

Amendment to Hawkesbury LEP 2012 to permit Detached Dual Occupancy and Secondary Dwellings in all rural and E3 and E4 Environmental Zones

Proposal Title :	Amendment to Hawkesbury LEP 2012 to permit Detached Dual Occupancy and Secondary Dwellings in all rural and E3 and E4 Environmental Zones		
Proposal Summary :	To amend the land use table for all rural and E3 and E4 Environmental zones to permit, with development consent, dual occupancies (detached) and secondary dwellings.		
PP Number :	PP_2016_HAWKE_008_00	Dop File No :	16/11648

Proposal Details

Date Planning Proposal Received :	29-Aug-2016	LGA covered :	Hawkesbury
Region :	Metro(Parra)	RPA :	Hawkesbury City Council
State Electorate :	HAWKESBURY	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	Whole of LGA		

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	Release Area Name :
Regional / Sub Regional Strategy :	Consistent with Strategy :

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings (where relevant) : 0

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes

Lobbyists Code of

Conduct has been

complied with :

If No, comment : The Department's Lobbyist Contact Register has been checked on 1 September 2016 and there are no records of contact with lobbyists in relation to this proposal.

Have there been No

meetings or

communications with

registered lobbyists? :

If Yes, comment : To the best of the knowledge of the regional team, the Department's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Sydney Region West (Parramatta) has not met with any lobbyists in relation to this proposal, nor has the Director been advised of any meetings between other departmental officers and lobbyists concerning this proposal.

Supporting notes

Internal Supporting

Notes :

External Supporting

Notes :

The planning proposal is not supported for the following reasons:

The advice provided by the Hawkesbury-Nepean Valley Flood Management Taskforce, on similar proposals, which seek to increase residential densities within the Taskforce's study area, has been to recommend that these proposals not proceed.

The Department has consistently applied the Taskforce's recommendations by refusing the following planning proposals:

- 280 Castlereagh Road, Agnes Banks - proposal refused by the Deputy Secretary 15/08/2016
- Mitchell Road, Pitt Town - proposal refused by the Deputy Secretary 31/03/2016
- 35 Chapel Street, Richmond - proposal refused by the Deputy Secretary 15/02/2016
- 24 Greenway Crescent, Windsor - proposal refused by the Deputy Secretary 05/05/2015

Further, a General Amendments (Housekeeping) planning proposal for a number of minor 'housekeeping' changes to Hawkesbury LEP 2012 was submitted to the Department in 2015, including an amendment to permit, with consent, secondary dwellings and dual occupancies (detached) within all rural and E3 and E4 environmental zones.

That proposal was referred to the Taskforce for comment on the 5th August 2015 which subsequently sought deferral until the implications of the cumulative impacts of residential development on evacuation planning could be determined.

Subsequently, a Gateway determination for that planning proposal was issued on 19/02/2016 with a condition to delete the proposed amendment to permit, with consent, secondary dwelling and dual occupancy (detached) component of the plan.

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The current proposal is the same as the component in the General Amendment (housekeeping) planning proposal that was required to be deleted.

As an increase in residential density in the study area could be reasonably expected as a result of this current proposal, advice was sought from the Taskforce. It has been indicated that a formal policy position has not been determined to date and timing is not known.

In these circumstances, the planning proposal cannot be supported.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment : The planning proposal seeks to amend the Hawkesbury Local Environmental Plan (LEP) 2012 to permit dual occupancies (detached) and secondary dwellings in all rural and E3 and E4 environmental zones, including a clause to restrict the development of dual occupancies (detached) to land with an area of not less than four (4) acres.

The intended outcome of the planning proposal is for secondary dwellings and dual occupancies (detached) to be land uses, permitted with consent, in the land use table for all rural and E3 and E4 environmental zones.

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

Is an explanation of provisions provided? Yes

Comment : The planning proposal seeks to amend the Hawkesbury Local Environmental Plan 2012 to:

(a) permit with development consent dual occupancies (detached) and secondary dwellings within RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, RU5 Rural Village, E3 Environmental Management and E4 Environmental Living zones.

(b) insert a local provision restricting the development of dual occupancies (detached) within RU1 Primary Productin, RU2 Rural Landscape, RU4 Primary Production Small Lots, RU5 Rural Village, E3 Environmental Management and E4 Environmental Living zones to land within an area of not less than 4 hectares.

