



Bourke LEP 2012 Planning Proposal

March 2015

Bourke LEP 2012

Planning Proposal

Prepared for Bourke Shire Council
by



Rural and Environmental
Planning Consultants

P.O. Box 1858
Bowral, NSW 2576
www.ruralplanning.com.au

March 2015

Table of Contents

Part 1: Objectives and Intended Outcomes	4
1.1. Introduction	4
1.2. Objectives	4
1.3. Council Resolution	4
Part 2: Explanation of Provisions	4
2.1. Introduction	4
2.2. Large Lot Residential Development at North Bourke	4
2.3. Dwelling Houses, Mitchell Highway, North Bourke	5
2.4. Detached Dual Occupancies	5
2.5. West Bourke	5
2.6. Flooding Clause	5
2.7. Heritage Map	5
Part 3: Justification	5
3.1. Introduction	5
3.2. Large Lot Residential Development at North Bourke	5
3.3. Dwelling Houses Mitchell Highway, North Bourke	6
3.4. Detached Dual Occupancies	7
3.5. West Bourke	7
3.6. Flooding Clause	7
3.7. Darling River Heritage Item Map	9
Part 4: Mapping	10
4.1. Introduction	10
4.2. Maps	10
Part 5: Community Consultation	14
5.1. Introduction	14
5.2. Consultation	14
Part 6: Project Timeline	14
6.1. Introduction	14
6.2. Timeline	14
Part 7: Local Planning Directions	14
7.1. Local Planning Directions	14

List of Maps

Map 4.1: North Bourke Large Lot Residential 2 ha	11
Map 4.2: Rural Residential Lot Sizes	12
Map 4.3 North Bourke Dwellings on Vacant Lots	13

Part 1: Objectives and Intended Outcomes

1.1. Introduction

The purpose of this part is to provide a short and concise statement setting out the intended outcomes of the planning proposal

1.2. Objectives

The objectives of this planning proposal are as follows:

To make amendments to the Bourke LEP to

- (a) Allow for more large lot residential development at North Bourke;
- (b) Permit dwelling houses on specific land between the Mitchell Highway and the Darling River at North Bourke;
- (c) Permit detached dual occupancies in the Primary Production RU1 Zone
- (d) Rezone land in West Bourke from light industrial to residential;
- (e) Rezone all existing Cemeteries to Special Purpose zones;
- (f) Amend the flooding clause to reflect the 1:100 flood and not the Probable Maximum Flood; and
- (g) Amend the heritage map to show the Darling River on the Bourke map sheet as a heritage item.

1.3. Council Resolution

Council resolved on 28 July 2014 to prepare the planning proposal.

Part 2: Explanation of Provisions

2.1. Introduction

The purpose of this part of the planning proposal is to explain the provisions to be included to allow the LEP to be changed.

Each of the provisions outlined in Part 1 will be explained separately.

2.2. Large Lot Residential Development at North Bourke

Land to the north of Hungerford Rd between the village zone for North Bourke and the Airport has been an orange orchard, but the trees have recently been grubbed and the water licences extinguished. It is proposed to change the zone to R5 Large Lot Residential with a minimum size of 2 ha.

It is currently zoned as Primary Production. This land was included in the Bourke Shire Strategy as having potential for development to Large Lot Residential.

2.3. Dwelling Houses, Mitchell Highway, North Bourke

The land on the eastern side of the Mitchell Highway at North Bourke between the highway and the Darling River has been used for orchards in the past but these have now ceased. There are a number of these lots that have dwellings on them but 4 are vacant. It is proposed to allow dwellings to be built on the 4 vacant lots.

2.4. Detached Dual Occupancies

It is proposed to permit detached dual occupancies on in the Primary Production RU1 Zone.

2.5. West Bourke

It is proposed to construct Aboriginal Housing on land at West Bourke and as such the zoning needs to change from Light Industrial. It is noted that the land was changed from residential to light industrial as part of the LEP 2012.

2.6. Flooding Clause

The wording of the Flooding clause in the LEP refers to flood liable land which is defined by the NSW Floodplain Development Manual as all land below the Probable Maximum Flood. This is would refer to all land within the Bourke Shire as well as land in the flood levees. Prior to this being changed by the LEP, the flood planning referred to the 1% or 1:100 probability flood event. A similar clause was included in the exhibited draft LEP.

It is proposed to reinstate the clause that was exhibited which referred to the 1% flood.

