

- date of this consent and prior to the issue of an Occupation Certificate.
6. The owner is to apply for a Building Certificate addressing the following matters;
1. Engineer's certification for the structural adequacy of the building making reference to the AS1170 series.
 2. Engineer's certification for the timber and wire balustrades and their compliance with Performance Requirement (PR) 2.5.1 and/or Part 3.9.2 of Volume 2 of the BCA.
 3. Engineer's certification stating that the building complies with Part 3.12 'Energy Efficiency' of the BCA
 4. Licensed Builder to certify the installation of the solid-fuel burning fire place to PR2.3.3 and/or Part 3.7.3 of the BCA.
 5. Interconnected smoke alarm to be installed within the ground floor storage area in accordance with Part 3.7.2.4 of the BCA – Certification is required from a licensed electrician.
7. Complete landscaping plans are to be submitted for approval prior to issue of an Occupation Certificate. Landscaping is to screen the development from the dwelling located at 851 Grattai Road. All landscaping to consist of appropriately advanced trees and shrubs. All landscaping is to be established prior to issue of occupation certificate for the development. Tree and shrub species should require minimal watering and be salt resistant.

The motion was carried with Councillors voting unanimously.

Councillor White returned to the meeting at 6.04pm.

6.2.2 PLANNING PROPOSAL - ADDITIONAL DWELLINGS ADAMS
LEAD ROAD GULGONG, SPRING FLAT ROAD AND MARKET
STREET MUDGEES

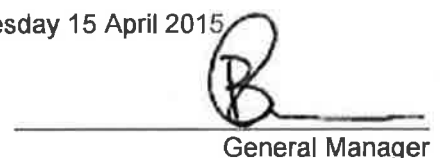
GOV400043, LAN900048

MOTION: Thompson / White

That:

1. the report by the Town Planner on the Planning Proposal - Additional Dwellings Adams Lead Road Gulgong, Spring Flat Road and Market Street Mudgees be received;
2. Council exercise the delegation in relation to the preparation of the amendment to Local Environmental Plan 2012 to amend the Mid-Western Regional LEP 2012 – Spring Flat Road, Adams Lead Road, Market Street and Split Zoning subject to the Opinion issued by Parliamentary Counsel.


Mayor


General Manager

84/15**AMENDMENT: Weatherley / Cavalier****That:**

1. the report by the Town Planner on the Planning Proposal - Additional Dwellings Adams Lead Road Gulgong, Spring Flat Road and Market Street Mudgee be received;
2. Council exercise the delegation in relation to the preparation of the amendment to Local Environmental Plan 2012 to amend the Mid-Western Regional LEP 2012 – Spring Flat Road, Adams Lead Road, and Split Zoning subject to the Opinion issued by Parliamentary Counsel;
3. Council not proceed with the planning proposal in relation to Lot 41 DP703056 and Lot 1 DP564729 Market Street Mudgee.

The amendment was put and carried and on being put as the motion was again carried with Councillors voting as follows:

Councillors	Ayes	Nayes
Cr Cavalier	✓	
Cr Kennedy	✓	
Cr Martens	✓	
Cr Shelley	✓	
Cr Thompson		✓
Cr Walker	✓	
Cr Weatherley	✓	
Cr Webb	✓	
Cr White		✓

6.2.3 ULAN WEST MODIFICATION 3

GOV400043, A0420028

85/15**MOTION: Walker / Weatherley**

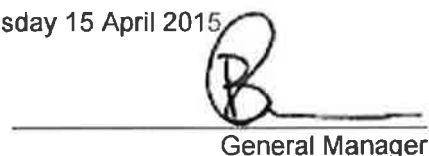
Councillor Cavalier declared a pecuniary conflict of interest in Item 6.2.3 as he has a business relationship with the party, left the room at 6.14pm, did not participate in discussion or vote in relation to this matter.

That:

1. the report by the Manager, Statutory Planning on the proposed Ulan West Modification 3 be received;
2. Council note that the proposed modification is on exhibition until the 17 April 2015;
3. Council not lodge a submission with the Department of Planning and Environment (DPE).



