

WENTWORTH LOCAL ENVIRONMENTAL PLAN 2011

PLANNING PROPOSAL REPORT

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 – S56 GATEWAY DETERMINATION

**Extension of Clause 4.2B (4) and Items 1(3), 2(4), 3(4)
and 4(4) of Schedule 1 Additional permitted uses**

February 2016

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1. INTRODUCTION

1.1 The Planning Proposal

Wentworth Shire Council is currently undertaking a Rural Land Use & Rural Residential Strategy (RLU&RRS) to review the current and future trends of agricultural/horticultural land within the shire area.

The strategy, not yet completed or adopted by Council, has raised a debated issue pertaining to Clause 4.2B Subclause (4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional permitted uses, commonly referred to as the 'Grandfather' or 'Sunset' Clause.

The 'Sunset' clause is due to expire on the fifth anniversary of the commencement of Wentworth Local Environmental Plan 2011 (WLEP 2011), effectively 16 December 2016. Once expired, the provision for the permissibility of a dwelling on an existing holding, former rural lot that is less than the minimum lot size and as listed in Schedule 1, will cease to exist.

It is not anticipated that the Rural Land Use & Rural Residential Strategy will be completed in time to address or act on any recommendation provided within the strategy by 16 December 2016, therefore there is certainty that prior to the completion of the project, the 'Sunset' clause will expire.

Therefore, this planning proposal seeks to extend the expiry date by one year to ensure the provision of this clause does not expire prior to the completion of the rural strategy.

2. OBJECTIVES OR INTENDED OUTCOMES

The objectives and intended outcomes of the planning proposal are to:

- To ensure the 'Sunset' Clause does not expire prior to the completion of the Rural Land Use and Rural Residential Strategy
- To allow for more time to investigate the implications of the expiry or removal of the 'Sunset' Clause and
- To amend Wentworth Local Environmental Plan 2011 Part 4 Clause 4.2B (4) and Items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional permitted uses by extending the expiry date by twelve months.

3. EXPLANATION OF THE PROVISIONS

Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones

Wentworth LEP 2011 allows the development of a dwelling house on rural or environmentally protected land subject to the following:

(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 (or equivalent) 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**, or

(e) **a former rural lot**.

(4) Land ceases to be an existing holding for the purposes of subclause (3) (d) or a former rural lot for the purposes of subclause (3) (e) if an application for development consent referred to in the relevant subclause is not made in relation to that land before the fifth anniversary of the commencement of [Wentworth Local Environmental Plan 2011](#).

(6) In this clause:

existing holding means land that:

(a) was a holding on 7 May 1993, and

(b) is a holding at the time the application for development consent referred to in subclause (3) is lodged,

whether or not there has been a change in the ownership of the holding since 7 May 1993, and includes any other land adjoining that land acquired by the owner since 7 May 1993.

former rural lot means a lot created for the purpose of a rural dwelling before 7 May 1993.

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

Schedule 1 Additional permitted uses

1 Use of certain land at Church Road, Creek Road, Delta Road and Silver City Highway, Curlwaa

(1) This clause applies to the following land at Curlwaa:

(a) Lot 19, DP 804043 at Church Road,

(b) Lots 3, 4 and 6, DP 729492 and Lots 15, 17 and 19, DP 804040 at Delta Road,

(c) Lot 3, DP 804041 at Creek Road,

(d) Lot 192, DP 822094 and Lots 8, 10, 18 and 19, DP 729494 at Silver City Highway.

(2) Development for the purpose of a dwelling house is permitted with consent on each lot.

(3) Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.

2 Use of certain land at Manly Road, Curlwaa

- (1) This clause applies to Lot 8, DP 807828, Manly Road, Curlwaa.
- (2) Development for the purpose of subdivision resulting in lots with a minimum area of 1,000m² is permitted with consent.
- (3) A dwelling house is permitted with consent on each lot created from the subdivision.
- (4) Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.

