

Mr Laurie Mifsud
Acting General Manager
Hawkesbury City Council
PO Box 146
Windsor NSW 2756

16/07182

Attn: Philip Pleffer

Dear Mr Mifsud

Planning proposal to amend Hawkesbury Local Environmental Plan 2012

I am writing in response to your Council's submission dated 17 December 2015 requesting finalisation under section 73A of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend clause 4.1E – Exceptions to Minimum Subdivision Lot Sizes for Grose Wold.

The Department's regional team's view about whether the amendment could proceed under section 73A, in particular the application of 73A(1)(b) and (c), is provided below:

- The proposed clause 4.1E cannot be categorised as falling under section 73A(1)(b) of the Act. *Hawkesbury Local Environmental Plan 2012* (and therefore clause 4.1E) commenced on 21 September 2012. The requested amendment is of a substantial nature rather than consequential or transitional. That is, the effect of the amendment is ongoing.
- The proposed clause 4.1E cannot be categorised as falling under section 73A(1)(c) of the Act. For (c) to apply, the Minister (or his delegate) must form the opinion that the proposed amendments to clause 4.1E would not have a significant adverse impact on the environment or adjoining land. Changing development standards for the minimum subdivision lot size is a matter that may have significant adverse impact. We have not been provided with any convincing argument contrary to this.
- The two court cases at the Land and Environment Court are evidence of the interest in this clause, and the possible effect any amendments will have on the adjoining landowners. It should therefore be the subject of public participation.
- These recommendations are supported by PS06-014 'Minor amendments to local environmental plans using section 73A'. The circular provides that 73A amendments should only occur where:
 - 1) there is no need for exhibition of the draft instrument (e.g. public exhibition has previously occurred and gazettal of the section 73A amendment will be sufficient notification); and
 - 2) the amendment will not have any material effect 'on-the-ground'.



For the above reasons, I recommend that Council resubmit the application under section 56 of the Act for Gateway consideration.

Should you have any queries in regard to this matter, I have arranged for Georgina Ballantine of the Department's regional office to assist you. Ms Ballantine can be contacted on (02) 9860 1568.

Yours sincerely

 27 June 2016
Stephen Murray
Acting Executive Director, Regions
Planning Services