BACKGROUND

On the 3 August 2015 Hawkesbury City Council submitted a general housekeeping amendments planning proposal (PP_2015_HAWKE_007 00) to the Department. The planning proposal sought to make approximately fifty minor 'housekeeping' amendments to the Hawkesbury LEP 2012.

One of the proposed changes was to permit secondary dwellings and dual occupancies (detached) within all rural and E3 and E4 environmental zones, including a clause restricting the the development of dual occupancies to land within an area of not less than 4 hectares.

Council provided information indicating there are approximately 11,213 individual parcels across the RU1, RU2, RU4, RU5, E3 and E4 zones within which secondary dwellings would become permissible. It was noted:

- * of these parcels, approximately 1,345 are below the 1 in 100 year ARI flood planning level;
- * there are approximately 3,846 individual parcels across RU1, RU2, RU4, RU5, E3 and E4 zones that are in excess of four (4) hectares in area;
- * of these parcels, approximately 434 are below the 1 in 100 year ARI flood

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planning level; and

- * although Council advice indicates that there are 1,345 parcels below the flood planning level, many more lots would be expected to be below the probable maximum flood (PMF).

The housekeeping proposal was forwarded to the Hawkesbury-Nepean Valley Flood Management Taskforce for comment. The Taskforce recommended that this item of the proposal be 'deferred until the implications of the cumulative impacts of residential development on evacuation planning could be determined, in light of recommendations made by government'.

A Gateway determination was issued for this planning proposal on 19 February 2016. This component of the proposal was required to be removed until the completion of the current phase of Taskforce work.

Council was advised to consider the findings of the current phase of the Hawkesbury-Nepean Flood Management Taskforce, prior to resubmitting this component of the planning proposal for separate Gateway determination.'

Council have not provided any additional supporting information as part of this application and an evacuation capacity assessment (required under Action 4.2.2 of a Plan for Growing Sydney) has not been submitted.

The Taskforce has not released Stage Two of the Hawkesbury-Nepean Valley Flood Management Review. When consulted, the Taskforce were unable to confirm a date for the release of this phase of work.

The Taskforce has recommended that proposals that seek to increase residential density in the study area, be deferred or refused and the Department has consistently applied the Taskforce's recommendations and have refused the following planning proposals:

- * 280 Castlereagh Road, Agnes Banks - proposal refused by the Deputy Secretary 15/08/2016
- * Mitchell Road, Pitt Town - proposal refused by the Deputy Secretary 31/03/2016
- * 35 Chapel Street, Richmond - proposal refused by the Deputy Secretary 15/02/2016
- * 24 Greenway Crescent, Windsor - proposal refused by the Deputy Secretary 05/05/2015

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

2.1 Environment Protection Zones

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

7.1 Implementation of A Plan for Growing Sydney

3.6 Shooting Ranges

Is the Director General's agreement required? Yes

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

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

SREP No. 20 - Hawkesbury-Nepean River (No. 2 - 1997)

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

Have inconsistencies with items a), b) and d) being adequately justified? No

If No, explain :

SECTION 117 DIRECTIONS

The proposal is generally consistent with the relevant section 117 Directions, except as follows:

1.2 RURAL ZONES

As this proposal seeks to increase permissible density within rural zones, the direction is relevant.

The direction states that a planning proposal must not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village). The direction specifies circumstances where a proposal may be justifiably inconsistent.

Council advises that the inclusion of secondary dwellings and dual occupancy (detached) housing in rural zones will not increase potential densities as dual occupancies (attached) are currently permitted with consent in these zones. Therefore, the proposal will not increase the number of dwellings.

Department Comment:

It is anticipated that the inclusion of secondary dwellings and dual occupancy (detached) development within rural zones would provide property owners with a more desirable choice in housing style. Consequently, it is considered likely that this proposal would result in an increase in residential density on land within rural zones.

Should this proposal proceed, the Secretary's delegate would be required to further consider this matter.

1.3 MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES

Should the proposal proceed, to ensure consistency with this direction, the planning proposal should be forwarded to the NSW Department of Primary Industry with a minimum of 40 days prior to public exhibition.

