

Liverpool Plains LEP 2011 Amendment No 7 - Dwelling Opportunity Map

Proposal Title : **Liverpool Plains LEP 2011 Amendment No 7 - Dwelling Opportunity Map**

Proposal Summary : **This Planning Proposal seeks to amend clause 4.2A of the Liverpool Plains LEP 2011 by introducing a 'Dwelling Opportunity Map' and remove redundant clauses from the LEP as the result of a 'sunset clause' expiring.**

PP Number : **PP_2017_LPLNS_003_00** Dop File No : **17/05817**

Proposal Details

Date Planning Proposal Received :	26-Apr-2017	LGA covered :	Liverpool Plains
Region :	Northern	RPA :	Liverpool Plains Shire Council
State Electorate :	TAMWORTH	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :
Suburb : City : **Liverpool Plains LGA** Postcode :

Land Parcel : **This Planning Proposal applies to all land in the RU1 Primary Production, R5 Large Lot Residential, Zone E3 Environmental Management and E4 Environmental Living zones as well as certain lots identified on the proposed 'Dwelling Opportunity Map'.**

DoP Planning Officer Contact Details

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RPA Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Northern Regional Strategy	Consistent with Strategy :	Yes

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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) :	7
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :	The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	The Northern Region has not met with any lobbyists in relation to this proposal, nor has the Northern Region been advised of any meeting between other Departmental Officers and lobbyists concerning the proposal.		

Supporting notes

Internal Supporting Notes :	Council staff have confirmed that the intent of the Planning Proposal is to: Introduce a 'Dwelling Opportunity Map' into the LEP to identify specific lots where an application for a dwelling house may be considered in addition to those provisions in clause 4.2A(3)(a)-(c); and Remove redundant provisions within the Liverpool Plains Local Environmental Plan 2011 as a result of a 'sunset' clause (4.2A(4)) expiring; and Retain or amend provisions within the LEP to continue to ensure development consent cannot be granted for the erection of a dwelling house on existing holdings (as defined in the Liverpool Plains Local Environmental Plan 2011).
External Supporting Notes :	Clause 4.2A of the Liverpool Plains Local Environmental Plan 2011 establishes ways in which a application for dwelling houses can be considered in certain rural, residential and environmental protection zones. The clause includes a sunset provision that limits the time in which dwelling houses on existing holdings, as defined in the LEP, can be considered. This clause lapsed on 9 December 2016. Council has identified that the clause is now redundant and wish to remove it from the LEP. Council has also identified some lots that have lost the opportunity to construct a dwelling and wish to reinstate them on a 'dwelling opportunity map' that will become part of the LEP.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment :	The statement of objectives for this planning proposal are precise in terms of the clauses that Council wish to remove from the LEP. The result of deleting these clauses may have unexpected consequences. It is recommended that Council revise the Overview and Part 1 of the planning proposal to a plain English version that clearly outlines the desired objectives. Council staff have confirmed that the intent of the Planning Proposal is to: Introduce a 'Dwelling Opportunity Map' into the LEP to identify specific additional lots where an application for a dwelling house may be considered in addition to those provisions in clause 4.2A(3)(a)-(c); and
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Remove redundant provisions within the Liverpool Plains Local Environmental Plan 2011 as a result of a 'sunset' clause (4.2A(4)) expiring; and
Retain or amend provisions within the LEP to continue to ensure development consent cannot be granted for the erection of a dwelling house on existing holdings (as defined in the Liverpool Plains Local Environmental Plan 2011).

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

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

Comment : **Part 2 of the planning proposal needs updating as some clauses appear to be wrongly referenced. It is recommended that Council revise Part 2 of the planning proposal to a plain English version that explains the intention to amend clause 4.2A.**

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

1.5 Rural Lands

* May need the Director General's agreement

2.1 Environment Protection Zones

4.4 Planning for Bushfire Protection

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

5.10 Implementation of Regional Plans

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 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

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

The draft New England North West Regional Plan 2036 and the New England North West Strategic Regional Land Use Plan applies to the Liverpool Plains LGA.

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Maps have been provided with the planning proposal that show the proposed land subject to the dwelling opportunities map.**

It is considered that the maps will be adequate for community consultation.

Maps prepared in accordance with the Department's technical mapping standards will need to be created before a Parliamentary Counsel's opinion can be sought.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal recommends a 28 day consultation period including direct notification of landowners deemed likely to have an interest in the planning proposal, newspaper advertisement and web based advertising. As the proposal does not meet the 'low impact' criteria this consultation period and approach is considered appropriate.**

Consultation will also be undertaken with the Commissioner of the Rural Fire Service due to the inconsistency with S117 Direction 4.4 Planning for Bushfire Protection.

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 :

The planning proposal and accompanying documentation are considered to satisfy the adequacy criteria by:

1. Providing objectives and intended outcomes which can be modified by conditions in the gateway determination;
2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining a proposed community consultation program; and
5. Providing a project time line.

Council is seeking an authorisation to exercise its plan making delegations. As the planning proposal deals with matters of only local significance, it is considered appropriate that an authorisation to exercise its plan making delegations be issued to Council if the planning proposal is supported.

Council has provided a project time line which estimates that the LEP will be ready for notification in August 2017. This is considered optimistic and to ensure an adequate period to complete the community consultation process a 6 month time frame is recommended.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Liverpool Plains LEP 2011 was made on 9 December 2011.

Assessment Criteria

Need for planning proposal :

At the commencement of the Liverpool Plains LEP 2011 a provision was included that limited the time in which Council was able to consider applications for dwelling houses on certain land that fell under the definition of an existing holding. This 'sunset clause' expired on 9 December 2016. As a result, Council has identified that parts of the LEP are now redundant and they wish to remove or amend them to provide clarity and transparency in the plan.

