

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**

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.**

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);**
- 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)**

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**

7. In accordance with s559 of the EP&A Act, Bogan Shire Council does not have delegation for this PP.

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

The Agency agrees with Council's 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.

Delegation Note

Bogan Council is not authorised to exercise delegations to finalise the planning proposal, as all 60 lots reside outside of the levee bank and sufficient testing of contaminated land is yet to be carried out. As such, Planning & Infrastructure will finalise the planning proposal once flooding and contaminated land studies have been conducted and exhibited in accordance with the conditions.

Panel Recommendation

Recommendation Date : **10-Apr-2014**

Gateway Recommendation : **Passed with Conditions**

Panel Recommendation : **The Planning Proposal should proceed subject to the variations as outlined in the following conditions:**

- 1. Prior to undertaking public exhibition, Council is to amend the planning proposal and accompanying maps to advise that the proposal will also rezone 45 lots from RU1 Primary Production to R5 Large Lot Residential, consistent with the attached map at Tag A.**
- 2. Prior to undertaking public exhibition, Council is to update the planning proposal to include existing and proposed lot size maps, which are at an appropriate scale and clearly identify the subject lands. Proposed lot sizes are to be consistent with lot sizes on map**

02C_TP04 211 054 Revision C, at Tag B. Council is to ensure the colours identified on the legend correspond with the colours on the map.

3. Prior to undertaking public exhibition, a flood study and Floodplain Risk Management Plan are to be prepared to address the proposal's inconsistency with S117 Direction 4.3 Flood Prone Land and a Bushfire Assessment Report is to be prepared to address the proposal's inconsistency with S117 Direction 4.4 Planning for Bushfire Protection. Council is to update the planning proposal to take into consideration the outcomes of this work. This work is to be placed on public exhibition with the planning proposal.

4. Council is to ensure that the planning proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. An initial site contamination investigation report is to be prepared to demonstrate that the land is suitable for rezoning to the proposed R5 zone. The preliminary review of the subject land, which has been undertaken by Council, and initial site contamination investigation report are to be placed on public exhibition with the planning proposal.

5. 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 (Planning and Infrastructure 2013).

6. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

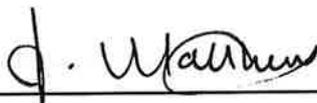
- Office of Environment and Heritage
- Department of Primary Industries – Agriculture
- Department of Primary Industries – Office of Water
- Transport for NSW - Roads and Maritime Services
- NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

7. 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).

8. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Signature:



Printed Name:

JAMES MATTHEWS

Date:

17/4/14