

# **Planning Proposal**

## **Kyogle LEP 2012 Amendment No. 2**

To enable rural boundary adjustments and split  
zoning subdivisions

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**Kyogle Council** November 2013

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## Introduction

This planning proposal relates to all land within the Kyogle Council area.

The planning proposal seeks to amend the Kyogle Local Environmental Plan 2012 as follows:

- By adding a clause to enable boundary adjustments of lots zoned either RU1, RU2, RU4 or R5, where such lots are below the minimum lot size shown on the Lot Size Map, where such adjustments do not create any additional dwelling opportunities, and where the adjustment does not adversely impact upon the agricultural potential of the lands involved.
- By adding a provision to Clause 4.2A(3) in order that lots the subject of an approved boundary adjustment retain any dwelling entitlement.
- By adding a clause to permit the creation of RU1, RU2 or RU4 zoned residue lots that are less than the minimum lot size shown on the lot Size Map, where their creation results from the subdivision of land zoned residential or rural village.

## Planning Context

### Council Resolution

Council considered the proposed amendment to the Kyogle Local Environmental Plan 2012 at its ordinary meeting of 11 November 2013 and resolved:

- 1. That Council support the proposed amendments to the Kyogle LEP 2012 to permit boundary adjustments of undersized lots and subdivision of lands with a split zone as outlined in this report and the planning proposal at Attachment 1.*
- 2. That Council submit the planning proposal to the NSW Department of Planning and Infrastructure for review and gateway determination.*
- 3. That upon an affirmative gateway determination being received from the Department of Planning and Infrastructure, Council staff carry out the procedural steps associated with the progress of the planning proposal, including community consultation.*
- 4. That a further report be presented to Council on this matter following conclusion of the community consultation.*

## **Kyogle Local Environmental Plan 2012**

The Kyogle LEP 2012 took effect on 11 February, 2013. The plan follows the format of the NSW Government's Standard Instrument for LEPs.

The draft LEP was placed on exhibition between July and October 2011. Following receipt of considerable submissions, an amended draft plan was placed on exhibition during June 2012.

The present form of the Standard Instrument LEP establishes significant limitations for subdivision in relation to rural boundary adjustment subdivision and the creation of residual rural zoned lots arising from urban subdivision.

### **Boundary Adjustment Subdivision**

Since the introduction of the LEP, Council has received a number of requests for the adjustment of boundaries between rural zoned lots where one or both of the lots are below the minimum lot size. In the majority of these cases there has been identified planning merit in that the adjusted lots would retain or enhance agricultural productivity potential. The current provisions of the LEP do not allow for Council to consent to such applications except where the proposed adjusted lots comply with the minimum lot size or comply with the limited variation available under Clause 4.6(6).

Where existing lots have a dwelling entitlement, the entitlement should remain following the boundary adjustment.

### **Residue lots**

Council has received enquiries regarding the subdivision of lands in a residential or rural village zone which will result in a single RU1, RU2 or RU4 zoned residue lot. The current LEP provisions do not permit this except where the proposed residue lot complies with the minimum lot size or complies with the limited variation available under Clause 4.6(6).

Where residue rural lots below the minimum lot size are created by subdivision of split zoned land, the residue lot would only have a dwelling entitlement if it included residential or rural village zoned land that satisfies the minimum lot size for these zones included with it.

## Part 1 – Objectives or Intended Outcomes

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The objectives of this planning proposal are:

- To provide for greater flexibility in relation to the subdivision of land zoned RU1, RU2, RU4 or R5 by:
  - o Permitting boundary adjustment subdivisions where one or more allotments involved is less than 90% of the minimum lot size specified for subdivision subject to the application not involving the creation of any additional dwelling opportunities and only where the adjustment does not adversely impact upon the agricultural potential of the land.
  - o Permitting subdivision of land zoned residential or rural village which results in the creation of a residue lot containing land zoned either RU1, RU2 or RU4 and which has an area less than the minimum lot size shown on the Lot Size Map.
  - o To ensure existing dwelling entitlements are not lost as a result of a boundary adjustment.

