



IRF21/4422

Gateway determination report – PP-2021-6509

Amendments to rural land planning controls and other provisions in the Wentworth Local Environmental Plan 2011

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Review of Rural Land Planning Controls October 2021
Wentworth Rural Land & Rural Residential Strategy: Agricultural update & planning policy recommendations 2020
Wentworth Local Strategic Planning Statement 2020
Far West Regional Plan 2017
Further information dated 12 January 2022 and 1 February 2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Wentworth
PPA	Wentworth Shire Council
NAME	Amendments to the rural land use planning controls
NUMBER	PP-2021-6509
LEP TO BE AMENDED	Wentworth Local Environmental Plan 2011
ADDRESS	Applies to rural land in the Wentworth LGA
RECEIVED	27/10/2021 and further information submitted 12 January 2022 and 1 February 2022
FILE NO.	IRF21/4422
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal. The objectives as stated by the planning proposal are to:

- Allow for rural landholder to diversify and value add to their existing enterprise.
- Facilitate a range of tourism uses on rural land.
- Enable a broader range of residential development on rural land.
- Facilitate boundary adjustments where existing or created allotments do not meet the minimum lot size or create additional allotments.
- To remove provisions that have expired.

1.3 Explanation of provisions

The planning proposal seeks to amend the Wentworth LEP 2011 as outlined below:

- Amend the current RU1 Primary Production land use table to include additional objectives and amend land uses in accordance with Table 1.3
- Amend the rural related Part 4 Principal development standard in accordance with Table 1.4
- Amend Part 5 Miscellaneous provisions Clause 5.5 in accordance with Table 1.5

- Amend Schedule 1 Additional permitted uses to remove expired provisions in accordance with Table 1.6.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

While the proposed changes to the land use table and various provisions of the LEP have been listed, demonstrating the intended outcomes for ease of understanding by the community, the planning proposal does not indicate the intention and purpose of the proposed changes and this should be added post Gateway determination.

Table 1.3 Proposed RU1 Primary Production zone land use table - subject to final legal drafting

Zone RU1 Primary Production	
Objectives of zone	Include: <ul style="list-style-type: none"> • To encourage and promote the growth and diversification of economic and employment opportunities in agriculture, horticulture, and tourism. • To enable restaurants and cafes as part of an agritourism farm gate development.
Permitted without consent	Include: Agriculture. Remove: Extensive agriculture, Farm buildings, and Intensive plant agriculture.
Permitted with consent	Include: Artisan food and drink industry, Backpackers Accommodation, Caravan Parks, Emergency services facility, Farm buildings, Heavy Industry, Home Industry, Kiosk, Markets, Open Cut Mining, Restaurant and café, Rural suppliers, Secondary dwellings, Transport Depot, Truck depots, Mining, and Waste or resource management facility. Remove: Correctional centres, and Information and education facilities.
Prohibited	Remove: Schools.

Additional information was provided by Council after lodgement of the planning proposal which will need to be incorporated into the planning proposal before consultation and exhibition.

Table 1.4 Proposed Principal Development Standards – subject to final legal drafting

Part 4 Principal development standards
<p>Replace the existing Clause 4.1(1) with the following:</p> <p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (a) to ensure subdivision of land occurs in a manner that promotes suitable land uses and development, (b) to establish minimum areas for lots that are consistent with the relevant zone objectives, (c) to prevent the fragmentation of productive rural lands, (d) to ensure that subdivision does not inappropriately impact on the natural environmental values of the area, (e) to provide for more intensive, small lot agricultural uses in areas able to access commercial quantities of irrigation water.

Part 4 Principal development standards

Include the following land zones in Clause 4.1AA(2):

- Zone C4 Environmental Living
- Zone R5 Large Lot Residential

Include the following land zones in Clause 4.1B(2)(b) and (3)(a)(ii):

- Zone C4 Environmental Living

Include the following land zones in Clause 4.2A(2):

- Zone C4 Environmental Living
- Zone R5 Large Lot Residential

Include the following land zones in Clause 4.2B(2):

- Zone C4 Environmental Living
- Zone R5 Large Lot Residential

Minor rewording of Clause 4.2B(3) as below and remove subclauses Clause 4.2B(4) and (6). The revised Clause 4.2B(3) would read 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, 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 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
- (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.

