



Greater Hume Shire

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Planning Proposal

Amendment to Greater Hume Local Environmental Plan 2012

- Land use table to the RU1 & RU4 zones
- Subdivision provisions in the RU1 zone
- Flood planning clause

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INTRODUCTION

This is a Planning Proposal seeking minor amendments to the *Greater Hume Local Environmental Plan 2012* (GHLEP) to:

- amend the land use tables to the RU1 Primary Production Zone and RU4 Primary Production Small Lots Zone to make ‘function rooms’ permissible with consent;
- provide an additional Clause 4.2A to permit subdivision for lots less than the minimum size in the RU1 for all activities permissible in the zone (other than a dwelling house); and
- introduce a flood planning clause.

The Planning Proposal has been structured and prepared in accordance with the Department of Planning and Infrastructure’s (DPI) *A guide to preparing planning proposals* (“the Guide”).

1. INTENDED OUTCOMES

The intended outcome of this planning proposal is to effect minor changes to the GHLEP in response to development issues and new information obtained since its commencement in October 2012.

2. EXPLANATION OF THE PROVISIONS

Changes to land use table for the RU1 zone

For each zone within the GHLEP there is a land use table that determines what types of development activity is permissible without consent, with consent or is prohibited.

It is not uncommon following the introduction and use of a new LEP for minor errors to be discovered in terms of the location of certain development types within the land use table. This is particularly the case for zones such as the RU1 and RU4 where if the development activity is not nominated within Section 2 or 3, it defaults to Section 4 which is prohibition.

Council officers have become aware of an activity that should be permissible with consent in the RU1 and RU4 zones, but is currently prohibited by default. ‘Function centres’ are an activity considered by Council to be compatible with rural land use and consequently should be permissible in the rural zones.

Consequently it is proposed to include ‘function centres’ in Section 3 of the land use tables to the RU1 and RU4 zones.

Clause 4.2 Rural subdivision

Clause 4.2 of the GHLEP addresses subdivision within the rural zones. The minimum lot size for subdivision is shown on the Lot Size Map of the GHLEP and is generally 100 hectares within the rural zones. Subclause (3) allows for lots less than the minimum size only if the purpose of the subdivision is for primary production. This clause was part of the Standard Instrument by which all new LEP’s were to be prepared and consequently Council had no control over it during the preparation of the GHLEP.

It is now apparent that this restriction on creating lots less than the minimum is too narrow in its interpretation. DPI have agreed that provision can be made for lots less than the minimum for any purpose that is permissible in the particular rural zone. For the RU1 zone that would include all those development activities nominated in Section 3 of the land use table (see above) with the exception of dwellings that will continue to be excluded by other subclauses of clause 4.2. Making this change will reinstate provisions under the previous LEP's within the Shire that allowed for subdivision under these circumstances.

The proposed additional clause is as follows:

4.2A Exceptions to minimum lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses or dual occupancies.
- (2) This clause applies to land in Zone RU1 Primary Production.
- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under the existing development consent for the land.
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not increase rural land use conflict in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Flood planning clause

At the time of preparing the new GHLEP there was little to no data available upon which to address flooding. As the GHLEP was close to being finalised, parts of the Shire experienced unprecedented flooding that resulted in DPI and other government agencies directing that elements of the new GHLEP (particularly some of the proposed rezonings) should be deferred pending further flood investigation.

This investigative work is now completed and Council is in a position to reflect the findings in the GHLEP. This is to be done via the introduction of a flood planning clause, the contents of which are as follows:

6.8 Flood planning

- (1) The objectives of this clause are as follows:
 - (a) to minimise the flood risk to life and property associated with the use of land,
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.
- (2) This clause applies to:
 - (a) land that is shown as "Flood planning area" on the Flood Planning Map, and
 - (b) other land at or below the flood planning level.
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
 - (a) is compatible with the flood hazard of the land, and

- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
 - (c) incorporates appropriate measures to manage risk to life from flood, and
 - (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (4) A word or expression used in this clause has the same meaning as it has in the NSW Government's Floodplain Development Manual published in 2005, unless it is otherwise defined in this clause.
- (5) In this clause:
- Flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.
- Flood Planning Map** means the Greater Hume Local Environmental Plan 2012 Flood Planning Map.

The introduction of this clause will provide greater certainty for both applicants and Council in determining the suitability of land for development where flooding is an issue. Council will utilise the findings of the Culcairn, Henty, Holbrook Flood Studies (June 2013) and the Albury City Council and Greater Hume Shire Council, Albury City to Greater Hume Murray River Flood Study 2012 in determining the Flood Planning Level. It is not intended as part of this Planning Proposal to introduce Flood Planning Maps to the GHLEP.

