



AGENDA

EXTRAORDINARY COUNCIL MEETING

19 JANUARY 2018

MEMBERSHIP: Councillors J Diffey, V Etheridge, D Grant, D Gumley, A Jones, S Lawrence, G Mohr, K Parker, J Ryan and B Shields.

The meeting is scheduled to commence at 12 noon.

PRAYER:

O God, Grant that by the knowledge of thy will, all we may resolve shall work together for good, we pray through Jesus Christ our Lord. Amen!

ACKNOWLEDGEMENT OF COUNTRY:

"I would like to acknowledge the Wiradjuri People who are the Traditional Custodians of the Land. I would also like to pay respect to the Elders both past and present of the Wiradjuri Nation and extend that respect to other Aboriginal peoples from other nations who are present".

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CCL18/1 LEAVE OF ABSENCE (ID18/137)

CCL18/2 PUBLIC FORUM (ID18/138)

REPORTS FROM STAFF:

CCL18/3 PLANNING PROPOSAL (R16-5) - SOUTHLAKES ESTATE, DUBBO (ID18/141)

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The Council had before it the report dated 16 January 2018 from the Manager Strategic Planning Services regarding Planning Proposal (R16-5) - Southlakes Estate, Dubbo.



DUBBO REGIONAL
COUNCIL

REPORT: Planning Proposal (R16-5) - Southlakes Estate, Dubbo

AUTHOR: Manager Strategic Planning Services
REPORT DATE: 16 January 2018
TRIM REFERENCE: ID18/141

EXECUTIVE SUMMARY

A Planning Proposal was lodged with Council on 10 October 2016 by Maas Group Properties seeking to amend the Dubbo Local Environmental Plan 2011 (Dubbo LEP). The Planning Proposal affects land located east of the existing Southlake Estate, known as Lot 399 DP 1199356, Lot 12 DP 1207280 and Lot 503 DP 1152321, Boundary Road, Dubbo.

The Planning Proposal seeks a number of amendments to the Dubbo LEP across the subject land. The proposed amendments include rezoning parts of the land from R2 Low Density Residential to R1 General Residential to facilitate further residential development types, alteration to the overall density of development in the southern section of the land and to amend the location of the public open space/stormwater system by amending the location of land zoned RE1 Public Recreation.

The Planning Proposal also seeks to rezone an area of approximately 19,500 m² along the future Boundary Road extension to B1 Neighbourhood Centre to facilitate a future supermarket and speciality stores to serve the needs of future residents.

Council at its meeting on 26 June 2017 considered a report in respect of the Planning Proposal and resolved as follows:

- “1. That Council endorse the amended Planning Proposal as provided by the Proponent and included as Appendix 2 to the report of the Manager City Strategy Services dated 13 June 2017 and including the following amendments:*
 - That land situated to the south of the indicative location of the Southern Distributor be zoned RE2 Private Recreation.*
 - That the area of land proposed to be zoned B1 Neighbourhood Centre be subject to a suitable provision in the Dubbo Local Environmental Plan 2011 that limits the total retail floor space of any centre to 5,000 square metres.*
 - That the additional use of recreation facility (indoor) be permitted on the subject area of the land proposed to be zoned B1 Neighbourhood Centre under the provisions of the Dubbo Local Environmental Plan 2011.*
- 2. That Council support a minimum 28 day public exhibition period for the Planning Proposal.*
- 3. That Council not use its delegation under Section 59 of the Environmental Planning and Assessment Act, 1979 to draft the amendments to the Dubbo Local Environmental Plan 2011.*

4. *That following the completion of the public exhibition period, a further report be provided to Council detailing the results of the public exhibition and for further consideration of the Planning Proposal.*
5. *That Council undertake a concurrent amendment to the Stage 1 Structure Plan for the South-East Residential Urban Release Area to ensure the Structure Plan is consistent with the development densities and typologies as included in the Planning Proposal and to show the amended indicative location of the Southern Distributor Road, noting that the State Government Department of Primary Industries (Water) will undertake assessment of this proposal as a component of the Planning Proposal process.*
6. *That the amendment to the Stage 1 Structure Plan for the South-East Residential Urban Release Area be placed on public exhibition with the subject Planning Proposal.”*

A copy of the report is available within the business paper for the Planning and Development Committee meeting held 19 June 2017 or on Council’s website of <https://www.dubbo.nsw.gov.au/About-Council/Meetings-and-Documents/archived-business-papers>.

A Gateway Determination, which allowed the Planning Proposal to be placed on public exhibition, was received from the Department of Planning and Environment (DPE) on 15 August 2017. The Planning Proposal was placed on public exhibition from 31 August 2017 until 29 September 2017. One (1) public submission was received during the exhibition period. A copy of the submission is provided here in **Appendix 1**. Council also received four (4) submissions from state public agencies. Those submissions are provided here in **Appendix 2**. Issues raised in the submissions are discussed in the body of this report.

It is recommended that Council support the proposed amendment to the Dubbo LEP, without any variation, and that a request be made to the Department to prepare the draft amendment and for the Plan to be made.

ORGANISATIONAL VALUES

Customer Focused: Council officers have worked with the applicant to address issues with the Planning Proposal in its early stages prior to consideration by Council and submission to the Department of Planning and Environment. Following Gateway Determination by the Department, the Planning Proposal was placed on public exhibition to provide the Dubbo community an opportunity to make a submission.

Integrity: The Planning Proposal has been assessed against the requirements of the Environmental Planning and Assessment Act, 1979 and the NSW Department of Planning and Environment’s document, A Guide to Preparing Planning Proposals.

One Team: Numerous Council staff have been involved in the assessment of the Planning Proposal in accordance with relevant legislation and Dubbo Regional Council policy.

FINANCIAL IMPLICATIONS

The applicant provided on lodgement of the Planning Proposal, payment of fees to Council in the amount of \$25,000. These fees were payment for the ad hoc processing and assessment of the Planning Proposal application in accordance with Council's adopted Revenue Policy.

POLICY IMPLICATIONS

The adoption of the Planning Proposal by Council, as recommended in this report, would result in an amendment to the Dubbo Local Environmental Plan 2011.

RECOMMENDATION

- 1. That the Planning Proposal, as exhibited, to undertake the following amendments to the Dubbo Local Environmental Plan 2011 be adopted by Council:**
 - That part of the subject land be rezoned from R2 Low Density Residential to R1 General Residential, B1 Neighbour Centre and the existing RE1 Public Recreation zone be reconfigured;
 - That minimum lot sizes be changed from existing 600 m² and 4000 m² to a range of no minimum lot sizes, 450 m², 600 m², 800 m² and 2000 m²;
 - That land situated to the south of the indicative location of the Southern Distributor be zoned RU2 Rural Landscape;
 - That the area of land proposed to be zoned B1 Neighbourhood Centre be subject to a suitable provision in the Dubbo Local Environmental Plan 2011 that limits the total retail floor space of any centre to 5,000 m²; and
 - That the additional use of Recreational Facility (Indoor) be permitted on the subject area of the land proposed to be zoned B1 Neighbourhood Centre under the provisions of the Dubbo Local Environmental Plan 2011.
- 2. That Council request the Department of Planning and Environment to prepare the draft amendment to the Dubbo Local Environmental Plan 2011 and provide Council with an Opinion that the Plan be made.**
- 3. That following receipt of an Opinion from the Department that the Plan be made, that the General Manager request gazettal of the Plan.**
- 4. That those who made a submission be thanked and advised of Council's determination in this matter.**

Steven Jennings
Manager Strategic Planning Services

BACKGROUND

A Planning Proposal was lodged with Council on 10 October 2016 by Maas Group Properties, which has sought to amend the Dubbo Local Environmental Plan 2011 (LEP). The Planning Proposal affects land known as Lot 399 DP 1199356, Lot 12 DP 1207280 and Lot 503 DP 1152321, Boundary Road, Dubbo and is located east of the existing Southlakes Estate, as shown in Figure 1.

The subject site is currently zoned R2 Low Density Residential with a component of the land zoned RE1 Public Recreation along the existing drainage corridor which traverses the site from north-east to the south-west under the provisions of the Dubbo Local Environmental Plan 2011. The subject land currently has a minimum lot size of 600 m² and 4,000 m² along the Hennessy Road boundary.



