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PHOTO OF THE SITE (LOOKING SOUTH WEST ACROSS THE MITCHELL HIGHWAY)

Planning Proposal

Prepared for: Quee Nominees

**On behalf of Bogan Shire Council to the
NSW Department of Planning & Environment**

**Railway Land in the Town of Nyngan NSW
bounded by the Great Western Railway Line,
Mitchell Highway (Nymagee Street), Hoskins Street &
Council's detention basin**

**Potential Rezoning from
Zone SP2 Railway Infrastructure Facilities to
Zone B6 Enterprise Corridor**

July 2014

Version C

Document Control

Date	Version	Purpose	Recipients
31 May 2014	A	Draft for Internal Review	Quee Nominees
23 June 2014	B	Final Draft for Preliminary Feedback from Key Authorities (Prior to formal lodgement)	Quee Nominees John Holland (Bill Brecht) Bogan Shire Council (Tim Riley) Dept. Planning & Env. (Wayne Garnsey) Roads & Maritime Services (Andrew McIntyre)
29 July 2014	C	Formal Lodgement of Planning Proposal	Bogan Shire Council (Tim Riley)

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1. Planning Proposal – Overview

Aim of this Proposal	Quee Nominees with the support of Bogan Shire Council ('Council') and John Holland (as representatives for Transport NSW – owners of the land) is seeking to change the zoning of land located between the Mitchell Highway and the Western Railway Line in Nyngan NSW to permit development of vacant land for a highway service centre and associated land uses.
Reason for Rezoning	In <i>Bogan Local Environmental Plan 2011</i> the current zoning (Zone SP2 Railway Infrastructure Facilities) for the land does not permit any significant business uses that are not ancillary to the railway function of the land. However, the mostly vacant land located between the edge of the Mitchell Highway and the active rail line is in excess of 40m deep and 250m long (with an area of up to 1.15ha) and has the potential to provide highway related uses without impacting on adjacent railway or highway operations or other adjacent land uses.
Proposed Zone	The proposal is for the land to be rezoned to Zone B6 Enterprise Corridor to permit a highway service centre and related uses. In the alternative, highway service centres are also permissible with consent in Zone IN1 General Industrial but the permissible industrial land uses are likely to have a higher impact on this key 'gateway' site to Nyngan.
Reason for /Request of Application	We firstly request that Council approve/adopt the Planning Proposal and its outcomes and allow it to be forwarded to the Department of Planning & Environment for consideration under Section 56 of the <i>Environmental Planning & Assessment Act</i>. If Council concurs, 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 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 (especially the active rail line and the Mitchell Highway), the natural environment and the community. We also suggest that no other additional studies should be required by a Gateway Determination to be completed prior to the public exhibition of the Proposal or the intended rezoning taking place EXCEPT FOR a Site Contamination Audit (and compliance with any recommendations of that Audit). This is an urban site with a very low probability of having any threatened or endangered species or communities, Aboriginal heritage, or other site constraints (except potential minor surface soil contamination) that would warrant additional studies. Any outstanding issues relating to site design, access and egress, and potential relocation of electricity lines can be addressed at the detailed design stage (development application). The comprehensive consultation with key public authorities prior to formal lodgement of this Planning Proposal and the lack of any opposition to the Proposal demonstrates that there are no substantial issues with the application that cannot be addressed at the detailed design stage (development application). We also request delegation to Council (as the Relevant Planning Authority or RPA) of the power to make this amendment to the <i>Bogan Local Environmental Plan 2011</i> recommending that this is a spot rezoning that is consistent with an endorsed strategy (primarily the <i>Western Councils Sub-Regional Land Use Strategy 2009</i>) and/or the surrounding zoning OR at least not inconsistent with such strategies owing to a lack of detail for the Site area.

Planning Proposal – Rezoning of Railway Land for Highway Service Centre – Nyngan NSW

Land Status	The land is railway land and, as such, does not have its own title. The land will form part of a long-term lease of railway land from John Holland as Country Railway Network (CRN) Manager on behalf of Transport NSW. The lodgement of this Planning Proposal is supported by John Holland as Country Rail Network Manager (on behalf of Transport for NSW)(see letter 10 July 2014 – Appendices).
Consultation & Agency Support	Council has made a resolution dated 27 March 2014 expressing in-principle support for the preparation of a Planning Proposal for the purpose of a highway service centre, subject to further consideration once the Proposal is submitted and consideration by the Department of Planning & Environment. John Holland has also provided in-principle support for a long term lease for highway related uses on the land and the lodgement of this Planning Proposal (see Appendices). There have been no objections to the Proposal from the Department of Planning & Environment and Roads & Maritime Services consulted during the preparation of this document and have not raised any objections (see Appendices).
Compliance	This Planning Proposal has been prepared in accordance with the requirements of: • The <i>Environmental Planning & Assessment Act 1979</i> ('EP&A Act'); • <i>Bogan Local Environmental Plan 2011</i> ('BLEP2011'); • Council's resolution regarding in-principle support for the rezoning of the land; • The Department of Planning (October 2012) '<i>A guide to preparing planning proposals</i>'; • Planning Circular No. PS12-006 – <i>Delegations and independent review of plan-making decisions</i>.
Opportunity	This proposal is an excellent opportunity to promote business land uses adjacent to the highway that will support the trucking industry in Western NSW, provide substantial economic benefits to the Town of Nyngan and Bogan Shire Council, and utilise vacant land to its best potential. In some ways it could be argued that the result of BLEP2011 in prohibiting business opportunities on railway land along the highway frontage was probably not the intent of the transition to the Standard Instrument LEP and this can be partly rectified by this Planning Proposal.

2. Subject Land - Description

As stated above, the subject land or 'Site' does not have a fixed address or title as it forms part of railway land and is not subdivided. It is approximately 1.15ha in area (see Survey in Appendices for dimensions).

The Site is located to the south-west of the Mitchell Highway (Nymagee Street) and north-east of the Great Western Railway Line (see aerial image below and red dotted line as well as photographs). It is bordered to the south-east by Hoskins Street and to the north-west by an existing detention basin and former service station site near the railway crossing that Council hopes to upgrade and landscape as the entrance to Nyngan's main business district along Pangee Street.



AERIAL PHOTO SHOWING THE SUBJECT SITE (RED OUTLINE).



PHOTO (PANORAMIC) LOOKING SOUTH-WEST ACROSS THE HIGHWAY TOWARDS THE SITE.



PHOTO (PANORAMIC) LOOKING NORTH-EAST ACROSS THE SITE FROM THE RAILWAY LINE TOWARDS THE HIGHWAY.

3. Indicative Future Land Use(s)

3.1. Background

The purpose of a Planning Proposal is to only provide an indicative range of future uses to justify and support the proposed rezoning and ensure the appropriate zone is selected. The applicant is seeking to achieve a rezoning that would support a **highway service centre** and its supporting functions including, but not limited to, a **service station**.

The applicant has noted a distinct lack of service stations that are appropriately located and sized to refuel larger heavy vehicles (road trains & B-doubles) west of the Blue Mountains with one located east of Bathurst and another in Dubbo (but not located on the Mitchell Highway). There is anecdotal evidence that large trucks are required to either travel with additional fuel or accessing smaller service stations along this key route that are not designed for larger vehicle resulting in conflicts with other road users.

Nyngan is located at the intersection of the Mitchell Highway and Barrier Highway, a critical freight road junction between Sydney-Bourke (and onto Queensland) and Sydney-Broken Hill (and onto South Australia). Therefore, Nyngan has the opportunity to capitalise on this market opportunity as long as appropriately located, sized and zoned land is provided.

A letter is attached (see Appendices) from The Shell Company of Australia Limited (dated 28 January 2013) that highlights this demand and endorses the applicant's experience in ownership and management of service stations.

The highway service centre would need to be located on the Mitchell Highway, preferably away from existing residences where conflicts may result. There is a lack of sites that are vacant, of sufficient size, available for purchase, and appropriately zoned in Nyngan for this use.

My client, in discussions with John Holland, has identified the existing vacant land along the southern side of the Mitchell Highway (just west of Hoskins Street) (the old Shell Depot) as an ideal location and this land is no longer required by the rail authority.

The applicant proposes to provide a **service station** that is capable of accommodating and re-fuelling a range of vehicle sizes (up to the largest current approved vehicle size on this section of the Mitchell Highway – a road train made up of a prime mover and two trailers ~36-38m long).

An indicative concept drawing (for the service station only) is attached (see Appendices). This may not be the final location, design or boundary for the Site or proposed service station and is indicative only. The concept diagrams demonstrate that satisfactory turning radii / swept paths for these vehicles mean they can be accommodated on the Site and provide suitable locations for access and egress to/from the Site without unduly interfering with the operation of the highway or adjacent streets (subject to the advice of the Roads & Maritime Services).

Additional highway related uses may also co-locate with the proposed service station on either side to create a **highway service centre** that maximises the potential of the land. This may include a **restaurant / take-away food and drink premises** or automotive spare parts business (range of definitions below).

This proposal provides an opportunity to facilitate development along the highway frontage that could improve the economy of Nyngan, enhance the gateway / entrance, and does not conflict with the existing business centre or the catchment basin and town entrance at the Mitchell Street intersection with the highway.

With the primary land use function being that of a **highway service centre**, it is obvious that the key requirement is a highway frontage and safe and appropriate access/egress to/from the Site to the highway.

