

Wentworth Planning Proposal - Wentworth LEP 2011 Amendment 1 - Various Amendments

Proposal Title : **Wentworth Planning Proposal - Wentworth LEP 2011 Amendment 1 - Various Amendments**

Proposal Summary : **To amend the Wentworth LEP 2011 to**
- amend the Lot Size map for rural land at Ellerslie, Darling View, Curlwaa and large lot residential land at Gol Gol
- to amend Cl. 4.2D to remove application of clause to rural dwellings where permissible based on being a 'former rural lot',
- amend the zone of the Gol Gol Water Treatment Plant
- amend property descriptions and maps for 3 heritage items (Cal Lal Post Office, Cal Lal Police Station and dwelling at 34 Sandwych St, Wentworth)

PP Number : **PP_2012_WENTW_001_00** Dop File No : **12//06420**

Proposal Details

Date Planning Proposal Received :	04-Apr-2012	LGA covered :	Wentworth
Region :	Western	RPA :	Wentworth Shire Council
State Electorate :	MURRAY DARLING	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :	Various		
Suburb :	Wentworth LGA	City :	Wentworth LGA
		Postcode :	
Land Parcel :	Various properties throughout Wentworth local government area		

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
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 :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes : **BACKGROUND:**

The Wentworth LEP 2011 was notified on 16 December 2011. This LEP replaced the Wentworth LEP 1993 and was essentially a 'conversion' or 'translation' of the LEP 1993.

However, it should be noted that significant urban areas were 'rezoned' for urban purposes in the Buronga - Gol Gol locality via LEP 1993 Amendments 27 and 28, immediately prior to the making of LEP 2011. The draft Wentworth LEP 2011 originally contained this land for 'upzoning' in accordance with the Wentworth Strategic Framework Document and Buronga - Gol Gol LES. However, this land was removed from the principal LEP prior to completion and 'upzoned' via two amending PP's to bring this land online in advance of the principal LEP.

WENTWORTH LEP 1993:

In assessing the current Planning Proposal (PP) it is vital to understand the relevant provisions of the Wentworth LEP 1993 and

- how they were 'translated' into the Wentworth LEP 2011, and consequently
- how the current PP reflects the integrity of the translation of the Wentworth LEP 1993.

The key issues to acknowledge are

- the rural dwelling and subdivision minimum lot size and other provisions that were available under Wentworth LEP 1993, and
- that the proposed reduction in lot size for R5 zoned land at Gol Gol from 10 000ha to 5000sq.m, is for land that was inadvertently included in the Wentworth LEP 2011. ie. it affects land that was zoned R5 in error.

Translation of former rural dwelling provisions in Wentworth LEP 1993 into Wentworth LEP 2011:

EXTRACT: REPEALED WENTWORTH LEP 1993

Cl. 5 – Definitions

Existing Holding means -

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was as at the appointed day, or
- (b) if, as at the appointed day, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were at the appointed day.

Horticultural Land - means land on which potentially commercial vines or fruit trees are permanently planted.

Pastoral Land - means land which is utilized for the grazing of livestock or for the production of an annual crop, or both.

13 - Subdivision of land within Zone No 1 (a), 1 (c) or 1 (d)

- (1) This clause applies to land within Zone No 1 (a), 1 (c) or 1 (d).
- (2) Subject to this clause, the Council may consent to the subdivision of land to which this clause applies into allotments of any size, but only if the Council is satisfied that the allotments will be used for a purpose permitted (whether with or without the Council's consent) within the zone concerned.
- (3) The Council must not consent to the subdivision of land within Zone No 1 (a) if there is a dwelling-house erected on the land unless the proposed lot on which the dwelling-house will stand after the subdivision:
 - (a) will have an area of at least 10,000 hectares, if the lot consists of pastoral land, or
 - (b) will have an area of at least 10 hectares, if the lot consists of horticultural land.
- (4) The Council must not consent to the subdivision of land within Zone No 1 (a) if the proposed subdivision would create an allotment of land which the Council is satisfied will be used for the purpose of a dwelling.
- (5) The Council must not consent to the subdivision of land within Zone No 1 (c) unless the lots created by the subdivision will each have an area of at least 0.5 hectare.
- (6) The Council must not consent to the subdivision of land within Zone No 1 (d) if there is a dwelling erected on the land unless the proposed lot on which the existing dwelling will stand and each dwelling to be erected would stand after the subdivision:
 - (a) will have an area of at least 300 hectares, if the lot consists of pastoral land, or
 - (b) will have an area of at least 10 hectares, if the lot consists of horticultural land.
- (6A) (Repealed)
- (7) On addition to any other provision of this clause, the Council must not consent to the subdivision of land within Zone No 1 (d) unless it is satisfied that the proposed subdivision will not have a detrimental effect on the future development of the land for urban purposes.
- (8) The Council must not consent to the subdivision of land to which this clause applies unless it is satisfied that adequate provision for on-site disposal of effluent will be provided in respect of each lot created by the subdivision on which a dwelling-house is or, in the opinion of the Council, will be situated.

