

Planning Proposal to amend Clause 1.1AA Commencement and to correct a number of minor errors in Schedule 5 Environmental Heritage, under Hunters Hill Local Environmental Plan 2012

Proposal Title :	Planning Proposal to amend Clause 1.1AA Commencement and to correct a number of minor errors in Schedule 5 Environmental Heritage, under Hunters Hill Local Environmental Plan 2012		
Proposal Summary :	The Planning Proposal (PP) seeks to amend Hunters Hill LEP 2012 (LEP), by: 1. Changing the date for the commencement of the LEP identified in Clause 1.1AA Commencement, from 12 April 2013 to 12 August 2013; and 2. Amending the description of 6 local heritage items listed in Schedule 5 Environmental Heritage, in order to correct minor drafting errors.		
PP Number :	PP_2013_HUNTE_001_00	Dop File No :	09/04016

Proposal Details

Date Planning Proposal Received :	26-Feb-2013	LGA covered :	Hunters Hill
Region :	Sydney Region East	RPA :	The Council of the Municipality of
State Electorate :	LANE COVE	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	N/A		
Suburb :	N/A	City :	Hunters Hill LGA
		Postcode :	
Land Parcel :	Various land parcels in Hunters Hill LGA as identified by Schedule 5 Environmental Heritage of the LEP		

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	Metro Inner North subregion	Consistent with Strategy :	Yes
MDP Number :	N/A	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) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**
 If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**
 If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? **Yes**

Comment : **Adequate. The objectives of the PP are:**

- 1. To alter the commencement date of 12 April 2013 currently included in Clause 1.1AA of the LEP to 12 August 2013;**
- 2. To amend minor administrative errors in Schedule 5 Environmental Heritage.**

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

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

Comment : **Adequate. The following provisions are to be included in the proposed instrument:**

- 1. Clause 1.1AA of the LEP be altered so that it reads as follows:
 "This plan commences on 12 August 2013 and is required to be published on the NSW legislation website".**
- 2. Schedule 5 Environmental Heritage to be amended as shown:**

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Hunters Hill-I11-Stone Wall-11 Ady Street (Lot F DP 387800)

- entry should be deleted as it is a duplicate of another item located at 12 Viret Street

Hunters Hill-I12-House, Vienna and adjoining orchard-38-40 Alexandra Street (Lot C, DP77688)

- property description should be amended to read Lot C and D, DP 77688

Hunters Hill-I464-Trees, Port Jackson Fig, Moreton Bay Fig and Sydney Peppermint Trees-Church Street, east side of Sea Street

- Church Street to be replaced by Mount Street in the Address column

Hunters Hill-I45-House-34 Viret Street (Lot 2, DP 231878)

- Incorrect item number to be replaced with I498

Gladesville-I390-Quadrangular asylum ranges-Gladesville Hospital (Lot 877, DP 83271, Lots 1 and 2, DP 877893)

- Incorrect DP number, DP 83271, to be replaced with DP 832717

Gladesville-I506-House-1 Earnshaw Street (Lot 33, DP 332731)

- Incorrect lot number to be replaced with Lot 3

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

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified?

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

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **The proposed changes to Schedule 5 Environmental Heritage do not affect the description of heritage items on the LEP's Heritage Map.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **No**

Comment : **In order for this PP to be enacted prior to the LEP's current commencement date of 12 April 2013, a "waiving" of a community consultation stage would be required. Should the PP proceed, a public exhibition period of 0 days should be nominated.**

The proposed changes to Schedule 5 of the LEP are in order to correct administrative errors. This component of the PP would normally be considered as an "expedited amendment" of an environmental planning instrument, under section 73A of the EP&A Act, and would not require community consultation.

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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 :

A nominal community consultation period would normally be assigned to such a proposal to extend the LEP commencement date. However, for the changes to the commencement date proposed to have effect, the amendment must be made prior to 12 April 2013. For this to occur, a exhibition period of 0 days is required.

The proposal to amend Schedule 5 of the LEP satisfies all adequacy criteria.

Proposal Assessment

Principal LEP:

Due Date : April 2013

Comments in relation to Principal LEP :

The LEP is already published and awaiting commencement on 12 April 2013. Prior to publication of the LEP, Council requested a commencement date of 12 April 2013, to align the LEP's commencement with that of its draft Consolidated Development Control Plan (DCP).

Assessment Criteria

Need for planning proposal :

Following the LEP's notification, Council indicated that there would be some delays to the finalisation of its draft DCP and requested an extension to the LEP's commencement date under Clause 1.1AA. It originally sought this amendment via section 73A of the Act. However, pursuing this amendment via section 73A may have exposed the LEP to legal challenge and the Department advised Council to lodge a Planning Proposal for a Gateway Determination.

