

Planning Proposal 4-2014

Narrabri LEP 2012 Amendment no.4

To enable rural boundary adjustments



4 September 2014

Legislative Framework

Pursuant to Section 55(1) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, a planning proposal must be prepared before a draft Local Environmental Plan (LEP) amendment is made. The proposal must explain the intended effect of the draft LEP amendment and provide justification for the amendment. The proposal must address those matters identified by Section 55(2) of the EP&A Act, which is considered below. Council must then determine whether or not to proceed with the proposal.

Council resolution

Council is required to determine whether to proceed with the planning proposal and forward the proposed amendment to the Department of Planning for consideration and Gateway Determination.

Overview

The Narrabri LEP 2012 took effect on the 21 December 2012. This plan follows the format of the NSW Government's Standard Instrument for LEPs.

The present form of the Standard Instrument LEP imposes significant limitations for subdivision in relation to rural boundary adjustment subdivision and the creation of residual lots arising from residential, or other, subdivision.

Since the introduction of the Standard Instrument LEP Council has received requests for the adjustment of boundaries between rural zoned lots where one or more of the lots are below the minimum lot size. In a number of cases there has been identified planning merit in that the adjusted lots would retain or enhance agricultural potential or environmental outcomes. The current provisions of the LEP do not allow for Council to consent to such applications regardless of the merit. It is considered that where such lots have a dwelling eligibility prior to the adjustment that eligibility should not be lost.

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Attachments

- A. Council Resolution
- B. Delegation Evaluation Form
- C. Information Checklist

Part 1 – Objectives or Intended Outcomes

The objective of this planning proposal is to provide greater flexibility in relation to the subdivision of land zoned RU1 Primary Production, RU3 Forestry, RU4 Primary Production Small Lots, R5 Large Lot Residential and E3 Environmental Management by:

1. Permitting boundary adjustment subdivisions where one or more allotments involved do not meet the minimum lot size specified for the subdivision of the land, subject to the application not leading to the creation of any additional dwelling eligibilities or subdivision potential, and only where the adjustment does not adversely impact upon the ability to achieve the objectives of the relevant zone.
2. To ensure existing dwelling eligibilities are not lost as a result of a boundary adjustment creating an undersized lot or lots.

Part 2 – Explanation of Provisions

The proposed outcome will be achieved by inserting the following clause in Part 4 of the Narrabri LEP 2012

Clause 4.7 Boundary adjustments of land in certain zones

- (1) The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production
 - (b) Zone RU3 Forestry
 - (c) Zone RU4 Primary Production Small Lots
 - (d) Zone R5 Large Lot Residential
 - (e) Zone E3 Environmental Management
- (3) Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the subdivision will not result in any of the following:
 - (a) an increase in the number of lots.
 - (b) an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.
 - (c) an increase in the total number of lots which could be created if the resulting lots were each subdivided to the applicable minimum lot size, when compared to the corresponding subdivision potential of the original lots.
- (4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) The existing uses and approved uses of other land in the vicinity of the subdivision,

- (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
 - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.
- (5) This clause does not apply in relation to the subdivision of individual lots in a strata plan or a community title scheme.

Add the following to Clause 4.2B – Rural Dwellings Clause:

- (3)(g) is a lot created by boundary adjustment in accordance with Clause 4.7 and upon which a dwelling house or dual occupancy (attached) would have been permissible prior to the adjustment of the boundary.

Part 3 – Justification

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

No, the proposal to permit boundary adjustments results from practical issues which have arisen due to the lack of flexibility in the provisions contained in the Standard Instrument – Principle Local Environmental Plan. Prior to implementation of the Standard Instrument Council traditionally permitted the adjustment of boundaries between RU1 Primary Production, RU3 Forestry, RU4 Primary Production Small Lots, R5 Large Lot Residential and E3 Environmental lots to facilitate improved layouts with increased potential agricultural productivity and environmental outcomes.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Amending the adopted LEP is the best means of achieving the objectives of this planning proposal. The only other option would be for each proposal to be subject to a planning proposal to amend Schedule 1 – Additional permitted uses. The second option would be very time consuming and expensive and would create a barrier to potentially beneficial projects.

Section B - Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The Planning Proposal is not site specific and does not, in itself, result in additional development potential beyond that which already exists. It does however introduce flexibility to remove potential barriers which may otherwise prevent existing development potential being achieved. It is not inconsistent with the objectives and actions of the Narrabri Strategic Growth Plan.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

As the Proposal is not site specific and does not, in itself, result in any development potential beyond that which already exists, it is considered that this Proposal has no impact on any of Council's local strategies.

Q5. Is the planning proposal consistent with application State Environmental Planning Policies?

As this Proposal is not site specific the majority of the SEPP's are not relevant to this Planning Proposal.

The one SEPP relevant to this proposal is the State Environmental Planning Policy (Rural Lands) 2008. The proposed provisions provide for the promotion and protection of agricultural and environmental 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 beyond those that already exist. The objectives of the SEPP are maintained by the required considerations inherent in this clause.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The proposal is consistent with the relevant Section 117 directions. See table below.

1. Employment and Resources	
1.2 Rural zones	Consistent. This proposal does not increase permissible density within a rural zone.
1.5 Rural lands	Consistent. As discussed above this proposal is not inconsistent with the Rural Planning and Subdivision principles as set out in the SEPP (Rural Lands)
2. Environment and Heritage	
2.1 Environmental protection zones	Consistent. This proposal does not reduce the environmental protection standards applying to any land.
3. Housing, Infrastructure and Urban Development	
3.1 Residential zones	Consistent. While of itself this proposal does not enable additional development it will enable existing development potential to be realised.
4. Hazard and Risk	
4.4 Planning for bushfire protection	As this proposal does not apply to any specific site, this direction does not apply to this proposal.
5. Regional Planning	
[5.1 Implementation of regional strategies]	Consistent. The proposal is consistent with the rural and urban growth provisions of the Far North Coast Regional Strategy.
6. Local Plan Making	

6.1 Approval and referral requirements	Consistent. No concurrence, consultation or referral is proposed.
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Section C – Environmental, social and economic impact

Q7. 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?

As this planning proposal is not site specific, and does not give rise to any development potential beyond that which already exists, it is considered that the proposal will not have an adverse impact upon critical habitat or threatened species, populations or ecological communities, or their habitats. Detailed assessment of these effects (if any) will occur when a development application is submitted over a specific site.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

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

Q9. Has the planning proposal adequately addressed any social and economic effects?

The proposal is considered to have positive albeit minor social and economic effects. It seeks to rectify what are widely acknowledged as deficiencies in the Standard Instrument LEP.

Specifically, the ability to rationalise property boundaries in rural areas to achieve desired outcomes, whilst preserving the ability to achieve the objectives of the agricultural zones will have positive economic impacts.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

This planning proposal does not impact on the need for public infrastructure.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with relevant state authorities will occur where specified as part of the Gateway Determination.

Part 4 - Mapping

No maps are affected by this planning proposal.

Part 5 – Community Consultation

It is considered that this proposal is a 'low-impact proposal'. For this reason it is considered that community engagement should include the placement of the proposal on public exhibition for a period of 14 days. The public exhibition would include notice within the local paper.

Part 6 – Project timeline

Action	Indicative Date
Gateway Determination	December 2014
Government Agency Consultation	None anticipated
Public exhibition Period	January 2015
Submission assessment	January 2015
RPA assessment of PP and exhibition outcomes	February 2015
Submission of endorsed LEP Amendment to Planning and Infrastructure for finalisation.	March 2015

Delegations

Delegation is sought, and the completed Evaluation Form is included as Attachment B.