

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 19 June 2017

PE3 – Post Exhibition Boundary Adjustment and Minimum Subdivision Lot Size for Community Title Scheme Planning Proposal

PE3

Post Exhibition Boundary Adjustment and Minimum Subdivision Lot Size for Community Title Scheme Planning Proposal

265508

TRIM 9019

Applicant: Wollondilly Shire Council
Owner: Shire Wide

Stage	Completed
Preliminary notification	NA
Gateway Determination	6/9/2016
Consultation with Public Agencies	08/09/2016 – 11/11/2016
Specialist Studies	NA
Public exhibition/community consultation	01/02/2017 – 03/03/2017
Referred to Minister for Publication	Not yet complete

EXECUTIVE SUMMARY

- The purpose of this report is to advise the outcomes of a public exhibition and seek Council’s support to finalise a Planning Proposal prepared by Wollondilly Shire Council. The proposal is to amend the provisions of Wollondilly Local Environmental Plan, 2011 to introduce the following two (2) additional principal development standards:
 - Clause 4.1AA Minimum subdivision lot size for community title schemes
 - Clause 4.2B Boundary adjustment in certain rural, residential and environment protection zones.
- The Planning Proposal is accompanied by amendments to the Wollondilly Development Control Plan, 2016 for Clause 4.2B Boundary adjustment in certain rural, residential and environment protection zones
- One submission was received in response to Community Consultation. This submission was in support of the proposal.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend 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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- This report recommends:
 - Council support the Planning Proposal in an amended form to that which was 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 and publish the decision in a local newspaper.
 - the applicant and persons who made submissions be notified of Council's decision.
 - a review of E4 zoned land be further considered after the completion of a Rural Land Use Strategy as part of Council's approach to the Metropolitan Rural Area described in the District Plan.

REPORT

1.1 SITE DESCRIPTION

The Planning Proposal relates to all land across the Wollondilly Shire Council within the following land use zones:

- RU1 Primary Production
- RU2 Rural Landscape
- RU4 Primary Production Small Lots
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- E4 Environmental Living.

1.2 DESCRIPTION OF PROPOSAL

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

The first being the introduction of a minimum lot size for the subdivision of community title schemes.

The second proposed change aims to provide flexibility to subdivision by allowing boundary adjustments with development consent on land within certain land use zones.

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The planning proposal has two (2) objectives:

1. To prevent land fragmentation and inappropriate densities across the shire which result from community title schemes in inappropriate locations.
2. 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.

1.3 DRAFT DEVELOPMENT CONTROL PLAN

The objective of the Draft Development Control Plan (DCP) is to support Clause 4.2B (i.e. boundary adjustments) of the Wollondilly LEP by providing planning controls to guide development for boundary adjustments where they require development consent.

The intended outcome of the draft DCP provisions are to streamline the development application process for boundary adjustments under proposed Clause 4.2B to guide development for boundary adjustment and to avoid the need to vary existing DCP controls.

Council resolved to support the public exhibition of the draft DCP provisions at its meeting held on 19 December 2016. The draft provisions were exhibited at the same time as the Planning Proposal, no feedback was received on these controls.

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1.4 GATEWAY DETERMINATION

A Gateway Determination was issued dated 6 September 2016. The Determination permitted the proposal to proceed. The conditions of the Gateway Determination are summarised in the following table with comments as to how these have been addressed in the Planning Proposal process.

Gateway Condition	Addressed by:
<p>Consultation with Transport for NSW – Roads and Maritime Service, Office of Environment and Heritage, and NSW Rural Fire Service</p> <p>Each Public Authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given 21 days to comment.</p> <p>Should the public authorities require any additional information, or specify any additional matters to be addressed the planning proposal is to be updated to respond to any such submission, a copy of which is to be included in any updated planning proposal.</p>	<p>Completed</p>
<p>Community consultation is required under section 56(2) and 57 of the Act as follows:</p> <p>(a) The planning proposal must be publically available for 14 days.</p> <p>(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).</p>	<p>Completed</p>
<p>A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.</p>	<p>Noted</p>
<p>The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.</p>	<p>Noted</p>

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CONSULTATION

2.1 FORMAL CONSULTATION WITH COUNCIL STAFF THAT PROVIDE SPECIALIST COMMENT

The following comments on the Planning Proposal were received from Council staff:

Development Assessment

Concerns that restricting community title subdivision to land that only meets the minimum lot size may result in fragmented vegetation and a poor environmental outcome on land zoned E4.

