

Request for Initial Gateway Determination

Instructions to Users

When forwarding a planning proposal to the Minister under section 56(1), the relevant planning authority must provide the information specified on this form. This form and the required information should be sent to your local Regional Office.

Relevant Planning Authority Details

Name of Relevant Planning Authority: **Bathurst Regional Council**

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Manager Strategic Planning**

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Planning Proposal Details - Attachments

1. **LAND INVOLVED** (If relevant - e.g. Street Address and Lot and Deposited Plan):

Attached ✓

2. **MAPS** (If applicable - electronic and hard copy)



- Location map showing the land affected by the proposed draft plan in the context of the LGA (tagged 'location map').
- Existing zoning map showing the existing zoning of the site and surrounding land and proposed zoning change for the site/s (tagged 'comparative existing/proposed zoning')

3. **PHOTOS and other visual material (if applicable)**



- Aerial photos of land affected by the Planning Proposal
- Photos of land involved and surrounding land uses

4. **COMPLETE PLANNING PROPOSAL** (electronic and hard copy)



- All matters to be addressed in a planning proposal – including Director-General's requirements for the justification of all planning proposals (other than those that solely reclassify public land) in accordance with a 'Guide to preparing a planning proposal' are completed prior to forwarding to the Regional Office in the first instance. See attached pro-forma.

.....
Director Environmental, Planning & Building Services
Signed for and on behalf of the Relevant Planning Authority
DATE: /9/09

**PLANNING PROPOSAL UNDER
SECTION 56(1)
BATHURST REGION HERITAGE**



**BATHURST
REGIONAL
COUNCIL**

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Background

The former Bathurst City Council and Evans Shire Council areas were amalgamated in 2004. An interim Local Environmental Plan, (LEP), was gazetted in 2005 to combine the former Bathurst City and Evans Shire planning controls.

Council resolved to prepare a new comprehensive LEP for the Bathurst Region. Prior to preparing the draft LEP, it completed the following:

- Bathurst Region Urban Strategy
- Bathurst Region Rural Strategy
- Bathurst Region Heritage Study

The Heritage Study was particularly important in respect of the rural and village areas of the Local Government Area, (LGA), for which little planning protection was provided to heritage sites by the former Evans Shire Council and the subsequent 2005 LEP.

The Heritage Study was adopted by Council in 2007. A new heritage item schedule and heritage conservation areas under the Comprehensive LEP have been finalised and mapped for some time now.

Progress with the Comprehensive LEP continues but is slow with a vast range of issues to be settled with the Department of Planning, (DoP).

Council remains frustrated because the implementation of the Heritage Study is being delayed by these other issues, (the study is now 2 years old). Importantly, the region's rural heritage assets continue to remain unprotected. Further delays are considered undesirable.

In order to expedite the implementation of the Heritage Study, this planning proposal has been made as there is no planning impediment to the introduction of the new heritage items and heritage conservation areas under the existing 2005 LEP. Note that the written heritage provisions of that LEP remain valid and unchanged.

Part 1 – Objectives

To amend the Bathurst Regional (Interim) LEP 2005 by:

- Removing the existing 5 heritage conservation areas and 131 heritage items from the LEP, and
- Implement instead the 10 new heritage conservation areas and 304 heritage items as recommended in the Bathurst Region Heritage Study 2007 and the Bathurst Conservation Area Review 2007.

Part 2 – Explanation of Provisions

1. Heritage Items

Remove the 131 heritage items from Schedule 5 of the LEP and insert instead the 304 heritage items listed in **Attachment 1**.

2. Heritage Conservation Areas

Remove from the LEP maps the existing heritage conservation areas at:

- Bathurst
- Hill End
- Sofala
- Wattle Flat and
- Rockley

Insert instead on the LEP maps the following new heritage conservation areas:

- a) Bathurst
- b) Kelso
- c) Evans Plains
- d) Hill End
- e) Peel
- f) Perthville
- g) Rockley
- h) Sofala
- i) Trunkey Creek
- j) Wattle Flat

Attachment 2 contains 17 heritage maps which map the 304 heritage items and the 10 new heritage conservation areas. **Attachment 3** provides aerial images of the localities for which heritage conservation areas are proposed.

Part 3 – Justification

Section A – Need for the planning Proposal

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

Yes. The proposal is a result of the following:

- Bathurst Region Heritage Study 2007
- Bathurst Conservation Area Review 2007
- Bridle Track Conservation Management Plan 2009
- Generic Rural Cemetery Conservation Management Plan 2009

As part of the above Heritage Study, Review and Conservation Management Plans, (CMPs), these documents have identified the significance of each heritage item and conservation area. From this information, statements of significance were prepared for all items and areas and appropriate curtilages were reviewed, extended, reduced or created. The heritage conservation areas and curtilages around every heritage item were mapped on the heritage maps, (**Attachment 2**), ensuring all areas that are significant are contained within the curtilages, (where in the same ownership), or heritage conservation areas.

