



Section 73A EP&A Act submission

Part A. Council to complete

Subject:

Proposed amendment to Clause 4.1E of Hawkesbury Local Environmental Plan 2012

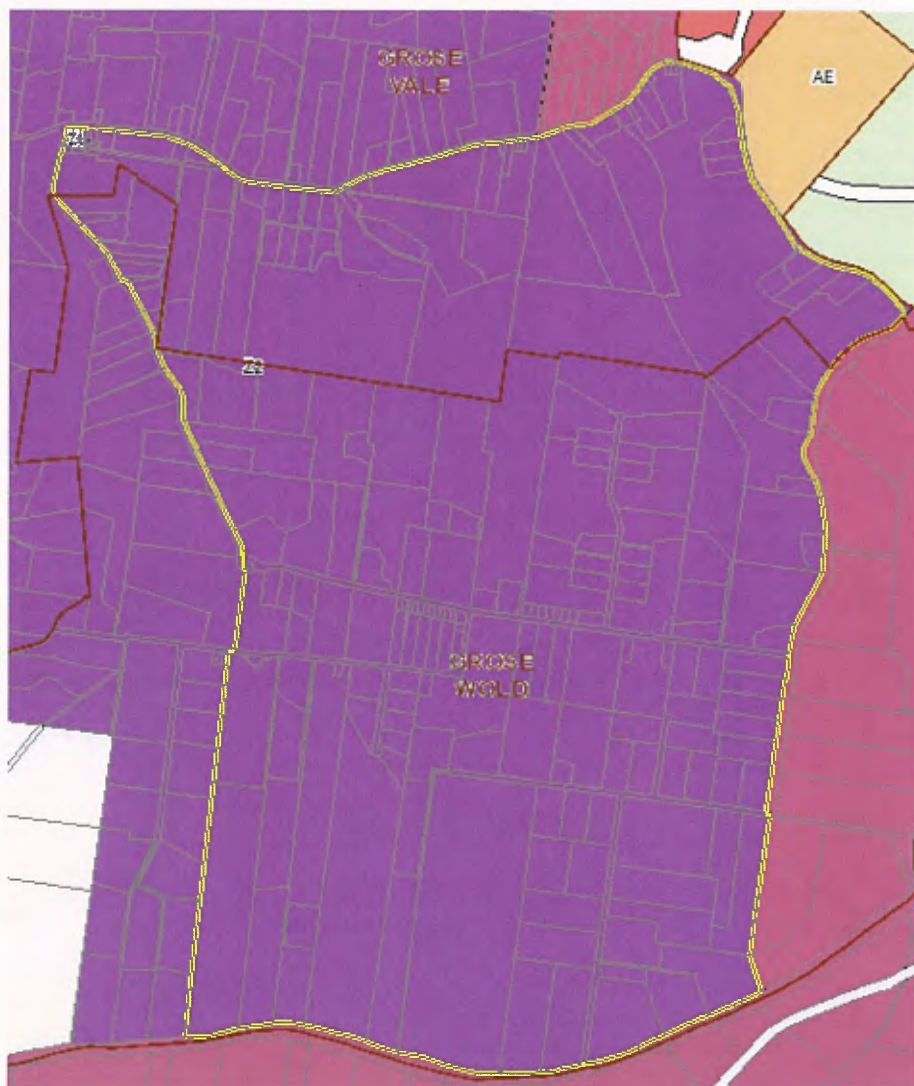
Report requesting the making of amending local environmental plan under section 73A of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

Background:

Hawkesbury City Council resolved on 8 December 2015 to request the Minister for Planning amend Clause 4.1E of Hawkesbury Local Environmental Plan 2012 under Section 73A of the EP&A Act 1979.

The draft amending plan and relevant Council report and resolution are attached.

This amendment applies to certain land at Grose Vale and Grose Wold as shown in 'Area B' and edged heavy yellow on the Lot Size Map. See image below.





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Why there is a need for the amendment:

Council has recently been involved in two Land and Environment Court (LEC) cases dealing with the wording of Clause 4.1E Exceptions to minimum subdivision lot size for Grose Wold and its relationship to Clause 4.1 Minimum subdivision lot size of Hawkesbury Local Environmental Plan 2012.

Clause 4.1 establishes the general minimum lot size provisions for a 'conventional' subdivision of land within the Hawkesbury local government area.

Clause 4.1E contains additional provisions relating to the subdivision of certain land within Grose Wold. In simple terms these provisions are based on the concept of 'lot averaging' whereby proposed lots may be less than the conventional minimum lot size provided certain ecologically significant vegetation is protected and the overall number of proposed lots is not greater than that which would be achieved by a conventional subdivision. Clause 4.1E is based on the former Clause 41AA of Hawkesbury Local Environmental Plan 1989 (LEP 1989) which was in operation from 2 June 2000 until the commencement of LEP 2012.

In both LEC cases Council lost due to the ambiguity in the wording of Clause 4.1E and its relationship with Clause 4.1. In summary in the first case, MB Investments Pty Ltd v Hawkesbury City Council, the LEC found that the qualitative provisions of Clause 4.1E overrode the quantitative provisions of Clause 4.1. Whereas in the second case, Ogg v Hawkesbury City Council, the LEC found that the quantitative provisions of Clause 4.1 overrode the qualitative provisions of Clause 4.1E.

The net effect of these findings is that land will be subdivided in a manner and produce a greater number of lots than was envisaged by the former Clause 41AA of LEP 1989.

A review of the preparation of LEP 2012 has found that the ambiguity in Clause 4.1E has arisen as a consequence of the former Clause 41AA of LEP 1989 being translated and re-drafted by DP&E's legal branch and/or NSW Parliamentary Counsel in the finalisation of LEP 2012.

What the amendment does:

The proposed amendment seeks to remove the ambiguities within the clause and ensure the long term protection of threatened species, populations and ecological communities and land in an environmental constraint area.

The proposed amendment is attached.

Why the amending plan is suitable to be made in accordance with section 73A:

It is requested that this proposed amendment be dealt with under Section 73A of the EP& Act 1979, in particular subclauses (1)(b) and/or (1)(c). That is consider this amendment as addressing matters that have arisen as a consequence of LEP 1989 transitioning to the principle instrument LEP 2012 and/or consider this proposed amendment as not having a significant adverse impact on the environment or adjoining land and hence compliance with the conditions precedent for the making of the amendment are not necessary.

Council requests that the Minister agree to make the draft amendment to Clause 4.1E of Hawkesbury Local Environmental Plan 2012

Signed: 

Date: 17/12/2015

Name: Cristie Evenhuis

Position: Acting Director City Planning

On behalf of: Hawkesbury City Council



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Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

- (a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* maketagged 'B')
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date:

Signed:

Name:

Position:
for Director-General

