



Item: 6.3 **Ref:** WO/2018/00744
Title: Review of the Walcha Local Environmental Plan 2012
Author: Environmental Services Manager
Previous Items: WO/17/824
Attachment: No

Community Strategic Plan Reference:

Goal – 6.1 – Walcha’s distinct and diverse natural and built environment will be protected and enhanced.

Goal – 6.6 – The character of Walcha and its surrounding villages will be maintained while protecting the productivity of our rural land.

Introduction:

The purpose of this report is to recommend that Council:

1. Accept the prepared planning proposal,
2. Seek a Gateway Determination from NSW Planning and Environment (P&E) requesting to place the draft Walcha Local Environmental Plan (Walcha LEP) 2012 Amendment No 1– **LEP Review 2018** on public exhibition, and
3. Request plan making delegations in respect of this Planning Proposal under the provisions of Section 3.36 of the *Environmental Planning and Assessment Act 1979*.
4. Give delegation to the General Manager to make any minor drafting corrections required.

This report has previously come before Council’s Ordinary Meeting on 31 May 2017, but due to the finding of a drafting area relating to the zoning of land and the recent amendments to the *Environmental Planning and Assessment Act 1979* a new resolution is required stating the new relevant sections of that Act.

There would be five matters pertaining to the Planning Proposal:

1. Boundary Adjustments

To include the ‘standard’ LEP rural and environmental boundary adjustment clause in the Walcha LEP 2012. The boundary adjustment clause provides flexibility for boundary adjustment subdivisions. The proposed clause replaces the variation provisions previously found in the repealed State Environmental Planning Policy (SEPP) 1 Variations to Development Standards.

As local Councils produced their (standard instrument) Local Environmental Plans (LEPs), the new LEPs repealed the SEPP 1 Variations to Development Standards for that area. Clause 4.6 of the Standard Instrument LEP replaced the functions of the repealed SEPP, and this clause allows for variations to development standards such as lot size, height and floor space ratio. One of the functions lacking in Clause 4.6 is the ability to make boundary adjustments for rural and environmental zoned land that is already below the minimum lot size.

Many other regional Councils, including Inverell, Tamworth, Armidale, Moree, Uralla, and Glen Innes have amended their LEPs to include the ‘new’ boundary

Submitted to Council: 30 May 2018

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adjustment clause or local versions of that clause. Clause 4.2C from the Uralla Local Environmental Plan 2012 has been reproduced and adapted to suit the zone structure for Walcha as shown in the report below.

2. Detached Dual Occupancy Dwellings

To expand permissible uses within rural and environmental zones to include detached dual occupancies with certain restrictions. The intended outcome is to permit detached dual occupancies within the RU1 and RU4 Zones while ensuring that they remain in close proximity to the primary dwelling, share the same access and remain on the same title.

Certain rural detached dual occupancy dwellings were previously permissible with consent subject to justification under the former Walcha LEP 2000. As Councils made their new (stand instrument) LEPs, they were required to include *Dual Occupancies (attached)* only in their rural zones.

The need for detached dual occupancy dwellings in rural areas has been identified through the operation of the current Walcha LEP since it came into force in 2012. It is reasonable to allow a degree of separation between rural dwellings, particularly where a dual occupancy is occupied by older members of a farming family who want to remain on the land, but not live in a household directly adjoining that of other family members.

3. Permit Signage in the RE1 Public Recreation

Currently *signage* is prohibited in the Public Recreation Zone. It is considered that *signage* is a compatible use and it is proposed to make it permissible in this zone.

4. Include a Minimum Lot Size for subdivision in the E2 and E4 Zone

The need for this LEP amendment arose during the review of the maps relating to the Walcha LEP 2012. It was found that the existing subdivision minimum of 2 hectares was omitted. As a result of this error, there are no current requirements on subdivision for this land. There are 10 lots which are affected, and all are contained on Map LSZ_003B.

5. Rezone Land from E1 to RU1

The need for this LEP amendment arose after a drafting error was recognised in the Walcha LEP 2012. It was found that land was zoned incorrectly in the transfer to the Walcha LEP 2012. It was previously zoned as 1a General Rural where by it was transferred into E1 National Parks and Nature Reserve. As a result of this error, the land is reflected as being part of a National Park or Nature Reserve. There is 1 lot which is affected, and it is contained on Map LZN_006.

