



PARLIAMENTARY COUNSEL

Opinion

Environmental Planning and Assessment Act 1979
Proposed Mid-Western Regional Local Environmental Plan 2012 (Amendment No 9)

Your ref: Elizabeth Densley
Our ref: FHG e2014-141-d04

In my opinion the attached draft environmental planning instrument may legally be made.

The draft environmental planning instrument adopts the maps identified in map cover sheet 5270_COM_MCS_20140604.

This opinion relates to the draft environmental planning instrument only. The maps adopted by the instrument and approved by the Minister or delegate when the instrument is made should have the names and contain the matters referred to in the instrument.

A handwritten signature in black ink, appearing to be 'D. Colagiuri'.

(D COLAGIURI)
Parliamentary Counsel

13 June 2014



New South Wales

Mid-Western Regional Local Environmental Plan 2012 (Amendment No 9)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

A handwritten signature in black ink, appearing to read 'Catherine Van Laeren'.

Catherine Van Laeren

Manager Development & Community Services
as a Delegate of Minister for Planning
16 June 2014

Mid-Western Regional Local Environmental Plan 2012 (Amendment No 9)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Mid-Western Regional Local Environmental Plan 2012 (Amendment No 9)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to Lot 1, DP 1000182, 220 Ulan Road, Mudgee.

4 Maps

Each map adopted by *Mid-Western Regional Local Environmental Plan 2012* that is specified in Column 1 of the following table is declared by this Plan to be amended or replaced, as the case requires, by the map specified opposite in Column 2 of the table as approved by the Minister on the making of this Plan:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Mid-Western Regional Local Environmental Plan 2012 Lot Size Map (5270_COM_LSZ_006_160_20140327)	Mid-Western Regional Local Environmental Plan 2012 Lot Size Map (5270_COM_LSZ_006_160_20140522)
Mid-Western Regional Local Environmental Plan 2012 Lot Size Map (5270_COM_LSZ_006F_020_20121213)	Mid-Western Regional Local Environmental Plan 2012 Lot Size Map (5270_COM_LSZ_006F_020_20140522)
Mid-Western Regional Local Environmental Plan 2012 Lot Size Map (5270_COM_LSZ_006G_010_20140122)	Mid-Western Regional Local Environmental Plan 2012 Lot Size Map (5270_COM_LSZ_006G_010_20140522)

Mid-Western Regional Local Environmental Plan 2012 (Amendment No 9)

**Mid-Western Regional
Council**
86 Market Street
PO Box 156
Mudgee NSW 2850

Map Cover Sheet

The following map sheets are revoked:

Map Sheet	Map Identification Number
Lot Size Map	
LSZ_006	5270_COM_LSZ_006_160_20140327
LSZ_006F	5270_COM_LSZ_006F_020_20121213
LSZ_006G	5270_COM_LSZ_006G_010_20140122

The following map sheets are adopted:

Map Sheet	Map Identification Number
Lot Size Map	
LSZ_006	5270_COM_LSZ_006_160_20140522
LSZ_006F	5270_COM_LSZ_006F_020_20140522
LSZ_006G	5270_COM_LSZ_006G_010_20140522



Certified

[Title of Council Delegate]

[Date] Minister for Planning

[Date]

Catherine Van Laeren

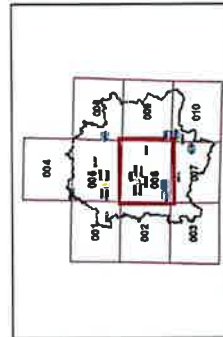
Manager Development & Community Services

16 June 2014

Minimum Lot Size (sq m)

450
600
1000
2000
3000
4000
2 ha
10 ha
12 ha
20 ha
40 ha
100 ha
400 ha
Refer to Clause 4.1 (3A)
Refer to Clause 4.1 C

Cadastra 15/12/2010 @ Land and Property Information (LPI)