Note. Clause 9 of the State Environmental Planning Policy (Rural Lands) 2008 also enables the subdivision of lots for the purposes of primary production.

Cl. 16 - Dwellings within Zone No 1 (a) or 1 (d)

(1) The Council must not consent to the erection of a dwelling on an allotment of vacant land within Zone No 1 (a) unless:

- (a) the allotment consists of pastoral land with an area of at least 10,000 hectares per dwelling to be erected on it, or**
- (b) the allotment consists of horticultural land with an area of at least 10 hectares per dwelling to be erected on it.**

(2) The Council may consent to the erection, on an existing holding, of one dwelling for every 10,000 hectares of that holding if the holding consists of pastoral land (or for every 10 hectares of the holding if it consists of horticultural land).

(3) Notwithstanding subclause (1), the Council may consent to the erection of a dwelling-house on land within Zone No 1 (a) or 1 (d) where the Council is satisfied the land comprises an allotment lawfully created for a rural dwelling before the appointed day.

(4) In this clause, vacant land means land on which no dwelling is located.

(5) Notwithstanding clause (1), the Council may consent to the erection of a dwelling on an allotment of vacant land of any size within Zone No 1 (a) or 1 (d) if that dwelling is ancillary to other development on that allotment for which consent has been granted or which consent is not required.

COMMENT:

Cl. 13 and 16 Wentworth LEP 1993 dealt with rural subdivision and dwelling permissibility. The key features of both are that the LEP 1993 required 10 000ha of 'pastoral land' and 10ha of 'horticultural land' to enable the subdivision or erection of a rural dwelling. The key feature of the 'pastoral land' and 'horticultural land' definitions, were that the land had to be actually used for these respective purposes PRIOR to the subdivision or dwelling being approved.

Similarly, the former LEP 1993 had a provision for rural dwellings if they were an 'existing holding' (Cl. 16(2)) which enabled one dwelling for every 10,000 hectares of that holding if the holding consists of 'pastoral land' (or for every 10 hectares of the holding if it consists of horticultural land). Again , these land uses had to be established before a dwelling could be approved.

Cl 16(3) also enabled Council to consider a rural dwelling on land that was lawfully created for a rural dwelling before the appointed day. ie. pre-dated the LEP 1993.

These former provisions were then 'translated' into the Wentworth LEP 2011 in the following ways:

- The rural land was zoned RU1 and/or E3.
- 1(c) Rural Small Holdings zoned land was zoned R5 Large Lot Residential. No additional rural residential land was proposed or justified/supported.
- 1(d) Future Urban zoned land was zoned either RU5 Village or reverted to RU1 or E3.
- Lot size of 10 000ha was applied to all rural land not used for 'horticulture', ie. the bulk of the rural area.
- Lot size of 10ha was applied to the existing Murray Irrigation Area schemes of Curlwaa,

Pomona, Coomealla, Buronga and Trentham where 'horticulture' (now defined as intensive plant agriculture) was occurring.

- Existing holdings provisions were maintained, but with additional controls, to ensure that the land was actually being used for agriculture (Cl. 4.2D), consistent with LEP 1993.

