



DUBBO
CITY COUNCIL

**REPORT: Bracken House Planning
Proposal - Part Lot 12 DP 1100130 No. 331
Macquarie Street, Dubbo**

AUTHOR: Strategic Planning Supervisor
REPORT DATE: 12 February 2013
FILE: R13-1

EXECUTIVE SUMMARY

A Planning Proposal, or Local Environmental Plan amendment application, has been lodged for the rezoning of Part Lot 12 DP 1100130 from E3 Environmental Management to R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011. The proposal will form the second amendment to the LEP. Any amendment proposed to be undertaken to the LEP now requires assessment and consideration in accordance with the new 'Gateway' system for the Local Environmental Plan amendments from the State Department of Planning and Infrastructure.

The Planning Proposal was lodged on 21 December 2012 by consultants Geolyse on behalf of the United Protestant Association. A copy of the existing and proposed zoning plans submitted by the Applicant is provided here in **Appendix 1**.

The Planning Proposal has sought the rezoning of 4,000 square metres to allow for a further expansion of the Bracken House Seniors Living development. At the present time, further expansion of the development is limited by the characteristics of site development and land to the west is subject to the effects of the 1% flood event.

The area of Lot 12 DP 1100130 proposed to be rezoned is subject to the 1% flood event and as such, the proponent has provided a flood study assessing the impact of the rezoning and the subsequent filling of the land. Issues in relation to flooding are further discussed in this report.

The Planning Proposal is considered to be consistent with the provisions of the Dubbo Urban Areas Development Strategy.

If Council resolves to support the proposed rezoning, the Planning Proposal will be submitted to the Department of Planning and Infrastructure to seek a Gateway Determination. A Gateway Determination will allow further consideration of the purpose of rezoning and construction to be undertaken with the public and State Government agencies.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

There are no policy implications arising from this report.

RECOMMENDATION

- 1. That Council supports the Planning Proposal for the rezoning of Part Lot 12 DP 1100130 from E3 Environmental Management to R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011.**
- 2. That Council supports a 14 day public exhibition period for the Planning Proposal.**
- 3. That Council seeks approval from the Minister for Planning and Infrastructure to undertake the functions of Section 59(2) and 59(3) of the Environmental Planning and Assessment Act 1979.**

Steven Jennings
Strategic Planning Supervisor

BACKGROUND

The allotment subject to the Planning Proposal, Lot 12 DP 1100130, is located on the western side of Macquarie Street in South Dubbo, adjoining the existing 'Bracken House' residential care facility.

The rezoning of part of the allotment from E3 Environmental Management to R2 Low Density Residential will allow an extension of the Bracken House residential care facility over the land.

The existing facility has a capacity to provide accommodation for 65 seniors who require either a low level of assistance or specified care. The rezoning of the neighbouring land (Part Lot 12 DP 1100130) land would permit the existing capacity to be increased through an extension of the facility.

It is considered that the extension of the facility is a suitable land use, providing an additional supply of seniors housing to meet the current increase in demand.

REPORT

1. Particulars of the Application

Applicant:	United Protestant Association
Current zoning:	E3 Environmental Management under the provisions of the Dubbo Local Environmental Plan 2011
Proposed zoning:	R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011
Lodgement date:	21 December 2012

2. Amendments to Local Environmental Plans

The State Department of Planning and Infrastructure created a new process for the consideration of amendments to Local Environmental Plans in 2009. The process for the consideration of an amendment to a Local Environmental Plan (LEP) now commences with Council's consideration of a Planning Proposal.

The role of a Planning Proposal is to explain the intended effects of a proposed LEP amendment and the justification for undertaking the amendment. Council has the role of considering the Planning Proposal. If Council resolves to continue with the Planning Proposal, the LEP amendment is provided to the Department to seek a Gateway Determination.

The Gateway is a new addition to the plan making process, which ultimately reviews and considers Planning Proposals in the initial stages prior to further consideration by Council. After consideration by the Department, Council is provided with a Gateway Determination for the LEP amendment.

The Gateway Determination specifies that the Department will allow the proposed amendment to proceed, specify any matters that require additional information, the level of public consultation required and State Government Agencies to be consulted.

After all additional matters have been addressed and the required consultation has been carried out, a report will be provided to Council for consideration. After Council's final consideration, the LEP amendment is provided to the Department for gazettal. It is unclear as to the specific time involved in the process with consideration by the Department.

It should also be noted that the Planning Proposal could be considered by the Department for the delegation of powers back to Council following the receipt of the Gateway determination. This could allow the Planning Proposal to not be considered by the Department following public exhibition. However, Council will still be required to liaise with Parliamentary Counsel for legal drafting and finalisation of the Plan.