## Part 2 – Explanation of Provisions

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It is proposed that the Kyogle Local Environmental Plan 2012 be amended as follows (or in a similar manner to enable the intended outcome of this planning proposal):

### 1. Insert the following clauses in Part 4 of the Kyogle LEP 2012:

#### ***4.1AB Boundary adjustments of land in certain zones***

- (1) *The objective this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size and the objectives of the relevant zone can be achieved.*
- (2) *This clause applies to land in the following zones:*
  - Zone RU1 Primary Production*
  - Zone RU2 Rural Landscape*
  - Zone RU4 Primary Production Small Lots*
  - Zone R5 Large Lot Residential*

- (3) *Despite Clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining allotments where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that:*
- (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and*
  - (b) the number of dwellings or opportunities for dwellings on each lot after subdivision must be the same as before the subdivision, and*
  - (c) the potential for land use conflict will not be increased as a result of the subdivision, and*
  - (d) the agricultural viability of the land will not be adversely affected as a result of the subdivision.*

#### **4.1AC Minimum subdivision lot sizes for certain split zones**

- (1) *The objectives of this clause are:*
- (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1, and*
  - (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development*
- (2) *This clause applies to each lot (an original lot) that contains:*
- (a) land in a residential or rural village zone, and*
  - (b) land in Zone RU1 Primary Production, RU2 Rural Landscape, or RU4 Primary Production Small Lots.*
- (3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:*
- (a) one of the resulting lots will contain:*
    - (i) land in a residential or rural village zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
    - (ii) all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone RU4 Primary Production that was in the original lot, and*
  - (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*

**4.2A(3)(f)** – *is a lot created by boundary adjustment in accordance with Clause 4.1AB and upon which a dwelling house or dual occupancy (attached) would have been permissible prior to the adjustment of the boundary.*

## **Part 3 - Justification**

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### **Section A – Need for the Planning Proposal**

#### **1. Is the planning proposal a result of any strategic study or report?**

##### ***Boundary adjustments and residue lots***

The proposal for permitting boundary adjustments of undersized lots and for creating residue lots is consistent with the historic pattern of development within the Council area. Council has traditionally permitted the adjustment of boundaries between rural lots to facilitate improved layouts with increased potential agricultural productivity. The proposal is consistent with Council's desire to promote sustainable development within the agricultural areas and is consistent with the objectives for the RU1, RU2, RU4 and R5 zones.

#### **2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Amending the Kyogle Local Environmental Plan 2012 to include provisions for exceptions to minimum lot sizes is the only way to achieve the objectives of the planning proposal. If the additional clauses are not added to the LEP there will be no avenue for Council to approve certain subdivisions that depart from the adopted minimum lot sizes despite the potentially positive merits of an application.

#### **3. Is there a net community benefit?**

Yes. The proposed changes will provide for additional opportunity for increased sustainable subdivision and development within the rural areas, and no appreciable community costs. Providing for residue lots from residential or rural village zones facilitates the appropriate development of the land in accordance with Council's growth management strategies, which will benefit the community as a whole.

### **Section B – Relationship to the strategic planning framework**

#### **4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy**

The proposal is consistent with the FNCRS, which provides the regional framework for the consideration of policy development and the overall vision of the future. The proposal supports agricultural and urban growth outcomes and actions identified in the strategy.

**5. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plans?**

The planning proposal is consistent with:

- The aims and objectives of the Kyogle LEP 2012
- The provisions of the Kyogle Structure Plan
- The provisions of the Kyogle Agricultural Land Study

The planning proposal will also continue to facilitate practical planning outcomes in relation to rural subdivision and is therefore, the proposal is consistent with the long-standing practice in the Kyogle LGA.

**6. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes, the proposal is generally consistent with applicable State Environmental Planning Policies (SEPP), including the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008. This is discussed further in Appendix 1.

**7. Is the planning proposal consistent with the applicable Ministerial Directions (S.117 directions)?**

Yes, the proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is contained in Appendix 1.

**Section C – Environmental, social and economic impact**

**8. Is there any likelihood that critical habitat or threatened species populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

The planning proposal is unlikely to result in negative impacts on flora and fauna. Practical boundary adjustments that provide for improved agricultural outcomes without creating additional opportunities for the establishment of dwelling houses will be able to be approved by Council. Any additional proposed development will be subject to an assessment under Section 79C EPA Act.

**9. Are there any other likely environmental effects as a result of the planning proposals and how are they proposed to be managed?**

No direct adverse environmental impacts are likely to arise as a result of the planning proposal.

**10. How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal will enable the creation of lots that promote agricultural production while supporting the provision of urban and rural residential development within zoned growth areas.