- Cl. 16(3) provisions for a rural dwelling were originally not included in the LEP 2011 at Council's request (predominantly due to difficulty ascertaining the purpose for which a rural lot was created and resulting potential abuse/misuse). Notwithstanding, after representations from Council, Cl. 16(3) provisions became a 'former rural lot' under new Cl. 4.2B(3)(e). A "former rural lot" was defined as a lot created for the purpose of a rural dwelling before 7 May 1993.

- Cl. 4.2D was included to ensure that rural dwellings which were possible under new Cl. 4.2B (ie. based on lot size, created for a dwelling under former epi, existing holdings or former rural lot) required the land to actually be used for agriculture before a dwelling could be approved. Cl. 4.2D was an essential mechanism to ensure that the Wentworth LEP 1993 provisions which required rural land to be actually used for agriculture ('pastoral' or 'horticulture') before a dwelling could be approved were retained/maintained. This clause is also essential to ensure that the highest quality land earmarked for 10ha "intensive plant agriculture" is not used for rural residential purposes. Upon review, it is acknowledged that Cl. 4.2D should have only applied to Cl. 4.2B(3)(a) and (d) - lots meeting minimum lot size and existing holdings.

POST-EXHIBITION CHANGES TO WENTWORTH LEP 2011

Following public exhibition of the Wentworth LEP 2011 several submissions were received and Council ultimately resolved to

- include additional areas for 10ha MLS.

- include a clause to enable 'intensive plant agriculture' to occur anywhere in the rural landscape, outside of the Lot Size Map.

- retain Cl. 16(3) LEP 1993 provisions.

- include additional areas as R5 zone for rural residential uses. Note: The inclusion of additional land for rural residential (R5) purposes was not supported by any study or nominated/identified by Council in its s68 submission. The inclusion of this land at Gol Gol was not identified by Council or picked up by the Department or Parliamentary Counsel. The R5 land was an obvious error as the Lot Size Map shows the land as 10 000ha.

Council submitted the draft Wentworth LEP 2011 at s68 (later converted to a PP) with additional areas of rural land at 10ha and a clause to allow 'intensive plant agriculture'.

The Ministers delegate removed the following (relevant) matters prior to making of the Plan

1. Removed Council's proposed Clause 4.2B(3)(e) relating to a lot size of 10ha for intensive plant agriculture (with a dwelling) other than where shown on the Lot Size Map. Reason: Lot sizes for subdivision must be shown on the Lot Size Map.

2. Reinstated the Lot Size Maps to the 'as exhibited' certified versions, removing Council's proposed post-exhibition changes that included significant additional areas of RU1 Primary Production land at a lot size of 10ha. This land will now have a lot size of 10,000ha.

Reason: The scale of the proposed 10ha lot size changes is significant, the location of the land was not determined in a strategic or consistent manner and does not enable community and agency consultation on their merit.

In advising Council of these changes, Council was "invited to resolve the rural planning issues with its proposed Rural Lands Strategy. Alternatively, Council could initiate a Planning Proposal to consider the rural issues or any other change that has been made to the LEP since its submission to the Department for making."

Hence the current PP has been submitted.

Note:

1. Wentworth Council has resolved to prepare a Rural Lands Study/Strategy but it is yet to commence.
2. The Department is preparing a clause to enable subdivision and dwellings for "intensive plant agriculture" other than in accordance with the Lot Size Map which may be of relevance to the current PP.

SUPPLEMENTARY INFORMATION:

To assist the assessment of the PP, the Department sought additional information from Council.

This included the area and potential yields of the reduction in lot sizes.

Council advised via email (12/4/2012)

*** Darling View**

- Area = 203.4ha, comprising 20 lots.
- potential for 20 x 10ha lots.

*** Ellerslie**

- Area 1503ha, comprising 52 lots.
- potential for 150 x 10ha lots

*** Curlwaa**

- Area 25.41ha, comprising 1 lot.
- potential for 2 x 10ha lots.