Mayor



General Manager

6.2.2 Planning Proposal - Additional Dwellings Adams Lead Road Gulgong, Spring Flat Road and Market Street Mudgee

REPORT BY THE TOWN PLANNER TO 15 APRIL 2015 COUNCIL MEETING

Planning Proposal

GOV400043, LAN900048

RECOMMENDATION

That:

1. **the report by the Town Planner on the Planning Proposal - Additional Dwellings Adams Lead Road Gulgong, Spring Flat Road and Market Street Mudgee be received;**
2. **Council exercise the delegation in relation to the preparation of the amendment to Local Environmental Plan 2012 to amend the Mid-Western Regional LEP 2012 – Spring Flat Road, Adams Lead Road, Market Street and Split Zoning subject to the Opinion issued by Parliamentary Counsel.**

Executive summary

Following receipt of Planning Proposal documents from three individuals Council resolved (17 September 2014) to prepare an amendment to the Local Environmental Plan 2012 (LEP2012) to:

1. Amend the Lot Size Map Sheet 006 in Spring Flat Road to facilitate the subdivision of Lot 52 DP 633029 to 20ha minimum lot size;
2. Rezone land to R5 Large Lot Residential and amend the Lot Size Map to 'Z' 2 Ha on land in Adams Lead Road Lot 76 DP 755434 Gulgong
3. Insert a provision in Local Environmental Plan 2012 which allows for the subdivision of split zoned land provided the area containing a dwelling or an opportunity for a dwelling meets the minimum lot size for land within that zone.
4. Rezone to part R1 and part RE2 land in Market Street Lot 41 DP 703056 and Lot 1 DP 564729 Mudgee and insert a provision relating to the permissibility of subdivision & dwellings on certain split zoned Residential land
5. Rezone to R1 General Residential Lot 42 DP 703056, Mudgee and amend the MLS to 600m2

The Planning Proposal was exhibited in accordance with the Gateway Determination **PP_2014_MIDWR_003_00 (Attachment 1)** from Friday 30th January 2015 till Friday 3rd April 2015, a total two (2) submissions were received. The exhibition period was extended following an error in the uploading of the necessary documentation to the Council's web site thus providing an additional 28 days for public submissions to be received.

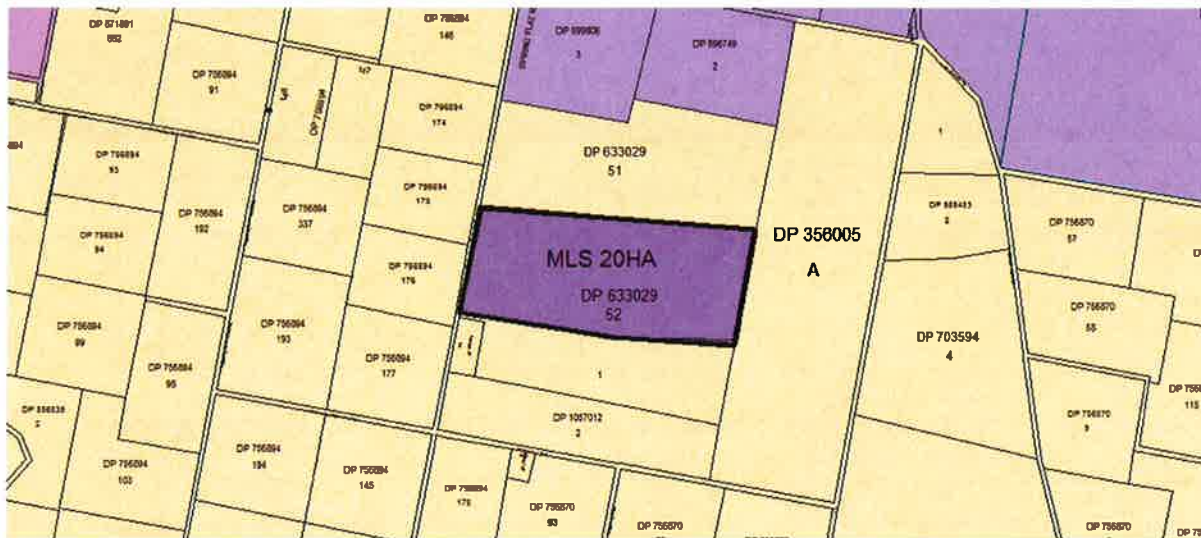
During the exhibition Council received two (2) submissions, all relating to the Market Street aspect of the amendment (item 4 above). These issues are discussed in detail below. The report recommends that Council proceed with a request to Parliamentary Counsel seeking an Opinion that the amendments be made.

