



Planning Proposal

Draft General Amendments to Great Lakes Local Environmental Plan 2014 (General Grouped Amendments No. 1)

Prepared by:

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Background

This Planning Proposal outlines a number of minor draft amendments to *Great Lakes Local Environmental Plan 2014* (GLLEP 2014).

The Planning Proposal has been prepared by Great Lakes Council in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning and Environment (DP&E) Guidelines, including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

The Planning Proposal outlines the effect of, and justification for the changes to existing planning controls under GLLEP 2014. The aim of the Planning Proposal is to facilitate the following matters:

1. Boundary realignments – to allow for minor boundary adjustments to existing lots, where one or both lots do not meet the minimum lot size for that zone. Boundary realignments will not result in any additional lots, or opportunity for additional lots, dwellings or opportunities for additional dwellings.
2. Minimum lot size for certain land in split zones – to allow for the subdivision of land which has two zones, where the resulting lot/s do not meet the minimum lot size requirement for that zone (despite any other provisions of GLLEP 2014 the resulting lot/s shall have permissibility for a dwelling with consent).
3. Amendments to existing clause: Ecological protection subdivision – to allow a development lot, created as part of an ecological offset subdivision, in an unsewered area to have a minimum area of 1 hectare instead of 2 hectares (despite any other provisions of GLLEP 2014 the resulting lot/s shall have permissibility for a dwelling with consent).
4. Amendments to clause 4.1A Exceptions to minimum lot sizes for certain residential development - to allow a minimum lot size of 500sqm on land within the RU5 Village Zone of Smiths Lake, where a single application is lodged to subdivide land and construct one or more dwellings.

Further information on each of the above is provided below:

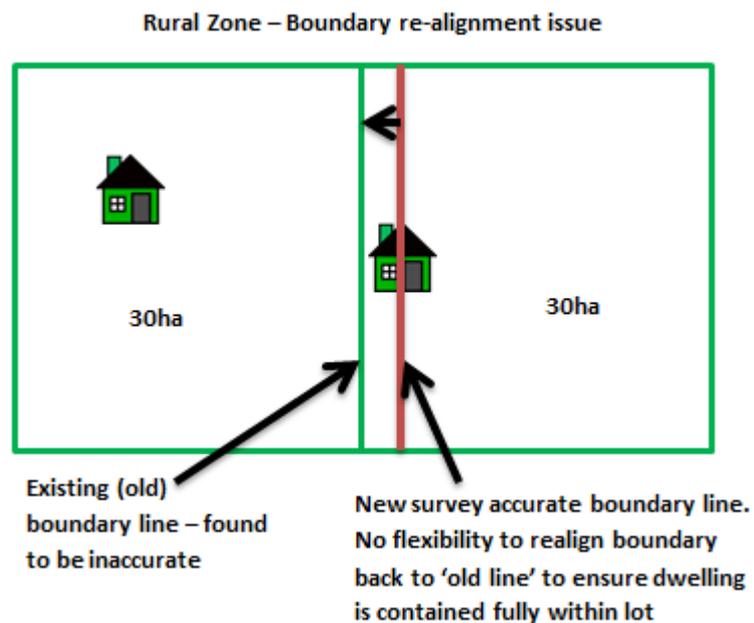
Boundary realignment

Council can consider certain boundary realignment applications under Clause 4.6 of GLLEP 2014 and "minor boundary realignments" under the *State Environmental Planning Policy Exempt & Complying Development 2008* (Code SEPP). However, the provisions of Clause 4.6 and the Code SEPP are generally restricted to allotments that can satisfy the minimum lot size provisions in the specified zone.

Under provisions of GLLEP 2014 consent can no longer be granted to subdivisions where more than one lot is less than the minimum standard or where any proposed lot is less than 90% of the standard (in the case of RU2 Rural Landscape, less than 36ha).

Since GLLEP 2014 has come into effect Council has encountered situations where reasonable variations to the lot size have been proposed but these cannot be approved because the variation is greater than that permitted.

The need for Council to enable boundary realignments under certain circumstances where one or both lots do not meet the minimum lot size is based on the need to facilitate sound planning outcomes. For example, in a rural zone a boundary alignment is sought to where one or both lots are undersized. The realignment may be sought for a variety of reasons such as improved access, compliance with recently surveyed lot boundaries indicating encroachment of house or garage onto adjoining allotment etc. Flexibility is sought in these types of scenarios to enable boundary realignments which have planning merit, but will not result in any additional lots or dwelling entitlements.



Such variations as depicted above have planning merit and would have been possible, with the concurrence of the Department of Planning and Environment (NSW DP&E) under the old Great Lakes LEP 1996 but are not possible under the provisions of GLLEP 2014.

Additional flexibility is therefore sought through an amendment to clause 4.6 to allow subdivision (boundary adjustments) in all land use zones contained within GLLEP 2014 (see below) where one or both lots do not meet the minimum lots size. Where existing lots have a dwelling entitlement, the entitlement should remain following the boundary adjustment.

As indicated above it is proposed that the boundary alignment clause will apply to all land use zones within GLLEP 2014.

Importantly, the intent of the boundary realignment clause is not to permit any additional lots or dwelling entitlements other than those that already exist.

Minimum lot size for split zones

Under the provisions of GLLEP 2014 Council cannot allow the subdivision of an existing allotment which has split zones unless the resulting allotments have an area which complies with the minimum lot size for each corresponding zone.

Council has encountered a number of situations where the subdivision of existing allotments in split zones has merit and would result in a desirable planning outcome. However, under GLLEP 2014 this would not be permissible.

For example: there are lots adjoining most villages in the Great Lakes that contain small areas of RU5 Village with the balance zoned RU2 Rural Landscape. The proposed clause would allow for the separation of the allotment along the zone boundary so that additional village lots could be created in an area already zoned for this purpose.

In the example given below, the residue lot would contain an area of RU5 Village which meets the minimum lot size for this zone (1000sqm) while the remaining RU2 Rural Landscape land is less than the minimum lot size for this zone (40 hectares). The residue RU2 Rural Landscape land would be fully contained in one allotment. The following figures provide a visual representation.

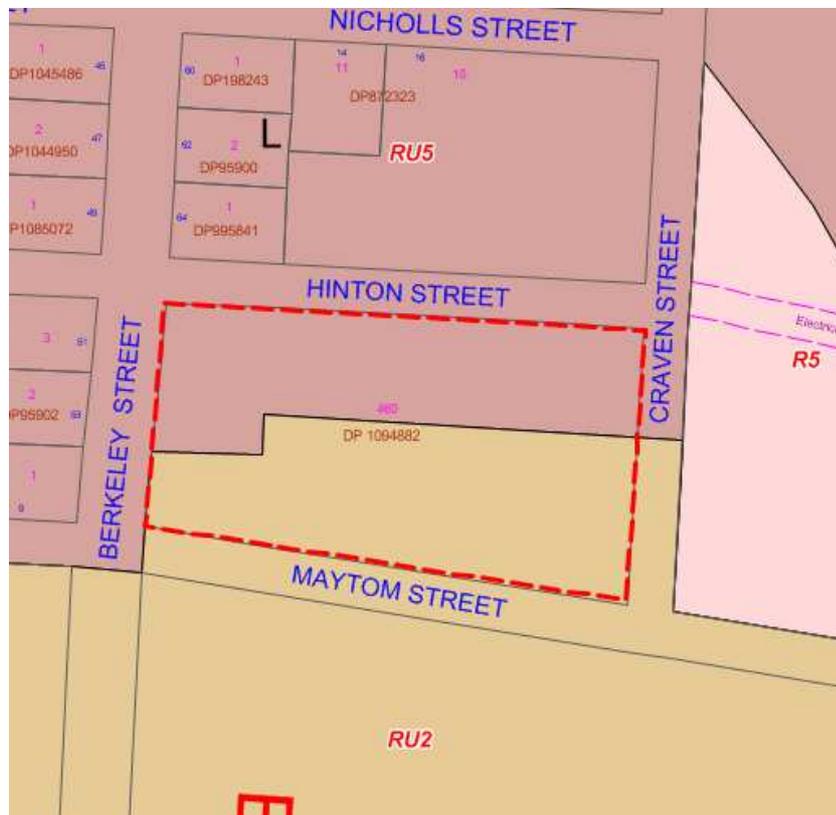


Figure 1: Example of allotment where split zone issue exists



Figure 2: Possible subdivision scenario using proposed clause (*note: subdivision scenario & lot sizes are not accurate and are indicative only. This example has been provided only as an example of potential clause use only*).

