



Gateway determination report – PP-2024-1850

Minimum subdivision lot size for strata and community
title plans in certain rural and residential zones

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans

Attachment A – Planning proposal

Attachment B – Council report and resolution

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Mid Western Regional
PPA	Mid Western Regional Council
NAME	Insertion of minimum lot size provision for community and strata title subdivisions in certain zones
NUMBER	PP-2024-1850
LEP TO BE AMENDED	Mid Western Regional LEP 2012
ADDRESS	Whole LGA
DESCRIPTION	Whole LGA
RECEIVED	3/09/2024
FILE NO.	IRF24/2182
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to insert the requirement for minimum subdivision lot size for strata plan schemes in the RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential and C3 Environmental Management zonings and inserting a requirement for a minimum subdivision for community title schemes for the R5 Large Lot Residential zoning.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Mid Western Regional LEP 2012 to require lots created via community or strata title subdivision within rural zones to meet the minimum lot size. The amendment will provide clarity within the LEP of the intent of the clause and dwelling entitlement status of future subdivisions of land.

The proposed amendments include:

- Amend clause 4.1AA Minimum subdivision lot size for community title schemes to include its application to R5 Large Lot Residential zoned land; and

- Insert a new local provision clause for 'minimum subdivision lot size for strata plan schemes in certain rural and residential zones' to ensure the subdivision land is not less than the minimum lot size map. This will apply to all land zoned RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential and C3 Environmental Management.

The planning proposal should be amended prior to public exhibition to include:

- The proposed amendment to clause 4.1AA. This revision should consider its potential conflict with clause 6.14 and investigate clause consolidation.
- Include a clear explanation of the proposed clause for minimum subdivision lot size for strata plan schemes.
- Identify any amendments required for references to 'registration of a strata plan' in the LEP that may conflict with the proposed minimum subdivision lot size for strata plan schemes clause.

1.4 Site description and surrounding area

The planning proposal relates to all land zoned RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential and C3 Environmental Management in the Mid Western Regional LGA.

1.5 Mapping

The planning proposal will not amend any mapping associated with the Mid Western Regional LEP 2012. The amendments relate to clause 4.1AA and the insertion of a new clause which does not reference any mapping.

1.6 Background

The planning proposal was reported to the Mid-Western Regional Council meeting of 14 August 2024. The report to Council recommended the proposal be supported for the following reasons:

- The planning proposal is consistent with the Comprehensive Land Use Strategy 2010 (CLUS), specifically in reference to the provision of dwellings in the rural areas (including zone R5 Rural Residential, the zone used for rural lifestyle lots and C3 Environmental Management, heavily vegetated land where dwellings and subdivision are still permissible).

The Council resolved to support the planning proposal without amendment.

2 Need for the planning proposal

The amendment will remove the opportunity from the existing clause for strata and community title subdivision and protect rural land from future fragmentation and unintended dwellings. Council states that it was not intended to provide a mechanism for community or strata title subdivision within rural zones that did not meet the minimum lot size of the mapped zone.

The planning proposal outlines consistency with the Comprehensive Land Use Strategy 2010 (CLUS) as the need for the planning proposal.

An amendment to the LEP is the only mechanism to achieve the objectives of the planning proposal.

The need for the proposal has been demonstrated, and further details are provided in Section 3 of this report.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2041.

Table 3 Regional Plan assessment

Regional Plan Objectives	Justification
15 – Manage rural residential development	The planning proposal is consistent with this objective. The amendment to Clause 4.1AA will ensure that rural residential development is undertaken in appropriate zonings, reducing the fragmentation of rural land. The amendment will also clearly outline the dwelling entitlement expectations for strata and community title subdivisions within rural zones and not create additional dwelling entitlements.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The planning proposal states that it is consistent with the Mid Western Towards 2040 and Our Place 2040 LSPS, specifically Planning Priority 2 <i>Making available diverse, sustainable, adaptable, and affordable housing options through effective land use planning</i> . The amendment to the LEP will support future land use planning within the Mid-Western Regional Local Government Area.
Mid-Western Comprehensive Land Use Strategy 2010 (CLUS).	The planning proposal is broadly consistent with the CLUS, protecting the fragmentation of agricultural and rural land through the amendment of the LEP to support future land use planning in rural areas. The CLUS does not extend strata and community title subdivision opportunities to rural zones. The proposed amendment will clarify this intent.

3.3 Section 9.1 Ministerial Directions.

The proposed amendment is a broader change to clause 4.1AA of the Mid-Western Regional LEP. The following table assesses the proposal's consistency with relevant s9.1 Directions.

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation	Yes	The planning proposal is consistent with the relevant parts of the Central West and Orana Regional Plan – see Section 3.1 of this report

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
of Regional Plans		for more detail.
4.4 Planning for bushfire protection	No	<p>Given the proposal applies to all RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential and C3 Environmental Management zoned land, it will impact bushfire prone land.</p> <p>The planning proposal is inconsistent with this direction given it has not demonstrated how it will have regard to the planning proposal requirements of this direction. The planning proposal is to be amended to provide an assessment of this s9.1 prior to public exhibition.</p> <p>NSW RFS is to be consulted on the planning proposal prior to public exhibition.</p>
6.1 Residential Zones	No, but justified	The planning proposal is reducing the permissible density of land within the R5 Large Lot Residential zone for community and strata subdivision purposes. The proposal is inconsistent with this direction, however, is considered justified given the intent of the R5 zones and the endorsed land use strategy community and strata title subdivision are not appropriate nor consistent with the zone objectives.
9.1 Rural zones 9.2 Rural Lands	Consistent	The planning proposal is consistent with this direction. The proposed amendments will remove the opportunity for community and strata title subdivision below the minimum lot size in the rural zones.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental, Social and Economic

There are no additional environmental, social or economic impacts associated with the proposal.

Site specific constraints will be considered during the assessment of any future development applications.

4.2 Infrastructure

There are no infrastructure impacts associated at the planning proposal stage with the proposed amendment to clause 4.1AA.

5 Consultation

5.1 Community

Council proposes a community consultation period of 10 days in line with the requirements of a 'basic' planning proposal.

The planning proposal is categorised as a standard under the LEP Making Guidelines (Aug 2023) due to the policy shift proposed with the amended clause. Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

It is recommended the NSW RFS be consulted on the planning proposal and given 30 working days to comment:

6 Timeframe

Council proposes a 9 month time frame to complete the LEP, however the proposed timeline within the planning proposal document on page 15 reflects a 3 month timeframe for completion.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard.

The Department recommends an LEP completion date of 30 June 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal is a reasonable amendment with minimal impacts the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistency with section 9.1 Direction 4 6.1 Residential zones is justified and no further work is required.
- Agree that section 9.1 Direction 4.3 planning for bushfire protection remains inconsistent and unjustified at this time and is recommended that the planning proposal be updated to reflect this.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to public exhibition to:
 - Reflect the updated finalisation date on the project timeline.
 - Include the proposed amendment to clause 4.1AA. This revision should consider its potential conflict with clause 6.14 and investigate clause consolidation.

- Include a clear explanation of the proposed clause for minimum subdivision lot size for strata plan schemes.
 - Identify any amendments required for references to 'registration of a strata plan' in the LEP that may conflict with the proposed minimum subdivision lot size for strata plan schemes clause.
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.
 3. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 30 June 2025 be included on the Gateway.



30/9/24

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