

**THE FOLLOWING ITEM CS-CS4 WAS DEFERRED FROM THE  
ORDINARY MEETING OF COUNCIL HELD ON WEDNESDAY, 14  
AUGUST 2013**

**cw-CS14 Planning Proposal to Amend WLEP 2010 to Insert a  
Clause to Permit Consideration of Boundary Changes  
between Lots in Certain Rural, Residential and  
Environment Protection Zones**

**Reference:** 5901  
**Responsible Officer:** Group Manager Strategic and Assets

**PURPOSE**

The purpose of this report is to present to Council a Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to insert a clause which allows Council to consider boundary adjustments between one or more undersized lots in certain rural, residential and environment protection zones as a Land Use Subdivision Application. It is recommended that the Planning Proposal be supported.

**DESCRIPTION OF PROPOSAL**

**BACKGROUND**

WLEP 2010 currently makes no provision for the consideration of a boundary adjustment between one or more adjoining undersized lots in certain rural, residential and environment protection zones except by means of a Planning Proposal.

There may be occasions when such boundary adjustments are required – for example, to transfer land between two adjoining lots to create a larger lot for agricultural purposes, or to relocate existing facilities from one adjoining property to the other in order to better utilise those facilities.

On 28 March 2013 the Department of Planning & Infrastructure (DP&I) wrote to Council encouraging Council to consider amending WLEP 2010 to insert a clause which would allow such boundary adjustments to be considered as a Land Use Application where certain conditions apply.

The Department's letter was considered at the Local Planning Strategy Steering Committee Sunset Working Group on 15 May 2013 at which time it was recommended that the matter be reported to Council.

**DETAILS OF PROPOSAL**

The variation of boundaries between properties which are at or above the minimum lot size is already able to be considered as a Land Use Application (LUA) because the lots comply with the minimum lot size under clause 4.1 (3) of WLEP 2010. However, if one or both lots are below the minimum lot size, a Planning Proposal is required to alter the minimum lot size map under WLEP 2010.

The primary purpose of the proposed clause is to permit consideration of the adjustment of boundaries between parcels of land, one or more of which are below the minimum lot size through the LUA process in certain rural, residential and environment protection zones, provided that adjustment does not adversely affect the objectives of the zone and would not create additional lots or dwelling opportunities.

The proposed clause is reproduced below.

**1 Boundary changes between lots in certain rural, residential and environment protection zones (d01.05)**

- (1) The objective of this clause is to permit the boundary between 2 lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.
- (2) This clause applies to land in any of the following zones:
  - (a) Zone RU1 Primary Production,
  - (b) Zone RU2 Rural Landscape,
  - (c) Zone RU3 Forestry,
  - (d) Zone RU4 Primary Production Small Lots,
  - (e) Zone RU6 Transition,
  - (f) Zone R5 Large Lot Residential,
  - (g) Zone E1 National Parks and Nature Reserves,
  - (h) Zone E2 Environmental Conservation,
  - (i) Zone E3 Environmental Management,
  - (j) Zone E4 Environmental Living.

**Drafting direction for subclause (2).**

If any of the above rural, residential or environment protection zones are not used in the Plan they should be omitted from subclause (2).

- (3) Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the subdivision will not result in:
  - (a) an increase in the number of lots, and
  - (b) an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.

**Drafting direction for subclause (3).**

1. A Council may choose to restrict the application of this clause to just 2 adjoining lots by the omission of "or more" from subclause (3).

2. If the intention is to permit secondary dwellings or dual occupancies as well as dwelling houses, then the specific types of dwellings for which the clause is to apply should be included in the appropriate places.

- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
  - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,

(Continued over)

- (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
  - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
  - (d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
  - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
  - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
  - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.
- (5) This clause does not apply:
- (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
  - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

### **PLANNING CONSIDERATIONS**

The adoption of the draft clause would permit an application for a boundary adjustment on any land to which the clause applied to be considered as a Land Use Application instead of an amendment to WLEP 2010 which would require a Planning Proposal.

The affected zones under WLEP 2010 would be the Rural zones RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry and RU4 Primary Production Small Lots, the Environmental Protection zones E1 National Parks and Nature Reserves, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living, as well as the R5 Large Lot Residential zone.

The advantage of this clause would be to limit the number of site specific LEP amendments and to reduce the demands on staff time which a Planning Proposal requires. The average time for a Planning Proposal is 9 to 12 months. Consideration of such applications through the LUA process would still require the same level of assessment as under a Planning Proposal and, if Council so resolved, could be reported to Council for final determination. The time frame however is considerably shorter.

It is noted that the assessment criteria include consideration of:

- a) the objectives and existing uses of the subject zones to which the clause applies and ensuring compatibility between those and neighbouring zones and land uses.
- b) the natural and physical constraints of the land.
- c) the ongoing agricultural viability of the land.

It is also noted that the clause would only apply where the boundary adjustment would not create any additional lots or dwelling entitlements and that the clause would not apply to state or community title subdivisions.

It is further noted that the number of lots to which the clause would apply may be limited to two (2). It is recommended that this limit be included in the clause.

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## **STATUTORY PROVISIONS**

### **Wingecarribee LEP2010 (WLEP 2010)**

A Planning Proposal is required to amend WLEP 2010 to insert the proposed clause. All Planning Proposals are required to follow the Gateway process introduced in July 2009 by the Department of Planning and Infrastructure. The gateway process contains the following steps:

**Planning Proposal** - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister (rather than the local council which is mostly the case) the Minister can appoint the Director-General of the Department of Planning or a joint regional planning panel to be the relevant planning authority.

**Gateway** - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

**Community Consultation** - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.

**Assessment** - The relevant planning authority (Council) considers public submissions and the Proposal is varied as necessary. It is noted that clause 58 of the EP&A Act allows Council to vary, at any time, its Proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. Council may also resolve to not proceed with the Planning Proposal under this clause.

If the Planning Proposal does proceed, Parliamentary Counsel then prepares a draft local environmental plan (the legal instrument).

**Decision** - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW Legislation website.

### **Development Control Plans (DCPs)**

This Planning Proposal does not require any amendment or reference to any DCP provisions.

### **Section 79C Assessment**

LUAs lodged for subdivision boundary variations undergo a full assessment under the provisions of section 79C of the Environmental Planning and Assessment (EP&A) Act 1979. If it is assessed that the variation is unacceptable and does not meet the objectives, then the application can be refused. The applicant can seek a review of the determination under the provisions of the EP&A Act or appeal to the Land and Environment Court.

### **State Environmental Planning Policies (SEPPs)**

All relevant SEPPs must be considered in preparing a Planning Proposal. The relevant SEPPs are reflected in the objectives and assessment criteria contained within the proposed clause.

### **Section 117 Directions**

The Minister for Planning, under section 117(2) of the EP&A Act issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. Employment and Resources
2. Environment and Heritage
3. Housing, infrastructure and urban development
4. Hazard and risk
5. Regional planning
6. Local plan making.
7. Metropolitan Planning

The relevant s.117 Directions are reflected in the objectives and assessment criteria contained within the proposed clause.

### **Relevant State Legislation**

No other State legislation is relevant at this stage.

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## **CONSULTATION**

### **External Referrals**

The Gateway Determination would identify what referrals to public authorities are required.

### **Internal Referrals**

No internal referrals have yet occurred but would be done during the community consultation phase should Council resolve to proceed with the Planning Proposal.

### **Community Consultation**

Community consultation will occur as set out in the Gateway Determination.

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## **SUSTAINABILITY ASSESSMENT**

### **ENVIRONMENT**

The proposed LEP amendment could provide a more efficient means by which land in rural, environmental protection and large lot residential zones can be arranged to provide better environmental protection for sensitive areas on affected lots.

### **SOCIAL**

There are no social implications associated with this proposal.

### **BROADER ECONOMIC IMPLICATIONS**

The proposed LEP amendment could provide a more efficient means by which land in rural, environmental protection and large lot residential zones can be arranged for the development of land uses supported by the objectives of the zones.

### **CULTURE**

There are no cultural implications associated with this proposal.

### **GOVERNANCE**

The proposed LEP amendment would provide a more efficient means by which to assess and implement boundary adjustments between certain zones which currently require a Planning Proposal.

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## **RELATIONSHIP TO CORPORATE PLANS**

The 2030+ Community Strategic Plan contains the following Goal - 1.2 Wingecarribee leadership is visionary through creative thinking and practical planning.

The inclusion of the proposed clause would be a 'practical planning' measure to assist in future management of boundary adjustment requests.

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## **BUDGET IMPLICATIONS**

There are budget implications associated with this proposal.

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## **RELATED COUNCIL POLICY**

No other Council policies are affected by this proposal.

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## **OPTIONS**

Two (2) options are available to Council:

**Option 1**

Resolve to not proceed with the Planning Proposal to insert the proposed clause into WLEP 2010.

**Comment:** This option would maintain the current process of reviewing boundary adjustment applications on their merits and, where Council resolves to proceed, undertake a Planning Proposal to amend WLEP 2010 through a Planning Proposal. This option is not preferred as Planning Proposals can be time-consuming, especially at a time when staff are focused on developing a new Local Planning Strategy as a framework for implementing the new NSW Planning legislation.

**Option 2**

Resolve to proceed with a Planning Proposal to insert the subject clause into WLEP 2010.

**Comment:** This option is recommended for the reasons outlined in this report.

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**CONCLUSION**

Because the same level of assessment occurs for consideration of a boundary adjustment under the proposed clause or as a Planning Proposal it is concluded that there is merit in including the clause in WLEP 2010. The clause, as it would apply to WLEP 2010 would be as follows:

**Boundary changes between lots in certain rural, residential and environmental protection zones**

- (1) The objective of this clause is to permit the boundary between 2 lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.
- (2) This clause applies to land in any of the following zones:
  - a) Zone RU1 Primary Production,
  - b) Zone RU2 Rural Landscape,
  - c) Zone RU3 Forestry,
  - d) Zone RU4 Primary Production Small Lots,
  - e) Zone R5 Large Lot Residential,
  - f) Zone E1 National Parks and Nature Reserves,
  - g) Zone E2 Environmental Conservation,
  - h) Zone E3 Environmental Management,
  - i) Zone E4 Environmental Living.
- (3) Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 adjoining lots, being land to which this clause applies, if the subdivision will not result in:
  - a) an increase in the number of lots, and
  - b) an increase in the number of dwellings, secondary dwellings or dual occupancies on, or dwellings, secondary dwellings or dual occupancies that may be erected on, any of the lots.
- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
  - a) the existing uses and approved uses of other land in the vicinity of the subdivision,

- b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
  - c) whether or not the subdivision is likely to be incompatible with the use referred to in paragraph (a) or (b),
  - d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
  - e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
  - f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
  - g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.
- (5) This clause does not apply:
- a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
  - b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

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## **ATTACHMENTS**

There are no attachments to this report.

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## **RECOMMENDATION**

**THAT the Planning Proposal to amend WLEP 2010 to include a clause to permit consideration of boundary adjustments in certain rural, residential and environmental protection zones between two lots where at least one is below the minimum lot size be prepared and forwarded to the NSW Department of Planning and Infrastructure for a Gateway Determination under section 55 of the Environmental Planning and Assessment Act 1979.**

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## **cw-CS15 Supplementary Report - Planning Proposal to amend WLEP 2010 to insert a clause to permit consideration of boundary changes between lots in certain rural, residential and environment protection zones.**

**Reference:** 5901  
**Responsible Officer:** Group Manager Strategic and Assets

### **PURPOSE**

To provide further supplementary information in relation to a Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to insert a clause which allows Council to consider boundary adjustments between one or more undersized lots in certain rural, residential and environment protection zones as a Land Use Subdivision Application.

### **REPORT**

This supplementary report is to be read in conjunction with the preceding report listed as Item cw-cs14 in this Agenda which was deferred from the meeting of 14 August 2013 ("the previous report").

This matter was deferred at the Ordinary meeting of Council on 14 August 2013 pending a briefing to Councillors. This briefing occurred at the Local Planning Strategy Sunset Steering Committee Working Group on 18 September 2013 attended by Councillors Gair, Clarke, Scandrett, Turland and McLaughlin. At that meeting it was recommended that the proposed clause be altered to include an additional provision to restrict the size of any newly create lot to no less than two (2) hectares, and that therefore the previous report should be noted for the record.

### **CONCLUSION**

At the briefing session it was concluded that the proposed subject clause should be amended to ensure that any boundary adjustment does not result in an allotment of less than two (2) hectares. The following proposed clause is amended accordingly, with the proposed additional inclusion highlighted.

#### **Boundary changes between lots in certain rural, residential and environmental protection zones**

- (6) The objective of this clause is to permit the boundary between 2 lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.
- (7) This clause applies to land in any of the following zones:
  - j) Zone RU1 Primary Production,
  - k) Zone RU2 Rural Landscape,
  - l) Zone RU3 Forestry,
  - m) Zone RU4 Primary Production Small Lots,
  - n) Zone R5 Large Lot Residential,
  - o) Zone E1 National Parks and Nature Reserves,
  - p) Zone E2 Environmental Conservation,

- q) Zone E3 Environmental Management,
  - r) Zone E4 Environmental Living.
- (8) Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 adjoining lots, being land to which this clause applies, if the subdivision will not result in:
- c) an increase in the number of lots, and
  - d) an increase in the number of dwellings, secondary dwellings or dual occupancies on, or dwellings, secondary dwellings or dual occupancies that may be erected on, any of the lots, and
- e) an allotment of less than two (2) hectares.**
- (9) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
- h) the existing uses and approved uses of other land in the vicinity of the subdivision,
  - i) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
  - j) whether or not the subdivision is likely to be incompatible with the use referred to in paragraph (a) or (b),
  - k) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
  - l) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
  - m) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
  - n) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.
- (10) This clause does not apply:
- c) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
  - d) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

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## ATTACHMENTS

There are no attachments to this report.

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## RECOMMENDATION

1. **THAT** the preceding report cw-CS14 titled “Planning Proposal to amend WLEP 2010 to insert a clause to permit consideration of boundary changes between lots in certain rural, residential and environment protection zones” originally presented to Council on 14 August 2013 be noted.
2. **THAT** a Planning Proposal to amend WLEP 2010 to include a clause, as described in this report, to permit consideration of boundary adjustments in certain rural, residential and environmental protection zones between two lots where at least one is below the minimum lot size be prepared and forwarded to the NSW

**Department of Planning and Infrastructure for a Gateway Determination under  
section 55 of the Environmental Planning and Assessment Act 1979.**

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Ann Prendergast  
**Deputy General Manager Corporate & Strategy**

9 October 2013