

Request for Initial Gateway Determination

Relevant Planning Authority Details

Mid-Western Regional Council

Contact Person: Mark Lyndon

0263 782850 mark.lyndon@midwestern.nsw.gov.au

Planning Proposal Details

Planning Proposal and Report to Council proposing a variation attached

- Allow for the construction of a single dwelling on the abovementioned parcel of land as an Additional Permitted Use in Schedule 1 on the Mid-Western Regional Local Environmental Plan 2012.

Signed for and on behalf of the Relevant Planning Authority:



Liz Densley

Manager Strategic Planning

1.1.1 Planning Proposal – Lot 74, 147 & 148 DP 756894, 542 Spring Flat Road, Spring Flat

REPORT BY THE STATUTORY/STRATEGIC PLANNER TO 16 SEPTEMBER 2015 COUNCIL MEETING

Planning Proposal - 542 Spring Flat Road
GOV400043, LAN900058

RECOMMENDATION

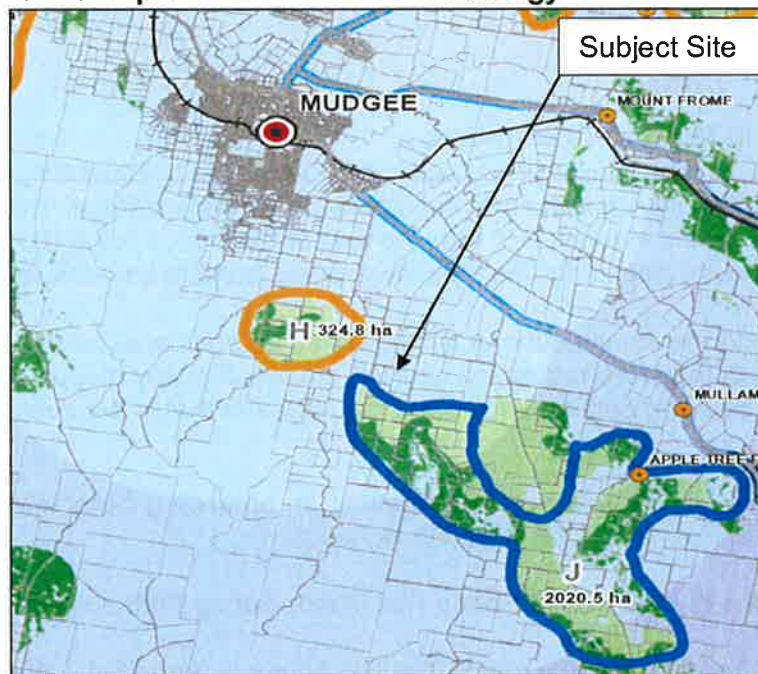
That:

1. the report by the Statutory/Strategic Planner on the Planning Proposal – Lot 74, 147 & 148 DP 756894, 542 Spring Flat Road, Spring Flat be received;
2. the Planning Proposal under Section 55 of the Environmental Planning & Assessment Act 1979 for Spring Flat Road be supported and forwarded to NSW Department of Planning & Environment for Gateway Determination.

Executive summary

The purpose of this report is to consider the preparation of an amending Local Environmental Plan (LEP) to allow for the future construction of a dwelling on Lots 74, 147 and 148 DP 756894. The applicant proposes amendments to the minimum lot size for a dwelling to facilitate this. The land is currently zoned RU1 Primary Production with a minimum lot size of 100 hectares (ha).

Figure 1 – Extract from Comprehensive Land Use Strategy

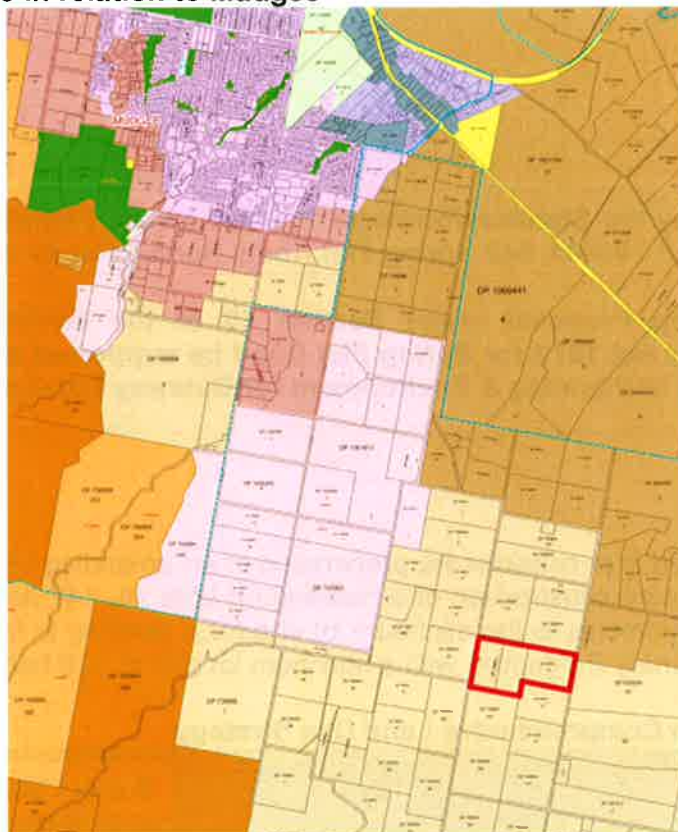


The total area of the land is approximately 25.48ha. The site is located 6.9km from the town centre, approximately 9km by road. Access is obtained from Spring Flat Road which is unsealed but considered suitable for 2wd all-weather access. The dominant land use in the vicinity of the site is extensive agriculture, being the grazing of cattle and sheep.

The land had a dwelling entitlement under a previous LEP (see attachment 2), however this was removed following the gazettal of the Mudgee LEP 1998. Development consent has previously been granted under DA163/97 for the staged construction of a dwelling, however this was never enacted and the consent has since lapsed.

Detailed report

Figure 2 – Subject Site in relation to Mudgee



1. OBJECTIVES OR INTENDED OUTCOMES

The intended outcome of the Planning Proposal can be achieved by amending the minimum lot size of the subject land to 20ha, which is the option put forward by the applicant. This, however, will result in a minimum lot size that is inconsistent with the rest of the surrounding RU1 Primary Production zone and will make it more difficult for the objectives of the zone to be achieved.

Another option is to add the construction of a dwelling as an additional permitted use in Schedule 1 of the LEP 2012. This is the preferred option as it will not result in any mapping changes and will not create any additional dwelling entitlements, other than the one that is the subject of this report.

2. EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by preparing an amending Standard Instrument LEP with the following Additional Permitted Use added to Schedule 1:

- (a) This clause applies to land at 542 Spring Flat Road, Spring Flat, being Lots 147, 148 and 174 DP 756894.
- (b) Development for the purpose of a single dwelling house is permitted with development consent subject to lots 147, 148 and 174 DP 756894 being consolidated into a single lot

3. JUSTIFICATION

(a) Need for planning proposal

There is no specific need for the Planning Proposal as the creation of one additional dwelling entitlement is considered to have very minimal impact on the overall supply of housing in the area.

(b) Relationship to strategic planning framework

The proposal is inconsistent with the Rural Lifestyle Opportunities map in figure 4-3 in the Comprehensive Land Use Strategy (CLUS) as it is located outside of the identified rural lifestyle opportunity areas. The site is located between Area H, which is identified as a short-term priority, and Area J, a long-term priority. Part 4.7 of the CLUS does, however, state that:

All “dwelling entitlements” which would have been recognised by a previous planning instrument will be retained. It also proposed to have a provision which makes it clear that lawfully created allotments on which a dwelling house could have been erected will retain that entitlement”.

This statement was regarding the Comprehensive LEP, which is now known as the LEP 2012. The subject property previously had a dwelling entitlement under clause *Special Provisions – Division 1 – Dwelling Houses* in the Mudgee Local Environmental Plan No. 28 which read:

- (3) *Notwithstanding subclause (2), a dwelling house may be erected with consent of the Council –*
- (i) *on an allotment created in accordance with clause 11 or 12;*
 - (ii) *on an existing holding that has an area of not less than 2 hectares and has all-weather vehicular access;*
 - (iii) *on an allotment that has an area of not less than 40 hectares and was in existence as a separate lot, portion or parcel of land as at 11 February 1985, and was owned separately from any adjoining or adjacent lands as at 11 February 1985; or*
 - (iv) *on an allotment or portion listed in Schedule 4;*

Schedule 4 of LEP 28 clearly lists Portion 174, Parish of Mudgee (being part of a parcel consisting of portions 147, 148 and 174) as having a dwelling entitlement.

LEP 28 was repealed and replaced with the Mudgee LEP 1998, and the dwelling entitlement not carried over into the new planning instrument. The reason for this is not clear, however it is noted in the explanatory notes for the LEP 1996 (later LEP 1998) that some provisions from previous instruments were not included in the plan either because they were no longer relevant or had been incorporated in the new provisions. The deletion of dwelling entitlements listed in Schedule 4, therefore, appears to have been an oversight.

(c) Environmental, social and economic impacts

The endorsement of the Planning Proposal is not anticipated to have any significant social or economic impacts due to its minor nature.

(d) State and Commonwealth interests

The applicants report states that there is adequate public infrastructure available to service any future dwelling on the site. Telecommunications and electricity both traverse the site. Water and sewer is not available and would need to be accommodated on site.

4. MAPPING

No mapping changes are required to facilitate this planning proposal if the dwelling entitlement is granted as a scheduled use listed in Schedule 1 of the LEP 2012. Mapping changes will be required if Council chooses to change the zoning or minimum lot size.

5. COMMUNITY CONSULTATION

No community consultation has been undertaken as yet, however, should Council support the Planning Proposal, community consultation requirements will be confirmed by the Department of Planning & Environment as part of the Gateway determination.

Financial and Operational Plan implications

Not applicable.

Community Plan implications

The strategic planning function comes under the theme 'Looking After our Community' in the Community Plan.



MARK LYNDON
STATUTORY/STRATEGIC PLANNER

LIZ DENSLEY
ACTING DIRECTOR DEVELOPMENT

11 August 2015

Attachments: (Included at the end of the business paper):

1. Planning Proposal prepared by Minespex
2. Extract from Mudgee Environs LEP 28 with relevant dwelling entitlement provisions highlighted.

APPROVED FOR SUBMISSION:



BRAD CAM
GENERAL MANAGER



MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT

COUNCIL MEETING: WEDNESDAY 16 SEPTEMBER 2015

7.2.4 PLANNING PROPOSAL – LOT 74, 147 & 148 DP 756894, 542
SPRING FLAT ROAD, SPRING FLAT

GOV400043, LAN900058

300/15

MOTION: Cavalier / Weatherley

That:

- 1. the report by the Statutory/Strategic Planner on the Planning Proposal – Lot 74, 147 & 148 DP 756894, 542 Spring Flat Road, Spring Flat be received;**
- 2. the Planning Proposal under Section 55 of the Environmental Planning & Assessment Act 1979 for Spring Flat Road be supported and forwarded to NSW Department of Planning & Environment for Gateway Determination.**

The motion was carried with Councillors voting unanimously.

15 June 2015
Our Ref: AS120_A68 Planning Proposal Shumack

The General Manager
Mid-Western Regional Council
86 Market Street
MUDGEE NSW 2850

\$ 3282-00
17 JUN 2015
R/N: 341345

Dear Sir

PLANNING PROPOSAL TO REINSTATE DWELLING ENTITLEMENT 542 SPRING FLAT ROAD, MUDGEE

Please accept this proposal on behalf of the owners, Todd Munn and Alison Shumack. Previously dwelling entitlement was associated with the land pursuant to Schedule 4 of the former Mudgee LEP No.28 (superseded by Mudgee LEP 1998). However the schedule which provided entitlement was removed from subsequent planning instruments. Investigations by Council and queries to NSW Planning have not uncovered a reason for the removal of the entitlement.

Separately, the Comprehensive Land Use Strategy (CLUS) through a constraints sieve process, identified land suitable for lifestyle development. This site is adjoining to the northern fringe of one such area identified in the CLUS at Spring Flat and is approximately 1.8km to a sealed road frontage. With review of the CLUS, this proposal is considered to be consistent with the identified opportunities for rural lifestyle development. This land is located adjacent to existing RU4 zoned land, and is on the cusp of land identified strategically for future lifestyle lots. The proposal for one dwelling is consistent with the strategic direction established in the CLUS for lifestyle lots.

In the past, Development Consent was issued by Council to previous owners for the erection of a dwelling (DA163/97) issued 15 September 1997, however the consent was never acted upon. When the schedule was removed from the planning instruments, the entitlement was removed. We are aware of the past investigations by MWRC and prev. Dept Infrastructure, Planning and Natural Resources in 2004, which also did not uncover any reason for the removal of the dwelling entitlements. Since this time the CLUS has been prepared and opportunities for lifestyle lots identified in the location. The future dwelling would be consistent with the current strategic direction adopted by Council.