Figure 1. Subject site - Lot 399 DP 1199356, Lot 12 DP 1207280 and Lot 503 DP 1152321, Boundary Road, Dubbo

The Dubbo Regional Council at its meeting on 26 June 2017 considered a report in respect of the provisions of the Dubbo Local Environmental Plan 2011 relating to the rezoning of the Southlakes Estate. In consideration of the report, the Council resolved as follows:

- “1. That Council endorse the amended Planning Proposal as provided by the Proponent and included as Appendix 2 to the report of the Manager City Strategy Services dated 13 June 2017 and including the following amendments:*
 - That land situated to the south of the indicative location of the Southern Distributor be zoned RE2 Private Recreation.*
 - That the area of land proposed to be zoned B1 Neighbourhood Centre be subject to a suitable provision in the Dubbo Local Environmental Plan 2011 that limits the total retail floor space of any centre to 5,000 square metres.*
 - That the additional use of recreation facility (indoor) be permitted on the subject area of the land proposed to be zoned B1 Neighbourhood Centre under the provisions of the Dubbo Local Environmental Plan 2011.*
- 2. That Council support a minimum 28 day public exhibition period for the Planning Proposal.*
- 3. That Council not use its delegation under Section 59 of the Environmental Planning and Assessment Act, 1979 to draft the amendments to the Dubbo Local Environmental Plan 2011.*
- 4. That following the completion of the public exhibition period, a further report be provided to Council detailing the results of the public exhibition and for further consideration of the Planning Proposal.*
- 5. That Council undertake a concurrent amendment to the Stage 1 Structure Plan for the South-East Residential Urban Release Area to ensure the Structure Plan is consistent with the development densities and typologies as included in the Planning Proposal and to show the amended indicative location of the Southern Distributor Road, noting that the State Government Department of Primary Industries (Water) will undertake assessment of this proposal as a component of the Planning Proposal process.*
- 6. That the amendment to the Stage 1 Structure Plan for the South-East Residential Urban Release Area be placed on public exhibition with the subject Planning Proposal.”*

The Planning Proposal and supporting documents were provided to the Department of Planning and Environment with a request for Gateway Determination on 27 June 2017.

REPORT

1. Gateway Determination

A Gateway Determination from the Department of Planning and Environment (DPE) was received on 18 August 2017 which allowed the Planning Proposal to proceed subject to the following conditions:

- "1. Prior to community and agency consultation, the Planning Proposal is required to be revised as follows:*
- a) There should be a single version of the Planning Proposal and supporting studies to avoid any confusion and ensure the planning proposal is clear for public exhibition purposes.*
 - b) Remove any reference to "original planning proposal dated October 2016" in the Planning Proposal document supporting studies and appendices.*
 - c) Remove any reference to "Lot 2 DP 880413, Sheraton Road, Dubbo" in the Planning Proposal document, supporting studies and appendices, as this land has not been considered in Council's resolution dated 26 June 2017.*
 - d) Revise mapping so that the proposed intended effect of zones and minimum lot sizes are clear and accurate.*
 - e) Amend the Planning Proposal and all mapping so that land situated to the south of the indicative location of the future Southern Distributor Road be zoned RU2 Rural Landscape with a minimum lot size (MLS) 100ha. The proposed RE2 Private Recreation zone for that section of land is not supported.*
 - f) Demonstrate consistency with the final Central West and Orana Regional Plan 2036.*

The revised Planning Proposal is required to be submitted to the Department for endorsement, prior to proceeding to community and agency consultation.

- 2. The proposed amendments to Clause 7.12 Shops in Zone B1 Neighbourhood Centre of the Dubbo LEP 2011 should achieve the intended outcome so that the total gross floor area of a retail premises on any land zoned B1 Neighbourhood Centre does not exceed 5000m², as resolved by Council on 26 June 2017.*
- 3. Community consultation is required under Sections 56(2)(c) and 57 of the Act 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 local environmental plans (Department of Planning and Environment 2016).*
- 4. Consultation is required with the following public authorities and/ organisations under Section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:*
 - Office of Environment and Heritage (OEH) (Direction 2.3 – Heritage Conservation; Direction 4.3 Flood Prone Land)*

- *Department of Primary Industries – Water (Direction 4.3 Flood Prone Land)*
- *Roads and Maritime Services*
- *OEH – National Parks and Wildlife Service*
- *Dubbo Local Aboriginal Land Council*

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

5. *A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the Act. 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).*
6. *Prior to the submission of the planning proposal under Section 59 of the Act, the final LEP maps must be prepared and be compliant with the Department’s “Standard Technical Requirements for Spatial Datasets and Maps’ 2015.*
7. *The timeframe for completing the LEP is to be 12 months from the date of the Gateway Determination.”*

The Department of Planning and Environment considered Council’s resolution not to exercise delegation in this instance and agreed not to issue an authorisation to exercise delegation.

To satisfy the requirements of condition 1 of the Gateway Determination, Council prepared a precis of the Planning Proposal, which provided a summary of the intent of the proposal and the supporting documentation. This precis was placed on public exhibition with the Planning Proposal.

2. Public Exhibition

In accordance with the conditions of the Gateway Determination, the Planning Proposal and supporting documentation, accompanied by the Precis, was placed on public exhibition from 31 August 2017 until 29 September 2017 inclusive.

The Planning Proposal was displayed at the Dubbo Branch of the Dubbo Regional Council, the Dubbo Branch of the Macquarie Regional Library and on Council’s website. An advertisement was also placed in local print media on 31 August 2017.

One (1) submission was received in respect of the Planning Proposal. The public submission is provided here in **Appendix 1**. The following information details the issues raised in the submission and a comment has been provided below.

Submission – Bachrach Naumburger Group and Comet (Aust) (owners of Orana Mall)

Council received a submission on 27 September 2017 from the owners of the Orana Mall, Bachrach Naumburger Group and Comet (Aust) Pty Ltd. The issues generally raised in the submission are summarised as follows:

- “1. We strongly object to the proposal to zone 19,500 square metres from residential (i.e. R2 Low Density) to business (i.e. B1 Neighbourhood Centre).*
- 2. The Dubbo Local Environmental Plan 2011 does not adopt any floor space ratio or height restrictions that could limit large scale retail and commercial development opportunity (potentially over 15,000m²) on the land that will undermine Council’s own policies as expressed in the Dubbo Urban Areas Development Strategy (including the Dubbo Commercial Areas Development Strategy).*
- 3. The proposal not only has the potential to adversely directly impact upon the business centres within Dubbo, but will undermine the overall business hierarchy Council has been trying to develop over the last decade.*
- 4. We do not accept the view put forward by “Hill PDA Consulting” in its review of the Economic Impact Statement by “Macro Plan Dimasi” on behalf of the proponents, that a minimum 2,800-3,000 square metres is required for a viable supermarket. There are many examples of successful neighbourhood supermarkets operating at a scale of less than 1,500 square metres.*
- 5. It is understood that Council has calculated a need for 5,000 square metres of retail area to be allowed on the subject land based on a large supermarket of 3,000 square metres, plus 1,500 square metres of complimentary retail space and a further 500 square metres for non-retail uses such as medical and real estate services etc. The calculation of these areas is based on a false premise and a limited view of the permitted retail uses under the existing residential R1 zone and proposed R2 zoning provisions.*

Both the R2 and R1 zones allow an unlimited number of neighbourhood shops with a floor area of 150 square metres.

On this basis there is no need to zone additional land for retail uses (neighbourhood shops) are allowed in the R1 zone and R2 zone that will apply to the land. Moreover, medical centres are also permitted in the R1 on the land by the provisions of State Environmental Planning Policy (Infrastructure) 2007 (Clause 57) without the necessity to zone additional land for this purpose.

6. *The Hill PDA Consultants review acknowledges that the year 2025-26 is a more appropriate time frame for such a supermarket based on population demand and on this basis it is premature to rezone the land some 8 years in advance of its perceived need; a lag time of 2-3 years would be more appropriate for consideration of any zoning for neighbourhood business purposes in this circumstance when a sufficient population may be located within the catchment."*

Comment:

The following information is provided in respect of the issues raised in the submission:

(a) Dubbo Commercial Areas Development Strategy

The Dubbo Urban Areas Development Strategy (including the Dubbo Commercial Areas Development Strategy) forms the basis for the business zonings and planning controls provided in the Dubbo Local Environmental Plan 2011.

