

## **SECTION 59 PLANNING REPORT**

### **Planning Proposal Details**

Planning Proposal PP\_2017\_LITHG-001\_00 to amend Lithgow Local Environmental Plan 2014.

Lithgow Local Environmental Plan 2014 (Amendment 2)

### **Planning Proposal Summary**

Planning Proposal to amend the Lithgow Local Environmental Plan 2014 through inserting Clause 4.1B Minimum lot sizes for certain split zones.

### **Date of Gateway Determination**

20 January 2017

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## **1.0 SUMMARY**

### **Background**

In the making of Lithgow Local Environmental Plan 2014, Council acknowledged different land capabilities and subdivision potential on some single larger allotments by applying more than one zone and minimum lot size across the lot. The land with the higher environmental value and lower capability for urban purposes was given an environmental protection zone, or in some cases a rural zone. A higher minimum lot size was also applied to prevent it from being further fragmented by future subdivision at a scale and intensity that would potentially reduce its environmental/rural value, long-term protection and management.

The application of Clause 4.1, 4.1AA and 4.2C of Lithgow Local Environmental Plan prevents a lot that contains split zones and is below the minimum lot sizes for subdivision in one of the applicable zones from all future subdivision. This is because not all resulting lots, including the residue lot, could achieve the required minimum lot size for that land as shown on the [Lot Size Map](#).

This was a non-intentional consequence of this clause as it prevents lands identified to support future urban growth opportunities from future subdivision and development.

To rectify this issue it is proposed to amend the Lithgow Local Environmental Plan 2014 to include a new clause which will enable the consideration of development applications for the creation of new lots on land with split zones and varying minimum lot sizes subject to certain criteria being applied.

### **Objectives of the proposal**

The objectives of this Planning Proposal are to:

- Enable the subdivision of lots that are within split zones but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C due to minimum lot size

- Provide for subdivision that promotes suitable uses and development of land within split zones.

The Planning Proposal was referred to the Western Region office of NSW Department of Planning and Environment on 2 December 2016. At the request of the Western Region office a minor amendment was made to remove proposed Clause 4.1B (4) (b) to avoid potential issues related to subjective judgement. This amendment was minor in nature and did not substantially change the intent of the proposal.

***The original and revised Planning Proposal are provided in Attachment 1.***

### **Public exhibition**

The Planning Proposal was placed on public exhibition for a period of 28 days between 13<sup>th</sup> April 2017 and 11 May 2017.

To support the exhibition the following was undertaken to accord with the requirements of Section 57 of the Environmental Planning and Assessment Act and Council's consultation program as outlined in the Planning Proposal:

- Notification on Council's Website via a dedicated webpage
- Written notification to all landowners affected by split zones of the type referred to in the proposal
- Written notification to all relevant government authorities and agencies
- Notification in the local newspaper in Council's Column throughout the exhibition period
- Exhibition material available for viewing at Council's Administration Centre and all three town libraries during the exhibition period.

### **Minor amendment following exhibition**

Whilst taking enquiry on the Planning Proposal during the exhibition period it has come to light that a minor amendment is required to the proposed clause to ensure that Clause 4.1(4A) retains its effect in preventing any further subdivision in "Area 1" and "Area 2" on the Lot Size Map.

Subsequently Parliamentary Counsel has inserted an additional sub clause as follows "Land identified as "Area 1" or "Area 2" on the Lot Size Map may not be subdivided under this clause.

Such amendment is minor in nature and did not constitute a variation of the Planning Proposal in accordance with the "*Guide to Preparing Local Environmental Plans (S5.5.6)*".

## **2.0 GATEWAY DETERMINATION**

Council received Gateway Determination on 20 January 2017 that was conditioned to conduct consultation with Rural Fires Service and Water NSW prior to general community consultation. This consultation was completed during February/March 2017. Both

authorities were satisfied with the proposal and raised no objection to it proceeding without alteration. The responses from the agencies were referred to the Western Region office of NSW Planning and Environment.

Council received notification of satisfactory compliance with Conditions 1 and 2 of the Gateway Determination as well as approval to commence community consultation on 27 March 2017.

