

# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**13 DECEMBER 2017**

- |              |   |
|--------------|---|
| ITEM 12.5    | COMPREHENSIVE LOCAL ENVIRONMENTAL PLAN - REVIEW<br>OF E4 ZONING - BYWONG AND WAMBOIN. |
| ATTACHMENT 1 | BACKGROUND TO THE APPLICATION OF THE E4 LAND USE<br>ZONE E4 ENVIRONMENTAL LIVING      |

## Attachment 1 Background to the application of the E4 land use zone E4 Environmental Living

### 1 Background

The *Palerang Local Environmental Plan 2014* applies to the whole of the former Palerang local government area. The making of this local environmental plan (LEP) entailed the amalgamation of six LEPs applying to the Palerang local government area as a result of the local government amalgamations in 2004. The former (repealed) LEPs were:

- *Cooma-Monaro Local Environmental Plan 1999 - (Rural)*,
- *Goulburn Mulwaree Local Environmental Plan 2009*,
- *Gunning Local Environmental Plan 1997*,
- *Mulwaree Local Environmental Plan 1995*,
- *Tallaganda Local Environmental Plan 1991*, and
- *Yarrowlumla Local Environmental Plan 2002*

The preparation of the draft plan commenced in late 2004 and involved extensive consultation with the community and government agencies throughout the process. Community consultation included visioning workshops, a telephone survey, exhibition of four discussion papers, two exhibitions of the draft LEP and letters to all property owners advising of the second draft LEP exhibition. Community meetings were held as part of the first exhibition of the draft LEP. Between 2010 and 2012, a working draft of the plan was considered at a series of Council meetings which members of the community were able to attend. The Council meetings were well reported by the media and the working draft was available on Council's website.

Following the first exhibition of the draft LEP from Wednesday 5 December 2012 to Friday 8 March 2013, a report was considered at the extraordinary meeting of 17 October 2013 (Appendix A).

The amended draft LEP was exhibited from Wednesday 27 November 2013 to Friday 10 January 2014. A report on the second exhibition of the draft LEP was considered by the extraordinary meeting of Council on 27 February 2014 (Appendix B).

### 2 The use of the E4 Environmental Living land use zone in the *Palerang Local Environmental Plan 2014*

The following is a summary of the reasons for the use of the land use zone E4 Environmental Living, a full account is provided in each of the reports to Council, see below and Appendices A and B.

One of the policy considerations confronting council in drafting the LEP was the application of the land use zones prescribed under the Standard Instrument LEP. There were two zones within the Standard Instrument that were potentially applicable to rural residential areas, these were:

- R5 Large Lot Residential Zone, and
- E4 Environmental Living Zone

The Department of Planning had issued practice notes concerning the zoning of land during the preparation of Standard Instrument LEPs. These were considered by council staff and also discussed with staff from the Department of Planning. The relevant practice notes are:

- Appendix C - Practice Note PN 07-001 *Standard instrument for LEPs - frequently asked questions.*
- Appendix D - Practice Note 09-002 *Environment Protection Zones*

*Note*

- The objectives of the land use zones, circulars and the nature of rural residential areas were taken into account
- The land uses permitted in the rural residential areas under the former LEPs were carried forward to the new E4 Environmental Living land use zone
- Zone E4 Environmental Living was used in a number of 'rural residential' localities in the former Palerang local government area

The R5 Large Lot Residential zone was applied to the areas with large residential lots on the edge of Bungendore and Braidwood where reticulated water or sewer either existed or was generally possible and which had been zoned 2(v) Village under the previous LEPs. This approach is in accordance with the Department's practice notes and the R5 land use zone objectives.

Both reports to council consider the community's submissions and provide responses to the matters raised in the submissions including native vegetation in the Wamboin and Bywong localities, land uses and the use of the land use zone RU4 Primary Production Small Lots.

The report to the extraordinary council meeting of 17 October 2013 (Appendix A, pp 66-82), states that no further change to the proposed zone was considered necessary. This was accepted by Council (p79). Recommendation 8 of the report (p80) states "*Recommended that the land use zone E4 Environmental Living be included in the rural lands study*". This recommendation was adopted by Council. However this was intended to be a review of subdivision sizes in the E4 zone rather than a review of the use of the E4 zone for rural residential land. This can be seen through it being in a paragraph separate to the consideration of the zoning of the land and confirmed by the staff comment on p81.

3 The use of the E4 Environmental Living land use zone in other local environmental plans

The following LEPs in the region also include the E4 Environmental Living zone for rural residential areas:

- *Queanbeyan Local Environmental Plan 2012* (see note below)
- *Cooma-Monaro Local Environmental Plan 2013*
- *Yass Valley Local Environmental Plan 2013*
- *Goulburn Mulwaree Local Environmental Plan 2009*

The *Yass Valley Local Environmental Plan 2013* also applies the R5 Large Lot Residential land use zone in rural areas as does the *Cooma-Monaro Local Environmental Plan 2013*.

The *Goulburn Mulwaree Local Environmental Plan 2009* additionally uses the RU6 Transition land use zone. The objectives of this zone are:

- To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.

- To minimise conflict between land uses within this zone and land uses within adjoining zones.

#### Note

The former Queanbeyan City Council applied the E4 Environmental Living land use zone to the part of the locality of Carwoola that was zoned 1(d) under the *Yarrowlumla Local Environmental Plan 2002*, this area has a similar landscape and provisions to the localities of Wamboin and Bywong.

#### 4 Environmental protection zones and the North Coast inquiry

Between 2012 and 2014, a review of the application of environmental zones applying to the local government areas of Ballina, Byron, Kyogle, Lismore and Tweed was undertaken by consultants for the Department of Planning. Following the review, the Department of Planning issued directions under section 117 of the *NSW Environmental Planning and Assessment Act 1979* regarding the use of the environmental zones in the above local government areas only. There has been no documentation relating to councils outside of this area issued by the Department of Planning. The Department's website states "The Department will be seeking comment in the near future on how the recommendations can work for environmental zoning across other council areas throughout the State." (<http://www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Environmental-Zones>).

