

8.2 Planning Proposal Housekeeping Amendment 2022/23

REPORT BY THE MANAGER, STRATEGIC PLANNING
TO 19 OCTOBER 2022 ORDINARY MEETING
GOV400089, LAN900146

RECOMMENDATION

That Council:

1. **receive the report by the Manager, Strategic Planning on the Planning Proposal Housekeeping Amendment 2022/23 to map Lot 1 and Lot 2 DP 1278320 AB4 40 hectares of the *Mid-Western Regional Local Environmental Plan 2012*;**
2. **provide initial support for a Planning Proposal to amend the mapping of the *Mid-Western Regional Local Environmental Plan 2012* to the NSW Department of Planning and Environment seeking a Gateway Determination, in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*; and**
3. **undertake community consultation as outlined within any approved Gateway Determination.**

Executive summary

Council has prepared a Planning Proposal seeking an amendment to the mapping of the *Mid-Western Regional Local Environmental Plan 2012* (LEP). It is proposed to map Lot 1 and Lot 2 DP 1278320 to AB4, 40 hectares to facilitate the erection of a dwelling on each of the lots.

Lots 1 and 2 DP 1278320 were created by a Council approved subdivision, Development Consent DA0351/2012. The lots were created in accordance with the previous environmental planning instrument, where 40 hectare lots were permissible.

The current LEP clause however, does not make provision for the erection of dwellings on the subject lots. This is due to the current LEP not providing an allowance to consider a development application lodged for subdivision under a previous LEP, but was not yet determined until after commencement of the current LEP. Accordingly, Council is amending the LEP to allow landowners to erect dwellings on lots created for that purpose and as previously approved by Council under DA0351/2012.

The Planning Proposal provided as Attachment 1 has been prepared in accordance with the structure outlined in the NSW Department Planning and Environment (DPE) Local Environmental Plan Making Guideline. The report outlines the context, intended outcomes, explanation of provisions and justification for the Planning Proposal.

The staff recommendation is to provide initial support for the Planning Proposal and to send to DPE for a Gateway Determination. If the staff recommendation is supported, the Planning Proposal along with the Council resolution will be forwarded to DPE for Gateway Determination.

Disclosure of Interest

Nil

Detailed report

Planning Proposals

Planning Proposal is a term used to describe the process of rezoning or making an amendment to a Local Environmental Plan (LEP). A Planning Proposal application is a document that explains the intended effect of the LEP amendment and provides a strategic justification for doing so. DPE has issued the Local Environmental Plan Making Guideline, to provide guidance and information on the process for preparing planning proposals and making the amendment to the LEP.

The Gateway Process

DPE is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in the Local Environmental Plan Making Guideline.

Gateway Timeline

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan (LEP) and the progress of the current Planning Proposal through the various stages. The below table demonstrates the Planning Proposal is within the initial stage of the process.

| Stage | Completed | Comment |
|---|-----------|-----------------|
| Preparation of a Planning Proposal | | |
| Staff Prepare the Planning Proposal | ✓ | September 2022 |
| Council Decision to Support Proposal | ✓ | 19 October 2022 |
| Issue of Gateway Determination | | |
| Council Requests Gateway Determination | | |
| DP&E Issues Gateway Determination | | |
| Gateway Conditions Satisfied | | |
| Consultation | | |
| Consultation with Relevant Agencies | | |
| Public Exhibition | | |
| Post-Exhibition Report to Council | | |
| Finalisation of the Planning Proposal | | |
| Council Exercises Delegation to Prepare LEP | | |
| Draft LEP by Parliamentary Council | | |
| Opinion Issued and LEP Made | | |

INTENDED OUTCOMES

The Planning Proposal will facilitate the development of dwellings on Lot 1 and Lot 2 DP 1278320. Once the mapping is amended and reduced to 40 hectares, a dwelling can be considered in accordance with the below existing clause:

4.2A Erection of dwelling houses and dual occupancies on land in certain zones

(3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on land in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, 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

EXPLANATION OF PROVISIONS

Lot 1 and Lot 2 DP 1278320 are currently mapped AD with a minimum lot size of 100 hectares, the Lot Size Map will be updated and map Lot 1 and Lot 2 DP 1278320 as AB4 with a minimum lot size for 40 hectares.