3. Planning Proposal

Council is in receipt of a Planning Proposal on behalf of the United Protestant Association to rezone Part Lot 12 DP 1100130 from E3 Environmental Management to R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011. The area subject to the Planning Proposal is shown on the existing and proposed zoning plans provided in **Appendix 1**.

The proponent has sought rezoning of the land to allow for further expansion of the existing Seniors Living development on the land.

4. Site Characteristics

Lot 12 DP 1100130 is located on the western side of Macquarie Street in South Dubbo adjoining the existing Bracken House Seniors Living development.

The overall allotment has an area of 5.9 ha. The Planning Proposal is for the rezoning of 4,000 square metres of the land.

The Oxley Seniors Living development occupies the south eastern corner of the subject allotment. This area is currently zoned R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011. The remainder of the allotment is zoned E3 Environmental Management and consists of vacant grassland.

The land is subject to the 1% flood event, with a floor level of 263.3m AHD in accordance with Council's Development Control Plan No G2.2 Flood Prone Lands – Urban Areas.

Development within the immediate vicinity of the land predominantly consists of residential development to the east and vacant grassland to the north, west and south.

5. Planning Considerations

5.1 Section 117 Directions

Direction 1.5 Rural Lands

The Direction applies to the Planning Proposal as the proposal will affect land within an existing environmental protection zone through the alteration of an existing environmental protection zone boundary.

The Direction requires the Planning Proposal to be consistent with the Rural Planning Principals listed in *State Environmental Planning Policy (Rural Lands) 2008*.

The Rural Planning Principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The area within the subject allotment currently zoned E3 Environmental Management largely consists of vacant grassland. The portion proposed to be rezoned is located along the boundary with Lot 10 DP 1100130, within an urbanised area and is not intended for rural activities.

The area subject to the Planning Proposal contains no identified natural resources such as threatened species, communities or water resources.

It is considered that the Planning Proposal is consistent with the provisions of the Dubbo Urban Areas Development Strategy.

Dubbo City Residential Areas Development Strategy 1996

The subject allotment is situated within the Southern Precinct as identified in the *Dubbo City Residential Areas Development Strategy 1996*. Land uses permitted within the R2 Low

Density Residential zone are deemed to be consistent with the objectives for land use in the precinct as follows:

1. Protect and enhance the quality and amenity of the residential environment of the Precinct.
2. Clarify, protect and reinforce the heritage and streetscape values of the residential areas by implementing the Freeman Collett Report, and subsequent analyses as recommendations as adopted.
3. Ensure any redevelopment is compatible with the established character of the neighbourhood.
4. Allow medium density redevelopment only on sites selected for their particular suitability for such use.
5. Facilitate residential development of the 1(d) areas wherever suitable.

Development types permitted with consent within the R2 Low Density Residential zone are considered consistent with the quality and amenity of the residential environment of the Precinct. Low density residential development is considered to be compatible with the established character of the neighbourhood. Development on the subject allotment would not impact on the heritage and streetscape values of Macquarie Street as the allotment does not have significant frontage to the street.

Direction 2.1 Environment Protection Zones

The Direction is applicable to the Planning Proposal as the portion of land subject to the rezoning is currently zoned E3 Environmental Management. The proposal must not reduce the environmental protection standards that apply to the land.

The Direction states as follows:

“A planning proposal may be inconsistent with the terms of the direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- a) *justified by a strategy which:*
 - a. *gives consideration to the objectives of this direction,*
 - b. *identifies that land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - c. *is approved by the Director-General of the Department of Planning, or*
- b) *justified by a study proposed in support of the planning proposal which gives consideration to the objectives of this direction, or*
- c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- d) *is of minor significance”.*

The area of land subject to the proposed rezoning consists of approximately 4,000 square metres of vacant grassland and is not known to contain any threatened species or ecological communities. Based on the intent of the E3 Environmental Management zone in this area and the environmental values of the land, it is considered that rezoning this land from E3 Environmental Management to R2 Low Density Residential is of minor significance.

Direction 2.3 Heritage Conservation

The subject land was zoned E3 Environmental Management in the 2011 LEP based on the fact that the land is prone to the 1% flood event. Direction 2.3 is applicable to the Planning Proposal as an item of local heritage significance is situated on the adjoining allotment, containing the Bracken House residential care facility. Lillimur House is identified as enjoying architectural interest of local heritage significance.

The Direction required the Planning Proposal to contain provisions that facilitate the conservation of the building in relation to the architectural and aesthetic value of the item. The land proposed to be rezoned adjoins the western boundary of the Lot 10 DP 1100130, which contains Lillimur House. The Bracken House residential care facility interrupts the site lines between the area proposed to be rezoned and Lillimur House. As such, development on the land resulting from the rezoning would not impact upon the architectural or aesthetic value of the building nor affect its conservation. It is considered that the Planning Proposal is consistent with the Direction.

