



WEDDIN SHIRE COUNCIL

To Avoid Delay when
Replying or Telephoning

Please Quote: **BJH:IKH T2.1.10**

Your Ref:

15 April 2014

All Correspondence to be addressed to:
The General Manager
Camp Street or P.O. Box 125
GRENFELL NSW 2810

Tel: (02) 6343 1212
Fax: (02) 6343 1203
Email: mail@weddin.nsw.gov.au
website: weddin.local-e.nsw.gov.au
A.B.N. 73 819 323 291

PP-2014-WEDDI-001-00

Mr A Albury
Planning & Infrastructure
Regional Director
Western Region
PO Box 58
DUBBO NSW 2830

Dear Mr Albury

SUBJECT: WEDDIN LOCAL ENVIRONMENTAL PLAN 2011

Council has resolved to prepare a planning proposal to delete wording from its existing LEP to assist with interpretation and consideration of dwelling houses on rural lands.

Please find attached the planning proposal developed in accordance with the guide provided by the department.

If you have any questions please do not hesitate to contact the undersigned on 02 63431212.

Yours faithfully


B J HAYES
DIRECTOR ENVIRONMENTAL SERVICES



Planning Proposal

This planning proposal is to amend the wording of Weddin Local Environmental Plan 2011 Clause 4.2B(3) relating to the erection of dwelling houses on land in certain rural and environmental zones.

PART 1 OBJECTIVES OR INTENDED OUTCOMES

The objective of this planning proposal is to amend the wording of Weddin Local Environmental Plan 2011 Clause 4.2B(3) relating to the erection of dwelling houses on land in certain rural and environmental zones.

PART 2 EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by the deletion of the wording in Clause 4.2B(3) “and on which no dwelling has been erected”.

PART 3 JUSTIFICATION

Clause 4.2B(3) of Weddin LEP 2011 states:

- “(3) Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is:
- (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or
 - (b) a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
 - (c) a lot resulting from a subdivision for which development consent was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (d) an existing holding.”

This provision applies to all lands zoned - 1) RU1 Primary Production
2) E3 Environmental Management

Council has had several representations made regarding the question of the ability of Council to consider the development of a dwelling house on land within the aforementioned RU1 zone. The specifics related to the existence of remnants of a dwelling previously erected on the subject land.

The current inclusion of the wording “and on which no dwelling has been erected” provides exclusion of application of 4.2B(3).

In addition, the existing holding provision has expired as provided for in 4.2B(4), and can no longer be relied on.

Clause 4.2B(5) relies on the replacement of “the existing dwelling house”. The question of whether remnants of a dwelling constitutes “the existing dwelling” provides further conjecture.

It is viewed that with the deletion of the wording, as proposed, the interpretation and use of the clause will be consistent with the objectives of the clause and much easier to determine questions of dwelling approvals on rural land.

It needs to be acknowledged that recently made instruments such as Forbes LEP 2013, Broken Hill 2013, Murrumbidgee LEP 2013 and others, have wording that reflects Council’s planning proposal.

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

The planning proposal is not the result of any strategic study or report. The planning proposal is simply amend wording to allow consistency with wording in contemporary LEP's.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The wording can only be amended via a planning proposal.

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

There is no regional or sub-regional strategy for the Weddin Local Governmental area.

Is the planning proposal consistent with a council local strategy or other local strategic plan?

Consistent with Council's Primary Production Strategy

Is the planning proposal consistent with the applicable State Environmental Planning Policies?

This planning proposal is consistent with SEPP (Rural Lands) 2008.

Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

This planning proposal is consistent with applicable s117 directions.

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?

No. Any impact on threatened species would be identified when a development application was submitted for a dwelling house.

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

No.

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

Not applicable

Is there adequate public infrastructure for the planning proposal?

Not applicable.

What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with state and Commonwealth public authorities is not required.

PART 4 MAPPING

Not applicable

PART 5 COMMUNITY CONSULTATION

No community consultation is proposed due to the minor nature of the planning proposal.

PART 6 PROJECT TIMELINE

Given the minor nature of the amendment and Council is not proposing any community consultation, Council intends to complete the planning proposal immediately.