Prior to the 'sunset clause' expiring Council undertook a process of community consultation that advised landholders of the impending change in the ability to consider development applications. As a result, and through an Expression of Interest process, Council has identified six lots that lost the opportunity to lodge a development application for a dwelling house and one whose previous development consent had expired. These lots are proposed to be included on the 'Dwelling Opportunity Map' to reinstate their 'dwelling entitlement'.

In the planning proposal submitted for a Gateway Determination, Council proposes to delete certain redundant clauses from the LEP. This however may lead to the reintroduction of dwelling entitlements on existing holdings comprising only one allotment. It is recommended that amend the planning proposal to include a plain English explanation of the intent of the amendments and rely on Parliamentary Counsel to draft an

appropriate amendment. This will ensure that no unintended consequences arise from the deletion of the sunset clause.

Consistency with strategic planning framework :

The draft New England North West Regional Plan applies to the Liverpool Plains LGA. The planning proposal is currently silent on the consistency with this strategic planning document. It is recommended that the Planning Proposal be updated to address this issue prior to public exhibition. The planning proposal is not inconsistent with this draft Plan. This planning proposal provides for a range of dwelling types within the LGA and is consistent with Action 3.3 of the Draft Plan.

The New England North West Strategic Regional Land Use Plan applies to the Liverpool Plains LGA. The planning proposal will not inhibit the protection of agricultural land and the sustainable management of resources. It is considered that this planning proposal is not inconsistent with the the New England North West Strategic Regional Land Use Plan.

The planning proposal is consistent with the objectives of Council's adopted Land Use Strategy - the Liverpool Plains Growth Management Strategy (2009). The planning proposal will reinstate development potential to certain allotments that had dwelling opportunities under previous planning provisions. It is considered that the planning proposal is consistent with Council's land use strategy.

The planning proposal is considered to be consistent with all other relevant State Environmental Planning Policies including the provisions of SEPP 44 Koala Habitat Protection, SEPP 55 Remediation of Land that can be dealt with at the development application stage. It is also considered consistent with the Rural Planning Principles in SEPP Rural Lands 2008.

Council have identified a range of s117 directions applying to this planning proposal. The planning proposal is considered to be consistent with all applicable section 117 Directions except for 4.4 Bushfire Prone Land. Below is a discussion on the applicable S117 Directions:

1.2 Rural Zones

This Direction applies to the planning proposal. The proposal is consistent with the direction as does not rezone rural land.

1.5 Rural Lands

This Direction applies as the planning proposal will affect land within an existing rural or environment protection zone. It is considered that the proposal is consistent with the direction as the reinstatement of limited dwelling opportunities is not inconsistent with the Rural Planning Principles of the Rural Lands SEPP.

2.1 Environmental Protection Zones

This Direction applies as the planning proposal affects land zoned for environmental protection. It is considered that the proposal is consistent with the direction as it does not reduce the environmental protection standards that apply to the land.

4.4 Bushfire Prone Land

This Direction applies as the planning proposal will affect land that is identified as bushfire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

The planning proposal is otherwise consistent with the relevant section 117 directions.

Environmental social economic impacts :

It is not anticipated that there will be an adverse impact on any critical habitat or threatened species, populations or ecological communities, or their habitats as a result of this amendment to the LEP. Detailed assessment of any impacts will occur upon submission of Development Applications for dwellings.

Assessment Process

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

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **NSW Rural Fire Service**

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 :

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
2017-04-18 Cover Letter.pdf	Proposal Covering Letter	Yes
2017-04-18 LEP Amendment No. 7 Planning Proposal.pdf	Proposal	Yes
Dwelling Opportunity LEP Maps - DRAFT.pdf	Map	Yes
2017-04-18 LEP Amendment No. 7 Council Report.pdf	Proposal	Yes
2017-04-18 LEP Amendment No. 7 Council Resolution.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 4.4 Planning for Bushfire Protection**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**
- 5.10 Implementation of Regional Plans**

Additional Information : **It is recommended that the Acting Director Regions, Northern as delegate of the Minister**

approve the planning proposal subject to the following conditions:

1. Prior to consultation being undertaken the Planning Proposal is to be amended as follows:

(a) The Overview, Part 1, Part 2 and Q1 of Section A in Part 3 are to be amended to remove reference to specific clauses and replaced with a plain English explanation of the intent of the planning proposal which is to:

- Introduce a 'Dwelling Opportunity Map' into the LEP to identify specific lots where an application for a dwelling house may be considered in addition to those provisions in clause 4.2A(3)(a)-(c); and
- Remove redundant provisions within the LPLEP 2011 as a result of a 'sunset' clause (4.2A(4)) expiring; and
- Retain or amend provisions within the LEP to continue to ensure development consent cannot be granted for the erection of a dwelling house on existing holdings (as defined in the LPLEP 2011).

(b) reference to the draft New England North West Regional Plan 2036 is to be included in Q3 of Section B in Part 3 including addressing the consistency of this proposal with the draft Plan.

2. Community consultation is required under sections 56(2)(c) and 57 of the 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 LEPs (Department of Planning and Environment 2016).

3. Consultation is required with the NSW Rural Fire Service under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions. The NSW Rural Fire Service 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.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).

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

That the A/Director Regions Northern as delegate of the Secretary issues an authorisation to exercise delegation to Council.

Supporting Reasons :

This proposal will introduce dwelling opportunity maps initially reinstating certain dwelling eligibilities. The removal of the redundant sunset clause in the LEP is also supported as it will improve clarity of Councils planning controls.

Signature:

T Prentice

Printed Name:

Thomas Prentice

Date:

4/5/17.

