

Development Control Policy 3.4

- Subdivision of rural land

January 2011

This policy supersedes *Development Control Policy 3.4 Subdivision of Rural Land* (February 2008). The Western Australian Planning Commission (WAPC) is the responsible authority for subdivision approvals in Western Australia. This policy sets out the principles which will be used by the WAPC in determining applications for the subdivision of rural land. The policy is consistent with the objectives of *State Planning Policy 2.5 Land Use Planning In Rural Areas* which establishes the statewide policy framework for rural land use planning in Western Australia. The following policies are relevant to this policy:

- *State Planning Policy 2.5 - Land Use Planning In Rural Areas*
- *SPP 2 - Environment and Natural Resources Policy*
- *SPP 2.1 - Peel-Harvey Coastal Plain Catchment Policy*
- *SPP 3 - Urban Growth and Settlement*
- *SPP 6.1 - Leeuwin-Naturaliste Ridge Policy*
- *Planning Guidelines: Planning for Bushfire Protection* (Edition 2)
- *Guideline 2.5.1 - Land Use Planning In Rural Areas*
- and other WAPC policies that may be relevant to rural land

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Background

This policy supersedes *Development Control Policy 3.4 - Subdivision of Rural Land* (DC 3.4) (March 2008). The Western Australian Planning Commission (WAPC) is the responsible authority for subdivision approvals in Western Australia. This policy sets out the principles which will be used by the WAPC in determining applications for the subdivision of rural land. The policy is consistent with the objectives of *State Planning Policy no. 2.5 - land use planning in rural areas* which establishes the Statewide policy framework for rural land use planning in Western Australia. The following policies are relevant to this policy.

State Planning Strategy

State Planning Policy 1: State Planning Framework (variation no. 2)

State Planning Policy 2: Environment and Natural Resources

State Planning Policy 2.1: Peel-Harvey Coastal Plain Catchment

State Planning Policy 2.4: Basic Raw Materials

State Planning Policy 2.5: Agricultural and Rural Land Use Planning

State Planning Policy 2.7: Public Drinking Water Source

State Planning Policy 2.9: Water Resources

State Planning Policy 3: Urban Growth and Settlement

State Planning Policy 4: State Industrial Buffer

State Planning Policy 4.3: Poultry Farms

State Planning Policy 7: Leeuwin-Naturaliste Ridge

Dc Policy 1.1: Subdivision of Land

Metropolitan Rural Policy (1995)

Guidance On The Format of Local Planning Strategies (2000)

Planning Guidelines: Planning For Bushfire Protection (Edition 2)

Guideline 2.5.1 - Land Use Planning In Rural Areas



1. Introduction

The changes in land use in Western Australia over the years since European settlement in 1829 have been dramatic. Clearing, subdivision, development and use of land for settlement and agriculture provided significant economic and social benefits to the expanding WA community. Continued rapid growth in the mining and resources sectors will mean WA's population is expected to increase to over 2.8 million people by 2031.

Rural zones are generally very flexible, and permit a range of agricultural, commercial and industrial land uses. This policy aims to support the range of land uses that can be contemplated on rural land, while limiting the loss of rural land to incompatible land uses such as housing.

This policy is primarily concerned with those matters contained in Part 10 of the *Planning and Development Act 2005*, which deals with the subdivision of land alienated from the Crown, and sets out the general principles of the WAPC in its operation of that Part. For the purpose of the policy, subdivision includes the creation of a new lot or lots, the amalgamation of existing lots and any other dealings in land that require the approval of the WAPC, including the creation of survey strata lots.

In determining subdivision applications the WAPC will seek to ensure that the broad objectives contained in section 2 of this policy are met and may impose conditions on an approval to secure these objectives. In addition to the provisions of this policy the WAPC will have due regard to the provisions of the local planning scheme and any endorsed local planning strategy or local rural strategy applying to the land.

