PLANNING AND ENVIRONMENTAL SERVICES REPORTS

PLANNING PROPOSAL: RURAL AND LARGE LOT RESIDENTIAL LANDS

1603/017 RESOLVED:

1. That Council forward a Planning Proposal to the Minister for Planning and Environment requesting a Gateway Determination to amend the Blayney Local Environmental Plan 2012 (BLEP 2012) by:
   a) Transferring all land which is shown as "Deferred Matter" in BLEP 2012 (land is zoned 1(c) Rural Small Holdings under the Blayney Local Environmental Plan 1998) in the vicinity of Forest Reefs Road, Millthorpe to R5 Large Lot Residential under the Blayney Local Environmental Plan 2012 with a Minimum Lot Size of 2 Hectares.
   b) Transferring all land which is shown as "Deferred Matter" in BLEP 2012 (land is zoned 1(c) Rural Small Holdings under the Blayney Local Environmental Plan 1998) in the vicinity of Browns Creek Road Blayney to R5 Large Lot Residential under the Blayney Local Environmental Plan 2012 with a Minimum Lot Size of 20 Hectares.
   c) Extending the period of time specified in Clause 4.2A (4) of the Blayney Local Environmental Plan 2012 from 3 to 5 years,
   d) Incorporating a new standard instrument boundary adjustment clause to permit simple boundary adjustments in rural areas on lots below the minimum lot size and/or greater than 10% variations in lot size.
   e) Amending Clause 4.2A (3)(c) to add the words 'under an environmental planning instrument' before the words 'before this Plan', and,
2. If points 1a) and 1b) are adopted, to revoke Blayney Local Environmental Plan 1998. (Oates/Radburn)

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	**AGAINST**
Councillor Ewin	
Councillor Oates	
Councillor Kingham	
Councillor Somervaille	
Councillor Ferguson	
Councillor Radburn	
Total (6)	**Total (0)**

16) PLANNING PROPOSAL: RURAL AND LARGE LOT RESIDENTIAL LANDS

Department: Planning and Environmental Services

Author: Director Planning and Environmental Services

CSP Link: 3.4 Sustainable land use practices across the Shire.

File No: LP.RS.3

Recommendation: .

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   e) Amending Clause 4.2A (3)(c) to add the words 'under an environmental planning instrument' before the words 'before this Plan', and,
2. If points 1a) and 1b) are adopted, to revoke Blayney Local Environmental Plan 1998.

Reason for Report:
The purpose of this report is to seek Council resolution to forward a Planning Proposal (PP) to the Department of Planning & Environment (DPE) to review and update the applicable Local Environmental Plan controls for its rural lands within the Blayney Local Environmental Plan 2012 and large lot residential areas (Browns Creek Road and Forest Reefs Road only) within the Blayney Local Environmental Plan 1998 ('BLEP1998').

This PP would permit the revocation of the remaining remnants of the Blayney Local Environmental Plan 1998 ('BLEP1998').

Report:
Council at its Ordinary Meeting in February 2016 resolved to proceed to prepare a PP for rural lands within the Blayney Local Environmental Plan 2012, and large lot residential areas (Browns Creek Road and Forest Reefs Road only) within the Blayney Local Environmental Plan 1998. The PP is now finalised and formal resolution of Council is required prior to forwarding to DPE for Gateway Assessment.

Attachment 1 is the proposed Planning Proposal prepared by iPLAN PROJECTS on behalf of Blayney Shire Council which details all of the proposed amendments proposed in this PP.

The proposed amendments include:

a) Transfer all land which is zoned 1(c) Rural Small Holdings under the Blayney Local Environmental Plan 1998 in the vicinity of Forest Reefs Road, Millthorpe, to R5 Large Lot Residential under the Blayney Local Environmental Plan 2012 with a Minimum Lot Size of 2 Hectares,

b) Transfer all land which is zoned 1(c) Rural Small Holdings under the Blayney Local Environmental Plan 1998 in the vicinity of Browns Creek Road, Blayney, to R5 Large Lot Residential under the Blayney Local Environmental Plan 2012 with a Minimum Lot Size of 20 Hectares,

c) Extend the period of time specified in Clause 4.2A (4) of the Blayney Local Environmental Plan 2012 from 3 to 5 years (the 3 year restriction removed the allowance of dwelling houses through the 'Existing Holding' provisions of Clause 4.2A of the BLEP 2012 in the RU1 zone on 23 November 2015),

d) Undertake minor administrative and clarification amendments including:
    a. Boundary Adjustment: To incorporate into BLEP2012 a new standard instrument boundary adjustment clause to permit minor boundary adjustments in rural areas on lots below the minimum lot size and/or greater than 10% variations in lot size as this is currently not permitted under either exempt development or under BLEP2012. This will provide increased flexibility for farming operations without creating new dwelling entitlements and is an administrative update to BLEP2012 to correct a 'gap' in current controls;
    b. Amending Clause 4.2A – Erection of dwelling houses or dual occupancies on land in certain rural protection zones - Subclause (3)(c) to add the words *'under an environmental planning instrument'* before the words *'before this Plan'*. The intent is to clarify that dwelling rights only extend to environmental planning instruments (LEPs and Interim Development Orders).

Issues:
The timing to receiving a favourable Gateway determination is unknown, depending upon whether DPE require further information and/or further analysis for any specific matter.

Budget Implications:
Allocation has already been made for IPLAN PROJECTS to prepare the PP. Council staff will be required to facilitate the PP if a favourable Gateway determination from DPE is received.

Enclosures (following report)

Nil

Attachments (separate document)

1	160311 Planning Proposal Rural & LLR Vers C	49 Pages

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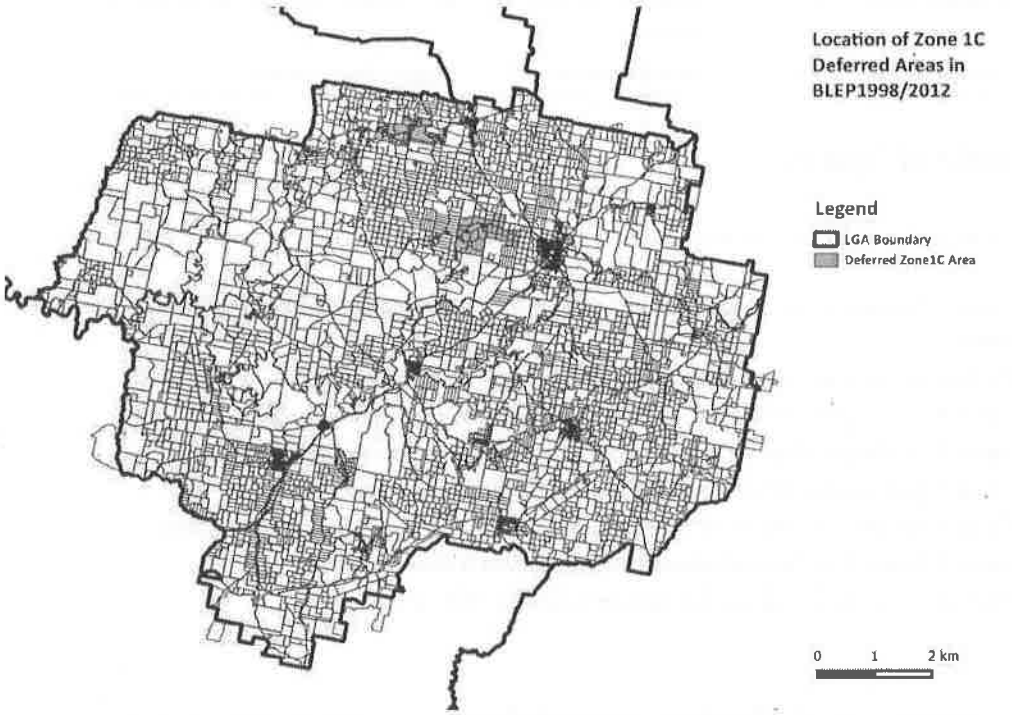

FIGURE 1: MAP ILLUSTRATING THE LOCATION OF THE TWO (2) ZONE 1(C) DEFERRED LARGE LOT RESIDENTIAL AREA IN BLAYNEY SHIRE

Planning Proposal

Proposed Amendment(s) to *Blayney Local Environmental Plan 2012* & *Blayney Local Environmental Plan 1998* for some Large Lot Residential and Rural Lands across the Shire

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

11 March 2016
Version C

iPLAN PROJECTS

Document Control

Date	Version	Purpose	Recipients
23 November 2014	A	Final (LLR Only)	Mark Dicker – Blayney Shire Council Erin Strong – Dept. Planning & Environment
10 March 2016	B	Draft Final for Internal Review	Mark Dicker – Blayney Shire Council
11 March 2016	C	Final for Council	Blayney Shire Council

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1. INTRODUCTION

1.1. Aims of Amendments

Blayney Shire Council is seeking to review and update the applicable Local Environmental Plan controls for its rural and large lot residential (Browns Creek Road and Forest Reefs Road only) areas.

This includes amendments to both *Blayney Local Environmental Plan 2012* ('BLEP2012') and the revocation of *Blayney Local Environmental Plan 1998* ('BLEP1998').

In summary this includes the following amendments (see next Section for detail):

a) **Large Lot Residential (Forest Reefs Road and Browns Creek Road only):** To transfer and update the relevant planning controls for the large lot residential lands along Forest Reefs Road and Browns Creek Road that are identified as 'Deferred matter' in BLEP2012 from the operation of BLEP1998 to BLEP2012. As a result, BLEP1998 will no longer be required and will be revoked. The aim is to address (in part) the recommendations of the Subregional Rural & Industrial Land Use Strategy (2008) and manage supply of this land use in the Shire.

b) **Existing Holdings:** To modify Clause 4.2A(4) of BLEP2012 to extend the time for the sunset of existing holdings from 3 years to 5 years (an extension of 2 years) from commencement. BLEP2012 commenced on 23/11/2012 so that the new sunset date for existing holdings would be 23/11/2017. Assuming that the LEP amendment occurs in late 2016 this would provide approximately a year to allow for more substantial notification to the community of the sunset date.

c) **Minor administrative and clarification amendments** including:

   i) **Boundary Adjustment:** To incorporate into BLEP2012 a new standard instrument boundary adjustment clause to permit boundary adjustments in rural areas on lots below the minimum lot size and or greater than 10% variations in lot size as this is currently not permitted under either exempt development or under BLEP2012. This will provide increased flexibility for farming operations without creating new dwelling entitlements and is an administrative update to BLEP2012 to correct a 'gap' in current controls;

   ii) **Amending Clause 4.2A:** Erection of dwelling houses or dual occupancies on land in certain rural protection zones - Subclause (3)(c) to add the words *'under an environmental planning instrument'* before the words *'before this Plan'*. The intent is to clarify that dwelling rights only extend to environmental planning instruments (LEPs and Interim Development Orders).

