

Mid Western LEP 2012- Various Amendments October 2013

Proposal Title :	Mid Western LEP 2012- Various Amendments October 2013		
Proposal Summary :	Mid-Western Regional Council lodged a Planning Proposal which proposes various amendments to the Mid-Western Regional LEP 2012 as follows: (a) Clarify subdivision and dwelling provisions on land in the former Rylstone local government area that has two lot sizes. (b) Clarification of Clause 4.2A as it relates to provisions for dwellings on rural land (c) Insert a new clause to facilitate farm adjustments (d) Insert a new clause to allow subdivision of rural land below minimum lot size for permissible purposes (other than agriculture, intensive plant agriculture, aquaculture or dwellings) (e) Clarification of land use on part of Lot 1 DP1166658 adjoining the Mudgee Airport to permit freehold hangar and associated dwellings. (f) Reclassify identified drainage reserves and surplus land from Community to Operational land (g) Rezoning land from zone R3 Medium Density Residential to zone B4 Mixed Use in Inglis St, Mudgee (h) Rezoning land from zone IN2 Light Industrial to zone B4 Mixed Use on Lots 1 & 2 Section 49 DP758721 Inglis Mudgee		
PP Number :	PP_2013_MIDWR_006_00	Dop File No :	13/16407

Proposal Details

Date Planning Proposal Received :	26-Sep-2013	LGA covered :	Mid-Western Regional
Region :	Western	RPA :	Mid-Western Regional Council
State Electorate :	BATHURST ORANGE UPPER HUNTER	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :			
Suburb :		City :	Mid-Western Regional
			Postcode :
Land Parcel :	This proposal applies to all land and to specific parcels of land. Refer to the planning proposal for detailed information.		

DoP Planning Officer Contact Details

Contact Name : Louise Starkey
 Contact Number : 0268412195
 Contact Email : louise.starkey@planning.nsw.gov.au

RPA Contact Details

Contact Name : Elizabeth Densley
 Contact Number : 0263782850
 Contact Email : Elizabeth.Densley@midwestern.nsw.gov.au

DoP Project Manager Contact Details

Contact Name : Wayne Garnsey
 Contact Number : 0268412192
 Contact Email : wayne.garnsey@planning.nsw.gov.au

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

Have there been
 meetings or
 communications with
 registered lobbyists? :

No

If Yes, comment : The Department of Planning and Infrastructure's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge. The Western Region has not met with any lobbyists in relation to this proposal, nor has the Western Region been advised of any meeting between other Departmental Officers and lobbyists concerning the proposal.

Supporting notes

Internal Supporting Notes : This Planning Proposal contains a variety of issues. Generally the matters raised can be supported. Some matters will require further information and justification prior to public exhibition or finalisation of the amendment.

External Supporting Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? **Yes**

Comment :

Objectives are provided for each item identified in the Planning Proposal. The objectives and intended outcomes of the Planning Proposal are adequately expressed for the proposed amendments to Mid Western Regional LEP 2012.

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

Is an explanation of provisions provided? **Yes**

Comment :

The Planning Proposal provides a clear explanation of the intended provisions for each item of the amendment to achieve the objectives and intended outcomes.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

1.2 Rural Zones

* May need the Director General's agreement

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

2.4 Recreation Vehicle Areas

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.4 Planning for Bushfire Protection

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

SEPP (Rural Lands) 2008

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

The endorsed Mid Western Comprehensive Land Use Strategy applies to the Mid-Western Regional LGA.

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The Planning Proposal relates to the amendment of the written instrument and amendment of LEP mapping for various items. Council has requested the Department assist in the preparation of the LEP mapping amendments as necessary for this proposal. The Department will liaise with Council in this regard.