Lot Size Map - Sheet LSZ_006F

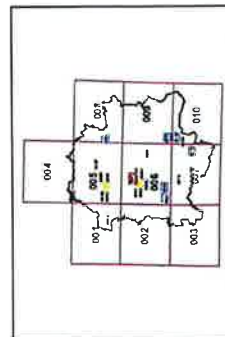
Minimum Lot Size (sq m)

G	450
M	600
U	1000
W1	2000
W2	3000
Z	4000
AB1	2 ha
AB2	10 ha
AB3	12 ha
AB4	20 ha
AD	40 ha
AF	100 ha
	400 ha
	Refer to C
	Refer to C

Refer to Clause 4.1 (3A)

Cadastre

Cadastre 15/12/2010 Land and Property Information (LPI)



Z

100 Metres

— Projection GDA model

Maple View Aviation Number: 2273_COM_1.52_0007_000_20140810

Lot Size Map - Sheet LSZ_006G



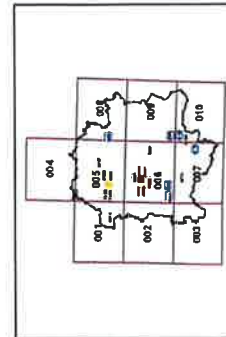
450	500	1000	2000	3000	4000	2 ha	10 ha	12 ha	20 ha	40 ha	100 ha	400 ha	Refer to C	Refer to C
G	M	U	W1	W2	?	AB1	AB2	AB3	AB4	AD	AF			

Refer to Clause 4.1 (3A)

Refer to Clause 4.1 C

Cadastro

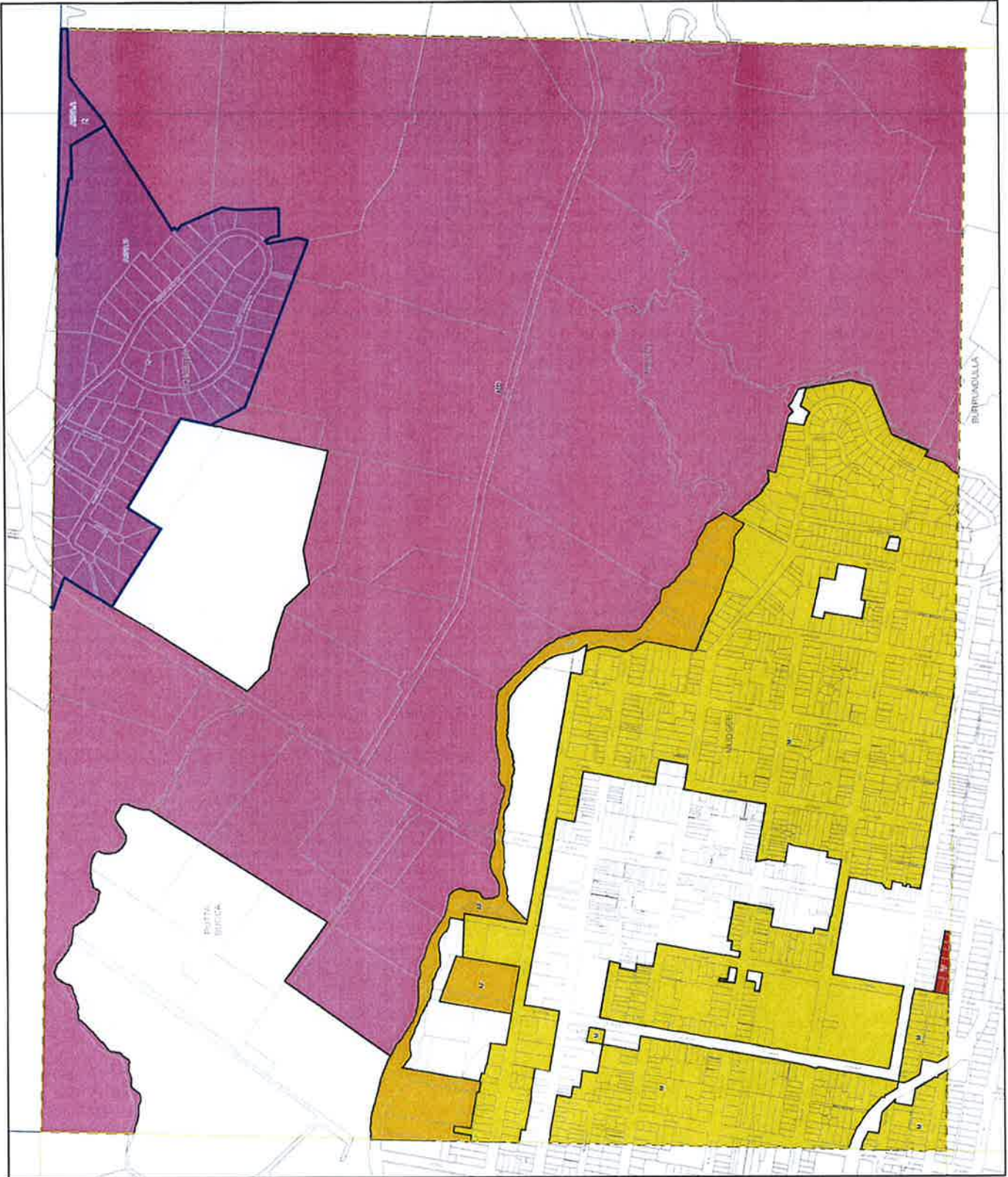
Cadastre 15/12/2010 Land and Property Information (LPI)



