**PLANNING PROPOSAL – MOREE PLAINS LOCAL ENVIRONMENTAL PLAN 2011 DRAFT AMENDMENT**

**TO AMEND THE RU1 PRIMARY PRODUCTION ZONE AS AN OPEN ZONE IN THE LAND USE TABLE**

19 September 2017

**BACKGROUND**

The LEP 2011 has a Dictionary of defined terms which are used to describe the full range of land use types. The Dictionary defines an extensive list of terms and not all terms are specifically noted as being exempt, permitted with consent or prohibited in the Land Use Table for each zone (due to the large number of terms).

Under the LEP 2011 the RU1 Primary Production zone is a closed zone. This means that it contains a list of defined land uses which are permitted with consent and any land use not listed is prohibited. The major problem with this is that it allows the possibility for suitable defined land uses to be prohibited due to their not being specifically listed as being permitted with consent. An open zone is one where a broad variety of land use can be considered.

**PART 1 – OBJECTIVES OR INTENDED OUTCOMES**

The objective of the Planning Proposal is to amend the Land Use Table in Moree Plains Local Environmental Plan 2011 (LEP) so that the RU1 Primary Production zone becomes an open zone.

This would involve amending the Land Use Table so that defined land uses are permissible unless they are specifically prohibited. It is considered that having an open zone would appropriately broaden the range of potential land uses in the specified zones. It also avoids the possibility of having suitable defined land uses being prohibited due to their not being specifically listed as being permitted with consent.

**PART 2 – EXPLANATION OF PROVISIONS**

The proposed objective will be achieved by amending the Land Use Table in LEP 2011 to open the RU1 Primary Production zone.

The Planning Proposal intends to improve the zone objectives and to specify that defined land uses are permitted with consent unless they are expressly prohibited or permitted without consent. This would have the effect of diversifying the potential land uses within the RU1 zone to include appropriate types of commercial and industrial development.

The Planning Proposal aims to facilitate appropriate development associated with the Melbourne to Brisbane Inland Rail project. The Inland Rail is listed as a priority project for Infrastructure Australia and would be delivered through the Australian Rail Track Corporation (ARTC) in partnership with the private sector. The Government announced in the 2017 Federal Budget a commitment to finance the Inland Rail project with an $8.4 billion equity investment.

It is considered that the proposed amendments are consistent with the RU1 zone objectives as the proposed permissible land uses are compatible with agricultural land uses. Further, it is viewed that the permissibility of these land uses in the RU1 zone would not act to reduce the role of existing urban land use zones.

The defined land uses proposed to be changed from prohibited to permissible in the RU1 zone are as follows:

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

The proposed Land Use Table zone amendments are in Appendix A.

It is intended to include new clauses in the LEP for ‘Truck depots’ and ‘Warehouse/distribution centres’ to ensure the appropriateness of such developments in the RU1 zone. The proposed clauses are in Appendix B.

**PART 3 – JUSTIFICATION**

**Section A. Need for the Planning Proposal**

1. **Is the Planning Proposal a result of any strategic study or report?**

The Planning Proposal is not the result of a strategic study or report. Council seeks to provide an improved Land Use Table mechanism for managing land use planning.

During the development of the Moree Plains LEP 2011 Council staff advocated for the use of open rural and residential zones. However, the NSW Department of Planning and Environment’s policy at the time, as issued under LEP Practice Note – PN06-002 – Preparing LEPs using the Standard Instrument: standards zones, was that “For zones in the environmental protection, recreation and rural categories and the low density residential zone, it will usually be appropriate to specifically identify the permitted uses and prohibit all other development.”

After completion of the Moree Plains LEP 2011, the Department issued a revised Practice Note that advised that closed zones should be used for Environment Protection, Special Purpose and Recreation zones. This approach allows greater flexibility and 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. In addition, councils can maximise the flexibility in nominating permissible land uses by using ‘group’ terms rather than listing only some of the development types from within that group (e.g. ‘commercial premises,’ ‘residential accommodation,’ ‘tourist and visitor accommodation).’

Open zones were a common approach under Moree Plains Shire Council Local Environmental Plan 1995 which preceded the current plan. It is also noted that Gunnedah, Bathurst and Tamworth Shires have open rural zones in their local environmental plans.

1. **Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

This matter seeks to address land use permissibility as governed by the Land Use Table in LEP 2011. A Planning Proposal is the most suitable way of addressing this issue as it involves the amendment of the LEP.

**Section B. Relationship to Strategic Planning Framework**

1. **Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The proposal has been considered under the objectives and actions of the applicable regional strategy which is the Draft New England North West Regional Plan.

