

PALERANG COUNCIL



Contact Person: Sue Robb
File: PROJ0053

17 December 2014

Mr Brett Whitworth
General Manager, Southern Region
NSW Department of Planning and Environment
PO Box 5475
Wollongong NSW 2520

Dear Mr Whitworth

RE: PLANNING PROPOSAL, AMENDMENT OF SUBCLAUSE 4.2A(3)(C) ERECTION OF DWELLING HOUSES ON LAND IN CERTAIN RURAL, RESIDENTIAL AND ENVIRONMENTAL PROTECTION ZONES IN THE PALERANG LOCAL ENVIRONMENTAL PLAN 2014

At its meeting of 4 December 2014, Council resolved that:

1. Council refer the planning proposal at Attachment 1 for the amendment of subclause 4.2A(3)(c) Palerang Local Environmental Plan 2014 to the Minister for Planning for a Gateway Determination in accordance with section 56 of the NSW Environmental Planning and Assessment Act 1979;
2. the General Manager write to the Department of Environment requesting that they meet all costs associated with this proposal.

The planning proposal and report to Council are attached. The minutes of Council's meeting are not yet available but I can advise that the recommendation was carried unanimously.

If you wish to discuss this matter please contact Sue Robb of Council's Planning and Environment Division on 6238 8111 or at sue.robbs@palerang.nsw.gov.au

Yours sincerely

John Wright
Director of Planning and Environmental Services

Item 10.8. Planning Proposal, amendment of subclause 4.2A(3)(c) in the *Palerang LEP 2014*

SUBJECT	Planning proposal, amendment of subclause 4.2A(3)(c) Erection of dwelling houses on land in certain rural, residential and environmental protection zones in the <i>Palerang Local Environmental Plan 2014</i>		
FILE NO.	PROJ0035/11	DIVISION	Planning and Environmental Services

Attachment

1. Planning Proposal, amendment of subclause 4.2A(3)(c) Erection of dwelling houses on land in certain rural, residential and environmental protection zones in the *Palerang Local Environmental Plan 2014*

Synopsis

Clause **4.2A Erection of dwelling houses on land in certain rural, residential and environmental protection zones** in the *Palerang Local Environmental Plan 2014* (PLEP 2014) permits the erection of dwellings in a range of land use zones by various means. However, the clause in the gazetted local environmental plan was amended by the Department of Planning and Environment or the Parliamentary Counsel's Office such that it differs from that in the draft local environmental plan considered by Council on 27 February 2014. Subclause 3 in the draft local environmental plan was intended to maintain the permissibility of dwellings on existing lots whether they were created by the Crown (prior to the introduction of environmental planning instruments) or by a subsequent subdivision. However, the insertion of the words *under an environmental planning instrument* has the effect of not permitting dwellings on some of the original Crown lots.

A planning proposal has been prepared under the *NSW Environmental Planning and Assessment Act 1979* to amend the PLEP 2014 to reflect the wording that was in the exhibited version.

Recommendation

Recommended that Council refer the planning proposal at Attachment 1 for the amendment of subclause 4.2A(3)(c) *Palerang Local Environmental Plan 2014* to the Minister for Planning for a Gateway Determination in accordance with section 56 of the *NSW Environmental Planning and Assessment Act 1979*.

Report

Background

Clause 4.2A Erection of dwelling houses on land in certain rural, residential and environmental protection zones in the *Palerang Local Environmental Plan 2014* permits the erection of dwellings in a range of land use zones subject to the land being:

- a lot meeting the minimum lot size requirement, or
- a lot created through a subdivision under one of the PLEP 2014 subdivision clauses, or
- a lot created under an environmental planning instrument before the commencement of the PLEP 2014 if a dwelling was permissible immediately before the commencement of the PLEP 2014, or
- a lot that was approved before the commencement of the PLEP 2014 and where a dwelling would have been permissible if the subdivision plan had been registered before the *PLEP 2014* commenced
- a lot (or group of lots) that is an existing holding as defined in the PLEP 2014

The clause is shown below:

4.2A Erection of dwelling houses on land in certain rural, residential and environment protection zones

(1) The objectives of this clause are as follows:

- (a) to minimise unplanned rural residential development,*
- (b) to enable the replacement of lawfully erected dwelling houses in rural, residential and environment protection zones.*

