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The General Manager  
The Hills Shire Council  
PO Box 75  
Castle Hill NSW 1765  
Your reference: FP170

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## Submission to the Draft LEP 2010

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### Introduction

5 Acres Now represents a large group of landowners who have been calling for the minimum lot size to be reduced to no more than 5 acres in the non-urban 'rural' areas of the Hills council area. The organisation was formed in 2004 after the Rural Land Study disregarded decades of lobbying by landowners for more reasonable minimum lot sizes. Further information about 5 Acres Now can be found at [www.5acresnow.com.au](http://www.5acresnow.com.au).

Apart from one exception – the decision to reduce the minimum lot size to 5 acres in Maraylya, Box Hill, and Nelson – 5 Acres Now has significant concerns with the draft plan and associated decision-making processes. These concerns form the basis of this submission.

Our primary concern is the failure of the draft plan to reduce the minimum lot size for most of the rural area. Community-titled cluster subdivision is not what any landowner asked for, and was specifically rejected by 5 Acres Now when it was first proposed several years ago. Nor have landowners called for additional controls over site coverage, clearing, trees they own, the colour of their buildings, or the hundreds of other restrictions found in the LEP, DCP, and accompanying documents.

5 Acres Now accepts that there may be good reasons for placing restrictions over the use of land in circumstances where it can be demonstrated through sound argument that there is a net public benefit, and where the interests of those disadvantaged are adequately addressed.

However, there is little evidence that these points have been properly considered in the development of the draft plan. Much of the underlying strategy is simple assertion; moreover, hasn't been applied consistently. There is no attempt to quantify the implied public benefits of the strategy versus simply reducing the minimum lot size to 5 acres or an equivalent density; nor is there any consideration of the lost opportunity costs borne by those subject to these new and on-going restrictions.

5 Acres Now again calls upon the council to set things right; to recognise that we live in a democracy that respects minority interests, property rights, and sound government; and reduce the minimum lot size to 5 acres or an equivalent density, not just in Maraylya, Box Hill, and Nelson, but throughout the rural area. Options for amending the draft plan to achieve this are suggested at the end of this submission.

### **Rural Land Study – hardly a credible basis for the draft plan**

In February 2000, the council passed a motion to investigate opportunities for “rural residential subdivision” in the rural area, and voted \$300,000 to continue with stage 3 of the Rural Land Study first commenced in 1983. Stage 3 then became the basis of the “rural strategy” that the 2010 draft plan references.

However, as those who participated in the study process know, stage 3 of the Rural Land Study was not well received. Hundreds attended council meetings to express their opposition to it, and at one council meeting (16 September 2004) councillors voted unanimously against its recommendations.

By ignoring the benefits of development, and focussing only on the concerns of those who wish to see the area remain undeveloped in perpetuity, it lacked balance, and misrepresented the aspirations of most landowners. It formed conclusions that were contrary to the facts presented. It read as if the desired outcome – maintenance of the area as a de-facto national park – was developed first, then the body of the study written to support it. Goals of preserving agricultural and so-called ‘environmental’ land came from the consultant and state government, not those who live in the area, as did the proposal for cluster subdivision and community title. Fact and reason didn’t come into it, as was detailed at the time through representations made by this organisation and others, and still published on the 5 Acres Now website. Furthermore, the findings of stages 1 & 2 of the study, which both recommended reducing minimum lot sizes in parts of the rural area to 5 acres, were ignored.

Most concerning of all was the fact that in spite of 69 submissions, most highly critical of the study findings, not one word of amendment was made to the final report tabled at the council.

Responses in the summary of submissions could be characterised as supercilious. Legitimate concerns were dismissed without reason, simply because they did not agree with the findings of the study. None of the benefits of reducing lot sizes were given serious consideration. Concerns about the lack of opportunity for subdivision were dismissed with “*The strategy does not support further subdivision*”. Others who pointed out that agricultural activities were no longer viable were told “*A number of other rural landuses may be viable on this land*”. It made a mockery of the entire submission process, and has led to a high degree of cynicism among those who participated.