3. JUSTIFICATION

This section of the Planning Proposal sets out the justification for the intended outcomes and provisions, and the process for their implementation. The questions to which responses have been provided are taken from the Guide.

3.1. Need for the Planning Proposal

Is the Planning Proposal a result of any strategic study or report?

The proposed inclusion of 'function centres' as permissible in the RU1 and RU4 land use table and the subdivision provisions are not the result of any study or report. They are a response to issues that have come to light during the first 12 months of administering the GHLEP.

The proposed flooding clause is in response to a flood study undertaken by Council following major flooding in the Shire early in 2012. This study has provided definitive flood data for the first time in some of the urban areas of the Shire.

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

The intended outcome of providing the opportunity for 'function centres' to occur in the RU1 and/or RU4 zones as well as subdivision for lots less than the minimum size to occur in the RU1 zone, can only be achieved through

changes to the GHLEP. Without the proposed changes, the development and subdivision scenarios in rural areas that have instigated the Planning Proposal will be unable to be considered by Council as the consent authority.

There are several successful function centres currently operating within rural areas of the Shire. None of these experience land use conflicts with adjoining agricultural activities. A rural setting for a function centre provides a legitimate point of difference to urban based operations mainly because of the amenity of an undeveloped environment. It is also likely that new function centres will locate in parts of the rural zones with a high level of landscape amenity (e.g. elevated areas, remnant vegetation, riverine areas, etc.) that are less likely to be involved in agriculture.

Council could continue to administer the GHLEP without a flooding clause and consider development proposals within flood prone land on their merits in accordance with the general assessment criteria in Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act). However it is considered judicious to include a specific flooding clause in the GHLEP now that some definitive flooding data is available. The clause will provide greater certainty for landowners and Council by being able to identify flood prone land at the outset rather than have to deal with the issue at the time of development.

Is there a net community benefit?

There is an overall net community benefit to be gained from the Planning Proposal through greater flexibility for development in the rural zones and more informed planning for flood prone land.

3.2. Relationship to strategic planning framework

Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including exhibited draft strategies)?

There is no adopted regional strategy applicable to the Planning Proposal.

However the *draft Murray Regional Strategy* was prepared by the Department of Planning (DoP) in October 2009 and despite it not having been finalised, it remains a matter to be considered in this planning proposal. It is noted that no progress has been made on this draft Strategy since its exhibition more than three years ago. There is no information on DPI's website as to the current status of the draft Strategy.

The main aims of the draft Strategy are not relevant to the subject matter of the proposal.

Is the Planning Proposal consistent with the local Council's community strategic plan or other local strategic plan?

The proposed changes to the GHLEP are in essence minor technical corrections and as such they are of little relevance to the context of Council's Community Strategic Plan (*Greater Hume 2030*).

The *2007-2030 Strategic Land Use Plan* (SLUP) for the Shire was undertaken as a precursor to the 2012 GHLEP. In establishing the context

for the SLUP flooding was identified as a key, but not a major, issue for the Shire. It should be noted that the SLUP was completed prior to the record flooding that occurred in early 2012. The strategic response in the SLUP to the flooding issue was nominated as *“review flood data and policies”*. The undertaking of the flood study leading to this Planning Proposal is taken as a direct response to that declared action.

The other proposed changes are minor and will not lead to any inconsistency with the strategic planning directions expressed in the SLUP.

Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The following table provides an assessment of the Planning Proposal against State Environmental Planning Policies (SEPP's).