N

Projections GDA 1994

Map Identification Number: 5270_COM_162_000C_010_20140122



Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	PP_2013_MIDWR_007_00
Date Sent to Department under s56	22 November 2013
Date considered at LEP Review Panel	
Gateway determination date	6 December 2013

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited	10 January 2014	24/01/14
Date of public hearing (if held)		
Date sent to PCO seeking Opinion	5 May 2014	
Date Opinion received	13 June 2014	
Date Council Resolved to Adopt LEP	19 March 2014	
Date LEP made by GM (or other) under delegation	16 June 2014	
Date sent to DP&I requesting notification	16 June 2014	

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

Item 6: General Business

6.2 REPORTS TO COUNCIL

6.2.1 PLANNING PROPOSAL 220 ULAN ROAD – CONSIDERATION OF SUBMISSIONS

Councillor Kennedy declared a pecuniary conflict of interest in this matter, as he is the owner of this property, subject to the planning proposal, vacated the chair and left the meeting at 5.38pm, and did not participate in discussions or vote in relation to this matter. In his absence, Councillor Cavalier assumed the chair.

GOV400038, A0420258

91/14 MOTION: Shelley / Walker

That:

- 1. the report by the Manager Strategic Planning on the Planning Proposal 220 Ulan Road – Consideration of Submissions be received;**
- 2. Council exercise the delegation in relation to the preparation of the amendment to Local Environmental Plan 2012 to reduce the minimum lot size in respect to Lot 1 DP 1000182, 220 Ulan Road from 4000m² to 2000m² and that the plan be made subject to the Opinion issue by Parliamentary Counsel.**

The motion was put and carried on the casting vote of the Chairman of the meeting, with Councillors voting as follows:

Councillors	Ayes	Nayes
Cr Cavalier	✓	
Cr Martens		✓
Cr Shelley	✓	
Cr Thompson		✓
Cr Walker	✓	
Cr Webb		✓

Councillor Kennedy returned to the meeting at 5.40pm and resumed the chair.