Detailed report

It is intended that the objectives and intended outcomes as described in Part 1 will be achieved through the application of the following mechanisms:

1. AMEND LOT SIZE MAP SHEET 006 IN SPRING FLAT ROAD LOT 52 DP 633029 SPRING FLAT TO REFLECT A 20HA MINIMUM LOT SIZE.

It is proposed that the Minimum Lot Size (MLS) Map Sheet 0006 be amended to reflect a MLS of 20 ha for the area identified on the map below.



Background

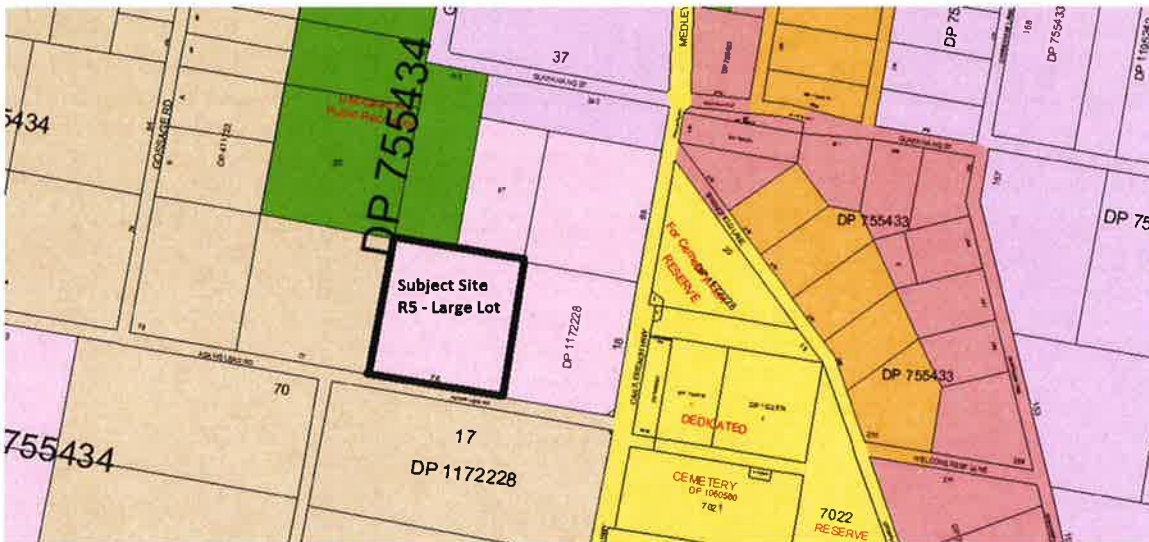
This proposal involves an amendment to the lot size map to facilitate the subdivision and additional rural dwelling. The site falls on the edge of the area identified in the Comprehensive Land Use Strategy (CLUS) as being identified as rural lifestyle opportunities within 15 km of Mudgee. The proposed amendment is generally consistent with the strategic direction established in the CLUS for lifestyle lots.

The site has an area of 44.05ha. In 2007 Council approved a subdivision for the land into two 20ha lots under the provisions for intensive agriculture. At this time part of the land use under grapes and a cellar door operated on the site. The subdivision consent included conditions relating to the availability of water which was not met resulting in the subdivision not proceeding at that time.