2. Policy objectives

This operational policy guides the subdivision of rural land to achieve the five key objectives of *SPP 2.5 – Land Use Planning In Rural Areas* which are:

- a) to protect rural land from incompatible uses by:
 - i. requiring comprehensive planning for rural areas;
 - ii. making land-use decisions for rural land that supports existing and future primary production and protection of priority agricultural land;
 - iii. providing investment security for the existing and future primary production sector;
- b) to promote regional development through provision of economic opportunities on rural land;
- c) to promote sustainable settlement in, and adjacent to, existing urban areas;
- d) to protect and improve environmental, landscape and cultural assets; and
- e) to minimise land use conflicts that compromise rural land uses.

3. Policy measures relating to rural living

3.1 General policy position

It is the policy of the WAPC that the subdivision of rural land for rural living should be properly planned through the preparation and endorsement of regional and local planning strategies and be appropriately zoned in local planning schemes prior to subdivision. Ad-hoc, unplanned subdivisions for rural living will not be permitted.

3.2 Water for rural living development

- a) When determining applications for rural living development the WAPC will require connection to a reticulated domestic water supply delivered by a licensed supplier. The ability of the land to be connected to a reticulated water supply is a key consideration at rezoning and strategy stage and accordingly *State Planning Policy 2.5 - Land Use Planning In Rural Areas* requires that servicing requirements be determined at this stage, with appropriate provisions inserted into local planning schemes.
- b) The WAPC recognises that some local planning schemes contain existing rural living zones in areas where a reticulated water supply is not available or planned, in which cases an alternative sustainable water supply for domestic and firefighting purposes may be considered. Subject to:
- The reliability of alternative water supplies in different localities is to be confirmed by the applicant using suitable investigation and licences and available models, which may include historic and projected rainfall quantity and variability, groundwater or surface water availability and quality and formal advice from agencies or organisations responsible to the Minister for Water Resources.
 - The provision of domestic water via roof collection and a rainwater tank as a sole alternative water supply is not considered a viable option in areas with a rainfall of less than 550mm per year.
 - For areas with greater than 550mm per annum rainfall, the likely variability of rainfall events must be considered.

- Where rainfall is the sole source of domestic water, applications must demonstrate appropriate arrangements to service the proposal should rainfall not be sufficient to provide a drinking water supply. This may include an allocation of non-reticulated scheme water from a licensed water service provider, if scheme water is the only alternative source.
- The WAPC will place memorials on title to advise prospective owners of a potential shortfall in domestic water supply where necessary.
- In regard to future rainfall and impacts arising from climate change, the WAPC will be guided by projected rainfall patterns developed by the Bureau of Meteorology and the Commonwealth Scientific and Industrial Research Organisation. The Department of Water will provide advice on the likely impacts of future water availability.

Rainwater catchment calculations are included as **Appendix 2**.

3.3 Other infrastructure

The WAPC will generally require the following other infrastructure standards for rural living:

- a) reticulated electricity;
- b) sealed and drained roads;
- c) a comprehensive drainage system;
- d) flood immunity above the Q100 flow channel;
- e) land stability;
- f) suitable on-site waste disposal; and
- g) other infrastructure as required by the site conditions.

4. Policy measures for the subdivision of rural land and more intensive agricultural uses

4.1 General policy position

- a) It is the policy of the WAPC that, in the absence of the planned provision for more intensive agricultural uses, rural lots be retained for primary production. Subdivision of rural land generally, and for more intensive agriculture proposals through ad-hoc, unplanned subdivision will not be permitted.
- b) It is the view of the WAPC that there is an existing supply of suitably sized and located rural lots to cater for intensive and emerging primary production land uses. The use of rural land for intensive or emerging primary production land uses is not a justification for subdivision. If required, further subdivision for such purposes should be planned in a local planning strategy.

4.2 Subdivision of rural lots

Notwithstanding clause 4.1, the WAPC will consider rural subdivision in the following circumstances:

- a) To realign lot boundaries with no increase in the number of lots;
- b) To protect and actively conserve places of cultural and natural heritage;
- c) To allow for the efficient provision of utilities and infrastructure and/or for access to natural resources;
- d) In the Wheatbelt Agricultural policy area (**Appendix 4**), to allow for the continued occupation of existing homesteads when they are no longer used in a farming operation; and,

- e) For other unusual or unanticipated purposes which, in the opinion of the WAPC, do not conflict with policy and are necessary in the public interest.

