

MAP ILLUSTRATING THE LOCATION OF ZONE E3 IN BLAYNEY LOCAL ENVIRONMENTAL PLAN (JAN 2015) EXCLUDING THE VILLAGES OF BARRY & NEVILLE.

Planning Proposal

Proposed Amendment(s) to *Blayney Local Environmental Plan 2012* to amend the Planning Controls for the Drinking Water Catchments for

Lake Rowlands (Blayney LGA) & Suma Park Dam (Orange LGA) including

- Replacement of Zone E3 Environmental Management with Zone RU1 Primary Production
- Other minor amendments to Zone RU1 Primary Production Land Use Table

Prepared on behalf of Blayney Shire Council for submission to the NSW Department of Planning & Environment

29 January 2015

Version D

Table of Contents

1. INTRODUCTION.....	7
1.1. Aim of Amendment	7
1.2. Land Description	7
1.3. Intent of Original Use of Zone E3	9
1.4. Process Overview.....	10
2. PROPOSED AMENDMENT(S)	11
3. SITE ANALYSIS.....	12
3.1. Topography	12
3.2. Water	12
3.3. Flora, Fauna & Potential Biodiversity	14
3.4. Bushfire	15
3.5. Land	15
3.6. Agricultural Potential	15
3.7. Culture & Heritage.....	17
4. PLANNING IMPLICATIONS.....	18
4.1. Zone Objectives	18
4.2. Land Uses Permissible without Consent	18
4.3. Land Uses Permissible with Consent	19
4.4. Existing Minimum Lot Size & Dwellings	21
4.5. Drinking Water Catchment Overlay.....	21
4.6. Exempt & Complying Development.....	22
5. SUBREGIONAL LAND USE STRATEGY	24
5.1. Background	24
5.2. Strategies and Actions	24
6. NSW NORTHERN COUNCILS ENVIRONMENTAL ZONES REVIEW	28
6.1. Area / Reason for the Review.....	28
6.2. Key Recommendations & Criteria.....	28
6.3. Implications of E Zone Review.....	29
7. PUBLIC HEALTH ACT & DRINKING WATER GUIDELINES.....	30
7.1. Public Health Act 2010 (NSW).....	30
7.2. Guidelines.....	30
7.3. Land Use that may Conflict with these Requirements	31
7.4. Other Councils	32
8. COMPLETED KEY STAKEHOLDER CONSULTATION.....	33
8.1. Department of Planning & Environment (DPE)	33
8.2. Office of Environment & Heritage (OEH)	33
8.3. NSW Agriculture	33
8.4. Central Tablelands Water (CTW)	34

8.5.	Central Tablelands Local Land Services (LLS)	34
8.6.	NSW Health	34
9.	PLANNING PROPOSAL	35
9.1.	Part 1 – Objectives and Intended Outcomes of Proposed Instrument.....	35
9.2.	Part 2 – Explanation of Provisions to be included in Proposed Instrument	35
9.3.	Part 3 – Justification of Objectives, Outcomes & Process for Implementation	36
9.4.	Part 4 – Maps (where relevant) showing Intent of Planning Proposal	41
9.5.	Part 5 - Community Consultation	42
	APPENDICES / ANNEXURES	43
1.	Completed Application Forms (DPE Requirements).....	43
2.	Key Correspondence / Consultation	44

Document Control

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17 November 2014	B	Draft for Internal Review	Mark Dicker / Patsy Moppett BSC Gavin Rhodes CTW
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1. INTRODUCTION

1.1. Aim of Amendment

Blayney Shire Council is applying to amend *Blayney Local Environmental Plan 2012* ('BLEP2012') to change the planning controls relating to what is effectively rural land that is covered by Zone E3 Environmental Management and forms part of two (2) drinking water catchments including:

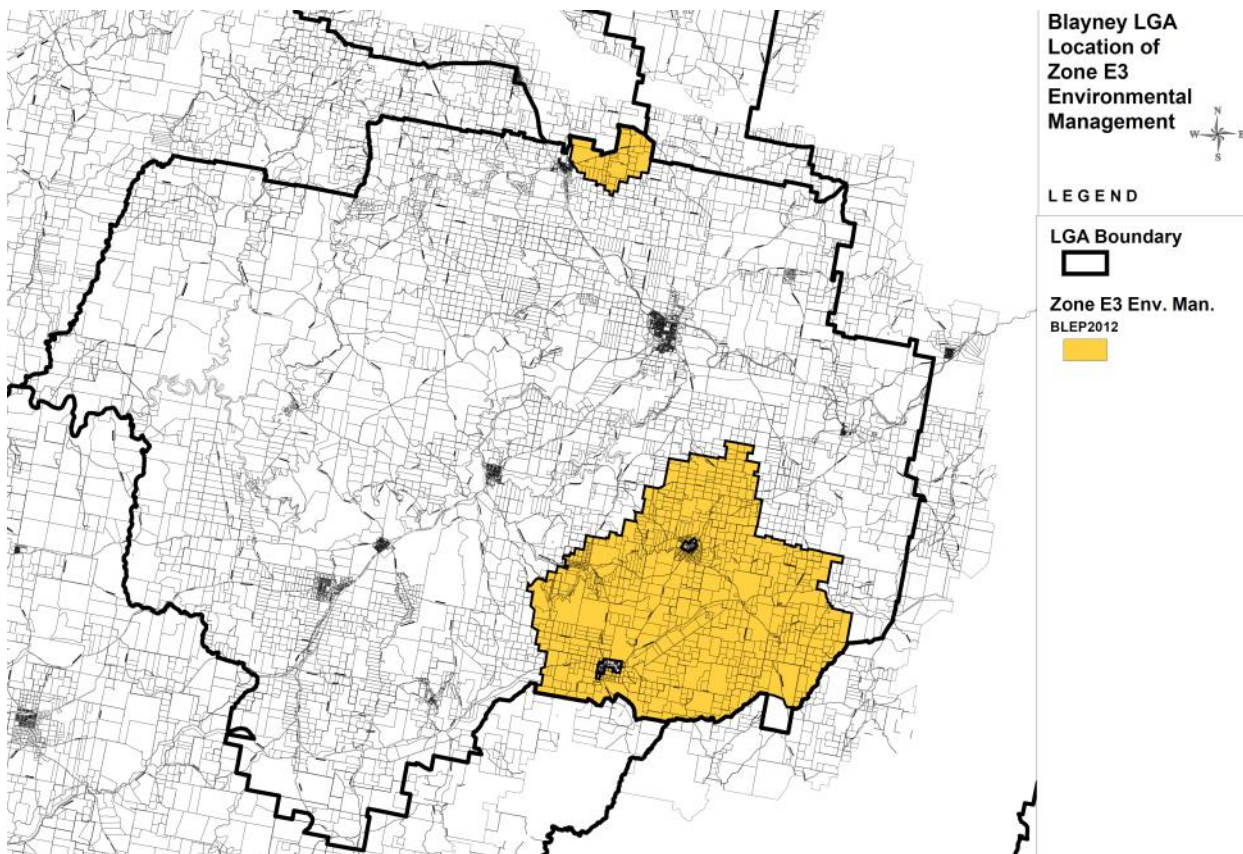
- Lake Rowlands (southern area of Blayney Local Government Area ('LGA')); and
- Suma Park Dam (in Orange LGA but with catchment extending into northern area of Blayney LGA)).

The aim is to replace the existing Zone E3 Environmental Management with Zone RU1 Primary Production.

The brief reasoning for the amendment is that Zone E3 Environmental Management has been found to potentially be overly restrictive in terms of rural land uses and development processes that may be suitable for the rural area, potentially inhibiting economic growth and development when there are other mechanisms in BLEP2012 to achieve the required environmental protections. It is submitted that an improved approach would be to let the market decide what rurally appropriate land uses could be supported and address any site-specific environmental constraints through the development assessment process.

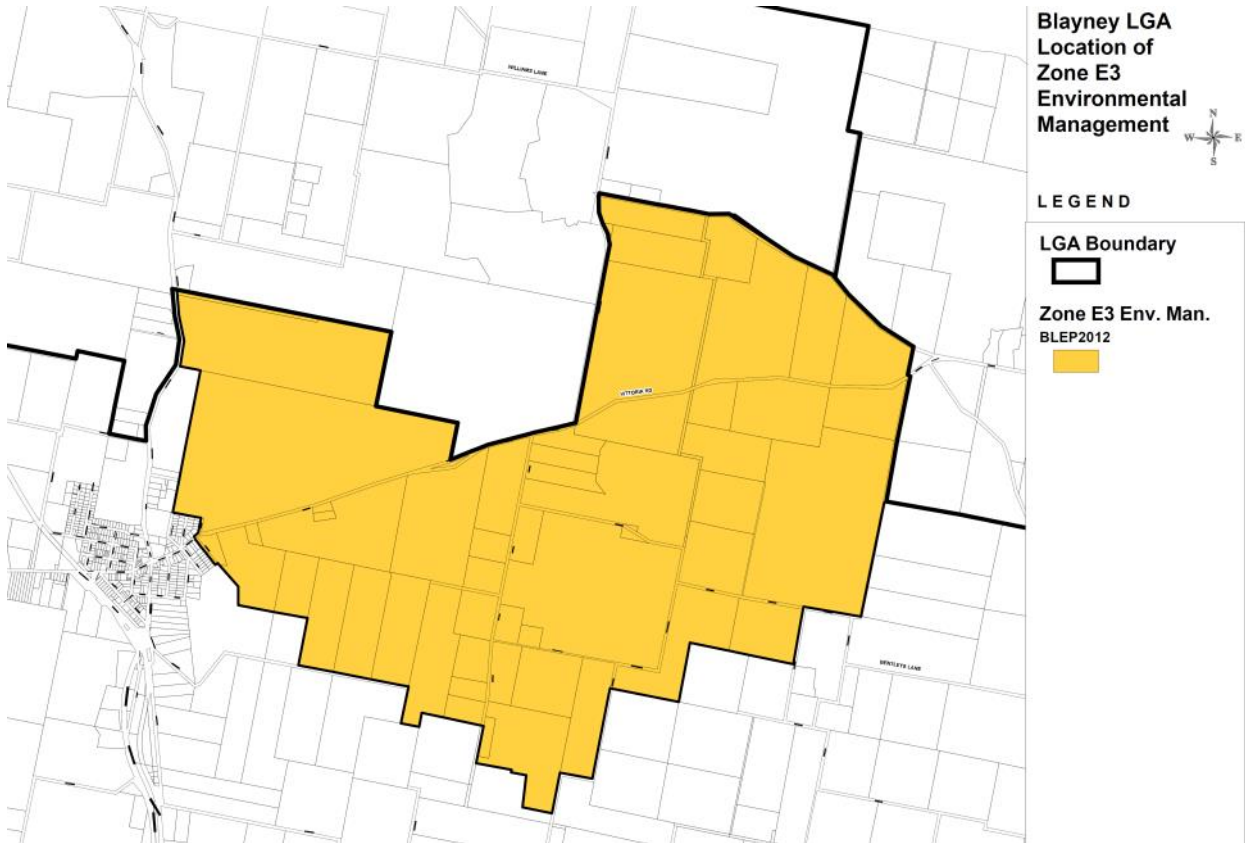
In particular, Zone E3 prohibits a range of rural land uses within the drinking water catchments that may be appropriate subject to a merit based development assessment. There are a range of other controls in BLEP2012 including, but not limited to, *Clause 6.5 – Drinking water catchments*, to provide a suitable level of protection for the drinking water catchments. Also, Zone E3 may impact on the permissibility of exempt and complying development and thereby require a full development application for certain land uses that could otherwise utilise these potentially cheaper and faster processes.

1.2. Land Description

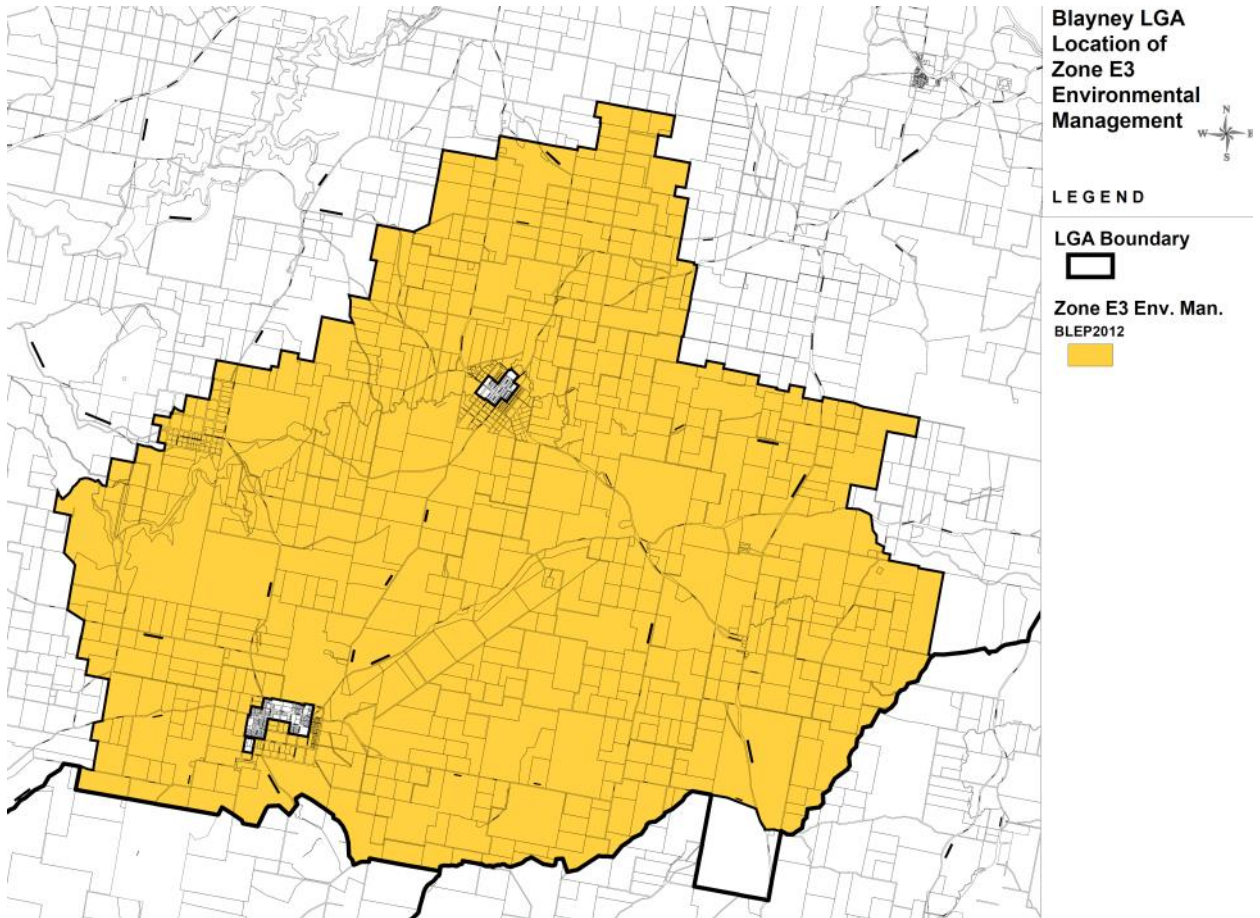


LOCATION OF THE ZONE E3 / DRINKING WATER CATCHMENTS IN BLAYNEY SHIRE IN BLEP2012 (JAN 2015).