To comply with the direction, the proposal would be required to be updated to address any objections/comments made by the NSW Department of Primary Industry.

3.6 SHOOTING RANGES

This direction applies when a relevant planning authority prepares a planning proposal that will alter a provision relating to land adjacent to and/or adjoining an existing shooting range. A planning proposal must not seek to rezone land that will permit more intensive land uses or permit land uses that are incompatible with the noise emitted under the existing zone.

The planning proposal seeks to alter a provision relating to all rural lands. Kurrajong Pistol Club is located on land adjoining RU2 zoned land.

Council indicates that the Kurrajong Pistol Club is on land relatively isolated from adjoining properties, therefore the amendments proposed by this planning proposal will not adversely impact upon the operation of this club or public safety and amenity.

Should the proposal proceed, it is considered that any inconsistency with the direction may be justified as of minor significance.

4.1 ACID SULFATE SOILS

Acid sulfate soils occur across the LGA. However, given the proposal relates to a large spatial area an acid sulfate soils study is not considered appropriate in this instance.

Further, the proposal does not contain any proposed amendment to Clause 6.1 acid sulfate soils.

Should the proposal proceed any subsequent development applications would be subject to these controls.

Consequently, any inconsistency with this direction may be justified as of minor significance.

4.3 FLOOD PRONE LAND

This Direction applies as the planning proposal seeks to create a provision that affects flood prone land. The planning proposal is considered inconsistent with this direction.

As previously noted this amendment is the same as the component submitted in the General Amendments (Housekeeping) planning proposal (PP_2015_HAWKE_007_00).

The Gateway determination issued for the 'housekeeping' planning proposal required this amendment be removed as 'permitting secondary dwellings and detached dual occupancy dwellings in all rural zones and E3 and E4 Environmental zones, potentially at locations that are disconnected or remote from existing established dwellings, raises additional residential development potential and additional concomitant risks and requirements for flood and/or bush fire evacuation and/or protection'.

Council was advised to defer this amendment until the completion of the current phase of Hawkesbury-Nepean Valley Flood Management Taskforce work.

The Taskforce have not completed this phase of work and, when consulted, were unable to provide a completion date for this work.

Additionally, Council have not provided any fresh supporting information as part of this proposal and did not submit an evacuation capacity assessment.

In light of the above, the amendment seeking to permit (with consent) secondary dwellings and dual occupancies (detached) within rural and environmental zones, is not considered consistent with Direction 4.3.

4.4 PLANNING FOR BUSHFIRE

Direction 4.4 requires the relevant planning authority to consult with the NSW Rural Fire Service where a planning proposal will affect, or is in proximity to land mapped as bushfire prone land. Given the wide nature of the proposal, it is anticipated that some land would fall into this category.

Council have indicated it will forward the planning proposal to the Rural Fire Service for comment as part of consultation with relevant public authorities.

Should the proposal proceed, consultation with the Service would be required prior to community consultation.

7.1 IMPLEMENTATION OF A PLAN FOR GROWING SYDNEY

This proposal is considered to be inconsistent with Action 4.2.2 Complete and Implement The Hawkesbury-Nepean Valley Floodplain Management Review (of A Plan for Growing Sydney) in relation to flooding and evacuation constraints.

This inconsistency is discussed in detail under the Strategic Planning Framework section of this report.

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SEPPS AND DEEMED SEPPS

The proposal is generally consistent with all relevant SEPPs. However, it is noted:

SYDNEY REGIONAL ENVIRONMENTAL PLAN NO. 9 EXTRACTIVE INDUSTRY (NO 2 - 1995)

It is not anticipated that the proposed amendment would result in development that will restrict the obtaining of deposits of extractive material from land described under Division 1, 4, 6, 7, 8 or 9 of Schedule 1 of this plan.

To ensure this is the case, however, (and should this proposal proceed) it is recommended that the proposal be forwarded to the Environmental Protection Authority and the NSW Department of Industry, Skills and Regional Development for comment as part of consultation with relevant public authorities.

Mapping Provided - s55(2)(d)

Is mapping provided? No

Comment : No mapping has been provided as part of this proposal.