A map showing the amendments contained within Planning Proposal applies (where relevant), is adequate for exhibition purposes. The mapping, where required, will need to comply with the Standard Instrument Technical requirements for LEP maps that must be provided with the s59 submission.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council has identified a 28 day exhibition period for the proposal. Furthermore, Council has proposed consultation with the following government authorities: NSW Roads and Maritime, NSW DoP&I, Essential Energy, NSW Office of Water, NSW Office of Environment and Heritage, NSW Rural Fire Service, Australian Rail Track Corporation. The proposed notification period is considered to be satisfactory. The Department recommends consultation with Civil Aviation Safety Authority for item (e) and generally recommends consultation with Department of Primary Industries - (Agriculture).

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 : The Planning Proposal and accompanying documentation is considered to satisfy the adequacy criteria to progress by:

1. Providing appropriate objectives and intended outcomes;
2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining a proposed community consultation program;

However further information is to be requested for:

Item (a)- Requires further justification prior to exhibition in relation to assessment of potential impact of the proposed change.

Item (e)- Requires further information and justification to allow freehold hangar and dwellings on land in this location having regard to the Mudgee Airport.

Item (f)- Requires further information in accordance with Planning Circular PN09-003 in relation to Council's interest and intentions for the land.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : Mid-Western Regional LEP 2012 (MWR LEP 2012) was notified on the 10 August 2012

Assessment Criteria

Need for planning proposal :

Item (a) Clarify subdivision and dwelling provisions on land in the former Rylstone local government area that have two lot sizes.

Proposal

Council intention is to propose a subclause to Clause 4.1 that clarifies development and subdivision where a lot has two minimum lot sizes.

Background

The 'split lot size' issue was a carry over from the former Rylstone LEP 1996 to maintain the 'status quo' in terms of subdivision and dwellings on rural land. Council proposes that a provision be provided to clarify implementation issues relating to assessment of applications for subdivision and dwellings on parcels with two minimum lot sizes.

Assessment

Council is proposing that where a lot has two lot sizes and where the lot size designation is at least 50% AB3 (40ha) that all of the lot can be subdivided to 40ha notwithstanding the remainder of the lot being indicated as having a 100ha mls.

While it acknowledged there currently may be some implementation issues with this item there is concern that the proposal will create unintended fragmentation issues. While the intent to clarify this issue is generally supported further justification and details regarding ramifications is required.

The proposal has been assessed against s117 Direction 1.5 Rural Lands. The consistency with this direction is not established at this time as further justification and details from Council of ramifications is required, prior to exhibition.

Item (b) Clarification of Clause 4.2A as it relates to provisions for dwellings on rural land

Proposal

Council propose to amend Clause 4.2A to reflect the following:

Part a) 4.2A(3)(b)

Amend subclause wording to maintain original intention of the clause. It is proposed to amend the wording of the subclause to include "or holding" after "lot" and omit the word "created and insert "existed" in its place.

The intent for this proposed change is to ensure lots or holdings that existed immediately prior to the commencement of the LEP retain their entitlements.

Assessment

The intent is supported and there is no policy implications as Council is permitted to maintain existing "dwelling entitlements".

Part b) 4.2A(3)(g)

Amend subclause to reflect that the instruments of reference are those in force immediately prior to MLEP 1998 and Merriwa LEP 1992. This is in addition to the following, in relation to land marked "Mudgee" on the Former LEP Boundaries Map on an allotment that has an area of not less than 40 hectares and that was in existence as a separate lot, portion or parcel of land as at 11 February 1985, and was separately owned from any adjoining or adjacent lands as at that date.

Assessment

The intent is supported and there is no policy implications as Council is permitted to maintain existing "dwelling entitlements".

Part c) 4.2A(3)(f)

Amend (split) subclause as originally exhibited with the draft MWR LEP 2012 to address specific land.

The intention of proposed subclause (e) is to save dwelling provisions for existing lots in the R5 zone that are below the 12ha MLS with an area of at least 5ha (as per the Interim LEP and LEP 1998 before that).

The intention of proposed subclause (f) is to introduce a new provision which facilitates the growth of Villages by extending entitlements beyond the village boundary only where a sealed road access is provided.