Ecological protection subdivision

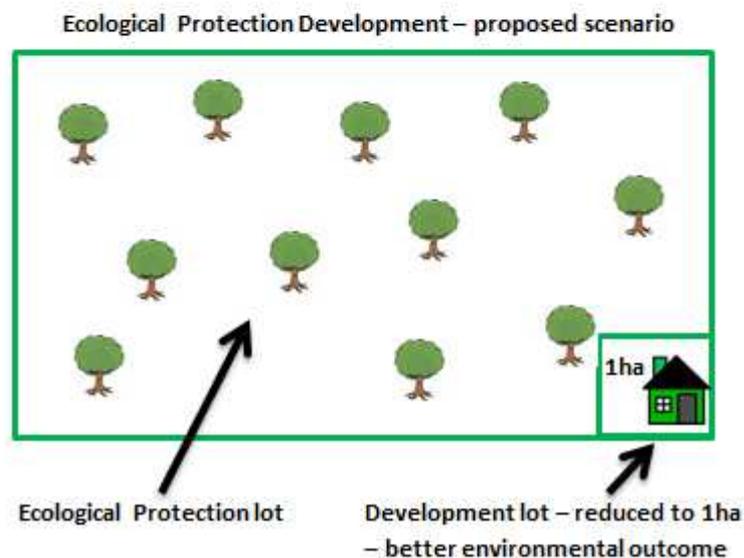
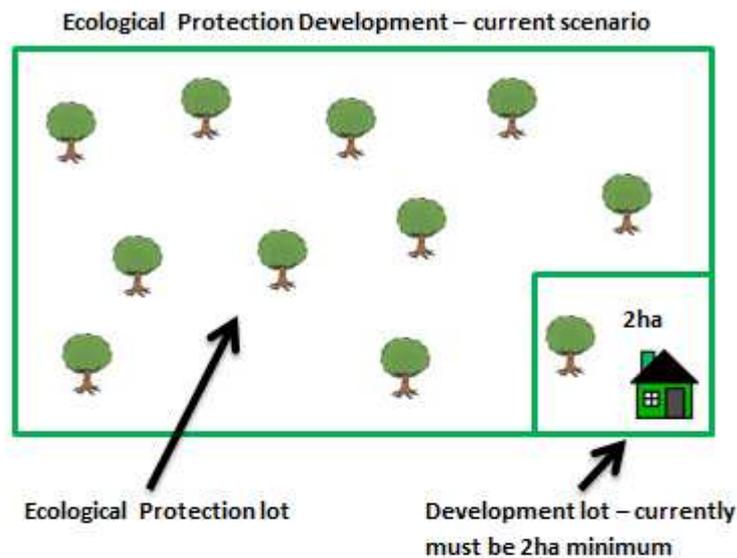
Clause 4.1B of GLLEP 2014 enables subdivision where the primary outcome is the creation of a significant ecological protection lot plus other smaller development allotments. Under the current clause, the resultant development lot/s must have a minimum lot size of 2 hectare for lots that cannot be serviced by reticulated sewerage and 1 hectare for lots that can be serviced.

Council has recently entered into preliminary discussions with land owners seeking to utilise the provisions of this clause for to facilitated significant environmental outcomes and two issues have be identified:

- The 2 hectare minimum lot size requirement may be excessive for lots not connected to a sewage reticulation system and as a consequence, may not result in the best environmental protection outcome; and
- There is no provision to allow a dwelling to be erected on the development lot/s once the subdivision has been approved.

This Planning Proposal therefore proposes that existing clause 4.1B of GLLEP 2014 be amended to enable subdivision where the resulting development lot/s, regardless of whether they can be connected to reticulated sewerage, have a minimum lot size of 1 hectare and a dwelling entitlement.

The reduction from 2 hectares to 1 hectare for the resulting development lot is based on significant improvements to wastewater treatment systems since the original clause was developed. Treatment systems have developed significantly since this time enabling them to achieve high performance levels on sites with size, soil, groundwater and landscape limitations. New and improved technologies are based on defining the performance requirements of the system, characterizing wastewater flow and pollutant loads, evaluating site conditions, defining performance and design boundaries, and selecting a system design that addresses these factors. The following diagram illustrates the use of the proposed clause



Council considers a reduction from 2 hectares to 1 hectare for the development lot in these scenario's reasonable based on the improvements to wastewater treatment systems. Further, the reduction will facilitate better environmental outcomes by potentially allowing more land to be set aside for ecological protection purposes.

Ensuring the ecological protection clause is workable in its current form is vital in order for Council to negotiate with land owners to achieve the best environmental outcomes.

Amendments to Clause 4.1A to include Smiths Lake RU5 Village Zone

The main issue associated with subdivision on steep land is that it increases the development potential of an allotment. In turn, this increases the impact of future buildings and structures by way of earthworks, tree and vegetation removal, stormwater management (runoff and quality) and poor relationships between dwellings (visual impact, view sharing and overshadowing). For this reason, Council has recently increased the minimum lot size for the RU5 Village Zone at Smiths Lake to 1000sqm under a separate Planning Proposal.

During the public consultation phase of the previous Planning Proposal to increase the minimum lot size for the RU5 Village Zone at Smiths Lake, submissions were received from the owners of two greenfield Master Planned sites, which requested flexibility for the creation of lots less than 1000sqm. In response, the lot size map was amended for one of the sites (the Tropic Gardens Road site) to include a smaller lot size on those parts of the site with a slope less than 20%. In addition, Council proposed to seek an amendment to clause 4.1A of LEP 2014 to allow consideration to be given to subdivision down to 500sqm at Smiths Lake where a single application is lodged for subdivision and the associated residential structures. Upon advice from the Department of Planning and Environment, the proposed amendment to Clause 4.1A was incorporated into this Planning Proposal.

Clause 4.1A Exceptions to minimum lot sizes for certain residential development was incorporated into GLLEP 2014 in order to preserve the ability for Council to give consideration to the creation of lots smaller than the minimum lot size, within the new planning assessment framework of one LEP and one Development Control Plan (DCP). A smaller lot size can only be considered if it forms part of a single development application for subdivision and the associated residential structures.

Clause 4.1A currently allows for the subdivision of land to a minimum lot size of 300sqm in the R2 Low Density Residential Zone and 200sqm in the R3 Medium Density Zone, where a single development application is lodged for the subdivision of land and associated residential structures. In comparison the GLLEP 2014 mapped Minimum Lot Sizes are 450sqm in the R2 Low Density Residential Zone and 1000sqm in R3 Medium Density Residential zone.

In many cases, people who buy a steep vacant lot are not aware of the design requirements to build on steep land. Likewise, they may not anticipate the costs associated with building in response to the topography of the site in order to reduce environmental impact. However, these issues can be anticipated and potentially overcome if the development application for the subdivision of land also includes the details of the residential structures that are to be

built on the land. Provided considerable thought is given to the design of residential structures on the proposed allotment, lots smaller than 1000sqm may still result in acceptable outcomes on steep land. In this regard, development applications lodged under Clause 4.1A would still be required to demonstrate compliance with the other relevant provisions in the LEP and the existing provisions for subdivision and associated residential development within the Great Lakes DCP.

Clause 4.1A does not determine the form of subdivision (Torrens, strata or community title) or limit the number of allotments or dwellings that can be applied for in a single development application. Clause 4.1A also does not restrict the ability of land owners to submit development applications for future additions and alterations to the dwellings that are constructed on these sites.

On this basis, Council is proposing flexibility in the creation of lot sizes within the RU5 Village zone of Smiths Lake, to a minimum lot size of 500sqm using the development provisions of Clause 4.1A.

The report and terms of the Council resolutions relevant to this Planning Proposal are contained within Appendix 2 to this Planning Proposal.

Council requests a Gateway determination under Section 56 of the EP&A Act for the draft amendment and authorisation to exercise its delegations for this Planning Proposal.

Part 1 – Objectives and intended outcomes

(s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument)

The following are the objectives and intended outcomes of the Planning Proposal:

- To facilitate minor boundary realignments to existing lots in certain circumstances, which are less than the minimum lot size for that zone and that do not result in the creation of any additional lots or dwelling entitlements.
- To facilitate minor boundary adjustments to existing lots which are in more than one planning zone where the resultant lots will be less than the minimum lot size for that given zone, *and*
- To allow development lots that are created as part of a subdivision for ecological protection to have a minimum size of 1 hectare and a dwelling entitlement.
- To allow for integrated development to a minimum lot size of 500sqm within the RU5 Village zone of Smith's Lake where it can be demonstrated that both the building design and subdivision are capable of mitigating any potential environmental impacts associated with development on steep land.

Part 2 – Explanation of provisions

(s.55(2)(b) An explanation of the provisions that are to be included in the proposed instrument)

The intended outcomes of the planning proposal will be achieved by:

- adding a new clause to enable boundary realignments in certain circumstances; *and*
- adding a new clause to enable subdivision of lots which have more than one zone; *and*
- amending existing clauses 4.1A and 4.1B in GLLEP 2014.

The outcomes above are expanded upon below by including the proposed new clauses/clause amendments to GLLEP 2014. Proposed clauses and amendments are indicative only and subject to change at the legal drafting stage:

1. Boundary realignment clause

There are a number of standard clauses which have been used by various Councils to address the 'boundary realignment issue'. Drawing upon these Council proposes to use a clause similar to the following:

The objective of this clause is to facilitate boundary adjustments between 2 or more lots if one or more of the resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land.

1) This clause applies to land in all land use zones contained within Great Lakes Local Environmental Plan 2014.

2) Despite clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that the subdivision:

- a) will not increase the number of lots, or the potential for future subdivision that would create additional lots when compared to the existing situation.*
- b) will not increase the number of dwellings or opportunity for additional dwellings*

3) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:

- a) the potential for land use conflict will not be increased as a result of the subdivision,*
- b) if the land is in a rural zone, the agricultural viability of the land will not be adversely affected as a result of the subdivision,*
- c) the future use of the new lots is consistent with the objectives of the zone that apply to the land,*

- d) whether or not the subdivision is appropriate having regard to the natural and physical constraints of the land,*
- e) whether or not the subdivision is likely to have an adverse impact on the environmental values of the land.*

4) Despite any other provision of GLLEP 2014 the erection of a dwellings house will be permitted with consent on any resulting lot.