1.2. Method for Planning Control Amendment

The only method to address these issues is to prepare a Planning (Rezoning) Proposal ('PP') to amend the current local environmental plan(s). We have combined the above issues because they relate to 'lifestyle dwelling lots' in rural areas and the issues and solutions are intertwined or address general rural development matters(as all of the existing holding, LLR, boundary adjustment issues are in rural areas and covered by the Subregional Strategy).

1.3. Land Description

This Planning Proposal will potentially affect development controls for lands in:

a) **Large Lot Residential:** The 'Deferred matters' that are currently zoned 1(c) in BLEP1998 along Browns Creek Road (BCR) and Forest Reefs Road (FRR) as shown on the map below as **'Deferred Zone 1C Area'**. This type of land use is now commonly called 'large lot residential'. The 'Deferred matters' do NOT include all original Zone 1(c) land in BLEP1998; and

b) **Rural Lands:** Lands in Zone RU1 Primary Production & Zone RU2 Rural landscape where the issues of dwelling entitlement (by existing holding or legislation) and rural boundary adjustment could apply.

It is not possible to individually identify lots that would have an 'dwelling potential' or to identify where boundary adjustments may be required in the future so it is assumed that all rural zoned lands could potentially be affected for the purposes of consultation.

It is important to note that the 'Deferred matters' the subject of this Proposal are smaller than the original Zone 1(c) Rural Small Holding areas in BLEP1998, parts of which have already been rezoned in BLEP2012 to either Zone R5 Large Lot Residential (Forest Reefs Road) or Zone RU2 Rural Landscape (Browns Creek Road).

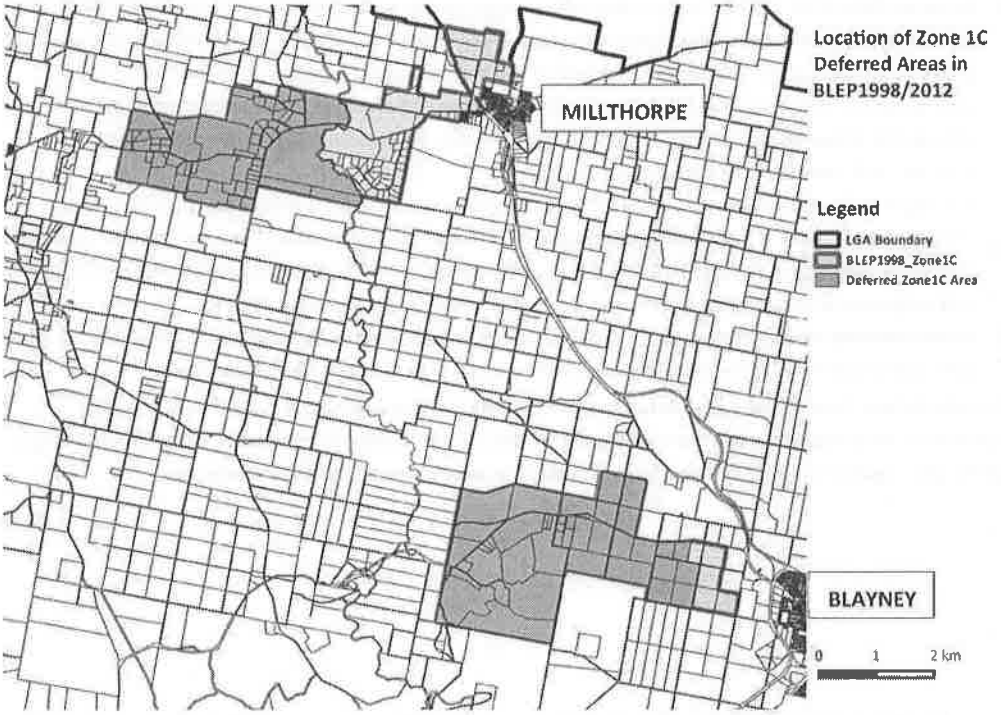

Figure 2: Location of the two (2) Deferred Large Lot Residential Areas in relation to the Former Zone 1C Areas

1.4. Process Overview

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

- The *Environmental Planning & Assessment Act 1979* ('EP&A Act');
- The Department of Planning (October 2012) *'A guide to preparing planning proposals'*;
- Planning Circular No. PS12-006 – *Delegations and independent review of plan-making decisions*;
- *Blayney Local Environmental Plan 1998* ('BLEP1998').
- *Blayney Local Environmental Plan 2012* ('BLEP2012').

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

We also request delegation to Council (as the Relevant Planning Authority or RPA) of the power to make this amendment.

At the Blayney Council Meeting in February 2016 a report was put to the Councillors with all of the options for each of the amendments proposed – and a resolution was made to support the PREFERRED OPTIONS in that report. The full options are again set out in this Planning Proposal (See Section 2).

Whilst the amendments are not entirely consistent with an endorsed strategy (primarily the *Sub-Regional Strategy 2008*) it is submitted that:

a) **Large Lot Res. FRR:** The assumptions in the Subregional Strategy for some of these areas (particularly along Forest Reefs Road) have proven to be incorrect and the subsequent take-up and development of these areas supports the retention of the large lot residential zone. A transition of existing controls from BLEP1998 into BLEP2012 does not result in any additional dwelling potential or social/economic/environmental impacts and should be dealt with as a 'minor' amendment;

b) **Large Lot Res. BCR:** Whilst the retention of the large lot residential zone is inconsistent with the specific recommendations, the proposed increase in Minimum Lot Size for subdivision along Browns Creek Road seeks to reduce potential dwelling yield in line with the recommendations for 'down-zoning' of this area – so whilst the 'tool' is different it would produce a similar outcome to the adopted Strategy recommendations whilst still providing some subdivision potential to all larger holdings and dwellings are permissible on each lot;

c) **Existing Holdings:** The Subregional Strategy recognised the need for a sunset period of 3-5 years prior to the removal of any dwelling entitlement – and whilst the original Council resolution was to choose 3 years, the extension to 5 years is broadly consistent with the Strategy recommendations and addresses a potential issue of fairness/equity in advertising that sunset date;

d) **Administrative Amendments:** The remaining amendment are minor or administrative in nature and intended to clarify or correct 'gaps' in current controls with limited impacts expected.

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

2. ISSUES & JUSTIFICATION

2.1. Large Lot Residential Zoning Issues & Options

The Subregional Strategy (see below) made several recommendations regarding the down-zoning of Zone 1(c) Rural Small Holdings (now known as 'Large Lot Residential') along parts of Forest Reefs Road (FRR) (west of Cowriga Creek) and Browns Creek Road (BCR) as the controls transitioned from BLEP1998 to BLEP2012.

Since the consultation on/adoption of the Subregional Strategy there have been above-average approvals of new subdivision applications and dwellings (particularly along FRR). This has challenged/ invalidated some of the Strategy positions and recommendations regarding take-up of land and supply/demand.

This may be in part because of an increase in demand for lifestyle lots over the 2008-2012 period but some of this take-up is likely to be attributed to attempts to protect dwelling entitlements from the expected down-zoning and not necessarily reflective of market demand. Regardless, the development of these lots reduces the effectiveness of any 'down-zoning' intentions.

When Draft BLEP2012 was placed on exhibition it followed the recommendations of the Subregional Strategy and proposed to down-zone these areas. However, following on from community feedback the Councillors decided to defer those affected areas from BLEP2012 because they were unhappy with the recommendations of the Subregional Strategy and its impact on development potential. As a result, the areas were deferred under BLEP2012 and retained their Zone 1(c) status under BLEP1998 which is still active in 2016.

Council staff and the Department of Planning & Environment (DPE) would like to see the issue of large lot residential resolved for these areas so that BLEP1998 can be removed and the relevant areas/controls brought across to BLEP2012 to assist with consistency of zones for e-planning initiatives. This has the advantage of simplifying and ensuring consistency in planning controls for both the community and Council officers seeking to enforce those controls. Originally DPE wanted this issue resolved within 12 months of commencement of BLEP2012 but it has now been 3 years.

The recommended approach is to transition all of the FRR area over to Zone R5 Large Lot Residential in BLEP2012 with a minimum lot size of 2ha (same as in BLEP2012). However, as BCR has not had the same degree of demand and a lower likely yield it would be transferred to Zone R5 but would have a **higher minimum lot size of 20ha** to ensure that the majority of land owners still have potential for at least one (1) dwelling on each existing holding (with some larger parcels having more potential).

It is important to note that for Forest Reefs Road the transition of existing zoning and minimum lot size to BLEP2012 would result in very little change to the development potential of that land compared to the existing situation under BLEP1998. There are only a limited number of larger lots/holdings where significant subdivision is possible so the total dwelling yield is likely to be small. The most significant changes would affect Browns Creek Road.

