

Dwelling Entitlement for Lots 28 & 29 DP 755414 Botobolar Rd

Proposal Title : **Dwelling Entitlement for Lots 28 & 29 DP 755414 Botobolar Rd**

Proposal Summary : **Council is seeking to list lots 28 and 29 DP 755414 in Schedule 1 of the Mid-Western LEP 2012 for the purpose of permitting a dwelling to be built on the land.**

PP Number : **PP_2013_MIDWR_008_00** Dop File No : **13/19749**

Proposal Details

Date Planning Proposal Received : **29-Nov-2013** LGA covered : **Mid-Western Regional**

Region : **Western** RPA : **Mid-Western Regional Council**

State Electorate : **ORANGE** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Botobolar Road**

Suburb : **Botobolar** City : **Mudgee** Postcode : **2850**

Land Parcel : **Lot 28 & 29 DP 755414**

DoP Planning Officer Contact Details

Contact Name : **Megan Jones**

Contact Number : **0268412180**

Contact Email : **megan.jones@planning.msw.gov.au**

RPA Contact Details

Contact Name : **Liz Densley**

Contact Number : **0263782850**

Contact Email : **Elizabeth.Densley@midwestern.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **N/A** Consistent with Strategy : **N/A**

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 1
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes
Lobbyists Code of
Conduct has been
complied with :

If No, comment : **There have been no known meetings or communications with registered lobbyists.**

Have there been No
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

Council submitted a SEPP 1 application in 2012 to permit the dwelling on the land however the request for Director-General concurrence was refused. Council wrote to the Department on 21 November 2012 seeking a review of the refusal on "compassionate grounds". The landowner was given consent in 2003 to build a dwelling associated with intensive plant agriculture however this consent has lapsed. No intensive plant agriculture has been established on the land.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment :

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment :

Two options were originally proposed by Council to achieve the dwelling entitlement on the land:

*** Option 1 - amend clause 4.2A in the LEP (Council's preferred option) to permit dwellings on holdings <20ha in existence prior to gazettal of the Interim LEP 2008, where the dwelling is in conjunction with intensive plant agriculture on the land.**

*** Option 2 - utilise Schedule 1 to permit a dwelling-house in association with intensive plant agriculture and consolidation of the two lots.**

Initially Option 1 was proposed as the preferred mechanism in the Council Report, however Council's resolution was to utilise Option 2. This contradiction was referred to Council, and Council has subsequently confirmed on 12-Dec-2013 that Option 2 (use of Schedule 1) is the preferred mechanism.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA : **1.2 Rural Zones**

* May need the Director General's agreement **1.5 Rural Lands**

Is the Director General's agreement required?

c) Consistent with Standard Instrument (LEPs) Order 2006 :

d) Which SEPPs have the RPA identified? **SEPP (Rural Lands) 2008**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Council's planning proposal report addresses the proposal from the original preferred option of amending clause 4.2B of the LEP as opposed to utilising Schedule 1. Therefore some of the assessment of the proposed development is not adequate.

An email was sent to Council on 4 December 2013 requesting additional information from Council to address this matter as outlined below:

1. Council's letter and resolution states it is seeking to utilise Schedule 1 to create the opportunity for a dwelling on the land, however this contradicts the Planning Proposal Report which proposes the amendment of Clause 4.2A of the LEP to provide the opportunity for a dwelling on the land. Please confirm that Council recognises this contradiction and that Schedule 1 is definitely the mechanism Council is seeking to utilise.

2. Following on from Point 1, if Schedule 1 is the selected option, please re-consider the Planning Proposal Report's assessment of the Ministerial Section 117 Directions and State Environmental Planning Policies, in particular 1.2 Rural Zones, 1.3 Mining, Petroleum and Extractive Industries, 1.5 Rural Lands and the SEPP (Rural Lands) 2008.

3. Council is required to indicate what community consultation is proposed in relation to the planning proposal as per the Guide to preparing local environmental plans. Please confirm what community consultation Council is proposing.

4. Please confirm the timeframe in which Council intends to implement the planning proposal.

5. Please provide an aerial photo with cadastral overlay clearly indicating the location of existing dwellings and the land holdings associated with the dwellings and what size (in hectares) the land holdings are, within a 5km radius of the subject land.

Council's response was received on 12 December 2013. A summary of Council's submission:

1. Council confirmed Schedule 1 is the preferred mechanism.

2. Council argues the proposal is not inconsistent with SEPPs and s.117s. However the proposal is for a dwelling on an undersize lot on rural land and intensive plant agriculture has not been established on the land. Council is arguing the matter is of minor significance given the dwelling was previously approved (although the approval lapsed in 2008) and Part 4.7 of the endorsed Strategy allows for all dwelling entitlements to be maintained.

