

Rezoning of 207-213 Sydney Road, Bathurst for bulky goods development and public open space

Proposal Title :	Rezoning of 207-213 Sydney Road, Bathurst for bulky goods development and public open space		
Proposal Summary :	Rezoning of 29ha being Lot 1 DP1093933, Lot 2 DP1079829, Lots 21 & 22 DP137352 and Lot 23 DP1133685, 207-213 Sydney Road, Bathurst from Inner Rural 1(a) to 3(b) Service Business and 6(a) Local Recreation for the purposes of bulky goods development, warehousing and distribution and riparian buffer.		
PP Number :	PP_2013_BATHU_001_00	Dop File No :	12/20712

Proposal Details

Date Planning Proposal Received :	07-Jan-2013	LGA covered :	Bathurst Regional
Region :	Western	RPA :	Bathurst Regional Council
State Electorate :	BATHURST	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Sydney Road		
Suburb :	Kelso	City :	Bathurst
Land Parcel :		Postcode :	2795
Street :			
Suburb :		City :	
Land Parcel :	Lot 1 DP1093933, Lot 2 DP1079829, Lots 21 & 22 DP137352 and Lot 23 DP1133685		

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

Contact Name :	
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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :	29.00	Type of Release (eg Residential / Employment land) :	Employment Land
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment :			

Supporting notes

Internal Supporting Notes : **The subject site was the subject of a Part 3A major project approved in 2006, modified in 2009. The project was for a freight rail terminal with warehousing and distribution centre and also some bulky goods retailing. The consent has now expired. Council objected to the modification on grounds that it was 'radically' different to the consent granted in 2006; however this was not the view of the Major Projects branch. Council is now responding to a request from the landowner to allow bulky goods retailing, warehousing and distribution, and freight terminal on site; but Council also wants to amend the definition of bulky goods development, permit certain uses only 'in conjunction with' freight rail facilities, and determine the staging of development.**

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **It is intended to rezone the subject land 3(b) excluding the Raglan Creek corridor, which will be rezoned 6(a) for a width of 50m. The current zone is Inner Rural 1(a). Council also intends to add a provision to the LEP to enable the development of Freight Transport Facilities, Warehousing and Distribution Centres; define 'Freight Transport Facilities' and also prepare a new definition of 'bulky goods development'. There is no explanation given for the new definitions. The definition of Freight Transport Facilities is identical to the SI definition, however the bulky goods definition is not, and further it is a form which is not acceptable on grounds of being too prescriptive (based on experience with Orange LEP 2011). It should be noted that the current LEP is the Non-SI Bathurst Regional Interim LEP 2005, and that Council is at pre-section 64 stage of their SI LEP preparation.**

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Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : Council has provided a detailed description of the proposed provisions. New proposed clause 22A will permit warehouses or distribution centres, industries, freight transport facilities on certain parts of the subject land, permit bulky goods development (with a new definition) on all the land; only permit warehouses or distribution centres and industries in conjunction with a freight transport terminal, prohibit subdivision of land containing warehouses and define 'freight transport terminal'. The proposed definition of bulky goods does not conform with the SI and will be difficult to transfer into the new SI LEP.

It is also uncertain how development can be restricted to a certain part of the site without cadastral boundaries. The approach offered by Council using the instrument as a prohibition and cross hatching on the map is not appropriate by SI standards, and will also be difficult to translate into the SI.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

1.2 Rural Zones

* May need the Director General's agreement

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.4 Integrating Land Use and Transport

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

e) List any other matters that need to be considered :

The 2006 Major Project approval was for a major regional rail freight terminal including containerised goods storage and hardstand areas; regional terminal warehousing and support facilities; bulky goods retail development and service station. The modification in 2009 resulted in a revised footprint for individual allotments and buildings on site, the introduction of 2 fast food restaurants, reduction in hardstand area, revised rail siding and loading area, small reduction in gross floor area, changes to site access, changes to the riparian corridor and revised stormwater management strategy, consolidation of the truck refuelling facility, railway engineers facility and forklift maintenance facility in the administrative facility, and revised concept plan staging.

Council objected to the proposed modification on the grounds that the result would be the conversion of the site to a bulky goods development without a freight rail facility instead of the originally approved freight terminal with a minor component of bulky goods/highway uses. The Department reviewed the modification request and concluded that the modification was consistent with the intent of the Concept approval. The modification was approved which resulted in the total developable floor space being limited to 62,000m² (broadly consistent with the Concept Plan) and imposing a condition to ensure uses such as fast food restaurants and the service station are not operational until the inter-modal works have been completed. The crux of the modification was to allow more sites within the same floor area, justified as a way to secure finance to undertake the development.

Stage 1 of the development was to remain as the intermodal terminal, the main driver of the site. New uses such as fast food restaurants were permissible under the current LEP.

It is noted by the proponent that the draft Bathurst LEP, the site would be zoned B5, and as such the proposed uses of take away food premises and bulky goods development

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would be permissible uses. The draft Bathurst LEP is at pre- Section 64 stage.