2.7. Heritage Map

The Darling River is a Heritage Item pursuant to schedule 5. However it is only shown on one of 5 maps that show the Darling River on them. It is proposed to put the Darling River on the other 5 heritage maps

Part 3: Justification

3.1. Introduction

The purpose of this part of the planning proposal is to provide justification of the proposals outlined in part 2.

Each of the provisions outlined in Part 1 will be explained separately.

3.2. Large Lot Residential Development at North Bourke

The land between Hungerford Road and the North Bourke Village Zone is currently zoned as Primary Production. It was included in the Bourke Shire

Strategy as having potential for development as Large Lot Residential. The land is shown on map 4.1.

The Strategy stated that this land had potential for rural residential development and made the following comment:

"Hungerford Road, North Bourke. The land to the north of Hungerford Road between the Airport that has previously been used as an irrigated orchard has now ceased and its water licences have been surrendered."
(Bourke Shire Strategy p116)

The Strategy suggested a minimum lot size of 10 ha but this is considered to be too large and it is proposed to have a minimum of 2 ha. The size of the land is 80 ha and it would yield approximately 40 lots. This is considered to be sufficient to meet the demands of the area for a number of years to come.

The minimum lot size of 2 ha has been chosen because of a desire to have a variety of lot sizes. There is a 1 ha area at Bourke and North Bourke and a 10 ha minimum area 8 km north of North Bourke along the Mitchell Highway. The addition of an area that has a 2 ha minimum will enable people to have a variety of lot sizes to choose from, thus providing a mix of housing choices.

The location of the 2 ha area is in close proximity to the facilities at North Bourke as well as being close to Bourke so the residents don't have to travel far to access shopping, schools, health, recreation and social facilities and services.

Map 4.2 shows the location of the two 1 ha area and the 10 ha area.

3.3. Dwelling Houses Mitchell Highway, North Bourke

The land along the Mitchell Highway at North Bourke between the Highway and the Darling River has dwelling houses on most of the lots. It was an area used for orcharding but this use has ceased as a productive land use and only one small orchard remains. This is an unproductive size now. The lots in this area range in size from 7 to 10 ha with most being smaller than 10 ha.

The lot numbers and sizes proposed to have dwelling entitlements are as follows:

- Lot 5 DP 753570 8.2 ha
- Lot 86 DP 753570 7.8 ha
- Lot 8 DP 753570 8.3 ha
- Lot 660 DP 761689. 10.9 ha

The land is shown on map 4.3.

Map 4.3 also shows that there are dwellings on the surrounding lots and this proposal will formalise the existing situation. It should be pointed out that as the land is not growing fruit, the land use has changed to a rural residential one.

Flooding in and around Bourke is delineated by the soil type, as there is no flood mapping available. The Bourke Shire Strategy referred to this in section 7.3.3 and it was also shown on map 7.2 of the strategy for the land around Bourke. If

the land is on red soil, it is considered to be not inundated during the 1% AEP flood (which has been determined to be the flood of record which is the 1974 flood) and if it is on grey soil, it is considered to be subject to inundation. This can be seen from map 4.3 which shows the subject land and it can be seen that they have red soil on them signifying that it would not be inundated. In addition, any dwelling house has to be 500mm above the flood height.

It is considered that a dwelling house can be constructed on each lot without creating any major issues with the surrounding land uses.

3.4. Detached Dual Occupancies

People who live in the Primary Production zone have expressed a desire to have detached dual occupancies so that a family member can live on the property but not as part of their house. At present, they are only permitted if they are an attached dual occupancy.

It is noted that other rural Councils have been permitted to have detached dual occupancies.

3.5. West Bourke

Land at West Bourke is largely owned by the Aboriginal Housing Authority and they wish to rebuild a number of the houses that have burnt down over the past few years.

Land at West Bourke between Meek Street to the north, Church St to the east, Anson to the south and Culgoa to the west has become vacant over time as houses have been burnt down and abandoned. There are only a few houses left in the area and in an attempt to revitalise it, the Bourke Shire Strategy recommended that it be rezoned to Light Industrial so that it could be revitalised. This has not happened and the Aboriginal Housing Authority now wish to build a number of houses on vacant land. This is considered an appropriate thing to do and it should revert to its previous zoning status of residential.

3.6. Flooding Clause

The current flooding clause in the Bourke LEP is as follows:

6.2 Flood planning

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

(a) to minimise the flood risk to life and property associated with the use of land,

(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,

(c) to avoid significant adverse impacts on flood behaviour and the environment.

(2) This clause applies to flood liable land.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the

development:

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

(4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.

