

PLANNING PROPOSAL

Rezoning of Land at 335 Hammond Avenue, East Wagga Wagga

PART 1- OBJECTIVES OR INTENDED OUTCOMES

The purpose of this Planning Proposal is to amend the Wagga Wagga Local Environmental Plan 2010 (WWLEP 2010) by making the following changes:

- Item 1: Rezone Lot 1 DP 164653 335 Hammond Avenue, East Wagga Wagga from RU1 Primary Production to IN2 Light Industrial. This will alter the WWLEP 2010 zoning map by removing the indicated extent of land coloured and zoned RU1 primary production, and by replacing it with the colour indicating the IN2 Light Industrial. The minimum lot size map will be amended by removing the minimum lot size applicable to the RU1 Primary Production zone. The proposed IN2 Light Industrial zone does not have a minimum lot size restriction under the WWLEP 2010.

PART 2 – EXPLANATION OF PROVISIONS

Amend the WWLEP 2010 as set out below:

- Item 1 Amend the WWLEP 2010 land zoning map as shown in the Attachment A. Attachment A shows the extent of the adjusted zone boundaries from RU1 Primary Production to IN2 Light Industrial.

PART 3 – JUSTIFICATION

Section A – Need for the planning proposal

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

No. The items, subject of this planning proposal, have not been subject to specific strategic reports or studies. However the separate proposal to rezone land at Gumly Gumly, east of the Tasman Road roundabout, from RU1 Primary Production to a more intensive “Industrial” oriented zone, B6 Enterprise Corridor, has been undertaken in response to the verbal suggestion of the Regional Director, Southern Region of the (then) Department of Planning. The suggestion recognised the possible alternate, highway frontage use of underproductive land on the northern side of the Sturt Highway, and in so doing, it can be argued that it altered the strategic context of similarly located land in the vicinity, but to the west of Tasman Road roundabout, closer to Wagga Wagga City Centre.

Further, the subject land suffered no adverse impact from the December 2010 flood – as confirmed in Section 2.6.2 Flooding of the attached RPS “Planning Proposal – Rezoning” report. That confirmation referred to the WMA report entitled “design Flood Information Report” which in turn reflected the findings of the WMA Flood Study carried out under commission by Council and whose Flood Precinct Map provisions have been adopted into Council’s DCP 2010.

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

Yes. The planning proposal is the only way for the use proposed for the land to become permitted, as it is not consistent with the objectives of the RU1 Primary Production zone.

3. Is there a net community benefit ?

Yes. The net community benefit is wholly to be realised in the medium – longer term rather than in the short term. It is expected that this proposal will serve to inform and guide decisions taken in the community interest, associated with the review of the functions of highway frontage land between Wagga Wagga City Centre and the Tasman Road roundabout. It is further expected that such review will keep to standardise the range of uses – and thus community expectations appropriate to this eastern approach area of Wagga Wagga.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

There are no applicable regional or sub-regional strategies applying to the Wagga Wagga LGA.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plans?

The planning proposal is consistent with the Wagga Wagga Community Strategic Plan 2011-2012 and is relevant to:

5.6 Provide employment opportunities for all.

The proposed zoning change has the potential to increase the usability – and thus employment creation – of business in the locality.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The proposal is consistent with all the relevant state environmental planning policies.

State Environmental Planning Policy No. 55 – Remediation of Land.

The SEPP requires the planning authority to consider whether land is contaminated, and if so whether it is, or can be made, suitable for the proposed use. If land is found to be potentially contaminated or previously contaminated a preliminary contamination assessment can be prepared for the site.

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

Direction 1.1 Business and Industrial Zones

The Planning Proposal is consistent with this direction. The rezoning of Lot 1 DP 164653 will provide additional Industrial land to the existing adjoining Industrial land located on the southern side of the site which is unsuitable for agricultural purposes.

Direction 1.2 Rural Zones

The Planning Proposal is inconsistent with this direction. The Planning Proposal is inconsistent with this direction because it is rezoning rural land to industrial land. However, in confirming the RPS rezoning proposal this inconsistency is justified by a study in support of the Proposal. The Wagga Wagga Industrial Land Use Study identifies this area as a future Industrial site, as this land is not of sufficient size for agricultural uses. Therefore the Planning Proposal is made consistent with this direction.

