

**Submission to Palerang Council**  
**by Braidwood Greens**  
**on the draft Palerang Local Environmental Plan (PLEP)**  
**March 2013**

**Introduction**

Thankyou for the opportunity to make a submission on the draft Palerang Local Environmental Plan (PLEP). The Braidwood Greens is a local group of the the Greens NSW and Australian Greens political party, and since its formation in 1993 has participated in local, state and national processes including a variety of consultation processes such as this one. As with all Greens policies and decision-making, our submission is based on the the four Greens principles, shared by Greens parties globally, of social and economic justice, grassroots democracy, peace and nonviolence and ecological sustainability. Our suggestions for action, direct and indirect, appear in **green** throughout this submission.

***Submission process***

This submission is a consensus document, having been distributed to the full membership of Braidwood Greens for their input and approval. It is also supported by members of the Queanbeyan-Monaro Greens who reside in Palerang.

We would like to acknowledge the input of the wider community included in some sections of this submission. They were drafted by community members from the three villages and rural-residential and farming areas, and provided the basis for the information that was collated from a diverse group of community members.

***Need for clear parameters***

We understand the reluctance of people to have what they see is yet another set of rules imposed on them by a bureaucracy, but at the same time we believe that the majority of residents in the shire support the concept of sustainability and are keen to retain the qualities of the area that are important to them. Many of these qualities were expressed by residents in the various visioning workshops, community and council-run, that took place in Palerang between 2005 and 2011, and this submission has been guided by those expressed visions.

It is for that reason that a comprehensive LEP is required, to ensure that all the development that takes place in the shire, some of which may be proposed by groups or individuals who are not resident in the shire and therefore do not value those qualities as highly, has been determined using clear parameters. It is also important to have a document that is fully defensible in court in case Palerang Council is challenged over a development determination. Without clear parameters, Council will have little hope of success, Council coffers are then depleted because of the requirement to pay costs, and ratepayers are disadvantaged accordingly. **We believe that the PLEP goes a long way to providing these parameters, but that there are some inconsistencies and a lack of clarity in some areas that could be improved.**

***State Government plans***

As a backdrop to all this, we are aware that the State Government has plans to overturn planning laws in NSW which, if it happens as soon as has been suggested, would negate the years of work that have gone into the PLEP by staff, councillors and some members of the community. We hope that the PLEP will proceed as soon as possible. **We do not support holding up the gazettal and implementation of the Plan any more than is absolutely necessary.**

### ***The LEP process, community concern and the benefit of hindsight***

Having said that, the Braidwood Greens are aware that there is growing concern in the community about the accuracy of some of the maps and of the zoning determinations. **If there are weaknesses, they need to be acknowledged and addressed immediately so that the community is on board and supportive of the PLEP**, rather than antagonistic towards it because of what are perceived to be injustices and inaccuracies. In the end, we all are in this together and disharmony will not lead to the optimum outcome.

Looking back on the process of the LEP to date, it seems that awareness of the process and what is being proposed for Palerang's principal planning instrument has only been heightened since letters started going out to people whose land has been identified as E3. Similar letters have not gone to people whose land has been indentified at RU2 however, with these people learning indirectly about such proposals.

The LEP process has been going on, even if only in a small way, since the amalgamation that resulted in Palerang. It accelerated in early 2010 when the first draft was presented to the second Palerang Council. Since that time, there has been constant coverage in the local papers in the form of letters and articles, Extraordinary LEP meetings of Council open to the public throughout, discussion in many community groups about the LEP, and Community Strategic Plan workshops around the shire at which the LEP process was canvassed on many occasions. It is very disappointing, then, that community awareness seems only to be happening at the eleventh hour when opportunities for engagement have existed for so long. The benefit of hindsight suggests that it would have been better to mail all landholders, perhaps in the first 2012-2013 rates notice, alerting them to what was in the pipeline, and asking for their input. Had that happened, we may not have found ourselves in the situation we do at present, whereby people are learning about the LEP at the last minute and becoming concerned that it has all happened without their knowledge.

### ***Greens support farming***

There has been an ongoing but recently ramped-up campaign to portray The Greens as anti-farming. Nothing could be further from the truth. During the years that Catherine Moore and Judith Turley (a farmer herself) were councillors, they consistently spoke up for farming and the need for it to be able to continue without threats from conflicting land uses in adjacent, smaller sub-divisions. They did this as part of specific DA considerations in addition to LEP deliberations, and their support for concerned farmers was evident when the shooting in National Parks issue raised its head and they moved a successful motion to convey Palerang Council's concern to the State Government, amongst other things. They still, as do all Greens, support the right and ability of farmers to continue to fulfil the vital role that they play in providing food and fibre. In state and national parliaments, Greens have been at the forefront of speaking out and trying to introduce legislation against the destruction of agricultural land to make way for mining, particularly coal and coal seam gas mining. Christine Milne was born into a farming family, and the the first thing she did when she became Australian Greens Parliamentary leader was to visit rural areas round the country to talk to farmers and rural communities.

Some residents have been talking about a "hidden environmental agenda" in the context of the LEP and government in general. There is nothing to hide as far as Braidwood Greens are concerned – with ecological sustainability as one of our four guiding principles, it is important that we get it right for now and the future. And it is widely agreed, in circles way beyond Green ones, that there is an environmental protection imperative given the impact human activity has had to date on biodiversity, eco-systems, waterways, soils, oceans and the atmosphere. It is unfortunate to say the

least that the word environment has become a dirty word in relation to the LEP, because without a clean and safe environment, our survival is in jeopardy.

### ***Rural Lands Study***

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 areas 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.

## **GENERAL MATTERS**

### **Zoning maps**

It has come to our attention that there are some inaccuracies in zone maps which, as mentioned above, need to be addressed. This will involve consultation with affected land-holders and those who are most familiar with the geography of their local environment.

Some examples of incorrect zonings include:

- Wambagga Swamp; zoned as RU2, located in the National Park but also privately owned land. Previously zoned as environmentally sensitive in the Tallaganda LEP.
- Jinden Hill; zoned as RU2. Steep and treed and could not be considered as an area suited to agriculture.
- Mt Bunhybee; steep, with remnant native grassland and low level cover, being preserved as a conservation area, zoned as RU1 and RU2.
- Mt Gillamatong; thickly vegetated in the upper areas, zoned as RU1.
- Jembaicumbene Wetlands; originally included as environmentally sensitive in the TLEP but removed by councillors in the 1990s.

**These anomalies alone indicate that there are weaknesses in the PLEP mapping which need to be addressed before the PLEP is adopted.**

### **Climate change and energy efficiency**

Climate change is well and truly upon us, and with it, the need to reduce our power consumption to minimise power costs as we move towards renewables. The Braidwood Greens are concerned that there is not enough emphasis on climate change in the PLEP in general and in particular, on encouraging people to build using the best solar passive design principles. While it is not possible nor maybe even desirable to be prescriptive about house design in our planning instruments, we are concerned that not enough is being done to actively educate people about not only general energy efficiency principles, but also the specific climatic conditions that prevail in the shire and which are becoming more pronounced, such as the warming trend caused by a decrease in SE winds and an increase in NW winds which results in less available moisture.