3.2. Possible Land Use Definitions

The intended broad set of uses for the Site is highway related uses, including (as defined in BLEP2011) a **highway service centre** and any ancillary or supporting land uses set out in the box below. The zone that the applicant recommends to support these land uses is Zone B6 Enterprise Corridor:

In accordance with the *Bogan Local Environmental Plan 2011* (BLEP2011) the following land uses may form part of the future development application:

highway service centre means a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:

- a) a restaurant or cafe,
- b) take away food and drink premises,
- c) service stations and facilities for emergency vehicle towing and repairs,
- d) parking for vehicles,
- e) rest areas and public amenities.

service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- a) the ancillary sale by retail of spare parts and accessories for motor vehicles,
- b) the cleaning of motor vehicles,
- c) installation of accessories,
- d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),
- e) the ancillary retail selling or hiring of general merchandise or services or both.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

vehicle repair station means a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.

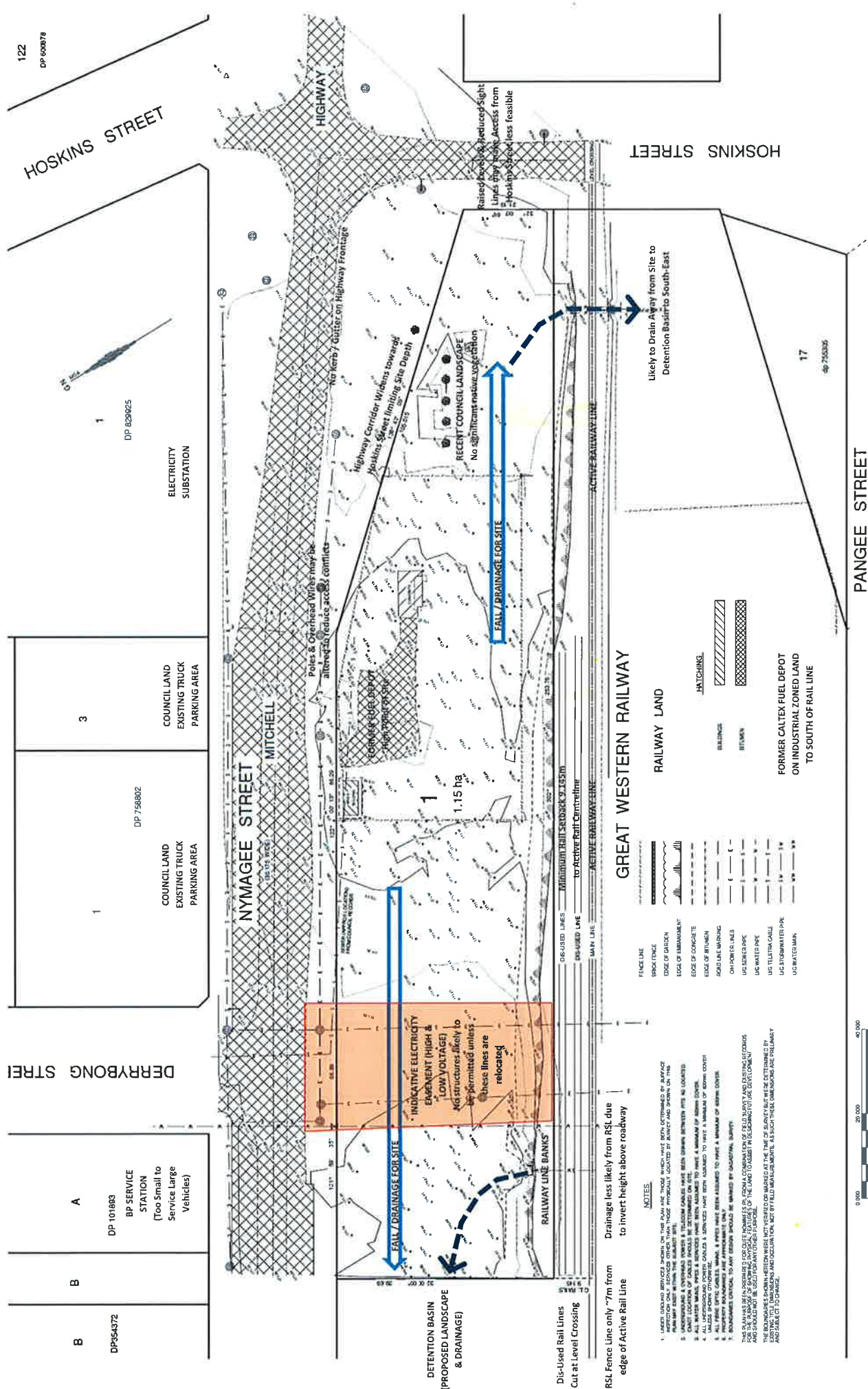
vehicle sales or hire premises means a building or place used for the display, sale or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.

hotel or motel accommodation means a building or place (whether or not licensed premises under the *Liquor Act 2007*) that provides temporary or short-term accommodation on a commercial basis and that:

- (a) comprises rooms or self-contained suites, and
 - (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,
- but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

transport depot means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking.

truck depot means a building or place used for the servicing and parking of trucks, earthmoving machinery and the like.



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4. Site Analysis

The following sections provide an overview of the Site characteristics (opportunities and constraints), key features of which are summarised as an overlay on the Site Survey (see following page).

4.1. Historical Land Use(s)

There is no documented / recorded history for the Site known to be available after enquiries with both Council and John Holland.

The only obvious history is the former fuel depot that utilised the central part of the Site that is still surrounded by chain link fencing and includes a small brick office building (see photo opposite), some bitumen paving and a concrete pad.

Council and John Holland have both confirmed verbally that this former fuel depot utilised above-ground fuel storage tanks so no tanks are present below ground, significantly reducing the chance of ground contamination (see more detail in Contamination section below).



PHOTO OF OLD FUEL DEPOT BUILDING

The adjacent vacant land has not been used for any other known purpose except for some Council landscaping and tree planting in the section near Hoskins Street. Council and John Holland continue to mow these areas so no significant native vegetation has arisen. They are primarily used for access to the railway tracks for maintenance (if required).

At one point in recent years John Holland planned to lease the land to a machinery company for them to display machinery for sale but due to the zoning issue it is believed that Council was unable to provide an approval for the proposed use.

4.2. Topography & Drainage

As with most land in and around Nyngan, the Site is relatively flat. The high points of the Site coincide with the railway line corridor and the old fuel depot area.

The top of the railway line corridor appears to be at about RL172.85 (terminus of disused line) to RL172.48 (near Hoskins Street) and there is an embankment that falls to the north-east down to lows ranging from RL170.83 – 171.86. The former fuel depot (which may have been built up on fill) has a high point at RL172.59 on the bitumen paving.

As a result, the land tends to slope away from the railway and from the centre of the Site towards:

- a) The north-west near the edge of the detention basin at RL170.82. The detention basin has a sand base and water in the basin generally drains away into the sub-surface area over time; and
- b) The south-west / Hoskins Street at RL171.29 and towards a drainage basin on the south-eastern side of Hoskins Street.

Therefore there is up to a 1.3-1.8m fall over 125m in both directions away from the former fuel depot, a slope of up to approximately 1.44%. This is not a major constrain on development of the Site.



PHOTOS OF CULVERTS UNDER THE RAILWAY LINE ADJACENT TO THE SITE (LEFT: NORTH-WEST CULVERT; RIGHT: SOUTH-EAST CULVERT).

There are two (2) culverts under the railway embankment adjacent to the Site (see photos above).

- a) The 1st at the north-western end of the Site connects across to the RSL/bowling green but the culvert base is higher than the road surface adjacent to the RSL so there is unlikely to be any regular drainage towards the Site. This culvert was recently reconstructed, primarily to protect the railway embankment and it not expected to create any significant water flows to the Site. Note that there are some pipes in front of this culvert in the photo. Nobody seems to know what these pipes are for. Council's water and sewer mapping does not show these pipes. Anecdotal evidence from John Holland's local representative suggests
- b) The 2nd culvert is located at the south-eastern end of the Site. The land falls away from the Site and drains under the rail line to the south. This drainage can be accommodated within any proposed rail setback. There are detention basins adjacent to the former Caltex fuel depot and on the opposite side of Hoskins Street that temporarily hold any water.

4.3. Access & Traffic

The Site has immediate road frontage to the Mitchell Highway (Nymagee Street) along the north-eastern boundary. For the majority of the frontage the Mitchell Highway is a ~30.175m wide road corridor that then widens towards Hoskins Street where it becomes ~60m wide road corridor. Currently, heavy vehicles regularly park on the verge of the highway adjacent to the Site whilst seeking food and services from the BP Service Station opposite but they are too large to refuel at this station. There is no kerb and gutter adjacent to the Site frontage to the highway but there is adjacent to Council's detention basin and on the other side of the highway in front of the truck parking area (see photo below).



PHOTO SHOWING MITCHELL HIGHWAY FRONTAGE TO SITE.

Preliminary advice from the RMS (Parkes Office) by letter dated 18 July 2014 (see Appendices) is that the RMS 'does not object to the proposed amendment and supports the initiative to provide facilities for operators of heavy and light vehicles to manage fatigue by stopping, obtaining goods and services and resting.' Email/verbal discussions suggest the RMS is actively looking at ways to improve larger vehicles

getting closer access to Dubbo. The RMS also reviewed the preliminary concept design for the Service Station and made the following suggestions (with our comments alongside):

RMS Comment (Letter 18 July 2014 – Appendices)	The Applicant's Comment
The preliminary drawings show heavy vehicle entry and exit movements as left in/left out only. Given vehicles approaching from the west of Nyngan will also likely want to access the site, the service centre should be designed to accommodate vehicles approaching the site from the west and exiting the site to the east.	At the time of development application access / egress from both directions on the highway will be addressed but this comment indicates that heavy vehicles turning across traffic in Nyngan should not be a major constraint to this development.
The preliminary drawings do not provide any on-site heavy vehicle parking and it is assumed that heavy vehicles will refuel on site, then move to Council owned truck rest area opposite the site to park before returning by foot to the service centre to access other services. The development application will need to address this arrangement and demonstrate that such movements can occur safely.	This comment is taken on board. The Applicant has not yet resolved where truck parking may occur before/after refuelling. However, there are options both on the site and off the site and movements between them can be resolved as part of the development application.
To improve traffic flow through the site, it is suggested that alterations be made to allow a second heavy vehicle to access the western side of the heavy vehicle bowsters whilst a double road train is refuelling on the eastern side of the fuel bowsters.	This comment is taken on board. The proposed site depth (different to that shown in the Draft Service Station Concept) will allow for an additional truck movement outside of the path of an existing refuelling truck as requested.