Option 1 – Transition ALL Deferred matters in Zone 1(c) areas to Zone R5 with 2ha Minimum Lot Size (RETAIN EXISTING KEY CONTROLS):

Pros	Cons
• Easy to understand Planning Proposal option. • Subregional Strategy Justification 1 – Mineral resource buffer on western boundary of both LLR areas already weakened by approved DAs. • Subregional Strategy Justification 2 – Demand weakened by recent take up since 2008. • Subregional Strategy flawed – relatively easy to	• Planning Proposal likely to have trouble addressing strategic justification. • Justification 1 – Regardless of weakening protection of mineral resources is still an important economic principle. • Justification 2 – BCR has less take up in several key areas so pressure to down-zone

Pros	Cons
address for FRR and some BCR. • Land owners likely to agree (limited consultation required / less Council resource intensive). • DPE may agree to this to remove BLEP1998 if not adding NEW supply.	/ reduce yield is still relevant. BCR has less development potential based on a review of site constraints so allowing a higher yield may give an incorrect perception of supply and affect future LLR proposals. • May need to amend Subregional Strategy or address supply/demand in more detail. Gov. agencies and Orange/Cabonne unlikely to agree as inconsistent with Subregional Strategy. • New supply in alternate areas recommended by Subregional Strategy less likely to be approved until Subregional Strategy amended (less flexibility in future). • Complicated by Existing Holding issue.

Option 2 – Transition all Deferred Zone 1(c) to Zone R5 with MLS of 2 hectares (similar controls) but adopt a Council policy to rezone large undeveloped lots in 3 Years (Transition Period) so no additional dwelling potential:

Pros	Cons
• Provides a transition period of 3 years for land owners to 'use or lose' dwelling opportunities in accordance with Subregional Strategy. • Avoids the need for a 'sunset' clause in the LEP that DPE advises is unlikely to be supported. • Only affects undeveloped lots with significant constraints (strategic solution) that are not developed in 3 years. • Relies on merit assessment of all subdivision and dwelling proposals and economic viability subject to market and constraints. • Recognises that Subregional Strategy is out-dated and potentially flawed. • No change to current controls means land owners more likely to agree (limited consultation required / less Council resource intensive). • DPE may agree to this to remove BLEP1998 if not adding NEW supply.	• Whilst Subregional Strategy recommended a sunset period it has been 7-8 years since that Strategy was finalised so any extension of time is well outside the original recommendations. • Increased subdivision in some areas could increase land use conflicts with larger surrounding agricultural holdings and reduce agricultural efficiency. • Without a sunset clause it is reliant on Council policy & resources to enact change in 3 years. There is no guarantee that this Policy would be acted on. • Boundaries likely to move again in 3 years with speculative subdivision approvals – so may not be significantly different to Option 1. • Justification 1 – Doesn't really assist Mineral buffer as land within mostly subdivided (BCR) • Justification 2 – Without alternate LLR land near Blayney there is potential for more subdivision in BCR in less desirable location. • May need to amend Subregional Strategy or address supply/demand in more detail. Gov. agencies and Orange/Cabonne unlikely to agree as inconsistent with Subregional Strategy. • New supply in alternate areas recommended by Subregional Strategy less likely to be approved until this matter resolved.

RECOMMENDED Option 3 – Transition ALL existing Zone 1(c) Deferred matters to Zone R5 AND Increase Minimum Lot Size for Browns Creek Road so that all large (>20ha) Lots have only limited dwelling potential (~1-4 dwellings per lot): This provides an immediate solution to reduce yield and potential land use conflicts whilst potentially providing limited dwelling opportunity to all land owners.

NOTE: A dwelling will still be permissible with consent on every existing and future subdivided lot .

Pros	Cons
• Similar to Option 2 (without the transition period). Less radical than Option 4 (and potentially Option 2). • Provides dwelling potential for all owners (value for land). • Sets maximum yield (reduced from current) so potentially allows turning on other LLR areas (arguable). • By putting larger MLS across entire Browns Creek Road Deferred Area it does not require a site by site analysis of development potential (more equitable). • Potentially avoids need for transition period as all owners have some dwelling potential and they have had 3-6 years to activate. • Preferred Zone RU1 for larger undeveloped lots to permit extensive agriculture without consent and intensive agriculture with consent. • 20ha lots will provide a new lot size that may be attractive to the market to contrast 2ha or 0.4ha lots elsewhere in the Shire. It is large enough to run a larger number of animals and to have privacy from neighbours (if appropriately designed) and support more sheds/storage.	• Not entirely consistent with Subregional Strategy aim to remove all dwelling potential. Retains all 1(c) deferred matters in R5. • May impact on LLR at Blayney West or other Subregional Strategy recommended areas (but arguable based on yield/supply). • Could still be argued that disproportionately affects some owners and sunset period required. • Consistent MLS for BCR may not recognise that some lots have greater development potential than others. • Requires complex arguments about Minimum Lot Size to reduce yield (subject to dispute). • Requires discussion about whether R5 or RU1 zone is best for larger lots (changes permissible land uses).
Recommendation: Option 3 is preferred as it provides a strategic solution and everyone has some dwelling potential there is less risk of complaints of loss of economic value – particularly for larger lots that are less likely to develop (Browns Creek Road only) – so this Option probably has the highest chance of success after Option 1 & 2 but at least achieves some strategic principles and provides greater flexibility for consideration of future LLR areas elsewhere in the Shire.	

Option 4 – Rezone ALL Forest Reefs Road to Zone R5 / MLS of 2ha (similar controls). Rezone existing subdivided land along Browns Creek Road to R5 (MLS 2ha) and any large undeveloped lots with limited development potential to RU1 (MLS 100ha) – No Transition Period

Pros	Cons
• Similar to Option 2 (minus transition period). • Accepts that land owners have had sufficient time to activate dwelling consents (3 years LEP + 3 years Subregional Strategy). • Avoids need for later Planning Proposal and subsequent adaptation to new approvals or policy/political shifts (may be outside control of Blayney Council).	• Similar to Option 2 (minus transition period). • Difficult explaining to land owners that they have had sufficient time to activate any viable dwelling approvals. Not entirely consistent with 'sunset' recommendation of Subregional Strategy. • Subject to more community and political pressure than Option 3 – so lower probability of achieving outcome.

Option 5 – Rezone all of BCR / FCR Deferred matters to Zone RU1 with MLS of 100ha – With or Without Transition Period in accordance with Subregional Strategy Recommendations

Pros	Cons
• Consistent with Subregional Strategy recommendations. • BLEP2012 allows for a dwelling on any lot that has a subdivision approved under a previous LEP (so it would protect all existing / approved subdivisions). • Restricts all land uses to rural permissibility (that includes a dwelling).	• Subregional Strategy recommendations are out of date. • Doesn't make strategic sense to have lifestyle lots in a rural zone where there are clusters of this use. • May prevent Complying Development for dwellings on approved subdivisions because lots in Zone RU1 would be below MLS (See SEPP Clause 3A.2). This is not a desirable outcome for efficiency/economic development. • Doesn't resolve land use conflicts with agriculture.

2.2. Existing Holdings Issues & Options

The Subregional Strategy (see below) assumed that existing holdings would be removed with the introduction of the Standard Instrument LEP. Subsequently, the Standard Instrument was modified to allow for the 'sunset' of existing holdings over a specified period. The Subregional Strategy also recommended the sunset of dwelling entitlements in rural areas over a 2-5 year period.

Draft BLEP2012 was placed on exhibition with a 2 year sunset clause. There was extensive consultation with the community and reasonable efforts were made to highlight that existing holdings would be removed after the sunset period. After feedback from the community the Councillors extended this to a 3 year sunset clause. BLEP2012 commenced on 23 November 2012. As a result, existing holdings ceased to exist on 23 November 2015.

During the sunset period (1st 3 years of BLEP2012) there was no further shire-wide engagement or notification reminding them specifically of the sunset date of 23 November 2015 other than notifying people who made specific enquiries about existing holdings. It was deemed that people who had existing holdings were aware of the need to approach Council and many people that enquired about existing holdings were informed of the sunset period.

However, since the sunset date in 2015 elapsed there have been a limited number of complaints that people were unaware of the actual sunset date and if they had been aware they could have taken steps to apply for a dwelling approval. The claim is that insufficient notification of the actual date was provided, even if people were broadly aware that existing holdings would sunset at some point in time.

In effect the loss of an ability to apply for a dwelling has potentially impacted on property values. It is important to note that there is no such thing as a 'dwelling entitlement' until there is an approved development application and there may be other reasons why former existing holdings may not have been able to support a dwelling.

The recommended approach is to provide an extension to the sunset date in BLEP2012. It would be consistent with the broad recommendations of the Subregional Strategy to remove lifestyle lots within a 3-5 year time period. The proposed extension would take the sunset period from 3 to 5 years. However, in effect (assuming that the LEP amendment commences in late 2016) there would only be up to 1 year (until 23 November 2017) for any existing holdings to be realised through a development application lodged before that date.

Option 1 – Do Nothing: Leave Existing Holdings as 'revoked'. Accept that consultation was sufficient to notify the community and provide written responses to claimants.

Pros	Cons
• Likely to be supported by most government agencies and surrounding Councils as it is consistent with Subregional Strategy and strategic direction. • If Council elects to consider new large lot residential ('LLR') areas then not reactivating existing holdings does not impact on supply of lifestyle lots.	• Doesn't address issues of particular community members who have lost Existing Holdings, particularly concerns that insufficient notification of sunset date. • The economic impact of the sunset of existing holdings is significant for these land owners so there is some risk of applicants seeking legal remedies based on a lack of due process.

RECOMMENDED Option 2 – Existing Holding Extension: Extend Existing Holdings to five (5) years from date of commencement of BLEP2012 (Sunset date of 23 November 2017). Assuming that if approved the amendment will commence late 2016 or early 2017 – this will provide up to 1 year from commencement of LEP amendment for people to lodge an application for a dwelling on existing holdings.