At this time, the owners would seek an amendment to the LEP to recognise the previous entitlement through an amendment to the lot size map, to enable the lifestyle opportunity but keep the existing zoning to retain the objectives of the land as rural rather than residential. Retaining the existing RU1 Primary Production Zone is consistent with the current owners' intention to utilise the land.

Recently, Council has supported a similar proposal to allow for a lot size change to permit a 20ha subdivision within 200m of the subject site on Spring Flat Road. This proposal is consistent with surrounding development and the earlier dwelling approval. The subject site has an area of 25.48ha (consolidated). Though the owners are able to demonstrate the consistency with the CLUS, we are also of the opinion that there is no town planning reason why the dwelling entitlement contained in LEP 28 should not apply to the land at the present time.

Should you require further information in relation to this matter, please do not hesitate to contact myself on 0457 711 169 or the owner, Alison Shumack on 0428 149 408.

Yours faithfully

EMMA YULE
ENVIRONMENTAL TOWN PLANNER
MINESPEX PTY LTD

THE PROPOSAL

PART 1 - Objectives and intended outcomes of the proposal

1.1 Statement of Intended outcomes

It is intended to enable the dwelling entitlement to be reinstated for the land (25.48ha), 542 Spring Flat Road, Mudgee.

1.2 Details of the proposed development to be carried out – Concept Plan

The proposal involves the consolidation of the existing lots to form a parcel of 25.48ha, which with an amendment to the minimum lot size map will attract a dwelling entitlement.

The main purpose of this planning proposal is to make an amendment to the relevant LEP lot size maps, to enable a dwelling in accordance with clause 4.2A(3) being 'a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land'.

The land has frontage to Spring Flat Road and can easily access a suitable building site. The site plan provided has identified a preferred site for future dwelling taking into consideration the DCP requirements. The concept plan is included to demonstrate that the future development of the land is a feasible development concept. The sketch has included buffer areas to minor watercourses.



Figure 1: Preliminary Concept Sketch (nts)

PART 2 - Explanation of Provisions

One option to achieve the objectives and intended outcomes as described in Part 1 of this proposal, is through the subject land, with current RU1 Primary Production zoning, to have an amendment to the lot size map as relevant.

This may be achieved by the following:

- 1.** Lot Size Maps (Sheet LSZ_006E and Sheet LSZ_006) to be amended to reflect a minimum lot size of 20ha for the land.

PART 3 - Justification

This section sets out the reasoning for the proposed changes to the LEP, taking into consideration the intended outcomes and objectives outlined. The following questions are based on requirements contained in NSW Planning and Infrastructure's *A guide to preparing planning proposals* (October 2012) and address the need for the planning proposal, relationship to strategic planning framework, environmental, social and economic impacts and its effect on State and Commonwealth interests.

SECTION A - Need for the Planning Proposal

Q.1. Is the planning proposal the result of any strategic study or report?

YES.

The Comprehensive Land Use Strategy (CLUS) identifies land suitable for rural lifestyle development. The site falls at the cusp of the lifestyle opportunity area south of Mudgee (refer to Figure 4-3 of the CLUS). The rural lifestyle opportunity areas were determined through the detailed constraints and opportunities analysis undertaken as part of the CLUS. The CLUS acknowledges that these types of lots will serve a residential function as typically will have a supplementary off farm income (see page 64).

Several opportunity areas have been identified as short term rural lifestyle opportunities, namely sectors C, G, F, H and J. The subject land falls at the edge of sector J south east of Mudgee and within 450m of sector H. The minimum lot size considered in the CLUS is 12ha for these areas; whereas the subject land includes 25.48ha. The location of the subject land in relation to the opportunity areas is shown in **Figure 2** below.

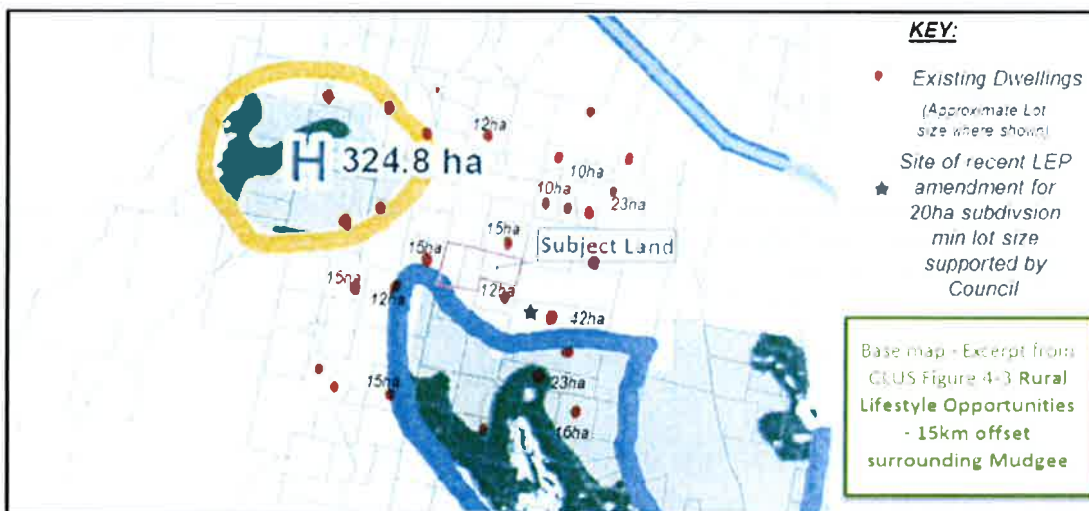


Figure 2: Location of Existing Dwellings and lot sizes

The land surrounding may be currently zoned RU1 however the 100ha minimum is not the standard for dwelling entitlement and the pattern of existing developed land supports this (refer

to plan showing existing dwellings). That is, the land is not within a coherent 100ha lot size area, rather with approved subdivisions, and existing rights the typical lot with dwelling within vicinity of the subject land is 20ha or less.

The proposed dwelling site is within close vicinity to the site of a recent lot size amendment supported by Council (and received Gateway Determination 9th December 2014, (current stage: 'Approved at Gateway and with RPA for implementation'). The land was similarly on the cusp of the lifestyle opportunity area, and is depicted in **Figure 2** also.

This proposal also has history where Council has removed the past entitlement without explanation. With the strategic direction for the area supporting the reinstatement of the entitlement; the current owners are responding to the CLUS and the recent interpretation of the document in the locality.