Hoskins Street forms the south-eastern road frontage. Access to the Site via Hoskins Street has several constraints because the road level rises up to the level rail crossing and sight-lines may be difficult to achieve for turning vehicles in close proximity to the existing level rail crossing (this requires further discussion with the RMS and John Holland).

Derrybong Street terminates at a T-intersection towards the north-western frontage of the Site. This may provide a constraint to exit points from the Site to ensure they do not interfere with vehicles turning onto the highway from Derrybong Street but can be addressed through appropriate driveway locations and signage.

Further consultation with the Roads and Maritime Services (RMS) will occur as part of this Planning Proposal and any future development application to ensure that access and egress to the highway addresses all reasonable safety and engineering requirements. Due to the relatively low densities of traffic in this location vehicle safety is unlikely to be significantly reduced by placing a new highway service centre in this location. The rail corridor and detention basin prevent direct access to the Site from the north-west and south-western boundaries.

4.4. Watercourses & Flooding

There is no watercourse adjacent to or in close proximity to the Site. The nearest significant watercourse is the Bogan River to the west of Nyngan.

According to the *Nyngan (April 1990) Flood Investigation* prepared by the former Department of Water Resources in October 1990, the April 1990 flood of the Bogan River at Nyngan was the highest flood on record. It reached 5.23m on the Nyngan gauge (nearly 1 metre higher than the previous highest recorded flood of February 1955 - an estimated 4.42m on the Nyngan gauge).

The Annual Exceedance Probability (AEP) of the 1990 flood was 0.5% (equivalent to a 1 in 200 year flood). The Probable Maximum Flood would have an approximate peak discharge seven (7) times the 1990 flood and would be about 2m higher than the 1990 event (this is conservatively high).

Prior to the 1990 flood, the levee banks were designed to the height of the 1976 flood record plus one (1) metre freeboard. The levee banks only failed where the freeboard had been reduced to 0.4m and the sandbags were unable to withstand the flood pressures. The new merit based approach is for levee banks heights to meet the 1 in 100 year flood plus one (1) metre freeboard. However, the Flood Investigation report recommended that the height be raised to the 1990 flood level (1 in 200 year flood) plus 0.5m to 1m and expansion of the levee bank to the north of Nyngan to encircle the town.

We have contacted Council seeking written confirmation of the eventual implemented levee bank height and they have emailed us anecdotal information suggesting it is now constructed to the 1990 flood level plus 1m around the entire Nyngan township. As a result the Site is not identified on any Flood Planning Maps in BLEP2011 (there are no flood maps in the LEP) and it is assumed that the Site is not flood prone land (subject to protection from the levee bank) and can address the Section 117 Ministerial Directions (see later sections for more detail).

4.5. Contamination

The section on Site History above in this report notes that the Site has been previously used as a fuel depot. John Holland does not have any additional information or site audits that would enable us to get a more detailed history and possible impacts on soil contamination.

Council and John Holland have both confirmed verbally that this Site utilised above-ground fuel storage tanks so no tanks are present below ground, significantly reducing the chance of ground contamination. Contaminants are likely to be in top substrate of soil and relatively easily removed to an appropriate disposal / treatment facility.

For this reason, *State Environmental Planning Policy No.55 (Remediation of Land)* is likely to apply to the Site and is addressed in more detail in the Planning Section below. Discussions with the Planning Department suggest that the remediation of the Site can form a condition at the Gateway Determination to occur prior to the rezoning. It is expected that minor scrapping and removal of top-soil to an approved facility may address the majority of any site contamination (awaiting Site Audit).

4.6. Flora & Fauna

The amount of significant native flora and/or fauna on the Site has not been reviewed by a qualified specialist. However, our preliminary recommendation is that a formal report is not required for the following reasons:

- a) The Site is not identified in the BLEP2011 Biodiversity maps as having sensitive biodiversity;
- b) Council has not identified the land as having any threatened species or ecological communities;
- c) The urban nature of this land and the likelihood it has been highly disturbed;
- d) The lack of any significant trees on the land except for recent beautification plantings by Council;
- e) The fact the area is mowed by Council and John Holland on a regular basis that would limit the establishment of native species and grasses;
- f) The presence of the old fuel depot and its hard-stand areas with significant weed growth;
- g) A Council aim to ensure that this land is able to drain clearly away to adjacent detention basins.

The use of the Site for commercial purposes is likely (with good design) to reduce the weed growth in the area and result in improved built form and landscape outcomes for this important gateway site.

4.7. Bushfire

As this is a site in the middle of the Town of Nyngan and there is no significant vegetation on or in proximity to the Site it is highly likely that there is no significant bushfire risk associated with this property. There is no Bushfire Prone Land Map on Council's website to suggest otherwise.

4.8. Electricity

As the section below on Surrounding Land Uses states, there is an existing large electricity substation for Nyngan located to the north-east of the Site on the other side of the Mitchell Highway. One of the impacts of this land use is the collection of high and low voltage overhead electricity cables that run along the highway frontage and across the Site aligned with Derrybong Street.

The first impact is the collection of power poles to support these cables along the highway frontage. The indicative Service Station design in the Appendices broadly is able to avoid most of these power poles for the access and egress areas from the proposed Service Station. If required there may need to be some consolidation and reorganisation of power poles in consultation with the electricity authority and the Applicant is currently commencing this consultation process.

The second impact is that some of the cables are located at limited heights along the highway frontage. Further discussions are required with the electricity authority to determine the existing cable heights above ground level to determine if there are any clearance issues for larger/higher vehicles entering the Site. However, again some consolidation and reorganisation of power poles in consultation with the electricity authority may be able to increase cable heights and ensure appropriate clearances.

The third impact is that electricity cables (that appear to be both high and low voltage) cross the Site along the alignment of Derrybong Street in the north-western section of the Site. As this is railway land we are not aware of any formal easements for these electricity lines so we cannot determine an easement boundary. It is assumed that any permanent structures or any uses that could interfere with these lines would generally be prohibited under these lines (or within 5-10m), including clearance heights. At this stage there is no detailed design for this section of the Site to determine how the 'easement' may affect proposed development. However, it would be expected that this area would remain clear of permanent structures.

4.9. Other Utilities

As the indicative diagram from Council below indicates, there is also water and sewer infrastructure in proximity to or on the Site. These have not yet been surveyed and are based upon Council's indicative mapping (see diagram below) so they are subject to a more detailed review.

- a) **Sewer:** The underground sewer line runs down the eastern side of Derrybong Street and under the highway before heading south-east along the frontage of the Site (or slightly within the boundary depending where the boundary is eventually agreed). It terminates at a point approximately half way along the highway frontage of the fence line of the former fuel depot. Therefore, the Site has access to reticulated sewer (subject to capacities and detailed design) to service any proposed development.
- b) **Water:** There is also a water line that runs along the western side of Derrybong Street and continues this alignment through the Site and under the railway line. A marker peg is present near what appears to be the boundary of the Site on the highway frontage (see photo below). Therefore, the Site has access to reticulated water (subject to capacities and detailed design) to service the proposed development. There may be some restrictions on development over the water line but its

proximity to the alignment of the indicative overhead electricity easement is likely to limit permanent structures in this location anyway.

- c) **Telecommunications:** There is also a Telstra marker at the front of the existing brick building on the former fuel depot land that would suggest there are existing telephone connections running along the highway frontage to service the development.

For these reasons, the Site has good access to reticulated services and based upon the principle of maximising development in existing serviced areas this would support a rezoning of the Site.



MAP PROVIDED BY BOGAN SHIRE COUNCIL SHOWING THE EXISTING WATER AND SEWER MAINS (APPROXIMATELY).



PHOTOS OF THE WATER & TELECOMMUNICATION MARKERS ON THE HIGHWAY FRONTAGE OF THE SITE.

4.9.1. Non-Aboriginal Heritage

The nearest heritage items are:

- a) Item I3: Nyngan Railway Station (Pangee Street) (>200m to the Site); and
- b) Item I4: Railway overhead footbridge and goods shed (Pangee Street) (>250m to the Site).

Both of these important heritage items are located more than 200m to the west of the subject Site so any development of the subject Site is unlikely to have any significant impact on these items. If required these can be addressed at the time of preparing a development application for the proposed uses and are not expected to impact on the rezoning proposal.

4.9.2. Aboriginal Heritage

We have not yet sought an AHIMS search of the Site to identify if there are any known Aboriginal relics on the Site. However, it would be considered highly unlikely considering the urban nature of the land, its proximity to the town centre, the use of part of the Site as a former fuel depot, the mowing and disturbance of the Site, and the adjacent rail and highway uses. However, an AHIMS search can be conducted after the Gateway Determination if required and the local Aboriginal Land Council could be notified during the public exhibition process. Any relics that are found during the development would be protected under the relevant legislation.

4.10. Surrounding Land Uses

4.10.1. Great Western Rail Line & Setback

A key adjacent land use is the Great Western Railway Line located to the south-west of the Site. John Holland (as Country Rail Network Manager) has been consulted during the preparation of this Planning Proposal and the commencement of lease negotiations for the land on behalf of Transport NSW.

