

## 13. REPORTS FOR DECISION

### 13.01 PLANNING PROPOSAL – 2519 O'CONNELL ROAD

File No: PR186-2519

Author: Shane Wilson - Planning & Development Director

#### History:

Council received a Planning Proposal from 'Geolyse' for an amendment to the Oberon Local Environmental Plan 2013. The Planning Proposal has been submitted to Oberon Council on behalf of Belvoir Hill Pastoral Company Pty Ltd in May 2017. The subject site is land located at 2519 O'Connell Road, O'Connell which is to the south of the village of O'Connell and 18km south-east of Bathurst. The Planning proposal is for a rezoning of the subject site from RU1 Primary Production Zone to R5 Large Lot Residential Zone with a 10ha minimum lot size. This rezoning would facilitate a potential 17-lot subdivision on the subject site.

Council at its Ordinary Meeting on 20 February 2018 resolved to:

1. *Council support the Planning Proposal and request for gateway determination due to the following reasons:*
  - *This area should have been included in the 2013 LEP.*
  - *The land release is of low agricultural value.*
  - *Services and infrastructure are currently available in the area.*
  - *Community interest in the adoption of the 2013 LEP.*
2. *Forward the endorsed Planning Proposal to the Department of Planning and Environment with a request for a Gateway determination and proceed to public exhibition subject to advice received and*
3. *Request that the Gateway delegate plan making functions to Council under Sections 59(2) and (3) of the Environmental Planning and Assessment Act 1979, in this instance.*
4. *A division be called in accordance with Section 375A of The Local Government Act 1993.*

---

#### Summary:

Director Regions, Western Planning Services considered and determined the planning proposal, having regard to the planning proposal, information provided by Council and Department of Planning and Environment assessment report. This resulted in a conditional gateway determination being approved, as detailed within this report.

---

#### Recommendation

That Council consider the gateway determination and subsequent conditions and determine its preferred direction based upon the information contained within the report.

---

#### Comment:

ATTACHED are copies of the Planning Determination report, Memorandum and Gateway Determination.

Council officer's prepared the lodgement of the planning proposal in accordance with the resolution of Council which was submitted with Planning & Environment on 22 February 2018. Further

information was requested of Council on 9 April 2018, which was submitted to them on 19 April 2018.

Below are the details of the process that Western Region Planning & Environment have undertaken in reaching the decision on the Gateway application, after which there are matters for the consideration of the Council.

### **Gateway Determination Report**

On 25 May 2018, Western Region Planning & Environment staff completed the final Gateway Determination Report which recommended that the proposal not be supported and the Gateway determination for refusal be issued.

The issues raised within the report were:

- The planning proposal is not consistent with the Central West and Orana Regional Plan 2036 (CWORP). The proposal undermines the directions contained within the Regional Plan which seeks to ensure the provision of suitably located rural residential land that is supported strategically by a local land use strategy.
- The planning proposal to rezone land RU1 Primary Production to R5 Large Lot Residential is not strategically considered and is inconsistent with the endorsed Oberon Land Use Strategy.
- The planning proposal will create a disproportionate demand on services and infrastructure in O'Connell which is zoned RU1 Primary Production and therefore problematic for Council to develop services and facilities that would be required to support additional rural residential development.
- The planning proposal is inconsistent with Section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 5.10 Implementation of regional plans as well as State Environmental Planning Policy (Rural Lands) 2008 as it will result in the loss of 200ha of agricultural land that is not supported by the endorsed Oberon Strategy.
- Information provided by Council and the proponent indicates that O'Connell has an existing supply of land zoned R5 Large Lot Residential with the potential for approximately 63 lots. This provides the immediate locality with approximately 13 years of supply. The Oberon Council area has a total of approximately 1348ha of existing vacant land zoned R5 Large Lot Residential providing the potential for approximately 411 lots.
- Council officers recommended that the proposal not be supported. Councillors resolved that the proposal proceed to Gateway determination.

### **Memorandum**

Director Regions, Western Planning Services within his memorandum made the following comments:

The following options to determine this proposal have been considered:-

1. Issue a Gateway determination that refuses the proposal for reasons as outlined in the Gateway Determination Report.
2. Issue a conditional Gateway determination that requires a strategic planning review of large lot residential land in the Oberon local government area.

3. Request Council to withdraw the proposal until the strategic work has been undertaken.

I am of the view that Option 2 is preferred in that the proposal be conditionally approved subject to conditions. I am recommending this option for the following reasons:

- The time that has passed since the Oberon Strategy was prepared and endorsed. It is timely that Council review the Oberon Strategy.
- The proposal has merit for further strategic investigation having regard to the planning proposal information notwithstanding it is inconsistent with the Oberon Strategy and CWORP.
- To allow Council to strategically justify the proposal in relation to the large lot residential land supply at O'Connell and in the Oberon Council local government area.
- To allow the strategic review of the large lots residential land in consultation with agencies and the community.

