

Kyogle LEP 2012 – Rural Boundary Adjustments and split zoning subdivisions.

Proposal Title :	Kyogle LEP 2012 – Rural Boundary Adjustments and split zoning subdivisions.		
Proposal Summary :	The planning proposal seeks to amend Kyogle LEP 2012 by; 1. Adding a clause to enable boundary adjustments of 'undersized' lots (lots which are smaller in area than the prevailing development standard) in rural zones and retain any dwelling entitlements on these lots. 2. Adding a clause to enable the creation of a split zoned lot that contains an undersized portion of rural zoned land created as a result of subdivision of land partly zoned residential or RU5 Village.		
PP Number :	PP_2013_KYOGL_002_00	Dop File No :	13/18988

Proposal Details

Date Planning Proposal Received :	19-Nov-2013	LGA covered :	Kyogle
Region :	Northern	RPA :	Kyogle Council
State Electorate :	LISMORE	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	This planning proposal applies to all land which is subject to the Kyogle LEP 2012.		

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	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 : The Statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to amend the Kyogle LEP 2012 so as to;

1. Permit boundary adjustments to create undersized rural zoned lots.
2. Permit the creation of lots containing an area of undersized rural zoned land as well as a portion of residential zoned land.
3. Maintain dwelling entitlements on undersized lots which undergo a boundary adjustment.

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

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

Comment : The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The planning proposal provides draft clauses that the RPA considers will achieve the objectives. The proposal seeks to amend the LEP by inserting clauses 4.1AB "Boundary adjustments of land in certain zones", 4.1AC "Minimum subdivision lot sizes for certain split zones", and subclause 4.2A(3)(f) to retain any dwelling entitlement on lots which are the subject of a boundary adjustment.

It is recommended that the Gateway Determination require that the RPA should exhibit a

plain English explanation of the intent of the clauses in the planning proposal, in addition to the draft clauses, as these may be changed by Parliamentary Counsel's Office when the plan is drafted.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.5 Rural Lands

3.1 Residential Zones

* May need the Director General's agreement

4.3 Flood Prone Land

5.1 Implementation of Regional Strategies

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

6.1 Approval and Referral Requirements

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 (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 :

See the assessment section of his report.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

No maps are required for the LEP amendment. The planning proposal does not propose any amendments to the LEP maps. The proposed provisions will apply to all land to which the Kyogle LEP 2012 applies so there is no need to include a map which identifies the subject land.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal does not nominate a community consultation period. It is considered that the proposal is a 'low impact' proposal and therefore a community consultation period of 14 days is recommended.

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 :

Overall Adequacy

The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.

2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.

3. Providing an adequate justification for the proposal.

4. Outlining a proposed community consultation program.

5. Providing a project time line

6. Providing an evaluation of the delegation of plan making functions

Time Line

The RPA has provided a project timeline which estimates the completion of the planning proposal in May 2014. Given the community consultation period for the proposal is not likely to be held until early 2014, a 9 month period for completion of the planning proposal is recommended.

Delegation.

Council has provided a completed 'Evaluation Criteria for the Delegation of Plan Making Functions' form. The evaluation concludes that the proposal can be delegated to Council for making of the LEP amendment. It is recommended that an Authorisation for the execution of delegation be issued to Kyogle Council in this instance.

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Kyogle LEP commenced in February 2013. This planning proposal seeks an amendment to the Kyogle LEP 2012.

Assessment Criteria

Need for planning
proposal :

The proposal to amend the LEP to introduce additional provisions for boundary adjustments and subdivision of split zoned lots is not the subject of a specific strategic study or report. The need for these provisions has arisen due to the inability to subdivide rural or Large Lot Residential zoned land, to create lots significantly less than the minimum lot sizes shown on the Lot Size Map using the current provisions of the LEP.

Clause 4.6(6) of Kyogle LEP 2012 prevents the subdivision of rural land to less than 90% of the minimum lot size shown on the Lot Size Map. In order to create a lot in a rural or Large Lot Residential zone which is less than the minimum lot size shown on the map, an amendment to the Lot Size Map of the LEP is required. This is a time consuming and inefficient means of facilitating development which may have planning merit.

The proposed additional provisions aim to streamline the subdivision process and specifically intend to achieve the following;

1. Enable boundary adjustments of lots zoned RU1, RU2, RU4 or R5, where such lots are, or the resultant lots will be, below the minimum lot size shown on the Lot Size Map. Such boundary adjustments will be permitted where they do not create any additional dwelling opportunities and do not adversely impact on the agricultural potential of the land involved.
2. Ensure that lots which are the subject of an approved boundary adjustment retain any dwelling entitlement.
3. Enable the creation of a residue lot zoned partly either RU1, RU2, RU4 or R5 and less than the minimum lot size shown on the Lot Size Map, where its creation results from the subdivision of land zoned residential or village.

The principles behind the proposed additional provisions are supported.

The planning proposal provides the intended outcomes of each proposed additional clause in Part 1 and a draft clause to achieve the objectives in Part 2. The clauses contain minor inconsistencies with the intended outcomes contained in Part 1 of the planning proposal. These inconsistencies are as follows;

1. Boundary adjustment clause – The draft clause refers to permitting the lots resulting from the subdivision to be less than the minimum lots size. However, the intended outcome for this clause in Part 1 of the planning proposal does not specify this outcome, instead suggesting that one or more of the original lots may be less than the minimum lot

size.

