

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 20 July 2015

PE5 – Draft Planning Proposal – Housekeeping Amendment to Correct Wollondilly Local Environmental Plan 2011, Original Holdings Maps

PE5

Draft Planning Proposal – Housekeeping Amendment to correct Wollondilly Local Environmental Plan 2011 Original Holdings Maps

1010

TRIM 8277

Applicant: Wollondilly Shire Council
Owner: Various

Stage	Completed
Preliminary notification	N/A
Gateway Determination	Not yet issued
Consultation with Public Agencies	Not yet completed
Specialist Studies	Not yet completed
Public exhibition/community consultation	Not yet completed
Referred to Minister for Publication	Not yet completed

EXECUTIVE SUMMARY

- This Planning Proposal seeks to amend the original holdings maps contained within Wollondilly Local Environmental Plan, 2011 (WLEP 2011). This housekeeping amendment is required to correct errors in the existing published maps.
- The Planning Proposal is considered to be minor therefore preliminary notification was not necessary.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this proposal.
- It is recommended that Council support the preparation of a Planning Proposal to amend the original holdings maps contained within WLEP 2011 to include the land identified in the map provided as an attachment to this report.

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REPORT

1.1 DESCRIPTION OF PROPOSAL

Wollondilly Local Environmental Plan 2011 contains a clause which has the intention of controlling density within E4 zoned land across the Shire. The Density Control only applies to land mapped on the original holdings maps which form part of Wollondilly LEP 2011. Several original holdings lots are not currently identified on the LEP original holdings maps, specifically in the Razorback and Menangle areas.

The intended outcomes of the Planning Proposal are:

- To correct the Original Holdings maps within Wollondilly LEP 2011 to include all original holdings within E4 zoned land across the Shire.
- Ensure that all subdivision of land within the E4 Environmental Living Zone is subject to Clause 4.1B of WLEP 2011 and achieves the density provisions identified in this clause.
- Ensure that errors on existing mapped land are corrected.

1.2 BACKGROUND

The concept of density controls within the E4 Environmental Living Zone was formed by a number of studies as detailed below:

Wollondilly Agricultural Land Study

In 1993, Council published the Wollondilly Agricultural Land Study ("the agricultural land study") in conjunction with the Wollondilly Local Environmental Plan 1991 (amendment No. 11). The study recognized that agriculture was an important land use within the shire and included 5 recommendations. Of particular relevance was recommendation number 2 which stated the following:

- "2. That Council carry out a review of its rural zones to prepare a draft Local Environmental Plan which will allow for agricultural production as well as rural residential subdivision. This is to be done utilising the methodology outlined for assessing the agricultural potential of the land."

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Review of Rural Lands Report

In September, 1996 the Council completed the Review of Rural Lands Report ("the rural lands report"). This report describes the Wollondilly Shire as comprising:

"A diverse landscape consisting of undulating rural land, fertile alluvial river flats and steep river gorges. There is a large amount of indigenous vegetation associated with this diverse landscape, the majority of it forming significant corridors, which are associated with the river gorges. The Shire has a scattered population of which approximately half live in the 16 towns and villages. The other half live in the rural residential and farming lots. The towns and villages range in size from 70 to over 3,000."

The objectives identified in the rural lands report not only involve the protection of agricultural lands but also to maintain the rural landscape character of the Wollondilly Local Government Area by providing a balance between agriculture and other land uses. These objectives are to be achieved by the introduction of three new rural zones:

- 1(a) Agriculture
- 1(b) Agricultural Landscape
- 7(c) Environmental Protection Rural Living.

