

Planning Services

Gateway Determination Report

LGA	Moree Plains
RPA	Moree Plains Shire Council
NAME	Proposal to make the RU1 Primary Production zone an "open" zone, include additional uses as permitted with consent, add objectives to the RU1 zone land use table and include local provisions relating to warehouse or distribution centres and truck depots.
NUMBER	PP_2017_MOREE_001_00
LEP TO BE AMENDED	Moree Plains LEP 2011
ADDRESS	This planning proposal applies to all land zoned RU1 in the Moree Plains LGA
DESCRIPTION	N/A
RECEIVED	20/9/2017
FILE NO.	17/10778
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POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to amend the Land Use Table in the Moree Plains LEP 2011 for the RU1 Primary Production zone to make it an "open" zone by listing "Any development not specified in item 2 or 4" in item 3 of the land use table for the RU1 zone.

This will have the effect of making land uses permissible with development consent if they are not listed in the LEP dictionary, and/or not listed as prohibited.

The planning proposal also intends to:

- make a number of new land uses permissible with consent;
- introduce local heads of consideration provisions relating to warehouse or distribution centres and truck depots where these land uses are proposed in the RU1 zone; and
- add new objectives to the RU1 zone land use table.

Site Description

The proposal will apply to all land within the RU1 Primary Production zone in the Moree Plains LGA.

Surrounding Area

A number of LGAs in the New England North West region including Glenn Innes Severn, Gwydir, Tamworth Regional, Tenterfield and Gunnedah have LEPs that have an 'open' RU1 zone.

Summary of Recommendation

It is recommended the planning proposal should proceed subject to conditions as:

- it will provide flexibility in the land uses permitted in the RU1 zone;
- it is consistent with the format adopted by many other LEPs across the region;
- having an 'open' rural zone is not inconsistent with Department policy; and
- the proposed amendment will increase flexibility in the rural areas and help support Moree's important agricultural sector.

The proposed local provisions relating to the development of warehouse or distribution centres and truck depots will ensure that potential land use conflict issues and the provision of infrastructure for these developments in rural areas can be appropriately considered and addressed as needed at the development application stage for these land uses.

PROPOSAL

Objectives or Intended Outcomes

The objective of the planning proposal adequately explains the intended primary outcome which is to make the RU1 Primary Production zone in the Moree Plains LEP 2011 an "open" zone.

Part 1 of the planning proposal does however need to be amended to also reflect the other proposed changes to:

- identify the additional permitted uses that have been made permissible with consent;
- include additional objectives in the RU1 zone land use table; and
- include local provisions relating to warehouse or distribution centres and truck depots.

It is recommended that this amendment be a condition of the Gateway determination.

Explanation of Provisions

The explanation of provisions adequately describes the intended changes to the land use table for the RU1 Primary Production zone. A draft land use table for the RU1 zone is included as Appendix A of the planning proposal. A land use matrix has also been prepared to clarify the land use permissibility in the RU1 zone. It is noted that secondary dwellings, landscape material supplies, markets and plant nurseries have not been correctly identified in the explanation of provisions as being proposed development with consent. It is recommended that the Gateway determination be conditioned to require this matter be amended prior to exhibition.

The planning proposal also seeks to include local clauses in the Moree Plains LEP 2011 to provide planning controls for some land uses which would not normally be permissible in the RU1 zone. The local planning controls (contained in Appendix B of the planning proposal) relate to warehouse or distribution centres and truck depots. The proposed local provisions require consideration of suitable road infrastructure and the need for the land use to serve the primary industry sector and not contribute to adverse impacts on amenity or land use conflict.

Mapping

The planning proposal does not require any alterations to the LEP maps.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a study or report. During the preparation of the Moree Plains LEP 2011 Council advocated to use open rural zones however at the time this was inconsistent with the Department's LEP Practice Note PN06-006 *Preparing LEPs using the Standard Instrument Standard Zones*.

The Department's policy changed in 2011 and Practice Note PN 11-002 (discussed further below) no longer prevented the use of open rural zones in Standard LEPs. Council has therefore sought to change the land use table for the RU1 Primary Production zone in the Moree Plains LEP 2011.

Council is also intending to ensure that development which would complement the Melbourne to Brisbane Inland Rail Project along its route through Moree Plains local government area (LGA) is permissible in the RU1 zone. Council notes that the location of the Inland Rail intermodal hub has not yet been finalised and therefore it is not possible to either rezone certain land or permit additional permitted uses on certain land until the location of the intermodal hub is known. However, Council does not wish for a restrictive RU1 zone to be an impediment to the location of the intermodal hub anywhere along its route through the Moree Plains LGA and therefore is seeking to provide flexibility for future development that may be required along the rail route.

