

Planning Report for Joint Regional Planning Panel (JRPP) Western Region

Gateway Review Wentworth Local Environmental Plan 2011 – Amendment No 5 PP_2014_WENTW_001_00

Summary and recommendation

The Department of Planning and Environment has been asked to undertake a Gateway Review of the planning proposal PP_2014_WENTW_001_00. As part of this review the planning proposal will be forwarded to the Western Region Joint Regional Planning Panel (JRPP) for its independent assessment, review and recommendation on whether the proposal should proceed.

The planning proposal relates to the proposed subdivision of two land holdings on the banks of the Darling River at North and South Pomona (490 hectares) into 49 rural lifestyle lots. The proponent has also offered to extinguish 49 dwelling entitlements held on other lands owned by the proponent in the area.

It is recommended the Joint Regional Planning Panel:

1. support the issue of a Gateway determination for the subject planning proposal to proceed, provided the proponent can address the following:
 - a) an appropriate zoning for the site;
 - b) management of flooding issues consistent with the NSW Flood Plain Policy; and
 - c) justification of the strategic context of the proposal consistent with the requirements of the *State Environmental Planning Policy (Rural Lands) 2008* and the *Murray Regional Environmental Plan No.2*;
2. encourage Wentworth Shire Council to complete both the draft Floodplain Risk Management Plan for the area and the draft Rural Study for the Shire as matters of priority; and
3. encourage Wentworth Shire Council to give consideration to preparing a River Settlement and Management Strategy to identify appropriate locations for riverfront settlement if it intends to intensify settlement immediately adjacent to any river.

Background

The history of the proposal is that the Minister's delegate declined to issue a Gateway determination for the subject planning proposal on 21 July 2014. The proponent, Grand Junction Pty Ltd, has requested a review of the decision and is seeking an independent assessment of the merits of the proposal. The proponent has also raised concerns over the Department's original assessment of the proposal and as such the Southern Region has undertaken a separate assessment of the application.

The Planning Proposal

The subject planning proposal is attached ([Tab A](#)).

The planning proposal seeks an amendment to *Wentworth Local Environmental Plan 2011* (the LEP) to rezone approximately 490 hectares of land in two separate locations north and south of Pomona from RU1 Primary Production to RU4 Primary Production Small Lots.

This is in order to facilitate the development of up to 49 lots ranging from 5 to 10 hectares each with direct frontage to the Darling River. Accordingly the relevant lot size maps for the subject land would also have to be amended.

The subject lots are to be used predominantly for rural lifestyle purposes. The proponent submits that development of these marginal agricultural lands will provide new capital for the investment in and development of the agricultural potential of its other landholdings in the Wentworth area.

The planning proposal addresses the requirements of the Department's '*Guide to Preparing Planning Proposals*' with the exception of a project timeline which is not considered essential for this assessment.

The planning proposal is also accompanied by a threatened species assessment of the land in question.

As part of the planning proposal the proponent has also expressed a willingness to extinguish 49 other dwelling entitlements that exist on its larger property in the Wentworth area (known as Grand Junction) and to consolidate these into a single land parcel. The proponent has also identified that existing shearing and wool scouring operations at its South Pomona site, on the banks of the Darling River, will be removed.

The Site

The subject land is shown in the attached planning proposal and also on the attached map ([Tab B](#)). A site inspection was carried out by Southern Region staff (Brett Whitworth – General Manager and Martin Brown – Planning Officer) on 15 December 2014, in conjunction with the landowner and staff of Grand Junction Pty Ltd.

The land comprises two separate sites, each south and north of the Pomona irrigation area (approximately 12kms north of Wentworth township). Pomona is a small community including a primary school.

The subject lands are approximately 490 hectares in area and are part of a broader agricultural holding of approximately 12,000 hectares (26,000 acres) representing a combination of sheep grazing, horticulture and wheat production. This broader holding is shown with a yellow border on the context map ([Tab B](#)). It includes frontage to the Murray River, the Darling River and the western anabranch of the Darling River. Photos of the subject land are shown attached ([Tab C](#)).