Existing subclause 4.2B(5) would stay and may be renumbered by PCO during drafting.

Replace the existing Clause 4.2C(1) with the following:

(1) The objectives of this clause are –

- (a) to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries, and
- (b) to ensure that the erection of rural worker's dwelling or secondary dwellings does not have an adverse impact on the agricultural or rural industries use of the land.

Retain sub-clause 4.2C(2)

Replace sub-clause 4.2C(3) with

Development consent must not be granted to the erection of a rural worker's dwelling or a secondary dwelling on land to which this clause applies unless the consent authority is satisfied that the development will not impair the use of the land for agricultural or rural industries.

Intent is to replace the existing Clause 4.2D with a proposed Boundary Adjustments in Zone RU1 and C3 clause to allow flexibility to allow boundary adjustments for undersized RU1 and C3 land

(1) The objective of this clause is to facilitate boundary adjustments between lots where one or more of the lots created do not meet the minimum lot size shown on the Lot Size Map in relation to the

Part 4 Principal development standards

land but the objectives of the relevant zone can be achieved.

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

- (a) Zone RU1 Primary Production,
- (b) Zone C3 Environmental Management.

(3) Despite clause 4.1, development consent may be granted to subdivide land to which this clause applies by way of a boundary adjustment between adjoining lots where one or more of the lots created by the subdivision do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—

- (a) the subdivision will not create additional lots, and
- (b) the number of dwelling houses or opportunities for dwelling houses on each lot after the subdivision will remain the same as before the subdivision, and
- (c) the potential for land use conflict will not be increased as a result of the subdivision, and
- (d) if the land is in Zone RU1 Primary Production—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and
- (e) if the land is in Zone C3 Environmental Management—the subdivision will result in the continued protection and long-term maintenance of the land, and
- (f) the subdivision will not result in any increased bush fire risk to existing buildings.

(4) In determining a development application for the subdivision of land under this clause, the consent authority must consider the following—

- (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
- (b) whether the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
- (c) whether the subdivision is likely to be incompatible with a land use on any adjoining land,
- (d) whether the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
- (e) whether the subdivision is likely to have a significant adverse impact on the environmental values of the land.

(5) This clause does not apply—

- (a) in relation to the subdivision of lots in a strata plan or community title scheme, or
- (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Table 1.5**5.5 Controls relating to secondary dwellings on land in a rural zone**

Adoption of Clause 5.5 and addition of the following text:

If development for the purposes of a secondary dwelling is permitted under this plan on land in a rural zone –

(a) The total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater –

(i) 110 square metres

(ii) 60% of the total floor area of the principal dwelling.

Table 1.6**Schedule 1 Additional permitted uses**

Removal of existing items 1, 2, 3 and 4. Retention and renumbering of items 5 and 6.

1.4 Site description and surrounding area

The proposal relates predominately to all land zoned RU1 Primary Production (Figure 1) within the Wentworth LGA, as well as individual lots listed in Schedule 1 and land zoned C3 Environmental Management, C4 Environmental Living and Zone R5 Large Lot Residential, which are not displayed in Figure 1.

