



PLANNING PROPOSAL

Amendment to Clause 4.1D(1)(a) of
Hawkesbury Local Environmental Plan 2012

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Introduction

Clause 4.1D(1) of *Hawkesbury Local Environmental Plan 2012* (HLEP 2012) contains provisions relating to the subdivision of certain residential land is as follows:

4.1D Exceptions to minimum subdivision lot size for certain land

- (1) Despite clauses 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map if:
 - (a) the land is not serviced by reticulated sewerage, and
 - (b) the area of any lot created by the subdivision that contains or is to contain a dwelling house is less than 4,000 square metres.

The general interpretation of clause 4.1D(1) has been that if unsewered land was proposed for development into lots smaller than 4,000m² then sewer would need to be provided at the same time as the development, i.e., under the provisions of the same development consent. Recently an issue has arisen in relation to the interpretation of this clause and advice to Council is that the clause required the sewer to be provided to a development site before Council can grant development consent for the subdivision of the site.

Historically the only sewer authorities in the Hawkesbury Local Government Area (LGA) were Sydney Water or Council. The introduction of the *Water Industry Competition Act 2006* (WICA) provided the opportunity for private companies/agencies to become a "Water Authority" that can either treat effluent only or treat effluent and provide recycled water to individuals. In the Hawkesbury LGA one of such private authorities successfully operates in Pitt Town with other private water authorities proposed in the future.

In light of the recent advice to Council regarding clause 4.1D(1), and the opportunity for the private provision of reticulated sewerage services in the Kurrajong, Kurmond and Wilberforce areas it is considered prudent to amend this clause.

On 25 June 2013 Council considered a report on this matter and resolved as follows:

That

1. *A planning proposal be prepared to amend clause 4.1D(1)(a) of the Hawkesbury Local Environmental Plan 2012 to the following:*

Arrangements satisfactory to the consent authority are not in place at the time of determining the application to ensure that each of the lots to be created by the subdivision will be serviced by a reticulated sewerage system from the date of being created, and

2. *The Minister for Planning and Infrastructure be requested to deal with this matter under the provision of Section 73A – Expedited Amendments of Environmental Planning Instruments, of the Environmental Planning and Assessment Act, 1979,*
3. *If the matter cannot be dealt with under the provisions of Section 73A, the planning proposal be forwarded to the Minister for Planning and Infrastructure for a "gateway determination",*
4. *The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan.*

The Planning Proposal

Part 1 - Objectives and Intended Outcomes

The objective of the planning proposal is to amend clause 4.1D(1)(a) of the HLEP 2012 to identify the timing of the provision of reticulated sewerage system for each of the lots to be created by the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map of HLEP 2012.

Part 2 - Explanation of Provisions

It is proposed to make an amendment to clause 4.1D(1)(a) of HLEP 2012 to achieve the objectives of the planning proposal as shown in the table below:

Current Clause 4.1D(1)(a)	Proposed Clause 4.1D(1)(a)
(1) Despite clauses 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map if: (a) the land is not serviced by reticulated sewerage, and	(1) Despite clauses 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map if: (a) arrangements satisfactory to the consent authority are not in place at the time of determining the application to ensure that each of the lots to be created by the subdivision will be serviced by a reticulated sewerage system from the date of being created, and

Part 3 – Justification

Section A - Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

This planning proposal is not a result of any strategic study or report.

Certain areas of land zoned for urban or small lot residential development purposes within the Hawkesbury LGA are not currently serviced with reticulated sewerage systems. In these areas the permissible minimum allotment size is 450m² which is not large enough to have an on-site effluent disposal system and the creation of such small residential allotments that rely on pump-out sewage services is not considered good planning practice or permitted by current Council policy. These areas are identified as "Area A" and edged heavy blue on the Lot Size Map of HLEP 2012.

The original intent of clause 4.1D(1) was that if there was no available reticulated sewerage system, then any proposed allotment size must be a minimum of 4,000m² to have a sufficient area of land for an on-site effluent disposal system. The general interpretation of subclause (1) was that if unsewered land was proposed for development into allotments smaller than 4,000m² then these allotments would need to be serviced by reticulated sewerage at the same time as the development, i.e., under the provisions of the same development consent.