Pros	Cons
• Consistent with 5 year maximum extension in Subregional Strategy (may not require agreement of Orange/Cabonne Councils). • A number of Central West Councils did NOT remove or sunset Existing Holdings (mostly post 2012) due to a change on politics. • There could have been more potential for improved notification to the community of the sunset time period coming (but there is always a question of how much consultation is necessary / required). • Resources for Planning Proposal to modify LLR / 'Deferred matters' (BLEP1998) subsume some of the costs of extending this Proposal to resolving the existing holding issue. • One (1) additional year should be short enough to limit substantial take-up in areas where complex/expensive to activate approval whilst still providing sufficient time for people to prepare and lodge a Development Application. • One (1) additional year is sufficient time for Council to both notify of the extension of the existing holding clause and also advise of the sunset date so that due process is followed.	• Subregional Strategy applied to sunset time (not to a further extension after closure). • It may still be argued by some that 1 year is too short for some to act on in poor economic climate. • It may be inconsistent with Rural Lands SEPP / s.117 Ministerial Directions / Subregional Strategy principles and recommendations so difficult to write a PP to support the LEP amendment • It may be inconsistent with the advice of State agencies responsible for planning, agriculture, environment, water and potentially economics who are likely to lodge objections to PP • It may be contrary to advice on economic protection of agricultural lands against further fragmentation – potential for wider economic impacts • It reopens opportunities across the whole LGA needed to be transparent – significant potential for impact (not just the small number of land owners who are pressing for this change) • Significant Council resources to do Planning Proposal, consultation, amendment, notification, readvertising extension, advertising closing of extension, and confirmation and processing of existing holding applications. • Orange and Cabonne may not support amendment as it contradicts adopted stance

Pros	Cons
	on existing holdings (but it is our understanding Orange appreciates that the Subregional Strategy is out-of-date). • Only a limited number of cases where people are claiming they did not know about the sunset period for existing holdings and some of these claims of ignorance could potentially be disputed. • No detailed analysis of supply/demand is included in this project or lot by lot update of take-up. It is not possible to know existing holding supply or up-take potential. • By aiming to turn on existing holdings again this must be counted effectively as LLR (unknown quantity) and may affect Council's ability to achieve LLR outcomes elsewhere.
Recommendation: Option 2 is preferred because it balances the need for transparency and accountability of local government (by ensuring sufficient notice is provided to existing holding owners prior to extinguishment of these rights) with the need for reduced fragmentation of agricultural lands (by extinguishing existing holdings within a defined timeframe).	

Option 3 – Site Specific Rezoning: Review alternative tools to address site specific complaints about loss of existing holdings e.g. LLR zoning of specific sites.

Pros	Cons
• Addresses only those lands/owners that have made submissions and does not reopen EH to entire LGA (affecting lifestyle lot supply). • Allows for a site-specific assessment of dwelling capacity on each lot prior to any rezoning (some may not be capable of a dwelling).	• Less transparent and equitable as potentially unfair to others who lost Existing Holdings but did not lodge complaint (potential for ICAC claim). • Less likely to be supported by DPE and Government Agencies and inconsistent with Subregional Strategy. • Potentially allows for others to claim they should be considered for LLR status without any strategic direction or assessment of where this type of land use should be allowed. This could open up issue to more applications in rural areas than may be achieved through reactivation of existing holdings.

2.3. Boundary Adjustment

SEPP (Exempt and Complying Development) 2008 addresses some opportunities where minor subdivision for the purpose of widening a public road or realigning boundaries is permissible but is not capable of being used where there is an existing lot below the minimum lot size (usually 100ha in rural areas) or there is an existing dwelling on the lot or where it would change the area of any lot by more than 10% (this affects a substantial portion of lots seeking adjustment in the Shire).

Clause 4.2 of BLEP2012 permits subdivision of rural lands below the minimum lot size (MLS) for the purpose of agriculture but cannot be used where there is an existing dwelling on the lot. Also Clause 4.6

states that development for subdivision in rural zones cannot be approved if the subdivision will result in 2 or more lots of less than the minimum area or the subdivision will result in one lot that is less than 90% of the MLS.

DPE has now created a standard instrument boundary adjustment clause and this has been introduced (with minor variations) into a number of rural and regional councils including, but not limited to: Wellington, Bathurst, Port Macquarie Hastings, and Griffith (for example).

The introduction of this clause would enable Council to adjust lots that are already below the minimum lot size and possibly more than 10% where there may be an existing dwelling BUT they would not create a new dwelling entitlement and subject to a range of appropriate assessment tools to prevent environmental or neighbour impacts.

There are only two (2) options – either adopt the clause (subject to resolution of the wording) or not adopt the clause and remain as is. It is likely that all key stakeholders would support adoption of the clause as the benefits significantly outweigh any impacts so this is the recommended option.

2.4. Clause 4.2A Erection of Dwelling Houses

A minor amendment is proposed to Clause 4.2A Erection of dwelling houses or dual occupancies on land in certain rural protection zones. This clause sets out when a dwelling can be erected in a rural zone (Zones RU1 and RU2) and under subclause (3) sets out when a dwelling is permissible below the minimum lot size.

The reason for this amendment is to clarify that the intent of this clause was to allow dwellings that had previously being permissible/approved under previous environmental planning instruments (including the original Interim Development Orders that pre-date BLEP1998). However, it was never intended that this permissibility extended to a range of legislative acts that date back to settlement where it would be very difficult to prove a dwelling entitlement. The additional wording clarifies that the subclause is limited to environmental planning instruments, not legislation or other acts.

There are only two (2) options – either adopt the clause amendment or not adopt the clause and remain as is. The only impact is likely to be in rural zones but no assessment of the impact of additional dwelling as a result of this clause is possible. The onus is on the applicants to prove their case and this would be both very difficult and highly unlikely. The restriction on this very limited opportunity is likely to have very limited impacts. It is likely that all key stakeholders would support adoption of the amendment to clarify the original intent and avoid any costly legal arguments.

3. SUBREGIONAL LAND USE STRATEGY

3.1. Background

Council and the Department of Planning and Environment ('Department' or 'DPE') have approved and adopted the GHD (2008) *Subregional Rural and Industrial Land Use Strategy* ('Subregional Strategy' or 'Strategy'). This is the relevant land use strategy applying to all land outside of the main towns/villages in Blayney LGA including the rural small holdings / large lot residential areas. The Subregional Strategy was adopted by Council on 28 July 2008 and approved by the NSW Government by letter dated 30 June 2011 from the former NSW Department of Planning & Infrastructure (now DPE).

3.2. Large Lot Residential 'Deferred matters'

The Subregional Strategy makes the following key recommendations for the two Zone 1(c) 'Deferred matters':

3.2.1. Forest Reef Road

The Strategy recommended transitioning the existing Zone 1(c) area along Forest Reefs Road (**east** of Cowriga Creek only) across to Zone R5 Large Lot Residential with the existing minimum lot size of 2 hectares (this was achieved in BLEP2012). However, **west** of Cowriga Creek it defined the Zone 1(c) area as **Strategy Area No.9 ('SA9')** as shown on the map below. This aligns with the 'deferred area' the subject of this Proposal.

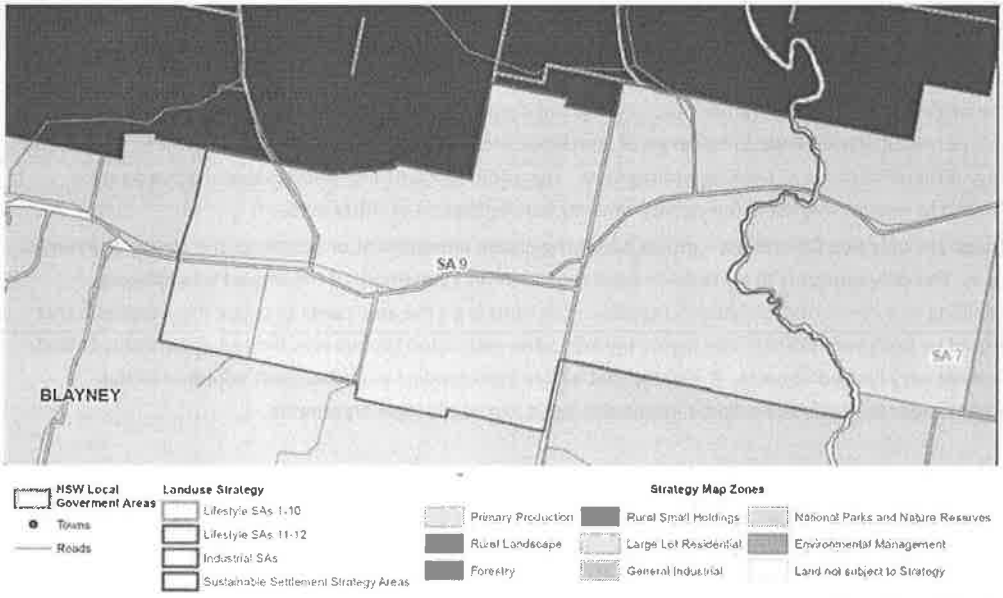

FIGURE 3: EXCERPT FROM FIGURE 6.9 IN SUBREGIONAL STRATEGY (FINAL STRATEGY) 2008.

The recommendations for SA9 are copied below but in summary, the Strategy recommended replacing this area with a rural zoning and increasing the minimum lot size to a level that would prevent any further subdivision and development for the purposes of large lot residential dwellings. To allow transition it suggested a 'sunset clause' for 2-5 years that allowed dwelling applications to be made to Council on existing lots.

These recommendations were based on key site constraints (see Site Analysis Section below) and low take-up of development in these areas when the Strategy was drafted (~2006-2007). These recommendations would EITHER significantly impact on the development potential of lands west of

Cowriga Creek in comparison to dwelling potential under BLEP1998 (subject to development consent) OR not reflect the EXISTING APPROVED/CONSTRUCTED development that has occurred since the Subregional Strategy was adopted.

It is important to note that many of the original assumptions and review of development potential have subsequently changed and no longer validate this significant change to the zoning west of Cowriga Creek. As the Development Analysis section below demonstrates, much of this area has already been either approved for subdivision or also developed for large lot residential housing so it is unlikely to be suitable for conversion to a rural zone. Some of these subdivision applications have challenged constraints such as the Mineral Potential Areas and Department of Resources & Energy have since compromised on the effective buffer zones in these areas.

On this basis Council recommends transitioning the existing Zone 1(c) lands in SA9 across to Zone R5 Large Lot Residential in BLEP2012 with the same Minimum Lot Size of 2ha.