JUSTIFICATION

The DPE Local Environmental Plan Making Guideline September 2022 outlines questions to consider when demonstrating the justification. The provided Planning Proposal responds to the questions.

NEXT STEP

If Council supports the recommendation, the next step would involve forwarding the Planning Proposal and a Council resolution of initial support to DPE seeking a Gateway Determination.

Community Plan implications

| Theme | Looking After Our Community |
|----------|---|
| Goal | Vibrant towns and villages |
| Strategy | Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning |

Strategic implications

Council Strategies

Mid-Western Regional Local Strategic Planning Statement, Our Place 2040

Council Policies

The forwarding of the Planning Proposal will not require any change to relevant policies.

Legislation

The Planning Proposal has been considered in accordance with Division 3.4 Environmental Planning Instruments - LEPs (previously Division 4) Local Environmental Plans of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Local Environmental Plan 2012*.

Financial implications

Nil

Associated Risks

If Council does not wish to provide initial support for the Planning Proposal, Council may resolve not to proceed with the Planning Proposal and advise the proponent accordingly.

SARAH ARMSTRONG
MANAGER, STRATEGIC PLANNING

ALINA AZAR
DIRECTOR DEVELOPMENT

28 September 2022

Attachments: 1. Planning Proposal.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



*Looking After
our Community*

PLANNING PROPOSAL HOUSEKEEPING AMENDMENT 2022/23

20 SEPTEMBER 2022

MID-WESTERN REGIONAL COUNCIL
STRATEGIC PLANNING

■ ■ ■ ■ ■ TOWARDS 2030



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| Version | Date | Notes |
|---------|----------------|----------------------------|
| V001 | September 2022 | PP reported to Oct Council |

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Overview

Introduction

The Planning Proposal Mid-Western Regional Local Environmental Plan Housekeeping Amendment (the Planning Proposal) explains the intent of, and justification for, the proposed amendment to the *Mid-Western Regional Local Environmental Plan 2012* (MWRLEP 2012).

The Planning Proposal is to implement the following change to the MWRLEP 2012:

Facilitate the erection of dwellings on lots Lot 1 and Lot 2 DP 1278320.

The proposal has been prepared in accordance with Section 3.32 and 3.33 of the Environmental Planning and Assessment Act 1979 (the Act) and the relevant Department of Planning and Environment, Local Environmental Plan Making Guideline, December 2021.

Background

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012) came into effect on 10 August 2012. MWRLEP 2012 is the consolidation of the previous planning controls into one local environmental plan. It is also a translation of those controls into the NSW Government's Standard Instrument Principal Local Environmental Plan.

The following clause was drafted for the MWRLEP 2012:

4.2A Erection of dwelling houses and dual occupancies on land in certain zones, specifically subclause (3) (c) 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 or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement.

The above MWRLEP 2012 clause did not account for the situation where a development application for subdivision was lodged under the previous LEP but not determined and lots registered until after commencement of the current LEP.

A search of Council's subdivision development approvals has established Lot 1 and Lot 2 DP 1278320 are the only lots that the erection of a dwelling can't be achieved under the MWRLEP 2012.

Lots 1 and 2 DP 1278320 were created by a Council approved subdivision, Development Consent DA0351/2012. The lots were created in accordance with the previous environmental planning instrument, 40 hectare lots were permissible. The subdivision and lots were approved and created with the intention that they would have a dwelling entitlement to facilitate the future erection of a dwelling.

Part 1 – Objectives or Intended Outcome

The objective of the Planning Proposal is to implement the following:

| PROPOSED AMENDMENT | LAND TO WHICH IT APPLIES | OBJECTIVE/OUTCOME |
|--|-----------------------------|--|
| 1. Reduce the minimum lot size to 40 hectares. | Lot 1 and Lot 2 DP 1278320. | Facilitate the development of dwelling houses on subject lots. |

Part 2 – Explanation of Provisions

The objectives and intended outcomes as described in Part 1 will be achieved by the following:

| PROPOSED AMENDMENT | EXPLANATION OF PROVISIONS |
|--|---|
| 1. Reduce the minimum lot size to 40 hectares. | Map Lot 1 and Lot 2 DP 1278320 as AB4 40 hectares on Lot Size Map – Sheet LSZ_007 |

Part 3 – Justification

Section A - Need for the Planning Proposal

Q1: Is the planning proposal the result of an endorsed LSPS, strategic study or report?