### **Gateway determination**

The above consideration by the Director Regions, Western Planning Services subsequently resulting in the gateway determination being approved subject to the following conditions:

1. Prior to undertaking community consultation of the planning proposal, Council is to prepare an addendum to the Oberon Land Use Strategy 2013 (Oberon Strategy) in respect to the rural residential/large lot residential component having regard to, but not limited to, the following:
  - a. Review the existing Oberon Strategy recommendations and suitability of the supply and demand for rural residential/large lot residential in Oberon Council area and make recommendations for any changes based on the revised trends, assumptions and evidence including;
    - i. Review the Oberon settlement hierarchy classification;
    - ii. Consider each proposed change in relation to the relevant section 9.1 Ministerial Directions, State Environmental Planning Policies and Central West and Orana Regional Plan 2036;
    - iii. Consider the subject site (Part Lot 4 DP 1023024 O'Connell Road O'Connell) in relation to the above review;
    - iv. Review the scenic heritage value of the land surrounding O'Connell; and
    - v. Review the appropriateness of the zone RU1 Primary Production at O'Connell settlement.
  - b. Consider and submit to the Department of Planning and Environment results of consultation with relevant agencies in relation to the draft Addendum.

The abovementioned Addendum to the Oberon Strategy is to be submitted to the Department of Planning and Environment for approval prior to undertaking community consultation.

2. Prior to community consultation Council is to demonstrate to the Department of Planning and Environment that it is satisfied with the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land.
3. Prior to community consultation being undertaken consultation is required with the Department of Planning and Environment – Resources and Energy under section 3.34(2)(d) of the Act to address the inconsistency with section 9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries.

The Department of Planning and Environment – Resources and Energy is to be provided with a copy of the planning proposal and any supporting material, and given at least 40 days to comment on the proposal.

The result of the consultation is to be provided to the Department of Planning and Environment seeking approval to undertake community consultation.

4. Community consultation is required under sections 2.22 and 3.34(2)(c) of the Environmental Planning and Assessment Act 1979 as follows:
  - a) the planning proposal must be made publicly available for a minimum of 28 days; and
  - b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment August 2016).
5. Consultation is required with the following public authorities under section 3.34(2)(d) of the Environmental Planning and Assessment Act, 1979:
  - Department of Primary Industry – Agriculture
  - NSW Roads and Maritime Services
  - Department of Industry – Water
  - Office of Environment Heritage

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

6. Prior to submission of the planning proposal under section 3.36 of the Environmental Planning and Assessment Act, 1979, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2015.
7. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Environmental Planning and Assessment Act, 1979.

This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

8. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

It is noted that plan making powers were delegated to Councils by the Minister in October 2012. However the nature of Council's planning proposal has resulted in the Director Regions, Western Planning Services making the decision not to issue an authorisation for Council to exercise delegation to make this plan at this time due to the strategic planning work required and the inconsistencies with section 9.1 Directions. He will review this decision after condition 1 of the Gateway determination has been completed.

### **Consideration for Council**

As can be seen by the gateway determination above, the conditions placed on the approval that are required to be completed prior to allowing the Planning Proposal to be placed upon public exhibition are substantial, in both time and cost to Council. It is estimated that the cost for the Land

Use Strategy and LEP review would cost in the vicinity of \$70,000 to complete and take all of the 12 months allocated.

The process for the Land Use Strategy (LUS) of the rural residential/large lot residential areas of the Oberon Council relies upon Planning & Environment endorsing the completed strategy, prior to the Gateway being able to proceed to the exhibition phase.

There is no certainty that the LUS will make recommendations that are supported by Council or be endorsed by Planning & Environment once completed, thus making the entire process potentially a waste of funds and resources, especially given the fact that this is required for a single proponent to undertake a 17 lot rezoning.

Council has a couple of options available to it, which are detailed below.

If Council is satisfied with the Gateway Determination and the conditions applied to it, Council can:

- Accept the conditions and allocate the funds and resources to undertake the requirements of the Gateway Determination.

If Council is dissatisfied with the Gateway Determination and/or the conditions applied to it, Council can:

- Request a formal review of the Gateway Determination by the Planning Panel.  
If the Gateway determination is to proceed with the planning proposal but imposes conditions that the council or proponent considers inappropriate, the council or proponent has 14 days from being notified by the Department to indicate their intent to request a review. The council or proponent would then have 42 days to formally apply for a Gateway review.
- Make an inform request to Planning Western Region reconsider and reissue the Gateway Determination.  
Separate to the formal Gateway review process outlined above, a council, when it is the relevant planning authority for a proposal, may at any time request that the Gateway determination be reconsidered and reissued. Councils should contact the Department's regional team to discuss any concerns about the Gateway determination before deciding to request a formal review. For some routine matters, a Gateway determination may be altered without the need for a formal review.

The proponent also has the right to request a review of the gateway as detailed within the formal review details above. They have not indicated to Council at this time, whether they intend to make a request or alike, however they have expressed their dissatisfaction of the conditional approval given to the Gateway determination.

Notes: