

Planning Services

Gateway Determination Report

LGA	Mid-Western Regional Council
RPA	Mid-Western Regional Council
NAME	Housekeeping amendments to rezone land and make corrections to Schedule 5 Environmental heritage
NUMBER	PP_2018_MIDWR_001_00
LEP TO BE AMENDED	Mid-Western Regional Local Environmental Plan 2012
ADDRESS	Multiple properties in Upper Growee, Rylstone and Bylong. See <i>Site Description</i> below.
DESCRIPTION	Multiple lots in Growee, Rylstone and Bylong. See <i>Site Description</i> below.
RECEIVED	21/11/2017 Deemed Adequate 21/12/2017
FILE NO.	18/107
QA NUMBER	
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal is to amend Mid-Western Local Environmental Plan (LEP) 2012 to address two (2) matters:

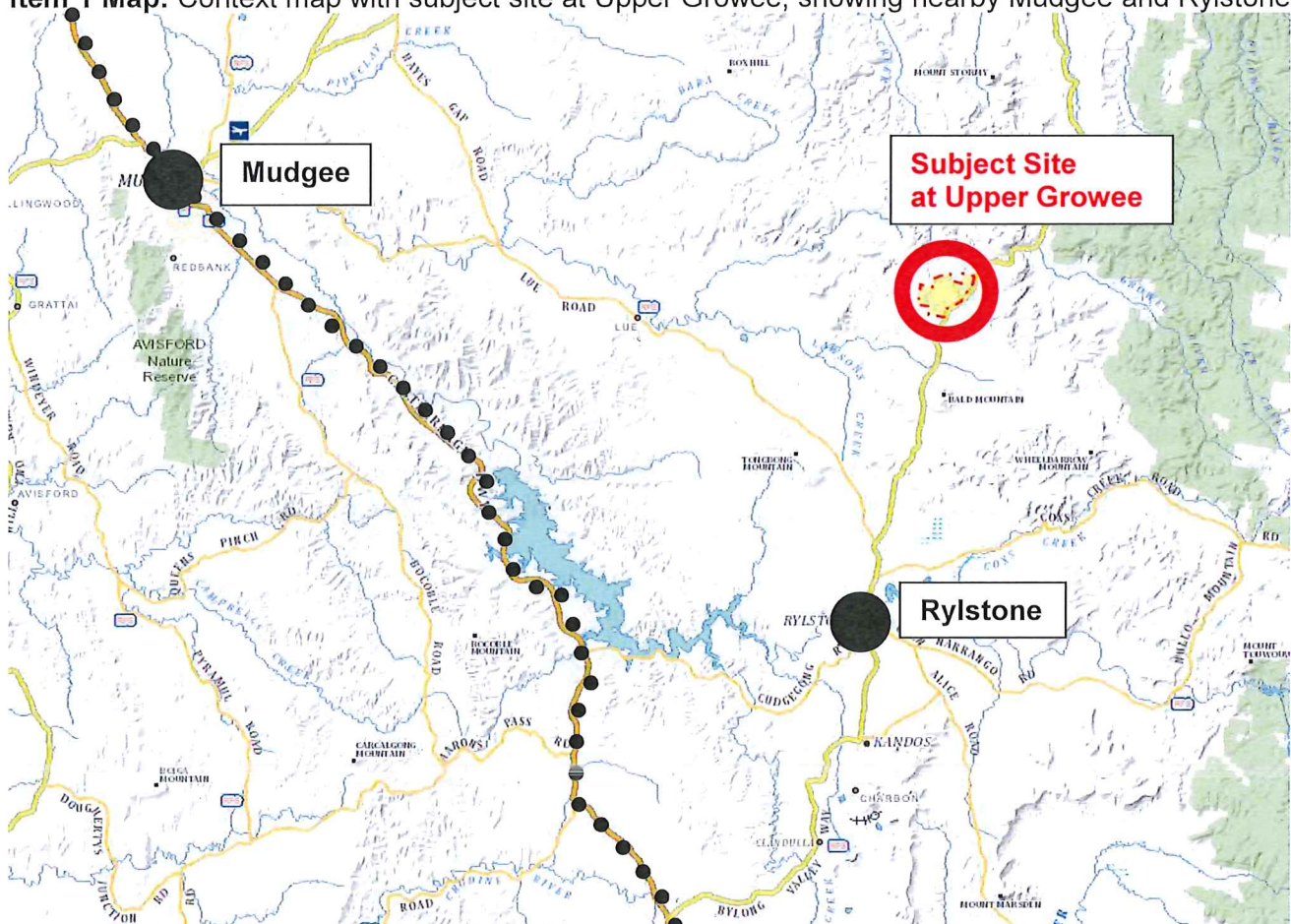
- **Item 1:** Resolve an oversight in landuse zoning and LEP mapping during the transition to the Standard Instrument Mid-Western LEP 2012, by rezoning land in Upper Growee from zone RU4 Primary Production Small Lots to R5 Large Lot Residential.
- **Item 2:** Add three (3) local heritage items and make corrections to the description of one (1) existing local heritage item under Schedule 5 of the Mid-Western LEP 2012.