2. Split zone clause

There are a number of standard clauses which have been used by various Councils to address the 'split zone scenario'. Council has been in discussions with the Department of Planning and proposes to use a clause similar to clause 4.1B contained within Kempsey Local Environmental Plan 2013 as indicated below:

Minimum subdivision lot sizes for certain split zones

(1) The objectives of this clause are as follows:

- a) 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, business or industrial zone, and*
- b) land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*

*(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, business or industrial zone that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land, and*
 - ii. all the land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living 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) Despite any other provision of GLLEP 2014 the erection of a dwellings house will be permitted with consent on any resulting lot.

3. Ecological protection subdivision clause

Council has resolved to amend the existing clause 4.1B in GLLEP 2014. It is proposed to amend the clause in the following manner:

black text = existing clause

blue text = proposed additions,

~~black strikethrough text~~ = sections of existing clause to be deleted

(1) *The objective of this clause is to:*

- a) *facilitate subdivision that will result in the improvement and protection of high value conservation land for ecological and ecosystem service purposes.*
- b) *result in reasonable subdivision and development opportunities for owners of land with high conservation value.*

(2) *This clause applies to each lot (an original lot) that contains any of the following land:*

- a) *an environmentally sensitive area,*
- b) *land identified as “Wetland” on the Wetlands Map,*
- c) *land the subject of a planning agreement that makes provision for the conservation or enhancement of the natural environment.*

(3) *Despite clause 4.1, development consent may be granted for the subdivision of an original lot to create other lots (**the resulting lots**) if the consent authority is satisfied that:*

- a) *one of the resulting lots will contain all of the land referred to in subclause (2) (a), (b) or (c) that was in the original lot, and*
- b) *all other resulting lots will contain land that has an area that is not less than 1 hectare regardless of if the land is serviced by a sewage/water reticulation system or not.*

~~(i) in relation to land that is serviced by a sewage reticulation system and water reticulation system 1 hectare, or~~

~~(ii) in relation to land that is not serviced by a sewage reticulation system and water reticulation system 2 hectares.~~

(4) *Development consent must not be granted under subclause (3) unless the consent authority is satisfied that suitable arrangements have been, or will be, made for the conservation and management of the land referred to in subclause (3) (a).*

(5) *Despite any other provision of GLLEP 2014 the erection of a dwelling house will be permitted with consent on any resulting lot with the exception of the lot referred to in subclause (3) (a).*

(6) *In this clause:*

environmentally sensitive area means land that is an environmentally sensitive area for exempt or complying development within the meaning of clause 3.3.

For the ecological protection clause, it is the intention that a dwelling house will not be able to be erected with consent on the ecological protection lot.

4. Exceptions to minimum lot sizes for certain residential development

To give effect to intentions to allow exceptions to minimum lot sizes for certain residential development the following amendments to clause 4.1A in GLLEP 2014 are proposed:

black text = existing clause

blue text = proposed additions,

Clause 4.1A Exceptions to minimum lot sizes for certain residential development

(1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.

(2) This clause applies to development on land in the following zones:

- (a) Zone R2 Low Density Residential,*
- (b) Zone R3 Medium Density Residential.*
- (c) Zone RU5 Village Zone (Smiths Lake)*

(3) Despite clauses 4.1 and 4.1AA, development consent may be granted to a single development application for development to which this clause applies that proposes the subdivision of land into 2 or more lots if:

- (a) one existing dwelling will be located, or one dwelling will be erected, on each lot resulting from the subdivision (other than any lot comprising association property within the meaning of the Community Land Development Act 1989), and*
- (b) the size of each lot will be equal to or greater than:*
 - (i) for development on land in Zone R2 Low Density Residential—300 square metres, or*
 - (ii) for development on land in Zone R3 Medium Density Residential—200 square metres, or*
 - (iii) for development on land in Zone RU5 Village at Smiths Lake—500 square metres.*

Part 3 – Justification

(s.55(2)(c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

SECTION A – NEED FOR THE PLANNING PROPOSAL

Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not considered to be linked directly to any study or report. However the need for flexibility in regards to undersized lots is consistent with the historic pattern of development within the Great Lakes Local Area and has been occurring for many years under previous instruments.

By enabling greater flexibility in regards to boundary alignment and subdivision of land in split zones, Council will be able to facilitate more desirable planning outcomes.

The proposal to permit smaller development lots in conjunction with subdivision for ecological protection purposes will also result in better planning outcomes which have increased environmental benefits.

Proposed amendments to clause 4.1A which form part of this Planning Proposal have come about as a result of submissions received during the exhibition of an earlier Planning Proposal to increase the minimum lot size for the Smiths Lake RU5 Village Zone from 700sqm to 1000sqm. Submissions received from the owners of two (2) large greenfield sites in Smith Lake zoned RU5 Village Zone objected to the increased minimum lot size proposed. The greenfield sites in question have both been subject to various environmental studies to allow for residential development. Based on this, Council has decided to support greater flexibility pertaining to lot sizes within the Smiths Lake RU5 Village Zone were the application to subdivide is undertaken as integrated development in accordance with the provisions of clause 4.1A *Exceptions to minimum lot sizes for certain residential developments*. In order to provide greater opportunity for community discussion, at the suggestion of the Department of Planning and Environment, the proposed amendments to Clause 4.1A were deferred to from the earlier Planning Proposal to increase the minimum lot size.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

GLLEP 2014 became effective on 4 April 2014. Under GLLEP 2014 there is limited flexibility for undersized lots in certain zones which was available under Great Lakes Local Environmental Plan 1996.

Council considers that the Planning Proposal is the most effective means of facilitating the objectives as identified in Part 1. Amendments to GLLEP 2014 in accordance with this Planning Proposal will enable Council to facilitate logical planning which has strategic merit.

With regards to the boundary alignment and split zones, it is noted that a number of Council's contain similar provisions within their Standard Local Environmental Plan to deal with these issues to those proposed in this Planning Proposal.

SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Planning Proposal is consistent with The Mid North Coast Regional Strategy (MNCRS) p11 namely for the protection of “...*high value environments, including significant coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors...*”.

It will also facilitate development that reflects and enhances the “...*character of existing settlements on which it is located and that is based on best practice urban design principles*” (p7)

The Planning Proposal is consistent with the MNCRS.

Is the Planning Proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?

Council’s Community Strategic Plan 2010-2030 (Great Lakes 2030) is the community's plan for the future. It represents the long term aspirations for the area and encompasses an overarching vision developed by the community and objectives and strategies to achieve community goals. Great Lakes 2030 identifies a number of Key Directions. The Planning Proposal is consistent with the following directions:

Key Direction 1: Our Environment

The objectives of this direction are to protect and maintain the natural environment so that it is healthy, diverse and to ensure that development is sensitive to the environment. The Planning Proposal is consistent with this key direction as it will facilitate subdivision, under certain circumstances, which results in significant environmental outcomes.

Key Direction 2: Strong Local Economies

Objectives of this direction are to promote Great Lakes as an attractive area for residents and visitors which encourages a supportive business environment, job opportunities and that provides transport and infrastructure that meets future needs. The Planning Proposal will enable subdivision, under certain circumstances which creates additional lots. This will in turn result in flow-on economic benefits. The Planning Proposal is consistent with this key direction.

Key Direction 3: Vibrant and Connected Communities

The objectives of this direction encourage the provision of the ‘right places and spaces’, supporting positive and safe communities which promote education, sustainable growth and connectivity. The Planning Proposal will facilitate logical and efficient land use planning outcomes. The Planning Proposal is consistent with this key direction.

Is the Planning Proposal consistent with applicable state environmental planning policies?

The Proposal is consistent with the objectives and provision of the following relevant State Environmental Planning Policies (SEPPs):

State Environmental Planning Policy No. 26 – Littoral rainforest

The Proposal is consistent with the Littoral Rainforest SEPP which aims to preserve littoral (near to the sea, ocean or lake) rainforest.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The Koala Habitat Protection SEPP aims to encourage the proper conservation and management of koala habitat areas in order to maintain the viability of koala populations and requires core koala habitat to be included in an environmental protection zone.

The Planning Proposal has the potential to protect koala habitat through the application of the ecological protection subdivision clause.

State Environmental Planning Policy No. 71 - Coastal Protection

This SEPP aims to encourage the proper conservation and management of coastal zone areas in order to maintain the viability of the coastal foreshore.

The Planning Proposal is consistent with the SEPP as it will not restrict access to the coastal foreshore and will result in sound land use planning outcomes for land within the coastal zone.

State Environmental Planning Policy (Infrastructure) 2007

This SEPP aims to provide a consistent approach for infrastructure planning and provision across NSW and to support greater efficiency in the location of infrastructure and service facilities.

The Proposal is consistent with the aims of the Infrastructure SEPP through improved land use planning promoting access and use of existing infrastructure.

State Environmental Planning Policy (Rural Lands) 2008

This SEPP aims to facilitate the orderly and economic use and development rural lands for rural and related purposes, reduce land use conflict and identify State significant agricultural land.

The Planning Proposal is consistent with the Rural Planning Principles of the SEPP. In particular, for the balance the social, economic and environmental interests of the community, and identify and protect natural resources, having regard to maintaining biodiversity, the protection of native vegetation.

Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

The consistency of the planning proposal with State Environmental Planning Policies is

outlined in the table below.

A more detailed assessment of the applicable s.117 Directions is included in Appendix 1.