*** Gol Gol (R5)**

- Area 73.81ha, comprising 10 lots (may only be 7).
- potential for approx. 147 x 5000sq.m lots.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : **The Statement of Objectives outlines Council's intended planning outcomes.**

To amend the Wentworth LEP 2011 to

- amend the Lot Size Map for rural land at Ellerslie, Darling View, Curlwaa and rural residential land at Gol Gol
- to amend Cl. 4.2D to remove application of clause to rural dwellings where permissible based on being a 'former rural lot' (Cl. 4.2B(3)(e)),
- amend the zone of the Gol Gol Water Treatment Plant
- amend property descriptions and maps for 3 heritage items (Cal Lal Post Office, Cal Lal

Police Station and dwelling at 34 Sandwych St, Wentworth)

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

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

Comment : **The Planning Proposal states how it is intended to achieve the 'objectives of the PP'.
 - amend the lot size map
 - Insert an additional sub-clause to Cl. 4.2D to restrict application of clause for rural dwellings. (The precise mechanism should be deferred till PC Opinion is sought)
 - amend the land zone map for the water treatment plant to zone the land SP2 Infrastructure.
 - amend the heritage schedule (Schedule 5) and heritage maps to amend the property description for the subject properties.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

**1.2 Rural Zones
 1.5 Rural Lands
 2.1 Environment Protection Zones
 2.3 Heritage Conservation
 3.1 Residential Zones
 3.4 Integrating Land Use and Transport
 4.1 Acid Sulfate Soils
 4.3 Flood Prone Land
 6.1 Approval and Referral Requirements
 6.2 Reserving Land for Public Purposes
 6.3 Site Specific Provisions**

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 21—Caravan Parks
 SEPP No 22—Shops and Commercial Premises
 SEPP No 30—Intensive Agriculture
 SEPP No 33—Hazardous and Offensive Development
 SEPP No 36—Manufactured Home Estates
 SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas
 SEPP No 55—Remediation of Land
 SEPP No 64—Advertising and Signage
 SEPP (Building Sustainability Index: BASIX) 2004
 SEPP (Exempt and Complying Development Codes) 2008
 SEPP (Housing for Seniors or People with a Disability) 2004
 SEPP (Infrastructure) 2007
 SEPP (Mining, Petroleum Production and Extractive Industries) 2007
 SEPP (Rural Lands) 2008
 SEPP (Temporary Structures and Places of Public Entertainment) 2007
 Murray REP No. 2 - Riverine Land
 SEPP (Affordable Rental Housing) 2009**

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

See Assessment section

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

See Assessment Section for analysis of 117 Directions and SEPPs

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The proposed mapping accompanying the PP identifies the subject land in accordance with the Technical Guidelines for amending PP/LEP maps, except for the map showing the proposed reduction in lot size for the single lot at Curlwaa. Council has indicated that this map belongs to Inset series 4E. The map should in fact be inset 2D and 2E.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council has formed the view that the PP is of 'low impact' and recommends a 14 day community consultation period.

It is suggested that the Planning Proposal is not a 'low impact proposal' and it is recommended that Gateway require a 28 day exhibition period. This is because

- the areas proposed for a reduced minimum lot size in the rural areas are significant and are not supported by any strategic planning.
- the PP will need to be referred to key government agencies such as Dept Primary Industries (Agriculture and Mining) to comment on the appropriateness of the lot size in the selected areas.
- the heritage changes are to correct property descriptions and 28 days is recommended to enable owners and adjoining properties an opportunity to comment.

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 : The Planning Proposal is brief and of marginal quality. However, there is sufficient information contained in the PP and from the supplementary information sourced from Council to enable the PP to be considered.

The 117 Direction assessment in particular, will require review before the PP can proceed.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The principal LEP in the Standard Instrument format was notified on 16 December 2011.

Assessment Criteria

Need for planning proposal : The Planning Proposal (PP) is the only means of amending the Wentworth LEP 2011 to deliver the planning outcomes that Council is seeking.

Council did consider making application under s73A for the proposed changes. However, the Department advised Council that the nature and scale of the proposed amendments were not appropriate under s73A and recommended the lodgement of a PP.

In terms of Net Community Benefit, there are advantages and disadvantages of the PP.

