

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 20 June 2016

PE4 – Draft Planning Proposal – Lot Boundary Adjustments

PE4

Draft Planning Proposal – Lot Boundary Adjustments

259421

TRIM 9019

Stage	Completed
Preliminary notification	None required
Gateway Determination	Not yet completed
Consultation with Public Agencies	Not yet completed
Specialist Studies	Not yet completed
Public exhibition/community consultation	Not Yet completed
Referred to Minister for Publication	Not yet completed

Planning & Economy

EXECUTIVE SUMMARY

- This report seeks to initiate a planning proposal to enable boundary adjustments with development consent between adjoining lots zoned Rural, Environmental Living and Large Lot Residential where one or both of the lots will not meet the minimum lot size.
- The proposal will involve amending the Wollondilly Local Environmental Plan, 2011 by inserting a new clause under *Part 4 Principal development standards*.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirement 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.
- It is recommended that Council initiate a planning proposal to amend the Wollondilly Local Environmental Plan 2011 by including a new clause to enable boundary adjustments between adjoining lots in all rural land use zones, E4 Environmental Living and R5 Large Lot Residential.

REPORT

1.1 LAND TO WHICH THIS PLANNING PROPOSAL WOULD APPLY

The planning proposal would apply to all land within the Shire which has a rural land use zone as well as land zoned E4 Environmental Living and R5 Large Lot Residential.

1.2 BACKGROUND & CURRENT OPTIONS FOR BOUNDARY ADJUSTMENTS

A 'boundary adjustment' is a form of subdivision which involves a minor realignment of boundaries between 2 or more lots. There is not an existing definition as to what constitutes a boundary adjustment and a definition is not proposed as part of this proposal.

PE4 – Draft Planning Proposal – Lot Boundary Adjustments

There are a number of NSW Land and Environment Court cases which have considered this issue and these have established the following principles:

- a boundary adjustment does not include any and all alterations of a boundary
- a boundary adjustment is generally taken to mean alteration of a boundary by correction or regularisation to reflect actual conditions (such as the physical features of land) or for example to make the use of land feasible or more practical
- the resulting lots should bear some resemblance to the lots which existed before subdivision

It is important to note that the intention of this proposal is not to enable a 'boundary change' (i.e. any change) but rather a 'boundary adjustment' in the form of a minor realignment of lot boundaries.

There are a number of benefits to boundary adjustments, including:

- To facilitate improved land management outcomes;
- To address issues when a property is sold;
- Rectifying encroachments;
- To enable larger agricultural production units;
- Enabling the creation of more logical property boundaries
- Reducing land conflict.
- Consolidation of lots

A boundary adjustment will generally have minor effects, particularly as a new lot is not being created. At present the following options are available for boundary adjustments:

- As exempt development (i.e. don't need planning or building approval) under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP);
- With development consent under the *Wollondilly Local Environmental Plan 2011* (WLEP 2011)

Exempt Development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP)

At present there is limited scope to undertake boundary adjustments as exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. In order to meet the exempt requirements the boundary adjustment must not result in any lot that is smaller than the minimum lot size. If the lot is already smaller than the minimum lot size then it must increase in size as a result of the boundary realignment. The minimum lot size for land in Wollondilly is specified in the *Wollondilly Local Environmental Plan 2011* (WLEP 2011).

PE4 – Draft Planning Proposal – Lot Boundary Adjustments

Due to the historical pattern of subdivision within Wollondilly there are a significant number of rural lots which are smaller than the minimum lot size specified in the WLEP 2011. Subsequently the exempt development provisions under the SEPP are not applicable to most rural zoned land in the Shire.

Development Consent under the Wollondilly Local Environmental Plan 2011 (WLEP 2011)

The only other opportunity to realign boundaries is by lodging a development application to Council. The WLEP 2011 sets out the statutory provisions for subdivision in Part 4 Principal development standards.

The WLEP 2011 provides 2 opportunities for consideration of subdivision which could apply to a boundary adjustment.

Clause 4.1 Minimum subdivision lot size - subdivision under this clause can only be permitted where both lots, after subdivision, would be not less than the minimum lot size. It therefore does not provide a flexible option for boundary adjustments for rural zoned land.

Clause 4.2 Rural subdivision - this clause provides flexibility by allowing rural zoned land to be subdivided to create lots which are smaller than the minimum lot size where these are subdivided for the purpose of primary production. The focus of this clause is where additional lots result from a subdivision and dwellings are not permitted on the newly created lots. While, it provides some flexibility to subdivision it is not an effective mechanism for enabling boundary adjustments as it does not allow rural landholders who wish to legitimately realign lot realign boundaries to do so while retaining dwelling entitlements.

What this means is that there is no current mechanism for certain landowners to undertake boundary adjustments.

1.3 DESCRIPTION OF PROPOSAL

The proposal would involve inserting a new clause within Part 4 Principal development standards of the WLEP 2011 to enable boundary adjustments on lots which are smaller than the minimum lot size identified on the Lot Size Map.