Assessment

The intent of proposed amendments to Clause 4.2A are supported and considered

consistent with the mandatory provisions of the standard instrument and comply with any relevant directions in that instrument. The drafting of these changes are subject to Parliamentary Counsel. The proposal has been assessed against s117 Directions 1.5 Rural Lands and this item is considered consistent with this direction.

Item (c) Insert a new clause to facilitate farm adjustments

Proposal

Council seek the inclusion of a local provision to permit 'farm adjustments'. This clause aims to provide clarity on the mechanism for facilitating farm boundary adjustments both with and without existing dwellings, and between zones. The intent of the clause is to provide opportunity for land that is underutilised or no longer required on one property, to be transferred to an adjoining holding even though an existing dwelling may be located on land less than the minimum lot size. It is proposed that there will be no additional opportunities created for dwellings or lots.

Background

The proposal was subject to ongoing discussion and negotiations with the Department prior to exhibition of the MWR LEP 2012. The Department now has a model clause to achieve this outcome.

Assessment

The intent is supported and there is no policy implications as it provides flexibility for the use of land. The proposal has been assessed against s117 Direction 1.5 Rural Lands. The inconsistency with this direction is considered to be of minor significance.

Item (d) Insert a new clause to allow subdivision of rural land below minimum lot size for permissible purposes (other than agriculture, intensive plant agriculture, aquaculture or dwellings)

Proposal

Council proposes to insert a new local clause, with the intent to allow subdivision of land below the minimum lot size for permissible non-agricultural purposes. The intent is to allow subdivision of those uses that are permissible but which do not necessarily require the minimum lot size.

Background

There were provisions in the Mid Western Interim LEP 2008 (cl 39) which allowed subdivision below the minimum lot size for a purpose other than agriculture or a dwelling. Council considers these provisions are not contrary to the Rural SEPP, rather provides flexibility within the zone to accommodate other permissible development.

Assessment

The proposal provides flexibility and there are no policy implications. There are similar provisions in Tamworth Regional LEP 2010, Dubbo LEP 2011 and Richmond Valley LEP 2012. The proposal is consistent with S117 Direction 1.5 Rural Lands.

Item (e) Clarification of land use on part of Lot 1 DP1166658 adjoining the Mudgee Airport to permit freehold hangar and associated dwellings.

Proposal

Council proposes to insert into Schedule 1 an additional permitted use to allow the development of private aircraft hangars, dwellings and subdivision on land adjoining the Mudgee Airport.

Background

This issue was raised as a post exhibition change to the draft MWR LEP 2012 and was not

supported at that time. The land is currently zone RU4 Primary Production Small lots with a minimum lot size of 2 ha. This creates an anomaly in so far as while the lot size map permits the land to be subdivided to 2ha but is to be used for productive agriculture. Council's intention is to allow the use of the land to be associated with the adjoining airport.

Assessment

The endorsed Mid-Western Land Use Strategy identifies this site as 'development opportunity' for airport related industries and uses subject to further feasibility studies. While the intent is supported further information to justify the land use change is required prior to public exhibition.

The mechanism to achieve this land use change should be that the land be appropriately zoned rather than using Schedule 1.

The proposal has been assessed against s117 Directions 3.5 Development near licenced aerodromes, 1.2 Rural zones and 1.5 Rural Lands. The inconsistency with Directions 1.2 Rural zones and 1.5 Rural lands are considered to be of minor significance due to the land being identified in and endorsed Strategy for Airport use.

The consistency with Direction 3.5 cannot be resolved at this time and is pending consultation with Civil Aviation Safety Authority and can be addressed with the S59 submission.

Item (f) Reclassify identified drainage reserves and surplus land from Community to Operational land

Part (a) Reclassify drainage reserves from Community to Operational Land
enable the effective management of each individual reserve.

Part (b) Reclassify surplus land in Gulgong from community to operational land to enable Council to consider disposal of the land in future

Subject land

- Site 1 - Lot 3 DP 626037 Caledonian Street Gulgong.
- Site 2 - Lot 2 DP 718061 Fisher Street Gulgong.

