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Mr Warwick Bennett
General Manager
Mid-Western Regional Council
PO Box 156
MUDGEES NSW 2850

Our ref: PP_2013_MIDWR_006_00 (13/16407)
Your ref: (ED)A0420254

Warwick
Dear Mr Bennett,

Planning proposal to amend Mid-Western Regional Local Environmental Plan 2012

I am writing in response to your Council's letter dated 19 September 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal for various amendments including: item (a) clarifying subdivision and dwelling provisions on certain land subject to two minimum lot sizes; item (b) clarifying clause 4.2A relating to provisions for dwellings on rural land; items (c and d) inserting a new clause to facilitate farm adjustment and a new clause to allow subdivision of rural land below the minimum lot size, in certain circumstances; item (e) permitting certain development and subdivision as additional permitted uses on land adjoining the Mudgee Airport; item (f) reclassifying certain land from 'community' to 'operational' land; and items (g and h) rezoning certain land at Inglis Street, Mudgee to B4 Mixed Use.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

While I support the intended outcome of the planning proposal, Council's proposed provision to include private aircraft hangers, associated dwellings and permit subdivision for purposes other than intensive agriculture as additional permitted uses on land adjoining the Mudgee Airport is not supported as a means of achieving the intended outcome. Council is to consider zoning the land appropriately to reflect the intended land uses, such as zoning the land to an appropriate special purpose zone. Council is to amend the planning proposal to reflect the above approach, prior to undertaking public exhibition.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones and 1.5 Rural Lands (in regards to item (c) and item (e)) are of minor significance. No further approval is required in relation to these Directions.

Council is reminded of its obligations for undertaking a public hearing and providing adequate information regarding the discharge of any interests in relation to the proposed reclassification of land in accordance with the department's practice note *PN09-003, Classification and reclassification of public land through a local environmental plan*.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation because Council has not confirmed that the Governor's approval is not required for the reclassification of land. Reclassification proposals where the Governor's approval is required cannot be delegated back to councils. Should Council demonstrate that it does not require the Governor's approval for the reclassification, it should contact the relevant regional office as soon as practicable.

The amending LEP is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the department to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Louise Starkey of the regional office of the department on 02 6841 2180.

Yours sincerely,


Neil McGaffin 25.10.13
Acting Deputy Director General
Planning Operations & Regional Delivery

Encl: Gateway determination

Gateway Determination

Planning proposal (Department Ref: PP_2013_MIDWR_006_00): to make various amendments to the Mid-Western Regional LEP 2012.

I, the Acting Deputy Director General, Planning Operations and Regional Delivery at the Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Mid-Western Regional Local Environmental Plan (LEP) 2012 for various amendments including: item (a) clarifying subdivision and dwelling provisions on certain land subject to two minimum lot sizes; item (b) clarifying clause 4.2A relating to provisions for dwellings on rural land; items (c and d) inserting a new clause to facilitate farm adjustment and a new clause to allow subdivision of rural land below the minimum lot size, in certain circumstances; item (e) permitting certain development and subdivision as additional permitted uses on land adjoining the Mudgee Airport; item (f) reclassifying certain land from 'community' to 'operational' land; and items (g and h) rezoning certain land at Inglis Street, Mudgee to B4 Mixed Use should proceed subject to the following conditions:

1. Council's proposed provision to include private aircraft hangers, associated dwellings and permit subdivision for purposes other than intensive agriculture as additional permitted uses on land adjoining the Mudgee Airport is not supported and should be removed from the planning proposal. Council is to consider zoning the subject land appropriately to reflect the intended land uses. Council is to amend the planning proposal to reflect the above approach and to provide further clarification and justification regarding land uses proposed on the subject land. This is to be done prior to undertaking public exhibition.
2. Prior to undertaking public exhibition, Council is to update the planning proposal to:
 - a) include additional information regarding the potential impact and fragmentation of rural land as a result of item (a). Council is to identify the affected land, assess the impacts of the potential additional dwellings and potential impacts of the proposal on surrounding land and justify why a 50% threshold has been chosen for land with a minimum lot size of 40ha, or justify another percentage;
 - b) remove the draft clauses for items (a), (b), (c) and (d) from the 'explanation of provisions' within the planning proposal and instead provide a plain English explanation of the intention of the proposed provisions;
 - c) include a project timeline, consistent with Section 2.6 Part 6 of the *A Guide to Preparing Planning Proposals*.
 - d) address the Director-General's requirements relating to the reclassification of public land consistent with section 5.5.4 of *A Guide to Preparing LEPs*, which includes advising whether the planning proposal extinguishes any interests.
 - e) include existing and proposed zoning and other applicable maps, which are at an appropriate scale and clearly identify the subject lands. Council is to prepare mapping consistent with the Standard technical requirements for LEP maps when it makes a request for the department to finalise the LEP.
3. Council is to update the planning proposal to include sufficient additional information to adequately demonstrate consistency or justify any inconsistency with the below S117 Directions:
 - 1.5 Rural Lands (item (a))
 - 3.5 Development Near Licensed Aerodromes (item (e))
 - 4.4 Planning for Bushfire Protection
 - 6.2 Reserving Land for Public Purposes (item (f))

4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A 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 LEPs* (Department of Planning & Infrastructure 2013).
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Essential Energy
 - Department of Primary Industries – Agriculture
 - Office of Environment and Heritage
 - NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)
 - Civil Aviation Safety Authority (S117 Direction 3.5 Development Near Licensed Aerodromes)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
6. A public hearing is not required to be held into the matter under section 56(2)(e) of the EP&A Act. However, a public hearing is required to be held into the matter in accordance with the department's practice note PN09-003, as the planning proposal involves a reclassification of land from community to operational.
7. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 25th day of October 2013.



Neil McGaffin
Acting Deputy Director General
Planning Operations & Regional Delivery
Department of Planning & Infrastructure

Delegate of the Minister for Planning & Infrastructure