The proposal is considered to be consistent with the following Directions in the Draft Plan:

DIRECTION 1.2 Grow and diversify intensive agriculture and food processing agribusiness

DIRECTION 1.3 Protect agricultural land from urban encroachment and fragmentation

DIRECTION 2.2 Manage competing and conflicting interests in rural and resource areas

to provide greater certainty for investment

DIRECTION 3.4 Promote sustainable settlement growth with great places to live

The proposal would facilitate the appropriate use of land for development in accordance with the Draft Plan.

1. **Is the Planning Proposal consistent with a council’s local strategy or other local strategic plan?**

The proposal is consistent with the Moree Growth Management Strategy. The intended changes would provide improvements to the statutory governance of land use planning.

1. **Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

It is considered that the Planning Proposal is consistent with the applicable State Environmental Planning Policies.

1. **Is the Planning Proposal consistent with applicable Ministerial Directions (s. 117 directions)?**

An assessment of the Planning Proposal has been completed against Ministerial Directions

(see Table 1) with no inconsistencies being identified.

**Table 1: Consistency with applicable Section 117(2) Ministerial Directions**

|  |  |  |
| --- | --- | --- |
| **Ministerial Direction** | **Objective/s** | **Consistency / Comment** |
| 1.1 Business and  Industrial Zones | (a) Encourage employment  growth in suitable locations,  (b) Protect employment land  in business and industrial  zones, and  (c) Support the viability of  identified strategic centres. | The Planning proposal does not propose to rezone land and will not affect the provisions of this Direction. |
| 1.2 Rural Zones | Protect the agricultural  production value of rural  land. | The Planning proposal does not propose to  rezone land and will not affect provisions  relating to this Direction. It would broaden the variety of potential development types on rural land. Unsuitable land uses will be listed as being prohibited. The Planning Proposal is in line with the Moree Plains Growth Management Strategy. |
| 1.3 Mining, Petroleum  Production and  Extractive Industries | Ensure that the future  extraction of State or  regionally significant  reserves of coal, other  minerals, petroleum and  extractive materials are not  compromised by  inappropriate development. | The Planning proposal does not affect provisions relating to this Direction. |
| 1.5 Rural Lands | (a) To protect the agricultural production value of rural land,  (b) To facilitate the orderly and economic development of rural lands for rural and related purposes. | The Planning Proposal is consistent with this direction as it would permit a broad variety of appropriate development types on rural land. |
| 2.1 Environment  Protection Zones | Protect and conserve  environmentally sensitive  areas. | The Planning proposal does not propose to  rezone land and will not affect provisions  relating to this Direction. |
| 2.2 Coastal Protection | Implement the principles in  the NSW Coastal Policy. | The Planning Proposal would not affect land within the coastal zone |
| 2.3 Heritage  Conservation | Conserve items, areas, objects and places of  environmental heritage  significance and indigenous  heritage significance. | The Planning Proposal does not affect heritage provisions. |
| 2.4 Recreation Vehicle  Areas | Protect sensitive land or land  with significant conservation  values from adverse impacts  from recreation vehicles. | The proposal would not affect current provisions relating to recreation vehicle areas. |
| 3.1 Residential Zones | (a) Encourage a variety and  choice of housing types to  provide for existing and  future housing needs,  (b) Make efficient use of  existing infrastructure and  services and ensure that  new housing has appropriate  access to infrastructure and  services, and  (c) Minimise the impact of  residential development on  the environment and  resource lands. | The Planning Proposal does not propose to rezone land and will not affect provisions  relating to this Direction. |
| 3.2 Caravan Parks and  Manufactured Home  Estates | (a) Provide for a variety of  housing types, and  (b) Provide opportunities for  caravan parks and  manufactured home estates. | The Planning Proposal would broaden the potential land uses on rural land including the potential for caravan parks on rural land. The Planning Proposal is considered to be consistent with this Direction. |
| 3.3 Home Occupations | Encourage the carrying out  of low-impact small  businesses in dwelling  houses. | The Planning Proposal would retain the provisions of the principal LEP which provides for this use without consent in most circumstances. |