In determining applications for rural subdivision, the WAPC will apply the clauses throughout this policy, and be guided by the objectives and intent of *SPP 2.5 – Land Use Planning In Rural Areas*.

4.3 Prevailing lot sizes

In broadacre farming areas large lots may be subdivided to create lots which are:

- consistent with the size of lots used for farming in the locality;
- greater than 100ha in size; and
- allow for continued broadacre farming.

Where local conditions require subdivision of smaller land parcels, this should be provided for in a WAPC endorsed planning strategy.

Neither lots created historically in the early days of European settlement nor tied lots will be considered in determining prevailing lot sizes in a locality or for creating a precedent for further subdivision.

4.4 Significant physical divisions

The existing physical division of a lot by a significant natural or constructed feature may be formalised through subdivision. A significant physical division would include, but not be limited to, a controlled access highway or a river, and therefore not generally include minor barriers such as rural roads or creeks that are commonly crossed for farm management purposes.

The WAPC may support boundary realignment where a rural property comprises multiple small titles and there is scope to resolve the physical division by rationalising multiple lots in one ownership

through boundary realignments. However the physical division in itself does not warrant the creation of additional lots.

Lot boundaries which result in encroachments may be corrected through minor boundary realignments, provided the realignments do not adversely affect environmentally sensitive areas or create additional lots.

4.5 Public utilities and ancillary uses

New lots for existing or proposed specific non-rural land uses such as recreation facilities, public utilities and quarries or uses ancillary to the rural use of the land such as abattoirs and processing works may be created through subdivision.

The existence or approval of an ancillary dwelling, aged persons dwelling or farm workers' dwelling is not a satisfactory justification for subdivision, except as provided for in clause 5.4.

5. Incentives for rural subdivision

Although the WAPC seeks to minimise the creation of new rural lots, there are some circumstances where subdivision of rural land may be appropriate, in order to promote better land management and achieve environmental, cultural and/or social benefits. These forms of subdivision may result in additional dwelling entitlements are considered incentives for rural subdivision. The following forms of rural subdivision will therefore be considered by the WAPC:

5.1 Property rationalisation to improve land management

Many rural properties comprise multiple titles and landowners may wish to subdivide to achieve better land management. Subdivision may also

present opportunities to create access to landlocked lots. Multiple lots in one ownership may be rationalised and/or reconfigured to provide access to landlocked lots provided that:

- (a) there is no increase in the number of lots;
- (b) the new boundaries achieve improved environmental and land management practices;
- (c) no new roads are created, unless supported by the local government;
- (d) new vehicle access points on State roads are minimised; and
- (e) rural smallholding lots (4 - 40ha) created as a result of the rationalisation may have notifications or memorials placed on title advising that the lot is in a rural area and may be impacted by primary production.

5.2 Conservation of heritage buildings and places

Lots may be created to facilitate the conservation of a heritage building or place provided that:

- (a) the building, object or place is listed in the State Register of Heritage Places, the Aboriginal Sites Register, the Heritage List in the local planning scheme, or has been assessed by a recognised heritage consultant as warranting heritage protection;
- (b) the subdivision is supported by the local government;
- (c) the local government and landowner enter into a legal agreement, binding on successive owners in title, to ensure the conservation of the heritage place and to limit the use of the newly created lot and place; and
- (d) the allotment is of sufficient size to contain its own impacts and will not adversely affect the operation of neighbouring uses.

5.3 Conservation of biodiversity and natural heritage

Conservation lots may be created to preserve significant environmental features and remnant vegetation provided that:

- (a) the vegetation has been identified and agreed as worthy of protection in an approved strategy, catchment plan, or a specific assessment carried out by an appropriate expert on behalf of the subdivider in accordance with the principles for clearing native vegetation contained in Schedule 5 of the *Environmental Protection Act 1986* (**Appendix 3**);
- (b) the application includes advice from the Department of Environment and Conservation, National Trust of Australia (WA) or another relevant agency endorsing the suitability of the new lot for the intended purpose of retaining environmental values including:
 - the adequacy of the lot size proposed (if it is less than 40 ha) to retain the conservation value in perpetuity
 - in-principle agreement to administer the necessary conservation covenant;
- (c) generally at least 85% of the area of the conservation lot has high environmental values or is covered by native or regenerated vegetation and/or wetland;
- (d) the proposed conservation lot has an appropriate shape having regard for the native vegetation, natural features, bush fire management, water resources, property management and existing or proposed structures;
- (e) a conservation covenant in perpetuity with the Department of Environment and Conservation, the National Trust of Australia (WA) or an alternative authority acceptable to the WAPC is

registered on the certificate of title as a condition of subdivision for the proposed conservation lot and that covenant includes provisions that:

- (i) prohibit further clearing (other than for necessary land management requirements);
 - (ii) clearly delineate a building envelope and/or building exclusion area also shown on the subdivision plan;
 - (iii) prohibit stocking outside any existing cleared area;
 - (iv) retains, where practical, native or regenerated vegetation as an integral part of sustainable primary production, provided that this does not result in the division of significant native vegetation in order to include a portion of that vegetation within the agricultural lot; and
 - (v) bushfire risk can be managed in accordance with WAPC guidelines.
- (f) the balance lot is suitable for the continuation of the rural land use.

The creation of more than one conservation lot is inconsistent with the objectives of this policy. The creation of multiple conservation lots will require land to be appropriately zoned as conservation themed rural-residential or rural smallholdings with conservation covenants and building envelopes specified.

The creation of conservation lots shall continue to be considered in the Leeuwin-Naturaliste Ridge policy area in accordance with land use strategy 3.8 under *SPP 6.1 Leeuwin-Naturaliste Ridge*.

Following creation of a lot under this clause, the resultant conservation lot should be appropriately zoned by the local government in the local planning scheme in a future omnibus amendment or when the scheme is reviewed.

5.4 Homestead lots

Homestead lots may be created to enable an existing house on a rural lot to continue to be occupied provided that:

- (a) the land is in the Wheatbelt agricultural policy area (refer **Appendix 4**);
- (b) the population in the local government area is declining or relatively static according to the Australian Bureau of Statistics;
- (c) the homestead lot has an area between 1 and 4 hectares, or up to 20 ha to respond to the landform and include features such as existing outbuildings or water sources;
- (d) there is an adequate water supply for domestic, land management and fire management purposes;
- (e) the homestead lot fronts a constructed public road;
- (f) the homestead lot contains an existing residence;
- (g) a homestead lot has not been excised from the farm in the past;
- (h) any dwelling on the balance lot has a demonstrated water supply; and
- (i) the balance lot is suitable for the continuation of the rural land use and greater than 100ha, unless otherwise provided for in an endorsed local planning strategy.

Where there are a number of dwellings on a rural lot, more than one homestead lot may be considered as a one-off application.

A homestead lot may not be used as the basis for a future subdivision application under any of the other clauses of this policy.

5.5 Subdivision for the purposes of carbon sequestration

Subdivision of land for the purposes of carbon sequestration may be considered provided:

- a) a carbon covenant is in place to secure the carbon for a period of greater than 50 years; and
- b) the average annual rainfall is lower than 400mm.

6. Other matters

6.1 Strata proposals

This form of subdivision may be appropriate to achieve land management or environmental protection objectives.

As a general principle, strata proposals that increase dwelling entitlements on rural land are considered rural living and will be assessed in accordance with clause 5.4 of *State Planning Policy 2.5 - Land Use Planning In Rural Areas*.

6.2 Tied Lots

Subdivision of rural land for the purposes of tied lots is provided for in s149 of the *Planning and Development Act 2005*. In determining applications for tied lots the WAPC will consider:

- a) the minimum size of the tied lot/s;
- b) the distance between the tied lot/s and the principal lot; and
- c) the proposed use of the lot/s.

7. Information requirements

In considering applications for the subdivision of rural land, the WAPC requires adequate information on which to base its decisions and may require applicants to address any or all relevant matters from the list at **Appendix 5**.

8. Separate applications

Separate subdivision applications are required where there are separate groups of lots which are in different ownerships or which do not form part of one contiguous landholding.

Appendix 1

Definitions

Uses shall have the meanings ascribed to them in the Model Scheme Text made under section 256 of the *Planning and Development Act 2005* and *State Planning Policy 2.5 - Land Use Planning In Rural Areas* unless defined below.