This subclause had its origin in HLEP 1989 and at the time of creating the clause the only sewer authorities in the area were Sydney Water and Council.

Objectives and Actions	Response
Metropolitan Plan for Sydney 2036	
Objective B.1 To focus activity in accessible centres Action B1.1 Plan for centres to grow and change over time. Action B1.3 Aim to locate 80% of all new housing within the walking catchment of existing and planned centres of all sizes with good public transport Objective D1 To ensure an adequate supply of land and sites for residential development Action D1.1 Locate at least 70 per cent of new housing within existing urban areas and up to 30 per cent of new housing in new release areas.	Consistent - According to the centre typology in the Metropolitan Plan for Sydney 2036, Kurrajong, Kurmond and Wilberforce are identified as Neighbourhood Centres. Residential allotments that may be created by subdivision of land to which this planning proposal applies are located within reasonable walking distances to these centres and public transport services. Future housing on these allotments will increase the housing supply, allow improved usage of public transport, and assist in the growth of these centres and long term viability.
Draft Metropolitan Strategy for Sydney to 2031	
Objective 5 Deliver new housing to meet Sydney's growth	Consistent - Certain areas of land affected by this planning proposal are to be developed for housing, and as such it will help achieve the objective of the draft Strategy.
Draft North West Subregional Strategy	
Action B2.1.1 Councils to consider planning for houses growth in centres, particularly those well serviced by public transport. Action C2.1 Focus residential development around centres, town centres, villages and neighbourhood centres.	Consistent - Residential allotments that may be created by subdivision of land to which this planning proposal applies are located within reasonable walking distances to Kurrajong, Kurmond and Wilberforce neighbourhood centres and public transport services.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The Hawkesbury Community Strategic Plan 2013 – 2032 (CSP) is relevant to the planning proposal.

Hawkesbury Community Strategic Plan 2013 – 2032 (CSP)

The Hawkesbury Community Strategic Plan 2013 – 2032 (CSP) is based on five broad interrelated themes:

- Looking after people and place
- Caring for our environment
- Linking the Hawkesbury

Q6. Is the planning proposal consistent with applicable Ministerial Directions (S.117 directions)?

The Minister for Planning and Infrastructure, under section 117(2) of the EP&A Act issues directions that local councils must follow when preparing planning proposals for new local environmental plans. The directions cover the following broad categories:

- a. employment and resources
- b. environment and heritage
- c. housing, infrastructure and urban development
- d. hazard and risk
- e. regional planning
- f. local plan making.

The following table provides an assessment of the planning proposal against applicable Section 117 directions.

Direction	Consistency of Planning Proposal
1.3 Mining, Petroleum Production and Extractive Industries The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Consistent - According to Plan 1 - 'Mineral Resources Audit of Hawkesbury City August, 2011' issued by the NSW Department of Trade and Investment's (DT&I) the land areas identified as "Area A" and edged heavy blue on the Lot Size Map of HLEP 2012 to which this proposed clause applies are not located within any identified resource areas, potential resources areas or transitional areas within the Hawkesbury LGA. There are no known existing mines, petroleum production operations or extractive industries in these areas subject to the planning proposal or in the vicinity. Given the nature of the planning proposal it would not restrict development potential or create land use conflict beyond that which currently exists. Therefore it is considered that the planning proposal will not impact on regionally significant mineral resources and is consistent with the s117 Direction. Notwithstanding this it is proposed that the planning proposal will be referred to DT&I for comment.
3.1 – Residential zones The objectives of this direction are: a. to encourage a variety and choice of housing types to provide for existing and future housing needs, b. to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and	Consistent - The planning proposal aims to amend clause 4.1D (1)(a) to clarify that development consent is not permitted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map of HLEP2012 if arrangements satisfactory to Council are not in place at the time of determining the application to ensure that each of the allotments to be created by the subdivision will be serviced by a reticulated sewerage system from the date of the allotments being created. Further, clause 6.7 of LEP 2012 ensures that urban development cannot proceed until adequate services are provided. The above proposed amendment will help streamline the implementation the <i>Water Industry Competition Act 2006 (WICA)</i> to provide licences for private agencies to act as "Water Authorities," similar to Sydney Water and Council, to service residential allotments with reticulated sewerage systems.

