

## Item 8: Development

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### 8.1 Housekeeping Amendment to Mid-Western Regional Local Environmental Plan 2012

REPORT BY THE MANAGER, STRATEGIC PLANNING  
TO 20 MARCH 2019 ORDINARY MEETING  
GOV400067, LAN900082

#### RECOMMENDATION

##### That Council:

1. **receive the report by the Manager, Strategic Planning on the Housekeeping Amendment to Mid-Western Regional Local Environmental Plan 2012;**
2. **provide initial support for the Planning Proposal in relation to the three Area D locations as marked on the Lot Size Maps, to enable the future subdivision of lots with a minimum area of 2 or 5 hectares under the Community Land Development Act 1989;**
3. **forward the Planning Proposal to amend the Mid-Western Regional Local Environmental Plan 2012 to the NSW Department of Planning and Environment seeking a Gateway Determination, in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*; and**
4. **undertake community consultation as outlined within any approved Gateway Determination.**

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#### Executive summary

Council has prepared a Housekeeping Amendment to the Mid-Western Regional Local Environmental Plan 2012 (Planning Proposal). The Planning Proposal is to implement a minor amendment to facilitate by subdivision lots with a minimum area of either 2 or 5 hectares created under the Community Land Development Act 1989. The Planning Proposal does not seek to alter any other existing provision relating to the land.

Council previously supported three Planning Proposal to facilitate the subdivision of lots with a minimum or either 2 or 5 hectares. An error was made during the legal drafting of the Clause resulting in the inability to created lots under the Community Land Development Act 1989. Lots can only be created as Torrens Title based on the current legislation. This Housekeeping Amendment will rectify this.

The Planning Proposal provided as Attachment 1 has been prepared generally in accordance with the structure outlined in the NSW Department of Planning and Environment's (DP&E) Guide to Preparing Planning Proposals. The report outlines the context, intended outcomes, explanation of provisions and justification for the Planning Proposal.

The staff recommendation is to provide initial support for the Planning Proposal and to send to DP&E for a Gateway Determination. If the staff recommendation is supported, the Planning Proposal along with the Council resolution will be forwarded to DP&E for Gateway Determination.

## Disclosure of Interest

Nil.

## Detailed report

## BACKGROUND

### **Planning Proposals**

Planning Proposal is a term used to describe the process of rezoning or making an amendment to a Local Environmental Plan (LEP). A Planning Proposal application is a document that explains the intended effect of the LEP amendment and provides a strategic justification for doing so. NSW Department of Planning & Environment (DP&E) has issued A Guide to Preparing Planning Proposals, to provide guidance and information on the process for preparing planning proposals.

### **The Gateway Process**

DP&E is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in DP&E's A Guide to Preparing Local Environmental Plans.

### **Gateway Timeline**

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan and the progress of the current Planning Proposal through the various stages. The below table demonstrates the Planning Proposal is within the initial stage of the process (i.e. at preparation of a Planning Proposal stage).

Stage	Completed	Comment
Preparation of a Planning Proposal		
Planning Proposal Drafted	✓	February 2019.
Staff Undertake Initial Assessment	✓	No assessment required as the Planning Proposal is a housekeeping amendment and has been prepared by Staff.
Council Decision to Support Proposal		Planning Proposal is being reported to 20 March 2019 meeting.
Issue of Gateway Determination		
Council Requests Gateway Determination		
DP&E Issues Gateway Determination		
Gateway Conditions Satisfied		
Consultation		
Consultation with Relevant Agencies		
Public Exhibition		
Post-Exhibition Report to Council		
Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		
Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

## CONTEXT

The Housekeeping Amendment will apply to three locations annotated Area D on the Lot Size Map. These areas were created with the notification of amendments 18 and 19.

## INTENDED OUTCOMES

The intended outcome is that lots with a minimum of either 2 or 5 hectares can be created under the Community Land Development Act 1989 within the locations nominated as Area D.

## EXPLANATION OF PROVISIONS

The intended outcomes outlined above will be achieved through the amendment to the applicable subclause of Part 4 Principal Development Standards of LEP.

## JUSTIFICATION

The DP&E guide to preparing Planning Proposals outlines eleven questions to be addressed in the Planning Proposal, the proponent has addressed the eleven questions.

## NEXT STEP

The recommendation of staff is to provide initial support for the Planning Proposal and forward to DP&E for a Gateway Determination. If Council accepts this recommendation, the next step would involve forwarding the Planning Proposal and a Council resolution of initial support to DP&E seeking a Gateway Determination.

## Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning

## Strategic implications

### Council Strategies

The Planning Proposal is consistent with the Mid-Western Regional Comprehensive Land Use Strategy Part C – Strategy, Addendum – 2 Hectares Criteria.

### Council Policies

The forwarding of the Planning Proposal will not require any change to relevant policies.

### Legislation

The Planning Proposal has been considered in accordance with Division 3.4 Environmental Planning Instruments - LEPs (previously Division 4) Local Environmental Plans of the *Environmental Planning and Assessment Act 1979* and the Mid-Western Regional Local Environmental Plan 2012.

## Financial implications

The parent lots (and part lots) remain unserviced and any future lots will not be serviced by Council's reticulated water and sewer infrastructure, accordingly there are no financial implications for Council.

## Associated Risks

If Council does not wish to provide initial support for the Planning Proposal, the landowners will not be able to create lots by subdivision under the Community Land Development Act 1989.

SARAH ARMSTRONG  
MANAGER, STRATEGIC PLANNING

JULIE ROBERTSON  
DIRECTOR DEVELOPMENT

4 March 2019

*Attachments:* 1. Planning Proposal.

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER

[CLICK HERE TO CHOOSE AN IMAGE, THEN CLICK ON ARROW ABOVE.](#)

*Looking After  
our Community*

## PLANNING PROPOSAL HOUSEKEEPING AMENDMENT 2019

ADDITIONAL SUBCLAUSE TO  
FACILITATE COMMUNITY TITLE  
SUBDIVISION WITH A MINIMUM OF 5  
OR 2 HECATRES

4 MARCH 2019

MID-WESTERN REGIONAL COUNCIL  
DEVELOPMENT: STRATEGIC PLANNING

■ ■ ■ ■ ■ TOWARDS 2030



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THIS DOCUMENT HAS BEEN PREPARED BY THE DEVELOPMENT DIRECTORATE FOR MID-WESTERN REGIONAL COUNCIL.

ANY QUESTIONS IN RELATION TO THE CONTENT OF THIS DOCUMENT SHOULD BE DIRECTED TO:  
SARAH ARMSTRONG OR (02) 6378 2850

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## Overview

### Introduction

The Planning Proposal Mid-Western Regional Local Environmental Plan Housekeeping Amendment (the Planning Proposal) explains the intent of, and justification for, the proposed amendment to the Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012).

The Planning Proposal is to implement a minor amendment to facilitate by subdivision lots with a minimum area of either 2 or 5 hectares created under the Community Land Development Act 1989. The Planning Proposal does not seek to alter any other existing provision relating to the land.

The proposal has been prepared in accordance with Section 3.32 and 3.33 of the Environmental Planning and Assessment Act 1979 (the Act) and the relevant Department of Planning and Environment guidelines, including A Guide to Preparing Local Environmental Plans and A Guide to Preparing Planning Proposals.

### Background

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012) came into effect on 10 August 2012. MWRLEP 2012 is the consolidation of the previous planning controls into one local environmental plan. It is also a translation of those controls into the NSW Government's Standard Instrument Principal Local Environmental Plan.

Council previously supported three amendments to the MWRLEP 2012, listed below (Department of Planning and Environment reference included)

PP\_2015\_MIDWRD\_004\_00 Lot 4 DP 1204035 & part of Lot 2, DP 136904 (Amendment 19)

PP\_2015\_MIDWR\_003\_00 Part of Lot 4 DP 1206488 (Amendment 18)

PP\_2016\_MIDWR\_002\_00 Lots 3 & 4 DP 1069441 (Amendment 18)

Amendment 18 and 19 resulted in the insertion of Clause 4.1 Minimum subdivision lot size, subclause 3B. This clause captures the creation of 2 or 5 hectare lots by torrens title subdivision, however lots cannot be created under the Community Land Development Act 1989 in accordance with Clause 4.1AA Minimum subdivision lots size for community title schemes. This housekeeping amendment will rectify this.



## Part 1 – Objectives or Intended Outcome

The objective of the Planning Proposal is to implement a minor amendment to facilitate by subdivision lots with a minimum area of either 2 or 5 hectares created under the Community Land Development Act 1989.

The Planning Proposal applies to 'Area D' on the relevant Lot Size Maps.

The Planning Proposal will correct an error in the drafting of the provisions for MWRLEP 2012 Amendment 18 and 19.

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## Part 2 – Explanation of Provisions

The objectives and intended outcomes as described in Part 1 will be achieved through the amendment to the applicable subclause of Part 4 Principal Development Standards of MWRLEP 2012.

