

Bogan Local Environmental Plan 2011 - proposed changes to minimum lot sizes (60 lots)

Proposal Title : Bogan Local Environmental Plan 2011 - proposed changes to minimum lot sizes (60 lots)

Proposal Summary : Council submitted a proposal to amend the minimum lot size of 60 lots, currently zoned RU1 Primary Production.

The intent of this proposal is to enable a dwelling on each lot, without permitting further subdivision of the land. Council proposes the application of a variable minimum lot size across each of these lots to achieve this (Tag A).

Council makes it expressly clear that the intention of the planning proposal is to ensure that no further subdivision could be carried out on the lot as a result of the amendment.

The Agency supports the planning proposal as submitted. However, it is considered that a portion of the identified lots (Tag A) be rezoned from RU1 to R5 (Tag B). 45 lots are identified for this rezoning. The primary reason for this rezoning is to better reflect the existing on-the-ground settlement pattern and intended future use of these lots, essentially for residential purposes.

The rezoning of these 45 lots was an option considered by Council's consultant Geolyse in their report to Council dated March 2014; however this option was not further investigated, as they believed it would enable further subdivision potential. It is noted that this option was not considered in conjunction with the application of a variable MLS to prohibit this from occurring.

The reasons why such a rezoning is considered appropriate for these lots is:

- The 45 lots proposed for rezoning range in size from 0.53ha – 19.46ha, which are sizes more conducive to an R5 zone and with the application of a potential dwelling on each lot, the zone objectives of the R5 zone are more appropriate:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

- The objectives of the RU1 zone are no longer considered applicable or appropriate for this land, given the existing MLS:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

- Existing heavy fragmentation renders the 45 lots as no longer being capable of genuine productive agricultural activities.

PP Number : PP_2014_BOGAN_001_00

Dop File No :

14/05943

Proposal Details

Date Planning Proposal Received :	12-Mar-2014	LGA covered :	Bogan
Region :	Western	RPA :	Bogan Shire Council
State Electorate :	BARWON	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Mitchell Highway		
Suburb :	Nyngan	City :	Postcode :
Land Parcel :	RU1 - Primary Production		

DoP Planning Officer Contact Details

Contact Name :	Rebecca Kell
Contact Number :	0268412195
Contact Email :	rebecca.kell@planning.nsw.gov.au

RPA Contact Details

Contact Name :	Derek Francis
Contact Number :	0268359000
Contact Email :	admin@bogan.nsw.gov.au

DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
Contact Email :	

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **To reduce the minimum lot size for 60 lots surrounding Nyngan currently zoned RU1 Primary Production. The overarching intent of this proposal is to enable the potential of a dwelling on each of these lots.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The proposed outcome is proposed to be achieved through the amendment of Lot Size Map LSZ_008A of the Bogan Local Environmental Plan 2011 by amending the minimum lot size for various parcels of land as outlined below:**

- a) For land zoned RU1 – Primary Production with a size of between 0 and 2 hectares – reduce the minimum lot size from the current 600 hectares to 12,500 meters (20 lots);**
- b) For land zoned RU1 – Primary Production with a size of between 2 and 4 hectares – to reduce the minimum lot size from the current 600 hectares to 2.25 hectares (13 lots);**
- c) For land zoned RU1 – Primary Production with a size of between 4 and 8 hectares – to reduce the minimum lot size from the current 600 hectares to 5 hectares (8 lots);**
- d) For land zoned RU1 – Primary Production with a size of between 8 and 16 hectares – to reduce the minimum lot size from the current 600 hectares to 9 hectares (5 lots);**
- e) For land zoned RU1 – Primary Production with a size of between 16 and 32 hectares –to reduce the minimum lot size from the current 600 hectares to 17 hectares (6 lots);**
- f) For land zoned RU1 – Primary Production with a size of between 32 and 64 hectares – to reduce the minimum lot size from the current 600 hectares to 33 hectares (4 lots);**
- g) For land zoned RU1 – Primary Production with a size of between 64 and 128 hectares – to reduce the minimum lot size from the current 600 hectares to 65 hectares (3 lots); and**
- h) For land zoned RU1 – Primary Production with a size of between 128 and 170 hectares – to reduce the minimum lot size from the current 600 hectares to 129 hectares (1 lot)**

In addition, for the rezoning amendment proposed by Planning and Infrastructure, Land Zoning Map LZN_008A of the Bogan Local Environmental Plan 2011 should be amended to identify the lots (Tag x) as R5 Large Lot Residential.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

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Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP No 55—Remediation of Land
SEPP (Rural Lands) 2008**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

In response to section 5.5.2 of 'A Guide to Preparing Local Environment Plans', the planning proposal is considered to be low impact and therefore requires a consultation period of 14 days.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **April 2014**

Comments in relation to Principal LEP :

The Bogan Local Environmental Plan was made in 2011.

