

Planning Proposal

Liverpool Plains Shire Council

Dwelling Opportunity

Liverpool Plains LEP 2011

(Amendment No. 7)



March 2017

Legislative Framework

Pursuant to Section 55(1) of the *Environmental Planning and Assessment Act 1979* ('the Act'), a Planning Proposal must be prepared before a draft Local Environmental Plan amendment is made. The proposal must explain the intended effect of the draft Local Environmental Plan amendment and provide justification for the amendment. The proposal must address those matters identified by Section 55(2) of the Act, which are considered as part of this report. Council must then determine whether or not to proceed with the proposal.

Council resolution

Amendment No. 7 to the *Liverpool Plains Local Environmental Plan* (LEP) 2011 was considered by Liverpool Plains Shire Council at the meeting on 22 March 2017.

Overview

This Planning Proposal considers an amendment to the *Liverpool Plains Local Environmental Plan 2011* in order to facilitate the follows matters:

- 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.

The proposed amendment and dwelling opportunity map only applies to allotments created prior to the commencement of the LPLEP 2011 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

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Part 1 - Objectives or Intended Outcomes of the Planning Proposal

The objective of this Planning Proposal is to undertake housekeeping amendments to the *Liverpool Plains Local Environmental Plan 2011* (the LEP). This Planning Proposal is 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 changes to planning controls.
- 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.

Part 2 – Explanations of Provisions

In order to achieve the objectives of the above, 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 were repealed five years after the commencement of the LEP.

In addition to the above, Council requests that a new provision be included in Part 4, Clause 4.2A(3)(e) 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](#).”*

In addition, a 'Dwelling Opportunities Map' shall be incorporated in the LEP Map Index supporting this Clause. Details of the mapping changes are provided in Part 4 of this Planning Proposal.

Part 3 – Justification

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not a result from any strategic study or report. The purpose of this report is to undertake housekeeping amendments to the LEP. The Planning Proposal is 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.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Council considers that a Planning Proposal is the best means of achieving the intended outcomes.

Section B – Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The planning proposal is consistent with the *New England North West Strategic Regional Land Use Plan* (SRLUP). The allotments had a dwelling opportunity up until 9 December 2016. The Planning Proposal will not prevent the protection of agricultural land and the sustainable management of resources. The Planning Proposal has strategic merit as it will allow dwellings to be erected on land that was previously provided with an opportunity for a dwelling.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic 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 provide future residential development to allotments that had dwelling opportunities under previous planning provisions. It is considered that the Planning Proposal is consistent with Council's land use strategy, as detailed above.

Q5. Is the planning proposal consistent with application of State Environmental Planning Policies?

The Planning Proposal is considered to be consistent with all relevant State Environmental Planning Policies (SEPPs), as demonstrated below:

Table 1 - Consistency of the Planning Proposal with State Environmental Planning Policies (SEPPs)

SEPPs	Objectives	Consideration
State Environmental Planning Policy No. 44 – Koala Habitat Protection	<i>State Environmental Planning Policy No. 44 – Koala Habitat Protection</i> aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. Before any development consent can be granted to a proposal, Council must be satisfied that the land does not constitute core koala habitat.	The Planning Proposal is consistent with the objectives of SEPP No. 44. Any proposals for development on the subject allotments shall be assessed against the provisions of this SEPP.
State Environmental Planning Policy No. 55 – Remediation of Land	<i>State Environmental Planning Policy No. 55 – Remediation of Land</i> aims to provide a state-wide planning approach to the remediation of contaminated land. The SEPP requires consideration of previous land uses and promoted the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	The Planning Proposal is considered consistent with the objectives of SEPP No. 55. All proposals for development on the subject allotments will be assessed for contamination.
State Environmental Planning Policy (Rural Lands) 2008	<i>State Environmental Planning Policy (Rural Lands) 2008</i> aims to facilitate the use and development of rural lands for rural and related purposes, to ensure the proper management, development and protection of rural lands, and to reduce land use conflict especially in regard to significant agricultural land.	The Planning Proposal is considered consistent with the objectives of the Rural Lands SEPP. The subject allotments previously had dwelling entitlements afforded to them. Therefore, it is considered that any proposals will be consistent with this SEPP and assessed against its provisions.