3. Council proposed 14 days exhibition. Although Part 4.7 of the Strategy allows for the dwelling, the land use outcome of a dwelling on an undersize lot on rural land is

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inconsistent with the Rural Lands SEPP and the land is not specifically identified in the Strategy as part of an current or future rural residential uses. Therefore, a 28 day public exhibition period is supported.

4. Council proposed 3-6 months to complete the LEP amendment. A 6 month timeframe is supported.

5. Council provided a map indicating there are 3 other undersize lots in the locality however the remaining holdings are on average around 400ha. The proposal consolidates 2 small holdings into one larger holding of 29ha. While this is a preferred outcome on rural lands, this is still significantly smaller than the 100ha MLS in the RU1 zone and the surrounding holding pattern. Despite this obvious inconsistency with the Rural Lands SEPP, the Strategy allows for previously permissible dwellings to be retained, and a development approval was previously issued for the dwelling in association with intensive plant agriculture on the land.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Adequate.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **No**

Comment : **Council proposes 14 days consultation. However a 28 day consultation period is recommended.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Adequate after receiving additional information from Council on 12-Dec-2013.**

Proposal Assessment

Principal LEP:

Due Date : **August 2012**

Comments in relation to Principal LEP : **The land is zoned RU1 Primary Production with a MLS of 100ha.**

Assessment Criteria

Need for planning proposal : **Council is proposing to amend the LEP 2012 therefore a planning proposal is the appropriate mechanism for this to achieve a dwelling entitlement on the land.**

Consistency with strategic planning framework : **The proposal is inconsistent with the strategic planning framework in land use terms, as the land is not specifically identified as current or future rural residential uses. However Part 4.7 of the Strategy (discussed below) does maintain dwellings on land where it would have been permissible under a previous planning instrument. The land is not identified as part of any existing or future rural residential land. Council has previously been advised to consider the broader implications of this proposal by formally reviewing and/or amending the Strategy. Council has decided not to review the Strategy in this case.**

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Environmental social economic impacts :

There is no strategic planning benefit for approving the proposal. There is a potential negative precedent to be set by approving the planning proposal for a dwelling on rural lands below the MLS. However Council does not believe the listing of this land in Schedule 1 will create a negative precedent for other similar applications in the future. Indeed the use of Schedule 1 and linking the dwelling to intensive agriculture maintains the bonafide of the original development application which has lapsed.

Assessment Process

Proposal type : **Consistent** Community Consultation Period : **28 Days**

Timeframe to make LEP : **6 months** Delegation : **DDG**

Public Authority Consultation - 56(2) (d) : **NSW Department of Primary Industries - Agriculture**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **The original development consent issued by Council over 10 years ago on 8 April 2003 - for the "consolidation of lots for intensive agricultural purposes" - required the dwelling to be ancillary to the use of the land for intensive agriculture. This consent lapsed on 8 April 2008. No intensive agriculture has been established on the site in the 10 years following the consent being given.**

However, the Strategy (endorsed by the Director-General on 1-Aug-2011) states in Part 4.7 - Subdivision and Dwelling Entitlements: "All 'dwelling entitlements' which would have been recognised by a previous planning instrument will be retained". Therefore, as a dwelling was previously approved on the land where it was ancillary to an intensive plant agricultural enterprise, the endorsed Strategy allows for the dwelling opportunity to be retained. It needs to be reinforced to Council that the dwelling is to be ancillary to the demonstrated use of the land for intensive plant agriculture.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
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Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones**
 1.5 Rural Lands

Additional Information : **Proceed with conditions.**

28 days minimum consultation required. Specific consultation with Department of Primary Industries. 6 months to finalise LEP.

Schedule 1 listing of Lots 28 & 29 DP 755414 Botobolar Rd, Botobolar, for consolidation of the lots and development for the purpose of a dwelling house is permitted with consent where the dwelling is demonstrated to be ancillary to established intensive plant agricultural uses on the land.

Provide Council with Written Authorisation to Exercise Delegation to finalise the LEP amendment.

Supporting Reasons : **A dwelling approval had been issued for the land where it was ancillary to intensive agriculture on the land (this lapsed in 2008). However, the DG endorsed Strategy maintains dwellings on land where it would have been permissible under a previous planning instrument, such is the case here.**

Signature: 

Printed Name: Azania Dobson Date: 10/12/13

Team Leader.