



New South Wales

PARLIAMENTARY COUNSEL

Opinion

Environmental Planning and Assessment Act 1979
Proposed Oberon Local Environmental Plan 2013 (Amendment No 4)

Your ref: Jaclyn Burns PP_2015_OBERO_002_00
Our ref: FG e2016-040.d04

In my opinion the attached draft environmental planning instrument may legally be made.

A handwritten signature in black ink, appearing to read 'D Colagiuri'.

(D COLAGIURI)

Parliamentary Counsel
4 March 2016



New South Wales

Oberon Local Environmental Plan 2013 (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

A handwritten signature in dark ink, consisting of a large loop followed by a long horizontal stroke.

GARY WALLACE
ACTING GENERAL MANAGER
OBERON COUNCIL
13 APRIL 2016.

Oberon Local Environmental Plan 2013 (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Oberon Local Environmental Plan 2013 (Amendment No 4)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to land in Zone RU1 Primary Production, Zone RU3 Forestry, Zone R5 Large Lot Residential and Zone E1 National Parks and Nature Reserves under *Oberon Local Environmental Plan 2013*.

Schedule 1 Amendment of Oberon Local Environmental Plan 2013

Clause 4.2C

Insert after clause 4.2B:

4.2C Boundary changes between lots in certain rural and residential 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 RU1 Primary Production,
 - (b) Zone RU3 Forestry,
 - (c) Zone R5 Large Lot Residential,
 - (d) Zone E1 National Parks and Nature Reserves.
- (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:
 - (a) an increase in the number of lots, or
 - (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.

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	PP_2015_OBERO_002_00
Date Sent to Department under s56	18 September 2015
Date considered at LEP Review Panel	Considered by the Director Generals Delegate 2 October 2015
Gateway determination date	2 October 2015

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited	19/11, 3/12, 10/12, 13/12/15	
Date of public hearing (if held)	N/A	
Date sent to PCO seeking Opinion	19/2/16	
Date Opinion received	4/3/16	
Date Council Resolved to Adopt LEP	15/12/15	
Date LEP made by GM (or other) under delegation	13/4/16	
Date sent to DP&I requesting notification	13/4/16	

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

13.02 PLANNING PROPOSAL – BOUNDARY ADJUSTMENT

File No: Land Use and Planning\Planning\LEP Local Environmental Plan

Author: Jaclyn Burns, Acting Planning & Development Director

Summary

A Planning Proposal has been prepared by Council staff to enable anomalies to be rectified in the implementation of the Oberon Local Environmental Plan (OLEP) 2013 with specific relationship to boundary adjustments. This report finalises the process associated to this Planning Proposal.

Recommendation

That delegation be granted to Councils Acting General Manager to enable Council submit to Parliamentary Counsel for drafting and making the Planning Proposal for the amendments to the Oberon Local Environmental Plan 2013 by the inclusion of an of a model boundary adjustment clause for rural and environmental zoned land.

Comment

A Planning Proposal was prepared by Council staff based on the Department of Planning & Environment's own recommended new clause and presented to the August, 2015 ordinary meeting of Council. The draft Planning Proposal sort to have the additional clause inserted in the Oberon LEP 2013 so that Council can gain reasonable flexibility to assess boundary adjustments of merit.

The Planning Proposal sort to amend the Oberon Local Environmental Plan 2013 (OLEP 2013) by the inclusion of an of a model boundary adjustment clause for rural and environmental zoned land.

Currently there is no provision in Councils Local Environmental Plan 2013 to undertake a boundary adjustment, as such the draft Planning Proposal seeks to have the additional clause inserted in the Oberon LEP 2013 so that Council can gain reasonable flexibility to assess boundary adjustments of merit.

Council resolved to support the Proposal in August, 2015. The Proposal was then forwarded to the Department of Planning & Environment (DPE) asking for the Gateway Proposal to be delegated to Council for determination. This delegation was provided to Council in October 2015.

The Proposal was placed on Public Exhibition for a period of 28 days via advertisement in the Oberon Review on three (3) separate occasions and on Councils Website. The notification period is due to expire on Friday 18 December, 2015 at 4pm. As of the date of this report no submissions to the Planning Proposal have been received.

Given no objections have so far been received to the Planning Proposal and Council's previous support for the proposal it is considered the Proposal can be proceed to being drafted and made subject to Council resolution should no further objections be received by 4pm on Friday 18th December, 2015.

As part of the 'making' of a proposal Council staff will liaise with Parliamentary Counsel to lawfully write and make the plan in accordance with the Gateway provisions.

It is considered that the Proposal can be supported and proceed to being made.



DRAFT PLANNING PROPOSAL

**A PROPOSAL TO AMEND OBERON LEP 2013 TO
INTRODUCE AN ADDITIONAL CLAUSE TO ALLOW
CONSIDERATION OF BOUNDARY ADJUSTMENTS
TO LOTS IN THE RURAL ZONES WHERE THE LOT IS
BELOW LOT SIZE**

AUGUST 2015

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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 Oberon LEP 2013, allows for the creation of a lot below lot size but only where there is not an existing dwelling on the lot or the potential for a dwelling. The only other provision open for boundary adjustment subdivision in Oberon 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 Oberon 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, Oberon 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 Oberon LEP 2013 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 Oberon 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. Officers 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 RS Large Lot Residential,
- (e) Zone EI National Parks and Nature Reserves,
- (f) Zone E2 Environmental Conservation,
- (g) 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
- (c) 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 Oberon LEP 2013 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.

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

1. Two adjoining land owners each has a lot below 100ha with a dwelling lawfully approved under a former EPI. They 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 100ha 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.

4.2 Section 8 - 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 at Council's office.

6 PROJECT TIMELINE

An estimated timeline to process this Planning Proposal, should it be supported through to gazettal, It is estimated that the process should be completed within 3 months of delegation from the Minister.

7 CONCLUSION

The inclusion of the proposed boundary adjustment clause in the Oberon LEP will provide the flexibility and clarity required for the subdivision of rural zoned land, where a dwelling already exists but does not meet the minimum lot size requirements. Such subdivision is not currently available in the Oberon LEP 2013 as it is based on the core Standard Instrument. The provision will address several recent cases in Oberon where boundary rationalisations otherwise of considerable merit have been barred by the limitations in the current provisions of the LEP and exemption provisions.