Direction 1.5 Rural Lands

The Planning Proposal is inconsistent with this direction. Item 1 is inconsistent with this direction as it will affect the current RU1 Primary Production Zone. However, the Planning Proposal is this inconsistency is justified by a study in support of the Proposal. This land is no longer suitable for the purposes of Primary Production because of its proximity to the Industrial area. Although the Proposal is not consistent with the Rural Planning Principles contained in the *State Environmental Planning Policy (Rural Lands) 2008* as follows:

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

However, in confirming the RPS rezoning proposal The Wagga Wagga Industrial Land Use Study identifies this area as a future Industrial site, as this land is not of sufficient size for agricultural uses. Therefore the Planning Proposal is made consistent with this direction.

Direction 2.3 Heritage Conservation

The Planning Proposal is consistent with this direction.

Direction 4.3 Flood Prone Land

The Planning Proposal is inconsistent with this direction. The purpose of Section 117(2) of the Environmental Planning and Assessment Act 1979

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- (b) to ensure that the provision of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

Where this direction applies

- (2) This direction applies to all relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

What a relevant planning authority must do if this direction applies

- (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).

The most pertinent consideration in this instance are:

- (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.
- (6) A planning proposal must not contain provision that apply to the flood planning areas which:
 - (a) permit development in floodway areas,
 - (b) permit development that will result in significant flood impacts to other properties.
 - (c) permit a significant increase in the development of that land,

- (d) are likely to result in a substantially increased requirement for services, or
 - (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.
- (7) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).
- (8) For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

Consistency

- (9) A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:
- (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or
 - (b) the provisions of the planning proposal that are inconsistent are of minor significance. **Note:** “flood planning area”, “flood planning level”, “flood prone land” and “floodway area” have the same meaning as in the Floodplain Development Manual 2005. **Direction 4.3 – issued 1 July 2009.**

Fundamentally, and taken in isolation this element of the Section 117 direction effectively means that no rezoning of land within the area identified in this report as described can take place.

Reference is made to the Wagga Wagga City council “Murrumbidgee River Model Conversion Project Final Report” prepared by WMA in September 2010 and the attached flood modelling data which indicates that the land is flood prone.

Section 117 4.3 (9) that states “*A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:*

- (a) *the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005 or,*

- (b) *the provisions of the planning proposal that are inconsistent are of minor significance. **Note:** “flood planning area”, “flood planning level”, flood prone land”, and floodway area” have the same meaning as in the floodplain Development Manual 2005. **Direction 4.3 – issued 1 July 2009.***

Recently Council representatives met with the Regional Director of the Department of Planning, Brett Whitworth to discuss this issue. Their response was encouraging in so far as they are amenable to a planning proposal that supports the development of the land as their initial view is that Section 117 4.3 (9) provides flexibility to overcome the requirements of Section 117 4.3 (5).

While that information related to land on the northern side of the Sturt Highway, east of Tasman Road, the applicant has in this case, as in the former, substantiated that clause 4.3(9) of the S.117 Direction, provides an appropriate degree of flexibility to overcome the requirements of clause 4.3(5) in this instance. That is, the applicant has established that the proposal is in accordance with a floodplain risk management plan.

Direction 4.4 Planning for Bushfire Protection

The Planning Proposal is consistent with this direction.

Direction 6.3 Site Specific Provisions

The Planning Proposal is consistent with this direction.

Section C – Environmental, social and economic impact.

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

No. The trees existing on site are substantially associated with the river edge and the land is a narrow strip of land partially cleared and with urban development adjacent to it.

The changes will not affect any critical habitat or threatened species, populations or ecological communities, or their habitats. The other items do not affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

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

There are no other known environmental affects that could arise from the planning proposal.

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

Section 5.13 “is there a net community benefit” of the RPS Planning Proposal adequately addresses this issue, identifying its job generation benefits and enhancement of local area services.

Section D – State and Commonwealth Interests.

11. Is there adequate public infrastructure for the planning proposal?

Section 7.1 of the RPS Planning Proposal addresses this issue.

Yes. Subject to the provision of a pressure sewerage pumping system being provided to augment existing available infrastructure, all other services are available in the vicinity and are capable of accommodating the proposed development. The rezoning of the land will not place an unreasonable demand on existing public infrastructure capacity.

12. What are the views of the State and Commonwealth

No State or Commonwealth public authorities have been consulted in the process of preparing this planning proposal.

PART 4 – COMMUNITY CONSULTATION

The Wagga Wagga community will have access to the detail of the planning proposal from the time the report to Council in relation to it, becomes a public document. This occurs when Council posts the Agenda for the February Planning and Standing Committee on its website.