The significance of each heritage item and conservation area was assessed in accordance with the Heritage Branch, DoP's *Criteria for Listing on the State Heritage Register*, as required by the Heritage Branch documents *Community Based Heritage Studies: A Guide* and *Local Government Heritage Guidelines*.

Ongoing updates of the State Heritage Inventory, (SHI), database following the completion of the Heritage Study and Review ensure that the significance of each heritage item and heritage conservation area has been appropriately identified and recorded.

The main recommendations of the Heritage Study and the Review are the recommended heritage items and heritage conservation areas, as referred to in Part 2 of the proposal, above. Other recommendations of the Heritage Study and Review, which have been considered in light of the preparation of the planning proposal include:

- The removal of heritage items that no longer warrant listing
- Separation of groups of buildings currently listed as individual items
- Removal of proposed heritage items where individual owners have objected to heritage listing

Other recommendations made as part of the Heritage Study and Review will either be considered as part of the Comprehensive LEP, e.g. recommended heritage clauses, or will relate to other areas of Council's administration so are not applicable to this proposal.

Attachment 4 provides a summary of the Heritage Study. This summary identifies the recommendations of the study and the implementation of the study, through this planning proposal.

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

Yes. Protection of the heritage assets by means of heritage conservation areas and heritage items under the LEP is the long held approach in NSW.

The new list provided is the result of the amalgamation of the former Evans Shire and Bathurst City Councils and subsequent strategic work to identify heritage assets.

In particular, it was identified that there is a large proportion of rural heritage assets that were not afforded adequate protection under the Interim Development Order by the former Evans Shire Council.

If the heritage items and heritage conservation areas were required to wait for the gazettal of the Comprehensive LEP, this would leave the identified items and areas unnecessarily unprotected for a continued unknown timeframe. This is not desirable as the Heritage Study was completed and adopted by Council in excess of 2 years ago.

Another method may be the consideration of Interim Heritage Orders, (IHOs). Bathurst City and Evans Shire Councils formerly had delegated authority to implement IHOs. However, it remains unclear as to whether the delegated authority has been carried over to Bathurst Regional Council. Council has asked for clarification from the Heritage Branch regarding its position but has not had a response to date.

It is understood that IHOs may only be applied to items of potential State significance. Therefore, should any item of local significance, (identified as a heritage item but not yet listed), be threatened in any way, Council, or the Heritage Branch, can not issue an IHO to protect the item under the Heritage Act 1977.

Nonetheless, the IHO process is a reactive one rather than strategic. The planning proposal therefore offers the most appropriate mechanism to protect the region's heritage assets.

The Bathurst Region contains thousands of heritage assets. The best means to afford adequate protection to these is a combination of heritage items and heritage conservation areas as proposed in this planning proposal.

3. Is there a net community benefit?

To consider whether there is a net community benefit, the private costs versus private benefits have been considered as well as community benefit versus community costs.

Private Costs

Development controls

1. Bathurst Regional (Interim) Local Environmental Plan 2005

By implementing the 10 new heritage conservation areas and 304 heritage items, all items and buildings within the heritage conservation areas will be subject to *Part 4 – Heritage Provisions* of the Bathurst Regional (Interim) Local Environmental Plan 2005, (LEP).

Proposed works, such as the demolition, alterations, structural internal changes or erecting a building on land which contains a heritage item or within a heritage conservation area will require Council's consent.

Council can not grant consent to a proposed development, unless it is of the opinion that the impact of the development on the heritage significance of the heritage item or heritage conservation area is acceptable.

For proposed development that requires consent under this clause, Council requires the preparation of a heritage impact statement to assist Council in its assessment of the impact the proposed development will have on the heritage significance of the heritage item or heritage conservation area. This statement is required to address the:

- (a) Heritage significance of the item
- (b) Impact of the proposed development
- (c) Measures proposed to conserve the significance
- (d) Any affect upon the historic subdivision pattern

For certain works Council may require the preparation of a Conservation Management Plan, (CMP), for work proposed on a heritage item or within a heritage conservation area.

