

Planning Proposal

General Amendments to Mid-Western Regional LEP 2012

To facilitate a number of general amendments to Mid-Western Regional Local Environmental Plan 2012

Mid-Western Regional Council



August 2013

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Overview

This planning proposal has been prepared by Mid-Western Regional Council in accordance with section 55 of the Environmental Planning and Assessment Act and the relevant Department of Planning and Infrastructure Guidelines.

The planning proposal relates to an amendment to the Mid-Western Regional Local Environmental Plan 2012 for the following:

- (a) Clarify dwelling provisions as they relate to split parcels on the Rylstone Lot Size Map ,
- (b) Insert a Farm Adjustment Clause ,
- (c) Clarification of clause 4.2 A – dwellings on rural land,
- (d) Subdivision of land below MLS for a non-agricultural purpose,
- (e) Clarification of the 2 ha minimum lot size on Lot 1 DP 1166658,
- (f) Reclassify drainage reserves and surplus land from Community to Operational Land,
- (g) Rezoning land from R1 General Residential to B4 Mixed Use in Inglis St Mudgee,
- (h) Rezoning land from IN2 Light Industrial to B4 Mixed Use on Lots 1 & 2 Section 49 DP 758721
Inglis St Mudgee,

Mid-Western Regional LEP 2012 was published in August 2012. There were a number of matters that were raised during the course of the public exhibition which were considered outside the delegation of Council to amend without the need for additional consultation and re-exhibition. Further, there are matters that have arisen since and have been including in this general amendment.

Part 1 Objectives or Intended Outcomes

As there are a number of matters to be addressed and a range of issues within items, each item has been explored individually for the purpose of the planning proposal.

The following table provides an outline of the objectives for each of the individual amendments.

Amendment	Objective/Outcome
(a) Clarify dwelling provisions as they relate to split parcels on the Rylstone Lot Size Map	Certainty as to the erection of a dwelling on a split zoned parcel
(b) Dwellings on rural land - Clarification of clause 4.2 A	Remove uncertainty in interpretation of the clause
(c) Insert a Farm Adjustment Clause	Provisions that will provide flexibility in the subdivision of rural land
(d) Subdivision of land below MLS for a non-agricultural purpose,	Provide flexibility in use of rural land
(e) Clarification of the 2 ha minimum lot size on Lot 1 DP 1166658,	Facilitate development for subdivision for the purpose of aero-related development
(f) Reclassify drainage reserves and surplus land from Community to Operational Land	Enable better management of drainage reserves and land reclassification
(g) Rezoning land from R1 General Residential to B4 Mixed Use in Inglis St Mudgee,	Rezone land to better reflect the current and potential use of the land
(h) Rezoning land from IN2 Light Industrial to B4 Mixed Use on Lots 1 & 2 Section 49 DP 758721 Inglis St Mudgee,	Rezone land to better reflect the current and potential use of the land, in particular as it relates to the permissibility of dwellings

Part 2 Explanation of Provisions

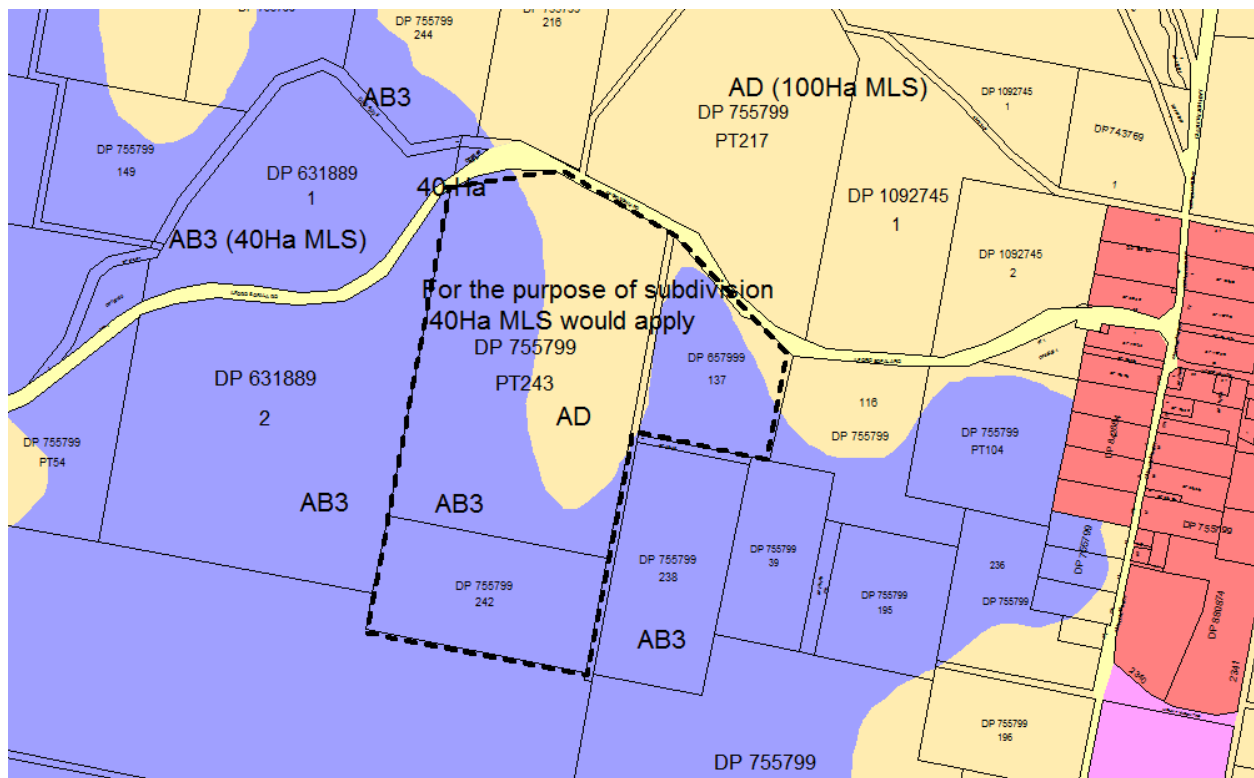
It is intended that the objectives and intended outcomes described in Part 1 will be achieved in the form of controls on development in an amending LEP. The individual provisions or mechanism for achieving the objective outcomes are explained as follows:

(a) Split parcels on the Rylstone Lot Size Map

Clause 4.1 as it relates to Rylstone minimum lot size where the land is subject to two minimum lot sizes. Flexibility is considered to be warranted here because of the scale and accuracy of the baseline mapping and current ability to refute this. It is considered that such flexibility is consistent with the intention of Council to “maintain the status quo” in relation to existing subdivision and minimum lot size provisions.

(3B) Despite subclause (3), any lot mapped with two minimum lot sizes as shown on the Lot Size Map may be subdivided for the purpose of a dwelling but only if:

- (a) where the minimum lot size includes an AB3 designation (40ha), at least 50% of the area of the new lot shall be within that AB3 designation, and
- (b) The subdivision will not result in an existing dwelling house being located on a lot that has an area less than the minimum lot size shown on the lot size map.



There is also some confusion as to the circumstances in which a dwelling is permissible on a split zoned lot.

Clause 4.2A(3) (a) provides for the erection of a dwelling on a lot “that is at least the minimum lot size shown on the Lot Size Map in relation to that land”. In circumstances where it is a split minimum lot size reference has to be made to a previous planning instrument under clause 4.2A(3) (b).

In order to simplify this, and importantly to avoid the need to reference a previous planning instrument for a straight forward enquiry, it is proposed to insert an additional sub-clause from the former Rylstone LEP as follows:

Clause 4.2A(3)(h) in relation to land marked “Rylstone” on the Former LEP Boundaries Map, a lot having an area of not less than 40ha.