> ***SA 9 Forest Reefs Road (Figure 6.9)***
>
> The Forest Reefs Road SA is one of two existing Rural 1(c) areas within Blayney Shire for which a differing planning and zoning approach is warranted. The SA is located near the northern boundary of the Shire, approximately 5 kilometres west of Millthorpe (7 kilometres to its western-most point).
>
> Despite current development provisions under the Blayney LEP 1998 allowing subdivision down to 2 hectare lifestyle lots, there has been limited take-up of this subdivision opportunity. The western extent of the Rural 1(c) zoned land are constrained through location within one kilometre of both known and potential metallic mineral resource deposits on adjoining lands, and in particular the proximity to current mining operations at Cadia. The absence of lifestyle lot take-up in this SA provides an opportunity, through this Strategy and subsequent local planning instruments, to implement a new zoning that more appropriately recognises this constraint, to Primary Production, and avoids any potential future land use conflicts in this area.
>
> Thus, in consideration of the distribution of lifestyle lots residential areas throughout the Sub-Region, the lifestyle lot provisions under the existing Rural 1(c) zoning in this location should not be allowed to continue.
>
> Council would be required to honour and uphold any development approval obtained for lifestyle lot subdivision, which remain legally valid binding. A 'sunset clause' could be included in any new LEP, whereby a development application for a dwelling could be lodged within a set time frame (minimum of 2 years, maximum of 5 years),. After the expiry of the time frame, the area would not see new lifestyle development in the form of dwellings. Areas the subject of this rezoning and sunset clauses would require close monitoring.

Figure 4: Excerpt from Section 6.4.2 in Subregional Strategy (Final Strategy) 2008.

3.2.2. Browns Creek Road

The Strategy defined the entire Zone 1(c) area along Browns Creek Road as **Strategy Area No.10 ('SA10')** as shown on the map below.

The recommendations for SA10 are copied below but in summary, the Strategy recommended replacing the entire area with a rural zoning (primary production or rural landscape) and increasing the minimum lot size to a level (likely 100ha) that would prevent any further subdivision and development for the purposes of large lot residential dwellings. To allow transition it suggested a 'sunset clause' for 2-5 years that allowed dwelling applications to be made to Council on existing lots.

These recommendations were based on key site constraints (see Site Analysis Section below) and low take-up of development in these areas when the Strategy was drafted (~2006-2007). These recommendations would significantly impact on the development potential of the deferred Zone 1(c)

area along Browns Creek Road in comparison to dwelling potential under BLEP1998 (subject to development consent).

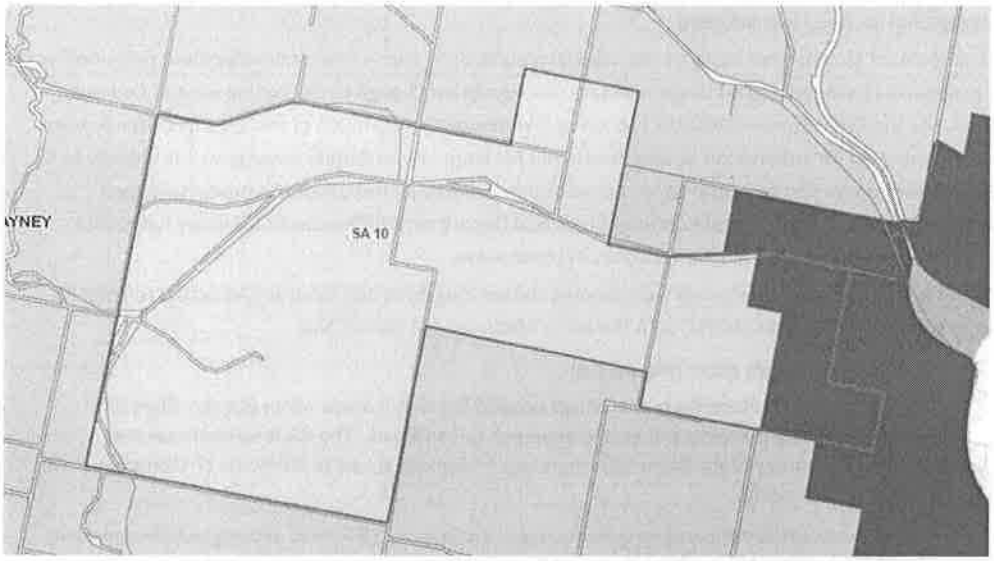

FIGURE 5: EXCERPT FROM FIGURE 6.9 IN SUBREGIONAL STRATEGY (FINAL STRATEGY) 2008.

SA 10 Browns Creek Road (Figure 6.10)

The Browns Creek Road SA, located 4 to 6 kilometres west of Blayney possesses a similar set of environmental and development circumstances to that at Forest Reefs Road.

Lifestyle lot subdivision opportunities have not been taken up within the existing Rural 1(c) zoned land. In addition, known metallic and industrial mineral deposits are located to the immediate east and west of the site, and accordingly, large portions of the existing Rural 1(c) zone fall within the one-kilometre buffer zones identified in the weighted constraints analysis.

The SA also contains steep slopes which would preclude and efficient lifestyle allotment subdivision pattern.

In addition, while the land is characterised by holdings of less that 100 hectares, the SA is surrounded to the north, west and south by larger holdings that have a soil profile (Class 3) considered suitable for agricultural activity. Over the long term, there may be potential for land in this SA to form part of these larger surrounding holdings.

Given the limited take-up of lifestyle lots subdivision in this zone, the opportunity exists through this Strategy and future planning instruments to minimise the potential for land use conflict and to maximise the efficient use of agricultural land in this location. As such the ongoing application of a land use zone that allows lifestyle lots subdivision in this location should be reviewed.

In addition, as outlined above, Council would be required to honour and uphold any development approval obtained for lifestyle lot subdivision, which remain legally valid binding. A 'sunset clause' could be included in any new LEP, whereby a development application for a dwelling could be lodged within a set time frame (minimum of 2 years, maximum of 5 years). After the expiry of the time frame, the area would not see new lifestyle development. Areas the subject of this rezoning and sunset clauses would require close monitoring.

FIGURE 6: EXCERPT FROM SECTION 6.4.2 IN SUBREGIONAL STRATEGY (FINAL STRATEGY) 2008.

This Proposal suggests that the existing Zone 1(c) Rural Small Holdings for all of SA10 (Browns Creek Road) are transitioned across to Zone R5 Large Lot Residential in BLEP2012 which is in contravention of the Strategy recommendations. However, the increase in Minimum Lot Size from 2ha to 20ha would effectively reduce new dwelling/lot creation to 10-20 additional lots with a dwelling potential (excluding recently subdivided land and assuming land is capable of subdivision to 20ha lots).

3.2.3. 'Sunset' Clause

We have had discussions with representatives from DPE and determined that there is no effective way to include a 'sunset' clause as part of this Planning Proposal to permit further subdivision for a limited period of time and then remove any residential land. Whilst a 'sunset' clause has been used for existing holdings it is not a standard instrument clause to use this wording to 'sunset' zoned areas. Therefore any reference in this Proposal to a 'sunset' period is merely a policy decision of Council at the time and would require further resolutions at the end of that period to amend the Local Plan through another Planning Proposal.

3.2.4. Other Large Lot Residential Areas

It is important to note that the Subregional Strategy provides recommendations for other large lot residential areas across Blayney, Cabonne and Orange City Council areas and the supply / demand analysis was broadly considered in terms of dwelling demand around Orange in collaboration with Orange City Council and Cabonne Council.

In addition, the Strategy made recommendations for other large lot residential areas in Blayney Shire including existing Zone 1(c) land to the north of Millthorpe and proposed new large lot residential areas including SA7 Millthorpe (SW of Millthorpe) and SA 8 Guyong Road (North of Blayney).

The supply/ demand relationship may need to be reconsidered if SA9 and SA10 ('Deferred matters') were to be included in a large lot residential zone in BLEP2012 AND had SUBSTANTIAL ADDITIONAL Dwelling Yield. However, the recommended option would limit any additional future yield and it could be argued would allow consideration of new areas for rezoning in the future (see Staging in Final Strategy p.96 – excerpt below):

> ***Blayney***
>
> Consideration for rezoning is to generally occur in the following order in the short to medium term, when other lifestyle allotment areas (such as North Millthorpe) have reached 85% completion in terms of subdivision and dwelling construction):
>
> - SA 7 Millthorpe may be rezoned for lifestyle allotments when SA 9 Forest Reefs Road has been rezoned to primary production; and
> - SA 8 Guyong Road may be rezoned for lifestyle allotments when SA 10 Browns Creek Road has been rezoned to primary production.

Figure 7: Excerpt from Section 11.2 - Staging in Subregional Strategy (Final Strategy) 2008.

3.3. Existing Holdings

The recommendations of the Subregional Strategy relating to Existing Holdings are somewhat muddied by the fact that the Subregional Strategy was based on an old version of the Standard Instrument LEP that did not envision a 'sunset clause' for existing holdings. On this basis it was assumed existing holdings would just be automatically removed upon the commencement of the new LEP.

However, it did discuss sunset clauses with relation to down-zoning of 'lifestyle lots' and the same principles effectively apply to existing holdings as a form of 'lifestyle lot'. It specifically, it says that 'lifestyle' dwelling allotments should sunset within 2-5 years of commencement of the LEP (Council ended up originally agreeing on 3 years). However, it could be argued that Council was within the

bounds or their adopted Strategy to sunset it within the 5 year period (approximately end 2017) so an amendment to the Subregional Strategy is NOT required.