Council is required to advertise applications for the proposed:

- (a) demolition of a heritage item
- (b) demolition of a building within a conservation area
- (c) prohibited uses proposed

The Bathurst Regional (Interim) LEP 2005 will therefore change the development process for those properties within heritage conservation areas or which are listed as heritage items. Council does, however, have a broad DCP for exempt development that enables a lot of activity to occur within heritage conservation areas or on a heritage item, (Note: As of 7 September 2009 Bathurst Regional Council is not subject to the SEPP (Exempt and Complying Development Codes) 2008).

2. Insurance

During the public exhibition for the Heritage Study, Council was asked whether the listing of a heritage item will have a detrimental effect upon existing insurance premiums. As a result, Council undertook a survey of a number of insurance companies to determine any potential effects.

The survey, undertaken in 2006, included 20 insurance companies and aimed to determine how many companies insured heritage items, and of those that do, determine whether heritage listing affects the premiums. It was also attempted to determine the reasons why certain insurance companies do not insure heritage items.

Out of the insurance companies surveyed, fifty percent, (50%), did insure heritage items, fifteen percent, (15%), did not insure heritage items, thirty percent, (30%), did not respond and five percent, (5%), were unable to provide an answer.

Of the fifty percent, (50%), of companies that did insure heritage items, twenty percent, (20%), of these companies stated that heritage listing will not alter insurance premiums. The other thirty percent, (30%), said that heritage listing will, or is likely to, increase insurance premiums.

From the feedback received, it is evident that some insurance companies perceive that a partial or total loss of a heritage item will require the rebuilding of the heritage item with like for like materials and building methods by Council. This is not required by Bathurst Regional Council. Council does not require a replica, with the same materials, to replace the heritage item. Therefore, the “rebuilding” of the heritage item is not required once lost.

As a result of the survey, it was apparent that not all insurance premiums will increase as a result of heritage listing. More importantly, it identified that should an insurance company increase the premiums or not insure heritage items, there are plenty of reasonable alternative for owners to shop around for companies or insurance policies that do cover heritage items.

Private Benefits

Development Controls

1. Bathurst Regional (Interim) Local Environmental Plan 2005

Clause 23(2) of the LEP allows Council to consider proposals of a minor nature that will not affect the significance of the subject item, (amongst other considerations), to be undertaken without development consent. Places that proposed works can be considered under this clause can include heritage items, places of Aboriginal significance, archaeological sites, relics or places within heritage conservation areas. Where the owner has notified Council in writing of the proposed development, Council will respond in writing informing them whether they can undertake the proposal in accordance with this clause.

This clause enables a high level of flexibility to permit work of a minor nature.

Clause 24 of the LEP enables Council to grant consent to a use that would otherwise be prohibited for a heritage item, within a conservation area or for a building that is of heritage significance providing it is satisfied that:

- (a) the retention of the building depends upon the granting of consent
- (b) the proposed development is in accordance with a CMP endorsed by Council
- (c) the granting of consent will ensure that all necessary conservation work identified in the CMP is undertaken

- (d) the proposed development will not adversely affect the heritage significance of the building or its setting
- (e) the proposed development will not adversely affect the amenity of the surrounding area

In addition, when considering a proposed development to erect a building on land associated with a heritage item or within a conservation area, Council may exclude the floor space of the existing building from its calculation, but only if it is satisfied that the conservation of the building depends on this exclusion for:

- (a) floor space ratio
- (b) number of car parking spaces on site

This provides a benefit to the landowner, particularly those whose properties are in a bad state of repair, and increases opportunities for the reuse of sites.

2. Heritage Advisory Service

Council offers the services of a Heritage Advisor to property owners, free of charge, who want advice on proposed developments, change of use and restoration and maintenance works. Funding from the Bathurst Regional Council and the Heritage Branch allows for fortnightly visits from Council's Heritage Advisor. This service is publicised to owners of heritage items, though it is available to all owners of older buildings. This service will be available to sites affected by this planning proposal.

3. Bathurst Region Heritage Fund

Bathurst Regional Council, in conjunction with the Heritage Branch, has established a Local Heritage Fund which provides modest support, (generally between \$300 to \$2,000), on a dollar for dollar grant basis for private projects of restoration or conservation. Applications are encouraged for works on old buildings regardless of whether they are listed on the State Heritage Register or the LEP. However, priority is given to heritage items. Annual funding for the heritage fund consists of \$37,500. Priority will therefore be given to sites affected by this planning proposal.

4. Heritage Trades, Services & Supplies Directory

Council has compiled a directory to assist home owners of older buildings to locate relevant trades people, services and supplies for carrying out restoration and maintenance work on their properties.

This directory is divided into three sections, including:

- Contacts within the Bathurst Region
- Heritage Organisations and Websites within NSW and Australia

- Directory – Trades, Services and Supplies

As part of the listing of the 304 heritage items, copies of the directory will be posted to all owners of the heritage items to ensure they have qualified heritage professionals at hand to undertake a range of services on their buildings.