The CLUS through a constraints sieve process, identified land suitable for lifestyle development. This site is on the cusp of one such area identified at Spring Flat. To date, Council have not dealt with any proposals to rezone land to facilitate lifestyle development in the vicinity and the zone has not been applied to any other land at Spring Flat. In this instance the land is adjacent to the existing RU4 Primary Production Small Lots zone and within 2km of the sealed road network at Queens Pinch Road. The CLUS suitability criteria include a requirement that land be within 1km of the sealed road network. Clearly, this criterion has not been met. However, the circumstances are such that the rezoning proposes only one additional dwelling.

The development standards adopted for the R5 zone include a 12ha minimum lot size. As this is just a minimum and given the range of lot sizes on which dwellings are erected in the area and the preference of the applicant for 20ha lots, it is proposed to retain the RU1 Primary Production zone and amend only the Lot Size Map to indicate a 20ha minimum lot size over the land. Maintaining the zone will also retain the objectives of the land as rural rather than residential. This is consistent with surrounding development and consistent with the earlier subdivision approval while still creating a life style opportunity. Further, the traffic generated by the additional dwelling is likely to be less than that which is experienced by a cellar door and more akin to the surrounding pattern of

2. REZONE LAND TO R5 LARGE LOT RESIDENTIAL AND AMEND THE LOT SIZE MAP ON LAND IN ADAMS LEAD ROAD LOT 76 DP 755434 GULGONG



Refer to Attachment 1, detailed planning proposal prepared by Minespex.

The land is located on the southern side of the residential area of Gulgong and adjoining an RE1 Public Recreation and R5 Large Lot Residential zone. The land itself has an area of approximately 4ha and houses an existing dwelling. The amendment proposed would enable the division of the land into two lots of approximately 2.13ha and 1.98ha.



Extract Planning Proposal prepared by Minespex August 2014

This site was not strategically identified in the CLUS, however, the CLUS does discuss a principle of development on adjoining zoned land in terms of maintaining consistency and continuity and providing opportunities for development on the fringe of residential areas. Under the provisions of the LEP 2012 a second dwelling could be achieved on the site as dual occupancy development, however, the land could not be subdivided.

The site is well situated on the edge of Gulgong town and could readily accommodate the development. In terms of the mechanism for achieving the desired outcome it is proposed to adopt the R5 Large Lot Residential zone to the site with an accompanying 2ha minimum lot size. This will enable the subdivision of the newly created lot resulting in a similar land use outcome as currently enjoyed but with the benefit of being able to legally register the second title.

At 2ha the site would generally not be required to be connected to water and sewer, however, Adams Lead Road from the new lot to the Castlereagh Highway being a distance of approximately 260m may be required to be sealed though the development application process.

Draft Urban Release Strategy – the planning proposal is not in response to any perceived shortfall in residential land in Gulgong being only one lot and as stated above not creating opportunities for dwellings outside framework provided by the current zone (that is the state could accommodate a detached dual occupancy). However, the Draft Urban Release Strategy (URS) currently on public exhibition does identify a supply of 2ha lots in Gulgong sufficient for the demand of one lot per annum. As this is only a single lot it is not considered to significantly impact or undermine the Draft URS.

3. INSERT A PROVISION IN LOCAL ENVIRONMENTAL PLAN 2012 WHICH ALLOWS FOR THE SUBDIVISION OF SPLIT ZONED LAND PROVIDED THE AREA CONTAINING A DWELLING OR AN OPPORTUNITY FOR A DWELLING MEETS THE MINIMUM LOT SIZE FOR LAND WITHIN THAT ZONE.

Dwellings on Split Zoned Land

One of the issues plaguing Council is the difficulty and uncertainty around development of residential land with more than one minimum lot size as is the case in this planning proposal.