The Rural Land Study is no basis upon which to formulate plans for the area. Its strategy – of forcing land that is in demand for housing to be used for uneconomic purposes, or wasted altogether under environmental restrictions – does not have the support of affected landowners, nor will it lead to a prosperous future for anyone.

### **The decision to reduce the minimum lot size to 5 acres in Maraylya, Box Hill, and Nelson, but not elsewhere.**

In discussing our call to reduce the minimum lot size to 5 acres, it has been frequently asserted that the state government would never agree, and so therefore there was no point including such a provision in the draft plan. We were further advised that the section 117 directive on rural land required a supporting strategy – perhaps a new rural land study – to justify any reduction in minimum lot size.

Yet in respect of Maraylya, Box Hill, and Nelson, where it is proposed to dramatically reduce the minimum lot size – from 100 acres to just 5 acres – no such supporting strategy has been presented. The only strategy presented to support the decision has been that developed from the Rural Land

Study, which focussed on protecting agricultural land and reducing land fragmentation. Subsequently, that formed the basis of the 2005 draft LEP, where it was proposed to reduce the minimum lot size in Maraylya, Box Hill, and Nelson from 100 to 25 acres, together with cluster subdivision to avoid undue fragmentation of the land because it would make future urban development more difficult.

No new strategy has been presented to justify the further reduction of the minimum lot size in that area to 5 acres. All we have is a vague verbal explanation from council staff that Maraylya, Box Hill, and Nelson 'had always been intended for future urban use', but since that area was not included in the most recent release area, the lot size would be reduced 'to maintain the hierarchy' of zonings between urban land and rural land.

If a vague verbal explanation is adequate justification for reducing the minimum lot size in Maraylya, Box Hill, and Nelson beyond that proposed in the current strategy, then why isn't a similar justification adequate in respect of the remaining non-urban 'rural' area?

Plenty of very sound reasons have been proposed by 5 Acres Now and others; among these are:

- Agriculture is no longer a viable use for land in the area. Using the land for residential purposes is more productive and more efficient;
- It would preserve family ties by providing housing opportunities so offspring can remain living in the area;
- 3 prior Rural Land Studies recommended reducing the minimum lot size to 5 acres in some areas not currently included.
- It would provide a very substantial boost to the local economy;
- 5 acre and smaller lots are easier to maintain, reduce the risk of bushfire, and lead to better 'environmental' outcomes;
- It would help satisfy pent-up demand for rural residential living due to the addition of another 1 million to Sydney's population since the restrictions were first introduced.

Furthermore, if the strategy developed from the Rural Land Study was applied consistently and in accordance with the data presented in the Rural Land Study, then it would provide the strongest justification for reducing the minimum lot size to 5 acres, not in Maraylya, Box Hill, and Nelson, but *everywhere else*. This is because the Study found that land in those other areas is generally hilly and rocky, making it less arable and less suitable for both agricultural use and future urbanisation. In regard to cluster subdivision, even the Study itself notes that "*This form of subdivision would be most appropriate in the Box Hill, Nelson and Maraylya areas where the lots are larger*" – the direct opposite of the proposal in the draft LEP.

While our members may be prepared to accept planning decisions based on reason and logic, they are not prepared to accept decisions that seem arbitrary and inconsistent. Few see any consistency, logic or net public benefit in maintaining a 25 acre minimum lot size in the current rural 1(b) area, while reducing it from 100 acres to 5 acres in the current rural 1(a) area.

Our organisation fully supports the decision to reduce the minimum lot size to 5 acres in Maraylya, Box Hill, and Nelson; our position is that the strategy used to support that decision supports, *even more strongly*, the same minimum lot size in the remaining non-urban 'rural' area.

### **Community title and cluster subdivision**

Our members are particularly disappointed that the only opportunity for any development in the current rural 1(b) area in the draft plan is a heavily conditioned proposal for community title cluster subdivision. It isn't what owners or buyers want, and the proposed conditions will greatly restrict the number of properties eligible.

