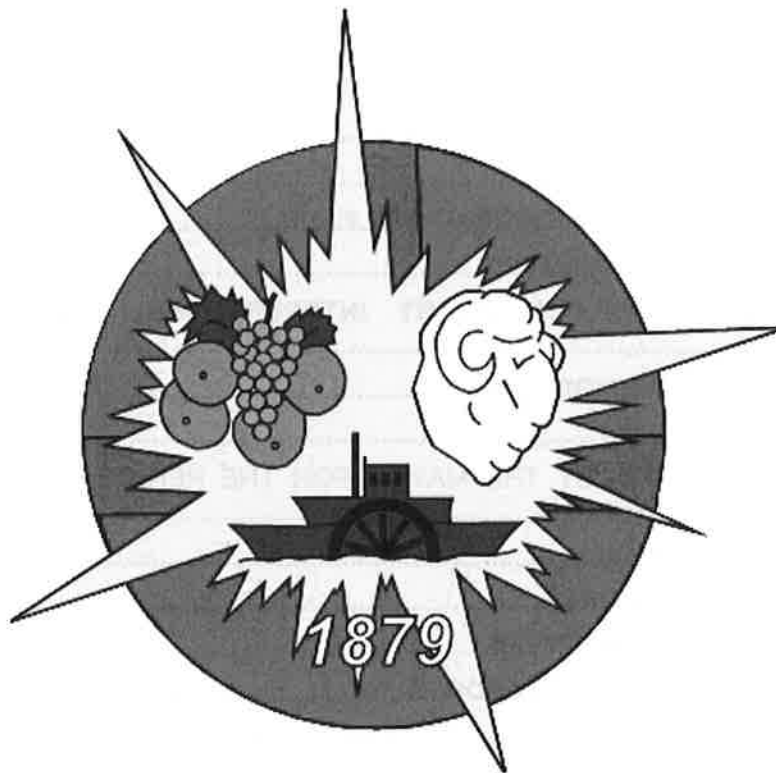




WENTWORTH SHIRE COUNCIL

MINUTES

ORDINARY MONTHLY COUNCIL MEETING
COMMENCING 9.00AM

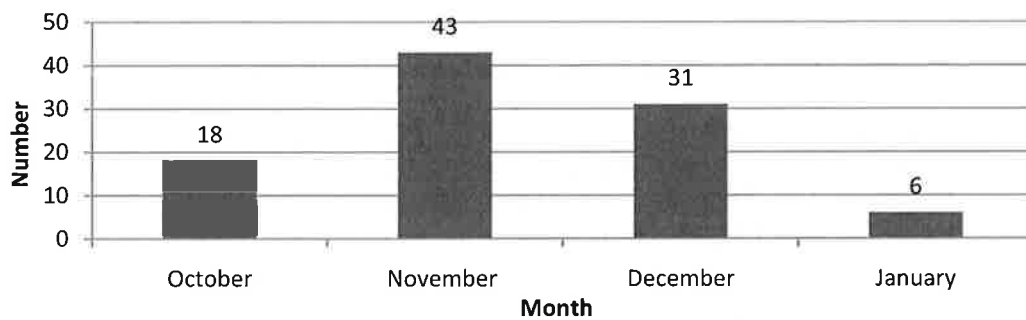
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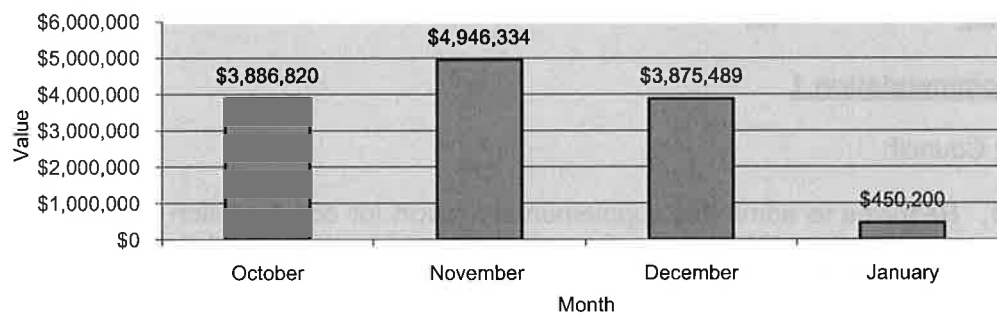
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October	18	\$3,886,820	\$215,934.44
November	43	\$4,946,334	\$115,031.02
December	31	\$3,875,489	\$125,015.77
January	6	\$450,200	\$75,033.33