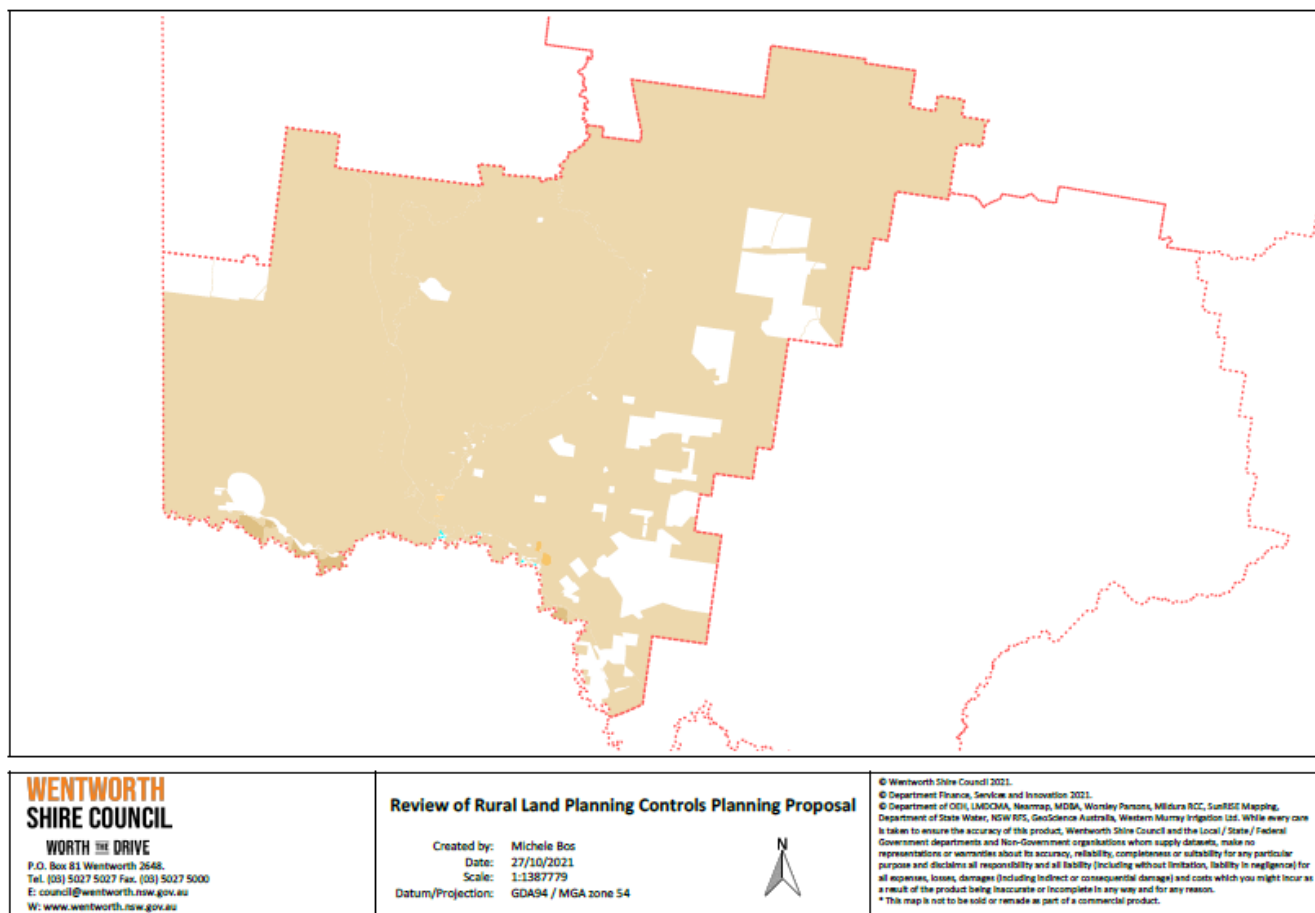


Figure 1 Rural zoned land of Wentworth LGA (source: Planning Proposal)

1.5 Background

Council engaged consultants in 2013 to develop an Agricultural Land Strategy and a Rural Land Use and Residential Strategy. Due to conflicts of interest, Council delegated its powers to the Western Joint Regional Planning Panel to finalise the strategy in 2018.

The Department and Western Joint Regional Planning Panel required further updates and reworking of the strategy in late 2018. In early 2020, the Department and Panel requested that the Agricultural Land Strategy data and policy/legislation references be updated as that Strategy directly fed in to and informed the Rural Land Use Strategy. Discussions around the two documents resolved that the Agricultural Land Strategy, Rural Land Use & Rural Residential Strategy should be a consolidated document.

A reworked strategy was presented to the Department in late 2020, and Council were advised that the strategy needed more information, significant investigation, and a higher level of justification to support the proposed amendments to the WLEP.

Ongoing discussions with the Department and Council resulted in the development of the Review of Rural Land Planning Controls policy paper 2021 to propose specific outcomes to progress more urgent matters.

A detailed chronological history of the Rural Land Use and Residential Strategy project can be accessed in the Council Agenda and Report from the Council Meeting held on 15 September 2021.

