



16 July 2019

Mr Ben Eveleigh
Regional Director – Southern Region
Department of Planning, Industry and Environment
GPO Box 5475
Wollongong NSW 2520

Dear Mr Eveleigh

Council request that planning proposal PP_2015_PALER_002_00 not proceed

Council at its meeting of 8 May 2019 resolved to request that the Minister no longer proceed with Planning Proposal PP_2015_PALER_002_00 (exempt and complying development in the land use zoned E4 Environmental Living, RU5 Village and RU1 Primary Production) under Section 3.35(4) of the NSW *Environmental Planning and Assessment Act 1979*.

The planning proposal seeking to expand the exempt and complying provisions in the E4 Environmental Living, RU5 Village and RU1 Primary Production zones was lodged in 2015 and a Gateway determination was issued on the 4 May 2015.

In addition to the conditions of the Gateway determination, the then Department of Planning and Environment requested that the mechanics for applying the proposed exempt and complying provisions be considered within the planning proposal prior to consultation. To date, no decision, regarding the most appropriate mechanism for applying the proposed exempt and complying provisions, has been determined and the planning proposal has not progressed to consultation with either government agencies or the community.

As a result of a number of factors that have occurred since the planning proposal was lodged, a report to 8 May 2019 Planning and Strategy Council meeting reconsidered the need for the planning proposal. The influencing factors negating the need for the planning proposal include:

- Significant review of the SEPPs by the Department;
- Minimal feedback from the community regarding limitations on exempt development; and
- Commencement of work on the comprehensive LEP (following the 2016 merger of Palerang Council and Queanbeyan City Council).

OFFICES

144 Wallace St, Braidwood
10 Majara St, Bungendore
256 Crawford St, Queanbeyan

POSTAL

PO Box 90, Queanbeyan NSW 2620

PHONE

P. 1300 735 025

EMAIL/WEB

W: www.qprc.nsw.gov.au
E: council@qprc.nsw.gov.au

A copy of the 8 May 2019 Council Report and Minutes containing the relevant resolution supporting request to not proceed with the planning proposal are enclosed.

If you would like further information, please contact Tanja Hogg of Council's Land Use Planning section on 6238 8115 or via email at tanja.hogg@qprc.nsw.gov.au

Yours sincerely



David Carswell
Service Manager Land Use Planning
Queanbeyan-Palerang Regional Council

5.3 **Planning Proposal - Exempt and Complying Development in the Landuse Zones E4 Environmental Living, RU5 Village and RU1 Primary Production (Ref: C1950902; Author: Thompson/Carswell)**

Summary

In 2015 Council prepared a planning proposal to increase the exempt and complying provisions in the E4 Environmental Living, RU5 Village and RU1 Primary Production zones. A Gateway Determination was issued by the NSW Department of Planning and Environment reflecting the proposed provisions.

However, the planning proposal has not proceeded to consultation with government agencies or the community as the mechanics of the proposed exempt and complying provisions could not be determined by the Department. As Council is preparing a draft comprehensive local environmental plan (LEP), any additional provisions sought by Council could be considered as part of this work. As this makes the planning proposal redundant, it is recommended that Council make a request to the Minister to discontinue the planning proposal.

Recommendation

That pursuant to Section 3.35(4) of the *NSW Environmental Planning and Assessment Act 1979*, Council request that the Minister no longer proceed with Planning Proposal PP_2015_PALER_002_00 exempt and complying development in the land use zoned E4 Environmental Living, RU5 Village and RU1 Primary Production.

Background

Following the gazettal of the *Palerang Local Environmental Plan 2014* (PLEP), the Council reviewed the provisions relating to exempt and complying development. A report and planning proposal (Attachment 1) to expand the opportunity for exempt and complying development in the Zones E4 Environmental Living, RU5 Village and RU1 Primary Production was considered by Council on 5 March 2015.

To increase the opportunities for exempt and complying development it was necessary to either amend the PLEP through a planning proposal or lobby for changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

The NSW Department of Planning and Environment issued a Gateway determination on 4 May 2015 (Attachment 2). As seen in the Department's letter attached to the determination, Council was required to update the planning proposal prior to community consultation to reflect the legal mechanism it was intending to use to enable the increase in exempt and complying development opportunities. Additionally, the Department advised that it was not possible for Council to amend the provisions of the Codes SEPP.

Subsequently, Council staff reviewed the provisions requested in the planning proposal and wrote to the Department with the suggested amendments (Attachment 3). The proposed provisions continued to be discussed between the Department and Council. On 7 March 2016, the Department extended the date for the completion of the planning proposal (Attachment 4) whilst these discussions occurred and this was further extended on 1 May 2017 (Attachment 5).

On 31 March 2016, the NSW Department of Planning and Environment wrote to Council stating that it had *been attempting to identify the most appropriate course of action to progress this matter* and that the Department was reviewing the Codes SEPP. The

5.3 Planning Proposal - Exempt and Complying Development in the Landuse Zones E4 Environmental Living, RU5 Village and RU1 Primary Production (Ref: C1950902; Author: Thompson/Carswell) (Continued)

Department attached the E4 Environmental Living complying development provisions in relation to dwellings implemented by Sutherland Shire Council as it was thought these may assist Council.