The PP is consistent with the draft LEP submitted to the Department by BRC, which does indicate that the site is to be zoned B5, with the riparian corridor being zoned RE1.

In relation to the 117 Directions, Council has advised that the proposal is consistent with Nos 6.2 and 6.3. In relation to 6.2, Council advises that the riparian land will be dedicated to Council as a public reserve at a later subdivision stage. Council proposes to purchase the portion of land to be zoned 6(a) Local Recreation in accordance with a Section 94 Contribution plan prior to the gazettal of the PP.

In relation to 6.3, the PP includes a site specific provision in the restriction of certain development and as such is inconsistent with the 117 Direction. The recommendation is to remove such provisions and therefore bring consistency with the 117 Directions.

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain : **Council has not provided an explanation of the inconsistency with Section 117 Direction 6.3, other than to suggest that the proposed definition of bulky goods development was 'recommended' by the 2011 Strategy. This strategy in fact supports the SI definition with further detail to be added in guiding information (page 73).**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The mapping shows the site being zoned 3(b) Service Business, with the riparian zone shown 6(a) Local Recreation; there is also a hatched area showing 'Additional Uses'. The hatched area is referred to in the enabling clause which permits warehousing or distribution centres only in conjunction with a/the freight rail terminal.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council suggests a 28 day consultation period. This is considered to be appropriate.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **However, Council has not referred to the Comprehensive LEP process, which is at pre Section 64 stage and is the most logical way to upzone this land; particularly as there is no urgency being expressed and the land being upzoned is acknowledged as 'excessive' in the short term.**

Proposal Assessment

Principal LEP:

Due Date : **January 2014**

Comments in relation to Principal LEP : **Council is in the draft LEP preparation stage; however, this process has been fraught with delays due to Council's unwillingness to accept the Standard Instrument compared with their current (interim, outdated) instrument. Some headway has been made recently, with the Department providing a review of Council's particular requests; with the result that there is broad agreement on the form of the draft LEP. Council may move to requesting a certificate around mid-2013, hence the January 2014 due date.**

Assessment Criteria

Need for planning proposal :

The current Bathurst Interim 2005 LEP is very flexible, however the Inner Rural 1(a) zone does not permit 'commercial premises'. 'Bulky goods premises' are not specifically listed as prohibited, although within the Zone Objectives, there is a part (2) which states:

"(2) Development for the purpose of the following is usually not consistent with the objectives of this zone:

boarding houses, bulky goods salesrooms or showrooms, generating works, motor showrooms, road transport terminals, service stations, vehicle body repair workshops, vehicle repair stations, warehouses."

Council therefore proposes the inclusion of a new definition which prescribes the type of goods able to be sold, displayed or hired. This is contrary to the SI definition and good planning practice. This issue has not been resolved in the draft LEP to date.

Consistency with strategic planning framework :

The proposal is broadly consistent with the Bathurst Urban strategy which was endorsed by the DG in 2008.

The more recent Bathurst CBD and Bulky Goods Business Development Strategy 2011 (not endorsed by the Dept) identified that additional land for the purpose of bulky goods development would be required to 2036 in the subject locality. A minimum of an additional 12ha was identified as necessary, with potentially all the land at the subject site meeting the requirements to 2036. The rezoning intends to upzone the entire site to 3(b), 29ha (less the riparian land). Council has stated that the Strategy recommends that the subject land be developed as a bulky goods precinct ie a 3(b) Business Zone or B5 zone in the SI LEP. Therefore based on this strategy the rezoning of the site would be premature.

Council's report states that the landowners had Dept Part 3A approval to operate a regional freight terminal, although this consent has now lapsed. The Council has considered the land owners request to include the intermodal rail freight terminal on the site. The rear portion of the site has been identified as suitable for this additional use, together with the ancillary uses of industries and warehousing. "This option ensures an area of approximately 12.7ha will be retained for use primarily for the permissible bulky goods uses of the 3(b) Service Business Zone." The rear section of the site, set aside for the Part 3A intermodal terminal, is also proposed to be zoned 3(b) Service Business and does not need to be used exclusively for the rail freight terminal, warehousing or distribution centres or the industrial uses. It is Council's intention to enable all uses to occur on the rear portion of the site.

Council's report mentions that the 2011 Strategy also recommends the use of a different definition of bulky goods development, "to enable further types of businesses which need larger floor areas, but are traditionally not bulky goods such as JB Hi Fi, Spotlight and the like." Council intends to amend the definition of bulky goods development as part of the PP. This is not supported and it is noted that the Strategy actually recommends using the SI definition of bulky goods, with 'a more detailed activities based definition be included in the explanation of bulky goods activities'. This Strategy has not been formally endorsed by the DG, although it is understood that Council has adopted the Strategy.