There are actually three (3) railway lines running along a substantial portion of the Site boundary but only the southern-most single line is active. The other two lines closer to the Site are dis-used and have been disconnected at the railway crossing and further down the line (adjacent to the Site). John Holland is not aware of any proposal to reactivate these lines and there are likely to be alternative railway spurs elsewhere along the line that have sufficient length for rail operations. The applicant would support the removal of the dis-used lines (subject to agreement from John Holland).

John Holland has identified a need to have an appropriate setback of any development from the active rail line to allow for access to the railway line for maintenance and a safety margin for trains that run off the rails. However, they have not provided any documentation suggesting a 'statutory' or 'recommended' setback distance.

The surveyor has reviewed property / lot boundary setbacks from the centre of the active line in the vicinity of the Site and the client informs me there is an average setback of 9.145m. Therefore, we have selected this as an appropriate setback. This setback is entirely outside of the active line and the two adjacent dis-used lines and for the majority of the site it is outside the battered slope / railway embankment. We believe that the nominated setback can provide suitable width for train run-off and emergency access to the active line. John Holland has reviewed the Survey Plan (see Appendices) that suggests this proposed setback / site boundary and has not provided any additional comment at this stage. If there are amendments then it can occur as part of the leasing process and need not affect the zoning of the land.

In addition, there is a need to ensure that vehicles at both level rail crossings have at least a 100m sight-line at the stop marker on the road to ensure they can see any oncoming trains before crossing. It is expected that the key buildings associated with the Service Station would be located towards the highway frontage to allow truck turning radii towards the rear / railway side of the Site. So there is unlikely to be any significant permanent structures blocking sight-lines along the railway line.

The detailed design will be prepared for the future development application and lease agreement and will need to address any requirements from John Holland including boundary and building setbacks, fencing, and sight-lines. As John Holland (on behalf of Transport NSW) will also be approving the terms

of any lease then there is sufficient opportunity for any issues to be addressed as part of the lease agreement or at the detailed design stage / future development application. Further consultation with John Holland will occur in accordance with the Gateway Determination.

4.10.2. Mitchell Highway & Hoskins Street

The Roads and Maritime Services (RMS) is responsible for the Mitchell Highway / Nymagee Street and Council is responsible for Hoskins Street.

RMS have recommended against any building encroachments onto the road corridor / RMS land to avoid complications with the lease and road closures (none of which are proposed). Further advice will be gained after the Gateway Determination and at the detailed design stage.

At this stage entry to the Site from Hoskins Street has not had a great deal of consideration due to the limited road frontage, difference in levels, and increased risk of vehicle conflicts due to reduced sight-lines in proximity to the level crossing but this may still warrant further consideration at the detailed design stage.

4.10.3. Council's Detention Basin & Old Service Station Site

The land to the north-west of the Site forms part of the rail corridor and is currently owned by Transport NSW. Council is currently seeking to lease this land to upgrade the existing detention basin and provide some additional beautification for the entrance to Nyngan at the rail level crossing.

The historic service station that sat on this corner has already been demolished and John Holland proposes to remove the below-ground tanks and remediate the Site appropriately. The old service station is at least 75m from the north-western boundary of the Site and is unlikely to affect development of the Site (and vice versa).

Council proposes to remove the chain wire fence around the detention basin and clean up the basin but keep the retaining wall. The rezoning of the Site will enable highway related activities that will ensure continued drainage of land towards the drainage basin and will adopt the necessary stormwater protection systems to avoid contamination of water systems.

4.10.4. Properties to North of Highway

One of the reasons that this Site has been selected is that the land to the north is either in Zone IN1 General Industrial or in Zone B6 Enterprise Corridor – so the existing and desired activities in this area are predominantly 'industrial' in character and are less likely to be impacted by any noise, lights etc. from the proposed highway development.

Another opportunity is that a significant frontage on the northern side of the highway is an existing truck layover area (Council land) that could integrate well with the highway service functions.

The existing electricity substation should also not be affected (subject to addressing the electricity issues noted above). There is an existing BP Service Station opposite the north-western corner of the Site that would be similar in function.

There are 2-3 existing dwellings located to the west of the BP Service Station but these look across the detention basin and are unlikely to receive any higher impact than the existing highway related noise and adjacent BP Service Station. This is addressed in more detail in the Planning Proposal justification below.

4.10.5. Properties to South of Railway Line

To the south of the railway line within proximity to the Site boundary there is a dis-used Caltex fuel depot to the south located in Zone IN1 that poses no conflict. However, it is interesting to note that this site would have once formed part of the rail corridor and is now zoned IN1 (as a fuel depot is more industrial in character than a highway service centre). The fuel depot also has a limited setback to the active railway line.

To the south-west of the Site is the RSL building and bowling greens that again are unlikely to be impacted due to the railway acting as a buffer and the lack of sensitive land uses. The RSL boundary is setback only 7-8 metres from the active railway line which sets a precedent.

4.10.6. Alternative Sites

The proposed development requires the following key features:

- a) A highway frontage east of the intersection of the Barrier Highway and Mitchell Highway;
- b) A sufficiently large site (greater than 0.6ha) with sufficient depth (40m or greater) to support a service station with turning radii for a road train 36-38m long and able to grow to support other highway related uses (such as a take-away food outlet and possibly truck parking and rest-stop areas) to improve the viability of the proposal;
- c) Limited interface with a residential zone or established residential area to minimise impacts on residential amenity from highway related uses;
- d) Preferably adjacent to industrial or business enterprise zones where activities would be consistent with those proposed and land use conflicts minimised; and
- e) Ideally located adjacent to the existing Council owned truck lay-over area for additional truck parking.

Based on these factors there are no other sites in the Town of Nyngan that would be suitable for the proposed development. Further south-east along the highway the railway corridor narrows and the highway land expands reducing the viability of this land for this proposal. Further west along the highway interfaces with residential properties increase the potential for impacts and decrease the suitability of this land.

Whilst the land opposite the Site (owned by Council could potentially support a service station) and is in a suitable zone – we have discounted this site because:

- a) The land is currently used as a truck-layover area and is a vital community service that should be retained for this purpose (and could work alongside / integrate with this Planning Proposal);
- b) The land is zoned for industrial uses and this zoned land is in short supply (see Land Use Strategy);
- c) The land is on the wrong side of the highway to capture trucks heading north and west that are the majority of heavy vehicles needing refuelling; and
- d) The land can only support a service station and is not large enough to support additional highway related uses.

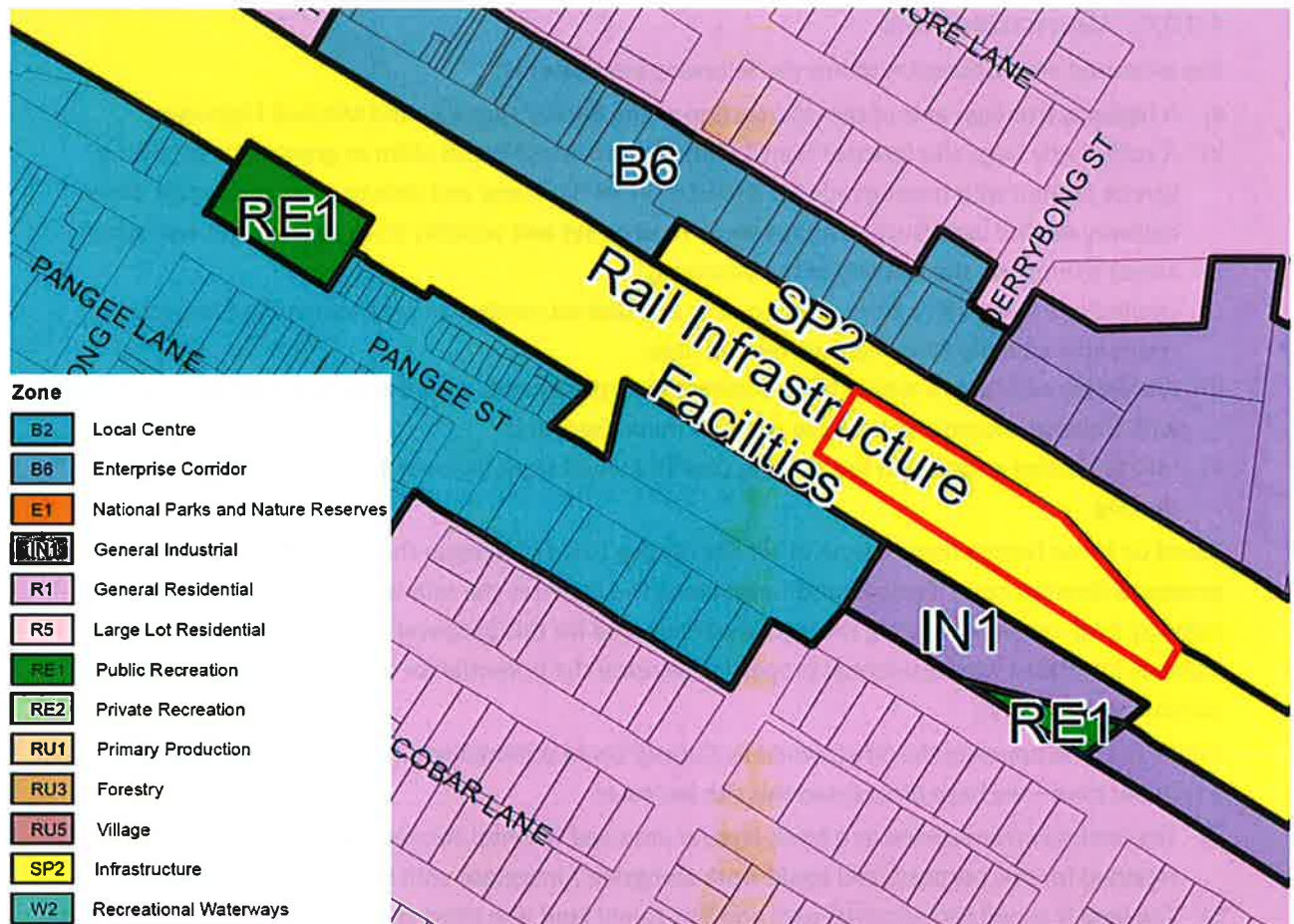
For these reasons the Council land is not suited to the proposed development.