Site Description

The planning proposal applies to the following subject sites:

AMENDMENT	LAND TO WHICH IT APPLIES	OBJECTIVE / OUTCOME
1. Upper Growee rezone from RU4 to R5	Lot 1 DP 730108 Lot 4 DP 1055368 Lot 1 DP 1055368 Lot 102 DP 1195109 Lot 103 DP 1195109 Lot 101 DP 1195109 Lot 4 DP 1084297 Lot 3 DP 1084297 Lot 122 DP 755448 Lot 1 DP 1084297 Lot 1 DP 1179425 Lot 2 DP 1179425	To resolve an oversight in the preparation of the mapping of the LEP 2012.
2. Additional items to be included and description of one item to be corrected in Schedule 5 Environmental Heritage of the LEP	Presbyterian Church (former) 90A Louee Street, Rylstone Lot 3 DP 1230710 Rylstone Kandos Cemetery 73 – 75A Narrango Road, Rylstone Lot 1 DP650878 Lot 1 DP1121520 Lot 1 DP668505 Lot 7023 DP1030117 Lot 1 DP724249 Lot 150 DP755789 Lot 1 DP668504 Lot 1 DP1138214 Uniting Church and Manse 3-5 Ilford Road, Rylstone Lot 1 DP 387675 Lot 2 Section 14 DP 758891 St Stephen's Anglican Church Bylong (correction of legal description) Lot 51 DP 1142227 Bylong Valley Way Bylong	In accordance with Council resolution dated 7 December 2011 these properties be included in Schedule 5 Environmental Heritage of the LEP 2012. The legal description of St Stephen's Anglican Church Bylong be corrected.