Assessment Criteria

Need for planning proposal :

The proposed amendment to the LEP will reduce the minimum lot size to enable dwelling development across the 60 lots; however through careful planning of the appropriate minimum lot size, further subdivision would not be enabled. This is proposed to be achieved by applying a variable minimum lot size across each of the lots, as identified in Map 02C_TP04 211 054 Revision C.

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Consistency with strategic planning framework :

The Agency's recommendation to rezone the fragmented RU1 lots to R5 Large Lot Residential is inconsistent with the endorsed Land Use Strategy.

However, given the existing heavily fragmented settlement pattern this is considered a better planning outcome. The size of the existing lots is not conducive to continued or future genuine agricultural pursuits, particularly once a dwelling is permissible on each allotment. The objectives of the RU1 zone are virtually abandoned by way of the existing lot size and the objectives of the R5 zone are more suitable, being:

- to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- to ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- to ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- to minimise conflict between land uses within this zone and land uses within adjoining zones.

In addition, existing R5 land is located to the south of these allotments, and as such this is considered a logical extension of this zone also.

Through an assessment of the Ministerial Directions applicable to this land, it is considered an appropriate and justifiable outcome. This rezoning is also supported by the NSW Department of Primary Industries in their submission to Council: "from the information provided there are lots that appear to be most appropriate to be classified as large lot residential, while others may be considered to be environmental living, being closely located to the river or are vegetated".

As such, despite consistency with an endorsed land use strategy, there is strategic merit for the proposed rezoning.

Environmental social economic impacts :

The proposed rezoning does not trigger any immediate environmental or social impacts. Consultation with the Office of Environment and Heritage has been carried out prior to lodgement of this planning proposal. Some issues were identified with regard to development in areas of environmental sensitivity. Further consultation with this agency is recommended in the Gateway. This will further address any issues, as a result of the proposed R5 rezoning.

In addition, any impacts will be required to be assessed via Section 79C of the EP&A Act at a development application stage.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	14 Days
Timeframe to make LEP :	24 months	Delegation :	
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage NSW Department of Primary Industries - Agriculture NSW Rural Fire Service Transport for NSW		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			

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Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Bushfire

Flooding

If Other, provide reasons :

Flood Study - Floodplain Risk Management Plan

Bushfire - Bushfire Assessment Report

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
proposal letter.pdf	Proposal Covering Letter	No
planning proposal - proposed changes to minimum lot size March 2014.pdf	Proposal	No
proposed lot sizes map.pdf	Map	No
proposed minimum lot size map.pdf	Map	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information :

The planning proposal is supported, with the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) The planning proposal must be made publicly available for a minimum of 28 days; and**
- (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)**
- (c) The Flood Study is to be publicly exhibited at the same time as the planning proposal, for a**

2. 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 (for example, in response to a submission or if reclassifying land).

3. The timeframe for completing the LEP is to be 24 months from the week following the date of the Gateway determination.

4. Prepare LEP mapping to amend the Minimum Lot Size Map LSZ_008A of the Bogan

Local Environmental Plan 2011 as outlined below (lot sizes are to be consistent with the lot sizes proposed in map 02C_TP04 211 054 Revision C):

- a) For land zoned RU1 – Primary Production with a size of between 0 and 2 hectares – reduce the minimum lot size from the current 600 hectares to 12,500 meters (20 lots);
- b) For land zoned RU1 – Primary Production with a size of between 2 and 4 hectares – to reduce the minimum lot size from the current 600 hectares to 2.25 hectares (13 lots);
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- h) For land zoned RU1 – Primary Production with a size of between 128 and 170 hectares – to reduce the minimum lot size from the current 600 hectares to 129 hectares (1 lot)

5. Prepare LEP mapping to amend the Land Zoning Map LZN_008A of the Bogan Local Environmental Plan 2011 as outlined below:

- a) 45 lots identified in Tag B to be mapped as Zone R5 Large Lot Residential

6. Council is to consult with the following agencies:

- NSW Rural Fire Service Commissioner
- NSW Office of Environment & Heritage
- Department of Primary Industries
- Department of Primary Industries - Office of Water
- Roads & Maritime Services

Supporting Reasons :

117 Directions

Direction 1.2 – Rural Zones

The PP as submitted by Council was considered consistent with this direction, in that the proposal did not seek to rezone any land from rural to another zone.