Many people could live more comfortably while saving on power bills by aligning their houses to face north and using natural airflows for heating and cooling, but we still see houses that have their utility areas on the north, and are surrounded often on all sides by verandahs, thus precluding any possibility of using the sun in winter to heat the house. **We believe that Palerang Council needs to actively engage with builders and those about to build new homes to raise awareness about these issues. Such engagement needs to happen at the time new blocks are sold and before DAs are submitted,** and also needs to encompass advice about tree-planting for summer shade and winter sun

perhaps through the use of food-producing trees that are suited to the local climate and for larger lots, native grasses and native species that do not pose and added fire risk.

There is potential for Palerang to lead the way in encouraging more energy-efficiency in building as well as the construction of smaller houses, to counter the trend for larger and larger buildings which are more expensive and are difficult to keep warm and cool without the use of electricity.

It has been advised that features such as: design for maximum solar interception and orientation, water harvesting, energy efficiency, and encouragement of innovative solutions for grey and black water treatment, public transport efficiency and promoting walking and bicycling, and also climate adaptation measures such as retaining and planting shade trees on residential developments and on streetscapes, looking at decreased life spans of infrastructure, utilising materials that are less likely to create heat islands etc. all belong in the DCP. However the DCP does not prescribe these sort of measures, as it only provides guidelines for how to implement some of them. Not only does the DCP not have the same legal standing as the LEP, it is possible that it will be abolished altogether, in which case, many important design guidelines will be lost.

It might be possible to include some of that listed above (along with other DCP items identified in this submission) in 4. Principle development standards; 5. Miscellaneous Provisions; or 6. Additional local provisions.

**Suggestion:** additional aim to reflect the need for climate adaptation through the active promotion of energy efficiency in housing design to reduce greenhouse gas emissions and power costs and the maximising of water saving and efficient measures.

**Suggestion:** investigation of where sustainability design items from DCP might best be located in the PLEP

**Suggestion:** reduced DA costs for houses that minimise carbon footprint, in size, orientation and materials.

### **Biodiversity**

It is now well-accepted in scientific circles that biodiversity is a central indicator of the health of our environment and ecosystems. Protection of biodiversity should be one of the highest priorities of the PLEP.

As part of the need to ensure ecological sustainability, it is important that we have regard to the remaining areas of biodiversity in Palerang. Braidwood Greens recognise that many people, including farmers, are doing their bit to protect and even extend existing areas, but a holistic view is required to ensure that our activities have a neutral or beneficial effect, and so it is therefore necessary to look at regions as a whole. This has resulted in the extension of greenways for biodiversity habitat and recreational purposes, a microcosm of the national program of partnerships like Kosciusko to Coast.

Biodiversity clauses in the PLEP can be found at 6.8. **Comparison of the existing clause with the wording of the original presented in the 2010 draft reveals that a number of key changes were made for which reinstatement should be considered:**

**(1)a** specified ‘protecting *biological diversity* of native fauna and flora’ – italicised words are not in the final draft PLEP but are important as they represent a quantifiable measure of the way that native fauna and flora can be protected.

**(1)d** specifically referred to the protection of wetlands, swamps, water courses and riparian habitats – this no longer appears. It could be argued that this is covered in the specific clause of this name but this needs to be examined to make sure the same protection is provided.

The **biodiversity map** needs to be interrogated to determine whether it simply corresponds to areas with high native tree cover or whether it also includes areas of native open woodland and grassland which are critically endangered habitats in this part of the country.

The first draft of the clause required council to **consider a biodiversity report** before granting consent to development on any land identified on the biodiversity map; this is no longer required, however there should be some threshold level of potential impact on biodiversity (perhaps when impacts cannot be minimised over areas greater than 0.5 ha –see next clause) that then requires a report to be generated considering potential impacts on the native vegetation community, the habitat of any threatened species, populations or ecological communities, regionally significant species of plant, animal or habitat, habitat corridor, wetland or other aquatic environment and biodiversity values within a reserve including road reserves or stock routes; and a description of proposed measures to be undertaken to ameliorate any potential impacts.

4(b) iii originally referred to **mitigation of impacts** through the restoration of any existing disturbed area on site so that there is an overall *beneficial* impact on the environment – this should be reconsidered for inclusion.

The original draft PLEP also included a separate clause for **environmental corridors** which was originally passed by Council – this is an important clause for rebuilding connectivity in the landscape and protecting native vegetation regrowth. **This clause (and its accompanying map) should be reinstated.**

### **ESD principles & Neutral or Beneficial Effect**

Ecologically Sustainable Development (ESD) principles are recognised around the world as an essential part of planning, in cities and rural and regional Local Government Areas (LGAs) alike. This is supported by Agenda 21, the non-binding UN document which countries including Australia are signatories to. There is some inconsistency in the PLEP in regard to ESD and we believe that the concept needs to be at the foundation of the instrument.

The Braidwood Greens are also concerned that references to activities and/or development having a neutral or beneficial impact on the environment have been removed from the draft after it was approved by Council. This principle is supported and used by several government departments and is an important measure for proposed activities.

**Suggestion:** reinstate the clause requiring the consent authority to have regard to the principles of ecologically sustainable development and add reference to the inclusion of climate adaptation features, and also reinstate NorBE principles throughout the PLEP, ensuring the wording is consistent.

### **Secondary dwellings and dual occupancy**

There is potential for confusion about these two sorts of development.

The PLEP dictionary defines secondary dwelling as:  
a self-contained dwelling that:

(a) is established in conjunction with another dwelling (the principal dwelling), and

(b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling.

the dictionary defines dual occupancy in this way:

“dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

“dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.”

Concerns were raised by some residents as part of general DA considerations in the years following amalgamation about the size of the two buildings with dual occupancy and indeed whether dual occupancy should have been allowed at all, for example in areas of Elmslea where residents understood that a covenant prevented them.

The clause (5.4) referring to secondary dwellings says “The total floor area of a secondary dwelling (excluding parking) must not exceed whichever of the following is the greater: more than 60 square metres or 33% of the total floor area of the principal dwelling. “

Not only can this be interpreted as the other dwelling, not necessarily the second one built, it also fails to take into account the total size of the building including carparking – it is not unusual for people to incorporate a two or three vehicle carport into their houses, and if this happens in the case of the secondary dwelling, the potential size of the building overall is much larger than perhaps anticipated.

To alleviate these concerns it is important to clarify that a secondary dwelling is not the original but the second building on the lot chronologically speaking, so that a larger building cannot later be built due to ambiguity of the relevant LEP clause.

Dual occupancy and/or secondary dwellings can be an efficient way of keeping families close while maintaining their privacy and independence, but the concept has also opened the way for backdoor sub-divisions in some cases. A second, larger house would seem to go against the spirit of dual occupancy and does not align with affordable housing principles.