Currently, where a lot is split zoned with a split minimum lot size, provided that the part of the site on which a dwelling will be erected has an area at least consistent with the minimum lot size for the erection of a dwelling in that particular zone, Council will consider an application for a dwelling. In

essence this practice applies the less of the two minimum lot sizes applicable to a single parcel of land.

In this case both lots are currently split zoned part R1 General Residential and part E3 Environmental Management and the minimum lot size in the two zones is 600m² and 400ha respectively. The objective of the E3 zone in this location is to protect the ecological and aesthetic values attributed to the river corridor. Part of both lots is also below the flood planning level, however, the site of a proposed building envelope immediately behind the existing house which fronts Market Street on Lot 1 is well above the 1 in 100 flood level. Based on current practice, if 600m² of the lot was included in the R1 General Residential zone as per the planning proposal Council would approve the erection of a dwelling on the lot provided the dwelling was located on land that is zoned R1 and land that has a MLS of 600m².

Council is seeking a local provision to address these issues. The provision would be applicable to all residential zones identified in the LEP 2012 as follows; R1 – General Residential, R2- Low Density Residential, R3 – Medium Density Residential, R5 Large Lot Residential and RU5 - Village.

Facilitating the subdivision and boundary adjustment between land zoned R1 General Residential and land zoned E3 Environmental Management.

Rezoning part of the site alone will not overcome the difficulties in undertaking a boundary adjustment and subdivision as part of the lot will still be zoned E3 Environmental Management and the MLS for subdivision within this zone is 400m².

Clarifying the provisions around dwellings on split zoned land such that provided the area zoned R1 is at least 600m² consistent with a residential lot size on the Lot Size Map the dwelling could be approved.

The uncertainty surrounding land containing two areas of land mapped for different minimum lot sizes has been addressed by Post Stephens Council in a specific clause in their LEP which is extracted as follows:

4.1D Minimum lot sizes for certain split zones

(1) The objectives of this clause are as follows:

(A) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,

(B) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.

(2) This clause applies to each lot (an original lot) that contains:

(A) land in a residential, business or industrial zone, or Zone RU5 village, and

(B) land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living

(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:

(A) one of the resulting lots will contain:

- I. land in a residential, business or industrial zone or Zone RU5 Village that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
- II. all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living that was in the original lot, and*

(B) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

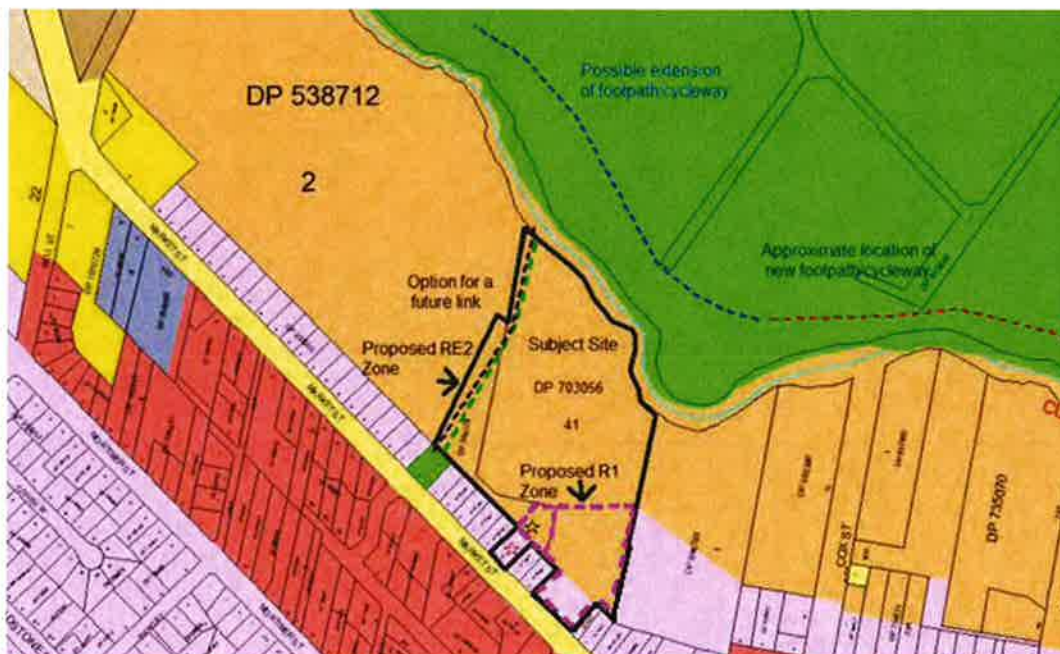
This clause assumes that the operation of clause 4.1 relating to subdivision does not apply to split zoned land. On the face of it, this is not the case, however, this local provision does provide some clarity in terms of subdivision of parcels with a split minimum lot size and a similar provision is being sort for the Mid-Western Regional LEP 2012.

For subdivision the same practice has been adopted in that provided the minimum lot size for the R1 General Residential land can be achieved the lot can be excised leaving an undersized E3 or zoned parcel which, if it does not contain a dwelling would have no opportunity to do so in the future. In this case the land use remains consistent. Council is seeking clarification to this in a local provision in the LEP.

4. & 5. REZONE TO PART R1 AND PART RE2 LAND IN MARKET STREET LOT 41 DP 703056 AND LOT 1 DP 564729 AND REZONE TO R1 LOT 42 DP 703056 MUDGEE AND AMEND THE MINIMUM LOT SIZE MAP TO 600M²

The third of the proposal is the most complex. The intention is to enable a dwelling to be erected on land currently within the E3 Environmental Management zone by rezoning part of the land to R1 General Residential, rezone a strip of land to ultimately provide a link to the Cudgegong River and facilitate a subdivision and boundary adjustment.

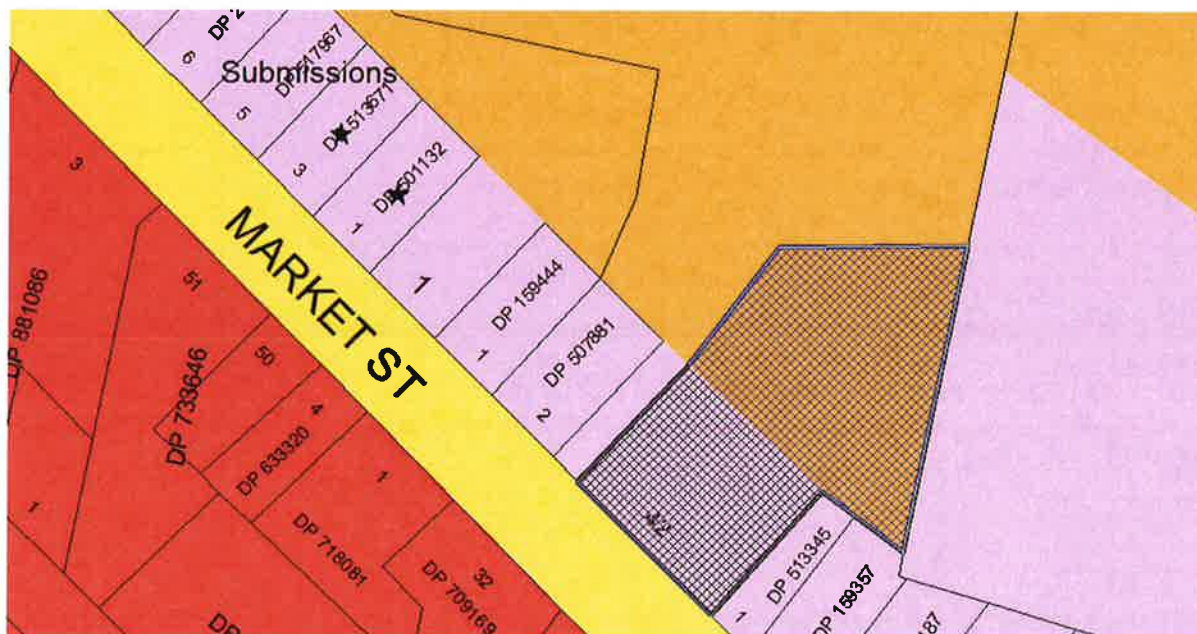
The proposal offers a Public Recreation zone, however, at this stage and until Council is in a position to acquire the land a Private Recreation zone may be more appropriate. The RE2 Zone would run along Lot 1 DP 564729 154 Market Street and the north western corner of Lot 41 DP 703056 146 Market Street and provide a link to the Cudgegong River from Interact Park in Market Street. This is shown on the map below.