Assessment (Part a and b)

This item can be supported as there is no change in zoning proposed however further information is required to be submitted to the Regional Office in accordance with Planning Circular PN09-003 prior to exhibition.

The inconsistency with s117 direction 6.2 Reserving land for public purposes also needs to be addressed and justified prior to exhibition.

A public hearing will be required after public exhibition.

Item (g) Rezoning land from zone R3 Medium Density Residential to zone B4 Mixed use in Inglis St, Mudgee

Proposal

Council seek to rezone land from R3 Medium density residential to B4 Mixed Use. In addition to the uses already permissible in the R3 zone the B4 zone would allow a range of additional uses such as business, office and retail premises, vets, wholesale supplies, car parks, passenger transport facilities, hotel or motel accommodation, camping grounds, caravan parks, emergency services facilities, public administration buildings, major recreation facilities, exhibition villages, helipads and mortuaries.

Background

The MWR LEP 2012 introduced a number of new zones including an SP3 Tourist zone and

B4 Mixed Use zone. The application of these zones either side of Inglis St in Mudgee has resulted in a small area of R3 Medium Density residential in isolation from other residential land.

Assessment

The proposal is not consistent with the endorsed Land Use Strategy for Mid-Western, however is considered to be justified having regard to the general suitability of land uses in the locality.

The proposal has been assessed against the S117 Direction 1.1 Business and Industrial zones and 3.1 Residential zones and is consistent with them in allowing additional uses and more reflective of land use in this area.

Item (h) Rezoning land from zone IN2 Light Industrial to zone B4 Mixed Use on Lots 1 & 2 Section 49 DP758721 Inglis Mudgee

Background

The western end of Inglis Street is currently zone part B4 Mixed Use and part IN2 Light Industrial. An amendment is proposed that would extend the Mixed Use zone over Lots 1 & 2 Section 49 DP 758721 to coincide with the mixed use zone on the opposite side of Inglis Street. This would extend the range of commercial activities permissible on these lots and be more consistent with the surrounding development. Lot 1 has an upholstery business and dwelling and Lot 2 is a heritage listed dwelling and more suited to mixed use rather than industrial.

Assessment

The proposal is not consistent with the endorsed Land Use Strategy, however can be supported as justified by Council to coexist with landuses surrounding the area. The proposal has been assessed against s117 Directions and is inconsistent with 1.1 Business and Industrial zones in that it reduces industrial zoned land.

This is considered to be of minor significance as the proposed rezoning reflects surrounding existing development and provides more mixed use land.

Consistency with strategic planning framework :

There are no sub regional strategies in place. The proposal is consistent with Councils community strategic plan. The amendments are generally consistent with the endorsed Mid-Western Regional Land Use Strategy except where identified for items; (g) and (h). These inconsistencies have been considered to be of minor significance. The proposal has been assessed as not inconsistent with the applicable SEPPs.

The proposal is considered to be consistent with all applicable S117 Directions, except in relation to the following;

S117 Direction 1.1 Business and Industrial zones

Item (h) is inconsistent with direction 1.1, however it is considered to be of minor significance.

S117 Direction 1.2 Rural zones

Item (e) is considered to be inconsistent with this direction, however is of minor significance.

S117 Direction 1.5 Rural Lands

The consistency with this direction for item (a) is not established as further justification and details of ramifications are required, prior to exhibition.

The inconsistency with this direction for item (c) and item (e) is considered to be of minor significance.

S117 Direction 3.5 Development near licenced aerodromes

This direction is relevant to item (e), parcel of land near the airport. Consultation with Civil Aviation Safety Authority is required to address consistency with this direction and provided at S59 submission.