The inclusion of this clause will reduce both complexity and confusion surrounding the erection of dwellings on existing lots regardless of the MLS shown on the LSM.

(b) Dwellings on Rural Land

4.2A Erection of dwelling houses and dual occupancies on land in certain zones

There are additional issues with the manner in which clause 4.3A operates and is interpreted and the intention of various sub-clauses which need to be addressed. The provisions of clause 4.2A were specifically drafted to enact the outcomes of the Mid-Western Regional Comprehensive Land Use Study (CLUS) in relation to dwelling rights, expanded largely as a result of the threat to increase minimum rural lot sizes from 100Ha to 400Ha (this did not eventuate). In this regard CLUS recommends the preservation or where necessary, the reanimation of any dwelling right that land has or may have had.

Clause 4.2A(3)(b) refers to a lot “created”. The intention of this provisions is to ensure that those lots or holdings that existed immediately prior to the commencement of the plan retain their entitlements. In the recent past, the erection of a dwelling was based on a minimum land area (lot or holding) under a particular ownership that met the minimum area attached to a particular zone. Council regularly provided advice which stated that provided the land holding was, for example 100ha, a dwelling could be erected. Typically a plan of consolidation was only prepared as a condition of consent for the dwelling. Therefore, and following on from this, sub-clause (3)(b) endeavoured to retain entitlement for those lots (or holdings).

It is proposed to amend the wording of the sub-clause to include “or holding” after “lot” and omit “created” and insert “existed” as a mean of clarification. There is a common view that the term created can be read widely to mean “created by a subdivision approved by Council” and this is not the intention.

Clause 4.2A(3)(f) came about as a result of the merging of two sub-clauses that should have remained separate. The exhibition of the Draft LEP represented the provisions as follows:

(e) in the case of a land within the R5 Large Lot Residential Zone;

(i) on a lot that has an area not less than 5ha, or

(ii) on an existing holding that has an area not less than 2ha and has all weather vehicle access, if Council is satisfied adequate public utility services are available to the lot and the land is suitable for on-site disposal of domestic wastewater, or

This subclause has been retained for public exhibition purposes only. Council has prepared an Explanatory Note outlining the intent of this subclause to seek public comment.

(f) on an existing lot located partly or wholly within 500m of a RU5 Village Zone that has an area of not less than 5ha, and provision is made for the lot to have a tar sealed road frontage and that the lot is connected to the sealed road network, or

This subclause has been retained for public exhibition purposes only. Council has prepared an Explanatory Note outlining the intent of this subclause to seek public comment.

The former (e) relates to a provision in Mudgee LEP 1998 and carried through to MWRC Interim LEP 2008. The clause gives those existing lots within the R5 zone an entitlement provided they meet the MLS criteria of 5ha. The intention was NOT to relate these entitlements to connection to the sealed road network.

Sub-clause (f) as exhibited is a new provision which came about as a mechanism to provide addition dwelling opportunities to land adjacent to or adjoining a Village zone. The intention of sub-clause (f) is to introduce a new provision which facilitates the growth of Villages by extending entitlements beyond the boundary BUT ONLY WHERE the proponent provides a sealed road connection. The Villages in the LGA have sealed main streets, however, often gravel beyond that. They also have existing lots at the fringe which are undersize for the RU1 zone which applies. This clause recognises the opportunity for a dwelling on an existing lot in close proximity to the Village, without the need for a subdivision and on which a dwelling would not otherwise be permissible. However, the dwelling is conditional on the proponent sealing the road (if it is not already sealed). While this involves a cost to the proponent, there is a significant benefit of a dwelling entitlement which otherwise would not exist.

It is proposed to reinstate the sub-clauses as they appeared in the public exhibition version of the draft LEP.

Clause 4.2A(3)(g)

Extract

a lot on which a dwelling house would have been permissible under an environmental planning instrument prior to the making of Mudgee Local Environmental Plan 1998 and Merriwa Local Environmental Plan 1992, and in the case of land within Zone RU1 Primary Production, has an area of not less than 40 hectares.

The function of clause 4.2A(3)(g) is to preserve dwelling rights where there have been changes in zoning and or minimum lot sizes over time that affect dwelling rights. Its secondary function is to reinstate dwelling rights for allotments, parcels or portions of land within the RU1 – Primary Production zone, which have an area of 40Ha or more.

The minimum rural lot size was initially 100Ha but was amended to 40Ha in 1975 which carried through until 1985 when Council adopted an LEP (LEP 15) that set the minimum lot size for rural subdivision and or the erection of dwellings at 100Ha.

LEP 15 had a clause that was in effect a savings provision whereby any existing allotment of 40Ha or more that was separately owned from any surrounding land retained a dwelling right in spite of the 100Ha minimum lot size. The purpose of drafting the clause in this fashion is to preserve dwelling rights while preventing the break-up of larger holding into 40Ha parcels or

amalgamation of smaller parcels into a 40Ha lot which would defeat the purpose of having a 100Ha minimum lots size.

Mudgee Local Environmental Plan 1998 momentarily preserved the dwelling rights of the existing 40Ha lots however, a sunset clause in MLEP 1998 terminated the clause three years after the commencement of that LEP and the subsequent Interim LEP 2008 did not contain any 40Ha provisions.

Since the commencement of LEP 2012 Council has assessed a number of development applications for dwellings or staged dwellings which rely on the provisions of 4.2A(3)(g) and this has revealed that the clause works as designed in relation to the preservation of rights affected over time by zone changes and the like but is not sufficiently clear in relation to which instruments should be referred to or that there are limitations on 40Ha parcels ie the parcel had to be separately owned at 11 February 1985. This has led to a number of attempts at creating a defacto 40Ha subdivision and associated dwelling entitlement.

It is recommended that the clause be amended to reflect that the instruments of reference are those in force immediately prior to MLEP 1998 and Merriwa LEP 1992 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.

(c) Farm Adjustment Clause

This was an issue that was included in the report to Council on 7th December 2011. The following paragraphs have been lifted from that report and remain valid.

The inclusion of this clause has been an on-going issue for Council throughout the negotiations with the DOPI leading to the exhibition and remains unresolved in terms of both clarifying the mechanism for facilitating farm adjustments both with and without exiting dwellings and between rural zones.

The clause does not create the opportunity of additional dwellings.

The intent of the clause is to provide the opportunity for land that is underutilised or not required on one property to be transferred to a productive holding. This is supported by the first aim of the Rural Lands SEPP which says:

The aims of this Policy are as follows:

(a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,

Further, like the clause proposed by Council, the Rural SEPP provides the opportunity for subdivision for agricultural purposes as follows:

9 Rural subdivision for agricultural purposes

(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.

(2) Land in a rural zone may, with consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size otherwise permitted for that land.

(3) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.

(4) A dwelling cannot be erected on such a lot.

(5) State Environmental Planning Policy No 1—Development Standards does not apply to a development standard under this clause.

By way of interpretation, a subdivision under this provision cannot occur if it will result in a dwelling being situated on a lot that is under the minimum lot size for a dwelling in that particular zone even though the dwelling already exists and the creation of the agricultural lot will facilitate a desirable outcome in term of the on-going management and productivity of the rural land. Further, there is no mechanism at all for a boundary adjustment between two already undersized lots both which have existing dwellings if the adjustment will result in a variation to either lot size by more than 10%. Again, this is not conducive to creating the opportunities for optimum use of agricultural land.

The clause as proposed does not increase the net number of dwellings or opportunity for dwellings. However, what it will do is assist in the consolidation of operating rural enterprises and provide an opportunity for an increase in holding sizes.