In general terms, **Council needs to give further consideration to the impact of Dual Occupancy developments in both rural and urban areas.** By facilitating increased population they increase the use of Council resources – traffic on roads, use of pools, libraries etc. If Council is to permit DOs it should investigate means of having them contribute to Council’s ongoing costs, and not just through development charges. If it is not possible to levy rates (and charges) on the second dwelling, then Council could investigate requiring covenants that require “voluntary” contribution to rates (and charges).

Dual Occupancy dwellings also have the potential to undermine the whole purpose of minimum lot sizes, particularly but not only in towns. Council should develop a definition of Dual Occupancy dwellings, and a framework under which they will be permitted (some possible conditions being: for occupation by a family member, not to be sold separately, not to be leased etc.).



**Suggestion:** specify secondary dwelling as meaning the second house built chronologically, and limit the size of the carport.

**Suggestion:** better clarify the difference between secondary dwellings and dual occupancy

### **Heritage listing and the Bungendore Conservation Area**

Palerang is rich in natural, built and indigenous heritage and a comprehensive inventory of heritage items contributes to the culture of the shire and and appreciation of its cultural importance and uniqueness.

As a result of what we and others in the community would see as a campaign of misinformation operating in parallel to but outside council processes, a number of residents were unwilling to have their properties included on the heritage register. This has resulted in the removal of some items with significant heritage value, including churches, former schools etc.

While the misinformation that was distributed about the meaning of heritage listing contributed to the situation, some responsibility needs to be taken by Palerang Council; the register was not marketed well, and despite there being plenty of information freely available to explain heritage listing (eg on the Wingecaribee Shire Council website), we are concerned that the Palerang Council website even now does not include a Frequently Asked Questions information section to reassure people that far from being the onerous situation it has been made out to be, heritage listing has a number of benefits for the owner.

**The Braidwood Greens support the inclusion of a comprehensive heritage register in the PLEP.**

The Bungendore Heritage Conservation Planning Strategy (2010) was prepared by the Palerang Heritage Advisory Committee (HAC) to guide heritage conservation in the village of Bungendore with regard to development and in the promotion of general awareness of heritage significance. The strategy includes:

*\*Historical overview*

*\*Assessment of significance*

*\*Recommendations for establishment of a single Conservation Area*

*\*Parameters for compiling the heritage list*

The HAC recommended to the previous Council that this strategy document and a map of the "Old Bungendore" Conservation Area (bounded by Turallo Creek reserve to the north, the railway to the east, Rutledge Street to the south and the western edge of the village) should be included in the PLEP. Planning staff advised that the DCP was a more appropriate place for the Heritage Conservation Area document to appear.

**However the DCP is a guide to development, not a legal document, and if we genuinely wish to protect the historic values of the village of Bungendore, inclusion of the Bungendore Heritage Conservation Area in the LEP is essential.**

### **Protection against over-development**

It has been suggested by some Bungendore residents that protection against the "over-development" of Bungendore can be written into the LEP, and it may be an important safeguard for Braidwood as well, if the DCP's future is uncertain. The Community Strategic Plan (CSP) went some way towards this protection but unlike the LEP, the CSP is not a legal document.

There is already the potential for significant growth of Bungendore in the mid- to long-term given

there are many small and large sub-divisions already approved, particularly in South Bungendore, also East Bungendore, plus many large blocks with the potential for subdivision. Any further expansion of the town threatens to become over-development which would seriously change the character and amenity.

**Suggestion:** inclusion of an objective relating to over-development in R2 and R5.

### **Large-scale development proposals on the outskirts of Bungendore**

A related issue to that above is the possibility of future mega-development proposals for areas near Bungendore currently zoned as RU1, similar to those that have resulted in the Buckingham, Carlton and Elmslea 1 and 2 developments.

The LEP is subject to the EPA Act and the objects of the Environmental Planning & Assessment Act, 1979 are:

a) *to encourage:*

i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

iii) *the protection, provision and co-ordination of communication and utility services,*

iv) *the provision of land for public purposes,*

v) *the provision and co-ordination of community services and facilities, and*

vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*

vii) *ecologically sustainable development, and*

viii) *the provision and maintenance of affordable housing, and*

b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment. [Act s. 5]*

If the draft LEP (and RU1 in particular) is to be consistent with the objects of the EPA Act then it should make provision for the possibility of mega-developments that:

- ensure optimal social and economic welfare of the existing community and environment;
- are coordinated with other town developments (including major ACT development proposals between Bungendore and Queanbeyan);
- include public space and do not over-tax existing public space, utilities and resources;
- provide affordable and sustainable housing; and
- do not negatively impact on environmental corridors etc

At present the draft LEP does not address these issues - town planning is occurring without consideration of what might be happening in surrounding areas. More importantly, in not addressing these issues the draft LEP fails to meet requirement (c) of the Act in providing increased opportunity for public involvement in the process. As things stand, mega-development proposals have only ad hoc community involvement.

**Given Palerang's high rate of development, the LEP needs to consider these issues and provide**



consistent direction to residents, developers and Councillors.

**Suggestion:** include wording to address this issue.

### **Minimum lot sizes**

There is much diversity of minimum lot sizes in Palerang, partly due to the fact that the shire comprises sections of several previous LGAs, and it is important to retain that diversity of lot sizes across the shire. Accordingly, the Braidwood Greens believe that there should be no consideration at this stage given to reducing the current minimum lot size in rural areas, and do not agree with the argument that lot sizes should be the same in all areas as a matter of “equity”. A minimum lot size in rural areas is important for a number of reasons. It allows farming to continue while minimising land-use conflicts. When smaller lots are created as they have been as a result of concessional allotments and averaging, and spot rezonings, the capacity of adjacent areas to remain as farming land is compromised and in some cases, destroyed. There are numerous cases of stock being killed and/or injured by roaming domestic dogs who are brought in as a result of rural residential areas being approved in farming areas. The concept that the right to subdivide land is an intrinsic part of land ownership is a false one, as it implies that land can continue to be subdivided infinitely, and this clearly is neither sustainable nor desirable, nor even possible.

The creation of small blocks amongst large ones can also create the expectation that the amenities that are a normal part of urban living will come as well. There is little understanding of the limitations faced by Council due to lack of financial resources to provide the amenities that are expected, as contributions fall far short of the actual costs of the provision of the amenities.

Given that Palerang is an amalgam of parts of several shires and the whole of the old Tallaganda and therefore comprises a large area, it may be appropriate to look at different lot sizes in different areas. If good planning is the underlying principle, the equity argument is weak – why does it make sense to have the same lot size in areas that have different demographics, different soils and different uses? It might be useful to look at local conditions and allow minimum lot sizes to reflect that. For example, the minimum lot size in the rural 1a old Yarrowlunla is 80ha, but in Tallaganda it is 40ha. This is a partial reflection of soil quality, but also reflects the particular preponderances and idiosyncrasies of councils at the time lot sizes were determined.