1.1.1 Planning Proposal 220 Ulan Road – Consideration of Submissions

REPORT BY THE MANAGER STRATEGIC PLANNING TO 19 MARCH 2014 COUNCIL MEETING
Planning Proposal 220 Ulan Road
GOV400038, A0420258

RECOMMENDATION

That:

- 1. the report by the Manager Strategic Planning on the Planning Proposal 220 Ulan Road – Consideration of Submissions be received;**
- 2. Council exercise the delegation in relation to the preparation of the amendment to Local Environmental Plan 2012 to reduce the minimum lot size in respect to Lot 1 DP 1000182, 220 Ulan Road from 4000m² to 2000m² and that the plan be made subject to the Opinion issue by Parliamentary Counsel.**

Executive summary

On 20 November 2013 Council resolved to prepare a Planning Proposal for an amendment to Local Environmental Plan 2012 to increase the residential density of land zoned Low Density Residential R2 from 4000m² to 2000m² on Lot 1 DP 1000182, known as 220 Ulan Road.

The Department of Planning and Infrastructure (DOPI) issued a Gateway determination which was received by Council on 9 December. The Gateway Determination authorised Council to prepare the amended plan under delegation from the Director General of DOPI. The Gateway Determination required consultation with agencies and public exhibition for a period of 14 days. The two agencies consulted were Road and Maritime Services (RMA) and the Civil Aviation Safety Authority (CASA) neither of who raised objections. In addition two Public submissions were received.

Detailed report

The Regional Director classified the Planning Proposal as a low impact proposal meaning that the proposal meets the following criteria:

A 'low' impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination is:

- Consistent with the pattern of surrounding land use zones and/or land uses
- Consistent with the strategic planning framework
- Presents no issues with regard to infrastructure servicing
- Not a principal LEP
- Does not reclassify public land

The Gateway determination (Attachment 1) included conditions requiring consultation with specific agencies and notification in the newspaper of a 14 day public exhibition period. The Gateway Determination also gave the Council delegation to make the amending plan.

The proposal was forwarded to both the Roads and Maritime Services (RMS) and Civil Aviation Safety Authority (CASA) both of whom provide a response (Attachments 2 &3).

The RMS did not object to the proposal and provided comments in relation to:

- the treatment of the intersection with Ulan Road (it is noted that while RMS refer to this section of Ulan Rd being in a 100km zone it has recently been reduced to 80km zone)
- The design treatment of the intersection
- Supports pedestrian/bike links and recommends consideration be given to a bus pickup/drop off

These comments are noted and relate entirely to the actual physical development of the site rather than the planning proposal and can be considered at the development application stage.

CASA similarly had no specific issues with the proposal that do not relate to the likely future use of the land and would be addressed through the development application process.

In addition to the authority submissions, Council received two submissions from the public exhibition process.

AUSTRALIAN RURAL EDUCATION CENTRE (AREC)