Strategic planning staff are not aware of any Department of Planning policy document concerning the environmental land use zones outside of the north coast or any new Department policy concerning the application of the RU4 land use zone.

The Department of Planning has prepared a Frequently Asked Questions pamphlet on the *North Councils Environmental Zone Review, Final Recommendations and Section 117 Direction*, March 2016 (Attachment 6). This report has been taken into account by Council staff.

#### 5 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Towards the end of the making of the *Palerang Local Environmental Plan 2014*, the Department of Planning requested that Council consider the types of exempt and complying development that apply in the R5 Large Lot Residential land use zone and whether these could be applied in the E4 Environmental Living land use zone. Following consideration of this, a planning proposal was prepared extending exempt and complying development in the E4 Environmental Living land use zone and a Gateway determination was received allowing the proposal to be exhibited. The exhibition has not been undertaken. It is suggested that this work be included as part of the draft Queanbeyan-Palerang LEP.

#### 6 Rural Lands Study

The Rural Lands Study commenced in 2014 and its objectives were:

- to identify and examine the strategic and legislative context, key trends and

the social, economic (including agriculture), infrastructure and environmental issues affecting rural, rural residential and environmental land in the Palerang LGA.

- to work with the community in the development of the study in order to gain an understanding of the study findings.
- to prepare a strategy for rural and rural residential and environmental land in the Palerang LGA based on the analysis of data (including community consultation).
- to recommend an appropriate minimum lot size for dwellings on rural, rural residential and environmental land.
- to consider the benefits and disadvantages associated with rural lot size averaging.
- to recommend the location and amount (if any) of land that could be zoned from rural to rural residential. This will also address the individual rezoning requests deferred following the exhibition of the draft local environment plan.
- to consider whether individual requests for a dwelling to be permitted on certain land.

A Rural Lands Study committee was formed and its meetings have been open to the public. Meetings have been advertised in the local newspaper and on Council's website. Reports to the committee and draft documents considered by the committee have been posted on the Council website. Community members interested in the E4 Environmental Living land use zone have attended the meetings.

The products of the Rural Lands Study are a report and a strategy. The Rural Lands Study Report was exhibited from 15 June 2015 to 20 July 2015. As part of this exhibition, numerous community meetings were held including in Wamboin and Bywong. The Bywong meeting was attended by 51 people (a high attendance compared to the other meetings). The majority of people in attendance were unhappy with the E4 Environmental Living zone being applied to land in the Bywong locality. At the meeting, the consultant agreed to consider the E4 Environmental Living matter and the Rural Lands Study Committee discussed a report on the exhibition on 15 August 2015, which included the consultant's thoughts on the E4 Environmental Living land use zone.

Following this, the consultant prepared a document (several drafts) on the more challenging matters that had emerged during the Rural Lands Study and the E4 land use zone was included in this. This document became a discussion paper which accompanied the exhibition of the draft Rural Lands Strategy (see p43-47 regarding the E4/RU4 land use zones). The document recommended that parts of the Bywong E4 land use zone be considered for RU4 Primary Production zoning. The final Rural Lands Study Committee meeting was held on Thursday 18 August 2016, the committee considered a staff report on the exhibition of the draft Strategy and discussion paper. The committee accepted the staff recommendation (p6, as below):

**Recommendation 1**

Recommended that land zoned E4 Environmental Living under the *Palerang Local Environmental Plan 2014* be considered as part of the preparation of a new comprehensive local environmental plan [for Queanbeyan-Palerang].

The use of the land use zone RU4 Primary Production Small Lots was discussed in the 27 February 2014 report to Council (Appendix B, p13 and 14).

The Rural Lands Strategy was adopted by Council in February 2017. The Strategy, Report and background documents can be found on Council's website.

Appendix A  
Extract from the October 2013 report  
to Council on the draft PLEP



Extraordinary Meeting

17 October 2013

Intensive livestock agriculture is part of the group term Agriculture.

Intensive livestock agriculture currently requires consent in rural zones under the *Tallaganda Local Environmental Plan 1991*, *Yarrowlumla Local Environmental Plan 2002*, *Mulwaree Local Environmental Plan 1995*, *Gunning Local Environmental Plan 1997*, *Cooma-Monaro Local Environmental Plan 1999—(Rural)* and *Goulburn Mulwaree Local Environmental Plan 2009*.

Intensive livestock keeping has the potential to cause significant environment impacts and conflict with neighbouring land holders. Subject to size or location, it is likely to be designated development and therefore requires the preparation of an Environmental Impact Statement. Additionally, due to the potential of significant environmental impacts, *State Environmental Planning Policy No 30—Intensive Agriculture* may also apply to an intensive livestock agriculture development.

Feedlots are a type of intensive livestock agriculture. The local environmental plan defines a feedlot as meaning “a confined or restricted area that is operated on a commercial basis to rear and fatten cattle, sheep or other animals, fed (wholly or substantially) on prepared and manufactured feed, for the purpose of meat production or fibre products, but does not include a poultry farm, dairy or piggery.”

It is suggested that the prime purpose of the separation of cows and calves through the yard method (of up to two weeks) is to separate the calves and cows permanently, to train the calves and to get them used to being managed by humans. It is not to rear and fatten them and hence the yard separation of cows and calves does not meet the definition of feedlot. Given, this the yard weaning of beef cattle is viewed as being part of the management practices associated with extensive agriculture (the grazing of livestock for commercial purposes).

In regard to the feed lotting of lambs, legislation relating to designated development includes sheep (4000 head). If the number of lambs being feed lotted was less, it suggested that a development application would be required in this instance as well as it would be necessary to consider the environmental impacts.