Direction	Consistency of Planning Proposal
encourage the efficient and appropriate assessment of development.	
7.1 Implementation of the Metropolitan Strategy The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.	Consistent – As outlined in Section B the planning proposal is considered consistent with the Metropolitan Plan for Sydney 2036.

Note this section provides the objectives of the relevant direction, a full copy of the directions can be viewed at <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=dOkLhSFp9eo%3d&tabid=248&language=en-AU>

Section C - Environmental, Social & Economic Impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The issue raised in this question is not considered directly relevant to the planning proposal as it aims only to clarify the timing of the provision of a reticulated sewerage system to allotments to be created by the subdivision of the identified land. Any likely presence of critical habitat or threatened species, populations or ecological communities, or their habitats and the likely adverse impacts of future subdivision of that land on them can be assessed when Council receives development applications for the subdivision of the relevant land.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Given the nature of the planning proposal there will be no environmental impacts resulting directly from this proposal. The likely environmental impacts of future development of any land to which this proposed clause applies can be assessed when Council determines such development applications.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The proposed amendment to clause 4.1D(1)(a) would help streamline the WICA implementation to enable private companies/agencies to work as a "Water Authority" that can either treat effluent only or treat effluent and provide recycled water to individuals enabling improved reticulated sewerage services in the Hawkesbury LGA.

Part 6 – Project Timeline

The following tentative project timeline is provided for DP & I's consideration.

Project Phase	Indicative Timeline
1. Anticipated commencement date	Date of Gateway Determination received by Council – to be advised by the DP & I.
2. Completion of technical information prior to government agency consultation	02 weeks after the receipt of Gateway Determination
3. Government agency consultation	08 weeks (03 weeks minimum consultation period and additional 05 weeks for any agency requests for additional time or information)
4. Preparation of written advice to the adjoining/affected property owners, public notice in a local newspaper, and exhibition material	03 weeks
5. Public consultation period	02 weeks subject to Gateway Determination
6. Consideration of submissions and a report on the matter to Council	08 weeks
7. Advice to the Department, the applicant and submission authors of Council's resolution	02 weeks
8. Request to PC to prepare a draft LEP under Section 59(1) of the Act with a copy of the request to DP & I	02 weeks
9. Finalisation of the content of the draft LEP by PC in consultation with Council and issuing of legal opinion on the draft plan	06 weeks minimum
10. Request to the Department for online notification of the LEP	02 weeks

Attachments

1. Council report and resolution dated 11 December 2012
2. Lot Size Maps showing the affected areas of land

Item: 113 **CP - Planning Proposal to Amend Wording of Clause 4.1D (1) (a) of Hawkesbury LEP to Clarify Reticulated Sewer System Provision - (95498)**

REPORT:**Executive Summary**

The purpose of this report is to propose that Council prepare a Planning Proposal to amend Clause 4.1D of the Hawkesbury Local Environmental Plan 2012 (LEP) to clarify the timing for reticulated sewer system provision to new development in areas where there is currently no reticulated sewer system.

Consultation

The issues raised in this report concern matters which will require community consultation under the provisions of the Environmental Planning and Assessment Act 1979. In this regard should the proposal obtain a "Gateway Determination" that determination will specify the consultation period required.

