

WENTWORTH LOCAL ENVIRONMENTAL PLAN 2011

PLANNING PROPOSAL REPORT

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
– S56 GATEWAY DETERMINATION**

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

August 2017

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1. INTRODUCTION

1.1 The Planning Proposal

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

The completion of the Strategy has been significantly delayed due to a pecuniary interest exemption request made to the Office of Local Government by all Wentworth Shire Councillors, which was ultimately refused. The advice provided by the Minister was for Council to resolve to delegate its powers to finalise the project to the Western Joint Regional Planning Panel. This advice is being acted upon at present.

The Strategy has raised a debated issue pertaining to Clause 4.2B Subclause (4)(a) 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 sixth anniversary of the commencement of Wentworth Local Environmental Plan 2011 (WLEP 2011), effectively 16 December 2017. 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 2017, 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 more year to ensure the provision of this clause does not expire prior to the completion of the 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)(a) 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:

(a) 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](#), or

(b) development consent has been granted for the erection of a dwelling on the land and that development consent has been surrendered in accordance with the Act.

(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 6 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 6 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 6 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 6 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.

6 Use of certain land at Sturt Highway, Trentham Cliffs

- (1) This clause applies to the following land at Sturt Highway, Trentham Cliffs:
- (a) Lot 38 and part of Lot 42, DP 756936, identified as “B” on the [Additional Permitted Uses Map](#),
 - (b) part of Lot 1, DP 1128099, identified as “C” on the [Additional Permitted Uses Map](#).
- (2) Development for the purposes of:
- (a) a highway service centre is permitted with development consent on land referred to in subclause (1) (a), and
 - (b) a caravan park is permitted with development consent on land referred to in subclause (1) (b).

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:

*(a) an application for development consent referred to in the relevant subclause is not made in relation to that land before the **seventh** anniversary of the commencement of [Wentworth Local Environmental Plan 2011](#), or*

(b) development consent has been granted for the erection of a dwelling on the land and that development consent has been surrendered in accordance with the Act.

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 **7** 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 **7** 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 7 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 7 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 development 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 to be finalised by the Western Joint Regional Planning Panel.

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 Strategy was delayed due to an application to the Office of Local Government seeking Pecuniary Interest Exemptions for Councillors and the subsequent response from the OLG and the necessity to seek advice as to the ongoing process to complete the project.

Therefore the amendment is required to ensure that the expiry of the clause is extended until such time as the completion of the 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 2017-2027

The following strategies under *Goal 1 – Wentworth is a vibrant, growing and thriving shire* of the plan are relevant to this planning proposal:

- *1.1 Grow the potential for business and industry to develop and expand*
- *1.2 Encourage and support population growth and resident attraction*

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.

4.2.3 Draft Far West Regional Plan 2036

To apply Direction 1: Grow the economic potential of the agribusiness sector of this plan should encourage the requirement to develop dwellings particularly where that development enhances and supports the operational practices and management of the rural enterprise.

Refer to Attachment 1 - Section 117 Directions Checklist.

Refer to Attachment 2 - SEPP Checklist

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 an additional 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 retainment of dwelling permissibility on existing holdings and former rural lots has the potential to assist and support with the day to day operations of individual enterprises. This would be achieved by management of the enterprise being present and on site at all times.

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:

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|---|----------------|
| Gateway Determination | September 2017 |
| Community Consultation, incl State Agencies | October 2017 |
| Consideration of submissions | October 2017 |
| Consideration of a proposal post exhibition | October 2017 |
| RPA Adoption to make Plan | November 2017 |
| Submission to PCO to finalise LEP | November 2017 |
| Forward to Department for notification | December 2017 |

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 a further twelve months, ie 16 December 2018.

This will allow for the completion of the Rural Land Use & Rural Residential Strategy by the Western Joint Regional Planning Panel including further investigation of any potential impacts of either permanently removing the clause or allowing the expiry of this clause to occur.

Attachment 1 – S117 Direction Checklist

| Section 117 Direction | Applicable (Y/N) | Consistent (Y/N) | Comments/Justification |
|--|------------------|------------------|---|
| 1. Employment and Resources | | | |
| 1.1 Business and Industrial Zones | N | | |
| 1.2 Rural Zones | Y | N | <p>The Planning Proposal will not reduce or restrict the agricultural production value of rural land and does not aim to rezone any rural land.</p> <p>The Planning Proposal is not consistent with the terms of this direction, however, as it only seeks to extend a permissible provision by a further twelve months, it is considered to be of minor significance.</p> |
| 1.3 Mining, Petroleum Production and Extractive Industries | N | | |
| 1.4 Oyster Aqua Culture | N | | |
| 1.5 Rural Lands | Y | N | <p>The Planning Proposal will not inhibit the agricultural value of affected rural lots but will facilitate the ongoing development and management of former rural lots and existing holdings.</p> <p>It is also considered that the Planning Proposal will not contravene the Rural Planning Principles contained in SEPP (Rural Lands) 2008.</p> <p>The Planning Proposal is not consistent with the terms of this direction, however, as it only seeks to extend a permissible provision by a further twelve months, it is considered to be of minor significance.</p> |
| 2. Environment and Heritage | | | |
| 2.1 Environment Protection Zones | N | | |
| 2.2 Coastal Protection | N | | |
| 2.3 Heritage Conservation | N | | |
| 2.4 Recreation Vehicle Areas | N | | |
| 3. Housing, Infrastructure and Urban Development | | | |
| 3.1 Residential Zones | N | | |
| 3.2 Caravan Parks and Manufactured Home estates | N | | |