This will have different implications, depending on not only the zoning but the areas to which it applies. It may be appropriate in parts of Bungendore to have 1000 square metres, but some argue that this is not appropriate for Captains Flat. In some areas of the old Tallaganda, it may be appropriate to increase the minimum lot size but again, this should be considered as part of a Rural Lands Study.

Unlike the towns of Braidwood and Bungendore, development in Captains Flat is mainly restricted by topography. Increasing the minimum lots size to 1000sqm from the current 450sqm has the potential to stifle population growth. The Braidwood Greens are not suggesting that population growth should not be the prime deciding factor in an issue like this, however it may be that a certain amount of growth in Captains Flat will assist it in retaining facilities like OOSH (out of school hours childcare) and such a change should not be implemented without an assessment of its impact – i.e. how many lots will be affected. Existing lots of under 1000sqm are unaffected, due to “existing use rights”, but lots that have been amalgamated in the past may not be able to be re-divided. Larger lots of up to but less than 2000sqm would not be able to be subdivided at all, even though currently they could be subdivided into up to four lots. Captains Flat’s “character” is small lots, and its character would not be unduly affected by retaining the 450sqm minimum. The Braidwood Greens suggest that staff and Council reconsider the minimum lot size for Captains Flat and examine the

possibility of applying different lot sizes to different areas of the villages and other zones.

### **Averaging**

The Braidwood Greens do not support averaging at this stage and suggest that it be removed from the PLEP altogether. Palarang planning staff did not support averaging in their reports and recommendations throughout Council LEP discussions in 2010 and 2011, and we believe that the motions to support averaging and indeed to expand it beyond what already existed were clearly driven by self-interest. It has been said that averaging is needed because it opens up areas of rural land to people who may not want a large block but still want to live in a rural area, and that it provides affordable housing for young families. But unfortunately, as has been shown with concessional allotments allowable until 2009 under the Tallaganda LEP, these lots can sometimes be far from employment, amenities and infrastructure, from business and health opportunities and along roads that there is not enough money to seal because of inadequate developer contributions.

It has been argued that averaging should be applied to the whole shire so there is equity. If our goal is good planning, equity alone can not be used as an excuse for approval of a certain activity. If the PLEP is to be about good planning, it doesn't require averaging, because the opportunity already exists to apply zonings and therefore different lot sizes that are appropriate to different localities. It is hard to see how averaging can be justified in any parts of the shire, regardless of whether they have been there in the past, and good planning principles would certainly not allow the introduction of averaging in areas where the minimum lot size is 40ha. The draft PLEP, principal development standards, says:

#### **Part 4 Principal development standards**

##### 4.1

##### Minimum subdivision lot size [optional]

##### (1)

The objectives of this clause are as follows:

- (a) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,
- (b) to ensure that lot sizes and dimensions are appropriate having regard to the objectives of the plan and the relevant zone and the likely future use of the land,
- (c) to ensure that lot sizes and dimensions allow dwellings to be sited to protect significant natural or cultural features including heritage items and retain special features such as significant trees.

#### ***Conflict with concept of "minimum lot size"***

The whole concept of averaging conflicts with this. It is disingenuous to say that there is a minimum lot size in a particular area if there is also averaging, because the minimum lot size in reality ends up being much smaller, for example, if there is a minimum lot size of 40ha but a land-holder can create lots that are actually 8ha or even 16ha. The fact that the size of the lots is averaged out to the so-called "minimum lot size" when you divide the number of lots created into the area of the holding is only relevant to the holding itself, and not relevant at all once they have been separated from it. Looking at a region holistically there will still be a collection of small lots in the middle or on the edge of a large one; it's just that they have come from a large holding owned by a single land-holder, and it is the largest land-holders who will benefit the most. So while the argument can be, and is put, that no extra blocks will be created, while that may be true in number, the end result is still a collection of small lots in an area that is supposed to have a minimum lot size of 40 or 80 ha (or other).

### ***Allowing farmers to continue to farm***

If averaging is about allowing farmers to continue to farm, an alternative that deserves exploration might be the carbon farming initiative, if it is shown to be an effective way to lock carbon, although this is as yet unproven. Alternatives to the carbon farming initiative could be revegetation using endemic species to extend corridors and create habitat, for which farmers could be paid annually. Such a scheme could be of far greater benefit to the farmer than averaging, especially as it would avoid conflicting land uses, and over time, revegetated areas could also attract rates benefits, in the same way that Voluntary Conservation Agreements (VCAs) do. Such initiatives can benefit not only people buying a 40 or 80ha lot (which could be excised from a larger holding where the minimum lot size is 40 or 80ha) and who want to only use a proportion of it for farming activities, but also the land-holder selling the lot.

A responsible rural/regional Council needs to be promoting the idea of the carbon farming initiative or other suitable alternative. Such a program will be of financial benefit to land-holders, as well as fulfilling a constructive environmental role which will benefit the wider community and is a important part of planning for climate change. It is a far better alternative to going in the opposite direction by allowing land to be carved up into smaller segments in a totally arbitrary way.

The Braidwood Greens believe that there is currently no justification for averaging to be expanded to include areas that have not hitherto been included in the draft, but have incidentally already benefitted from concessional.

### ***Planning staff and departmental responses***

The business papers of August 12 2010 dealt with the issue in detail, including a comprehensive report to Council on the subject of averaging. An additional report provided to the meeting provided an alternative clause for averaging that included the 40ha areas of Palerang but stated that the adoption of the clause was not recommended. **NOT RECOMMENDED** in bold caps.

The reasons given for this were:

“Averaging at 40ha is considered to be contrary to the Rural SEPP Rural Subdivision Principles, in particular:

- *the minimisation of rural land fragmentation; and*
- *the minimisation of rural land use conflicts, particularly between residential land uses and other land uses.*

Averaging at 40ha is also likely to be considered by the Department of Planning to be concessional lot subdivision by another name and is unlikely to be supported.”

The business papers from August 12 2010 say that “the Department of Planning has advised on a number of occasions that it considers the use of average lot size provisions to create small lots in rural zones is not appropriate as it perpetuates the problems associated with concessional lots..

