

Wednesday, 2 September 2015

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Dear Jessica,

**148 Wyoming Rd, Stubbo - rezoning to R5 Residential and amendment to minimum lot size to 12ha/lot - 148 Wyoming Rd, Stubbo**

Reference is made to your email advice to Heath Dennerley of Mid-Western Regional Council dated 28 August 2015, requesting additional information in support of the Gateway application made to The Department for the above property.

In response to your request please find our additional advice as follows:

**1. The relevant Section 117 Directions including 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 3.1 Residential Zones and 3.4 Integrating Land Use and Transport.**

**Direction 1.2 - Rural Zones**

Consideration is given to this direction whereby the proposal seeks rezoning of rural land to permit large lot residential subdivision. As stated, the objective of this direction is *to protect the agricultural production value of rural land*. In circumstances where a Planning Proposal is not consistent with this Direction and not identified for potential rezoning under the Council's Strategy, a study in support of the proposal is required *which gives justification to the objectives of this direction*.

The land has a relatively low level of agricultural production noting its use for low intensity grazing. Given its relatively low productivity and that it is recognised in the Comprehensive Land Use Strategy as suitable for large lot residential subdivision at 12ha/lot, it is submitted that the current zoning as RU1 Primary Production does not reflect its highest and best use.

Based on this, the rezoning of 12ha of the site to R5 - Large lot residential would not result in a significant loss of productive agricultural land in the region, noting the residual lot at 99.3ha will remain zoned RU1 – Primary Production so that it may be retained in its use as grazing land. Accordingly, the proposal is considered to satisfy the Planning Direction 1.2 – Rural Zones.

## **Direction 1.5 - Rural Lands**

Consideration is given to this direction which applies where *a planning proposal affects land within an existing rural zone*, and where the proposal *changes the existing minimum lot size on land within a rural zone*.

The direction requires the proposal to be consistent with the rural planning and subdivision principles listed in *State Environmental Planning Policy (Rural Lands) 2008*. Notwithstanding, a planning proposal may be inconsistent with the Direction (and the SEPP) if the proposal is justified by a strategy that identifies the land for future rezoning (that the proposal is consistent with), and the strategy has been endorsed by the Department of Planning.

In the circumstances of this Planning Proposal for rezoning the site to R5 - Large lot residential, the site is identified as part of land for such rezoning and development under the Mid-Western Regional Comprehensive Land Use Strategy ("the Strategy") dated October 2009.

In relation to the proposed development, the Strategy specifically identifies the site as "Opportunity Land". Figure 4-4 of the Strategy identifies some 379.4ha of rural land on the south side of Stubbo including the subject site as 'Area B'. Under *Section 4.8 Rural Lifestyle Landuse*, Area B is identified as a long term release area with a minimum recommended lot size of 12ha/lot.

Whilst the Strategy identifies Area B as a long term release area, the proposal is limited to rezoning a relatively small area of land at 12ha and represents a logical extension to the existing RU5 zone to the north and west where a minimum lot size of 12ha applies. As the proposal does not require any new road or road extension, it would not otherwise affect the timing for rezoning Area B.

Based upon this, the proposal is broadly consistent with the Strategy insofar that the site is recognised as suitable to support large lot residential (formerly 'rural-residential') subdivision, as proposed. Therefore as the proposal is consistent with the Strategy, it satisfies the Planning Direction 1.5 – Rural Lands.

## **Direction 2.1 Environmental Protection Zones**

The objectives of this Direction are to protect and conserve environmentally sensitive lands. In response to this Direction, the biodiversity sensitive riparian corridor which is located towards the north-eastern corner of the site is separated approximately 1km from the land identified for rezoning and will not be affected. Accordingly the proposal is consistent with this Direction.

## **Direction 3.1 Residential Zones**

The relevant objectives of this Direction are to encourage a range of housing that utilises existing infrastructure and does not increase demand for land on the urban fringe. In response to this the proposal utilises existing access from Wyoming Road and is serviced by electricity and telephone. As a large lot residential subdivision water and sewer are managed on site as per surrounding development in the R5 zone. The design of the subdivision is also consistent with neighbouring lots providing a functional form to accommodate the existing dwelling and access to this from Wyoming Road, with no amenity impacts identified to the surrounds.

### **Direction 3.4 Integrating Land Use and Transport**

The objectives of this clause is to improve access to housing, jobs and services by means of walking, cycling and public transport, with reduced car dependence. In response to this the proposal will not increase demand on car use noting that it will not facilitate any new housing, rather it will simply enable subdivision of rural land containing two existing dwellings. Based upon this the proposal is not inconsistent with this Direction.

## **2. The relevant State Environmental Planning Policies including SEPP 55 Remediation of land, SEPP (Rural Lands) 2008 and SEPP 44 Koala Habitat Protection.**

### **State Environmental Planning Policy No.55 – Remediation of Land**

Clause 6 of SEPP 55 requires consideration of any contamination of the subject land and any remediation which would be required to make it suitable for the proposed use. In response to this an inspection of the site resulted in no sources of likely contamination being identified, noting its existing use as low intensity grazing land.