Table 1: Summary - consistency with s.117 Directions

No.	Direction	Applicable	Consistent
Employment & Resources			
1.1	Business & Industrial Zones	Y	Y
1.2	Rural Zones	Y	Y
1.3	Mining, Petroleum Production and Extractive Industries	N	N/A
1.4	Oyster Aquaculture	N	N/A
1.5	Rural Lands	Y	Y
Environment & Heritage			
2.1	Environmental Protection Zones	Y	Y
2.2	Coastal Protection	Y	Y
2.3	Heritage Conservation	Y	Y
2.4	Recreation Vehicle Areas	Y	Y
Housing, Infrastructure & Urban Development			
3.1	Residential Zones	Y	Y
3.2	Caravan Parks and Manufactured Home Estates	Y	N/A
3.3	Home Occupations	Y	N/A
3.4	Integrating Land Use & Transport	Y	Y
3.5	Development Near Licensed Aerodromes	N	N/A
3.6	Shooting Ranges	N	N/A
Hazard & Risk			
4.1	Acid Sulfate Soils	Y	Y
4.2	Mine Subsidence and Unstable Land	N	N/A
4.3	Flood Prone Land	Y	Y
4.4	Planning for Bushfire Protection	Y	Y
Regional Planning			
5.1	Implementation of Regional Strategies	Y	Y
5.2	Sydney Drinking Water Catchments	N	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Y	Y
Regional Planning (Continued)			

No.	Direction	Applicable	Consistent
5.5, 5.6 & 5.7	REVOKED		
5.8	Second Sydney Airport: Badgerys Creek	N	N/A
Local Plan Making			
6.1	Approval and Referral Requirements	Y	Y
6.2	Reserving Land for Public Purposes	Y	Y
6.3	Site Specific Provisions	N	N/A
Metropolitan Planning			
7.1	Implementation of the Metropolitan Plan for Sydney 2036	N	N/A

SECTION C – ENVIRONMENTAL, SOCIAL & ECONOMIC IMPACT

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?

No. The Planning Proposal will not impact upon critical habitats, threatened species, populations or ecological communities or their habitats.

Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No. The Planning Proposal will not have any likely environmental effects.

Has the Planning Proposal adequately addressed any social and economic effects?

It is considered that the Planning Proposal will not have any negative social effects.

The Planning Proposal has economic merit as it will enable additional lots to be created under given circumstances.

SECTION D – STATE AND COMMONWEALTH INTERESTS

Is there adequate public infrastructure for the planning proposal?

The planning proposal is not site specific. Public infrastructure requirements would be considered as part of the development application process.

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

Consultations have not yet been undertaken with State and Commonwealth agencies as the Gateway determination has not yet been issued. Once a Gateway determination is received Council will consult with any State and Commonwealth public authorities in accordance with the Gateway Determination.

Part 4 - Mapping

No maps are required for the Planning Proposal.

Part 5 – Community consultation

In accordance with Section 56(2) (c) and 57 of the *Environmental Planning and Assessment Act 1979*, this Planning Proposal will be made publically available for a minimum of 14 days.

In accordance with Council's adopted consultation protocols the following will also be undertaken:

- Notices in the local newspaper;
- Exhibition material and all relevant documents to be made available at all Council's Offices within the Local Government Area;
- Consultation documents to be made available on Council's website; and

Any further consultation requirements in accordance with the Gateway determination will be undertaken.

Part 6 – Project timeline

In accordance with DP&E guidelines the following timeline is provided which includes the tasks deemed necessary for the making of this local environmental plan.

Table 2: Estimated project timeline

Task	Responsibility	Timeframe	Date (approximate)
Lodgement of PP for Gateway Determination	Great Lakes Council	-	August 2015
Gateway Determination	Minister for Planning and Infrastructure	4 weeks	September 2015
Consultation with Public Authorities in accordance with Gateway Determination (if necessary).	Government Authority	4 weeks	October 2015
Public exhibition of amended PP	Great Lakes Council	Minimum 14 days	November/December 2015
Making of local environmental plan*	Minister for Planning and Infrastructure	6 – 8 weeks	January/February 2016

*Making of plan factors in potential office closures and holidays in association with Christmas/New Years

Appendix 1

Table 3: Detailed consistency with s.117 Directions

s.117 Direction Summary		Consistency
Employment & Resources		
1.1	<u>Business and Industrial Zones</u>	<p>This Direction is applicable as the Planning Proposal has the potential to affect land within an existing or proposed business or industrial zone.</p> <p>The Planning Proposal is consistent with this Direction as it will not result in changes to areas or locations of existing business or industrial zones. In addition, it will not reduce the floor space area in business or industrial zones.</p>
1.2	<u>Rural Zones</u> Aims to protect the agricultural production value of rural land.	<p>This Direction is applicable as the Planning Proposal has the potential to affect land within existing and proposed rural zones.</p> <p>The Planning Proposal is consistent with section 4(a) of this Direction as it will not rezone land in a rural zone to a residential, business, village or tourist zone.</p> <p>The Planning Proposal is inconsistent with section 4(b) of this Direction as it will result in a change to the minimum lot size in rural zones, but only in a limited number of scenarios.</p> <p>The inconsistency is justified as the proposal will not impact on the agricultural production value of rural land and will only be able to occur under given circumstances where the proposal has planning merit.</p> <p>Council considers that this inconsistency is of this Planning Proposal with section 4(b) is of minor significance.</p>
1.3	<u>Mining, Petroleum Production and Extractive Industries</u>	Not Applicable
1.4	<u>Oyster Aquaculture</u>	Not Applicable
1.5	<u>Rural Lands</u> The objectives of this Direction are to protect the agricultural productions value of rural lands and to facilitate the orderly and	<p>This Direction is applicable as the Planning Proposal has the potential to affect land within existing and proposed rural zones including environmental protection zones.</p> <p>The Planning Proposal is inconsistent with</p>

s.117 Direction Summary	Consistency
<p>economic development of rural lands for rural and related purposes.</p>	<p>section 4(b) of this Direction as it will change the minimum lot size of land within a rural or environmental zone in given circumstances.</p> <p>Council considers that the inconsistency of the proposal is minor as a reducing in the minimum lot size will only be permitted in limited circumstances.</p> <p>Further the inconsistency of the proposal is justified as it supports the objectives of the Direction for the protection of agricultural land and the orderly and economic development of rural lands for rural related purposes.</p> <p>The Planning Proposal is consistent with this Direction as</p>
Environment & Heritage	
<p>2.1 <u>Environmental Protection Zones</u></p> <p>The objective of this Direction is to protect and conserve environmentally sensitive areas.</p>	<p>This Direction is applicable as the Planning Proposal will potentially apply to land in environmental protection zones.</p> <p>The Planning Proposal is consistent with section (4) of this Direction as it includes provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>The Planning Proposal is inconsistent with section (5) of this Direction as it will modify development standards within environmental protection zones but only under limited circumstances.</p> <p>Council considers that the inconsistency of the proposal in this instance is minor as a reduction in the minimum lot size will only be permitted under limited circumstances. Further, the environmental benefits which will result from the proposal will outweigh the impacts associated with this inconsistency.</p> <p>The overall intent of the proposal within regards to this Direction is consistent with the said objectives.</p>
<p>2.2 <u>Coastal Protection</u></p> <p>The objectives of this Direction are to implement the principles in the NSW Coastal Policy.</p>	<p>This Direction is applicable as the Planning Proposal applies to land in the coastal zone.</p> <p>The Planning Proposal is consistent with this Direction as it is consistent with the <i>NSW Coastal Policy</i>, namely for the conservation of biological diversity and ecological integrity including the principles of Ecologically Sustainable Development.</p>

s.117 Direction Summary		Consistency
		<p>It is consistent with the <i>Coastal Design Guidelines</i> as it will ensure logical planning outcomes which have regard to the settlement pattern of the relevant coastal locality.</p> <p>It is consistent with the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual 1990</i>).</p>
2.3	<p><u>Heritage Conservation</u></p> <p>This Direction aims to conserve items and places of heritage and indigenous heritage significance.</p>	The Planning Proposal is consistent with this Direction as it will not negatively impact on heritage items, places or items or places of Aboriginal significance.
2.4	<p><u>Recreational Vehicle Areas</u></p> <p>The objective of this direction is to protect sensitive land or land with significant conservation value from adverse impacts from recreation vehicles.</p>	The Proposal is not inconsistent with this Direction.
Housing, Infrastructure and Urban Development		
3.1	<p><u>Residential Zones</u></p> <p>This Direction aims to encourage a range of housing that makes use of existing infrastructure and services that do not impact on environment and resource lands.</p>	<p>This Direction is applicable as the Planning Proposal as it will apply to land within existing residential areas.</p> <p>The Planning Proposal is consistent with this Direction as it will result in the creation of additional allotments for residential development on land which is already zoned for this purpose. It will make use of existing infrastructure and services and will have positive environmental outcomes.</p>
3.2	<p><u>Caravan Parks and Manufactured Home Estates</u></p> <p>The objectives of this direction are to provide for a variety of housing types including opportunities for caravan parks and manufactured home estates.</p>	The Planning Proposal is consistent with this Direction.
3.3	<p><u>Home Occupations</u></p> <p>The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.</p>	<p>The Planning Proposal does not impact on Home Occupations.</p> <p>The Planning Proposal is consistent with this Direction.</p>
3.4	<p><u>Integrating Land Use and</u></p>	This Direction is applicable to the Planning