The Planning Proposal is not a direct result of any specific strategic study or report. The Planning Proposal is to correct a minor oversight in the drafting of the MWRLEP 2012.

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

The proposed mapping amendment outlined in this Planning Proposal is the best means of achieving the Objectives and Intended Outcomes outlined above.

Section B - Relationship to Strategic Framework

Q3: Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy?

The Planning Proposal is of such a minor nature; this question is not relevant.

Q4: Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The Planning Proposal is of such a minor nature; this question is not relevant.

Q5: Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The Planning Proposal is of such a minor nature; this question is not relevant.

Q6: Is the planning proposal consistent with applicable SEPPs?

Yes. An analysis of the applicable State Environmental Planning Policies (SEPP's) is included in the following table.

| SEPP TITLE | PLANNING PROPOSAL CONSISTENCY |
|--|--|
| SEPP (Biodiversity and Conservation) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP Building Sustainability Index (BASIX) 2004 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. Future dwelling development applications would be required to determine at development application whether the BASIX is applicable. |
| SEPP (Exempt & Complying Development Codes) 2008 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Housing) 2021 | Yes – The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Industry and Employment) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |

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|--|---|
| SEPP No 65 – Design and Quality of Residential Apartment Development | Not applicable. |
| SEPP (Planning Systems) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Precincts – Central River City) 2021 | Not applicable. |
| SEPP (Precincts – Eastern Harbour City) 2021 | Not applicable. |
| SEPP (Precincts – Regional) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Precincts – Western Parkland City) 2021 | Not applicable. |
| SEPP (Primary Production) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Resilience and Hazards) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Resources and Energy) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Transport and Infrastructure) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |

Q7: Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?

These directions apply to planning proposals lodged with the Department of Planning and Environment on or after the date the particular direction was issued and commenced.

Detailed in the table below are the directions issued by the Minister for Planning to relevant planning authorities under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*.

| DIRECTION | PLANNING PROPOSAL CONSISTENCY |
|---|--|
| Focus area: Planning Systems | |
| 1.1 – Implementation of Regional Plan | Not applicable. |
| 1.2 - Development of Aboriginal Land Council land | Not applicable |
| 1.3 - Approval and Referral Requirements | The proposed amendment does not include the requirements for approvals or referrals. |
| 1.4 - Site Specific Provisions | Not applicable, as the proposed amendments are not site specific. |
| 1.5 - Parramatta Road Corridor Urban Transformation Strategy | Not applicable. |
| 1.6 - Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan | Not applicable. |
| 1.7 - Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Not applicable. |
| 1.8 - Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Not applicable. |
| 1.9 - Implementation of Glenfield to Macarthur Urban Renewal Corridor | Not applicable. |
| 1.10 - Implementation of the Western Sydney Aerotropolis Plan | Not applicable. |
| 1.11 - Implementation of Bayside West Precincts 2036 Plan | Not applicable. |
| 1.12 - Implementation of Planning Principles for the Cooks Cove Precinct | Not applicable. |
| 1.13 - Implementation of St Leonards and Crows Nest 2036 Plan | Not applicable. |
| 1.14 - Implementation of Greater Macarthur 2040 | Not applicable. |
| 1.15 - Implementation of the Pyrmont Peninsula Place Strategy | Not applicable. |
| 1.16 - North West Rail Link Corridor Strategy | Not applicable. |
| 1.17 - Implementation of the Bays West Place Strategy | Not applicable. |
| Focus area 2: Design and Place | |