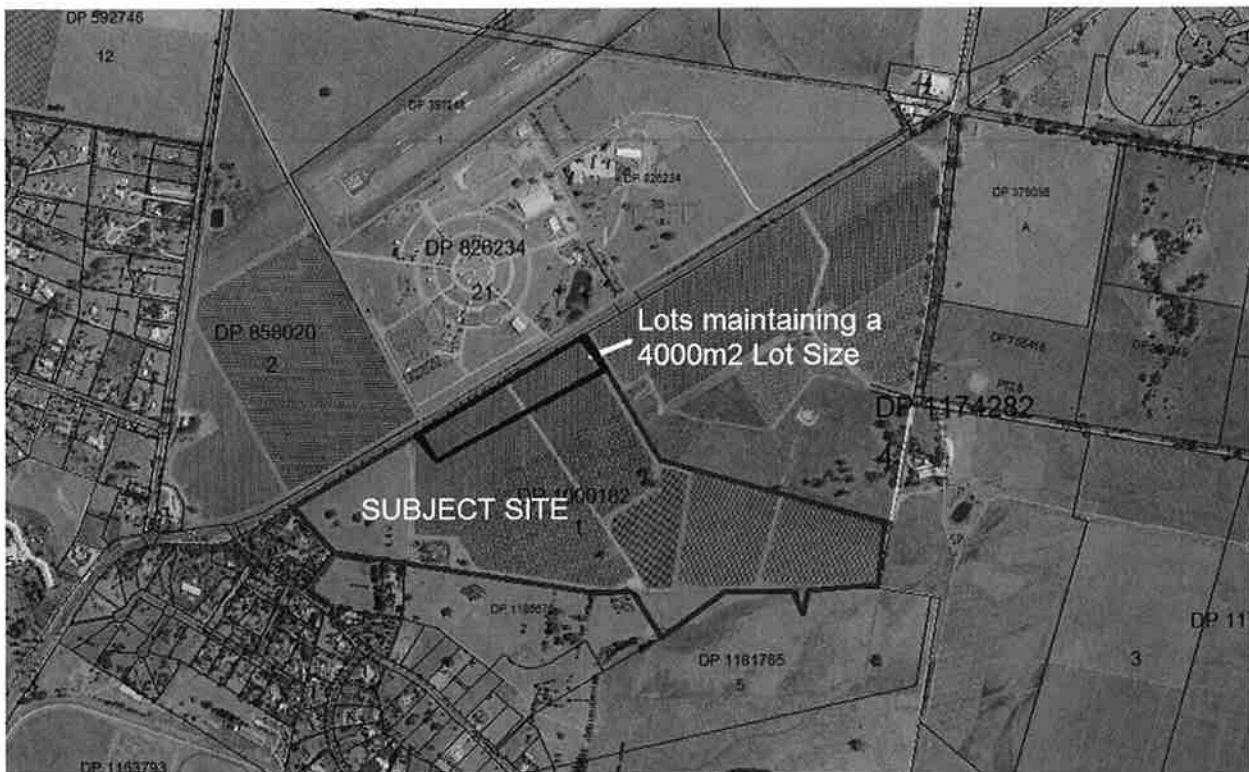
AREC stated (Attachment 4) that they moved to the current site from the showground in Mudgee to enable expansion of activities removed from the residential area. The concerns are raised as to the impact of proposed additional residential development on the existing land uses and with an increase in density there may be an increase in potential noise and traffic complaints.

The submission included a suggestion as to the possible inclusion of a condition or covenant on the any future subdivision DA acknowledging the use of the AREC site in relation to the potential noise and traffic impacts associated with activities at AREC.

The submission also stated that the only concerns AREC had with the initial rezoning were concerns relating to noise and traffic.

These comments are valid. The change in the minimum lot size will result in a greater density of residential development on the site. Concept plans submitted in support of the Planning Proposal address this to some extent by limiting the number of residential lots adjacent to Ulan Road to ten, six of which are 4000m² where the land is immediately opposite the AREC site and the other four being beyond the AREC site closer to Mudgee.

The aerial photograph shows the relationship between the subject site and AREC as well as that land proposed to retain a 4000m² minimum lot size.



In relation to the inclusion of any conditions of consent, these would be dealt with at such a time as Council were considering a development application for the subdivision of the site rather than at the rezoning stage.

CULPITE

A second public submission (attachment 5) was received from Mr Stratham Culpite. While he does not object to the development, Mr Culpite is concerned that the Planning proposal had overlooked the potential impact on threatened native flora and or fauna.

In response, it should be noted that land is already zoned R2 Low Density Residential. It is clear in the DOPI guidelines to preparing planning proposals that variations to an LEP amount to a variation to a specific control or controls in that instrument which are necessary to secure a particular development outcome for a site not the development itself. At this point, in so far as the zoning of the site is not altered by this proposal, any issues associated with specific impacts on flora and fauna are a matter for a development application. This proposal is increasing the density of development rather than changing the land use.

The submission makes a direct reference to a statement in the Planning Proposal as follows: "Groundcover was estimated at 95%. Weeds are well controlled on the land". From this Mr Culpite draws that the "property may be dominated by derived native grasslands" and goes on to state that these could therefore be a "White box yellow box Blakely's red gum woodland and derived native grassland" which is an Endangered Ecological Community (EEC).