S117 Direction 4.4 Planning for Bushfire Protection

This Direction is relevant as the Planning Proposal and affects land that is identified as bushfire prone land. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

S117 Direction 6.2 Reserving land for Public Purpose

Item (f) may be inconsistent with this direction however it cannot be determined at this time until further information is provided prior to exhibition

Environmental social economic impacts :

No significant adverse environmental, social or economic impact has been identified as resulting from the proposal.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2) (d) :	Essential Energy Office of Environment and Heritage NSW Department of Primary Industries - Agriculture NSW Rural Fire Service		

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

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

If no, provide reasons :

Resubmission - s56(2)(b) : **Yes**

If Yes, reasons : **Further information is required in respect to some items as discussed**

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
Report to Council 20.02.2013.pdf	Proposal	Yes
Planning Proposal General Amendments.pdf	Proposal	Yes
Request for Initial Gateway Determinationx.pdf	Proposal Covering Letter	Yes
Council covering letter to DoP&I.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 4.4 Planning for Bushfire Protection**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information : **The intent of the Planning Proposal is generally supported however there are some items that require further information and justification prior to exhibition or with the S59 submission as identified below:**

Item (a) Clarify subdivision and dwelling provisions on land in the former Rylstone local government area that have two lot sizes.

Prior to exhibition Council is to provide additional information to the Regional Office in relation to the potential impact and fragmentation of rural land as a result of the changes proposed. Council is to identify and locate the the land affected, assess the potential additional dwellings and possible impact on surrounding land and justify why the 50% threshold for AB3 lot size has been chosen - or justify another percentage.

(b) Clarification of Clause 4.2A as it relates to provisions for dwellings on rural land

The intent, and not the draft clause, of the proposed changes to Clause 4.2A is to be clearly provided to the public during community consultation

(c) Insert a new clause to facilitate farm adjustments

The intent, and not the draft clause, of the proposal is to be clearly provided to the public during community consultation

(d) Insert a new clause to allow subdivision of rural land below minimum lot size for permissible purposes (other than agriculture, intensive plant agriculture, aquaculture or dwellings)

The intent, and not the draft clause, of the proposal is to be clearly provided to the public during community consultation

(e) Clarification of land use on part of Lot 1 DP1166658 adjoining the Mudgee Airport to permit freehold hangar and associated dwelling.

Prior to exhibition Council is to provide to the Regional office justification to demonstrate the proposed land use change.

The use of Schedule 1 Additional permitted use - is not supported and the Planning Proposal is to be amended to reflect a suitable zone to achieve the intent of the proposed land use change

(f) Reclassify identified drainage reserves and surplus land from Community to Operational land

Prior to exhibition Council is to provide to the Regional Office the appropriate level of information as required in Attachment 1 of PN09-003 - Classification and reclassification of public land through a local environmental plan.

(g) Rezoning land from zone R3 Medium Density Residential to zone B4 Mixed use in Inglis St, Mudgee

At S59 submission Council is to provide maps of the proposed land use change to comply with the Department's Standard Instrument Standard technical requirements for maps.

(h) Rezoning land from zone IN2 Light Industrial to zone B4 Mixed Use on Lots 1 & 2 Section 49 DP758721 Inglis Mudgee

At S59 submission Council is to provide maps of the proposed land use change to comply with the Departments Standard Instrument Standard technical requirements for maps.

General Conditions

- . Council be authorised to use delegation to finalise the Planning Proposal
- . The Planning Proposal to be completed in 12 months
- . The Planning Proposal be placed on community consultation for a minimum of 28 days
- . The intent of the proposed items of this amendment be placed on exhibition and not the specific subclause/and or clause as drafted by Council.

. A public hearing be undertaken in respect to the proposed Council owned land reclassification in accordance with PN09-003 - Classification and reclassification of public land through a local environmental plan

. Consultation be undertaken with the following agencies:

- Department of Primary Industries - Agriculture
- Civil Aviation Safety Authority in respect to Item (e)
- NSW Rural Fire Service

Supporting Reasons : To justify land use change and comply with the Standard Instrument and policy

Signature:



Printed Name:

Louise Starkey

Date:

04-10-2013

Endorsed: a.w. alt

Ashley Allery

Regional Director 4-10-2013