s.117 Direction Summary	Consistency
<p><u>Transport</u></p> <p>The purpose of this Direction is to ensure that development achieves objectives with regard to the improvement of access by walking, public transport and other means that reduce dependence on private car travel.</p>	<p>Proposal.</p> <p>The Planning Proposal is consistent with this Direction as it has the potential to improve access and circulation to lots which currently have access issues.</p> <p>It will not impact upon access with regards to walking, public transport or other means. It will not increase dependence on private car travel.</p> <p>The Proposal is not inconsistent with this Direction.</p>
<p>3.5 <u>Development Near Licensed Aerodromes</u></p>	<p>Not Applicable.</p>
<p>3.6 <u>Shooting Ranges</u></p>	<p>Not Applicable.</p>
Hazard and Risk	
<p>4.1 <u>Acid Sulfate Soils</u></p> <p>The purpose of the Direction is to avoid significant adverse environmental impact from the use of land that has a probability of containing acid sulphate soils.</p>	<p>This Direction is applicable to the Planning Proposal.</p> <p>Smiths Lake is relatively free from Acid Sulfate Soils.</p> <p>It is considered that any land use intensification resulting from this Planning Proposal is minor and will not have significant environmental impacts due to Acid Sulfate Soils.</p> <p>Further, any application to 'use land' will be assessed with regards to Acid Sulfate Soils at the development application stage.</p> <p>The Proposal is not inconsistent with this Direction.</p>
<p>4.2 <u>Mine Subsidence and Unstable Land</u></p>	<p>Not Applicable.</p>
<p>4.3 <u>Flood Prone Land</u></p> <p>The purpose of this Direction is to ensure the provisions of the LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential of the flood impacts both on and off the subject land.</p>	<p>This Direction is applicable to the Planning Proposal.</p> <p>The Planning Proposal is consistent with this Direction as it will not rezone any flood prone areas.</p> <p>Village areas of Smiths Lake are relatively free from flooding. The Planning Proposal will not affect the small number of allotments at risk of flooding in Smiths Lake.</p> <p>Any additional development on flood prone land as a result of this Planning Proposal is considered minor. Further any development on flood prone land as a result of this Planning</p>

s.117 Direction Summary		Consistency
		<p>Proposal will be assessed during the development assessment process.</p> <p>The Proposal is not inconsistent with this Direction.</p>
4.4	<p><u>Planning for Bushfire Protection</u></p> <p>The objectives of this Direction are to encourage the sound management of bushfire prone areas, and to protect life, property and the environment from bushfire hazards.</p>	<p>This Direction is applicable to the Planning Proposal as it has the potential to apply to land that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>Development that may occur as a result of this Planning Proposal is considered minor in nature.</p> <p>The majority of Smiths Lake Village has been identified as being significantly bush fire prone. Any subdivision of allotments within these village areas would require a detailed bush fire assessment and would need to comply with the requirements of the Rural Fires Service (RFS) and have regard to Planning for Bushfire Protection 2006 at the development assessment stage.</p> <p>The Proposal is not inconsistent with this Direction.</p>
Regional Planning		
5.1	<p><u>Implementation of Regional Strategies</u></p> <p>This Direction provides that a draft LEP should be consistent with the applicable Regional Strategy.</p>	<p>The Proposal is consistent with the provisions of the Mid North Coast Regional Strategy as indicated above namely for the protection of high value environments, including significant coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors.</p> <p>It will also facilitate development that reflects and enhances the character of existing settlements which it is located and that is based on best practice urban design principles.</p>
5.2	<p><u>Sydney Drinking Water Catchments</u></p>	<u>Not Applicable.</u>
5.3	<p><u>Farmland of State and Regional Significance on the NSW Far North Coast</u></p>	<u>Not Applicable.</u>
5.4	<p><u>Commercial and Retail Development along the Pacific Highway, North Coast</u></p> <p>The aim of this Direction is to manage commercial and retail development along the Pacific</p>	<p>This Direction is applicable to the Planning Proposal as it will apply to land in the vicinity of the Pacific Highway.</p> <p>It is considered that any development associated with this Planning Proposal will not impact upon the existing or proposed alignment of the Pacific</p>

s.117 Direction Summary		Consistency
Highway.		Highway. The Proposal is consistent with this Direction.
5.5, 5.6, 5.7 - Revoked.		
5.8	<u>Second Sydney Airport: Badgerys Creek</u>	Not Applicable.
5.9	<u>North West Rail Link Corridor Strategy</u>	Not Applicable.
Local Plan Making		
6.1	<u>Approval and Referral Requirements</u> The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Proposal is not inconsistent with this Direction.
6.2	<u>Reserving Land for Public Purposes</u> The objectives of this Direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	The Proposal is not inconsistent with this Direction.
6.3	<u>Site Specific Provisions</u>	Not Applicable.
Metropolitan Planning		
7.1	<u>Implementation of the Metropolitan Plan for Sydney 2036</u>	Not Applicable.

Appendix 2

Report and resolution from Strategic Committee Meeting

Subject: PES - Planning Proposal - Residential Rezoning at Bulahdelah

Index: General Amendments: SP-LEP-GL 2014

Author: Strategic Landuse Planner - Rebecca Underwood

Strategic Committee Meeting: 9 September 2014

SUMMARY OF REPORT:

This report outlines proposed amendments to the minimum lot size and subdivision provisions of Great Lakes Local Environmental Plan 2014 (LEP 2014).

SUMMARY OF RECOMMENDATION:

That Council endorse amendments to the subdivision provisions and the Minimum Lot Size map layer of Great Lakes LEP 2014.

That these provisions be incorporated in the General Amendments Planning Proposal to Great Lakes LEP 2014 endorsed at the Strategic Committee Meeting on 10 June 2014.

FINANCIAL/RESOURCE IMPLICATIONS:

Preparation of the draft amendments will be accommodated within the existing Strategic Planning Work Program.

POLICY IMPLICATIONS:

Nil.

LEGAL IMPLICATIONS:

Nil.

LIST OF ANNEXURES:

NB: Annexures have been removed as they do not relate to this planning proposal

LIST OF ATTACHMENTS:

Nil.

REPORT:

BACKGROUND

Great Lakes Local Environmental Plan 2014 (LEP 2014) came into effect on 4 April 2014.

At the Strategic Committee Meeting on 10 June 2014 a program of amendments to LEP 2014 was endorsed by Council. The amendment program had a particular focus on housekeeping amendments aimed at maintaining the flexibility of Council's existing development assessment policy and practice.

In this report it was specifically identified that variations to development standards with the concurrence of NSW Planning & Environment under the State Environmental Planning Policy No.1 - Development Standards, is no longer possible under the State Principal Instrument

Local Environmental Plan provisions in Great Lakes LEP 2014.

Specifically, it was identified that *Clause 4.6(6) Exceptions to development standards*, placed significant restrictions on subdivisions by specifying that subdivision applications cannot be supported if:

- 4.6(6)(a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard*
- 4.6(6)(b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard*

To address these restrictions Council endorsed the introduction of two local clauses that would allow for boundary realignments and the subdivision of land with two zones.

Council also wanted to introduce a new clause that would more broadly permit subdivision into lots of less than the minimum size under certain circumstances. This was in response to two situations that arose in South Forster where there were reasonable grounds to allow lots smaller than the permitted size. The affected properties were Lot 304 DP1099114, Cape Hawke Drive, owned by McBride, and Lot 602 DP1076070 The Southern Parkway owned by Lampo Pty Ltd. The subdivision for McBride was in connection with the creation of an easement for acquisition by Council, and the one for Lampo Pty Ltd was in connection with the transfer of a part of Lot 602 to the adjoining Barclay Retirement Village.

Since the resolution of 10 June 2014, additional matters have been identified and discussions have been held with the Department of Planning and Environment (DPE). As a consequence the following is now required:

- amendments to the endorsed subdivision clauses to clarify their intent;
- amendments to the ecological protection subdivision clause to clarify its intent; and
- a site specific amendment to the Minimum Lot Size map layer to enable subdivision.

These matters are discussed in detail within the following report.

REPORT

1. Boundary realignment clause

Council can consider certain boundary realignment applications under Clause 4.6(6) of LEP 2013 and "minor boundary realignments" under the State Environmental Planning Policy Exempt & Complying Development 2008 (Code SEPP). However, the provisions of Clause 4.6(6) and the Code SEPP are restricted to allotments that can satisfy the minimum lot size provisions of the LEP.

At the Strategic Committee Meeting on 10 June 2014 Council endorsed the inclusion of an additional clause that allows for boundary realignments of existing lots that may be less than the 40 hectare minimum lot size within the rural and environmental zones.

However, in recent discussions it has become clear that this scenario may occur in any zone, and therefore the specific references to the rural and environmental zones should be removed from the clause.

For example, two allotments in the B2 Local Centre zone may have an area of less than 1,000m², and a boundary realignment is sought to improve access and circulation to the allotments from a rear laneway. This scenario would be excluded from the proposed clause

because the minimum lot size in the zone is 1,000m².

It is therefore recommended that the intention of the proposed boundary realignment clause be amended as follows (struck-through text to be deleted; underlined text to be added):

Intention:

Facilitate boundary adjustments ~~in rural or environmental zones~~ where one or both of the lots does not meet the minimum lot size provided:

- the subdivision does not create additional lots or additional dwelling entitlements; and
- the potential for land use conflict will not be increased;
- ~~the agricultural viability or environmental values of the land will not be adversely affected as a result of the subdivision;~~
- the future use of the new allotments is consistent with the objectives of the zone that applies to the land.

