

**ITEM 5 WELLINGTON LOCAL ENVIRONMENTAL PLAN 2012 PLANNING
PROPOSAL FOR AMENDMENTS TO THE LOT SIZE MAP TO SIMPLIFY
EXISTING HOLDING PROVISIONS AND TO RECTIFY CERTAIN
ANOMOLIES**

Reason for Report

In the course of the Rural Strategy work, Council has discovered 14 anomalies where past advice about the ability of land to have a dwelling may be ambiguous under the refined provisions of LEP 2012. Steps need to be taken to amend the LEP to ensure there is no confusion as to the dwelling status of these lands.

It is also recommended that Council take action to replace the cumbersome, confusing and resource hungry Existing Holding provisions of Clause 4.2B (5) of the LEP with much simpler amendments to the Lot Size map.

It is recommended Council adopt the attached draft planning proposal to initiate the actions required to amend the Wellington LEP.

Background

Former Councils at Wellington going back to the 1990s introduced and continued a process of memorandums as a method of defining dwelling permissibility. The intention of this was sound but unfortunately has left anomalies for 14 parcels since the introduction of LEP 2012.

Council has given previous advice that a dwelling may be approved on these parcels but the wording of the 2012 LEP creates some ambiguity. The attached planning proposal aims to lot size these 14 parcels so there is no ambiguity.

In addition, the opportunity is being taken to replace the cumbersome Existing Holding provisions of the LEP with simple and clear amendments to the Lot Size map. The current provisions require time consuming research into property ownership history and are very complex, leading to much public confusion as to where dwellings are permissible on lots below the standard lot size in the rural zones.

Mapping existing holdings is a complex task. Staff and Council consultants have devised a mapping technique to capture most existing holdings but the accuracy cannot be taken to higher levels without unreasonable expenditure of resources.

To ensure equity for all owners of legitimate existing holdings where a dwelling is permissible subject to consent, a three phase process is recommended in the draft Planning Proposal:

1. That the draft maps be exhibited and widely publicised so people who consider that they have an existing holding can make submission if they feel they have a case and are not included in the draft maps.
2. That the current provisions defining an existing holding as of 26 June 1987 be retained with a grandfather clause that sees this path for

definition of an existing holding removed after five years. Effectively, that allows a further five years for people who may miss the exhibition to apply for a dwelling if they can prove EH status by historic title records.

3. The lot size map, at the conclusion of the five year period, will be the single and simple definition of where vacant existing holdings exist.

The Rezoning Process

If it supports the recommendation, Council needs to formally resolve to prepare a Planning Proposal to start off the rezoning process. A draft Planning Proposal has been prepared for Council's consideration and is attached.

If Council so resolves, the matter would then be referred to the Department of Planning and Environment (DPE) for Gateway consideration. Should the Department support the proposal, the draft Planning Proposal would then be authorised to allow public exhibition. It has been recommended such exhibition be for four weeks with information to be provided in all relevant towns and villages and special notification be targeted at owners of rural land.

Following exhibition, Council would consider submissions from the community and make resolutions to proceed as exhibited, make alterations or not proceed at all with the Proposal.

Should Council resolve to proceed with the making of the Planning Proposal after consideration of submissions, the plan would then be submitted to the Department for finalisation and the new lot size map with grandfather conditions in place for five years would become part of the LEP once the Plan amendment was published in the Government Gazette.

RECOMMENDATION:

That:

- 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; and**
- 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.**

Attachment 1

DRAFT PLANNING PROPOSAL

**A PROPOSAL TO AMEND WELLINGTON LEP 2012
TO INCORPORATE AMENDMENTS TO THE LOT SIZE MAP TO
ADDRESS SOME ANOMALIES AND TO IDENTIFY EXISTING
HOLDINGS.**

DECEMBER 2014

TABLE OF CONTENTS

1	INTRODUCTION	II
1.1	The Proposal	ii
2	OBJECTIVES OR INTENDED OUTCOMES	II
3	EXPLANATION OF THE PROVISIONS	II
4	JUSTIFICATION	III
4.1	Section A – Need for the Planning Proposal	iii
4.2	Section B – Relationship to strategic planning framework	iii
4.3	Section C – Environmental social and economic impact	iv
4.4	Section D – State and Commonwealth interests	iv
5	COMMUNITY CONSULTATION	IV
6	CONCLUSION	IV

1 INTRODUCTION

1.1 The Proposal

Wellington Council is developing a Rural Land Use Strategy to review its rural land use planning needs for the coming 20 years.

As part of the research for that strategy 14 anomalies were identified where the existing holding status of certain land as defined in clause 4.2B (3) (d) of the Wellington LEP 2012 was unclear.

In addition Council has decided to explore the possibility of simplifying the Existing Holding (EH) provisions with lot sizing of appropriate sizes on the lot size map.