Q.2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

YES.

The proponent seeks that the request be considered as an LEP amendment, as no suitable provision exists in the LEP to alternatively seek reinstatement of the entitlement to adopt the strategic direction identified in the CLUS. The application of clause 4.6 *Exceptions to development standards* has been considered. However the proposal represents a 75% variation to the minimum (100ha), and MWRC staff have indicated that this is not supported as a mechanism. Citing a consistency with clause 4.6(6)(b) which states that development consent must not be granted if 'the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such as lot by a development standard'.

Though the proposal does not include subdivision as such, the minimum lot size is related to dwelling entitlement, and would be a significant variation to the adopted minimum, making the use of this clause not ideal.

It is considered that a Planning Proposal is the best means of achieving the intended outcomes. Alternative avenues under the current available LEP provisions have been considered that may achieve the outcomes of the proposal. In this case, a lot size map amendment is supported as a logical outcome to achieve the objective of the proposal.

SECTION B - Relationship to the strategic planning framework

Q.3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

In June 2014 the NSW Government released new draft regional boundaries for NSW. The Mid-Western Regional LGA falls within the 'Central West and Orana' region. Once the boundaries are finalised for each region, they will provide the basis for a new generation of strategic plans called Regional Growth Plans. The Regional Growth Plan will identify areas suitable for housing and employment expansion in the region.

Prior, in 2012, the NSW Government introduced the 'Strategic Land Use Policy' to better manage the potential land use conflicts arising from the location of our high quality agricultural land, and the mining and coal seam gas (CSG) industries.

There are no existing strategies in place for this region. There are no applicable State or Regional strategic directions for development as such, the Assessment Criteria as referred to in the 'A Guide to Preparing Planning proposals' is referred to.

a. Does the proposal have strategic merit?

YES.

The planning proposal has strategic merit:

- The development site is on the cusp of land identified as an opportunity area for lifestyle opportunities in the CLUS.
- This planning proposal presents an option to reinstate the past entitlement without change to the zone and objectives.
- The land adjoins similar lots and is consistent with the land use pattern occurring.
- The land is capable of accommodating a dwelling in accordance with DCP standards.
- The realization of the entitlement does not depend on the prior development of other land or new roads.
- The scale of the proposal will also not risk an 'over supply' of land into the market.

b. Does the proposal have site-specific merit and is it compatible with the surrounding land uses, having regard to the following:

The natural environment; the existing uses, approved uses, and likely future uses in vicinity to the proposal; the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

The rural lifestyle opportunity areas in the CLUS were determined through the detailed constraints and opportunities analysis undertaken in Part B of the Strategy. The CLUS identifies that the sieve mapping exercise identified potential 'opportunity' areas which meet specific spatial criteria. Council is to take these opportunity areas as the most suitable locations for future development based on the agreed criteria adopted by the CLUS. This specific site, falling at the fringe of lifestyle area 'J', is within 1.8km to existing sealed road. To date, Council has not rezoned land to accommodate rural lifestyle development in the area. The retention of the rural

zone as proposed will ensure consistency with surrounding development but create the lifestyle opportunity. The land is within 200m of the site of the recent LEP amendment to permit a 20ha lot size lifestyle subdivision, and is adjacent to existing RU4 Primary Production Small Lots zoned land.

The site has merit for a dwelling entitlement, considering:

- The proximity to Mudgee, road frontage and distance to sealed road.
- The proposal would not take up prime agricultural land and is compatible with the surrounding development pattern.
- The land is not constrained by significant environmental features.
- The onsite disposal of wastewater is easily accomplished.
- The land is not bushfire prone land.

The site has been used for grazing in the past and is cleared of significant native vegetation. Mapped watercourses & gullies have been located on the concept plan. The photos below depict the land.

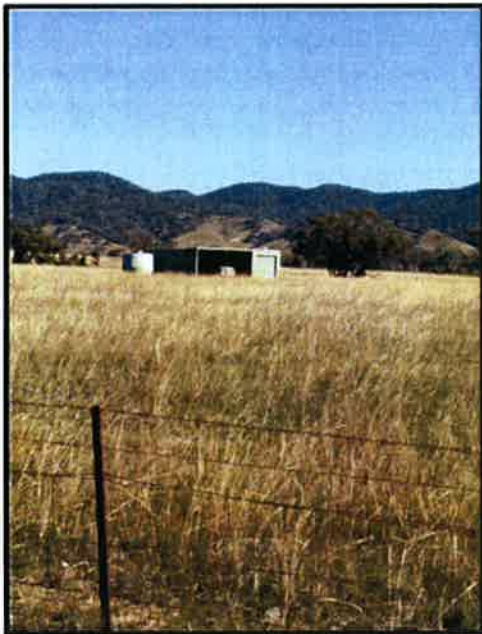


Plate 1 – View to the west from Spring Flat Road (depicts shed/carport only built structure within the land)



Plate 2 – View to north along Spring Flat Road (adequate site distance for new access)

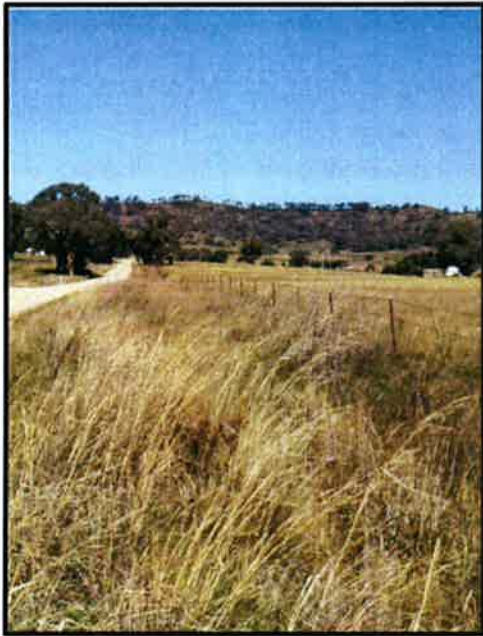


Plate 3 – View to south along Spring Flat Road (adequate site distance for an access driveway)



Plate 4: Panoramic view of land from frontage to Spring Flat Road (no trees would need to be removed)



Q.4. Is the proposal consistent with Council's Local Strategy or other local strategic plan?

YES.

