

Lithgow LEP - Am 2 - Split Zones Clause

Proposal Title : **Lithgow LEP - Am 2 - Split Zones Clause**

Proposal Summary : **Council is seeking to amend the Lithgow LEP 2014 by including a split zones / split lot size clause. The proposed clause from Council allows for residual lots in an environmental zone to be below the mapped MLS.**

PP Number : **PP_2017_LITHG_001_00**

Dop File No : **16/16056**

Proposal Details

Date Planning : **11-Jan-2017**

Proposal Received :

LGA covered : **Lithgow**

Region : **Western**

RPA : **City of Lithgow Council**

State Electorate : **BATHURST**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street : **Lithgow**

Suburb : **Lithgow**

City : **Lithgow**

Postcode : **2790**

Land Parcel :

DoP Planning Officer Contact Details

Contact Name : **Megan Jones**

Contact Number : **0268412180**

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RPA Contact Details

Contact Name : **Sherilyn Hanrahan**

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DoP Project Manager Contact Details

Contact Name : **Wayne Garnsey**

Contact Number : **0268412180**

Contact Email : **wayne.garnsey@planning.nsw.gov.au**

Land Release Data

Growth Centre : **N/A**

Release Area Name : **N/A**

Regional / Sub : **N/A**

Consistent with Strategy : **N/A**

Regional Strategy :

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **There have been no known meetings with any registered lobbyists.**

Supporting notes

Internal Supporting Notes : **DPE Office closed over Christmas from 24th December 2016 and reopened on 9th January 2017.**

Extra information requested from Council on 10th January 2017.

On 11 January 2017 Council provided written confirmation it intended to amend the proposed clause to not include provision for undersize residual lots in an environmental zone. This is supported.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objectives of the planning proposal are to:**

- Enable the subdivision of lots that are within split zones but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C due to minimum lot size
- Provide for subdivision that promotes suitable uses and development of land within split zones.

These objectives are supported, provided no under-size residual lots are created in the environmental zone or may contain a dwelling located thereon.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **Original clause wording:**

"4.1B Minimum lot sizes for certain split zones

(1) The objectives of this clause are as follows:

- (a) to provide for subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1; 4.1AA or 4.2C.
 - (b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.
- (2) This clause applies to each lot(an original lot) that contains:
- (a) land in a residential, village; business or industrial zone , and
 - (b) land in a rural or environmental zone.
- (3) Despite clause 4.1,4.1AA or 4.2C, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:
- (a) one of the resulting lots will contain:
 - (i) land in a residential; village; business or industrial zone that has an area not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
 - (ii) all of the land in any rural or environmental zone that was in the original lot; and
 - (b) all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.
- (4) Despite subclause (3) development consent may be granted to subdivide an original lot to create a resulting lot/s that contains land within an environmental zone that is less than the minimum lot size shown on the Lot Size Map where;
- (a) the resulting lot/s are created for a public purpose and dedicated to Council ; or
 - (b) the development will facilitate the ongoing protection and management of the land.
- (5) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision:
- (a) is not likely to have a significant adverse impact on the environmental values of the land, and
 - (b) will not compromise the continued protection and long-term maintenance of any land in an environmental zone, and
 - (c) is not likely to have a significant adverse impact on the primary production value of land in a rural zone."

This wording was not supported due to the subjective nature of (4)(b) where an undersize lot may be created in the environmental zone, but without qualifying what 'on-going protection and management of the land' is.

Council agreed to amend the clause wording and has provided the following clause (on 11 January 2017) for consideration in this planning proposal:

"4.1B Minimum lot sizes for certain split zones

- (1) The objectives of this clause are as follows:
- (a) to provide for subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1; 4.1AA or 4.2C.
 - (b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.
- (2) This clause applies to each lot(an original lot) that contains:
- (a) land in a residential, village; business or industrial zone , and
 - (b) land in a rural or environmental zone.
- (3) Despite clause 4.1,4.1AA or 4.2C, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:

- (a) one of the resulting lots will contain:
- (i) land in a residential; village; business or industrial zone that has an area not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
 - (ii) all of the land in any rural or environmental zone that was in the original lot; and
- (b) all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.
- (4) Despite subclause (3) development consent may be granted to subdivide an original lot to create a resulting lot/s that contains land within an environmental zone that is less than the minimum lot size shown on the Lot Size Map where;
- (a) the resulting lot/s are created for a public purpose and dedicated to Council.
- (5) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision:
- (a) is not likely to have a significant adverse impact on the environmental values of the land, and
 - (b) will not compromise the continued protection and long-term maintenance of any land in an environmental zone, and
 - (c) is not likely to have a significant adverse impact on the primary production value of land in a rural zone."