3 Use of certain land at Silver City Highway, Curlwaa

- (1) This clause applies to Lot 5, DP 807831, Silver City Highway, Curlwaa.
- (2) Development for the purpose of subdivision resulting in lots with a minimum area of 2,000m² is permitted with consent.
- (3) A dwelling house is permitted with consent on each lot created from the subdivision.
- (4) Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.

4 Use of certain land at Silver City Highway, Mourquong

- (1) This clause applies to Lot 1, DP 1040128 and the part of Lot 2, DP 1040128 that was part of former Lot 1043, DP 39753, being Silver City Highway, Mourquong.
- (2) Development for the purpose of subdivision resulting in lots with a minimum area of 6,000m² is permitted with consent.
- (3) A dwelling house is permitted with consent on each lot created from the subdivision.
- (4) Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.

5 Use of land marked “Community facilities” in Zone SP1 Special Activities

- (1) This clause applies to land within Zone SP1 Special Activities and marked “Community facilities” on the [Land Zoning Map](#).
- (2) Development for the purposes of dwelling houses or educational establishments is permitted with consent.

This planning proposal seeks to amend Clause 4.2B (4) as per the following:

*(4) Land ceases to be an existing holding for the purposes of subclause (3) (d) or a former rural lot for the purposes of subclause (3) (e) if an application for development consent referred to in the relevant subclause is not made in relation to that land before the **sixth** anniversary of the commencement of [Wentworth Local Environmental Plan 2011](#).*

This planning proposal seeks to amend Schedule 1 Additional permitted uses as per the following:

1 Use of certain land at Church Road, Creek Road, Delta Road and Silver City Highway, Curlwaa

- (1) This clause applies to the following land at Curlwaa:
 - (a) Lot 19, DP 804043 at Church Road,
 - (b) Lots 3, 4 and 6, DP 729492 and Lots 15, 17 and 19, DP 804040 at Delta Road,
 - (c) Lot 3, DP 804041 at Creek Road,
 - (d) Lot 192, DP 822094 and Lots 8, 10, 18 and 19, DP 729494 at Silver City Highway.
- (2) Development for the purpose of a dwelling house is permitted with consent on each lot.
- (3) Development consent under subclause (2) must not be granted after **six** years from the commencement of this Plan.

2 Use of certain land at Manly Road, Curlwaa

- (1) This clause applies to Lot 8, DP 807828, Manly Road, Curlwaa.
- (2) Development for the purpose of subdivision resulting in lots with a minimum area of 1,000m² is permitted with consent.
- (3) A dwelling house is permitted with consent on each lot created from the subdivision.
- (4) Development consent under subclause (2) must not be granted after **six** years from the commencement of this Plan.

3 Use of certain land at Silver City Highway, Curlwaa

- (1) This clause applies to Lot 5, DP 807831, Silver City Highway, Curlwaa.
- (2) Development for the purpose of subdivision resulting in lots with a minimum area of 2,000m² is permitted with consent.
- (3) A dwelling house is permitted with consent on each lot created from the subdivision.
- (4) Development consent under subclause (2) must not be granted after **six** years from the commencement of this Plan.

4 Use of certain land at Silver City Highway, Mourquong

- (1) This clause applies to Lot 1, DP 1040128 and the part of Lot 2, DP 1040128 that was part of former Lot 1043, DP 39753, being Silver City Highway, Mourquong.
- (2) Development for the purpose of subdivision resulting in lots with a minimum area of 6,000m² is permitted with consent.
- (3) A dwelling house is permitted with consent on each lot created from the subdivision.

(4) Development consent under subclause (2) must not be granted after six years from the commencement of this Plan.

4. JUSTIFICATION

4.1 Need for the Planning Proposal

Wentworth Shire Council has expressed an explicit desire to reinstate the dwelling entitlements previously provided in perpetuity by the Wentworth LEP 1993. The provisions of the WLEP 1993 permitted the erection of a rural dwelling on an allotment that was created for the purposes of a dwelling and listed dwelling entitlements in Schedule 1. There was no expiry applied to these provisions.