The Comprehensive Land Use Strategy (CLUS) forms the current basis of Council policy and constraints assessment. The Mid-Western Regional Council adopted the CLUS in 2010, which aimed to provide clear direction for growth for the next 15-20 years. The Strategy has informed the comprehensive MWRLEP and provides a context for future land use. This planning proposal is consistent with the CLUS. The CLUS assessed suitable land for lifestyle allotments with the subject land falling at the fringe of one such area south of Mudgee (area 'J'). The CLUS encourages opportunities for housing diversity in the Mid-Western Regional LGA. The proposal is consistent with the CLUS findings. The CLUS states that *"These opportunity areas should be prioritised for rural lifestyle development and investigated for release in the short term"* (pg 67).

The Mudgee and Gulgong Urban Release Strategy (URS) provides guidance on the timing, location and type of future residential development. The proposal facilitates only one (1) dwelling entitlement and will not impact on an orderly and coordinated approach to growth. The URS does not identify a need for significant release of rural lifestyle land (12ha +), and this proposal would not seek to address any need with one entitlement only for the land proposed. The proposal does not seek an amendment to the current rural zone applying to the land and is consistent with the URS.

Further, with reference to the Mid-Western Regional Comprehensive Land Use Strategy (CLUS)(Part C-Strategy) pg. 62 Section 4.7 Subdivision and Dwelling Entitlements, the following is stated:

"All 'dwelling entitlements' which would have been recognised by a previous planning instrument will be retained. It is also proposed to have a provision which makes it clear that lawfully created allotments on which a dwelling house could have been erected will retain that entitlement. Further, Council's former policy where land could have been consolidated to achieve the minimum lot size (without consent) should be acknowledged by recognising these lots as would be the case had consent been required and granted subject to the parcel achieving the minimum lot size."

Council has historically supported the retention of existing entitlements when new LEP's are adopted, which is apparent in the CLUS, and current and superseded LEP provisions. Specifically for this land, dwelling entitlement was associated with the land pursuant to Schedule 4 of the former Mudgee LEP No.28 (superseded by Mudgee LEP 1998). However the schedule which provided entitlement was removed from subsequent planning instruments. Investigations by Council and queries to NSW Planning have not uncovered a reason for the removal of the entitlement.

Reinstatement of the entitlement would be consistent with the position taken by Council where 'dwelling entitlements' are recognised in such local legislation changes.

Q.5. Is the planning proposal consistent with applicable state environmental planning policies?

Yes. The Planning Proposal is considered to be consistent with applicable State Environmental Planning Policies as discussed below.

SEPP	Applicable/Consistency
1 – Development Standards	Not relevant to planning proposal.
4 – Development without consent	Not relevant to planning proposal.
6 - Number of Storeys	Not relevant to planning proposal.
10 - Retention of Low Cost Rental Accommodation	Not relevant to planning proposal.
14 – Coastal Wetlands	Not relevant to planning proposal.
19 – Bushland in Urban Areas	Not relevant to planning proposal.
21 – Caravan Parks	Not relevant to planning proposal.
22 – Shops and Commercial Premises	Not relevant to planning proposal.
26 – Littoral Rainforests	Not relevant to planning proposal.
29 – Western Sydney Recreation Area	Not relevant to planning proposal.
30 – Intensive Agriculture	Not relevant to planning proposal.
32 – Urban Consolidation (Redevelopment of Urban Land)	Not relevant to planning proposal.
33 – Hazardous and Offensive Development	Not relevant to planning proposal.
36 – Manufactured Home Estates	Not relevant to planning proposal.
39 – Spit Island Bird Habitat	Not relevant to planning proposal.
41 – Casino Entertainment Complex	Not relevant to planning proposal.
44 - Koala Habitat Protection	Not relevant to planning proposal.
47 – Moore Park Showground	Not relevant to planning proposal.
50 – Canal Estate Development	Not relevant to planning proposal.
52 – Farm Dams and other works in Land and Water Management Plan Areas	Not relevant to planning proposal.
53 – Metropolitan Residential Development	Not relevant to planning proposal.
55 – Remediation of Land	<i>See comments below.</i>
59 – Central Western Sydney Economic and Employment Area	Not relevant to planning proposal.
60 – Exempt and Complying Development	Not relevant to planning proposal.
62 – Sustainable Aquaculture	Not relevant to planning proposal.
64 – Advertising and Signage	Not relevant to planning proposal.
65 – Design Quality of Residential Flat Development	Not relevant to planning proposal.
70 – Affordable Housing	Not relevant to planning proposal.
71 – Coastal Protection	Not relevant to planning proposal.
BASIX 2004	Future development for housing will be required to address the provisions of BASIX.
Exempt and Complying Development Codes 2008	Not relevant to planning proposal.
Housing for Seniors or People with a Disability 2009	Delivery of accessible housing is not affected.
Infrastructure 2007	Not relevant to planning proposal.
Kosciusko National Park – Alpine Resorts 2007	Not relevant to planning proposal.
Major Development 2005	Not relevant to planning proposal.
Sydney Region Growth Centres 2006	Not relevant to planning proposal.
Mining and Petroleum Production and Extractive Industries 2007	Not relevant to planning proposal.

SEPP	Applicable/Consistency
Temporary Structures and Places of Public Entertainment 2007	Not relevant to planning proposal.
Rural Lands 2008	The proposal is consistent with the Rural Planning Principles. Council should consider whether or not the development is likely to have a significant impact on land uses that, in their opinion, are likely to be preferred and the predominant land uses in the vicinity of the development. The locality is currently characterised by the smaller holding size and rural lifestyle opportunities with agricultural pursuits. This is consistent with the proposed use.
Western Sydney Employment Area 2009	Not relevant to planning proposal.
Western Sydney Parklands 2009	Not relevant to planning proposal.
Affordable Rental Housing	Through the provision of a variety of housing choices, the housing options in Mudgee will potentially cater to a range of income levels. The development proposal is not to adversely affect rental housing.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) applies to the whole of the State of NSW and is required to be considered in a rezoning proposal under Clause 6 of SEPP 55. Given the previous use of the site (i.e. historical grazing) the likelihood of contamination indicating the land is not suitable for the proposed concept is minimal. One small shed/carport is located within the site, though no other rural structures are known for the land. Any localised surface soil contamination will require remediation before the land can be used for residential development. Should remediation be required, it is anticipated that this can occur at future development application stage. The Planning Proposal is consistent with SEPP 55.

Q.6. Is the proposal consistent with applicable Ministerial directions (s.117 directions)?

Section 117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) enables the Minister for Planning and Infrastructure to issue directions regarding the content of LEPs to the extent that the content must achieve or give effect to particular principles, aims, objectives or policies set out in those directions.

