

**Expanding exempt and complying development in E4, RU5 and RU1 zones.**

Proposal Title : **Expanding exempt and complying development in E4, RU5 and RU1 zones.**

Proposal Summary : **1. Expand the exempt and complying provisions for the E4 Environmental Living Zone to better reflect its rural residential nature.  
2. Allow the erection of a residential type fence in the RU5 Village Zone as exempt development.  
3. Allow as complying development in the RU1 Primary Production Zone the erection of a new single storey and two storey dwelling house and ancillary development on lots created by subdivision for residential purposes.**

PP Number : **PP\_2015\_PALER\_002\_00**

Dop File No : **15/05306**

**Proposal Details**

Date Planning  
Proposal Received : **19-Mar-2015**

LGA covered : **Palerang**

Region : **Southern**

RPA : **Palerang Council**

State Electorate : **MONARO**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

**Location Details**

Street : **various**

Suburb : **various**

City : **Palerang**

Postcode : **2621**

Land Parcel : **various**

**DoP Planning Officer Contact Details**

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**RPA Contact Details**

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## Expanding exempt and complying development in E4, RU5 and RU1 zones.

### Land Release Data

|                                    |                                            |                                                      |     |
|------------------------------------|--------------------------------------------|------------------------------------------------------|-----|
| Growth Centre :                    | N/A                                        | Release Area Name :                                  | N/A |
| Regional / Sub Regional Strategy : | Sydney-Canberra Corridor Regional Strategy | Consistent with Strategy :                           | Yes |
| MDP Number :                       |                                            | Date of Release :                                    |     |
| Area of Release (Ha) :             |                                            | 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 : **Palerang Council has identified a number of deficiencies relating to the RU1, RU5 and E4 Zones under the Palerang LEP 2014 and the ability to undertake appropriate exempt and/or complying development.**

**Amending Schedules 2 Exempt Development and 3 Complying Development of the Palerang LEP 2014 or amending the SEPP (Exempt and Complying Development Codes) 2008 is proposed to permit a greater range of exempt and/or complying development in these zones in the Palerang Local Government Area.**

External Supporting Notes :

### Adequacy Assessment

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

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

Comment : **The stated objectives/intended outcomes of the planning proposal are:**

- '- to allow a wider range of landuses to be exempt and complying development in E4 Environmental Living. This includes the erection of new one or two storey dwellings as complying development.**
- to allow residential type fencing as exempt development in the land use zone RU5 Village.**
- to allow the erection of new one or two storey dwellings and ancillary development as complying development on lots created by subdivision for residential purposes.'**

**The statement of the objectives/intended outcomes is considered to be adequate.**

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

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

Comment :

The proposal identifies that to achieve the intended outcomes of the planning proposal, it would be necessary to amend either the Palerang LEP 2014 (Schedules 2 - Exempt Development and 3 - Complying Development) or the State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 to permit the following:

- E4 Environmental Living exempt development:

- \* Aerials, antennae and communication dishes
- \* Animal shelters
- \* Aviaries
- \* Balconies, decks, patios, pergolas, terraces and verandahs
- \* Barbecues and other outdoor cooking structures
- \* Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses
- \* Carports
- \* Farm buildings (stockyards)
- \* Fowl and poultry houses
- \* Rainwater tanks (below ground)
- \* Shade structures of canvas, fabric, mesh or the like
- \* Tennis courts

E4 Environmental Living complying development:

- \* New single storey and two storey dwelling houses
- \* Alterations or additions to existing single storey and two storey dwelling houses
- \* Ancillary development
- \* Maximum heights of dwelling houses and outbuildings

RU5 Village Zone exempt development:

- \* Fences in residential zones

RU1 Primary Production Zone complying development (houses and ancillary development):

- \* Small lots created through subdivision using 'averaging' or 'concessional' lot provisions.

Detailed explanation of provisions are provided at Attachment 1 of the planning proposal.

It is not clear from the explanation of provisions provided on the different options it is proposing (eg amend the LEP or amend the SEPP) to achieve the stated objectives. It is recommended that Council provide further clarification on these options in the planning proposal.

## 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

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

2.4 Recreation Vehicle Areas

3.1 Residential Zones

3.2 Caravan Parks and Manufactured Home Estates

3.3 Home Occupations

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

5.2 Sydney Drinking Water Catchments

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes



## Expanding exempt and complying development in E4, RU5 and RU1 zones.

Is the Director General's agreement required? No

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

d) Which SEPPs have the RPA identified? N/A

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

### SECTION 117 DIRECTIONS:

**1.2 RURAL ZONES:** Council has identified that this Direction applies to the planning proposal, however it does not apply as it is not rezoning land and it is not proposing to increase the permissible density of land within a rural zone.

**1.5 RURAL LANDS:** This Direction does apply to the planning proposal as it will affect land within an existing rural zone.

The proposal is considered to be **CONSISTENT** with this Direction as it will not affect the viability of agricultural or environmental land and is not amending the minimum lot size.

**2.1 ENVIRONMENT PROTECTION ZONES:** This Direction does apply to the planning proposal as it will affect land within an environment protection (E4 Environmental Living) zone or land otherwise identified for environment protection purposes.

The proposal is considered to be **CONSISTENT** with this Direction as it does not propose to reduce the environmental standards for the affected land. Notably, the SEPP (Exempt and Complying Development Codes) contains environmental management provisions relating to the protection of trees, vegetation and other natural assets and protection of unsewered land in drinking water catchments. These provisions would apply to the land affected by the planning proposal.

**2.3 HERITAGE CONSERVATION:** Council has identified that this Direction applies to the planning proposal because it could affect items, places, buildings, works, relics moveable objects or precincts of environmental heritage significance.

The proposal is considered to be **CONSISTENT** with this Direction as the SEPP (Exempt and Complying Development Codes) contains provisions relating to the management/protection of heritage.

**2.4 RECREATION VEHICLE AREAS:** Council has identified that this Direction applies to the planning proposal; however it does not apply as it does not affect land to be developed for the purpose of a recreation vehicle area.

**3.1 RESIDENTIAL ZONES:** Although not identified by Council, this Direction does apply to the planning proposal as it will affect land within an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted.

The proposal is considered to be **CONSISTENT** with this Direction as it proposes to encourage the provision of housing on land zoned E4 and RU1 by enabling residential and ancillary minor development to be undertaken as complying and exempt development.

**3.2 CARAVAN PARKS AND MANUFACTURED HOME ESTATES:** Council has identified that this Direction applies to the planning proposal; however it does not apply as it does not affect land or provisions relating to caravan parks or manufactured home estates.

**3.3 HOME OCCUPATIONS:** Council has identified that this Direction applies to the planning proposal; however it does not apply as it will not affect land or provisions relating to the permissibility of home occupations in dwelling houses. Notably, home occupations can currently be undertaken in the Palerang LGA as exempt development.

**4.3 FLOOD PRONE LAND:** This Direction does apply to the planning proposal as it will alter a provision that affects flood prone land.

The proposal is considered to be **CONSISTENT** with this Direction as the SEPP (Exempt and Complying Codes) contains provisions to manage flooding on flood control lots which would apply to land affected by the planning proposal.

**4.4 PLANNING FOR BUSHFIRE PROTECTION:** Council has identified that this Direction applies to the planning proposal as it may affect, or is in close proximity to land mapped as bushfire prone. The SEPP (Exempt and Complying Codes) contains provisions to manage bushfire prone land, which would apply to the land affected by the planning proposal. The Direction requires that Council consult with the NSW Rural Fires Service (RFS) following receipt of a Gateway determination. It is considered that the proposal will be **CONSISTENT** with the Direction after Council has consulted with the RFS.

**5.1 IMPLEMENTATION OF REGIONAL STRATEGIES:** This Direction does apply to the planning proposal as the Sydney-Canberra Corridor Regional Strategy applies to the land.

The proposal is considered to be **CONSISTENT** with this Direction because the proposal is generally consistent with the vision, land use strategy, policies, outcomes and actions of the Regional Strategy.

**5.2 SYDNEY DRINKING WATER CATCHMENT:** This Direction applies to the planning proposal as a significant part of the land is located within the Sydney drinking water catchment. The Direction requires that Council consult with Sydney Catchment Authority (WaterNSW) prior to requesting a Gateway determination. Council has yet to consult with WaterNSW.

The proposal is considered to be **CONSISTENT** with this Direction after Council has consulted with WaterNSW and has addressed any issues on the proposal raised by WaterNSW.

**6.1 APPROVAL AND REFERRAL REQUIREMENTS:** Council has identified that this Direction applies to the planning proposal; however it does not apply as it does not include provisions that require the concurrence, consultation or referral of development applications to the Minister or a public authority.

**6.2 RESERVING LAND FOR PUBLIC PURPOSES:** Council has identified that this Direction applies to the planning proposal; however it does not apply as it does not create/alter/reduce existing zonings or reservations of land for public purposes and requires the approval of the relevant public authority and the Secretary of the Department.

#### State Environmental Planning Policies (SEPPs):

The key SEPPs that are relevant to the planning proposal are the SEPP (Exempt and Complying Development Codes) 2008 and the SEPP (Sydney Drinking Water Catchments) 2011.