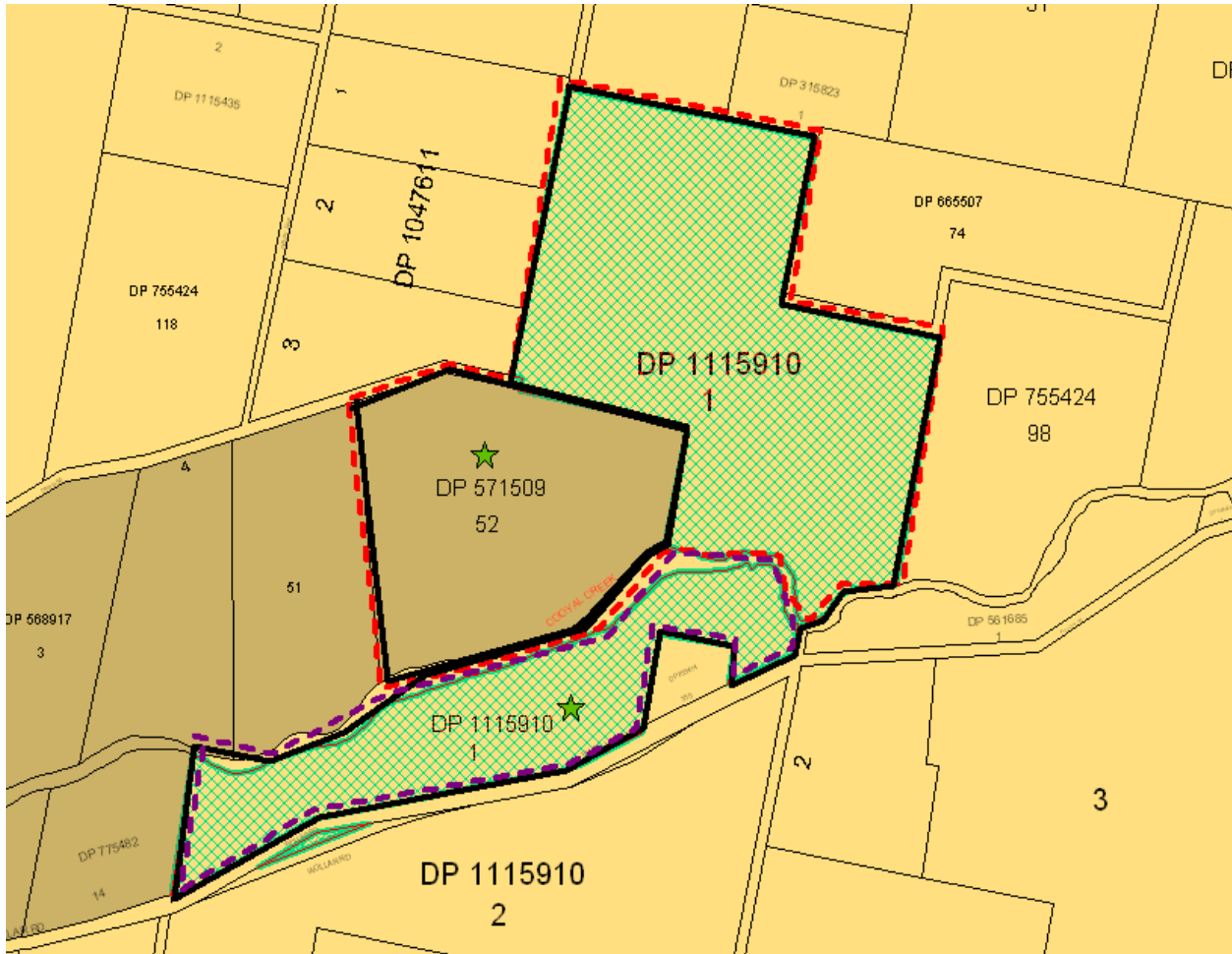
In the application of this clause a resolution needs to be made in terms of the most appropriate minimum lot size for these lots. An existing dwelling still needs to be buffered from the operation of a neighbouring farm to reduce the potential for land use conflict and have regard to the protection of natural resources. At this stage the minimum lot size for a holding in the rural context is 12ha in the R5 Large Lot Residential zone and this could be adopted in the farm adjustment provisions for both the RU1 Primary Production and RU4 Primary Production Small Lots zones. In terms of the R5 zone, the minimum lot size for a dwelling on existing lots is 5ha (Clause 48 (2) in the Interim LEP 2008) and provided no net increase in dwellings this could be adopted as the minimum lot size in the R5 zone.

The Farm adjustment Clause proposed is consistent with the Council resolution of 7 December 2011 as follows:

4.2B Subdivision for a farm adjustment [local]

- (1) The objectives of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve sustainable agricultural development in the relevant zone.
- (2) This clause applies to the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU4 Primary Production Small Lots
 - (c) Zone R5 Large Lot Residential
- (3) despite clause 4.1 and any other provision of this plan, consent may be granted to a subdivision for a boundary adjustment between two adjoining lots, but only if;
 - (a) the subdivision will not result in a net increase in the number of lots or the opportunities for additional dwellings, and
 - (b) the number of dwellings on, or the opportunity for dwellings for, each lot after the subdivision is the same as before the subdivision, and
 - (c) the net outcome of the subdivision is likely to assist in achievement of the objectives for development in the zone,
 - (d) the subdivision design will not set up a situation where the relative position of existing or proposed improvements and rural activities on the new lots is likely to result in conflict, and
 - (e) the minimum lot size for any lot created by a subdivision under this clause is 12ha in the case of the RU1 and RU4 zones and 5ha in the case of the R5 zone.

Example of how the clause would work.



Lot 1 DP 1115910 – Zoned Agriculture, has an existing dwelling. Lot size 50.06ha (undersized lot in the Agriculture Zone).

Lot 52 DP 571509 – Zoned Rural Small Holdings, has an existing dwelling. Lot size 20.23 ha.

The owner of Lot 1 is seeking a boundary adjustment with the owner of Lot 52 for the area of Lot 1 that is north of Cooyal Creek. The proposal would not result in an increase in the net number of dwellings or create the opportunity for additional dwellings on either lot. The proposal will result in the better utilisation and efficient management of agricultural land.

As both lots have existing dwellings and the adjustment (based on the area) is not “minor”, there is no mechanism within the current planning framework to facilitate that proposal. The farm adjustment clause would facilitate this subdivision.

(d) Subdivision of land below MLS for a non-agricultural purpose

There were provisions in the Interim LEP 2008 which allowed subdivision below the minimum lot size for a purpose other than agriculture or a dwelling. Council has a current example of infrastructure

associated with the rail loop at Bylong whereby a lot cannot be created for the purpose of a refuelling facility which requires only 2Ha of land.

These provisions are not contrary to the Rural SEPP rather provide flexibility within the zone to accommodate the development other than agriculture and dwellings in accordance with the land use table.