The southern Pomona site includes land currently used as a sale/holding yard for the existing sheep operations, a former shearing shed and workers accommodation. The northern site is largely free from any structures.

Both sites comprise a combination of riverine land dominated by River Red Gums and Black Box immediately on the banks of the river becoming increasingly dominated by Salt Bush as distance from the river increases.

Both sites are accessed by sealed road from Wentworth. Further roads would be required to service each site if development were to proceed. It is understood both sites are serviced with electricity but not reticulated water or sewer.

Planning Issues

Strategic Context

Whilst the sites are not identified in a State or Council endorsed strategy as being suitable for development, Council is in the process of preparing a rural settlement strategy and has commissioned a consultant to prepare a draft. The draft is in an advanced stage but has not been released for community comment.

A rural settlement strategy seeks to ensure an adequate supply of land is made available to meet market demands. In regional areas, such as Wentworth, more land will be identified than is required just to meet projected demand as a way of inducing more development to an area, and to increase competition. The Department has supported such approaches provided the land identified for development is:

- well located and takes advantage of adjoining settlements;
- is free from hazard;
- does not jeopardise other land uses, particularly primary production; and
- does not create adverse environmental impact.

In the case of Wentworth, previous Regional Environmental Plans (*Murray Regional Environmental Plan No. 2*) and the draft Murray Regional Strategy have also identified the importance of protecting the cultural, recreational and aesthetic values of the Murray and Darling Rivers. It would be expected that any rural settlement strategy would ensure new development does not impact on these values by addressing the potential proliferation of riverfront development (which could include sheds, boat ramps, water pumps, moorings and other ancillary development).

Ensuring riverfront development occurs in planned areas helps to protect the values of the river systems that attract recreational and tourist activity to the Region. Such controls help to provide consistency as appropriate with Victorian planning controls which use both tenure (e.g. Government ownership) and planning controls to prevent riverfront development.

Supporting the local housing market

Enabling a suitable supply of housing to be available to accommodate population growth in Wentworth is an important outcome for Council that provides opportunities to build on the growth occurring in nearby Mildura.

The Mildura-Wentworth 2014 Regional Overview published by the Mildura Development Corporation (www.milduraregion.com.au) provides population projections for the region based on data from the Australian Bureau of Statistics, NSW Department of Planning and Environment and the Victorian Department of Planning and Community Development. These projections are reproduced below (updated to reflect more recent Department of Planning and Environment population projections).

Population Projections - Mildura Region 2011-2031

LGA	2011	2016	2021	2026	2031
Mildura	54,666	57,936	60,325	62,493	64,288
Wentworth	6,850	6,800	6,750	6,650	6,550
Region	61,516	64,736	67,075	69,143	70,838

Source: VIC Department of Planning & Community Development (2012), NSW Department of Planning and Environment (2014), Australian Bureau of Statistics Cat No 3235.1.55.001 (2006)

The data suggests the population for the Region is likely to increase by 9,332 persons between 2011 and 2031, or approximately 460 persons per year. The key driver for housing in Wentworth is economic activity associated the city of Mildura in Victoria, located approximately 30kms from Wentworth township. Both Wentworth and Mildura are interspersed by smaller settlements on both sides of the Murray River and these communities share a common economic catchment.

In terms of supply, land has been rezoned for both residential and rural residential development in the Wentworth Shire over recent years and is listed in the following table.

Date	LEP	Proposal	Approximate Number of Lots	Ha
Residential				
23/08/2011	WLEP 1993 Amendment 27	Pittman Avenue Buronga 1(a) – General Rural and 1(d) to 2(v) Village	267	31ha
30/09/2011	WLEP 1993 Amendment 28	Residual Buronga Gol Gol Land1(a) – General Rural Zone and 1(d) – Future Urban Zone to 2(v) – Village or Urban Zone 165ha res and 61ha industrial	2000	165ha
Rural Residential				
18/05/2012	WLEP 2011- Amendment 1	Change lot size from 10,000ha to 5000m2 at East Gol Gol to allow development of R5 (implementing post-exhibition change)	147	73.18ha
		Ellerslie, Darling View & Curlwaa RU1 land MLS reduction from 10,000ha to 10ha in rural areas	172	
15/12/2012	WLEP 2011- Amendment 2	Pooncarie Road - Rezone land RU1 to R5	34	25.8ha
9/01/2014	WLEP 2011- Amendment 3	R5 land MLS reduction from 5,000m2 to 3,000m2 at East Gol Gol (Ref to Amendment 1)	17	
Total			2637 Lots	295 ha

