

7.1 TAMWORTH REGIONAL LOCAL ENVIRONMENTAL PLAN 2010 - PLANNING PROPOSAL TO ADDRESS BOUNDARY ADJUSTMENT PROVISIONS – FILE NO SF6242

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RECOMMENDATION

That in relation to the report “Tamworth Regional Local Environmental Plan 2010 – Planning Proposal to Address Boundary Adjustment Provisions”, Council prepare and forward the planning proposal to Department of Planning and Infrastructure requesting a gateway determination in accordance with Sections 55 and 56 of the Environmental Planning and Assessment Act 1979.

SUMMARY

The purpose of this report is to seek a resolution of Council to prepare a planning proposal to address the application of Clauses 4.2 and 4.2A of the *Tamworth Regional Local Environmental Plan 2010 (TRLEP 2010)* relating to rural subdivision. Clause 2.75 of the *State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP)* is key to the issues at hand.

Council was unsuccessful in including a clause, which would have addressed in more detail boundary adjustment situations, when the draft *Tamworth Regional Local Environmental Plan 2009 (TRLEP 2009)* was considered by the Department of Planning in 2010. However, recent planning proposals in other local government areas have been approved by the Department of Planning and Infrastructure gateway process to proceed to public exhibition. On this basis it is considered that a planning proposal to amend the *TRLEP 2010* to insert an appropriate clause may be successful at this point in time.

COMMENTARY

It is reasonably common that landholders may wish to undertake a boundary adjustment between holdings. Such circumstances may arise when a property is sold or to facilitate improved land management outcomes.

The *Tamworth Regional Local Environmental Plan 2010 (TRLEP 2010)* addresses boundary adjustment issues under clause 4.2, which aims to provide flexibility in the application of standards for subdivision in rural zones. The clause allows that land may be subdivided to create a lot smaller than the minimum lot size shown on the Lot Size Map for the purpose of primary production. However, the clause specifies that such a lot cannot be created if an existing dwelling would be situated on the lot and also that a dwelling cannot be erected on such a lot.

Clause 4.2A specifies that land can be subdivided to create a lot less than the minimum lot size, as long as it is for the same use as permitted under the existing consent for the land (other than for a dwelling house or dual occupancy).

In addition to the provisions of the *TRLEP 2010*, clause 2.75 of the *Codes SEPP* provides that subdivision of land may be undertaken for a minor realignment of boundaries where no additional lots or the opportunity for additional dwellings is created. The clause does not allow for the creation of lots smaller than the minimum lot size. However, if the original lots are already smaller than the minimum lot size a minor boundary adjustment may be considered.

The intent of the planning proposal would be to permit subdivision in the RU1 and RU4 rural zones to effect realignment of boundaries between lots where one or both do not meet the minimum lot size shown on the *TRLEP 2010* Lot Size Map. This

would be permitted on the basis that no additional lots or potential for additional dwelling houses would be created. Also, it would need to be demonstrated that the potential for land use conflict is not increased and that an unreasonable impact on agricultural capacity of the land will not result.

A clause in these general terms was proposed for inclusion in the draft *TRLEP 2009*, however, the clause was not included when the *TRLEP 2010* was published on 21 January 2011, by the Minister for Planning. It is anticipated that Council may be more successful with an amendment to the *TRLEP 2010* as a number of Councils have received gateway determinations providing for similar planning proposals to proceed to public exhibition.

(a) Policy Implications

Nil

(b) Financial Implications

Nil

(c) Legal Implications

An amendment to the *Tamworth Regional Local Environmental Plan 2010* will alter the planning provisions for the affected land.

(d) Community Consultation

Community consultation requirements will be specified by a gateway determination on the planning proposal.
