



30 October 2009

Ms L Gray
Department of Planning
PO Box 58
DUBBO NSW 2830

Dear Ms Gray

Planning Proposal – Bathurst Region Heritage
(Department reference number D09/00031)

I refer to the Gateway Determination received by Council on 21 October 2009 in respect of the above matter.

The following information is provided as required by the Departments Gateway determination.

1. Proposed Heritage List

Please find **attached** the proposed heritage list with those items requested to be removed highlighted in green.

Council requests the Department confirm that the following items are those which are sought by the Department to be removed from the list.

- Item 3 – Abercrombie Caves
- Part Item 102 – Bridle Track Surrounds (note the roadway will still be listed).
- Item 110 – Copperhania Nature Reserve.
- Item 154 – Golden Gully and Archway
- Item 185 – Boundary Road Reserve
- Item 287 – Wattle Flat Heritage Lands

Please note that Council strongly objects to the removal of these items. In this regard these items were recommended for listing by the Bathurst Region Heritage Study 2007. Council notes that the Department has not previously raised a concern about listing natural environmental sites yet it has had a copy of the Heritage Study since its adoption in early 2007.

Previous referral of the proposed comprehensive LEP to both the Heritage Branch and Department of Environment, Climate Change & Water did not raise any concern in relation to these proposed listings.

The sites are highly likely to contain lands of aboriginal significance. The Department of Environment, Climate Change & Water, in previous correspondence to Council, has urged Council to provide adequate protection to sites of aboriginal significance. These sites are not currently zoned environmental protection.

Reference: JB:JM:20.00162
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Council seeks an explanation from the Department as to why these sites should now be ignored despite the recommendations of its adopted Heritage Study and previous advice Council has received from the Department of Environment, Climate Change & Water.

2. State Heritage Listed Sites and Hill End Historic Site

All state heritage listed sites, other than moveable heritage (eg School of Arts Book collection) have been included in the proposed schedule 5. These sites have been listed as being of "State" significance in the significance column. In order to clarify their listing the wording in the significance column can be changed to "State Heritage Register Listed", if this is what the Department seeks.

A review of the Hill End Heritage Conservation Area against the area of Hill End listed on the State Heritage Register indicates that both are in fact the same. The significance column should therefore remain as "State". Please advise whether the map should still be labelled to indicate its State Listing. Given that the map is an LEP map only, Council cannot understand why the State Listing needs to be shown on the map.

3. Heritage Provisions and Definitions from Standard Instrument Order.

Please find **attached** the proposed changes to the written instrument (Bathurst Regional Interim LEP 2005). These changes include:

- a. Delete existing clause 23 and 24.
- b. Insert new clause 23, being Standard Instrument Order Clause 5.10, with some additions and variations.
- c. Amendment to clause 26 to reference new clauses 23(10) and 23(11).
- d. Deletion of existing heritage definitions and insertion of Standard Instrument Order heritage definitions, (except for archeological sites and places of aboriginal significance).

In relation to (b) above, please note that Council has removed any reference to a tree in subclause (2) and (3) as Council will not be taking development applications for tree removals. The 2005 LEP and previous LEPs have not included this provision.

Note also that Council has added subclause 23(10)(f) to the Standard Instrument Order clause in order to provide better guidance on when this heritage incentive may be applied to the subdivision of land. This is considered particularly important in relation to the subdivision of the new heritage items on rural lands below the minimum lot size of 100/200 ha.

Council has also added subclause 23(11) which reinstates heritage incentives in heritage conservation areas. Council is not prepared to delete this provision from its current LEP. The provision enables Council to assess on merit the need to apply an

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incentive to any building within a Heritage conservation area to ensure its conservation. The clause has successfully been applied to the existing Bathurst Heritage Conservation Area for in excess of 20 years.

It is a major task for Council to identify all contributory buildings in the proposed conservation areas to which the clause might be applied. The table below shows the number of rate assessments and number of lots in each conservation area as an indication of how many properties/buildings are likely to be involved.

Heritage Conservation Area	Number of Rate Assessment	Number of lots
Bathurst	4015	4423
Evans Plains	7	19
Hill End	142	309
Kelso	53	59
Peel	22	36
Perthville	97	135
Rockley	94	182
Sofala	124	260
Trunkey Creek	43	76
Wattle Flat	73	137
TOTAL	4670	5636

It would be a mammoth task (and cost prohibitive) to identify buildings to which the clause should specifically apply.

Proposed clause 23(11) clearly only enables Council to apply the incentive under the following conditions:

- a) the conservation of the building is facilitated by the granting of consent, and
- b) the proposed development is in accordance with a Conservation Management Plan.

Council has extensive experience in heritage management to be able to successfully determine when this clause should be applied. It has also developed the Bathurst Conservation Area Management Strategy methodology to rate buildings to provide some objectivity as to whether a building contributes to the heritage of the region or not. Identification of specific sites would simply be a waste of Council's time and resources.

In relation to (c) above, Council wishes to retain the existing provision requiring public exhibition of certain heritage development applications. Clause 5.10 of the Standard Instrument Order does not provide for this.

In relation to (d) above, Council is concerned about the appropriateness of the Standard Instrument definitions for "archaeological site" and "a place of Aboriginal heritage significance" as proposed schedule 5 does not include all possible sites. In

this regard Council intends to do an archaeological study in the near future which would likely see a future amendment to the LEP.

Council is awaiting a study from the Central West CMA regarding aboriginal sites. Nonetheless Council is concerned about the appropriateness of identifying aboriginal sites on its Schedule and heritage map.

Given the lack of identification of these sites the existing definitions under the 2005 LEP for archaeological site and place of Aboriginal heritage significance have been retained otherwise these sites will gain no protection under the amended LEP.

Council notes that as a result of the adoption of the Standard Instrument definitions, the 2005 LEP maps will now be amended to delete the existing heritage items and heritage conservation areas and that a new heritage map will be included as part of the LEP to map the new items and areas.

4. Large lot heritage items

Council has only mapped and described that part of the land on large allotments that forms the curtilage of the heritage items. No changes are therefore required.

Council seeks clarification from the Department on a number of other matters as follows.

1. Community Consultation.

Can consultation with the Department of Environment, Climate Change & Water occur simultaneously with public exhibition or does it have to occur prior to public exhibition (as with old system)?

2. Six (6) month time frame for completion

Council policy does not enable Council to place the planning proposal on public exhibition over the Christmas/New Year period. Unless endorsement for public exhibition is received by Friday 13 November, Council would not be able to exhibit the planning proposal until the end of January. This may impact on the 6 months completion time.

3. Moveable Heritage

Council does not consider that moveable heritage should be listed on the LEP largely because it can not be described by a specific site and nor does it need to be guided or protected by the land use planning process.

4. Standard Instrument Order

Council notes that its existing 2005 LEP is not based on the Standard Instrument Order and therefore expects the Department to consider the variations proposed to the standard clauses and definitions on their merits rather than insisting that the Standard

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Instrument Order can only be applied. The Standard Instrument Order has no relevance to the 2005 LEP.

Council awaits your endorsement of the amended planning proposal to enable public exhibition. In this regard please find attached the amended planning proposal (without attachments) as outlined in this letter.

If you have any queries, please do not hesitate to contact Council's Manager, Strategic Planning, Ms Janet Bingham on 6333 6211.

Yours faithfully

D R Shaw

DIRECTOR

ENVIRONMENTAL, PLANNING & BUILDING SERVICES