Environmental social economic impacts :

The site is a denuded of vegetation and has low bushfire risk. The site is also flood free; Raglan Creek does traverse the site from south east to north west. Some testing has occurred on site in relation to contamination. The conclusion of investigations was that there was negligible/low risk of contamination. The riparian area is degraded and the 50m buffer to be zoned 6(a) will allow for rehabilitation and ongoing maintenance.

A number of reports have been prepared for the Part 3A development proposal and has found that the site is generally suitable for bulky goods development, industrial, intermodal freight terminal and warehouse uses and there was no significant constraint to development occurring.

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The site is zoned for rural purposes however its capacity as an agricultural holding is negligible, particularly as it is surrounded by urban development and major transport infrastructure.

Assessment Process

Proposal type : **Consistent** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Essential Energy
Ambulance Service of NSW
Central West Catchment Management Authority
Essential Energy
Office of Environment and Heritage
Department of Premier and Cabinet
NSW Department of Primary Industries - Agriculture
NSW Department of Primary Industries - Fishing and Aquaculture
Transport for NSW
Fire and Rescue NSW
NSW Police Force
NSW Rural Fire Service
Transport for NSW
Transport for NSW - RailCorp
Transport for NSW - Roads and Maritime Services
State Emergency Service
Telstra**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **The matter should proceed, however Council should consider the potential to zone only part of the site now in light of the oversupply potential; with the entire site to be reviewed with the comprehensive LEP; and the matter should proceed without the proposed definition of 'bulky goods development' or the use of cross hatching to delineate certain land uses (warehousing and distribution centres) which are restricted to be only permissible in the event of the development of a freight rail terminal, "only in conjunction with".**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Economic

If Other, provide reasons :

Council acknowledges that the proposal will result in a potential oversupply of bulky goods development potential in the short to medium term. Therefore it may be prudent to investigate upzoning only part of the site at this stage and rezoning the remainder with the Comprehensive LEP when further justification can be provided.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **Road and intersection upgrade; rail upgrades will be necessary.**

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Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal requesting gateway determination.pdf	Proposal	No
Gateway_Enterprise_Park.pdf	Map	No
Gateway_Enterprise_Park_URA.pdf	Map	No
Attachment 1 - Council report and minute.pdf	Proposal	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.4 Integrating Land Use and Transport**

Additional Information : **Condition 1. Consultation with the following:**

Ambulance Service, Essential Energy, Department of Primary Industries, Fire and Rescue NSW, John Holland Rail P/L, NSW Police Service, NSW Rural Fire Service, NSW Dept of State and Regional Development, Office of Environment and Heritage, Office of Water, Roads and Maritime Service, State Emergency Service, Telstra, Transport for NSW.

Condition 2. Exhibition for a period of 28 days, with a 12 month completion period.

Condition 3. That the draft instrument either Option 1: zone part of the site to 3(b) Special Business, with the remainder (area containing former Part 3A approved rail-freight terminal) being deferred and considered as part of the Comprehensive LEP 2013; or Option 2 (Preferred): that the site be zoned a combination of 3(b) Special Business and 4(b) Industrial, in order to reflect the general concept of bulky goods premises along the Sydney Road frontage and freight transport facilities, warehousing and distribution centres over the former Part 3A approved concept plan, or Option 3: that the entire site be rezoned to 3(b) Special Business and Schedule 4 of Bathurst Regional (Interim) LEP be amended to enable development for the purpose of freight transport facilities, warehousing and distribution centres on the site, and that in each case the draft LEP mapping be amended accordingly;

Condition 4. That in each case in (3) above, the draft LEP instrument omit the proposed definition of 'bulky goods development' as proposed, instead the SI definition for 'bulky goods premises' be inserted into the Bathurst Regional (Interim) LEP 2005 as necessary.

Condition 5. That in each case in (3) above, there is no reference to 'Additional Uses' on the draft map; and that the draft instrument omit reference to development 'only in conjunction with' other forms of development.

Condition 6. Prior to community consultation the amended instrument and maps in accordance with items 3, 4 and 5 be submitted to the Department's Western Region office

Supporting Reasons : **That the following reasons be provided in the covering letter to Bathurst Regional Council:**

Condition 1. In particular, the impact of the proposed rezoning and subsequent development on the transport systems in Bathurst is to be addressed in the s59 Submission;

Condition 2: As nominated by Council and agreed as the suitable timeframe for public

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exhibition.

Condition 3: The following reasons are provided in relation to the drafting of the LEP:

Option 1: In relation to the timing of the preparation of the draft Comprehensive LEP and the potential to be further informed on the use of the subject site at this time; **Option 2:** To provide a clear delineation of land uses as proposed; **Option 3:** To permit the proposed land uses on a site-specific basis.

Conditions 3,4 & 5: The need to conform where possible with the SI LEP for ease of transition to the Comprehensive LEP.

6. Conditions 3,4 5 & 6: The need to conform to established legal drafting and planning practice, particularly in relation to the SI LEP.

Signature:



Printed Name:

WAYNE GARNSEY

Date:

21/1/13