Planning Proposal to amend Planning Controls in the Drinking Water Catchments, Blayney Shire NSW



LOCATION OF THE ZONE E3 / DRINKING WATER CATCHMENTS IN THE NORTH OF BLAYNEY SHIRE IN BLEP2012 (JAN 2015).



LOCATION OF THE ZONE E3 / DRINKING WATER CATCHMENTS IN THE SOUTH OF BLAYNEY SHIRE IN BLEP2012 (JAN 2015) CLEARLY EXCLUDING THE VILLAGES OF BARRY & NEVILLE.

The area where Zone E3 applies (the 'subject lands' for the purpose of this Proposal) are illustrated on the map above. Note that whilst Zone E3 to a large extent matches the Drinking Water Catchment Maps – Zone E3 does not apply to the villages of Neville or Barry that are within the drinking water catchment. Please see the detailed maps in the Appendices.

The first catchment is for Lake Rowlands which is the primary drinking water source for a number of local government areas throughout the central west including Blayney, Cabonne, Cowra and Weddin Shires. The catchment for Lake Rowlands is predominantly in the Blayney LGA and covers an area of 20,111ha extending from the southern LGA boundary to north of Barry.

The second catchment is for Suma Park Dam which is the primary drinking water source for the City of Orange. The Suma Park Dam is located in the Orange LGA to the north-east of the city but its catchment extends partially into Blayney LGA to the east of Millthorpe including 1,143ha of land.

1.3. Intent of Original Use of Zone E3

The original intent of using Zone E3 Environmental Management for the drinking water catchment was supported by the following factors (with an alternative response to justify this variation suggested):

The Subregional Land Use Strategy (GHD 2008) recommended that Council implement a specific environmental protection zoning for land within the drinking water catchments that would restrict the type and intensity of development in these areas (See Final Strategy, Section 12.3, Strategy 2, p.104).	Response: The Subregional Strategy does not preclude the use of alternative planning tools to achieve the key principles.
The transport and utilities infrastructure (especially in the Lake Rowlands catchment) is weak (i.e. lack of state or regional roads; lack of sewerage reticulation; only low voltage power lines) so the likelihood of rural industries and other commercial ventures was less likely to be economically viable and would require significant upgrades to infrastructure at a high cost.	Response: This is something that the market and merit assessment can decide so increased flexibility is more likely to be economically sustainable.
Zone E3 was being used by Orange City Council for their drinking water catchments (including the catchment for Suma Park Dam) so the use of the zone would increase compatibility in planning outcomes across the LGA boundary.	Response: Other Councils such as Cabonne have not used Zone E3 for the drinking water catchment so consistency is not mandatory if protections in place.
Lake Rowlands is currently used as a drinking water source for four (4) LGAs and is therefore a regionally strategic water source and supply. Other strategic studies suggested that Lake Rowlands may be expanded to increase supply and potentially service a wider area. Its strategic significance was deemed worthy of additional protections through regulation of land uses within the drinking water catchment. See the section below on the Public Health Act and Australian and NSW Guidelines for Drinking Water Management.	Response: The drinking water catchment overlay can provide sufficient protection for existing and future water security.
Suma Park Dam is currently the primary drinking water source for Orange City Council and it is expected that some regulation of land use within that catchment may be necessary. However, this was included in Zone E3 primarily for consistency in planning approach.	Response: The drinking water catchment overlay can provide sufficient protection for existing and future water security.
An alternate suitable zone may have been Zone RU2 Rural Landscape (as this zone was used for the drinking water catchment in Cabonne LGA). However, in Blayney LGA this zone had already been used for the original scenic protection zones in BLEP1998 and had a different focus, objectives, and land use permissibility.	Response: Utilising Zone RU1 Primary Production may be sufficient with the additional overlays in BLEP2012.

1.4. Process Overview

This Planning Proposal has been prepared in accordance with the requirements of:

- Letter from DPE dated 5/9/14 notifying Blayney Shire of amended procedures for drafting and notifications of local environmental plans;
- The *Environmental Planning & Assessment Act 1979* ('EP&A Act');
- The Department of Planning (October 2012) '*A guide to preparing planning proposals*';
- Planning Circular No. PS12-006 – *Delegations and independent review of plan-making decisions*;
- *Blayney Local Environmental Plan 2012* ('BLEP2012').

A gateway determination under Section 56 of the EP&A Act is requested from the Department of Planning & Environment ('Department') to allow this planning proposal to be placed on public exhibition.

We also request delegation to Council (as the Relevant Planning Authority or RPA) of the power to make this amendment to the *Blayney Local Environmental Plan 2012* recommending that this rezoning is generally consistent with an endorsed strategy (primarily the *Sub-Regional Land Use Strategy 2008*) except for the recommendation in this Strategy to utilise Zone E3 for the drinking water catchments (as it did not consider the use of the drinking water catchment overlay as a suitable alternative).

We submit that there is sufficient detail in this Planning Proposal to justify a positive Gateway Determination considering the low complexity of the proposed amendment and limited chance of any significant impacts on adjacent land uses, the natural environment and the community.

2. PROPOSED AMENDMENT(S)

The key amendments (and/or retained planning controls) are as follows:

- a) It is intended to amend the land use zone for all of the lands that are in Zone E3 Environmental Management in BLEP2012 and replace it with Zone RU1 Primary Production. This will amend the following Land Zoning Maps: LZN_004; LZN_004A; LZN_005; LZN_005B; LZN_005C; LZN_007. As a result, the land use permissibility (without consent / with consent / prohibited) of Zone RU1 will apply to these lands (see table below).
- b) Zone E3 will be removed from the Land Use Table in Part 2 of BLEP2012 as there are no other lands utilising this zone;
- c) Any reference to Zone E3 will be removed from the following clauses (if permissible in Standard Instrument):
 - i) Clause 4.1AA – Minimum subdivision lot size for community title
 - ii) Clause 4.1A – Minimum subdivision lot size for strata plan schemes in certain rural and environmental zones
 - iii) Clause 4.2A – Erection of dwelling houses or dual occupancies on land in certain rural and environmental protection zones.
- d) The following minor amendments to land use permissibility will be made to Zone RU1 Primary Production - **Emergency service facilities** – permissible with consent

It is important to note that these amendments will **NOT** affect the following key controls:

- a) There will be no impact on the minimum lot size for subdivision of those lands so no Lot Size Maps will be amended; and
- b) The Drinking Water Catchment Maps that trigger consideration under *Clause 6.5 – Drinking water catchment* will be retained and provide the key protection of the drinking water catchments (in addition to other factors to be considered as part of a merit assessment of any development application). This will meet the requirements of the *Public Health Act 2010* and the *2013 NSW Guidelines for Drinking Water Management Systems*.

Council have elected to ensure that **intensive plant agriculture** and **intensive livestock agriculture** are permissible **with consent** in Zone RU1 if it were to include the drinking water catchment and would rely on the merit assessment process to ensure that development with consents have appropriate measures in place to protect the catchment and those that are unsuitable are not approved.

3. SITE ANALYSIS

A brief desktop review of known constraints and opportunities has been considered to inform the proposed amendment and determine if there are other factors in addition to the drinking water catchment to consider when removing Zone E3 from these areas.

3.1. Topography

3.1.1. Slope & Gradient

The Subregional Strategy highlights that there are only very limited areas within the Lake Rowlands catchment and none within the Suma Park catchment where the slope exceeds 18 degrees and there would be a need to avoid significant development to protect against erosion and landslip.

3.1.2. Scenic Protection

BLEP2012 utilises Zone RU2 Rural Landscape to define scenic protection areas around the towns of Blayney and Carcoar (outside the catchments) due to the valley setting of these two settlements. No other parts of the Blayney LGA are deemed worthy of protecting for the purposes of scenic protection under the LEP (including the existing Zone E3 / drinking water catchment areas) but merit assessment may still take this into consideration.

3.2. Water

3.2.1. Drinking Water Catchment

Obviously, the areas in consideration are both drinking water catchments as highlighted and defined on the Drinking Water Catchment Maps in BLEP2012 for both Lake Rowlands and Suma Park Dam (excluding the villages of Neville and Barry). The Suma Park catchment falls within the former Central West Catchment Management Authority and Lake Rowlands falls within former Lachlan Catchment Management Authority (now Central Tablelands Local Lands Services). There is no proposal to amend the drinking water catchments at this time so their protection under Clause 6.5 of BLEP2012 remains.

3.2.2. Watercourses & Riparian Corridors

Both drinking water catchments, by their very nature include watercourses. The most significant of these are shown as riparian waterways on the Riparian Lands and Waterways Maps in BLEP2012. This includes, but it not limited to, Coombing Creek which flows past Barry and is fed by a watercourse from Neville before flowing into Lake Rowlands. The ESA Mapping – Sensitive Water Resources (see figure below) shows most of the watercourses are major freshwater habitats with riparian qualities. It also shows that there are some limited areas in the drinking water catchments with very severe stream-bank erosion, these are less significant than in most other areas of the Shire and don't generally involve very severe gully erosion. The issue of stream protection can be addressed by the existing Clause 6.6 Riparian lands and watercourses during any development assessment processes.

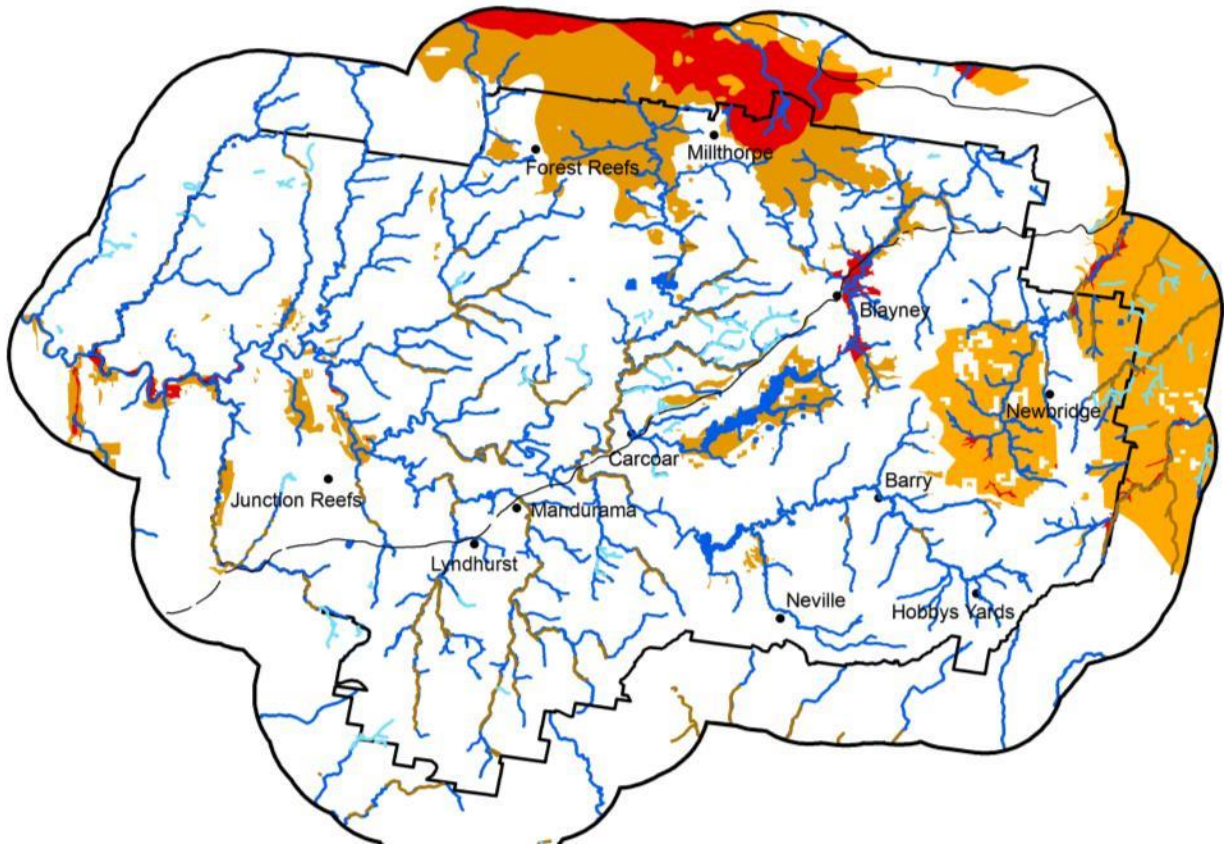
3.2.3. Flooding & Stormwater Management

There are no Flood Planning Maps in BLEP2012 for the drinking water catchment areas. There is likely to be intermittent flooding along the watercourses through Neville and Barry and the rural areas but there is no historical evidence of a broad flood plain or other flood hazard that would significantly impact on future land uses or an appropriate zoning of this rural land. Any evidence of flooding can be addressed under Clause 6.1 Flood Planning.