When the land was originally rezoned it was the site of an operating vineyard. This is evident from the aerial photograph above. There is no evidence to suggest or indicate that the site in its current state would be an EEC and no additional studies and report were considered necessary. Further, as initially stated the land has already been rezoned. We are aware that the removal of trees with hollows is a Key Threatening Process. There are a number of isolated mature trees on the site which will require assessment and consideration in any development application, however, it is once again highlighted that this is not such an application.

Process

Council has requested the assistance of the DOPI Planning Coordination and Support section to assist in the preparation of the new maps. The amendment will be to the following map sheets:

5270_COM_LSZ_006_160_20130320
5270_COM_LSZ_006F_020_20121213
5270_COM_LSZ_006G_010_20120619

Following the confirmation of draft maps the documentation will be forwarded to Parliamentary Counsel for an Opinion. Once an Opinion has been received the draft plan will be made and the plan, along with an assessment report and completed delegation reporting template, will be sent to the DOPI who will then arrange notification.

Financial and Operational Plan implications

Not applicable.

Community Plan implications

Managing land supply through strategic planning falls under the theme Looking After Our Community in the Community Plan under the goals of Vibrant Towns and Villages and Effective and Efficient delivery of Infrastructure. There are no specific strategies identified.



CATHERINE VAN LAEREN
DIRECTOR, DEVELOPMENT & COMMUNITY
SERVICES

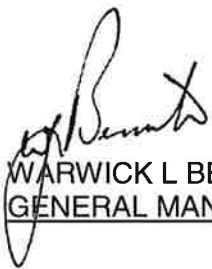
ELIZABETH DENSLEY
MANAGER STRATEGIC PLANNING

10 March 2014

Attachments:

1. Gateway Determination
2. Submissions RMS
3. Submission CASA
4. Submissions AREC
5. Submission Culpite

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER



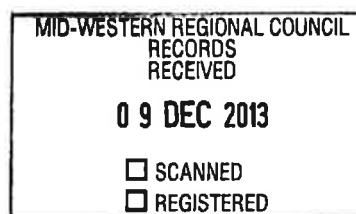
**Planning &
Infrastructure**

Contact: Wayne Gamsey
Phone: (02) 68412180
Fax: (02) 68848483
Email: wayne.gamsey@planning.nsw.gov.au
Postal:

Our ref: PP_2013_MIDWR_007_00 (13/19748)
Your ref: (ED)A0420258

Mr Warwick Bennett
General Manager
Mid-Western Regional Council
PO Box 156
Mudgee NSW 2850

WJ
LMD



Dear Mr Bennett,

Planning Proposal (PP_2013_MIDWR_007_00) to amend Mid-Western Regional Local Environmental Plan 2012 – 220 Ulan Road, Mudgee

I am writing in response to your Council's letter dated 22 November 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 (EP&A Act) in respect of the planning proposal to change the lot size to 2000 m2 as it applies to Lot 1 DP 1000182 at 220 Ulan Road Mudgee.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan (**Attachment 1**).

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office (parliamentary.counsel@pco.nsw.gov.au) 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes at planmaking.monitoring@planning.nsw.gov.au.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

In accordance with "A Guide for the preparation of local environmental plans" attachment 5- Delegated plan making reporting template (**Attachment 2**) is enclosed for Council's information. Table 2 of the attachment is to be completed and included in Council's section 59 submission.

Should you have any queries in regard to this matter, please contact Wayne Garnsey of the Western Regional office of the Department on 02 68412180.
Yours sincerely,

 6-12-2013
Ashley Albury
Regional Director
Western Region

Encl.

Attachment 1 – Written Authorisation to Exercise Delegation.

Attachment 2 – Delegated plan making reporting template.