Table 4.1 - Consistency with State Environmental Planning Policies

No.	Title	Applicable to Greater Hume Shire?	Consideration
1	Development Standards	No	
4	Development without consent & Miscellaneous Exempt & Complying Development	No	
6	Number of Storeys in a Building	Yes	The Planning Proposal does not derogate from the aims and method for determining the number of storeys in a building as provided in the SEPP.
14	Coastal Wetlands	No	
15	Rural Landsharing Communities	No	
19	Bushland in Urban Areas	No	
21	Caravan Parks	Yes	The Planning Proposal does not derogate from the aims, development consent requirements for caravan parks relating to, the development consent requirements, the number of sites being used for long term or short term residents, the permissibility of moveable dwellings where caravan parks or camping grounds are also permitted, and subdivision of caravan parks for lease purposes as provided in the SEPP.
22	Shops & Commercial Premises	Yes	The Planning Proposal does not derogate from the aims, development consent requirements relating to a change of use from a lawful commercial premises to another or from a lawful shop to another where that change of use is prohibited under another environmental planning instrument as provided in the SEPP.
26	Littoral Rainforests	No	
29	Western Sydney Recreation Area	No	
30	Intensive Agriculture	Yes.	The Planning Proposal does not derogate from the aims, development consent, information and public notification requirements for cattle feedlots or piggeries as provided in the SEPP.
32	Urban Consolidation (Redevelopment of Urban Land)	Yes	Council considers that the Planning Proposal is consistent with aims and objectives of the SEPP.
33	Hazardous & Offensive Development	Yes	The Planning Proposal does not derogate from the aims, definitions of hazardous and offensive industries, development consent, assessment, information and notification requirements as provided in the SEPP.

No.	Title	Applicable to Greater Hume Shire?	Consideration
36	Manufactured Home Estate	Yes	The Planning Proposal does not derogate from the aims, strategies, development consent, assessment and location provisions as provided in the SEPP.
39	Spit Island Bird Habitat	No	
41	Casino Entertainment Complex	No	
44	Koala Habitat Protection	Yes, part of Greater Hume LGA is included in Schedule 1 (State Forest are excluded)	The former Hume Shire is listed in Schedule 1 of the SEPP. Neither the former Culcairn or Holbrook LGA's are listed. The Planning Proposal does not derogate from the aims, development consent requirements and operations of plans of management relating to land of potential koala habitat and/ or core koala habitat as provided in the SEPP.
47	Moore Park Showground	No	
50	Canal Estate Development	Yes	The Planning Proposal does not derogate from the aims and canal estate development prohibitions as provided in the SEPP.
52	Farm Dams and Other Works in Land and Water Management Plan Areas	No	
53	Metropolitan Residential Development	No	
55	Remediation of Land	Yes	The Planning Proposal does not derogate from the aims, definitions, preliminary investigation, development consent, assessment, notification and remediation requirements as provided in the SEPP.
59	Central Western Sydney Regional Open Space and Residential	No	
60	Exempt & Complying Development	No	
62	Sustainable Aquaculture	Yes	The Planning Proposal does not derogate from the aims, development consent, site location, operational and/or minimum performance requirements of aquaculture development as provided in the SEPP.
64	Advertising & Signage	Yes	The Planning Proposal does not derogate from the aims, development consent requirements and assessment criteria for advertising and signage as provided in the SEPP.
65	Design Quality of Residential Flat Development	Yes	The Planning Proposal does not derogate from the aims, development consent, assessment, information and notification requirements as provided in the SEPP.

No.	Title	Applicable to Greater Hume Shire?	Consideration
70	Affordable Housing (Revised Schemes)	No	
71	Coastal Protection	No	
	Affordable Rental Housing 2009	Yes	The Planning Proposal does not derogate from the aims and functions of this SEPP as changes do not discriminate against the provision of affordable housing (and consequently affordable rental housing). The GHLEP cannot influence the provision of rental housing.
	Building Sustainability Index (BASIX) 2004	Yes	The Planning Proposal does not derogate from the aims and development consent requirements relating to BASIX affected building(s) that seeks to reduce water consumption, greenhouse gas emissions and improve thermal performance as provided in the SEPP.
	Exempt & Complying Development Codes 2008	Yes	The Planning Proposal does not derogate from the aims and functions of this SEPP with respect to exempt and complying development provisions.
	Housing for Seniors & People with a Disability 2004	Yes	The Planning Proposal does not derogate from the aims, development consent, location, design, development standards, service, assessment, and information requirements as provided in the SEPP.
	Infrastructure 2007	Yes	The Planning Proposal does not derogate from the aims, permissibility, development consent, assessment and consultation requirements, capacity to undertake additional uses, adjacent, exempt and complying development provisions as provided in the SEPP.
	Kosciuszko National Park – Alpine Resorts 2007	No	
	Major Development 2005	Yes	The Planning Proposal does not derogate from the aims, major project identification, state significant site identification and development assessment and approval process applying under Part 3A of the EP&A Act to major projects as provided in the SEPP.
	Mining, Petroleum Production & Extractive Industries 2007	Yes	The Planning Proposal does not derogate from the aims, permissibility, development assessment requirements relating to mining, petroleum production and extractive industries as provided in the SEPP.
	Murray Regional Environmental Plan No. 2 – Riverine Land	Yes (to a small part of the Shire west of Albury)	The Murray REP is a deemed SEPP. The aims of the REP are to conserve and enhance the riverine environment of the River Murray for all users. This environment includes all waterways, river beds and banks, associated tributaries, wetlands and water bodies. The Planning Proposal does not derogate from the aims, objectives, development consent, general and specific planning principles, consultation and building setback requirements as provided in the REP.

