

## ORDINARY MEETING AGENDA

26 June 2024

Held in the Hilltops Council, Young Chambers, 189 Boorowa Street, Young

### **12.13 - 24/159 - PLANNING PROPOSAL - HOUSEKEEPING AMENDMENT TO HILLTOPS LOCAL ENVIRONMENTAL PLAN 2022**

Responsible Officer: Director Planning

#### **PURPOSE**

The purpose of this report is to recommend endorsement of the Planning Proposal for a Housekeeping Amendment to the Hilltops Local Environmental Plan (LEP) 2022 for submission to the NSW Department of Planning, Housing and Infrastructure requesting Gateway Determination.

#### **RECOMMENDATION**

**That Council:**

- (a) Endorse the Planning Proposal - Housekeeping Amendment to the Hilltops Local Environmental Plan (LEP) 2022 (Attachment 1);**
- (b) Request a Gateway Determination from the Department of Planning, Housing and Infrastructure in accordance with Section 3.34(1) of the Environmental Planning and Assessment Act 1979, with the submission to include a request to issue Council with Delegation to be the Local Plan Making Authority.**
- (c) Upon receipt of a Gateway Determination, Council place the Planning Proposal on public exhibition pursuant to any requirements of the Determination and Section 3.34(2) of the Environmental Planning and Assessment Act 1979.**
- (d) Grant delegation to the General Manager to make any necessary changes to the Planning Proposal prior to public exhibition in response to the conditions of the Gateway Determination; and**
- (e) Receive a further report following the completion of the public exhibition for consideration, including the results of public exhibition.**

#### **REPORT/SUMMARY/BACKGROUND**

The Hilltops Local Environmental Plan 2022 (LEP 2022) was gazetted on 23 December 2022 and replaced the Young Local Environmental Plan 2010, the Harden Local Environmental Plan 2011, and the Boorowa Local Environmental Plan 2012. It was drafted in accordance with the Environmental Planning and Assessment Act 1979 and the Standard Instrument (Local Environmental Plans) Order 2006.

When the LEP adopted by Council was sent to the Department of Planning and Environment for legislative assent, several changes were made by the Parliamentary Counsel's Office (PCO). The most significant of these changes was taking a different approach to the Land Use Tables which generated contradictory and unintended outcomes (such as allowing land uses in zones that the Council intended to be prohibited). While substantial effort was made by officers to identify and rectify the PCO's changes through the Department, most were inevitably gazetted. As such, this Housekeeping Amendment to the Hilltops LEP 2022 has arisen from the need to rectify the land use definition tables to align with the original intent of the LEP approved by the Council.

As a part of the review of the Hilltops LEP, Council identified a few further areas for refinement such as adjustment of Land Use Zoning map for infrastructure corridors, inclusion of special flood planning clause and refinement of the Schedule 5 Environmental Heritage register and associated mapping relating to a few heritage items.

# ORDINARY MEETING AGENDA

26 June 2024

Held in the Hilltops Council, Young Chambers, 189 Boorowa Street, Young

## PROCESS

The Planning Proposal has been drafted in accordance with the *Local Environmental Plan Making Guideline, Section two: The Planning Proposal*, and is a basic planning proposal. The Guideline defines a basic planning proposal as follows:

*A basic planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:*

- *To correct an administrative error,*
- *For a few minor 'housekeeping' amendments,*
- *To list a local heritage item,*
- *To reclassify land where the Governor's approval is not required,*
- *That is consistent with a Department endorsed/approved local strategy, such as a Local Housing Strategy,*
- *That is consistent with section 3.22 Expedited amendments of environmental planning instruments of the EP&A Act to:*
  - a. *correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,*
  - b. *address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature, and/or*
  - c. *deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.*

Council are required to follow the procedure set out by the Department in the *Local Environmental Plan Making Guideline* as follows:

- Where a Planning Proposal is initiated by Council, officers are to prepare the Planning Proposal Document, and a report to Council for formal consideration.
- If endorsed by Council, officers are to submit the proposal to the Department for a Gateway Determination via the Planning Portal.
- Once submitted, the Department will review the proposal and determine whether the proposal is to proceed, to request additional information, and to impose Gateway Conditions, if required.
- Upon receipt of the Gateway Determination, officers review the determination, action any conditions imposed by the Department, and if required, update the proposal, and refer back to the Department for confirmation the Gateway Determination Conditions have been addressed.
- Once the Department is satisfied with the Proposal, it proceeds to Public Exhibition.