- additional rural land at 10ha will enable additional dwellings in the rural landscape and potentially greater management efficiencies. The downside is that it is widely recognised that 10ha is an unviable/unsustainable lot size for intensive plant agriculture in the Wentworth context. In fact, the Department of Primary Industries (Agriculture) objected to the retention of the 10ha MLS in the Wentworth LEP 2011. The objection was only removed when DPI were made aware that Council was maintaining the MLS as per the provisions of SEPP (Rural Lands) 2008 and that Council had agreed to prepare a Rural Lands Study to review the MLS.
- removing the link between the agricultural use of land on a 'former rural lot' is consistent with the former LEP 1993 provisions. Cl. 4.2D should only apply to Cl. 4.2B(3)(a) and (d)- lot size map and existing holdings. The precise mechanism should be resolved with Parliamentary Counsel.
- allowing the subdivision of the additional R5 land to 5000sq.m will provide additional housing choice, but it is not justified or agreed that the subject land is suitable, or the best use for that land.
- zoning the water treatment plant to SP2 is in the community's interest.
- accurately identifying heritage items is in the community's interest.

Consistency with strategic planning framework :

There is no local, regional or state strategic plan supporting any of the proposed amendments to the Wentworth LEP 2011.

The draft Murray Regional Strategy has not been adopted, but it does encourage additional housing choice.

Council is using the 'local' draft Wentworth Rural Residential Land Strategy (June 2008) (the "RR Strategy") to justify the zoning of the R5 land at Gol Gol and the reduction in lot size to 5000sq.m. In this regard the following points are made in relation to the RR Strategy:-

- the document is of poor quality, with significant data gaps and deficiencies.
- whilst Council has adopted the document, the Department/Director General never endorsed the document for use to support any recommendation.
- the document does not recommend all of the proposed land at Gol Gol (inadvertently zoned R5 with Wentworth LEP 2011) be zoned for 'rural residential purposes'. In fact the RR Strategy only recommends 2 of the 7 lots (Council claims 10 lots) for rural residential use. Candidate Areas 8 and 9.
- the last correspondence from the Department to Council is dated 1 Dec 2008 which details a host of concerns in relation to the draft RR Strategy.
- Council chose to set aside the RR Strategy and concentrate on the urban land release at Buronga and Gol Gol and the principal LEP,
- Council has resolved to prepare a new Rural Lands Study/Strategy to review rural land minimum lot sizes and new rural residential land and has prepared a draft brief to seek a consultant to undertake the work.

To conclude, the draft Wentworth Rural residential Strategy cannot be used to support the inclusion of the (inadvertent) R5 land at Gol Gol or the reduction in lot size to 5000sq.m.

SEPPS

Council's assessment of SEPPs is brief.

Of particular reference is the assessment of SEPP (Rural Lands) 2008 - see assessment under 117 Direction 1.5 Rural Lands.

SEPP 55 - Council has acknowledged that the reduction in lot size for the R5 land at Gol Gol requires soil contamination analysis. Council proposes to do this at subdivision/development application stage. The subject land is currently being used for horticulture. Agriculture/horticulture are activities listed in Table 1 of the Managing Contaminated Land Guidelines adopted under the SEPP, requiring further assessment.

Therefore, as Council has not identified whether the subject land is contaminated, and/or whether the land can be remediated to a standard suitable for its future intended use, then the PP is inconsistent with SEPP 55 (Cl. 6).

117 DIRECTIONS

Council's assessment of the 117 Directions is marginal but deemed suitable except for the following -

1.2 Rural Zones

Council has not considered or justified the increased density (reduced lot size) for the proposed areas which would be subject to the 10ha minimum lot size (MLS). Therefore, the PP is inconsistent with this Direction. There is no strategy or study which would support the increased density. Council will need to justify the proposed amendment as of "minor significance" if the PP proceeds.

Noting, that the retention of existing (former LEP) MLS is not a consideration under 117 Direction 1.5

1.3 Mining, Petroleum and Extractive Industries

Council has not considered the application of this Direction. As the PP seeks to increase the density of rural land (reduce lot size) then it will have the affect of reducing the potential to access mineral resources. Council must therefore consult with the Department of Primary Industries (Minerals) to ascertain whether any resources will be impacted by the PP.