Conclusion

It is considered that private costs of listing are outweighed by the private benefits. Particular with respect to:

- (a) Heritage support provided by Council, e.g. heritage advisory service and heritage fund
- (b) Ability of Council to exempt minor development from the need for consent under its DCP and clause 23 of the LEP
- (c) Incentives available under the LEP to encourage reuse of sites in a bad state of repair

Community Cost

The overall cost to the community for Council to manage the region's heritage is estimated at about \$200,000 per year. This cost is incurred through Council rates and is supported through funding from the Heritage Branch. Annual costs for the Heritage Advisory Service and the Heritage Fund, with funding received from the Heritage Branch, are illustrated in the table below:

Type of incentive	Total amount (2009-10)	Heritage Branch funding	Cost to the community
Heritage Advisory Service	\$25,500	\$7,000	\$18,500
Heritage Fund	\$37,500	\$15,000	\$22,500
TOTAL COST TO THE COMMUNITY:			\$41,000

Other heritage expenses from the 2009-10 financial year are listed below:

- Heritage Seminar expenses: \$2,000
- 100 Lives of the Bathurst Region: \$7,500
- Heritage Trails: \$5,000
- Heritage brochures: \$2,000

Community Benefit

Below are the benefits to the community that are available through development controls, tourism opportunities and other areas that will result from the improved management of heritage items and heritage conservation areas listed by this planning proposal.

1. Bathurst Regional (Interim) Local Environmental Plan 2005

The LEP will allow Council to consider the potential impact that proposed developments will have upon the heritage significance of heritage items and heritage conservation areas. As a result, Council can control the limit of any potential impact and ensure that the heritage significance of the heritage items and heritage conservation areas is maintained for the community's benefit. By doing so, Council will ensure that the heritage significance is protected for future generations.

2. Is it beneficial to be listed?

Council's Senior Strategic Planner undertook a post graduate diploma in heritage conservation in 2006. The research project entitled "*Is it beneficial to be listed?*", investigated the benefits and constraints of statutory listing of heritage significant items within the Bathurst Regional Council LGA to determine if listing lead to a better physical condition of the item. The project excluded current debate concerning owner's perceptions and the economics of heritage listing.

The condition of non listed and listed heritage items were compared to see if the physical condition of items had benefited from heritage listing over a 16 to 20 year period.

The integrity of items was investigated based on the previous Bathurst Heritage Study, (1990), and the Evans Heritage Study, (1987), and the findings were compared with the integrity of the same items, as identified in the Bathurst Region Heritage Study 2007.

Fifty three items for each of the two categories were randomly selected. Each item was given a rating for its condition from the previous heritage studies and a rating for the 2007 Heritage Study. The major findings from the comparison are listed below:

- There was a higher percentage of listed items that remained substantially intact compared to non listed items
- There were slightly more listed items that were restored to near original condition than non listed items
- There was a larger percentage of non listed items that were unsympathetically altered
- There was a larger percentage of non listed items than listed items where the condition had worsened since the previous study
- There were more non listed items that had fallen down, been demolished or destroyed than listed items

The study concluded that heritage items are like any other property as the value of the item is affected by a number of factors based on the location and surrounding development. Therefore, heritage items are much the same as their non heritage listed counterparts, except with a heritage listing which can be considered as a positive or an attraction. In addition to this, listings enforce the significance of attractive precincts, which is more likely to occur within a conservation area where the visual aesthetics of an area is likely to be higher.

A finding of the literature review of the project was the concern with the general public that heritage listing imposes intolerable restraint on the individual rights of owners to enjoy unimpeded use of their property. It was pointed out that proposed development that is not considered as exempt development will require Council consent. Therefore, there are many other scenarios where consent is required for non listed properties as well.

In relation to a discussion on the Heritage Advisor's website which was undertaken as part of the project, it was concluded that heritage listing may be beneficial in certain areas and will strongly depend on the view of the owner and wider community towards heritage items. In a more general sense, development pressures in metropolitan areas add another consideration to the argument, and will add to the economic impact of heritage listing. As expected, the further away a heritage item is from a metropolitan area, (or an urban area), the less development pressures will apply.

Therefore, for a heritage significant item to be listed in the Bathurst Regional Council LGA, based on the analysis and findings of the project, suggests that the item will be better maintained and any additions and/or alterations will be more sympathetic than if the item was not listed. This study therefore implied that if heritage items are better maintained than their non listed counterparts, the community will benefit by more heritage items.