Suggest changing to all Community Title subdivision of E4 zone to be considered on lots less than the minimum shown on the Lot Size Map, provided that the average lot size complies with the minimum lot size shown on the Lot Size Map. With a requirement to only allow it where Council considers it necessary to achieve the zone objectives.

These changes would enable a potentially better lot layout and the environmental land would be retained in private ownership without 'encouraging' the need for gifting land to council or it staying in a private lot but being poorly managed as fragmented vegetation.

Assessing Officers Comment

In 1996 a 7(c) Environmental Protection – Rural Living Zone was added to the Wollondilly Local Environmental Plan 1991 to achieve what is outlined in the development assessment teams comments. This flexibility was lost when Council moved to the standard instrument LEP in 2011.

Although there may be some benefit for specific development applications there is concern that introducing this change without proper investigation may not get the optimum balance.

The issue raised in this submission could be more thoroughly investigated in a review of E4 zoned. However this should occur after the development of a Rural Lands Study.

2.2 CONSULTATION WITH PUBLIC AGENCIES

The Gateway Determination required consultation with the following Public Agencies:

- Transport for NSW
- NSW Rural Fire Service
- Office of Environment and Heritage.

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This consultation was carried out prior to Public Exhibition and was held from 8 September 2016 to the 11 October 2016. The following is a summary of the matters raised by public authorities and assessment comments.

Transport for NSW (TfNSW)

TfNSW reviewed the submitted information and had no comment on the above Planning Proposal.

NSW Rural Fire Service (NSW RFS)

The RFS reviewed the Planning Proposal and made no objection to its progression.

Office of Environment and Heritage (OEH)

No objection was raised to the introduction of minimum subdivision lot sizes for community title schemes. However, in regard to the proposed boundary adjustment clause, it was recommended that the wording for Clause 4.2B(4)(d) be slightly amended **from:**

(d) 'will not adversely impact the curtilage of a heritage item,'

to:

(d) 'will not impact on the heritage significance of a heritage item including its curtilage, character or the setting'.

On a number of instances, boundaries of the heritage items are historically significant and alterations to the boundaries may impact the significance of the heritage item and therefore the consent authority should aim to retain the integrity of the original.

Comment

The proposal has been amended to incorporate the suggested wording for Clause 4.2B.

Boundary adjustment under the proposed clause is only permissible with development consent. Volume 1 of the Wollondilly Development Control Plan, Part 5.3 Control 4 outlines requirements for the subdivision of land containing a heritage item and/or land within a heritage conservation area. These controls stipulate that any subdivision of the land:

- 1. Must not compromise or adversely affect any historic layout of the subject lot and heritage significance of the original lot pattern.*
- 2. Must not compromise the curtilage of any heritage item or significant complimentary building, garden, driveway or other relic.*

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2.3 COMMUNITY CONSULTATION

The Gateway Determination specified a **14 day** period of community consultation and public exhibition, however as the Draft DCP was exhibited at the same time, public exhibition was extended to over **28 Days** in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000 and was held from 1 February 2017 to 3 March 2017.

During this time the Planning Proposal, specialist studies and other documents as required by the Gateway Determination along with the Draft Development Control Plan were made available for public viewing on Council’s website and at Council’s Administration Building and Council’s Library. A public notice was placed in the local newspaper. Emails were sent to those who had identified their interest in the proposal previously.

Only one submission was received from the community. This submission was in support of the proposal and identified a current circumstance where they have been prevented from undertaking a boundary adjustment to rural land due to the land not meeting the minimum lot size requirements.

Issue Raised	Assessment Comment
Supportive of the proposal in relation to Clause 4.2 B. Current circumstance where they have been unable to carry out a boundary adjustment to rural land due to the land not meeting the minimum lot size requirements. <i>“The changing of the boundary adjustment ruling will allow us to combine the land that we inherited in equal portions to our one acre lots.”</i>	Noted

2.4 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 an amended form as described in Section **2.14** to this report.

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2. Resolve to support the Planning Proposal in another form to that which is described in this report. With this option a new Gateway Determination, amended specialist studies 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.