Changing the RU1 zone to an open zone has had deliberate and consequent impacts on the land uses which are permissible in the RU1 zone. As a result of the change more land uses are now permissible with consent in the RU1 zone.

The following land uses will now be permissible with consent in the RU1 zone as a consequence of making the RU1 zone an open zone:

- Eco-tourist facilities
- Industrial retail outlets
- Warehouse or distribution centres
- Sewerage systems
- Airstrip
- Helipad
- Freight transport facilities
- Truck depots
- Educational establishments
- Industrial training facilities
- Respite day care centres
- Boat launching ramps
- Charter and tourism boating facilities
- jetties
- marinas
- moorings
- Mooring pens

Additionally, Council has deliberately listed the following land uses as permissible with consent:

- secondary dwellings
- landscape material supplies
- markets
- plant nurseries

The following land uses, which are now proposed to be permissible with consent, are considered to be appropriate as they are generally suited to rural land or isolated locations and are not expected to generate significant land use conflicts or the need for significant additional services or infrastructure: eco-tourist facilities; sewerage systems; airstrip; helipad; landscape material supplies; markets; plant nurseries; respite day care centres; boat launching ramps; charter and tourism boating facilities; jetties; marinas; moorings; mooring pens.

With regard to the other newly proposed permissible land uses:

- Secondary dwellings - this is not considered to be a significant change in policy given that detached dual occupancies are currently permissible with consent in the RU1 zone. The inclusion of secondary dwellings as a permissible land use will not result in an increase in residential density on rural land since detached dual occupancies are already permissible.
- Industrial training facilities – by definition industrial training facilities can be associated with a rural industry, extractive industry or mining which are permitted in the RU1 zone with consent and therefore it is appropriate that training facilities for these kinds of development be permitted on the same land.
- Industrial retail outlets – by definition industrial retail outlets may be associated with rural industries which are permissible in the RU1 zone.
- Warehouse or distribution centres – these are considered generally more suited to industrial zoned land where services and infrastructure, particularly transport infrastructure is available; and
- Truck depots – these are considered generally more suited to industrial zoned land where services and infrastructure, particularly transport infrastructure is available.

While warehouse or distribution centres and truck depots are generally considered to be more appropriately located in an industrial zone, Council has advised that it is seeking these uses be permitted with consent to enable their development around intermodal nodes of the future Inland Rail corridor and to help serve the needs of the local agricultural sector. Council has proposed the inclusion of local clauses into the Moree Plains LEP 2011 (Appendix B of the Planning Proposal) to address concerns relating to the proliferation of warehouse or distribution centres and truck depots in other rural areas. These local clauses require the consent authority to be satisfied that a proposal for warehouse or distribution centres or truck depots must have adequate road access, support the primary industry sector and not have significant adverse amenity or land use conflict impacts.

It is recognised that in rural areas many primary producers may have multiple trucks and need facilities for the storage and distribution of produce. Given the proposed matters for consideration to be included in the local clauses, and the extensive primary production sector that operates in Moree Plains LGA, the proposal to make warehouse or distribution centres and truck depots permissible with consent is considered appropriate particularly as any site specific potential impacts can be adequately considered and addressed at development application stage.

The proposed changes to the RU1 Primary Production land use table are therefore considered to be appropriate and are the best means of achieving the intent of the planning proposal particularly as the location of the intermodal terminal is not yet known and Council has rightly resisted nominating and rezoning land to avoid speculative land purchases or limit the efficiency of the planning system to approve development to service the node in a timely manner.

It is considered that Council's approach of making the RU1 zone an open zone is appropriate in this instance.

STRATEGIC ASSESSMENT

State

The proposal is not inconsistent with the State Plan. The proposal will result in minor changes to the permissible land uses in the RU1 Primary Production zone which will facilitate development to support the proposed Inland Rail project.

Practice Note 11-002

The Department's Practice Note 11-002 provides guidance on the use of standard zones in Standard Instrument LEPs. The PN only states that closed zones should be used for environment protection, special purpose and recreation zones.

The Practice Note recognises that the open zone approach minimises the need to undertake 'spot rezonings' or other ad hoc LEP amendments to permit additional acceptable uses that were not anticipated during the initial LEP preparation.

The proposal to change the RU1 Primary Production zone to an open zone is therefore not inconsistent with the Practice Note.