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| 3.3 Home Occupations | N | | |
| 3.4 Integrating Land Use and Transport | N | | |
| 3.5 Development Near Licensed Aerodromes | N | | |
| 3.6 Shooting Ranges | N | | |
| 4. Hazard and Risk | | | |
| 4.1 Acid Sulfate Soils | N | | |
| 4.2 Mine Subsidence and Unstable Land | N | | |
| 4.3 Flood Prone Land | N | | |
| 4.4 Planning for Bushfire Protection | N | | |
| 5. Regional Planning | | | |
| 5.1 Implementation of Regional Strategies | N | | |
| 5.2 Sydney Drinking Water Catchments | N | | |
| 5.3 Farmland of State and Regional Significance on the NSW Far North Coast | N | | |
| 5.4 Commercial and Retail Development along the Pacific Highway, North Coast | N | | |
| 5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010) | N | | |
| 5.6 Sydney to Canberra Corridor (Revoked 10 July 2008) | N | | |
| 5.7 Central Coast (Revoked 10 July 2008) | N | | |
| 5.8 Second Sydney Airport: Badgerys Creek | N | | |
| 5.9 North West Rail Link Corridor Strategy | N | | |
| 6. Local Plan Making | | | |
| 6.1 Approval and Referral Requirements | N | | |

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| 6.2 Reserving Land for Public Purposes | N | | |
| 6.3 Site Specific Provisions | N | | |
| 7. Metropolitan Planning | | | |
| 7.1 Implementation of the Metropolitan Plan for Sydney 2036 | N | | |

Attachment 2 – SEPP Checklist

| State Environmental Planning Policy (SEPP) | Applicable (Y/N) | Consistent (Y/N) | Comments/Justification |
|---|------------------|------------------|------------------------|
| State Environmental Planning Policy No 1 – Development Standards | N | | |
| State Environmental Planning Policy No 14 – Coastal Wetlands | N | | |
| State Environmental Planning Policy No 19 – Bushland in Urban Areas | N | | |
| State Environmental Planning Policy No 21 – Caravan Parks | N | | |
| State Environmental Planning Policy No 26 – Littoral Rainforests | N | | |
| State Environmental Planning Policy No 30 – Intensive Agriculture | N | | |
| State Environmental Planning Policy No 33 – Hazardous Development | N | | |
| State Environmental Planning Policy No 36 – Manufactured Home Estates | N | | |
| State Environmental Planning Policy No 44 – Koala Habitat Protection | N | | |
| State Environmental Planning Policy No 47 – Moore Park Showground | N | | |
| State Environmental Planning Policy No 50 – Canal Estate Development | N | | |
| State Environmental Planning Policy No 52 – Farm Dams and other works in Land and Water Management Plan Areas | N | | |
| State Environmental Planning Policy No 55 – Remediation of Land | N | | |
| State Environmental Planning Policy No 62 – Sustainable Aquaculture | N | | |

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| State Environmental Planning Policy No 64 – Advertising and Signage | N | | |
| State Environmental Planning Policy No 65 – Design Quality of residential Apartment Development | N | | |
| State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) | N | | |
| State Environmental Planning Policy No 71 – Coastal Protection | N | | |
| State Environmental Planning Policy (Affordable Rental Housing) 2009 | N | | |
| State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 | N | | |
| State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 | N | | |
| State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 | N | | |
| State Environmental Planning Policy (Infrastructure)2007 | N | | |
| State Environmental Planning Policy (Integration and Repeals) 2016 | N | | |
| State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007 | | | |
| State Environmental Planning Policy (Kurnell Peninsula) 1989 | N | | |
| State Environmental Planning Policy (Mining, Petroleum Production | N | | |

| | | | |
|---|---|---|--|
| and extractive Industries) 2007 | | | |
| State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 | N | | |
| State Environmental Planning Policy (Penrith Lakes Scheme) 1989 | N | | |
| State Environmental Planning Policy (Rural Lands) 2008 | Y | Y | It is consistent with this policy as it only seeks to extend the current provision by a further twelve months. |
| State Environmental Planning Policy (State and Regional Development) 2008 | N | | |
| State Environmental Planning Policy (State Significant Precincts) 2005 | N | | |
| State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 | N | | |
| State Environmental Planning Policy (Sydney Region Growth Centres) 2006 | N | | |
| State Environmental Planning Policy (Three Ports) 2013 | N | | |
| State Environmental Planning Policy (Urban Renewal) 2010 | N | | |
| State Environmental Planning Policy (Western Sydney Employment Area) 2009 | N | | |
| State Environmental Planning Policy (Western Sydney Parklands) 2009 | N | | |