3. Heritage tourism opportunities

Council's Senior Strategic Planner carried out a research project in 2006 for his Post Graduate Diploma in Heritage Conservation. The project was titled "*Is it beneficial to be listed?*". It identified that twenty percent, (20%), of the current 131 heritage items directly, or indirectly, take advantage of heritage tourism opportunities within the Bathurst region. Therefore, with an increase to 304 heritage items, there will be a significant increase in the opportunity for owners of heritage items to take advantage of heritage listings and utilise this as part of potential heritage tourism opportunities.

The type of building and its location will influence the potential for tourism opportunities. Therefore, some owners will be able to benefit more so from tourism activities within the Bathurst Regional Council LGA than others. It is also appreciated that not all owners of heritage items will want to pursue heritage tourism opportunities. Examples of current heritage items located within the LGA that benefit from tourism include:

- Parks
- Museums
- House museums
- Educational facilities
- Railway stations
- Churches and cathedrals
- Commercial buildings
- Restaurants and cafes
- Hotels and pubs

- Bed & Breakfast facilities

4. Sustainability

Clause 24 of the LEP provides sustainable redevelopment opportunities to the landowner, particularly those whose properties are in a bad state of repair, and increases opportunities for the reuse of sites. In doing so, reuse may control or minimise ecological footprints of sites by utilizing existing building materials and building envelopes and reduces the need for additional materials and fossil fuels used to create and transport the materials and products.

Reuse also minimises the impact of development on “green sites” as it utilizes already used “brown sites”. In doing so, the incentive clause allows Council to consider proposals to maximise available land within existing sites for redevelopment.

In addition to the above, the traditional building methods and materials used tend to have more environmentally sustainable characteristics and thermal retention, e.g. double brick cavity walls tend to remain cooler than their modern counterparts and are cheaper to heat. It is also relatively easier to retrofit these buildings to bring them up to current efficiency standard. Therefore, fewer resources are required to create comfortable micro climates within buildings, reducing the dependency on air conditioning units, for example.

Conclusion

Notwithstanding the cost of funding provided by Council towards heritage management, it is clear from the arguments presented above that this planning proposal has a net community benefit, particularly with respect to:

- (a) Improving / maintaining the physical condition of buildings
- (b) Increasing tourism opportunities within the region
- (c) Increasing sustainable development opportunities within the region and the buildings and areas they may be applied to

Section B – Relationship to strategic planning framework.

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies?

No regional or sub-regional strategy applies to the Bathurst Region.

The planning proposal is consistent with the objectives and actions of the locally adopted strategies including:

- Bathurst Region Urban Strategy

- Bathurst Region Rural Strategy
- Bathurst Region Heritage strategy

All of the above documents have been provided to the Department of Planning.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The heritage related recommendations of both the Bathurst Region Urban Strategy and the Bathurst Region Rural Strategy are identified in Tables 1 and 2 below. The key recommendations and implementation, in terms of this planning proposal and the Comprehensive LEP, are outlined in these tables illustrating that the proposal is consistent with Council's Urban and Rural Strategies. **Attachment 4** provides a summary of the Planning Proposal against the recommendations of the Bathurst Region Heritage Study and the Bathurst Conservation Area Review.

**Planning Proposal under section 56(1)
Bathurst Region Heritage**

Table 1: Recommendations of the Bathurst Region Urban Strategy.

Key Strategic Objectives	Key Recommendations	Implementation
Protect the City's built, indigenous and natural heritage and history.	- Incorporate recommendations as identified by the Bathurst Conservation Area Review, Bathurst Region Heritage Study, Bathurst Conservation Area Management Strategy, (BCAMS), and Councils Heritage Advisor into the LEP. - Continue to implement and review Council's Infill Development Policy and Structural/Historical assessment Policy. - Do not permit urban expansion on or adjacent to landscapes and features identified by the Bathurst Region Heritage Study.	Within the urban area two Heritage Conservation Areas are proposed to be created. These are: - Bathurst (essentially comprising the colonial grid part of the city) - Kelso (comprising the Gilmour Street/Sydney Road/Lee Street precinct) Within the urban areas 126 heritage items are proposed. This planning proposal will ensure that the recommendations of the Urban Strategy are incorporated into the LEP. Council's Infill Development Policy and Structural/Historical assessment Policy will continue to be implemented as per the current policies.

Table 2: Recommendations of the Bathurst Region Rural Strategy.

