

Planning Services

Gateway Determination Report

LGA	Forbes Shire Council
RPA	Forbes Shire Council
NAME	Insert a model clause into the Forbes Local Environmental Plan 2013, to allow minor boundary adjustments between lots in the RU1 Primary Production and RU4 Primary Production Small Lots zones, that are below the minimum lot size and/or where there may be an existing dwelling.
NUMBER	PP_2018_Forbes_001_00
LEP TO BE AMENDED	Forbes Local Environmental Plan 2013
ADDRESS	Various – All land zoned RU1 Primary Production and RU4 Rural Small Holdings
DESCRIPTION	
RECEIVED	20 December 2017
FILE NO.	IRF18/177
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to insert a model clause into the Forbes Local Environmental Plan 2013, to allow minor boundary adjustments between lots in the RU1 Primary Production and RU4 Primary Production Small Lots zones, that are below the minimum lot size and/or where there may be an existing dwelling.

Site Description

The planning proposal will impact all land zoned RU1 Primary Production and RU4 Rural Small Holdings within the Forbes Shire Council area.

Summary of Recommendation

Proceed with Conditions.

The planning proposal intends to insert the model boundary adjustment clause to permit low impact boundary adjustments on land zoned RU1 Primary Production and RU4 Primary Production Small Lots. The planning proposal is supported.

PROPOSAL

Objectives or Intended Outcomes

The planning proposal identifies that the objective of this planning proposal is to amend the Forbes Local Environmental Plan 2013 to allow boundary adjustments in specified rural zones below the minimum lot size (subject to defined controls). The intent of this clause is to allow logical variation to rural lot boundaries to allow them to adjust to changing demands and meet agricultural needs.

The intended outcome of the planning proposal has been clearly explained.

Explanation of Provisions

The planning proposal will achieve the intended outcome by inserting the following clause (example) into the Forbes Local Environmental Plan 2013:

4.2E Boundary changes between lots in certain rural zones

(1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant zone can be achieved.

(2) This clause applies to land in any of the following zones:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU4 Rural Small Holdings,*

(3) Despite clause 4.1, development consent may be granted to subdivide land by way of boundary adjustment between adjoining lots where 1 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 (beyond that already permitted on the lot prior to the boundary adjustment), and*
- (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will 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.*

The explanation of provisions of the planning proposal has been clearly explained.

Mapping

No mapping is required as part of the planning proposal.

NEED FOR THE PLANNING PROPOSAL

The planning proposal states:

The planning proposal is not the result of a specific study or report. The issues that the planning proposal addresses have been identified through operational experience with the new LEP and community feedback.

The planning proposal is the appropriate means of achieving the intended outcomes identified in Part 2.

1. The planning proposal seeks to provide guidance to allow consolidation and rationalisation of rural land lot boundaries.

Comment: This view is supported. The insertion of proposed Clause 4E in the Forbes Local Environmental Plan is the best means of achieving the objective of the planning proposal, being, to permit low impact boundary adjustments on land zoned RU1 Primary Production and RU4 Primary Production Small Lots.

STRATEGIC ASSESSMENT

Central West and Orana Regional Plan

The planning proposal states:

The planning proposal is consistent with the Central West and Orana Regional Plan.

Comment: Whilst it is agreed that the planning proposal is consistent with the Central West and Orana Regional Plan, the planning proposal does not address any specific goals of the plan and the relevant directions. It is considered that the **Goal 1: The most diverse regional economy in NSW, Direction 1: Protect the region's diverse and productive agricultural land**, applies to the planning proposal.

The planning proposal is considered to be consistent with the Direction as the objective of the new clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant rural zone can be achieved.

Recommendation: A condition is recommended in the Gateway Determination to amend the planning proposal to address the specific actions in the Central West and Orana Regional Plan 2036 applicable to the planning proposal .

Local

The planning proposal states:

Forbes Shire Growth Management Strategy 2009

The planning proposal is consistent with the Forbes Shire Growth Management Strategy 2009, as there will not be further opportunities for additional dwellings and will not result in the fragmentation of RU1 Primary Production and RU4 Primary Production Small Lot zoned land. This will be managed within future boundary adjustment subdivision applications through assessing the compliance of the proposed boundary adjustment against the proposed clause. If the subdivision does not comply with the clause the subdivision could not proceed.

Comment: This view is supported. The planning proposal will not create additional opportunities for the construction of a dwelling and will not result in the fragmentation

of RU1 Primary Production and RU4 Primary Production Small Lot zoned land. This is consistent with section 4.2.5 Rural Land and Planning Policies, 4.2.6 Preserving Rural Land and 4.3 Land Use Planning in the Forbes Shire Growth Management Strategy.

Section 117(2) Ministerial Directions

1.1 Business and Industrial Zones

The planning proposal States: *Compliance: Yes. No impact as a result of this planning proposal.*

Comment: Council has identified that this Direction applies to the planning proposal, however it does not apply as it only applies to land within an existing or proposed business or industrial zones (including the alteration of any existing business or industrial zone boundary).