At the time of conversion from the WLEP 1993 to the WLEP 2011 these provisions were included, however, a 'Sunset' clause was added. There is no known evidence of justification for the inclusion of the 'Sunset' clause in the WLEP 2011.

The current rural strategy project raises equity concerns around the issue of the 'Sunset' clause and the expiry of such clause. However, the strategy is still under review, in draft format and not a Council approved document. It should also be noted that the draft report also requires further investigation into the implications of either allowing the expiry to proceed or removing the 'Sunset' clause altogether. Based on the findings of the rural strategy, it is expected that the strategy will guide future decisions made by Council in respect to future rural development.

However, the progress of the rural strategy has been delayed due to an application to the Office of Local Government seeking Pecuniary Interest Exemptions for Councillors.

Therefore the amendment is required to ensure that the expiry of the clause is extended until such time as the completion of the rural strategy that will provide decision guidance for Wentworth Shire Council with respect to the 'Sunset' clause.

It is considered that the planning proposal is the most appropriate means of achieving the intended objectives and outcomes of the planning proposal.

4.2 Strategic Planning Framework

The planning proposal is consistent with the aims and objectives of current strategic documents that are relevant to Wentworth Shire Council and its community.

4.2.1 Community Strategic Plan 2013-2023

The following strategies under *Vision 1 We want to be a vibrant, growing and thriving community* of the plan are relevant to this planning proposal:

- 1.3 Increase economic development and growth by reducing red tape that stifles development opportunities

- 2.1 Improve population growth and residential expansion by supporting population growth, resident attraction and retention
- 4.3 Strengthen the community by promoting harmony, unity, fairness and equity for all citizens.

4.2.2 Draft Rural Land Use & Rural Residential Strategy

The draft RLU&RRS identifies that:-

*The deletion of the grandfather clause is **supported** through:*

- *Consistency in landowner equity*
- *Growth of the local economy through the entitlement to construct a dwelling in rural areas that are less than the minimum lot size*
- *The former rural lots are generally located in areas with or close to river frontage and access to water.*

Referenced from Page 93.

However, it should be noted that the rural strategy project has not been completed or adopted by Council and is still a working draft document. Also, further investigation is required into the potential impact of removing the 'Sunset' clause permanently from the WLEP 2011.

Environmental, Social & Economic Impact

4.3.1 Environmental Impact

No adverse environmental impact would result from the planning proposal.

4.3.2 Social Impact

Any social impact would be positive as it allows rural landholders the continuation of their existing dwelling entitlement for a further twelve months and until such time as the rural strategy is completed providing a permanent and justified, recommendation for action.

4.3.3 Economic Impact

The planning proposal will have minimal impact on the economy of the Shire.

4.3.4 State and Commonwealth Interests

There are no known inconsistencies or issues of State or Federal significance.

5 COMMUNITY CONSULTATION

It is recommended that the planning proposal be exhibited for a period of two weeks. The exhibition would include advertising in a local newspaper, on Council's website and copies available for inspection at libraries and the Shire Office.

Community consultation will be complete when Wentworth Shire Council has appropriately and effectively considered all submissions received relative to the planning proposal.

6 PROPOSED PROJECT TIMELINE

This project timeline provides a mechanism to monitor the progress of the planning proposal:

Gateway Determination	February 2016
Community Consultation, incl State Agencies	March 2016
Consideration of submissions	April 2016
Consideration of a proposal post exhibition	May 2016
RPA Adoption to make Plan	June 2016
Submission to DP&E & PCO to finalise LEP	July 2016
Forward to Department for notification	August 2016

7 CONCLUSION

The extension of the 'Sunset' clause, of the Wentworth Local Environmental Plan 2011, ensures that existing dwelling entitlements for former rural lots and existing holdings in certain rural and environmental protection zones are retained for an additional twelve months, ie 16 December 2017.

This will allow for the completion of the Rural Land Use & Rural Residential Strategy and further investigation of any potential impacts of either permanently removing the clause or allowing the expiry of this clause to occur.

