

Planning Proposal Assessment Report

APPLICATION DETAILS

Application No:	LEP20/0001
Applicant:	Internally generated
Proposal Summary:	<p>The Planning Proposal proposes to amend the Wagga Wagga Local Environmental Plan by:</p> <ul style="list-style-type: none">▪ including an additional local clause provision for <i>boundary changes between lots in certain rural and environmental protection zones</i>▪ introduce an additional subclause within Clause 4.2A <i>Erection of dwelling housing and dual occupancies on land in certain residential, rural and environmental protection zones.</i>
Land Owner:	N/A
Assessment Officer:	Crystal Atkinson, Senior Strategic Planner

SITE AND LOCATION

Subject Land:	N/A
Current LEP Provisions:	Clause 4.6 – Exemptions to Development Standards
Current DCP Provisions	Nil
Existing Character:	N/A

PROPOSAL

There are two elements to this planning proposal:

1. Introduce local provisions for boundary changes between lots in certain rural and environmental protection zones
2. Introduce an additional subclause within Clause 4.2A *Erection of dwelling houses and dual occupancies on land in certain residential, rural and environmental protection zones* to ensure that lots resulting from boundary adjustments as a result of the introduction of the above clause retain a dwelling entitlement if it existed prior to the boundary adjustment.

Local Provisions – Boundary changes between lots in certain rural and environmental protection zones

The proposal is to include a local provision clause as Clause 4.7 to allow boundary changes in certain rural and environmental protection zones.

The proposed local clause is shown below:

4.7 Boundary changes between lots in certain rural and environmental protection zones

- (1) *The objective of this clause is to permit the boundary between 2 or more lots to be adjusted in certain circumstances to give landowners a greater opportunity to achieve the objectives of a zone.*
- (2) *This clause applies to land in the following zones—*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone RU4 Primary Production Small Lots,*
 - (d) *Zone E3 Environmental Management.*
- (3) *Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 or more adjoining lots that are 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 dwelling houses on, or dwelling houses that may be erected on, any of the lots, and*
 - (c) *any lot created by a boundary adjustment in Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone E3 Environmental Management having an area of less than 5 hectares, and*
 - (d) *any lot created by a boundary adjustment in Zone RU4 Primary Production Small Lots having an area of less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*
- (4) *Before determining a development application for the subdivision of land to which this clause applies, 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 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, heritage vistas or landscapes 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.*

Additional Subclause – Clause 4.2A – Erection of dwelling houses and dual occupancies on land in certain residential, rural and environmental protection zones:

The proposal is intended to retain dwelling entitlements for boundary adjustments that result from the introduction of the above clause, if the dwelling entitlement existed prior to the boundary adjustment.

The proposed subclause is shown below:

- (e) *is a lot created by a boundary adjustment in accordance with clause 4.7 and upon which a dwelling house would have been permissible prior to the adjustment of the boundary.*

ASSESSMENT

The proposal is a result of development enquiries for boundary adjustments in rural areas where existing holdings are separated by roads or where lots are below the minimum lot size and cannot be achieved under the existing provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) and the Wagga Wagga Local Environmental Plan Clause 4.6 Exemptions to development standards.

The planning proposal will create flexibility for boundary adjustments. For existing holdings that are already fragmented by roads, this can create economic activity for farmers both in selling land and purchasing additional land to increase agricultural viability.

Key considerations are detailed below:

1. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (The SEPP) allows subdivision of land for the purposes of realigning boundaries within the RU1, RU2, RU3, RU4, RU6, E1, E2, E3 or E4 zones where the change will not result in more than a minor change in the area of any lot and if in any other zone, not result in a change in the area of any lot by more than 10%.

For subdivision that results in more than a minor change or more than a 10% change in area, the minimum lot size provisions of the Wagga Wagga Local Environmental Plan will prevail, and subdivision cannot create lots below the minimum lot size.

The proposed clause is intended to capture those boundary adjustments that are more than a minor change of 10%.

2. Clause 4.6 Exemptions to development standards

Clause 4.6 allows for an appropriate degree of flexibility in applying certain development standards, provided the resulting lot meets the minimum lot size provisions. Boundary adjustments for consideration in this proposed clause are intended to capture lots that are already below the minimum lot size.

The 200-hectare minimum lot size provision was introduced in 2010 as a blanket approach. At the time of implementation, there were a number of lots already below this minimum lot size.