Although the majority of the development focus in the Wentworth Shire is at Buronga Gol Gol, there have been some additions to rural residential land supply in the Wentworth area. Amendment No 1 to Wentworth LEP 2011 was made in May 2012 and potentially provided for 170 new lots at Ellerslie and Darling View north of Wentworth. Amendment No 2 was made in December 2012 and provides for up to 34 rural residential lots adjacent to the Darling River just north of Wentworth.

In 2012 the Victorian Department of Planning and Community Development released a Regional Residential Report for the rural city of Mildura. That report, based on 2011 data, identified the potential for 6,210 zoned broad acre lots and a further strategic potential (unzoned) of 2,235 lots in Mildura and its surrounding rural area.

Assuming an average household occupancy of 2.2 persons, and that there is potential supply in Wentworth Shire of at least 2,637 lots, there is capacity to accommodate a population growth of up to 5,800 persons within existing zoned areas. This represents over 58% of the potential growth for the entire region (including Mildura) up to 2031. In this context, there is adequate existing supply of both residential and rural residential housing to accommodate existing population growth and to provide opportunities to build on the growth occurring in nearby Victoria.

However, the proponent has indicated that the Murray and Darling Rivers are the key environmental and aesthetic features of the local landscape, and as such, any development that provides private and direct river frontage to these rivers is highly desirable from a market perspective. The proponent argues its proposal will thus meet a sub-market that does not have sufficient supply.

Zone suitability

Both the Council and the proponent have identified the RU4 Primary Production Small Lot zone as the most desirable zone for the subject land. The Department's relevant Practice Note PN 11-002 '*Preparing LEPs Using the Standard Instrument: Standard Zones*' ([Tab D](#)), identifies the RU4 zone as best used for commercial primary production on smaller rural holdings. It is not a rural residential lifestyle zone.

The planning proposal and discussions with the proponent during the site visit confirmed the intention of the lots is for rural lifestyle purposes with some small scale hobby farming. In these circumstances a more appropriate zone for the development envisaged would be either a R5 Large Lot Residential or an E4 Environmental Living zone. The environmental, aesthetic and cultural qualities relevant to the site and the Practice Note PN 09-002 '*Environmental Protection Zones*' ([Tab E](#)), suggest an E4 Environmental Living would be the most appropriate zone for rural lifestyle use on the river. If a Gateway determination was to be issued for this matter, it could be conditioned to amend the planning proposal to apply the E4 Environmental Living zone.

Flooding

Section 117 Direction 4.3 *Flood Prone Land* requires planning proposals to give effect to, and be consistent with, the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*. The direction also prevents the rezoning of flood prone land from a Rural zone to a Residential zone unless in accordance with a Floodplain Risk Management Plan prepared consistent with the *Floodplain Development Manual 2005* (or is of minor significance only).

Attached ([Tab F](#)) is an extract from the Murray River Flood Atlas prepared by the Water Resources Commission in 1986. While the study area does not include the northern parcel of land, it does show the southern parcel was affected by both the 1956 and 1974 floods. Comments on the map confirm flooding occurred beyond the study area and would likely have impacted on the northern site as well given the similar topography and ground levels of both sites.

Also attached ([Tab G](#)) is an extract from a River Murray Commission publication (date unknown) showing the extent of the flood in 1956. This also indicates both areas were subject to flooding at that time.

Council's Local Environmental Plan utilises the standard flooding clause that identifies land as flood prone based on either maps contained in the Plan, or land affected by the 1:100 'historical flood'. Council's flood maps in its Plan do not therefore cover all the lands that are flood prone.

Council staff have advised the Department that the Council did begin the process of developing a Floodplain Risk Management Plan, and that a draft flood model was developed by the consultants Worley Parsons. Council has indicated it was looking to again progress the plan and that this may be completed by early 2016.

