

**ITEM 4 WELLINGTON LOCAL ENVIRONMENTAL PLAN 2012
PLANNING PROPOSAL FOR AN ADDITIONAL CLAUSE TO ALLOW MORE
FLEXIBILITY IN BOUNDARY ADJUSTMENTS**

Reason for Report

Council has experienced several development proposals involving boundary adjustments of rural land where there was merit in approving such boundary adjustments but where the current planning rules do not permit such subdivision.

This report recommends Council support a Planning Proposal to insert an additional clause in the Wellington LEP 2012 to allow greater flexibility for Council in approving boundary adjustments.

Background

The development of the 2012 LEP saw the former planning instruments converted to the Standard Instrument.

The State Government had requirements for all Councils to promptly convert to the new State wide plan format and it was agreed early in the process that Wellington would essentially move to a "conversion" plan and largely introduce the Standard Instrument in its basic format, then modifications could be considered subsequently in the light of trialling the new plan and following work such as the urban and regional strategies.

Unfortunately, the boundary adjustment provisions of the Standard Instrument are quite restrictive. This problem has been recognised by the Department of Planning and Environment which has developed a new additional clause Councils may apply to have added to their LEPs, which gives back some of the flexibility enjoyed in the earlier plans.

The attached draft Planning Proposal presents three examples where Council has been legally barred from being able to approve sensible boundary adjustments, where no extra dwellings were proposed beyond what the LEP already allowed.

The draft Planning Proposal seeks to have the additional clause inserted in the Wellington LEP 2012 so that Council can gain reasonable flexibility to approve boundary adjustments of merit (see the attached draft Planning Proposal for the actual clause and supporting justification for its insertion).

The Rezoning Process

If it supports the recommendation, Council needs to formally resolve to prepare a Planning Proposal to start off the rezoning process. A draft Planning Proposal has been prepared for Council's consideration and is based on the Department of Planning and Environment's own recommended new clause.

If Council so resolves, the matter would then be referred to the Department of Planning and Environment (DPE) for Gateway consideration. Should the Department support the proposal, the draft Planning Proposal would then be authorised for public exhibition. It has been recommended such exhibition be for four weeks with information to be provided in all relevant towns and villages.

Following exhibition, Council would consider submissions from the community and make resolutions to proceed as exhibited, make alterations or not proceed at all with the Proposal.

Should Council resolve to proceed with the making of the Planning Proposal after consideration of submissions, the plan would then be submitted to the Department for finalisation and the new clause allowing more flexible boundary adjustment would become part of the LEP once the Plan amendment was published in the Government Gazette.

RECOMMENDATION:

That:

1. Council resolve to prepare a Planning Proposal to introduce a specific additional clause into the Wellington LEP 2012 to increase flexibility with respect to Council's ability to approve Boundary Adjustment Subdivisions in the rural zones; and
2. the draft Planning Proposal presented to Council's Ordinary Meeting of 17 December 2014 be forwarded to the Regional Manager of the Department of Planning and Environment, seeking the matter be progressed through the Gateway process to allow the proposals to proceed to public exhibition.

Attachment 1

DRAFT
PLANNING PROPOSAL

A PROPOSAL TO AMEND WELLINGTON LEP 2012
TO INTRODUCE AN ADDITIONAL CLAUSE TO ALLOW
CONSIDERATION OF BOUNDARY ADJUSTMENTS TO LOTS IN
THE RURAL ZONES WHERE THE LOT IS BELOW LOT SIZE.

DECEMBER 2014

TABLE OF CONTENTS

1	INTRODUCTION.....	III
1.1	The Proposal	iii
2	OBJECTIVES OR INTENDED OUTCOMES	III
3	EXPLANATION OF THE PROVISIONS	III
4	JUSTIFICATION	V
4.1	Section A – Need for the Planning Proposal	v
4.2	Section B – Relationship to strategic planning framework	v
4.3	Section C – Environmental social and economic impact	vi
4.4	Section D – State and Commonwealth interests	vi
5	COMMUNITY CONSULTATION.....	VI
6	CONCLUSION.....	VI

1 INTRODUCTION

1.1 The Proposal

Prior to the introduction of the Standard Instrument, many LEPs had capacity to permit boundary adjustments to lots where dwellings were sited, and where the lot created would be below lot size, provided this gave no potential for yet further dwellings over that available under other clauses of the plan.

Clause 4.2 of the Wellington LEP 2012, allows for the creation of a lot below lot size but only where there is not an existing dwelling on the lot nor the potential for a dwelling.

The only other provision open for boundary adjustment subdivision in Wellington under current planning provisions, where the proposed lots are below lot size, is the exempt provisions for subdivision in State Environmental Planning Policy (Exempt and Complying Development Codes, 2008). Clause 2.75 of that plan specifies the requirements for a subdivision to be exempt from the need for development consent.

But these provisions bar boundary adjustments for land with a heritage item, require lots below lot size to increase in area as a result of the adjustment and for most of the rural zones of the Wellington Area, there is the constraint that the subsequent lot(s) can only have a minor change of area.

A wholesome intent of the current clause 4.2 and Clause 2.75 of the SEPP is to allow rational alteration of rural land to meet agricultural needs (for example, so two farmers can swap some land to achieve better boundaries or so one farmer can consolidate by buying some land off a neighbour etc.). However Wellington Council has encountered a number of boundary adjustment proposals of merit where the above current provisions are not flexible enough to permit an adjustment.

