



## **REPORT: Additional Permitted Use - Animal Boarding or Training Establishment Lot 12 DP 1154493, 31 Merrilea Road, Dubbo.**

**AUTHOR:** Manager Strategic Planning Services  
**REPORT DATE:** 25 January 2019  
**TRIM REFERENCE:** ID19/24

### **EXECUTIVE SUMMARY**

A Planning Proposal has been lodged by the prospective owners of Lot 12 DP 1154493, 31 Merrilea Road, Dubbo. A copy of the Planning Proposal is included here in **Appendix 1**.

The Planning Proposal seeks to allow the additional permitted use of animal boarding or training establishment on the subject land, as an amendment to Schedule 1 of the Dubbo Local Environmental Plan 2011.

The land is zoned E3 Environmental Management under the provisions of the Dubbo LEP 2011. Use of the subject land for the purposes of an animal boarding or training establishment is a prohibited form of development in the zone.

The land is situated adjacent to the Dubbo Racecourse. The Proponent has provided information that they intend on working their horses at the Dubbo Racecourse and utilise the land and existing infrastructure at 31 Merrilea Road for the purposes of stabling and operating the commercial business.

It is recommended that Council supports the Planning Proposal and it be submitted to the Department of Planning and Environment to seek a Gateway Determination. Following receipt of a Gateway Determination, Council will place the Planning Proposal on public exhibition for a period of no less than 28 days.

### **ORGANISATIONAL VALUES**

Customer Focused: Council officers have met with the Proponent on a number of occasions to assist their understanding of the Planning Proposal process.

Integrity: The Planning Proposal has been assessed against the requirements of the Environmental Planning and Assessment Act, 1979 and the Department of Planning and Environment's document, A Guide to Preparing Planning Proposals.

One Team: Council staff have assisted in the preparation and consideration of this Planning Proposal.

### **FINANCIAL IMPLICATIONS**

The Proponent provided payment to Council for processing the Planning Proposal in accordance with Council's adopted fees and charges. These fees are payment for preparation of the Planning Proposal, ad hoc processing and assessment fees in accordance with Council's adopted Revenue Policy.

### **POLICY IMPLICATIONS**

The Planning Proposal is provided for consideration and endorsement to seek a Gateway Determination from the Department of Planning and Environment. Receipt of a Gateway Determination from the Department of Planning will allow Council to, conditionally, undertake an amendment to the Dubbo LEP. The Proposal is consistent with the Dubbo Urban Areas Development Strategy which underpins the land use decisions in the LEP.

### **RECOMMENDATION**

- 1. That Council supports the Planning Proposal to include an animal boarding or training establishment as an additional permitted use on Lot 12 DP 1154493, 31 Merrilea Road, Dubbo.**
- 2. That Council supports a minimum 28 day public exhibition period for the Planning Proposal.**
- 3. That Council resolves to use its delegation under Section 2.4 of the Environmental Planning and Assessment Act, 1979 to draft the amendments to the Dubbo Local Environmental Plan 2011.**
- 4. That following completion of the public exhibition period, a further report be provided to Council detailing the results of the public exhibition period.**

*Steven Jennings*

Manager Strategic Planning Services

## BACKGROUND

A Planning Proposal has been lodged by the prospective owners of Lot 12 DP 1154493, 31 Merrilea Road, Dubbo. The Planning Proposal has sought to use the land for the purposes of an animal boarding or training establishment, which includes the training of race horses as a commercial business.

The subject land was previously zoned 6(c) Commercial Recreation under the provisions of the former Dubbo Local Environmental Plan 1998 – Urban Areas. Use of the land for the purposes of an animal boarding or training establishment was previously allowable on the land subject to development consent.

## REPORT

### 1. Particulars of the Planning Proposal Application

Owners:	Jonathon Cox and Concetta Mercuri
Applicant:	Kody and Anna Nestor
Subject site:	Lot 12 DP 1154493, 31 Merrilea Road, Dubbo.
Land area:	9,033 square metres
Current zoning:	E3 Environmental Management
Proposed LEP amendment:	Amendment to Schedule 1 and the Additional Permitted Uses Map APU_007C of the Dubbo Local Environmental Plan 2011 to allow an animal boarding or training establishment
Lodgement date:	16 January 2019

### 2. Amendment to Local Environmental Plans

The Department of Planning and Environment (DPE) introduced a process for the consideration of amendments to Local Environmental Plans in 2009. The process commences with Council's consideration of the Planning Proposal. The Planning Proposal process is shown in **Figure 1**.