**2.5 A PLAN FOR GROWING SYDNEY (DECEMBER 2014) AND DRAFT
AMENDMENT: TOWARDS OUR GREATER SYDNEY 2056 (NOVEMBER 2016)**

A Plan for Growing Sydney was released on 14 December 2014 and is an action plan which will guide land use planning decisions for the next 20 years for the Sydney Metropolitan Area. It seeks to influence how people move about, where they live, growing the economy and safeguarding the environment.

This planning proposal does not deliver upon the strategic directions contained in the Plan nor is it inconsistent with any of these directions.

The proposed changes are not inconsistent with A Plan for Growing Sydney.

**2.6 DRAFT GREATER MACARTHUR PRELIMINARY LAND RELEASE STRATEGY
(SEPTEMBER 2015)**

The Draft Greater Macarthur Preliminary Land Release Strategy identifies Menangle Park, Mount Gilead and Wilton as Priority Growth Areas with potential to accommodate 35,000 new homes by 2036.

The draft strategy proposes that up to 2036 areas outside these Priority Growth Areas will remain rural in nature, with small scale development that can be supported by the existing infrastructure and transport network.

This proposal supports this strategy as it seeks to prevent unplanned residential development in rural areas within the strategy and across the Shire.

2.7 DRAFT SOUTH WEST DISTRICT PLAN (NOVEMBER 2016)

The South West District Plan was released by the Greater Sydney Commission in November 2016. The plan identifies a vision for south western Sydney over the next 20 years.

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The planning proposal and subsequent site specific development controls are not inconsistent with the plan and respond to the Sustainable Sydney - Managing the Metropolitan Rural Area priority in the plan. With particular reference to the following:

- Discourage urban development in the Metropolitan Rural Area
- Consider environmental, social and economic values when planning in the Metropolitan Rural Area
- Provide for rural residential development while protecting the values of the Metropolitan Rural Area.

2.8 SECTION 117 MINISTERIAL DIRECTIONS

The Gateway Determination for the proposal does not identify specific Ministerial Directions (S.117 Directions) that must be complied with however; the following Ministerial Directions (S.117 Directions) are relevant to the Planning Proposal:

- Direction 1.2 Rural Zones
- Direction 1.3 Mining, Petroleum and Extractive Industries
- Direction 2.1 Environmental Protection Zones
- Direction 2.3 Heritage Conservation
- Direction 3.1 Residential Zones
- Direction 3.4 Integrating Land Use and Transport
- Direction 4.2 Mine Subsidence and Unstable Land
- Direction 4.3 Flood Prone Land
- Direction 4.4 Planning for Bushfire Protection
- Direction 5.2 Sydney Drinking Water Catchments.

The planning proposal seeks to facilitate a shire wide policy change by allowing boundary adjustments within rural zones and applying the minimum lot size map to community title scheme subdivision. Therefore the proposal does not relate to a particular parcel of land. This means that the planning proposal does not contain specific provisions that will protect or preserve land that may be relevant under these Directions.

The planning proposal in and of itself will not lead to any strategic adverse impacts as any development application on land, which is for example environmentally sensitive or bushfire prone, would be subject to an assessment under existing statutory provisions on a site by site basis. This is considered to be satisfactory to safeguard the environment and resources.

Consequently, the planning proposal is either consistent with Ministerial Directions or any inconsistencies are of minor significance.

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2.9 STATE ENVIRONMENTAL PLANNING POLICIES

A review of State Environmental Planning Policies ('SEPPs') deemed SEPPs and draft SEPPs has been undertaken and the planning proposal is consistent with all of the relevant policies.

A number of these policies will be applicable at the development application stage, however as the proposal does not relate to any specific parcel of land the proposal will not have any impact at the strategic stage.

2.10 WOLLONDILLY COMMUNITY STRATEGIC PLAN 2033

The following CSP strategies are relevant to the Planning Proposal as described below:

Strategy CO4 – Engagement and Communication

Implement excellence in our community engagement by listening to and responding to the needs and concerns of our residents.

Comment

Consultation with the community and other stakeholders was undertaken prior and during the formal public exhibition period.

Strategy EN2 – Growth Management

Apply best practice environmental principles to the management of future growth.

Comment

The application of both proposed amendments will trigger a merit based assessment prior to approval and so potential impacts on biodiversity and riparian areas will be considered through the Development Application process.

Strategy EN3 – Development Assessment

Apply best practice environmental principles to the assessment of development and planning proposals.