Under the Commercial Areas Development Strategy, Neighbourhood Centres should:

- *Provide limited convenience retailing and services to the surrounding residential area*
- *Not have scope for expansion beyond role*
- *Have a secure market ie needs to be separate from other neighbourhood shopping centres (ie catchments)*
- *Provide adequate short term parking, public transport*
- *Have safe traffic movement*
- *Have safe pedestrian access*
- *Minimise disturbance to surrounding residential uses*
- *Be contained within the block, not divided by streets*
- *Be located close to other neighbourhood facilities (schools, child care, recreational leisure)*
- *Have symbiosis with other community facilities*
- *Not include pubs*
- *Not include public facilities as part of the total retail floor area; and*
- *Have a floor area normally limited to 1500 square metres (larger areas are exceptional eg small supermarket)*

The proposed rezoning of the area of the subject land to B1 Neighbourhood Centre and the likely development of a future neighbourhood centre is not currently included in the Commercial Areas Development Strategy, which was originally adopted by the former Dubbo City Council in 2007. However, it should be noted that the Delroy Park Shopping Centre that has been developed as a Neighbourhood Centre in west Dubbo was also not included in the Commercial Areas Development Strategy however, the two proposals are not inconsistent with the Strategy.

(b) Delroy Park Shopping Centre

Following a request from the developer of the Delroy Park Estate, the former Dubbo City Council approved an amendment to the Dubbo Local Environmental Plan 1998 – Urban Areas, which applied to the land prior to the gazettal of the Dubbo Local Environmental Plan 2011. This amendment resulted in the former Urban LEP including the following provision:

“that part of Lot 11 DP 830646, bounded by Baird Drive, Minore Road and Carnegie Avenue, Dubbo, that is within zone 3(c) – development for the purpose of a neighbourhood shopping complex where the maximum floor area does not exceed:

5,500 square metres for the whole complex comprising:

- *2,500 square metres for any supermarket situated within the complex, and*
- *3,000 square metres for development for purposes that are permitted within development consent within zone 3(c).”*

The former Dubbo City Council at its meeting on 15 December 2008 approved Development Application D2009/217 for a Shopping Centre on the land. The overall shopping centre was approved with a total retail floor space of 4,386 m². This included 2,500 m² of retail floor space for a supermarket tenancy. The remaining speciality tenancies included a total retail floor space of 1,426 m².

Contrary to the submission’s point 3 regarding impact on the commercial hierarchy, it should be noted that both the Delroy Park Shopping Centre and the proposed neighbourhood centre, which is included as a component of the subject Planning Proposal, can perform important functions in the Dubbo retail hierarchy in offering convenience shopping (including a full-line supermarket in each Centre) which can service significant Residential Urban Release Areas in west and south-east Dubbo. In the case of the proposed rezoning in the Southlakes Estate from R2 Low Density Residential to B1 Neighbourhood Centre, the South-East Residential Urban Release Area has the potential to realise the development of a further 2,500 lots for residential housing. When considered in the context of existing estates in the South-East, this presents a sizeable catchment for a Neighbourhood Shopping Centre.

(c) Hill PDA Third Party Assessment

In response to points 4, 5 and 6 of the submission, in order to consider the overall impact of the proposed B1 Neighbourhood Centre zoning, including the impact of the zoning on existing neighbourhood centres, the Dubbo Central Business District and the adopted commercial hierarchy of the City, which aims to protect the primacy of the CBD, Council sought a third party review of the Economic Impact Assessment provided with the Planning Proposal.

Independent property and economic consultants, Hill PDA were engaged by Council to undertake a review of the proponent's Economic Impact Assessment, to consider the impact of the proposal on the overall Dubbo retail hierarchy and consider whether the site and commencement date of development were too large/too early to facilitate orderly development on the land.

In summary, the assessment undertaken by Hill PDA provided the following conclusions:

1. Any proposed new neighbourhood centre to be developed on the land is likely to be of a similar size and composition to the Delroy Centre in west Dubbo. Also, that the Centre would perform the function of a 'third level' centre for residents in South-East Dubbo in a similar fashion to the Delroy Centre in west Dubbo.
2. In respect of the proposal to extend the Dubbo Commercial Business District to the west over time, it was considered that any proposed neighbourhood centre on the land is unlikely to affect this proposal as the trade area for the centre would be more localised in the South-East precinct.
3. In respect of the impact and use of the neighbourhood centre situated on Myall Street and the land zoned B1 Neighbourhood Centre (but undeveloped) on Websdale Drive, the Hill PDA assessment concluded that any proposed centre is unlikely to provide any significant impacts based on the trade areas of the centres. However, Hill PDA recommends that Council, in preparing a new Employment Lands Strategy for Dubbo, should carefully consider the close proximity of the two (2) neighbourhood centre zones.
4. In respect of the composition and timing of any proposed neighbourhood centre, Hill PDA provided information that 2,800 to 3,000 m² is considered to be a minimum size for a full-line supermarket in the current market. However, Hill PDA also recognised that most retailers would ideally seek 3,500 m² of floor space.

The review suggested that a more appropriate year of commencement for any neighbourhood centre would be 2025-2026, when a further nucleus of population would be located within the catchment. However, based on the anticipated lead time for the development of any neighbourhood centre and the fact that an anchor supermarket tenant is not likely to occupy the 3,500 m² tenancy until a suitable population was available, it is considered that no such limitations should be placed on the future development of a neighbourhood centre.

Hill PDA also provided information that a further 1,000 m² of complementary retail floor space and a further 500 m² of complementary services floor space, such as for real estate services and medical services, would likely be suitable.

(d) Floor Space Limitations

The submission at point 2 provides information that the Dubbo Local Environmental Plan 2011 does not adopt any floor space limitations, building heights or floor space ratios in respect of the proposed rezoning of 19,500 m² of land to B1 Neighbourhood Centre. The submission also infers that a centre with a floor space of 15,000 m² could be developed on the land in the future.

There is considered to be no basis for this proposition as included in the submission. The Economic Impact Assessment provided with the Planning Proposal included information that a neighbourhood shopping centre of 5,000 and 6,000 m² could be justified on the land. Given the uncertainty associated with the actual floor space of any neighbourhood shopping centre on the land, Council at its meeting on 19 June 2017 (in part) resolved as follows:

“That the area of land proposed to be zoned B1 Neighbourhood Centre be subject to a suitable provision in the Dubbo Local Environmental Plan 2011 that limits the total retail floor space of any centre to 5,000 square metres.”

This would allow (subject to development consent) the development of a neighbourhood shopping centre on the land with a total retail floor space of 5,000 m², which includes 3,500 m² for a full-line supermarket and a further 1,500 m² for associated speciality stores.

(e) Neighbourhood Shops

Point 5 of the submission raises concern in respect of the need to rezone land for the purpose of a neighbourhood shopping centre. It appears that there is confusion regarding the definition and distinction between ‘neighbourhood shopping centre’ and ‘neighbourhood shop’. The Dubbo Local Environmental Plan 2011 allows for the development of a neighbourhood shop, which is defined as follows:

*“**Neighbourhood shop** means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.”*

The LEP also provides a floor space limitation of 150 m² for a neighbourhood shop.

The submission infers that there is no need to rezone land for the purposes of commercial development as the Dubbo LEP 2011 allows the development of an unlimited number of neighbourhood shops.

The provision was included in the Dubbo LEP 2011 to allow for the development of a small scale neighbourhood shop that retails a variety of convenience goods or services. The definition of a neighbourhood shop does not allow for the development of a number of convenience business activities joined together as separate neighbourhood shops. The definition requires these convenience activities to be situated in one (1) premise.

If the Dubbo LEP 2011 did allow for the development of an unlimited number of neighbourhood shops adjoining or adjacent to each other, without controls, this is likely to result in impacts on the adopted Dubbo retail hierarchy and provide unacceptable impacts to adjoining and adjacent residents.

3. State Public Agency Consultation

The Gateway Determination required Council to undertake consultation with a number of state public agencies as provided below:

- Office of Environment and Heritage (OEH) (Direction 2.3 – Heritage Conservation; Direction 4.3 Flood Prone Land);
- Department of Primary Industries – Water (Direction 4.3 Flood Prone Land);
- Roads and Maritime Services;
- OEH – National Parks and Wildlife Service; and
- Dubbo Local Aboriginal Land Council.

The submissions provided by state public agencies are included here in **Appendix 3**.

Submission – Office of Environment and Heritage (OEH)

Council received a submission on 29 September 2017 from the Office of Environment and Heritage (OEH).

In summary, the OEH had the following interests in the Planning Proposal:

1. *The impacts of development and settlement intensification on biodiversity and Aboriginal cultural heritage;*
2. *Adequate investigation of the environmental constraints of affected land;*
3. *Avoiding intensification of land use and settlement in environmentally sensitive areas (ESAs); and*
4. *Ensuring that development within a floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans."*

The potential impacts from future ground works were noted and will be assessed at the development application stage. In addition, OEH also noted the recorded cultural heritage site K-OS-4 and the recommended 15 m buffer around the location to be addressed at the development application stage.

