

GR6 – Planning Proposal – Boundary Adjustment and Minimum Subdivision Lot Size for Community Title Scheme & Associated Amendments to Wollondilly Development Control Plan 2016

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259421

TRIM 9019

Applicant: Wollondilly Shire Council
Owner: N/A

Stage	Completed
Preliminary notification	N/A
Gateway Determination	6 September 2016
Consultation with Public Agencies	September to November 2016
Specialist Studies	None required
Public exhibition/community consultation	February/March 2017
Referred to Minister for Publication	Not yet complete

EXECUTIVE SUMMARY

- This report addresses matters raised in discussion by Council when this matter was considered at the Ordinary Meeting of Council on 19 June 2017.
- It also seeks to finalise the Planning Proposal and accompanying amendments to the Wollondilly Development Control Plan 2016 (DCP).
- This Planning Proposal, prepared by Wollondilly Shire Council, seeks two (2) separate amendments to the *Wollondilly Local Environmental Plan 2011* to introduce development standards which will apply to the subdivision of community title schemes and to allow boundary adjustments.
- The Planning Proposal is accompanied by proposed amendments to the DCP to guide the assessment of development applications seeking boundary adjustments.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.

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- It is recommended that:
 - Council support the Planning Proposal in the form subject to community consultation
 - the Planning Proposal be forwarded to the Greater Sydney Commission for finalisation
 - Council amend the Wollondilly Development Control Plan, 2016 with amendments effective from the date at which the amended LEP is published
 - a fact sheet on boundary adjustments is prepared to complement the amendments
 - the applicant and persons who made submissions be notified of Council's decision.

REPORT

1.1 DESCRIPTION OF PROPOSAL

The Planning Proposal brings together two (2) separate changes to *Part 4 – Principal development standards* of the *Wollondilly Local Environmental Plan 2011* (Wollondilly LEP).

1. Introduction of a minimum lot size for the subdivision of community title schemes (proposed Clause 4.1AA).
2. To allow boundary adjustments with development consent on land within certain land use zones (proposed clause 4.2B).

The planning proposal has two (2) objectives.

- To prevent land fragmentation and inappropriate densities across the shire which result from community title schemes in inappropriate locations.
- To enable boundary adjustments within all rural land use zones, E4 Environmental Living and R5 Large Lot Residential to provide greater flexibility to landowners.

The intended outcome of the proposal is the orderly development of land across the shire.



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1.2 NOTABLE CHANGES TO STATE ENVIRONMENTAL PLANNING POLICY FOR EXEMPT DEVELOPMENT

On 14 July 2017 changes were made to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) which affect boundary adjustments.

As a result of the recent changes the likelihood of development applications for boundary adjustments under the proposed new boundary adjustment clause in the Wollondilly LEP has been significantly reduced.

In previous versions of the Codes SEPP, boundary realignments or boundary adjustments could only be undertaken (without the need for development consent) so long as the boundary adjustment did not result in any lot being smaller than the minimum lot size.

The recent changes involved an amendment to the wording and now provide more flexibility. Subject to development standards, boundary realignments can now be undertaken as exempt development, which will result in lots smaller than the minimum lot size if those lots were already smaller than the lot size.

The recent change has mostly addressed the issue this planning proposal seeks to rectify. However, the proposed amendment to the Wollondilly LEP is still considered to have strategic planning merit as there will be land that the exempt development provisions don't apply to. The amendment will enable consideration of boundary adjustments which don't meet the development standards for exempt development but are otherwise minor.

1.3 RESPONSE TO MATTERS RAISED BY COUNCIL AT MEETING ON 19 JUNE 2017

A report was considered by Council at the Ordinary Meeting of Council on 19 June 2017. The purpose of the report was to advise Council of the outcome of the public exhibition and seek support to finalise the amendment to the Wollondilly LEP and draft amendments to the *Wollondilly Development Control Plan 2016*. A copy of the report & minutes from the June meeting is provided at Attachment 1.

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A number of matters were raised during the discussion of the report and Council resolved to defer the matter.

- That Council planners meet with the Mulley and the Mulley-James families
- Potential ambiguity & robustness of DCP provisions relating to reconfiguration of the lot & resemblance of lots
- Potential rural interface concerns (particularly in relation to R5 land)
- Preventing the consolidation of lots
- Protecting rural land
- Protecting environmentally sensitive land.

Council planners to meet with the Mulley and Mulley-James families

Council planners were asked to meet with the Mulley and Mulley-James families to identify whether they can be assisted.

The Mulley and Mulley-James families addressed the Community Forum on 13 June 2017 and support the principle of the proposal to introduce boundary adjustments as they consider this would benefit their desire to adjust the boundary on land they own in Wollondilly.

Council's Manager Sustainable Growth has met with the Mulley and Mulley-James families.

The principle of the proposed boundary adjustment amendment is to enable a 'boundary adjustment' only and not a 'boundary change', i.e. allow a minor realignment of lot boundaries but not any change such as a reconfiguration of the lots.

Based on the limited information provided, the Mulley and Mulley-James proposal would appear to be a reconfiguration of the lots (a re-subdivision) and not a boundary adjustment. As a result, the proposed amendment to the Wollondilly LEP will not assist their plans.