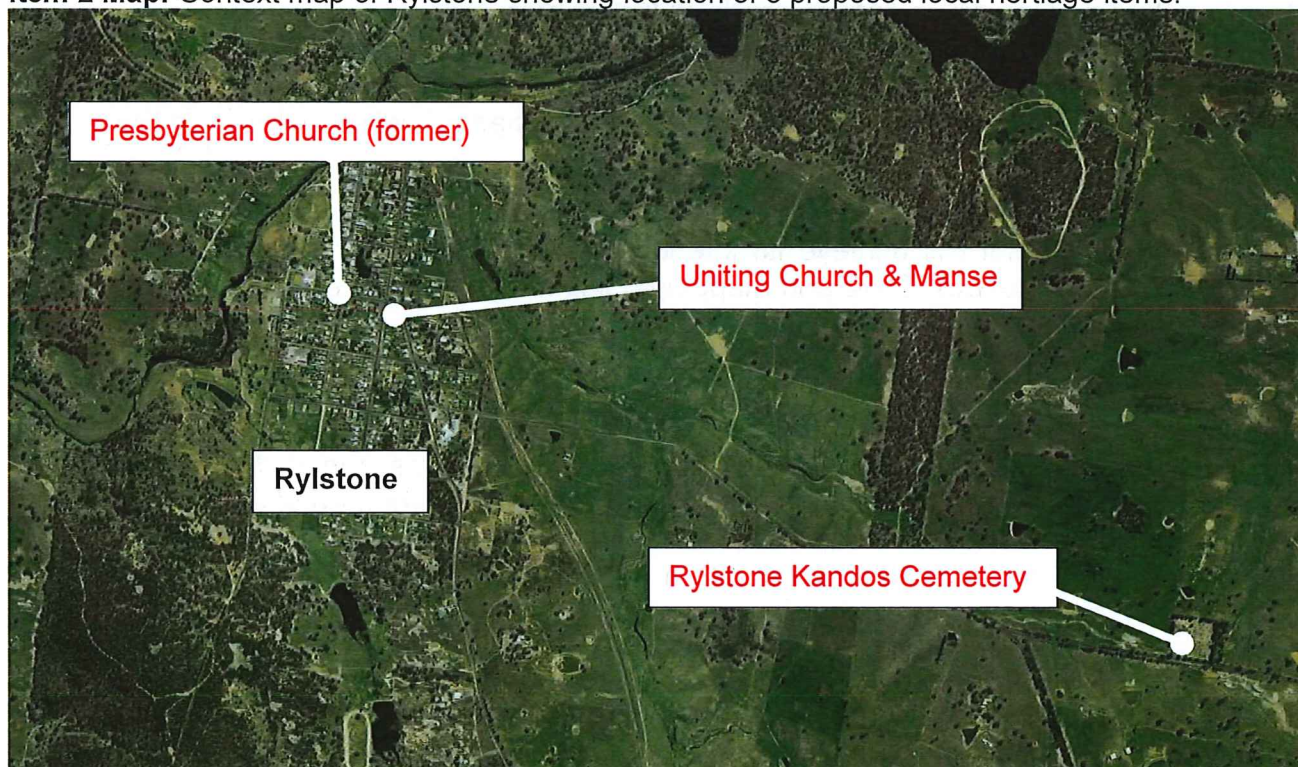
Item 1 Map: Context map with subject site at Upper Growee, showing nearby Mudgee and Rylstone



Item 1 Map: Site Map of Upper Growee, showing subject site and existing dwellings.



Item 2 Map: Context map of Rylstone showing location of 3 proposed local heritage items.



Summary of Recommendation

It is recommended that the proposal proceed with conditions given that it is considered as a minor housekeeping amendment that resolves possible land use zoning oversights during the Standard Instrument program preparation of the Mid-Western LEP 2012 and introduces three (3) new local heritage items and makes corrections to the description of one (1) existing local heritage item.

The planning proposal has been assessed as not likely to result in any unreasonable impacts on the amenity of surrounding residents.

PROPOSAL

Objectives or Intended Outcomes

The planning proposal seeks to amend the Mid-Western Local Environmental Plan (LEP) 2012 to address two (2) matters:

- **Item 1:** Resolve an oversight in landuse zoning and LEP mapping during the from the Rylstone LEP 1996 to the Mid-Western LEP 2012, by rezoning land in Upper Growee from RU4 Primary Production Small Lots to R5 Large Lot Residential.
- **Item 2:** Add three (3) local heritage items and make corrections to the description of one (1) existing local heritage item under Schedule 5 of the Mid-Western LEP 2012.

The planning proposal seeks to include the following properties as local heritage items under Schedule 5 of the MRLEP 2012:

- Presbyterian Church (former) at 90A Louee Street, Rylstone
- Rylstone Kandos Cemetery at Nerrango Road, Rylstone
- Uniting Church and Manse at Ilford Road, Rylstone.

The planning proposal also seeks to make a correction to the property description of an existing local heritage item, known as St Stephan's Anglican Church in Bylong.

Explanation of Provisions

The planning proposal will achieve its intended outcomes through an amendment to the Mid-Western Regional LEP 2012 and mapping using the following mechanisms:

Item 1: Upper Growee rezoning

The subject site at Upper Growee has an approximate area of 415ha across 12 existing lots with 5 lots containing existing dwellings. The subject site was zoned *1(c1) Rural Small Holdings – Rural Retreat* under the former Rylstone Local Environmental Plan 1996. During the transition to Standard Instrument LEPs, the site was rezoned to RU4 Primary Production Small Lots under the Mid-Western Regional LEP 2012.