Standard Instrument LEP

The Standard Instrument LEP template includes drafting directions for some land uses and mandates that some land uses must be allowed with or without consent. The proposed land use table for the RU1 zone in Moree Plains LEP 2011 is consistent with the requirements for the RU1 zone in the Standard Instrument LEP template.

The proposal seeks to include two new objectives in the RU1 zone these are:

- *To maintain the rural character of the land.*
- *To protect significant agricultural resources (soil, water and vegetation) in recognition of their value to Moree Plains' long-term economic sustainability.*

These proposed objectives are not inconsistent with the current objectives of the zone and will be important considerations when assessing proposals for the increased range of land uses that will be permissible with consent in the RU1 zone.

Regional / District

New England North West Regional Plan 2036 (NENWRP)

The proposal is consistent with the directions and actions of the NENWRP.

Action 1.2 promotes the expansion of agribusiness and associated value adding activities through local plans. The proposal to increase the flexibility of permissible land uses in the RU1 zone may enable such land uses to be considered through the development application process without further amendments to the LEP provisions.

Action 1.4 encourages the development of commercial, tourist and recreation activities that complement and strengthen the agricultural sector. The proposal will enable flexibility of permissible land uses in the RU1 Primary Production zone consistent with this action.

Action 7.2 seeks to focus commercial and retail activities in central business precincts. The proposal achieves this action as commercial premises remain prohibited in the RU1 zone and only employment generating land uses that require a rural land location or complement

an existing rural enterprise are permitted with consent for example cellar door premises and industrial retail outlets associated with rural industries.

The proposal will enable flexibility of permissible land uses in the RU1 Primary Production zone to facilitate the development of land uses which will complement the development of the Inland Rail Corridor (Action 13.2).

Action 13.4 seeks to locate freight and logistics facilities to maximise existing infrastructure and capitalise on inter-regional connections. The proposal achieves this through enabling flexibility of land uses to facilitate development of the Inland Rail Project. The provisions relating to warehouse or distribution centres and truck depots also require Council to be satisfied that there is adequate road infrastructure for these developments.

The proposal will also protect agricultural land from urban encroachment and urban land uses as it has listed many of the urban land uses as prohibited in the RU1 zone. The proposal to make warehouse and distribution centres and truck depots permissible with consent is mitigated by the proposed local provisions which will require these land uses to be in conjunction with the primary production sector.

While considered to be consistent with the regional plan, it is noted that the planning proposal still refers to the draft regional plan. These references should be amended prior to public consultation.

Local

The proposal is not inconsistent with the Department approved Moree Plains Shire Growth Management Strategy 2009 (the 'GMS'). The proposal does not propose to rezone land in Moree LGA to either industrial or commercial to facilitate development associated with the Inland Rail project.

The GMS recognises that the current extent of zoned industrial land is considered to be potentially excessive and poorly located, some with poor access, particularly for land on the eastern side of the town. Some of the undeveloped industrial land is also subject to flooding. It notes that much of the industrial precinct is under-utilised, having poor visibility from major access roads and requiring significant infrastructure development.

The GMS recognises that the proposed inland rail line could create the need for additional industrial development and a need for industrial land that could be used in association with the proposed railway line. The GMS does identify some existing industrial areas that could be expanded to facilitate development associated with the Inland Rail Project though it also notes that there had not been any decision on the proposed Inland Railway line route at the time of preparing the GMS.

The GMS concludes that should the Inland Railway line travel through Moree, a more detailed study will be needed of its potential impact and the types of industry that will be generated.

It is considered that the opening of the RU1 zone and the inclusion of local provisions for certain types of developments is not inconsistent with the GMS. The proposal will enable flexibility in the planning framework to facilitate some initial developments associated with the Inland Rail Project intermodal hub when the location is finalised. However, it will not preclude a more strategic approach to planning for the development of a more intensive intermodal hub should future rezoning of the land be necessary.

Section 117(2) Ministerial Directions

The following S117 directions are relevant to the planning proposal 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.5 Development Near Licensed Aerodromes, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes; 6.3 Site Specific Provisions.

The proposal is considered to be consistent with all the relevant directions except 3.5, 4.3 and 4.4. With regard to these S117 Directions it is noted that:

Direction 1.5 Rural Land is relevant to the planning proposal. The direction provides that a planning proposal which affects land in a rural zone must be consistent with the Rural Planning Principles in SEPP (Rural Lands) 2008. As discussed in the following section of this report the proposal is consistent with the Rural Planning Principles and therefore the proposal is not inconsistent with direction 1.5.