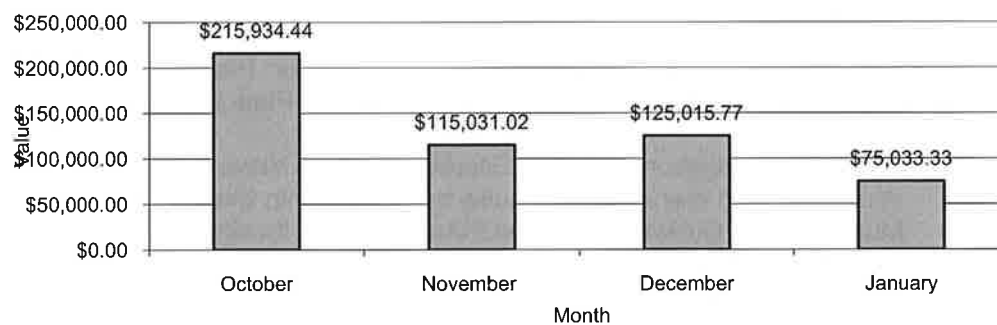
Development Determinations



Development Application Value



Development Application Average Value



Councillor Wheeldon declared a pecuniary interest in item 12.8.1 as his son owns properties mentioned in the report and left the Council Chambers at 12.15pm.

Moved Councillor Whitfield and seconded Councillor Clarke that the recommendation be adopted.

CARRIED

In accordance with Section 375A of the Local Government Act the Mayor called for a division.

For the motion: Councillors King, Clarke, Brook, Whitfield, Wakefield, Hederics, McKinnon, Thomson

Against the motion: Nil

Councillor Wheeldon returned to the chambers at 12.15pm.

12.8.2 SUPPLEMENTARY LATE REPORT: Planning Proposal – Ellerslie, Darling View, Pomona & Kassulke's Land at Curlwaa Inclusion in 10ha Minimum Lot Size Mapped Areas and Exemption Clause for Existing Holdings And Former Rural Lots

Responsible Officer: Director Sustainable Development
 Author: Manager Health & Development
 Implications: Policy
 File: L1/42-3
 Attachments: Nil
 Separately Circ.: Nil
 Tabled: Nil

Recommendation 1

That Council:

1. Resolves to admit this supplementary report for consideration in accordance with Section 18(3) of the Council Code of Meeting Practice as the subject matter is deemed urgent.

Moved Councillor Brook and seconded Councillor Clarke that the recommendation be adopted.

CARRIED

Recommendation 2

2. Endorse the Planning Proposal to the Minister for Planning seeking an Amendment to the Wentworth Local Environmental Plan 2011 (WLEP 2011) that seeks to:
 - a. include the irrigation areas of Ellerslie, Darling View, Pomona and that section of land owned by Kassulke's that is within the Curlwaa levee on Murray Road, Curlwaa within the 10ha minimum lot size mapped areas of the Wentworth LEP 2011;
 - b. amend Clause 4.2D of the Wentworth LEP 2011 to provide an exclusion for land defined as "existing holdings" or "former rural lot" from meeting the requirements of being used or intended to be used for intensive plant agriculture or extensive agricultural by addition of the following sub-clause in the Wentworth LEP 2011:

4.2D

(4) Notwithstanding subclauses (1), (2), (3)(a), (b) & (c), the Council may consent to the erection of a dwelling house on land within zone No 1(a)

where the Council is satisfied the land meets the definition of an existing holding or a former rural lot as defined in Clause 4.2B(6)".