Current provisions require cumbersome searching of historical title and ownership data which is wasteful of Council planning resources and confusing for the public.

2 OBJECTIVES OR INTENDED OUTCOMES

- To address 14 anomalies where past Council advice has indicated EH status but where the position is not clear with respect to the requirements of LEP 2012.
- To replace the cumbersome and confusing EH provisions of LEP 2012 with simple amendments to the Lot Size Map.
- To retain the equity of persons who own land, which currently qualifies as an existing holding during the transition to a map definition.

3 EXPLANATION OF THE PROVISIONS

The current Wellington LEP 2012 defines an existing holding as follows:

Clause 4.2B (5) states:

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.

Currently, to define an Existing Holding (EH) is a significant task requiring a search back into the ownership history of the land and the adjoining lands. This is consuming Council's

planning resources and making it complex and uncertain for people to be able to readily define if a dwelling is permissible on land where the area is less than the current lot size.

This Planning Proposal aims to map the vacant Existing Holdings on the Lot Size Map at a lot size which would make a dwelling permissible with Consent but not allow any additional dwellings beyond that already possible under the 2012 LEP.

Council has completed a mapping exercise and estimates there are approximately 172 Existing Holdings below lot size. Given the complexity of the task and the conservative approach to the mapping, it is likely some Existing Holdings may have been missed in the mapping work. To address this, the planning proposal recommends 3 actions:

1. That the draft maps be exhibited and widely publicised so people who consider that have an existing holding can make submission if they feel they have a case and are not included in the draft maps.
2. That the current provisions defining an existing holding as of 26 June 1987 be retained with a grandfather clause that sees this path for definition of an existing holding removed after five years. Effectively that allows a further 5 years for people who may miss the exhibition to apply for a dwelling if they can prove EH status by historic title records.
3. The lot size map, at the conclusion of the 5 year period, will be the single and simple definition of where vacant existing holdings exist.

In addition, Council is aware of 14 parcels where the Existing Holding status has been previously confirmed by Council but where, under the new and clearer definitions of LEP 2012, there is an anomaly. It is proposed to also lot size these 14 parcels to confirm that a dwelling is permissible with Consent.

4 JUSTIFICATION

4.1 Section A – Need for the Planning Proposal

A Planning Proposal is needed if the existing holding clause provisions are to be phased out by the lot size map and if the 14 anomalies are to be rectified / made unambiguous as to their dwelling permissibility.

The public exhibition process required as part of this Planning Proposal will also be an opportunity for community feedback and review of the recommended areas, before any final decision is made.

4.2 Section B – Relationship to strategic planning framework

The proposed changes to the existing holding provisions do not conflict with the strategic planning framework for the Central West region.

No dwelling opportunities beyond those already permissible in the current LEP, would be created. The planning administration would be simplified and public confusion about where dwellings are permitted on land below the current standard 400 ha provision across the RU1 zone would be removed.

Given the Proposal does not change the dwelling status of lands in the Wellington LEP 2012, only clarifies the location of such lands, there is no conflict with any 117 Directions of the Minister or with any applicable State Environmental Planning Policy.

4.3 Section C – Environmental social and economic impact

No adverse environmental impact would result from this proposal. The proposal merely seeks to clarify and simplify provisions for land where a dwelling is currently permissible with consent.

There will be social benefits with the proposal in that a much higher level of certainty will be created as to where lands are located where dwellings are permissible. Council will have administrative savings in the day to day management of planning advice.

4.4 Section D – State and Commonwealth interests

The proposal to clarify existing dwelling permissibility is not seen to invoke any issues of State or Federal significance. See also 4.2 for compliance with state and regional policies.

COMMUNITY CONSULTATION
It is recommended this planning Proposal be publicly exhibited for 4 weeks. The exhibition should include appropriate advertising in the local press and Council's web page. A copy of the exhibition package should be made available in each of the affected villages as well as at Council's Wellington office.

Particular publicity should be aimed at people who own vacant rural land below the 400 ha lot size to encourage them to review the draft maps and to make a submission if they feel their land is not included and justifies inclusion.

5 CONCLUSION

The replacement of the current cumbersome existing holding provisions with simple definition on the Lot size map will simplify Council's planning administration and greatly reduce the current public confusion and doubt as to which lands below the 400 ha lot size can be considered for a dwelling, subject to consent.

In addition, 14 parcels currently the subject of confusion or anomaly over existing holding status would be clarified.

No new dwelling opportunities would be created beyond those already permissible in the Wellington LEP 2012.

A copy of the proposed draft amendments to the Lot Size Map accompany this Planning Proposal text.

RECOMMENDED DRAFT CHANGE TO CLAUSE 4.2B (5) OF WELLINGTON LEP 2012

That the following wording be added at the end of clause 4.2B (5):

Subclause 4.2B (5) will lapse five years from the date of the coming into force of the amendment to the Wellington LEP 2012 that created this Clause.