The clause in LEP 2008 was as follows:

39 Subdivision of land within Intensive Agriculture Zone for purposes other than agriculture, intensive plant agriculture, aquaculture or dwellings

- (1) This clause applies to a subdivision of land within the Intensive Agriculture Zone where, in the opinion of the consent authority, it is intended that no allotments created by the subdivision will be used for the purpose of agriculture, intensive plant agriculture, aquaculture or any dwelling.
- (2) Clause 19 (Minimum subdivision lot size) does not apply to a subdivision to which this clause applies.
- (3) The consent authority, before granting consent to a subdivision to which this clause applies, must:
 - (a) be satisfied that:
 - (i) the size of the proposed allotment and its future use will be consistent with the objectives of the zone, and
 - (ii) the level of demand for any goods and services that are to be supplied from the allotment, and for any activities that are to be carried out on the allotment, and the extent to which the allotment is proposed to be used to meet that demand, justify the creation of the allotment, and
 - (iii) the creation of the allotment is unlikely to adversely affect the existing and potential capability of the adjoining and adjacent land to be used for other permissible land uses in that zone, and
 - (iv) the allotment to be created and any subsequent development on the allotment is unlikely to have the effect of creating a demand for uneconomic provision of public infrastructure and utilities, and
 - (v) the allotment to be created is of an adequate area and has appropriate topography and geology to facilitate an on-site effluent disposal system, and
 - (vi) the future use of the allotment will not result in land use conflict or degradation of natural resources, including water resources, and
 - (b) consider:

- (i) the effect of the subdivision on the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for agricultural purposes, and
- (ii) whether legal and practical access to any proposed lot can be provided to an existing dedicated road reserve, and
- (iii) the effect of the proposed use on adjoining existing development, and
- (iv) the effect of the proposed use on the natural environment, including water resources, and
- (v) the effect of the proposed development on vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the availability, quality and stability of watercourses and ground water storage and riparian rights), and
- (vi) the protection of areas of significance for nature conservation or of high scenic or recreational value, and
- (vii) the potential for rural land use conflict with adjoining uses where the new allotments, and any resulting potential future development, are likely to inhibit or give rise to complaints about normal farming practice (such as pesticide spraying, noxious weeds and feral animal control, bush fire hazard reduction work, noise, separation from noxious odours and the like).

A local clause in the LEP 2012 would have a similar intent and will catch those uses that are permissible but which do not necessarily require 100ha of land.

39 Subdivision of land within the rural zones for purposes other than agriculture, intensive plant agriculture, aquaculture or dwellings

- (1) This clause applies to a subdivision of land within the rural zones where, in the opinion of the consent authority, it is intended that no allotments created by the subdivision will be used for the purpose of agriculture, intensive plant agriculture, aquaculture or any dwelling.
- (2) Clause 4.1 (Minimum subdivision lot size) does not apply to a subdivision to which this clause applies.
- (3) The consent authority, before granting consent to a subdivision to which this clause applies, must:
 - (a) be satisfied that:
 - (i) the size of the proposed allotment and its future use is not inconsistent with the objectives of the zone, and
 - (ii) the level of demand for any goods and services that are to be supplied from the allotment, and for any activities that are to be

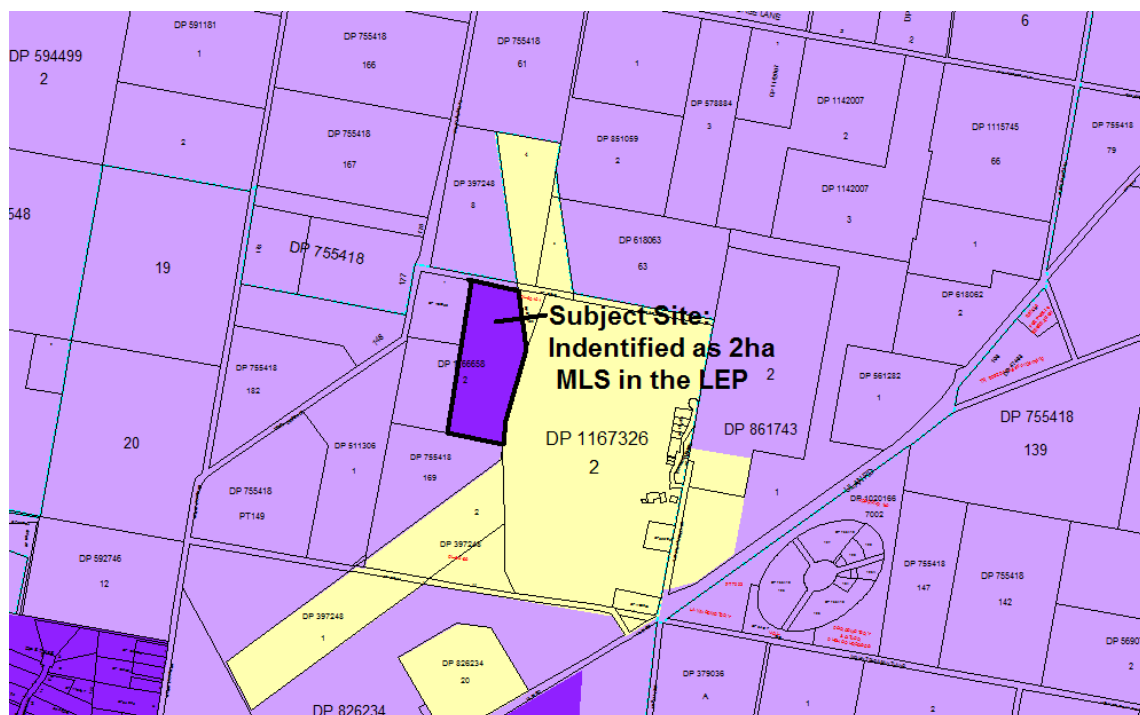
carried out on the allotment, and the extent to which the allotment is proposed to be used to meet that demand, justify the creation of the allotment, and

- (iii) the creation of the allotment is unlikely to adversely affect the existing and potential capability of the adjoining and adjacent land to be used for other permissible land uses in that zone, and
- (iv) the allotment to be created and any subsequent development on the allotment is unlikely to have the effect of creating a demand for uneconomic provision of public infrastructure and utilities, and
- (v) the allotment to be created is of an adequate area and has appropriate topography and geology to facilitate an on-site effluent disposal system, and
- (vi) the future use of the allotment will not result in land use conflict or degradation of natural resources, including water resources, and
- (v) a dwelling will not be erected on the allotment.

(e) Clarification of the 2 ha minimum lot size at the airport

In the review of public submissions to the Draft LEP 2012 on December 7, 2011, Council resolved to include part of Lot 1 DP 1166658 in the SP1 Special Purposes Airport related facilities zone. The Department of Planning vetoed the inclusion of the land in the SP1 zone, however, permitted an amendment to the Lot Size Map to show the site as having a 2ha minimum lot size. The RU4 Primary Production Small Lots zone was retained. This creates an anomaly in so far as while the lot size map permits the land to be subdivided to 2ha, clause 4.2B requires that the proponent must demonstrate an intensive agricultural use.

The intention of the site was to provide freehold hanger development and an associated dwelling. This can be achieved but for clause 4.2B. In order to overcome this, it is proposed to insert into Schedule 1 an additional permitted use in accordance with clause 2.5 of the LEP which deals specifically with this site adjoining the airport. Despite the reluctance of the Department of Planning to use this mechanism, under these circumstances it provides the most transparent result.



(f) Reclassify drainage reserves and surplus land

In the course of subdivision development, Council has acquired via dedication a number of drainage reserves. These are operational in nature and should be classified as such to allow Council to continue to manage and maintain them effectively and the avoid having to prepare Plans of Management of each individual reserve. The LEP 2012 will need to be amended to include the re-classification of this land from Community Land to Operational Land. The following properties are included:

Asset No	Description	Prop no	Notes
140758 - Defined as Drainage Reserve	Drainage Reserve 44A Mortimer Street MUDGE Lot A DP 408150	1827	Plan dated 1957 doesn't specifically dedicate reserve for drainage
140799 - Defined as Drainage Reserve	Collyer Park Public Reserve 16A Lisbon Road MUDGE Lot 2 DP 802143	9150	Lot 2 had been listed as a Drainage Reserve but was dedicated as Public Reserve on Plan dated 2/7/1990. Note that there is an Easement to Drain Water over Lot 2. There is a retention basin for drainage on Lot 2.