3.2.4. Groundwater

The Natural Resource – Groundwater Vulnerability Maps in BLEP2012 (based on the ESA – Sensitive Water Resources Maps see figure below) highlight that there is a high groundwater vulnerability under the majority of the Suma Park catchment to the east of Millthorpe but very little groundwater

vulnerability in the Lake Rowlands catchment. A rural zone is unlikely to significantly increase impacts on the groundwater systems. The issue of groundwater vulnerability can therefore be addressed by *Clause 6.4 – Groundwater vulnerability* if required for any development application and is not an absolute prohibition on more intensive agricultural uses or rural industries where alternate water supplies are required/available.



BLAYNEY LGA

**Environmentally Sensitive Areas
- Sensitive Water Resources**

This land use decision making tool is based on information produced by the Department's of Water and Energy, Environment and Climate Change and Primary Industries and does not represent other NSW Government agency information.

This information should be used as a guide only and scale must be taken into consideration when used with cadastral information.

**Environmentally Sensitive Areas
Water Overlay Data**

Data Source	Data Codes
Vulnerable Riparian Areas	All codes + 40m buffer either side of high bank
Groundwater Vulnerability	High and Moderately High
Drainage Polygon	Reservoirs
Gully Streambank Erosion 1995	81,82,83,84,85,102,103,104

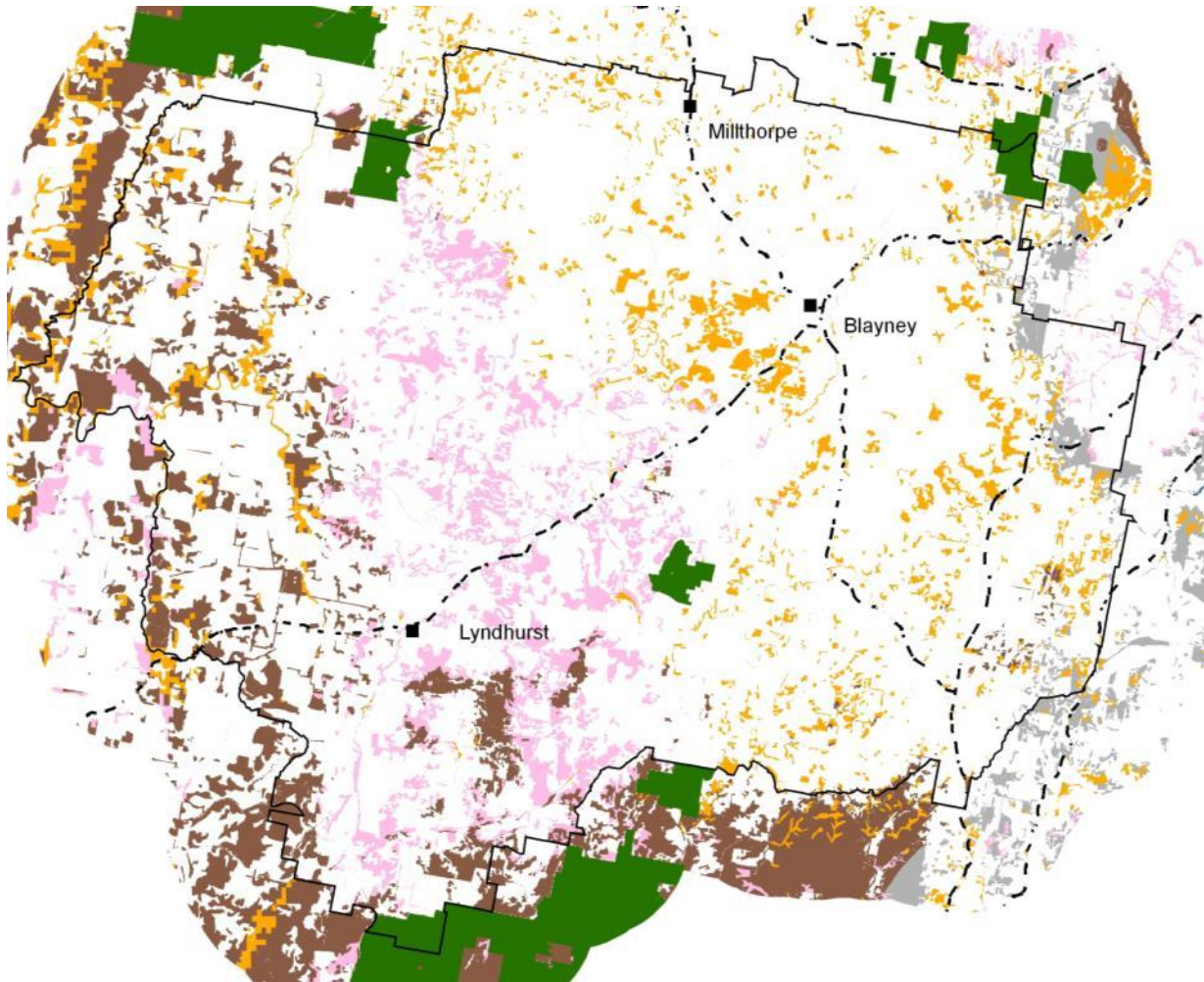
- Legend**
- Local Government Boundary
 - Local Government Area 5km buffer
 - Major freshwater habitats (40m buffer either side for bed & bank stability; protection of riparian vegetation & connectivity of habitat)
These areas should be excluded from development.
 - Very severe streambank erosion
 - Very severe gully erosion
 - Reservoir
 - Moderately High Groundwater Vulnerability.
Developments with the potential for significant contamination of groundwater sources (such as intensive animal agriculture) would not be considered appropriate in these locations.
 - High Groundwater Vulnerability
Developments with the potential for significant contamination of groundwater sources (such as intensive animal agriculture) would not be considered appropriate in these locations.
 - NSW Highway
 - Town

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ENVIRONMENTALLY SENSITIVE AREAS – SENSITIVE WATER RESOURCES (STATE GOV. 2008)

3.3. Flora, Fauna & Potential Biodiversity

The Terrestrial Biodiversity Maps suggests that there are some features of the two drinking water catchments that may contain sensitive biodiversity (see opposite) and trigger Clause 6.3 of BLEP2012. As the ESA – Sensitive Biodiversity Areas mapping shows (see figure below), the majority of the highlighted areas are sensitive because there is less than 30% of that species remaining (orange) with 2-3 pockets of vegetation on over-cleared landscapes (brown) but no specific species are identified for protection. There are some pockets of remnant native vegetation but there is limited connectivity and these generally overlap with the sensitive biodiversity areas.



BLAYNEY LGA

Environmentally Sensitive Areas - Biodiversity and Native Vegetation

This land use decision making tool is based on information produced by the Department's of Water and Energy & Environment and Climate Change and does not represent other NSW Government agency information.

This information should be used as a guide only and scale must be taken into consideration when used with cadastral information.

Environmentally Sensitive Areas Biodiversity and native vegetation

Data Source	Data Codes
Native vegetation mapping	DECC data
Wetlands	DECC data

Legend

- Wetland
- EEC
- <30% Remaining
- <1000 ha Remaining
- Vegetation on Overcleared Landscapes
- Riparian Vegetation
- Vegetation Within 100m of a National Park
- Other Native Vegetation
- Local Government Boundary
- NSW Highway
- Town
- DECC Estate
- Forests NSW

ENVIRONMENTALLY SENSITIVE AREAS – BIODIVERSITY & NATIVE VEGETATION (STATE GOV. 2008)

However, a rural zone is likely to have a similar effect in terms of future clearing and impacts and these sensitive areas are protected by the retention of the biodiversity overlay in BLEP2012 that does not require the additional protection of Zone E3 (that has little additional benefit/consideration in the development assessment process).

In addition, we have utilised Council's GIS data and the NSW Natural Resource Atlas to confirm there are no known threatened or endangered species (flora or fauna) or ecological communities in the drinking water catchments including no sensitive wetlands or reserves or former DECC estates. Generally the change of zoning is not likely to significantly increase activities that would impact on the Threshold Sustainability Criteria.

3.4. Bushfire

According to the Rural Fire Service (2009) *Bushfire Prone Land Map* there are only small pockets of bushfire prone land to the south and north-east of Neville and very limited pockets to the east of Millthorpe. The change in zoning from environmental to rural is unlikely to significantly increase development on or near bushfire prone land and can be addressed through the development assessment process.

3.5. Land

3.5.1. Historical Land Use(s) & Contamination

There are no known listed contaminated sites listed in Blayney Shire within the drinking water catchments under the *Contaminated Land Management Act 1997*. The predominant historic use of land in these areas has been for grazing and other agricultural practices and there could be some expectation of chemical use with low level soil contamination. However, the change in zoning from environmental to rural will predominantly result in ongoing rural uses and contamination issues can be dealt with during the development assessment process for any sensitive uses.

3.5.2. Geology & Soils

As there are very few pockets of land with slope above 18 degrees, landslip is less likely to be an issue. The ESA – Sensitive Land Resource mapping for the Shire suggests that the areas to the east of Millthorpe and around Neville/Barry/Hobbys Yards (i.e. within the drinking water catchments) are relatively free of sensitive land issues such as salt affected land, land capability classes 5-8, karst or soil regolith R4. The NSW Natural Resource Atlas mapping also suggests the areas are not affected by dry-land salinity (this occurs generally to the east and south east of the Shire).

3.5.3. Mineral Potential & Mine Subsidence

According to the Mineral Resources Audit Map (Aug, 2012) prepared by the former Department of Mineral Resources there are no existing or potential resource areas in the Suma Park catchment near Millthorpe and there is only one known existing extractive industry in the Lake Rowlands catchment known as Gordon's Quarry (NE of Barry). The change of zoning is unlikely to significantly increase development potential (particularly dwelling potential) in or around this industry as a rural zone is proposed and there is no change in the minimum lot size.

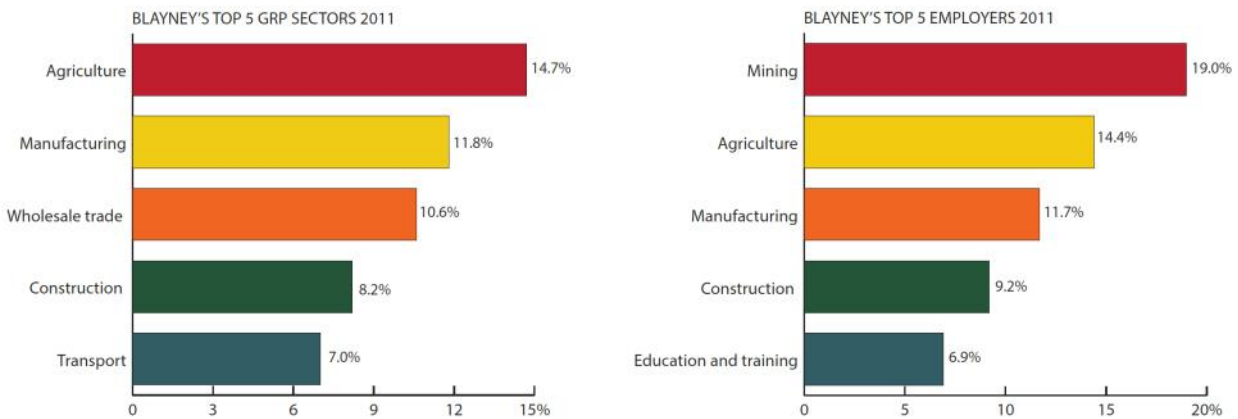
3.6. Agricultural Potential

3.6.1. Role of Agriculture in Blayney Shire

It is important to put this amendment in perspective of the role of agriculture in Blayney Shire. In 2011 (Australian Bureau of Statistics – Region Summary) the Blayney Shire (SA2) had 134,271ha of agricultural land (out of 164,254ha) of which there were 222,498ha sheep, 66,280 meat cattle and 1,021

dairy cattle – so it was dominated by grazing. Only very limited areas were used for broad-acre crops (2,590ha) and fruit and nuts excluding grapes (32ha). The agriculture, forestry and fishing industry employed the largest percentage (12.8%) of the workforce. The gross value of agricultural production was \$38.2 million dollars.

The CENTROC website summarised the Blayney Regional Overview 2011-2012 and stated that Agriculture (\$34.9 million) was the biggest sector of the economy by gross regional product (see graph excerpt below) and employed the 2nd highest number of people in the Shire. It is for these reasons that this review seeks to consider replacing the Zone E3 with Zone RU1 Primary Production in the drinking water catchments.



Sources: AECgroup (2012), A.PSHEERE CONSULTING (2013)

BLAYNEY REGIONAL OVERVIEW 2011-2012 (SEE CENTROC WEBSITE).