The site's current zoning as RU4 Primary Production Small Lots triggers the consideration of *Clause 4.2B Dwelling houses on land in Zone RU4 Primary Production Small Lots* under the MWLEP2012. This clause requires landholders to demonstrate and satisfy the consent authority that the land will be used for intensive agriculture or the irrigation of pasture and fodder crops, when seeking development consent for a dwelling house. This has become problematic for landholders seeking development consent for a dwelling, as the land is stated to be not conducive to intensive agricultural uses as no water licences exist or are problematic.

Mid-Western Regional LEP 2012

4.2B Dwelling houses on land in Zone RU4 Primary Production Small Lots

- (1) The objective of this clause is to ensure that dwelling houses are erected only where they support the permitted agricultural use of the land.*
- (2) Development consent must not be granted for the erection of a dwelling house on land in Zone RU4 Primary Production Small Lots unless the consent authority is satisfied that:*
 - (a) the land is being used, or is intended to be used, for the purpose of intensive plant agriculture, and*
 - (b) the dwelling house will be required to support the carrying out of the intensive plant agriculture or the irrigation of pasture and fodder crops, and*
 - (c) the dwelling house is not likely to cause any land use conflict with existing agricultural uses being undertaken on neighbouring properties in the zone, and*
 - (d) services for the supply of water and electricity to support that agricultural use are available or adequate arrangements have been made to make them available when required.*

The provisions of Clause 4.2B are in place to ensure dwelling houses are erected only where they support a permitted agricultural use on land zoned RU4 Primary Production Small Lots. The subject site at Upper Growee is stated to not being used for agricultural purposes, with the properties instead characterising rural residential living.

Furthermore, the requirements set out under Clause 4.2B of the MWLEP 2012 for land zoned RU4 did not exist under the former Rylstone LEP 1996 for land zoned 1(c1) *Rural Small Holdings – Rural Retreat*. Clause 17 Subdivision for the purposes of dwellings within Zone 1(c1) of under the Rylstone LEP 1996 outlines the considerations for a dwelling and as detailed below, there is no requirement for establishing an intensive agricultural pursuit to justify subdivision for the purposes of a dwelling house on land zoned 1(c1).

Rylstone LEP 1996 (Repealed)

17 Subdivision for the purposes of dwellings within Zone No 1 (c1)

- (1) The Council shall not consent to the subdivision of land within Zone No 1 (c1) unless each allotment to be created has an area of 10 hectares or more and the Council is satisfied that each allotment will be used primarily for the purposes of a dwelling-house.*
- (2) The Council shall not grant consent to the subdivision of land as referred to in subclause (1) unless it has taken into consideration:*
 - (a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the number of the allotments proposed to be created, and*
 - (b) the desirability of providing a range and mixture of allotment sizes, and*
 - (c) whether each allotment to be created by the subdivision is suitable for the economic provision of services, and*
 - (d) whether each allotment to be created by the subdivision is suitable for on-site sewage management.*

Looking further at the objectives of Zone 1(c1) *Rural Small Holdings – Rural Retreat* under the former Rylstone LEP 2012, there are no zone objectives that relate to the establishment of an intensive agricultural pursuit. Instead, these zone objectives align more closely with the zone objectives for the SI R5 Large Lot Residential zone under the MWLEP 2012.

Rylstone LEP 1996 (Repealed)

Zone No 1 (c1) (Rural small holdings—rural retreat)

1 Objectives of zone

The objectives of this zone are:

- (a) to promote development of land identified as suitable for:*
 - (i) rural retreat or hobby farm development, or*

- (ii) a range of rural, industrial and storage purposes which are compatible with the environmental capabilities of the land and which are unlikely to adversely affect the land or development in the vicinity and,*
- (b) to enable other forms of development which are:*
 - (i) in keeping with the rural character of the locality and compatible with existing, and likely future, rural retreat holdings, and*
 - (ii) compatible with the environmental capabilities of the land and are unlikely to adversely affect the land or development in the vicinity.*

Based on the information in the planning proposal and a review of the provisions under the former Rylstone LEP 1996 and current Mid-Western Regional LEP 2012, the subject site should have been transitioned from *Zone 1(c1) Rural Small Holdings – Rural Retreat* to the R5 Large Lot Residential zone during the Standard Instrument program in 2012.

It is therefore recommended that the subject site be rezoned to R5 Large Lot Residential, given the requirement for an intensive agricultural pursuit under the RU4 zone is not compatible with the capability of the site in the absence of water licences. The subject site at Upper Growee more closely satisfies the objectives of the R5 zone, based on the nature of development and uses on existing properties. Lastly, the site's former zoning as *1(c1) Rural Small Holdings – Rural Retreat* under the former Rylstone LEP 2012 did not require establishment of intensive agricultural pursuits to justify a dwelling and its zone objectives more closely aligns with the Standard Instrument's R5 Large Lot Residential zone. It is Therefore it is recommended that the subject site be rezoned to R5 Large Lot Residential.

It is noted that the applicable Minimum Lot Size (MLS) is 12ha and this is not proposed to be amended.

In 2011 the Department issued concurrence to a SEPP 1 development standard variation on zone 1(a) General Rural land (Lot 100 DP 1038561) adjoining the subject land.

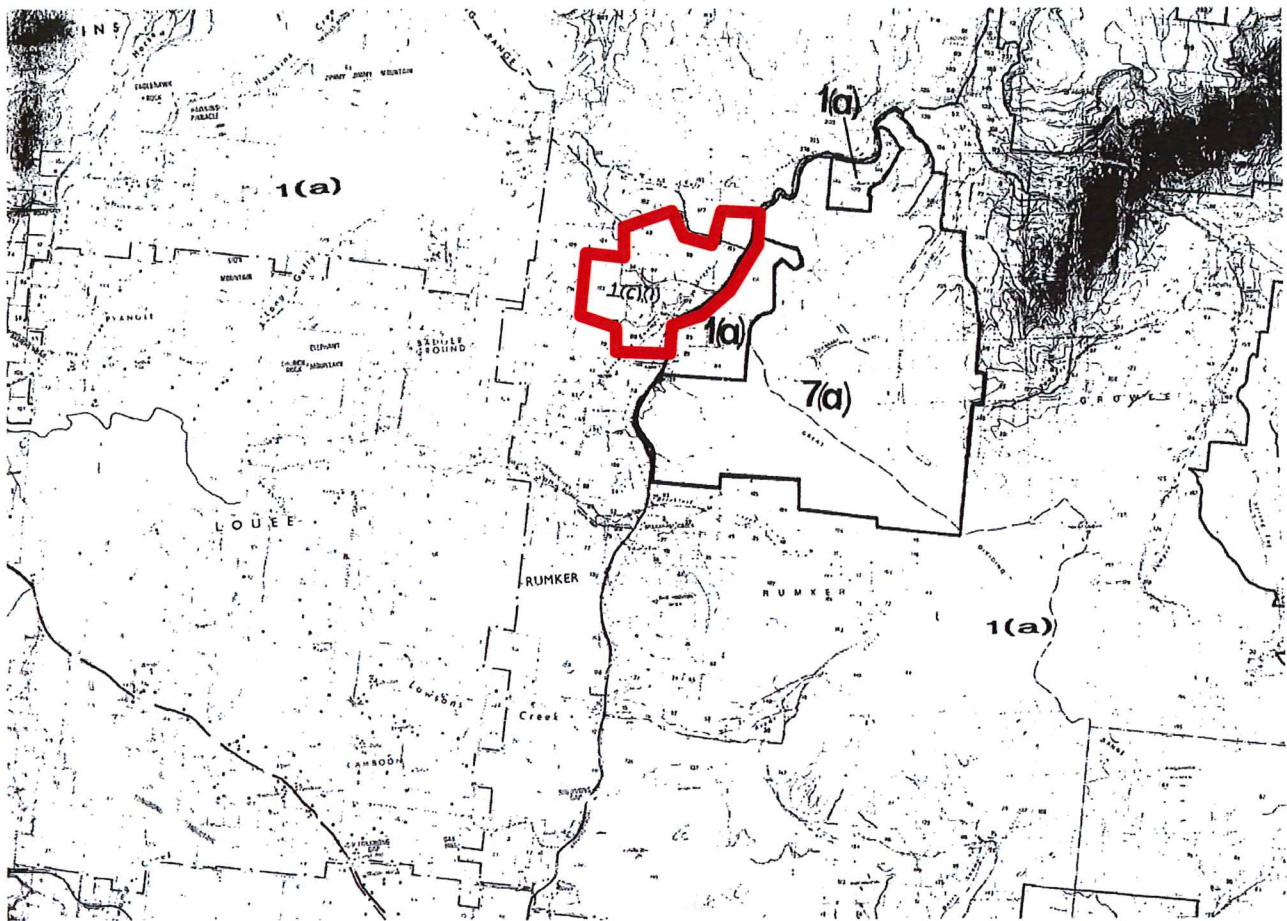


Figure 1: Excerpt from the Landuse Zone Map under the former Rylstone LEP 1996, clearly identifying the subject site as Zone 1(c)(1).

Item 2: New local heritage items under Schedule 5 Environmental heritage

The planning proposal also seeks to include three (3) additional local heritage items and make a correction to the description of one (1) existing local heritage item under Schedule 5 Environmental heritage in Mid-Western Regional LEP 2012. These housekeeping amendments are detailed below:

AMENDMENT	LAND TO WHICH IT APPLIES	OBJECTIVE/OUTCOME
ADDITIONAL ITEMS TO BE INCLUDED IN SCHEDULE 5 AND DESCRIPTION OF ONE ITEM TO BE CORRECTED	Presbyterian Church (former) 90A Louee Street, Rylstone Lot 3 DP 1230710	In accordance with Council resolution dated 7 December 2011 these properties be included in Schedule 5.
	Rylstone Kandos Cemetery 73 – 75A Narrango Road, Rylstone Lot 1 DP650678 Lot 1 DP1121520 Lot 1 DP668505 Lot 7023 DP1030117 Lot 1 DP724249 Lot 150 DP755789 Lot 1 DP668504 Lot 1 DP1138214	The legal description of St Stephen's Anglican Church Bylong be corrected.
	Uniting Church and Manse 3-5 Ilford Road, Rylstone Lot 1 DP 387675 Lot 2 Section 14 DP 758891 St Stephen's Anglican Church Bylong Lot 51 DP 1142227 Bylong Valley Way Bylong	