Comment

The proposed changes to the WLEP will apply to land across the Shire and will not be site specific. Consequently there is no strategic likelihood of adverse impacts on the environment.

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Strategy EC3 – Manage Growth

Encourage and manage growth to ensure that it contributes to economic wellbeing.

Comment

The introduction of a minimum lot size to community title will support managed growth and help to ensure appropriate services and facilities are available as the community grows. This will also allow Council to more accurately anticipate growth and plan accordingly.

Additionally, the introduction of a clause for boundary adjustment to rural land will better enable lot consolidation, the development of larger agricultural production units and act to reduce land use conflict. This may help also help to support the economic viability of some agricultural uses in the Shire.

2.11 WOLLONDILLY GROWTH MANAGEMENT STRATEGY

At present there is no minimum lot size for community title subdivision within Wollondilly which means that in principle land across the shire can be subdivided so long as they have development consent. In rural areas these types of estates would fragment rural land in isolated locations away from existing towns and villages, services and infrastructure. In urban locations this type of subdivision could be used as a loophole to seek approval for subdivision at higher densities than would otherwise be permitted under the Wollondilly LEP 2011. The proposed adoption of the standard instrument clause 4.1AA (i.e. to introduce a minimum lot size for community title schemes) will reduce these risks and is considered to be consistent with the GMS.

Proposed clause 4.2B seeks to allow minor boundary adjustment and will not lead to any unplanned growth.

2.12 FINAL FORM OF PLANNING PROPOSAL

2.12.1 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011 (WLEP 2011)

Based on the consultation and engagement there were minor changes to the Planning Proposal as exhibited.

The Planning Proposal seeks to introduce two (2) additional principal development standards to WLEP 2011 as described below:

- Amend Part 4 to insert optional Clause 4.1AA Minimum subdivision lot size for community title schemes as shown in Attachment 1.
- Amend Part 4 to insert Clause 4.2B Boundary adjustment to certain residential, environment protection and rural zones as shown in Attachment 2.

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2.12.2 WOLLONDILLY DEVELOPMENT CONTROL PLAN, 2011 (WDCP 2011)

Amendments are proposed to WDCP 2011 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 as follows:

Proposed Control	Description
Land Fragmentation	Controls to prevent the fragmentation of rural land
Lot configuration	Controls to prevent large scale subdivision
Landscape and Character	Controls to ensure subdivisions are designed in a way that maintains or enhances the landscape
Corner allotments	Controls to ensure safe vehicular access
Building envelopes	To ensure constraints on rural and environmental land are considered before a boundary adjustment is carried out.
Traffic and Transport	Controls to provide for appropriate road access.
Wastewater	Controls to ensure the effective management of wastewater is considered
Stormwater	Controls to ensure the effective management of stormwater

These amendments were placed on public exhibition for over 28 days with the Planning Proposal. No submissions raised issues relevant to the proposed amendments to WDCP 2011. A copy of these controls are available in Attachment 3.

FINANCIAL IMPLICATIONS

Funding for the maintenance of Planning Instruments is part of the ongoing operational budget for Strategic Planning and no additional funding sources are required.

This matter has no direct financial impact on Council’s adopted budget of forward estimates.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Clause 4.1AA Minimum subdivision lot size for community title schemes
2. Clause 4.2B Boundary adjustment to certain residential, environment protection and rural zones
3. Draft Amendment to Wollondilly Development Control Plan, 2016

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RECOMMENDATION

1. That Council adopt and make the draft Local Environment Plan under delegation for the Boundary Adjustment and Minimum Subdivision Lot Size for Community Title Schemes Planning Proposal to amend the Wollondilly Local Environment Plan 2011 land within the following zones:

- RU1 Primary Production
- RU2 Rural Landscape,
- RU4 Primary Production Small Lots
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- E4 Environmental Living.

As follows:

- Amend Part 4 to insert optional Clause 4.1AA Minimum subdivision lot size for community title schemes
 - Amend Part 4 to insert Clause 4.2B Boundary adjustment to certain residential, environment 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.
 3. That Council amend the Wollondilly Development Control Plan 2016 in the form which was publically exhibited with amendments effective from the date at which the amended LEP is published.
 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 persons who made submissions regarding the Planning Proposal be notified of Council's decision.
 6. That a review of E4 zoned land be further considered after the completion of a Rural Land Use Study as part of Council's approach/response to managing the metropolitan rural area.