Direction 3.1 Residential Zones

The Direction is applicable to the Planning Proposal as the proposal seeks to alter an existing residential zone boundary.

“A Planning proposal must include provision that encourage the provision of housing that will:

- a) broaden the choice of building types and locations available in the housing market, and*
- b) make more efficient use of existing infrastructure and services, and*
- c) reduce to consumption of land for housing and associated urban development on the urban fringe, and*
- d) be of good design.*

A Planning proposal must, in relation to land to which this direction applies:

- a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
- b) not contain provisions which will reduce the permissible residential density of land.”*

The Planning Proposal is consistent with the Direction and will encourage the provision of housing in accordance with the requirements.

It is considered that the proposed rezoning will allow an extension of the facility, increasing the capacity for aged care in the region and making efficient use of the existing infrastructure and services which support the Bracken House development.

Direction 3.4 Integrating Land Use and Public Transport

The Direction is applicable to the Planning Proposal as it will zone further land for residential development.

The Direction states as follows:

“A Planning Proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principals of:

- a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
- b) The Right Place for Business and Services – Planning Policy (DUAP 2001)”.*

It is considered that the existing public transport network is appropriate to serve the site through its connection with existing pedestrian and public transport routes. The use of the subject land for residential development is consistent with the aims, objectives and accessible development principals of the above listed documents.

Direction 4.3 Flood Prone Land

The Direction is applicable as the subject allotment is subject to the 1% flood event.

The Direction states as follows:

“The following provisions apply where a planning proposal creates, removes or alters a zone or a provision that affects flood prone land:

- a) a planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principals of the Floodplain Development Manual 2005 (including the building on Development Controls on Low Flood Risk Areas).*
- b) a planning proposal must not rezone land within the flood planning areas from Special use, Special Purpose, Recreation, Rural or Environmental Protection Zones to Residential, Industrial, Special Use or Special Purpose Zone.*
- c) a planning proposal must not contain provisions that apply to the flood planning areas which*
 - a. permit development in floodway areas,*
 - b. permit development that will result in significant flood impacts to other properties,*
 - c. permit a significant increase in the development of that land,*
 - d. are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*

- e. *permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.*
- d) *a planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*
- e) *for the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from the Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General)”.*

The Planning Proposal is inconsistent with the requirements of provision c) above as the subject land is within the flood planning area, is currently zoned E3 Environmental Management and is proposed to be zoned R2 Low Density Residential.

A planning proposal may be inconsistent with this direction where the provisions of the Planning Proposal that are inconsistent are of minor significance.

The proponent provided a flood impact report which provides information on the current flooding of the site and the impact of future development on flooding in the vicinity of the site. The report concludes that the planned development and filling of the site is considered to have no discernible impact on the 100 year average recurrence interval (ARI) flood levels, 100 year ARI velocities, velocity x depth and hazards in the vicinity of the site.

The flood risk of the site has been assessed and it is considered that the rezoning of Part Lot 12 DP 1100130 from the E3 Environmental Management zone to R2 Low Density Residential is of minor significance and is consistent with the Direction.

Direction 6.3 Site Specific Provisions

The Direction is applicable to the Planning Proposal as the rezoning of Part Lot 12 DP 1100130 from E3 Environmental Management to R2 Low Density Residential will allow the expansion of the Bracken House residential care facility to be carried out on the land.

The Direction states as follows:

“A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

- a) allow that land use to be carried out in the zone the land is situated on, or*
- b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*

- c) *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended”.*

The Planning Proposal seeks to amend the Dubbo Local Environmental Plan 2011 through rezoning approximately 4000 square metres of Lot 12 DP 1100130 to R2 Low Density Residential which permits residential accommodation with development consent. The Planning Proposal does not seek to impose any development standards or requirements in addition to those already contained in that zone.

The Planning Proposal is consistent with the Direction.

5.2 State Environmental Planning Policies

State Environmental Planning Policy (Rural Lands) 2008

Clause 4 of Ministerial Direction 1.5 – Rural Lands, requires planning proposals to be consistent with Clause 7 – Rural Planning Principles of *State Environmental Planning Policy (Rural Lands) 2008*, where a rezoning affects land located within a rural or environmental protection zone.

The land subject to the rezoning is currently zoned E3 Environmental Management, as such the Policy is applicable to the Planning Proposal.

The Planning Proposal is considered consistent with the Rural Planning Principles.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP) applies to the R2 Low Density Residential zone. The proponent can not undertake further expansion of the Bracken House development on the land as the subject section of the site is currently zoned E3 Environmental Management. The SEPP does not allow for development to be undertaken in the E3 Environmental Management zone or on flood prone land.

