

ITEMS FOR DECISION

COUNCIL MEETING

TO BE HELD ON MONDAY 9 AUGUST 2010

ITEM NO 6 **AMENDMENT OF COOMA-MONARO LOCAL ENVIRONMENTAL PLAN 1999 — (RURAL) TO ALLOW SUBDIVISION FOR INFRASTRUCTURE PURPOSES**

Reporting Officer: Strategic Planner	File No: PL/STR/8
Budget Allocation: N/A	Expenditure to Date: N/A
Effect of Recommendation on Budget: N/A	

Purpose of Report:

To obtain a recommendation to amend the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* to allow subdivision without the need for a 1997 holding for the purposes of infrastructure and extractive industries.

Commentary:

Background

As highlighted to Council at a workshop on 20 July 2010, Cooma-Monaro Shire Council wishes to undertake two infrastructure projects, which both require the subdivision of land.

Development of Undoo Gravel Pit

Council currently operates a gravel pit on part of a Crown land lot. Council wishes to subdivide the land, purchase it and obtain development consent for the existing gravel pit. The land is zoned 1(a). The *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* requires that land be a 1997 holding to allow subdivision. Whilst the land may be part of a 1997 holding it is considered that a lot of work will be necessary to determine the 1997 holding. Additionally, it is understood that some of the land which may be part of the 1997 holding is being sold. The subdivision of the holding may impact on the ability of freehold land owners to subdivide land in the future.

Development of Lake Wallace Water Storage Facility

Council is proposing to develop a water storage facility for the village of Nimmitabel on Pigring Creek. The land on which the facility will be sited is privately owned. The land is zoned 1(a). Council requires approximately 14.5 hectares of land for the facility. Council is concerned that the subdivision of land for the facility will not enable the future subdivision of the remainder of the land due to the subdivision provisions of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* (namely that the 1997 holding has been broken).

The problem of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* provision also became evident in Council discussions with a telecommunications organisation in regard to the erection of a telecommunications tower.

It is likely that there will be other instances where a small amount of land is required for the development of infrastructure, either for or on behalf of Council or for other service providers.

Clause 14 of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* and the definition of the holding requires that the 1997 holding must be in one ownership at the time of subdivision.

It is felt that the best means of facilitating the development of infrastructure is through amending the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* to allow for subdivision outside of the requirement for a 1997 holding. Council is concerned that in excising an allotment for the above purposes, the 1997 holding has been extinguished by that action.

Changes to Part 3 of the *NSW Environmental Planning and Assessment Act 1979* mean that Council must prepare a planning proposal under Section 55 of the Act. A planning proposal has been prepared (see below) in accordance with the Department of Planning's publications *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* (NSW Department of Planning, July 2009). The planning proposal contains the matters required by the Director General to be addressed in all planning proposals.

If Council wishes to proceed with the amendment of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)*, the planning proposal will be forwarded to the Minister for Planning for a "Gateway Determination". The intention of the "Gateway" process is to allow a planning proposal to be reviewed at an early stage to make a decision whether to proceed further, before significant resources are committed. At the "Gateway Determination" stage the Minister will decide:

- Whether the proposal will proceed, with or without variation and whether it should be re-submitted.
- The level of community consultation required.
- Whether input from State and Commonwealth authorities is required.
- The necessity for a public hearing by the Planning Assessment Commission or other body.
- The appropriate timeframes for the various stages of the proposal.

Following the gateway determination the proposal will be publicly exhibited, government authority views sought and Council will consider any submissions received.

A report will then be prepared for Council to consider the community consultation.

Under the new planning procedures it is only the planning proposal and supporting documents which are exhibited. The legal instrument (*draft Local Environmental Plan*) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister (or their delegate). The Local Environmental Plan takes effect when it is published on the NSW Legislation website.

The NSW Department of Planning website allows the planning proposal to be tracked by the public. The Planning Proposal Tracking tool allows the public access to:

- Information on planning proposals that have been submitted to the Department.
- The "Gateway Determination" including the reasons why the proposal has been allowed to continue or why it has been refused.
- The final -determination of a planning proposal.

A planning proposal to amend the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* is attached. A suggested revised clause has been included.

Cooma-Monaro Shire Council
Planning Proposal
Amendment of *Cooma-Monaro Local Environmental Plan 1999 — (Rural)*

Part 1 Intended Outcomes

An amendment of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* (clauses 14 and 15) to allow for the subdivision of land for infrastructure purposes and the operation of extractive industries.

Part 2 Explanation of the Provisions

The revision of clause 14 of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* for the subdivision of land for infrastructure purposes and the operation of extractive industries (non residential landuses) which exempts these uses from the requirements of clauses 14(2) and 14 (2A).

An amendment to clause 15(1)(b) would also be required to align with the revised clause 14.

Part 3 Justification

Currently clause 14 (2A) of the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* requires that land be a ‘1997 holding’ for consent to be granted for the subdivision of land. Clause 14 (2A) also specifically requires land to be a 1997 holding for subdivision in the 1(a) and 7(d) land use zones.

The current provisions are impractical in relation to land required for infrastructure or extractive industries purposes as such land may not be a ‘1997 holding’. The ‘1997 holding’ provision was introduced to prevent the fragmentation of rural land however, frequently infrastructure and extractive industries only require a small amount of rural land and so do not cause the widespread fragmentation of rural land. Often the land is marginal for primary production and/or dwelling houses. The use of rural land in the shire for infrastructure and extractive industries is permissible with consent in the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)*.