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

The proposal is consistent with the relevant Section 117 directions, as demonstrated in Table 3, below:

Table 2 - Consistency of the Planning Proposal with Section 117 Ministerial Directions

Direction No.	Provisions	Consideration
1.2 Rural Zones	What a relevant planning authority must do if this direction applies Clause 4(a) of this direction applies to all relevant planning authorities and states that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. Liverpool Plains Shire Council local government area is not specified in Clause 2(b) as being required to comply with Clause 4(b). This direction applies when a relevant planning authority	The Planning Proposal is consistent with this direction, as it will not enable an increase in density within the rural zones.

	prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Consistency A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director General of the Department of Planning (or an officer of the Department nominated by the Director General) that the provisions of the planning proposal that are inconsistent are: (a) Justified by a strategy which: (i) Gives consideration to the objectives of this direction, (ii) Identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and (iii) Is approved by the Director General of the Department of Planning, or (b) Justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or (c) In accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) Is of minor significance.	
1.5 Rural Lands	When this direction applies This direction applies when: (a) A relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or (b) A relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. Consistency A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director General of the Department of Planning (or an officer of the Department nominated by the Director General) that the provisions of the planning proposal that are inconsistent are: (a) Justified by a strategy which: (i) Gives consideration to the objectives of this direction, (ii) Identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and (iii) Is approved by the Director-General of the Department of Planning and is in force, or Is of minor significance.	It is considered that the Planning Proposal is not inconsistent with this direction.

2.1 Environment Protection Zones	What a relevant planning authority must do if this direction applies A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in an LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change in a development standard for minimum lot size in accordance with clause (5) of Direction 1.5 “<i>Rural Lands</i>”.	This Planning Proposal does not reduce the environmental protection standards applying to any land. It is therefore considered that the Planning Proposal is not inconsistent with this direction.
4.4 Planning for Bushfire Protection	When this direction applies This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.	The planning proposal is inconsistent with the direction as consultation with the Commissioner of the NSW Rural Fire Service will be undertaken.
5.10 Regional Plans	When this direction applies This direction applies when a relevant planning authority prepares a planning proposal.	This Planning Proposed is considered consistent with this direction.
6.1 Approval and Referral Requirements	When this direction applies This direction applies when a relevant planning authority prepares a planning proposal. What the relevant planning authority must do if this direction applies A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General)	This Planning Proposal is consistent with this direction. The Planning Proposal does not include provisions requiring the concurrence, consultation or referral of future Development Application’s to a Minister or public authority.

	prior to undertaking community consultation in satisfaction of section 57 of the Act. Consistency A planning proposal must be substantially consistent with the terms of this direction.	
6.3 Site Specific Provisions	When this direction applies This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. What the relevant planning authority must do if this direction applies A planning proposal must: (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. Consistency A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director General of the Department of Planning (or an officer of the Department nominated by the Director General) that the provisions of the planning proposal that are inconsistent are of minor significance.	It is considered that the Planning Proposal is not inconsistent with this direction.

Section C – Environmental, social and economic impact

Q7. 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?

No. It is not expected that the amendment will have an adverse impact upon critical habitat or threatened species, populations or ecological communities, or their habitats. Detailed assessment of these effects (if any) will occur upon submission of Development Applications on each allotment.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No direct adverse environmental impacts are expected to arise as a result of the Planning Proposal. Future Development Applications will need to address environmental impacts.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal is considered unlikely to result in adverse social or economic impacts. Furthermore, is it anticipated that the Planning Proposal is likely to achieve positive social and economic effects, particularly through clarity for dwelling opportunities on land within rural zones.

Future Development Applications will need to address the *Liverpool Plains Shire Council Development Control Plan 2012* to comply with Council's development controls and to avoid land use conflict.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Additional essential services, including electricity, stormwater and road access shall be made available to serve the affected lands via the imposition of appropriate conditions of consent on future Development Applications in accordance with the provisions of the LEP and *Liverpool Plains Development Control Plan (DCP) 2012*.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with relevant state authorities will occur where specified as part of the Gateway determination.

Part 4 - Mapping

The Planning Proposal seeks to add Dwelling Opportunity maps. Draft maps are provided in Appendix A.

Part 5 – Community Consultation

Public consultation will be undertaken in accordance with the requirements of the Gateway determination and the Department's 'guide to preparing local environmental plans'.

It is expected that the Planning Proposal will be exhibited for a period of not less than 28 days and that this will include:

- Quirindi Advocate – public notices section;
- Fixed exhibit at Administration building;
- Liverpool Plains Shire Council website;
- Media release via social media;
- Notification to all landowners deemed likely to have an interest in the Planning Proposal;
- Planning staff being available to answer questions via telephone, email and face to face interviews.

Consultation will also be conducted with the NSW Rural Fire Service.

Part 6 – Project Timeline

Action	Indicative Date
Council Resolution	March 2017
Anticipated Gateway Determination	April 2017
Government Agency Consultation (RFS)	April 2017 – May 2017
Public exhibition Period	April 2017 – May 2017
Submission assessment	May 2017
Assessment of Planning Proposal and exhibition outcomes including report to Council	June 2017
Drafting of instrument and finalisation of mapping	July 2017
LEP finalised (if delegated)	July 2017
Plan forwarded to the Department of Planning & Environment for notification	August 2017

Appendix A – Dwelling Opportunity Maps