Key Strategic Objectives	Key Recommendations	Implementation
To provide adequate statutory protection to heritage items and places and promote the conservation of heritage buildings in rural areas.	Establish heritage conservation areas over the villages/settlement areas, (or parts thereof), for Hill End, Sofala, Wattle Flat, Rockley, Trunkey Creek, Peel and Evans	Heritage Conservation Areas will be created at the following locations as part of this planning proposal for: - Hill End - Sofala - Wattle Flat

**Planning Proposal under section 56(1)
Bathurst Region Heritage**

	Plains and develop and adopt appropriate DCP standards to ensure the historic character of the villages is protected. - List various properties and places as recommended in the Bathurst Region Heritage Study on the LEP and/or on the State Heritage Register, (SHR). - Continue to apply Council's Infill Policy to new development in the villages of Hill End, Sofala, Wattle Flat, Rockley and Trunkey Creek. - Permit the subdivision of the historic homestead from rural holdings identified by the Heritage Study, (7 properties), where a CMP supports the subdivision as a means to restore the homestead and ensure a viable future use of the building. Provide a dwelling entitlement to the residual holding where it does not already exist.	- Peel - Evans Plains - Rockley - Trunkey Creek 178 of the heritage items will be created in rural and village locations. Council's Infill Policy will be applied to new development in the villages of Hill End, Sofala, Wattle Flat, Rockley and Trunkey Creek. LEP clause changes are not included in this planning proposal. They will be considered by the Comprehensive LEP.
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6. Is the planning proposal consistent with applicable state environmental planning policies?

Below are the SEPPs applicable to the Bathurst Region, which make reference to heritage items or heritage conservation areas.

SEPP No. 4 – Development without consent and Miscellaneous Complying Development

The above SEPP allows relatively simple or minor changes of land or building use and certain types of development without the need for formal development applications.

Clause 6(a) and (b) excludes alterations, additions or the demolition of buildings that are heritage items or located within heritage conservation areas. Clauses 6(2)(a) and (b) do not allow the subdivision of land containing a heritage item or within heritage conservation areas. Filming can only be carried out concerning heritage items if there will not be any permanent changes or additions to the item.

SEPP No. 15 – Rural Land-Sharing Communities

This policy makes multiple occupancy permissible, with Council consent, in rural and non-rural zones subject to a list of criteria.

Clause 9(1)(q) requires that Council must not grant consent to a rural land sharing community unless it has taken into consideration the impact of the proposed development on any heritage item, relic or site, or on their curtilages. Schedule 3 of the SEPP, *Site Analysis*, requires that any heritage items, relics and sites and their curtilages are to be shown in the site analysis as well as the design and siting of proposed buildings and their relationship to existing heritage items and the heritage significance of surrounding buildings and landscape.

SEPP No. 36 – Manufactured Home Estates

This policy helps establish well designed and properly serviced manufactured home estates in suitable locations.

Clause 9(1)(d) states that Council may grant consent pursuant to this policy providing that it is satisfied that the development will not have any adverse affects on heritage items.

SEPP No. 55 – Remediation of Land

This policy introduces state wide planning controls for the remediation of contaminated land.

Clause 9, *Remediation work: work needing consent*, is required for sites containing heritage items.

SEPP No. 64 – Advertising and Signage

This policy aims to ensure that the outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. Clause 10, *Prohibited advertisements*, prohibits the display of advertisements on land that is identified as a heritage area. Under Schedule 1: *Assessment Criteria*, *Clause 2 – Special areas*, consideration is required to be given as to whether the proposal will detract from the amenity or visual quality of any environmentally sensitive areas or heritage area.

SEPP (Housing for Seniors or People with a Disability) 2004

This policy encourages the development of high quality accommodation for the aging population and for people who have disabilities and for housing that is in keeping with the local neighbourhood.

Clause 5(4), *Relationship to other environmental planning instruments*, ensures that this policy does not affect a provision in another environmental planning instrument that relates to the demolition of a heritage item. *Part 3 Design Requirements, Clause 30: Site Analysis*, states that Council must not grant consent, unless it is satisfied that the applicant has considered the location of heritage features and items including archaeology and heritage features of the surrounding locality and landscape. *Division 2: Design Principles, Clause 33: Neighbourhood amenity and streetscape* requires that any proposed development should retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

This policy aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State. The policy establishes appropriate planning controls to encourage ecologically sustainable development.

Clause 10(2)(b): Exempt Development, does not permit the demolition of a building or structure that is a heritage item or within a heritage conservation area.

SEPP (Temporary Structures and Places of Public Entertainment) 2007

This policy provides for the erection of temporary structures and the use of places of public entertainment while protecting the public safety and local amenity.

Clause 3(b) identifies one of the aims being to encourage the protection of the environment at the location, and in the vicinity, of places of public entertainment or temporary structures by, (among other things), managing noise, parking and traffic impacts and ensuring heritage protection. *Clause 12: Matters for consideration*, requires Council to consider land identified as a heritage conservation area prior to granting consent to the erection of a temporary structure.

