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Department of
Primary Industries
Office of Water

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Our ref ER22421
Your ref LEP2013

Attention: Sherilyn Hanrahan

Dear Sir/Madam

Public exhibition – Draft Principal Lithgow City Local Environmental Plan 2013

I refer to your letter of 17 June 2013 to the NSW Office of Water seeking comment on the exhibition of the draft Lithgow City LEP.

The Office of Water comments on the draft LEP are provided at **Attachment A** for consideration.

Should you require further information please contact Janne Grose, Planning and Assessment Coordinator on (02) 4729 8262 at the Penrith office.

Yours sincerely

Mitchell Isaacs
Manager Strategic Stakeholder Liaison Unit
15 July 2013



Public exhibition of Draft Principal Lithgow City Local Environmental Plan 2013

Part 1 Preliminary

1.2 Aims of Plan

The Office of Water supports the inclusion of an aim to protect and enhance environmentally sensitive areas, ecological systems, areas of high scenic, recreational, landscape or conservation value and areas that have potential to improved environmental outcomes but suggests that draft Aim 1.2 (2)(b)(vi) also applies to rural land and not only apply to land that is to be developed. It is recommended a specific Aim is included to conserve and enhance waterways and riparian land and an Aim is included to protect and conserve surface water and groundwater resources and groundwater dependent ecosystems.

Council may wish to consider the following subclauses:

Subclauses 1.2 (2)(b) and (c) which are included in the gazetted Kiama LEP 2011:

(2) *The particular aims of this Plan are as follows:*

- (b) *to maintain, protect and improve the natural environment including native vegetation, endangered ecological communities, natural habitat corridors, riparian land, groundwater dependent ecosystems and wetlands for their biodiversity values,*
- (c) *to conserve and protect the area's water resources, groundwater, waterways, and water quality for their biodiversity, ecological, health and recreational values,*

and subclause 1.2 (2) (c) which is included in draft Bega LEP 2012:

(2) *The particular aims of this Plan are as follows:*

- (c) *To conserve and enhance environmental assets including estuaries, rivers, wetlands, remnant native vegetation, soils and wildlife corridors.*

Part 2 Permitted or prohibited development

2.8 Temporary use of land

The Office of Water recommends the following amendment is included at sub-clause 2.8 (3)(c) to make specific reference to waterways, riparian lands and groundwater:

(3) Development consent must not be granted unless the consent authority is satisfied that:

- (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land **including waterways, riparian land and groundwater**, or increase the risk of natural hazards that may affect the land, and

Land Use Table

Zone E3 - Environmental Management

The Office of Water supports the inclusion of the third objective under this zone but recommends the following amendment is included:

- to facilitate **the protection, enhancement and** management of environmentally sensitive lands, **waterways** and riparian areas within this zone

It is recommended a specific objective is included under all other relevant zones to protect, maintain and rehabilitate waterways and riparian land

Zones RU1, RU2 and R5

The Office of Water notes watercourses occur on land zoned RU1 (Primary Production) and RU2 (Rural Landscape) and R5 (Large Lot Residential).

It is noted the proposed RU2 zone has identified areas of high environmental sensitivity and biodiversity connectivity. The Office of Water's preference is to zone riparian land, especially areas of high environmental sensitivity as E2 - Environmental Conservation zone.

Council may wish to consider the Penrith LEP 2010 which includes a separate E2 zoning for more key watercourses / riparian land while the surrounding non-riparian land is zoned RU1 and RU2 (please see Penrith LEP 2010 Land Zoning maps sheets). It is recommended a similar E2 zoning be applied to riparian land in the Lithgow LEP. If a separate E2 zoning can't be achieved and riparian land is to be zoned RU1, RU2 and R5 etc it is recommended a specific objective is included under these zones:

- ***to protect, maintain and rehabilitate waterways and riparian land.***

The protection and improvement of waterways and catchment health depends on rural and urban areas protecting and rehabilitating waterways, riparian land, surface water and groundwater resources.

It is recommended the LEP include an objective under the RU1, RU2 and R5 zones to ensure development for agricultural/rural purposes occur in a manner that does not have a significant adverse effect surface and groundwater resources and dependent ecosystems:

- ***To ensure development for agricultural and rural purposes protects, conserves and enhances surface and groundwater resources and dependent ecosystems.***

The RU1 and RU2 Zones propose to permit with consent boat launching ramps, boat sheds, jetties and water recreation structures. The locating of such development on the bed and banks of waterways needs to be minimised. Council needs a provision in place for considering and managing the potential proliferation of such structures and to guide Council's assessment of potential cumulative impacts. The locating of such structures within waterways and riparian land will affect existing riparian vegetation or the rehabilitation of the riparian vegetation. It is recommended the RU1 and RU2 zones only permit with consent public structures and not extend to private structures.