Conservation covenant

A conservation covenant is an agreement between a landowner and a designated conservation covenant agency such as the National Trust or an environmental agency, which protects and enhances the natural and cultural values of the land. The conservation covenant is restrictive in effect and is registered on the property, binding all future owners. Conservation covenants have the force of statute, and should be distinguished from common law covenants. Unlike common law covenants, conservation covenants are generally permanent 'in perpetuity'.

Homestead lot

A small lot generally ranging from 1 - 20 hectares in size, which is excised from a larger farm holding for separate occupation, such as by a retiring farmer wishing to remain in an existing dwelling.

Integrated catchment management

The integrated management of land, water and related biological resources to achieve sustainable and balanced use of these resources by fostering cooperation and coordination between the many land holders and other resources users, community groups and agencies involved.

Restrictive covenant

A notice on a Certificate of Title restricting the use or enjoyment of certain land for the benefit of other land and binding on every owner of the burdened land having notice of the covenant.

A covenant indicates to owners and prospective purchasers that pre-existing conditions relating to the subject land may influence the ability to use and develop the land.

Sustainable primary production

The use of farming practices and systems which over the long-term, maintain or enhance production, the on-farm natural resource base and ecosystems which are influenced by agricultural activity.

Water supply - external purposes

Water required outside the dwelling which may include, but is not limited to, fire fighting, stock, horticulture, domestic gardens, revegetation and wash down areas.

Appendix 2

Catchment calculations for rainwater

The method of calculating the minimum collection area required to service a rainwater tank is based on a calculation sourced from the Department of Water's Stormwater Management Manual for WA. The WAPC will be guided by this formula when considering proposals for water supply from rainwater:

*Collection area (m²) = Average Household Water Consumption (L) divided by (0.85 x (local rainfall – 24mm)) ***

Other factors affecting the viability of rainwater as an alternate supply are:

- minimum tank size required to provide a reliable water supply throughout the year, where no minimum tank size has been specified;
- the impacts of climate change on the amount, frequency and reliability of rainfall;
- determination of the average catchment area for existing rural residential properties; and
- consideration of the average water consumption for rural residential properties (as opposed to relying on metropolitan water consumption figures).

** 0.85 is the efficiency of the collection meaning a minimum of 85% of the water will be collected (A greater efficiency rate may be accepted if it can be demonstrated through design).

24mm is the anticipated loss through absorption and wetting of materials based on 2mm a month.