Among the many objections are the additional cost, complexity, and further restrictions likely to be imposed through the DCP, such as requirements for a common driveway and common recreational facilities. Those seeking their 'escape to the country' generally do so to get away from such schemes – for privacy and open space, where they have their own facilities and road access – not to live huddled together with strangers.

Many owners only wish to sell a portion of their current landholding, and don't want to be involved with setting up associations, or the maintenance of communal land. Many are also concerned that the proposal transfers land from private ownership to common ownership, viewing it as a first step towards eventual council or government ownership, which they are opposed to. Many also question why, if it was such a great idea, only around 50 community titles are registered annually throughout the entire state; and for the same reason, question why it couldn't be offered as a choice, with the other option being either a 5 acre minimum lot size or equivalent density.

If there was a clear net public benefit, supported by sound arguments, where those disadvantaged were compensated, then our members may be prepared to accept the proposal; however this is not the case.

### **Cluster subdivision**

The Rural Land Study argued for cluster subdivision because it allowed development while minimising the fragmentation of land, which the Study held as an impediment to future urban development. Presumably the impediment is that highly fragmented land ownership may lead to higher future urban development costs, and thus higher housing prices. However a far greater factor leading to high house prices is the artificial shortage of land created by the very restrictions upon development that 5 Acres Now has been critical of. If the 'public benefit' being sought is more affordable housing, then surely it would be more sensible to reduce minimum lot sizes, than to introduce expensive and complicated cluster subdivision proposals as the only option available for development.

And as noted above, cluster subdivision has greater legitimacy in the very area where it has *not* been proposed. There is little need for it in those areas where the terrain makes the demand for urban use unlikely in the foreseeable future.

A secondary argument that the Rural Land Study presented in support of cluster subdivision was that it provided a way to protect 'environmentally sensitive land' – presumably on the basis that this is a public benefit. Clearly cluster subdivision does in fact exclude substantial portions of a property from development, but it does not consider the effect upon those who are disadvantaged. There would be an outcry if similar requirements were imposed on every property development throughout the state of NSW.

Most of the land identified as 'environmentally sensitive' is in fact simply undeveloped land – no different from all land in Sydney prior to settlement by large numbers. There is no sound argument for declaring that at this point in history, development must stop – that no more undeveloped land around

Sydney can be developed to accommodate the increasing population. Attempts to do so have simply created more congestion and higher urban housing prices – hardly a net public benefit.

5 Acres Now suggests that the proper way to introduce proposals like this is to make them voluntary – to offer a choice between cluster subdivision, and traditional subdivision to the same dwelling density. Otherwise, it is easy to see this as little more than a way to make subdivision difficult for landowners, or a make-work scheme for consultants and bureaucrats.

### **Community title**

One of the greatest concerns among our members is the requirement that cluster subdivision must be carried out under community title. This requirement was presented in the Rural Land Study as a simple assertion, without any supporting reasons or argument. No-one apart from the consultant who prepared the Study sought this form of title, and we question why the council appears so determined to include it. We cannot identify any net public benefit over a cluster subdivision proposal that did not mandate community title; whereas the additional costs and disadvantage to landowners are obvious.

### **A better solution**

One size does not fit all. Community title and cluster subdivision are not what landowners or buyers are seeking in rural areas, and some properties might not be suitable for uniform 5 acre lot sizes.

A better solution would be to recognise this, and alter the conditions of clause 4.2B so that it becomes a straightforward 'density' subdivision option, where lots may be any size above 1 acre providing that the overall dwelling density does not exceed 1 dwelling per 5 acres. Given the topography, and restrictions on building sites that already exist in the LEP & DCP, this would deliver an outcome similar to that carried out by the council at Cadwells Rd on land currently zoned rural 1(d), where large amounts of bushland remain undisturbed. It overcomes all of the objections landowners have to both community title and cluster subdivision, providing flexibility to cater for the wide range of landforms and wishes of landowners, while at the same time producing an outcome that satisfies environment concerns.

5 Acres Now supports 'density' or 'averaging' subdivision similar to that carried out in the current rural 1(d) area, where there was no requirement for community title, nor any requirement for cluster subdivision together with the associated development controls that were proposed in conjunction with the 2005 draft plan, such as disallowing separate driveways and recreational facilities. We wish to see clause 4.2B amended to remove the requirement for community title, and provide for 'lifestyle subdivision' instead of 'cluster subdivision', as detailed at the end of this submission.

### **Protecting agricultural land**

One of the most frequent justifications provided for continuing the prohibition on subdivision in the area is the goal of protecting the agricultural value of land.

However most land in the area is unsuitable for agriculture, as evidenced by the fact that in spite of the existing restrictions, by far the most prevalent land use is in fact residential. There is a very simple reason for this: food can be produced more cheaply elsewhere, on land that is more fertile and has better access to water. The most valuable use for land in the area is housing, not farming.

Secondly, those parts where the land is more suitable for agriculture are the very parts where the prohibitions against subdivision have been lifted. Some years ago it was Rouse Hill; now it is Maraylya,

Box Hill & Nelson – all areas with land relatively better for agriculture than the rural 1(b) areas of Glenorie, Kenthurst, Cattai, Maroota, etc where the prohibition against subdivision largely remains.

These facts demolish any suggestion that the goal of protecting agricultural land is a criterion that has been applied consistently in regard to setting minimum lot sizes in the rural area. It has not.

The focus on agriculture and primary production in the objectives for the area proposed to be RU2 in the draft LEP are totally inappropriate and should be changed to include the predominant land use, which is residential. Of all the template zones, the one which most closely matches the actual and future intended use is R5, large lot residential.

### **Environmental restrictions**

More recently the spotlight has turned away from protecting agricultural value to the goal of protecting the environmental value of land. The claim is that certain areas of regrowth or undeveloped land are of 'high value' to the community, and must therefore be protected. A map has been prepared, largely on the basis of aerial photographs, corresponding closely with areas that have not been cleared recently. These areas are then labelled 'biodiversity', or 'sensitive environmental land'.

Planning is supposed to be about responding to the needs of the community based on fact and evidence, not pandering to romantic notions of what some would like the area to look like, regardless of who is disadvantaged. Within living memory, attitudes towards bush and clearing have reversed, and will likely do so again. Such attitudes do not form a sound basis upon which to base planning decisions, particularly when they so dramatically override the interests and rights of property owners compelled to exclude parts of their land from development.

In reality, whatever value 'the community' places upon a particular resource will be reflected in demand and the price buyers are prepared to pay for it. Anything else – using the planning system to 'value' land for its alleged environmental benefits by prohibiting development on it – represents the use of force by some to further their agenda at the expense of others.

If there truly are those in the community who place a high value on land that cannot be developed, then we would see this reflected in the market. In areas where there were no restrictions against development, we would see cleared land converted back to bushland, and high prices paid for land that cannot be developed. Yet we see the exact opposite.

If 'the community', however defined, truly does value such land quarantining, then 'the community' must pay for it, not misuse the power of government to transfer ownership rights away from current owners. It is utterly wrong to require land to be quarantined from development as a condition for carrying out any development at all, when those in other areas do not face the same requirements. Development and environmental restrictions should be treated as 2 separate issues, not tied to each other in this way.

Our members reject the notion that their land should be quarantined from development without their consent, and without any compensation, to satisfy so-called 'environmental' objectives. We wish to see the biodiversity map removed from the LEP. At the very least, the council must seek the consent of landowners to any 'environmental' controls the council wishes to apply to their property.