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal is a result of the Review of Rural Land Planning Controls October 2021 that was prepared by Wentworth Shire Council. This review was undertaken to identify current major issues relating to the use and development of rural land; to discuss those issues; and identify justifiable amendments as outlined below:

- RU1 land use table – Additional land uses are proposed in the rural zone, which are compatible with the current use of land and supplemented by site selection considerations, to facilitate diversification of agricultural land for uses such as tourism and value-added manufacturing. The need for each individual land use is provided in the Review of Rural Land Planning Controls October 2021.
- Principal development standards – These changes are needed in response to subdivision needs from succession farm planning and removing confusing and contradictory development standards which cause additional time delays for Council. The most common changes to these development standards will enable appropriate assessments of subdivisions on C4 and R5 zoned land in various circumstances, which is currently missing. Removal of text from Clause 4.2B(3)(d) onwards will remove the terms existing holding and former rural lot which have now expired.
- Miscellaneous provisions – Clause 5.5 is to be amended to enable the size of the secondary dwelling to be adequately controlled, relative to the main dwelling.
- Additional Permitted Uses – each of the sites nominated to be removed from the Wentworth LEP 2011 are no longer needed as they had a seven year lifetime which has expired.

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

The planning proposal is considered the best means of achieving the objectives or intended outcomes.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Far West Regional Plan.

Table 3 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 2 Protect productive agricultural land and plan for greater land use capability	<i>2.2 Manage the interface between agricultural lands and other land uses to minimise land use incompatibility and fragmentation</i> The proposed amendments are consistent with this direction.
Direction 5 Promote Tourism Opportunities	<i>5.9 Identify opportunities for tourism uses and associated land uses in local plans</i> The proposed amendments are intended to allow for additional tourism uses in the RU1 land use table. Whilst the amendments are consistent with this direction, various proposed uses can increase land use conflict in agricultural areas. Further correspondence with Council on 12 January 2022 confirmed additional assessment requirements and considerations in PN 09-006 – Providing for tourism in standard instrument local environmental plans - would be adopted by Council. Inclusion of the additional site selection considerations in the proposal will be required as a condition of Gateway determination.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	Planning Priority 1 of the Wentworth Local Strategic Planning Statement highlights the growing trend and demand for tourism on rural land. Strategic Direction E under this planning priority also recommends that tourism uses that are compatible with agriculture be included in the land use table for rural land. Whilst consistent with this direction, some of the proposed uses may create land use conflict on rural land. Council proposes site selection considerations to assist in reducing land use conflict and adequate servicing.
Review of Rural Land Planning Controls	The planning proposal is consistent with and will directly implement many recommendations of this report.

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 Section 9.1 Ministerial Direction assessment

Directions	Consistency	Reasons for Consistency or Inconsistency
1.2 Rural Zones	Yes	The planning proposal is not altering or changing the current application of the RU1 Primary Production zone and is supported by Council's Review of Rural Land Planning Controls 2021.
1.3 Mining, Petroleum Production and Extractive Industries	Yes	The proposed amendments will not affect the permissibility of mining activities on rural land which is consistent with this Direction.
1.5 Rural Lands	No	<p>The proposed amendments may potentially cause land use conflict between agricultural activities and dwellings and other uses on rural land.</p> <p>Further correspondence with Council on 12 January 2022 confirmed consideration of PN 09-006 and proposed additional assessment requirements would be adopted by Council. Inclusion of this additional information in a revised planning proposal will resolve the inconsistency with this Direction.</p>
2.1 Environmental Protection Zones	Yes	The planning proposal applies to this Direction as the proposal will modify development standards which apply to the C3 and C4 zones. The proposal will not increase development potential, instead it will impose additional considerations for certain residential developments and subdivisions. Therefore, the proposal is consistent with the objectives of this Direction.
2.6 Remediation of Contaminated Land	Yes	The proposal does not seek to rezone land. Any future proposed site-specific development of land will include assessment of potential contamination during the development assessment stage.
3.2 Caravan Parkes and Manufactured Home Estates	Yes	The planning proposal is consistent with this Direction as it will permit caravan parks subject to certain site selection considerations with consent in the RU1 zone. Furthermore, there will be no change to existing caravan parks in the LGA.
5.10 Implementation of Regional Plans	Yes	The planning proposal gives effect the Far West Regional Plan.
6.1 Approval and Referral Requirements	Yes	The planning proposal does not include provisions that require concurrence, consultation or referral to a Minister or public authority.
6.3 Site Specific Provisions	Yes	The planning proposal does not include site specific provisions as it applies to all land within the RU1 Primary Production zone.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Exempt and Complying Development Codes) 2008	Yes	The planning proposal will not alter the application of this SEPP for development that satisfies the development standards of the code.
SEPP (Koala Habitat Protection) 2020	Yes	The planning proposal will not reduce or cause impediment to koala habitat.
SEPP (Koala Habitat Protection) 2021	Yes	The planning proposal will not reduce or cause impediment to koala habitat.
SEPP 55 (Remediation of Land)	Yes	Consideration of potential contamination of land and how it impacts future development will need to be considered at the development assessment stage.
SEPP 64 (Advertising and Signage)	Yes	Where there is new development requiring signage, because of greater flexibility in the rural zone, this SEPP will need to be considered by Council.
SEPP (Housing) 2021	Yes	The planning proposal does not alter the application of this SEPP
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Yes	The intent of this planning proposal is to clarify that mining and open cut mining are permitted with consent in the RU1 zone, which aligns with the Mining SEPP.
SEPP (Primary Production and Rural Development) 2019	Yes	This planning proposal does not change or alter in any way the application of this SEPP on new development in the rural zone.