No.	Title	Applicable to Greater Hume Shire?	Consideration
	Rural Lands 2008	Yes	The proposed changes to permissible activities in the rural zones and subdivision may result in a minute loss of rural land across the Shire through development for non-agricultural purposes (e.g. function centres and smaller lots). However, Council is of the view that overall the Planning Proposal is not deemed to be inconsistent with the Rural Planning and Subdivision Principles listed in this SEPP.
	Sydney Region Growth Centres 2006	No	
	Temporary Structures 2007	Yes	The Planning Proposal does not derogate from the aims, permissibility, development consent requirements, exempt and complying development provisions relating to temporary structures and places of public entertainment as provided in the SEPP.
	Western Sydney Employment Area 2009	No	

Is the Planning Proposal consistent with applicable Ministerial Directions (S.117 Directions)?

Section 117 of the EP&A Act allows the Minister for Planning to give directions to Councils regarding the principles, aims, objectives or policies to be achieved or given effect to in the preparation of LEP's. A Planning Proposal needs to be consistent with the requirements of the Direction but can be inconsistent if justified using the criteria stipulated such as a Local Environmental Study or the proposal is of "*minor significance*". An assessment of the S117 Directions is undertaken in Table 4.2 below.

Table 4.2 - Consistency with Section 117 Directions

No.	Title	Applicable to Planning Proposal?	Consistency
1.	Employment and Resources		
1.1	Business & Industrial Zones	No	
1.2	Rural Zones	Yes because changes are proposed to the provisions relating to subdivision of rural land.	The Planning Proposal is arguably inconsistent with this Direction because it will increase the “ <i>permissible density</i> ” of rural land by potentially allowing the subdivision of land to lots less than minimum lot size for any permissible purpose. The inconsistency is considered justified on the basis it “ <i>is of minor significance</i> ”.
1.3	Mining, Petroleum Production & Extractive Industries	No	
1.4	Oyster Aquaculture	No	
1.5	Rural Lands	Yes because changes are proposed that indirectly change the minimum lot size for subdivision.	Having regard for the minor and indirect consequences of the proposed changes to the RU1 and RU4 land use tables as well as subdivision for the purposes of a permitted use, an assessment against the Rural Planning Principles and Rural Subdivision Principles in the Rural Lands SEPP is not considered necessary. Suffice to say that the proposed changes will not have any significant detrimental impact on the use of rural land for agriculture. The changes could potentially satisfy other principles by providing for investment in rural industry and generating employment to the benefit of rural communities. On balance therefore, the proposal is considered consistent with this Direction.
2.	Environment and Heritage		
2.1	Environmental Protection Zones	No	
2.2	Coastal Protection	No	
2.3	Heritage Conservation	No	
2.4	Recreation Vehicle Areas	No	

No.	Title	Applicable to Planning Proposal?	Consistency
3. Housing Infrastructure and Urban Development			
3.1	Residential Zones	No	
3.2	Caravan Parks & Manufactured Home Estates	No	
3.3	Home Occupations	No	
3.4	Integrating Land Use and Transport	No	
3.5	Development Near Licensed Aerodromes	No	
3.6	Shooting Ranges	No	
4. Hazard and Risk			
4.1	Acid Sulphate Soils	No	
4.2	Mine Subsidence & Unstable Land	No	
4.3	Flood Prone Land	Yes because changes are proposed to provisions relating to flood prone land.	The Planning Proposal is consistent with this Direction because it is not advocating the 'up-zoning' of flood prone land or introducing provisions that increase development opportunities on flood prone land. The introduction of a flood clause in the GHLEP will provide greater protection against inappropriate development on flood prone land and better align provisions relating to flooding with the requirements of the <i>Floodplain Development Manual 2005</i> .
4.4	Planning for Bushfire Protection	No	
1. Regional Planning			
5.1	Implementation of Regional Strategies	No	
5.2	Sydney Drinking Water Catchment	No	

No.	Title	Applicable to Planning Proposal?	Consistency
5.3	Farmland of State & Regional Significance on the NSW Far North Coast	No	
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5	Development in the Vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	
5.6	Sydney to Canberra Corridor	No	
5.7	Central Coast	No	
5.8	Second Sydney Airport: Badgerys Creek	No	
6.	Local Plan Making		
6.1	Approval and Referral Requirements	No	
6.2	Reserving Land for Public Purposes	No	
6.3	Site Specific Provisions	No	
7.	Metropolitan Planning		
7.1	Implementation of Metropolitan Strategy	No	

3.3. Environmental, Social & Economic Impact

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, as none of the current environmental protection mechanisms within the GHLEP will be affected by the proposal.