Key references in the Final Strategy (2008) include:

p.ii (Key Issues – Agriculture) 'Existing holding'

> The State Government has advised that a minimum allotment size for the subdivision of rural land (with an ancillary dwelling) should be reflective of a sustainable and commercial agricultural operation typical to the area. Further, the Department's Standard Instrument for LEPs disposes of concessional lot provisions and does not recognise 'existing holding' status.

p.15 (Section 3.1) 'Existing holding'

> Concessional allotment provisions will be removed, consistent with State Government policy and good rural planning practice. Existing holdings are also not recognised under the Standard Instrument. Under the Principal LEPs, subdivision in rural areas will reflect the minimum lot size for a new farm with an ancillary dwelling.

p.18 (Section 3.3) 'Sunset clause' + 'Existing holding'

> Transitional arrangements may need to be developed by the Councils in consultation with the Department of Planning for lots created for the purpose of lifestyle development under current planning controls. This issue refers to concessional lots or equivalent, and are often small (around 2ha) lots scattered across the landscape. A method of gradual 'phasing out' of lots created for the purpose of a dwelling is available through an LEP provision known as a 'sunset clause'.
>
> Further, 'existing holdings' will not be defined under the LEPs, and any potential to create lots for rural lifestyle dwellings from existing holdings will be extinguished. The practice of estimating the potential, eligibility or otherwise of 'dwelling entitlements' is not supported by the Department of Planning as this leads to speculation, inflated land values and infers an automatic right to land holders which does not exist.

p.73 (Section 7.5) 'Sunset clause'

> Should the minimum allotment size for an ancillary dwelling be increased, the councils will need to consider including a local provision in their LEPs to recognise that allotments that were created for the purpose of a dwelling under a previous planning instrument and that are now below the minimum allotment size. It is recommended that the ability to erect a dwelling on these allotments be subject to a sunset provision, whereby a development application to erect a dwelling would need to be lodged within a specified period (minium of 2 years, maximum of 5 years), after which time the ability to erect a dwelling would be removed. A similar provision should be included for 'existing holdings' as defined under the current LEPs.

p.99 (Section 11.3 – Strategies & Actions) 'Sunset' + 'Concessional lots'

Strategy	Policy actions	
5. Manage current supply of lifestyle allotments	5.1	Rezone existing zoned 1(c) areas to Primary Production in Principal LEPs as defined in Section 6.4.2 and introduce sunset clauses relating to the erection of dwelling houses.
	5.2	Manage existing concessional lots as part of the supply and consider introducing a sunset clause to remove access to these lots in the medium term.

p.123 (Section 15.2) 'Sunset' + 'Existing holdings'

15.2 Transitional arrangements

Transitional arrangements need to be developed by the Councils in consultation with the Department of Planning and Department of Primary Industries where it is recommended that where there is an excess of rural lifestyle lots created for the purpose of a dwelling, where not strategically located or deemed necessary, are gradually 'phased' out. The Standard Instrument does not provide for outdated provisions such as 'concessional lots' or existing holdings, with new subdivision and development for the purpose of an ancillary dwelling determined by minimum lot size provisions.

Where a Council intends to 'phase out' lots created for the purpose of a dwelling under a current plan, a specific clause can be instigated in the Principal LEP, known as a 'sunset clause'. This type of clause gives landholders a period of time in which to lodge a development application for a dwelling house on lots created for the purpose of a dwelling by the previous plan. This type of clause enables those with legitimate intentions to develop to lodge a DA. Once the 'sunset clause' expires, dwellings will not be permissible on these lots.

There is also a large amount of land that has been zoned for rural smallholdings or rural small holdings under the current LEPs but have not yet been developed. In some cases, these areas are poorly located and it is recommended that the councils 'back zone' these areas to Primary Production and include 'sunset clauses' in the new LEPs to enable landholders to act lodge a DA for a dwelling where a lot has been created. Councils need to carefully consider which areas will be the subject of back zoning, while recognising the need to provide rural lifestyle opportunities in more strategic locations.

The Central West Rural Land Use Inquiry made recommendations for the management of rural living opportunities and it is expected that a draft Rural SEPP will be prepared to give further guidance.

3.4. Boundary Adjustments

The Subregional Strategy did not specifically address the issue of boundary adjustments (to be best of our knowledge) though facilitating adjustments to support agriculture is consistent with the Strategies and Actions relating to agriculture including (Section 9.3 of Final Strategy):

a) Provide for the economic growth of the rural area and maintain and enhance rural job opportunities;
b) Protect agricultural land resources;
c) Promote sustainable management of natural resources for primary production;

Prevent and manage land use conflicts.

However, since the new Standard Clause does not create any new or additional dwelling potential and is consistent with the recommendations with the need to facilitate agriculture – the proposed new clause could be said to be consistent with the Subregional Strategy recommendations.

3.5. Clause 4.2A(3)(c) Amendment

The Subregional Strategy did not specifically address the issue of dwelling potential that pre-dates environmental planning instruments (to be best of our knowledge) but did seek to restrict additional dwelling potential in rural zones. The proposed wording was utilised in *Cabonne Local Environmental Plan 2012* and other LEPs so it is accepted by NSW Government. As it does not create any new or additional dwelling potential and is consistent with the Strategies & Actions noted above, the proposed new clause could be said to be consistent with the Subregional Strategy recommendations.

3.6. Strategies & Actions

3.6.1. Section 9 – Agriculture

The objective of Section 9 is to *'protect and promote agriculture in the Sub-Region, having regard to its economic value and contribution to the regional, state and national economies.'*

Strategy	Policy Actions	Comment
1. Provide for the economic growth of the rural area and maintain and enhance rural job opportunities	1.1 Ensure agriculture is given priority in planning and land use decision making. 1.2 Encourage a wide variety of agricultural activities within the agricultural zones. 1.3 Encourage the development of intensive agricultural industries where they can be serviced with necessary infrastructure and in appropriate locations to avoid land use conflicts.	**LLR:** Existing LLR areas transferred over to BLEP2012 (no additional impact) but with reduced future yield (esp. BCR) which minimises additional land use conflict. **Existing Holdings:** Short extension of existing holdings for 1 year consistent with strategy 3-5 year period and unlikely to produce significant additional land use conflict and will cease in late 2017. **Boundary Adjustment:** Encourages flexibility for land owners in rural areas without additional dwelling potential and proposed clause will minimise land use conflict and protect agricultural potential/resources. **Cl.4.2A(3)(c):** Clarifies intent of clause to limit dwelling opportunities to environmental planning instruments to minimise impacts on rural lands.
2. Protect agricultural land resources	2.1 Adopt the land use designations in Figure 6.1 including Primary Production / Rural Landscape / Forestry / Rural Small Holdings	
3. Minimise the fragmentation of agricultural land	3.2 Consider including performance-based criteria for minimum lot size with an ancillary dwelling for intensive forms of agriculture as a local provision.	
4. Promote sustainable management of natural resources for primary production	4.1 Ensure planning policy supports efficient and sustainable irrigation practices on farms. 4.3 Investigate with industry the potential for re-use and recycling of waste products... 4.4 Locate and design primary industry and associated land uses to minimise potential hazards, such as chemical spills, particularly onto productive land and watercourses. 4.5 Develop programs with primary industries to address drainage and management of irrigation wastewater to prevent adverse impacts.... 4.8 Create environmentally sensitive area overlays with associated assessment clauses...	
7. Prevent and manage land use conflicts AND 10. Prepare controls for specific land uses 11. Provide guidelines for development associated with viticulture.	7.1 Prepare specific controls for the agricultural land uses and regulate them through the LEP or DCP. 10.1 Prepare specific controls in the LEP and/or DCP for [a range of agricultural and associated land uses]. 11.1 Prepare guidelines and controls on the location of wineries and cellar doors, dwelling houses, tourist facilities and accommodation.	

3.6.2. Section 11 – Residential and Rural Subdivision

The objective of Section 11 is to *'provide a range of residential opportunities within the rural areas which are in accordance with real expressed demand, compatible with the natural environment, settlement patterns, community aspirations, and economic pursuits of people living and working in the rural areas of Sub-Region'.*

Strategy	Policy Actions	Comment
3. Support the ongoing viability of rural communities.	3.1 Direct population growth away from agricultural areas and towards towns and villages.	**LLR:** Existing LLR areas transferred over to BLEP2012 (no additional impact) but with reduced future yield (esp. BCR) which minimises additional land use conflict. **Existing Holdings:** Short extension of existing holdings for 1 year consistent with strategy 3-5 year period and unlikely to produce significant additional land use conflict and will cease in late 2017. **Boundary Adjustment:** Not applicable. **Cl.4.2A(3)(c):** Clarifies intent of clause to limit dwelling opportunities to environmental planning instruments to minimise impacts on rural lands.
5. Manage current supply of lifestyle allotments.	5.1 Rezone existing zoned 1(c) areas to Primary Production as per Section 6.4.2 and introduce sunset clauses relating to the erection of dwelling houses. 5.2 Manage existing concessional lots.	
7. Identify areas that are suitable for lifestyle blocks.	7.2 Permit subdivision for lifestyle blocks in a controlled staged manner after management of excess supply.	
11. Prevent & manage land use conflicts.	11.3 Protect primary industry through appropriate buffer areas for future development.	

3.6.3. Section 12 – Natural and Scenic Environment

The objective of Section 12 is to *'ensure that natural resources, the scenic environment and conservation values are preserved for the benefit of current and future generations'*. This Proposal has reviewed the constraints of the natural environment on retaining the existing large lot areas and, whilst there are some areas less desirable for growth, there are no sensitive areas that cannot be protected through merit assessment of each application. Without knowing where existing holdings are likely to occur an assessment of the risk cannot be conducted now but can be managed through the merit assessment process.

a) **Water Quality:** The primary issue is in maintaining water quality and setting back development from key riparian watercourses. 'Lifestyle' development has sufficient lot size to achieve this.

b) **Environmentally Sensitive Area:** The amendment will introduce the application of Environmentally Sensitive Areas to the deferred matters which, whilst these issues are still applicable under Section 79C, would provide the support of mapping to improve identification and addressing of issues.

c) **Environmental Hazards:** The amendment does not introduce any new large lot residential zoned areas and/or most local hazards can be addressed on their merits through the development assessment process.

3.6.4. Conclusion

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

4. PROPOSED LEP AMENDMENTS

4.1. Large Lot Residential

The following is a review of the key amendments between the existing BLEP1998 Zone 1(c) and proposed BLEP2012 Zone R5 Large Lot Residential for the subject lands and in summary includes:

a) **Zoning (LZN Map):** All 'Deferred matters' in former Zone 1(c) in BLEP1998 are to be transferred to Zone R5 Large Lot Residential in BLEP2012

b) **Minimum Lot Size (LSZ Map):**
   i) The existing 2ha minimum lot size for the Forest Reef Road (FRR) Deferred Area is transferred from BLEP1998 to BLEP2012 (and included on the relevant Lot Size Map);
   ii) A new 20ha minimum lot size is adopted for the Browns Creek Road (BCR) Deferred Area in BLEP2012 (and included on the relevant Lot Size Map);

c) **Other Maps:** The maps (see list) are all updated to include the most recent mapping provided by NSW Government Agencies for environmentally sensitive areas and state and locally agreed heritage items for the deferred matters that was previously 'masked' for the deferred matters:
   i) Heritage Maps;
   ii) Drinking Water Catchment Maps;
   iii) Natural Resource – Biodiversity Map;
   iv) Natural Resource – Groundwater Vulnerability Map; and
   v) Riparian Land and Waterways Map.