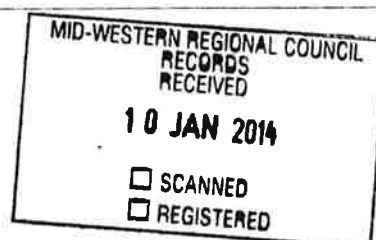
Transport
Roads & Maritime
Services

WST13/00159

General Manager
Mid Western Regional Council
PO Box 156
MUDGEES NSW 2850

Attention Ms Liz Densley

Dear Ms Densley



**Proposed Amendment to Mid-Western Regional Local Environmental Plan 2012;
Lot 1 DP 1000182; 220 Ulan Road, Mudgee**

Thank you for your letter dated 13 December 2013 forwarding a Planning Proposal to amend the Mid-Western Regional Local Environmental Plan 2012.

It is noted that the proposed amendment seeks to reduce the minimum allotment size within the R2 Low Density Residential Zone on the subject land from 4000m² to 2000m². A master plan has been developed for the subject land showing 136 residential allotments. Vehicular access is proposed via an internal road network connecting to one single access to Ulan Road.

The Traffic Analysis and supporting documentation has been reviewed. Roads and Maritime will not object to the Planning Proposal and provides the following comments for Council's consideration:

- The intersection of the proposed local road and Ulan Road is proposed to include Channelised Right (CHR) and Left (CHL) treatments. These intersection treatments will need to be designed for the current sign posted speed limit of 100km/h. Any request to reduce the speed zone will require a separate review and approval by Roads and Maritime;
- To determine the peak hour traffic volumes, the proponent has adopted a figure of 9% of the average daily traffic. Clause 4.8 Part 4A of Austroads Guide to Road Design 2010 assumes the design peak hour volume equals 8%-10% of daily traffic volumes in urban environments and 11%-16% of daily traffic volumes in rural environments. Given the current speed zone of 100km/h, the surrounding semi - rural environment and that Ulan Road is a main route to nearby coal mines, design of the proposed intersection treatment should be based on the maximum 16% of daily traffic volumes;
- Roads and Maritime encourages the facilitation of alternate methods of transportation and supports the proposal to provide a link from the subject land to existing bicycle/pedestrian paths. Consideration should also be given for a designated bus pick up/drop off area on Ulan Road for school and public transport buses.

Roads and Maritime Services

51-55 Currajong St Parkes NSW 2870
PO Box 334 Parkes NSW 2870
www.rms.nsw.gov.au | 13 22 13

Please keep Roads and Maritime informed on the progress of this Planning Proposal. Should you require further information or wish to discuss this matter further, please contact Andrew McIntyre on (02) 6861 1453.

Yours faithfully

per: 

Peter Dearden
Network & Safety Manager
Western

210114



Australian Government
Civil Aviation Safety Authority

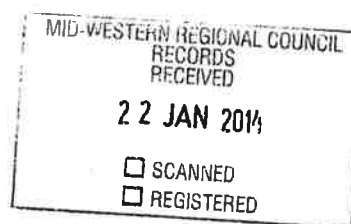
AIRSPACE AND AERODROME REGULATION

File Ref: G113/1502

Your Ref: A0420258

17 January 2014

Ms Liz Densley
Mid-Western Regional Council
PO Box 156
MUDGEES NSW 2850



Dear Ms Densley,

I refer to your letter dated 13 December 2013 to the Civil Aviation Safety Authority (CASA) regarding the planning proposal to amend the lot size for the property at 220 Ulan Road, Mudgee.

CASA would like to provide the following response in reply to your invitation to comment on the planning proposal:

1. The airspace above the subject land is affected by the Mudgee Aerodrome Obstacle Limitation Surfaces (OLS) and Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS). Any development should be subject to consultation as per procedures published in the Mudgee Aerodrome Manual;
2. Any development on the subject land could be subject to lighting limitations. For lighting limitations refer to the Manual of Standards 139 (MOS) Chapter 9 Section 21 "Lighting in the Vicinity of Aerodromes"; and
3. Any increase in bird activity should be subject of the Mid-Western Council's Mudgee Aerodrome Bird and Animal Hazard Management Plan.