Direction 3.5 Development Near Licensed Aerodromes is relevant to the planning proposal. The direction provides that when a planning proposal sets controls for development of land in the vicinity of a licensed aerodrome the relevant planning authority (RPA) must consult with the Commonwealth agencies responsible for aerodromes.

The proposal seeks to allow additional land uses with consent on land zoned RU1. A large area of land around the Moree Airport is zoned RU1 and therefore additional land uses will now be permissible on this land. It is appropriate that Council consult with the Commonwealth Agency responsible for airports and the lessee of the airport. It is considered that until this consultation has been undertaken the consistency of the proposal with the direction remains unresolved.

Direction 4.3 Flood Prone Land is relevant to the planning proposal. The Direction provides that a planning proposal must not permit a significant increase in the development of flood prone land nor permit development to be carried out without development consent.

The proposed changes to the RU1 land use table will not increase the number of land uses that are permissible without development consent in the RU1 zone. However, the proposal will result in a potential increase in the number of land uses which are permissible with consent in the RU1 zone which includes flood prone land. These additional land uses are discussed previously in this report. Given the large number of land uses which are currently permissible with consent in the RU1 zone, and the existence of controls in clause 7.6 Flood Planning of Moree Plains LEP 2011, it is considered that the permissibility of the additional land uses is of minor significance and therefore justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Part of the RU1 zoned land in Moree Plains LGA is identified as being bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

The proposal is otherwise consistent with relevant Section 117 Directions.

State Environmental Planning Policies

Many SEPPs apply to the RU1 zoned land in Moree Plains LGA. The proposal is not considered to be inconsistent with the relevant State environmental planning policies (SEPPs).

SEPP (Rural Lands) 2008

The SEPP (Rural Lands) 2008 is relevant to the planning proposal. The SEPP includes Rural Planning Principles to guide the planning for rural land. In general, the proposed changes to the RU1 land use table are consistent with the Rural Planning Principles for the following reasons:

- the proposal will provide for greater flexibility in the permissibility of potential productive and sustainable economic activities in rural areas;
- the changes to the land use table will assist the planning controls to readily adapt to the changing nature of agriculture and the trends and demands of agriculture in the region;
- the proposal recognises the significance of rural land uses in the Moree Plains LGA, particularly agriculture, through the proposed local provisions for warehouse or distribution centres and truck depots as these proposed provisions require these land uses to support the primary industry sector; and
- the proposal is not considered to be inconsistent with the regional strategic planning framework.

SITE SPECIFIC ASSESSMENT

Social

The proposal is not considered to have an adverse social impact on the Moree Plains LGA. The proposal will enable greater flexibility in the permissibility of land uses in the RU1 Primary Production zone. The proposal will also still require development consent for the wide range of permissible land uses thereby giving the community the opportunity to comment on potentially contentious land uses in rural areas.

Environmental

The proposal is not expected to have a significant adverse impact on the environment including critical habitat or threatened species, populations or ecological communities or their habitats.

While the proposal will make additional land uses permitted with consent in the RU1 zone, it will still require development consent for these land uses and the potential impacts can be assessed at development application stage.

Similarly, constraints to proposed developments such as bushfire risk, flooding and impacts on air transport facilities can be addressed at development application stage having regard to the relevant provisions in the Moree Plains LEP

Economic

The proposal is expected to have a small positive economic impact for the Moree Plains LGA by providing greater flexibility in providing for a wide range of suitable land uses in the RU1 zone. The proposed open RU1 zone will avoid the need for LEP amendments to facilitate suitable development on land zoned RU1 where the land uses may previously have been prohibited.

The inclusion of warehouse or distribution centres, truck depots and freight transport facilities as permissible in the RU1 zone is however considered to have a small adverse

economic impact on the industrial land in the Moree Plains LGA. By making these land uses permissible with consent on rural land it is less likely that these land uses will be located on the existing vacant industrial zoned land in the LGA, eroding the potential advantages of congregating similar land uses in a single location where economies of scale can be achieved in the provision of services and infrastructure and where transport movements for consumers can be minimised.

However, it is expected that freight transport facilities would be developed in association with the Inland Rail Project and the proposed local provisions relating to warehouse and distribution centres and truck depots include provisions to guide the development of these land uses and limit their development to the primary production sector. It is expected these provisions would prevent a proliferation of ad hoc developments across the rural land in the LGA. Therefore, the potential adverse impacts of these land uses being permissible with consent is considered to be minor.