The definition of flood liable land in the Floodplain Development Manual includes all land in the floodplain up to the Probable Maximum Flood. The former LEP adopted the 1% flood level which is related to a flood event in 1974. During the drafting of the current LEP it was agreed that the 1% flood height remain and this was in the exhibited version. There are no flood maps of Bourke because the urban area has a levee around it and therefore, there is not any need to carry out flood studies and plans. It was agreed that the DCP would adopt the 1974 flood as the 1% flood for the purposes of the LEP. It also states that all development is required to be 500 mm above the level of the 1974 flood. However, after the draft LEP was submitted to the Department for making, the clause was changed by the Department to the current one, which in effect means that all land in the Shire, including that land within the levee, would be floodprone because the probable maximum flood is a higher flood event than the 1% one, which is the level of the flood levee.

It is considered therefore that the clause that was exhibited should replace the one that is in the LEP at present. The exhibited clause which is proposed to replace the current one is as follows:

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

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

(2) This clause applies to land at or below the flood planning level.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(a) is compatible with the flood hazard of the land; and

(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

(c) incorporates appropriate measures to manage risk to life from flood, and

(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

(4) A word or expression used in this clause has the same meaning as it has in the NSW Government's Floodplain Development Manual published in 2005, unless it is otherwise defined in this clause.

(5) In this clause:

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard.

3.7. Darling River Heritage Item Map

The Darling River is a heritage item listed in Schedule 5 as item number I10. If an item is listed in the schedule, it is also required to be mapped.

The maps of the Heritage Items only show the Darling River on map tile 5. This is despite the fact that the river is shown on map tiles 3, 6, 8, 8A and 8B. It is considered that it is misleading not to show the heritage item on all map sheets that have the Darling River on them. It should be pointed out that the Heritage mapping was prepared by the Department of Planning and Environment and not the Council.