It will enable boundary adjustments in rural areas to provide for improved agricultural outcomes with resultant social and economic benefit.

**Section D – State and Commonwealth interests**

**11. Is there adequate public infrastructure for the planning proposal?**

The planning proposal does not create the need for any additional public funded infrastructure.

**12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation will be undertaken with relevant agencies following the gateway determination stage of the LEP amendment.

**Part 4 - Mapping**

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The proposed amendment relates only to the written component of Kyogle Local Environmental Plan 2012. As such, no mapping is proposed as part of the amendment.

## Part 5 – Community Consultation

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Council has not undertaken any community consultation concerning this planning proposal. It is anticipated that this will occur as part of the formal exhibition of the planning proposal and as directed through the gateway determination process. Council anticipates that community consultation would involve:

- Placement of a notice in the Richmond River Express Examiner
- Placement of a notice on the Kyogle Council website and Department of Planning and Infrastructure website.

If approved, the Department of Planning and Infrastructure will prescribe the duration of the public exhibition period in the Gateway determination.

## Part 6 – Project Timeline

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The proposed timeline for completion of the planning proposal is as follows:

| Plan Making Step                                              | Estimated Completion Date |
|---------------------------------------------------------------|---------------------------|
| Gateway Determination (anticipated)                           | December 2013             |
| Completion of Technical Assessment                            | January 2014              |
| Government Agency Consultation                                | February 2014             |
| Public Exhibition Period                                      | February 2014             |
| Public Hearing (if required)                                  | February 2014             |
| Submissions Assessment                                        | March 2014                |
| RPA Assessment of PP and Exhibition Outcomes                  | April 2014                |
| Submission of Endorsed LEP Amendment to DP&I for Finalisation | May 2014                  |

## Appendices

### Appendix 1 – Section 117 Directions Checklist

| Direction Number                                           | Compliance of Planning Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Employment and Resources</b>                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 1.1 Business and Industrial Zones                          | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 1.2 Rural Zones                                            | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 1.3 Mining, Petroleum Production and Extractive Industries | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 1.4 Oyster Aquaculture                                     | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 1.5 Rural Lands                                            | Consistent. The planning proposal is consistent with the Rural Planning Principles and Rural Subdivision Principles listed in SEPP (Rural Lands). The amendments provide for the promotion and protection of the agricultural resources whilst providing additional economic and social opportunities for the rural communities and within the sustainable capacity of the area. The amendments do not lead to land fragmentation or land use conflicts and do not create any additional dwelling opportunities. |
| <b>2. Environment and Heritage</b>                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 2.1 Environmental Protection Zones                         | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2.2 Coastal Protection                                     | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2.3 Heritage Conservation                                  | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2.4 Recreational Vehicle Areas                             | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>3. Housing, Infrastructure and Urban Development</b>    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 3.1 Residential Zones                                      | Consistent                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 3.2 Caravan Parks and Manufactured Home Estates            | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3.3 Home Occupations                                       | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3.4 Integrating Land Use & Transport                       | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3.5 Development Near Licensed Aerodromes                   | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3.6 Shooting ranges                                        | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>4. Hazard and Risk</b>                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 4.1 Acid Sulphate Soils                                    | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 4.2 Mine Subsidence and Unstable Land                      | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 4.3 Flood Prone Land                                       | Consistent                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 4.4 Planning for Bushfire Protection                       | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>5. Regional Planning</b>                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5.1 Implementation of Regional Strategies                  | Consistent. Proposal is consistent with the rural and urban growth provisions of the Far North Coast Regional Strategy                                                                                                                                                                                                                                                                                                                                                                                           |
| 5.2 Sydney Drinking Water Catchment                        | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5.3 Farmland of State and Regional Significance            | Consistent                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 5.4 Commercial and Retail Development                      | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5.8 Second Sydney Airport: Badgerys Creek                  | Does not apply to planning proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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|-------------------------------------------------|-------------------------------------|
| <b>6. Local Plan Making</b>                     |                                     |
| 6.1 Approval and Referral Requirements          | Consistent                          |
| 6.2 Reserving Land for Public Purposes          | Does not apply to planning proposal |
| 6.3 Site Specific Provisions                    | Does not apply to planning proposal |
| <b>7. Metropolitan Planning</b>                 |                                     |
| 7.1 Implementation of the Metropolitan Strategy | Does not apply to planning proposal |