Comment:

Comments made by the Office of Environment and Heritage have been noted and will be required to be addressed as a component of any future development application for residential subdivision on the land.

Submission – Department of Primary Industries (DPI) – Water

Council received a submission on 5 October 2017 from the Department of Primary Industries Water (DPI Water).

In summary, DPI Water had the following interests in the Planning Proposal:

- Zoning of riparian land;
- Stormwater management;
- Floodplain and watercourse management;
- Water supply;
- Basic landholder rights;
- Harvestable right dams; and
- Groundwater.

The information provided in the submission is as follows:

“Zoning of Riparian Land:

DPI Water supports the rezoning of land to from R2 Low Density Residential to RU2 Rural Landscape south of the indicative southern distributor road. The Department is however concerned that future development may encroach on the 40m riparian zone which buffers the Eulomogo Creek.

Stormwater:

DPI Water has requested the pre-development stormwater discharge levels from the subject site and would like further confirmation on the proposed method for managing peak levels.

Floodplain and Watercourse Management:

Proposed plans included in the Planning Proposal indicate a likely diversion of flood waters to Eulomogo Creek on the property adjacent to the subject land. DPI Water have requested that the 40m riparian buffer to Eulomogo Creek will be maintained and permission will be granted from the neighbour prior to finalising the rezoning proposal. Following these considerations, future works will be subject to development assessment.

Water Supply:

DPI Water supports the supply of reticulated town water for this proposal.

Basic Landholder Rights:

It is recommended that Council consider the potential for an increase in Basic Landholders Rights under the Water Management Act 2000 which applies to landholders with land overlying an aquifer, or with river or lake frontage.

Harvestable Right Dams:

DPI Water notes that existing and proposed onsite dams should be assessed against the Maximum Harvestable Right Dam Capacity (MHRDC).

Groundwater:

DPI Water supports the recommendations of the Groundwater and Salinity Study Lot 2 DP 880413, 24R Sheraton Road, Dubbo NSW (dated 9 March 2017 and prepared by Envirowest Consulting Pty Ltd)."

Comment:

The Planning Proposal seeks to rezone all land south of the indicative Southern Distributor road to RU2 Rural Landscape in relation to the subject site. The overall site plan indicates that the development of the indicative Southern Distributor will not encroach on the Eulomogo Creek riparian zone and ensure that a 40 m riparian buffer is maintained. In respect of the issues raised by DPI Water regarding stormwater flows, the overall stormwater strategy for the South-East Residential Urban Release Area has been provided to DPI Water. The remaining components included in the submission will be required to be considered by the proponent and Council with any development application for the future development of the subject land.

Submission – Roads and Maritime Services (RMS)

The RMS raised no objection to the Planning Proposal.

Comment:

The comment made by the RMS has been noted.

Submission – Dubbo Local Aboriginal Land Council

Council received a submission on 23 October 2017 from the Dubbo Local Aboriginal Land Council (DLALC).

Comments made by the DLALC were as follows:

“As a legislative authority under the Aboriginal Land Rights Act 1983, Dubbo Local Aboriginal Land Council is highly supportive of expansion within the township to continue to grow and foster the needs of our community whilst continuing to ensure minimal harm to the rich Aboriginal heritage within our boundary.

We look forward to further consultation in relation to the four mentioned Aboriginal Heritage sites, objects and or artefacts found within the site and hope to work with the developer in the future stages to assist in minimising harm to any site that obtains cultural significance or sensitivity.”

Comment:

The Dubbo Local Aboriginal Land Council made comment regarding four (4) Aboriginal heritage sites contained within the subject site. It should be noted that the subject land contains one (1) known Aboriginal heritage site.

The recorded Aboriginal heritage site is located along the southern boundary of the subject land and comprises of 12,000 m² open artefact scatter ranging from between 50 and 100 stones artefacts. At the time of the site survey, the land had extensive ground cover restricting ground surface visibility (GSV) over the land. As the site could not be located due to the low GSV, Aboriginal Heritage site K-OS-4 and associated artefacts could not be relocated during the assessment.

Comments made by the DLALC have been noted and will be considered further at the development application stage for future subdivision of the land.

3. Legal Drafting of the LEP

Subject to endorsement of the Planning Proposal by Council, a request will be provided to the Department of Planning and Environment to prepare the draft Dubbo Local Environmental Plan 2011 under Section 59(1) of the Environmental Planning and Assessment Act, 1979.

The Department will liaise with Parliamentary Counsel about the content of the draft amendment. Once the content has been finalised, an Opinion stating that the Plan can be made will be provided to Council.

Following consideration of the Opinion by Council, a request will be made to the Department to arrange for the Plan to be made. Once the Plan is made, the Department will request Parliamentary Counsel to notify the Plan on the NSW Legislation website.

The draft amendment to the Dubbo Local Environmental Plan 2011 will come into force on the day it is published on the NSW Legislation website.

SUMMARY

A Planning Proposal (R16-5) was lodged by Maas Group Properties Pty Ltd seeking to amend the Dubbo LEP 2011 on 10 October 2016.

The Planning Proposal seeks to rezone R2 Low Density Residential land to a mixture of R1 General Residential, B1 Neighbourhood Centre, RU2 Rural Landscape and realign the existing RE1 Public Recreation zone. Subsequently, the Planning Proposal seeks to change the minimum lot sizes on the site from the existing 600 m² and 4,000 m² to a range of no minimum lot size, 450 m², 600 m², 800 m² and 2,000 m².

Land proposed to be zoned B1 Neighbourhood Centre will be subject to a suitable provision in the Dubbo Local Environmental Plan 2011 that limits the total retail floor space of any centre to 5,000 m². An amendment to the land use table will also be undertaken to allow recreational facilities (indoor) in the B1 Neighbourhood Centre zone.

The Planning Proposal is considered to be consistent with all relevant State Environmental Planning Policies and the majority of applicable Section 117 Directions. It is also considered to be broadly consistent with the Dubbo Residential Areas Development Strategy and the Stage 1 Structure Plan for the South-East Residential Urban Release Area.

It is recommended that Council supports the Planning Proposal to amend the Dubbo Local Environmental Plan 2011.

Appendices:

- 1 [↓](#) Submission from Bachrach Naumburger Group
- 2 [↓](#) Submissions from State agencies (4)



26 September 2017

General Manager
Dubbo Regional Council
Attention: Mr. Steven Jennings
PO Box 81
DUBBO NSW 2830

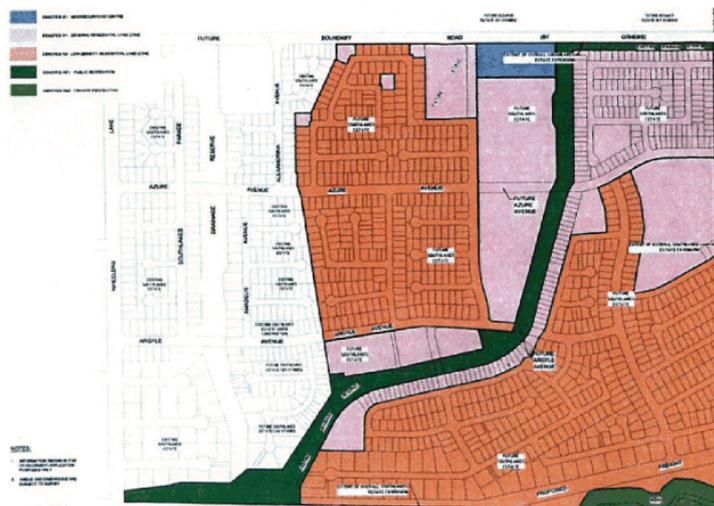
Dubbo City
Parcel: R16-5
Asset: HOPS
27 SEP 2017
File C: R16-5

Dear Sir,

Submission to Planning Proposal (R16-5) South Lakes Estate, Dubbo

I am writing to you on behalf of the Bachrach Naumburger Group and Comet (Aust) Pty Ltd, the owners of Orana Mall, in relation to the above proposal.

The proposal is for the rezoning of parts of the land from R2 Low Density Residential to R1 General Residential; rezoning part of the land from R2 Low density to RE1 Public Recreation; and rezoning part of the land from R2 Low Density to B1 Neighbourhood Centre as described on the map below.



It is also understood that the proponents are seeking an amendment to Clause 7.12 'Shops in B1 Zone Neighbourhood Centre' by allowing Council to grant consent to retail development that would exceed 1000m² and to allow for a recreation facility (indoor) within the B1 zone. We note that at the time of preparing this submission that Council proposes that the land be subject to a suitable provision under the LEP (Dubbo Local Environmental Plan 2011) to allow 5000m² of retail development on the land.