3. Council's Vision or Strategic Intent

- Current endorsed strategy – Wagga Wagga Spatial Plan 2013

Through the Wagga Wagga Spatial Plan it is acknowledged that our rural lands have provided the foundation for settlement and agriculture continues to provide significant economic return and employment. One of the key challenges identified for rural lands is ensuring productive agricultural land is protected and not unreasonably fragmented.

The proposed local provision clause will continue to protect productive agricultural land from unreasonable fragmentation by ensuring there will not be an increase in the number of lots.

The proposed clause will not create additional dwelling opportunities.

COMPLIANCE TEST

The following matters pursuant to the provisions of Section 3.33 of the Environmental Planning and Assessment Act 1979 and the Department of Planning, Industry and Environment's Guide to Preparing Planning Proposal, have been taken into consideration in the assessment of the proposal.

Riverina Murray Regional Plan 2036	
Direction	Compliance
<i>Protect the region's diverse and productive agricultural land</i>	The planning proposal is consistent with this direction as it will not enable an increase in the number of lots.
<i>Promote and grow the agribusiness sector</i>	The planning proposal will facilitate boundary adjustments that can be responsive to agricultural and agribusiness needs and enable industry to grow.
<i>Expand advanced and value-added manufacturing</i>	The proposed clause will provide flexibility to the restrictive minimum lot size provisions.
<i>Protect and manage the region's many environmental assets</i>	Providing flexibility for boundary adjustments will not create dwelling entitlements and therefore will not create impacts arising from development.
<i>Manage rural residential development.</i>	The planning proposal will not create dwelling entitlements or increase rural residential development.
Wagga Wagga CSP	
Direction	Compliance
<i>We have sustainable urban development</i>	The clause will allow minor boundary adjustments and will not result in additional dwelling entitlements.
<i>We minimise our impact on the environment</i>	Boundary adjustments will continue to provide protection of our natural vegetation as it won't create dwelling entitlements or remove vegetation protection.
Wagga Wagga Spatial Plan 2013 -2043	
Direction	Compliance
<i>We improve the quality of our environment</i>	The planning proposal will enable boundary adjustments in certain environmental zones; however, it will not create dwelling entitlements, therefore not creating adverse effects as a result of development.
Section 9.1 Ministerial Directions	
Direction	Compliance
<i>1.2 Rural Zones</i>	The planning proposal is consistent with this direction as it is not proposing to rezone land or increase permissible density.
<i>1.5 Rural Lands</i>	The planning proposal is consistent with this direction as it is continuing to reduce fragmentation of rural land by not creating dwelling entitlements.
<i>2.1 Environmental Protection zones</i>	The planning proposal is consistent with this direction as it is not proposing to reduce environmental protection standards.
<i>5.10 Implementation of Regional Plans</i>	The planning proposal is consistent with this direction as it is consistent with the objectives of the Riverina Murray Regional Plan.
State Environmental Planning Policies	
Policy	Compliance
<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>	<p>The Codes SEPP provides opportunities for subdivision of land for the purpose of realigning boundaries where the subdivision will not result in more than a minor change or not result in a change in the area by more than 10%.</p> <p>The purpose of this planning proposal is to create opportunities not captured by the Codes SEPP.</p>

Other	

Internal / External Consultation

<u>Internal:</u>	Consultation with development assessment section was undertaken.
<u>External:</u>	The proposal will be referred to state agencies if the proposal should proceed and agency referral is conditioned as part of the Gateway Determination.
<u>Community consultation:</u>	Community consultation will be undertaken as required by the Gateway Determination.

FINANCIAL IMPLICATIONS

The proposed changes have been generated internally and therefore application fees are not required.

The local provision clause will enable development applications to be lodged seeking approval for a boundary adjustment. Applications will incur relevant application fees.

Council's contributions plans apply and will apply to any future development consent.

CONCLUSION

The proposal is supported for the following reasons:

- The proposed changes will provide opportunities for appropriate boundary adjustments in suitable locations.
- The proposal complies with the provisions of Council's endorsed strategy.
- It is consistent with relevant S9.1 Ministerial Directions.
- The changes consider the provision of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

To comply with the NSW Department of Planning, Industry and Environment guidelines, council staff will prepare a planning proposal to be submitted for Gateway Determination.