4.1.1. Zone Objectives

Zone R5 BLEP2012

1 Objectives of zone

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Zone 1C BLEP1998

1 Objectives of Zone

The objectives of this zone are:

(a) to promote development of land identified as suitable for rural-residential or small holding development, and

(b) to identify land suitable for future urban development, and for development for other non-agricultural purposes, in accordance with the need for that development, and

(c) to allow a range of rural living styles in appropriate locations within the zone.

The wording between the two sets of objectives is different but effectively aimed at producing the same outcome. Zone R5 has more clearly set out the factors that should be considered in permitting this land use whereas Zone 1C is less clear on the key constraints. These factors would have been considered under Section 79C of the EP&A Act anyway. **No significant impact from change.**

4.1.2. Zoning & Land Use Permissibility

Zone R5 BLEP2012

2 Permitted without consent

Environmental protection works; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Building identification signs; Business identification signs; Camping grounds; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Exhibition homes; Exhibition villages; Highway service centres; Home-based child care; Home businesses; Home industries; Home occupations (sex services); Information and education facilities; Neighbourhood shops; Plant nurseries; Recreation areas; Roads; Roadside stalls; Water reticulation systems; Water storage facilities

4 Prohibited

Any development not specified in item 2 or 3

Zone 1C BLEP1998

2 Without development consent

Exempt development.

Development for the purpose of:

agriculture (other than intensive livestock keeping).

3 Only with development consent

Any development not included in item 2 or 4.

4 Prohibited

Development for the purpose of:

hotels; industries (other than rural, light or home industries); motor showrooms; residential flat buildings; shops (other than general stores).

A key change is that Zone R5 prohibits extensive agriculture. ***Extensive agriculture*** means any of the following:

a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
b) the grazing of livestock for commercial purposes,
c) bee keeping,
d) a dairy (pasture-based).

Zone 1C was intended as a cross-over between agriculture and hobby-farming whereas Zone R5 recognises that lifestyle lots are often in conflict with commercial agriculture. With lots sizes at 2 hectares in FRR agricultural uses become less viable (unless intensive which is prohibited in both zones) and potential for land use conflict increase. On the larger 20ha lots in BCR there is unlikely to be anything other than grazing but it is less likely to be 'commercial' and more likely to be hobby farming.

Another key change is that Zone R5 is a closed zone whereas Zone 1C is open – i.e. it permits a range of activities that are not prohibited – of which there is only a limited list compared to Zone R5. Again – this goes back to the primary role of the zone and the amenity of rural residential dwellings where commercial/industrial uses of any significant scale would generally conflict with this amenity.

4.1.3. Existing Minimum Lot Size & Dwellings

The minimum lot size for subdivision in both Zone 1(c) and Zone R5 for FRR will be 2 hectares which is consistent but not the original intent of the Subregional Strategy. However, for the BCR area it will be increased to 20ha that substantially reduces development yield in accordance with the intent (if not the recommendation) of the Subregional Strategy. In effect this transition will have no impact in terms of additional dwelling potential or fragmentation of agricultural lands. Any new dwellings would need to have approval for any on-site effluent management so minimum lot size can be assessed for each application.

4.1.4. Subdivision Clause

The effect of including the Deferred Matters into BLEP2012 and revoking BLEP2012 is that Clause 15 of BLEP1998 that provides for subdivision for the purpose of dwelling houses in Zone 1(c) is now replaced by Clause 4.1 – Minimum subdivision lot size.

Clause 15 of BLEP1998 states

(1) The Council must not consent to the subdivision of land within Zone No 1 (c) unless each allotment intended to be created primarily for the purpose of a dwelling-house has an area of 2 hectares or more.

(2) The Council must not grant consent to the subdivision of land within Zone No 1 (c) unless it has made an assessment of:

(a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density of the allotments proposed to be created, and

(b) the desirability of providing a range and mixture of allotment sizes, and

(c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services and the physical suitability for on-site disposal of wastes, and

(d) the capability of the land to accommodate septic disposal of household waste, and

(e) the standard and capacity of public roads serving the land relative to the likely volume of traffic to be generated as a consequence of the density of the proposed development, and the means available to improve roads to a standard appropriate to the level of traffic likely to be generated, and

(f) the availability of other similar kinds of services and social services relative to the likely demand for those services and costs of their provision, and

(g) the purpose for which the land is to be used after subdivision.

***Note.** See Schedule 10 for an exception to the clause (certain land fronting Richards Lane and Springvale Road, Millthorpe)*

Clause 4.1 of BLEP2012 states:

(1) The objectives of this clause are as follows:

(a) to minimise the cost to the community of:

(i) the fragmented and isolated development of rural land, and

(ii) providing, extending and maintaining public amenities and services,

(b) to ensure that the character and landscape setting of an area is protected and enhanced by any development,

(c) to ensure that development is undertaken on appropriately sized parcels of land commensurate with available services (including any associated sewerage system) and responds to any topographic, physical or environmental constraints,

(d) to protect drinking water catchments from over-development that may impact on water quality and quantity in the catchment and drinking water systems.

(2) This clause applies to a subdivision of any land shown on theLot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

It is important to note that Clause 6.8 – Essential Services in BLEP2012 addresses many of the other objectives in Clause 15 of BLEP1998.

4.1.5. Environmentally Sensitive Lands

It must be noted that the Environmentally Sensitive Area maps in BLEP2012 (Biodiversity, Riparian Lands & Watercourses; Groundwater Vulnerability) will all need to be updated because the 'Deferred matters' effectively 'masked' (or made hidden) the operation of these layers in the Zone 1(c) areas that were deferred. Therefore, these layers and their relevant clauses will now apply to the Deferred matters. This brings these lands into line with the other lands throughout the Shire. Many of these issues may have been addressed under Section 79C of the EP&A Act and other clauses of BLEP1998 and the Development Control Plan – so the relative impact of the addition of these controls is unlikely to significantly reduce development potential.

4.1.6. Heritage

The Deferred Area status also resulted in any heritage maps for those areas not showing the adopted heritage items (believed to be all locally listed items) in the deferred matters. The inclusion of the deferred matters in BLEP2012 will require those heritage items to now show on the heritage maps and therefore be subject to the heritage provisions of BLEP2012. A brief review suggests this only affects three (3) items along Forest Reefs Road and these were all listed in the text of Schedule 5 of BLEP2012 anyway (this was apparently not amended when the Deferred matters were introduced) – so the amended mapping has little additional affect.

- Item No.186 – 'Garryowen' homestead, outbuildings and garden – 571 Forest Reefs Rd;
- Item No.267 – Basalt market posts – 368 Forest Reefs Road (corner Spring Hill Road)
- Item No.268 – 'Westbrook' stables, basalt pillars, avenue plantings and outbuildings – 425 Forest Reefs road

'Garryowen' was already listed in BLEP1998 those the other two items appear to be new in BLEP2012.

4.2. Existing Holdings

As stated above the proposed amendment for existing holdings will modify Clause 4.2A Erection of dwelling houses or dual occupancies on land in certain rural protection zones.

In particular it will amend subclause (4) so that instead of the number '3' it will be replaced with the number '5' and read:

> ***(4) Land ceases to be an existing holding for the purposes of subclause (3) (e) if an application for development consent referred to in that subclause is not made in relation to that land within 5 years after the commencement of this Plan.***

This will extend the date of the sunset of existing holdings from 23 November 2015 to 23 November 2017. By the time this Planning Proposal proceeds through Gateway and Public Exhibition and is made by the Minister it is likely to be late in 2016. So in effect it will grant approximately one (1) more year extension for people to make application for a dwelling.

The number of existing holdings still remaining in Blayney Shire has never been accurately determined or mapped. As a result it is not possible to accurately determine how many or where existing holdings

are likely to arise if this extension is granted. However, based on historical applications received by Blayney Council there are rarely more than a handful each year.

In addition, even if there was originally an existing holding it may have been extinguished over time and an existing holding does not guarantee that a dwelling approval will be granted if suitable land is not identified for that dwelling. Therefore, it is estimated that the extension is unlikely to result in levels of additional dwelling approval in rural zones that would substantially compromise the agricultural principles. The potential impacts must also be offset against the benefits to valid existing holding owners who can appropriately activate dwelling approvals.

4.3. Boundary Adjustment

As stated above, DPE has now created a standard instrument boundary adjustment clause and this has been introduced (with minor variations) into a number of rural and regional councils including, but not limited to: Wellington (Cl.4.2B), Bathurst (Cl.4.2D), Port Macquarie Hastings (Cl.4.2C), and Griffith (Cl.4.2G) (for example).

There are a number of different versions of the objective of this clause but they all seek to achieve the same thing. The more commonly adopted wording is:

> *The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.*

Some councils apply this clause to their rural, environmental and large lot residential zones. It is Blayney Council's intent to only apply this to the rural zones (Zone RU1 Primary Production and Zone RU2 Rural Landscape). All Environmental Zones have been removed from BLEP2012 and there is no requirement to extend boundary adjustments to Large Lot Residential areas at this time.

There are several versions of the operational part of the clause that set out the matters that Council must consider before it can grant the subdivision/boundary adjustment. The Griffith/Port Macquarie Hastings clause(s) seem the simplest and clearest. The following is indicative wording based on those clauses that may be suitable for Blayney (subject to legal review):

> *Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that:*
> *(a) the subdivision will not create additional lots or the opportunity for additional dwellings, and*
> *(b) the number of dwellings or opportunities for dwellings on each lot after subdivision will remain the same as before the subdivision, and*
> *(c) the potential for land use conflict will not be increased as a result of the subdivision, and*
> *(d) if the land is in Zone RU1 Primary Production or Zone RU2 Rural Landscape —the agricultural viability of the land will not be adversely affected as a result of the subdivision.*

The Wellington / Bathurst clauses are more detailed about detailing the term 'land use conflict' and use a range of words to expand including:

- Likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development
- Likely to be incompatible with a use in the vicinity or on adjoining land
- Taking into account any measures proposed by the applicant to avoid or minimise incompatibility;
- Taking into account the natural and physical constraints of the land.