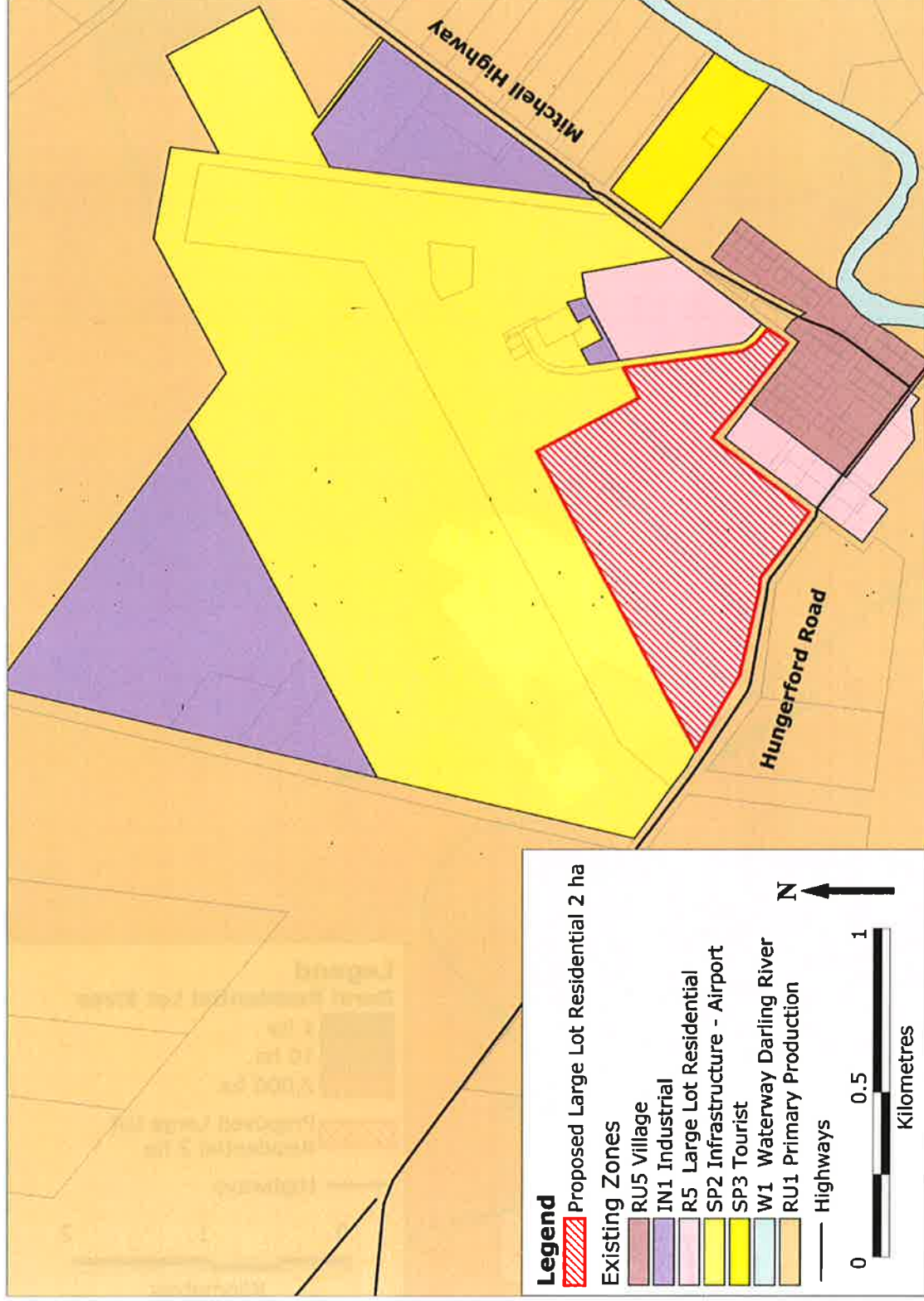
Part 4: Mapping

4.1. Introduction

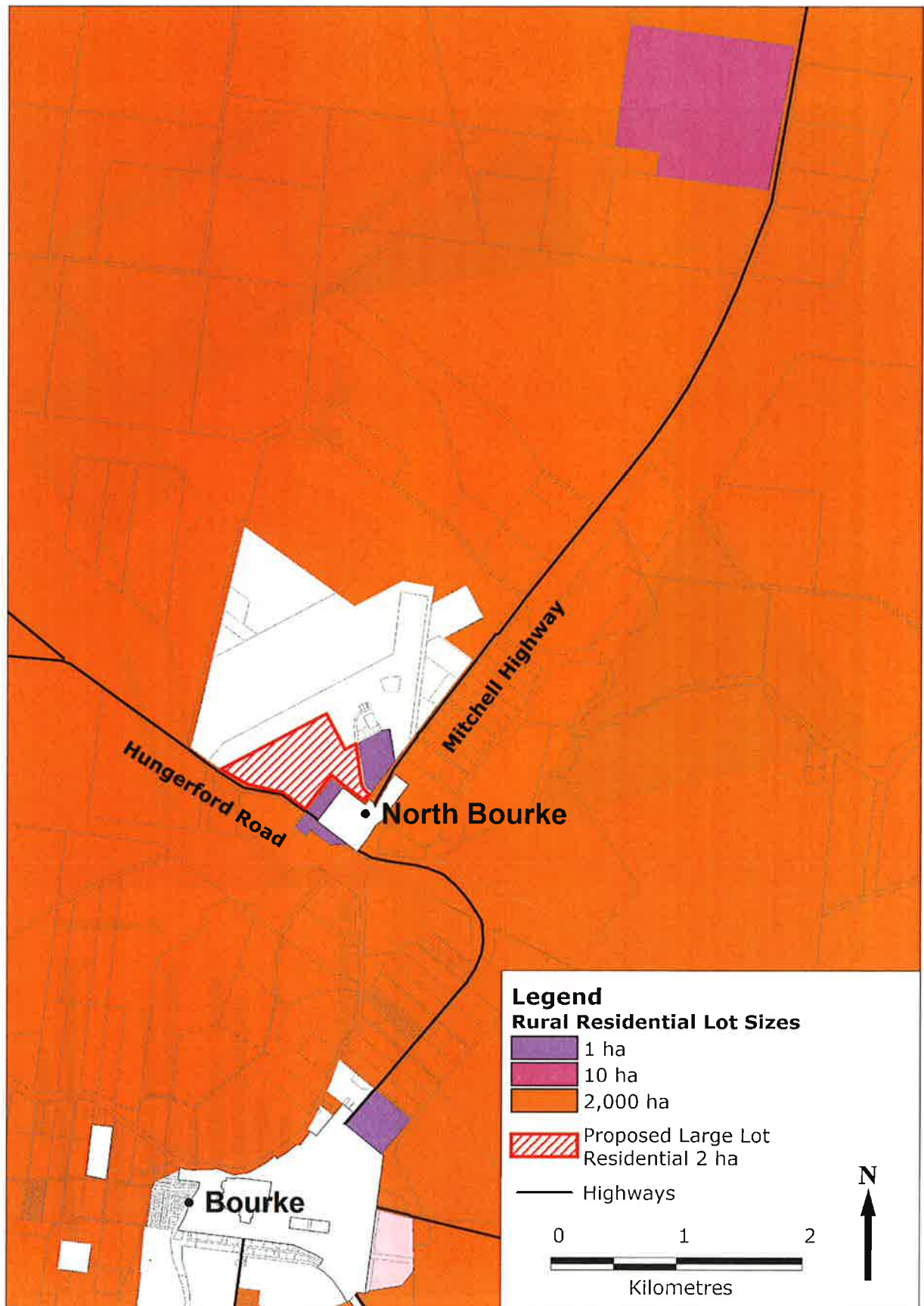
The purpose of this part of the planning proposal is to show the maps that have been used to identify the intent of the Planning Proposal.