Report:

The subject Planning Proposal would seek to amend the Walcha LEP 2012 to include appropriate LEP provisions to enable rural detached dual occupancies and boundary adjustment subdivisions of 'undersized' rural lots within rural and environmental zoned land, the inclusion of signage as a permissible use in the RE1



Zone, include a Minimum Lot Size for E2 and E4 Zoned land and rezone land from E1 to RU1.

Boundary Adjustments

As local Councils produced their (standard instrument) Local Environmental Plans (LEPs), the new LEPs repealed the SEPP 1 Variations to Development Standards for that area. Clause 4.6 of the Standard Instrument LEP replaced the functions of the repealed SEPP, and this clause allows for variations to development standards such as lot size, height and floor space ratio. One of the functions lacking in Clause 4.6 is the ability to make boundary adjustments for rural and environmental zoned land that is already below the minimum lot size.

Many other regional Councils, including Inverell, Tamworth, Armidale, Moree, Uralla, and Glen Innes have amended their LEPs to include the 'new' boundary adjustment clause or local versions of that clause. Clause 4.2C from the Uralla Local Environmental Plan 2012 has been reproduced and adapted to suit the zone structure for Walcha as shown in the report below.

Boundary adjustment subdivisions resulting in lots below the minimum rural lot size were formerly assessed and determined pursuant to a SEPP 1 variation of the Walcha LEP 2000. SEPP 1 variations were removed with the implementation of the Standard Instrument LEP. Council's intention in preparing the Walcha LEP 2012 was to complete a best fit transfer of the old LEP into the new format. The proposed provision complies with Council's intent.

Rural boundary adjustments are often necessary for efficient farm management purposes or to facilitate estate planning. The ability for rural land owners to be able to undertake routine boundary adjustments is considered to be a valid and sustainable approach to land management. It allows property owners flexibility when it comes to management of their farms.

The subject Planning Proposal would provide a logical additional clause to the Walcha LEP 2012 that has been "tested" in other regional local government areas and addresses a "gap" in the standard instrument LEP template.

The proposed boundary adjustment LEP Provision is:

4.2D Exceptions to minimum subdivision lot size for boundary adjustments

- 1) *The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.*
- 2) *This clause applies to land in the following zones:*
 - a) *Zone RU1 Primary Production,*
 - b) *Zone RU4 Primary Production Small Lots,*
 - c) *Zone R5 Large Lot Residential,*
 - e) *Zone E4 Environmental Living.*



3) *Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the consent authority is satisfied that the subdivision:*

- a) will not result in an increase in the number of lots, and*
- b) will not result in an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots, and*

4) *In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:*

- a) the existing uses and approved uses of other land in the vicinity of the subdivision,*
- b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*
- c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- d) whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,*
- e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),*
- f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,*
- g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.*

(5) *This clause does not apply:*

- (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or*
- (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.*

Explanation of each subclause:

1. Explains the objectives of the provisions.
2. Defines which zones to which the proposed provisions apply.
3. Indicates that despite minimum lot size provisions contained in the plan, subdivision of undersized allotments may occur where Council is satisfied that no additional dwelling entitlement would be created and the potential for land use conflicts are not increased.
4. Council must also be satisfied that E3 and E2 zoned land will not be detrimentally impacted by the adjustment.

Detached Dual Occupancy Dwellings

Traditional reasons against the use of detached dual occupancies in rural areas have been:

- ✚ Raising expectations of future subdivision to separate rural dwellings;
- ✚ Impacts from additional road access driveways;
- ✚ Loss of agricultural land; and
- ✚ Increase in value of agricultural land as a result of built improvements.



These issues will be managed by proposed DCP controls in the Walcha LEP 2012, including:

- ✚ Consolidation of separate land parcels so that the primary dwelling and the detached dual occupancy are located within a single lot;
- ✚ Access to the primary dwelling and the detached dual occupancy dwelling are to be via a single (existing) access driveway and single point of access location of a public road;
- ✚ Justification for the separation distance between the proposed detached dual and the primary dwelling.

The mechanism for amending the LEP and enabling detached dual occupancies is as follows:

- ✚ Removing *Dual occupancies (attached)* from the Land Use Table for RU1 and RU4 zoned land as a use that is permitted with consent ; and
- ✚ Including *Dual occupancies* in the Land Use Table for RU1 and EU4 zoned land as a use that is permitted with consent.

Permit Signage in the RE1 Public Recreation

Under the Walcha LEP 2012, *signage* is defined as:

any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following:

- (a) an advertising structure,*
- (b) a building identification sign,*
- (c) a business identification sign,*

but does not include a traffic sign or traffic control facilities.