The proposal is consistent with those 117 Directions that are relevant to the site. An overview of applicable directions and compliance is included in **Table 1**.

Table 1: Section 117 Ministerial directions

Section 117 Ministerial directions	Compliance of Planning Proposal
1.1 Business and Industrial Zones	N/A

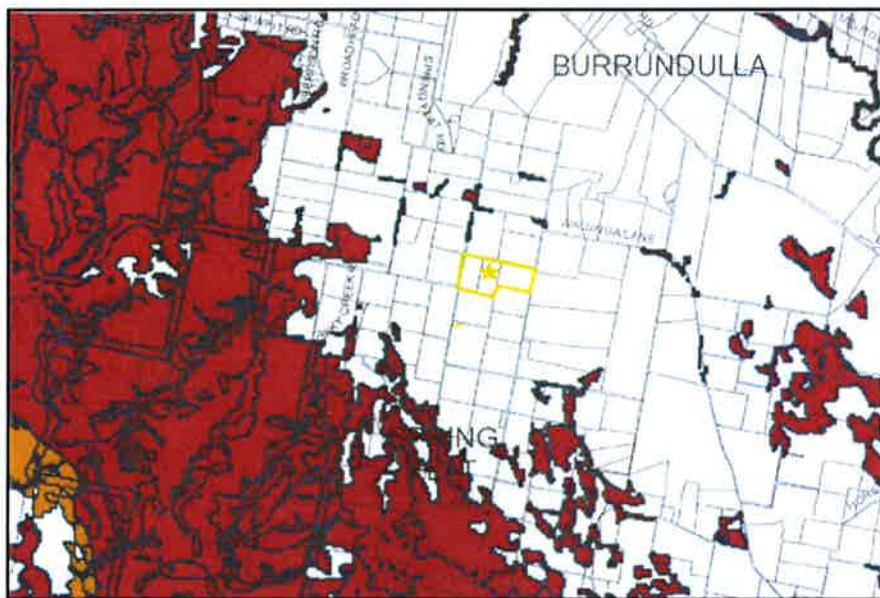
Section 117 Ministerial directions	Compliance of Planning Proposal
1.2 Rural Zones	The current zoning of the land is RU1 Primary Production. The zoning is not sought to be amended and is suitable for the proposed lot size amendment. This proposal is generally consistent with the Comprehensive Land Use Strategy in that it is partially identified as an opportunity area for large lot residential (12ha MLS) lots. The proposal creates the opportunity for one new dwelling for land that Council has in the past approved a dwelling (lapsed). Reason for previous dwelling entitlement being omitted from LEP's since MLEP 1998 has not been established. The change to land use capability of the site is minor, with no rezoning proposed to enable the entitlement.
1.3 Mining, Petroleum Production and Extractive Industries	N/A
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	The objectives of this direction are to protect the agricultural production value of rural land, and facilitate the orderly and economic development of rural lands for rural and related purposes. The proposal is not predicted to restrict rural land activities. Existing holdings in the location are small and would typically have off farm incomes associated.
2.1 Environment Protection Zones	N/A
2.2 Coastal Protection	N/A
2.3 Heritage Conservation	No items of European heritage are identified in vicinity of the subject site. The planning proposal adopts measures that facilitate the conservation of environmental heritage. Due diligence and mitigation measures are to be followed that will ensure the protection of any unknown Aboriginal heritage items occurring within vicinity of the future development lands. An AHIMS Search has been undertaken and attached to this proposal.
2.4 Recreation Vehicle Areas	N/A
3.1 Residential Zones	<i>The planning proposal is consistent with the objective: '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>
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	The planning proposal is consistent with this Direction, and the capacity for any future dwelling to accommodate small businesses will not be hindered.
3.4 Integrating Land Use and Transport	N/A
3.5 Development Near Licensed Aerodromes	N/A
3.6 Shooting Ranges	N/A

Section 117 Ministerial directions		Compliance of Planning Proposal
4.1	Acid Sulfate Soils	N/A
4.2	Mine Subsidence and Unstable Land	N/A
4.3	Flood Prone Land	N/A
4.4	Planning for Bushfire Protection	Mid-Western Regional LGA has a bushfire prone land map prepared under s146 of the <i>Environmental Planning and Assessment Act 1979</i> . The planning proposal is not affected by the mapped bushfire prone land.
5.1	Implementation of Regional Strategies	N/A
5.2	Sydney Drinking Water Catchment	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.8	Second Sydney Airport: Badgerys Creek	N/A
6.1	Approval and Referral Requirements	This direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. The planning proposal does not include LEP provisions requiring concurrence, consultation or referral.
6.2	Reserving Land for Public Purposes	N/A
6.3	Site Specific Provisions	N/A
7.1	Implementation of the Metropolitan Plan for Sydney 2036	N/A

SECTION C - Environmental, Social and Economic Impact

Q.7. 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?

The map below depicts the site in regard to the MWR LEP 2012 Sensitivity Biodiversity mapping. The land has no constraint due to biodiversity with the majority of the land historically cleared for grazing purposes. The nearest mapped land occurs within the road reserve. The planning proposal is not likely to cause any impact on critical habitat or threatened species, populations or ecological communities. Site specific native flora and fauna survey is not warranted.



(Excerpt MWR LEP 2012 – Sensitivity Biodiversity Map (sheet BIO_006))

Q.8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

With reference to *A Guide to Preparing Planning Proposals*, technical studies to address an identified issue should be undertaken following the initial Gateway determination. Such studies together with community and public authority consultation can explore the mitigation of any potential impacts.

The planning proposal constraints assessment has not identified any specific technical assessment that would be required.

Heritage

Heritage aspects relevant to the site have been considered. **Appendix B** provides the AHIMS search results carried out for the locality. With a buffer of 1km, 0 recorded items are known for the locality. However the area does have mapped watercourses that may indicate potential for heritage items. Further consideration of the likelihood for occurrence of Aboriginal heritage and due diligence assessment processes will be able to be carried out in the future at DA stage. The occurrence of heritage would be able to be managed in the future and the development impacts assessed as a DA was prepared.

Q.9. How has the planning proposal adequately addressed any social and economic effects?

In the past, Development Consent was issued by Council to the previous owners for the erection of a dwelling (DA163/97) issued 15 September 1997, however the consent was never acted upon. When the schedule was removed from the planning instruments, the entitlement was removed. Any social and economic impacts are expected to be minimal with the proposal requesting the reinstatement of the one (1) entitlement for existing parcels.