Appendix 1

Attachment 4 – Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

Wedderburn Shire

Name of draft LEP:

Address of Land (if applicable):

Intent of draft LEP:

Amend wording of Wedderburn LEP 2011
Clause 4.2 B(3) relating to the exclusion of
dwelling houses on land in certain rural zones.

Additional Supporting Points/Information:

See attached planning proposal.



Evaluation criteria for the issuing of an Authorisation				
(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y		✓	
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y		✓	
Are appropriate maps included to identify the location of the site and the intent of the amendment?		✓	✓	
Does the planning proposal contain details related to proposed consultation?	Y		✓	
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?		✓	✓	
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y		✓	
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y		✓	
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		✓	✓	
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		✓	✓	
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		✓	✓	
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		✓	✓	
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		✓	✓	
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		✓	✓	
Is the planning proposal proposed to rectify an anomaly in a classification?		✓	✓	
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?	✓		N/A	
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		✓	✓	

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		✓	✓	
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		✓	✓	
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		✓	✓	
Spot Rezonings	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		✓	✓	
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		✓	Y	
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		✓	✓	
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		✓	✓	
Does the planning proposal create an exception to a mapped development standard?		✓	✓	
Section 73A matters				
Does the proposed instrument				
a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;	✓		✓	
b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or	✓		✓	
c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?		✓	✓	
(NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).				
NOTES - Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance. - Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.				

W4 23/4/14



Attachment 5 – Delegated plan making reporting template

Reporting Template for Delegated LEP Amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	
Date Sent to department under s56	
Date considered at LEP Review Panel	
Gateway determination date	

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Date LEP made by GM (or other) under delegation		
Date sent to DP&I requesting notification		

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional Relevant Information:

3. Weddin Local Environmental Plan 2011, T2.1.9

The Weddin Local Environmental Plan 2011 was made on 5 December 2011. During the use of the LEP 2011 an error has been identified in Clause 4.2B regarding the erection of dwelling houses on land in certain rural and environmental protection zones.

In order to correct this error an amendment to the LEP 2011 is required and therefore a planning proposal must be proposed. The amendment is considered to be of a minor nature and as such, will be expected.

Planning Proposal

Clause 4.2B(3) to LEP 2011 states:

- (3) Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is:

It is proposed to delete the portion “and on which no dwelling house has been erected”.

The alteration of the wording will remove any conflict in interpretation and application of the clause and assist Council in determining approvals for dwelling houses on rural land.

Planning NSW have provided the wording for the new clause and note that this is a standard wording in all new LEP’s made recently.

RECOMMENDATION: that Council

- a) Prepare a planning proposal in accordance with section 55(1) of the Environmental Planning and Assessment Act 1979 to alter wording on the Weddin Local Environmental Plan 2011. Clause 4.2B(3) – Erection of dwelling houses on land in certain rural and environmental protection zones.
- b) Forward the planning proposal to the Minister for Planning and Infrastructure in accordance with section 56(1) of the Environmental Planning and Assessment Act 1979.
- c) Request that the local planning making functions in relation to this planning proposal be delegated to Council.

B J HAYES
DIRECTOR ENVIRONMENTAL SERVICES

THE DIRECTOR ENVIRONMENTAL SERVICES' REPORT

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- c) Request that the local planning making functions in relation to this planning proposal be delegated to Council.

360 RESOLVED: Cr McClelland and Cr Best that Council:

- a) Prepare a planning proposal in accordance with section 55(1) of the Environmental Planning and Assessment Act 1979 to alter wording on the Weddin Local Environmental Plan 2011. Clause 4.2B(3) – Erection of dwelling houses on land in certain rural and environmental protection zones.
- b) Forward the planning proposal to the Minister for Planning and Infrastructure in accordance with section 56(1) of the Environmental Planning and Assessment Act 1979.
- c) Request that the local planning making functions in relation to this planning proposal be delegated to Council.

This is Page No. 41 of the Minutes of the Ordinary Meeting of Weddin Shire Council held, **20 March 2014**.

.....General ManagerMayor