The Department provided the following additional information in support of this position: quoted advice from the Department, that is:

- *The pressure for rural subdivision has intensified since SEPP (Rural lands) 2008 removed the concessional lot provisions on rural land. The concessional lot provisions have in many instances been misused in the past. It resulted in the unplanned creation of rural residential lots occupied by rural lifestyleers located next to large commercial farms. It created a range of unintended impacts such as fragmentation of rural land, land use conflicts and increased demand for infrastructure and services in remote areas.*

- *The application of lot averaging subdivision in rural zones is not consistent with the rural subdivision principles outlined in SEPP (Rural Lands) 2008. Despite not increasing the overall density (in terms of numbers of lots) the cumulative impact of lot averaging subdivision will undermine strategic rural settlement planning, cause land use conflict and increase the cost of infrastructure services.*
- *The adoption of lot averaging subdivision in rural zones would run contrary to the aims of the Sydney Canberra Corridor and other regional strategies. The strategies discourage unplanned rural residential development and the breakup of agricultural land. They recommend that the demand for rural lifestyle housing is addressed in long term strategic planning for rural residential accommodation.*
- *The current SI provisions for rural subdivision enable councils to establish different minimum lot sizes across the same zone taking into account the character and development potential of the land. This flexibility was not available prior to the SI adoption when each zone had one set minimum lot size.*
- *Further the Lot Size Map can be amended if new studies or information justifies a change based on the merits of a proposal. There are also model local provisions (model clauses) prepared to assist councils in natural resource management along with the ability to local zone objectives. All of these tools assist in protecting the environmental values the lot averaging clause purports to protect. These mechanisms will ensure a more planned approach to subdivision with careful consideration of cumulative impacts and servicing ability consistent with strategies, or as otherwise justified.*
- *In addition to different minimum lot sizes across the same zone, SI clause 4.2 Rural subdivision that applies in zones RU1, RU2, RU4 and RU6 permits subdivision of land for the purpose of primary production to a size less than specified on the Lot Size Map without attracting a dwelling 'entitlement'. The clause provides flexibility for land owners who may wish to lease land for agriculture or for other primary production development consistent with the objectives of the particular zone.*

While Palerang Council subsequently received advice from the Department or the Minister that averaging would be allowed in the new LEP, this is clearly at odds with the reasons previously given by the Department (under the previous government) for not supporting averaging before. The circumstances on the ground have not changed – the only thing that has changed is the government, and the requests that have been made to the new Minister by those who wish to see averaging proceed.

The report to the meeting went on to say:

While the reasons leading to Yarrawlumba's introduction of averaging remain sound, a number of unintended undesirable consequences should be acknowledged:

- **The averaging provision may encourage the subdivision of rural land to the *maximum extent allowed* because subdivision is made more attractive to the landowner – smaller lots are more marketable and less land is lost from the farm.** Thus a farmer who would not subdivide 80 hectare lots from the farm because of the impact of the loss of land on the farm's production may be tempted to create some 8 ha lots on the less productive land.

- **Large land holdings could be subdivided to create large numbers of what are effectively rural residential lots.** Sizeable rural residential communities could be created in relatively isolated locations remote from services and with no regard for Council's previous planning for rural residential development. The existing rural residential areas in Palerang have generally been selected after careful consideration of environmental studies and with due regard to provision of services and to social impacts. This issue can be addressed (as in the draft clause below and the existing YLEP 2002 clause) by limiting the number of small lots that can be created. The problem with this approach is that for large land holdings, after the allowed five small lots and the accompanying large agricultural lot (up to 440 ha) are created, the remainder of the farm can continue to be subdivided into 80 ha lots. Thus the full benefit of averaging in terms of consolidation and the protection of a large agricultural lot is not realised.
- **The creation of rural residential enclaves and scattered small lots within the broad acre rural areas can adversely affect nearby agricultural operations through land use conflicts associated with noise, dust, odour, chemical use, weed and pest control, dogs, bushfire risk and so on.**

If Council wishes to pursue the use of averaging provisions in the rural zones, the following clause which is based on the existing YLEP 2002 averaging provision may be inserted into the working draft PLEP. **For simplicity the clause proposes a new existing holding date of 11 February 2004 which was the date the council came into being. It should be noted that this is contrary to the Department of Planning's advice that where existing holding provisions are used the existing holding date must be brought forward from the existing LEP. In Palerang's case this would mean 6 different existing holding dates which would cause administrative difficulties.** It is considered that this matter can be pursued with the department in discussions which will follow Council's completion of its consideration of the working draft.

The Department's preferred outcome was for the dates in previous LEPs, to avoid the opportunity for re-averaging..

The August 12 2010 report says on p. 7

**If Council follows this recommendation it will still be necessary to prevent re-subdivision of large lots that were created under the averaging provisions of the YLEP 1993 and YLEP 2002. If such lots are re-subdivided the density of development will increase above the level set by the planning controls, thereby removing the advantages that were gained by the use of the averaging provision.**

*And finally, a community view*

A letter to the Mirror from a Burra resident published in July 2012:

Dear Ed,

I notice two notices of motion concerning lot size and averaging are due for consideration by Council in the coming week.

As a Palerang resident I share the frustrations of many at the delays in developing Palerang's LEP. Nevertheless, it seems to me that the quite radical shift away from rural primary production towards urbanisation and suburbanisation that would be allowed for in what is proposed by Councillor Marjason et al warrants careful, disinterested research rather than being rushed through in the dying days of a Council up for election in two months. Frankly, while I am normally reluctant to impute negative motives to people who give their time to local government, the combination of rush, rescission and the proposed date for determination of holdings raises serious questions about probity in this case.

I have substantial agreement with the argument that subdivision of primary production land should be allowed to a reasonable degree to facilitate families staying on the land. This should not be used, however, as a pretext for subdivision of large, productive holdings (whether productive in commercial terms or as repositories of biodiversity) into lot sizes which are fundamentally suburban in function. Palerang should take a stand against the notion that landholders have a right - irrespective of the damage done to primary production, to rural amenity, to the capacity of Council to provide services, or the environmental health of the catchment - to subdivide and sell small blocks as a form of superannuation.

Clearly neither science nor society stand still, and I have little patience with those who will countenance no change from the status quo or yearn for a mythical golden past. Nevertheless, changes in how we use Palerang's natural resources should be undertaken in a thoughtful, measured way and informed by the best available information. The way to that end would seem to be to commission a rural land use study and allow the newly elected Council to come to this vexed issue with a collectively more open mind. Or, if open minds are too much to hope for, at least more informed. The recent water study was large step in the right direction. If we can inform ourselves about water use, why not land use?

Peter Duffy

### **Aims of the PLEP**

The Braidwood Greens support the aims of the plan (1.2) but would like to see them carried through into other parts of the PLEP, to ensure that they will actually be achieved. For example, there needs to be a clause elsewhere that requires the planning authority to consider unreasonable increase in demand for public services or facilities. Equally, there needs to be a clause where ESD principles are required to be considered, where the linking of fragmented core habitat areas are explicitly dealt with and, as mentioned earlier in this submission, there needs to be some mention of planning for climate adaptation, not just in the aims but repeated in the objectives of the various zones.

#### *Consistent and inclusive environmental clause across all zones*

The overarching aim of the Plan, set out in clause 1.2, appropriately includes these provisions:

- 'to protect and improve the...environmental...resources and prospects for the Palerang community'
- 'to retain and protect wetlands, watercourses and water quality and enhance biodiversity and wildlife corridors by encouraging the linking of fragmented core habitat areas within Palerang'.

The Braidwood Greens support these aims, together with others focusing on social development and economic development that is beneficial in both social and environmental terms.