This Planning Proposal requests an amendment to the Wellington LEP 2012 to insert a model "boundary adjustment" clause to provide the required flexibility and clarity required to allow for boundary adjustments for the rationalisation of rural zoned land for agricultural purposes, particularly where houses exist and lots are below lot size.

2 OBJECTIVES OR INTENDED OUTCOMES

- To provide additional flexibility and clarity for boundary adjustment subdivisions in the rural zones of Wellington Council Area..
- To give potential for boundary adjustment subdivision where lots are or will be below lot size and dwellings are involved, provided no additional dwelling opportunities are created beyond those already permissible under other clauses of the LEP.
- To allow for rationalisation and consolidation of agricultural land.

3 EXPLANATION OF THE PROVISIONS

Following preliminary consultation with the Department of Planning and Environment, it was advised Council may consider seeking to amend the LEP to insert a model boundary

adjustment clause. Staff members have reviewed the draft model clause of the Department and suggest the following variation as the basis of this planning proposal:

4.2C Boundary changes between lots in certain rural, residential and environment protection 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 any of the following zones:
 - (a) Zone RU 1 Primary Production,
 - (b) Zone RU3 Forestry,
 - (c) Zone RU4 Primary Production Small Lots,
 - (d) Zone R5 Large Lot Residential,
 - (g) Zone EI National Parks and Nature Reserves,
 - (h) Zone E2 Environmental Conservation,
 - (i) 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 or dual occupancies on, or dwellings or dual occupancies that may be erected on, any of the lots.
- (4) Before determining a development application 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:
 - (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

4 JUSTIFICATION

4.1 Section A – Need for the Planning Proposal

A Planning Proposal is needed to amend the Wellington LEP2012 to insert the draft clause in section 3 of this report. The inclusion of the proposed clause will provide some flexibility to allow for consolidation and rationalisation of rural land where there is an already an existing dwelling (and therefore the impacts already exist) but does not meet the minimum lot size.

Three examples, modelled on cases already experienced by Council, are provided below to give justification for the additional clause.

1. A land owner has a lot below 400ha with a dwelling lawfully approved under a former EPI. He wishes to sell most of the land to his neighbour who is a professional farmer seeking to increase the size of his holding. But his neighbour does not own a lot over 400ha adjoining, only a smaller lot. The current provisions bar the proposal. The LEP clause 4.2 cannot be applied because of the existing dwelling and the exempt provisions cannot be claimed as one lot below lot size will decrease in area.
2. A heritage listed dwelling is currently located on a lot below lot size. The neighbour is a professional farmer and would like to acquire the bulk of the land in the heritage lot but not the dwelling. The proposal has merit but is barred under the LEP as clause 4.2 cannot be used because of the dwelling and the proposal is not exempt because of the heritage provisions and because one lot below lot size would decrease in area.
3. A heritage dwelling was converted to a semi-detached dwelling quite some time ago and straddles the common boundary of two lots below lot size. Both lots qualify for a dwelling under clause 4.2B (3)(d) of the Wellington LEP 2012 and the semi detached dwellings are the current lawful dwellings on each lot.

The two owners wish to achieve the following:

- A boundary adjustment to put all of the heritage building on one lot and renovate it back to its original single dwelling standard. This has significant merit for the conservation of the item.
- Allow the owner of the lot that would become vacant to build a new dwelling.

The proposal is barred as the dwelling rules out the use of Clause 4.2 of the LEP and the proposal fails to be exempt given the heritage status and fact one lot will decrease in area.

4.2 Section B – Relationship to strategic planning framework

State Environmental Planning Policy (Rural Lands) 2008 applies to the area and provides a State wide provision for creation of a lot for agriculture but Clause 9(3) of that SEPP states

"However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot"

The proposed Boundary adjustment clause is not considered to be inconsistent with this SEPP's objectives or clause 9(3) in that the proposed clause will merely facilitate better use of land in lots below lot size (including better use of existing dwellings) and not increase potential for dwellings.

Section 117 Direction 1.2 Rural Zones applies to this proposal and this proposal is consistent.

Section 117 Direction 1.5 Rural Lands applies and requires compliance with the objectives of the Rural SEPP which has been addressed above.

Section 117 Direction 2.1 Environmental Protection Zones applies to lands so zoned in this proposal. This Direction requires Planning Proposals not reduce environmental protection standards. This proposal retains such standards and complies.

4.3 Section C – Environmental social and economic impact

There is no perceived negative impact of the Planning Proposal. The clause will allow for farm rationalisations, conserve existing dwelling stocks but not facilitate additional dwellings beyond that already permissible under other clauses of the LEP.

4.4 Section D – State and Commonwealth interests

The proposal to insert the proposed boundary adjustment clause is not seen to invoke any issues of State or Federal significance. See also 4.2 for compliance with state and regional policies.

5 COMMUNITY CONSULTATION

It is recommended this Planning Proposal be publicly exhibited for 4 weeks. The exhibition should include appropriate advertising in the local press and Council's web page. A copy of the exhibition package should be made available in each of the affected villages as well as at Council's Wellington office.

6 CONCLUSION

The inclusion of the proposed boundary adjustment clause in the Wellington LEP will provide the flexibility and clarity required for the subdivision of rural zones, where a dwelling already exists but does not meet the minimum lot size requirements. Such subdivision is not currently available in the Wellington LEP 2012 as it is based on the core Standard Instrument.

The provision will address several recent cases in Wellington where boundary rationalisations otherwise of considerable merit have been barred by the limitations in the current provisions of the LEP and exemption provision