3.6.2. Agricultural Land Classification

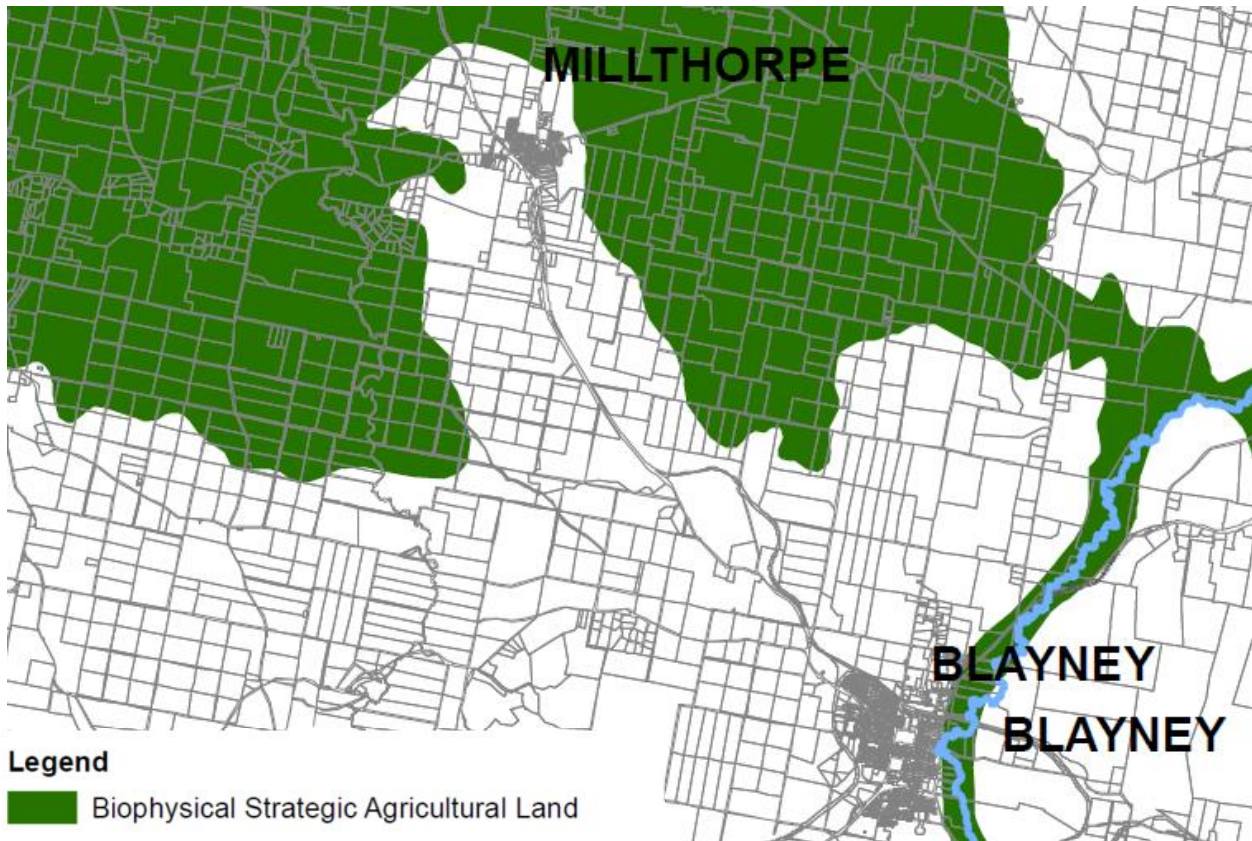
According to the mapping in the Subregional Strategy (Local Profile – Figure 6.8 – Land Capability) most of the land in the drinking water catchments are in Class 2, 3 or 4 areas. Therefore, they have a high to moderate agricultural potential with limited areas suitable for cropping with soil conservation practices but are mostly suited to grazing and pasture improvement.

3.6.3. Central West Pilot Mapping Project

In 2011-2012 the NSW Department of Primary Industries (DPI) investigated a new process for mapping agricultural lands in a pilot project for the Central West including the Site. It looks at agricultural development potential and resources and implications for land use planning. This study found that the majority of land in the drinking water catchments was potentially important grazing land and medium wool land, with more limited areas important for horticulture and viticulture land. This accords with the land capability classifications above.

3.6.4. Biophysical Strategic Agricultural Land Mapping

Biophysical Strategic Agricultural Land (BSAL) is land with high quality soil and water resources capable of sustaining high levels of productivity. The BSAL Mapping is given legal authority by *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and is primarily a tool to avoid conflicts between mining and prime agricultural land. Strategic Agricultural Land Map Sheet STA_023 and STA_024 covers the Shire and demonstrates that there is biophysical strategic agricultural land to the east of Millthorpe (Suma Park catchment) but the Lake Rowlands catchment is not strategic agricultural land. A rural zoning would therefore be better suited to strategic agricultural land than an environmental zone, particularly where there are no other underlying environmental sensitivities other than the drinking water catchment.



EXCERPT FROM STRATEGIC AGRICULTURAL LAND SHEET STA_023.

3.7. Culture & Heritage

Whilst there are items of non-indigenous heritage and possibly Aboriginal heritage in these drinking water catchments, the change in zoning from environmental to rural is not expected to significantly increase development potential and with consent required for most new land uses this can be managed during the development assessment process.

4. PLANNING IMPLICATIONS

The following is a comparison between the planning controls (and likely development outcomes) between the use of Zone E3 Environmental Management and Zone RU1 Primary Production for the subject lands.

4.1. Zone Objectives

The objectives of both zones are set out as follows:

Zone E3 Environmental Management	Zone RU1 Primary Production
<ul style="list-style-type: none"> To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. To provide for a limited range of development that does not have an adverse effect on those values. To protect drinking water catchments from the impacts of development by minimising impacts on the quality and quantity of water entering drinking water storages. 	<ul style="list-style-type: none"> 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 enable function centres, restaurants and appropriate forms of tourist and visitor accommodation to be developed in conjunction with agricultural uses.

The objectives between Zone E3 and Zone RU1 have significant differences in terms of their focus and the key issues facing land uses in each zone. Zone E3 is focussed on limiting development and protecting the environmental and cultural amenity of the area whilst Zone RU1 seeks to encourage agriculture and appropriate ancillary land uses for economic growth with land use conflicts been the key issue. An additional local objective was added to Zone E3 to protect drinking water catchments because this was the primary role of the zone when BLEP2012 was prepared.

It is submitted that the primary role of the area that forms the drinking water catchment is actually its agricultural role and the drinking water catchment is a secondary (but equally important) role. A review suggests that the intent to limit development in Zone E3 is not appropriate for these rural areas and instead Council should be facilitating development and assessing environmental and social impacts on their merits.

4.2. Land Uses Permissible without Consent

Land uses permissible without consent for each zone are as follows:

Zone E3 Environmental Management	Zone RU1 Primary Production
	Building identification signs
Environmental protection works	Environmental protection works
Extensive agriculture	Extensive agriculture
Home occupations	Home occupations

The land uses permissible without consent in Zones RU1 are very similar to Zone E3 with the exception of building identification signs. This is probably an oversight because building identification signs would have no impact on the drinking water catchment and are appropriate in these areas. Therefore, for these land uses Zone RU1 is appropriate.

4.3. Land Uses Permissible with Consent

Land uses permissible with consent for each zone are as follows with our comments (colours – red is significant discrepancy / purple – minor discrepancy / white – same or similar outcomes for important land uses):

Zone E3 Environmental Management	Zone RU1 Primary Production	Impact if Permissible
Agriculture & Terms Outside. This is the area where Zone E3 does not provide the flexibility in agricultural uses that is recommended in the Subregional Strategy. It is submitted that whilst applications for intensive agriculture have a higher potential impact on the drinking water catchment they are likely to be limited in number/size. It is inappropriate to prohibit these uses and a merits assessment is the best way to achieve the desired outcomes. Zone RU1 more flexible.		
Aquaculture	Aquaculture	Same
Extensive Agriculture without consent except dairy (pasture based) with consent	Extensive Agriculture without consent	Similar but dairy (pasture based) relatively low impact
	Intensive livestock agriculture.	Possible need / higher impact
Intensive plant agriculture except turf farming	Intensive plant agriculture	Similar – turf farming unlikely
Animal boarding or training establishments	Animal boarding or training establishments	Same
Farm buildings	Farm buildings	Same
	Forestry	Higher impact?
Residential & Terms Outside. There is no major discrepancy in permissibility for residential uses between the zones and minimum lot size will avoid additional dwelling potential and fragmentation of agricultural lands. No major impacts on drinking water catchment likely.		
Dual occupancies	Dual occupancies	Same
Dwelling houses	Dwelling houses	Same
Home-based child care	Home-based child care	Same
Home businesses	Home businesses	Same
Home occupations (sex services)	Home occupations (sex services)	Same
Tourist and Visitor Accommodation & Terms Outside. There is no major discrepancy in permissibility for tourist uses (except camping grounds which are unlikely).		
Bed and breakfast accommodation	Bed and breakfast accommodation	Same
Farm stay accommodation	Farm stay accommodation	Same
	Camping grounds	Low likelihood / higher impact?
Eco-tourist facilities	Eco-tourist facilities	Same
Commercial Premises & Terms Outside. Business premises and Office premises are prohibited in both Zone RU1 and E3. Retail premises are prohibited except for following. There is a significant discrepancy in permissibility of commercial premises between Zone E3 and RU1. This is another area where Council is seeking increased flexibility for economic growth of businesses that are ancillary to agriculture including cellar door premises, plant nurseries, etc. Most inappropriate commercial premises are not likely to be viable in these areas or can be addressed through a merit based assessment. No major impacts on drinking water catchment likely. Zone RU1 more flexible.		
	Cellar door premises	Low likelihood / low impact
	Restaurants or cafes	Possible need but low economic viability outside villages

Planning Proposal to amend Planning Controls in the Drinking Water Catchments, Blayney Shire NSW

Zone E3 Environmental Management	Zone RU1 Primary Production	Impact if Permissible
	Landscaping material supplies	Possible need but higher impact
	Plant nurseries	Possible demand / low impact
Roadside stalls	Roadside stalls	Same
	Function centres	Low likelihood / economic viability
Veterinary hospitals	Veterinary hospitals	Same
<p>Rural Industries. There is a significant discrepancy in permissibility of rural industries between Zone E3 and RU1. This is another area where Council is seeking increased flexibility for economic growth of rural industries that are associated with agriculture including agricultural produce industries etc. Most inappropriate industries are not likely to be viable in these areas or can be addressed through a merit based assessment even though industrial uses are likely to have a higher potential impact on the drinking water catchment. Zone RU1 more flexible.</p>		
	Ag. produce industry	Possible need / impact depends on use
	Livestock processing	Low likelihood / higher impact
	Sawmill or log process.	Low likelihood / impact
	Stock & sale yards	Low likelihood / low impact
<p>Industries, Heavy industrial storage establishments, storage premises and terms outside storage premises group. All industries (except for home industries) and all storage establishments (heavy or otherwise) are prohibited in both Zone RU1 and Zone E3 (same). The only difference is that depots are permissible with consent in Zone RU1 and not E3 which are generally low impact / can be addressed through merit assessment.</p>		
Home industries	Home industries	Same
	Depots	Possible need / Low impact
<p>Signage. The error of not permitting building identification signs without consent should be fixed. Otherwise same.</p>		
Building identification signs	(without consent)	Should be without consent
Business identification signs	Business identification signs	Same
<p>Recreation. Broadly the permissibility of recreation uses is similar between the zones and major and outdoor recreation facilities have a low likelihood in these areas or could be addressed through merit assessment. No major impacts on drinking water catchment likely.</p>		
Boat launching ramps / Boat sheds	Boat launching ramps / Boat sheds	Same
Water recreation structures	Water recreation structures	Same
Jetties / Moorings	Jetties / Moorings	Same
Recreation areas	Recreation areas	Same
Recreation facilities (major)	Recreation facilities (major)	Low likelihood
Recreation facilities (outdoor)	Recreation facilities (outdoor)	Low likelihood
Environmental facilities	Environmental facilities	Same
Extractive industries	Extractive industries	Same
Industrial training facilities	Industrial training facilities	Possible need / Low impact
<p>Community Infrastructure. Broadly the permissibility of community infrastructure is similar between the zones. Emergency services facilities should be permitted with consent in Zone RU1 (error). Any</p>		

Zone E3 Environmental Management	Zone RU1 Primary Production	Impact if Permissible
inappropriate uses can be addressed through merit assessment. No major impacts on drinking water catchment likely.		
Cemeteries	Cemeteries	Same
Community facilities	Community facilities	Low likelihood (mostly in village centres)
	Correctional centres	Low likelihood
Emergency services facilities		Error – Should be permissible with consent in RU1
Information and education facilities	Information and education facilities	Possible need / Low impact
	Research stations	Possible need but low likelihood
Infrastructure. Council supports applications for infrastructure where a merit assessment is suitable. The addition of truck depots in Zone RU1 would not be a significant impact on the drinking water catchment. May consider adding ‘water reticulation systems’ and ‘water storage facilities’ to Zone RU1.		
Roads	Roads	Same
	Airstrips	Low likelihood
Helipad/Heliport	Helipad/Heliport	Low likelihood
	Truck depots	Possible need / low impact
	Waste or resource management facilities	
	Water supply systems	Possible need
Water reticulation systems	Water reticulation systems are sub-term to water supply systems	Same
Water storage facilities	Water storage facilities is a sub-term to water supply systems	Same
	Water treatment facilities	Low likelihood
Open cut mining	Open cut mining	Same

In conclusion, it can be seen that Zone RU1 is significantly more flexible with regard to agricultural land uses and commercial premises where these can be shown to be ancillary to agriculture and this would suggest that Zone RU1 is the preferred zone for the drinking water catchment land. Potential impacts on the drinking water catchment can be managed through merit assessment.

4.4. Existing Minimum Lot Size & Dwellings

The minimum lot size for subdivision in both Zone E3 Environmental Management and Zone RU1 Primary Production is 100 hectares and will remain at this size so there is no need to amend any Lot Size Maps in BLEP2012 and no impact in terms of additional dwelling potential or fragmentation of agricultural lands. Any new dwellings would need to have approval for any on-site effluent management anyway so there is a low chance of significant impact on the drinking water catchment.

4.5. Drinking Water Catchment Overlay

It is proposed to retain the existing Drinking Water Catchment Maps and *Clause 6.5 – Drinking water catchment* in BLEP2012. This is the primary control that can be used to ensure development will avoid, or minimise/mitigate its impacts on the drinking water catchment if the zoning is changed. However, it must be understood that this may mean that complying development is not available in these areas (see more detail on Exempt and Complying Development below).

4.6. Exempt & Complying Development

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ('SEPP Code') sets out a variety of circumstances when development can be classified as either 'Exempt development' or 'Complying development'.

The key aim of the SEPP Code is to provide streamlined assessment processes (with potential for reduced development costs and processes) for development that complies with state-wide development standards including:

- a) Exempt development that may be carried out without the need for development consent as it is likely to have minimal environmental impact; and
- b) Complying development that offers a fast-track approvals process where development meets the requirements of the SEPP Code and can be assessed by an accredited certifier.