Advice from the owners is that no commercial pesticide spraying has taken place on the land that they are aware of. Noting the two existing dwellings on the land, the residential use of these dwellings and the land will not change as a result of the proposal which will simply enable subdivision between the two dwellings, with no additional dwelling entitlements created. Accordingly the proposal is considered satisfactory in response to the provisions of SEPP 55.

### **State Environmental Planning Policy (Rural Lands) 2008**

Clause 8 – Rural subdivision principles is considered in the assessment of the proposal, and has the principles of minimising rural land fragmentation and land use conflict, considering existing farm holdings when considering subdivision, and constraints and opportunities for dwellings.

In response to this the proposal retains a large farm lot of 99.3ha consistent with the existing minimum lot size of 100ha. The proposal will enable creation of one 12ha lot adjoining the existing R5 zoned land with an associated 12ha minimum lot size. No constraints are identified to the proposed subdivision, and no new dwellings or dwelling entitlements will be created. Accordingly the proposal is not inconsistent with the principles of rural subdivision.

### **State Environmental Planning Policy No. 44 - Koala Habitat Protection**

The aim of this SEPP is to *encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas*. From inspection and shown in aerial imagery (see overpage) the subject land for rezoning is predominantly cleared having a long established use as low intensity grazing land, with no fauna observed on site apart from passing avian species.

Scattered eucalypt trees are noted on the subject land. By virtue of its cleared state these trees are isolated from any Woodland corridor that may provide habitat for koalas. Given that no clearing is required to accommodate the proposal and resultant subdivision, and that no new development or dwelling entitlements are proposed, no issues arise of koala habitat protection.



*Aerial view of site and surrounds, noting agricultural activities causing substantial clearing*



*View of proposed subdivision, note substantially cleared state of Lot 1 - rezoning area*

### **3. The Mudgee and Gulgong Urban Release Strategy, endorsed January 2015, particularly in respect of supply of land zone R5 Large Lot Residential surrounding Gulgong**

The *Mudgee and Gulgong Urban Release Strategy* (URS) provides Council with a framework for release of residential land in terms of its suitable location and timing. As its name implies, the Strategy applies to release of urban lands surrounding the towns of Mudgee and Gulgong. The Strategy does not consider the village areas of Rylstone, Kandos, Lue and Ulan; nor rural-residential settlement areas such as Stubbo.

The URS identifies land immediately to the north and south of Gulgong for release and rezoning to R5 large lot residential and provides recommendations on minimum lot size, however does not address the existing R5 zoned area of Stubbo noting it is some 7km north-east from Gulgong and separated from the town by farmland zoned RU1 Primary Production with a minimum lot size of 100ha.

In relation to rural and rural-residential areas, the URS identifies the *Mid-Western Regional Comprehensive Land Use Strategy ("the CLUS")* dated October 2009 as the overarching Strategy that provides the framework for planning and land use decisions across the Mid-Western LGA up until 2030. As discussed in the Planning Proposal the CLUS specifically identifies the site as "Opportunity Land". Figure 4-4 of the Strategy identifies some 379.4ha of rural land on the south side of Stubbo including the subject site as 'Area B', with a minimum recommended lot size of 12ha/lot.

Based upon this, the proposal is broadly consistent with the CLUS insofar that the site is recognised as suitable to support large lot residential (formerly 'rural-residential') subdivision, as proposed. As the CLUS is acknowledged by the URS, the proposal is therefore consistent with Council's strategic planning objectives.

#### 4. Details on community consultation and a project timeline.

| Task                                                              |               | Responsibility                         | Timeframe   | Date (approx.)                                        |
|-------------------------------------------------------------------|---------------|----------------------------------------|-------------|-------------------------------------------------------|
| Planning submission                                               | Proposal      | Barnson                                | -           | March 2015                                            |
| Review Proposal                                                   | Planning      | Mid-Western Regional Council           | -           | July 2015                                             |
| Gateway determination & review additional assessment if requested |               | Department of Planning & Environment   | 4 -6 weeks  | August - September 2015                               |
| Community consultation                                            |               | Mid-Western Regional Council           | 4 weeks     | September – October 2015                              |
| Amended Proposal (if required) and exhibition                     | Planning      | Barnson / Mid-Western Regional Council | 4 weeks     | October – November 2015                               |
| Making of amended Local Environmental Plan                        | Environmental | Department of Planning & Environment   | 6 – 8 weeks | November 2015 – January 2016 (pending any amendments) |

#### Conclusion

The additional assessment provided in this submission addresses all of the matters raised in The Department's request to Council for additional information of 28 August 2015.

Should Council or The Department seek further clarification please do not hesitate to contact me.

Yours faithfully



**Ben Rourke**  
Senior Town Planner  
BTP, MEnvLaw