2. Minimum Lot Size for split zones clause

At the Strategic Committee Meeting on 10 June 2014 Council also endorsed the inclusion of an additional clause that allows for the subdivision of land that has two zones, and therefore two minimum lot sizes.

For example, there are lots adjoining most villages that contain small areas of RU5 Village zone with the balance zoned RU2 Rural Landscape zone. This additional clause would allow for the separation of the allotment along the zone boundary so that additional village lots could be created.

However, on further consideration, the purpose of this new clause needs to be clarified to ensure that the residual lot containing all of the land within the RU2 Rural Landscape, E2 Environmental Protection or E3 Environmental Management zone, would retain a dwelling entitlement after subdivision.

Therefore it is recommended that the intention of the proposed split zones clause be amended as follows (struck-through text to be deleted; underlined text to be added):

Intention:

Facilitate the subdivision of land which has two existing zones that results in:

- all resulting lots in a residential, business, industrial or village zone shall have an area not less than the minimum lot size of the relevant zone; and
- one residual lot containing all of the land zoned RU2 Rural Landscape, E2 Environmental Protection or E3 Environmental Management which has an area less than the minimum lot size; and
- despite any other provision of LEP 2014, the residual allotment shall have a dwelling entitlement.

3. Ecological Protection subdivision clause

Council successfully introduced a local clause to Great Lakes LEP 2014 to enable subdivisions where the primary outcome is the creation of significant ecological protection lot/s plus other smaller development allotments. Under the clause, the resultant development lots must have a minimum size of 2 hectares for lots that cannot be serviced by reticulated sewerage and 1 hectare for lots that can be serviced.

Council has recently entered into preliminary discussions with land owners seeking to utilise the provisions of this clause and two issues have been identified:

1. The 2 hectare minimum lot size requirement may be excessive for lots not connected to a sewage reticulation system, and as a consequence, may not result in the best environmental protection outcome; and
2. there is no provision to allow a dwelling to be erected on the development lot/s once the subdivision has been approved.

Therefore it is recommended that the clause be amended as part of the General Amendments Planning Proposal program so as to reflect the following intention (underlined text to be added):

- subdivision that will result in the improvement and protection of high value conservation land for ecological and ecosystem service purposes; and
- reasonable subdivision and development opportunities for owners of land with high conservation value; and
- require all resulting development lots to have a minimum area of 1 hectare; and
- despite any other provision of LEP 2014, the development lots shall have a dwelling entitlement.

4. Minimum Lot Size Map Amendment

Following the Strategic Committee meeting of 10 June, staff held discussions with the Department of Planning and Environment (DPE) on the changes sought by Council. The DPE officers acknowledged the difficulties of the situation, including the challenges with making the intent of any new subdivision clause clear to the community. The officers did express concerns with the insertion of a new clause that would generally allow variations to the minimum lot size, even if it was only under certain prescribed circumstances. Mainly the concern was with the unintended consequences of landholders wishing to subdivide land that does not meet the minimum lot size requirements.

The DPE officers therefore suggested that the preferred approach would be for Council to amend the Minimum Lot Size map layer in LEP 2014 for the specific locations there was sufficient strategic planning benefit to warrant the departure from the minimum lot size.

Therefore, Council's endorsement is sought to amend the Minimum Lot Size map layer of LEP 2014 as it pertains to Lot 602 DP1076070, The Southern Parkway and Lot 304 DP1099114, Cape Hawke Drive, South Forster (see Annexure 'A' and Annexure 'B').

CONCLUSION

The amendments to the existing subdivision provisions in Great Lakes Local Environmental Plan 2014 (LEP 2014) outlined within this report would provide Council with the additional flexibility to facilitate sound conservation and development outcomes where departures from the minimum lot size are justified.

The amendments are considered to be relatively minor, and as a result could reasonably be accommodated within the General Amendments Planning Proposal that is currently being prepared for submission to NSW Planning and Environment.

RESOLUTION

User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Resolved Items Action Statement

Action is required for the following item as per the Council Decision or Resolution Under Delegated Authority.

Subject: PES - Planning Proposal - Residential Rezoning at Bulahdelah
Index: General Amendments: SP-LEP-GL 2014
Author: Strategic Landuse Planner - Rebecca Underwood
Strategic Committee Meeting: 9 September 2014

Cr L Vaughan, having declared a pecuniary interest, left the meeting.

RECOMMENDATION:

That Council:

- A. In accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*, Council resolve to incorporate the following matters in the Planning Proposal for General Amendments to Great Lakes Local Environmental Plan (LEP) 2014:
- i. Incorporate a clause to facilitate boundary realignments where one or both of the lots do not meet the minimum lot size, provided:
 - a. the subdivision does not create additional lots or additional dwelling entitlements; and
 - b. the potential for land use conflict will not be increased; and
 - c. the future use of the new allotments is consistent with the objectives of the zone that applies to the land.
 - ii. Incorporate a clause to facilitate the subdivision of land which has two existing zones that results in:
 - a. all resulting lots in a residential, business, industrial or village zone shall have an area not less than the minimum lot size of the relevant zone; and
 - b. one residual lot containing all of the land zoned RU2 Rural Landscape, E2 Environmental Protection or E3 Environmental Management; and
 - c. despite any other provision of LEP 2014, the residual allotment shall have a dwelling entitlement.
 - iii. Amend Clause 4.1B Exceptions to minimum lot sizes for ecological protection to facilitate:
 - a. subdivision that will result in the improvement and protection of high value conservation land for ecological and ecosystem service purposes; and
 - b. reasonable subdivision and development opportunities for owners of land with high conservation value; and
 - c. require all resulting development lots to have a minimum area of 1 hectare; and

d. despite any other provision of LEP 2014, the development lots shall have a dwelling entitlement.

- iv. Amend the Minimum Lot Size Map over the lands known as Lot 304 DP1099114 and Lot 602 DP1076070, South Forster as shown on the Figures contained in Annexure 'A' and Annexure 'B' to this report.

and once prepared, the planning proposal be submitted to NSW Planning and Environment for a Gateway Determination.

- B. In accordance with Section 59 of the *Environmental Planning and Assessment Act 1979* Council request written authorisation from NSW Planning & Environment to exercise its plan making delegations to undertake the Planning Proposal of General Amendments.
- C. If NSW Planning & Environment issue a Gateway Determination for Council to proceed with the Planning Proposal of General Amendments, consultation be undertaken with the community and government agencies in accordance with Section 57 of the *Environmental Planning and Assessment Act 1979* and any directions of the Gateway Determination.

4 PES - Planning Proposal-Increased Lot Size Smiths Lake/North Arm Cove

Index: SP-PP-19

Author: Strategic Land Use Planner - Peta Stimson

Strategic Committee Meeting: 10 March 2015

SUMMARY OF REPORT:

Council at its Strategic Committee Meeting on 10 June 2014 resolved to prepare a Planning Proposal to amend the minimum lot size maps for Smiths Lake and North Arm Cove. The proposal seeks to increase the minimum lot size from 700m² to 1000m² at Smiths Lakes and from 1000m² to 2000m² at North Arm Cove. In accordance with Council's resolution a Planning Proposal was prepared and publicly exhibited for comment.

This report presents the issues raised from submissions received during the public exhibition of the proposal and seeks Council's endorsement of the final proposal to enable drafting of the planning instrument.

SUMMARY OF RECOMMENDATION:

That Council:

1. Pursuant to s59 of the Environmental Planning and Assessment Act, 1979, adopt the revised Planning Proposal as contained in Attachment A.
2. Submit the revised Planning Proposal the Department of Planning & Environment seeking advice as to whether Council can utilise its delegated plan making function;
3. If the Department of Planning & Environment permits Council to use its plan making delegations, the revised Planning Proposal be submitted to the Parliamentary Counsel's Office for final drafting of the corresponding LEP;
4. Once drafted by the Parliamentary Counsel's Office, submit the draft LEP to the Department of Planning & Environment for notification by the Parliamentary Counsel's Office on the NSW legislation Website;
5. In the event the Department of Planning and Environment advises that Council cannot use its plan making delegations, then the planning proposal be submitted to the department with a request that the local environmental plan to give effect to the planning proposal be drafted and made.
6. That additional provisions be included in Great Lakes Development Control Plan relating to integrated development on steep land at Smiths Lake.

FINANCIAL/RESOURCE IMPLICATIONS:

There are no financial implications associated with requesting the Parliamentary Counsel's Office to draft the planning instrument. Staffing resources from Council Strategic Planning section are required to continue overseeing the advancement and completion of the LEP amendment.

POLICY IMPLICATIONS:

Nil.

LEGAL IMPLICATIONS:

There is always the possibility for a LEP Amendment to be challenged in the Land and Environment Court, however this is unlikely.

LIST OF ANNEXURES:

Nil.

LIST OF ATTACHMENTS:

- A: Planning Proposal - Minimum Lot Size (Smiths Lake and North Arm Cove)
- B: Gateway Determination
- C: Planning Proposal Explanatory Notes and Lot Size Analysis

Due to its large size, Attachments A, B & C have been circulated in hard copy to Councillors and Senior Staff only as a paper conservation measure. However, these Attachments are publicly available on Council's Website, copies are available at Council offices and copies are available on request.

