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2 September 2016

**WESTERN
PLAINS
REGIONAL
COUNCIL**

Incorporating the former
Dubbo City & Wellington councils

Mr A Albury
Director Regions, Western
NSW Planning and Environment
PO Box 58
DUBBO NSW 2830

Dear Mr Albury

**PLANNING PROPOSAL – EXISTING HOLDING PROVISIONS FOR DWELLING HOUSES ON LAND
ZONED RU1 PRIMARY PRODUCTION – WELLINGTON LOCAL ENVIRONMENTAL PLAN, 2012
(AMENDMENT 3)**

Reference is made to the Planning Proposal provided above and previous correspondence between the Department of Planning and Environment and the former Wellington Council.

Following amalgamation of the former Dubbo City and Wellington councils on 12 May 2016, detailed review of the Planning Proposal was undertaken in accordance with the Department of Premier and Cabinet's 'Merger Implementation Action Checklist.' The review also considered compliance of the Planning Proposal with the provisions of the Environmental Planning and Assessment Act 1979, the requirements of the Department of Planning and Environment and good planning practice. Subsequently, Council at its meeting on 24 August 2016 considered a report in respect of the Planning Proposal and in particular the subject review. Council in consideration of the report resolved as follows:

- "1. That Council, in accordance with Section 58(4) of the Environmental Planning and Assessment Act, 1979 request of the Minister for Planning and Environment that the subject Planning Proposal process cease and that no amendment be made on this basis to the Wellington Local Environmental Plan, 2012.*
- 2. That the City Strategy Works Program include an Operational Review of the Wellington Local Environmental Plan, 2012, including consideration of the 'existing holding' provisions."*

A copy of report and associated minutes are provided attached as Appendix 1.

Our recent review of the Planning Proposal has indicated that any further amendment and clarification of existing holding provisions in the Wellington LEP 2012 will not facilitate any additional development in the former Wellington Local Government Area (LGA) than that would have otherwise been permissible if the Planning Proposal had been further progressed.

All communications to: **THE INTERIM GENERAL MANAGER**

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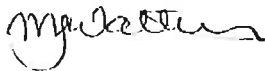
The review also concluded that whilst the current process of reviewing the 'existing holding' status of land in Wellington is somewhat cumbersome, the current provisions of the Wellington LEP 2012 are considered appropriate in guiding the development of rural lands at the current time.

It should also be noted that the proposed amendments included in the Planning Proposal will be further considered as part of the Operational Review of the Wellington LEP 2012, which is required to be undertaken by Council in the 2016/2017 financial year as a key step towards the development of a comprehensive LEP for the new LGA.

In accordance with Council's resolution of 24 August 2016, and pursuant to Section 58(4) of the Environmental Planning and Assessment Act, 1979 Council, as the relevant planning authority, requests that the Minister for Planning and Environment determine that the Planning Proposal not proceed and that no amendment be made to the Wellington Local Environmental Plan 2012 on this basis.

Should you require any information in this matter, please do not hesitate to contact Council's Manager City Strategy Services, Steven Jennings, on 6801 4000.

Yours faithfully



Melissa Watkins
Director Environmental Services

Attachment: Council Report and Minutes of Ordinary Council Meeting 24 August 2016

**WESTERN
PLAINS
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Incorporating the former
Dubbo City & Wellington councils

REPORT: Planning Proposal - Existing Holding Provisions for Dwelling Houses on Land zoned RU1 Primary Production - Wellington Local Environmental Plan, 2012 (Amendment 3)

AUTHOR: Manager City Strategy Services
REPORT DATE: 12 August 2016
TRIM REFERENCE: ID16/1482

EXECUTIVE SUMMARY

The former Wellington Council commenced preparation of a Rural Land Study for land zoned RU1 Primary Production and RU4 Rural Small Holdings in October 2012. Preparatory work for the draft Wellington Rural Lands Study highlighted a number of issues in respect of the clarity and application of 'existing holding' provisions in the Wellington Local Environmental Plan, 2012 for dwellings on land zoned RU1 Primary Production. In addition, this preparatory work included a review of the status of 'existing holdings' in the former Wellington Local Government Area. This review resulted in the 'existing holding' status of 14 allotments as being unable to be confirmed based on the level of information the former Wellington Council held in respect of their status and their ownership characteristics.