Asset No	Description	Prop no	Notes
140833 - Defined as Drainage Reserve	Public Reserve 18A Macquarie Drive MUDGEE Lot 47 DP 862452	11219	Lot 47 had been listed as a Drainage Reserve but was dedicated as Public Reserve on Plan dated 17/9/1996. Note that there is an Easement to Drain Water over Lot 47.
140853 - Defined as Drainage Reserve	Drainage Reserve 76A Bellevue Road MUDGEE Lot 19 DP 1020110	12635	Lot 19 is dedicated as a Drainage Reserve on Plan dated 6/12/2000. Note that there is an Easement to Drain Water over Lot 19.
140858 - Defined as Drainage Reserve	Drainage Reserve 15 White Circle MUDGEE Lot 49 DP 1062044	13436	Lot 49 is dedicated as a Drainage Reserve on Plan dated 28/11/2003.
140895 - Defined as Drainage Reserve	Drainage Reserve 2A Banjo Paterson Avenue MUDGEE Lot 157 DP 1082615	18549	Lot 157 is dedicated as a Drainage Reserve on Plan dated 7/6/2005.
140897 - Defined as Drainage Reserve	Drainage Reserve 30 Vera Court MUDGEE Lot 33 DP 1087576	18613	Lot 33 is dedicated as a Drainage Reserve on Plan dated 26/9/2005.
140902 - Defined as Drainage Reserve	Drainage Reserve 152 Robertson Street MUDGEE Lot 18 DP 1110787	19250	Lot 18 was dedicated as a Drainage Reserve on Plan dated 30/4/2007.
140908 - Defined as Drainage Reserve	Drainage Reserve 72 White Circle MUDGEE Lot 227 DP 1119919	19621	Lot 227 was dedicated as a Drainage Reserve on Plan dated 10/12/2007.
140922- Defined as Drainage Reserve	Public Reserve 29 Woodside Close MUDGEE Lot 29 DP 871844	20174	Lot 29 had been listed as an Access to Drainage Reserve but was dedicated as a Public Reserve on Plan dated 3/11/1997. Lot 29 includes an area for drainage ie it is just not for access.
140798 - Defined as Drainage Reserve	Collyer Park Drainage Reserve 14 Lisbon Road MUDGEE Lot 18 DP 788035	8928	Lot 18 was dedicated as a Drainage Reserve on Plan dated 6/4/1989.

Asset No	Description	Prop no	Notes
140814 - Defined as Drainage Reserve	Walkers Oval Public Reserve 3 Court Street MUDGEE Lot 23 DP 816236	9772	Lot 23 had been listed as a Drainage Reserve but was dedicated as Public Reserve on Plan dated 22/4/1992. Note that there is an Easement to Drain Water over Lot 23. Reserve is predominately for drainage.
- Defined as Drainage Reserve	Drainage Reserve 3A Banjo Paterson Avenue MUDGEE Lot 158 DP 1082615	18550	Lot 158 is dedicated as a Drainage Reserve on Plan dated 7/6/2005.
140899 - Defined as Drainage Reserve	Public Reserve 65A White Circle MUDGEE Lot 199 DP 1089672	18866	Lot 199 was dedicated as Public Reserve on Plan dated 12/12/2005. Reserve contains a retention basin.
136570/136571 - Defined as Drainage Reserve	Public Reserve 85-95 White Circle MUDGEE Lot 228 DP 1119919	19614	Lot 228 was dedicated as Public Reserve on Plan dated 10/12/2007. Reserve contains a retention basin
	Drainage Reserve - 69 Banjo Paterson Avenue MUDGEE Lot 271 DP 1175650	21766	Lot 271 was dedicated as a Drainage Reserve on plan dated 16 March 2012

Property 22064 – Lot 2 DP 1182624 – Drainage

Property 22167 – Lot 1 DP 1182613 – Drainage

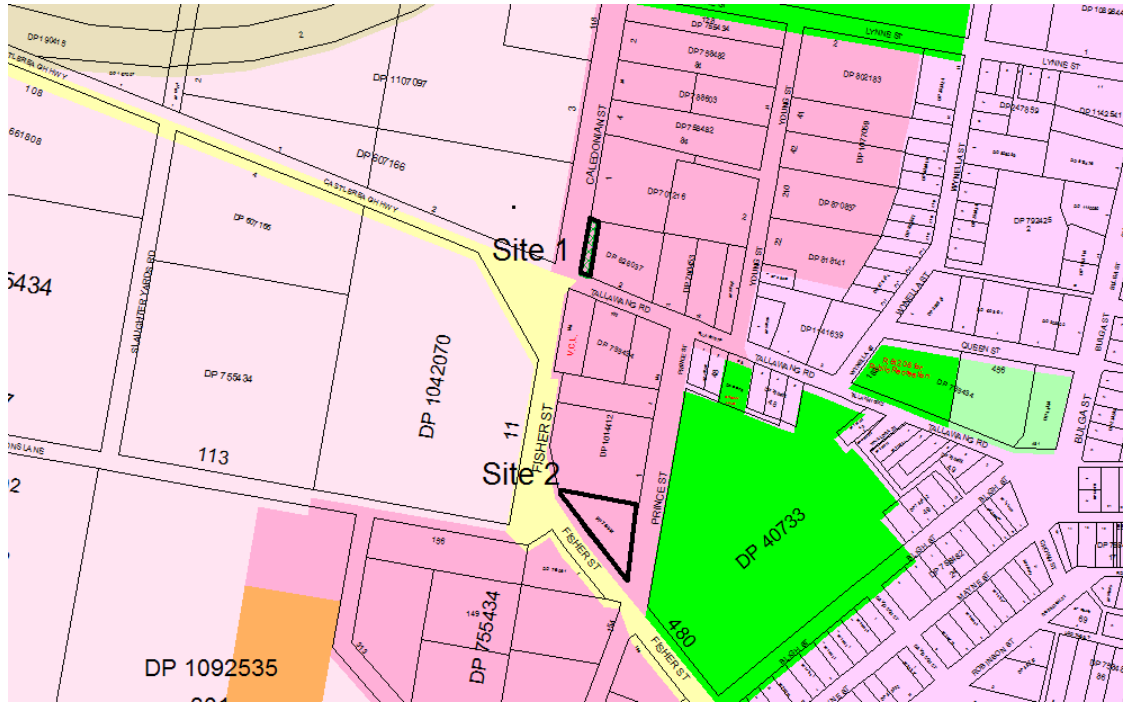
Property 19941 – Lot 82 DP 1127630 – Closed Road Industrial Avenue