1.5 Rural Lands

Council has considered this Direction. However, Council has not assessed the 'rural planning' or 'rural subdivision' principles listed in SEPP (Rural Lands) 2008. The Direction applies to the reduced MLS of 10ha in the nominated areas. Technically, as the new LEP has been made, Council will need to consider both principles.

However, practically Council is seeking to justify the reduced MLS based on a 'translation' of the former lot sizes possible under the Wentworth LEP 1993. In that regard, the Wentworth LEP 2011 was deemed to be consistent with this Direction as it was merely retaining the former (existing) MLS.

In terms of a straight 'translation' of the Wentworth LEP 1993, it is noted that the majority of the land at the "Darling View" locality which is nominated for a 10ha MLS is not being used for "intensive plant agriculture" (or "horticulture" under the former Wentworth LEP 1993). Council has stated that "approximately 40% of Darling View is planted for irrigated grazing fodder crops". Fodder crops were not defined as "horticulture" under former Wentworth LEP 1993 and are not now defined as "intensive plant agriculture" under the Standard Instrument.

Similarly, there are areas of the proposed "Ellerslie" locality that are not used for "horticulture/intensive plant agriculture" and are in fact areas of significant remnant vegetation.

Therefore, it is recommended that only land that was actually being used for 'horticulture' at 16 December 2011 be permitted to have a reduced 10ha MLS with the current PP - pending completion of Council's proposed Rural Lands Study.

Notwithstanding, Council should be required to consult with the Department of Primary Industries (Agriculture) and also provide written assessment of the PP against this Direction.

Other important facts to note are:

- Council is about to commence a "Rural Lands Study" to review minimum lot sizes in rural zones and also the potential for additional rural residential development.

- that the Department is considering a performance based clause for dwellings and subdivision of rural land for intensive plant agriculture outside of the Lot Size Map, which may provide an opportunity for Council to not map areas at 10ha (or other smaller MLS) for intensive plant agriculture. This clause may be available during the timeframe of this PP. This performance based provision is Council's preferred approach to dealing with subdivision and rural dwellings associated with "intensive plant agriculture".

3.1 Residential Zones

This Direction applies.

The core issue is that the the proposed reduction of lot size from 10 000ha to 5000sq.m applies to land that was zoned R5 in Wentworth LEP 2011 in error. Council did not nominate the land as a post-exhibition change in the draft Wentworth LEP 2011 s68 report and it was not subsequently identified by the Department or Parliamentary Counsel.

The proposed site is adjoining an existing developed rural residential area and services are available, so there is some logic in this area being extended. However, as previously mentioned there is no strategic basis to support this land for rural residential purposes.

Options

- back zone to rural (RU1) zone consistent with the certified draft Wentworth LEP 2011.
- retain land as R5 with a 10 000ha MLS pending further assessment as part of the impending Rural Lands Study, including contamination assessment.
- recognise the land as R5 and allow reduction in lot size to 5000sq.m

It is recommended that either the land be 'back zoned' to RU1, OR retain the existing zone (R5) and lot size (10 000ha) be maintained pending further strategic review.

3.4 Integrating Land Use and Transport

Council has identified that the PP is inconsistent with this Direction. Council is justifying this inconsistency on the basis of a draft Rural Residential Strategy (for the R5 land at Gol Gol) and the 10ha MLS applies to existing irrigation settlements.

Firstly, the draft Rural Residential Strategy has not been endorsed by the Director General.

Secondly, the Direction does not apply to rural land.

Council will need to justify the inconsistency of the PP (Gol Gol R5) as of minor significance before making the Plan (if to proceed).

3.6 Shooting Ranges

Council has not provided any assessment of consistency with this Direction. This should be required as part of further assessment/progression of the PP.

4.3 Flood Prone Land

The PP does not propose additional residential development in flood prone areas. The rural areas proposed for a reduction in the MLS may be subject to flooding, but rural uses (dwellings) are not restricted by the Direction. It is considered the PP is consistent with this Direction.

6.2 Reserving land for Public Purposes

Council has nominated that the rezoning of the Gol Gol water treatment plant requires consideration of this Direction. The water treatment plant is a "public service and facility" and the land, if zoned SP2 Infrastructure would be reserved for a "public purpose". Therefore it is recommended that the Director General or delegate approve the zoning of the treatment plant SP2.