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

The proposal does not involve any changes of zoning or weakening of provisions and consequently there is unlikely to be any detrimental environmental effects. The introduction of a flood clause will assist in protecting the floodplain and as such is a positive environmental outcome.

How has the Planning Proposal adequately addressed any social and economic effects?

The minor changes to the land use tables of the RU1 and RU4 zones and easing of restrictions on circumstances in which lots less than the minimum can be created in the RU1 zone will have a positive social and economic effect within the rural communities where such opportunities might be taken up.

The flood clause will bring a greater focus on the assessment of development within the floodplain and this may have a detrimental effect through the loss of development opportunities and conflict with landowner expectation.

On balance, the social and economic impact of the proposal is considered positive.

3.4. State & Commonwealth interests

Is there adequate public infrastructure for the Planning Proposal?

This is not relevant within the context of what is proposed.

What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Having regard for the nature of the Planning Proposal, it is anticipated no public authority consultation will be required.

It is acknowledged that the Gateway determination may specify consultation with public authorities.

4 MAPS

No maps are proposed as part of the Planning Proposal.

Council will rely on the contents of completed flood studies to determine the Flood Planning Level for sites identified as being flood prone rather than introducing a Flood Planning Map to the GHLEP.

5 COMMUNITY CONSULTATION

The Planning Proposal will be subject to public exhibition as part of the Gateway process. The Gateway determination will specify the community consultation that must be undertaken on the planning proposal, if any. As such, the exact consultation requirements are not known at this stage.

This Planning Proposal is considered to be relatively minor and as such, the will be exhibited for a period of 28 days in accordance with the requirements of section 57 of the EP&A Act and the DPI's: *A guide to preparing local environmental plans* (April 2013).

At a minimum, the future consultation process is expected to be in accordance with the consultation requirements set out the Department's guide, being:

- no written notification to landowners as the proposal is of a general nature and not site specific;
- consultation with relevant Government Departments and agencies, service providers and other key stakeholders, as determined in the Gateway determination;
- public notices to be provided in local media, including in a local newspaper and on Councils' website;
- static displays of the Planning Proposal and supporting material in Council public buildings; and
- electronic copies of all documentation being made available to the community free of charge (preferably via downloads from Council's website).

At the conclusion of the public exhibition period Council staff will consider submissions made with respect to the Planning Proposal and prepare a report to Council.

It is considered unlikely that a Public Hearing will be required for the proposal although this can't be conformed until after the exhibition/notification process has been completed.

6 PROJECT TIMELINE

The project timeline for the planning proposal is as follows. There are many factors that can influence compliance with the timeframe including the cycle of Council meetings, consequences of agency consultation (if required) and outcomes from public exhibition. Consequently the timeframe should be regarded as indicative only.

Milestone	Date/timeframe
<i>Anticipated commencement date (date of Gateway determination)</i>	September 2013
<i>Anticipated timeframe for the completion of required studies</i>	2 months from Gateway determination
<i>Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)</i>	2 months from Gateway determination

<i>Commencement and completion dates for public exhibition period</i>	Commence 3 months from Gateway determination and complete 1 week after commencement
<i>Dates for public hearing (if required)</i>	Within 2 weeks of public exhibition completion
<i>Timeframe for consideration of submissions</i>	2 weeks following completion of exhibition
<i>Timeframe for the consideration of a proposal post exhibition</i>	1 month following completion of exhibition
<i>Anticipated date RPA will make the plan (if delegated)</i>	2 weeks following consideration of proposal
<i>Anticipated date RPA will forward to the department for notification (if delegated).</i>	1 month following consideration of proposal

CONCLUSION

The Planning Proposal has been instigated by circumstances arising from the administration of GHLEP following its commencement in October 2012. The three types of changes are of a minor nature with little to no impact on the environment. On balance, the proposal will have a net positive impact on the community of Greater Hume Shire. The proposal is generally satisfies the criteria against which Planning Proposals have to be considered.

In conclusion, the Planning Proposal should be supported.

