# Planning Proposal Liverpool Plains Shire Council

# Dwelling Opportunity Amendment Liverpool Plains LEP 2011



October 2019

### Legislative Framework

Pursuant to Section 3.33(1) of the *Environmental Planning and Assessment Act 1979* ('the Act'), a Planning Proposal must be prepared to support an amendment to a Local Environmental Plan. The Planning Proposal must explain the intended effect, and provide justification for, the amendment. The Planning Proposal must address the matters identified by Section 3.33 of the Act, which are considered as part of this Report. Council must then determine whether or not to proceed with the Planning Proposal.

### **Council resolution**

This amendment to the *Liverpool Plains Local Environmental Plan* (LEP) 2011 was considered by Liverpool Plains Shire Council at their meeting on Wednesday 26 June 2019.

### **Overview**

This Planning Proposal seeks to amend the 'Dwelling Opportunity Map' under Clause 4.2A(3)(d) of the LEP to include the following allotments so that an application for a dwelling house may be considered:

- Lot 21 DP 751026;
- Lot 36 DP 751025;and,
- Lot 1 DP 1074257.

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### **Document Control:**

Version No.	Last Updated	Document Status
Version 1.0	16 May 2019	Draft Planning Proposal
Version 2.0	12 June 2019	Internal review
Version 3.0	21 June 2019	Internal review/Council report
Version 4.0	1 October 2019	Updated PP as per advice from DPIE

### Part 1 - Objectives or Intended Outcomes of the Planning Proposal

The objective of this Planning Proposal is provide a stimulus for the local economy by allowing applications to be lodged for the erection of a dwelling on selected rural zoned lands. Specifically, this Planning Proposal seeks to amend the 'Dwelling Opportunity Map' under Clause 4.2A(3)(d) of the LEP to include the following allotments so that an application for a dwelling house may be considered:

- o Lot 21 DP 751026;
- Lot 36 DP 751025; and,
- Lot 1 DP 1074257.

#### **Part 2 – Explanations of Provisions**

On 22 March 2017, Council resolved to add a 'dwelling opportunity' provision under Clause 4.2A(3)(d) of the LEP in order to capture dwelling opportunities that existed under previous planning instruments (i.e. *Parry Local Environmental Plan 1987*) but lapsed on 9 December 2016. The objective of the dwelling opportunity provision was to allow applications to be lodged for the erection of a dwelling house in rural, rural-residential and environmental protection zoned lands in the following circumstances:

- The allotment was created before the commencement of the LEP and on which a dwelling could have been lawfully erected immediately before the commencement of the LEP;
- The allotment has not been altered since the commencement of the LEP unless affected by a minor realignment of its boundaries that did not create an additional allotment; and,
- There is no dwelling currently on the lot and no current approvals for a dwelling on the lot.

The proposed amendment to the dwelling opportunity map only applies to the allotments created prior to the commencement of the LEP and to the landowners who submitted an Expression of Interest (EOI) to Council for a dwelling entitlement during the public consultation process that was undertaken as a part of the review of the LEP. The proposed amendment provides dwelling opportunities for lands that are precluded from a dwelling opportunity as a result of historic arbitrarily undersized lots.

The proposed amendment will assist in the achievement of a logical pattern of development on rural and environmental lands, while having regard for ecological considerations. The proposal recognises historic and current agricultural land uses, while preserving, and minimising impacts on environmentally sensitive locations and scenic quality.

Maps and property details for the proposed dwelling opportunities are provided in Appendix A and Table 1 below:

#### Table 1 - Schedule of Affected Lands.

Real Property Description	Property Address	Property ID	Mapping Reference No.
Lot 21 DP 751026	641 Wallabadah Road, WALLABADAH NSW 2343	Ass. No. 69,686	Map 1
Lot 36 DP 751025	578 Bulunbulun Road, CURRABUBULA NSW 2342	Ass. No. 70,364	Map 3
Lot 1 DP 1074257	1788 Merriwa Road, WILLOW TREE NSW 2339	Ass. No. 69,973	Map 6

### **Part 3 – Justification**

#### <u>Section A – Need for the Planning Proposal</u>

# Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

The Planning Proposal is not a result of any strategic study or report. The proposed changes have resulted from an EOI process that was undertaken by Council as part of reviewing the LEP. The 'Open to Change' campaign was launched in November 2018 as a part of the EOI process in order to elicit feedback on the LEP in relation to zoning, minimum lot size, permissible uses, heritage items and dwelling opportunities. The objective of the consultation process was to identify any planning constraints to economic development that could be amended as part of the LEP review.

As the Local Government Area (LGA) is under significant economic stress, which has been amplified by the impact of the drought, Council are looking to opportunities to stimulate the local economy. Council considers that increasing the residential population is one (1) approach to achieve this objective as it provides a small population increase and an economic opportunity for landowners, without adding significantly to infrastructure demand.

Each EOI has been assessed to confirm the suitability of the location for a future dwelling house with consideration of the following matters:

- Traffic and access;
- Adjoining and future land use conflict;
- Fragmentation of prime agricultural land;
- Environmental constraints, including bushfire, flooding and ecology; and,
- Infrastructure impacts.

The location of each proposed dwelling opportunity is such that the likelihood of future offensive or conflicting adjoining land uses is limited. Therefore, the proposed dwelling opportunities do not preclude future land use changes. Each lot also provides sufficient area to accommodate a dwelling and driveway access without detrimental impact on the environment.

Lot 21 in DP 751026 and Lot 36 in DP 751025 each have evidence that suggests that a dwelling was situated on the subject lands. However, as there are no known development consents for the dwellings, Council is unable to consider an application for a replacement dwelling under Clause 4.2A(5). Therefore, under Clause 4.2A(3), there is currently no dwelling opportunity on the lands.

Lot 1 in DP 1074257 contains an existing building that was previously used as a church. A dwelling opportunity would enable an application for a change of use to allow occupation of the existing building for residential purposes.

*Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?* 

Council considers that a Planning Proposal is the best means of achieving the intended outcomes without detrimental environment, social or infrastructure impacts.

A change to the zoning or minimum lot size (MLS) would also achieve the objectives of enabling a dwelling opportunity. However, a change to the MLS or zoning would provide greater development potential, and potentially lead to unsuitable residential density, unplanned infrastructure pressure, subdivision or unsuitable land uses. A dwelling opportunity limits development impacts and, avoids land use conflict and pressure on infrastructure resources.

#### <u>Section B – Relationship to strategic planning framework</u>

# Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposed is considered consistent with the objectives of the *New England North West Regional Plan 2036*, as follows:

- A growing and diversified agricultural sector;
- A diversified economy through the management of mineral and energy resources, including renewable energy generation;
- Communities resilient to change with housing choice and services that meet shifting needs and lifestyles;
- Prosperous urban centres with job opportunities; and,
- Protected water, environment and heritage.

# *Q4. Will the planning proposal give effect to a Council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?*

The Planning Proposal is consistent with the objectives of Council's adopted Land Use Strategy - the *Liverpool Plains Growth Management Strategy* (2009). The Planning Proposal will provide future residential development to allotments that do not have potential as prime agricultural land, or result in detrimental environmental impacts or pressure on public infrastructure.

Single dwelling opportunities do not place an unacceptable burden on infrastructure resources and provide a diversity of housing choice consistent with the Strategy. The proposed lots that are not currently serviceable by reticulated water, sewer and/or power will have any future dwelling consent conditioned to require a notation on the title of the land stating the same. An advice will also be included on a Section 10.7(5) Planning Certificate stating that the site is not serviced in order to avoid pressure on Council to upgrade infrastructure services.

### *Q5. Is the planning proposal consistent with application of State Environmental Planning Policies?*

The Planning Proposal is considered to be consistent with all of the relevant State Environmental Planning Policies (SEPPs), as demonstrated in Table 2 below:

### Table 2 - Consistency of the Planning Proposal with State Environmental Planning Policies(SEPPs).

SEPPs	Objectives	Consideration
State Environmental Planning Policy No. 44 – Koala Habitat Protection	State Environmental Planning Policy No. 44 – Koala Habitat Protection aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas. Before any development consent can be granted to a proposal, Council must be satisfied that the land does not constitute core Koala habitat.	The Planning Proposal is consistent with the objectives of SEPP No. 44. Any proposals for development on the subject allotments shall be assessed against the provisions of this SEPP.
State Environmental Planning Policy No. 55 – Remediation of Land	State Environmental Planning Policy No. 55 – Remediation of Land aims to provide a state-wide planning approach to the remediation of contaminated land. The SEPP requires consideration of previous land uses and promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	The Planning Proposal is considered consistent with the objectives of SEPP No. 55. A search of Council's records and contamination register has not produced any approvals for activities on the affected lands that are listed under Table 1 of the <i>Planning Guidelines</i> <i>SEPP 55 – Remediation of</i> <i>Contaminated Land</i> 1998, such as sheep dips and the like. There are no known previous investigations regarding contamination on the affected lands or land use restrictions issued by the NSW Environmental Protection Authority (EPA). Furthermore, a search of the NSW EPA's online public registers has not produced any notices on the affected allotments.
State Environmental Planning Policy (Primary Production and Rural Development) 2019	State Environmental Planning Policy (Primary Production and Rural Development) 2019 aims to facilitate the orderly and economic use and development of lands for primary production, to reduce land use conflict and sterilisation of rural land, to encourage sustainable agriculture and identify State significant agricultural land to ensure the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations.	The Planning Proposal is considered to be consistent with the objectives of the Primary Production SEPP. The subject allotments are within areas of existing un- productive or low intensity agricultural land. It is also considered that future dwellings on the affected lands are capable of being compatible with existing and future land uses, and therefore are not expected to result in any land use conflict. Thus, it is considered that future dwelling applications will be consistent with this SEPP when assessed against its provisions.

# *Q6.* Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Consistency with the relevant Section 9.1 Directions is addressed in Table 3 below:

Direction No.	Provisions	Consistency
1.2 Rural Zones	Clause 4(a) of this direction applies to all relevant planning authorities and states that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. Liverpool Plains Shire Council local government area is not specified in Clause 2(b) as being required to comply with Clause 4(b). This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).	The Planning Proposal is consistent with this Direction, as it will not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
1.5 Rural Lands	<ul> <li>When this direction applies <ul> <li>(3) This direction applies when:</li> <li>(a) A relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or</li> <li>(b) A relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</li> </ul> </li> <li>What a relevant planning authority must do if this direction applies <ul> <li>A Planning Proposal to which Clauses (3)(a) or (3)(b) apply must considers the matters under Clauses (4) and (5) of this direction.</li> </ul> </li> <li>Consistency <ul> <li>(5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are: <ul> <li>(a) justified by a strategy which:</li> <li>(i) gives consideration to the objectives of this direction,</li> <li>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</li> <li>(iii) is approved by the Director-General of the Department of Planning proposal relates to a particular site or sites), and</li> <li>(iii) is approved by the Director-General of the Department of Planning proposal relates to a particular site or sites), and</li> </ul> </li> </ul></li></ul>	It is considered that the Planning Proposal is consistent with this Direction.
2.1	A planning proposal must include provisions that facilitate the	This Planning Proposal is
Environment Protection Zones	protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in an LEP must not reduce the	not inconsistent with this Direction as it does not affect any environmentally sensitive areas.