| 3.4 Integrating Land Use and Transport | Ensure that urban  structures, building forms,  land use locations,  development designs,  subdivision and street  layouts achieve the following  planning objectives:  (a) improving access to  housing, jobs and services  by walking, cycling and  public transport, and  (b) increasing the choice of  available transport and  reducing dependence on  cars, and  (c) reducing travel demand  including the number of trips  generated by development  and the distances travelled,  especially by car, and  (d) supporting the efficient  and viable operation of  public transport services,  and  (e) providing for the efficient  movement of freight. | The Planning proposal does not directly affect provisions relating to the integration of land use and transport. However the amendments are supported by the Moree Plains Growth Management Plan. |
| 3.5 Development Near  Licensed Aerodromes | (a) Ensure the effective and  safe operation of  aerodromes, and  (b) Ensure that their  operation is not  compromised by  development that constitutes  an obstruction, hazard or  potential hazard to aircraft  flying in the vicinity, and  (c) Ensure development for  residential purposes or  human occupation, if  situated on land within the  Australian Noise Exposure  Forecast (ANEF) contours of  between 20 and 25,  incorporates appropriate  mitigation measures so that  the development is not  adversely affected by aircraft  noise. | The Planning proposal does not affect provisions relating to this Direction. |
| 3.6 Shooting Ranges | (a) Maintain appropriate  levels of public safety and  amenity when rezoning land  adjacent to an existing  shooting range,  (b) Reduce land use conflict  arising between existing  shooting ranges and  rezoning of adjacent land,  (c) Identify issues that must  be addressed when giving  consideration to rezoning  land adjacent to an existing  shooting range. | The Planning proposal does not affect provisions relating to shooting ranges. |
| 4.1 Acid Sulfate Soils | Avoid significant adverse  environmental impacts from  the use of land that has a  probability of containing acid  sulfate soils. | The Planning Proposal does not affect provisions relating to Acid Sulfate Soils. |
| 4.2 Mine Subsidence  and Unstable Land | Prevent damage to life,  property and the  environment on land  identified as unstable or  potentially subject to mine  subsidence. | The Planning Proposal would not affect provisions relating to mine subsidence or  unstable land. |
| 4.3 Flood Prone Land | (a) Ensure that development  of flood prone land is  consistent with the NSW  Government’s Flood Prone  Land Policy and the  principles of the *Floodplain*  *Development Manual 2005*,  and  (b) Ensure that the  provisions of an LEP on  flood prone land is  commensurate with flood  hazard and includes  consideration of the potential  flood impacts both on and off  the subject land. | The Planning Proposal does not directly affect provisions relating to flood prone land. Flood policy would continue to be enforced on flood-prone land. |
| 4.4 Planning for Bushfire Protection | (a) Protect life, property and  the environment from bush  fire hazards, by discouraging  the establishment of  incompatible land uses in  bush fire prone areas, and  (b) Encourage sound  management of bush fire  prone areas. | The Planning Proposal would not affect existing bushfire planning provisions. These provisions would continue to be enforced for developments on bushfire-prone land. |
| 5.1 Implementation of  Regional Strategies | Give legal effect to the  vision, land use strategy,  policies, outcomes and  actions contained in regional  strategies. | The Planning Proposal would not affect the implementation of regional strategies and would support the aims relating to economic development. |
| 6.1 Approval and  Referral Requirements | Ensure that LEP provisions  encourage the efficient and  appropriate assessment of  development. | The proposal would be consistent with this  Direction in that no changes to referral provisions are made. The zone changes would facilitate the appropriate assessment of development in that land uses would not be arbitrarily restricted in the affected zones. |
| 6.2 Reserving Land for  Public Purposes | (a) Facilitate the provision of  public services and facilities  by reserving land for public  purposes, and  (b) Facilitate the removal of  reservations of land for  public purposes where the  land is no longer required for  acquisition. | The proposal would not alter any land reserved for public use. |
| 6.3 Site Specific  Provisions | Discourage unnecessarily  restrictive site specific  planning controls. | The Planning Proposal does not propose any site specific provisions. |