The RE1 Public Recreation zone is generally intended for a wide range of public recreational areas and activities including local and regional parks and open space. The uses may include *recreation facilities, community facilities* such parks, *environmental facilities, environmental protection works* and other uses compatible with the primary use of the land. The inclusion of *signage* as a permissible land use is considered to be acceptable as it is a compatible use.

These issues relating to appropriate nature of signage, i.e. size, construction and location will be managed by proposed DCP controls in the Walcha LEP 2012.

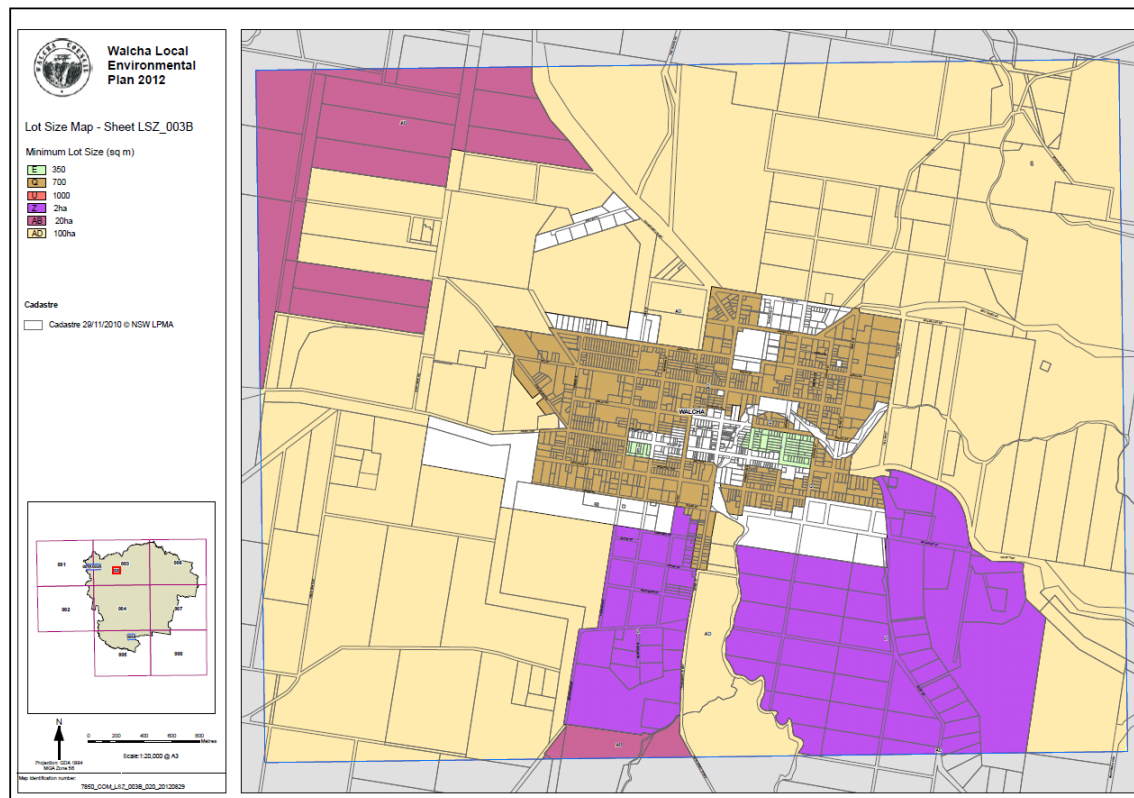
The mechanism for amending the LEP and enabling *signage* is to include *signage* in the Land Use Table for RE1 zoned land as a use that is permitted with consent.

Include a Minimum Lot Size for subdivision in the E2 and E4 Zone

Due to a drafting error in the Walcha LEP 2012, it was found that the E2 and E4 zoned land listed below was not allocated a Minimum Lot Size. This implies that there are no subdivision controls on this land. The lots affected are: Lots 560, 561, 562, 563 DP 722828, Lot 7023 DP 1059151, Lot 4 Section 20 DP 759035, Lots 202, 216 DP 756502, Lot 7 DP 1217346 and Lot 4 DP 1155108 and are all contained on Map LSZ_003B.



Under the Walcha LEP 2000 the land had a subdivision minimum of 2 hectares. It would be appropriate to use this as a Minimum Lot Size for this land as it is also adjoining similar land to the east and south.