Environmental social
economic impacts :

No critical habitat has been identified.

The sites subject of the PP were assessed against the existing Natural Resource Maps in the Wentworth LEP 2011. Only some land at "Ellerslie" is identified as of biodiversity

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significance. This is the same land that is NOT used for horticulture/intensive plant agriculture and already recommended for exclusion of the 10ha MLS. Removing this land from the 10ha MLS will also protect the biodiversity values of the site.

The waterways adjoining the rural land subject of the PP are of significance. Notwithstanding, the recognition of this land for a 10ha MLS (allowing a dwelling) is not considered to pose a significant risk to the values of the waterway.

The correct identification of the heritage items will ensure proper conservation and management.

The other significant environmental issue is the potential for land contamination on the proposed R5 zoned land. See SEPP 55 analysis for details.

Limiting application of Cl. 4.2D to Cl. 4.2B(3)(a) and (d) - lot size and existing holdings, will ensure that where the clause does operate, that a dwelling is necessary to support the agricultural use of the land.

Assessment Process

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

Timeframe to make LEP : **6 Month** Delegation : **DG**

Public Authority Consultation - 56(2)(d) : **Lower Murray Darling Catchment Management Authority
Office of Environment and Heritage
NSW Department of Primary Industries - Agriculture
NSW Department of Primary Industries - Minerals and Petroleum**

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

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

If no, provide reasons : **The matter should proceed subject to conditions and modifications.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

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 : **Urban release area provisions were included in the former Wentworth LEP 1993 and current LEP 2011. These applied to the urban release areas at Buronga and Gol Gol. After assessment, no levy was applied for state public infrastructure for this land (some 2000 lots).**

Documents

Document File Name

DocumentType Name

Is Public

Wentworth Planning Proposal - Wentworth LEP 2011 Amendment 1 - Various Amendments

Wentworth Planning Proposal 04042012 including revised s117 directions.docx	Proposal	Yes
WSC Planning Proposal Cover Letter.pdf	Proposal Covering Letter	Yes
(2) Heritage Amendment 1 2011 LEP.pdf	Map	Yes
Ellerslie Sign.pdf	Photograph	Yes
Ellerslie, Curlwaa, Coomealla, pomona and Darling View Irrigation, Road and Locality Maps.pdf	Map	Yes
Heritage Amendment 1 2011 LEP.pdf	Map	Yes
LEP 2011 Amendment 1 Ellerslie.pdf	Map	Yes
LEP 2011 Amendment 1 Sheet 002E.pdf	Map	Yes
LEP 2011 Amendment 1 Sheet LSZ 004G.pdf	Map	Yes
LEP 2011 Amendment 1 Sheet LZN 004G.pdf	Map	Yes
LEP 2011 Amendment LSZ 002.pdf	Map	Yes
WSC Minutes 15 February 2012.pdf	Proposal	Yes
WSC Minutes 21 March 2012.pdf	Proposal	Yes
Extract Repealed Wentworth LEP 1993.doc	Proposal	Yes
Email WSC G Johnston 20120413.pdf	Proposal	No
Draft Wentworth Rural Residential Strategy (June 2008) - Candidate Areas Maps.pdf	Study	Yes
Draft Wentworth Rural Residential Strategy (Dec 2007).pdf	Study	Yes

Planning Team Recommendation

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

- S.117 directions:
- 1.2 Rural Zones
 - 1.5 Rural Lands
 - 2.1 Environment Protection Zones
 - 2.3 Heritage Conservation
 - 3.1 Residential Zones
 - 3.4 Integrating Land Use and Transport
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 6.1 Approval and Referral Requirements
 - 6.2 Reserving Land for Public Purposes
 - 6.3 Site Specific Provisions

Additional Information : That Gateway determine to support the Planning Proposal and require it to be revised to comply with the determination under section 56 and in a form approved by the Director-General.