For any further clarification of this information, please call the CASA Aerodrome Inspector Slavica Despotovic on (02) 8651-3110 or slavica.despotovic@casa.gov.au.

Yours sincerely,


Slavica Despotovic
Aerodrome Inspector
Airways and Aerodromes



Australian Rural Education Centre

Re: Local Environmental Plan - 220 Ulan Road

The General Manager
Mid-Western Regional Council
P.O. Box 156
Mudgee NSW 2850

29 January, 2014

Thank you for the opportunity to comment on the Planning Proposal for 220 Ulan Road.

Our only concern with the proposed residential development on the site is the impact on the existing uses of adjacent lands such as the AREC site. There is the opportunity for future residents complaining about any traffic increase at large events such as the Mudgee Small Farm Field Days, and any associated noise at events.

For example Council and planners would be well aware of the issue of people moving nearby an airport then proceed to complain about airport noise. It is this type of complaint that we see as an issue with the proposed planning changes.

AREC is a not for profit, community organisation and has run the Mudgee Small Farm Field Days event for some 37 years. For the first 19 years the event was held at the Mudgee Showground. AREC moved out of the town centre to the current site on Ulan Road due to space constraints and to move away from the largely residential area, to grow the event and to run additional activities free from impacts on local residents.

At the time that the LEP was prepared we noted our only concern, that existing land owners (AREC, TAFE & Mudgee Airport) would be impacted by residential housing and possible complaints about noise & traffic. With a greater number of lots due to the reduced lot size it is reasonable to expect there is a greater chance of complaints.

AREC would like council to insert a condition/covenant of any DA consent on development applications for the land described in the Planning Proposal that acknowledges AREC's existing use of their site for the Small Farm Field Days, and its use for events rallies, musters and other activities. Such covenant should make clear to future purchasers of the residential blocks that there may be noise, traffic, that results from these uses on the AREC site. AREC would like council, to acknowledge this existing use by AREC, when dealing with any future complaints from residential owners towards the use of the AREC site.

Regards



Steve Garland
General Manager

From: [Steve Culpite](#)
To: [Council](#)
Subject: Planning Proposal 220 Ulan Road Mudgee, Lot 1 DP 1000182
Date: Thursday, 30 January 2014 9:21:21 AM

Dear General Manager of Mid-Western Regional Council,

RE: Planning Proposal 220 Ulan Road Mudgee, Lot 1 DP 1000182.

I am writing to you with an objection to the current proposal, under the grounds that the potential for the presence of threatened native flora and/or fauna of this location have been overlooked.

The following quote was taken directly from the Planning Proposal: "Groundcover was estimated at 95%. Weeds are well controlled on the land". This quote is a preliminary indication that the property may be dominated by derived native grasslands. Based on the geographical location and landscape of the property, such derived native grasslands could possibly constitute a state and/or federally-listed endangered vegetation community known as "White box yellow box Blakely's red Gum woodland and derived native grassland". Yet this has been ignored.

Mature trees on the property may also contain state-protected 'tree hollows' essential for nesting by threatened and protected species including birds and bats. This is irrespective of whether trees are native or not. Likewise, any mature gum trees on the property may provide potential food resources for endangered birds. While I don't object to this development in its entirety, I recommend you obtain an adequate flora and fauna assessment of the site (just as you have done for potential indigenous heritage values) prior to seeking approval. Local conservation groups, environmental planners or ecology consultants may be able to provide this type of service. Local land services may also provide recommendations.

Best regards,

Statham Culpite
Lawson, NSW
acridotherestrustus@gmail.com

This e-mail has been scanned for viruses by MCI's Internet Managed Scanning Services - powered by MessageLabs. For further information visit <http://www.mci.com> or contact Information Technology Business Unit - Mid-Western Regional Council