4.2. Maps





Map 4.1: North Bourke Large Lot Residential 2 ha



Map 4.2: Rural Residential Lot Sizes



Map 4.3 North Bourke Dwellings on Vacant Lots

Part 5: Community Consultation

5.1. Introduction

The purpose of this part of the planning proposal is to identify the community consultation that is proposed to be undertaken.

5.2. Consultation

It is proposed to place the documentation on exhibition in Bourke for a period of 28 days.

This is a minor proposal and it is not considered that it is of such an impact as to require Government Agency consultation prior to the exhibition. The relevant Government Agencies will be consulted during the public exhibition.

Part 6: Project Timeline

6.1. Introduction

The purpose of this part of the planning proposal is to outline a timeline for the completion of the Planning Proposal

6.2. Timeline

The following tasks are proposed to be done

- 31 March – Gateway Determination
- 6 April to 4 May – Public Exhibition
- May – Consideration of Submissions
- May – Report Submissions to Council
- June – Submit Planning Proposal to Department

Part 7: Local Planning Directions

The Department have prepared a set of Local Planning Directions pursuant to section 117 of the Environmental Planning and Assessment Act. The directions are listed in the following sections with comments made on their consistency where relevant.

7.1. Local Planning Directions

The following Local Planning Directions issued pursuant to section 117 of the EP&A Act are relevant to Bourke Shire

Direction Name	Consistent	Comment / Reason for Inconsistency

1 Employment and Resources

Direction Name	Consistent	Comment / Reason for Inconsistency
1.1 Business and Industrial Zones	No	This planning proposal seeks to rezone industrial land to residential in West Bourke. It should be pointed out that this land was only recently zoned to light industrial from residential as part of LEP 2012. Land at West Bourke between Meek Street to the north, Church St to the east, Anson to the south and Culgoa to the west has become vacant over time as houses have been burnt down and abandoned. There are only a few houses left in the area and in an attempt to revitalise it, the Bourke Shire Strategy recommended that it be rezoned to Light Industrial so that it could be revitalised. This has not happened and the Aboriginal Housing Authority now wish to build a number of houses on vacant land. This is considered an appropriate thing to do and it should revert to its previous zoning status of residential.
1.2 Rural Zones	No	This planning proposal seeks to rezone some land at North Bourke to enable 2 ha development as well as allowing dwellings to be constructed on four lots at North Bourke. The minimum lot size of 2 ha has been chosen because of a desire to have a variety of lot sizes. There is a 1 ha area at Bourke and North Bourke and a 10 ha minimum area 8 km north of North Bourke along the Mitchell Highway. The addition of an area that has a 2 ha minimum will enable people to have a variety of lot sizes to choose from, thus providing a mix of housing choices. The location of the 2 ha area is in close proximity to the facilities at North Bourke as well as being close to Bourke so the residents don't have to travel far to access shopping, schools, health, recreation and social facilities and services. The land along the Mitchell Highway at North Bourke between the Highway and the Darling River has dwelling houses on most of the lots. It was an area used for orcharding but this use has ceased as a productive land use and only one small orchard remains. This is an