It is not considered possible or appropriate to amend the planning proposal for a development standard change to suit an individual scenario. No changes are recommended to address this matter.

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Potential ambiguity & robustness of DCP provisions relating to reconfiguration of the lot & resemblance of lots

Concern has been raised with two (2) of the proposed criteria included within the proposed development control plans, which set out that a boundary adjustment must:

- *Not result in a significant reconfiguration of the lots and*
- *Bear some resemblance to the lots which existed before the adjustment.*

In particular, that this criteria is unclear and will not adequately control development applications for boundary adjustments.

There is no known widely adopted definition of a boundary adjustment however, the Land & Environment Court (the Court) has considered the term in a number of cases.

Based on a review of previous considerations by the Court it was considered that the best approach was not to define 'boundary adjustments' within the Wollondilly LEP and instead include a list of criteria within the DCP. One reason for this is that the Land and Environment Court have not established what constitutes a boundary adjustment. It is also noted that a definition does not exist in other local environmental plans within NSW that have boundary adjustment clauses.

Inclusion of some criteria within the DCP is considered beneficial to provide clear indication that a boundary adjustment does not include all or any changes to boundaries. However, it is still considered beneficial to provide a degree of flexibility in its interpretation. This is because development applications seeking boundary adjustments are likely to vary considerably and any assessment will be heavily based on the individual merit of the case.

The criteria reflect the key types of consideration given by the Land & Environment Court. Additional controls could be included.

- To prevent the creation of 'new' boundaries.
- To limit alteration of boundaries to corrections and regularisations.
- That any new boundary must have a relationship to an existing boundary.

These have not been included as they may be too restrictive to apply in all situations.

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One alternative is to prepare a Fact Sheet to complement the proposed controls within the development control plan. A Fact Sheet, while it will not have any statutory power, would allow a more detailed explanation of a boundary adjustment which is difficult to provide within the DCP which is limited by its legal format. The Fact Sheet could also include diagrams to illustrate what is meant by a lot reconfiguration and the need to bear resemblance to the original lot. The Fact Sheet could be made available on Council's website to assist customers.

Please note that the reference to the lots which existed before the adjustment in control 2.11(1)(b) is not a reference to the Original Land Holding.

Potential rural interface concerns (particularly in relation to R5 land)

There is a concern that the introduced permissibility of boundary adjustments may allow the creation of small lots, such as 450sq.m, in periphery areas that could lead to land use conflict.

This scenario is unlikely to occur. A boundary adjustment does not include any or all alterations of a boundary. So unless the existing lot arrangement already includes a small lot than it is unlikely that a boundary adjustment would result in this sort of configuration because the development proposal would not meet the requirements of a boundary adjustment. This is because the resulting lots are unlikely to bear some resemblance to the lots which existed before the adjustment and it may also be considered a reconfiguration.

For this reason it is not considered necessary to specifically limit boundary adjustments on land zoned *R5 Large Lot Residential* so that the lot size cannot be changed by more than 20%. It is noted that there may be scenarios where a change of more than 20% could still provide a logical outcome.

Preventing the consolidation of lots

There was concern that the inclusion of draft control 2.11(1)(c) would prevent the consolidation of lots. This is not the intention of the proposed control.

Control 2.11(1)(c) indicates that the boundary adjustment must *not result in a consolidation of the lots...*

Consolidation of lots can be undertaken without development consent and the draft controls within the DCP will not change this right.

Growth

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The reason for including draft control 2.11(1)(c) is to assist in indirectly defining a boundary adjustment and does not prevent the consolidation of lots outside boundary adjustments. Its particular relevance is to indicate that a boundary adjustment does not include the consolidation of lots and their re-subdivision into new lots even if the result is still the same number of lots.

Protecting Rural Land

There was a concern that boundary adjustments could impact the agricultural viability of rural land by fragmenting it.

Proposed DCP Clause 2.11(1)(e) already seeks to prevent fragmentation of land. It indicates that a boundary adjustment must *not fragment or degrade land*. However the inclusion of additional criteria with a focus on rural land would provide a clear intent.

It is proposed that the additional criteria should refer to ‘agricultural potential’ rather than ‘rural use’:

Not negatively alter the agricultural potential of rural zoned land

Protecting environmentally sensitive land

Concern was also raised about the potential for a boundary adjustment to fragment land within an environmental protection zone (i.e. E2 Environmental Conservation and E3 Environmental Management) or land which includes threatened ecological communities.

The controls which will apply to development applications for boundary adjustments will be located within the Wollondilly LEP and the Wollondilly DCP 2016. A table is provided at Attachment 2 to show how these controls work together across a number of development considerations to control boundary adjustments.

A provision to protect environmentally sensitive land is included within the proposed local environmental plan amendment. Proposed clause 4.2B(4)(e) will require that before determining a development application the consent authority must consider that the boundary adjustment *will minimise any impact upon threatened species, ecological endangered communities and vegetation*.

The Wollondilly LEP has more statutory power than the DCP. As legislation that must be applied, it therefore provides stronger protection for environmentally sensitive land. The DCP only provides guidance and its controls can be varied where justified.