Background

Council currently has a number of areas in the Local Government Area (LGA) that are zoned for urban or small lot residential development that are not currently serviced with reticulated sewer systems. These areas include, but are not limited to, Kurrajong, Kurmond and Wilberforce. In these areas the minimum allotment size can be 450m² which is not large enough for on-site effluent disposal and the creation of residential allotments that rely on pump-out sullage services is not permitted. In these cases the land is identified by blue edging on the Lot Size Map in the LEP where the following Clause applies:

4.1D Exceptions to minimum subdivision lot size for certain land

- (1) Despite clauses 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map if:
 - (a) the land is not serviced by reticulated sewerage, and
 - (b) the area of any lot created by the subdivision that contains or is to contain a dwelling house is less than 4,000 square metres.
- (2) Despite subclause (1) and subject to subclause (3), development consent may be granted for the subdivision of land in the following zones into separate lots for the purpose of dual occupancies, multi dwelling housing, residential flat buildings or shop top housing, if the development for that purpose has been previously approved:
 - (a) Zone R1 General Residential,
 - (b) Zone R2 Low Density Residential,
 - (c) Zone R3 Medium Density Residential.
- (3) Subclause (2)(b) does not apply to land in Glossodia

The original intent of the above subclause (1) was that if there was no reticulated sewer system available in the area, and it could not be extended to service that development, then any proposed allotment size must be a minimum of 4,000m² to cater for on-site effluent disposal. The general interpretation of subclause (1) was that if unsewered land was proposed for development into allotments smaller than 4,000m² then sewer would need to be provided at the same time as the development, i.e., under the provisions of the same development consent.

ORDINARY MEETING

Meeting Date: 25 June 2013

development the development application can assess the sewer system proposal at the same time and then require that system to be in place prior to creation of the allotments.

As this is a relatively minor matter that does not involve mapping changes and only a clause clarification, it is suggested that the Minister be requested to deal with this matter under the provisions of Section 73A - – Expedited Amendments of Environmental Planning Instruments of the Environmental Planning and Assessment Act. This section deals primarily with typing and grammatical errors in Instruments, but as this amendment is a clarification of an existing clause it is considered appropriate to make that request.

If that request is not supported a request for a Gateway Determination would be made to amend clause 4.1D(1)(a) as shown above. If that is the case it is recommended that Council request the use of its delegations in this matter following the Gateway Determination. It is also recommended that the matter be pursued separately so this administrative change can be finalised in a timely manner.

Conformance to Community Strategic Plan

The proposal is consistent with the Caring for Our Environment Directions statement;

- Take active steps to encourage lifestyle choices that minimise our ecological footprint

and is also consistent with the nominated strategy in the Community Strategic Plan being:

- Manage growth with ecologically sustainable principles

Financial Implications

No financial implications applicable to this report.

Planning Decision

As this matter is covered by the definition of a “planning decision” under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

ORDINARY MEETING
MINUTES: 25 June 2013

CITY PLANNING

Item: 113 CP - Planning Proposal to Amend Wording of Clause 4.1D (1) (a) of Hawkesbury LEP to Clarify Reticulated Sewer System Provision - (95498)

MOTION:

RESOLVED on the motion of Councillor Reardon, seconded by Councillor Conolly.

Refer to RESOLUTION

185 RESOLUTION:

RESOLVED on the motion of Councillor Reardon, seconded by Councillor Conolly.

That:

1. A Planning Proposal be prepared to amend Clause 4.1D(1)(a) of the Hawkesbury Local Environmental Plan 2012 to the following:
 - a. arrangements satisfactory to the consent authority are not in place at the time of determining the application to ensure that each of the lots to be created by the subdivision will be serviced by a reticulated sewerage system from the date of being created, and
2. The Minister for Planning and Infrastructure be requested to deal with this matter under the provisions of Section 73A – Expedited Amendments of Environmental Planning Instruments, of the Environmental Planning and Assessment Act 1979,
3. If the matter cannot be dealt with under the provisions of Section 73A, the Planning Proposal be forwarded to the Minister for Planning and Infrastructure for a “gateway” determination,
4. The Department of Planning and Infrastructure be advised that Council wishes to request a Written Authorisation to Exercise Delegation to make the Plan,
5. This matter be pursued separately to any other Planning Proposal or combined with another matter only if that would expedite the matter.