The new clause would have the following characteristics:

- the objectives of the land use zone can still be achieved
- the boundary adjustment will not result in the creation of additional lots
- the boundary adjustment will not result in a lot that could then be subdivided

PE4 – Draft Planning Proposal – Lot Boundary Adjustments

- the boundary adjustment will not result in the number of dwellings or potential for additional dwellings being increased
- the natural and physical constraints of the land should be considered
- the clause should not apply to strata plan of community title schemes.

It is also considered beneficial to extend the flexibility proposed by this proposal so that it also applies to land zoned 'E4 Environmental Living' and 'R5 Large Lot residential'.

CONSULTATION

2.1 FORMAL CONSULTATION WITH COUNCIL STAFF THAT PROVIDE SPECIALIST COMMENT

No formal comments have been sought from Council staff across Council at this point in time.

However, as planning staff frequently receive enquiries from landowners interested in making boundary adjustments to their land preliminary comments have been sought on the scope of the proposed new clause.

In particular, the following points are noted for incorporation into the proposal:

- Ambiguous terms which require further explanation should be avoided to ensure clarity around the future application of the clause. For example, basing the suitability on the agricultural viability of the lots to be created.
- A provision based on a percentage change in lot size in order to define 'minor' was considered inappropriate for rural land (for example that the change in the area of any lot by more than x%). This is due to the potential size of lots which have a rural or environmental protection land use zone.
- there was an interest in making boundary adjustments exempt development. However, after a review of the approach taken by a number of other local government authorities in NSW there are very few local environmental plans which include an exempt provision for boundary changes and of these even fewer, if any, were relevant to the Wollondilly situation. Given most Councils have approached boundary adjustments through a clause in Part 4 it is considered that this is the best approach initially.
- In order to protect biodiversity on land zoned E2 Environmental Conservation, E2 land will not be subject to the proposed boundary adjustments clause.

PE4 – Draft Planning Proposal – Lot Boundary Adjustments

2.2 CONSULTATION WITH PUBLIC AGENCIES

Consultation with public agencies would normally occur when and if a Gateway Determination has been issued.

It is noted that restrictions around boundary adjustments and the provisions within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP) has been an ongoing issue in Wollondilly for some time now. Council staff has corresponded at various times with the NSW Government Department of Planning & Environment on this issue and had understood changes to the SEPP were being considered.

The most recent advice from the Department has been to suggest that Council consider introducing a clause within the WLEP 2011 to enable boundary adjustments similar to that introduced by other Councils around the state to address similar issues.

2.3 COMMUNITY CONSULTATION

No community consultation has been held to date. However, based on anecdotal evidence, Council receives frequent enquiries from landholders wishing to undertake logical boundary adjustments which involve undersized lots and are therefore prohibited. Subsequently, it is considered that there is likely to be community support for the introduction of a clause within the WLEP 2011 to enable boundary adjustments on undersized lots.

If a Gateway Determination is issued by the Minister, or their delegate, it is more than likely to require a formal period of community consultation.

2.4 PREPARATION OF A PLANNING PROPOSAL

Should Council resolve to support the proposal, a Planning Proposal will be prepared in accordance with Section 55 to the *Environmental Planning and Assessment Act, 1979* and guidelines published by the Department of Planning and Environment. The Planning Proposal is then forwarded to the Minister for Planning and Environment for a Gateway Determination.

Council's options are:

1. Resolve to support the proposal and prepare a Planning Proposal accordingly. Matters can be more fully investigated as determined by the Gateway process.
2. Resolve that a Planning Proposal be prepared in a form different to the proposal. Matters can be more fully investigated as determined by the Gateway process.
3. Resolve not to support the Planning Proposal.

Option 1 is the recommendation of this report.

PE4 – Draft Planning Proposal – Lot Boundary Adjustments

3.1 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011 (WLEP, 2011)

The proposed amendments to WLEP 2011 are described below:

- Amend Part 4 Principal development Standards by introducing a clause to permit boundary adjustments with consent in rural zones (RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots), E4 Environmental Living and R5 Large Lot Residential.

3.2 WOLLONDILLY DEVELOPMENT CONTROL PLAN 2016 (WDCP 2016)

There may be a need to provide further guidance within WDCP 2016 on the application of any new clause relating to boundary adjustments.

The need for controls to support the proposal will be considered after a Gateway Determination has been issued and would be based on the outcomes of consultation with public agencies, internal staff and the community.

FINANCIAL IMPLICATIONS

Funding for the maintenance of Council's suite of planning instruments is part of the ongoing operational budget for Strategic Planning and no additional funding sources are required. This matter has no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS

1. Nil.

RECOMMENDATION

1. That Council support the preparation of a Planning Proposal to amend Part 4 of Wollondilly Local Environmental Plan 2011 by inserting a new clause to permit boundary adjustments with consent in all rural land use zones (RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots), E4 Environmental Living and R5 Large Lot Residential.
2. That the Planning Proposal be forwarded to the Minister for Planning and Environment for a Gateway Determination.
3. That Council request the Minister to grant Council delegation to make the amendments to Wollondilly Local Environmental Plan, 2011 in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979.