# PLANNING PROPOSAL PROCESS

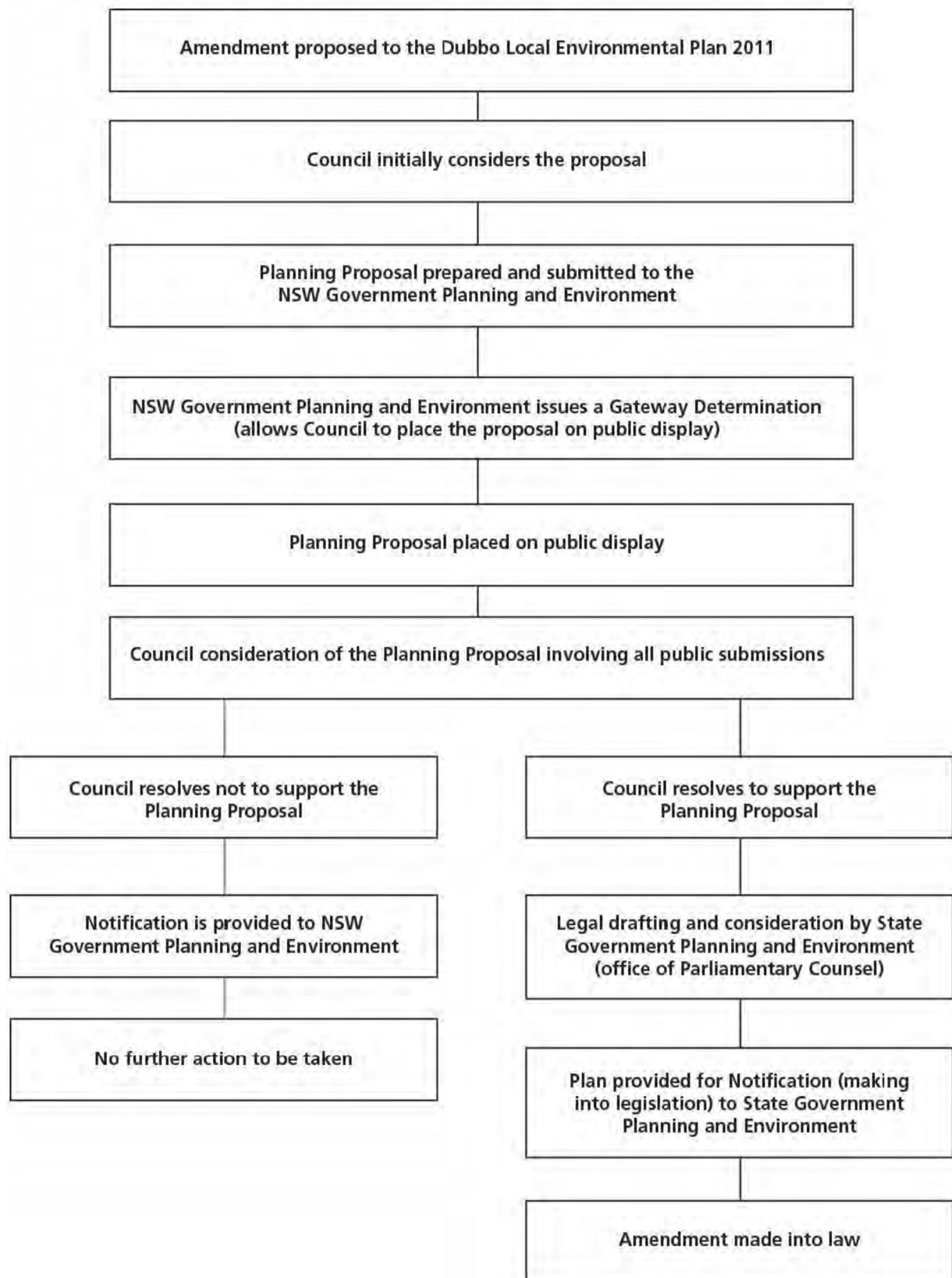


Figure 1. Planning Proposal Process

The role of a Planning Proposal is to explain the intended effects of a proposed Local Environmental Plan amendment and the justification for undertaking the amendment. Council has the role of considering the Planning Proposal. The amendment is then provided to the DPE seeking a Gateway Determination.

The Gateway Determination reviews and considers Planning Proposals in their initial stages prior to further consideration by Council. After consideration by the Department, Council is provided with a Gateway Determination for the LEP amendment.

The Gateway Determination specifies that the DPE would allow the proposed amendment to proceed, any matters that require additional information, the level of public consultation required and State Government agencies to be consulted. After all the additional matters have been addressed and the required consultation has been carried out, a report is provided to Council for further consideration.