However, if lambs raised in a paddock were restricted to a yard on the property on which they were raised, for several days and feed pellets on the property it is suggested that this would not meet the definition of feedlot could be considered as part of practices associated with extensive agriculture. Additionally, if during a drought lambs from a property on which they were born were yarded to be fed that this would not constitute a feed lot as it would not be a permanent measure.

No change to the draft LEP is considered necessary.

Page 65

Extraordinary Meeting

17 October 2013

### 2.2.8 RU3 Forestry

#### **Submission No. 249**

The submission states "The objective is 'enable development for forestry purposes'. However, the plan only identifies 'Roads' with anything else Prohibited. Surely the plan needs flexibility to permit associated development to enable the management and harvesting of trees?"

#### *Comment*

Government owned land that is managed for forestry is zoned RU3 Forestry. Private land that is used for forestry is generally zoned RU1 Primary Production. The Standard Instrument defines forestry as being the following:

"**forestry** has the same meaning as **forestry operations** has for the purposes of Part 5A of the *Forestry Act 2012*.

**Note.** The term is defined as follows:

**forestry operations** means:

- (a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- (b) the harvesting of forest products, or
- (c) on-going forest management operations, namely, activities relating to the management of land for timber production such as thinning and other silvicultural activities such as bee-keeping, grazing and bush fire hazard reduction, or
- (d) ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations."

The definition contains provision for development associated with the harvesting of trees.

### 2.2.10 E4 Environmental Living

#### **Background**

The E4 Environmental Living land use zone was applied to existing rural residential areas including the areas zoned 1(g) (Rural Small Holding) under the YLEP 2002. The native vegetation of these areas generally has moderate to high conservation value although it is recognised that much of the native vegetation in this areas is as a result of regeneration



Extraordinary Meeting

17 October 2013

over several decades. The majority of the land is used for residential purposes or smaller scale agricultural activities such as horticulture.

The areas zoned E4 Environmental Living are:

- the Bywong and Wamboin rural residential area (zoned 1(d) Rural Residential under the *Yarrowlumla Local Environmental Plan 2002*). Additionally, an area currently zoned 1(a) (Rural) under the *Gunning Local Environmental Plan 1997* to the north, adjacent to the Federal Highway has been included, in accordance with Council's resolution of 14 October 2010 .
- the Bidges Road and Sutton Road rural residential area (zoned 1(d) Rural Residential under the *Yarrowlumla Local Environmental Plan 2002*)
- Carlton Estate on the Kings Highway (zoned 1(a) General Rural under the *Yarrowlumla Local Environmental Plan 2002*)
- Carwoola rural residential area (zoned 1(d) Rural Residential under the *Yarrowlumla Local Environmental Plan 2002*)
- Hoskinstown area, (zoned 1(g) Rural Small Holdings under the *Yarrowlumla Local Environmental Plan 2002*)
- the Burra rural residential area (zoned 1(d) Rural Residential under the *Yarrowlumla Local Environmental Plan 2002*).
- the Royalla rural residential area (zoned 1(d) Rural Residential under the *Yarrowlumla Local Environmental Plan 2002*). A portion of Lot 1 DP 456367 was previously 1(a) General Rural (a proposed community title subdivision)
- Rossi area (zoned 1(g) Rural Small Holdings under the *Yarrowlumla Local Environmental Plan 2002*)
- Jamaleopa rural residential area (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*)
- Bombay Road (outer) rural residential area (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*)
- Bombay Road adjacent to Braidwood rural residential area (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*).
- Hawthorn Lane rural residential area adjacent to Braidwood (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*).
- Glenmore Road, adjacent to Braidwood (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*).
- Endrick River Road, Nerriga rural residential area (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*). Three small lots (2 to 4 ha) that are currently zoned 1(a) General Rural but are adjacent to the 1(c) area have been zoned E4 Environmental Management.
- Northangara Road, Mongarlowe rural residential area (zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*).
- part of the Araulen village, which is currently zoned zoned 2(v) under the *Tallaganda Local Environmental Plan 1991*

Page 67

Extraordinary Meeting

17 October 2013

**Method for determining the areas that would be zoned E4 Environmental Living in the draft local environmental plan**

There is no land use zone in the standard instrument that is directly equivalent to the current rural residential zones.

The Practice Notes, zone objectives of E4 Environmental Management, R5 Large Lot Residential and RU4 Primary Production Small Lots were examined as well as the characteristics of the land use zone and documents listed at the beginning of this report.

It was recognised that the size and use of the lots, and the amount of native vegetation cover differed between the areas currently zoned 1(d) and 2(v). There was no environmental study undertaken as it is not a requirement, particularly in the situation of 'translating' the current local environmental plans.

Extracts of the Department of Planning and Infrastructure Circular *PN 11-002 Preparing LEPs using the Standard Instrument: standard zones* which describe the Department's intention regarding each of the land use zones are listed below:

**"E4 Environmental Living**

This zone is generally intended for land with special environmental or scenic values, and accommodates low impact residential development.

This zone may be applicable to areas with existing residential development in a rural setting, which still has some special conservation values. Where lands have higher conservation values, with more restrictive land use permissibility, an E2 or E3 zone may be more suitable than E4 zone."

**"RU4 Primary Production Small Lots**

This zone (previously named Rural Small Holdings) is for land which is to be used for commercial primary industry production, including emerging primary industries and agricultural uses that operate on smaller rural holdings.

In 2011, the name of the zone was changed to clarify that it is a rural zone for agricultural uses, not a pseudo-residential zone. The objectives of the zone have been changed to encourage opportunities in relation to primary production on small lots and to minimise fragmentation and alienation of resource lands important for food security. The changed zone name, modified core zone objectives and additional mandated permissible uses ('intensive plant agriculture' and 'plant nursery') better reflect the intent of the zone – being an agricultural industry/food production focus and not a rural residential lifestyle zone."

The land use zone RU4 Primary Production Small Lots is not considered appropriate as there are a few properties that would fit the above description.

