

PLANNING PROPOSAL No. 4

SUBDIVISION COMPLYING DEVELOPMENT SCHEDULE 3



YOUNG SHIRE COUNCIL

Date Council resolved to prepare: ??-Oct 2010
Date sent to LEP Review Panel:
Date Gateway Determination received:
Date Council Meeting resolved to place on public exhibition:
Date Council determined submissions:

PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objective is to reinstate the subdivision requirements that existed prior to gazettal of Young Local Environmental Plan 2010 (Young LEP 2010) on 2 August 2010.

PART 2 – EXPLANATION OF THE PROVISIONS

Prior to gazettal of Young LEP 2010 on 2 August 2010, the subdivision of land into registrable lots (any number of lots) required development consent, construction certificate and other process relating to subdivision, excepting minor anomaly restoration (boundary adjustments, easements and the like).

Following gazettal of Schedule 3 Complying Development Part 1 Types of Development Subdivision (1) in the Young LEP 2010, the type of subdivision mentioned above requires only a complying development certificate on all lands and without merit assessment or any development standards.

When preparing the Young LEP 2010, it was always Council's intention that development consent and construction certificates were required for subdivision works and that complying or exempt be for correction of anomalies.

As such the matter has been misinterpreted in the drafting of the instrument. This misinterpretation is to be rectified by this Planning Proposal.

The amendment of Young LEP 2010 that is requested by this planning proposal is as follows:

- Delete, in its entirety, Schedule 3 Complying development Part 1 Types of development;
- Consequently, delete, in its entirety, Schedule 3 Part 2 Complying development certificate conditions.

Young LEP 2010 clause 2.6 Subdivision – consent requirements will become the relevant clause.

PART 3 – JUSTIFICATION

Section A – Need for the planning proposal

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

No. The planning proposal is a correction of an unintended error.

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

Council considers the best means of achieving the objective is the use of S73A of the Act by correcting a drafting error that enables dramatic abuse of the zoning instrument.

Legal Branch of the Department of Planning considers that a planning proposal is required for a formal amendment to the Young LEP 2010.

3 Is there a net community benefit?

Yes. Community expectation is that the process of development consent and construction certificate would continue. The process of complying development certificate could be seen by the community as a reduction of their involvement and to dire consequences of subdivision without merits based assessment and in the absence of development standards.

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 sub-regional strategies applying to land in Young Shire.

5 Is the planning proposal consistent with the local Council's Community Strategic Plan?

Not relevant. Council has not yet prepared Council's Community Strategic Plan.

6 Is the planning consistent with applicable state environment planning policies?

State Environmental Planning Policies (SEPPs) relevant to this planning proposal are listed as follows. For each relevant SEPP consistency or inconsistency is indicated:

SEPP	Relevance	Consistency	Implications
SEPP (Exempt and Complying Development Codes) 2008	Aims to streamline assessment processes for development that complies with specified development standards with State-wide application.	Yes.	Type of development is addressed in clause 2.6 of the Young LEP 2010. Amendment will remove conflict and confusion.
SEPP (Rural Lands) 2008	Aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes.	Yes.	Booth Associates conducted a Rural Lands Study 2008 for all rural lands in Young Shire. Major finding was to prevent fragmentation of rural production lands. Amendment will reinstate this important planning

			study.
SEPP No 1 Development Standards	Aims to make development standards more flexible. Councils can approve development where it can be shown the development standards are unreasonable or unnecessary.	Yes.	Amendment identified in the planning proposal will remove confusion relating to what development standards apply. Clause 2.6 of Young LEP 2010 will become the development standard.

7 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Ministerial Directions (s117 directions) relevant to the planning proposal are listed as follows. For each s117 direction the consistency or inconsistency is indicated:

Ministerial Direction	Relevance	Consistency	Implications
1.1 Business and Industrial Zones	Aims to encourage employment growth and protect employment land in business and industrial zones and support the viability of strategic centres.	Yes.	Amendment in the planning proposal will remove the risk of unintended land subdivision.
1.2 Rural Zones	Direction requires the protection of agricultural production value of rural land.		Amendment in the planning proposal will remove the risk of unintended land subdivision. Rural lands Study 2008 done by Booth Associates will be reinstated.
1.5 Rural Lands	Direction protects agricultural production value of rural land and facilitates orderly and economic development of rural lands for rural		Amendment in the planning proposal will remove the risk of unintended land subdivision. Rural lands Study 2008 done by Booth Associates

	and related purposes. It is relevant to SEPP (Rural Lands) 2008.		will be reinstated.
3.1 Residential Zones	Direction seeks to optimise housing choice and location whilst minimising impact of residential development on the environment and resource lands.		Amendment in the planning proposal will remove the risk of unintended land subdivision.
6.1 Approval and referral Requirements	Direction minimises provisions in a draft LEP that require concurrence, consultation or referral to a Minister or public authority.		Amendment in the planning proposal will remove the risk of unintended land subdivision.
6.3 Site Specific Provisions	Direction seeks to discourage unnecessarily restrictive site specific planning controls.		Amendment in the planning proposal will remove the risk of unintended land subdivision.