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU5 Village,*
- (c) Zone R1 General Residential,*
- (d) Zone R2 Low Density Residential,*
- (e) Zone R5 Large Lot Residential,*
- (f) Zone B4 Mixed Use,*
- (g) Zone E3 Environmental Management,*
- (h) Zone E4 Environmental Living.*

(3) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies unless the land:

- (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or*
- (b) is a lot created under clause 4.1, 4.1AA, 4.1A or 4.1B, or*
- (c) is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
- (d) is 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*
- (e) is an existing holding, or*
- (f) would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) or (e) had it not been affected by:*
 - (i) a minor realignment of its boundaries that did not create an additional lot, or*
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or*
 - (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.*

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

- (4) Development consent must not be granted under subclause (3) unless:*
 - (a) no dwelling house has been erected on the land, and*
 - (b) if a development application has been made for development for the purpose of a dwelling house on the land—the application has been refused or it was withdrawn before it was determined, and*
 - (c) if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed.*
- (5) Development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.*
- (6) In this clause:*
 - existing holding** means land that:
 - (a) was a holding on the relevant date, and*

(b) is a holding at the time the application for development consent referred to in subclause (3) is lodged,

whether or not there has been a change in the ownership of the holding since the relevant date, and includes any other land adjoining that land acquired by the owner since the relevant date.

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

relevant date means:

(a) in relation to land to which Cooma-Monaro Local Environmental Plan 1999—(Rural) applied immediately before the commencement of this Plan—3 March 1997, or

(b) in relation to land to which Goulburn Mulwaree Local Environmental Plan 2009 or Mulwaree Local Environmental Plan 1995 applied immediately before the commencement of this Plan—15 May 1970, or

(c) in relation to land to which Gunning Local Environmental Plan 1997 applied immediately before the commencement of this Plan—15 July 1966, or

(d) in relation to land to which Tallaganda Local Environmental Plan 1991 applied immediately before the commencement of this Plan—14 June 1974, or

(e) in relation to land to which Yarrowlumla Local Environmental Plan 2002 applied immediately before the commencement of this Plan—13 October 1995.

Note. *The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.*

In drafting the Draft PLEP it was Council's intention to maintain the permissibility of dwelling houses on lots on which a dwelling house was permissible under the existing LEPs. With this in mind, clause 4.2A(3)(c) was worded as follows:

(c) is a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or

This is the wording that was publicly exhibited and the wording that was considered and adopted by Council at its Extraordinary Meeting of 27 February 2014 and subsequently submitted to the Department of Planning and Environment.

During the consideration of the Draft PLEP 2014 by the Department and the Parliamentary Counsel's Office, the wording of clause 4.2A(3)(c) was amended by the addition of the words 'under an environmental planning instrument' after 'created' in the first line. This amendment has the effect of changing the permissibility of dwelling houses by excluding lots that were created as part of the original Crown division of New South Wales and the

creation of Town Plans in the late 19th and early 20th century, because such lots were not created under an environmental planning instrument. Some of these lots will maintain dwelling house permissibility by being larger than the minimum lot size shown on the lot size map (ie under cl. 4.2A(3)(a)), but because the minimum lot size has increased in some areas, some lots on which a dwelling house was previously permissible are no longer able to have a dwelling house.

The majority of the lots in Palerang that are affected are those original un-subdivided lots that were zoned 1(c) (Rural Small Holdings) and 2(v) (Village or Urban) under clauses 24 and 25 of the repealed Tallaganda Local Environmental Plan 1991. The lots are in Araluen, Braidwood, Mongarlowe, Majors Creek and Nerriga and areas zoned 1(c) that were not created through a subdivision. The Tallaganda Local Environmental Plan 1991 permitted with development consent dwellings on lots in the 1(c) land use zone where the lot was a minimum of 4 hectares or in designated areas 2 hectares. The clause from the repealed Tallaganda Local Environmental Plan 1991 is shown below:

24 Dwelling-houses within Zone No 1 (c)

- (1) The Council may consent to an application to erect a dwelling-house on land within Zone No 1 (c) if the land has an area of not less than 4 hectares.*
- (2) Notwithstanding subclause (1), the Council may consent to an application to erect a dwelling house on land within Zone No 1 (c) shown edged with a heavy black line and vertically hatched with black lines on the map, having an area of not less than 2 hectares.*