Page 68

Extraordinary Meeting

17 October 2013

#### **"R5 Large Lot Residential**

This zone is intended to cater for development that provides for residential housing in a rural setting, often adjacent to towns or metropolitan areas. The allocation of large lot residential land should be justified by council's housing/settlement strategy prepared in accordance with planning principles set out in regional and subregional strategies, s.117 directions and relevant SEPPs. Access to reticulated sewerage and water systems should be considered when determining appropriate minimum lot sizes. Lot sizes can be varied within the zone depending on the servicing availability and other factors such as topography, native vegetation characteristics and surrounding agricultural land uses."

The rural residential areas to the west of Bungendore and adjacent to Tarago Road at the northern end of Elmslea and immediately adjacent to Braidwood area are zoned R5 Large Lot Residential in the draft local environmental plan and are currently zoned 2(v) Village. The mandatory objectives for the R5 Large Lot Residential zone are:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones."

#### *Comment*

The use of the 'equivalent zone' table is not considered an appropriate means of determining the future land use zone of the current rural residential areas as the table was developed by Council (at the request of the Department of Planning and Infrastructure) in response to the introduction of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* as an interim measure until the draft local environmental plan was gazetted. The table shows the land use zone R5 - Large Lot Residential as being equivalent to the 1(d) Rural Residential and 1(g) Rural Small Holdings land use zones under the *Yarrowlunla Local Environmental Plan 2002*. The level of consideration that contributed to the development of the table was significantly less than the development of the draft local environmental plan. For instance there was no analysis in developing the equivalent zone table of the environmental qualities of the 1(d) Rural Residential land use zone. Land zone R5 Large Lot Residential is generally expected to have or obtain in the future reticulated water and sewer.

Page 69

Extraordinary Meeting

17 October 2013

**The application of the E4 Environmental Living land use zone**

One of the aims of applying the E4 Environmental Living land use zone was to allow the existing rural residential outside of urban areas to remain rural residential areas and to recognise that the areas generally contain a high level of native vegetation.

The mandatory objectives of the E4 Environmental Living land use zone are:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

The words "special ecological, scientific or aesthetic values" have been taken in the preparation of the draft local environmental plan to mean the natural features particularly the native vegetation of the proposed land use zone and the significance of the water catchments of the Yass, Molonglo and Queanbeyan Rivers which are of importance to the ecological health and amenity of the area and region. The use of the word 'special' is not viewed in the sense of there being a 'one-off' type of feature or critical habitat (the highest legal status accorded to habitat in NSW). Rather that the characteristics of the areas are unique and very different to that of the rural residential areas adjacent to Bungendore and Braidwood that are proposed to be zoned R5 large Lot Residential. Additionally, the aesthetic values are of equal importance and differ to the residential areas on the edge of Braidwood and Bungendore.

It is suggested that the objectives do not restrict rural residential living but rather ensure consideration of the values of the zone so that both these and residential living can co-exist. It should be noted that the majority of lots in the E4 Environmental Living zone have a dwelling.

The lots in the areas zoned E4 Environmental Management are typically sized between 2 and 40 hectares in size which is too small for large scale agricultural practices. However, some properties are used to graze small numbers of livestock and in several instances to grow crops and practice horticulture. The agricultural class of the land in these areas is 3, 4 and a small amount of 5.

The areas zoned E4 Environmental Management generally contain a high proportion of high conservation value native vegetation. The maps below show the draft local environmental plan Terrestrial Biodiversity map. The map was developed by the NSW Office of Environment and Heritage for inclusion in the *draft* Palerang Local Environmental Plan 2012.

The whole of the Palerang local government area map is composed of native vegetation and natural resource features. It includes areas predicted to be endangered ecological communities, naturally rare community types, over cleared vegetation types where the vegetation has been more than 70% cleared in that catchment, over cleared Mitchell landscapes, poorly conserved vegetation communities, old growth forests, threatened species habitat, wilderness areas and listed entities or communities under the *Environment*

Page 70

Extraordinary Meeting

17 October 2013

*Protection and Biodiversity Conservation Act 1999.* There are nine endangered ecological communities within the Palerang local government area:

- Natural Temperate Grassland of the Southern Tablelands of NSW and the Australian Capital Territory
- White Box Yellow Box Blakely's Red Gum Woodland
- Lowland Grassy Woodland in the South East Corner Bioregion
- Montane Peatlands and Swamps of the New England Tableland, NSW North Coast, Sydney Basin, South East Corner, South Eastern Highlands and Australian Alps bioregions
- Tableland Basalt Forest in the Sydney Basin and South Eastern Highlands Bioregions
- Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland in the South Eastern Highlands, Sydney Basin, South East Corner and NSW South Western Slopes Bioregions
- Dry rainforest of the south east forests in the South East Corner Bioregion - endangered ecological community listing
- Araluen Scarp Grassy Forest in the South East Corner Bioregion

There are over 100 flora and fauna species that are listed in Commonwealth or NSW legislation as being endangered or threatened that are found within the Palerang local government area. High conservation value vegetation can be defined as being native vegetation that is listed under NSW or Commonwealth legislation or which is not listed but is depleted or uncommon.