We have no objection to the proposals to change in the zoning for part of the land from R2 to R1 to allow for a greater variety of allotment sizes and additional residential uses, such as, attached dwellings, semi-detached dwellings and multi dwelling housing; and we have no objection to the rezoning of part of the land to RE1 and proposals to allow for gymnasium (recreation facility -indoor) on the land. However, we strongly object to the proposal to zone 19,500m² from residential (i.e. R2 Low density) to business (i.e. B1 Neighbourhood Centre).

PO Box 6003 Park Beach Plaza Coffs Harbour NSW 2450 p 02 6651 6789 f 02 6651 6152

H.A. Bachrach (Norm) Pty Ltd – ACN 005 026 326 ABN 13 690 993 695



Dubbo LEP 2011 does not adopt any floor space ratio or height restrictions that could limit the development of the land and as such the proposal is allowing for a large- scale retail and commercial development opportunity (potentially over 15,000m²) on the land that will undermine Council's own policies as expressed in the Dubbo Urban Areas Development Strategy (including the Dubbo Commercial Areas Development Strategy). Council has invested considerable resources in developing the Commercial Areas strategy including extensive consultation with the general community and business community and many investment decisions have been made on the basis of this Strategy.

The Commercial Areas Development Strategy put forward the following policies in relation to Neighbourhood Business Centres:

- *Provide limited convenience retailing and services to the surrounding residential area*
- *Not have scope for expansion beyond role*
- *Have a secure market i.e., needs separate from other Neighbourhood shopping centres (i.e. catchments)*
- *Have a floor area normally limited to 1500m²*

This proposal which has the potential to allow well over 15,000m² of retail development is completely outside the policy framework established by Council under the Strategy. The proposal not only has the potential to adversely directly impact upon the Business Centres within Dubbo, but will undermine the overall business hierarchy that Council has been trying to develop over the last decade.

We do not accept the view put forward by "Hill PDA Consulting" in its review of the Economic Impact Statement by "Macro Plan Dimarsi" on behalf of the proponents, that a minimum of 2,800-3,000m² is required for a viable supermarket. There are many examples of successful neighbourhood supermarkets operating at a scale of less than 1,500m². It is understood that Council has calculated a need for 5,000m² of retail area to be allowed on the subject land based on a large supermarket of 3000m², plus 1500m² of complimentary retail space and a further 500m² for non- retail uses such as medical and real estate services etc. The calculation of these areas is based on a false premise and a limited view of the permitted retail uses under the existing residential R1 zone and proposed R2 zoning provisions.

Both the R2 and R1 zones allow an unlimited number of neighbourhood shops with a floor area of 150m². Neighbourhood shops are defined as follows under the LEP:

neighbourhood shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

On this basis there is no need to zone additional land for retail purposes as retail uses (neighbourhood shops) are allowed in the R1 zone and R2 zone that will apply to the land. Moreover, medical centres are also permitted in the R1 on the land by the provisions of State Environmental Planning Policy (Infrastructure) 2007 (Clause 57) without the necessity to zone additional land for this purpose.

The proposal to seek to limit retail development on the site to 5000m² by amending the provisions of Clause 7.12 of the LEP are ineffectual and inappropriately transfer strategic planning decisions to the development application process. They also place Council in the difficult position of potentially having to defend its Commercial Areas Strategy. Clause 7.12 states:

The objective of this clause is to maintain the commercial hierarchy of Dubbo by encouraging retail development of an appropriate scale within neighbourhood centres.

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H.A. Bachrach (Nom) Pty Ltd – ACN 005 026 326 ABN 13 690 993 695



(2) Despite any other provision of this Plan, the consent authority must not grant development consent to development for retail premises on land within Zone B1 Neighbourhood Centre if the gross floor area of the development will exceed 1,000 square metres.

(3) Before granting consent to development for the purpose of shops having a gross floor area of 500 square metres or greater, in either one separate tenancy or any number of tenancies, the consent authority must consider the economic impact of the proposed development and be satisfied that the proposed development will not have an adverse impact on the commercial hierarchy of Dubbo.

This proposal to rezone 19,500m² for business purposes on the subject land will have an adverse impact upon the established commercial hierarchy of Dubbo and this will not be protected by the provisions of Clause 7.12 or an amended version of this Clause; the Clause has a number of loopholes through potential tenancy rearrangements to circumvent its intention.

The best means of 'maintaining the commercial hierarchy of Dubbo by encouraging retail development of an appropriate scale within neighbourhood centres' is by a strategic approach to business development by firstly establishing strategic policies and then a consideration of the rezoning of lands; this proposal is contrary to good planning practice and is utilising the wrong planning tools to control retail development.

We note that the Traffic Reports do not take into account the traffic generation from a large-scale business centre as proposed and that the Economic Impact Assessment relies on the closure of the IGA Supermarket in the Orana Mall in determining the supermarket retail needs. There is currently an oversupply of supermarkets in Dubbo!!

The Hill PDA Consultants review acknowledges that the year 2025-26 is a more appropriate time frame for such a supermarket based on population demand and on this basis it is premature to rezone the land some 8 years in advance of its perceived need; a lag time of 2-3 years would be more appropriate for consideration of any zoning for neighbourhood business purposes in this circumstance when a sufficient population may be located within the catchment.

In summary, the proposed rezoning of 19,500m² of land to B1 Neighbourhood Centre is unnecessary because:

- neighbourhood shops are already permitted in the R1 and R2 zones;
- the area of land being considered is excessively large and unjustified;
- the rezoning is too early in terms of population needs; and
- the rezoning will seriously undermine the established Commercial Centres Hierarchy developed in consultation with the community for Dubbo.

We request that Council not proceed with the rezoning of the subject land to B1 Neighbourhood Centre nor any amendments to Clause 7.12 of the LEP to facilitate the development of the land for retail purposes beyond what is permitted in the R1 and R2 zone under Clause 5.4.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Steve Gooley', written over a horizontal line.

Steve Gooley
General Manager

PO Box 6003 Park Beach Plaza Coffs Harbour NSW 2450 p 02 6651 6789 f 02 6651 6152

H.A. Bachrach (Nom) Pty Ltd – ACN 005 026 326 ABN 13 690 993 695



29 September 2017

SF2017/212154; WST17/00139

General Manager
Dubbo Regional Council
PO Box 81
DUBBO NSW 2830

Dear Sir

**PP_2017_DREGI_001_00: Lot 399 DP 1199356, Lot 12 DP 1207280 and Lot 503 DP 1152321;
Boundary Road, Hillview Estate, Dubbo
Proposed Amendments to Dubbo Local Environmental Plan 2011**

Thank you for your letter dated 8 September 2017 referring PP_2017_DREGI_001_00 to Roads and Maritime Services for comment. I note the proposal seeks to amend some zoning tables, change some zoning of lands, change minimum allotment sizes and make a minor alignment change to the proposed Dubbo Southern Distributor Road.

Roads and Maritime has reviewed the proposed amendments. The amendments will not significantly increase potential traffic generated by future developments and their impact on the classified road network. Roads and Maritime will not object to the proposal and makes no submission.

Please keep Roads and Maritime informed on the progress of the proposed amendments. Should you require further information please contact me on 02 6861 1453.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Andrew McIntyre".

Andrew McIntyre
Acting Network & Safety Manager
Western

Roads and Maritime Services

51-55 Currajong Street Parkes NSW 2870 | PO Box 334 Parkes NSW 2870 | DX20256
T 02 6861 1444 | F 02 6861 1414

www.rms.nsw.gov.au | 131 782



DOC17/487314
R2016-5 Part 1

Mr Steven Jennings
Manager Strategic Planning Services
Dubbo Regional Council
PO Box 81
DUBBO NSW 2830

Dear Mr Jennings

Planning Proposal - Stage 1 Structure Plan for the South-East Residential Urban Release Area, Boundary Road Dubbo

Thank you for your letter, dated 8 September 2017, seeking comment from the Office of Environment and Heritage (OEH) on the proposed rezone.

OEH has the following primary areas of interest relating to strategic land use planning proposals:

1. The impacts of development and settlement intensification on biodiversity and Aboriginal cultural heritage;
2. Adequate investigation of the environmental constraints of affected land;
3. Avoiding intensification of land use and settlement in environmentally sensitive areas (ESAs); and
4. Ensuring that development within a floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans.