(repealed Tallaganda Local Environmental Plan 1991)

The lots relating to the 2(v) land use zone are in the sewerage section of Braidwood that have a minimum of 550 square metres and the villages where the lot size is a minimum of 2,000 square metres (the villages are not sewerage). The clause is shown below:

25 Dwelling-houses within Zone No 2 (v)

The Council may consent to an application to erect a dwelling house on land within Zone No 2 (v) if the land:

- (a) has an area of not less than 550 square metres if it is located in a sewerage section of the Village of Braidwood, or*
- (b) has an area of not less than 2,000 square metres if it is located in any other section of a Village Zone.*

(repealed Tallaganda Local Environmental Plan 1991)

No estimate has been undertaken of the number of lots affected by subclause 4.2A(3)(c) in the villages however, most villages contain vacant land where the lots are less than 4,000 square metres. There may be vacant and appropriately zoned sewerage lots in Braidwood that are greater than 550 square metres but less than 850 square metres. Additionally, there are lots likely to be affected in the areas that were formerly zoned 1(c). It is not possible to use subclause 4.2A(3)(e) as an existing holding in the villages frequently consists of several lots some of which may be zoned RU1 Primary Production. As there are

several lots in the existing holding, the property would lose the ability to erect a dwelling on more than one lot.

In preparing the draft *PLEP 2014*, it was determined that a minimum lot size of 4,000 square metres in the villages of Araluen, Mongarlowe, Majors Creek and Nerriga would provide a better environmental outcome due to the large disposal area for on-site effluent systems.

However, this was intended to apply to future subdivisions as Council did not want to disadvantage the property owners of existing lots on which dwelling houses were permissible with development consent under the Tallaganda Local Environmental Plan 1991.

On 27 February 2014, Council considered the submissions from the second exhibition and subclause 4.2A(3) was not amended. The reason the draft LEP was amended by the Department/Parliamentary Counsel is not known, but it is noted that the equivalent subclause (4.2B(3)(b) in the *Yass Valley Local Environmental Plan 2013* (as well as many other principal LEP across NSW) does not contain the words 'under an environmental planning instrument':

(b) is a lot created before this Plan commenced and on which the erection of a dwelling house or a dual occupancy was permissible immediately before that commencement, or

Given, that subclause 4.2A(3) enables with development consent the erection of potential dwellings particularly in the villages and that an increase in dwellings is generally desirable it is recommended that clause 4.2A(3) (c) be amended to reflect the wording that was in the exhibited version of the draft Palerang Local Environmental Plan 2013. A planning proposal has been prepared under the *NSW Environmental Planning and Assessment Act 1979* to instigate this process.

It is noted that until subclause 4.2A(3) is amended that clause 4.6 Exceptions to development standards, *PLEP 2014* can be used to allow dwelling houses on the affected lots. However, justification for the approval of a development application and the concurrence of the Director-General (or equivalent) would be required.

The process

To enable the proposed amendment to occur, it is necessary amend to 4.2A(3) *PLEP 2014* To facilitate these amendments, a planning proposal has been prepared.

A planning proposal is a document that explains the intended effect of the proposed local environmental plan or amendment, provides the justification for making it and facilitates the process. The intention of the gateway process is to allow the proposal to be reviewed at an early stage so that a decision whether to proceed can be made; before significant resources are committed. The process is outlined below:

- Council determines whether it supports the planning proposal
- If the planning proposal is supported, it is forwarded to the Minister for Planning for a Gateway Determination

- If the Gateway Determination permits the planning proposal to proceed, the planning proposal will be sent to relevant government agencies for comment and exhibited for the period stated on the gateway determination
- Submissions from the exhibition will be considered by Council and the Department of Planning and Environment

Further information on the process can be found in the NSW Department of Planning and Infrastructure documents *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Only the planning proposal and any supporting documents are exhibited. The written legal instrument (draft amending local environmental plan) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister or her delegates. The local environmental plan takes effect when it is published on the NSW government legislation website.

It is possible under the *NSW Environmental Planning and Assessment Act 1979* for Council to undertake much of this process under delegation. The Department of Planning and Environment will advise Council whether the process is to be undertaken under delegation.