According to section 7.3 of the rural lands report, the 7(c) zone is to provide: rural living opportunities within a sensitive environment and that subdivision and dwelling houses must cater for the protection of that sensitive environment. Also, rural living is a residential use of land in a rural environment. The primary objective of the 7(c) zone is to provide rural living opportunities having regard to the preservation of the rural landscape character as well as the constraints of the land. The lot size and density standards were then determined as follows:

"The 2ha subdivision minimum lot size and 4ha density was arrived at after an assessment of the existing lot size range, landscape as well as topographical considerations. It was considered that by providing a density of 4ha, the integrity of the landscape would be preserved and that land degradation would not occur. The 2ha minimum was introduced to allow for a range of lot sizes to be created so that they conform to the landscape and land forms of the area and to provide for a variety in the lots created. It should be pointed out that the primary objective of the zone is to encourage the preservation of the landscape character by ensuring that development does not detract from that character. It is considered that any lesser density would not achieve that objective."

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Section 8.3 of the Rural Lands Report states that there are four areas of environmental protection (rural living) within the Wollondilly Local Government Area, being within the following localities:

- Werombi – Theresa Park – Orangeville
- Brownlow Hill
Menangle
- Razorback and Pheasants Nest.

The areas were said to be chosen for rural living because of their highly fragmented nature and non-degraded areas as well as lack of any significant agricultural enterprise.

The rural lands report was used as a basis for the introduction of the 7(c) zone into several rural areas of the Shire that were seen to have a level of scientific, aesthetic or environmental values and that were suitable for residential living in a rural environment. The development standards discussed above in relation to lot size and density were incorporated into these areas.

Specialist studies are not considered necessary for this Planning Proposal as the outcomes of the Planning Proposal would be following the previous land use investigations discussed above. The Planning Proposal would correct mapping errors to ensure the findings of these previous investigations are appropriately implemented.

Wollondilly Local Environmental Plan 1991 (WLEP 1991)

Relevant to any application for the subdivision of land in the 7(c) zone was clause 13B(1) which was inserted into WLEP 1991 on 20 September, 1996 and contained the following development standards:

- “(1) The Council may consent to a subdivision of all or part of an original holding consisting of land within zone No. 7(c), or of land partly within that zone and the residue of which is within zone No. 1(b), only if:*
- (a) the total number of lots into which the original holding will be divided after the subdivision will not exceed the number obtained by dividing by 4, the area (in hectares) of the original holding that is within Zone No. 7(c) only, the dividend being rounded down to the nearest whole number, and*
 - (b) None of the allotments to be created by the subdivision will have an area of less than 2ha.”*

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Clause 13B(2) defined original holding as:

“a lot in a current plan (within the meaning of section 327AA(1) of the Local Government Act, 1919) as at the date of publication in the Gazette of Wollondilly Local Environmental Plan 1991 (Amendment No. 11)”.

Clause 13(b)(1) of WLEP 1991 had the effect that any subdivision of land within the 7(c) zone would be required to comply with the relevant density provisions and minimum lot size listed above. The provisions of WLEP 1991 were repealed upon the commencement of Wollondilly Local Environmental Plan 2011 on 23 February, 2011.

Wollondilly Local Environmental Plan 2011 (WLEP 2011)

The Standard Instrument LEP Program was initiated by the Department of Planning in 2006 to create a common format and content for Council's LEP's across the state. WLEP 2011 was gazetted on 23 February, 2011.

The standard instrument advised that 7(c) zoned land would generally be incorporated as an E4 Environmental Living Zone within WLEP 2011. Clause 4.1B within WLEP 2011 is applicable for the subdivision of land within the land use zone E4 Environmental Living, but only applies if the original holdings lot is identified on the “Original Holdings” maps that form part of the LEP. Clause 4.1B is provided below:

“4.1B Subdivision of certain land in Zone E4 Environmental Living

- (1) The objective of this clause is to ensure that certain land within Zone E4 Environmental Living is not subdivided to significantly increase the density of development on the land.*
- (2) This clause applies to the land identified as “Original holdings” on the Original Holdings Map.*
- (3) Despite clause 4.1, development consent must not be granted for the subdivision of land to which this clause applies if the total number of lots comprising the land will exceed 1 lot per 4 hectares as a result of the subdivision.*
- (4) In this clause, Original Holdings Map means the Wollondilly Local Environmental Plan 2011 Original Holdings Map.”*

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Sub-clause (3) listed above acts to ensure that the original holding is not subdivided to a density of greater than 1 lot per 4 hectares however no such definition of “original holding” was provided in WLEP 2011 as the original holdings were to be identified on maps which formed part of the LEP.