We also understand that planning proposals must comply with current statutory matters such as the Local Planning Directions under S117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

We generally support strategic planning proposals which:

- Avoid rural settlement intensification in areas of biodiversity value, Aboriginal cultural heritage value and other environmentally sensitive areas;
- Include objectives, such as 'no net loss of native vegetation'; and
- Minimise flood risk to human life, property and the local environment while maintaining floodplain connectivity for environmental benefit.

Biodiversity

OEH note that impacts to native vegetation will occur when on ground works commence. Please note that at Development Application stage these impacts will need to be assessed and quantified. For any development application (accompanied by an EIS or SoEE) that is submitted by 25 November

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Level 1, 48-52 Wingawarra Street Dubbo NSW 2830
Tel: (02) 6883 5330 Fax: (02) 6884 8675
ABN 30 841 387 271
www.environment.nsw.gov.au

2017, assessment of impacts on biodiversity using the Biodiversity Assessment Methodology (BAM) is optional. Any application received after 25 November 2017 **must** use the BAM to assess impacts to biodiversity in accordance with the *Biodiversity Conservation Act 2016* (BC Act). The requirements below are in accordance with the BC Act.

Aboriginal cultural heritage

OEH note there is a previously recorded site (K-OS-4) within the subject area however it was unable to be relocated during field surveys. The Aboriginal Archaeological Assessment recommends that the previously recorded site be avoided with a 15 metre buffer in place. The buffer distance must also take into account an acceptable range of GPS error if the site cannot be relocated.

For all other matters please refer to **Attachment A** which includes our generic recommendations for local government strategic planning. Council should ensure that those matters within Attachment A which are relevant to the rezoning proposal have been appropriately addressed.

If additional information relating to the proposal indicates that areas within OEH responsibilities require further investigation, we may provide future input. Should you require further information, please contact Michelle Howarth, Conservation Planning Officer on (02) 6883 5339.

Yours sincerely



DAVID GEERING
A/Senior Team Leader Planning North West
Regional Operations Division

29 September 2017

Contact officer: MICHELLE HOWARTH
02 6883 5339

ATTACHMENT A

Office of Environment and Heritage (North West Branch) general advice for local government strategic planning

Biodiversity Values

Rural settlement intensification can have significant impacts on biodiversity. Development will have short and long-term negative impacts on biodiversity. These negative impacts are caused by activities such as:

- the clearing of house and building sites;
- the disturbance caused by infrastructure (such as new roads, fence lines, dams and access to utilities); and
- the construction of asset protection zones for statutory fire protection.

The cumulative effect of multiple subdivisions will magnify these substantial impacts on biodiversity. These impacts are not regulated by the *Biodiversity Conservation Act 2016* or *Local Land Services Act 2013*.

There is also a need to recognise climate change as a severe and wide ranging threat to biodiversity in NSW. Rising temperatures and sea-levels, changed rainfall and fire regimes will affect biodiversity in complex and often unpredictable ways. As a result of climate change, current threats to biodiversity, including habitat loss, weeds, pest animals and drought, are expected to intensify.

In many cases, existing approaches to biodiversity conservation (protection of intact vegetation, species recovery, mitigation of current threats and revegetation and restoration activities) will form the basis of adaptation programs to address the impacts of climate change. Reducing existing threats to biodiversity, such as habitat loss, pests and weeds is the most effective option for enabling species to adapt to climate change (at least in the short term) as this will increase the capacity of species to persist in their current locations and form the base from which migration can occur.

Council has the responsibility to control the location and, to a degree, development standards of settlement and other land use intensification. Local Environmental Plans (LEPs) can be used to avoid settlement and development in Environmentally Sensitive Areas (ESAs) including areas of remnant native vegetation.

The S117 Directions in the *Environmental Planning and Assessment Act 1979* (EP&A Act) require that Councils in preparing a new LEP must include provisions that facilitate the protection and conservation of ESAs. As a minimum, these provisions must aim to maintain the existing level of protection for ESAs within the LGA, as afforded by the current LEP.

As a matter of priority the OEH recommends six actions be taken by Councils when developing new LEPs. These will address the S117 Directions, and protect biodiversity from growth, development and associated pressures and changes:

1. Implement appropriate Environmental Zonings;
2. Avoid development in remnant native vegetation;
3. Establish large minimum lot sizes;
4. Conduct comprehensive environmental studies if areas of high environmental sensitivity occur in sites where there is a strong imperative to intensify land use;
5. Include a biodiversity overlay and clauses within the LEP; and
6. Define biodiversity protection and management measures in Development Control Plans (DCPs).

1. Implement appropriate Environmental Zonings

The zone, E1 'National Parks and Nature Reserves', should be applied to all of the OEH estate within the LGA. We also encourage Councils to apply other environmental and water ways zones in appropriate areas.

The E1 zoning is intended to apply to all lands acquired under the *National Parks and Wildlife Act 1974* (NP&W Act), and therefore is not limited to only the 'National Park' and 'Nature Reserve' classifications.

OEH is also strongly supportive of the implementation of appropriate environmental zonings to other areas identified to have high biodiversity or Aboriginal cultural sensitivity. Private and public lands with high conservation values, including those providing linkages or corridors, can be protected in LEPs through appropriate zoning and/or via overlays with associated development controls. Councils should implement land use zonings such as E2-E4 and W1-W2 to provide as much protection as possible to biodiversity and ecological communities. Specific advice regarding the use of these zones is included in Practice Note previously forwarded to Council.

In particular, we advocate the application of the E2 zone to areas of private or Crown lands that are presently managed primarily for conservation (such as crown reserves or areas under conservation covenants).

We also recommend that Travelling Stock Reserves (TSRs) with known conservation values are included in E3 zones at a minimum, although E2 zoning would be preferred. Mapping of TSRs, including identified conservation values, is available via the Grassy Box Woodlands Conservation Management Network. This mapping can be accessed via <http://gbwcmn.net.au/node/6>.

2. Avoid development in remnant native vegetation

- Council, through the Land Use Strategy and LEP, can protect biodiversity by avoiding development such as settlement and other land use intensification, in areas of remnant native vegetation.
- Development should be directed to areas that have already been cleared, unless such areas have been identified as having environmental importance.

Avoiding development in areas of native vegetation will contribute to the achievement of State biodiversity targets.

Settlement should also be avoided in locations that are likely to be targeted for investment. Landholders in such areas may receive incentive funding for protection and enhancement of native vegetation or revegetation of cleared areas.

OEH will not support strategic land use recommendations or LEP provisions that allow further settlement opportunities in these areas, particularly if Council assumes that ongoing management could be effectively controlled by complex DCP rules.

To assist, the best available mapping of remnant native vegetation has been supplied to Council as part of an interagency package of ESA mapping and associated Technical and Practice Notes to help Council identify areas where further settlement intensification should not be allowed. At the broad strategic level, these maps can be used to identify areas that are most likely to be free from significant land, water or biodiversity constraints, therefore more suited to development.

Excluding remnant native vegetation from development pressure on private land could be largely achieved by retaining such areas on relatively large holdings, within RU1 and RU2 zones for example.

Similarly, higher density settlement in 'fire prone' locations should be avoided in the first instance. Where residential areas abut native vegetation there is pressure for the required Asset Protection Zones and other hazard management measures to encroach on that vegetation, particularly where adequate existing cleared land has not been retained to fulfil that role.

Avoiding settlement in remnant native vegetation is also likely to avoid bushfire prone lands and protect any Aboriginal cultural heritage that may remain in such areas.

3. Establish large minimum lot size limits

Minimum lot size limits should be large in RU1 and RU2 zones as well as environmentally sensitive areas. This will reduce the pressures of development and settlement on biodiversity in rural lands.

Minimum lot size limits can be used to reduce the pressures of development and settlement on biodiversity. The LEP should define realistically large minimum lot size limits with associated dwelling provisions to control the intensity of development and settlement.

In particular, Council needs to ensure that minimum lot sizes in environmentally sensitive areas are of an appropriately large size to control the cumulative impact of any development and settlement intensification permitted in those areas by the LEP.

Council needs to adopt a risk-based approach to this matter. The selected sizes should be designed to meet expectations of rural living while minimising the adverse environmental impacts of any settlement that may occur with the sub division.

If Council is strongly of the opinion that lot sizes need to be reduced then this should not be applied uniformly across the shire with environmentally sensitive areas excluded from such revisions.

4. Conduct targeted environmental studies

Where development in areas of native vegetation or environmentally sensitive areas cannot be avoided, a targeted environmental study should be conducted. This should focus on ensuring a "maintain or improve" outcome for biodiversity.