4 Site-specific assessment

4.1 Environmental

The proposal will amend the LEP for certain rural and residential land across the whole Wentworth LGA. Overall, the proposal will increase development potential which could lead to impacts on the environment. However, the development potential and impact on the environment cannot be quantified until the development assessment stage for each individual development. Impact on the environment will therefore be assessed on a site by site basis under the relevant approval pathways to adequately assess and mitigate any impacts to the environment, threatened species and their habitats.

4.2 Social and economic

The planning proposal expects a positive local effect from increased development potential of tourist and rural industry uses on rural land. The increased employment opportunities, farm diversification and tourist attractions which could increase in visitor numbers and spending within Wentworth LGA. There would be positive social and economic impact if there is uptake of the increased development potential made possible by this proposal.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms a condition on the Gateway determination.

5.2 Agencies

Council consulted with Department of Primary Industries (DPI) – Agriculture in 2021 to ensure consistency with their state agricultural land policies. DPI Agriculture raised concerns on 29 September 2021 with the following proposed land uses in the RU1 zone:

- Back packers' accommodation.
- Emergency services facility.
- Heavy industry.
- Kiosk.
- Restaurant or café.
- Transport depot.

Council responded to DPI – Agriculture on 5 October 2021 and proposes additional justification and site considerations for the need of these land uses. However, DPI- Agriculture have not yet had an opportunity to review the additional information and the planning proposal. Therefore, consultation with DPI- Agriculture is recommended as part of the Gateway determination conditions.

6 Timeframe

Council proposes a 10 month time frame to complete the LEP.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal contains mainly administrative changes and doesn't affect any specific site with Council interests, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- Enables the growth and diversification of agricultural land through permitting additional tourist and value-added developments and employment opportunities.
- Enables greater flexibility to subdivide certain land which complies with the proposed development standards.
- The proposal will reduce confusion by removing provisions which have expired.

As discussed in the previous sections 4 and 5, the planning proposal should be updated to:

- Revise the proposed RU1 Primary Production land use table objectives and developments permitted with consent.
- Include the additional considerations and justifications for certain tourism land uses proposed to be included in the RU1 Primary Production land use table.

Based on the assessment outlined in this report, the proposal must be updated before community consultation to include the additional information provided by Council and agreed to by the Western Region team on 12 January 2022 and 1 February 2022. This forms condition 1 of the Gateway determination.

9 Recommendation

It is recommended the delegate of the Secretary note, that the planning proposal's inconsistency with section 9.1 Directions 1.5 Rural Lands will be resolved when the revised planning proposal is submitted for approval prior to community consultation with the information provided in email correspondence with Council and the Western Region team on 12 January 2022.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to include the additional information provided by Council and agreed to by the Western Region team, to:
 - Revise the proposed RU1 Primary Production land use table objectives and developments permitted with consent.
 - Include the additional considerations and justifications for certain uses proposed to be included in the RU1 Primary Production land use table.
 - Include supporting information on the intent and purpose of the proposed changes as an aid to drafting.
 - Update Project Timeline
2. Consultation is required with the Department of Primary Industries – Agriculture for a minimum of 21 days.
3. The planning proposal should be made available for community consultation for a minimum of 28 days. (~ 20 working days)
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.
6. The planning proposal is categorised as standard.



(Signature)

11 February 2022

(Date)

Wayne Garnsey

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11 February 2022

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