcome of the Planning Proposal. Council is to consult with the Department's Regional Team on the form and content of an appropriate mechanism to achieve the desired outcomes of the Planning Proposal and maintain the integrity of previous strategic planning work undertaken by Council and Government Agencies.

2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- **NSW Rural Fire Service**

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

Council is to consult the Commissioner of the NSW Rural Fire Service, prior to undertaking community consultation. Council is to take into account any comments made and amend the planning proposal (if necessary) as per the requirements of S117 Direction Planning for Bushfire Protection.

3 Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 28 days; and**
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made**

publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

6. The Delegate of the Director General agrees that the inconsistencies with S117 Directions 1.2 Rural Zone, 3.5 Development Near Licensed Aerodromes, 3.6 Shooting Ranges, 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection are justified as being of minor significance.

Supporting Reasons :

Council's intention to reinstate opportunities for development applications to be approved for dwellings in the RU1 Primary Production and RU4 Primary Production Small Lots zones that may have been removed by the publication of the Tamworth Regional Local Environmental Plan 2010 is supported where appropriate, as this will provide the community certainty for development opportunities for dwellings in rural areas.

Signature:



Printed Name:

JIM CLARK

Date:

10 January 2013