Cooma-Monaro Shire Council is a significant regional provider of sand and gravel. It also provides for a major a gas pipeline and nationally significant electricity and road infrastructure. Additionally, Cooma-Monaro Shire Council operates numerous gravel pits which provide material for the maintenance of the shire’s extensive road network.

Section A-Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

The proposal is not a result of any strategic study or report. However, if the proposal does not proceed a consequence may be that planned infrastructure or extractive industries are unable to proceed in a reasonable timeframe.

2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Cooma-Monaro Shire Council wishes to continue requiring that the subdivision of land obtain development consent so there is no alternative to not amending *Cooma-Monaro Local Environmental Plan 1999 — (Rural)*.

3 Is there a net community benefit?

The proposal is of benefit to the community as it will assist in the development of new infrastructure and economic opportunities for the Shire. This will in turn result in employment opportunities.

Section B-Relationship to strategic planning framework

- 4 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)?**

There are no regional or strategic plans applying to this proposal.

- 5 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan**

There is no strategic plan for Cooma-Monaro Shire.

- 6 Is the planning proposal consistent with applicable state environmental planning policies?**

The proposal is consistent with the aim and the rural planning principles of the *State Environmental Planning Policy (Rural Lands) 2008*.

- 7 Is the planning proposal consistent with applicable Ministerial Directions (117 directions)?**

Relevant 117 Directions are 1.5 *Rural Lands*. The proposal complies with Direction No.1.5.

Section C – Environmental, social and economic impact

- 8 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?**

A flora and fauna study would normally be required as part of a subdivision application.

- 9 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

The consideration of environmental effects would normally be required as part of a subdivision application.

- 10 How has the planning proposal adequately addressed any social and economic effects?**

The subdivision for infrastructure development would potentially result in infrastructure projects in turn creating employment in the shire and facilitating employment across the region and state.

Section D – State and Commonwealth interests

- 11 Is there adequate public infrastructure for the planning proposal?**

Not applicable.

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

There has been no consultation with the Commonwealth or state government.

Part 4 – Community Consultation

- One advertisement will be placed in a local newspaper. Comment will be received for 28 days.
- The proposal will be placed on Council's website.

Additional information pertaining to the reclassification of land

If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished
Not applicable.

The concurrence of the landowner, where the land is not owned by the relevant planning authority

Not applicable.

PROPOSED DRAFT AMENDED CLAUSE

14 Subdivision

Objective of provision

To ensure the subdivision of land is consistent with the objectives of this plan.

Subdivision requires consent

- (1) A person may subdivide land to which this plan applies but only with development consent and only in accordance with this clause.

Subdivision of 1997 holdings

- (2) Consent may be granted to a subdivision of land within Zone No 1 (a) or 7 (d) if:

- (a) the land to be subdivided is a 1997 holding or, if the land has been subdivided previously in accordance with this clause, the land was nominated as the residue lot in that subdivision;
- (b) the consent authority is satisfied that each allotment to be created will be used primarily for the purpose of agriculture;
- (c) the average area of the allotments proposed to be created by the subdivision will be not less than 80 hectares,
- (d) each allotment proposed to be created by the subdivision will have an area of not less than 5 hectares, .
- (e) the consent authority has had regard to the matters indicated in Schedule 2 to the extent that they are relevant, and
- (f) the consent authority has considered the objectives of clause 21.

Subdivision for purposes other than agriculture or a dwelling

- (2A) Consent may be granted to a subdivision of land within Zone No 1 (a) or 7 (d) to create an allotment that the consent authority is satisfied will be used primarily for a purpose other than agriculture or a dwelling if the consent authority is satisfied that the area of the allotment to be created is appropriate for the development for which it is intended to be used.
- (2B) For the purposes of subclause (2), land does not cease to be a 1997 holding only because the land has been subdivided to create an allotment referred to in clause (2A).

Subdivision of land (including 1997 holdings)

- (3) Despite subclause (2), consent may be granted to the subdivision of land (including a 1997 holding) within Zone No 1 (a) or 7 (d) that will create an allotment of any size if the proposed allotment is of a size and use that the consent authority is satisfied, by a property development plan prepared in accordance with Schedule 3, indicates the use is environmentally and economically sustainable.

RECOMMENDATION:

- 1 That the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* be amended to allow subdivision for the purposes of infrastructure and extractive industries, without the need for a 1997 holding.
- 2 That the planning proposal for the above amendment of *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* for a “Gateway Determination” in accordance with Section 56 of the *NSW Environmental Planning and Assessment Act 1979* be forwarded to the NSW Minister for Planning.

Item No 6

**Amendment of Cooma-Monaro Local Environmental Plan 1999 — (Rural)
to Allow Subdivision for Infrastructure Purposes**

- 1297 **RESOLVED:**
(Phillips/McDonald)
- 1 That the *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* be amended to allow subdivision for the purposes of infrastructure and extractive industries, without the need for a 1997 holding.
 - 2 That the planning proposal for the above amendment of *Cooma-Monaro Local Environmental Plan 1999 — (Rural)* for a “Gateway Determination” in accordance with Section 56 of the *NSW Environmental Planning and Assessment Act 1979* be forwarded to the NSW Minister for Planning.
- CARRIED**

CARRIED UNANIMOUSLY (9-0)