Council has advised that it manages flood risk in areas affected by the historic flood by requiring a freeboard of 750mm above the level of the 1956 flood. This is usually achieved by using fill to raise the home to an appropriate level above the 1:100 year inundation.

The proponents have provided some survey information in respect of each site and this is attached (Tab H).

Further confirmation is needed to be satisfied that the proposal for 49 lots would be consistent with the section 117 direction on flooding. To enable the rezoning to be finalised, the proponent would need to demonstrate that the rezoning was either:

- a) consistent with a flood plain risk management plan endorsed by Council and the Office of Environment and Heritage; or
- b) demonstrate that there would be a minor flooding impact on the site and that flood impacts (including evacuation) from the development of the site can be managed.

Biodiversity

As noted, both sites comprise a combination of riverine land dominated by River Red Gums and Black Box immediately on the banks of the river becoming increasingly dominated by Salt Bush as distance from the river increases.

The planning proposal includes a basic threatened species assessment for the subject lands.

Any Gateway determination for this matter should require a detailed fauna and flora assessment for both sites. It is acknowledged that, subject to any particular threatened species concerns, appropriate house sites could be located with a minimum of clearing and biodiversity impact.

Heritage

There are a number of remnant structures on the South Pomona site however none of these are listed as heritage items.

A number of sand dunes also exist close to the Darling River on the South Pomona site.

Any Gateway determination for this matter should require a heritage study to be carried out, particularly in respect of Aboriginal archaeology.

Water Supply

During the site inspection the proponent indicated water was intended to be supplied to the area on the basis of it being a 'private irrigation trust', however, it is unclear how this is intended to operate. The indicative subdivision patterns provided at Appendix F of the planning proposal suggest each lot would hold a stock and domestic water entitlement under the *Water Management Act 2000* given each is proposed to have direct access to the Darling River. This

would allow each lot to extract water directly from the River for both the purposes of any ordinary domestic use (such as washing, watering gardens, etc) and for watering of any stock animals.

Any Gateway determination issued for this matter should be conditioned to require consultation with the Office of Environment and Heritage and the Office of Water in respect of ongoing impacts of water extraction.

Effluent Disposal

It is understood any development would dispose of effluent through the use of aerated wastewater treatment systems. Subject to appropriate approval and inspections this is appropriate.

Extinguishment of Dwelling Entitlements

As part of the planning proposal, the proponent has suggested the extinguishment of another 49 dwelling consents currently held by the landowner under s104A of the *Environmental Planning and Assessment Act 1979* (the Act) on the Grand Junction property. In essence development rights would be transferred from these lots to the subject lands identified under the planning proposal (Tab I). It is understood that the Council has agreed that the properties do have dwelling rights (as they are in effect 'existing holdings', albeit below the minimum lot size for the area) and the proponent has indicated that it does have valid dwelling house consents for a number of the titles.

Surrender of the consents would enable the highest quality agricultural land on the Grand Junction property to be consolidated and protected and would prevent the fragmentation of the area. This does provide a public benefit, although the extent of the benefit needs to be measured against the likelihood of the lands being taken up for development. The proponent has not suggested a legal mechanism for the surrender of the consents.

If the planning proposal were to proceed, the landowner could document the surrender by entering into a voluntary planning agreement (VPA) with the Council. The VPA would oblige the proponent to surrender its consents and consolidate lots on the Grand Junction property in exchange for receiving the planning benefit of the rezoning. Any VPA should then be exhibited with the draft LEP. This is consistent with the approach established by the Land and Environment court case at Catherine Hill Bay (*Gwandalan Summerland Point Action Group Inc –v- Minister for Planning 2009*)

Statutory Context

Rural Lands State Environmental Planning Policy

State Environmental Planning Policy (Rural Lands) 2008 (the Rural Lands SEPP) is relevant in this instance. The Rural Lands SEPP establishes a number of Rural Planning Principles and Rural Subdivision Principles to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

The Rural Planning Principles set out under the Rural Lands SEPP are:

- 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 Rural Subdivision Principles set out in the Rural Lands SEPP are:

- (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.*

The Rural Lands SEPP operates in conjunction with relevant section 117 Directions (*1.2-Rural Zones* and *1.5-Rural Lands*) to ensure rural land is managed and developed in the best interests of the community having regard to economic, social and environmental considerations.