However, as the proposal has been amended by the Agency the proposal is now considered inconsistent for the following reasons as land is proposed to be rezoned from RU1 to R5, and permissible density of that land is increased by way of providing 1 dwelling opportunity for each allotment.

As such an assessment of this direction has been carried out by the Agency and the inconsistency with this direction has been justified as minor significance for the following reasons:

- the objective of Direction 1.2 Rural Lands is to protect the agricultural production value of rural land. The 45 lots proposed for rezoning are heavily fragmented with their capacity to be considered viable productive agricultural land substantially diminished.
- the existing lot sizes of the proposed lots to be rezoned are not of a size which would adequately allow genuine agricultural activities to be carried out;
- the 45 lots identified for rezoning are adjacent to existing R5 zoned land and recreational zoned land;
- Council has submitted a proposal that allows for a dwelling on each lot without allowing for further subdivision;
- any biodiversity that exists across the lots is heavily fragmented and separated across the lots; and
- a merit based assessment for any development application on these lots will capture and adequately address any issues as they arise.

Direction 1.3 – Mining, Petroleum Production and Extractive Industries

Council have noted that preliminary consultation with Trade and Investment, Resources and Energy division has occurred, with regard to the reduction in MLS. A submission was

made by the agency and no objections to the reduction in MLS were lodged. As such Council deems that this direction is inconsistent and justified as minor significance. This is considered appropriate in this instance.

Direction 1.5 – Rural lands

The Agency agrees that Council has adequately addressed the requirements stated in Direction 1.5 Rural Lands. Section (3) (b) of this direction is triggered by this proposal to change the MLS of land with a rural zoning. In satisfying this direction, Council has addressed the Rural Subdivision Principles contained within the Rural Lands SEPP. Council's assessment of these principles is considered adequate with a brief summary of the assessment provided below:

- The proposal does not seek to further subdivide any identified allotment, therefore reducing rural fragmentation.
- Land use conflict is expected to be minimised given the proximity to the town of Nyngan, Council has noted the development application process will also enforce controls for the construction of new dwellings to reduce conflict.
- Existing agricultural holdings will be maintained, as no further subdivision is proposed, or will be permitted (by way of applying a variable MLS)
- Consideration of the natural and physical constraints of the land has occurred. Some of the lands may be constrained by way of flooding and bushfire, however this can be more adequately addressed at development application stage. A flood report/study is proposed to be prepared upon receiving a Gateway. The Agency notes that this requirement will form a condition on the Gateway.

Direction 4.3 – Flood Prone Land

This direction applies to the Planning Proposal as provisions affecting flood prone land are proposed. Currently the proposal is inconsistent with this direction, however in Council's assessment it is noted that a flood study will be carried out upon receiving a Gateway and a Floodplain Risk Management Plan will be prepared to satisfy consistency with this direction.

The inconsistency with this direction is supported by the Agency at this time. The Agency acknowledges Council's intention to carry out a flood study for the 60 lots located outside of the Nyngan levee bank.

However, it is noted that the requirement to complete a flood study and prepare a Floodplain Risk Management Plan is required before this proposal will be supported for making. This requirement will form part of the conditions for the Gateway.

Direction 4.4 – Planning for Bushfire Protection

Council has made an assessment against Direction 4.4 Planning for Bushfire Protection and noted that Council identifies the Direction as relevant due to parts of the proposed land being either mapped or in proximity to land mapped as bush fire prone.

Currently, the proposal is inconsistent with the direction and Council acknowledges this. However, Council also notes that consultation with the NSW RFS Commissioner and the preparation of a bushfire assessment report are required prior to the making of the LEP amendment. On this basis, this inconsistency is deemed of minor significance at this time. A condition is to be placed on the Gateway requiring Council to consult with the Commissioner and submit the bushfire assessment report with the LEP post exhibition.

Direction 6.1 – Approval and Referral Requirements

Council has assessed this direction and has deemed that the proposal is consistent with the requirements of the direction. This is supported by the Agency. The proposal does not result in any increase for referral or concurrence from other State Agencies.

Direction 6.3 – Site Specific Provisions

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The Agency agrees with Councils assessment of this direction. In addition an assessment has been carried out of this direction with regard to the proposed rezoning of land from RU1 to R5.

The planning proposal allows the proposed land use (dwelling) to be carried out in the applicable zones (RU1 and R5). The proposal as amended by the Agency will allow for rezoning without imposing any other development standards in addition to those already contained in the zone.

Signature:		
Printed Name:	<u>Daniel Wagner</u>	Date: <u>4/4/14</u>