The proposal to rezone part of Lot 41 DP 703056 and Lot 1 DP 564729 and all of Lot 42 DP 703056 to R1 General Residential as outlined on the maps above leads to the need for clarity in developing on split zones.

In addition to the rezoning the Lot Size Map will be amended to show 600m² for the subject re zoned land at Lot 41 DP 703056, Lot 1 DP 564729 and Lot 42 DP 703056 to align with the General Residential zoning and facilitate boundary adjustments.

It should be noted that, the initial Planning Proposal did not interfere with Lot 42 DP 703056 which is currently zoned part R1 General Residential and part E3 Environmental Management. However, as proposed this would have resulted in an isolated parcel of E3 and it was a condition of the Gateway Determination to include Lot 42 DP 703056 in its entirety as R1 with a corresponding MLS of 600m².



Lot 42 DP 703056 as hatched above – Initially not included in the Planning Proposal but required as a condition of the Gateway to be included in the R1 General Residential zone. Stars denote submissions.



Stars denote the location of objections. Hatch is Lot 42 DP 703056 being the additional lot included at the Gateway.

GATEWAY DETERMINATION

The Department of Planning & Environment (DP&E) gave permission for the Planning Proposal to proceed and be exhibited on 9 December 2014 (**Attachment 1**), subject to the following amendments:

- to address State Environmental Planning Policy (SEPP) 55 Remediation of Land and State Environmental Planning Policy (Rural Lands) 2007,
- to outline the zones which are to be affected by the minimum lot size for split zones provision,
- to zone land at lot 76 DP 755434 Adams Lead Road, Gulgong Zone R5 Large Lot Residential,
- to clearly indicate the intent to amend the minimum lot size on part Lot 41 DP 703056 and part lot 1 DP 564729 Market Street, mudgee to 600 square metres, and

- e) to zone land that forms part Lot 42 DP 703056 within Zone E3 Environmental Management, Zone R1 General Residential and amend the minimum lot size to 600 square metres.

On Monday 26 January 2015 the Planning Proposal had been amended as requested and DP&E agreed Council could publically exhibit the Planning Proposal.

PUBLIC EXHIBITION

The Planning Proposal and all accompanying attachments were placed on Public Exhibition from Friday 30th January 2015 till Friday 27th February 2015. The Public Exhibition involved a newspaper advertisement, neighbour notification letters, uploading the documents to Council's website and having a hard copy of the Planning proposal at Gulgong, Mudgee and Rylstone Council offices for the public to view.

There was an error loading an attachment to the website and as such a second exhibition period was undertaken to ensure all community members had appropriate time to respond.

The second exhibition was between Friday 6th March 2015 and Friday 3rd April 2015.

During the Exhibition Periods responses from the Rural Fire Service (RFS), Office of Environment and Heritage (OEH) and two (2) formal objections were received from the public. As discussed below.

SUBMISSIONS AND RESPONSES

Public Authority Responses –

The Rural Fire Service (RFS) responded on the 10th March 2015 stating RFS had reviewed the 'plans and documents received for the proposal and subsequently has no concerns or issues in relation to bushfire'.

The NSW Office of Environment & Heritage (OEH) responded on 27th February 2015, generally supporting the Planning Proposal. OEH noted an item of Aboriginal Heritage near the Market Street portion of the proposal and suggests further 'due diligence' will be required before any future development.

This will be addressed at the development application stage as is practice of Council.