Clause 4.2C of the Wellington Local Environmental Plan, 2012 (Wellington LEP 2012) allows for the development of a dwelling house on land zoned RU1 Primary Production if the land complies with one or more of the categories as provided below:

- (a) An allotment of land is equal to or larger than the minimum allotment size in the Wellington LEP 2012 (400 hectares); or
- (b) An allotment of land was approved under a former Environmental Planning Instrument for the purposes of allowing for the development of a dwelling house (not in the case of an allotment that was specifically created for the purposes of agriculture or another use); or
- (c) An allotment of land is part of an Existing Holding. In the case of the Wellington LEP 2012, this means land that has been held in the ownership of one person/s on 26 June 1987.

A Planning Proposal was prepared which sought to remove the 'existing holding' provisions from the Wellington LEP 2012 and to introduce a 'sunset clause' for the provision to remain in the LEP for a period of five (5) years. This would mean that any land classified as an 'existing holding' would only be permitted to have a dwelling entitlement for five (5) years. After five (5) years, the subject lands would not hold a dwelling entitlement unless the land had an area

of at least 400 ha or was created for the purposes of a dwelling house and not agriculture only.

The Planning Proposal also sought to map all existing holdings and the 14 additional allotments where their respective existing holding status was undeterminable.

Based on these issues, the former Wellington Council prepared a Planning Proposal which sought to undertake amendments to the Wellington Local Environmental Plan, 2012.

The former Wellington Council at its meeting on 17 December 2014 considered a report in respect of the Planning Proposal and resolved as follows:

- "1. Council resolve to prepare a Planning Proposal to address 14 anomalies relating to the existing holding status of certain lands in the rural zones;*
- 2. The draft Planning Proposal also instigate actions to replace the existing holding provisions as defined in Clause 4.2B(5) of the Wellington LEP 2012 with appropriate amendments to the lot size map;*
- 3. The draft Planning Proposal presented to Council's Ordinary Meeting of 17 December 2014 be forwarded to the Regional Manager of the Department of Planning and Environment, seeking the matter be progressed through the Gateway process to allow the proposals to proceed to public exhibition."*

A copy of the report considered by the former Wellington Council, including the subject Planning Proposal, is provided in **Appendix 1**.

Following amalgamation of the former Dubbo City and Wellington councils on 12 May 2016, a detailed review of the Planning Proposal has been undertaken to determine compliance of the Planning Proposal with the provisions of the Environmental Planning and Assessment Act, 1979 and the requirements of the Department of Planning and Environment in accordance with the Department of Premier and Cabinet's 'Merger Implementation Action Checklist'.

The review found the current provisions of the Wellington LEP 2012 appropriate in guiding development of rural lands at the current time.

Based on the findings of the review, it is recommended that the Planning Proposal not be further processed and for the matter to not proceed.

The proposed amendments included in the Planning Proposal will form components of an Operational Review of the Wellington LEP 2012 which is required to be undertaken by Council in the 2016/2017 financial year. This review will determine if any changes should be made to the Wellington LEP 2012 to improve the clarity and understanding of the LEP in conjunction with the development of a comprehensive Local Environmental Plan for the new Western Plains Regional Council Local Government Area.

It is recommended that Council, pursuant to Section 58(4) of the Environmental Planning and Assessment Act, 1979 prepare correspondence to the Minister for Planning and Environment to discontinue the Planning Proposal process in respect of the subject amendment to the Wellington Local Environmental Plan, 2012 (Amendment 3).

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

Policy implications in respect of the Planning Proposal are discussed in this report.