**Section C. Environmental, Social and Economic Impact**

1. **Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No additional adverse effects are anticipated, subject to normal merit assessment of Development Applications.

1. **Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No significant environmental effects are anticipated.

1. **How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal provides social and economic benefits through providing a more appropriate Land Use Table for determining the types of development that may be undertaken on particular lands. The Planning Proposal delivers increased flexibility in the regulation of land use developments while not requiring ad hoc Planning Proposals for appropriate but unlisted land uses.

1. **Is there adequate public infrastructure for the planning proposal?**

There are no additional infrastructure implications from the proposal.

1. **What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination?**

No specific consultations have been undertaken. If consultations are required in accordance with a gateway determination these would be undertaken.

**PART 4 – MAPPING**

The subject amendments would not involve changes to existing mapping.

**PART 5 – COMMUNITY CONSULTATION**

Community consultation would commence by giving notice of the public exhibition of the planning proposal:

in the Council’s news page of the Moree Champion; and on Council’s web-site at www.mpsc.nsw.gov.au;

Public exhibition of the Planning Proposal would be for 14 days.

The written notice would provide:

a description of the objectives or intended outcomes of the planning proposal; the land affected by the planning proposal; advise and when the planning proposal can be inspected; give the name and address of the Council for the receipt of submissions; and indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

the planning proposal, in the form approved for community consultation by the Director General of Planning; the gateway determination; and any studies or reports relied upon by the planning proposal (such as the Growth Management Strategy and the Report to Council).

Public exhibition of the Planning Proposal would be carried out in accordance with the requirements of the EPA Act, EPA Regulations and the Gateway determination.

**PART 6 – PROJECT TIMELINE**

The anticipated project timeline for completion of the Planning Proposal is outlined in Table 1.

**Table 1 - Project Timeline**

|  |  |
| --- | --- |
| **Task** | **Anticipated timeframe** |
| Date of Gateway Determination | Late September 2017 |
| Completion of required technical information, studies |  |
| Government agency consultation (pre exhibition as required by Gateway Determination) | No additional pre-exhibition consultation is anticipated. |
| Any changes made to Planning Proposal resulting from technical studies and government agency consultations. Resubmit altered Planning Proposal to Gateway panel. Revised Gateway determination issued, if required. | No specific changes are anticipated. |
| Commencement and completion dates for public exhibition. | October 2017 |
| Dates for public hearing | None likely to be required |
| Consideration of submissions, report from public hearing and Planning Proposal post exhibition | None likely to be required |
| Date of submission of proposal to Department to finalise the LEP. | November 2017 |

**Appendix A**

**Proposed Land Use Table**

**Zone RU1   Primary Production**

**1**   **Objectives of zone**

•  To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

•  To encourage diversity in primary industry enterprises and systems appropriate for the area.

•  To minimise the fragmentation and alienation of resource lands.

•  To minimise conflict between land uses within this zone and land uses within adjoining zones.

•  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.

•  To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere.

**2**   **Permitted without consent**

Building identification signs; Business identification signs; Environmental protection works; Extensive agriculture; Farm buildings; Forestry; Home-based child care; Home businesses; Home industries; Home occupations; Intensive plant agriculture; Roads

**3**   **Permitted with consent**

Agriculture; Air transport facilities; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Car parks; Caravan parks; Cellar door premises; Cemeteries; Community facilities; Correctional centres; Crematoria; Depots; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Flood mitigation works; Funeral homes; Heavy industrial storage establishments; Heavy industries; Home occupations (sex services); Information and education facilities; Intensive livestock agriculture; Kiosks; Landscaping material supplies; Markets; Mortuaries; Neighbourhood shops; Open cut mining; Passenger transport facilities; Places of public worship; Plant nurseries; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Restaurants or cafes; Roadside stalls; Rural industries; Rural supplies; Rural workers’ dwellings; Service stations; Secondary dwellings; Sex services premises; Signage; Tourist and visitor accommodation; Transport depots; Turf farming; Veterinary hospitals; Water recreation structures; Water storage facilities Any other development not specified in item 2 or 4

**4**   **Prohibited**

Amusement centres; Child care centres; Commercial premises; Entertainment facilities; Exhibition homes; Exhibition villages; Function centres; Garden centres; Health services facilities; High technology industries; Highway service centres; Hostels;Industries; Port facilities; Registered clubs; Residential accommodation; Restricted premises; Storage premises; Vehicle body repair workshops; Vehicle repair stations; Wholesale supplies

**Appendix B**

**Proposed local clauses**

\***Warehousing and Distribution in the RU1 Primary Production Zone**

1. The objective of this clause is to establish matters which the consent authority must consider in assessing applications for Warehousing and Distribution within the RU1 Primary Production Zone.
2. This Clause applies to any application for Warehousing and Distribution within the RU1 Primary Production zone.
3. Development consent must not be granted for Warehousing and Distribution within the RU1 Primary Production Zone unless the consent authority is satisfied that:
   1. Adequate road access is available or can be made available to the site to support the scale of the proposed development, and
   2. The proposed development would facilitate:
      1. The aggregation of freight either to or from the primary industry sector, and
      2. the movement of freight by rail, and
   3. The proposal would not increase rural land use conflict in the locality.

\***Truck Depot in the RU1 Primary Production Zone**

1. The objective of this clause is to establish matters which the consent authority must consider in assessing applications for Truck Depot within the RU1 Primary Production Zone.
2. This Clause applies to any application for Truck Depot within the RU1 Primary Production zone.
3. Development consent must not be granted for Truck Depot within the RU1 Primary Production Zone unless the consent authority is satisfied that:
   1. Adequate road access is available or can be made available to the site to support the scale of the proposed development, and
   2. The proposed development would predominantly serve vehicles engaged in supporting the primary industry sector, and
   3. The proposal would not have significant amenity impacts on the locality.