Public Submissions – the issues raised in the two public submissions are addressed below. Copies of the submissions are Attachments 2 & 3.

Location	Issue	Staff Comment
Planning Proposal - Exhibition	The information placed on public exhibition is incomplete and inadequate. Particularly the gateway determination and attachments not being uploaded to Council's Website properly.	There was a problem with uploading the documents which went unnoticed during the first exhibition. All documents were available at Council's Mudgee, Gulgong and Rylstone offices during the first exhibition.
	The planning proposal as exhibited is not the same	However in response to the concerns it was decided to re-exhibit the Planning Proposal and Associated documentation between Friday 6 th March 2015 and Friday 3 rd April 2015. The Planning proposal provided to the Department was the same as

Location	Issue	Staff Comment
	as that Considered by Council at its Council meeting in September 2014 and therefore Council has not endorsed the planning proposal as provided to the Department for Gateway determination.	the Planning proposal endorsed by Council in September 2014. The changes made prior to the exhibition were made as conditions in the Gateway Determination. These changes were to; - include Lot 42 DP 703056 in the Residential zone and impose the MLS to 600m2 for this lot; and - to use the R5 rather than the R2 zone for land in Adams Lead Rd Gulgong (no change to lot size).
154 Market Street, Mudgee	Potential rezoning of the land from E3 – Environmental Management to R1 – General Residential will result in dwellings behind my property.	The option to build a second dwelling under the dual occupancy provisions already exists on the land in question, however, under the current LEP framework the dual occupancy could not be subdivided. Under the proposal, the second dwelling will be still be permissible and the land could be subdivided to create a separate tile for the dual occupancy.
	Negative Impact on property values	Property Values are not a Planning consideration under the EP&A Act 1979
	Loss of views	Council has setback and height limit controls to assist in maintaining neighbourhood amenity at the development application stage. In this case, that part of the existing lot that is proposed to be rezoned R1 is immediately behind the existing dwelling on the site and includes the area in which a dual occupancy could be located under the current LEP provisions. Any DA be it a dual occupancy under the current LEP or a second dwelling in line with the proposed amendment will require a full merit assessment.
	The need/viability of the proposed RE2 land and potential pathway connecting Market Street to the Cudgegong.	A new public walking link is considered a positive outcome as it provides important access to the Cudgegong River and allows more flexible future pathways planning.
	Building in Flood Prone Land	The proposed rezoning is on land identified as 'no flood risk' towards market street and low flood risk (maximum extent) towards the Cudgegong River. This is similar to

Location	Issue	Staff Comment
		the remainder of properties on the northern Side of Market Street and any impacts on dwellings will be assessed at DA stage.
	Overlooking/ Loss of Privacy / Overshadowing	The main intent of the zoning change is not to allow additional uses but facilitate subdivision. Amenity concerns will be addressed if and when a DA for a dwelling is lodged in line with Council LEP and DCP controls.
	Traffic generation from new developments	There is considered to be no significant change in traffic generation. A dual Occupancy development is currently permissible and would result in additional dwellings, the rezoning is for the provision of subdivision.

The Public Submissions have been taking into consideration and are considered to be of minor consequence to the Planning proposal as addressed above.

In addition to the written submissions, a request was made by an objector to meet with staff to discuss concerns. Despite staff setting aside time to do this, the objector did not avail themselves of the opportunity.

Financial and Operational Plan implications

Not applicable.

Community Plan implications

The strategic planning function sits under the theme Looking After Our Community in the Community Plan. Should the recommendation proceed it will have implications for land use development as a result of an amendment to the LEP 2012.

AMBROSE MARQUART
TOWN PLANNER



CATHERINE VAN LAEREN
DIRECTOR, DEVELOPMENT

7 April 2015

Attachments: 1. Gateway Determination
2. Public Submission
3. Public Submission
4. RFS Response
5. OEH Response

APPROVED FOR SUBMISSION:



BRAD CAM
GENERAL MANAGER