

12.2 WENTWORTH LOCAL ENVIRONMENTAL PLAN 2011 - PLANNING PROPOSAL - EXTENSION TO 'GRANDFATHER/SUNSET' CLAUSE EXPIRY DATE

File Number: RPT/16/114

Responsible Officer: Ken Ross - Director, Health and Planning
 Responsible Division: Health and Planning
 Reporting Officer: Michele Bos - Strategic Development Officer

Delivery Program Objective: 2. Growth & Development
 Delivery Program Strategy: 2.1 Maximise the productive use of land

Summary

This report relates to the expiry of the 'Grandfather/Sunset' Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses of the Wentworth Local Environmental Plan 2011 and a previous report presented to Council, including the subsequent resolution, at Council's Ordinary Meeting held 16 December 2015.

Options

Based on the information contained in this report, the options available to address this matter are to:

- a) Resolve to submit a Planning Proposal to the Department of Planning & Environment for consideration of a Gateway Determination to extend the expiry date of 'Sunset/Grandfather' Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses of the Wentworth LEP 2011 from 16 December 2016 to 16 December 2017, or
- b) Resolve to submit a Planning Proposal to the Department of Planning & Environment for consideration of a Gateway Determination to remove 'Sunset/Grandfather' Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses of the Wentworth LEP 2011.

Recommendation

That Council:

1. Receives and notes the contents of the report, and
2. Resolves to submit the Planning Proposal to amend the Wentworth Local Environmental Plan 2011, by extending the expiry date of Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses from 16 December 2016 to 16 December 2017, to the Minister for the Department of Planning and Environment for consideration of a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979.

That a division be called in accordance with S375A of the Local Government Act.

Detailed Report

Purpose

The purpose of this report is to provide Council with further information to make an informed decision with respect to the attached planning proposals, following discussions with the Department of Planning & Environment.

The report also seeks a resolution from Council to submit a planning proposal to the Department of Planning and Environment for their consideration of a Gateway Determination to amend the Wentworth LEP 2011.

Refer to Attachment 1 Planning Proposal to Remove Sunset/Grandfather Clause.

Refer to Attachment 2 Planning Proposal Report to Extend Expiry of Sunset/Grandfather Clause.

Background

A report was tabled at Council's Ordinary Meeting held 16 December 2015 seeking approval to submit a Planning Proposal to remove the 'Grandfather/Sunset' Clause from the Wentworth Local Environmental Plan 2011.

The basis for the preparation of the planning proposal to remove Clause 4.2B(4) and associated items listed in Schedule 1 was to ensure that the provision did not expire, which would result in the permanent loss of dwelling entitlements on former rural lots that were created for the purpose of a dwelling and existing holdings. The proposal also included the removal of 'Sunset/Grandfather' Clause of Items 1-4 in Schedule 1 of Wentworth LEP 2011.

The second attached planning proposal has been prepared for Council's consideration following discussions with the Department of Planning & Environment (the Department) with respect to the planning proposal that was tabled for Council's consideration in December.

Matters under consideration

The Department has expressed concern that the removal of Clause 4.2B(4) may create unknown implications, in particular, the number of vacant former rural lots and existing holdings within the Shire. This may result in unplanned rural settlement, increasing the demand on Council services, such as roads, waste and water/sewer. Council also needs to have regard to the recent planning proposals that have rezoned an amount of rural residential land. The proposal may create an unknown number of dwelling entitlements in perpetuity and, as such, the potential impact should be further investigated.

Given these concerns, a second planning proposal has been prepared to extend Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses for an additional twelve months (expiring on 16 December 2017), while the rural strategy is completed. This will allow time for Council to investigate and properly consider the implications of the removal of Clause 4.2B(4).

The proposed extension of the sunset clause will allow for Council to finalise the draft Strategy, including a robust rural and residential component clearly identifying the current land supply (including the recent rezoning of land) and an estimate for future demand and preferred localities for rural residential development.

On the basis of the discussions with the Department and while Council waits for a response from the Office of Local Government to the request for a Pecuniary Interest Exemption for Councillor's, the extension of Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses for 12 months is recommended.

Until such time as an approval to the Pecuniary Interest Exemptions application is received, further investigations can be undertaken.

An alternate option for Council is to identify and map the vacant existing holdings and former rural lots in the Wentworth Shire, to acknowledge the dwelling entitlement. However, Council should be aware that this would take considerable time and resources to complete.

Options

Based on the information contained in this report, the options available to address this matter are to:

- Submit a Planning Proposal to the Department of Planning & Environment for consideration of a Gateway Determination to extend the expiry date of Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted

Uses of the Wentworth Local Environmental Plan 2011 from 16 December 2016 to 16 December 2017, or

- Submit a Planning Proposal to the Department of Planning & Environment for consideration of a Gateway Determination to remove 'Sunset/Grandfather' Clauses 4.2B(4) and 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses of the Wentworth LEP 2011.

Implications

The decision item has the following implications for Council:

- a) Council can ensure that the 'Grandfather/Sunset' Clause does not expire prior to the finalisation of the rural strategy, from which guidance and recommendations should be provided to Council as to the best way to manage the Clause. This assurance can be provided by submitting the planning proposal to extend the expiry date to the Department for their consideration of a Gateway Determination.
- b) Should Council proceed with the original option, to submit the planning proposal to remove the 'Grandfather/Sunset' clause, it is unsure how the Department will determine this request, given the discussions that have occurred. This may cause a delay to any amendment process, which elevates the risk of the clause expiring prior to any formal process being undertaken.

Conclusion

This report provides Council with the opportunity to ensure that the 'Sunset/Grandfather' Clause relating to dwelling permissibility for former rural lots and existing holdings, including those properties listed in Schedule 1 Additional Permitted Uses, are retained for an additional 12 months. This will allow for investigative work to be conducted to determine the impact of seeking approval to retain this provision in perpetuity and for the completion of the Rural Land Use and Rural Residential Strategy.

Attachments

1. Planning Proposal to Remove Sunset/Grandfather Clause.
2. Planning Proposal to Extend Expiry of Sunset/Grandfathers Clause.

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At 10:48am Councillor Bill Wheeldon left the Council Chambers as he declared a Pecuniary interest in this item.

At 10:49am Councillor Paul Cohrs left the Council Chambers as he declared a Pecuniary interest in this item.

Councillor Hederics stepped in to chair the meeting.

Officer Recommendation

That Council:

1. Receives and notes the contents of the report, and
2. Resolves to submit the Planning Proposal to amend the Wentworth Local Environmental Plan 2011, by extending the expiry date of Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses from 16 December 2016 to 16 December 2017, to the Minister for the Department of Planning and Environment for consideration of a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979.
3. That a division be called in accordance with S375A of the Local Government Act.

Council Resolution

That Council:

1. Receives and notes the contents of the report, and
2. Resolves to submit the Planning Proposal to amend the Wentworth Local Environmental Plan 2011, by extending the expiry date of Clause 4.2B(4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses from 16 December 2016 to 16 December 2017, to the Minister for the Department of Planning and Environment for consideration of a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979.

That a division be called in accordance with S375A of the Local Government Act.

Moved Councillor P Nunan, Seconded Councillor D McKinnon

CARRIED

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

For the Motion : Crs B Clarke, M Hederics, D McKinnon, P Nunan and I Whitfield.

Against the Motion: Nil.

Moved Councillor P Nunan, Seconded D McKinnon

CARRIED

At 10:53am Councillor Paul Cohrs returned to Council Chambers.

At 10:53am Councillor Bill Wheeldon returned to Council Chambers and resumed the chair.