Clause 16: Complying Development, excludes development from being complying on land that contains a heritage item.

SEPP (Infrastructure) 2007

This policy provides a consistent planning regime for infrastructure and the provision of services across NSW, along with providing for consultation with relevant public authorities during the assessment process.

Clause 14: Consultation with councils - development with impacts on local heritage applies where development is likely to have an impact on a local heritage item or a heritage conservation area.

A public authority must not carry out development to which this clause applies unless the authority or the person has made an assessment of the proposed impact, given written notice to the heritage item of concern and taken into account any reply from the Council.

To be exempt development under *Clause 20(2) Exempt Development*, and if concerning a heritage item or within a heritage conservation area, must involve no more than minimal impact on the heritage significance of the item or area. *Clause 29: Development without consent* does not permit outdoor learning or play areas and associated awnings and covers or canopies in association with heritage items. *Clause 31A: Complying development* also does not permit outdoor learning or play areas and associated awnings and covers or canopies in association with heritage items. *Clause 39: Exempt Development* does not permit outdoor learning or play areas and associated awnings and covers or canopies in association with heritage items.

Clause 39(2) does not permit wind monitoring towers in association with heritage items. *Clause 41: Development permitted without consent*, allows construction works for electricity transmission or distribution to occur whether the subject land is in a heritage conservation area or not. Clause 41(2)(a)(ii) allows the alteration, demolition or relocation of a heritage item in relation to construction works for electricity transmission or distribution.

Clause 79: Development permitted without consent – rail infrastructure generally, can occur whether or not the subject site contains a heritage item or not. Clause 79(2)(a)(iii) includes the alteration, demolition or relocation of a heritage item. *Clause 94: Development permitted without consent – general*, permits construction works, whether or not within a heritage conservation area. *Clause 114(4): Development permitted without consent* permits subscriber connections to occur on land where there is a heritage item or in a heritage conservation area.

SEPP (Affordable Rental Hosing) 2009

This policy aims to better encourage home owners, social housing providers and developers to invest and create new affordable rental housing to meet the needs of the growing population and existing residents.

Clause 11: Development to which Division applies, (b)(ii), does not permit residential flat buildings on land containing a heritage item. *Clause 23: Complying Development (2)* does not permit a secondary dwelling on land that contains a heritage item. *Clause 40: Development may be carried out without consent* does not apply to land containing heritage items under subclause (1)(b)(i) or (ii) within a heritage conservation area.

Conclusion

It is considered that this planning proposal is not inconsistent with any of the abovementioned SEPPs. It simply adds to the heritage conservation areas and heritage items listed that may or may not be affected by those SEPPs.

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

The objective of *Direction 2.3: Heritage Conservation*, is “...that this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance”.

This direction applies to Councils when preparing a draft LEP. In summary, the direction requires a draft LEP to contain provisions that facilitate the conservation of:

- (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area
- (b) Aboriginal objects or places protected under the National Parks and Wildlife Act 1974
- (c) Aboriginal areas, objects, places or landscapes identified by an Aboriginal survey which identifies the item as being of heritage significance to Aboriginal culture and people.

The planning proposal will ensure that items identified as having heritage significance, currently not protected, will be protected by the LEP either by being listed as a heritage item or being located within a heritage conservation area.

In relation to points (b) and (c) above, no heritage items will be listed purely on the basis of being of Aboriginal heritage significance. It is pointed out that some places, which are of European significance, are also of Aboriginal significance. However, out of respect for the Aboriginal community, these sites will not be identified as such in Schedule 5 of the LEP, so that they do not become public knowledge.

There are provisions within the current LEP which will allow for the protection of items and places of Aboriginal significance, which are not listed as heritage items or located within heritage conservation areas.

It should be noted that the Central West Catchment Management Authority, (CWCMA), is undertaking a study of Aboriginal heritage significance within the Bathurst and Orange areas. As a result of this study, it is anticipated in the future that should the Aboriginal community

request that certain Aboriginal sites, places or items be protected by the LEP, that the LEP will be further amended to include these items. The Comprehensive LEP will provide for such an opportunity.

Section C – Environmental, social and economic impact.

8. 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?

No. The planning proposal is aimed at protecting the existing natural and built environment.

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

There will be no adverse environmental effects as the proposal will be protecting the natural and built environment. There will be positive environmental affects through the protection of the existing natural and built environment.

The planning proposal ensures that the heritage assets identified can be appropriately managed via the development application process and specifically *Part 4 Development Assessment* under the Environmental Planning & Assessment Act 1979.