Several original holdings (particularly in the areas of Razorback and a small part of Menangle) were not identified on the final published original holdings maps issued by the Department of Planning upon gazettal of WLEP 2011. As a result clause 4.1B does not apply to those lands. This has resulted in the subdivision of land being permissible with consent on some lots which should not have this entitlement.

It should be noted that the Review of Rural Lands Report identified that for the locality of Razorback, the zone boundary for this area uses a topographic boundary rather than a cadastral one. The Razorback range has a district plateau with steep sides. The land on the plateau is capable for subdivision and buildings. The land on the slopes is not. Therefore, the boundary of the zone has been chosen as the contour line. The density of lots for subdivision is to be measured for that land within the E4 Environmental Living zone only.

Under WLEP 2011, this means that many of the lots along the fringe of Razorback have two distinct land use zonings, typically E4 Environmental Living (the plateau component) and RU2 Rural Landscape (the slopes). The entire lots would be included on the original holdings maps as the term original holding relates to an entire lot. However, the method for calculating the permissible density of the site under clause 4.1 would only relate to the component of the land zoned E4 Environmental Living. The ability of any residue lot in the RU2 portion of a site to be further subdivided would need to be considered under clause 4.1 of WLEP 2011.

CONSULTATION

Consultation with Council Managers & Staff

No comments have been sought from Council staff at this time. This could be undertaken post Gateway if necessary.

Consultation with Public Agencies

No public agencies have yet been consulted. Council does not consider that any agencies would need to be consulted as part of this Planning Proposal.

Community Consultation

No community consultation has been undertaken at this time. This will occur post Gateway if required by the Department of Planning.

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PREPARATION OF A PLANNING PROPOSAL

Should Council resolve to support the application, a Planning Proposal will be prepared in accordance with Section 55 to the Environmental Planning and Assessment Act, 1979 and guidelines published by the Department of Planning and Environment. The Planning Proposal is then forwarded to the Minister for Planning and Environment for a Gateway Determination.

In deciding to forward a Planning Proposal to the Gateway process, Council is endorsing the Planning Proposal and it is deemed to be Council's Planning Proposal.

Council's options are:

1. Resolve to support the application in its original form and prepare a Planning Proposal accordingly. Matters can be more fully investigated and resolved with future specialist studies as determined by the Gateway process.
2. Resolve that a Planning Proposal be prepared in a form different to the application (and as described in Section 2.13 of this report). Matters can be more fully investigated and resolved with future specialist studies as determined by the Gateway process.
3. Resolve not to support a Planning Proposal for this site.

Option 1 is the recommendation of this report.

A Plan for Growing Sydney

A Plan for Growing Sydney was introduced in December, 2014 and is intended to guide strategic land use planning decisions for Sydney over the next 20 years. The plan identifies population growth targets and includes strategies for the balancing of housing growth with protecting the natural environment and creating liveable cities. The Plan comprises 4 key goals which consist of key directions and actions to assist the implementation of the plan.

The Planning Proposal would not impact on the population targets in the plan. Goal 4 in the plan which is to achieve *a sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources* is particularly relevant to this Planning Proposal. The Planning Proposal would achieve this goal by enabling appropriate controls to apply to those parts of the Shire which are of environmental or aesthetic significance, without restricting the ability for future growth in more suitable areas.

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Draft South West Sub Regional Strategy 2031

The Planning Proposal may reduce some future development potential in the E4 zone. However, the Planning Proposal intends to correct errors in the existing LEP maps to control density in these zones. The Planning Proposal would not impact on the ability of other, more suitable areas of the Shire to allow for future development that would contribute to the population targets identified in the Strategy.