### **The favourable treatment of Riverside Oaks’ proposal contrasted against decades of procrastination and unwillingness to support smaller lot sizes in our area.**

At around midnight during the last council meeting of 2010, a report came before the council supporting a proposal to increase the number of dwellings on the Riverside Oaks site to around 700, plus a 100 room hotel. It was passed without debate. Although the report referred to it as a tourist development, it is in fact a *housing* development – a fact confirmed in the report where they admit that it would not be viable as a stand-alone tourist facility – with an overall site dwelling density *6 times greater* than our organisation is calling for in the very same area! It is no more a tourist development than our call for 5 acre minimum lot sizes, since our proposal would do just as much to maintain and improve the scenic qualities that attract tourists.

As with the proposal to reduce the minimum lot size in the rural 1(a) area, our organisation is not opposed to the Riverside Oaks proposal; however we are very disturbed by the glaring double standard on display. Whereas our proposals have been met with decades of procrastination, the Riverside Oaks proposal has so far met *no* opposition from the council at all. In fact, one of the key arguments used against our calls to reduce the minimum lot size to 5 acres – the need to preserve agricultural land – was dismissed in the report with the comment that “*there has been very little agriculture practised in recent times on the site and indeed the surrounding sub catchment*” – the very same rural 1(b) sub catchment that our members live in!

Our members find it unacceptable that the council supports the Riverside Oaks proposal while continuing to resist our calls to reduce the minimum lot size to 5 acres in the very same area. If the council wishes to avoid the appearance of bias, it must immediately support our call to reduce the minimum lot size to 5 acres or equivalent density in the surrounding area.

### **Conclusion**

Throughout this decades-long saga it has become clear that the underlying motives for prohibiting development in the so-called ‘rural’ area have nothing to do with protecting agricultural land or the environment, or with providing a net public benefit and addressing those who may be disadvantaged. Rather, they seem more directed at reducing competition, and thereby protecting the interests of large developers who profit through high and medium-density ‘in-fill’ development.

Thanks to copious amounts of spin, the public have been persuaded that allowing the city to spread naturally in response to demand is a bad thing, and persuaded that urban consolidation is good. It is on the back of this spin that the restrictions on development in our area have been imposed.

However an honest appraisal of urban consolidation shows that not only has it failed to achieve its stated objectives; it has also produced side-effects that have directly reduced living standards. Sydney – a city surrounded by abundant land – is now the second most expensive urban housing market in the world after Hong Kong, diverting funds away from other more socially beneficial uses, and destroying the dreams of home ownership for many. Congestion has become worse, not better. Infrastructure has deteriorated, not improved. And concentration of the power to determine which land can be developed, and which cannot, into the hands of a small number of politicians and bureaucrats, has substantially increased opportunities for corruption.

While our call for a 5 acre dwelling density throughout the rural 1(b) area will not make much difference in the overall scheme of things, it will be a step in the right direction towards addressing these failures

of urban consolidation, and it will go some way to restoring faith in the planning system, especially among those disadvantaged by it. It is a reasonable call that owners have been making ever since the restrictions were first imposed several decades ago.

What is very disturbing is the way landowners' concerns have been continually sidelined or even ignored, regardless of the cogency of the arguments. It is unacceptable for council planning staff to advise callers, as they have done, that the community title proposal is being made on the basis of 'take it or leave it'; that if there is too much opposition to the proposal, then there is no prospect of amending the plan to incorporate what landowners have been seeking for decades – a simple reduction of the minimum lot size to 5 acres or equivalent dwelling density. Equally disturbing is the way that council staff characterise landowner calls for relaxing the restrictions as a benefit – as something that landowners are asking the council to give them. Landowners are not seeking any gift or benefit at all. What they seek is the removal of restrictions that few agreed to in the first place.

Many of our members are alarmed and angry at the way this conflicts with the principles of good government: as unbiased, objective, and in the public interest. It shouldn't have to be this hard to achieve a goal that by rights should be up to owners to decide upon, and which won't make much difference to anyone except those directly affected.