Zone RE1 - Public Recreation

The Land Zoning maps show some waterways and riparian land is zoned RE1. The Office of Water suggests the following objective is included under the RE1 zone to specifically protect and enhance waterways and riparian land:

- ***To ensure development protects, maintains and rehabilitates waterways and riparian land.***

Council may wish to consider draft Pittwater LEP and the sixth objective under the RE1 zone which is "*to ensure development minimises unnecessary impacts on the natural environment of the site, characteristics of the site and surrounding area*" but if riparian land is to be zoned RE1, it is suggested a specific objective is included to ensure the riparian areas are protected and enhanced and not used for development.

Other zones

It is recommended a specific objective is included under any other relevant zone such as R2 (low Density Residential), IN1 (General Industrial) and IN3 (Heavy Industrial) to protect, maintain and rehabilitate waterways and riparian land, groundwater resources and dependent ecosystems.

Part 3 Exempt and Complying Development

3.3 Environmentally sensitive areas excluded

The Office of Water supports the inclusion of Clause 3.3 (1) that Exempt or Complying Development must not be carried out on any environmentally sensitive area. It is recommended Clause 3.3 (2) is amended so that the description of environmentally sensitive areas includes waterways and riparian land to prevent the proliferation and potential impact of such development on riparian land.

The locating of exempt and complying development within riparian lands will adversely affect the current and future values and functions of the riparian lands including existing riparian vegetation or the re-establishment of riparian vegetation.

Council may wish to consider:

- Clause 3.3 (2)(ja) in the gazetted Wingecarribee LEP 2010
- clause 3.3(2)(d) in the gazetted Kiama LEP 2011
- clause 3.3(2)(ja) in gazetted Eurobodalla LEP 2012 and
- clause 3.3(2)(jc) in draft Penrith Stage 2, City-wide LEP 2010 (exhibition draft of May 2013)

Part 4 Principal development standards

4.1 Minimum subdivision lot size

The Office of Water supports the inclusion of objective 1(c) *"to ensure that the development is undertaken on appropriately sized parcels of land commensurate with available services (including an associated sewerage system) and responds to any topographic, physical or environmental constraints"*. It is suggested a specific objective is included under Clause 4.1 to protect and/or enhance waterways and riparian land, for example:

(1) The objectives of this clause are as follows:

to ensure the lot sizes allow development to be sited to protect and/or enhance waterways as natural systems and riparian land

Subdivision of land fronting a watercourse or over an aquifer

The Office of Water recommends a clause is included in the LEP to limit the potential for an increase of new Basic Landholder Rights (BLRs) as a result of subdivision of land fronting a watercourse, or over any vulnerable/sensitive/stressed aquifers in the LGA.

The *Water Management Act 2000* identifies BLRs for access to water whereby landholders over an aquifer, or with river or lake frontage, can access water for domestic (household) purposes or to water stock, without the need for a water access licence (although a works approval may still be required for bore construction or to construct a dam). Where riparian frontage continues to be subdivided, creating new basic rights for water extraction, there is the potential to impact significantly and inequitably on existing water users including the environment.

Any proliferation and concentration of the number of allotments and dwelling houses with direct frontage to waterways in a relatively small geographical area that potentially could take a domestic

water supply from a water source will increase the demand and use of water resources, effect other users of the resource including the environment and contribute to declining river health (for eg decline in aquatic habitat, geomorphic stability, water quality and riparian areas etc) unless properly managed.

Water supply options (both potable and non-potable) for each proposed lot need to be considered at the planning stage. New subdivisions should only be considered if a feasible, sustainable water supply system is available. Reticulated town water provides a more secure (quality and quantity), reliable and manageable water supply and reduces the stress on local surface and ground water resources. Reticulated water supply also enables smaller allotment sizes with increased population density, which in turn reduces the development footprint. Where reticulated town water supply is not available each allotment should demonstrate it has an adequate and self sufficient water supply, without having to pump from streams, particularly when flows are depleted and with minimal reliance on accessing valuable groundwater resources (ie the use of tank storage and harvesting roof runoff).

The subdivision of land requires a strategic understanding of the water needs of different allotments by size and location. Innovative subdivision design is required so that subdivision reduces the creation of new BLRs and allows for additional lots without direct river/lake frontage and where possible, utilises collective or community title to manage waterfront ownership. It is recommended Council only consent to the subdivision of land if:

- the pattern of allotments created by the proposed subdivision and the location of any proposed buildings on those allotments will not have a detrimental impact on waterways, riparian land and groundwater,
- each new allotment will have a sustainable water supply;
- the pattern of allotments created by the proposed subdivision will not result in the proliferation of BLRs along the frontage of waterways and also over any vulnerable/sensitive/stressed aquifers in the LGA

The following clause is suggested for inclusion in the LEP:

- (1) *The objective of this clause is to limit the potential for an increase in water extraction as a result of subdivision of land fronting a watercourse or over an aquifer:***
- (2) *This clause applies to land that has a direct frontage to a watercourse and to land over vulnerable aquifers.***
- (3) *Before determining a development application in an area to which this clause applies the consent authority must consider:***
 - (a) *the potential for the development to create additional allotments that are located over a vulnerable aquifer or front a waterway; and***
 - (b) *whether reticulated water is to be supplied to those allotments.***

4.3 Exceptions to development standards

The following amendment is recommended for inclusion in subclause 4.3 (6) to prevent the proliferation of Basic Landholder Rights along the frontage of waterways and also over any vulnerable aquifers in the LGA:

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1, RU2, RU3, RU4, etc if:**

- (c) there is potential for significantly increased water extraction (under Basic Landholder Rights) along the frontage of waterways and over vulnerable aquifers**

Part 5 Miscellaneous provisions

5.9 Preservation of trees or vegetation

Clause 5.9 states it applies to trees or other vegetation that are prescribed by a Development Control Plan (DCP) made by the Council. It is noted on Lithgow Council's website that Council has amended the Tree Preservation Order (TPO) so that it no longer applies to privately owned land.

It is recommended Council's TPO/DCP includes a provision to protect rehabilitated riparian land to assist prevent the clearing of rehabilitated riparian vegetation by private landholders. The Office of Water has found that once new subdivided lots (which include riparian land) come under private ownership, riparian vegetation which has been rehabilitated by a developer is being destroyed (cleared and mown) by private land holders because the trees have not grown to reach a size that can be protected by a Council's Tree Preservation Code. The inclusion of a provision in the TPO/DCP to protect rehabilitated riparian land would assist to prevent this from occurring.

5.13 Eco-tourist facilities

It is suggested the following amendments are incorporated into clause 5.13:

- (1) The objectives of this clause are as follows:
 - (a) to maintain **and improve** the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,
- (3) The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:
 - (d) the development will promote positive environmental outcomes and any impact on **watercourses, waterways, surface water and groundwater sources, riparian land**, soil quality, heritage and indigenous flora and fauna will be minimal,

Part 6 Urban Release Areas

6.3 Development Control Plan

It is suggested the following amendments are incorporated in Clause 6.3 :

- (1) The objectives of this clause **is are**:
 - (a) to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land, and
 - (b) **to ensure urban development conserves and enhances the natural environment including waterways and riparian land**
- (3) The development control plan must provide for all of the following:
 - (c) an overall landscape strategy **for the preparation of a Vegetation Management Plan** for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations and detailed **landscaping vegetation** requirements for both the public and private domain,

Part 7 Additional Local Provisions

7.1 Flood Planning

The following amendments are recommended for inclusion in Clause 7.1 (3)(d):

- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation **or effect the rehabilitation of riparian vegetation, or a reduction in the stability of river banks and minimises potential impacts on the hydrologic, hydraulic and geomorphic functions of waterways or watercourses**

7.2 Stormwater Management

The following amendments are recommended for inclusion in subclauses 1 and 3:

- (1) The objectives of this clause is to minimise the impacts of urban stormwater on land to which the development applies and on adjoining properties **including:**
- (a) native bushland; and
- (b) receiving waters **including waterways and groundwater**

7.3 Earthworks

The Office of Water repeats the advice previously provided on subclause 7.3(1)(a) and (3) (g)

- (1) The objectives of this clause are as follows:
- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on **waterways, riparian land, groundwater, groundwater dependent ecosystems**, environmental functions and processes, neighbouring uses, cultural or heritage items and features of the surrounding land.
- (3) Before granting development consent for earthworks, the consent authority must consider the following matters:
- (g) proximity to and potential for adverse impacts on any waterway, **riparian area**, drinking water catchment or environmentally sensitive area.
- (h) the potential impact on groundwater and groundwater dependent ecosystems**

7.4 Riparian Lands and Waterways

The inclusion of a specific riparian lands and waterways clause in the LEP is to be commended so as to protect and enhance waterways and riparian land. The inclusion of clause 7.4 in the draft LEP is a great improvement on the existing LEPs which do not currently include such a clause.

It is recommended the objective of draft Clause 7.4 (1) to “protect and maintain” is amended to also improve riparian land and waterways in accordance with NSW State Government natural resource policy, for example:

- (1) The objective of this clause is to protect, **improve** and maintain the following.....

Subclause 7.4(2) indicates the clause applies to land identified as “Sensitive Waterway” on the Environmentally Sensitive Areas – Water Overlay Map. The Office of Water is concerned that the mapping to which this clause applies is limited and does not apply to all waterways in the LGA. Council may wish to consider the draft LEP prepared by Bega Valley Shire Council which includes a subclause that applies to all waterways:

- Clause 6.3.(2) in Draft Bega Valley LEP 2012 as submitted to the NSW Department of Planning and Infrastructure

7.5 Groundwater vulnerability

The inclusion of a specific groundwater vulnerability clause in the LEP is to be commended. The inclusion of clause 7.5 is a great improvement on the existing LEPs which do not currently include such a clause.

7.7 Sensitive Lands

As a number of waterways are located on the sensitive lands, it is recommended the following amendments are made to the clause:

- (1) The Objective of this clause is to protect, maintain and improve the diversity and stability of landscapes including restricting:
(g) development on riparian land

- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:
 - (a) whether the development is likely to have any adverse impact upon:
(vi) any riparian land

End Attachment A