Council supports the use of exempt and complying development where impacts can be appropriately managed. However, historically the complexity of these processes has reduced the use of exempt and complying development paths so people have tended to lodge development applications.

The SEPP Code includes the following and we have highlighted where the relevant sections may be applicable in the rural and environmental zones of the drinking water catchments:

<p>Part 2 - Exempt Development Codes includes the General Exempt Development Code; Advertising and Signage Exempt Development Code; and Temporary Uses and Structures Exempt Development Code. Changing from Zone E3 to Zone RU1 for the subject lands will enable agricultural related development such as 'animal shelters' and 'farm buildings' to be undertaken with as exempt development.</p>	
Complying Development Codes	Comment
1) Part 3 - General Housing Code	Clause 3.1 - Only applies to specific development in Zones R1, R2, R3, R4 or RU5. Only relevant to village of Neville in drinking water catchment but not affected by Zone E3.
2) Part 3A - Rural Housing code	Clause 3A.1 - Only applies to specific development in Zones RU1, RU2, RU3, RU4, RU6 and R5 (No mention of Zone E3) but would apply if a rural zone adopted. Predominantly about new 1-2 storey housing and ancillary structures (See restrictions in drinking water catchment below).
3) Part 4 - Housing Alterations Code	Applies to internal alterations to existing dwellings and ancillary development (in all zones)
4) Part 4A – General Development Code	Applies to bed and breakfast accommodation, home businesses, tent/marquees/community event booths, stages/platforms etc.
5) Part 5 – Commercial and Industrial Alterations Code	Applies to an internal alteration to a building used for any purpose other than residential, heavy industry, sex services or restricted premises and change of uses.
6) Part 5A – Commercial and Industrial (New Buildings and Additions) Code	Applies to specified development in business, industrial, and special use zones only. Not applicable to Zone E3.
7) Part 6 – Subdivisions Code	Applies to strata subdivision of multi-dwelling housing or a building other than a dual occupancy which is unlikely in Zone E3.
8) Part 7 - Demolition Code	Applies to demolition of a dwelling, ancillary development, swimming pool, industrial building, or a commercial building.
9) Part 8 – Fire Safety Code	Applies to fire sprinkler systems and fire safety systems in specified circumstances.

The key issue is that the complying development code for rural housing does not apply to Zone E3 Environmental Management so an application for a dwelling and associated structures will always require a development application in this zone.

However, it is important to note that under Division 2 of the SEPP Code development is excluded from being either exempt or complying if it is **located within a drinking water catchment** including:

- 1) *Clause 1.19 – Land on which complying development may not be carried out*
 - a) *Subclause (1) – Specific land exemptions for General Housing Code and Rural Housing Code*
 - i) *Subsection (j) – Unsewered land* [this would include all of the drinking water catchments in Blayney LGA]
 - (1) *Subsection (ii) in any other drinking water catchment identified in any other environmental planning instrument* [this would include BLEP2012].
 - b) *Subclause (4) – Specific land exemptions for Housing Alterations Code and General Development Code* states that complying development must not be carried out on unsewered land:
 - (1) *Subsection (b) in any other drinking water catchment identified in any other environmental planning instrument* [this would include BLEP2012].

Therefore, in Zone RU5 (Neville), Zone R5 (Neville and Barry) and Zone E3 or RU1 in the rural areas complying development is excluded because of the drinking water catchment and these areas being unsewered. This has significant implications because there are no current plans for reticulated sewer in either of these villages.

One future suggestion for the current review of Exempt & Complying Development in the Western Region is that dwellings requiring on-site effluent systems could be managed through the Section 68 approval process for the on-site systems whilst still allowing complying development for the dwelling component ensuring that drinking water catchments are protected from effluent and stormwater where required.

5. SUBREGIONAL LAND USE STRATEGY

5.1. Background

Council and the Department of Planning and Environment ('Department') have approved and adopted the GHD (2008) *Subregional Rural and Industrial Land Use Strategy* ('Subregional Strategy'). This is the relevant land use strategy applying to all land outside of the main towns/villages in Blayney LGA including the drinking water catchments. The Subregional Strategy was approved by the NSW Government by letter dated 30 June 2011 from the former NSW Department of Planning & Infrastructure.

5.2. Strategies and Actions

The key strategies and actions are set out in the Final Strategy Section 9 – Agriculture and Section 10 – Industry (relevant to Rural industry in particular), and Section 12 – Natural and Scenic Environment (particularly relating to water quality).

5.2.1. Section 9 – Agriculture

The objective of Section 9 is to '*protect and promote agriculture in the Sub-Region, having regard to its economic value and contribution to the regional, state and national economies.*' It is for this reason that this Proposal submits that Zone E3 is potentially unduly restrictive on the range of agriculture and ancillary uses that could be permissible in what has traditionally been a rural area (albeit with a drinking water catchment overlay). This Proposal does not propose to affect minimum lot size that may increase fragmentation of rural lands. The following strategies and action (Section 9.3) are relevant:

Strategy	Policy Actions	Comment
1. Provide for the economic growth of the rural area and maintain and enhance rural job opportunities	1.1 Ensure agriculture is given priority in planning and land use decision making. 1.2 Encourage a wide variety of agricultural activities within the agricultural zones. 1.3 Encourage the development of intensive agricultural industries where they can be serviced with necessary infrastructure and in appropriate locations to avoid land use conflicts.	Zone E3 is somewhat restrictive in terms of intensive agricultural land uses and rural industries that could potentially be supported in the drinking water catchments. This contradicts the Strategy recommendations. Zone RU1 is more flexible.
2. Protect agricultural land resources	2.1 Adopt the land use designations in Figure 6.1 including Primary Production / Rural Landscape / Forestry / Rural Small Holdings	BLEP2012 is roughly consistent with Figure 6.1 in the Strategy. However, the Strategy failed to resolve the conflict between use of agricultural zones and environmental zones in the drinking water catchments.
3. Minimise the fragmentation of agricultural land	3.2 Consider including performance-based criteria for minimum lot size with an ancillary dwelling for intensive forms of agriculture as a local provision.	This Proposal does not affect the minimum lot size or fragmentation or dwelling permissibility. No impact.
4. Promote sustainable management of natural resources for primary production	4.1 Ensure planning policy supports efficient and sustainable irrigation practices on farms. 4.3 Investigate with industry the potential for re-use and recycling of waste products... 4.4 Locate and design primary industry and associated land uses to minimise potential	The original intent of using Zone E3 was to limit some uses that <u>may</u> have higher impacts on the drinking water catchment. However, it is possible to meet these recommendations through greater flexibility and merit

Strategy	Policy Actions	Comment
	<p>hazards, such as chemical spills, particularly onto productive land and watercourses.</p> <p>4.5 Develop programs with primary industries to address drainage and management of irrigation wastewater to prevent adverse impacts....</p> <p>4.8 Create environmentally sensitive area overlays with associated assessment clauses...</p>	<p>assessment processes and programs to educate primary industries to minimise impacts. The use of the drinking water catchment overlay assists with determining impacts. Proposal not inconsistent with Strategy.</p>
<p>5. Protect and enhance forestry resources AND</p> <p>6. Promote the forestry industry in the sub-region</p>	<p>5.2 Encourage the development of forestry in locations where the impact on water resources is appropriately managed ...</p> <p>6.1 Encourage State Forests, existing private forestry operators and landowners to expand existing forests or introduce new commercial forestry</p>	<p>Private forestry is prohibited in Zones E3 but permissible with consent in Zone RU1 which would provide more flexibility to assess impacts on catchments. Expansion of forestry is consistent with Zone RU1.</p>
<p>7. Prevent and manage land use conflicts AND</p> <p>10. Prepare controls for specific land uses</p> <p>11. Provide guidelines for development associated with viticulture.</p>	<p>7.1 Prepare specific controls for the agricultural land uses and regulate them through the LEP or DCP.</p> <p>10.1 Prepare specific controls in the LEP and/or DCP for [a range of agricultural and associated land uses].</p> <p>11.1 Prepare guidelines and controls on the location of wineries and cellar doors, dwelling houses, tourist facilities and accommodation.</p>	<p>Council submits that an outright prohibition through use of Zone E3 is less appropriate than providing merit controls in the DCP to control key impacts on the drinking water catchment. It is difficult to predict what lands could support these additional uses without impacting agriculture so flexibility is a more sensible way forward.</p>

Overall, the replacement of Zone E3 with Zone RU1 would be broadly consistent with the recommendations as long as there are other controls (like Clause 6.5 of BLEP2012) that would protect natural resources and reduce land use conflicts.

5.2.2. Section 10 – Rural Industry & Tourism

The objective of Section 10 is to *‘provide adequate opportunities for employment-generating activities that will support the community and the economy of the Sub-Region’*.

Rural Industries: The Strategy states *‘[g]iven the importance of rural industries in the Sub-Region, demand for agricultural value-adding and processing industries could emerge. The zoning provisions in the rural area would need to be flexible to accommodate these industries, however development controls would need to be developed to ensure that impacts on surrounding agricultural activities were minimised.’*

It is for this reason that this Proposal submits that Zone E3 is potentially unduly restrictive on the range of rural industries that could be suitable to support economic growth in rural areas such as the drinking water catchments.

Unlike standard industrial types, rural industries must often occur in proximity to the primary industries/ agriculture for efficiency. There is potentially sufficient transport and infrastructure in the drinking water catchments to support a wide range of rural industries that would not conflict with the industrial zones in Blayney or quasi-industrial uses in key villages. Broadly, however, the replacement of Zone E3 with Zone RU1 is consistent with allowing flexibility in rural areas as long as impacts are managed in the assessment process.

Strategy	Policy Actions	Comment
12. Encourage the establishment of enterprises that value-add to the agricultural industry	<p>12.1 Permit rural industries within the Primary Production and Rural Small Holdings zones.</p> <p>12.2 Allow for the development of value-adding activity, such as packing sheds and processing facilities, which complement primary industry in the local area.</p> <p>12.4 Examine opportunities for co-location of intensive primary industries and compatible processing activities to reduce land use conflict and achieve efficiencies ...</p>	The proposal is consistent with have flexibility in the rural zones for compatible rural industries. The only discrepancy is determining whether existing rural areas in drinking water catchments require an environmental zone or are better suited to a rural zone. The recent North Coast review suggests that rural zones are more suited to drinking water catchments.

Tourism: The Strategy states *‘[t]ourism planning needs to avoid any adverse impacts on agriculture and should concentrate low impact rural tourism, particularly where it includes overnight accommodation, in and around rural towns.’*

Strategy	Policy Actions	Comment
15. Identify land that is appropriate for tourism development	15.5 Encourage sustainable rural tourist facilities in rural zones including farm stays, ecotourism resorts and associated facilities through the development of a DCP	As the land use permissibility between Zones E3 and RU1 is not significantly different for tourism uses then the amendment will have little impact.
17. Promote and enhance those qualities of the region that attract tourists	17.5 Require rigorous site analysis and innovative design for any tourism development in environmentally sensitive areas.	This is something best managed through a DCP and merit assessment controls for tourism land uses.

Mining:

Strategy	Policy Actions	Comment
11. Protect known and potential mineral and extractive resources	<p>11.2 Known resources and areas of identified high mineral potential would not be unnecessarily sterilised by inappropriate zoning or development.</p> <p>11.5 Development for the purposes of mines and extractive industries would be permitted in the Primary Production zone.</p>	As the land use permissibility between Zones E3 and RU1 is not significantly different for mining / extractive industry uses then the amendment will have little impact. There is only one known mining location and increased agricultural and rural industries are unlikely to conflict with its ongoing use.

5.2.3. Section 12 – Natural and Scenic Environment

The objective of Section 10 is to *‘ensure that natural resources, the scenic environment and conservation values are preserved for the benefit of current and future generations’.*

Water Quality: The Strategy states that *‘[h]ealthy water resources and catchments in the Sub-Region are critical to the wellbeing of both the Sub-Region due to the region’s vital role for the agricultural industry. Protection of water quality and quantity is one of the highest priorities for the region and attention must be given to the cumulative impact of land uses and management of these resources. Provision of suitable buffers to development is critical in facilitating appropriate outcomes for natural resources, including groundwater and surface water.’*

Strategy	Policy Actions	Comment
2. Control development in drinking water catchments	<p>2.1 Implement a specific environmental protection zoning for land within the drinking water catchments.</p> <p>2.2 Restrict the type and intensity of development permissible in the drinking water catchment.</p> <p>2.3 Develop specific performance criteria based on the most current government endorsed Water Quality and River Flow Objectives, to be applied to all development in the drinking water catchment to further minimise adverse impacts.</p>	<p>This is the core reason why Zone E3 was used in BLEP2012. However, the Strategy was perhaps remiss in not considering the use of the drinking water catchment overlay as a suitable tool to achieve a similar outcome. With that control (and further controls in the DCP) there is the potential to restrict inappropriate development in the catchments and minimise adverse impacts. Council submits that inconsistency with Policy Action 2.1 is not sufficient to refuse this Proposal if the other strategies are addressed.</p>
1. Ensure development does not have a detrimental impact on nearby water bodies.	<p>1.1 Development to be located an appropriate distance from waterways.</p> <p>1.4 On-site effluent management is to be in accordance with an adopted DCP for On-Site Sewage Management and the NSW Government’s Environment and Health Protection Guidelines.</p> <p>1.6 Identify and map environmentally sensitive waterways.</p>	

The Subregional Strategy recommends that Council implement a specific environmental protection zoning for land within the drinking water catchments and, in particular, the Strategy Area maps suggested in the legend that this would be an ‘Environmental Management’ zone and Zone E3 is listed as one of the possible zones to be applied to the new local environmental plan in Chapter 15 – Recommendations for LEPs.

However, the Strategy also recommends the use of ‘drinking water catchment’ overlays and the use of the Standard Instrument Local Provision for drinking water catchment protection. Therefore, it could be argued that this clause meets the objectives for water quality protection set out in the Strategy as an alternative to an environmental zone.