RECOMMENDATION

1. That Council, in accordance with Section 58(4) of the Environmental Planning and Assessment Act, 1979 request of the Minister for Planning and Environment that the subject Planning Proposal process cease and that no amendment be made on this basis to the Wellington Local Environmental Plan, 2012.
2. That the City Strategy Works Program include an Operational Review of the Wellington Local Environmental Plan, 2012, including consideration of the 'existing holding' provisions.

Steven Jennings
Manager City Strategy Services

BACKGROUND

1. Wellington Local Environmental Plan 2012

The Wellington Local Environmental Plan, 2012 was gazetted by the Minister for Planning and Environment on 23 November 2012. The majority of rural lands in the former Wellington Local Government Area (LGA) are zoned RU1 Primary Production under the provisions of the Wellington LEP 2012 and are subject to a minimum allotment size of 400 hectares.

Clause 4.2C of the Wellington LEP 2012 specifically controls the provision of dwellings on land zoned RU1 Primary Production, RU4 Primary Production Small Lots and E3 Environmental Management as provided below:

- “(1) The objectives of this clause are as follows:*
 - (a) to minimise unplanned rural residential development,*
 - (b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in certain rural and environmental protection zones.*
- (2) This clause applies to:*
 - (a) for the erection of a dwelling house—land in Zone RU1 Primary Production, Zone RU4 Primary Production Small Lots or Zone E3 Environmental Management, or*
 - (b) for the erection of a dual occupancy—land in Zone RU1 Primary Production.*
- (3) Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land, and on which no dwelling house or dual occupancy has been erected, unless the land:*
 - (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or*
 - (b) is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or*
 - (c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (d) is an existing holding, or*
 - (e) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) had it not been affected by:*
 - (i) a minor realignment of its boundaries that did not create an additional lot, or*
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose.*

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

- (4) *Development consent may be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house or dual occupancy on the land and the dwelling house or dual occupancy to be erected is intended only to replace the existing dwelling house or dual occupancy.*

- (5) *In this clause:*

existing holding means land that:

- (a) *was a holding on 26 June 1987, and*
- (b) *is a holding at the time the application for development consent referred to in subclause (3) is lodged, whether or not there has been a change in the ownership of the holding since 26 June 1987, and includes any other land adjoining that land acquired by the owner since 26 June 1987.*

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

Note. *The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.*

Clause 4.2C of the Wellington LEP 2012 allows for the development of a dwelling house on land zoned RU1 Primary Production if the land complies with one or more of the categories as provided below:

- (a) An allotment of land is equal to or larger than the minimum allotment size in the Wellington LEP 2012 (400 hectares);
- (b) An allotment of land was approved under a former Environmental Planning Instrument for the purposes of allowing for the development of a dwelling house (not in the case of an allotment that was specifically created for the purposes of agriculture or another use); and
- (c) An allotment of land is part of an Existing Holding. In the case of the Wellington LEP 2012, this means land that has held in the ownership of one person/s on 26 June 1987.

2. Wellington Land Use Strategies

In 2007, the former Wellington Council was successful in obtaining \$100,000 in funding from Round 4 of the NSW Planning Reform Fund to prepare a new comprehensive Wellington Local Environmental Plan and a comprehensive Wellington Land Use Strategy, incorporating three components as provided as follows:

- 1. Urban Lands Strategy;
- 2. Rural Residential Strategy; and
- 3. Rural Land Use Strategy.

The Wellington Rural Land Use Strategy is the only remaining component of the Wellington Planning Reform Fund Project which has not been completed.

The former Wellington Council appointed consultants, Booth Associates to prepare both the Rural Residential Strategy and the Rural Land Use Study. Booth Associates provided the former Wellington Council with a draft Rural Land Use Study for RU1 and RU4 land in October 2013.

3. Planning Proposal (Amendment 3)

- Preparatory work for the draft Wellington Rural Lands Study in 2012 and 2013 highlighted a number of issues in respect of the clarity and application of 'existing holding' provisions in the Wellington Local Environmental Plan, 2012 for dwellings on land zoned RU1 Primary Production. It is also understood that the process for the consideration of whether an 'existing holding' existed was also considered to be cumbersome by the former Wellington Council.