MATTERS OTHER THAN THE 10HA MINIMUM LOT SIZE ISSUE:

1. Community and agency consultation occur for a minimum of 28 days.
2. That the zoning of the Water Treatment Plant at Gol Gol as SP2 Infrastructure Zone be approved under 117 Direction 6.2 Reserving Land for Public Purposes.
3. That the R5 zoned land at Gol Gol be zoned RU1 with a 10 000ha minimum lot size (MLS) pending further strategic assessment under Council's proposed Rural Lands Strategy/Study, including contamination assessment in accordance with Cl. 6 SEPP 55.
4. Council needs to address and/or justify the following inconsistencies with Section 117 Directions with its submission under section 59 EPAA requesting that the Planning Proposal be made:-
 - * 1.2 Rural Zones - address increase in density (reduced lot size) and justify inconsistency.
 - * 1.3 Mining, Petroleum Production and extractive Industries - consult with the Department of Primary Industries and determine if any resources will be impacted by the

Planning Proposal.

* 1.5 Rural Lands - undertake assessment of the Direction and principles as specified in SEPP (Rural lands) 2008.

* 3.4 Integrating Land Use and Transport - justify the inconsistency with this Direction for the R5 land at Gol Gol. NOTE: This assessment would not be required if the land is back zoned to RU1 or the land is not subject to a reduced lot size (5000sq.m)

*3.6 Shooting ranges - undertake assessment and determine consistency.

5. That the Planning Proposal be amended to limit the application of Cl. 4.2D, only to rural dwellings permissible under Cl. 4.2B(3)(a)- lot size map, and Cl. 4.2B(3)(d) - existing holdings, and that the final mechanism be resolved with Parliamentary Counsel.

6. The map showing Lot 8 DP807827 Murray Rd, Curlwaa should be shown on Inset 2D and 2E (not 4E).

10HA MINIMUM LOT SIZE ISSUE:

In terms of recommendations for the proposed mapping of additional rural land at 10ha for "intensive plant agriculture" to enable subdivision and dwellings for such land, it is recommended that -

7. That the Planning Proposal be amended to

- a) insert a performance based clause in Wentworth LEP 2011 which would enable subdivision and dwellings for intensive plant agriculture, at a reduced lot size, outside of the lot size map, and
- b) amend Cl. 4.2D to reflect changes, and
- c) amend all Lot Size Maps to remove 10ha on RU1 zoned land.

The Department would assist Council to incorporate a suitable clause that meets Council's needs, and reflects Council's previous attempts to include a performance based clause.

OR

Alternatively, if Gateway believes it appropriate to maintain the intent of the current Planning Proposal by mapping additional areas at 10ha, then the Planning Proposal be amended as follows:

8. That the land identified in the Planning Proposal as RU1 zoned land at "Ellerslie" and "Darling View" not used for "horticulture" (as defined in the former Wentworth LEP 1993) or "intensive plant agriculture" under the Wentworth LEP 2011 as at 16 December 2011, retain a 10 000ha lot size, pending completion and endorsement of Council's proposed Rural Lands Study/Strategy. Note: Irrigated pasture or fodder crops are not "intensive plant agriculture" under the Standard Instrument definition.

Supporting Reasons :

1. The Planning Proposal is not considered of "low impact" and requires additional time for the agencies and the community to consider its implications.

2. Director General's (or officer nominated) approval is required to reserve land for a public purpose.

3. That the R5 land at Gol Gol was zoned in error in the Wentworth LEP 2011. Large Lot Residential development at this site is not supported until Council completes its impending Rural Lands Strategy.

4. Statutory requirement (Environmental Planning and Assessment Act 1979) that 117 Directions be addressed.

5. To ensure that the intent of the planning outcome for Cl. 4.2D is clear and that the final mechanism is resolved with Parliamentary Counsel.

6. To be consistent with the Technical Guidelines for LEP Maps.

7. To enable the subdivision and erection of rural dwellings related to "intensive plant agriculture" outside of the Lot Size Map, via a performance based provision.

8. To reflect the intent of Council's Planning Proposal as submitted and to effect a 'translation' of the rural dwelling and subdivision provisions from the Wentworth LEP 1993 into the Wentworth LEP 2011.

Signature:

T Deverell - Team Leader - Western Region

Printed Name:

Tim Deverell

Date:

13/4/2012