It is not considered necessary to include additional controls within the DCP.

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2. PLANNING PROPOSAL

The Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 and the guidelines published by the Department of Planning and Environment. As discussed in this report some of the wording to the proposed clauses within the Planning Proposal has been revised from what was publicly exhibited in response to matters raised through consultation.

Council's options are:

1. Resolve to support the Planning Proposal in the form as described in Section 2.1 to this report.
2. Resolve to support the Planning Proposal in another form. With this option a new Gateway Determination and a new public exhibition period may be required.
3. Resolve not to support the Planning Proposal.

Option 1 is the recommendation of this report.

2.1 FINAL FORM OF PLANNING PROPOSAL

2.1.2 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011 (WLEP 2011)

Based on the consultation and engagement one (1) minor change is proposed to the planning proposal as exhibited.

The change is to extend the type of land to which boundary adjustments clause will apply to include land within an E3 Environmental Management land use zone. This change is considered to be minor and is in response to an internal submission from specialist staff. The change to the relevant clause is shown in **bold** below:

- (2) *This clause applies to the following land use zones:*
- (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone RU4 Primary Production Small Lots,*
 - (d) *Zone R5 Large Lot Residential,*
 - (e) **Zone E3 Environmental Management,**
 - (f) *Zone E4 Environmental Living.*

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The Planning Proposal seeks amendments to Wollondilly LEP 2011 as described below:

- Adopt option *Standard Instrument – Principal Local Environmental Plan clause 4.1AA Minimum subdivision lot size for community title schemes*
- Insert new clause *4.2B Boundary adjustment within certain residential, environment protection and rural zones.*

2.1.3 WOLLONDILLY DEVELOPMENT CONTROL PLAN, 2016 (WDCP 2016)

Amendments are proposed to WDCP 2016 to include additional controls within *Volume 3 – Subdivision of Land, Part 2 – General Requirements for All Development* to provide guidance to support the proposed Clause 4.2B which introduces the permissibility of boundary adjustments with development consent.

The table at Attachment 2 provides a description of the proposed controls which seek to guide development in terms of:

- defining a boundary adjustment
- biodiversity/environmentally sensitive land
- land fragmentation
- orderly and logical development.

These amendments were placed on public exhibition for more than 28 days with the Planning Proposal. No submissions raised issues relevant to the proposed amendments to WDCP 2016.

Based on discussion of this matter at the Ordinary Meeting of Council on 19 June 2017 it is proposed to amend control 1 to include an additional criteria.

The additional criteria is shown in **bold** below.

1. *The boundary adjustment must:*
 - a. *Not result in a significant reconfiguration of the lots; and*
 - b. *Bear some resemblance to the lots which existed before the adjustment; and*
 - c. *Result in an orderly and logical lot pattern; and*
 - d. *Not fragment or degrade the land; and*
 - e. ***Not negatively alter the agricultural potential of rural zoned land.***

A copy of the full proposed amendments to the WDCP 2016 is provided at Attachment 4.

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FINANCIAL IMPLICATIONS

Funding for this project to date has been achieved through Council's adopted Fees and Charges.

Council has experienced a record increase in the number of Planning Proposals submitted in addition to the Wilton Junction project. Note that the Wilton Junction project is not a planning proposal but has had significant impact on Strategic Planning resources. All proposals which result in an increased intensity of land use within the Shire shall also lead to increased demand for Council services and facilities over time. Council will need to consider this in the adopted budget and forward estimates.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Report & Minutes to Ordinary Meeting of Council on 19 June 2017
2. Table showing how the proposed planning controls will address development considerations
3. Clause 4.1AA Minimum subdivision lot size for community title schemes
4. Clause 4.2B Boundary adjustment within certain residential, environment protection and rural zones
5. Draft Amendment to Wollondilly Development Control Plan 2016 for adoption

RECOMMENDATION

1. That Council support the amendment to the planning proposal as described in Section 2.1.2 and adopt and make the draft Local Environmental Plan under delegation for the Boundary Adjustment and Minimum Subdivision Lot Size for Community Title Schemes Planning Proposal to amend the Wollondilly Local Environmental Plan 2016 as follows:
 - amend Part 4 to insert clause 4.1AA Minimum Subdivision lot size for community title schemes, and
 - amend Part 4 to insert new clause 4.2B Boundary adjustment within certain residential, environmental protection and rural zones.
2. That in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979 the Planning Proposal be forwarded to Parliamentary Counsel and the Greater Sydney Commission with a request to make arrangements for the drafting of the amended Local Environmental Plan in the form as detailed in this report and in the Planning Proposal.

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3. That Council support the amendments to WDCP 2016 as described in Section 2.1.3 to this report.
4. That in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000 public notice is given of Council's decision to adopt the Wollondilly Development Control Plan 2016 in a local newspaper within 28 days.
5. That a Fact Sheet be prepared to complement the boundary adjustment controls within the amendment to the local environmental plan and the development control plan.
6. That the Fact Sheet be made available on Council's website.
7. That the applicant and persons who made submissions regarding the Planning Proposal be notified of Council's decision.