We are concerned, however, that these aims are not adequately carried forward into the statements of objectives relating to the specific zones. Considering the overriding importance of the environment to the well-being of Palerang both now and into the future, it is strongly suggested that the statement of objectives for every zone include the following text, or something very similar to it:

*To ensure that the development and management of the land has proper regard for the environmental constraints of the land and has a neutral or beneficial impact on environmental assets including waterways, riparian land, wetlands and other surface and ground water resources, soil fertility, remnant native vegetation, and existing and potential fauna movement corridors.*

This reflects the fact that environmental considerations apply to the whole of Palerang, including the rural zones, the residential zones, the business zones, the industrial zones, the special purpose zones, the recreational zones and the environmental protection zones alike.

### **Visual Impact**

Removal of this clause, which started life as 6.17 Visual impact of development in rural areas and on main roads [local] in the first version of the draft presented to Councillors in early 2010, and was amended (watered-down) in June 2010, means there is no protection for scenic views in Palerang, including the visual corridors of the Federal, Kings and Monaro Highways.

Particularly concerning is the loss of protection of ridgelines. The watered-down version, 6.10, stated:

(2) "Consent must not be granted to the carrying out of development involving works or building construction within zones R5, RU1, RU2, E2, E3 and E4 unless the consent authority has considered the following:

(b) the extent to which the height, scale and bulk of any building as well as the construction materials and colours of external surfaces of the building will accord with the visual character of the locality

also, (d) where the buildings are situated in relation to ridgelines (the changes to (d) were recommended by staff.)

Reference to vegetation clearing on ridgelines was removed from 6.17 by Councillors, which originally said in (3): In determining whether to grant consent the consent authority must consider the following:

(d) whether buildings are sited below ridgelines so that:

(ii) vegetation clearing associated with the development does not impact on the existing vegetation form and line.

Both versions of the clause do at least make mention of the problems with development occurring on tops of hills/ridges, but now there seems to be no mention of this in the PLEP at all.

Ridgetop building normally occurs to take advantage of views. However, this legislation acknowledges that views are a two-way thing – one person's view can be many others' spoilt one.

Apart from the obvious aesthetic issues involved with ridge-top construction, there are other issues to consider, especially with regard to adaptation to climate change. Most pertinently, dwellings on tops of hills are at greatest risk from bushfire as fire travels fastest uphill. A house on top of a hill is very vulnerable on days of high to extreme and now catastrophic fire danger.

Since it is usually difficult to build dams on ridgetops as they have no catchment, water must be pumped up from lower water storages, increasing the use of fossil fuels, given that windmills only pump when the wind blows. Buildings sited further down hill can take advantage of gravity-fed

water supplies. Much of Palerang is noted for the ferocity of its winds; living on hilltops means the residents are very exposed to both hot and cold winds, increasing the need for heating/cooling.

Braidwood Greens suggest the reintroduction of clauses relating to visual amenity and impact.

## **SPECIFIC CLAUSE MATTERS**

### **Specific zone objectives (contained within 2.1)**

#### ***RU1 Primary Production and RU2 Rural Landscape***

The Braidwood Greens are concerned that the environmental clauses that were proposed in the first draft of the PLEP be reinstated as first written. **It is also important to articulate a further clause to ensure that the development in the area does not unreasonably increase the demand for public services or public facilities.** The potential strain on public facilities is not mentioned in the RU1 zone and is a significant oversight. Given the size of the RU1 zone, there is significant scope for sub-division while not permitting consideration of demand for services and facilities. This oversight creates a financial risk for Palerang in that it would be required and expected to provide services without consideration of demand at the planning stage.

Some concerns have been raised by people whose main activity is primary production (RU1) but whose land has been classified as RU2. Given that RU2 is defined as Rural landscape, generally because it is land that is not deemed to be as high quality in an agricultural sense, many people feel that this has devalued their land.

Many Local Government Areas (LGAs) including those in our region have opted not to use RU2 classification in their LEPs, recognising that the activities taking place in potential RU1 and RU2 areas are often the same.

**The Braidwood Greens suggest that planners and Council consider the option of merging these two zones together.**

And a word from farmer and member of Braidwood Greens, David Watson:

It seems there is a danger the LEP could degenerate into a real estate manual to bail out failing or retiring farmers either with averaging or smaller lots. The LEP should be about best practice planning. It should delineate what happens where, because that is what is best for the land. Ultimately we all depend on the land. If we look after the land it will look after us.

The best way for farmers to remain viable is to work with nature, to identify what their land is capable of producing sustainably. The closer the LEP comes to identifying land capability and biodiversity, the more likely farming will prosper. To try and save farmers with smaller lot sizes is short-term bad planning. It's called the law of diminishing returns.

#### ***RU5 village***

Given the wide range of activities permitted with consent in this zone, the Braidwood Greens query the omission of landscape and garden supplies, and timber and building supplies. We would also like to see the words 'innovative and environmental' reinstated with regard to design and development, and 'protects' in regard to the streetscape and existing village character.

**Suggestion:** that these items be reincluded.

#### ***R1 General residential and R2 Low Density Residential***

This zone was not included in the first working draft of the PLEP but was included later in order to permit a small zone of potentially medium density housing in Bungendore and Braidwood. The principle difference between this zone and R2 Low density Residential is that 'Attached dwellings', 'Hostels', "multi-dwelling housing", and 'residential flat buildings' are all permitted with consent. There are arguments for and against this – some say that there is no need at all for medium density housing in Bungendore and Braidwood; others suggest that by zoning for medium density explicitly in central locations we will end up with better planned development which allows for more sustainable living (less transport dependent, more 'walkable') and senior/disability friendly housing options close to shops and amenities. Objectives of R2 Low Density Residential Zone include "to integrate new development with the established pattern and landscape within the neighbourhood by encouraging (ii) the retention and enhancement of existing streetscape and other significant vegetation (iii) consistency with the scale, density and form of the existing development.

The Braidwood Greens are concerned that the objectives for R1 do not contain such protections, acknowledging that, if similar wording is adopted, the word "density" may need to be modified given this zone is about a different density.

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

This needs a stronger environmental clause.

### ***B2 Local Centre, B4 Mixed Use and IN2 Light Industrial***

These all refer to the need for new development to have regard to the character and amenity of the locality but not adjacent and nearby residential areas. This needs to be reinstated. In addition, although the words 'do not create hazardous or offensive off-site or on-site impacts' occur, the original environmental constraints clause was removed entirely and needs to be reinstated.

### ***RE1 Public Recreation***

We suggest reinstating the word 'natural' before 'environment'.

### ***E2 Environmental Conservation***

The Braidwood Greens are concerned at the watering down of the environmental constraints and would like to see them strengthened.

### ***E3 Environmental Management***

The Braidwood Greens are concerned about the removal of the following:

- the original clause about improving over the long term the ecological values of the existing vegetation;
- the specific clause limiting agricultural activities to those not having an adverse impact on the environment or scenic quality;
- reference to environmental constraints;
- reference to development on land that adjoins E1 land being compatible. ???????