### **Timeframe for Completion**

The Gateway Determination stated that the LEP was to be finalised within 9 months of the date of the Gateway Determination which falls due on **20 October 2017**.

***Gateway Determination and notification to proceed with consultation are provided in Attachment 2.***

## **3.0 COMMUNITY CONSULTATION**

### **Overview of submissions/enquiries received**

Council officers fielded a number of verbal enquires via the telephone and face to face interviews during the exhibition period. In all individual circumstances discussed, the Planning Proposal was deemed to have a neutral or positive impact for landowners.

Council received a total of two written submissions during the exhibition period with a further four written enquiries received seeking clarification of the Planning Proposal as detailed in the table below. No submissions raised objection to the proposal.

<b>Name</b>	<b>Submission/Enquiry Summary</b>	<b>Planning Response</b>
Department or Primary Industries Water	DPI water considers the amendment does not impact on water management issues and has no further comment.	Noted.
Department of Primary Industries - Agriculture	There are no issues of concern in relation to the proposal	Noted.
Forager Planning and Development	Concluded that the proposal will not impact on land within the Marrangaroo Urban Release Area and sought confirmation.	Confirmed no impact.
Private	Sought clarification of a number of matters relating to land in the Marrangaroo Employment Zone and the impact of the proposal.	Responses provided and concluded that proposal has a neutral impact.

Name	Submission/Enquiry Summary	Planning Response
Private	Sought clarification of the impact of the proposal on future subdivision potential of land in the R5 zone.	<p>As the subject land Lot 180 is a whole lot contained within the R5 zone and the zoning is not split the proposal will have no impact.</p> <p>The remaining Lot 179 is entirely within the RU1 Zone and is already below the MLS of 40ha and therefore has no further subdivision potential.</p> <p>The planning proposal has a neutral effect.</p>
Private	Sought clarification of the impact of the proposal on land at Portland.	Confirmed neutral impact.

#### 4.0 VIEWS OF PUBLIC AUTHORITIES

The Draft Planning Proposal was referred to all relevant public authorities.

Council received comment from Rural Fires Service and Water NSW prior to public exhibition.

Department of Industries - Water and Agriculture responded with no issues of concern.

***The responses from these authorities are provided in Attachment 3.***

#### 5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Council has reviewed all applicable State Environmental Planning Policies to determine the direct relevance to this Planning Proposal and has found that the proposal is consistent with all SEPPs and will not hinder their operation during the development assessment phase.

As a condition of gateway determination Council directly consulted with both Rural Fires Service and Water NSW in accordance with Directions 4.4 and 5.2. There are no outstanding matters in relation to the S.117 Directions.

***Responses from relevant agencies are provided in Attachment 3.***

#### 6.0 PARLIAMENTARY COUNSEL OPINION

Council sought Parliamentary Counsel Opinion on 4 July 2017 and a final draft was received on 1 August 2017.

Council received the legal opinion on 11 August 2017.

**Legal Opinion is provided in Attachment 4.**

## **7.0 OTHER RELEVANT MATTERS**

Reports to Council in relation to this Proposal were made on 31 October 2016 and 26 June 2017.

Copies of the relevant Council reports and minutes are provided in Attachment 5.

There are no other matters relevant to this Proposal.

## **8.0 MAPPING**

No mapping is required.

## **9.0 RECOMMENDATION**

Council through its sub- delegate General Manager, Mr Graeme Faulkner, recommends that the Plan be made in accordance with the legal opinion issued on 11 August 2017 and requests that the plan be notified.

## **ATTACHMENTS**

- 1 Original and Revised Planning Proposal
- 2 Gateway Determination
- 3 Responses from Public Authorities
  - Rural Fires Service
  - Water NSW
  - DPI - Water
  - DPI - Ag
- 4 Legal Opinion dated 11 August 2017
- 5 Council reports and minutes of Ordinary Meetings 31 October 2016 and 26 June 2017.

Signed

**To be Signed**

Graeme Faulkner

GENERAL MANAGER LITHGOW CITY COUNCIL

**Insert Date** September 2017

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