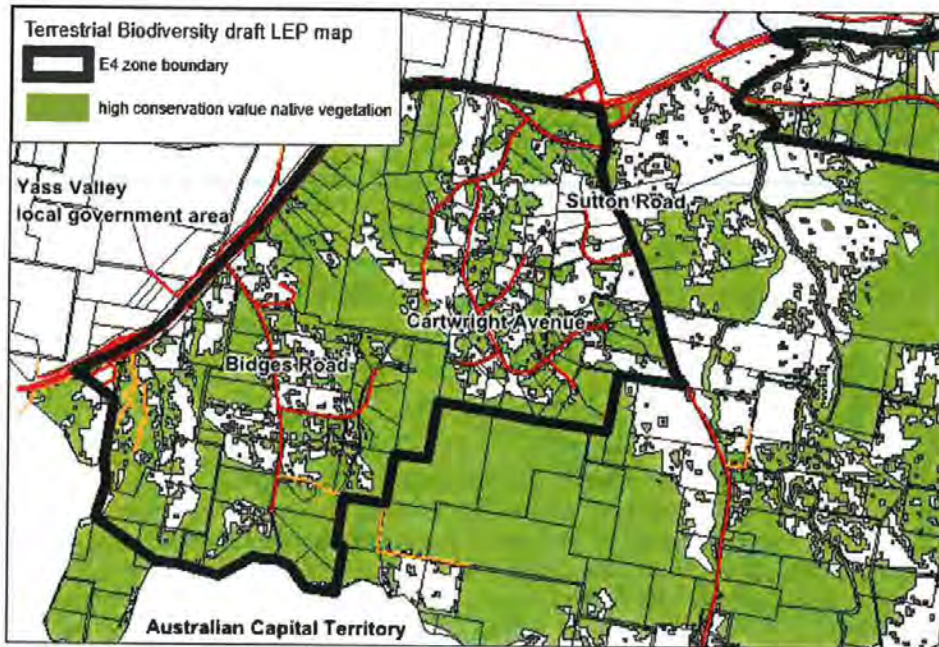
It should be noted that whilst the data is predicted, it is sourced from flora and fauna surveys, satellite imagery and a variety of studies.

Not all endangered ecological communities or threatened species are located in national parks or intact native forest. Some species, particularly those that are associated with natural template grasslands are found in areas that have been partially disturbed such as road reserves or agricultural land. As seen in the maps below the majority of the rural residential area contains high conservation value native vegetation. It is noted that while some lots do not contain high conservation value native vegetation this does not mean that they should not be zoned E4 Environmental Living. The application of a zone to an area is concerned with the greater values of an area rather than individual lots.

Page 71

Extraordinary Meeting

17 October 2013



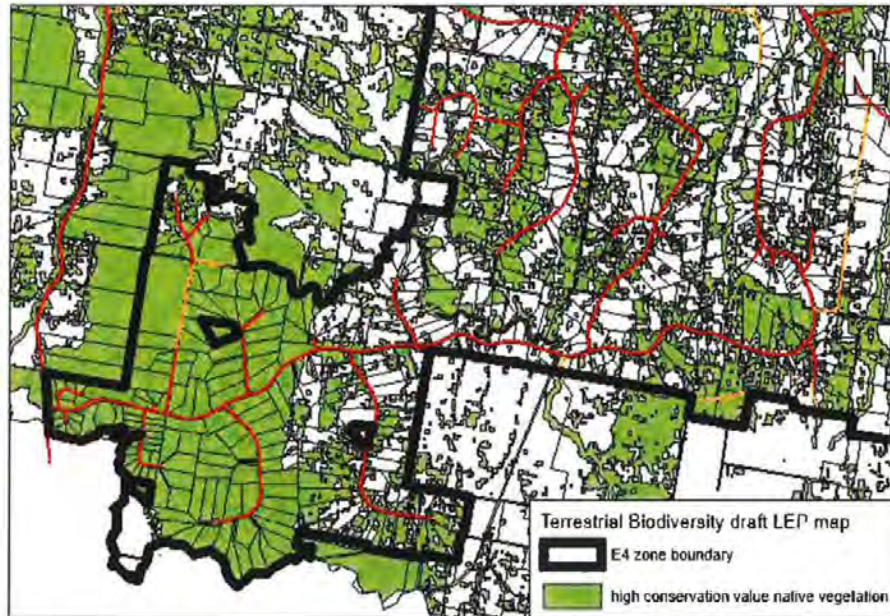
Map 1 Terrestrial Biodiversity draft local environmental plan, Bidges Road area

Source NSW Office of Environment and Heritage and NSW Land and Property Information



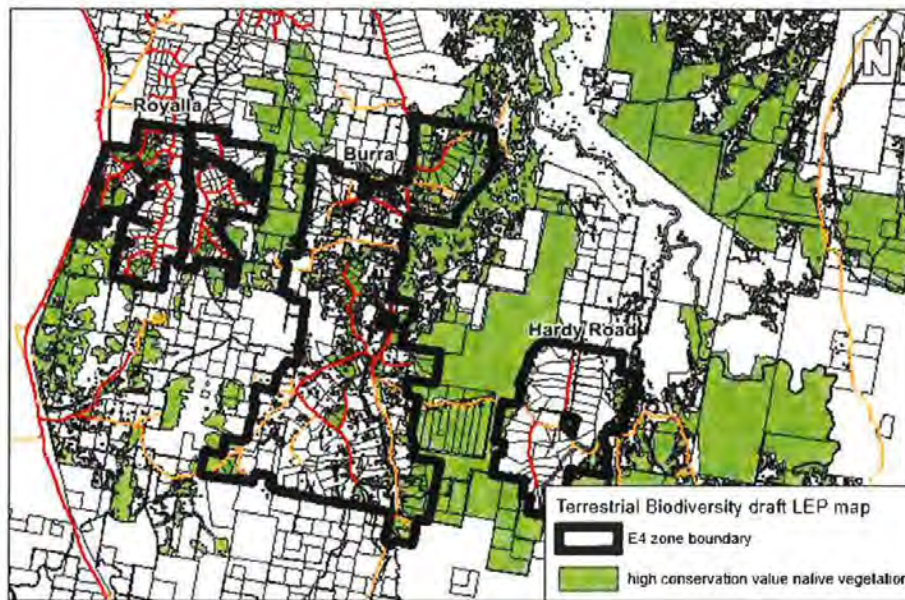
Extraordinary Meeting

17 October 2013



Map 2 Terrestrial Biodiversity draft local environmental plan, Wamboin area

Source NSW Office of Environment and Heritage and NSW Land and Property Information