#### Table 3 - Consistence of Planning Proposal with S 9.1 Directions.

	environmental protection standards that apply to the land (including by modifying development standards that apply to the land).	
2.3 Heritage Conservation	A planning proposal must contain provisions that facilitate the conservation of items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	This Planning Proposal is not inconsistent with this Direction as it does not affect the conservation of any known heritage items.
4.4 Planning for Bushfire Protection	<ul> <li>This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</li> <li>A planning proposal must: <ul> <li>a) have regard to Planning for Bushfire Protection 2006,</li> <li>b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</li> <li>c) ensure that bushfire hazard reduction is not prohibited within the APZ.</li> </ul> </li> </ul>	The planning proposal is not inconsistent with this Direction as consultation with the Commissioner of the NSW Rural Fire Service will be undertaken post gateway. The proposal has regard to bushfire protection and provides adequate APZs.
5.10 Regional Plans	This direction requires planning proposals to be consistent with the vision, land use strategy, goals, directions and actions contained in Regional Plans.	This Planning Proposed is considered to be consistent with this Direction.
6.1 Approval and Referral Requirements	<ul> <li>A planning proposal must: <ul> <li>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</li> <li>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: <ul> <li>(i) the appropriate Minister or public authority, and</li> <li>(ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),</li> </ul> </li> <li>prior to undertaking community consultation in satisfaction of section 57 of the Act, and</li> <li>(c) not identify development as designated development unless the relevant planning authority: <ul> <li>(i) can satisfy the Director-General of the Department of Planning (or an officer of the Department of Planning (or an officer of the Department unless the relevant planning authority: <ul> <li>(i) can satisfy the Director-General of the Department nominated by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</li> <li>(ii) has obtained the approval of the Director-General of the Department nominated by the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.</li> </ul> </li> </ul></li></ul></li></ul>	This Planning Proposal is consistent with this Direction. The Planning Proposal does not include provisions requiring the concurrence, consultation or referral of future Development Application's to a Minister or public authority.
6.3 Site Specific Provisions	<ul> <li>This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carries out.</li> <li>A planning proposal must: <ul> <li>(a) allow that land use to be carried out in the zone the land is situated on, or</li> <li>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards</li> </ul> </li> </ul>	It is considered that the Planning Proposal is partially inconsistent with this Direction. A notation on title that flags the absence of infrastructure on certain lots, is an additional requirement. However, the provision is considered minor as it does not establish an additional

	or requirements in addition to those already contained	development	stan	dard
	in that zone, or	determining	suitability,	
(c	c) allow that land use on the relevant land without	rather a conti	ol.	
	imposing any development standards or requirements			
	in addition to those already contained in the principal			
	environmental planning instrument being amended.			

#### Section C – Environmental, social and 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?

No. It is not expected that the amendment will have an adverse impact upon critical habitat or threatened species, populations or ecological communities, or their habitats. Detailed assessment of such impacts (if any) will occur upon submission of Development Applications on each allotment.

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

No direct adverse environmental impacts are expected to arise as a result of the Planning Proposal. Each EOI for a dwelling opportunity has been assessed to confirm the suitability of the location for a dwelling with consideration of ecological impacts, bushfire and flooding constraints. Future Development Applications will also need to address environmental impacts.

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

The Planning Proposal is considered unlikely to result in adverse social or economic impacts. Furthermore, it is anticipated that the Planning Proposal is likely to achieve positive social and economic effects through investment and population growth throughout the LGA.

#### <u>Section D – State and Commonwealth interests</u>

#### **Q10.** Is there adequate public infrastructure for the planning proposal?

Yes. Adequate capacity is available to service individual dwellings where existing water, sewer and electricity are currently available. Where these services are not currently available, the provision of reticulated services will not be required.

The proposed dwelling opportunities are intended to provide an economic stimulus and a diversity of housing choice. Therefore, infrastructure costs are to be minimised. Alternative on site water, sewer and power servicing arrangements will be accommodated with subsequent Development Applications via the imposition of appropriate conditions of consent in accordance with the provisions of the LEP and the *Liverpool Plains Development Control Plan* (DCP) 2012.

# Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with relevant State authorities will occur if specified as part of the Gateway Determination.

### Part 4 - Mapping

The Planning Proposal seeks to add Dwelling Opportunity maps. Draft maps are provided in Attachment A.

### Part 5 - Community Consultation

Public consultation will be undertaken in accordance with the requirements of the Gateway determination and the Department's '*Guide to Preparing Local Environmental Plans*'.

It is expected that the Planning Proposal will be exhibited for a period of not less than twenty-eight (28) days and that this will include:

- Advertisement in the public notices section of the Quirindi Advocate;
- A fixed exhibit at Council's Administration building and public libraries;
- Notice on Council's website;
- Media release via social media;
- Notification to all landowners deemed likely to have an interest in the Planning Proposal; and,
- Planning staff being available to answer questions via telephone, email and face to face interviews.

### Part 6 – Project Timeline

Action	Indicative Date
Council Resolution	June 2019
Gateway Determination	October 2019
Government Agency Consultation	November 2019
Public exhibition Period	November 2019
Submission assessment	November & December 2019
RPA assessment of Planning Proposal and exhibition outcomes	December 2019 & January 2020
Liaison with Parliamentary Counsel and submission of endorsed LEP Amendment to Department of Planning and Environment for finalisation.	February – April 2020

Attachment A – Dwelling Opportunity Maps