## Objective

The amendments seek to rectify the changes made by the PCO to the Land Use tables and uphold the intent of the LEP as adopted by Council in 2021. The changes aim to improve clarity for land uses as to what is permissible in zones, and to remove land uses that were resolved as undesirable and contradictory to the objectives of the zones.

For example, 'Shops' means a premises that sell merchandise such as; groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise. These land uses were prohibited in the R1 and E4

## ORDINARY MEETING AGENDA

26 June 2024

Held in the Hilltops Council, Young Chambers, 189 Boorowa Street, Young

zones in the adopted LEP because they were considered to detract from residential amenity or generate traffic that conflicts with industrial activities. There are some retail activities that are compatible in these zones, such as neighbourhood shops in residential areas and take away food and kiosks in industrial areas. These activities are provided for separately to the group term of 'shops' and this amendment does not remove their permissibility.

Clauses 5.21 Flood Planning (compulsory) and 5.22 Special Flood Considerations (optional) were added to the standard instrument LEP on 14 July 2021. During this time the Hilltops LEP was in development and the final iteration included the compulsory clause 5.21 but did not include the optional clause 5.22.

Clause 5.22 Special Flood Considerations is a means of mitigating the impacts of flood events on developments that are considered sensitive or hazardous or that are deemed by Council's Flood Studies to be on land that, in the event of flood, may cause increased risk to life, require evacuation of people or other safety concerns. The aim of this clause is to manage the risk to life and property from future developments in the floodplain areas during a flood event. It is proposed to adopt the optional clause in response to the recommendations of the NSW Government Flood Risk Manual, Murrumburrah flood study, and the Young and Boorowa flood studies, both which were jointly funded studies with the SES, and aimed at enhancing response times in the event of floods.

Amendments to Schedule 5 – Environmental Heritage to correct the addressing, add, or remove an item are in response to discrepancies between the Harden Heritage Inventory, the Report on the Review of Cultural Heritage of the Hilltops LGA, and the gazetted Schedule 5 of the LEP.

The accurate provision of Heritage listed items is essential, not only to preserving our regions cultural heritage and maintaining a sense of place and community but is important to upholding Councils responsibilities to protect, manage and conserve heritage items.

### PROPOSED AMENDMENTS

The Planning Proposal intends to amend the Hilltops Local Environmental Plan 2022 to:

- Amend the Land Use Tables to improve clarity over land uses permissibility including:
  - Remove 'shops' permissibility in R1 General Residential zone
  - Clarify the permissibility of 'home industries' in the R1 General Residential zone
  - Remove 'school-based childcare' permissibility in E4 General Industrial zone
  - Remove 'shops' and 'neighbourhood shops' permissibility in E4 General Industrial Zone
  - Remove 'animal boarding and training establishments', 'office premises' and 'neighbourhood shops' in E3 Productivity Support Zone;
- Adopt Clause 5.22 Special Flood Considerations as per recommendations in the NSW Floodplain Development Manual and recommendations in Council's Flood Studies;
- Correct the Land Use Zoning mapping for the SP2 Zone along Saines Rd and the Blaney to Demondrille Rail Corridor; and
- Amend Schedule 5 Heritage Items and associated mapping to correct items addressing and remove items no longer .

## ORDINARY MEETING AGENDA

26 June 2024

Held in the Hilltops Council, Young Chambers, 189 Boorowa Street, Young

### Strategic Planning Links

This Planning Proposal addresses and responds to Southeast and Tablelands Regional Plan 2036 particularly, Direction 16: Protect the coast and increase resilience to natural hazards and Direction 23: Protect the region's heritage.