1. Request that a Gateway Determination be made, pursuant to the Environmental Planning and Assessment Act 1979 (EP&A Act) that permits either an expedited Amendment pursuant to Section 73A of the EP&A Act with no public exhibition and no State and Commonwealth Government public authority consultation requirement in recognition that the Draft Wentworth LEP 2011 has been extensively exhibited for scrutiny by the general public and government agencies and the Planning Proposal seeks to:
 - a. bring about an outcome identified after the public submissions received by Council in response to the exhibition of the Draft Wentworth LEP 2011, to correct the omission from the draft exhibition maps of the existing irrigation areas of Ellerslie, Darling View, Pomona and land within the levee at Curlwaa within the 10Ha minimum lot size mapped areas under the Wentworth LEP 2011; and
 - b. to provide for an equivalent exception clause in the Wentworth LEP 2011 for "existing holdings" and "former rural lots" as was provided under Clause 16(3) of the Wentworth LEP 1993.
2. Furnish a copy of this report and other relevant information to the NSW Department of Planning and Infrastructure, in accordance with Sec 56 of the EP&A Act and request the Minister for Planning undertake the appropriate actions to secure the making of the amendment to the Wentworth Local Environmental Plan 2011 to the extent that it relates to the inclusion of the subject land within the 10Ha minimum lot size mapped areas, and the addition of an exemption clause with respect to "former rural Lots" and "existing holdings".

Purpose

The purpose of this report is to have Council endorse the planning proposal to include Ellerslie, Darling View, Pomona and a small section of land within the Curlwaa levee within the minimum lot size mapped areas and to have a sunset period with respect to development of existing holdings or former rural lots.

This course of action is suggested on the basis that the making of the new standard instrument LEP was meant to be a conversion LEP, with no loss of entitlements to existing landholders. The Wentworth LEP 2011 has not delivered this entitlement and Council has had representation from some rural landholders that they are significantly disadvantaged under the Wentworth LEP 2011 when compared with the Wentworth LEP 1993. The two (2) matters outlined in this report should be amended in the Wentworth LEP 2011 without the need for the completion of Council's proposed Rural Land Use Strategy as they aim to provide for matters that were allowed under the Wentworth LEP 1993 and henceforth have a historic justification not a strategic justification.

Report

Minimum lot size 10Ha mapped areas

- The areas of Ellerslie, darling View, Pomona and the land within the Curlwaa levee in Murray Rd, Curlwaa were left not included in the public exhibition 10Ha minimum lot size mapped areas due to an oversight of a former staff member. These areas are existing irrigation areas similar to those areas of Pomona,

Curlwaa, Coomealla, Buronga, Gol Gol and Trentham Cliffs irrigation areas that have been included in the 10Ha minimum lot size mapped areas under the Wentworth LEP 2011.

- 20 submissions (out of a total of 80 submissions to the draft LEP) , including 1 submission on behalf of 11 landholders at Darling View were received by Council pointing out the oversight in the 10Ha mapped areas and requesting Council include these areas within the 10Ha minimum lot size mapped areas as part of the Wentworth LEP 2011.
- Following the public consultation process, Council at its April 2011 resolved to formally agree to amend the oversight to make provision for a dwelling entitlement for those areas which are used for horticulture to have a dwelling entitlement if they have a minimum lot size of 10ha. The resolution of Council was:
"That Council inserts the following clauses into section 4.2B (3) of the draft WLEP 2011:-
(e) Notwithstanding clauses (a) and (d), Council may consent to the erection of a dwelling on an allotment of land shown on the 10000ha minimum lot size maps if the land use is intensive plant agriculture on an allotment not less than 10ha."
- In its Section 68 submission to Planning NSW in support of the post exhibition changes to the draft Wentworth LEP Council included Folio #7
"Ellerslie Irrigation district mapped for minimum 10Ha lot size. The addition of this area is based on the criteria of the area being an irrigation district as per the minimum lot sized mapped areas that were part of the exhibition. Ellerslie was missed in the exhibited plan. The inclusion of Clause 4.2B (3)(e) permits minimum lot size of 10ha in 10,000ha mapped area if provisions relating to use is consistent with objectives.
- Council were advised in a letter from Tom Gellibrand Planning NSW dated 15 December, 2011 that the gazetted Wentworth LEP 2011 *"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.

Former Rural Lots and Existing Holdings:

The Wentworth LEP 1993 included Clause 16(3) which provided a concession for the Council to grant to consent of a rural dwelling on an existing lot if the lot was in existence before the 7 May 1993, regardless of the size of the lot and regardless of whether the lot was used for horticulture, as follows:

(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".