Council has proposed to include the abovementioned items, subject to landowner's consent and the preparation of a heritage Statement of Significance. It is recommended that the

Statement of Significance be prepared and exhibited through the community and agency consultation process.

The proposed addition of these local heritage items and the minor correction of an existing property description is supported. This item is consistent with section 117 Direction 2.3 Heritage Conservation. The proposal is recommended to proceed to Gateway determination.

Mapping

The planning proposal includes adequate mapping for the purposes of community consultation.

To achieve the intended outcomes of the planning proposal, the following LEP maps are required to be amended:

- Land Zoning Map Sheet LZN_009 (Item 1: Upper Growee site rezoning)
- Heritage Map Sheet HER_009A (Item 2: Proposed local heritage item – Presbyterian Church; Uniting Church and Manse)
- Heritage Map Sheet HER_009 (Item 2: Proposed local heritage item – Rylstone Kandos Cemetery)

The final maps can be provided at section 59 stage.

NEED FOR THE PLANNING PROPOSAL

This planning proposal is not a result of any strategic study or report. However, the planning proposal provides an appropriate response to and is consistent with the vision for Mid-Western Local Government Area given in various strategic studies, including the Central West & Orana Regional Plan 2036, the Mid-Western Regional Comprehensive Land Use Strategy 2010 and Community Plan.

The planning proposal is the best means of achieving Council's intended outcomes.

STRATEGIC ASSESSMENT

Regional / District

Central West & Orana Regional Plan 2036

The planning proposal is a routine and minor housekeeping amendment to resolve zoning matters and add/correct heritage items. It is therefore broadly consistent with the Central West & Orana Regional Plan 2036. An itemised assessment against individual directions and actions is not required.

Local

Local Strategy – Mid-Western Regional Comprehensive Land Use Strategy 2010

Council's adopted landuse strategy, known as the Mid-Western Regional Comprehensive Land Use Strategy (MCLUS) 2010, was endorsed by the Department on 6 December 2010. The planning proposal is inconsistent with the endorsed landuse strategy, as the subject site at Upper Growee is not identified for rural residential purposes.