Following gazettal of the draft LEP and the subsequent filling of the land, further expansion of Bracken House will be a permissible form of development on the land.

Given the location and characteristics of the site, it is considered that any future development could adequately achieve compliance with the provisions of the SEPP.

5.3 Dubbo Local Environmental Plan

The Planning Proposal will zone the subject land R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011 from its current zoning of E3 Environmental Management. The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure development is consistent with the character of the immediate locality.*
- *To encourage low density housing within a landscaped setting on the fringe of the Dubbo urban area.*

As previously discussed in the report, the proponent is proposing to utilise the land for the purposes of aged care in association with the Bracken House residential care facility on the adjoining allotment.

It is considered that the rezoning of the land to R2 Low Density Residential is appropriate given the location of the land and its relationship with the Bracken House development.

5.4 Flood Impact Assessment

The Applicant provided a Flood Impact Assessment with the Planning Proposal which has been prepared by a suitably qualified and experienced professional.

The Flood Impact Assessment has been undertaken with the objective of providing information on the current flooding of the subject site and assessing the impact of the proposed filling in relation to flooding in a one per cent Annual Exceedence Probability (AEP) event.

The assessment concludes that the planned filling and future residential development on the site will have no discernible impact on the 100 year average recurrence interval (ARI) flood levels, 100 year ARI velocities, velocity x depth and hazards in the vicinity of the site.

5.5 Net Community Benefit Test

Consideration of a Planning Proposal and ultimately an amendment to the LEP requires consideration of a Net Community Benefit Test. The Test is a broad assessment of policy and the benefit of a proposed rezoning to the community.

The Test is a component of the draft Centres Policy prepared by the Department of Planning and Infrastructure and requires consideration for any amendments to the LEP.

The Test requires consideration of an LEP amendment under the major subject areas provided below:

- *Consistency with relevant Local and State Policy*
- *Strategic Location*
- *Accessibility*
- *Opportunity for choice*
- *Places for People*
- *Economic Viability*
- *Environmental Sustainability*
- *Amenity and Safety*

It is considered that the proposed rezoning of the subject land will have a community benefit.

The rezoning of the land to permit residential development facilitates the proposed expansion of the Bracken House residential care facility. The proponent provided the following information addressing the suitability of the proposed rezoning and the community benefit:

“Data collected by the Australian Bureau of Statistics show that the population of Dubbo City has grown 2.5% between 2006 and 2011. The data shows population losses in age groups generally between 5 and 49. However significant population growth has been experienced in the older age groups generally from 50 above. Most notably, the population of persons aged 85 and over (ie The age group most likely to require residency at Bracken House) has experienced the largest rise of any age group – 23.5%.

From the above data, it is determined that a rise in the elderly population would also trigger a need for a rise in available aged care and seniors living accommodation in Dubbo City. The UPA, which provides a significant proportion of the current aged care stock in Dubbo, are well placed to provide on-going and upgraded facilities to cater for the growing demand for such accommodation.”

It is deemed that the provision of additional seniors housing associated with the expansion of the Bracken House residential care facility will be of benefit to the public.

5.6 Other Implications

Utilities

The expansion of Bracken House will require augmentation of the existing water and sewerage connections located in the road reserve of Macquarie Street at the front of Lot 10 DP 1100130.

Stormwater from the proposed development is expected to be disposed of through the existing roof gutter and downpipe system of the adjoining Bracken House building, draining to Macquarie Street.

The Applicant states that there is sufficient capacity within the existing water, sewerage and stormwater systems to service the proposed development.

Issues in relation to infrastructure provision will form a key component of any future development application.

Traffic

It is expected that the proposed development would result in a minimum increase in the number of vehicle movements to and from the site and demand for on-site car parking.

Adjoining and adjacent development

It is considered that the adjoining and adjacent development within reasonable proximity of the subject land will not be impacted by the proposed rezoning.

Any further development on the land will be subject to the submission of a development application to Council, which would be notified to adjoining and adjacent property owners for consideration.

SUMMARY

Geolyse on behalf of the Untied Protestant Association have lodged a Planning Proposal with Council for consideration to facilitate the rezoning of Part Lot 12 DP 1100130 from E3 Environmental Management to R2 Low Density Residential under the provisions of the Dubbo Local Environmental Plan 2011. This Planning Proposal is the second amendment to the LEP which was gazetted on 11 November 2011.

It is considered that the Planning Proposal does not raise any issues of concern at this stage of the rezoning process and that Council should seek a Gateway Determination from the Department of Planning and Infrastructure.

After a Gateway Determination is received from the Department, Council can place the LEP amendment on public exhibition and consult with relevant State Agencies.

At the conclusion of the consultation stage of the process, a further report will be presented to Council for consideration.

Appendices:

1 Existing and Proposed Zoning Plans