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 effected as a result of the proposal?

No. The planning proposal is a correction of an unintended error. The correction permits these to be addressed where in the present form, they may not be addressed.

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

No. The planning proposal is a correction of an unintended error.

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

There are no known social and economic effects in correcting the unintended error other than potential loss that may be considered if not corrected.

Section D – State and Commonwealth Interests

11 Is there adequate public infrastructure for the planning proposal?

Not relevant.

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

State and Commonwealth authorities would have expected that the process of development consent and construction certificate would have continued with all appropriate referrals under a normal development application process, not an exempt and complying development.

PART 4 – COMMUNITY CONSULTATION

It is considered that community consultation is not required.

Public exhibition of draft Young LEP 2010 provided complying development for minor subdivision development such as boundary adjustments and the like. Any other subdivision development required the process of development consent and construction certificate.

Correction of the error will reinstate the expectations of the community.

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***Attachment No. 2 to Strategic Planners Report
to October 2010 Council Meeting***

ATTACHMENT 2

EXTRACTS OF RELEVANT PROVISIONS OF YOUNG LEP 2010

Attachment 1 contains the following relevant extracts from draft plan version and Minister approved version of Young LEP 2010:

- Schedule 3 Complying development Part 1 Types of development public Exhibition version 22 September 2009 (draft plan version);
- Clause 2.6 Subdivision – consent requirements Young LEP 2010 (Minister approved version);
- Schedule 3 Complying development Part 1 Types of development Young LEP 2010 (Minister approved version).

EXHIBITION DRAFT – 22 SEPTEMBER 2009 - - Draft Plan version.

Schedule 3 Complying development

(Clause 3.2)

Part 1 Types of development

Complying Development Table

SUBDIVISIONS DEVELOPMENT STANDARDS

Subdivisions including:

- Widening a Public Road
- Correcting an encroachment
- Consolidating
- Adjusting a boundary between lots, that does not result in an increased number of lots

1. All allotments are above the minimum area for subdivision/building, applicable to the relevant zone.

2. All existing services (e.g. power, water, sewer, drainage etc) are maintained to the individual allotments and are located wholly within the boundaries of the individual allotment.

3. All allotments have existing physical and legal access, which is not affected by the proposal.
4. There is no resulting encroachment of buildings on either allotment.
5. The boundary adjustment will not result in changing the area of any allotment by more than 10%.
6. The final number of allotments to be registered does not exceed two (2) allotments.

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Young Local Environmental Plan 2010 - Minister approved version

Clause 2.6 Subdivision – consent requirements and Schedule 3 Part 1 Types of development – Subdivision are provided below.

2.6 Subdivision—consent requirements

- (1) Land to which this Plan applies may be subdivided, but only with consent.
- (2) However, consent is not required for a subdivision for the purpose only of any one or more of the following:
 - (a) widening a public road,
 - (b) a minor realignment of boundaries that does not create:
 - (i) additional lots or the opportunity for additional dwellings, or
 - (ii) lots that are smaller than the minimum size shown on the Lot Size Map in relation to the land concerned,
 - (c) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
 - (d) rectifying an encroachment on a lot,
 - (e) creating a public reserve,
 - (f) 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.

Note. If a subdivision is exempt development, the Act enables the subdivision to be carried out without consent.

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Schedule 3 Complying development - Minister approved version

(Clause 3.2)

Note. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* specifies complying development and the complying development conditions for that development under that Policy. The Policy has State-wide application. This Schedule contains additional complying development not specified in that Policy.

Part 1 Types of development

Subdivision

- (1) Must not create more than 2 registrable lots.
- (2) Must only create lots that exceed the minimum lot size for the relevant zone.
- (3) Lots created must be connected to all services that were available to the existing lots immediately before the subdivision.
- (4) Essential services (other than any connecting points) for lots created must be wholly contained within each lot.
- (5) All lots created, including residual lots, must have existing physical and legal access.
- (6) Must not result in encroachment of any building across a lot boundary.

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