Given the wide ranging nature of the proposal, and should the proposal proceed, it is considered appropriate that Council be required to provide the community and agencies with access to zone, bushfire and flooding maps for all rural and E3 and E4 zones as part of the exhibition process.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : Council indicate that the proposal is to be forwarded to relevant public authorities for comment prior to Council undertaking community consultation.

Council have indicated that the planning proposal will be publicly exhibited for a minimum of 28 days.

Should the proposal proceed, this is supported.

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? No

If No, comment : Noting the above comments, the planning proposal is considered to be inconsistent with s117 Directions: 4.3 and 7.1, together with the overarching strategic direction provided in A Plan for Growing Sydney.

It is therefore recommended that this planning proposal not proceed.

Proposal Assessment

Principal LEP:

Due Date : September 2012

Comments in relation to Principal LEP : The Hawkesbury Local Environmental Plan 2012 came into effect when it was published to the NSW Legislation website on 21 September 2012.

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Assessment Criteria

Need for planning proposal :	A planning proposal was considered the best method to achieve the inclusion of additional the land uses, dual occupancies (detached) and secondary dwellings to the land use table to the Hawkesbury LEP 2012.
Consistency with strategic planning framework :	A PLAN FOR GROWING SYDNEY A Plan for Growing Sydney provides the overarching strategic direction for development across the Sydney Metropolitan Region with a focus on livability, economic growth and environmental protection, with a focus on the location of housing, infrastructure, employment and open space. The proposal is considered inconsistent with Goal 4 - Action 4.2.2. As discussed previously in this report, Council were advised to defer this amendment pending completion of the current phase of The Hawkesbury-Nepean Flood Management Taskforce and an evacuation capacity assessment has not been submitted as part of this proposal. As the Taskforce has provided consistent advice advising against any development that seeks to increase residential density within the study area, as well as the Taskforce's recommendation for deferral of this amendment until completion of the current phase of the Taskforce's work, this proposal is considered inconsistent with A Plan for Growing Sydney.
Environmental social economic impacts :	ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS A severe flood in the Hawkesbury-Nepean Valley is likely to lead to economic, social and other impacts, including evacuation risks. The ability to favourably assess this proposal at this time without a robust strategic planning framework is not desirable and, consequently, any proposed increase in residential density cannot be supported.

Assessment Process

Proposal type :	Inconsistent	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	DG
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage Transport for NSW NSW Rural Fire Service Transport for NSW - Roads and Maritime Services State Emergency Service Sydney Water Other		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	No		
If no, provide reasons :	Flooding impact on the site and access constraints have not been adequately addressed. These are critical factors that determine whether or not the proposal should proceed to Gateway determination. The proposal is particularly inconsistent with S.117 Directions: 4.3 Flood Prone Land and with A Plan for Growing Sydney - Goal 4. Action 4.2.2.		

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Advice provided by the Hawkesbury-Nepean Flood Management Taskforce indicates that the proposal for the inclusion of dual occupancies (detached) and secondary dwellings in all rural and E3 and E4 zones be deferred until the implications of the cumulative impacts of additional development below the probable maximum flood level can be determined pending completion of the Taskforce's current phase of work.

Given the above, it is recommended under s56(2)(a) of the EP&A Act that the planning proposal not proceed.

Resubmission - s56(2)(b) : No

If Yes, reasons :

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

Evacuation Capacity Assessment

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
1. Cover Letter.pdf	Proposal Covering Letter	Yes
2. Planning Proposal.pdf	Proposal	Yes
3. Attachment 1 Council Notice of Motion and Resolution 31 March 2016.pdf	Proposal	Yes
4. Attachment 2 Council Report and Resolution 9 December 2014.pdf	Proposal	Yes
5. Attachment 3 Hawkesbury Flood Risk Managment Plan Adopted 11 December 2012.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 2.1 Environment Protection Zones
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 7.1 Implementation of A Plan for Growing Sydney
- 3.6 Shooting Ranges

Additional Information : **IT IS RECOMMENDED THAT THE PLANNING PROPOSAL NOT PROCEED, FOR THE REASONS BELOW:**

1. The planning proposal has not demonstrated consistency with A Plan for Growing Sydney.

2. The planning proposal is inconsistent with Section 117 Direction 4.3 Flood Prone Land.

Supporting Reasons : **As indicated above.**

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Signature:



Printed Name:

T DORAN

Date:

13/9/16