

Planning Services

Gateway determination Report

LGA	Wentworth
RPA	Wentworth Shire Council
NAME	Second extension of sunset clause provisions and timeframes for items listed in Schedule 1 Additional Permitted Uses
NUMBER	PP_2017_WENTW_003_00
LEP TO BE AMENDED	Wentworth LEP 2011
DESCRIPTION	Land within zones RU1 Primary Production and zone E3 Environmental Management, and land listed in Schedule 1 of Wentworth LEP 2011
RECEIVED	7 September 2017
FILE NO.	17/12616
QA NUMBER	qA418293
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The planning proposal seeks to extend sunset period for an additional one (1) year until 16 December 2018 within Clause 4.2B(4) and the sunset provisions of items 1(3), 2(4), 3(4) and 4(4) of Schedule 1 Additional Permitted Uses of the WLEP 2011.

This is the second request for the extension of the sunset clause provisions – PP_2016_WENTW_002_00 (Gateway determination issued 23 March 2016 – AM 12 notified on 15 July 2016) provided a 12 month extension of the provisions until 16 December 2017, while Council finalised the draft Wentworth Rural Land Use and Residential Strategy. Council has been unable to complete this work, including the decline of a pecuniary interest exemption by the Office of Local Government. The extension of the sunset clause is sought to ensure the provisions do not expire prior to the completion of the strategy work.

Site Description

Land within zones RU1 Primary Production and zone E3 Environmental Management, and land listed in Schedule 1 Additional Permitted Uses under the Wentworth LEP 2011.

Summary of Recommendation

Proceed with Conditions – The extension of the sunset clause provision ensures that the existing dwelling entitlements for former rural lots and existing holdings in certain rural and environmental protection zones and items 1 - 4 in Schedule 1 are retained for an additional

twelve months. This will allow for the completion of the draft rural land use strategy and further investigation of any potential impacts of either permanently removing the clause or allowing the expiry of the clause to occur.

The Director Regions, Western can use delegation in this instance to extend the sunset clause provisions for twelve months while the draft rural strategy is completed.

PROPOSAL

Objectives or Intended Outcomes

The Statement of Objectives clearly identifies the objective of the planning proposal is to ensure that the sunset provision in Clause 4.2B(4) and Schedule 1 is extended until 16 December 2018.

Explanation of Provisions

The explanation of provisions clearly state the outcome of the planning proposal will be achieved by amending Schedule 1 and Clause 4.2B(4).

Mapping

There are no changes to any mapping required as part of this proposal.

NEED FOR THE PLANNING PROPOSAL

The provisions of the Wentworth LEP 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 LEP 1993 to the LEP 2011, these provisions were included with a limited timeframe, whereby the dwelling entitlement on vacant existing holdings and former rural lots expired on the 5th anniversary of the commencement of the LEP 2011, being 16 December 2016. This date was extended by 12 months as part of PP_2016_WENTW_002_00 (Gateway determination issued 23 March 2016 – AM 12 notified on 15 July 2016) to 16 December 2017 to allow for the finalisation of the draft Wentworth Rural Land Use and Residential Strategy.

Council ultimately wishes to reinstate the provisions of the LEP 1993, where dwelling entitlements of vacant existing holdings and former rural lots are held in perpetuity.

There may be significant implications if this was to occur, including servicing unplanned rural settlement which has not been considered in a strategic context. The extension of the sunset provisions will allow for Council to finalise the draft Strategy, and consider the implications of dwelling entitlements in perpetuity in rural areas.

It is considered that Council requires additional time to further justify the requirement for perpetual rural dwelling entitlements in the LGA through the completion of the draft Wentworth Rural Land Use and Residential Strategy. Council has been unable to complete this work, including the decline of a pecuniary interest exemption by the Office of Local Government. Council and the Department are in consultation regarding the preferred method to progress the draft Strategy, which is why the extension of the sunset clause is considered appropriate at this time.

STRATEGIC ASSESSMENT

State

Not applicable. There is no State strategic planning framework applicable to the proposal.

Regional / District

The Far West Regional Plan (FW RP) applies to the proposal.

The Planning Proposal addresses the draft FW RP, however has not considered the final FW RP. The planning proposal will be required to be updated prior to the commencement of community consultation to address the Plan.

The proposal is broadly consistent with the Directions and Actions of the Plan. The proposal will contribute to the protection of productive agricultural land (Direction 2) and also contribute to the management rural residential development (Direction 29).

Local

Wentworth does not have an endorsed Land Use Strategy.

Council is currently in consultation with the Department to determine the preferred mechanism to progress the draft Rural Land Use and Residential Strategy.

The Department can support an extension of the sunset provisions for an additional twelve months to allow Council to consider the strategic implications of providing dwelling entitlements in perpetuity.