5. Planning Controls

The key planning controls for the Site are in *Bogan Local Environmental Plan 2011* (BLEP2011). Whilst there are more detailed controls in the *Bogan Development Control Plan 2012* (DCP) these will not generally affect the ability of the Site to support the proposed land uses and can be addressed at the detailed design stage. The key controls in BLEP2011 can be summarised as follows:

5.1. Existing Zoning

In BLEP2011 the subject land is located in Zone SP2 Rail Infrastructure Facilities (the Great Western Railway Line). However, a significant part of the rail corridor is surplus to the requirements of the rail authority.



ZONING MAP EXCERPT FROM BLEP2011 SHOWING THE SUBJECT SITE (RED OUTLINE).

5.2. Surrounding Zoning

The surrounding land around the subject land/Site has the following zones:

- 1) The Great Western Railway line is within Zone SP2 Rail Infrastructure Facilities;
- 2) The Mitchell Highway (Nymagee Street) is within Zone SP2 Classified Road;
- 3) To the north of the Site / highway is Zone B6 Enterprise Corridor;
- 4) To the north-east of the Site / north of the highway is Zone IN1 General Industrial (including the existing truck layover area opposite the Site and the electricity substation);
- 5) To the south of the railway line is both Zone B2 Local Centre as well as Zone IN1 General Industrial for the former (defunct) Caltex Fuel Depot.

Therefore, the obvious surrounding zones that could be applicable to this Site are either Zone B6 Enterprise Corridor or Zone IN1 General Industrial. Both of these zones permit (with consent) **highway service centres** – but Zone B6 Enterprise Corridor allows a broader range of ancillary commercial uses that could maximise the potential of the highway frontage without conflicting unduly with the Nyngan's main business district (Zone B2 Local Centre). Zone IN1 General Industrial could be used but a key gateway (highly visible) site would be better served by commercial uses rather than industrial uses.

The types of highway related businesses are restaurants / take-away shops / vehicle service stations / hotels and motels that would not fit within the existing small lot pattern of the main street and generally require significant off-street parking and circulation areas that would not be desirable in the town centre. They primarily service passing traffic on the highway and predominantly heavy vehicles that are not desirable in the main street. Therefore, impacts on Nyngan's town centre are expected to be minimal – whereas the economic and employment flow-on benefits could be significant.

There are also a number of vacant lots in Zone IN1 General Industrial that suggests no additional supply of this zoned land is required at this time.

5.3. Heritage

The nearest heritage items are:

- c) **Item I3: Nyngan Railway Station** (Pangee Street) (>200m to the Site); and
- d) **Item I4: Railway overhead footbridge and goods shed** (Pangee Street) (>250m to the Site).

Both of these important heritage items are located more than 200m to the west of the subject Site so any development of the subject Site is unlikely to have any significant impact on these items. If required these can be addressed at the time of preparing a development application for the proposed uses and are not expected to impact on the rezoning proposal.

5.4. Minimum Lot Size

There is no minimum lot size for subdivision within the urban areas of the Town of Nyngan (excluding the large lot residential areas) or the subject Site. This is generally irrelevant to the rezoning because no subdivision is proposed at this time for the land as it will be part of a long term lease of railway land in accordance with standard practice for business uses of railway land and does not require its own title. Therefore, the Site should remain with no minimum lot size for subdivision necessary.

5.5. Environment & Hazards

A review of the mapping associated with BLEP2011 suggests that the following issues do NOT affect the Site:

- a) Terrestrial Biodiversity Map BIO_008;
- b) Groundwater Vulnerability Map GRV_008;
- c) Watercourse Map WCL_008;
- d) Wetlands Map WET_008.

For these reasons, we recommend that the Gateway Determination does not need to require a flora/fauna study, or other riparian or ecological studies to support the rezoning.

There are no flood prone land maps in BLEP2011 and flooding is addressed by the provision of the levee around Nyngan (see earlier Site Analysis section).

6. 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:

6.1. Bogan Shire Council (Council)

The applicant had already sought support from the Mayor of Bogan Shire (in his individual capacity) and this was received by a letter dated 13 January 2014 (see Appendices). We also approached Council to seek in-principle support for the rezoning prior to commencing preparation of the Planning Proposal and this was provided by a resolution at the March 2014 Council meeting as follows:

056/2014 RESOLVED that

- 1 Council expresses in-principle support for the preparation of a Planning Proposal to amend the Bogan Local Environmental Plan 2011 to allow an application for a Highway Service Centre on railway land to the south side of the Mitchell Highway, subject to further consideration once the Proposal is submitted, consideration by the NSW Department of Planning & Infrastructure and determination by the Minister for Planning & Infrastructure.
- 2 In due course following receipt of a formal application:-
 - a. other owners of land similarly zoned along the Nyngan portion of the train line be advised of the application; and
 - b. previous owners of Lot 1, DP777957, Lot 2, DP777957 and Lot 1, DP 742739 be advised of the application and that Council does not intend to make any changes to the zoning of these lots. (Ryan/Neill)

Subsequently the applicant has met with **Tim Riley** (Manager Planning) and **Dean Woods** (Environmental Health & Building Surveyor) on Tuesday, 29 April 2014 to discuss the proposal and any Council requirements and there has been subsequent email correspondence on services dated 30/4/14 and strategies in late April 2014. The Draft Planning Proposal was provided to Council by letter dated 23 June 2014 prior to formal lodgement to seek any final comments. No written or verbal comments were received prior to formal lodgement.

6.2. John Holland / Transport NSW

We have had a number of email conversations and meetings with representatives of John Holland including **Bill Brecht** (Property Offices – Country Regional Network), **Stan Knight-Smith** (Property Facilities Manager – Country Regional Network) and **Stephen Parry** (local John Holland representative). The applicant has commenced negotiations with John Holland and has received a letter dated 17 March 2014 providing in-principle support from Transport NSW that the land is surplus to their needs and there is potential to lease this land.

John Holland provided Safety Officers to allow surveying of the land on 29 April 2014. The lease agreement will be confirmed once the Gateway Determination has been approved and we are proceeding towards a rezoning of the land.

The Draft Planning Proposal was provided to John Holland by letter dated 23 June 2014 prior to formal lodgement to seek any final comments. John Holland replied by email from Bill Brecht (Property Officer CRN) dated 9 July 2014 (see Appendices) that stated there were 'positive replies' from all of the key internal stakeholders including the Rail Access Manager, the Manager Network Operations, and the Infrastructure Manager. The only comment was to state that the existing unutilised (disconnected) railway sidings would need to stay (but these are outside the proposed site boundary and not relevant to this Planning Proposal).

John Holland has also provided a letter dated 10 July 2014 (see Appendices) that states that Transport for NSW have approved in principle an application for Quee Nominees to lease rail land at the Site and John Holland CRN stakeholders have reviewed the Draft Planning Proposal and have given approval to submit the proposal to Council.

6.3. Roads & Maritime Services (RMS)

Key correspondence & meetings includes email correspondence with **Andrew McIntyre**, Development Assessment Officer (Network & Safety Management) in the Parkes Office of RMS on 22/4/14, 29/04/14, 2/5/14, and 5/5/14.

We have provided copies of the indicative concept and access/egress arrangements for the proposed Service Station. We have also discussed establishment of the boundary between the highway/road corridor and the rail corridor, access to/from the highway, and other potential contacts on road issues. The Draft Planning Proposal was provided to RMS by letter dated 23 June 2014 prior to formal lodgement to seek any final comments. The RMS replied by letter dated 18 July 2014 from Susie Mackay (Network & Safety Manager – Western Region) (see Appendices). This letter states that RMS *‘does not object to the proposed amendment and supports the initiative to provide facilities for operators of heavy and light vehicles to manage fatigue by stopping, obtaining goods and services and resting.’* The RMS also review the preliminary draft service station plans and provided comment and these are addressed in Section 4 – Site Analysis (where relevant).

6.4. Department of Planning & Environment (Department)

We have already had a meeting with **Wayne Garnsey** of the Dubbo Regional Office (Department of Planning & Environment) on 29 April 2014. An outline of the proposal was discussed. It was agreed this was a matter that could potentially be dealt with under delegated authority of Council if Bogan Shire Council has the delegations (they do) and consistent with Council’s land use strategies (see sections below outlining compliance with Sub-Regional Strategy).

It was also agreed that the issue of potential site contamination could be potentially conditioned in the Gateway Determination to occur prior to the rezoning and the Applicant would also need to address any impacts of a B6 zoning on the B2 local centre of Nyngan (see Section 7 below).

The Draft Planning Proposal was provided to the Department by letter dated 23 June 2014 prior to formal lodgement to seek any final comments. The Department replied by letter dated 4 July 2014 (see Appendices) and it was noted that *‘The Department supports the provision of suitable land for commercial use to provide opportunities for the establishment of new business and employment opportunities’*. The only issue raised was the need to ensure the Planning Proposal adequately addressed the issue of permissibility of retail uses (Section 10.6 of Sub-Regional Strategy) in the proposed zone that may compete with the main street of Nyngan (Zone B2). This has been addressed in more detail in Section 7.3.2 below. A subsequent telephone conversation with Ryan Thomas of DPE Dubbo suggested that Zone B6 Enterprise Corridor could be supported if this issue was addressed appropriately.