1.3 SECTION D - State and Commonwealth interests

Q.10. Is there adequate public infrastructure for the planning proposal?

Infrastructure is available to support the dwelling entitlement generated by the proposal. The site has current electricity and telecommunication services traversing the land within vicinity to a building site that would be accessed. Connection to public infrastructure will require consultation with appropriate public authorities at the design stage.

Q.11. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the Planning proposal?

N/A.

PART 4 - Mapping

MWRC has a SI LEP in force and mapping should be carried out consistently with the requirements of the Standard technical requirements for LEP maps. The land subject to the planning proposal is included within Land Zoning Maps – Sheet LZN_006 and Sheet LZN_006E which is depicted in **Figure 3 and Figure 4**. The land is currently zoned RU1 Primary Production, which is consistent with the intended use of the land. The owners' intentions for the land would be to build a dwelling while continuing to run cattle.

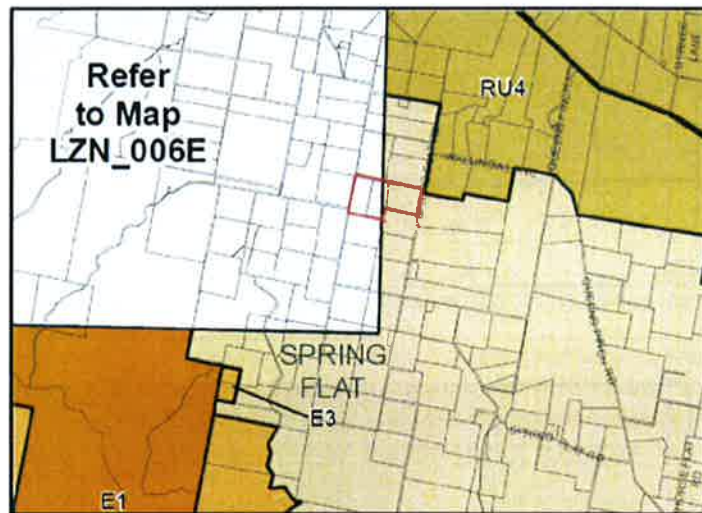


Figure 3: No Proposed change to zoning map (excerpt Land Zoning Map - Sheet LZN_006)



Figure 4: No Proposed change to zoning map (excerpt Land Zoning Map – Sheet LZN_006E)

The corresponding lot size map is proposed to be amended to allow the minimum 20ha lot size proposed.

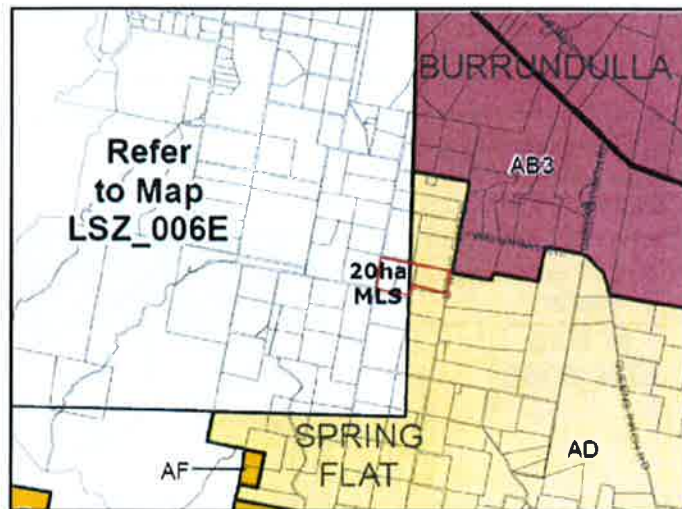


Figure 5: Excerpt Lot Size map (Sheet LSZ_006) showing location of proposed 20ha lot size amendment

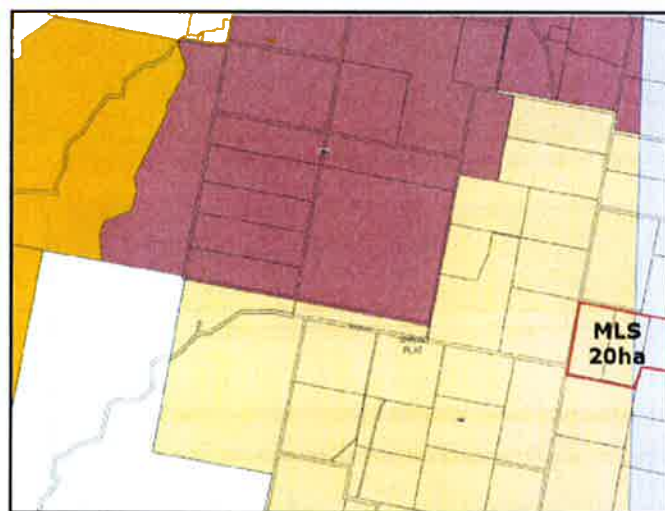


Figure 6: Excerpt Lot Size map (Sheet LSZ_006E) showing location of proposed 20ha lot size amendment

PART 5 - Community Consultation

Community consultation for the Planning Proposal would be undertaken in accordance with the consultation requirements set out in *A guide to preparing local environmental plans* (DoP 2009). The consultation requirements for this Planning Proposal are expected to be confirmed by the Department of Planning and Infrastructure (DP&I) at the gateway determination.

PART 6 – Project Timeline

This will be prepared with MWRC if supported.

CONCLUSION

This Planning Proposal relates to an amendment to *Mid-Western Regional Local Environmental Plan 2012* for the relevant Lot Size Map to that part of Lot 147, 148 and 174 DP756894, Spring Flat Road, Mudgee. The aim of this report has been to describe the strategic merit and site suitability for the proposed amendment to the lot size map to accommodate one (1) dwelling entitlement for the site.

The planning proposal has highlighted the history regarding the subject land with regard to past entitlement. Context and consistency of the proposal in relation to the adopted local strategies demonstrates the merit of the proposal. Consistency with existing rural zoning is inherent with the proposal to retain the existing land use zone. The feasibility of a suitable building site within the land has been demonstrated, and can create a lifestyle opportunity without hindering existing land uses.

Overall it is considered that the planning proposal has strategic merit:

- The development site is on the cusp of land identified as an opportunity area for lifestyle opportunities in the CLUS.
- This planning proposal presents an option to reinstate the past entitlement without change to the zone and objectives.
- The land adjoins similar sized developed lots and is consistent with the land use pattern occurring.
- The land is capable of accommodating a dwelling in accordance with DCP standards.
- The realization of the entitlement does not depend on the prior development of other land or new roads.
- The scale of the proposal will also not risk an 'over supply' of land into the market.