Section 117(2) Ministerial Directions

Direction 1.2 - Rural zones

The proposal does not rezone rural land, however it does contain provisions that will increase the permissible density of land within a rural zone, through the acknowledgement of the dwelling entitlements of existing holdings and former rural lots for an additional twelve months.

There is no strategy which is applicable to the Wentworth LGA, however it is to be noted that Council is currently preparing a rural land use strategy. The strategy is not anticipated to be finalised prior to the expiration of the sunset clause on 16 December 2017.

The proposal does increase the opportunity for additional unplanned rural residential development within the LGA, however provision for this has already been considered during the Standard Instrument making process with the addition of the sunset clause in both clause 4.2B(4) and also the items in Schedule 1. It is considered that the acknowledgement of the existing holdings, former rural lots and additional permitted uses in Schedule 1 for an additional twelve months while the draft rural land use strategy is completed is considered minor in nature and inconsistencies with this Direction are considered of minor significance. It will also permit additional community consultation about this issue. There are no changes to existing LEP provisions relating to rural land.

Direction 1.5 - Rural Lands

The planning proposal does not contain provisions that will reduce the minimum lot size of any land within a rural zone.

The proposals inconsistencies with this direction are considered to be of minor significance, as the extension of the sunset provisions is only for an additional twelve months to facilitate the completion of the draft rural land use strategy. There are no changes to existing LEP provisions relating to rural land.

5.10 Implementation of Regional Plans

The proposal has considered the draft Far West Regional Plan. The proposal is not inconsistent with this Direction. The Planning Proposal is required to be amended prior to the commencement of community consultation to address the final Far West Regional Plan.

State Environmental Planning Policies

State Environmental Planning Policy (Rural Lands) 2008

As previously discussed, the proposal does increase the opportunity for additional unplanned rural residential development within the LGA, however provision for this has already been considered during the Standard Instrument making process with the addition of the sunset clause in both clause 4.2B(4) and also the items in Schedule 1. Consideration of the planning principles and rural subdivision principles will be undertaken on a case by case basis should a development application be received by Council for a dwelling on a rural allotment.

It is considered that the acknowledgement of the existing holdings, former rural lots and additional permitted uses in Schedule 1 for an additional twelve months while the draft rural land use strategy is completed is considered minor in nature and the proposal is therefore considered to be consistent with this SEPP. It will also permit additional community consultation about this issue.

SITE SPECIFIC ASSESSMENT

Social, Environmental and Economic Impacts

The environmental, social and economic impacts of the extension of the sunset provisions are unknown, as the exact number of dwelling entitlements is unknown.

These impacts will be required to be assessed on a case by case basis at the development application stage for a dwelling on the sites listed in Schedule 1, and the lots identified as existing holdings or former rural lots.

CONSULTATION

Community

The 14 day community consultation proposed by Council is considered adequate. The intention of the proposal has previously been exhibited for 28 days and no submissions were received during that period (being Amendment 12 to the Wentworth LEP 2011). The current amendment is consistent with the previous changes. Given it is a local planning matter and not the Principal LEP, the proposal can be considered as low impact (in accordance with the Guide to preparing planning proposals), as there is no change to the current planning framework in Wentworth which would warrant a longer exhibition period.

Agencies

Council has acknowledged that community consultation may be required, however has not recommended any specific agencies as part of the proposal.

It is recommended that no agency consultation be undertaken, given the previous consultation that has been undertaken as part of Amendment 12.

TIMEFRAME

It is recommended that the planning proposal be finalised in 6 months.

Council has proposed the completion of the proposal in 4 months, prior to the expiration of the existing sunset clause provisions. Additional time has been proposed, to provide for any delays.

DELEGATION

Council has requested to be authorised to exercise delegation. Due to the nature of the proposal it is recommended that Council be authorised to exercise delegation.

CONCLUSION

It is being recommended that the proposal proceed and that a conditional Gateway determination be issued under the delegation of the Secretary.

The extension of the sunset clause provision ensures that the existing dwelling entitlements for former rural lots and existing holdings in certain rural and environmental protection zones and items 1 - 4 in Schedule 1 are retained for an additional twelve months until 16 December 2018. This will allow for the completion of the draft rural land use strategy and further investigation of any potential impacts of either permanently removing the clause or allowing the expiry of the clause to occur.

RECOMMENDATION

It is recommended that the Director Region, Western as delegate of the Secretary:

1. agree any inconsistencies with section 117 Directions 1.2 Rural Zones and 1.5 Rural Lands are minor; and.
2. note that the consistency with section 117 Directions 5.10 Implementation of Regional Plans is unresolved and will require justification prior to the plan being finalised.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. No consultation is required with public authorities:
3. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.

4. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.
5. The Secretary's delegate can be satisfied that the proposal is consistent with relevant s117 Directions.
6. Prior to community consultation the planning proposal is to be amended to address Section 117 Direction 5.10 - Implementation of Regional Plans. This work is to address the final Riverina Murray Regional Plan.



22.9.17

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