6.5. Shell Company of Australia

The applicant has received a letter in support from The Shell Company of Australia Limited (head office) confirming that the applicant has had previous experience as a service station operator and stating that the Nyngan area desperately needs a facility that can legally and safely cater for the retail transport / heavy vehicle segments at this key location servicing the eastern, northern and western states (see Appendices).

7. 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'.

7.1. 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 rezone land in the Town of Nyngan NSW that currently forms part of the railway corridor to permit (with consent) a range of highway related businesses including a highway service centre and associated ancillary highway business and rest-stop facilities. The land is defined by the boundaries of the Mitchell Highway (Nymagee Street), the Great Western Railway line, Hoskins Street, and an existing detention basin to the north-west.

7.2. 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 in Part 1 above is to amend *Bogan Local Environmental Plan* (BLEP2011), in particular, to amend **Land Zoning Map LZN_008A**.

This would involve changing the Land Use Zone on Map LZN_008A for the subject land from the existing Zone SP2 Railway Infrastructure Facilities to a suitable zone to permit (with consent) highway service centres. We have proposed Zone B6 Enterprise Corridor as a suitable zone.

An excerpt from BLEP2011 providing the objectives and permitted land uses in Zone B6 is set out in the box below. As a result, all of the proposed land uses discussed in **Section 3.2 – Possible Land Use Definitions** are permitted with consent in Zone B6 (see underlines in box below).

There is no need to amend any other maps in BLEP2011 (including the Lot Size Map) as they provide the desired outcome or the proposal does not affect any environmental mapping. There is no need to amend the text of BLEP2011 including the land use tables for Zone B6 as it already permits (with consent) the proposed land uses.

Zone B6 Enterprise Corridor

1 Objectives of zone

- a) To promote businesses along main roads and to encourage a mix of compatible uses.
- b) To provide a range of employment uses (including business, office, retail and light industrial uses).
- c) To maintain the economic strength of centres by limiting retailing activity.
- d) To provide for residential uses, but only as part of a mixed use development.

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations; Roads

3 Permitted with consent

Business premises; Community facilities; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Landscaping material supplies; Light industries; Multi dwelling housing; Neighbourhood shops; Passenger transport facilities; Plant nurseries; Residential flat buildings; Seniors housing; Shop top housing; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat launching ramps; Boat sheds; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Eco-tourist facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Heavy industrial storage establishments; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Recreation facilities (major); Research stations; Resource recovery facilities; Residential accommodation; Roadside stalls; Rural industries; Sewage treatment plants; Shops; Vehicle body repair workshops; Waste disposal facilities; Water treatment facilities; Wharf or boating facilities

7.3. 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 BLEP2011.

7.3.1. SECTION A

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

This planning proposal is not driven by the outcomes of any particular strategic study or report as none of the applicable studies have considered this Site in any detail. However it is consistent with the vision and guiding principles of the *Western Councils Sub-Regional Land Use Strategy* ('Strategy') prepared by GHD in 2008/2009 (addressed in more detail in Section B below).

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

The only way to allow Council to approve the proposed highway service centre and businesses would be to rezone the land to either Zone B6 Enterprise Corridor or Zone IN1 General Industrial. There is not sufficient flexibility in the objectives or permitted land uses in Zone SP2 Railway Infrastructure Facilities to claim the required uses as 'ancillary' to the rail or highway functions. Therefore, the Planning Proposal is the best means of achieving the objectives or intended outcome.

7.3.2. SECTION B

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

The only relevant regional or sub-regional land use strategy is the *Western Councils Sub-Regional Land Use Strategy 2009* ('Strategy') prepared by GHD for the local government areas of Bogan, Coonamble, Gilgandra, Narromine and Warren. The Strategy included a local profile, issues paper and land use strategy. The proposed development is consistent with the relevant parts of the Strategy including:

Part A – Context relating to the Vision and Guiding Principles:

- a) Support for resilience and economic growth;
- b) Protection of the natural environment through appropriate land suitability;
- c) Support for the settlement hierarchy;
- d) Urban design of the gateway to Nyngan;
- e) Appropriate level of infrastructure;
- f) Encouraging new opportunities for industrial/commercial uses in settlements.

Part B - Sub-Regional Actions relating to Industry, Commerce and Tourism:

- a) **Economic Growth (Section 6.1):** The sub-region has an ongoing need to attract new and successful businesses...to provide a sustainable employment and industry base; The identification of a sub-regional 'edge' (such as servicing long distance transport); Planning policy should facilitate and support business development.
- b) **Nature of Future Industrial land (Section 6.2):** To strategically plan for suitable industrial locations (there is already a cluster of industries in the proposed location).
- c) **Land Use Conflicts (Section 6.3):** Prevent and manage land use conflict (in this case through appropriate site selection in an existing industrial/enterprise zone area where conflicts are minimised).
- d) **Industrial Development (Section 6.5):** Identify land that is appropriate for industrial development (in this case the proposed use is quasi-industrial/commercial and land is surplus to railway needs and adjacent to an existing industrial area) and provides necessary highway frontage.
- e) **Commercial Development (Section 6.6):** Ensure planning policies facilitate, protect and support commercial development (in this case the proposed B6 zone is consistent with the existing adjacent zone and highway functions and would not unduly compromise Nyngan's main business district as

this is proposed for highway related uses.

- f) **Hazards and Climate Change (Section 9.3):** For contaminated lands where there is an intensification of use on land that may be contaminated any subsequent rezoning will need to be supported by documentation consistent with the requirements of SEPP55. This will be addressed as part of the Site rezoning.

Part C – Local Action relating to Bogan Shire:

- a) **Desired Future Character (Section 10.2):** The aim is to encourage investment consistent with its rural, agricultural and historic character focussed on the railway and highway.
- b) **Economic Growth (Section 10.4):** This section did not focus on the potential for additional highway related functions but aims to create increased robustness in the local economy consistent with this application.
- c) **Industry (Section 10.5):** All of Bogan’s industrial land is located in Nyngan. Whilst the proposed development is more commercial in character, it would support the local industries by servicing heavy vehicles and not conflict with it by taking up valuable industrial land that is in relatively short supply (only present in Nyngan).
- d) **Commerce (Section 10.6):** The Department of Planning & Environment has requested that the proposed zoning does not provide permissibility for retail uses that would compete with land that is in Zone B2 Local Centre in Nyngan. It is not intended that the proposed land uses (or the supporting Zone B6 Enterprise Corridor) would conflict with the main business district of Nyngan. Firstly, it is important to note the objectives of Zone B6 would enable Council to refuse any proposed land use that would impact significantly on the retail activity of the main centre whilst promoting businesses along main roads and a range of employment (including retail) uses:
- To promote businesses along main roads and to encourage a mix of compatible uses.
 - To provide a range of employment uses (including business, office, retail and light industrial uses).
 - **To maintain the economic strength of centres by limiting retailing activity.**
- Secondly, ‘shops’ are prohibited in Zone B6 so it is primarily larger footprint buildings that are permissible such as ‘bulky goods premises’, ‘food and drink premises’, ‘garden centres’ and ‘hardware and building supplies’ etc.
- The main street is dominated by smaller lots with more retail functions (less suitable for a major truck refuelling station) whereas the proposed development has predominantly highway related uses on a larger site that integrates better with the surrounding industrial and enterprise corridor uses.
- The strategy clearly supports development along Nymagee Street/the railway corridor for enterprise corridor functions such as offices, logistics and transport related businesses where general retail is prevented. By ‘general retail’ it is taken to mean supermarkets and small retail development (not proposed on the Site), whereas food and take-away premises and restaurants or bulky goods retail / vehicle repairs etc. (potential future use) that need larger parking areas and are integrated into a highway service centre would not be considered by the Applicant as ‘general retail’.
- In the alternative, if Council and the Department are not satisfied with Zone B6 Enterprise Corridor then the Applicant offers Zone IN1 General Industrial as an alternative after further discussion but this is not the Applicant’s preference and is less suited to a highway frontage / gateway site considering the objectives of each zone.

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

Other than the *Western Council's Sub-Regional Land Use Strategy* (addressed above) the only other 'local' strategy is Council's Community Strategic Plan 2026 which is the highest level plan Council will prepare. 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, particularly the most relevant goals, as follows:

Connecting our Community

Section 2.1 – Road Networks – Clause 2.1.5: Work with the RMS to ensure current standards of road safety are maintained. This will be achieved by the applicant working with Council and the RMS to ensure appropriate and safe access and egress to the highway at the detailed design stage.

Managing Our Environment

Section 3.1 – Built Environment – Clause 3.1.1: Conduct periodic reviews of Council's planning instruments to ensure that land use planning supports the long term sustainability of our local communities and our economy. This is achieved by having suitable land available for expansion. As the Sub-Regional Strategy indicated, there is a slight lack of suitably zoned industrial or highway related areas in Nyngan that could be remedied by this proposed rezoning.

Developing our Economy

Section 5.1 – Local Industries & Businesses – Clause 5.1.1: Undertake an assessment of our local business and industry ... to identify gaps and develop initiatives to actively encourage the establishment of sustainable economic growth and local employment opportunities. This is partly achieved by the identification of the potential for highway related uses as an area for economic growth in Nyngan that requires suitably zoned highway frontage land in accordance with this Proposal.

Section 5.1 – Local Industries & Businesses - Clause 5.1.2: Create and maintain a diverse commercial sector that is sustainable, vibrant, located in safe, well designed and visually appealing premises and which meets the needs of our community and visitors. The proposed ancillary commercial activities are ideally placed on the highway frontage (with good design) to provide an active gateway to Nyngan and address the needs of passing traffic.