However, given Rylstone LEP 1996 precedes the MCLUS 2010, there is adequate justification for the proposal to rezone the subject site and resolve an oversight during the Standard Instrument program to transition into the Mid-Western Regional LEP 2012.

Therefore, the inconsistency with the MCLUS 2010 is of minor significance and adequately justified in this case. Any future review of the MCLUS should reflect the rural residential (R5 Large Lot Residential) use of the subject site.

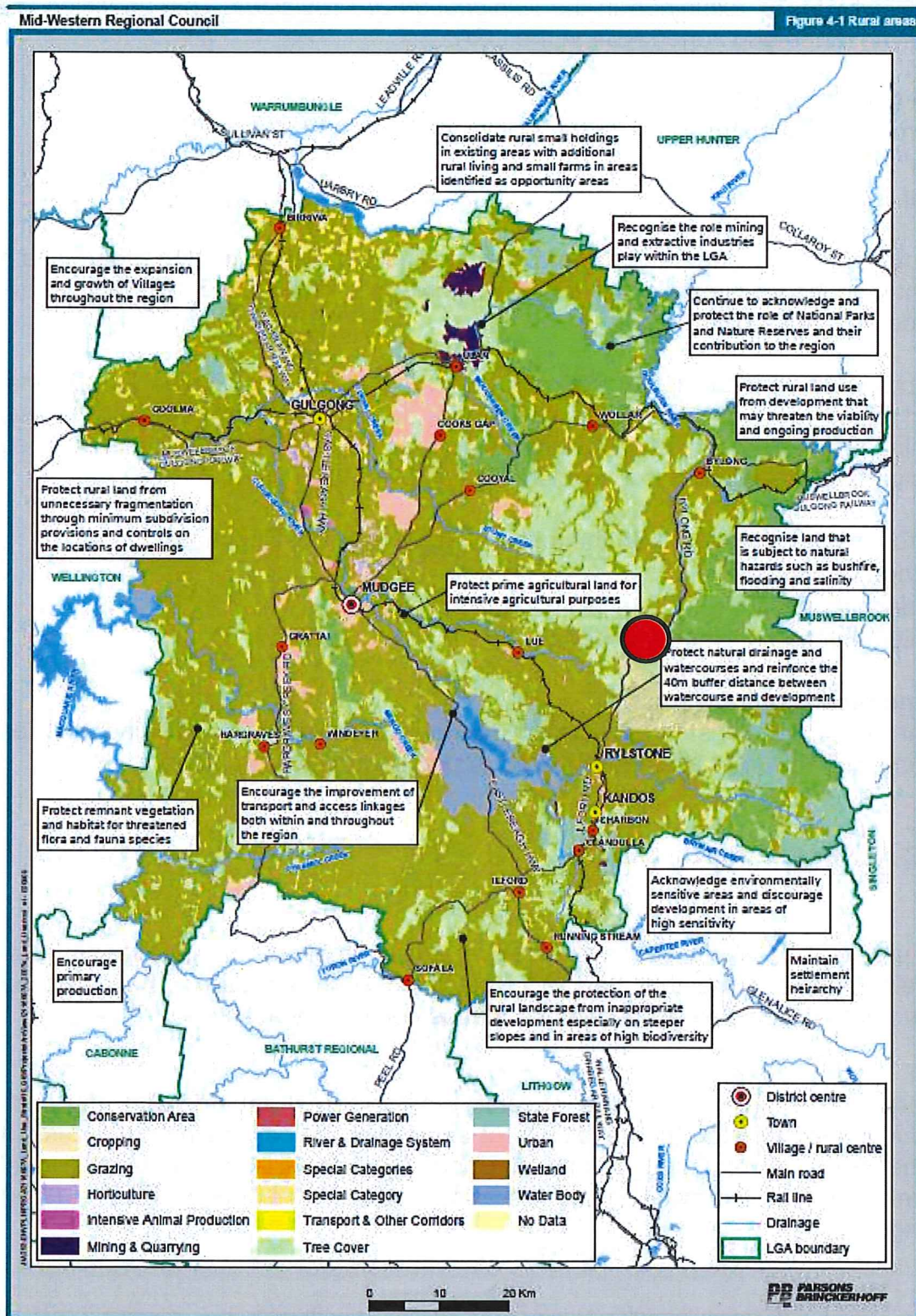


Figure 2: MCLUS 2010 mapping for rural lands

The Mid-Western Local Environmental Plan 2012

The planning proposal is consistent with the existing provisions of Mid-Western Regional LEP 2012 as the proposed rezoning to R5 Large Lot Residential will ensure that *Clause 4.2B Dwelling houses on land in Zone RU4 Primary Production Small Lots* will no longer apply to the subject site, as explained in the *Explanation of Provisions*. This provision will continue to apply to other land zoned RU4 in the LGA.

Section 117(2) Ministerial Directions

The planning proposal is inconsistent with the following relevant s117 Directions:

- 1.2 Rural Zones;
- 1.5 Rural Land.

Based on the information provided and the previous zoning and nature of land of the land it is considered that the inconsistencies are of minor significance in this case. No further work is required to address these Directions.

The planning proposal is inconsistent with the following s117 Direction – 1.3 Mining, Petroleum Production and Extractive Industries in that the proposed rezoning at Growee will prohibit mining and restrict potential development of resources. Consultation is required with Resources is required before this inconsistency can be settled.

The planning proposal is consistent with the following relevant s117 Directions:

- 2.3 Heritage Conservation;
- 3.1 Residential Zones.
- 5.10 Implementation of Regional Plans

State Environmental Planning Policies

The planning proposal is consistent with relevant State Environmental Planning Policies (SEPPs) including SEPP Rural Lands 2008 based on the information provided.

SITE SPECIFIC ASSESSMENT

Social

The planning proposal is likely to have positive social impacts, by facilitating rural residential development on land that has been identified such landuses. The proposed inclusion of new heritage items will protect and enhance community assets.

Environmental

The planning proposal is unlikely to have adverse environmental impacts and any such impacts can be mitigated through the development application and assessment process. It is noted that the proposed rezoning of land at Upper Growee will not create additional development yields for lots and dwellings as the existing Minimum Lot Size (MLS = 12ha) remains unchanged.

Economic