Biodiversity: It is not intended that the change in zoning would remove the use of the Terrestrial Biodiversity mapping or the Riparian Corridors and Waterways mapping that trigger additional controls in BLEP2012 to protect these significant resources. However, it is important to note that the two drinking water catchments do not include a significant amount of areas identified as sensitive biodiversity or riparian corridors (see Section on Site Analysis) so the impacts of this proposal are likely to be limited and can be addressed through a merit assessment process.

Scenic Quality: The additional permitted land uses in Zone RU1 are primarily for a rural zone and have a low impact (when appropriately designed) on scenic quality.

Environmental Hazards: The drinking water catchments do not have any significant flooding or bushfire threats over and above other rural lands so the proposed amendment to Zone RU1 is unlikely to result in inappropriate development in environmental hazard areas.

6. NSW NORTHERN COUNCILS ENVIRONMENTAL ZONES REVIEW

6.1. Area / Reason for the Review

The Department of Planning and Environment (DPE) has highlighted that the issue of environmental zoning is currently being reviewed by Councils along the North Coast of NSW. The reason for the review was that there was concern that councils were introducing environmental zones and overlays as they updated their LEPs without evidence of the environmental significance of the land and, in some cases, these zones were being applied to rural and agricultural land which has the potential to limit the use of this land for agricultural purposes.

The review applies to the zoning of land in Ballina, Byron, Lismore, Tweed and Kyogle LGAs. It is an independent review by Parsons Brinckerhoff. The *Northern Councils E Zone Review Interim Report* (30 September 2013) was placed on public exhibition in May/June of 2014 and is under consideration by DPE. DPE has provided preliminary responses to the Interim Report but no formal position has been adopted with regard to environmental zonings.

Whilst the review only applies to those specific LGAs at this time, some of the considerations and principles raised by the Interim Report are relevant to the discussion of the use of Zone E3 in Blayney Shire.

6.2. Key Recommendations & Criteria

The relevant consultant's key draft recommendations are as follows (taken from DPE Frequently Asked Questions Sheet:

- a) *Environmental zones should only be applied to those areas which have important environmental values, based on validated ecological evidence;*
- b) *Land that does not meet the criteria should be zoned according to its primary use;*
- c) *Where an environmental value is identified which may not warrant an environmental zone, it should be protected through an environmental overlay on the LEP map which an accompanying clause. The consultant considers environmental values which should be managed in this way are **drinking water catchment areas**, scenic protection areas, coastal risk areas and terrestrial biodiversity;*
- d) *Extensive agriculture should be permitted without consent on E3 zoned land;*
- e) *Aesthetic values should be removed as an attribute from the E3 zone.*

In effect the consultant is suggesting that on the North Coast drinking water catchment areas are best protected by adopting a drinking water catchment overlay and the DPE has agreed that where this is the only issue then this is appropriate. Where there is cleared land used for agricultural or rural purposes it should be given an appropriate rural zoning if there are not substantial environmentally sensitive areas. The DPE does not support the use of overlays for scenic protection or terrestrial biodiversity.

The consultant has recommended the application of a set of criteria for applying the E3 zone as follows (excerpt from Interim Report, p.77 – see below).

In response, the land in Blayney's E3 zone does not meet criteria 1-2 & 4-6 as it does not contain rainforest; old growth forest; rare, endangered or vulnerable forest ecosystems; coastal foreshore or coastal hazard; or on vegetated land where the vegetation is critical (i.e. to prevent erosion, landslides, flood or drought, etc.).

The only criterion that is partially met is Criteria No.3 – as there are identified riparian corridors through the lands but these do not contain any wetland or estuarine vegetation. The riparian corridors are identified on the Riparian Lands and Waterways Maps and receive protection under Clause 6.6 – Riparian land and watercourses so it may not need an Environmental Zone to protect the riparian outcomes.

E3 Criteria	
1	Land identified within a validated spatial dataset comprising areas of all types of rainforest other than SEPP 26 mapped areas
2	Land identified within a validated spatial dataset comprising areas of old-growth forest, defined as an ecologically mature forest where the effects of disturbances are now negligible (Commonwealth of Australia 1997)
3	Land identified within a validated spatial dataset comprising areas of riparian, wetland and estuarine vegetation other than SEPP 14 mapped areas
4	Land identified within a validated spatial dataset comprising areas of rare, endangered and vulnerable forest ecosystems based on criteria defined by the Joint ANZECC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) (Commonwealth of Australia 1997).
5	Land identified within a validated spatial dataset comprising areas of native vegetation on coastal foreshores and land subject to coastal hazards (as listed under the <i>Coastal Protection Act 1979</i>), including climate change effects.
6	<p>Land identified within a validated spatial dataset comprising areas of land where strict controls on development should apply. Such land includes those areas of native vegetation where the ecosystem services provided by the vegetation is critical including:</p> <ul style="list-style-type: none"> ▪ where the risks of severe erosion and landslides are extremely high (i.e. steep land) and the consequences are potentially catastrophic ▪ where native vegetation that is critical to watershed protection (i.e. when vegetation protects against catastrophic floods or drought and the destruction of fisheries where spawning grounds are protected by mangroves or riparian forests).

Therefore, it is submitted that the criteria suggested in the Interim Report for the application of an E3 Zone is only partially met but has no significant environmental resource that requires protection and, therefore, the land should be returned to an appropriate rural zone.

6.3. Implications of E Zone Review

The Frequently Asked Questions Sheet from DPE suggests that DPE will support the removal of E zones where it can be protected by an alternate overlay, such as the Drinking Water Catchment maps and standard clause. However, there are a number of more detailed matters that have not yet been agreed and the Department is currently reviewing submissions from the exhibition of the Interim Report before it will set out its preferred position.

The Fact Sheet also suggests this position will be applied state-wide and that the Minister for Planning will in the future issue a direction to councils about the criteria that must be used when applying an E2 or E3 zone. This would apply when a council sought to amend their local environmental plans.

Blayney may be taking a small risk in seeking the removal of the E zone before the Department has finalised its position. However, it could be argued that the Blayney LGA has quite a different set of circumstances to the North Coast Councils and should be considered on its own merits and should not have to wait for the North Coast matter to be resolved. Also, there appears to be a relatively clear direction to remove E zones when there is an additional drinking water catchment overlay / protection and no other matters of environmental significance and it is not expected this will change.

It is important to note that any land use zone and/or drinking water catchment overlay only is considered when a development application is lodged for a particular land use, though it may also affect where complying development can occur. If a land use does not require an application then it will not need to address these criteria.

7. PUBLIC HEALTH ACT & DRINKING WATER GUIDELINES

7.1. Public Health Act 2010 (NSW)

It is important to note that under the *Public Health Act 2010* there are a number of obligations including but not limited to Clause 25 – Quality assurance programs that states:

- (1) A **supplier of drinking water** must establish, and adhere to, a **quality assurance program** that complies with the requirements prescribed by the regulations.
- (2) The regulations may make provision for or with respect to any of the following:
 - (a) the tests on water and other substances to be carried out by a supplier of drinking water pursuant to this Division,
 - (b) the records to be maintained by a supplier.
- (3) The Chief Health Officer may, by notice in writing, exempt a supplier of drinking water or class of suppliers from subsection (1) if the Chief Health Officer is satisfied that the supplier, or class of suppliers, is subject to other appropriate licensing or other regulatory requirements.

Under Clause 34 of the Regulations it further expands on these requirements by stating:

- (1) For the purposes of section 25 (1) of the Act, a **quality assurance program** must address the elements of the Framework for Management of Drinking Water Quality (as set out in the **Australian Drinking Water Guidelines** published by the National Health and Medical Research Council) that are relevant to the operations of the supplier of drinking water concerned.
- (2) A supplier of drinking water must provide the Director-General with a copy of its most recent quality assurance program.
- (3) The Director-General may arrange for the review of a quality assurance program of a supplier of drinking water at any time.

A **supplier of drinking water** includes, amongst other,

- (c) a water supply authority within the meaning of the Water Management Act 2000,
- (d) a local council or a county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the Local Government Act 1993,

7.2. Guidelines

Section 3.3 of the **Australian Drinking Water Guidelines 2011** (updated Dec 2013) states that ‘prevention is an essential feature of effective drinking water quality management. Preventative measures are those actions, activities and processes used to prevent hazards from occurring or reduce them to acceptable levels’. In particular, there should be a ‘multiple barrier approach’ and ‘preventative measures should be applied as close to the source as possible, with a focus on prevention in catchments rather than sole reliance on downstream control’. It then goes on to state on p.28-29:

Catchment management and source water protection

Catchment management and source water protection provide the first barrier for the protection of water quality. Where catchment management is beyond the jurisdiction of drinking water suppliers, the planning and implementation of preventive measures will require a coordinated approach with relevant agencies such as planning authorities, catchment boards, environmental and water resources regulators, road authorities and emergency services.

Effective catchment management and source water protection include the following elements:

- developing and implementing a catchment management plan, which includes preventive measures to protect surface water and groundwater;
- ensuring that planning regulations include the protection of water resources from potentially polluting activities, and are enforced;
- promoting awareness in the community of the impact of human activity on water quality.

Whether water is drawn from surface catchments or underground sources, it is important that the characteristics of the local catchment or aquifer are understood, and the scenarios that could lead to water pollution are identified and managed. The extent to which catchment pollution can be controlled is often limited in practical terms by competition for water and pressure for increased development in the catchment.

Effective catchment management has additional benefits. By decreasing contamination of source water, the amount of treatment and quantity of chemicals needed is reduced. This may lead to health benefits through reducing the production of treatment by-products, and economic benefits through minimising operational costs.

In surface water catchments, preventive measures can include:

- selection of an appropriate source water (where alternatives exist);
- exclusion or limitations of uses (e.g. restrictions on human access and agriculture);
- protection of waterways (e.g. fencing out livestock, management of riparian zones);
- use of planning and environmental regulations to regulate potential water-polluting developments (e.g. urban, agricultural, industrial, mining and forestry);
- use of industry codes of practice and best practice management;
- regulation of community and on-site wastewater treatment and disposal systems;
- stormwater interception.

In addition, the 2013 **NSW Guidelines for Drinking Water Management Systems** reiterates these requirements and requires suppliers of water to prepare a Drinking Water Management System (DWMS) to address risks in their catchments. The document at p.15 states that:

'catchments can be protected by limiting access by humans and animals, limiting land use to non-polluting types that will not contribute to risk and the use of buffer zones. Development controls can be used to ensure that development within catchments is appropriate. Planning Instruments such as Local Environmental Plans (LEPs) may be used to help protect catchment integrity, for example inclusion of local provisions which restrict land use within catchments to types that will not pose a risk to water quality.'

The Public Health Unit of NSW Health (representative Marnie Page) has reiterated these regulations and overarching controls at several recent conferences including EDAP (April/May 2014) and the Central West Planners Group (November 2014).

We have not yet determined if the Central Tablelands Water authority has prepared a Drinking Water Management System in accordance with the guidelines to comply with the Public Health Act but it was partly their original direction to include Zone E3 in BLEP2012 and the drinking water catchment overlay. We expect that a full and complete response from CTW prior to or during the public exhibition process will assist in a decision relating to these issues.

7.3. Land Use that may Conflict with these Requirements

Zone E3 permits **intensive plant agriculture** (excluding **turf farming**) with consent but prohibits **intensive livestock agriculture** (which was part of the original reason for Zone E3 to differentiate it from Zone RU1).

It is for these reasons that Council have elected to ensure that **intensive plant agriculture** and **intensive livestock agriculture** are permissible **with consent** in Zone RU1 if it were to include the drinking water catchment and would rely on the merit assessment process to ensure that development with consents have appropriate measures in place to protect the catchment and those that are unsuitable are not approved.

7.4. Other Councils

It is important to note that there are discrepancies between Councils in the region on this issue. A number of Councils have drinking water catchments and do not define / map these areas for the purposes of their LEPs. Many of these have utilised rural zoning for these catchments and generally these permit a wide variety of rural uses including some forms of intensive agriculture (often without consent).

However, differences with Council may relate to the strategic nature of their drinking water catchments, the perceived risk and planning response, appropriate development control using other tools / methods, or less awareness of the changing guidelines/regulations for water suppliers. Whatever the reasons, Blayney Shire Council must form its own opinion (in collaboration with the key stakeholders) on the issue.

8. COMPLETED KEY STAKEHOLDER CONSULTATION

We have already approached a number of the key stakeholders during the preparation of this Planning Proposal (See Appendices for copies of all relevant correspondence) as follows:

8.1. Department of Planning & Environment (DPE)

The following key meetings have occurred with officers at DPE:

Date	Department Officers	Comments/Outcomes
16/9/14	Meeting with Erin Strong of DPE Dubbo	Brief overview of the Planning Proposal and relationship to the North Coast review of E Zones. Erin had also previously discussed this with the Director of Environmental Services (Mark Dicker) at Blayney Shire.
2/10/14	Telephone discussion & emails with Noo Porima of DPE Sydney	Arrangement for DPE to prepare the SILEP mapping for the Planning Proposal based on MapInfo files to be provided to the Department.
20/11/14	Telephone discussions with Erin Strong of DPE	Discussions regarding the permissibility with consent of intensive plant agriculture in the drinking water catchment in Zone RU1, particularly, whether there was a method to permit it without consent in Zone RU1 whilst permitting with consent in the catchment with the same zone.
Dec 2014/Jan 2015	Council officers met with DPE representatives	Review of Draft Planning Proposal with concerned citizens and agreement on final amendments to permit Council adoption.

8.2. Office of Environment & Heritage (OEH)

The following key meetings have occurred with officers at OEH:

Date	Department Officers	Comments/Outcomes
2/10/14	Email to Erica Baigent. Brief discussion with David Kerring	Email overviewing Planning Proposals and seeking preliminary comments to assist in drafting.
Late Oct	Telephone discussion Erica Baigent, Conservation Officer	Erica reiterated the submission made to Blayney Council during the public exhibition of BLEP2012. This submission is in the Appendices. In summary OEH supported the exclusion of intensive livestock agriculture and intensive plant agriculture and water treatment facilities from the E3 zone which has been applied to the drinking water catchment. Therefore, they are less likely to support the proposed introduction of Zone RU1 with these land uses being permissible with consent.

