

# **LIVERPOOL PLAINS SHIRE COUNCIL**

## **REPORT TO COUNCIL MEETING TO BE HELD ON WEDNESDAY 22 MARCH 2017**

**AUTHOR: JACK MASSEY**

**REPORT NO: DEED 22/17**

**SUBJECT: LEP AMENDMENT NO. 7 – DWELLING  
OPPORTUNITY**

**FILE NO: 13.6.1**

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### **PURPOSE:**

The purpose of this report is to seek Council's concurrence to submit a Planning Proposal to the Department of Planning and Environment to undertake housekeeping amendments to the *Liverpool Plains Local Environmental Plan 2011* (the LEP). The Planning Proposal will be in two parts, as follows:

- The introduction of Clause 4.2A(3) and a 'Dwelling Opportunity Map' into the LEP. Council received Expressions of Interest for a number of allotments, that previously had dwelling entitlements, but may have been lost due to provisional changes to the LEP; and,
- Removal of Clause 4.2A(3)(d), Clause 4.2A(4) and Clause 4.2A(6) of the LEP. These provisions relate to 'existing holdings', which were to be extinguished from the LEP five years after its commencement. The commencement of the LEP was 9 December 2011, therefore Clause 4.2A(3)(d), Clause 4.2A(4) and Clause 4.2A(6) are no longer required in the LEP as they lapsed on 9 December 2016.

### **SUPPORTING INFORMATION:**

Draft Planning Proposal, attached as Appendix A of this report.

### **BACKGROUND:**

To ensure that rural/agricultural land is not fragmented and to avoid land use conflicts, Council's LEP has always contained controls relating to the construction of dwelling houses on rural/agricultural land. This was previously referred to as a 'dwelling entitlement'. The term entitlement has now been replaced in planning instruments as the word entitlement was seen to give the impression that is an entitlement existed then development consent could not be refused, even if a site was highly constrained. The term now used is 'dwelling opportunity' as this implies that further assessment of the land's suitability is needed before a dwelling can be approved or erected on the land.

The *Liverpool Plains Local Environmental Plan 2011* currently contains a Clause, known as Clause 4.2A, which sets out the ways in which a dwelling can be erected on land in certain rural, residential and environmental protection zones. It provides the 'dwelling opportunity' options for sites in RU1 Primary Production, R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living zones. Clause 4.2A permitted dwelling houses to be erected on land that were an existing holding under a previous LEP (i.e. *Parry Local Environmental Plan 1978*). However, this opportunity lapsed on 9 December 2016. The introduction of a 'dwelling opportunities' map will capture dwelling opportunities that existed under previous planning instruments that may have now lapsed under the LEP.

## **ISSUES & COMMENTS:**

It is considered that a dwelling opportunity map would allow applications to be lodged for the erection of a dwelling in rural and environmental protection zones in the following circumstances:

- The allotment was created before the commencement of the LEP and on which a dwelling could have been lawfully erected immediately before the commencement of the LEP;
- The allotment has not been altered since the commencement of the LEP unless affected by a minor realignment of its boundaries that did not create an additional allotment; and,
- There is no dwelling currently on the lot and no current approvals for a dwelling on the lot.

The proposed amendment and dwelling opportunity map only applies to allotments created prior to the commencement of the LEP and to those who submitted an Expression of Interest to Council. This includes the following allotments:

- Lot 212 DP 535109
- Lot 1 DP 1076767
- Lot 248 DP 751026
- Lot 342 DP 1037352
- Lot 12 DP 1143851
- Lot 9 DP 819141

The proposed amendment will assist in the achievement of a logical pattern of development on rural and environmental lands while having regard for ecological considerations. The proposal will aim to recognise historic and current agricultural land uses, while preserving, and minimising impacts on environmentally sensitive locations and scenic quality.

In addition to the introduction of a new Clause and a 'dwelling opportunities map', it is proposed that Clause 4.2A(3)(d), Clause 4.2A(4) and Clause 4.2A(6) be removed from the LEP. These provisions relate to 'existing holdings', which lapsed on 9 December 2016 and are now redundant.

In order to achieve the objectives of the Dwelling Opportunity Map, it is proposed that a new provision be included in Clause 4.2A(3) of the LEP, as follows:

*(3) Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is:*

- (a) a lot that is at least the minimum lot size specified for that land by the [Lot Size Map](#), or*
- (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
- (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or*
- (d) a lot identified as "Dwelling opportunity" on the [Dwelling Opportunity Map](#).*

As part of the above amendment, Dwelling Opportunity Maps shall be included in the Map Index of the LEP. These maps are enclosed within Appendix A of this report for the Councillors perusal.

It is suggested that Council amends the *Liverpool Plains Shire Council Development Control Plan 2012* to include a chapter which relates to the dwelling opportunity map to ensure that environmental impacts and land use objectives have been given consideration in the assessment of Development Applications under this provision. This shall be completed as part of a separate document put to Council.

The introduction of the new Clause and dwelling opportunity map in the LPLEP 2011 will not hinder or obstruct the objectives of the LEP as it will only capture land that had a dwelling opportunity until 9 December 2016. Therefore it will not create the fragmentation of rural/agricultural land.

### **FINANCIAL & RESOURCE IMPLICATIONS:**

There are no financial implications to report at this time.

### **LEGAL IMPLICATIONS:**

There are no legal implications to report at this time.

### **STAKEHOLDER CONSULTATION:**

The statutory requirements for the preparation of Local Environmental Plans includes community consultation. The duration and process for this consultation will be determined as part of the Gateway process but is ordinarily a minimum of 28 days. The draft planning proposal, provided in Appendix A of this report, recommends an exhibition period of 28 days via an advertisement in the local newspaper, Council's website and via social media. Each of the affected landowners will also be advised on the planning proposal.

Consultation will be required with the NSW Rural Fire Service as the land to which the planning proposal relates is mapped as bushfire prone land.

### **OPTIONS:**

1. Confirm authorisation for Council staff to proceed with the lodgement of a draft Planning Proposal to LEP Gateway (NSW Department of Planning and Environmental) in respect to the proposed amendment; or
2. Elect not to proceed with the Planning Proposal.

### **CONCLUSION:**

This Report has been prepared to inform Council about a draft Planning Proposal being prepared for the proposed amendment No. 7 'Dwelling Opportunity Map' to the LEP. Authorisation is requested from Council.

### **LINKS TO COMMUNITY STRATEGIC PLAN:**

"Ensure that environmental and development standards satisfy community needs and aspirations."

**RECOMMENDATION**

**THAT:**

- (a) That Council resolve to progress a Planning Proposal to amend the LPLEP 2011 to amend Clause 4.2A(3) to refer to a 'dwelling opportunity map' and to delete Clauses Clause 4.2A(3)(d), Clause 4.2A(4) and Clause 4.2A(6).
- (b) That Council resolve to forward the Planning Proposal to the Department of Planning & Environment for Gateway Determination to allow the LEP amendment process to commence under Section 56 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979).
- (c) That Council resolve to request the Department of Planning & Environment to issue written authorisation to Council's General Manager to exercise and implement plan making delegations pursuant to Section 23 of the EP&A Act 1979, so as to facilitate the plan making process following the Gateway Determination.
- (d) That following the Gateway Determination by the Department of Planning & Environment the Planning Proposal be placed on public exhibition in accordance with the procedures outlined in the EP&A Act 1979.
- (e) A report to be presented to Council at the completion of the public exhibition period detailing submissions received and the outcome of any consultation required with public authorities.

Donna Ausling  
**Director Environmental and  
Economic Development Services**

## **APPENDIX A – PLANNING PROPOSAL**