Draft Metropolitan Strategy for Sydney 2036

The Planning Proposal would not impact on population targets and other measures outlined for the South West Growth Centre identified in the plan.

Section 117 Ministerial Directions

Ministerial Direction 2.1 - Environmental Protection Zones

The following criteria apply when considering a Planning Proposal in an environmental protection zone:

(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

Comment: The density control of 4 hectares was originally applied to all environmental zoned land with the aim of protecting and conserving environmentally sensitive areas. The correction of the original holdings maps to include all land not currently identified on the original holdings maps would be consistent with these criteria.

(5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".

Comment: The Planning Proposal would not reduce the development standards as they would ensure that the prescribed density control applies to E4 zoned land at Razorback and Menangle. This density control currently doesn't apply to these lands due to mapping errors.

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State Environmental Planning Policies

The proposal would not be contrary to any SEPP which applies to the land.

Draft Amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) (Coal Seam Gas Exclusion Zones) 2013

Not applicable.

Wollondilly Growth Management Strategy

Wollondilly Growth Management Strategy (GMS) was adopted by Council in February 2011 and sets directions for accommodating growth in the Shire for the next 25 years. All planning proposals which are submitted to Council are required to be assessed against the Key Policy Directions within the GMS to determine whether they should or should not proceed.

The following table sets out the planning proposal's compliance with relevant Key Policy Directions within the GMS:

Key Policy Direction	Comment
General Policies	
P1 All land use proposals need to be consistent with the key Policy Directions and Assessment Criteria contained within the GMS in order to be supported by Council.	This proposal meets all the relevant Key Policy Directions and Assessment Criteria contained within the GMS.
P2 All land use proposals need to be compatible with the concept and vision of "Rural Living" (defined in Chapter 2 of the GMS).	The proposal is consistent with the concept and vision of rural living identified in the GMS.
P3 All Council decisions on land use proposals shall consider the outcomes of community engagement.	The proposal falls within low impact proposal and preliminary consultation is not required. Further consultation may be required if imposed by the conditions of the gateway determination.
P4 The personal financial circumstances of landowners are not relevant planning considerations for Council in making decisions on land use proposals.	The purpose of the Planning Proposal is to correct mapping errors contained in WLEP 2011 and financial circumstances of landowners have not been considered.

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Key Policy Direction	Comment
P5 Council is committed to the principle of appropriate growth for each of our towns and villages. Each of our settlements has differing characteristics and differing capacities to accommodate different levels and types of growth (due to locational attributes, infrastructure limitations, geophysical constraints, market forces etc.).	The density controls were originally applied to E4 zones due to the sensitive environment and it is considered that including lots on the original holdings maps would enable development that is more in keeping with the character of the area by enabling appropriate density provisions to apply.
Housing Policies	
P6 Council will plan for adequate housing to accommodate the Shire's natural growth forecast.	The inclusion of E4 zoned land in Razorback and part of Menangle on the original holdings maps may reduce potential lots that could be excised from existing holdings, however, the areas identified for potential future growth would not be compromised.
P8 Council will support the delivery of a mix of housing types to assist housing diversity and affordability so that Wollondilly can better accommodate the housing needs of its different community members and household types.	The Planning Proposal would reduce some current subdivision potential in the areas of Razorback and Menangle however, it would only be establishing the dwelling densities originally intended in previous studies for the E4 zoned land and to correct mapping errors. It is anticipated that these areas would still cater for residential development in a rural environment and be capable of catering for a variety of housing types within the area.
P9 Dwelling densities, where possible and environmentally acceptable, should be higher in proximity to centres and lower on the edges of towns (on the "rural fringe").	The amendment of the original holdings maps would restore the dwelling densities originally intended for these areas and dwelling densities would remain higher closer to the townships.