We also are concerned that agriculture (which includes aquaculture, extensive agriculture, intensive livestock agriculture and intensive plant agriculture) being permitted with consent, amended by the previous council, seems counter to the intention of an E3 zone which is about undertaking activities in more sensitive environmental areas. However, we recognise that there are possible issues with the maps that have rezoned some areas in the shire E3 and whether the zoning is not appropriate for the activities that are being undertaken in these areas.

The Braidwood Greens support the prohibition in this zone of intensive livestock agriculture and turf farming, however are concerned that the dictionary definition of agriculture includes intensive livestock agriculture. This adds ambiguity, especially as the dictionary is mandated whereas Council's addition here is voluntary.

#### ***E4 Environmental living***

The Braidwood Greens suggest that this section needs a clause referring to environmental constraints.

There has been a lot of concern in the community about grazing in this zone which would probably be solved by adding extensive agriculture to the permitted without consent. However judging by the level of concern in the community expressed at a public meeting on March 6 in Bywong, this measure may not go far enough to address those concerns.

The Braidwood Greens suggest that planners and Council consider whether it would be more appropriate to zone R5 some areas that are currently zoned E4 in the Wamboin and Bywong areas, and perhaps elsewhere. We do not have enough information before us either way to say that this ought to be done, but believe it is worthy of consideration.

The E4 zoned areas of Bywong, Wamboin, Carwoola etc are lifestyle/bush block and/or hobby farms area. However, these usages are not reflected in the draft PLEP, and do not readily fit with the definition of extensive agriculture as this is for 'commercial purposes'. This issue could be addressed by creating the following definitions within extensive agriculture:

- Commercial purposes - a business intended for the purpose of making profit.
- Non-commercial purposes - an undertaking for the enjoyment of the property owner that does not have the intention of profit making.

Each of these categories could be a sub-set of extensive agriculture. Within the E4 zone, extensive Agriculture – non-commercial, could be permitted without consent.

The absence of a dictionary definition of 'commercial purposes' is problematic. A legal dictionary defines 'commercial' as 'relating to business'. The Australian Taxation Office approach is that something is 'commercial' if it is undertaken with the aim of making a profit. In one reading, then, people producing crops or fodder, grazing livestock and/or cultivating irrigated crops would not need to obtain consent if they were doing so for non-commercial purposes, i.e. not with the intention of making a financial profit from these activities.

Alternatively, the term lifestyle/bush block and/or hobby farm could be added to the dictionary and listed as a permitted without consent in the E4 zone.

The definition of 'agriculture' provided in the LEP Dictionary includes, among other things, 'extensive agriculture', 'intensive livestock agriculture' and 'intensive plant agriculture'. These are shown in black, meaning that they are provisions mandated by the State Government. The definitions have raised concern to residents in both the proposed Rural Zones and Environmental Protection Zones. People living in the proposed E4 Environmental Living zone feel that the specification of activities that are permitted without consent and those permitted with consent do not clearly enough acknowledge the unique nature of the E4 zone. E4 Environmental Living—essentially the former rural residential areas—fall between the residential and rural zoning classifications. The activities permitted in E4 need to be further clarified.

The Braidwood Greens support the exclusion of 'intensive livestock agriculture' from the E4 zone. 'Intensive livestock agriculture' is defined as 'the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses or other livestock that are fed wholly or substantially on externally-sourced feed'. This is an inappropriate activity in an area which is zoned to combine a rural lifestyle with residential living.

#### **4.1B Sub-division of land within Zone E4**

E4 Zone - Subdivision of this land is permissible and the minimum sizings are:

- 6 ha as per lot size map;
- 2 ha if averaged over a number of lots; or
- 1 ha if created under the *Community Land Development Act 1989*.

Zone E4 includes the objectives:

- 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.*
- To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns.*
- To encourage development that is visually compatible with the landscape.*
- To minimise the impact of any development on the natural environment.*
- To ensure that development does not unreasonably increase the demand for public services or public facilities.*
- To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The smaller proposed lot sizes of 2 and 1 ha in Section 4.1B conflict with these objectives.

Specifically:

**Objective a & 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 animals control / management in a rural setting.

There is an argument that there should be at least a 7ha minimum in E4, regardless of the topography. 7Ha is the DSE for one horse on native grasses in some parts of Palerang.

**Objective c** - The Bywong and Wamboin areas have a history of gold mining typified by smaller holdings, which have translated into hobby farms in a contemporary context. The 6 ha lot size is consistent with the historical land use patterns. Smaller lot sizes do not align with the hobby farm land use currently in place or the historical use.

**Objective d** - The proposed E4 areas of Bywong and Wamboin are lifestyle/bush block zone. An urban type development with smaller lot sizes of 1 or 2 ha minimum is not consistent with this zone. These smaller lots are incapable of supporting small numbers of livestock pets and thus would develop as urban backyards creating inconsistency in the landscape.

**Objective e** - Smaller lot size will fragment habitats which are integral to the aesthetic and ecological aspects of the environment. Specifically, the insect, bird, and mammal life present in this zone would be fragmented by increased housing pressure in the zone. It is the wildlife that makes up a significant aspect of the attractiveness and aesthetics of this zone. Lot sizes of 1 and 2 ha would limit mobility of wildlife by fragmenting the natural environment into urban backyards.

**Objective f** - Clusters of urban lot sizes will create a differing user expectation from a rural context.

The expectation of essentially urban rate payers in these areas will increase demand for water, sewer, garbage collection, and roads that are typically associated with urban development but may not be provided in the quasi-rural zone of Environmental Living zone.

### ***Counter-argument***

The counter-argument of this is that if this style of development is done well and a suitable management structure for the 'association property lot' (a large block of significant ecological value created as part of the averaging) is included in the development there may be some ecological benefit to concentrating residential development on smaller blocks and managing a larger area of ecological significance for environmental benefit and community recreation. Alternatively perhaps it would be a more satisfying solution to look at rezoning small Village centres within E4 zones if this sort of higher density living is determined to be desirable. Braidwood Greens are not convinced that this is workable, but believe the idea deserves further investigation.

Braidwood Greens suggest that matters relating to E4 ought to be included as part of the Rural Lands Study.

### **6.4 Flood planning**

Concern in this submission focuses specifically on the management of the Bungendore floodway. *The Floodplain Development Manual 2005* defines floodway areas as being "those areas of the floodplain where a significant discharge of water occurs during floods. They are often aligned with naturally defined channels. Floodways are the areas that, even if only partially blocked, would cause a significant redistribution of flood flow, or a significant increase in flood level."

In relation to floodways, the *Flood Risk Management Guideline 2007* notes that obstructions can:

- *divert water to other existing flowpaths*
- *have a significant impact upon upstream flood levels in the planning level flood*
- *divert significant amounts of water away from existing flowpaths resulting in the development of new flowpaths and associated adverse impacts.*

Unlike former planning instruments, the current draft Palerang LEP does not specifically identify this area or prohibit development on such land. In neglecting to identify Bungendore's floodway, the LEP fails to:

- recognise development pressures now being placed on such land
- acknowledge local residents' specific requests that development on such land be prohibited
- anticipate or limit the potential for on-going disputation concerning development on such land
- account for increasing prudential requirements emerging from recent floodway research
- concede the potential such land has to address Bungendore's shortage in recreational land.