BACKGROUND

Great Lakes Development Control Plan provisions (originally from DCP 31 Subdivision) were prepared to address the environmental and amenity impacts of subdivision of steep and vegetated land at Smiths Lake and North Arm Cove to ensure:

- sufficient area to accommodate the additional requirements on steep land for batters, retaining walls, cut/fill, setbacks etc;
- a satisfactory method of on-site sewage disposal in unsewered areas is achieved;
- battle-axe lots to lands with a slope of less than <15% are restricted;
- vegetation is retained to preserve the unique character of the villages.

To this end, the following provisions were created for subdivision of sewered allotments in the village zone:

- Less than 15% slope - to be no less than 15m wide and 700sqm;
- Between 15% and 20% slope - to be no less than 18m wide and 850sqm; and
- 20% slope or greater - to be no less than 20m wide and 1000sqm.

and for subdivision of unsewered allotments in the village zone:

- Less than 15% slope - to be no less than 18m wide and 1000sqm;
- Between 15% and 20% slope- to be no less than 20m wide and 1500sqm; and

- 20% slope or greater - to be no less than 25m wide and 2000sqm.

At the November 2013 Strategic Committee meeting Council requested officers remove any ambiguity associated with the assessment of subdivision of steep land and prepare a clause that did not allow for allotments less than 1000sqm to be created where those sites have a slope greater than 15%.

In order to determine the most equitable outcome of such a provision, additional slope analysis of land within the RU5 Village zones of North Arm Cove and Smiths Lake was undertaken. This revealed that not only does the majority of land within these RU5 Village zones have slopes in excess of 15%, but a high number of sites have slopes in excess of 25%. The slope analysis maps are provided in **Attachment C**.

Furthermore, the gazettal of Great Lakes Local Environmental Plan 2014 (LEP 2014), in April 2014, resulted in these controls being unable to be carried over into the new planning controls.

Therefore, Council determined the most equitable approach would be to amend the minimum lot size maps for each of these villages based on the minimum lot sizes from the DCP:

- North Arm Cove (unsewered) minimum lot size of 1000sqm would increase to 2000sqm; and
- Smiths Lake (sewered) minimum lot size of 700sqm would increase to 1000sqm.

REPORT:

Council, at the Strategic Committee Meeting on 10 June 2014, resolved to progress the amendment relating to minimum lot sizes to reflect steep land constraints at Smiths Lake and North Arm Cove as a separate planning proposal.

Specifically, Council resolved:

1. *In accordance with Section 55 of the Environmental Planning and Assessment Act 1979 Council resolve to prepare a Planning Proposal to amend the minimum lot size map layer of Great Lakes Local Environmental Plan (LEP) 2014 in order to:*

- *increase the minimum lot size from 1000sqm to 2000sqm in the North Arm Cove RU5 Village zone; and*
- *increase the minimum lot size from 700sqm to 1000sqm in the Smiths Lake RU5 Village zone,*

and that the planning proposal be submitted to NSW Planning and Environment for a Gateway Determination.

2. *In accordance with Section 59 of the Environmental Planning and Assessment Act 1979 Council request written authorisation from NSW Planning & Environment to exercise its plan making delegations to undertake the Planning Proposal.*

3. *If NSW Planning & Environment grant a Gateway Determination to proceed with the Planning Proposal, consultation be undertaken with the community and government agencies in accordance with Section 57 of the Environmental Planning and Assessment Act 1979 and any directions of the Gateway Determination.*

A planning proposal was prepared and submitted to the NSW Department of Planning & Environment on 15 September 2014. A Gateway Determination was granted by the Department on 2 October 2014 (Refer to **Attachment B**) which included an authorisation for Council to exercise its delegation to make the plan.

The planning proposal was publicly exhibited for 28 days, as required by the Gateway Determination, from the 5 November to 4 December 2014. Eight (8) submissions were received. The issues identified in submissions received during the public exhibition period are summarised below.

Public Authority Submissions

Consultation with the NSW Rural Fire Service, as required by the Gateway Determination, was undertaken. The NSW Rural Fire Service raised no objection to the proposal, stating:

The RFS has reviewed the referred documentation and has no objection to the Planning Proposal and provides the following advice:

- Any future subdivision development application will be required to comply with the “specifications and requirements” of Planning for Bush Fire Protection 2006.

Public Submissions

1. *Comments by a landowner at North Arm Cove querying whether the planning proposal will affect property values. The provision of a sewage treatment facility would far better ensure protection of water quality.*

Response: The planning proposal will remove the potential for some allotments to be further subdivided. However not all allotments which presently satisfy the lot size requirement for subdivision would be capable of successfully obtaining subdivision approval due to the inability to comply with bushfire, water sensitive design, driveway design or ecological constraints. Furthermore the cost of complying with multiple development constraints on steep sites would possibly make subdivision of these allotments economically unviable.

Council is not the responsible authority for the provision of reticulated water and sewer services at North Arm Cove. Council is not aware of any strategic plan by the local water authority to make these services available in North Arm Cove in the foreseeable future.

2. *Comments by a landowner at Smiths Lake supporting the Planning Proposal as it will result in improved catchment and environmental values, is in keeping with the character and surrounding landscape and will preserve the amenity of the villages.*

Response: No comments.

3. Concern raised by four (4) landowners at Smiths Lake that the proposal will restrict the potential to subdivide their land. Two (2) of these landowners have large greenfield village zoned sites, Lot 122 DP 1142798, Tropic Gardens Drive and Lot 2 DP 1103357 Macwood Drive. These sites have been subject to numerous studies resulting in the preparation of a Master Plan.

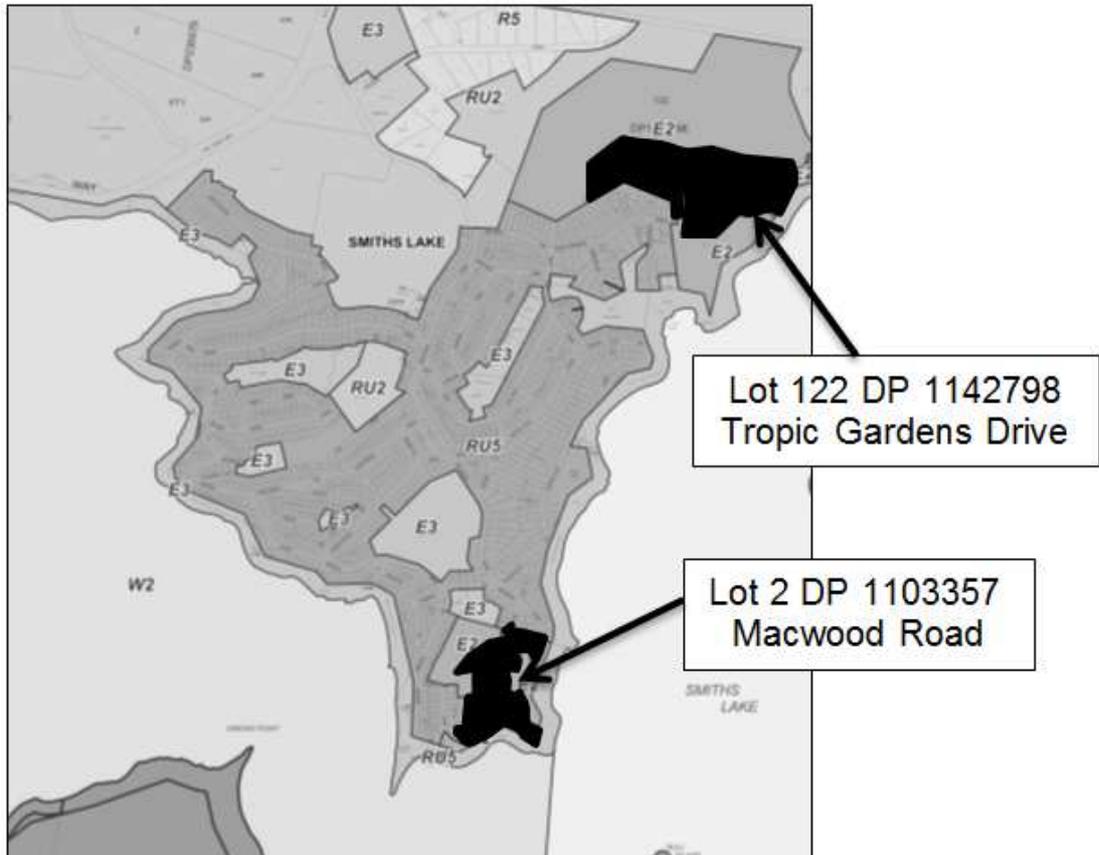


Figure 1: Greenfield RU5 Village Zone sites at Smiths Lake, Tropic Gardens Drive and Macwood Road

Tropic Gardens Drive and Macwood Road – Smiths Lake

Tropic Gardens Drive

The large greenfield village zoned site is located at the eastern end of Tropic Gardens Drive, as seen in Figure 1, and was rezoned in 2013. A detailed environmental assessment of the site was undertaken prior to its rezoning, providing an understanding of the land constraints associated with the site. The landform over the site is predominately steep, greater than 15% slope, however there are some small sections of land which contain a more gentle undulating landform. A concept plan was prepared for the site, and has been amended over time. The plans include standard residential lots and numerous residential units, similar to other tourist accommodation in Smiths Lake.