1.2 Rural Zones

The planning proposal states: *Compliance: Yes. No change of rural zoning or additional development is proposed by this plan upon rural land*

Comment: This Direction does applies to the planning proposal as it will affect land within an existing or proposed rural zone. The Director Regions, Western can be satisfied that the planning proposal is considered to be consistent with 1.2 Rural Zones as the planning proposal does not propose to rezone land from a rural zone to a residential, business, industrial, village or tourist zone. The planning proposal provides flexible rural subdivision arrangements that will not increase the permissible density of land within the rural zones.

1.5 Rural Lands

The planning proposal states: *Compliance: Yes. The boundary adjustment model clause will allow for boundary adjustment subdivision to occur below the minimum lot size:*

- *Where the subdivision will not create additional lots or opportunity for*
- *dwellings, and*
- *The opportunity for dwellings remains the same as before the subdivision and*
- *Land use conflict will not be increased, and*
- *The agricultural viability of the land remains unaltered.*

Compliance with the requirements of this clause will ensure that that any resulting subdivision/boundary adjustment will be consistent with the rural subdivision planning principles specified within SEPP (Rural Lands) 2008.

Comment: The Ministerial Direction applies as the planning proposal affects land within a rural zone. The Direction requires the planning proposal be consistent with the rural planning principles and rural subdivision principles in the SEPP (Rural Lands) 2008.

The Director Regions, Western can be satisfied that the planning proposal is consistent with this Direction and supports the productive sustainable economic activities by providing a mechanism which permits low impact boundary adjustments to facilitate ongoing agricultural practices. This is consistent with the Rural Planning Principles and Rural Subdivision Principles in the SEPP (Rural Lands) 2008.

2.1 Environmental Protection Zones

The planning proposal states: *Compliance: Yes. No change to environmental protection zones currently in place.*

Comment: Section 117 Direction 2.1 Environment Protection Zones applies to the site as this direction must be considered when a relevant planning authority prepares a planning proposal. The Director Regions, Western can be satisfied that the planning proposal is consistent with the Direction as the proposal will allow minor boundary adjustments on rural lots to facilitate improved agricultural production. This includes boundary adjustments that have consideration to the sensitive environmental features on the site.

2.3 Heritage Conservation

The planning proposal states: *Compliance: Yes. Proposal does not alter existing provisions related to the conservation of heritage items.*

Comment: Section 117 Direction 2.3 Heritage Conservation applies as this direction must be considered when a relevant planning authority prepares a planning proposal. The above view is supported, the planning proposal does not alter the existing heritage provisions within the Forbes Local Environmental Plan 2013.

2.4 Recreation Vehicle Areas

The planning proposal states: *Compliance: Yes. Proposal does not affect existing restrictions upon development of land for RVs.*

Comment: Section 117 Direction 2.4 Recreation Vehicle Areas applies as this direction must be considered when a relevant planning authority prepares a planning proposal. As no recreation vehicle areas are proposed the planning proposal can be considered to be consistent with the Direction.

3.2 Caravan Parks and Manufactured Home Estates

The planning proposal states: *Compliance: N/A. Proposal does not affect existing provisions*

Comment: Section 117 Direction 3.2 Caravan Parks and Manufactured Home Estates applies to the site as this direction must be considered when a relevant planning authority prepares a planning proposal.

This view is supported as the existing provisions are not affected.

3.3 Home Occupations

The planning proposal states: *Compliance: N/A. Proposal does not affect existing provisions*

Comment: Section 117 Direction 3.3 Home Occupations applies as this direction must be considered when a relevant planning authority prepares a planning proposal.

The above statement is supported.

4.3 Flood Prone Land

The planning proposal states: *Compliance: Yes. Relevant provisions are included in the FLEP 2013.*

Comment: This Direction applies as the planning proposal applies to flood prone land. No existing flooding provisions contained in the FLEP 2013 will be altered as part of the planning proposal.

The above statement is supported.

4.4 Planning for Bushfire Protection

The planning proposal states: *Compliance: Yes. Requirements of Planning for Bushfire Protection would apply and be addressed for rural lands during assessment of a development application.*

Comment: This Direction is relevant as the planning proposal will affect bushfire prone land. Consultation with NSW Rural Fire Service is required to comply with this Direction.

5.10 Implementation of Regional Plans

Council has addressed Direction 5.1 Implementation of Regional Strategies, which was revoked 17 October 2017 rather than Direction 5.10 Implementation of Regional Plans. This Direction applies when a relevant planning authority prepares a planning proposal.

As abovementioned, it is agreed that the planning proposal is consistent with the Central West and Orana Regional Plan 2036 and therefore Direction 5.10.

Recommendation: A condition has been recommended to amend the planning proposal to address Direction 5.10.