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| - | |
| Focus area 3: Biodiversity and Conservation | |
| 3.1 - Conservation Zones | Consistent. |
| 3.2 - Heritage Conservation | Consistent. |
| 3.3 - Sydney Drinking Water Catchments | Not applicable. |
| 3.4 - Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs | Not applicable. |
| 3.5 - Recreation Vehicle Areas | Consistent. |
| 3.6 - Strategic Conservation Planning | Not applicable. |
| Focus area 4: Resilience and Hazards | |
| 4.1 - Flooding | Not applicable. |
| 4.2 - Coastal Management | Not applicable. |
| 4.3 - Planning for Bushfire Protection | Consistent, the Planning Proposal is not site specific. |
| 4.4 - Remediation of Contaminated Land | Consistent, the Planning Proposal is not site specific. |
| 4.5 - Acid Sulfate Soils | Consistent, the Planning Proposal is not site specific. |
| 4.6 - Mine Subsidence and Unstable Land | Consistent, the Planning Proposal is not site specific. |
| Focus area 5: Transport and Infrastructure | |
| 5.1 - Integrating Land Use and Transport | Not applicable. |
| 5.2 - Reserving Land for Public Purposes | Not applicable. |
| 5.3 - Development Near Regulated Airports and Defence Airfields | Consistent, the Planning Proposal is not site specific. |
| 5.4 - Shooting Ranges | Consistent, the Planning Proposal is not site specific. |
| Focus area 6: Housing | |
| 6.1 - Residential Zones | Not applicable. |
| 6.2 - Caravan Parks and Manufactured Home Estates | Not applicable. |
| Focus area 7: Industry and Employment | |
| 7.1 - Business and Industrial Zones | Not applicable. |
| 7.2 - Reduction in non-hosted short-term rental accommodation period | Not applicable. |
| 7.3 - Commercial and Retail Development along the Pacific Highway, North Coast | Not applicable. |
| Focus area 8: Resources and Energy | |
| 8.1 - Mining, Petroleum Production and Extractive Industries | Consistent, the Planning Proposal is not site specific. |
| Focus area 9: Primary Production | |
| 9.1 - Rural Zones | The zoning of the land is not proposed to change, only the minimum lot size. |
| 9.2 - Rural Lands | Consistent – The minimum lot size is changing, however, the Planning Proposal is making provision |
| 9.3 - Oyster Aquaculture | Not applicable. |
| 9.4 - Farmland of State and Regional Significance on the NSW Far North Coast | Not applicable. |

Section C - Environmental, Social and Economic Impact

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Q8: 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?

The site specific constraints were considered in the assessment of the previous development application for subdivision.

Q9: Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As set out in Local Environmental Plan Making Guideline, the purpose of this question is to ascertain the likely environmental effects that may be relevant. The nature of the planning proposal is such that no technical information is required.

Q10: How has the planning proposal adequately addressed any social and economic effects?

Not applicable.

Section D - State and Commonwealth Interests

Q11: Is there adequate public infrastructure for the planning proposal?

Not applicable as the Planning Proposal will not trigger an upgrade or reliance on public infrastructure.

Q12: What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Not applicable due to the nature of the Planning Proposal.

Part 4 – Mapping

Lot Size Map – Sheet LSZ_007, Map Identification Number:
5270_COM_SLZ_007_160_20120619 will be updated to map Lot 1 and 2 DP 1278320 as
AB4 40ha.

Part 5 – Community Consultation

Community consultation has not been carried out prior to the preparation of the Planning Proposal.

The Planning Proposal is considered 'basic' in accordance with the Local Environmental Plan Making Guideline and requires a public exhibition period of 10 days.

Public exhibition will be undertaken in accordance with any issued Gateway Determination.

Part 6 – Project Timeline

The Planning Proposal is a housekeeping amendment to the *Mid-Western Local Environmental Plan 2012* and should be able to be achieved within 3 - 6 months of the date of the Gateway Determination.

Proposed Timeline

| MILESTONE | DATE |
|-------------------------------------|------------------------------|
| Gateway Determination | October 2022 |
| Completion of Technical Information | N/A |
| Agency Consultation | N/A |
| Public Exhibition | October/November 2022 |
| Consideration of Submissions | December 2022 |
| Legal Drafting & Opinion | December 2022 / January 2023 |
| Finalisation | January 2023 |