Extraordinary Meeting

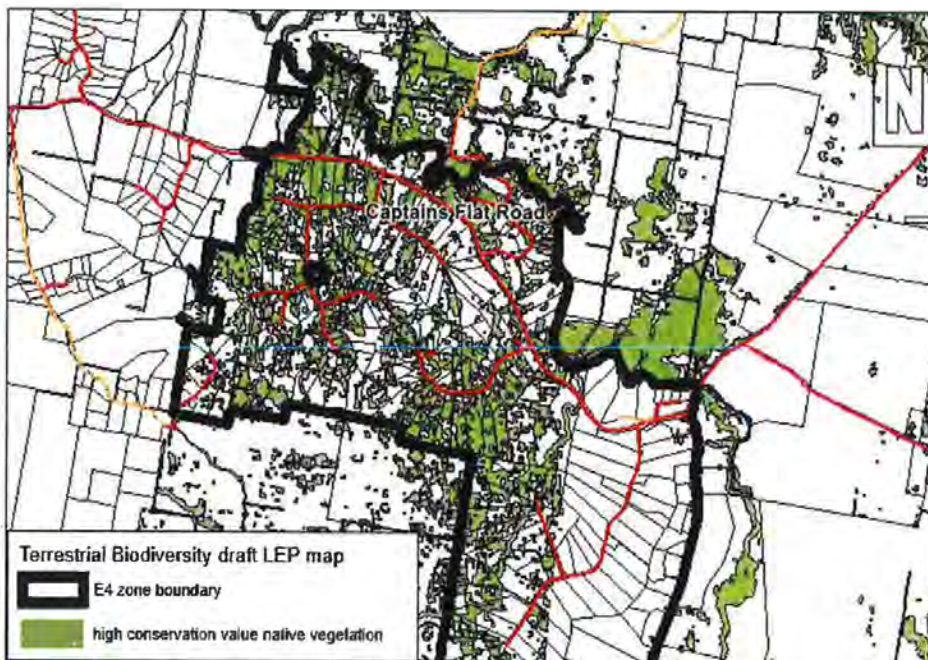
17 October 2013

Map 3 Terrestrial Biodiversity draft local environmental plan, Royalla, Burra and Hardy Road area

Source NSW Office of Environment and Heritage and NSW Land and Property Information

*Comment*

There are large areas of the Royalla, Burra and Hardy Road E4 Environmental Living land use zone that have very little or no high conservation value native vegetation. However, in the Royalla subdivision there is an area of the threatened species *Swainsona recta* and several other listed species have been identified since the destocking of the land for housing development.



Map 4 Terrestrial Biodiversity draft local environmental plan, Carwoola area

Source NSW Office of Environment and Heritage and NSW Land and Property Information

Despite the clearing of native vegetation and at times intensive grazing of livestock in some areas, there is a substantial amount of high conservation value native vegetation.

Page 74

Extraordinary Meeting

17 October 2013

### **Method for the review of the submissions and letters relating to E4 Environmental Living**

Submissions have been reviewed using Council's electronic mapping data which includes aerial photography, detailed information on native vegetation predicted to be of high conservation value and agricultural classifications. The comments in the submissions have also been reviewed against the Practice Notes and Ministerial Directions.

### **Summary of submissions and letters**

#### **Note:**

At the Council meeting of 5 September 2013, Council resolved (195/2013) to amend the *draft* Palerang Local Environmental Plan 2012 to make extensive agriculture permissible without consent.

While this change addresses the concerns raised in submissions regarding the need to obtain development consent for grazing, the issues and submissions are still matters for consideration as they are submissions made in response to the exhibited draft PLEP and are discussed below.

Approximately 188 submissions were received in relation to the land use zones E4 Environmental Living and R5 Large Lot Residential. The majority of these were from land owners whose land is currently zoned 1(d) Rural Residential under the *Yarrowlumla Local Environmental Plan 2002*. Many of the submissions state that as a result of some or all of the above there will be a loss of economic opportunity and to some extent lifestyle.

The submissions can be broadly grouped into eleven themes (some submissions mention multiple themes). Each of the themes are outlined and commented below; in no particular order, these are:

#### **1. *The use of the word 'environmental' in the name of the land use zone and the potential implications of this***

As with the land use zone E3 Environmental Management many submission authors are not comfortable with the word 'environmental' being used in the title of the land use zone. As stated earlier in the report, at the time Council was determining the land use zones to be used for the draft local environmental plan; there was discussion within NSW government agencies and councils concerning the application of the Standard Instrument land use zones. In many instances the land use zones differ to those used in the current local environmental plans. There appears to be a concern that the word 'environmental' implies that the land requires additional controls or consideration. It is felt by many that the land is being well managed in regard to maintaining its ecological values now and doesn't need to be called an 'environmental' land use zone for this to continue.

It is suggested by the authors of the submissions that in applying the E4 Environmental Living land use zone Council feels that property owners do not manage their property for ecological values. In fact it is recognised that it is the efforts of property owners since the land became rural residential land that has largely led to the unique situation of people

Page 75

Extraordinary Meeting

17 October 2013

living in areas of high conservation value native vegetation in relatively close proximity to two major urban centres.

In regard to additional controls, the dwelling and subdivision provisions are similar to that in the current local environmental plans. The format of these cannot be the same as the current local environmental plans due to the requirements of the Standard Instrument.

**2. That the land does not meet the first and third objective of E4 Environmental Management**

The first objective of the land use zone is:

*To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. (mandatory)*

The third objective is:

*To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns. (inserted by Council)*

*Comment*

The first objective was discussed earlier in this report. The aim of the third objective, also an objective for the land use zone E3 Environmental Management is that the consideration of previous land uses such as mining and in some instances agriculture occurs and if possible is incorporated into the design of development.

It is suggested that given the perceived ambiguity of this objective, that a paragraph explaining zone objectives be included in the draft development control plan. This would complement the draft character statements which have been prepared for each of the villages and Bungendore and Braidwood.