Property 21856 – Lot 1 DP 1181314 – Transfer Station

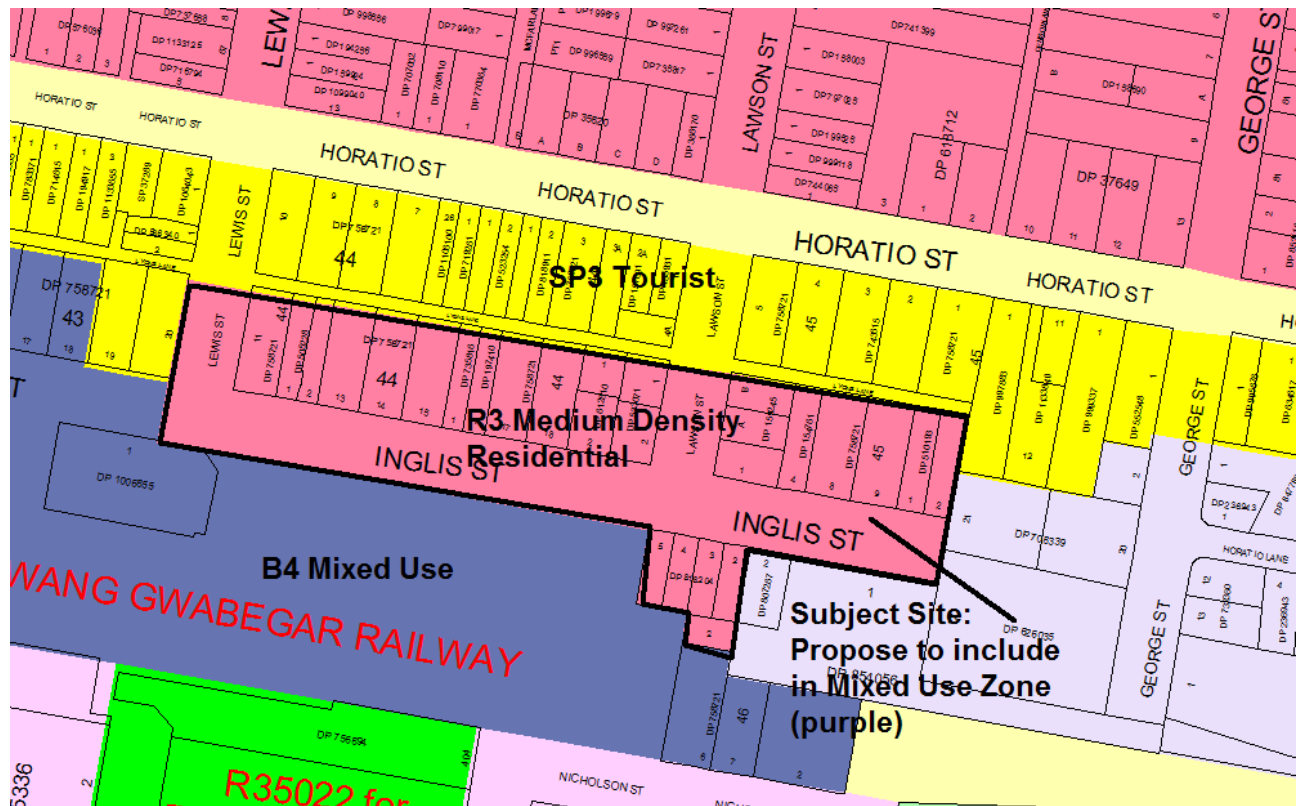
Lot 7 Section 1 DP 759017 – vacant land Ulan Village

In addition to the drainage reserves, the following properties are proposed to be re-classified from Community to Operational land to enable Council to consider disposal in the future:

- Site 1 (see Map) Property No. 11104 - Lot 3 DP 626037 – 630.9 m2. Reserve in Caledonian Street Gulgong. It is fenced in and is being used as part of the garden area of Lot 2. Zoned Residential
- Site 2 (see Map) Property 11128, Lot 2 DP 718061 – vacant land owned by Council in Fisher Street Gulgong. Zoned Residential



(g) Rezoning land from R1 General Residential to B4 Mixed Use in Inglis St Mudgee



The 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. Further, there are a number of large garages and storage sheds, some of a commercial nature fronting the rear lane between Inglis St and Horatio Street. Given that the land is zoned R3, the legal commercial use of this land is limited. There is an opportunity to consider expanding the Mixed Use zone like that which occurs in the western end of Inglis Street and in Church Street opposite the tennis courts.

In addition to the uses already permissible in the R3 zone the B4 zone would allow:

Business, Office and Retail Premises, Vets, Wholesale supplies, water supply systems, car parks, passenger transport facilities, hotel or motel accommodation, camping grounds, caravan parks, emergency services facilities, public administration buildings, major recreation facilities, exhibition villages, helipad and mortuaries.

The proposal would require targeted consultation with land owners in Inglis Street and this can be undertaken in parallel with the planning proposal.

up the LEP. The amendments reflect the need for local provisions to deal with specific issues and circumstances within the region.

Mid-Western Regional Draft Comprehensive Land Use Strategy

The Mid-Western Regional Council has prepared the *Mid-Western Regional Comprehensive Land Use Strategy*. The Strategy provides clear direction for future growth and land-use change in the area for the next 15 to 20 years. The proposed amendments are generally consistent with the strategic direction established in the Strategy.

State and Regional Policies

Whilst there is no specific State or Regional Environmental Plan that addresses future development in Mudgee or that has relevance to the LGA, there are a number of significant challenges common to strategic planning in inland and regional areas of NSW. These are to:

- Support sustainable agriculture
- Conserve valuable environmental assets
- Minimise land use conflict.

At a general policy level, the proposed amendment will facilitate the more efficient use of land and provide clarity in an otherwise complex planning document.

Q2 Is the planning proposal the best means of achieving the objectives or outcomes or is there a better way?

The Planning Proposal is the best means of achieving the outcomes explicit to the Planning Proposal.

Section B – Relationship to strategic planning framework

Q3: Is the planning proposal consistent with the application regional or sub-regional strategy?

There are no regional strategies in place.

Q4: Is the proposal consistent with Council's Community Strategic Plan or other local strategic plan?

Yes. Refer to Q1

Q5: Is the planning proposal consistent with applicable state environmental planning policies?

Yes. An analysis of the applicable State Environmental Planning Policies (SEPP's) is included in the following table. The proposal is either consistent with or not offensive to any applicable SEPP's.

SEPP	Consistency / Response
1 – DEVELOPMENT STANDARDS	Not relevant
4 – DEVELOPMENT WITHOUT CONSENT	Not relevant
6 – NUMBER OF STOREYS	Not relevant
10 – RETENTION OF LOW COST RENTAL ACCOMMODATION	Not relevant
14 – COASTAL WETLANDS	Not relevant
19 – BUSHLAND IN URBAN AREAS	Not relevant
21 – CARAVAN PARKS	Not relevant
22 – SHOPS AND COMMERCIAL PURPOSES	Not relevant
26 – LITTORAL RAINFORESTS	Not relevant
29 – WESTERN SYDNEY RECREATION AREA	Not relevant
30 – INTENSIVE AGRICULTURE	Not relevant
32 – URBAN CONSOLIDATION (Redevelopment of Urban Land)	Not relevant
33 – HAZARDOUS AND OFFENSIVE DEVELOPMENT	Not relevant
36 – MANUFACTURED HOME ESTATES	Not relevant
39 – SPIT ISLAND BIRD HABITAT	Not relevant
41 – CASINO ENTERTAINMENT COMPLEX	Not relevant
44 – KOALA HABITAT PROTECTION	Not relevant
47 – MOORE PARK SHOWGROUND	Not relevant
50 – CANAL ESTATE DEVELOPMENT	Not relevant
52 – FARM DAMS AND OTHER WORKS IN LAND AND WATER MANAGEMENT PLAN AREAS	Not relevant
53 – METROPOLITAN RESIDENTIAL DEVELOPMENT	Not relevant
55 – REMEDIATION OF LAND	Not relevant
59 – CENTRAL WESTERN SYDNEY ECONOMIC AND EMPLOYMENT AREA	Not relevant
60 – EXEMPT AND COMPLYING DEVELOPMENT	Not relevant
62 – SUSTAINABLE AQUACULTURE	Not relevant

SEPP	Consistency / Response
64 – ADVERTISING AND SIGNAGE	Not relevant
65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT	Not relevant
70 – AFFORDABLE HOUSING	Not relevant
71 - COASTAL PROTECTION	Not relevant
BASIX 2004	Not relevant
EXEMPT AND COMPLYING DEVELOPMENT CODES 2008	Not relevant
HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY 2009	Not relevant
INFRASTRUCTURE 2007	Not relevant
KOSCIUSZKO NATIONAL PARK - ALPINE RESORTS 2007	Not relevant
MAJOR DEVELOPMENT 2005	Not relevant
SYDNEY REGION GROWTH CENTRES 2006	Not relevant
MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES 2007	Not relevant
TEMPORARY STRUCTURES AND PLACES OF PUBLIC ENTERTAINMENT 2007	Not relevant
RURAL LANDS 2008	The aim of this SEPP is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. Council is of the view that the provisions within the Planning Proposal are consistent with the intent of the Rural Lands SEPP.
EXEMPT AND COMPLYING DEVELOPMENT CODES 2008	Not relevant
WESTERN SYDNEY EMPLOYMENT AREA 2009	Not relevant
WESTERN SYDNEY PARKLANDS 2009	Not relevant
AFFORDABLE RENTAL HOUSING	Not relevant

There are no relevant Deemed SEPPs.