The strategic direction for the area supports the reinstatement of the entitlement. The current owners are responding to the CLUS and the recent interpretation of the document in the locality. Overall, the planning proposal has made consideration of what style of lifestyle the 20ha lot is associated with, and presents land which is ideal for this type of development in the context of the surrounding land use and adopted local strategies.

Appendix A – AHIMS Search

AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : Shumack 1 km

Client Service ID : 173178

Minespex Pty Ltd
Units 1 and 2 73 Market Street
Mudgee New South Wales 2850
Attention: Emma Yule
Email: emma.yule@minespex.com.au

Date: 14 May 2015

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 147, DP:DP756894 with a Buffer of 1000 meters, conducted by Emma Yule on 14 May 2015.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

<input type="checkbox"/>	Aboriginal sites are recorded in or near the above location.
<input type="checkbox"/>	Aboriginal places have been declared in or near the above location. *

(5) In order to assist it to determine an application for consent to the subdivision of land to which this clause applies, the Council shall refer the application to the Department of Conservation and Land Management and may take into account any comments that that Department may make in relation to the application.

(6) The Council shall not consent to the subdivision of land shown by scarlet hatching on the map.

Subdivision of land within Zone No. 2(c)

15. The Council shall not consent to the subdivision of land within Zone No. 2(c) unless each allotment to be created by the subdivision has an area of not less than 600 square metres and the Council is satisfied that the ratio of depth to frontage of each such allotment is adequate having regard to the purpose for which the allotment is (in the opinion of the Council) intended to be used.

Subdivision of land within Zone No. 4(a)

16. The Council shall not consent to the subdivision of land within Zone No. 4(a) unless each allotment to be created by the subdivision has an area of not less than 2,000 square metres and the Council is satisfied that the ratio of depth to frontage of each such allotment is adequate having regard to the purpose for which the allotment is (in the opinion of the Council) intended to be used.

Division 2 - Dwelling-houses

Dwelling-houses within Zones Nos. 1(a), 1(a1), 1(c1), 1(c2), 2(c) and 7(b)

17. (1) This clause applies to land within Zone No. 1(a), 1(a1), 1(c1), 1(c2), 2(c) or 7(b).

(2) A dwelling-house shall not be erected -

- (a) on vacant land within Zone No. 1(a) or 7(b) - unless the land has an area of not less than 100 hectares;
- (b) on vacant land within Zone No. 1(a1) - unless the land has an area of not less than 20 hectares, and the dwelling-house is ancillary to the agricultural use of the land;

- (c) on vacant land within Zone No. 1(c1) - unless the land has an area of not less than 4 hectares;
- (d) on vacant land within Zone No. 1(c2) - unless the land has an area of not less than one hectare; or
- (e) on vacant land within Zone No. 2(c) - unless the land has an area of not less than 600 square metres.

(3) Notwithstanding subclause (2), a dwelling-house may be erected with the consent of the Council -

- (a) on vacant land within Zone No. 1(a) or 1(a1) -
 - (i) on an allotment created in accordance with clause 11 or 12;
 - (ii) on an existing holding that has an area of not less than 2 hectares and has all-weather vehicular access;
 - (iii) on an allotment that has an area of not less than 40 hectares and was in existence as a separate lot, portion or parcel of land as at 11 February 1985, and was owned separately from any adjoining or adjacent lands as at 11 February 1985; or
 - ~~(iv) on an allotment or portion listed in Schedule 4;~~
- (b) on vacant land within Zone No. 1(c1) - on an existing holding that has an area of not less than 2 hectares and that has all-weather vehicular access;
- (c) on vacant land within Zone No. 1(c2) -
 - (i) on an allotment created in accordance with clause 14; or
 - (ii) on an existing holding that has an area of not less than 4,000 square metres and that has all-weather vehicular access;
- (d) on vacant land within Zone No. 7(b) on an existing holding that has an area of not less than 2 hectares and that has all-weather vehicular access;
- (e) on vacant land within Zone No. 1(a), 1(a1) or 1(c1) - if the dwelling-house is ancillary to a purpose for which development may be carried out on the land only with the consent of the Council; or
- (f) on any vacant allotment which was created by a subdivision approved by the Council on or after 24 November 1967, if the Council is satisfied that the

SCHEDULE 2

Art production
 Designing
 Handcraft making
 Photography

Cl. 6(1))
 Pottery
 Sculpture
 Weaving

SCHEDULE 3

(Cl. 6(1))

HERITAGE ITEMS

1. Burrundulla Station and Homes - Parish of Mudgee - Portion 182.
2. Gawthorne Cottage - Parish of Bumberra - Portion 42
3. Oakfields Homestead - Parish of Bumberra - Portion 80
4. Loneragan Homestead (Putta Bucca) - Parish of Bumberra - Lot 23, Putta Bucca Estate
5. Menah Homestead - Parish of Munna - Portion 55
6. Wallinga Homestead - Parish of Mudgee - Lot 11, D.P.581380
7. Roth Homestead - Parish of Bumberra - Lot 15, D.P.2858
8. Wilgowra Homestead - Parish of Bumberra - Portion 56

SCHEDULE 4

Portion 74, Parish of Bumberra
 Portion 79, Parish of Bumberra
 Portion 102, Parish of Bumberra
 Portion 149, Parish of Bumberra
 Portion 150, Parish of Bumberra
 Portion 157, Parish of Bumberra (being part of a parcel consisting of portions 157 and 160, Parish of Bumberra)
 Portion 176, Parish of Bumberra
 Lots 1 to 17 in D.P.253326, Parish of Bumberra
 Portion 99, Parish of Mudgee
 Portion 174, Parish of Mudgee (being part of a parcel consisting of portions 147, 148 and 174, Parish of Mudgee)
 Lot 1, D.P.710206, Parish of Munna

SCHEDULE 5

(Cl. 9)

Butcher's shop
 Chemist's shop
 Confectionery shop
 Delicatessen
 Fish and chip shop
 Fruit or vegetable shop
 General store
 Grocery or health food shop
 not exceeding 500 square
 metres gross floor area
 Hairdressing salon
 Hardware store

Milk bar
 Newsagency
 Pet and produce store
 Retail liquor outlet
 Retail plant nursery
 Second hand and used goods shop
 Smallgoods and sandwich shop
 Take-away food shop
 Tobacconist's shop
 Video outlet
 Any like use appropriate to a
 neighbourhood shopping centre