It is noted that a Planning Proposal would be considered by the DPE for delegation of powers to 'make' the amendment back to Council following receipt of the Gateway Determination. This could allow the Planning Proposal to be finalised by Councils without further consideration by the Department following public exhibition. In this circumstance, Council would be required to liaise with Parliamentary Counsel for legal drafting and finalisation of the Plan. Given the nature of the Planning Proposal, it is considered appropriate for Council to accept delegated authority.

### **3. Planning Proposal**

A Planning Proposal has been lodged by the prospective owners of Lot 12 DP 1154493, 31 Merrilea Road, Dubbo. The Planning Proposal seeks to use the land for the purposes of an animal boarding or training establishment, which includes the training of race horses as a commercial business.

The land is zoned E3 Environmental Management under the provisions of the Dubbo Local Environmental Plan 2011. Use of the subject land for the purposes of an animal boarding or training establishment is a prohibited form of development in the zone.

The land is situated adjacent to the Dubbo Racecourse. The Proponent has provided information that they intend on working their horses at the Dubbo Racecourse and utilise the land and existing infrastructure at 31 Merrilea Road for the purposes of stabling and operating the commercial business.

The location of the subject land is shown in **Figure 2**.



Figure 2: Subject Land

#### 4. Site Characteristics

The land the subject of the Planning Proposal includes Lot 12 DP 1154493, 31 Merrilea Road, Dubbo as shown in **Figure 3**. The total area of the land is 9,033m<sup>2</sup> and is situated adjacent to the Dubbo Turf Club. The land currently contains an existing dwelling house and two (2) sheds.

The subject site is zoned E3 Environmental Management under the provisions of the Dubbo LEP. The adjoining land to the north, west and east is zoned E3 and land directly south of Merrilea Road is zoned RE2 Private Recreation. The land zoning regime in the immediate locality is shown in **Figure 3**.



Figure 3. Existing land zoning map with subject land highlighted

## 5. Planning Considerations

This section of the report provides an analysis against the planning considerations Council is required to consider in the Planning Proposal process. The information below does not provide an analysis of all planning considerations associated with the Planning Proposal.

The purpose of this section of the report is to explain any significant matters for consideration in the Planning Proposal process.

### (a) Central West and Orana Regional Plan 2036

The Central West and Orana Regional Plan 2036 was released by the Minister for Planning on 14 June 2017.

The Plan has the following goals:

- Goal 1: The most diverse regional economy in NSW;
- Goal 2: A stronger, healthier environment and diverse heritage;
- Goal 3: Quality freight, transport and infrastructure networks; and
- Goal 4: Dynamic, vibrant and healthy communities.

In particular, the Planning Proposal is consistent with the following Directions:

*Direction 4: Promote and diversify regional tourism*

The Planning Proposal would facilitate the development of an animal boarding or training establishment which would support the operations of the Dubbo Racecourse. The Dubbo Racecourse provides diversity to the regional tourism market.

*Direction 6: Expand education and training opportunities*

The animal boarding or training establishment would create additional opportunities within the region for education and training.

The Planning Proposal is considered to be consistent with the provisions of the Central West and Orana Regional Plan 2036.

**(b) Dubbo Industrial Areas Development Strategy**

The Dubbo Industrial Areas Development Strategy 1996 - 2015 forms the basis of the industrial land use zonings and planning controls provided in the Dubbo Local Environmental Plan 2011.

The area subject of the Planning Proposal is located in the Central District Sub-district North Structure Plan. The proposed strategic direction for this area is to cater for recreational, horse racing or light industry related uses. The Planning Proposal seeks to facilitate development for the purposes of an animal boarding or training establishment.

The Planning Proposal is considered to be consistent with the Dubbo Industrial Areas Development Strategy.

**(c) Section 9.1 Directions**

A number of Section 9.1 Directions are applicable to the Planning Proposal, as described in Table 1.

Direction	Requirement	Consistency
1.4 Rural Lands	The Direction applies to the Planning Proposal as it will affect land within an existing or proposed rural or environmental protection zone (including the alteration of any existing rural or environmental protection zone boundary). The Direction is applicable to the Planning Proposal as the subject land is located within an existing environmental zone.	The Planning Proposal is considered to be consistent with the Direction.