The planning proposal will result positive economic affects, facilitating the development of dwellings on land identified for rural residential living, near Rylstone and Mudgee. The proposed inclusion of new heritage items will protect and enhance community assets, while facilitating their ongoing protection.

Infrastructure

Existing local infrastructure is adequate in supporting any future rural residential development in the Upper Growee site.

CONSULTATION

Community

A community consultation period of 28 days is considered an appropriate amount of time to gauge the response of the community rather than the 14 days as proposed by Council.

Agencies

During the consultation period, it is recommended that Council liaise with the following agencies:

- Department of Primary Industries – Agriculture
- Office of Environment and Heritage
- NSW Rural Fire Service
- Department of Planning and Environment – Resources and Energy

TIMEFRAME

A 12 month timeframe for completion of the amendment is appropriate in this instance.

DELEGATION

It is recommended that delegation be issued in the instance given the proposal seeks to make routine and minor housekeeping amendments to the Mid-Western Regional LEP 2012.

CONCLUSION

The planning proposal has merit and should proceed subject to conditions given it will facilitate rural residential development in an area identified for such landuses. The proposal will also provide for the necessary ongoing protections of local heritage items.

RECOMMENDATION

It is recommended that the delegate of the Minister, determine that the planning proposal should proceed subject to the following conditions:

1. Council as the relevant planning authority is required to prepare a Statement of Significance for the proposed local heritage items and include this work as part of the community and agency consultation package.
2. Community consultation is required under sections 56(2)(c) and 57 of the 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 local environmental plans* (Department of Planning and Environment 2016).

3. Consultation is required with the following public authorities and/organisations under Section 56(2)(d) of the Act:

- Department of Primary Industries – Agriculture
- Office of Environment and Heritage
- Rural Fire Service
- Department of Planning and Environment – Resources and Energy.

Each public authority/organisation 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.

4. Prior to submission of the planning proposal under section 59 of the Act, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2015.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be **12 months** following the date of the Gateway determination.



18.1.18

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18.1.18

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