Where Council is unable to avoid applying zonings or minimum lot sizes which permit essential development intensification in remnant native vegetation, a targeted study should be conducted to investigate the biodiversity values of the area. Any study should determine how potential impacts can be mitigated or, where this is not possible, offset through conservation management of other areas.

This study and any resulting objectives and zonings should aim to ensure a 'maintain or improve' outcome. This is a vital step in the strategic planning process and in effectively addressing the S117 Directions.

5. Include a biodiversity overlay and suitable clauses within the LEP

OEH strongly recommends the use of overlays and associated provisions with the LEP to provide additional protection for biodiversity.

It is particularly important to define assessment and development control provisions for those instances where development or settlement intensification cannot be avoided in remnant native vegetation.

LEPs should include objectives and provisions that require a 'maintain or improve' outcome for native vegetation and threatened species whenever clearing of native vegetation or environmentally sensitive areas cannot be avoided

Overlays can also be used to update any existing 'environmentally sensitive lands' provisions in current LEP and therefore meet the requirements of the S117 Directions to at least maintain existing environmental protection standards.

Importantly, the use of such overlays is consistent with the Department of Planning and Environment (DP&E) Practice Note PN 09-002v (30 April 2009) on environmental zones' which states:

'Local environmental provisions may be applied where zone provisions need to be augmented in order to ensure that special environmental features are considered. For example, rural land that is still principally for agriculture but which contains environmentally sensitive areas may be zoned RU1 or RU2 and the environmental sensitivities managed through a local provision and associated ('overlay') map.

The benefits of this approach include:

- *The intended conservation or management outcomes for land can be clearly articulated in the LEP.*
- *Areas are clearly defined and controls streamlined.*
- *Sub-zones are not created. (These are not permitted under the standard instrument).*

Provisions for environmentally sensitive areas may include multiple natural resource or other features such as acid sulfate soils and riparian land. A local provisions clause may include objectives and, where the sensitivity is a mappable attribute, a map would accompany the provision.

OEH advocates the inclusion of the environmentally sensitive land overlays developed by the former Departments of Water and Energy, Environment and Climate Change, and Primary Industries (Fisheries). These overlays and clauses have been prepared to provide Council with information on resource assets and environmental constraints and how these assets and constraints should be managed during the assessment of development applications. The use of the environmentally sensitive areas overlays supplied by agencies is now common-place in both exhibited and gazetted LEPs.

The use of these overlays and clauses and how these may affect land uses are outlined in the previously mentioned Practice Note and Technical Note. When implemented in this way the layers and clauses do not exclude development. Rather, they act as a flag for values that may be present at a site. Sites should be checked for these potential values prior to any development approval. If the values are present at the site, the impact should be avoided or, if this is not possible, at the very least minimised and mitigated.

6. Define biodiversity protection and management measures in Development Control Plans

Biodiversity protection and management measures should be defined in DCPs for all areas zoned for rural small holdings, residential and other development intensifications.

We view DCPs as a secondary mechanism to provide biodiversity protection and management measures. It is vital that biodiversity values are first considered strategically in zoning decisions and development assessment provisions. We do not consider it acceptable to completely defer consideration of these matters to the DCP stage.

It is also important to consider the threats to remnant native vegetation posed by adjoining land uses.

For example, threats to biodiversity associated with nearby growth and intensification of residential land use include (but are not limited to):

- Clearing;
- domestic animals;
- invasive plants;
- effluent and waste dispersion;
- changes in hydrology and hydraulics;
- increasing access due to fire trails and other tracks; and
- firewood collection.

Particular attention should be paid to relevant Key Threatening Processes identified and listed under the *Biodiversity Conservation Act 2016*ⁱ. Mechanisms to abate threats to ESAs (such as implementing codes of practice, best management practice, alternative designs and operations, control technology and buffers between remnant vegetation and small holdings) should be considered.

Council should recognise that buffers may be necessary between environmentally sensitive areas and other land uses. The size of the buffer will vary depending on the nature or activity being undertaken and the level of management control required to prevent or minimise adverse impacts. Provisions should be made to rigorously assess any developments within environmentally sensitive areas and adjoining buffers to prohibit land uses and activities that threaten the ecological integrity, values and function of the area.

Some forms of development adjacent to national parks and reserves can impact on their values and should be avoided or restricted. Council should consider how these areas could be buffered from incompatible development and activities so that potential conflicts can be minimised.

The OEH Guidelines for Developments Adjoining OEH Estateⁱⁱⁱ have been designed to assist Councils when they are assessing development on lands adjoining OEH estate. However, the issues

identified in these guidelines are also relevant when considering buffers for protection of environmentally sensitive areas.

Aboriginal Cultural Heritage

Land Use Strategies, LEPs and DCPs should aim to identify and protect culturally sensitive areas, rather than relying on site by site development assessment.

Aboriginal objects, places and areas are protected across all land tenure under the NPWS Act. However, Council should not rely on the site by site development assessment process as the only mechanism for considering the impact of development and settlement intensification on Aboriginal cultural heritage.

It is clear from the S117 directions and mandatory clauses in the Standard Instrument that DP&E supports a **strategic approach** to the protection of Aboriginal cultural heritage. Provisions to facilitate the strategic conservation of Aboriginal cultural and heritage within a local government area should include a landscape framework for assessing potential impacts and partnership development with local Aboriginal people.

We strongly recommend that Councils develop planning strategies that result in the **avoidance** of impacts to Aboriginal cultural heritage and minimise impacts in instances where avoidance is not possible.

Specifically, it is important to:

- Develop a framework for effective Aboriginal engagement; and
- Identify sensitive and least sensitive areas through:
 - accessing existing Aboriginal site information;
 - cross reference to landscape information;
 - assessment of areas of potential development/settlement intensification;
 - use of the Department's search tools;
 - reports from previous studies.
 - Aboriginal knowledge; and by
 - Undertaking site surveys to ground truth assumptions.

We offer the following advice to aid Council efforts in adequately addressing Aboriginal cultural heritage assessment and protection within strategic planning documents and environmental planning instruments:

1. The Aboriginal Heritage Information Management System

Councils should contact the OEH to seek access to the Aboriginal Heritage Information Management System (AHIMS) prior to the drafting of any new Land Use Strategy or LEP. AHIMS is the State register of known Aboriginal site locations. A data licence agreement between the OEH and Council can be prepared on application. Information about obtaining a data licence is available on the OEH website^{iv}. Alternatively, the AHIMS Registrar can be contacted by phone on (02) 9585 6513 or (02) 9585 6345 or by email at ahims@environment.nsw.gov.au.

2. Aboriginal Heritage Study

We recommend using the AHIMS data, along with any previous landscape assessments of the occurrence of Aboriginal objects and sensitive areas, to assist in developing effective strategies to assess impacts to Aboriginal sites in areas being considered for future development. The selection of landscape mapping to overlay with AHIMS site data will highlight distribution patterns between landscape features and Aboriginal sites. This information can assist in identifying potential areas of sensitivity in locations where no location information for Aboriginal sites exists.

OEH can be contacted to advise on data searches for previous cultural and heritage studies undertaken in each Council LGA, and discuss the potential for appropriate desktop tools for use in cultural heritage management.

We recommend that the strategic planning process be used to initiate the development of a strategic framework for engaging local Aboriginal community interests to ensure that active engagement with Aboriginal people evolves over time.

3. Implement a range of tools to ensure strategic management of Aboriginal cultural heritage

We strongly recommend that Councils aim to protect identified areas of Aboriginal cultural sensitivity through:

- The designation of appropriate zoning provisions and boundaries where possible,
- Inclusion on the Heritage Map of any specific important areas identified (which will enable the mandatory clauses in the Standard Instrument to be effectively applied),
- The generation of a cultural heritage constraints map which could be used in a similar way to the ESA layers provided by the natural resource management agencies,
- Appropriate provisions within DCPs to ensure adequate assessment and protection of Aboriginal cultural heritage values,
- Formation of an Aboriginal community Advisory Group to ensure on going input and dialogue on identification and management of Aboriginal cultural heritage for the LGA

4. Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales^v

This code of practice is to assist individuals and organisations to exercise due diligence when carrying out activities that may harm Aboriginal objects and to determine whether they should apply for consent in the form of an Aboriginal Heritage Impact Permit (AHIP).

The NPW Act provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without an AHIP.

The NPW Act allows for a generic code of practice to explain what due diligence means. Carefully following this code of practice, which is adopted by the *National Parks and Wildlife Regulation 2009* (NPW Regulation) made under the NPW Act, would be regarded as 'due diligence'. This code of practice can be used for all activities across all environments.