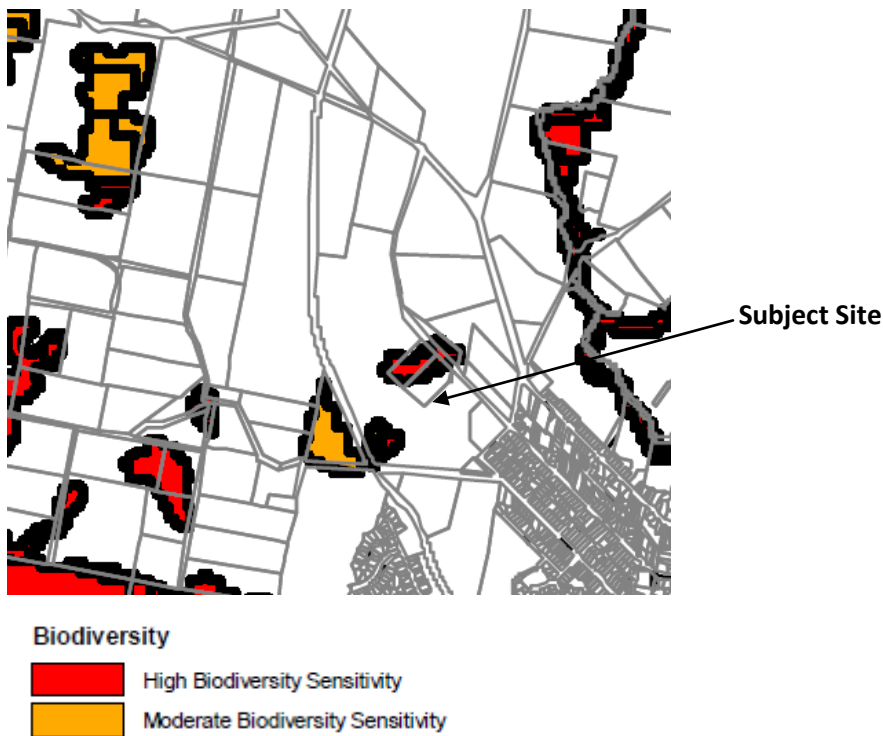
Q6: Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The relevant section 117 Directions are addressed in Appendix 2. The proposal is consistent with those 117 Directions that are relevant to the site.

Section C – Environmental, social and economic impact

Q8: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Small pockets of land within the subject site are identified as having biodiversity values under Council's Draft LEP mapping (see Figure 6). Further ecological and biodiversity studies can be carried out as the planning proposal progresses through the Gateway Process should it be considered necessary, to understand the extent of the biodiversity value of the land, and ensure the planning proposal will not cause any detrimental impact on critical habitat or threatened species, populations or ecological communities.



Q9: Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As set out in *A Guide to Preparing Planning Proposals*, the purpose of this question is to ascertain the likely environmental effects that may be relevant. It states that technical investigations to address an identified environmental issue should be undertaken following the initial Gateway determination.

Technical studies, together with community and public authority consultation, will investigate the potential for other likely environmental effects arising from the planning proposal and explore options for the mitigation and management of any environmental effects.

A review of biodiversity, site contamination and soil salinity should be undertaken prior to development of the site and can be done either post gateway or as a requirements through provisions in the amended instrument.

Q10: How has the planning proposal adequately addressed any social and economic effects?

The proposal will facilitate the development of much needed residential land. Mudgee is currently experiencing a housing crisis with upward pressure being placed on rent through demand for housing from those working in the mining industry. The Department of Planning and Infrastructure with Council have commissioned a Local Services Assessment to investigate the impact of the resources boom on the region. Although it is yet to be finalise, indications are that the planning proposal would be consistent with the outcomes of the assessment in terms of the need for additional residential land.

Section D – State and Commonwealth interests

Q11: Is there adequate public infrastructure for the planning proposal?

The assessment of public infrastructure is a relevant matter. At this stage the following infrastructure has been considered:

Utilities

Essential Energy has advised that there is capacity currently available for the proposal. Taking into account the planned future upgrade of the existing Water Supply System, there is capacity in system to provide potable water supply to cater to the proposal.

Further consultation will occur with telecommunication authorities to confirm the availability of utilities.

Sewer

A new Sewerage Augmentation system to service Mudgee township is currently under construction, consisting of a Sewage Treatment Plant, Pump Station and associated rising main. The plant is being sized to accommodate the planned growth in Mudgee therefore will have capacity to service the proposal.

Roads

There is currently good road access available in the surrounding road and traffic network to service the proposal. More detailed traffic investigations will be undertaken as the planning proposal progresses through the Gateway process.

Waste Management

The existing Waste Management Facility located west of the subject land will have capacity to service the proposal.

It is anticipated that enabling development on the subject land will increase demand on public infrastructure in the area. Consultation will be required on this matter with the appropriate public authorities who will be identified through the initial gateway determination.

Q12: What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

N/A at this stage

Part 4 – Community Consultation

The proposal deals with an issue that is currently generating significant community interest and it is considered appropriate to apply the recommended community consultation for ‘All other planning proposals’ which would include the following:

- An exhibition period of 28 days commencing on the date that a notice of exhibition is printed in the local news press
- Advertising in the local newspaper at the start of the exhibition period
- Advertising on Council’s website for the duration of the exhibition period

Consultation is proposed with the following Government Authorities:

- NSW Department of Planning and Infrastructure
- NSW Roads and Maritime Service (RMS – former RTA)
- Essential Energy
- NSW Office of Water
- NSW Office of Environment and Heritage
- NSW Rural Fire Service
- Australian Rail Track Corporation.

All of the Government authorities and agencies listed above were consulted recently in relation to Councils draft LEP and Land Use Strategy.

Appendix 1

S117 Ministerial Directions Analysis

1.1 Business and Industrial Zones

Objectives

- (1) The objectives of this direction are to:
 - (a) encourage employment growth in suitable locations,
 - (b) protect employment land in business and industrial zones, and
 - (c) support the viability of identified strategic centres.

Where this direction applies

- (2) This direction applies to all relevant planning authorities.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).

What a relevant planning authority must do if this direction applies

- (4) A planning proposal must:
 - (a) give effect to the objectives of this direction,
 - (b) retain the areas and locations of existing business and industrial zones,
 - (c) not reduce the total potential floor space area for employment uses and related public services in business zones,
 - (d) not reduce the total potential floor space area for industrial uses in industrial zones, and
 - (e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

Consistency

- (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:
 - (a) justified by a strategy which:
 - (i) gives consideration to the objective of this direction, and
 - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - (iii) is approved by the Director-General of the Department of Planning, or
 - (b) justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or
 - (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
 - (d) of minor significance.