6.1 Approval and Referral Requirements

The planning proposal states: *Compliance: Yes. No additional concurrence, consultation or referral procedures are included.*

Comment: Section 117 Direction 6.1 Approval and Referral Requirements applies as this direction must be considered when a relevant planning authority prepares a planning proposal. Consultation with NSW RFS has been conditioned. No other separate approval and referral is required.

6.3 Site Specific Provisions

The planning proposal states: *Compliance: Yes. The proposal does not contain restrictive site specific planning controls.*

Comment: Section 117 Direction 6.3 Site Specific Provisions has been identified as being applicable to the planning proposal. The above statement is supported.

State Environmental Planning Policies

SEPP 4 Koala Habitat Protection

The planning proposal states: *Consistent with the objective to conserve land forming part of a national park.*

Comment: The objective of the SEPP is to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. Forbes Local Government Area is identified as land to which the SEPP applies. The proposal will include a provision on land zoned RU1 Primary Production and RU4 Primary Production Small Lots. Impacts on koala habitat will be assessed on a case-by-case basis at the development application stage. There are no matters in the SEPP that require further consideration as part of the planning proposal.

SEPP 55 Remediation of Land

The planning proposal states: *Not applicable to the planning proposal. SEPP 55 will form a part of the assessment of future development applications for subdivision.*

Comment: The objective of the SEPP is to provide for a Statewide planning approach to the remediation of contaminated land. The SEPP provides requirements relating to the rezoning of land. The planning proposal does not propose to rezone land. There are no matters in the SEPP that require further consideration as part of planning proposal.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

The planning proposal states: *Applicable*

Comment: The proposal is broadly consistent with this SEPP. No mining or other extractive industry uses or restrictions are proposed as part of this planning proposal.

SEPP (Rural Lands) 2008

The planning proposal states: *Applicable*

Comment: The planning proposal is consistent with the rural planning principles and rural subdivision principles in the SEPP and supports productive sustainable economic activities by providing a mechanism which permits low impact boundary adjustments.

SITE SPECIFIC ASSESSMENT

Social, Economic and Environmental Impact

The planning proposal states the proposed amendment will result in no adverse environmental impacts and have positive social and economic impacts. The proposal enable landowners to undertake minor boundary adjustments resulting in better flexibility for agricultural enterprises.

It is considered that the public consultation period of 28 days is an appropriate timeframe to address any potential social impacts that arise.

Therefore, it is considered the planning proposal does not pose any significant social, environmental or economic impacts.

CONSULTATION

Community

Council has advised that the planning proposal is to be publicly exhibited for 28 days. Notification of the planning proposal will be undertaken by the following means:

- a notice in the local newspaper(s);
- placement of the planning proposal in Council's customer service areas;
- posting on Council's website; and
- written notification to landowners adjacent to identified sites.

Agencies

Council has not proposed any consultation with any agencies. However, in accordance with section 117 Direction 4.4 Planning for Bushfire consultation with NSW Rural Fire Service is required.

TIMEFRAME

Council has prepared a six (6) month project timeframe to complete the rezoning process.

Given the nature of the planning proposal a twelve (12) month timeframe is considered to be appropriate.

DELEGATION

Council has requested Council Officer Delegation to prepare the draft LEP under section 59 of the Act. Appendix 4 – Evaluation Criteria for the Delegation of Planmaking Functions was submitted.

Due to the nature of the planning proposal, it is considered appropriate that delegations are given to Council.

CONCLUSION

The planning proposal insert a model clause into the Forbes Local Environmental Plan 2013, to allow minor boundary adjustments between lots in the RU1 Primary Production and RU4 Primary Production Small Lots zones, that are below the minimum lot size and/or where there may be an existing dwelling.

It is recommended the Minister's delegate determine that the planning proposal proceed to Gateway determination subject to conditions.

RECOMMENDATION

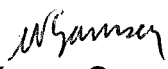
It is recommended that the delegate of the Secretary:


1. **Agree** that the planning proposal is consistent with section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 4.3 Flood Prone Land, and 6.1 Approval and Referral Requirements and 6.3 Site Specific Provisions.

Further work is required in relation to section 117 Directions 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans.

It is recommended that the delegate of the Director Regions, Western, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, the planning proposal is to be revised as follows:
 - a. Amend the planning proposal to address the relevant directions in the Central West and Orana Regional Plan 2036.
 - b. Amend the planning proposal to address section 117 Direction 5.10 Implementation of Regional Plans and remove reference to 5.1 Implementation of Regional Strategies.
2. Prior to community consultation, consultation is required with the NSW Rural Fire Service under section 56(2)(d) of the Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment 2016).
4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

 23/1/18
Wayne Garnsey
Team Leader, Western Region

 23-1-18
Damien Pfeiffer
Director Regions, Western

**Region
Planning Services**

Contact Officer: Haydon Murdoch
Planning Officer, Western
Phone: 62297914