8.3. NSW Agriculture

The following key meetings have occurred with officers at NSW Agriculture:

Date	Department Officers	Comments/Outcomes
2/10/14	Mary Kovac – Resource Management Officer – NSW Agriculture	The broad intent of the proposed rezoning and removal of Zone E3 was not considered a critical issue for NSW Agriculture as a rural zoning was proposed. There would be more flexibility for agricultural uses which is consistent with their charter. For this reason, NSW Agriculture is happy to be notified as part of the public exhibition process and does not need to comment prior to lodgement of the Planning Proposal.

8.4. Central Tablelands Water (CTW)

The following key discussions have occurred with officers at CTW:

Date	Department Officers	Comments/Outcomes
18/11/14	Gavin Rhodes – General Manager of CTW	Meeting with Mr Rhodes explaining the proposed outcomes in the drinking water catchment for Lake Rowlands for which CTW is the responsible water authority. The requirements under the <i>Public Health Act 2010</i> and the <i>2013 NSW Guidelines for Drinking Water Management Systems</i> were highlighted. A copy of the draft Planning Proposal was provided to Mr Rhodes by email on the same date for comment.

8.5. Central Tablelands Local Land Services (LLS)

The following key meetings have occurred with officers at OEH:

Date	Department Officers	Comments/Outcomes
2/10/14	Email to Casey Proctor of LLS	Email overviewing Planning Proposals and seeking preliminary comments to assist in drafting. No comment yet received.

8.6. NSW Health

The following key discussions on this topic have occurred with officers from NSW Health:

Date	Department Officers	Comments/Outcomes
April/May 2014	Marnie Page, EHO, Public Health Unit	Discussions at the EDAP Conference (Cowra) on how Blayney came to have Zone E3 and a drinking water catchment overlay for its catchments and support for this position.
5 Nov 2014	Marnie Page, EHO, Public Health Unit	Reiteration at the Central West Planners Forum (Parkes) of support for protection of drinking water catchments in Blayney and concerns about removal of any protections as part of this Planning Proposal.

9. PLANNING PROPOSAL

The layout of this section is in accordance with the requirements of the Department of Planning's document dated October 2012 entitled 'Guide to preparing planning proposals'.

9.1. Part 1 – Objectives and Intended Outcomes of Proposed Instrument

Part 1 of the planning proposal should be a short, concise statement setting out the objectives or intended outcomes of the planning proposal. It is a statement of what is planned to be achieved, not how it is to be achieved. It should be written in such a way that it can be easily understood by the general community.

The objective of this planning proposal is to make amendments to *Blayney Local Environmental Plan 2012* ('BLEP2012') to facilitate a wider range of land uses (primarily agricultural and rural industrial land uses) in the drinking water catchments of Blayney Shire.

The current Zone E3 Environmental Management is considered overly restrictive in terms of land use permissibility and the existing *Clause 6.5 – Drinking water catchments* and the associated Drinking Water Catchment Maps provide sufficient protection to assess a wider range of agricultural and other land uses on their merits without compromising the importance of protecting the drinking water catchments and drinking water quality.

9.2. Part 2 – Explanation of Provisions to be included in Proposed Instrument

Part 2 of the planning proposal provides a more detailed statement of how the objectives or intended outcomes are to be achieved by means of amending an existing local environmental plan.

The proposed mechanism(s) to achieve the objective(s) in Part 1 above is to amend *Blayney Local Environmental Plan 2012* (BLEP2012) as follows:

- a) Amend the land use zone for all of the lands that are in Zone E3 Environmental Management in BLEP2012 and replace it with Zone RU1 Primary Production. This will amend the following Land Zoning Maps: LZN_004; LZN_004A; LZN_005; LZN_005B; LZN_005C; LZN_007. As a result, the land use permissibility (without consent / with consent / prohibited) of Zone RU1 will apply to these lands (see table below).
- b) Zone E3 will be removed from the Land Use Table in Part 2 of BLEP2012 as there are no other land utilising this zone and potentially the reference to Zone E3 Environmental Management can be removed from all Land Zoning Maps;
- c) Any reference to Zone E3 will be removed from the following clauses:
 - i) Clause 4.1AA – Minimum subdivision lot size for community title
 - ii) Clause 4.1A – Minimum subdivision lot size for strata plan schemes in certain rural and environmental zones
 - iii) Clause 4.2A – Erection of dwelling houses or dual occupancies on land in certain rural and environmental protection zones.
- d) The following minor amendments to land use permissibility will be made to Zone RU1 Primary Production - **Emergency service facilities** – permissible with consent

An excerpt from BLEP2012 providing a comparison of the objectives and permitted land uses in Zone RU1 and Zone E3 is set out in the above section reviewing the potential planning outcomes.

9.3. Part 3 – Justification of Objectives, Outcomes & Process for Implementation

Part 3 of the planning proposal provides a justification that sets out the case for the making of the proposed instrument. The overarching principles that guide the preparation of planning proposals are:

- The level of justification should be proportionate to the impact the planning proposal will have;
- It is not necessary to address the question if it is not considered relevant to the planning proposal (as long as a reason is provided why it is not relevant);
- The level of justification should be sufficient to allow a Gateway determination to be made with the confidence that the instrument can be finalised within the time-frame proposed.

As a minimum a planning proposal must identify any environmental, social and economic impacts associated with the proposal. Generally detailed technical studies are not required prior to the Gateway determination.

The Director General has set out the following requirements as matters that must be addressed in the justification of all planning proposals:

SECTION A

- 1) *Is the planning proposal the result of any strategic study or report?*
- 2) *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

SECTION B

- 3) *Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?*
- 4) *Is the planning proposal consistent with a council's local strategy or other local strategic plan?*
- 5) *Is the planning proposal consistent with applicable State Environmental Planning Policies?*
- 6) *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

SECTION C

- 7) *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?*
- 8) *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*
- 9) *Has the planning proposal adequately addressed any social and economic effects?*

SECTION D

- 10) *Is there adequate public infrastructure for the planning proposal?*
- 11) *What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?*

The following justification sets out the case for the amendment to BLEP2012.

9.3.1. SECTION A

1) Is the planning proposal the result of any strategic study or report?

This planning proposal has not been initiated by a strategic study or report for the Blayney Shire but does seek to address some of the recommendations of the *Northern Councils E Zone Review Interim Report* (30 September 2013) and is consistent with the principles of the Councils of Blayney, Cabonne and Orange City (2008) *Subregional Land Use Strategy* ('Subregional Strategy') prepared by GHD in 2008 that has been adopted by both Council and the NSW State Government.

Whilst the Subregional Strategy recommended an Environmental Management zone for the drinking water catchments, it perhaps did not consider the potential to utilise a drinking water catchment overlay instead and to meet the recommendations for agriculture that are more suited to the historical use of these lands. Therefore, it could be argued that this Proposal seeks to provide alternate planning controls in BLEP2012 that meet the underlying principles and recommendations of the Strategy.

2) Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The only two ways that Council could approve the additional land uses (predominantly intensive agriculture and some ancillary commercial premises) would be to either change the zoning or to add these uses as Additional Permitted Uses to BLEP2012. It is our understanding that Additional Permitted Uses are not preferred for this purpose (particularly when Zone E3 would then 'mimic' Zone RU1 with no additional distinction/separation in outcome). In addition, the North Coast E Zone Interim Report suggests that the removal of Zone E3 over drinking water catchments is likely to be the preferred solution by key stakeholders where the drinking water catchment is protected by other controls (such as the drinking water catchment overlay/clause and other environmentally sensitive mapping/clauses).

9.3.2. SECTION B

3) Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

As stated above, the GHD (2008) Subregional Strategy applies to the rural and environmentally zoned lands (outside of key settlements) across the Councils of Cabonne, Blayney and Orange City. The Strategy included a local profile, issues paper and final strategy. The primary recommendations are in Part D – Land Use Strategies in the Final Strategy (July 2008), in particular:

- a) Section 9 – Agriculture;
- b) Section 10 – Industry (including rural industry / tourism etc.);
- c) Section 12 – Natural and Scenic Environment.

The proposed development is consistent with the principles set out in the sections relating to agriculture and industry and with most of the key environmental concerns relating to the drinking water catchments.

However, the Subregional Strategy made the recommendation to include all of the drinking water catchments in Zone E3 Environmental Management – which was somewhat inconsistent / at odds with the recommendations for agriculture and rural industry in the other sections considering that the drinking water catchments are primarily rural rather than environmentally sensitive areas.

Council considers that the inclusion of a range of environmentally sensitive area maps and standard instrument clauses (including but not limited to drinking water catchment maps) meets the environmental principles of the Strategy but offers an alternative set of planning controls to achieve the same outcome.

As a result, the Proposal can be seen to be consistent with the underlying principles of the Strategy (albeit with a different planning approach) so we submit that the Planning Proposal can be considered under delegation to Council if the Gateway Determination is positive.

4) Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The Subregional Strategy addressed above and in Section 5 of this Proposal is the primary strategy that directly addresses rural and environmental areas outside of the key towns/villages in Blayney LGA. The only other local strategy that has high level objectives for development in Blayney LGA is the *Community Strategic Plan 2025*. Its purpose is to identify the community's main priorities and aspirations for the future and to plan strategies for achieving those goals. The Proposal can be seen to be consistent with these goals and aspirations as there are alternative controls retained in BLEP2012 to protect the natural environment whilst facilitating economic growth by minimising overly prescriptive zoning.

5) Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with all of the State Environmental Planning Policies as follows:

<p>SEPP No.30 – Intensive Agriculture</p> <p>One of the reasons for making this proposed change in zoning is to potentially permit intensive livestock agriculture in the drinking catchment if suitable mechanisms to protect the environment and water quality are maintained. This SEPP defines when intensive livestock agriculture will require development consent and consideration of public feedback, pollution, and measures to mitigate potential adverse impacts. Therefore, this SEPP provides additional protections through the development assessment process and supports this proposed amendment.</p>
<p>SEPP No.44 – Koala Habitat Protection</p> <p>Blayney is a listed LGA to which this SEPP applies. This policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The change in zoning will not substantially affect the predominantly rural outcomes that already occur within the drinking water catchments. The biodiversity overlay and control in BLEP2012 will also aid in protecting significant stands of native vegetation through the area. Therefore, the Proposal is consistent with this SEPP.</p>
<p>SEPP No.55 – Remediation of Land</p> <p>This policy applies to the whole State including the Site. Under Clause 6, contamination and remediation is to be considered in zoning or rezoning proposals. The change from an environmental zone to a rural zone is only expected to increase the permissibility of intensive agricultural uses and some rural industries and associated commercial premises. It is not expected that this change of zoning will result in increased land use conflicts with potentially contaminated lands. This can be addressed as part of any development application for these additional uses as they require consent. If any contamination is found then it will be remediated in accordance with SEPP55 and the relevant guidelines / policies. Therefore, the Proposal is consistent with this SEPP.</p>
<p>SEPP No.62 – Sustainable Aquaculture</p> <p>Aquaculture is already permitted with consent in Zone E3 so any amendment to Zone RU1 where aquaculture is also permitted with consent will have no impact and will be consistent with this SEPP.</p>
<p>SEPP No.64 – Advertising and Signage</p> <p>To the extent that this Proposal seeks to amend the permissibility of land uses in Zone RU1 Primary Production to enable building identification signs without consent – it is consistent with objectives of this SEPP to ensure signage is compatible with the amenity and visual character of these areas as building identification signage is generally low impact.</p>
<p>SEPP (Mining, Petroleum Production and Extractive Industries) 2007</p> <p>This SEPP applies to land identified as having mineral potential. The most relevant map is the Mineral Resource Audit map provided by the former Department of Mineral Resources in 2010. As</p>

demonstrated in the Site Analysis Section above, there are no existing or potential resource areas in the Suma Park catchment near Millthorpe and there is only one known existing extractive industry in the Lake Rowlands catchment known as Gordon's Quarry (NE of Barry) and the change of zoning is unlikely to significantly increase development potential (particularly dwelling potential) in or around this industry as a rural zone is proposed and there is no change in the minimum lot size. Therefore, the Proposal is consistent with this SEPP.

SEPP (Infrastructure) 2007

This SEPP is concerned with appropriate opportunities for infrastructure development throughout the State. The proposed rural zone would not be inconsistent with future infrastructure provision. Neither area is located on a State or Regional Road or a railway line. The primary infrastructure is likely to be water storage and reticulation as part of Lake Rowlands. The change in zoning is unlikely to significantly increase development potential (particularly dwelling potential) so traffic generation is unlikely to require RMS consideration. Therefore, the Proposal is consistent with this SEPP.

SEPP (Rural Lands) 2008

This policy aims to facilitate the orderly use and development of rural lands, identify Rural Planning Principles, reduce land use conflicts, and identify State significant agricultural land.

The Rural Planning Principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

Again, the change from an environmental to a rural zoning is likely to be consistent with the Rural Planning Principles and is aimed at increasing agricultural opportunities whilst providing appropriate alternative mechanisms to protect natural resources like the drinking water catchment. Therefore, the Proposal is consistent with this SEPP.

SEPP (Exempt and Complying Development Codes) 2008

This SEPP is addressed in more detail in Section 4.6 of this Proposal. Changing from Zone E3 to Zone RU1 will enable agricultural related development such as 'animal shelters' and 'farm buildings' to be undertaken as exempt development. Whilst one aim of changing the zoning was to enable more complying development in the drinking water catchment areas, the fact that most development would involve on-site effluent management would preclude it from being complying development under this Code.

6) Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with all of the relevant Ministerial Directions as follows:

<p>1. Employment & Resources - 1.2 Rural Zones (1 July 2009)</p> <p>This direction seeks to protect rural zoned land from being rezoned for another use or increase the permissible density of that land. The variation from environmental zoned land to rural zoned land is consistent with this direction. The agricultural potential of the lands has been addressed also in the Site Analysis Section above.</p>
<p>1. Employment & Resources - 1.3 Mining, Petroleum Production and Extractive Industries</p> <p>This Planning Proposal has demonstrated that the proposed development will not impact on any known or likely mineral resources in the area according to the former Department of Mineral Resources – Audit Map 2012. This has been addressed also in the Site Analysis Section above.</p>
<p>1. Employment & Resources - 1.5 Rural Lands</p> <p>The objectives of this direction are to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes. The key justification for the amendment from an environmental to a rural zone for this land is to achieve these objectives.</p>
<p>2. Environment & Heritage - 2.3 Heritage Conservation</p> <p>Whilst there are listed heritage items and potential for Aboriginal cultural heritage within the drinking water catchments, the change in zoning to a rural zone is not likely to significantly increase development potential or impacts on heritage or cultural items. This has been addressed also in the Site Analysis Section above.</p>
<p>3. Housing, Infrastructure & Urban Development - 3.4 Integrating Land Use and Transport (1 July 2009)</p> <p>Objectives of this direction seek to improve access to transport and reduce travel demand. The proposed rural zone will not significantly increase development requiring additional infrastructure and rural uses are appropriate in a rural zone.</p>
<p>4. Hazard & Risk - 4.3 Flood Prone Land</p> <p>This direction applies to all land that may be flood prone land in accordance with the <i>Floodplain Development Manual 2005</i> and has been addressed also in the Site Analysis Section above. Whilst there is always a chance of flooding along the key watercourses in each catchment, historically this has been minor and is unlikely to significantly affect development potential for rural land uses. Any known flood impacts can be addressed during the assessment process.</p>
<p>4. Hazard & Risk - 4.4 Planning for Bushfire Protection</p> <p>As stated in the Site Analysis Section above, there are only limited areas of bushfire prone land within both catchments and these are unlikely to significantly affect the development potential of the land for rural and associated uses. Each development application can address site specific issues in accordance with <i>Planning for Bushfire Protection 2006</i>.</p>

9.3.3. SECTION C

7) 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?

As stated in the Site Analysis Section above, there are no known critical habitats or threatened species, populations or ecological communities, or their habitats within the drinking water catchments – though it is appreciated that there is remnant native vegetation and sensitive biodiversity due to historic vegetation removal in these areas. However, this issue is best addressed through merit assessment of each development application in accordance with the Biodiversity Maps and Riparian Lands and Waterways Maps in BLEP2012.

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

The key planning outcome of the replacement of Zone E3 with Zone RU1 is that it will potentially permit with consent a range of intensive agricultural land uses, rural industries, and some agriculturally related commercial premises. As these will require development consent, there is the opportunity to ensure that environmental impacts including water for irrigation, effluent management, chemical usage and storage, transport and infrastructure demand, and land use conflicts can be appropriately addressed through the assessment process.

9) Has the planning proposal adequately addressed any social and economic effects?

The significant economic benefits of ensuring appropriate flexibility in rural areas to encourage appropriate rural and ancillary land uses is consistent with all major state policy and the Subregional Strategy. The only economic challenges are to ensure that new developments are economically viable, particularly when they are more distant from major infrastructure but zoning should not preclude the possibility of these land uses being considered. From a social perspective, the existing rural communities want Council to consider new more intensive rural developments and address any land use conflicts on a case-by-case basis. Social impacts are likely to be low from the proposed changes in planning tools to achieve similar development outcomes.

9.3.4. SECTION D

10) Is there adequate public infrastructure for the planning proposal?

Public infrastructure includes a range of infrastructure (e.g. roads), utilities (e.g. water, electricity, gas etc.), access to key services (retail, employment, health etc.) and access to open space and recreation. The proposed amendment from an environmental zone to a rural zone is not expected to significantly increase development potential or reliance on public infrastructure. However, if there are applications for intensive livestock agricultural, rural industries, or ancillary commercial premises the impacts on key infrastructure can be determined and managed through appropriate conditions and contribution plans. For most rural uses the public infrastructure is adequate.

11) What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Section 10 of this Proposal sets out the consultation to-date with the key NSW Government authorities relevant to this rezoning and proposed development including the Department of Planning & Environment (DPE), Office of Environment and Heritage (OEH), Local Lands Services (LLS), and NSW Agriculture. Their responses are included in Section 7. No Commonwealth authorities are believed to be relevant to this application but this can be determined at the Gateway stage.

9.4. Part 4 – Maps (where relevant) showing Intent of Planning Proposal

This Planning Proposal seeks to amend the land use zone for all of the lands that are in Zone E3 Environmental Management in BLEP2012 and replace it with Zone RU1 Primary Production. This will amend the following Land Zoning Maps: LZN_004; LZN_004A; LZN_005; LZN_005B; LZN_005C; LZN_007. No other maps require amendment in BLEP2012. The proposed amendments will be prepared in SILEP format by DPE after a positive Gateway Determination and prior to public exhibition.

9.5. Part 5 - Community Consultation

9.5.1. Key Stakeholders

The key stakeholders for this Site include:

- a) Department of Planning & Environment (Gateway Determination process);
- b) Office of Environment & Heritage (within DPE) relating to environmental and water issues;
- c) Local Land Services (LLS) including the former Lachlan Catchment Management Authority;
- d) Orange City Council and Cowra Council as the adjacent local government authorities.

Additional stakeholders that may need to be notified when the Planning Proposal is on public exhibition include:

- a) The affected land owners;
- b) NSW Department of Primary Industries (NSW Agriculture) – regarding the increased agricultural potential of the land which they are likely to support;
- c) NSW Department of Primary Industries (Office of Water) – regarding treatment of the drainage lines / watercourses and water licencing for intensive agriculture (if required).
- d) NSW Trade & Investment - Crown Lands Division – if any Crown land exists in these areas;
- e) NSW Health – Public Health Unit (re drinking water catchment protection).

9.5.2. Proposed Notification

In addition to the previous notification of key stakeholders during the preparation of this Planning Proposal, Council is likely to provide a letter notifying all key stakeholders listed above of the dates that the Planning Proposal is on public exhibition and providing opportunity for further submissions (if required). Council is also expected to provide a letter notifying all relevant land owners in existing Zone E3 that the Planning Proposal is on public exhibition and providing opportunity for further submissions (if required).

9.5.3. Proposed Public Exhibition & Community Notification

Public Exhibition

Council will provide public notice of a proposed resolution to rezone land and specify a 28 day period during which submissions may be made to Council.

Notice will include:

- a) Notification in the *Blayney Chronicle* newspaper prior to the public exhibition period;
- b) Written notification to all land owners in existing Zone E3 (as noted above);
- c) Provision of a copy of the Gateway Determination, Planning Proposal and supporting information at the Council Offices in Blayney.
- d) Any other requirements of the Gateway Determination made by the Department.

Submissions

Council will accept public submissions up to the close of the public exhibition period. All public submissions will be reviewed and summarised. The outcomes of any public hearing (if required) will also be considered prior to making a recommendation to Council.

Public Hearing

Under Section 57 of the EP&A Act Council must arrange a public hearing in respect of a planning proposal if one is requested by a key stakeholder or member of the public. The public hearing must be presided over by someone who is not a councillor or employee of Council (in the last five years). The presiding person should make a report available to Council on the outcomes of the public hearing.

APPENDICES / ANNEXURES

1. Completed Application Forms (DPE Requirements)

- a. Request for Initial Gateway Determination
- b. Attachment 1 – Information Checklist
- c. Attachment 4 – Evaluation Criteria for the Delegation of Plan Making Functions
- d. Council’s resolution to send the written Planning Proposal to DPE

2. Key Correspondence / Consultation

- a. Office of Environment & Heritage



Office of
Environment
& Heritage

Your reference: 328016
Our reference: DOC12/13315
Contact: Erica Baigent (02) 68835311
Date: 30 March 2012

Aaron Jones
General Manager
Blayney Shire Council
PO Box 62
Blayney NSW 2799

Dear Mr Jones

Attention: Leon Rodwell, Director Environmental Services

Thank you for your letter (dated 6th February 2012) seeking comment from the Office of Environment and Heritage (OEH) regarding the exhibited Draft Blayney Local Environment Plan 2011 (LEP):

Please note that as of the 29th of February 2012, the Environment Protection Authority (EPA) has been re-created as an independent authority. However as part of the transition period for these new arrangements, EPA issues have been considered and included in this response.

The OEH and EPA have the following primary areas of interest relating to strategic land use planning and the preparation of new Local Environmental Plans (LEPs):

1. The impacts of development and settlement intensification on biodiversity, Aboriginal cultural heritage, air, water quantity and quality and noise related issues;
2. Adequate investigation of the environmental constraints of affected land;
3. Avoiding intensification of land use and settlement in environmentally sensitive areas (ESAs).
4. Ensuring that development within a floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans.

We also understand that draft LEPs must comply with current statutory matters such as the Local Planning Directions under S117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

We generally support strategic planning proposals which:

- Avoid rural settlement intensification in areas of biodiversity value, Aboriginal cultural heritage value and other environmentally sensitive areas;

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- Include objectives, such as 'no net loss of native vegetation', that will ensure the LEP supports the NSW State Plan via State Natural Resource Management Targets and Catchment Management Authority Action Plans;
- Avoid neighbour conflicts associated with noise, odour, dust and pesticide use; and
- Minimise flood risk to human life, property and the local environment while maintaining floodplain connectivity for environmental benefit.

Specific comments on the exhibited draft LEP are included below.

Biodiversity and Environmental Protection

We strongly support the Council's inclusion of the biodiversity overlay and associated clause within the LEP. The inclusion of this clause will help support the view expressed in the Blayney Settlement Strategy that *'There should be no net loss of native vegetation from development'* and the intent to *'seek to preserve and enhance the biodiversity of the region and protect existing native vegetation'* and *'to setback development from riparian corridors and areas of existing significant vegetation or adopt other controls to minimise the impact of settlement'*.

This clause will also be important in ensuring that the impacts of development on native vegetation are appropriately assessed and mitigated, particularly in parts of the LGA where the LEP has not excluded development intensification within remnant native vegetation. As previously noted, one such instance is at Mandurama, where there will be potential to create additional lots within native vegetation, with little opportunity for future dwellings and associated asset protection zones to be sited to avoid clearing. We remain of the view that a larger MLS should be applied to this area, to further reduce the number of new lots that can be created. We also encourage Council to consider specific controls related to this land within a future Development Control Plan as a secondary measure.

We also support:

- The inclusion of clause 6.6 *'Riparian lands and waterways'*.
- The exclusion of intensive livestock and plant agriculture and water treatment facilities from the E3 zone which has been applied to the drinking water catchment.
- The proposed clause 6.4 to be applied to the drinking water catchment and clause 6.3 relating to stormwater.

However we also note that the LEP is inconsistent with the Rural and Industrial Land Use Strategy developed for the LGA. This Strategy recommended larger minimum lot sizes for rural lands than the 100ha MLS proposed within the LEP. In particular, that Strategy recommended a 200ha MLS for the drinking water catchment.

Our view remains that the MLS within an E3 zone can be variable, but should ensure there is very limited, if any, scope for further subdivision and associated intensification of use or settlement. In accordance with this principle, we support the Rural and Industrial Land Use Strategy recommendation of a 200ha MLS for the drinking water catchment (covered by the E3 zone in the LEP). Reducing the amount of potential subdivision of lots, and therefore new dwellings and associated infrastructure, can reduce the potential for these to impact on water quality, particularly where they may be in close proximity to, and place pressures on, riparian areas.

We also recommend the zoning of Travelling Stock Reserves (TSRs) as E3 at a minimum, particularly those identified as having conservation values. Mapping of TSRs, including identification of EECs and biodiversity conservation value rankings is available from <http://gbwcmn.net.au/node/6>.

Similarly, we recommend that environmental zonings (E2 preferably, or E3 where appropriate) be applied to other Crown Reserves (eg Public Recreation Reserves) containing remnant native vegetation within the LGA.

We have also advised previously that if Council approves residential development near the Blayney Sewage Treatment Plant (STP) and residences are impacted by offensive odours from the STP, Council will be in breach of s129 of the *Protection of the Environment Operations Act 1997* and may also be required to undertake expensive augmentation to its STP. We recommended that an adequate buffer be implemented via the LEP rather than being deferred to a future DCP. Whilst it remains preferable that this issue be addressed via appropriate zonings in the first instance, we do view the proposed LEP clause 6.9 'Development in proximity to sewerage treatment plants and waste depots' as a positive step forward in addressing this issue.

Aboriginal Cultural Heritage

We have no further comments to make on the extent to which Aboriginal cultural heritage has been addressed by the LEP. We refer Council to our previous submissions (21 December 2009, 1 July 2010 and 20 December 2010) containing advice on planning and assessment for the protection of Aboriginal cultural heritage and encourage Council to implement this advice in future LEP reviews, DCPs and development assessment. However if requested by Council, OEH would be happy to continue to work with Council on this issue during finalisation of the LEP.

Flooding-related Issues

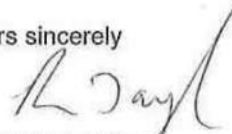
No towns or urban centres (Blayney, Millthorpe, Carcoar, Lyndhurst, Mandurama, Neville, Newbridge and Barry) within the Blayney LGA have a valid Flood Study to determine flood-related planning matters.

In the absence of any specific flood studies, a recommendation has been made in Blayney to adopt a Flood Planning Area (included in the maps), possibly determined from anecdotal evidence and some historic flood marks. Although similar flood planning areas were discussed in the villages other than Blayney during preparation of the Strategy, the maps for the other villages have not been included in the draft LEP. It should be noted that the definitions and subclauses in the LEP Flood Clause cannot be applied in the absence of a Flood Map for villages other than Blayney. Council may need to take appropriate steps towards establishing flood-related controls when it is in a position to carry out the relevant studies.

Any specific questions that may be outstanding regarding flood planning matters should be directed to Siva Varathan, Senior Natural Resources Officer – Floodplain Management, on (02) 6883 6503.

Should you require further information regarding this submission generally, please contact Erica Baigent on (02) 6883 5311.

Yours sincerely



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