Infrastructure

The planning proposal does not propose a specific development on a specific site. The proposal will make additional land uses permissible with consent in the RU1 zone however the infrastructure needs for these land uses cannot be determined until the scale and site of the proposed development are known at development application stage. The proposed additional permitted land uses are not expected to require the provision of significant State infrastructure.

CONSULTATION

Community

The planning proposal nominates a 14 day community consultation period. In accordance with "A Guide to Preparing Local Environmental Plans" (the 'Guide'), it is agreed that the planning proposal is a low impact planning proposal as it is generally consistent with the strategic planning framework, does not change the land zoning pattern in the LGA, presents no issues in regard to servicing and does not propose the reclassification of land. The Guide also suggests written notification to the affected and adjoining land owners however given that the planning proposal applies to all RU1 land in the LGA this is considered overly onerous. It is therefore considered that a community consultation period of 14 days is appropriate.

Agencies

The proposal does not nominate any proposed consultation with State agencies. Since the proposal relates to agricultural land, bushfire prone land and land surrounding the Moree Airport, it is recommended that the following agencies be consulted:

- Department of Primary Industries – Agriculture;
- NSW Rural Fire Service;
- Air Services Australia;
- Civil Aviation Safety Authority; and
- The Operator of the Moree Airport

TIMEFRAME

The planning proposal includes a project time line which estimates completion of the LEP amendments in November 2017. Given the need to conduct public and state agency consultation and to enable Council time to consider any submissions and undertake legal drafting, it is recommended that a six (6) month time frame for completion for the planning proposal is appropriate. The current timeline also does not include all the necessary steps

and should be amended prior to community consultation to include the steps and timeframes associated with a delegated planning proposal.

DELEGATION

Council has not indicated whether it wishes to accept plan making delegations for this proposal. The proposal is considered to be of local planning significance and displays no significant inconsistencies with the strategic planning framework. It is recommended that an Authorisation for the exercise of delegation be issued to Council in this instance.

CONCLUSION

It is recommended the planning proposal should proceed subject to conditions as:

- it will provide flexibility in the land uses permitted in the RU1 zone;
- it is consistent with the format adopted by many other LEPs across the region;
- having an 'open' rural zone is not inconsistent with Department policy; and
- the proposed amendment will increase flexibility in the rural areas and help support Moree's important agricultural sector.

The proposed local provisions relating to the development of warehouse or distribution centres and truck depots will ensure that potential land use conflict issues and the provision of infrastructure for these developments in rural areas can be appropriately considered and addressed as needed at the development application stage for these land uses.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

- Agree that the inconsistency with Section 117 Direction 4.3 Flood Prone Land is justified in accordance with the terms of the direction; and
- Note that the inconsistencies with Section 117 Directions 3.5 and 4.4 are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

- Prior to community consultation the planning proposal is to be amended as follows:
 - (a) Part 1 *Objectives or Intended Outcomes* of the planning proposal is to be amended to identify the additional land uses which have been made permissible with consent, reflect the inclusion of additional objectives for the RU1 zone, and the proposed inclusion of local provisions for warehouse or distribution centres and truck depots;
 - (b) Part 2 *Explanation of Provisions* of the planning proposal is to be amended to identify secondary dwellings, landscape material supplies, markets and plant nurseries as being proposed as development with consent;
 - (c) references to the New England North West Regional Plan 2036 are to be updated as it is no longer a draft document;
 - (d) the proposed local provision in Appendix B "*Warehousing and Distribution in the RU1 Primary Production Zone*" is to be amended to clarify that it applies to 'warehouse or distribution centres' as defined in the LEP;
 - (e) the discussion on S117 Direction 5.1 Implementation of Regional Strategies is to be deleted and replaced with discussion on Direction 5.10 Implementation of Regional Plans;

- (f) the Project Timeline is to be updated to reflect the need for State agency consultation, the extra steps associated with delegation of the proposal to Council and a six (6) month time frame; and
 - (g) the Land Use Matrix is to be corrected to show 'forestry' as permitted without consent as proposed in the RU1 Zone land use table in Appendix A of the planning proposal.
- The planning proposal should be made available for community consultation for a minimum of 14 days.
 - Consultation is required with the following public authorities:
 - Department of Primary Industries – Agriculture;
 - NSW Rural Fire Service;
 - Air Services Australia;
 - Civil Aviation Safety Authority; and
 - The Operator of the Moree Airport
 - The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
 - Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.



6/10/17

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