**SEPP (Exempt and Complying Development Codes):** The SEPP applies to the planning proposal because it provides provisions relating to exempt and complying development types, environmental management, aircraft noise exposure, heritage and unsewered land in drinking water catchments.

As previously mentioned, the planning proposal is not clear whether it intends to amend the LEP or the SEPP (via a local variation or exclusion) to allow the additional exempt and complying development types and development standards in the E4, RU5 and RU1 Zones. Clarification on the various options should be provided in the planning proposal.

The SEPP excludes unsewered land in the Sydney Drinking Water Catchment (as defined under the SEPP (Sydney Drinking Water Catchments) 2011) from complying development. Council has advised that the majority of the land zoned E4 Environmental Living under the Palerang LEP 2014 is located outside the Drinking Water Catchment, notably at Bywong and Wamboin. A small area of land zoned E4 is also located within the Drinking Water Catchment at Braidwood. Council has advised that it is not the



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intention of the planning proposal to amend the provisions of the SEPP (Exempt and Complying Development Codes) as they relate to excluding complying development from unsewered land in the Drinking Water Catchments.

The planning proposal is considered to be **CONSISTENT** with SEPPs (Exempt and Complying Development Codes) 2008 and (Sydney Drinking Water Catchments) 2011.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

### Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

### Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council proposes 28 days.**

### 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 : **With exception of Part 2 Explanation of Provision where, as previously mentioned, it is recommended that Council provide further explanation of the various options concerning amending the LEP or amending the SEPP (Exempt and Complying Development Codes), the planning proposal meets the requirements of the Department's 'a guide to preparing planning proposals'.**

## Proposal Assessment

### Principal LEP:

Due Date :

Comments in  
relation to Principal  
LEP :

**Palerang LEP 2014**

### Assessment Criteria

Need for planning  
proposal :

**Palerang Council has identified a number of deficiencies relating to the RU1, RU5 and E4 zones and the ability to undertake appropriate exempt and/or complying development.**

**Amending Schedules 2 and 3 of the Palerang LEP 2014 or the SEPP (Exempt and Complying Development Codes) 2008 to permit a greater range of exempt and/or complying development in these zones is considered appropriate.**

Consistency with  
strategic planning  
framework :

**The proposal is not inconsistent with the Sydney-Canberra Corridor Regional Strategy. Council does not have a local planning strategy.**

Environmental social  
economic impacts :

**There are likely to be social and economic benefits from individuals being able to undertake a wider range of exempt or complying development in the RU1, RU5 and E4 zones. Environmental impacts would be considered either of minor significance or would**

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be addressed by complying with the proposed exempt and complying development standards.

### Assessment Process

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

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Sydney Catchment Authority**  
**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  |
|--------------------------------------------------------------------------------------------------------------|-------------------|------------|
| <b>Palerang Council meeting minutes.pdf</b>                                                                  | <b>Proposal</b>   | <b>Yes</b> |
| <b>Palerang Council_19-03-2015_Planning Proposal - Exempt and Complying in E4 - RU5 &amp; RU1 zones_.pdf</b> | <b>Proposal</b>   | <b>Yes</b> |

### 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**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**



5.2 Sydney Drinking Water Catchments  
6.1 Approval and Referral Requirements  
6.2 Reserving Land for Public Purposes

Additional Information :

**RECOMMENDATIONS.**

It is **RECOMMENDED** that the Executive Director, Regions, Planning Systems, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment either to the Palerang Local Environmental Plan 2014 (Schedules 2 and 3) or to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 in relation to exempt and complying development provisions in the E4 Environmental Living, RU5 Village, and RU1 Primary Production Zones be allowed to progress subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

(a) the planning proposal must be made publicly available for 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 local environmental plans (Planning and Infrastructure, 2013)'.

2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- \* NSW Rural Fire Service (s117 Direction 4.4)
- \* WaterNSW (Sydney Catchment Authority) (s117 Direction 5.2)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

3. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A 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).

4. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

5. **SECTION 117 DIRECTIONS** - It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 3.1 Residential Zones, 4.3 Flood Prone Land, 5.1 Implementing Regional Strategies.

(b) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Directions 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchment after Council has consulted with the Commissioner of the Rural Fire Service and with WaterNSW respectively.

(c) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance; and

(d) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

6. The planning proposal is considered to be consistent with all relevant SEPPs.

Supporting Reasons :



Signature:

George Curtis A/Team Leader, Southern  
Region

Printed Name:

George Curtis

Date:

16/4/15.