Direction	Requirement	Consistency
2.1 Environmental Protection Zones	The Direction applies when a Planning Proposal is prepared. The Direction is applicable to the Planning Proposal as the subject land is zoned E3 Environmental Management.	The Planning Proposal will undertake an additional land use activity on the land. However, given the physical characteristics of the land and the fact that the proposed use is consistent with the flood hazard on the land, it is considered that the Planning Proposal is consistent with the Direction.
3.3 Home Occupations	The Direction applies when a Planning Proposal is prepared.	The Planning Proposal is considered to be consistent with the Direction as the proposal does not prohibit home occupations from occurring without the need for development consent.
4.3 Flood Prone Land	The Direction applies to the Planning Proposal as the subject land is flood affected.	<p>The Planning Proposal is considered to be inconsistent with the Direction as it will permit the undertaking of development on flood prone land.</p> <p>The inconsistency is considered to be of minor significance. Issues in respect of flooding are included in Part (v) of the report.</p>
5.10 Implementation of Regional Plans	The Direction applies when a Planning Proposal is prepared.	The Planning Proposal is considered to be broadly consistent with the Goals and Directions of the Central West and Orana Regional Plan 2036.
6.1 Approval and Referral Requirements	The Direction applies when a Planning Proposal is prepared.	The Planning Proposal is consistent with the Direction as it will not create additional provision for concurrence, consultation or referral of a development application to a Minister or public authority.

Direction	Requirement	Consistency
6.3 Site Specific Provisions	<p>The Direction applies when a Planning Proposal is prepared that will allow a particular development to be carried out.</p> <p>The Direction is applicable as the Planning Proposal intends to create provision for an additional permitted use for the purposes of an animal boarding or training establishment on the subject land.</p>	The Planning Proposal is consistent with the Direction.

**(d) State Environmental Planning Policies**

State Environmental Planning Policy (Rural Lands) 2008 is applicable to the Planning Proposal as the subject land is located adjacent to Troy Creek and is constrained by flooding impacts.

The Planning Proposal is considered to be broadly consistent with the Rural Planning Principles of the SEPP (Rural Lands) 2008.

**(e) Dubbo Local Environmental Plan 2011**

**(i) Land Use Zoning**

The subject land is currently zoned E3 Environmental Management with a subsequent minimum lot size of 1.5 hectares.

The objectives of the E3 Environmental Management zone are as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To ensure development is compatible with the flood hazard of the Macquarie and Talbragar Rivers.
- To ensure development does not create outbreaks of saline lands or exacerbate the existence of existing saline lands.

The Planning Proposal has sought to allow the development of an animal boarding or training establishment on the land with development consent from Council.

The Dubbo Local Environmental Plan 2011 defines an animal boarding or training establishment as follows:

*“animal boarding or training establishment means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.”*

One of the objectives of the E3 zone is to ensure development is compatible with the flood hazard of the Macquarie and Talbragar rivers. Troy Creek is located adjacent to the subject site and partially impacts the property during the 1% average recurrent interval (ARI) flood event. Flooding impacts are discussed further in the following section of the report.

The Planning Proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

(ii) Clause 7.1 Flood Planning

The subject site is identified within the flood planning area on the Dubbo Local Environmental Plan (LEP) 2011 Flood Planning Map Sheet FLD\_007C.

The area of the subject site which is identified as flood prone land contains two (2) existing sheds. The Proponent as a component of the proposed use of animal boarding or training establishment has identified that they will seek future development approval from Council to utilise both sheds as stables in association with the proposed use. As all walls to convert the sheds to stables will be internal, it is considered that the proposed development is unlikely to impact flood behaviour and is unlikely to result in any further flooding impacts to properties within the immediate location. However, as a component of the Planning Proposal process, Council will seek the views of State Emergency Services, particularly in respect of the need for flood evacuation during a flood event.

The Planning Proposal is not considered likely to significantly affect flood behaviour that would result in detrimental impacts to other properties.

**(f) Infrastructure**

It is considered that the Planning Proposal is unlikely to result in any significant requirements for upgrading of public infrastructure. Public infrastructure impacts will be further considered as a component of the development application process for establishment of the animal boarding or training establishment use on the land.

**SUMMARY**

A Planning Proposal has been lodged by the prospective owners of Lot 12 DP 1154493, 31 Merrilea Road, Dubbo. The Planning Proposal has sought to use the land for the purposes of an animal boarding or training establishment, which includes the training of race horses as a commercial business.

It is proposed to undertake an amendment to Schedule 1 and the Additional Permitted Uses Map – Sheet APU\_007C of the Dubbo Local Environmental Plan 2011. The amendment would allow the development of an animal boarding or training establishment on the land with development consent from Council.

It is considered that the Planning Proposal is broadly consistent with the objectives of the E3 Environmental Management zone and the Dubbo Urban Areas Development Strategy.

Appendices:

- 1** Planning Proposal - 31 Merrilea Road Dubbo