Council had specific clauses / definitions included in the Wentworth LEP 2011 that it believed would deliver the same provisions as the concession under the old clause 16(3). These clauses also had sunset clauses of 5 years included as recognition of the need for a review of these provisions as part of the proposed Rural Land Use Strategy. The specific clauses are the inclusion of provision for the erection of a dwelling house on land in a rural zone on that does not meet the minimum lot size as follows:

Clause 4.2B (3) (d) “an existing holding” or

Clause 4.2B (3) (e) “a former rural lot”.

Subclause (6) of the Wentworth LEP 1993 provides a definition of an existing holding and a former rural lot relating to lots or holdings that existed prior to the 7 May, 1993.

The purpose of including specific definitions of “existing holdings” and “former rural lots” was to provide a concession similar to what Clause 16(3) of the Wentworth LEP 1993 provided.

However, the Wentworth LEP 2011 also includes Clause 4.2D which requires for Dwelling Houses in Zone RU1 Primary Production. This clause reads:

(1) The objective of this clause is to ensure dwelling houses are developed only where they support the permitted agricultural use of the land.

(2) This clause applies to development for the purposes of dwelling houses on land in Zone RU1 Primary Production.

(3) Before granting consent to development to which this clause applies, the consent authority must be satisfied that:

(a) the land is being or is intended to be used for the purpose of intensive plant agriculture or extensive agriculture, and

(b) the dwelling house will be required to support the carrying out of any such purpose, and

(c) the dwelling house is not likely to cause any land use conflict with existing agricultural uses being undertaken on neighbouring properties, and

(d) services for the supply of water and electricity to support the agricultural activity are available or adequate arrangements have been made to make them available when required.

Advice from NSW Planning is that clauses 4.2B and 4.2D must be read together. This defeats the whole purpose of including the definition of “existing holding” and “former rural lot” as the allotments that those definitions apply to are generally not going to be viable allotments for the purpose of intensive plant agriculture or extensive agriculture.

Inclusion of a notwithstanding clause in 2.4D, as shown below, will allow a similar concession to what was available under clause 16(3) of the Wentworth LEP 1993:

(4) Notwithstanding subclauses (1), (2), (3)(a), (b) & (c), the Council may consent to the erection of a dwelling house on land within zone No 1(a) where the Council is satisfied the land meets the definition of an existing holding or a former rural lot as defined in Clause 4.2B(6)."

Policy and Management Plan Implications

This planning proposal intends to support the social and economic development of the shire and provide an opportunity for use of land that is not viable for intensive plant agriculture or extensive agriculture. If not carefully managed this may provide

potential for land use conflict between residential uses and existing horticultural land use.

Conclusion

With the gazettal of the Wentworth Local Environmental Plan 2011 Council and the NSW Planning Minister have received representations that the Wentworth LEP 2011 has not been a conversion from the Wentworth LEP 1993, in that some landholders do not have the same land use rights as they had under the Wentworth LEP 1993.

Accordingly, Council support is sought to endorse the Planning Proposal and seek NSW Department of Planning and Infrastructure authority to progress this matter as either an expedited amendment pursuant to Section 73A of the Environmental Planning and Assessment Act 1979 (EP&A Act) with no public exhibition and State and Commonwealth Government public authority consultation requirement.

Notwithstanding, should an exhibition period and State and Commonwealth Government public authority consultation be required by the Gateway Determination, consultation will be undertaken in accordance with any conditions of the Gateway Determination and in accordance with the EP&A Act.

Moved Councillor Brook and seconded Councillor Clarke that recommendation 2 be adopted.

CARRIED

In accordance with Section 375A of the Local Government Act the Mayor called for a division.

For the motion: Councillors Wheeldon, King, Clarke, Brook, Whitfield, Wakefield, Hederics, McKinnon and Thomson

Against the motion: Nil

12.9 PRINCIPAL ACTIVITY: BUILDING CONTROL

Nil

12.10 PRINCIPAL ACTIVITY: SUSTAINABLE ECONOMIC DEVELOPMENT & GROWTH

Nil

12.11 PRINCIPAL ACTIVITY: ENVIRONMENTAL MANAGEMENT

Nil

12.12 PRINCIPAL ACTIVITY: DOMESTIC WASTE MANAGEMENT

12.12.1 Skip Bin Darling River Houseboat Pumpout Facility

Responsible Officer:	Director Sustainable Development
Author:	Director Sustainable Development
Implications:	Budget
File Reference:	W1/1-2
Attachments:	Nil