In addition, this preparatory work also included a review of the status of existing holdings in the former Wellington LGA. This review resulted in the 'existing holding' status of at least 14 allotments as being uncertain based on the level of information the former Wellington Council held in respect of their status and their ownership characteristics.

Based on these issues, the former Wellington Council prepared a Planning Proposal (**Appendix 1**) which sought to undertake amendments to the Wellington Local Environmental Plan, 2012.

The former Wellington Council at its meeting on 17 December 2014 considered a report in respect of the Planning Proposal and resolved as follows:

- "1. Council resolve to prepare a Planning Proposal to address 14 anomalies relating to the existing holding status of certain lands in the rural zones;*
- 2. The draft Planning Proposal also instigate actions to replace the existing holding provisions as defined in Clause 4.2B(5) of the Wellington LEP 2012 with appropriate amendments to the lot size map;*
- 3. The draft Planning Proposal presented to Council's Ordinary Meeting of 17 December 2014 be forwarded to the Regional Manager of the Department of Planning and Environment, seeking the matter be progressed through the Gateway process to allow the proposals to proceed to public exhibition."*

A copy of the report considered by the former Wellington Council is included in the subject Planning Proposal, included in **Appendix 1**.

REPORT

1. Planning Proposal, Existing Holdings Provisions for Dwellings

(a) Components of the Planning Proposal

The subject Planning Proposal seeks to remove the 'existing holding' provisions from the Wellington LEP 2012 and to introduce a 'sunset clause' for the provision to remain in the LEP for a period of five (5) years.

This would mean that any land classified as an 'existing holding' would only be permitted to have a dwelling entitlement for five (5) years. After five (5) years, the subject lands would not hold a dwelling entitlement unless the land met the following criteria:

- The allotment has an area of 400 hectares or more; or
- The allotment was created for the purposes of allowing the development of a dwelling house.

As a component of the Planning Proposal, the former Wellington Council also undertook an extensive mapping exercise to review the location and characteristics of 'existing holdings' in the former Wellington LGA. In seeking to remove the 'existing holding' provisions from the Wellington LEP 2012, a component of the subject Planning Proposal included an amendment of the minimum lot size mapping to separately map each existing holding as having a dwelling entitlement. It is understood that this component of the Planning Proposal would also map the 14 allotments where the 'existing holding' status was uncertain, as having a dwelling entitlement.

(b) Progression of the Planning Proposal

The former Wellington Council sought a Gateway Determination from the Department of Planning and Environment on 6 January 2015. A Gateway Determination was provided on 29 January 2015. The Gateway Determination was issued to the former Wellington Council subject to the following conditions:

- "1. Prior to undertaking public exhibition, Council is to amend the planning proposal to address all applicable State Environmental Planning Policies (SEPPs) and Section 117 Directions, and include and map all 17 existing holding anomalies. The planning proposal is not to be placed on public exhibition until the Department is satisfied that the SEPPs and Section 117 Directions have been adequately addressed.*
- 2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act, 1979 as follows:*
 - (a) the Planning Proposal must be publicly available for a minimum of 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 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2013).*
- 3. *Consultation is required with the following public authorities under section 56(2)(d) of the Environmental Planning and Assessment Act:*
 - (a) *Office of Environment and Heritage; and*
 - (b) *Department of Primary Industries (Agriculture)*

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

- 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 Environmental Planning and Assessment 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).*

It is understood that the Planning Proposal was not placed on public exhibition by the former Wellington Council due to staff resourcing and consultation requirements which were required to be undertaken as part of the public exhibition process. It should also be noted that the former Wellington Council were originally provided with a 12 month timeframe in which to process the Planning Proposal through to completion. This would mean that the Planning Proposal was required to be completed by 6 January 2016.