10. How has the planning proposal adequately addressed the social and economic effects?

Refer to the response to Question 3, Section A. In summary, the private benefits and community benefits have ensured that social and economic effects have been considered and addressed. The private and community benefits will out way the private and community costs of the new heritage items and heritage conservation areas.

Section D – State and Commonwealth interests.

11. Is there adequate public infrastructure for the planning proposal?

The planning proposal relates only to the existing natural and built environment. No additional public infrastructure is required.

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

Council consulted with the Department of Environment, Climate Change and Water and the Heritage Branch, DoP in respect of the draft Heritage Study.

Department of Environment, Climate Change and Water, (DECCW):

- Supports the intent to conserve and manage Aboriginal heritage sites
- Supports the strategic objectives and recommended actions specific to Hill End and the provision of heritage conservation zoning and DCP standards
- Supports relevant objectives and strategic actions that manage natural heritage

The Heritage Branch did not provide any specific comments at this stage.

Council again consulted with DECCW and the Heritage Branch, under Section 62 of the Environmental Planning & Assessment Act 1979, in respect of the preparation of its Comprehensive LEP which incorporates this planning proposal.

DECCW, (refer to **attached** letter):

- Did not raise any issues or oppose the proposed list of heritage items or heritage conservation area at Hill End
- Seeks further investigation of Aboriginal Heritage
 - Comment: An Aboriginal Heritage Study is currently being undertaken by the CWCMA. Any additional sites identified for listing will be subject to subsequent planning proposals.

Heritage Branch, (refer to **attached** letter):

- Supports the use of heritage items and heritage conservation areas
- Did not raise any issues or oppose the proposed list of heritage items and heritage conservation areas

Part 4 – Community Consultation

Consultation has already been undertaken with State agencies in relation to the draft Heritage Study and draft Comprehensive LEP as outlined in Question 12, Section D, above.

Council undertook 2 stages of consultation with the community in preparation of the Heritage Study.

Stage 1: Identifying heritage items

Stage 2: Comments on the draft Heritage Study and proposed new list of heritage items and heritage conservation areas

The table below summarises the community response to the Draft Heritage Study covered in letters, (50 letters received), and phone calls received during the public exhibition period.

Community Response	No.
Provided additional information	25
Provided corrections	25
Provided additional information and corrections	17
Oppose potential listing of property	10
Congratulated Council on carrying out the Heritage Study	1
Wanted clarification on what it meant to be included in the Heritage Study	19
Wanted property included in the Heritage Study, previously not included	5
Correct information in the Heritage Study – no additional comments	18
Invited staff back to further inspect/collect additional information	6
Supported proposed listing	10
TOTAL	136

In terms of this planning proposal, further consultation with the Heritage Branch and DECCW seems unnecessary and time wasting, given the information outlined in Question 12, Section D, above.

If the DoP requires further consultation with these 2 agencies it is suggested that this occur concurrently with the community consultation given the absence of any issues previously raised by these agencies in respect of the heritage items and heritage conservation areas proposed.

In terms of community consultation the following program is proposed.

Public exhibition of the planning proposal for 28 days with notice given as follows:

- Western Advocate
- Council's website and radio ads
- All landowners of proposed heritage items
- Bathurst Branch of the National Trust
- Bathurst District Historical Society
- Village Associations where heritage conservation areas are proposed
- Heritage Branch, (DoP), and DECCW

Community meetings are not proposed as these were undertaken extensively when the Heritage Study was being prepared.

The matter of whether a public hearing should be held will be determined on consideration of submissions.

In addition to the above, Council continues to receive numerous enquires from property owners requesting clarification as to when their property will officially become a heritage item.

Part 5 – Conclusion

The planning proposal is consistent with the Bathurst Region Heritage Study 2007 and the Bathurst Conservation Area Review 2007.

Council has already carried out extensive consultation with the community in preparing the Heritage Study.

Council has already had extensive consultation with the Heritage Branch and DECCW in the preparation of the Heritage Study and for Section 62 consultation of the draft Comprehensive LEP.

Whilst the draft Comprehensive LEP is being prepared concurrently and includes the provisions of this planning proposal, Council seeks to proceed with this planning proposal as a means to introduce new heritage items and heritage conservation areas more quickly, (the Heritage Study is now 2 years old), as other issues are slowing down progress with the Comprehensive LEP.

The planning proposal will ensure that the Bathurst Region's heritage assets can be appropriately managed, particularly via the DA process.

In particular, it will ensure appropriate management of the region's rural assets that are currently **not** managed under the LEP.