The way forward is quite simple and straightforward. The council needs to bring disaffected landowners back on board, and amend the draft plan so that it reflects their wishes and aspirations. It means seeking the consent of affected landowners prior to drafting biodiversity corridors or environmental zones, and reducing the minimum lot size to 5 acres or an equivalent density, without rafts of restrictions and conditions.

As the changes in Maraylya, Box Hill, and Nelson show, there is no need for any further studies, new strategies, or further delays. The area has been studied ad nauseam, and those affected have made their concerns extremely clear for decades. Landowners have been very tolerant of the liberties taken with their ownership rights, but aren't prepared to see them eroded further. Few would object to a minimum lot size that was reasonable – but no-one can defend a 25 acre minimum for property an hour from the CBD, and barely half an hour from the burgeoning western CBD areas.

The council has often claimed that it is powerless to take any action to redress this situation due to legislation and directives issued by the state government. 5 Acres Now accepts that this factor may make it difficult for the council to achieve some aims, but that should not stop the council from properly representing the interests of constituents. We can see no reason why the council cannot prepare plans that reflect the wishes of affected ratepayers, rather than the wishes of the state government. At worst, such plans may be rejected by the state government, but at least then the source of the roadblock would be revealed, allowing our members to stop wasting time dealing with the council. However, it is our firm belief that the new Liberal government is wise enough to understand and recognise the threat to our way of life that unreasonable restrictions like this cause, and receive the amended plan favourably.

### Suggested Amendments to the draft LEP

- Extend the RU4 zone and 2 hectare minimum lot size to those parts that are serviced by existing roads, and where agriculture is no longer the predominant use. RU2 would remain over most of the former Maroota state forest area.
- Remove the RU1 zone from properties no longer used for agriculture where requested by individual landowners.
- Amend clause 4.2B as below. The effect of this would be:
  - 1 dwelling per 2 hectares (5 acres) – unaltered.
  - No common land – each new lot would remain privately owned with one dwelling located on it.
  - No requirement for biodiversity map coverage in order to qualify for subdivision.
  - The minimum qualifying lot size reduced from 10 hectares (25 acres) to 4 hectares (10 acres).

- (1) The objective of this clause is to encourage rural ~~cluster~~ *lifestyle* subdivision that will ensure the land is developed, managed and conserved in a holistic and sensitive manner where affected by biodiversity.
- (2) This clause applies to land zoned RU2 Rural Landscape. ~~and affected by the Natural Resource Biodiversity Map~~
- (3) Despite Clause 4.1, Council may consent to the subdivision of land to which this clause applies, only if:
- (a) ~~the land is subdivided in accordance with the Community Land Development Act 1989 for a neighbourhood scheme, and~~
  - (b) the total area of the land to be subdivided is equal to or greater than ~~10~~ 4 hectares; and
  - (c) the subdivision will not result in more than 0.5 development lots per hectare; and
  - (d) each lot, other than a lot comprising neighbourhood property, to be created by the subdivision will have an area of not less than 0.4 hectares. ~~and an area not greater than 1 hectare.~~

### Other

- Remove clause 1.9A – Suspension of covenants, agreements, and instruments. This is an optional local clause that seeks to directly override private contract while retaining government-imposed agreements. It attempts to set the government above and outside the law, undermining an important cornerstone of our society.
- Remove clause 5.1A – Development on land intended to be acquired for public purposes. This represents the council exercising ownership rights over land prior to acquiring it. It unduly impacts upon property rights.
- Amend clause 5.4 (g) – Secondary dwellings. The criteria are too small. A more reasonable limit for the rural area would be 120 square metres or 40% of the total floor area combined.

- The following clauses should be removed, as they are all optional clauses that unduly impact upon ownership rights without sound reason or quantifiable public benefit, adding unnecessary costs to development, and hindering the productive and beneficial use of land:
  - Clause 5.9 – Preservation of trees or vegetation;
  - Clause 7.1 – Acid Sulphate Soils;
  - Clause 7.2 – Foreshore building line;
  - Clause 7.3 – Biodiversity (Terrestrial).