Section 5.1 – Local Industries & Businesses - Clause 5.1.6: Investigate opportunities to support the township of Nyngan This is best achieved by leveraging off Nyngan's important road transport location at the intersection of two key highways and providing supporting road transport facilities.

Section 5.2 – Tourism – Clause 5.2.2: Develop and implement a visitor strategy which includes the identification of potential opportunities for growth and new tourism products through consultation with stakeholders. This proposal seeks to meet an unmet demand for heavy vehicle traffic but also to provide supporting services for other passing tourists that provides facilities to promote a stop in Nyngan and could form part of this visitor strategy.

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 (SEPPs) or can be made to be consistent with those policies through further studies in accordance with the key SEPPs that apply to the Site. As this table shows the only State Policy that requires further justification is SEPP No.55 (Remediation of Land) and this can be appropriately addressed through remediation of the Site.

SEPP No.32 – Urban Consolidation (Redevelopment of Urban Land)

This policy applies to all urban land which would include land in the Town of Nyngan. It requires consideration of urban land that is no longer needed for the purpose for which it is currently zoned or used to be considered for redevelopment for multi-unit housing and related development. Whilst this is not an application for additional housing a similar principle applies for the creation of business lands for economic growth for Nyngan.

SEPP No.33 – Hazardous and Offensive Development

There is potential that a Service Station could be considered a potentially hazardous industry due to the storage of flammable fuels – but it is not a hazardous storage establishment because the standard protections required by the industry will address any safety issues and it does not require additional buffers greater than any other local business or industry in an urban environment like Nyngan. This can be addressed as part of the detailed development application.

SEPP No.55 – Remediation of Land

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. In Table 1 to the Contaminated Land Planning Guidelines – the historical use of the land for a liquid fuel depot is likely to be a class of land identified for this policy.

It is proposed to investigate whether there is any substantial site contamination resulting from the former fuel depot through an Environmental Site Audit prepared by a suitably qualified consultant after the Gateway Determination has been received so that the applicant has support to prepare these additional studies.

If any contamination is found then it will be remediated in accordance with SEPP55 and the relevant guidelines / policies. It is proposed to use this for business purposes not residential purposes.

It should be satisfactory to make the Site Audit (and any remediation, if required) a condition of the Gateway Determination or the future development application for this Site.

SEPP No.64 – Advertising and Signage

This may apply at the time of lodging a development application but is not relevant to this planning proposal.

SEPP (Exempt and Complying Development Codes) 2008

This may apply at the time of lodging a development application but is not relevant to this planning proposal.

SEPP (Infrastructure) 2007: One of the reasons for this Planning Proposal is that whilst this SEPP permits a range of activities on railway land and adjacent to classified roads – it is not sufficiently broad to encompass the range of commercial activities for highway related uses. Therefore, support for this Planning Proposal is the best way to achieve the desired outcomes without interfering with road or rail infrastructure. There are no known proposals to expand the existing railway lines through Nyngan or the Mitchell Highway road corridor so this proposal is not in conflict with the infrastructure provisions of the SEPP. Any particular issues will be raised by the relevant authorities through the consultation process after the Gateway Determination.

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:

1. Employment & Resources - 1.1 Business and Industrial Zones (1 July 2009)

The objectives of this direction are met as follows:

- a) To encourage employment growth in suitable locations – the urban area of Nyngan is the best location to encourage employment growth for highway related uses where there is an appropriate highway frontage, minimal environmental impacts, and frontage to other commercial/industrial lands to minimise land use conflicts. The location is not inconsistent with the road/rail infrastructure uses and is consistent with the broad vision / guiding principles of the Sub-Regional Strategy.

- b) To protect employment land in business and industrial zones – this Planning Proposal does not reduce the existing supply of business or industrial zones but seeks to expand it in an appropriate location. The Sub-Regional Strategy clearly states there may be insufficient industrial land in the longer term – so the rezoning of this land will free up other industrial enterprises.
- c) To support the viability of identified strategic centres – Nyngan is a key strategic centre for the Bogan Shire and the surrounding regions. The provision of highway related uses – particularly servicing heavy vehicles at this important highway junction is very important to the ongoing viability of road transport throughout NSW and towns like Nyngan.

2. Environment & Heritage - 2.3 Heritage Conservation

The Planning Proposal Site is greater than 200m from any identified heritage item and will not impact on these items in any significant way. If required then a more detailed analysis can be prepared at the detailed design stage. The land is not expected to have any significant Aboriginal relics or landscapes as it is in an urban area that has been heavily disturbed. Any relics that are found during the development would be protected under the relevant legislation. See sections above for more details.

3. Housing, Infrastructure & Urban Development - 3.4 Integrating Land Use and Transport (1 July 2009)

One of the relevant objectives of this Direction is to provide for the efficient movement of freight. The provision of proposed highway related uses including a highway service centre/ service station is conducive to the efficient movement of freight by allowing refuelling of heavy vehicles at a critical junction in the NSW road system for long-distance transport. This is more efficient than requiring larger trucks to carry more fuel or refuel at inappropriately small service stations.

4. Hazard & Risk - 4.1 Acid Sulfate Soils

There is no known occurrence of acid sulphate soils in proximity to the Site (www.nratlas.nsw.gov.au) so this Direction is unlikely to apply.

4. Hazard & Risk - 4.3 Flood Prone Land

This direction applies to all land that may be flood prone land in accordance with the *Floodplain Development Manual 2005*. The applicant submits that due to the construction of a levee bank around Nyngan that is at a height of the 1 in 200 year flood plus freeboard that all land within this levee is not flood prone land (except in an extreme probable maximum flood). Therefore, in the interest of economic growth it is more practical to consider rezoning and new development of land within the levee bank than it is to consider development outside the levee. The proposal will not result in any additional impacts to adjacent properties or result in an increased requirement for government spending on flood mitigation measures, infrastructure or services. We submit that the proposal is consistent with the intent of this Direction.

4. Hazard & Risk - 4.4 Planning for Bushfire Protection

The Site and surrounds are not known to be (or in proximity to) bushfire prone land within the meaning in *Planning for Bushfire Protection 2006* so this Direction does not apply.

7.3.3. 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?*

There are no known critical habitats or threatened species, populations or ecological communities, or their habitats on the Site. The Site is devoid of any significant native trees and any existing trees have been recent plantings by Council for beautification purposes only. The Site is covered in grasses – but these are often mown by Council or John Holland representatives or are in heavily disturbed areas where the chance of threatened species / habitats is very low – particularly in an urban area on vacant land between the highway and railway. There are no standing areas of water in which aquatic species would be expected to be present.

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

The only likely impacts from the proposal are the operation activities of the highway service centre which includes light spill, noise, storage of flammable petroleum products, and traffic safety and are addressed as follows:

- a) **Light:** There are no immediately adjacent residences to light spill is unlikely to be a significant issue. The nearest residences are immediately adjacent to the existing BP Service Station across the road that would produce a similar level of impact. At the detailed design stage light spill can be addressed in accordance with the Australian Standards.
- b) **Noise:** The primary noise is unlikely to be from operations of the facilities associated with a highway service centre and mostly from vehicle manoeuvring (braking and accelerating) – particularly heavy vehicles entering and leaving the Site. However, it is important to note this is a highway environment where heavy vehicles will be braking and accelerating anyway and provide a much higher level of background noise. Most vehicle noises on the Site will be at low speeds. The impacts are consistent with an industrial / enterprise corridor zone and can be managed through the detailed design process. The main service station development is likely to be in excess of 100m from the nearest dwelling.
- c) **Flammable Liquid Storage:** This will be addressed through appropriate licencing, storage and transfer of flammable liquids in accordance with EPA Guidelines and requirements. The isolated nature of this Site reduces the chance of fire spreading to adjacent areas and the risk is reasonable for any service station component in an urban area.
- d) **Traffic Safety:** The proposed development is likely to require new access/egress points to the highway and result in some traffic generation that will need to be appropriately designed and managed to ensure safety for other road users. The detailed design will address RMS and Council road engineering guidelines and controls to minimise risks to safety. It is important to note that the RMS not only supports but argues for access/egress to/from the Site in both directions from the highway to maximise the number of vehicles that can utilise this Site (see letter Appendices).

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

Economic Effects

The key economic impact is consistent with Council's Strategic Plan to identify opportunities for Nyngan that leverage off its assets and local economy. In this case, the town's location at the intersection of these key highways / transport routes and the lack of suitably sized and designed service stations for heavy vehicles (road trains & B-doubles) along these highways means that Nyngan is well placed to create a strong highway service centre with ancillary functions that will promote road / freight transport with Nyngan as a key stopping point / hub. The service station and ancillary highway service functions will also provide employment opportunities in service industries and maintenance and refuelling that have several multipliers for local businesses.

The only economic impact will be other service stations that are unable to provide suitably designed service stations to service heavy vehicles but may lose some light vehicle business. This is not a factor that an approval authority can consider in accordance with the Trade Practices Act and there may be sufficient demand within the market to support multiple well run service stations.

The proposed Zone B6 Enterprise Corridor will permit a range of ancillary businesses – but in accordance with Council's strategies the aim will not be to attract small to medium sized commercial or retail premises away from the smaller lots in the main business district. The larger areas proposed will be targeted at new highway related businesses to service passing heavy vehicle and general motoring

traffic as well as provide some additional services to the local community. These businesses will require larger areas of land with on-site vehicle circulation and/or parking that would not compete unduly with local businesses and/or should not be relevant to a decision about the suitability of these businesses.

Social Effects

The key potential social impact is noise on residential amenity. However, this is addressed above and is reasonable considering the background noise of the highway, the surrounding zoning, and the setback from existing dwellings. There are no expected impacts on Aboriginal or European cultural heritage.