Financial considerations

Council staff have prepared the planning proposal and the report to Council. If the proposal is supported by Council and it receives a gateway determination, staff will be required to manage the consultation with government authorities, public exhibition and legislative process associated with preparing the local environmental plan. Council will be required to pay for the costs associated with the public exhibition such as advertisements in newspapers.

Policy implications

The Palerang Council *Community Strategic Plan 2014-2024* Focus Area 2 – Local Economy lists one of Council's roles as being improving planning processes to facilitate the local economy. It is suggested that the amendment of the clause will facilitate residential development which will in turn encourage development providing opportunities for local business.

Social implications

Minimal as clause 4.6 Exceptions to development standards, *PLEP 2014* can be used to obtain development consent until subclause 4.2A(3) is amended, but applicants may face additional costs and potential delays due to the need to prepare a case demonstrating that compliance with the development standard is unnecessary in the circumstances of the case.

Environmental considerations

Effluent reports are required for all dwelling applications where unsewered land is involved. The size of the lot and potential disposal area is taken into account when the report is prepared and considered by Council (including the assessment of the application against the Sydney Catchment Authority assessment tools). Additionally, the proposed

amendment is the same as exhibited and the provision was not objected to by government agencies.

Attachment 1. Planning Proposal

Planning proposal, amendment of subclause 4.2A(3)(c) Erection of dwelling houses on land in certain rural, residential and environmental protection zones in the Palerang Local Environmental Plan 2014

Part 1 Intended outcome

Reinstatement of the dwelling house eligibility that existed under previous planning instruments on certain lots in Palerang by amending subclause 4.2A(3)(c) of the Palerang LEP 2014 to delete the words 'under an environmental planning instrument'.

If amended as proposed, clause 4.2A(3)(c) will read as follows:

'a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or'

Part 2 Explanation of provisions

If amended as proposed the provision will allow with development consent, dwelling houses to be erected on lots formerly zoned 1(c) (Rural Small Holdings) and 2(v) (Village or Urban) under the repealed Tallaganda Local Environmental Plan 1991 where they were permissible prior to the commencement of the *Palerang Local Environmental Plan 2014*.

Part 3 Justification

Section A Need for the planning proposal

Question 1 Is the planning proposal a result of any strategic study or report

The planning proposal is not part of a strategic study or a report.

Question 2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way

The planning proposal is the only means of achieving the intended outcome.

Section B Relationship to strategic planning framework

Question 3 Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy

The *Sydney–Canberra Corridor Regional Strategy* applies to the whole of the Palerang local government area. As it is a strategic planning document it does not include planning provisions but includes in its direction an increase in residential development across the region and livability. It is suggested that the proposed provisions will contribute to this direction.

Question 4(a) Is the planning proposal consistent with a council's local strategy or other local strategic plan

Palerang Council does not have a local strategic plan.

Question 4(b) Is the planning proposal consistent with the local council's community plan, or other local strategic direction

The planning proposal is consistent with the *Palerang Community Strategic Plan 2013-32*, Focus Area 4: Rural and Urban Development. This focus area states that one of Council's role is the review of the local environmental plan and to maintain a long-term planning approach that caters for diversity and choice in rural and village living.

Question 4(c) If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided

There are no interests to be extinguished.

Question 4(d) the concurrence of the landowner, where the land is not owned by the relevant planning authority

As the provisions are not specific to a particular lot it is not considered necessary to have the concurrence of landowners. It is considered most unlikely that any landowners would object to the restoration of dwelling eligibility.

Question 5 Is the planning proposal consistent with the applicable State Environmental Planning Policies

<i>Name of State Environmental Planning Policy</i>		<i>Consistency with the State Environmental Planning Policy</i>
21	Caravan Parks	Not applicable
30	Intensive Agriculture	Not applicable
33	Hazardous and Offensive Development	Not applicable
36	Manufactured Home Estates	Not applicable
44	Koala Habitat Protection	Not applicable
50	Canal Estates	Not applicable
55	Remediation of land	Not applicable
62	Sustainable Aquaculture	Not applicable
64	Advertising and Signage	Not applicable
65	Design Quality of Residential Flat Development	Not applicable
	SEPP (Housing for Seniors or People with a Disability) 2004	Not applicable
	SEPP (Building Sustainability Index : BASIX) 2004	Not applicable
	SEPP (Major Development) 2005	Not applicable
	SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable
	SEPP (Infrastructure) 2007	Not applicable
	SEPP (Miscellaneous Consent Provisions) 2007	Not applicable
	SEPP (Rural Lands) 2008	Not applicable