This revised clause has removed (4)(b) and now requires that any residual undersize lots in the environmental zone may only be dedicated to Council. It is intended that this will ensure proper ongoing protection and management of the land.

This revised clause is supported.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

3.1 Residential Zones

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.2 Sydney Drinking Water Catchments

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

The affected land is not being rezoned or resulting in a change of the minimum lot size. The proposal is to permit subdivision in accordance with the LEP and Land Use Strategy. Therefore the proposal is not inconsistent with the identified section 117 Directions.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Section 117 Direction 4.4 Planning for Bushfire Protection requires consultation with the NSW Rural Fire Service prior to community consultation being undertaken. (refer condition number one of the Gateway determination).

Section 117 Direction 5.2 Sydney Drinking Water Catchment requires consultation with Sydney Catchment Authority (SCA) prior to the issuing of a Gateway determination. In

this case, Council may consult with the SCA prior to commencing community consultation (refer condition number two of the Gateway determination)

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **No mapping changes are required.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council is proposing specific consultation with these Government agencies:**

- DPI (Water and Agriculture)
- Water NSW
- NSW RFS
- Fire and Rescue NSW
- OEH
- Mine Subsidence Board

This is supported.

28 days consultation period is recommended as the planning proposal was affect the entire Lithgow LGA and is not supported by a strategic plan.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **December 2014**

Comments in relation
to Principal LEP :

Assessment Criteria

Need for planning
proposal : **Council is seeking to amend the Lithgow LEP 2014 through inclusion of clause 4.1B Minimum lot sizes for certain split zones. The appropriate mechanism to amend the LEP is through a planning proposal.**

Consistency with
strategic planning
framework : **There are situations where lots may have more than one land zone and minimum lot size that applies to the lot. Under the standard instrument LEP clause '4.1 Minimum subdivision lot size', some of these lots with split zones are unintentionally restricted from subdivision. This has been resolved in numerous other standard instrument LEPs through inclusion of a clause, like that proposed for Lithgow LEP, to deal with minimum lot sizes for split zones.**

Council has indicated that most of the lots currently burdened with this situation contain urban zoned land earmarked for release for residential development, in line with Council's land use strategy.

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Environmental social
economic impacts :

Inclusion of the proposed clause will ensure lots with split zones are no longer unintentionally restricted from subdivision. Land in the environmental zone if less than the minimum lot size can be created for a public purpose and dedicated to Council.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) :
**Sydney Catchment Authority
Office of Environment and Heritage
NSW Department of Primary Industries - Agriculture
Mine Subsidence Board
Fire and Rescue NSW
NSW Rural Fire Service
Other**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Additional Public Authority consultation required with DPI - Water.

Council needs to consult with the NSW Rural Fire Service and Sydney Catchment Authority prior to commencing community consultation.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal - Revised Clause Wording.pdf	Proposal	No
Planning Proposal from Council.pdf	Proposal	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:
**1.1 Business and Industrial Zones
1.2 Rural Zones
1.5 Rural Lands
2.1 Environment Protection Zones**

- 3.1 Residential Zones**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.2 Sydney Drinking Water Catchments**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**

Additional Information : It is recommended that the planning proposal **PROCEED** subject to the following conditions:

- 1. Prior to community consultation Council is to consult with NSW Rural Fire Service to address section 117 Direction 4.4 Planning for Bushfire Protection. Council is to submit the NSW Rural Fire Service comments to the Department of Planning and Environment for approval prior to community consultation being undertaken.**
- 2. Prior to community consultation Council is to consult with Sydney Catchment Authority (SCA) to address section 117 Direction 5.2 Sydney Drinking Water Catchments. Council is to submit the SCA comments to the Department of Planning and Environment for approval prior to community consultation being undertaken.**
- 3. Community consultation is required under Sections 56(2)(c) and 57 of the EP&A Act as follows:**
 - (a) the Planning Proposal must be made publicly available for a minimum of 28 days; and**
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment 2016).**
- 4. Consultation is required with the following public authorities and organisations under Section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant Section 117 Directions:**
 - NSW Rural Fire Service**
 - Fire and Rescue NSW**
 - Sydney Catchment Authority**
 - Office of Environment and Heritage**
 - Department of Primary Industries – Water**
 - Department of Primary Industries – Agriculture**
 - Mine Subsidence Board**

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 9 months following the date of the Gateway determination.

Supporting Reasons : Council needs to consult with NSW Rural Fire Service and Sydney Catchment Authority prior to community consultation in accordance with section 117 Directions 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments.

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Signature: _____

Printed Name: _____

Date: _____

Endorsed

W. Gamsey

A DR, W

20/1/17