Tropic Gardens Drive - Submission

In their submission regarding the Planning Proposal the consultant acting for the landowner of the Tropic Gardens Drive site objects to the increased lot size from the current 700m² to 1000m², stating that the outcomes of the planning proposal will reduce the potential development yield of the land and threaten the viability of the development concept for the site. Furthermore, the landowner has requested that the minimum lot size for the Tropic Gardens Drive site be reduced to 450m². The landowner claims that the concept plan prepared for the site includes varying lot sizes ranging from 450m² to 1200m². The Master Plan held by Council for the site shows only four (4) lots with an area between 500m² and 700m². The majority of lots proposed are greater than 700m². It is relevant to note that strata subdivision does not have to comply with the minimum lot size.

Macwood Road - Background

The large greenfield village zoned site is located at the southern end of Macwood Road, as seen in Figure 1, with the current minimum lot size being 700m². In developing the Forster Tuncurry Conservation and Development Strategy (2003) Council formally recognised the development potential of this site and the need to create site specific development provisions within the Great Lake Development Control Plan (GL DCP). The site presently remains undeveloped and the ownership has changed since the land was rezoned and the prescriptive DCP was prepared in 2009.

Numerous meetings have been held with the new owners who have indicated that they do not wish to undertake the form of development required by the DCP, however they do wish to retain the smaller lot size under the DCP. Once LEP 2014 came into effect a minimum lot size of 700m² was established and the DCP provisions relating to lot size were of no effect. The current site specific provisions within the DCP are now considered out dated and inconsistent with new planning controls relating to subdivision.

Macwood Road - Submission

The landowner of the Macwood Road site objects to the planning proposal claiming previous studies undertaken for the site have considered land constraints such as water sensitivity, setbacks and ensuring earthworks are minimised. In their submission the landowner claims that increasing the minimum lot size would be detrimental to the overall development options available for the site.

Response - Proposed Solution

The main issue associated with subdivision on steep land is that it allows future buildings which require considerable earthworks, can adversely affect amenity and loss of character by removal of trees, cause difficulties for management of stormwater (runoff and quality) and can end up with a poor relationship between dwellings. In many cases, the designs and work to overcome these issues are more expensive than building on a flatter lot. Consequently, people who buy a steep vacant lot are often not aware of the costly requirements and/or may not want to build the type of house that reduces the environmental impact.

Such issues can be overcome if the development application for the subdivision of land also includes the details of the dwellings to be built on the subdivided land. This is known as "integrated development". Presently, clause 4.1A allows for the subdivision of land in the R2 Low Density Residential zone down to a lot size 450m² for integrated development and down to 200m² for integrated development in the R3 Medium Density zone. It does not allow variations to the RU5 Village zone.

There is the option for Council to allow subdivision of land at Smiths Lake into lots smaller than the prescribed lot size, for integrated development only, by amending clause 4.1A of LEP 2014 to include RU5 zone. This would require the applicant to provide full details of the proposed buildings on each lot to Council with the development application. Allowing integrated development can still result in acceptable outcomes on steep land provided considerable thought is given to the house design.

The planning proposal seeks to increase the minimum lot size at Smiths Lake from 700m² to 1000m². It is acknowledged that whilst both Tropic Gardens Drive and Macwood Road greenfield sites contain significantly steep landforms, they also contain areas that are more undulating upon which smaller lots could be accepted subject to careful design.

To respond to these submissions it is recommended that the planning proposal be amended to include an amendment to clause 4.1A of LEP 2014. The proposed amendment would

allow subdivision down to 500m² only at Smiths Lake and only for integrated development proposals. This option will provide flexibility and enable housing diversity for development within of the two (2) large greenfield sites located within the village.

In order to allow some flexibility for both the Tropic Gardens Drive and Macwood Road sites to include smaller lot sizes, it is recommended that clause 4.1A of LEP 2014 be amended as follows:

4.1A Exceptions to minimum lot sizes for certain residential development

- (1) *The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) *This clause applies to development on land in the following zones:*
 - (a) *Zone R2 Low Density Residential,*
 - (b) *Zone R3 Medium Density Residential.*
 - (c) Zone RU5 Village Zone (Smiths Lake)**
- (3) *Despite clauses 4.1 and 4.1AA, development consent may be granted to a single development application for development to which this clause applies that proposes the subdivision of land into 2 or more lots if:*
 - (a) *one existing dwelling will be located, or one dwelling will be erected, on each lot resulting from the subdivision (other than any lot comprising association property within the meaning of the Community Land Development Act 1989), and*
 - (b) *the size of each lot will be equal to or greater than:*
 - (i) *for development on land in Zone R2 Low Density Residential—300 square metres, or*
 - (ii) *for development on land in Zone R3 Medium Density Residential—200 square metres, or*
 - (iii) for development on land in Zone RU5 Village at Smiths Lake—500 square metres.**

A minimum lot size of 500m² for integrated development will accommodate all proposed lots as shown on the current Master Plan for Tropic Gardens Drive and as reflected in recent discussions with the landowners of the Macwood Road site. The Master Plan for Tropic Gardens Drive includes 47 residential lots, only 4 of these lots have an area between 500-700m² and as far as can be established only one 91 lots have an area of less than 500m² (477m²).

The proposed amendment to clause 4.1A will also provide an option for other landowners in Smiths Lake to subdivide their land into lots smaller than the prescribed lot size, provided they submit an integrated development proposal. Such proposals will need to demonstrate suitable outcomes relating to the design of future dwellings on each lot to be created.

In addition, DCP 2014 provides controls for residential subdivisions where approval is sought for lots smaller than the minimum lot size. Further amendments to the DCP provisions should be undertaken to include controls specific to integrated development at Smiths Lake within the next set of general amendments to DCP 2014.

The planning proposal has been revised to include the amendment to clause 4.1A as discussed above (refer to **Attachment A**). Council has been advised that the revised planning proposal, once adopted by Council, should be forwarded to the Department of Planning and Environment seeking advice as to whether the delegations previously granted for making the plan can still be utilised given the amendment to the planning proposal.

CONCLUSION

The planning proposal seeks to establish revised planning controls with regard to development on steep landforms in Smiths Lake and North Arm Cove. The planning proposal explains the intended effect of, and justification for, the proposed amendment to LEP 2014.

The proposed amendment to clause 4.1A will allow the impacts of smaller allotments to be assessed in conjunction with the design of a proposed dwelling for each allotment created. Thus, any potential issues relating to water quality, vegetation removal and excavation associated with the dwelling design can be assessed and mitigated prior to subdivision approval. All allotments and dwellings will need to demonstrate compliance with both subdivision and dwelling provisions of DCP 2014. The proposed amendment to clause 4.1A suitably resolves the concerns raised by the landowners of the two (2) large greenfield sites and other landowners at Smiths Lake seeking a reduced lot size for subdivision.

The proposed amendment to clause 4.1A does not include the North Arm Cove village. Unlike Smiths Lake, North Arm Cove is not connected to reticulated water and sewage. Furthermore there are no greenfield sites at North Arm Cove. It is not considered feasible to enable a smaller lot size for North Arm Cove due to the area required for onsite sewage disposal.

The proposed amendments to the LEP 2014 Lot Size Maps, as contained in the planning proposal, are considered fundamental to the protection of the sensitive environs of Smiths Lake and North Arm Cove. Council's endorsement of the planning proposal is required in order for it to be forwarded to the Department of Planning and Environment so the planning instrument can be drafted and the LEP amendment made.

Delegations to process the planning proposal were granted to Council on the basis of the original proposal, without the changes to clause 4.1A. Council will need to confirm with the department whether the delegations are still applicable given the proposed amendments to clause 4.1A. The recommendation is structured accordingly.

RECOMMENDATION:

That Council:

1. Pursuant to s59 of the Environmental Planning and Assessment Act, 1979, adopt the revised Planning Proposal contained in Attachment A which includes an amendment to clause 4.1A of LEP 2014 to allow for integrated development at Smiths Lake down to a lot size of 500m²;
2. Submit the revised Planning Proposal to the Department of Planning & Environment seeking advice as to whether Council can utilise its delegated plan making function;
3. If the Department of Planning & Environment permits Council to use its plan making delegations, the revised Planning Proposal be submitted to the Parliamentary Counsel's Office for final drafting of the corresponding LEP;
4. Once drafted by the Parliamentary Counsel's Office, submit the draft LEP to the Department of Planning & Environment for notification by the Parliamentary Counsel's Office on the NSW legislation Website;
5. In the event the Department of Planning and Environment advises that Council cannot use its plan making delegations, then the planning proposal be submitted to the department with a request that the local environmental plan be given effect to the planning

proposal be drafted and made.

6. That additional provisions be included in Great Lakes Development Control Plan relating to integrated development on steep land at Smiths Lake.

4 PES - Planning Proposal-Increased Lot Size Smiths Lake/North Arm Cove

Index: SP-PP-19

Author: Strategic Land Use Planner - Peta Stimson

Strategic Committee Meeting: 10 March 2015

RECOMMENDATION:

That Council:

1. Pursuant to s59 of the Environmental Planning and Assessment Act, 1979, adopt the revised Planning Proposal contained in Attachment A which includes an amendment to clause 4.1A of LEP 2014 to allow for integrated development at Smiths Lake down to a lot size of 500m²;
2. Submit the revised Planning Proposal the Department of Planning & Environment seeking advice as to whether Council can utilise its delegated plan making function;
3. If the Department of Planning & Environment permits Council to use its plan making delegations, the revised Planning Proposal be submitted to the Parliamentary Counsel's Office for final drafting of the corresponding LEP;
4. Once drafted by the Parliamentary Counsel's Office, submit the draft LEP to the Department of Planning & Environment for notification by the Parliamentary Counsel's Office on the NSW legislation Website;