On the other hand there is a potential social benefit of providing a well-designed highway service centre that can contribute to the economic growth and employment in Nyngan and provide some potential tourism benefits as well as a stopping point along the key highways that may assist in reducing or preventing further population loss away from important rural centres like Nyngan and maintain the viability of this important rural community.

The other social benefit is the activation of this important gateway site with active uses that provide a built form and landscape feature to create an entrance to Nyngan. Currently the built form and landscape along the highway is sporadic and lacks consistency and there is great potential to reinforce this key set of intersections near Derrybong Street and the rail crossing to Pangee Street.

7.3.4. SECTION D

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

The key function of the proposed land use is to have a highway frontage to provide highway related services including, but not limited to, refuelling and ancillary services – particularly for heavy vehicles at this important road junction. For this reason the Site location on the Mitchell Highway in the urban centre of Nyngan will provide sufficient road infrastructure without requiring heavy vehicles to detour off the highway.

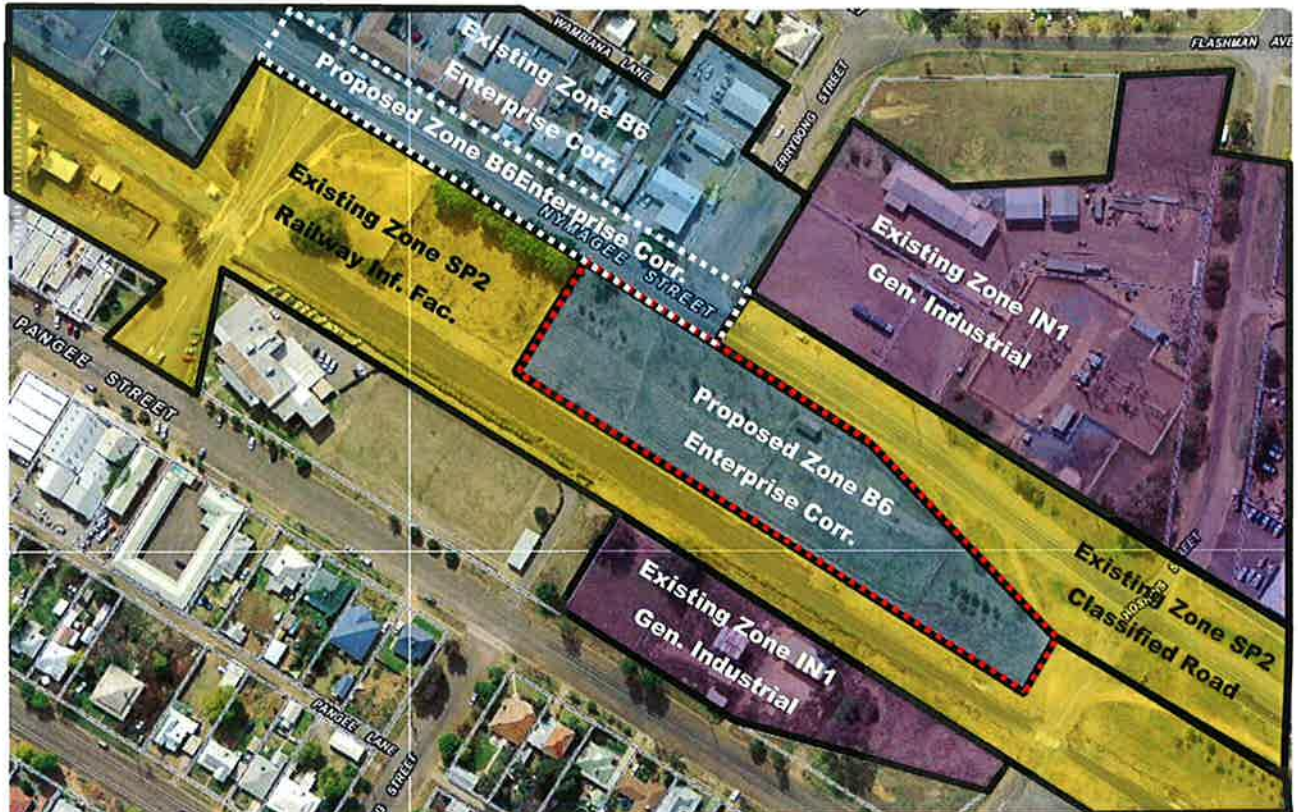
The proposed uses will have only standard requirements for access to electricity, water, sewer etc. and these are all available in the road frontage or near the Site (see Site Analysis section above) and there are no known constraints in these utilities to meeting the needs of the proposed development. The proposed development is unlikely to have levels of consumption or demand on existing infrastructure that would make them inappropriate for Nyngan. Therefore, there is adequate public infrastructure for the planning proposal / proposed uses.

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

Section 6 of this Proposal sets out consultation-to-date, particularly with key NSW Government Departments. The Department of Planning & Environment, Roads and Maritime Services, and John Holland (as Country Rail Network Manager on behalf of Transport NSW) were all consulted and none raised objections to the Draft Planning Proposal or the rezoning. Any other Departments can be consulted during the public exhibition period as no substantial issues affecting other departments have yet been raised. No Commonwealth authorities are believed to be relevant to this application but this can be determined at the Gateway stage.

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

The proposed boundary of the rezoning is indicated (roughly) on the aerial image below (for key zones). As recommended by this report, the proposed Site (dotted red outline) would be included in Zone B6 Enterprise Corridor and would connect with the existing Zone B6 area to the north of the highway and west of Derrybong Street. For simplicity we have recommended that rather than having an isolated section of Zone SP2 Classified Road for the highway between Derrybong Street and the rail crossing to Pangee Street that this should also be included in Zone B6 Enterprise Corridor (white dotted line) to join the two B6 areas. Council will prepare more detailed maps prior to the Planning Proposal going on public exhibition.



INDICATIVE PROPOSED ZONING MAP INCLUDING SITE & ADJACENT HIGHWAY IN PROPOSED ZONE B6 ENTERPRISE CORRIDOR.

7.5. Part 5 - Community Consultation

7.5.1. Key Stakeholders

As noted at the start of this Planning Proposal, the key stakeholders for this Site include:

- John Holland as Country Rail Network Manager (on behalf of Transport NSW) as owner of the Site and operator of the adjacent railway land;
- Department of Planning & Environment (including the Office of Environment & Heritage);
- Roads & Maritime Services (RMS) as the Site is adjacent to the Mitchell Highway;
- Bogan Shire Council (as the Relevant Planning Authority and owner of adjacent Site);
- Possibly the electricity substation (adjacent land owner and overhead lines through Site);
- The community of the Town of Nyngan and adjacent land owners;
- Possibly the local Aboriginal Land Council (though Aboriginal sites are highly unlikely).

7.5.2. Proposed Notification

In addition to the existing notification of key stakeholders 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 adjoining land owners that the Planning Proposal is on public exhibition and providing opportunity for further submissions (if required).

7.5.3. Proposed Public Exhibition & Community Notification

Public Exhibition

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

Notice will include:

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

We also note the additional requirements of the resolution of Council from its March 2014 meeting that stated that following a formal application (this Planning Proposal) that:

056/2014 RESOLVED that

- 1 Council expresses in-principle support for the preparation of a Planning Proposal to amend the Bogan Local Environmental Plan 2011 to allow an application for a Highway Service Centre on railway land to the south side of the Mitchell Highway, subject to further consideration once the Proposal is submitted, consideration by the NSW Department of Planning & Infrastructure and determination by the Minister for Planning & Infrastructure.
- 2 In due course following receipt of a formal application:-
 - a. other owners of land similarly zoned along the Nyngan portion of the train line be advised of the application; and
 - b. previous owners of Lot 1, DP777957, Lot 2, DP777957 and Lot 1, DP 742739 be advised of the application and that Council does not intend to make any changes to the zoning of these lots. (Ryan/Neill)

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.

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.

7.5.4. Additional Studies Required Prior to Consultation

This Proposal submits that no other additional studies should be recommended by a Gateway Determination to be completed prior to the public exhibition of the Proposal or the intended rezoning taking place EXCEPT FOR a Site Contamination Audit (and compliance with any recommendations of that Audit).

This is an urban site with a very low probability of having any threatened or endangered species or communities, Aboriginal heritage, or other site constraints that would warrant additional studies (except potential minor surface soil contamination). Any outstanding issues relating to site design, access and egress, and potential relocation of electricity lines can be addressed at the detailed design stage (development application).

The comprehensive consultation with key public authorities prior to formal lodgement of this Planning Proposal and the lack of any opposition to the Proposal demonstrates that there are no substantial issues with the application that cannot be addressed at the detailed design stage (development application).

7.5.5. Process After Consultation

This is also a matter that can be dealt with under delegated authority to Bogan Shire Council and is in accordance with the relevant Subregional Strategy. This is a local matter and whilst there are substantial benefits for heavy vehicle transport in western NSW, there are no significant impacts beyond the Site and Town of Nyngan.

List of Annexures

- 1. Completed Information Checklist for Planning Proposal**
- 2. Survey Plan dated 15/5/2014 DWG 13-308_01 DETAIL (Revision 1)**
- 3. Indicative Plans for Service Station Concept (Subject to Detailed Design)**
- 4. Key Correspondence with John Holland (CRN Manager)**
- 5. Key Correspondence with Department of Planning & Environment**
- 6. Key Correspondence with Roads & Maritime Services**
- 7. Key Correspondence with The Shell Company of Australia Limited**
- 8. Key Correspondence with Bogan Shire Council / the Mayor**
- 9. The Applicant's Letter to Key Authorities enclosing the Draft Planning Proposal**