	SEPP (Exempt and Complying Development Codes) 2008	Not applicable
	SEPP (Affordable Rental Housing) 2009	Not applicable
	SEPP (Sydney Drinking Water Catchment) 2011	Not applicable

Question 6 Is the planning proposal consistent with applicable Ministerial Directions

	Name of direction	Applicability and consistency with the direction
1.1	Business and Industrial Zones	Not applicable
1.2	Rural Zones	Applicable and consistent. The proposal is allowing a provision that was contained in a previous local environmental plan
1.3	Mining, Petroleum Production and Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable
2.1	Environment Protection Zones	Applicable and inconsistent. The proposal is allowing a provision that was contained in a previous local environmental plan
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Applicable and inconsistent. The <i>Palerang Local Environmental Plan 2014</i> contains heritage provisions
2.4	Recreation Vehicle Areas	Applicable and consistent
3.1	Residential Zones	Applicable and consistent. The proposal is allowing a provision that was contained in a previous local environmental plan
3.2	Caravan Parks and Manufactured Home Estates	Applicable and consistent. The proposal is allowing a provision that was contained in a previous local environmental plan
3.3	Home Occupations	Applicable and consistent.
3.4	Integrating Land Use and	Not applicable

	Transport	
3.5	Development near Licensed Aerodromes	Not applicable
3.6	Shooting ranges	Not applicable
4.1	Acid Sulfate Soils	Not applicable
4.2	Mine Subsidence and Unstable Land	Not applicable
4.3	Flood Prone Land	Not applicable
4.4	Planning for Bushfire Protection	Applicable and consistent. The proposal is allowing a provision that was contained in a previous local environmental plan
5.1	Implementation of Regional Strategies	Applicable and consistent.
5.2	Sydney Drinking Water Catchments	Applicable to some of the land affected by the planning proposal. The proposal is allowing a provision that was contained in a previous local environmental plan
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	-
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	-
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	-
5.8	Second Sydney Airport: Badgerys Creek	Not applicable
5.9	North West Rail Link Corridor Strategy	Not applicable

6.1	Approval and Referral Requirements	Applicable and consistent.
6.2	Reserving Land for Public Purposes	Applicable and consistent.
6.3	Site Specific Provisions	Not applicable
7.1	Implementation of the Metropolitan Plan for the Sydney 2036	Not applicable

Section C Environmental, social and economic impact

Question 7 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

There is no critical habitat as listed in NSW legislation in the Palerang local government area.

Threatened species or endangered ecological communities will not be directly affected as a result of the planning proposal. Threatened species or endangered ecological communities will be considered in the assessment of a development application.

Question 8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed

No.

Question 9 Has the planning proposal adequately addressed any social and economic effects

The planning proposal will reinstate the ability to erect a dwelling on lots where it was possible to erect a dwelling immediately prior to the *Palerang Local Environmental Plan 2014* coming into force. The restoration of the provision relating to this is likely to avoid unwanted social and economic effects for the property owners, the immediate locality and the Palerang local government area.

Section D State and Commonwealth interests

Question 10 Is there adequate public infrastructure for the planning proposal

Not applicable

Question 11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination

NSW or Commonwealth public authorities have not been consulted as this is a minor local issue.

Part 4 Mapping

There will be no mapping required.

Part 5 Community consultation

The Planning Proposal will be exhibited for 28 days as it potentially involves a large number of properties.

Part 6 Project timeline

<i>stage</i>	<i>completion date</i>
Anticipated commencement date (date of Gateway Determination)	February 2015
Anticipated timeframe for government agency consultation	end of March 2015
Anticipated commencement and completion dates for public exhibition period	end of May 2015
Anticipated timeframe for consideration of submissions	mid June 2015
Anticipated date of report to Council	July 2015
Anticipated date of submissions, Council report and recommendation to the NSW Department of Planning and Environment to finalise the draft local environmental plan	August 2015
Amended local environmental plan gazetted	September 2015