Applying the Subdivision Principles set out in the Rural Lands SEPP to the proposal it is considered it is likely to lead to some fragmentation of rural land, albeit, minor in the context of the broader agricultural landscape of the area.

The proposal would also lead to rural residential land uses in an area surrounded by irrigated agricultural production. This creates the potential for land use conflict over issues such as spray drift and bird guns associated with horticultural activities at Pomona and pet management (particularly dogs) in an area with sheep grazing.

A rural settlement strategy addressing either the rural planning principles from the SEPP or addressing the strategic considerations for riverfront development from the *Murray Regional Environmental Plan no. 2* or the draft Murray Regional Strategy has not been prepared. This makes the proposal potentially inconsistent with the Rural Lands SEPP and its supporting s117 Ministerial Direction. The proponent can undertake more work to justify the strategic context of the rezoning. However, Council should also be asked to ensure the proposal does not create a precedent leading to other potential planning proposals that may lead to the cumulative loss of agricultural, cultural and aesthetic values arising from further riverfront development.

The proponent has identified that a previous amendment to the LEP allowed similar rural lifestyle subdivision and did not require a strategy to be completed.

In 2012, the Department approved an amendment to the LEP that recognised the prior use that certain lands (Ellerslie, Darling View and Curlwaa) had for irrigated agriculture and reduced the minimum lot size from 10,000 hectares to 10 hectares. These areas could have taken advantage of previous clauses in the former Wentworth local environment plan that allowed a 10 hectare subdivision because they were mapped as being within a historic irrigated area.

When deciding to proceed with the proposed amendment, Council did not include the Pomona sites as they could not have taken advantage of that previous clause as they were not within a mapped irrigation area.

State Environmental Planning Policy 55 and Contamination

It is understood no assessment has been carried out against *State Environmental Planning Policy No 55 – Remediation Of Land* (SEPP 55) to date. Given the lands extensive use for agricultural operations, consideration of the subject lands potential for contamination should be considered, particularly on the southern site. Any Gateway for this matter should require an assessment against SEPP 55.

Views of Wentworth Shire Council

Wentworth Shire Council supports the intended planning outcome and subsequently resolved to support the original planning proposal by forwarding it to the Department on 13 March 2014. The Department declined to issue a Gateway determination for that proposal on 21 July 2014. Council provided further advice to the proponent on 11 December 2014 confirming it continues to support the planning proposal (Tab J).

Conclusion

There are three issues with the planning proposal that require further work:

- 1) Whether the proposed zoning of the land to RU4 Primary Production Small Holdings zone is the most appropriate zone given the intention of the land to provide for rural lifestyle. While this is not considered crucial, if the proposal were to proceed, and in recognition of the unique and highly sensitive location of the subject lands, the more appropriate zone is E4 Environmental Living.
- 2) Either an endorsed Floodplain Risk Management Plan for the area is required, or demonstrating that the proposal would have only minor flood risks and flood impacts. Both sites are subject to some degree of flooding, but the extent of flooding, and the suitability of placing new dwellings on these sites has not been established. The NSW Government's Flood Plain Policy identifies where any development of flood prone land is proposed, particularly for residential uses, this should be consistent with an endorsed Floodplain Risk Management Plan.
- 3) Providing a strategic position on both the proposed rural and riverfront settlement to justify the suitability of this proposal in the broader context of settlement for the Shire. The Rural Lands SEPP, supporting section 117 directions and *Murray Regional Environmental Plan No.2*, require rural residential and settlement proposals to be considered in the context of an endorsed strategy. If a Strategy was prepared that identified the proposal could be appropriately developed without adversely affecting the values of the Murray and Darling Rivers to the Wentworth area, then it could be supported.

Council should, as a priority, be encouraged to complete both the Floodplain Risk Management Plan and the draft Rural Settlement Strategy in order to inform this and similar proposals in the future.



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