5. Rezone Land from E1 to RU1

The need for this LEP amendment arose after a drafting error was recognised in the Walcha LEP 2012. It was found that Lot 50 DP 756473 (contained in Map LZN_006) had been inadvertently rezoned from Rural (1a General Rural) to E1 National Park & Nature Reserve. The environment protection zone E1 is only to be applied to existing areas identified under the *National Parks and Wildlife Act 1974* or areas identified as proposed for national park or nature reserves agreed by the NSW Government. This land is not part of the adjoining National Park, therefore the zone needs to reflect this.

The RU1 Primary Production zone covers land used for most kinds of commercial primary industry production, including extensive agriculture, intensive livestock and intensive plant agriculture, aquaculture, forestry, mining and extractive industries. The zone is aimed at utilising the natural resource base in a sustainable manner. The zone is not a default zone for non urban land. The zone is allocated to land where the principal function is primary production. This is the most suitable zone.



Gateway Determination

It is requested that Council resolves to prepare and forward the Planning Proposal to NSW Planning and Environment for a Gateway determination, approval to place the Planning Proposal and draft LEP amendment on Public Exhibition and that Council be the delegated plan making authority instead of the Minister.

Should council resolve to endorse the recommendation, the NSW Planning and Environment 'Gateway Determination' process is summarised as follows:

1. **Gateway:** the Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.
2. **Community consultation:** the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request that a public hearing be held.
3. **Assessment:** the relevant planning authority (Council) considers public submissions and the proposal is varied as necessary. Parliamentary Counsel then prepares a draft local environmental plan; the legal instrument.
4. **Decision:** with the Minister's approval the plan becomes law and is published on the NSW legislation website.

Submitted to Council: 30 May 2018

..... General Manager Mayor



Key issues:

- The Planning Proposal involves the inclusion of an additional boundary adjustment clause (provision) in the Walcha Local Environmental Plan 2012.
- The new boundary adjustment provision will enable Council to determine boundary adjustment subdivisions that would previously have required a SEPP 1 variation under the former Walcha LEP 2000.
- The proposed amendment will enable *Dual Occupancies (detached)* in the RU1 and RU4 zones.
- The proposed amendment will enable *signage* in the RE1 zone.
- Drafting errors within the Walcha LEP 2012 will be corrected.
- The Planning Proposal does involve mapping amendments to the Map LSZ_003B and LZN_006.

Conclusion:

A review of surrounding Councils shows that there is a genuine and justifiable need for:

1. Flexibility when dealing with rural boundary adjustment subdivisions,
2. Detached rural dual occupancy dwellings,
3. Inclusion of signage as a permissible land use in the RE1 zone, and
4. Correct a previous drafting error in the Walcha LEP 2012 and include a minimum Lot Size for E2 and E4 zoned lands and to rezone land from E1 to RU1.

The proposed amendments are recommended to keep the Walcha LEP 2012 up-to-date and accurate and to provide the best balance in effective planning to achieve and facilitate good development outcomes. Given the complexity of the LEP document this is an important continuous improvement process.

It is recommended that Council accept this housekeeping planning proposal and seek a Gateway Determination from NSW Planning and Environment to place the Planning Proposal on public exhibition. The Planning Proposal is 'low impact,' and it would be expected the gateway Determination will require the Planning Proposal to be exhibited for 14 days.

Further, plan making delegations be requested in respect of this Planning Proposal under the provisions of Section 3.36 of the Environmental Planning & Assessment Act 1979, allowing Council to act on the behalf of the Minister in this matter.

RECOMMENDATION:

That Council:

1. **Accept the Planning Proposal containing:**
 - a. **Boundary Adjustment clause,**
 - b. **Include Detached Dual Occupancy Dwellings as permissible development for the RU1 and RU4 zones,**
 - c. **Include signage as a permissible use in the RE1 zone, and**



- d. Amend Minimum Lot Size of 4 ha for Lots 560, 561, 562, 563 DP 722828, Lot 7023 DP 1059151, Lot 4 Section 20 DP 759035, Lots 202, 216 DP 756502, Lot 7 DP 1217346 and Lot 4 DP 1155108 being contained on Map LSZ_003B.
 - e. Rezone Lot 50 DP 756473 from E1 National Parks and Nature Reserves to RU1 Primary Production being contained in Map LZN_006.
2. Forward the planning proposal to NSW Planning and Environment for a Gateway Determination,
3. Request plan making delegations as per the provisions of Section 3.36 of the *Environmental Planning & Assessment Act 1979* for this planning proposal.
4. The Planning Proposal is advertised as per the provisions of Section 3.34 of the *Environmental Planning & Assessment Act, 1979* once a Gateway Determination has been issued.
5. Give the General Manager delegated authority to make any minor alterations as requested by NSW Planning and Environment.