Council's justification for this PP is that it is undertaking a consolidation of its 17 existing DCPs into one document, in order to comply with section 74C(2) and (5) of the Act, and seeks to ensure that the provisions are consistent with the LEP upon commencement. The LEP's commencement was deferred to 12 April 2013 to provide Council with time to finalise its draft Consolidated DCP. However, owing to the "complexity" of the draft Consolidated DCP project, Council has since had to revise the project timeframe and requests that the LEP does not commence until 12 August 2013 to account for this timeframe.

In consolidating its existing DCP provisions, Council endeavours to:

- Ensure consistency with the LEP and other relevant State legislation;
- Move non-Standard Instrument heritage provisions, in relation to contributory items and Council's Conservation Advisory Panel, from Hunters Hill LEP No 1 to the draft DCP;
- prepare Tree Management DCP provisions, pursuant to Clause 5.9 of the LEP; and
- develop a clear structure and remove inconsistencies and duplications.

Section 74C, subsection (2) of the Act stipulates that only one DCP made by the same relevant planning authority may apply in respect of the same land. This subsection applies whether Hunters Hill LEP 2013 commences prior to the DCP's adoption by Council or not and is not a relevant justification for amending the commencement date of the LEP.

Section 74C, subsection (5)(b) of the Act stipulates that a provision of a DCP has no effect to the extent that it is inconsistent with a provision of an environmental planning instrument applying to the same land.

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It is noted that uplift in the LGA had already been provided for under the completed LEPs for Hunters Hill Village and Gladesville Village Centre precincts and that corresponding DCP provisions have already been updated for both precincts. As a result, the Principal LEP was predominantly a translation of existing controls into the Standard Instrument template, with the exception of certain minor changes such as the transfer of contributory items from the LEP to the DCP. Given that the new LEP is effectively a translation, any inconsistencies between it and existing DCPs would likely be minor and not create a strong argument for amending the commencement date of the LEP.

Council's argument that the consolidation of existing DCPs, in accordance with section 74C, subsection (5) of the Act, necessitates the proposed extension to the LEP's commencement date is not supported.

Consistency with strategic planning framework :

The PP is not inconsistent with any SEPP, section 117 Direction or State Government Policy.

Environmental social economic impacts :

The PP would not result in any adverse environmental, social or economic impacts. It is acknowledged that a prolonged deferred commencement of the LEP could result in some inconvenience to landowners wishing to benefit from development controls under the LEP, although the LEP is effectively a translation of existing controls under other LEPs.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	Nil
Timeframe to make LEP :	3 Month	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :			

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 :

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Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal to Amend LEP.docx	Proposal	No
Project Schedule Consolidated DCP Jan 13.docx	Proposal	No
Planning Proposal email notification.rtf	Proposal Covering Letter	No
Planning Proposal to Amend LEP.pdf	Proposal	Yes
Planning Proposal notification - Council further information provided on DCP consolidation.rtf	Study	No

Planning Team Recommendation

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

S.117 directions:

Additional Information : The Planning Proposal should proceed subject to the following conditions:
1. The proposed amendment to Clause 1.1AA of the LEP, to extend the deferred commencement date from 12 April 2013 to 12 August 2013, be omitted, and
2. A community consultation period of nil days be nominated.

It is recommended that plan-making functions be delegated to Council as relevant planning authority for this Planning Proposal.

Supporting Reasons : The Planning Proposal is not inconsistent with any SEPPs, section 117 Directions or State Government Policies or Strategies.

Council's proposed amendment to Clause 1.1AA of the LEP is not supported because:
1. Extending the already deferred commencement date of the LEP may have an adverse impact on land owners, developers and the community who are expecting the LEP to commence on 12 April 2013. These people should be given the opportunity to comment.
2. Exhibiting the proposed amendment to Clause 1.1AA would mean that the amendment would not be made until after 12 April 2013, when the LEP would already have commenced.
3. The LEP is predominantly a translation from the previous controls, with the exception of transferring non-Standard Instrument heritage provisions such as contributory items from the LEP to the DCP and updating terminology in the DCP. Inconsistencies between the LEP and the DCP are expected to be relatively minor and can be corrected in the short term.

The proposed amendments to the heritage schedule are supported as they will rectify minor drafting errors in the form of inconsistencies between Schedule 5 and the Heritage Map. A community consultation period of nil days is supported.

Signature:



Printed Name:

Dan Cutler

Date:

4/3/2013