This code sets out the reasonable and practicable steps which individuals and organisations need to take in order to:

- identify whether or not Aboriginal objects are, or are likely to be, present in an area
- determine whether or not their activities are likely to harm Aboriginal objects (if present)
- determine whether an AHIP application is required.

When formulating DCPs and other planning controls, Council should require proponents to undertake due diligence in accordance with the Code of Practice. Proponents should provide Council with evidence that the due diligence process has been followed.

ⁱ <http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Environmental-Plans/-/media/F1001EC0B1C443CD83286163B43891B8.ashx>

ⁱⁱ **Key Threatening Processes:**
<http://www.environment.nsw.gov.au/threatenedspecies/KeyThreateningProcesses.htm>

ⁱⁱⁱ **Guidelines for Development Adjoining DECCW Estate:**
<http://www.environment.nsw.gov.au/protectedareas/developmentadjoiningdecc.htm>

^{iv} <http://www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm>

^v **Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW**

<http://www.environment.nsw.gov.au/licences/archinvestigations.htm>



**Department of
Primary Industries
Water**

Contact: Alice Buckley
Phone: 02 6841 7469
Fax: 02 6884 0096
Email: alice.buckley@dpi.nsw.gov.au

General Manager
Dubbo Regional Council
PO Box 81
DUBBO NSW 2830

File: V15/3876#95
Our Ref: OUT17/40644
Your Ref:

admin@dubbo.nsw.gov.au

Dear Sir/Madam

5th October 2017

Re: Proposed Amendments to Dubbo Local Environmental Plan 2011 – Lot 399 DP 199356, Lot 12 DP 1207280 and Lot 503 DP 1152321, Boundary Road Dubbo

Thank you for giving the Department of Primary Industries – Water (DPI Water) the opportunity to comment on the above proposed amendment. DPI Water provides the following comments and recommendations for council's consideration in determination of the proposal.

Zoning of Riparian Land

It is noted that the land south of the indicative location of the Southern Distributor road, which is within close proximity to Eulomogo Creek, is proposed to be rezoned as RU2.

DPI Water supports the rezoning to RU2, but recommends all land located below the indicative location of the Southern Distributor road be zoned RU2 rather than a mix of R2 and RU2.

Additionally, DPI Water has concerns that the construction of the Southern Distributor has the potential to encroach on the 40m riparian zone of Eulomogo Creek. This riparian zone must be considered in the future development and construction of the Southern Distributor road.

Stormwater Management

DPI Water notes that detention basins are not proposed within the site, confirmation is sought on the proposed method/s of managing peak storm water discharge from the site, along with a commitment to ensure peak storm water discharge does not exceed pre-development levels.

It is noted that post development peak discharge has been provided; DPI Water requests that pre development discharge levels are also provided.

To aid in the protection of the receiving water source quality, all stormwater runoff must be appropriately treated at its source and/or diverted through the stormwater treatment process designed for the site, prior to discharge from the site.

DPI Water considers all stormwater treatment measures should be consistent with Water Sensitive Urban Design (WSUD) objectives.

Where the construction of stormwater outlets and spillways is occurring within waterfront riparian land, refer to '*Guidelines for outlet structures on waterfront land*', available on DPI

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Waters website for further information www.water.nsw.gov.au > Water Licensing > Approvals > Controlled activity approvals.

Floodplain & Watercourse Management

The planning proposal raises concerns about flooding at the site. Flood levels provided show part of the site impacted by flood flows from Eulomogo Creek.

The plans provided indicate a probable diversion to Eulomogo Creek on the property adjacent to proposal area. It is recommended this be confirmed at rezoning stage and the viability confirmed in terms of its implementation, specifically the ability to maintain a 40m buffer and the ability to obtain consent from the neighbour. Diversion works require approval under the *Water Management Act 2000* which would be subject to assessment at the Development Application stage. DPI Water will have a focus on the ability to provide adequate buffers and watercourse stability.

Any works proposed within 40 metres of the high bank of watercourses on site should be carried out in accordance with the Department of Primary Industries – Water’s Guidelines for Controlled Activities. A Controlled Activity Approval under the *Water Management Act 2000* may be required for works undertaken as part of any future development on the site.

A flood work approval under the *Water Management Act 2000* may be required where works occurring (such as earthworks, channels, embankments or levees) are likely to affect the flow of water to or from a river or lake, designated floodplain or prevent land from being flooded.

Water Supply

DPI Water supports the supply of reticulated town water for this proposal. Reticulated town water provides a more secure (quality and quantity), reliable and manageable water supply and reduces the stress on local surface and ground water resources. A reticulated water supply also enables smaller allotment sizes with increased population density, which in turn reduces the development footprint.

Basic Landholder Rights

The *Water Management Act 2000* provides that landholders with land overlying an aquifer, or with river or lake frontage, can access water for domestic (household) purposes, without the requirement for an access licence, through a domestic and stock right. Landholders can also capture a portion of rainfall from their property under a harvestable right. These rights are known as basic landholder rights (BLRs). DPI Water notes that where landholdings are subdivided, creating new basic landholder rights for water extraction, there is the potential to impact on existing water users, including the environment.

It is recommended council consider the potential increase in basic landholder rights and the impacts on other users and the environment. Please note any future approval of groundwater works will be subject to the distance conditions of the Water Sharing Plan for the Macquarie Bogan Unregulated and Alluvial Water Sources 2012.

Harvestable Right dams

Existing and proposed onsite dams should be assessed against the Maximum Harvestable Right Dam Capacity (MHRDC). If the dam/s will exceed the MHRDC of the new lot size a landholder may choose to either reduce the size of the onsite dam/s to stay under the MHRDC, or purchase sufficient entitlement within the relevant water source to account for the excess storage volume.

Certain types of dams (known as ‘special dams’) should not be included when calculating the capacity of dams allowed on a property under a harvestable right. These include:

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1. *Dams for the control or prevention of soil erosion (gully control structures)*, where no water is reticulated or pumped from them and the size of the structure is the minimum necessary to fulfil the erosion control function. If you fence off the dam as part of the erosion control program, water may be reticulated to a trough in an adjacent paddock without prejudicing the exempt status.
2. *Dams for flood detention and mitigation*, provided no water is reticulated or pumped from them. These dams serve specific functions and, apart from a small pondage, should only store water for a short period during and immediately after floods. Such storages are exempt provided they function effectively. If any water is pumped or reticulated from such a storage it can no longer be considered to be exempt and must be considered in calculating the MHRDC.
3. *Dams for the capture, containment and recirculation of drainage and/or effluent* that conform to best management practice or are required by regulation to prevent the contamination of a water source. The harvestable right is not intended to be contrary to initiatives to prevent pollution of water sources. Many landholders are required to install dams to capture contaminated water or to collect and re-use irrigation tail water. These dams are not considered in assessing your harvestable right.
4. *Dams endorsed by the Minister for specific environmental management purposes.*

For further information on harvestable rights see DPI Water's website:
<http://www.water.nsw.gov.au/water-licensing/basic-water-rights>

Groundwater

DPI Water supports the recommendations of the Groundwater and salinity study Lot 2 DP 880413 24R Sheraton Road Dubbo NSW (dated 9th March 2017 and prepared by Envirowest Consulting Pty Ltd).

Should you have any further queries in relation to this submission please do not hesitate to contact Alice Buckley on 02 6841 7469.

Yours sincerely



Tim Baker
for
Vickie Chatfield
Regional Manager
Water Regulatory Operations
Department of Primary Industries – Water

**Dubbo Local Aboriginal Land Council**

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October 23, 2017

Steven Jennings
Manager Strategic Planning Services
C/- Dubbo Regional Council
Dubbo NSW 2830

Public Authority Consultation - Planning Proposal - Proposed Amendments

To Steven,

In relation to the proposed amendments to the Stage 1 Structure Plan for the South-East Residential Urban Release Area, Dubbo Local Aboriginal Lands Council have considered the information included in the proposed amendments.

As a legislated authority under the Aboriginal Land Rights Act 1983, Dubbo Local Aboriginal Land Council is highly supportive of expansion within the township to continue to grow and foster the needs of our community whilst continuing to ensure minimal harm to the rich Aboriginal heritage within our boundary.

We look forward to further consultation in relation to the four mentioned Aboriginal Heritage sites, objects and or artifacts found within the site and hope to work with the developer in the future stages to assist in minimising harm to any site that obtains cultural significance or sensitivity.

For further comment and or information please contact our office on 6884 5276

Respectfully,

A handwritten signature in blue ink, appearing to read 'Jennayah Knight'.

Jennayah Knight
A/g CEO
Dubbo Local Aboriginal Land Council