To address these concerns two options are proposed:

Option one revises clause 6.4, by removing the (open-to-dispute) term "significant," and restricting development consent to proposals that pose **no** risk to the environment or community. Since this change is highly restrictive and covers an extensive area, a second option is presented.

Option two introduces a new clause that deals only with floodways and leaves clause 6.4 to cover areas subject to less intense flooding. In this option tighter restrictions are placed on floodway land and Clause 6.4 flexibility is retained for areas adjacent to the floodway. Please see accompanying document *Floodway development revisions for PLEP submissions* for specific recommendations for altered wording.



Suggested changes are highlighted below in red within the current LEP clauses. Explanatory note is in black italic:.

## **Option 1**

### **6.4 Flood planning [local]**

- (1) The objectives of this clause are as follows:
- (a) to minimise the flood risk to life and property associated with the use of land,
  - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
  - (c) to avoid ~~significant~~ adverse impacts on flood behaviour and the environment,
- and
- (d) **to maximise the use of flood land for community recreational use.**

*A new objective that recognises flood prone land, whilst not suitable for development for obvious reasons, can potentially address shortfalls in community recreational space.*

- (2) This clause applies to:
- (a) land that is shown as "Flood planning area" on the Flood Planning Map, and
  - (b) other land at or below the flood planning level.
- (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:
- (a) is compatible with the flood hazard of the land; and
  - (b) will not ~~significantly~~ adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- local residents should not be subject to any adverse flood behaviour resulting from new developments, or the threat of on-going disputation with developers*
- (c) incorporates appropriate measures to manage risk to life from flood, and
  - (d) will not ~~significantly~~ adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- To avoid future wrangles in courts over the definition of "significantly" there should be NO adverse affects from new development approvals. Council already bears a risk legacy from the existing issues such as uncertain structural quality of existing levies and difficulty of upgrading privately held river banks.*
- (e) ~~is~~ **will** not ~~likely to~~ result in unsustainable social and economic costs to the community as a consequence of flooding.
- We should learn from the current flood issues Australia-wide that no long term social or economic costs should be permitted; especially those long term costs of mitigation resulting from private developments.*

- (4) A word or expression used in this clause has the same meaning as it has in the NSW Government's *Floodplain Development Manual* published in 2005, unless it is

otherwise defined in this clause.

(5) In this clause:

***flood planning area*** means the land shown as “Flood planning area” on the Flood Planning Map

### **Option 2**

Option 2 is achieved through the addition of the following clause. The new clause would require "floodway" to be added to the LEP's list of definitions. The clause would also require an additional map identifying recently updated floodway boundaries.

### **6.4A Floodway management**

- (1) The objectives of this clause are as follows:
  - (a) to manage risks associated with floodways,
  - (b) to prohibit in-fill and new developments on floodways
  - (c) to account for climate change and emerging research on flood risks
  - (d) to maximise the use of flood land for community recreational use.
- (2) This clause applies to:
  - (a) land that is defined as floodway areas (require additional definition in LEP)
- (3) Land to which this clause applies may be used for public open space, environmental enhancement and extensive agriculture.
- (4) Development consent must not be granted to land on which this clause applies.
- (5) A word or expression used in this clause has the same meaning as it has in the NSW Government's *Floodplain Development Manual* published in 2005.

### **4.3 Height of buildings**

Braidwood Greens suggest that the stronger wording of the original be reinstated. Language was weakened: (a) changed from 'retaining' the natural character to 'enhancing'; (c) changed from 'minimise' the visual impact of development to 'manage'; (d) change from reflect the predominantly 'single storey' character to 'low rise'.

### **5.3 Development near zone boundaries**

Braidwood Greens suggest that the clause affecting the development of land within 20m of a boundary between two zones that was not adopted be reinstated.

### **5.6 Architectural Roof features**

This clause related to ensuring that roof features were decorative, not signage and that they should stay within building height limits. It was not adopted by Council from staff the recommendation and could be reconsidered.

### **6.5 Bushfire prone land**

Braidwood Greens suggest listing the sorts of measures that might be considered by Council as

adequately mitigating threats from bushfires e.g. bushfire protection would be improved if residents were discouraged from planting natives in their fire sector (to the NW/W) and instead planted vegetation with low flammability (e.g. Oaks, Ash, Poplar) . It might be possible to plant natives that have low flammability in some parts of Palerang but they don't survive in the drier and frostier parts of West Palerang.

### **6.10 Highly erodible soils and 6.11 Slopes over 18 degrees**

Both these clauses are not as strongly worded for protection from erosion as they were in the original draft. Environmentally Sensitive land – landscape clause which specified the issues that must be considered by a report and had much more specific objectives. The real key to strengthening these clauses however is that development consent must not be granted unless the consent authority is satisfied that the development will result in an overall neutral or beneficial effect on the local environment.

The Braidwood Greens suggest amending this clause by reinstating original accordingly.

### **6.12 Riparian land and waterways**

Braidwood Greens do not support the reduction in the distance from a waterway of land that this clause affects from 50m to 40m. Reference to threatened aquatic species, communities, populations and their habitats could be reinstated in (1), as could scenic and cultural heritage values. The key change is from a requirement for a report to a requirement to consider impacts; once again a threshold level of potential impact could trigger a requirement for a report. Consideration of impacts on environmental flows under low flow regimes could also be required. Council should also consider the results of their own Water Futures Report series in considering whether further controls over the erection of small farm dams should appear in the PLEP, at the very least requiring dams to minimise surface area (to reduce evaporative losses) and to require the removal of any dams that are over and above the maximum harvestable rights (10% of annual runoff).

The DPI recommends best practice for ecologically sensitive areas such as the Mongarlowe River with known threatened fish species, is for 100 metres buffer width for new developments, in line with the DPI's *Policy and Guidelines for Aquatic Habitat Management and Fish Conservations (1999)*.

Braidwood Greens supports the position of the community group Friends of the Mongarlowe River (FMR) which feels the LEP should include this as policy instead of only as a guideline for 40ha lots and minimum of 60 metres with smaller lots such as the zoned area in Mongarlowe E4. This would compliment the Protection of drinking water catchments objective ensuring that the development of land within a drinking water catchment does not have an adverse impact on water quality.

Braidwood Greens believe this should apply to all similar riparian areas in Palerang.

### **Conclusion**

Braidwood Greens reiterate the importance of getting the PLEP right, so that land-holders and developers can proceed within clear parameters to help meet the goals that have been expressed by the community for their future. We look forward to continuing to work co-operatively with Council and the community to achieve that.

Your sincerely  
Catherine Moore  
convenor, on behalf of Braidwood Greens  
March 8, 2013