Note: In this direction, “identified strategic centre” means a centre that has been identified as a strategic centre in a regional strategy, sub-regional strategy, or another strategy approved by the Director General.

Section 117 Direction		Applicable (PP)	Consistent	Remarks
1 Employment and Resources				
1.1	Business and Industrial Zones	Yes	No	The PP includes amendments to the Industrial zone in Inglis Street in Mudgee, however, it is considered of minor significance given that the amendment involves a change from Light Industry to Mixed Use and arguably providing additional opportunities for development within this precinct. The amendment is consistent with the objectives of the direction. The Mixed Use zone is also more aligned with the current land use structure of the area. The re-zoning will be undertaken in consultation with individual landowners and has been at the request of same to better accommodate the current mix of commercial and residential land use.
1.2	Rural Zones	Yes	N/A	
1.3	Mining, Petroleum Production and Extractive Industries	Yes	N/A	
1.4	Oyster Aquaculture	No	N/A	
1.5	Rural Lands	Yes	Yes	See Detail below.
2 Environment and Heritage				
2.1	Environment Protection Zones	Yes	N/A	
2.2	Coastal Protection	No	N/A	
2.3	Heritage Conservation	Yes	N/A	There are no known Aboriginal items at the site identified within any planning instruments. However, an Aboriginal Heritage can be undertaken post-gateway as required to determine that there is no potential impact on items of

				heritage significance.
2.4	Recreation Vehicle Areas	Yes	N/A	
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	Yes	N/A	This direction seeks <i>‘To encourage a variety and choice of housing types to provide for existing and future housing needs; to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services; and to minimise the impact of residential development on the environment and resource lands’.</i> The planning proposal is consistent with this objective and will provide for a range of dwelling types that will support the supply of residential development in the Mudgee region.
3.2	Caravan Parks and Manufactured Home Estates	No	N/A	
3.3	Home Occupations	Yes	N/A	
3.4	Integrating Land Use and Transport	Yes	N/A	
3.5	Development Near Licensed Aerodromes	No	N/A	The land has previously been identified by council as land for future residential urban release, taking into account the location of Mudgee airport.
4 Hazard and Risk				
4.1	Acid Sulfate Soils	No	N/A	
4.2	Mine Subsidence and Unstable Land	No	N/A	
4.3	Flood Prone Land	No	N/A	
4.4	Planning for Bushfire Protection	Yes	TBA	Further assessment will be required in addition to consultation with the Commissioner of the NSW Rural Fire Service after the gateway determination and prior to community consultation.
5 Regional Planning				
5.1	Implementation of Regional	No	N/A	

	Strategies			
5.2	Sydney Drinking Water Catchments	No	N/A	
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A	
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A	
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	revoked		
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)			
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)			
5.8	Second Sydney Airport: Badgerys Creek	No	N/A	
6 Local Plan Making				
6.1	Approval and Referral Requirements	Yes	Yes	Is consistent with Ministerial Direction
6.2	Reserving Land for Public Purposes	No	N/A	
6.3	Site Specific Provisions	Yes	N/A	
7 Metropolitan Planning				
7.1	Implementation of the Metropolitan Strategy	No	N/A	

117(s) Directions

1.5 Rural Lands

Objectives

- (6) The objectives of this direction are to:
- (a) protect the agricultural production value of rural land,

- (b) facilitate the orderly and economic development of rural lands for rural and related purposes.

Where this direction applies

- (2) (a) This direction applies to all planning proposals to which *State Environmental Planning Policy (Rural Lands) 2008* applies, which includes all local government areas in the State other than the following local government areas:

Ashfield	Holroyd	Penrith
Auburn	Hornsby	Pittwater
Bankstown	Hunters Hill	Randwick
Baulkham Hills	Hurstville	Rockdale
Blacktown	Kogarah	Ryde
Blue Mountains	Ku-ring-gai	Strathfield
Botany Bay	Lake Macquarie	Sutherland
Burwood	Lane Cove	Warringah
Camden	Leichhardt	Waverley
Campbelltown	Liverpool	Willoughby
Canada Bay	Manly	Wollondilly
Canterbury	Marrickville	Woollahra
City of Sydney	Mosman	Wollongong
Fairfield	Newcastle	Wyong
Gosford	North Sydney	
Hawkesbury	Parramatta	

When this direction applies

- (8) This direction applies when:
- (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or
 - (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.

What a relevant planning authority must do if this direction applies

- (4) A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.
- (5) A planning proposal to which clause 3(b) applies must be consistent with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

Note: *State Environmental Planning Policy (Rural Lands) 2008* does not require a relevant planning authority to review or change its minimum lot size(s) in an existing LEP. A relevant planning authority can transfer the existing minimum lot size(s) into a new LEP. However, where a relevant planning authority seeks to vary an existing minimum lot size in an LEP, it must do so in accordance with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

Consistency

- (6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:
- (a) justified by a strategy which:
 - i. gives consideration to the objectives of this direction,
 - ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and
 - iii. is approved by the Director-General of the Department of Planning and is in force, or
 - (b) is of minor significance.

Comment

Both clauses 4(a) and 4(b) apply in that the Planning Proposal affects rural land and changes the lot size of land within a rural zone, therefore triggering consistency with either/or the Rural Planning and Subdivision Principles of the SEPP (Rural Lands) 2008, extracted below.

7 Rural Planning Principles

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

The SEPP (Rural Lands) 2008 also includes a number of subdivision principles;

8 Rural Subdivision Principles

The Rural Subdivision Principles are as follows:

- (a) the minimisation of rural land fragmentation,
- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,
- (d) the consideration of the natural and physical constraints and opportunities of land,
- (e) ensuring that planning for dwelling opportunities takes account of those constraints.

In order to address this direction the table of amendments covered by this planning proposal has been altered and a comment as to the justification for the inconsistency has been inserted.

Amendment	Objective/Outcome	Comment
(a) Clarify dwelling provisions as they relate to split parcels on the Rylstone Lot Size Map	Certainty as to the erection of a dwelling on a split zoned parcel	The inclusion of a clause clarifying how the minimum lot size is applied when land has a split lot size is not inconsistent with the SEPP (Rural Lands) 2008.
(b) Dwellings on rural land - Clarification of clause 4.2 A	Remove uncertainty in interpretation of the clause	As Above, the amendment goes to clarification of the provisions
(c) Insert a Farm Adjustment Clause	Provisions that will provide flexibility in the subdivision of rural land	The inclusion of this clause will facilitate better rural land management. The consistency with the SEPP is addressed in the body of the PP refer p6

(d) Subdivision of land below MLS for a non-agricultural purpose,	Provide flexibility in use of rural land	This is a provisions that has existing in previous planning instruments. The Rural SEPP is
(e) Clarification of the 2 ha minimum lot size on Lot 1 DP 1166658,	Facilitate development for subdivision for the purpose of aero-related development	While the minimum lot size provides for a 2 ha lot, clause 4.2B requires that the proponent demonstrate an intensive agricultural use. Addressing this anomaly in the LEP is not considered inconsistent with the direction or the SEPP.
(f) Reclassify drainage reserves and surplus land from Community to Operational Land	Enable better management of drainage reserves and land reclassification	N/A
(g) Rezoning land from R1 General Residential to B4 Mixed Use in Inglis St Mudgee,	Rezone land to better reflect the current and potential use of the land	N/A
(h) Rezoning land from IN2 Light Industrial to B4 Mixed Use on Lots 1 & 2 Section 49 DP 758721 Inglis St Mudgee,	Rezone land to better reflect the current and potential use of the land, in particular as it relates to the permissibility of dwellings	N/A