The Gateway determination timeframe will expire shortly and the Department of Planning and Industry has advised that a Council resolution should be obtained to discontinue this planning proposal given that Council, as a merged entity, would require a new comprehensive local environmental plan which would allow the exempt and complying provisions to be considered as part of the preparation of that plan should Council wish to do so.

As seen in Attachment 3, Council's letter to the NSW Department of Planning and Environment sought to allow a range of minor land uses associated with rural residential living to be exempt development and for the erection of dwellings to be complying development within the E4 Environmental Living zone, where there is a building envelope created under section 88B of the *Conveyancing Act 1919 (NSW)*.

Over the last four years there has been a substantial review of the Codes SEPP. The Inland Code has been introduced which will eventually replace the Rural Code. However, this Code does not apply to the E4 Environmental Living zone. Also there have been some minor changes to the Codes SEPP which allow for the exempt provisions sought by Council.

In relation to exempt fencing in the RU5 Village landuse zone this appears to be largely addressed in the Codes SEPP Subdivision 17. Under the Inland Code, complying development for dwellings can only be undertaken on lots that meet the minimum lot size.

It is over four years since the gazettal of the PLEP and within this time there have been very few comments from the community relating to problems experienced by limitations on exempt development or not having complying development in the E4 Environmental Living zone. It is acknowledged that it is likely that many of the minor landuses are undertaken without regard for the Codes SEPP.

Given the above, it is suggested that there are several options for Council:

1. Discontinue the planning proposal and consider including any desired provisions in the comprehensive local environmental plan. It should be noted that consideration would need to be given to applying these provisions across the E4 Environmental Living zone for the whole local government area; or
2. Discontinue the planning proposal and not pursue seeking any increase in exempt and complying development provisions; or
3. Seek an extension of time on the planning proposal, noting that it only applies to the former Palerang local government area. The Department of Planning and Industry may not want to continue the planning proposal as it has been some time since it commenced and the review of exempt and complying provisions in the E4 Environmental Living zone has been completed.

Considering all of the above matters it is recommended that Option 2 be pursued.

Implications

Legal

Under Section 3.35(4) of the *Environmental Planning and Assessment Act 1979*, the planning proposal authority may also, at any time, request the Minister to determine that the matter not proceed.

5.3 Planning Proposal - Exempt and Complying Development in the Landuse Zones E4 Environmental Living, RU5 Village and RU1 Primary Production (Ref: C1950902; Author: Thompson/Carswell) (Continued)

Should Council resolve not to proceed with the planning proposal, the Department of Planning and Industry will be advised of Council's resolution and a request made to discontinue the process.

Policy

Council does not have a policy which specifically seeks to reduce the need for land use planning provisions.

Environmental/Social/Economic

Whilst it is beneficial for the economy to have efficient landuse planning provisions, it is suggested that the Council effort that has been expended on this planning proposal and would be required in the future is not of enormous benefit to the economy. In most instances the development is minor so a development application is relatively straightforward. In relation to a complying development provision for the erection of dwellings on RU1 Primary Production lots that are below the minimum lot size, it is suggested that the fees and effort for a development application for this type of development are similar to the use of a complying development approach.

Engagement

Aside from the report to Council on 5 March 2015, there has been no community consultation. The Department of Planning and Industry is the only government agency that has been consulted by Council.