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Key Policy Direction	Comment
P10 Council will focus on the majority of new housing being located within or immediately adjacent to its existing towns and villages.	Not applicable.
Macarthur South Policies	
Key Policy Directions P11, P12, P13 and P14 are not applicable to this planning proposal. The subject land is not with the Macarthur South area.	Not applicable.
Employment Policies	
P15 Council will plan for new employment lands and other employment generating initiatives in order to deliver positive local and regional employment outcomes.	Not applicable.
P16 Council will plan for different types of employment lands to be in different locations in recognition of the need to create employment opportunities in different sectors of the economy in appropriate areas.	Not applicable.
Integrating Growth and Infrastructure	
P17 Council will not support residential and employment lands growth unless increased infrastructure and servicing demands can be clearly demonstrated as being able to be delivered in a timely manner without imposing unsustainable burdens on Council or the Shire's existing and future community.	Not applicable.

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Key Policy Direction	Comment
P18 Council will encourage sustainable growth which supports our existing towns and villages, and makes the provision of services and infrastructure more efficient and viable – this means a greater emphasis on concentrating new housing in and around our existing population centres.	The Planning Proposal would not impact on the ability of growth to occur around surrounding towns and villages.
P19 Dispersed population growth will be discouraged in favour of growth in, or adjacent to, existing population centres.	The proposal would not discourage growth closer to the towns and would ensure an appropriate density of development in other areas.
P20 The focus for population growth will be in two key growth centres, being the Picton/Thirlmere/Tahmoor Area (PTT) area and the Bargo Area. Appropriate smaller growth opportunities are identified for other towns.	The Planning Proposal is not inconsistent with this policy direction.
Rural and Resource Lands	
P21 Council acknowledges and seeks to protect the special economic, environmental and cultural values of the Shire's lands which comprise waterways, drinking water catchments, biodiversity, mineral resources, agricultural lands, aboriginal heritage and European rural landscapes.	The Review of Rural Lands Report acknowledges that E4 zoned land is typically within a sensitive environment. The inclusion of land at Razorback within the original holdings maps would ensure that an appropriate density of development is achieved in these areas and accounts for the constraints of the area.

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Key Policy Direction	Comment
P22 Council does not support incremental growth involving increased dwelling entitlements and/or rural lands fragmentation in dispersed rural areas. Council is however committed to maintaining where possible practicable, existing dwelling and subdivision entitlements in rural areas.	The Planning Proposal is consistent with this policy direction as it would ensure that all E4 zoned land occurs across the Shire is subject to the relevant density provisions of Clause 4.1B of WLEP 2011. This would avoid inappropriate fragmentation of rural lands in across the Shire.

Wollondilly Local Environmental Plan, 2011 (WLEP 2011)

It is considered that the Planning Proposal should take the form as detailed in the report and amend the original holdings map to include original holdings missed on the current map.

Wollondilly Local Environmental Plan, 2011 (WLEP, 2011)

The proposed amendments to WLEP 2011 are described below:

Amend the Original Holdings Maps so that they correctly identify all original holdings within the E4 Environmental Living Zone in the areas identified on the maps attached.

Wollondilly Development Control Plan, 2011 (WDCP, 2011)

No amendments are proposed to WDCP 2011.

Voluntary Planning Agreement

Not Applicable.

Public Hearing

Not applicable.

FINANCIAL IMPLICATIONS

This Planning Proposal is not anticipated to have any implications on Council's budget or forward estimates.

ATTACHMENTS:

1. Proposed amendments to Original Holdings Maps.

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RECOMMENDATION

1. That Council support the preparation of a Planning Proposal to make amendments to the Wollondilly Local Environmental Plan 2011 Original Holdings Maps within E4 zoned land across the Shire which are currently not included in error.
2. That the Planning Proposal be forwarded to the Minister for Planning and Environment for a Gateway Determination.
3. That Council request the Minister to grant Council delegation to make the amendments to Wollondilly Local Environmental Plan, 2011 in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979.