2. Split Zoned Lot subdivision clause – The draft clause requires that the rural zoned residue lot also include a portion of residential zoned land which complies with the minimum lot size for that part of the land. This is not made clear in the intended outcomes in Part 1 of the planning proposal.

As a result of these anomalies it is suggested that the RPA amend the planning proposal to remove these inconsistencies or include a plain English explanation of the intention of each clause for exhibition. The drafting of each clause can then be conducted by Parliamentary Counsel's Office.

The proposed clauses will not result in a significant increase in development or density in the rural zones. The boundary adjustment clause does not allow for the creation of additional lots or dwelling entitlements. The split zone lot clause only applies to land that is partly zoned residential or village and requires that the resultant lot contains a portion of land which is zoned residential or village which complies with the minimum lot size for that zone.

The inclusion of additional clauses is the best means of achieving the objectives of the planning proposal as it results in the most efficient means of achieving the orderly and economic development of land while having regard to the constraints of the land and the impact of the proposed subdivision. The proposed clauses will facilitate;

1. The efficient subdivision of rural land without the need to amend the LEP to change a MLS to facilitate the subdivision.
2. The efficient subdivision of urban land for urban purposes.
3. Retention of appropriate zones and MLSs over constrained land without preventing the subdivision of land as necessary.

Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS)

The proposed amendment to the Kyogle LEP 2012 to include additional subdivision provisions is not inconsistent with the FNCRS. The proposed provisions will facilitate the orderly development of urban zoned land and will not result in an unacceptable increase in the density of development in rural areas. The provisions require the consideration of agricultural outcomes associated with the proposed subdivisions and will reflect the historic approach to subdivision previously permitted throughout Kyogle Shire. The provisions will still require development consent for subdivision.

Local Strategic Plans

The proposed provisions are not inconsistent with the RPA's strategies and structure plan.

SEPPS

The planning proposal identifies the SEPP (Rural Lands) 2008 as being relevant to the planning proposal as it contains principles for subdivision of rural land. The proposed provisions will not be inconsistent with the Rural Subdivision Principles or Rural Planning Principles of the SEPP (Rural Lands) 2008 as the provisions will;

1. not contribute to the unnecessary fragmentation of rural land since subdivision will only be permitted where the land is included in the subdivision of residential zoned land, or in the case of rural boundary adjustments, no additional lots will be created;
2. require consideration of agricultural production potential of land prior to the subdivision being approved;
3. take account of the constraints of the land and ensure that the subdivision is appropriate to the natural and physical characteristics of the land and the existing land use;
4. not create additional opportunities for dwellings in rural zones.

The proposal is otherwise consistent with other SEPPs.

Standard Instrument LEP

The principles behind the proposed additional provisions are not inconsistent with the mandatory clauses of the Standard Instrument LEP.

S117 Directions.

The following S117 directions are applicable to the proposal 1.2 Rural Zones, 1.5 Rural Lands, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast, 6.1 Approval and Referral Requirements, and 6.2 Reserving Land for Public Purposes.

Of the above s117 Directions the proposal is inconsistent with Direction 4.4.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The proposed boundary adjustment and split zoned lot subdivision provisions will apply to the entire LGA and some of the land within Kyogle LGA is bush fire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

The planning proposal is otherwise consistent with S117 directions.

Environmental social economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

The planning proposal has the potential to have indirect effects on the natural and socioeconomic environments when subdivision of the land occurs however these impacts will vary considerably depending on the characteristics of the subject land and any indirect impact is most appropriately addressed by the development assessment process.

The planning proposal has given consideration to social and economic impacts of the

proposed amendment. The social and economic impacts will be largely positive as the introduction of the subdivision provisions will improve flexibility and clarity for subdivision in certain circumstances and therefore will facilitate the efficient and orderly development of land.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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
Cover letter_Kyogle LEP 2012_ Amend#2_ boundary adjustment_14 Nov 2013.pdf	Proposal Covering Letter	Yes
Planning Proposal_Kyogle LEP 2012amend No.2_rural boundary adjust_v1_FINAL.pdf	Proposal	Yes
Attachment_4_Evaluation_criteria_delegation_rural boundary ad.doc	Determination Document	No

Planning Team Recommendation

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

S.117 directions:

- 1.5 Rural Lands**
- 3.1 Residential Zones**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast**
- 6.1 Approval and Referral Requirements**

Additional Information : It is recommended that;

1. The planning proposal proceed as a 'routine' planning proposal.
2. Prior to undertaking community consultation, Council is to amend the 'Objectives or Intended Outcomes' or the 'Explanation of Provisions' within the planning proposal to ensure that the intended outcome of each clause is consistent with the wording of the draft clause. A plain English explanation of the intent of each clause is to be included in the 'Explanation or Provisions' section of the planning proposal.
3. A community consultation period of 14 days is necessary for the planning proposal.
4. The planning proposal is to be completed within 9 months.
5. The RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.
6. A written authorisation to exercise delegation be issued to Kyogle Council in this instance to enable Council to make the plan.

Supporting Reasons : The reasons for the recommendation are as follows;

1. The proposed provisions will facilitate the efficient and orderly subdivision of land.
2. The principles of the proposed provisions are supported and are not considered to be inconsistent with the Intent of the Standard LEP.

Signature:



Printed Name:

Jim Clark

Date:

22 November 2013