## Part 3 – Justification

### Section A - Need for the Planning Proposal

#### Q1: Is the planning proposal the result of any strategic study or report?

The Planning Proposal is not the result of a strategic study or report. The Planning Proposal relates to the correction of an error.

#### Q2: Is the planning proposal the best means of achieving the objectives or outcomes or is there a better way?

The Department of Planning and Environment advised Council that the Planning Proposal is the best means of achieving the outcome (i.e. correction of an error).

### Section B - Relationship to Strategic Framework

#### Q3: Is the planning proposal consistent with the application regional or sub-regional strategy?

The Central West and Orana Regional Plan 2036 applies to the Mid-Western Regional Local Government Area. The Plan has limited impact upon the Planning Proposal. It should be noted that the land subject to the Planning Proposal has already been rezoned from a rural zoning (either RU1 or RU4) to R5.

#### Q4: Is the proposal consistent with Council's Community Strategic Plan or other local strategic plan?

Not applicable. The proposed housekeeping amendment will not impact upon Council's Community Plan key themes.

#### Q5: Is the planning proposal consistent with applicable state environmental planning policies?

Yes. An analysis of the applicable State Environmental Planning Policies (SEPP's) is included in the following table. The proposal is either consistent with or not offensive to any applicable SEPP's.

SEPP	CONSISTENCY / RESPONSE
1 – DEVELOPMENT STANDARDS	Not relevant
14 – COASTAL WETLANDS	Not relevant
19 – BUSHLAND IN URBAN AREAS	Not relevant
21 – CARAVAN PARKS	Not relevant
26 – LITTORAL RAINFORESTS	Not relevant
30 – INTENSIVE AGRICULTURE	Not relevant
33 – HAZARDOUS AND OFFENSIVE DEVELOPMENT	Not relevant

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SEPP	CONSISTENCY / RESPONSE
44 – KOALA HABITAT PROTECTION	Not relevant
47 – MOORE PARK SHOWGROUND	Not relevant
50 – CANAL ESTATE DEVELOPMENT	Not relevant
52 – FARM DAMS AND OTHER WORKS IN LAND AND WATER MANAGEMENT PLAN AREAS	Not relevant
55 – REMEDIATION OF LAND	Not relevant
62 – SUSTAINABLE AQUACULTURE	Not relevant
64 – ADVERTISING AND SIGNAGE	Not relevant
65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT	Not relevant
70 – AFFORDABLE HOUSING	Not relevant
71 - COASTAL PROTECTION	Not relevant
AFFORDABLE RENTAL HOUSING 2009	Not relevant
BASIX 2004	Not relevant
EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES 2017	Not relevant
EXEMPT AND COMPLYING DEVELOPMENT CODES 2008	Not relevant
HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY 2004	Not relevant
INFRASTRUCTURE 2007	Not relevant
INTEGRATION AND REPEALS 2016	Not relevant
KOSCIUSZKO NATIONAL PARK - ALPINE RESORTS 2007	Not relevant
KURNELL PENINSULA 1989	Not relevant
MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES 2007	Not relevant
MISCELLANEOUS CONSENT PROVISIONS 2007	Not relevant
RURAL LANDS 2008	Not relevant
STATE AND REGIONAL DEVELOPMENT 2011	Not relevant
STATE SIGNIFICANT PRECINCTS 2005	Not relevant
SYDNEY DRINKING WATER CATCHMENT 2011	Not relevant
SYDNEY REGION GROWTH CENTRES 2006	Not relevant
THREE PORTS 2013	Not relevant
URBAN RENEWAL 2010	Not relevant
VEGETATION IN NON-RURAL AREAS 2017	Not relevant
WESTERN SYDNEY EMPLOYMENT AREA 2009	Not relevant
WESTERN SYDNEY PARKLANDS 2009	Not relevant

Q6: Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The relevant section 117 Directions are addressed in Appendix 1. The proposal is consistent with the relevant 117 Directions.

## Section C - Environmental, Social and Economic Impact

Q8: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Only PP\_2015\_MIDWR\_003\_00 is subject to high biodiversity sensitivity. This area on the subject site was considered on the submitted Planning Proposal and not critical or threatened species, populations or ecological communities, or their habitats were found.

Q9: Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As set out in A Guide to Preparing Planning Proposals, the purpose of this question is to ascertain the likely environmental effects that may be relevant. The nature of the planning proposal is such that no technical information is required.