(c) Review of the Planning Proposal

Following amalgamation of the former Dubbo City and Wellington councils on 12 May 2016, a detailed review of the Planning Proposal has been undertaken to determine compliance of the Planning Proposal with the provisions of the Environmental Planning and Assessment Act, 1979 and the requirements of the Department of Planning and Environment. In addition, the review also focused on whether the subject Planning Proposal was required to facilitate further development of the former Wellington LGA and the current operation of the Wellington LEP 2012.

Review of the Planning Proposal indicates that further amendment and clarification of existing holding provisions in the Wellington LEP 2012 will not facilitate any additional development in the former Wellington LGA that would have otherwise been permissible if the Planning Proposal had been further progressed. In addition, it is also considered that whilst the current process of reviewing the 'existing holding' status of land in Wellington is somewhat cumbersome, the current provisions of the Wellington LEP 2012 are considered appropriate in guiding development of rural lands at the current time.

Based on the findings of the review as provided above, it is recommended that the Planning Proposal not proceed.

2. Future Direction

The former Wellington Council was provided with Delegations by the Minister for Planning and Environment to undertake the functions of Section 59 of the Environmental Planning and Assessment Act, 1979. This means that Western Plains Regional Council, as the Relevant Planning Authority (RPA) must continue to exercise functions in respect of the processing and management of the Planning Proposal.

For the Planning Proposal to be ceased, Section 58 (4) of the Environmental Planning and Assessment Act, 1979 and the Department of Planning and Environment's 'A guide to preparing local environmental plans' requires the RPA to request the Minister to determine that the Planning Proposal not proceed. If the Minister determines for the Planning Proposal not to proceed, the subject amendment to the Wellington LEP 2012 can be ceased.

The proposed amendments included in the Planning Proposal will be given further consideration as a component of the Operational Review of the Wellington LEP 2012 which is required to be undertaken by Council in the 2016/2017 financial year. This review will determine if any changes should be made to the Wellington LEP 2012 to improve the clarity and understanding of the LEP and to determine whether any other changes are required to further facilitate development of the former Wellington LGA and to progress the development of a comprehensive Local Environmental Plan for the Western Plains Regional Council LGA.

SUMMARY

Preparatory work for preparation of the draft Wellington Rural Lands Study in 2013 raised a number of issues in respect of the clarity and application of 'existing holding' provisions for dwellings on land zoned RU1 Primary Production in the Wellington Local Environmental Plan, 2012. In addition, this preparatory work included a review of the status of 'existing holdings' in the former Wellington LGA which resulted in the existing holding status of at least 14 allotments as being unclear.

Following completion of this preparatory work, a Planning Proposal was prepared which seeks to remove the existing holding provisions from the Wellington LEP 2012 and to introduce a 'sunset clause' for the provision to remain in the LEP for a period of five (5) years. This would mean that any land classified as an 'existing holding' would only be permitted to have a dwelling entitlement for five years. After five years, the subject lands would not hold a dwelling entitlement unless the land met the following criteria:

- The allotment has an area of 400 hectares or more; or
- The allotment was created for the purposes of allowing the development of a dwelling house.

Following amalgamation of the former Dubbo City and Wellington councils on 12 May 2016, a review of the Planning Proposal has been undertaken in accordance with the Department of Premier and Cabinet's 'Merger Implementation Action Checklist'. The review found that the current provisions of the Wellington LEP 2012 are appropriate in guiding development of rural lands at the current time.

Based on the findings of the review, this report recommends that the Planning Proposal not be further processed and the matter not proceed.

Further, this report also recommends that the proposed amendments included in the Planning Proposal form part of the Operational Review of the Wellington LEP 2012 which is required to be undertaken by Council in the 2016/2017 financial year. This review would determine if any changes should be made to the Wellington LEP 2012 to improve the clarity and understanding of the LEP and to progress the development of a comprehensive Local Environmental Plan for the Western Plains Regional Council LGA.

Appendices:

- 1 Council Report - 'Wellington LEP 2012 Planning Proposal for Amendments to the Lot Size Map to Simplify Existing Holding Provisions and to Rectify Certain Anomalies**