**Recommendation 7**

It is recommended that a paragraph explaining the zone objectives be included in the draft development control plan.

**3. Concerns regarding the need for development consent for the land use extensive agriculture and the continuation of existing land uses particularly the grazing of stock**

(Refer to note above regarding the resolution passed at Council's 5 September 2013 meeting.)

The land use *Extensive agriculture* is permissible with consent in the E4 Environmental Living land use zone as is *Intensive plant agriculture*. Other forms of agriculture that are included under the group term *Agriculture* (refer to earlier parts of this report) are prohibited. *Extensive agriculture* is defined as:

Extraordinary Meeting

17 October 2013

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
- (b) the grazing of livestock for commercial purposes,
- (c) bee keeping,
- (d) a dairy (pasture-based).

The inclusion of the word 'commercial' should be noted.

*Comment*

The NSW legislation does not define the term commercial. A general definition could be considered to be the undertaking of an activity for financial gain. Therefore the keeping of several horses as children's pets or the keeping of a small number of cattle or other livestock for household consumption, as a hobby or for the management of vegetation would not be considered commercial. As a consequence, these activities do not fall within the definition of extensive agriculture and do not require consent as they are regarded as ancillary to the principal residential use of the land.

In determining whether a proposal for grazing stock would be *extensive agriculture*, Council would consider matters such as the number of stock, the area and type of land, whether the land will be cleared, and whether the activity is organised in a business-like manner and the activity is carried on in a similar manner to an ordinary trade.

It is not explicitly stated in the *draft* Palerang Local Environmental Plan 2012, that there is a certain number of stock that can be grazed without development consent. It would be necessary to determine whether the grazing is being undertaken in a manner that would constitute a commercial activity (refer to above).

Whilst no survey has been undertaken, Council is aware through its role in the assessment of development applications, strategic planning work, noxious weed inspections, environmental management and compliance that there are few large agricultural activities occurring in the rural residential areas of the Palerang local government area. It is likely that the primary reason for this is the small size of the properties and the agricultural class of the land not being suitable for intensive agriculture. Development consent for *extensive agriculture* in the land use zone R5 Large Lot Residential was not required as it was considered that given the size of the lots in this zone it would not be possible to undertake such agriculture, or where it was undertaken it would be of minimal impact due to its scale. It is unlikely that the NSW Department of Planning and Infrastructure would allow the definitions discussed to be amended or new land use terms to be created.

In regard to 'existing land use', sections 106 to 109 of the *NSW Environmental Planning and Assessment Act 1979* sets the provisions regarding the continuation of lawful development. If the building, work or land was being used for a lawful purpose before the gazettal a local environmental plan, it can continue. This means that if stock was being grazed on a rural

Page 77

Extraordinary Meeting

17 October 2013

residential property under the *Yarrowluma Local Environmental Plan 2002*), then that land use can continue provided that it meets the definition of *agriculture—general farming* as this land use did not require development consent under that local environmental plan.

#### **4. *The imposition of controls on the use of lands***

As outlined in the introduction of this report, it appears that many people do not realise that local environmental plans have existed for a long time and that there is a substantial amount of Commonwealth and State environmental legislation. However, the *NSW Environmental Planning and Assessment Act 1979* (and its subordinate planning instruments), is the only legislation directly responsible for the land use planning. The Act does not aim to duplicate requirements under other legislation but seeks to guide land use planning across the local government area. Local environmental plans are part of a hierarchy of land use plans within NSW and it is a core function of all councils to develop and administer the plans.

#### **5. *The level and rigour of the assessment in allocating the land use zone E4 Environmental Management***

As previously outlined, Council has taken into account a wide range of data including the results of consultation with the community. Whilst this is an essential and important part of the process of developing a draft local environmental plan, it should be noted that the *draft Palerang Local Environmental Plan 2012* is a 'translation' of the current local environmental plans into one local environmental plan in the format of the Standard Instrument. Whilst there have been some changes, the majority of the draft local environmental plan is a 'best' fit. It is not usual to prepare a strategic assessment or cost benefit analysis or similar studies in these circumstances. However, the *Rural Residential and Environmental Areas Discussion Paper, 2008* and the *Palerang Settlements Discussion Paper, 2006* examined the zoning of the current rural residential areas. Refer also to the background paragraphs earlier in this section regarding the natural environment.

#### **6. *The land use zone R5 Large Lot Residential better fits the nature of the rural residential areas***

In the Palerang draft local environmental plan, the R5 Large Lot Residential zone is proposed to be used for areas that feature very large lots in Bungendore (Elmslea Drive area) and Braidwood (Llewellen Drive) but are still residential in character and are adjacent to an urban centre. Given the small size of the lots there is little agricultural activity occurring and there is little native vegetation on these lots as they have been highly disturbed due to residential development. These areas are quite different in their character and resultant land uses from the areas that are proposed to be zoned E4 Environmental Living

#### **7. *That the land use zone E4 Environmental Living will devalue the land***

It appears that property owners are concerned that their interpretation of the land use table requires the grazing of stock to have development consent and in turn this will lead to a devaluing of land. It is viewed by the authors of the submissions that this activity is one of the main reasons people purchase rural residential properties in the E4 Environmental Management land use zone. As commented in theme no.3, development consent would not be required for the majority of agricultural activities in this land use zone.

Page 78



Extraordinary Meeting

17 October 2013

**8. The impact on those with primary producer status for taxation purposes**

Several submissions or letters stated that they felt that the draft local environmental plan provisions would affect their status as a primary producer. It is Council's understanding that the zoning of land has no bearing on the primary producer status.

*Comment*

The comments in relation to theme no.3 are relevant here.

**9. The zoning of the Mongarlowe River riparian area E4 Environmental Living**

Several submissions have objected to the zoning of the riparian area of the Mongarlowe River E4 Environmental Living.

*Comment*

The watercourse map and associated clause require the consideration of the riparian areas in relation to development.