Q10: How has the planning proposal adequately addressed any social and economic effects?

Not applicable as these were considered as part of the previous three Planning Proposals.

## Section D - State and Commonwealth Interests

Q11: Is there adequate public infrastructure for the planning proposal?

Not applicable as this matter was considered as part of the previous three Planning Proposals. It should be noted that the three sites remain unserved by Council water and sewer reticulated infrastructure.

Q12: What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Extensive consultation was undertaken with the Department of Primary Industries - Water regarding water supply and groundwater impacts as required by Gateway Determination conditions. Support for the Planning Proposals was provided to rezone the land and amend the minimum lot size to as it is currently; this proposal does not seek to alter these provisions and no further consultation is considered to be required.

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## Part 4 – Mapping

No change to mapping is required.

## Part 5 – Community Consultation

The proposal is of minor significance and is considered to be a low impact proposal as outlined in 5.5.2 Community Consultation “Guide to preparing local environmental plans” is:

- Consistent with the pattern of surrounding land use zones and/or land uses
- Consistent with the strategic planning framework
- Presents no issue with regard to infrastructure servicing
- Not a principal LEP
- Does not reclassify public land

As such the following consultation is proposed:

- An exhibition period of 14 days commencing on the date that a notice of exhibition is printed in the local news press
- Advertising in the local newspaper at the start of the exhibition period
- Advertising on Council's website for the duration of the exhibition period

Consultation with agencies external to Council is not considered necessary.

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## Part 6 – Project Timeline

The Planning Proposal is a minor amendment to the Mid-Western Local Environmental Plan 2012 and should be able to be achieved within 3 months of the date of the Gateway Determination.

### Proposed Timeline

MILESTONE	DATE
Gateway Determination	March 2019
Completion of Technical Information	N/A
Agency Consultation	N/A
Public Exhibition	22 March 2019 – 5 April 2019
Consideration of Submissions	17 April 2019
Mapping, Legal Drafting & Opinion	April 2019
RPA makes Plan	April / May 2019



## Appendix 1 – Section 117 Directions

The Section 117 Directions have been identified in the table below. The planning proposal is generally consistent with the directions.

SECTION 117 DIRECTION	APPLICABLE	CONSISTENT	COMMENT
<b>1. Employment and Resources</b>			
1.1 Business & Industrial zones	No	N/A	
1.2 Rural zones	No	N/A	The Planning Proposal does not involve the rezoning of rural land, this occurred as part of Amendment 18 and 19.
1.3 Mining, Petroleum Production and Extractive Industries	No	N/A	
1.4 Oyster Aquaculture	No	N/A	
1.5 Rural Lands	No	N/A	The Planning Proposal does not involve the rezoning of rural land, this occurred as part of Amendment 18 and 19.
<b>2. Environment &amp; Heritage</b>			
2.1 Environment Protection Zones	No	N/A	
2.2 Coastal Protection	No	N/A	
2.3 Heritage Conservation	No	N/A	
2.4 Recreation Vehicle Areas	No	N/A	
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	No	N/A	
<b>3. Housing, Infrastructure and Urban Development</b>			
3.1 Residential Zones	Yes	N/A	
3.2 Caravan Parks and Manufactured Home Estates	No	N/A	
3.3 Home Occupations	No	N/A	
3.4 Integrating Land Use and Transport	No	N/A	
3.5 Development Near Licensed Aerodromes	No	N/A	
3.6 Shooting Ranges	No	N/A	
<b>4. Hazard and Risk</b>			
4.1 Acid Sulfate Soils	No	N/A	

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4.2 Mine Subsidence and Unstable Land	No	N/A
4.3 Flood Prone Land	No	N/A
4.4 Planning for Bushfire Protection	No	N/A
<b>5. Regional Planning</b>		
5.1 Implementation of Regional Strategies	No	N/A
5.2 Sydney Drinking Water Catchments	No	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.8 Second Sydney Airport: Badgerys Creek	No	N/A
5.9 North West Rail Link Corridor Strategy	No	N/A
5.10 Implementation of Regional Plans	No	N/A
<b>6. Local Plan making</b>		
6.1 Approval and Referral Requirements	No	Yes
6.2 Reserving Land for Public Purposes	No	N/A
6.3 Site Specific Provisions	No	Yes
<b>7. Metropolitan Planning</b>		
7.1 Implementation of A Plan for Growing Sydney	No	N/A
7.2 Implementation of Greater Macarthur Land Release Investigation	No	N/A
7.3 Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A

