

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217 &
PSC2009-06567

PLANNING PROPOSAL TO AMEND THE LEP – EXEMPT DEVELOPMENT – REALIGNMENT OF BOUNDARIES

MAYOR BRUCE MACKENZIE

THAT COUNCIL:

- 1) Resolve to immediately prepare a Planning Proposal to amend the LEP to include the following:

Add to Schedule 2 Exempt Development:

Realignment of Boundaries

The Realignment of Boundaries pursuant to this Clause:

- a) must be of minimal environmental impact, and
- b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994), and
- c) cannot be carried out in a wilderness area (identified under the Wilderness Act 1987).
- d) cannot be carried on land on which a heritage item or draft heritage item is situated.

This Clause applies to land in Zones:

- i. RU1 Primary Production,
- ii. RU2 Rural Landscape,
- iii. RU3 Forestry,
- iv. RU4 Primary Production Small Lots,
- v. RU6 Transition,
- vi. R5 Large Lot Residential,
- vii. E2 Environmental Conservation,

- viii. E3 Environmental Management or
- ix. E4 Environmental Living.

The subdivision of land, for the purpose only of any one or more of the following, is exempt development specified for this clause:

- a) widening a public road,
- b) a realignment of boundaries:
 - i. that will not create additional lots or the opportunity for additional dwellings, and
 - ii. that will not create a resultant lot that is more than 15% different in area to at least one pre-existing lot
 - iii. that will not result in one or more lots that are smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (unless the original lot or lots are already smaller than the minimum size), and
 - iv. that will not adversely affect the provision of existing services on a lot, and
 - v. that will not result in any increased bush fire risk to existing buildings,
- c) rectifying an encroachment on a lot,
- e) creating a public reserve,
- d) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

Add to Part 4 Principal Development Standards

Exceptions to minimum subdivision lot size for lot boundary adjustments in certain Rural, Residential and Environmental Zones.

The objective of this clause is to facilitate boundary adjustments between 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 objectives of the relevant zone can be achieved.

- 1) This clause applies to land in the following zones:

- i. RU1 Primary Production,
 - ii. RU2 Rural Landscape,
 - iii. RU3 Forestry,
 - iv. RU4 Primary Production Small Lots,
 - v. RU6 Transition,
 - vi. R5 Large Lot Residential,
 - vii. E2 Environmental Conservation,
 - viii. E3 Environmental Management or
 - ix. E4 Environmental Living.
- 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:
- a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - b) the number of dwellings or opportunities for dwellings on each lot after 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) 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.

**BACKGROUND REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT
AND COMPLIANCE SECTION MANAGER, DEVELOPMENT SERVICES**

BACKGROUND

Boundary realignments are not currently a permissible form of development under the Port Stephens Local Environmental Plan 2013 (PSLEP 2013). Rather, boundary realignments are permitted under the State policy – SEPP (Exempt and Complying Codes) 2008. The State policy permits boundary realignments without the requirement for gaining a development consent, however only when a number of conditions can be met.

Changes to the State policy over time has seen a continued restriction on the scenarios where boundary realignments can be carried out, to the extent that proposals once considered to be straight-forward developments are no longer permissible.

The restrictions imposed on boundary alignments results in impractical development outcomes in many instances, where boundaries on the map do not relate to topographical or physical features of the land. Consequently, public confidence in the planning process can be negatively impacted.

To restore a practical outcome based solution, Council has the option to prepare a planning proposal to introduce permissibility for boundary realignments under the PSLEP 2013, such as described in the resolution above.

It is noted that the above resolution addresses those boundary realignments permissible without consent. In addition the above resolution also provides for Council to consider a planning proposal to address those boundary realignments that do not meet the above stated criteria, allowing a merits based assessment to be carried out via a development application.

The standard process for proposed amendments to the PSLEP 2013 is approval from the Department of Planning and Environment subject to the review of the Planning Proposal. At this stage it is unclear on the Department's position on the proposed amendment which will be established through consultation with the Department through the preparation of the Planning Proposal.

It is noted that in the planning framework there is generally a requirement for local environmental plans to maintain consistency with State policy. In this instance, the consistency between the State policy and the proposed amendments to the PSLEP 2013 would need to be established with the Department of Planning and Environment. This may require lobbying of the State Government to change the State policy to provide for consistency with the proposed amendment to the PSLEP 2013.