Appendix 3

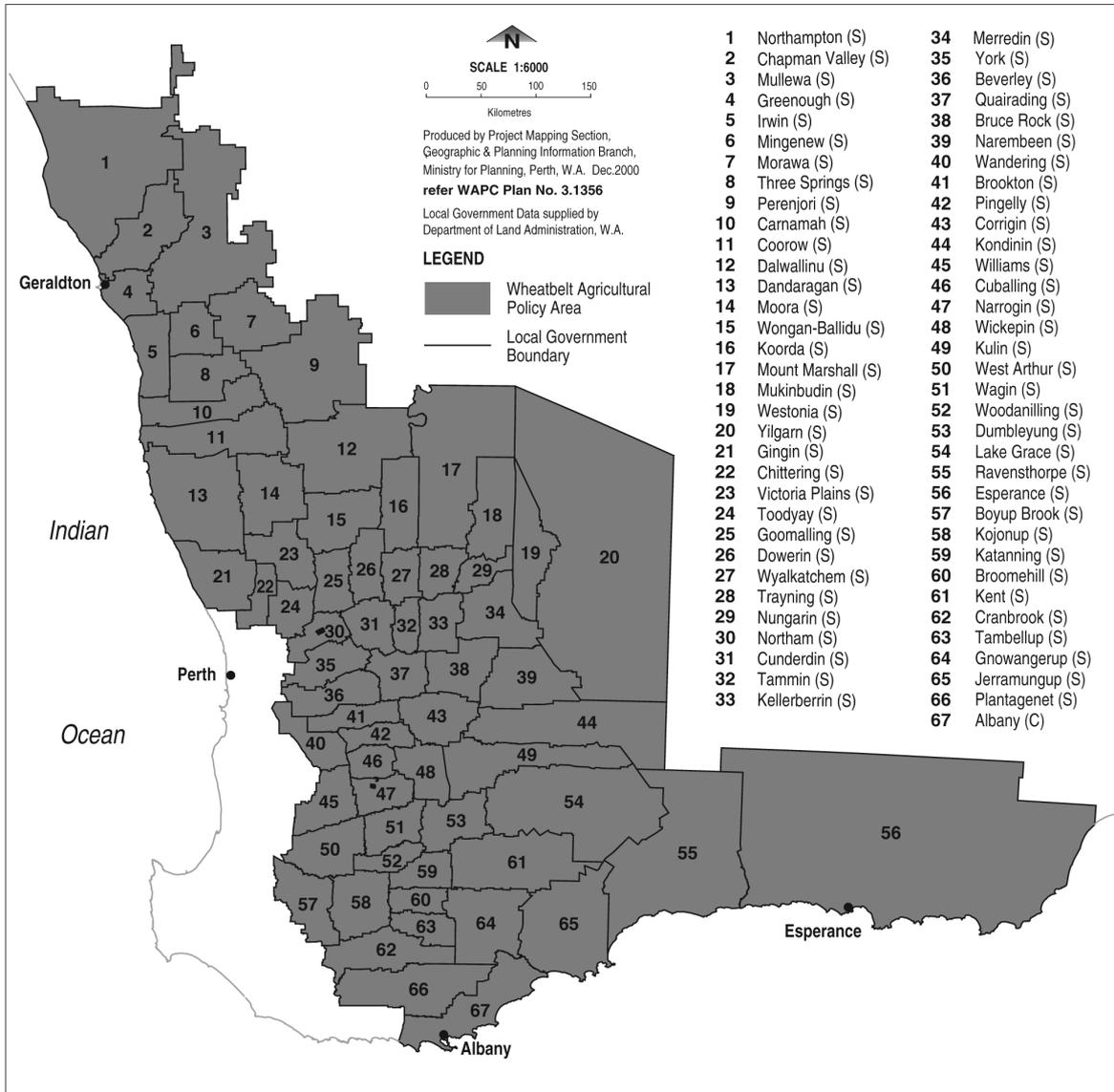
Principles for clearing native vegetation (extract from the Environmental Protection Act 1986 Schedule 5)

Native vegetation should not be cleared if -

- (a) it comprises a high level of biological diversity;
- (b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- (c) it includes, or is necessary for the continued existence of, rare flora;
- (d) it comprises the whole or a part of, or is necessary for the maintenance of, a threatened ecological community;
- (e) it is significant as a remnant of native vegetation in an area that has been extensively cleared;
- (f) it is growing in, or in association with, an environment associated with a watercourse or wetland;
- (g) the clearing of the vegetation is likely to cause appreciable land degradation;
- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area;
- (i) the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.

Appendix 4

Wheatbelt agricultural policy area



Appendix 5

Additional information to support subdivision applications

In accordance with Section 7 of this policy, applicants are encouraged to address the following matters, where relevant, in support of their application for subdivision:

- a) a statement explaining the intent of the subdivision and any relevant background information;
- b) whether each lot has a sustainable water supply for domestic, fire management and agricultural purposes, including, if relevant, the need for and proximity to existing services and infrastructure and details of the service provider;
- c) whether subdivision boundaries have been designed to reflect sound planning and land management principles;
- d) whether a proposal complies with the performance criteria and standards specified in the WAPC's Fire Planning Policy, including appropriate access and egress in case of emergency;
- e) how the proposal relates to adjacent properties, reserves and roads and existing and proposed adjoining land uses, and whether the subdivision would prejudice future urban expansion;
- f) whether there are any significant noise sources or other potential forms of nuisance to the proposed use;
- g) whether a previous use has resulted in contaminated soils or the use of construction and demolition waste for filled areas;
- h) whether there are any heritage features including archaeology and any sites of Aboriginal significance or claims on the land;
- i) any potential adverse environmental impacts of the proposed subdivision;
- j) whether the proposal is consistent with the provisions of an endorsed local planning strategy or scheme operating in the district.