Direction Name	Consistent	Comment / Reason for Inconsistency
		unproductive size now. The lots in this area range in size from 7 to 10 ha with most being smaller than 10 ha. There are dwellings on the surrounding lots and this proposal will formalise the existing situation. It should be pointed out that as the land is not growing fruit, the land use has changed to a rural residential one. Flooding in and around Bourke is delineated by the soil type, as there is no flood mapping available. The Bourke Shire Strategy referred to this in section 7.3.3 and it was also shown on map 7.2 of the strategy for the land around Bourke. If the land is on red soil, it is considered to be not inundated during the 1% AEP flood (which has been determined to be the flood of record which is the 1974 flood) and if it is on grey soil, it is considered to be subject to inundation. This can be seen from map 4.3 which shows the subject land and it can be seen that they have red soil on them signifying that it would not be inundated. In addition, any dwelling house has to be 500mm above the flood height. It is considered that a dwelling house can be constructed on each lot without creating any major issues with the surrounding land uses.
1.3 Mining, Petroleum Production and Extractive Industries	Not Applicable	
1.4 Oyster Aquaculture	Not Applicable	
1.5 Rural Lands	Yes	This matter has been addressed in the Bourke Shire Strategy. Section 7.3.5 makes recommendations for preserving rural land and specifically addresses the provisions of the Rural SEPP. The draft LEP has reflected the recommendations of the Shire Strategies.

Direction Name	Consistent	Comment / Reason for Inconsistency
----------------	------------	------------------------------------

2.Environment and Heritage

2.1 Environment Protection Zones	Not Applicable	
2.2 Coastal Protection	Not Applicable	
2.3 Heritage Protection	Not Applicable	
2.4 Recreation Vehicle Areas	Not Applicable	

3. Housing, Infrastructure and Urban Development

3.1 Residential Zones	Yes	The Planning Proposal seeks to rezone land to provide for additional housing opportunities.
3.2 Caravan Parks and Manufactured Home Estates	Not Applicable	
3.3 Home Occupations	Not Applicable	
3.4 Integrating Land Use and Transport	Not Applicable	
3.5 Development Near Licensed Aerodromes	Yes	The Bourke Airport is a licensed aerodrome. It is not used on a regular basis for flights and is used by light aircraft. It is not considered that the proposed Large Lot Residential rezoning will cause problems with the operation of the airport
3.6 Shooting Ranges	Not Applicable	

4. Hazard and Risk

4.1 Acid Sulfate Soils	Not Applicable	
------------------------	----------------	--

Direction Name	Consistent	Comment / Reason for Inconsistency
4.2 Mine Subsidence and Unstable Land	Not Applicable	
4.3 Flood Prone Land	Yes	This matter has been addressed in the Bourke Shire Strategy. Section 7.12 makes recommendations for land affected by Natural Hazards which includes flood prone land. This has been taken into consideration when identifying land for future urban and rural residential development. In addition the LEP adopts a local provision at clause 6.1. The council has adopted the level of the 1974 flood as the 1:100 ARI flood which makes the clause operational. However, this was changed by the Department of Planning and Environment after the Council submitted the LEP pursuant to section 68 to make all of the land in the Shire subject to the Probable Maximum Flood. This planning proposal seeks to amend this to revert to the clause that was exhibited and adopted by the Council.
4.4 Planning for Bushfire Protection	Yes	This matter has been addressed in the Bourke Shire Strategy. Section 7.12 makes recommendations for land affected by Natural Hazards which includes bushfire prone land. This has been taken into consideration when identifying land for future urban and rural residential development.

5.Regional Planning

5.1 Implementation of Regional Strategies	Not Applicable	
5.2 Sydney Drinking Water Catchments	Not Applicable	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not Applicable	

Direction Name	Consistent	Comment / Reason for Inconsistency
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not Applicable	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	Not Applicable	
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Not Applicable	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Not Applicable	
5.8 Second Sydney Airport: Badgerys Creek	Not Applicable	
5.9 North West Rail Link Corridor Strategy	Not Applicable	

6. Local Plan Making

6.1 Approval and Referral Requirements	Not Applicable	
6.2 Reserving Land for Public Purposes	Not Applicable	
6.3 Site Specific Provisions	Not Applicable	

7. Metropolitan Planning

Direction Name	Consistent	Comment / Reason for Inconsistency
7.1 Implementation of a Plan for Growing Sydney	Not Applicable	

Part 8: Conclusion

Bourke Shire Council proposes to make amendments to the Bourke LEP to

- (a) Allow for more large lot residential development at North Bourke;
- (b) Permit dwelling houses on specific land between the Mitchell Highway and the Darling River at North Bourke;
- (c) Permit detached dual occupancies in the Primary Production RU1 Zone
- (d) Rezone land in West Bourke from light industrial to residential;
- (e) Rezone all existing Cemeteries to Special Purpose zones;
- (f) Amend the flooding clause to reflect the 1:100 flood and not the Probable Maximum Flood; and
- (g) Amend the heritage map to show the Darling River on the Bourke map sheet as a heritage item.

This Planning Proposal has outlined the changes and provided justification.