Financial

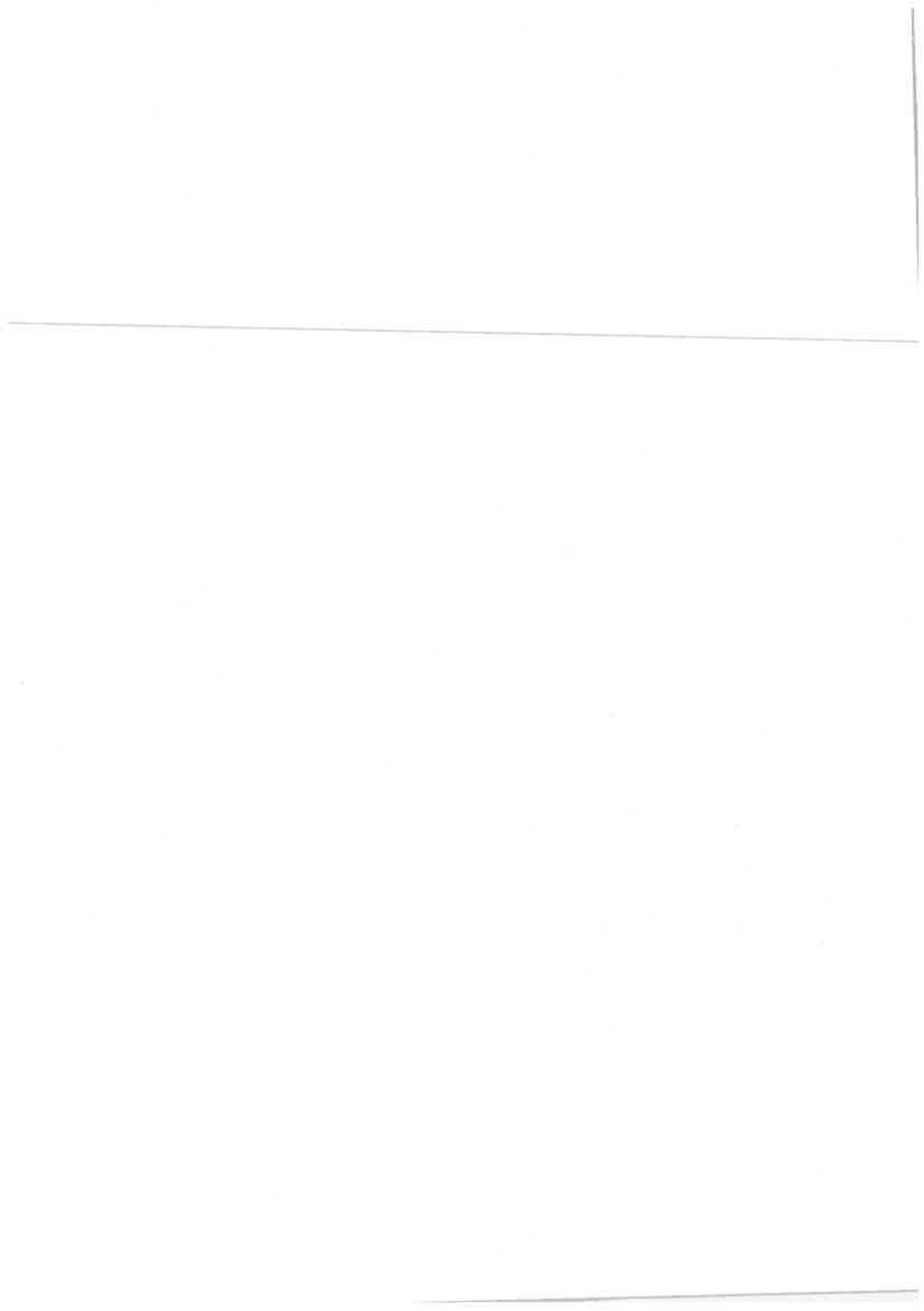
The cost of Council staff time allocated to this planning proposal has been provided for in Council's Operational Plans. At this time the only costs expended have been administration costs.

Conclusion

If required there is an opportunity to further consider these matters as part of the comprehensive local environmental plan. However, at the same time there appears to be little demand for an increase in exempt and complying provisions in the E4 Environmental Living, RU5 Village and RU1 Primary Production zones. Consequently it is recommended that the planning proposal be discontinued and the Department of Planning and Industry be notified of this.

Attachments

- Attachment 1  Report and Planning Proposal - 10 March 2015 (*Under Separate Cover*)
- Attachment 2  Gateway Determination - 4 May 2015 (*Under Separate Cover*)
- Attachment 3  Letter to Department of Planning and Environment - 9 September 2015 (*Under Separate Cover*)
- Attachment 4  Gateway Determination - Extension - 7 March 2016 (*Under Separate Cover*)
- Attachment 5  Gateway Determination - Extension - 1 May 2017 (*Under Separate Cover*)



PLA045/19 **Procedural Motion**
RESOLVED (Overall/Taylor)
That the Planning and Strategy meeting be extended by 30 minutes to complete the agenda.

The resolution was carried unanimously.

ADJOURNMENT: The meeting adjourned at 9.04pm and resumed at 9.25pm.

5.2 **Planning Proposal - West Jerrabomberra**
PLA046/19 **RESOLVED (Hicks/Bray)**
That Council:

1. Note the outcomes of the public exhibition process.
2. Agree to the changes to the draft plan for West Jerrabomberra as outlined in this report.
3. Forward the planning proposal to the Department of Planning and Industry requesting the Minister (or delegate) make the draft plan as amended.
4. Commit to revisiting the proposed additional uses raised in submissions to determine the suitability of including these in a planning proposal at a later date.

The resolution was carried unanimously.

5.3 **Planning Proposal - Exempt and Complying Development in the Landuse Zones E4 Environmental Living, RU5 Village and RU1 Primary Production**
PLA047/19 **RESOLVED (Harrison/Marshall)**
That pursuant to Section 3.35(4) of the *NSW Environmental Planning and Assessment Act 1979*, Council request that the Minister no longer proceed with Planning Proposal PP_2015_PALER_002_00 exempt and complying development in the land use zoned E4 Environmental Living, RU5 Village and RU1 Primary Production.

The resolution was carried unanimously.

5.4 **Draft Voluntary Planning Agreement - 18 Mecca Lane, Bungendore**
PLA048/19 **RESOLVED (Marshall/Schweikert)**
That Council:

1. Exhibit the draft Voluntary Planning Agreement in accordance with section 7.5 of the *Environmental Planning and Assessment Act 1979* for a minimum of 28 days.
2. Following the exhibition of the draft Voluntary Planning Agreement, consider a report on the results of the exhibition.

The resolution was carried unanimously.