**10. Support for the land use zone E4 Environmental Living**

There are nine submissions supporting the land use zone E4 Environmental Living.

**11. Zone objectives**

One submission suggests that information is required in regard to the management of the objectives.

**Conclusion**

While there have been a large number of submissions requesting that the rural residential areas away from Bungendore and Braidwood be zoned R5 Large Lot Residential it is the staff view that land use zone E4 Environmental Living is the most appropriate and that it should remain in the draft local environmental plan as these areas are quite different in their nature to the proposed R5 Large Lot Residential areas in Bungendore and Braidwood.

No change to the draft LEP is considered necessary.

**Other matters relating to E4 Environmental Living**

***Submission No. 31***

The submission comments on provisions relating to the subdivision of land in the land use zone E4 Environmental Living. The submission suggests "that matters relating to E4 ought to be included as part of the Rural Lands Study."

Page 79

Extraordinary Meeting

17 October 2013

**Recommendation 8**

Recommended that the land use zone E4 Environmental Living be included in the rural lands study.

**Submission No. 120**

The submission states that the average lot size of 6 hectares and a minimum lot size of 2 hectares "This seems inconsistent with the objectives of the zone. It is difficult to see how blocks of this size can be low impact in areas with special values, avoid land use conflicts with land uses such as farming, or not create demand for public services that Council can ill afford to provide. Similarly, while the objectives might be appropriate for bush blocks they are not for hobby farms."

"I do not support current averaging provisions and consider them particularly inappropriate in rural residential areas, with uniform average and minimum lot size provisions. This combination prevents Council from:

- Creating appropriate buffers between conflicting land uses such as high density rural residential and pastoral activity (weeds, domestic pet management, farm baiting and vermin control activities etc); and
- Preserving the character of existing settlements that attracted existing residents in the first place.

The maps should be revised to increase minimum lot size to create buffer zones with existing farming enterprises."

*Comment*

Lot size averaging provisions have been used in Palerang's rural residential areas since 1980 when they were introduced to the Yarrowlumla Interim Development Order No 1 Non-urban D zone and since 1991 when the 1(c) Rural Small Holdings zone commenced under the Tallaganda LEP 1991. The existing character of most of the Palerang rural residential areas is due to the successful use of averaging.

No change to the draft LEP is considered necessary.

**Submission No. 167**

The submission states "The smaller proposed lot sizes of 2 and 1 ha in Section 4.1B conflict with these objectives. Specifically:

Objective a and b - 1 or 2 ha lots do not align with the rural residential/hobby farm environment. There is likely to be subsequent conflict relating to co-location of domestic animals and farming animals and different expectations of domestic animal control/management in a rural setting. There is an argument that there should be at least

Page 80



Extraordinary Meeting

17 October 2013

7ha minimum in E4 – whatever the topography. That is the DSE for one horse on native grasses in this part of the world!"

*Comment*

See comment under submission No 120.

***Submission No. 204***

The author of the submission states that they "object to the lot size limitations on existing sub-divisions in the Carwoola area which is presumably Zone R5. Statutory minimum sizes of lot for which further sub-division is allowable for rural/residential sub-divisions should be a maximum of 10 hectares. Allowable sizes for the sub-division should a question for the development application."

"I also submit that the 16 hectare limit on further subdivision of lots should be substantially reduced in the former Radcliffe area and other Canberra feeder areas."

*Comment*

The subdivision 'averaging' provision and minimum lot provision for the areas zoned E4 Environmental Living can be considered in the rural lands study.

***Submission No. 263***

The submission objects to the lots that are zoned 1(c) Rural Small Holdings being zoned RU2 Rural Landscape with a 6 hectare average lot size. The lots concerned are; Lots 12, 15, 172, 174, 181 and 209 DP 755918. These lots encompass the majority of the Budawang Road/Myrtle Grove portion of the 1(c) Rural Small Holdings land use zone.

*Comment*

There is a current subdivision approval for fourteen lots over Lots 12, 15, 172, 174, 181 and 209 DP 755918 within the 1(c) Rural Small Holdings land use zone. Council has advised the property owner that sufficient work has been undertaken to enable the subdivision to be considered as having been commenced and therefore the consent will not lapse. It is recommended that Lots 12, 15, 172, 174, 181 and 209 DP 755918 are zoned E4 Environmental Living with a 6 hectare lot size average lot size.

***Recommendation 9***

Recommended that Lots 12, 15, 172, 174, 181 and 209 DP 755918 be zoned E4 Environmental Living.

Page 81

Extraordinary Meeting

17 October 2013

***Submission No. 309 (Office of Environment and Heritage)***

The submission states that the Office of Environment and Heritage supports clause 4.1B (5) (a) and (b) Subdivision of land within Zone E4 Environmental Living

***Submission No. 388 – Southern Rivers Catchment Management Authority***

The submission states that “Southern Rivers CMA supports the inclusion of 4.1B 4(d) that provides for perpetual covenants to be placed on title over residual lots (if the subdivision is not under community title).”

***Submission No. 403***

The author states that clauses 4.1B(5) and 4.1B(6) are “unfair, irrelevant and not a valid planning reason for denying a subdivision.”

*Comment*

The clauses relate to the re-subdivision of land that is zoned rural residential. The clause maintains the controls of the current *Yarrowluma Local Environmental Plan 2002* and is necessary to prevent the repeated subdivision of the larger lots that have been created in an average lot size subdivision, which would result in the average lot size in an area being reduced below the size that was intended.

**Rural Lands Study**

***Submission No. 31***

“Given the issues that have been raised by a cross-section of the community, the Braidwood Greens suggest that the Rural Lands Study is not limited to RU1 and RU2 area but looks at land uses and potential uses across all of Palerang’s rural and residential lands. We also support the study investigating a range of possible lot sizes suited to specific locations and also whether or not averaging can be supported in Palerang.”

*Comment*

Recommendations in this report have included rural land, subdivision provisions and rural residential land for consideration in the rural lands study.