The adoption of Clause 5.22 Special Flood Considerations meets identified goals in the Hilltops LSPS- Environment Land Use and Infrastructure:

- *Objective 4: Risks from natural hazards are reduced through adaptive planning and building responses.*
- *Priority 3: Reduce the risk from natural hazards, by establishing adaptation strategies to minimise vulnerability to heatwaves and high temperature, reduced and more variable rainfall, severe winds and severe storms and hail.*
- *Action 1: Review planning controls for flood planning for new developments and review benchmarks against best available data.*
- *Action 5: Vulnerability to the impacts of flooding, bushfires, and severe storms and winds are minimised.*
- *Action 6: Development is avoided where it's location or form may unreasonably increase flood risk elsewhere.*

The proposed amendments to maintain Land Use Zone integrity aligns with the following objectives of the Hilltops LSPS:

*Residential Town Lots -*

- *Objective 1: Provide and protect a high-quality residential amenity that adds value to the existing character and amenity of the town, neighbourhood and street.*
- *Objective 2: Residential uses dominate with other uses limited to ancillary low impact activities which add to the liveability of the neighbourhood.*

Amendments to heritage details in Schedule 5 of the LEP align with the Hilltops Heritage Strategy 2022-2025, 2.1- Increased knowledge and proactive management of heritage.

*With the aim to:*

*"Identify and appropriately record the cultural heritage of the Hilltops Local Government Area."*

*Actions:*

- a) *Implement the recommendations of the Hilltops Heritage Study, including updating of Heritage databases, and*
- c) *Continue the ongoing of recording and assessment of heritage items in the region.*

*And 1.6 - Council proactively conserves and manages its heritage assets. With the aim to:*

*"Ensure that Council is seen to be taking leadership in the responsible management of the community's heritage assets."*

# ORDINARY MEETING AGENDA

26 June 2024

Held in the Hilltops Council, Young Chambers, 189 Boorowa Street, Young

---

## Consultation and community engagement

Upon receipt of the Gateway Determination, Council will review and action any conditions of the Determination, referring back to the Department as required, and will publicly exhibit the Planning Proposal as per the direction of the Department.

The Planning Proposal is intended to be on public exhibition for a minimum period of 28 days as per Hilltops Council's Community Participation Plan and as specified within the Gateway Determination. Where amendments relate to specific properties, those landowners will be notified directly.

The exhibition of the Housekeeping Amendment will take place via the Planning Portal (as required by the Local Environmental Plan Making Guideline).

At the end of the exhibition period, any submissions made to the Planning Proposal will be reviewed and addressed by Council. A final Post Exhibition Report on the Planning Proposal be considered for adoption at a future Ordinary Council Meeting.

## ATTACHMENTS

Attachment 1 - Planning Proposal - Housekeeping Amendment to Hilltops LEP 2022

## POLICY AND LEGISLATION

- Environmental Planning and Assessment Act 1979
- Standard Instrument (Local Environmental Plans) Order 2006.

## COMMUNITY STRATEGIC PLAN LINKAGE

1B1. Enabling diverse, sustainable and affordable housing options.

1C6. Protecting and enhancing our cultural and built heritage.

5D9. Sustaining land planning and management measures that adapt to changing demands and pressures, including those emerging relating to community health (e.g. heat stress, sun cancer and obesity), climate change, and increasing rate and scale of natural hazards including drought, bushfires and flooding.

## FINANCIAL IMPLICATIONS

- There are no financial implications arising from this report.

## RISK IMPLICATIONS

- Council is progressing the Housekeeping Planning Proposal to close an inadvertent development pathway for less desirable land uses being permissible within some Land Use Zones such as the R1 General Residential Zone. If the Planning Proposal does not proceed, the less desirable land uses will remain permissible and have potential to cause land use conflict with neighbouring uses.
- By implementing Clause 5.22 Special Flood Considerations Council seeks to mitigate the impacts of flood events on the lives, property and natural environment of the people and places of our region.
- In NSW, Local Government Councils are obligated to protect, manage and conserve heritage items. The accurate provision of Heritage listed items is essential, not only to preserving our regions cultural heritage and maintaining a sense of place and community but is important to upholding Councils responsibilities under the *Heritage Act 1977*, the *National Parks and Wildlife Act 1974*, and the *Environmental Planning and Assessment Act 1979*.