In our view the additional wording in the Wellington/Blayney clauses is a bit repetitive and replicates standard Section 79C EP&A Act assessment requirements and is not required so the simpler

Griffith/Port Macquarie Hastings clause is preferred. However, this is partly up to the DPE legal division to write the appropriate legal wording.

4.4. Clause 4.2A Amendments

The amendment is to Clause 4.2A Erection of dwelling houses or dual occupancies on land in certain rural protection zones.

Firstly, the heading could be amended to remove the word 'protection' as the correct heading is 'rural zones' ('protection' is likely to be associated with 'environmental protection' – and the Environmental 'E' zones are not included in this clause.

Secondly, the intent is to modify subclause (3)(c) to add the words *'under an environmental planning instrument'* before the words *'before this Plan'* in that subclause. Therefore subclause (3)(c) will read:

> *is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*

5. 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*'.

5.1. 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.

Please see *Section 1.1 – Aims of Amendments* above.

5.2. 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.

Please see *Section 4 – Proposed LEP Amendments* above.

5.3. 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:

Please see *Section 2 – Issues & Justification* and *Section 3 – Subregional Land Use Strategy* (above) for more details.

5.3.1. SECTION A

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

This Planning Proposal includes what is effectively an 'addendum' to the Subregional Rural and Industrial Land Use Strategy ('Subregional Strategy') to justify any alignment with or change from the Strategy and Actions recommended in the previously adopted strategy.

We have combined the large lot residential and rural issues because they relate to 'lifestyle dwelling lots' in rural areas and the issues and solutions are intertwined or address general rural development matters (as all of the existing holding, LLR, boundary adjustment issues are in rural areas and covered by the Subregional Strategy).

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

The only method to address these issues is to prepare a Planning (Rezoning) Proposal ('PP') to amend the current local environmental plan(s).

5.3.2. SECTION B

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

As stated above, the Subregional Strategy applies to the rural and environmentally zoned lands (outside of key settlements) across the Councils of Cabonne, Blayney and Orange City including large lot residential / rural residential land. We have demonstrated in Section 3- Subregional Land Use Strategy (particularly Section 3.6) that the particular Strategies & Actions are generally consistent or the impact is relatively minor for a limited time.

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

The Subregional Strategy addressed above and in Section 3 of this Proposal is the primary strategy that directly addresses rural and environmental areas outside of the key towns/villages in Blayney LGA.

The only other local strategy that has high level objectives for development in Blayney LGA is the *Community Strategic Plan 2025*. Its purpose is to identify the community's main priorities and aspirations for the future and to plan strategies for achieving those goals but it does not provide specific goals relevant to the proposed amendments that haven't been addressed in relation to the Subregional 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 as follows:

SEPP No.30 – Intensive Agriculture SEPP defines when intensive livestock agriculture will require development consent and consideration of public feedback, pollution, and measures to mitigate potential adverse impacts. The proposed amendments are unlikely to have any additional impacts on intensive agriculture across the Shire and land use conflicts are addressed above. Therefore, the Proposal is consistent with this SEPP.
SEPP No.44 – Koala Habitat Protection Blayney is a listed LGA to which this SEPP applies. This policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The transferral of existing large lot residential areas to BLEP2012 will have no additional impact and, instead, the increase in minimum lot size for BCR is likely to have a potential positive affect. Existing holdings are expected to have a negligible additional affect and can be managed during the assessment process to minimise vegetation impacts. The biodiversity overlay and control in BLEP2012 will also aid in protecting significant stands of native vegetation through the area. Therefore, the Proposal is consistent.
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. The transferral of existing large lot residential areas to BLEP2012 will have no additional impact and, instead, the increase in minimum lot size for BCR is likely to have a potential positive affect. Existing holdings are expected to have a negligible additional affect. This can be addressed as part of any development application for these additional uses as they require consent. If any contamination is found then it will be remediated in accordance with SEPP55 and the relevant guidelines / policies. Therefore, the Proposal is consistent with this SEPP.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007 This SEPP applies to land identified as having mineral potential. The most relevant map is the Mineral Resource Audit map provided by the former Department of Mineral Resources in 2010. However, as the site analysis section demonstrates, the protection of mineral resources has been somewhat weakened by recent approvals within potential mineral resource audit areas that have been accepted by the Department governing mineral resources. Therefore, whilst on its face the ongoing subdivision potential in these areas is inconsistent – the reality is that most of the affected areas have already achieved the

maximum subdivision potential so additional impacts are limited and the Mineral Resource Map does not represent the latest position of NSW Resources and Energy.
SEPP (Infrastructure) 2007 This SEPP is concerned with appropriate opportunities for infrastructure development throughout the State. The transfer of existing large lot residential areas to BLEP2012 would not be inconsistent with future infrastructure provision. Neither area is located on a State or Regional Road or a railway line. The change in zoning is unlikely to significantly increase development potential (particularly dwelling potential) so traffic generation is unlikely to require RMS consideration. Therefore, the Proposal is consistent with this SEPP.
SEPP (Rural Lands) 2008 This policy aims to facilitate the orderly use and development of rural lands, identify Rural Planning Principles, reduce land use conflicts, and identify State significant agricultural land. The Rural Planning Principles are as follows: *(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,* *(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,* *(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,* *(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,* *(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,* *(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,* *(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,* *(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.* Section 2 – Issues and Justifications addresses in more detail how the proposed amendments will have minimal if any additional impact and overall the potential for land use impacts will be reduced consistent with the SEPP.

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 - 1.2 Rural Zones (1 July 2009) This direction seeks to protect rural zoned land from being rezoned for another use or increase the permissible density of that land. There is no proposal to change the zoning of rural land. The decrease in future additional yield along Browns Creek Road more than offsets any minor increase in rural dwellings from existing holding extension for one year. The agricultural potential of the lands has been addressed also in the Site Analysis Section above.
1. Employment & Resources - 1.3 Mining, Petroleum Production and Extractive Industries This Planning Proposal has demonstrated that the proposed development will not create any significant additional impact on any known or likely mineral resources in the area according to the former Department of Mineral Resources – Audit Map 2012. This has been addressed also in the Site Analysis Section and the SEPP review above.
1. Employment & Resources - 1.5 Rural Lands The objectives of this direction are to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes. Again, the decrease in future additional yield along Browns Creek Road more than offsets any minor increase in

rural dwellings from existing holding extension for one year. The agricultural potential of the lands has been addressed also in the Site Analysis Section above.
2. Environment & Heritage - 2.3 Heritage Conservation The proposal seeks to map the heritage items for the 'Deferred matters' (though these items remained listed in Schedule 5 of BLEP2012. Therefore, the net benefit is clarification of the existing heritage items and no loss of heritage protection. Other impacts in rural areas can be addressed through the assessment process.
3. Housing, Infrastructure & Urban Development - 3.4 Integrating Land Use and Transport (1 July 2009) It is recognised that large lot residential development is not the most efficient way to prevent reliance on private vehicles. But as these are existing areas and it is nonsensical to end up with pockets of rural subdivision it makes sense to allow continued subdivision in existing zoned areas where the market supports it, albeit with reduced future potential due to an increase in MLS along BCR.
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* and has been addressed also in the Site Analysis Section. Whilst there is always a chance of flooding along the key watercourses in each catchment, historically this has been minor and is unlikely to significantly affect development potential for rural land uses. Any known flood impacts can be addressed during the assessment process.
4. Hazard & Risk - 4.4 Planning for Bushfire Protection As stated in the Site Analysis Section, there are only limited areas of bushfire prone land and these are unlikely to significantly affect the development potential of the land for rural and associated uses. Each development application can address site specific issues in accordance with *Planning for Bushfire Protection 2006*.

S.3.3. SECTION C

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

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

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

There are no additional impacts from the transition of existing key controls (zoning and minimum lot size) from the deferred Zone 1(c) areas across to Zone R5 Large Lot Residential except for minor differences in the wording of the controls. Any environmental effects from further subdivision of existing large lot residential land can be addressed through merit assessment of development applications for subdivision and dwellings. Any affects from additional existing holdings or boundary adjustments can be assessed as part of the development application process.

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

There are social and economic pros and cons of large lot residential development, however, the market is still demanding this as **one of** the housing choice solutions in Blayney Shire. As these are existing large lot residential areas there are **no additional** social and economic effects from maintaining the existing zoning. The increase in minimum lot size for BCR has the effect of potentially reducing yield and value though the development and market potential of these land is believed to be heavily constrained and by ensuring each holding can have at least one (1) dwelling the economic impact is somewhat mitigated.

5.3.4. SECTION D

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

This is transition of existing zoned large lot residential areas to BLEP2012 is unlikely to place any significant additional pressure on infrastructure and the decreased yield potential in BCR is likely to reduce potential yield and requirements in that area. The infrastructure required for large lot residential subdivision is generally limited to electricity and telecommunications as water and sewer are addressed on-site with a suitable lot size. There are no known infrastructure constraints to continued subdivision and dwellings in these areas at these low densities. Any infrastructure requirements for existing holdings or boundary adjustments can be dealt with at the time of development assessment and are covered by Clause 6.8 Essential Services in BLEP2012.

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

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

Only the amendments to the Large Lot Residential areas will have any impacts on BLEP2012 maps as the remaining amendments are to clause wording only. We have not yet prepared the updated LEP maps for the Deferred matters but believe there is sufficient description and associated maps attached to this proposal for it to be considered for Gateway and the preparation of maps can be conditioned.

5.5. Part 5 - Community Consultation

5.5.1. Key Stakeholders

The key stakeholders for this Proposal include:

a) The affected land owners in large lot residential and rural zones across the Shire;
b) Department of Planning & Environment (Gateway Determination process);
c) Office of Environment & Heritage (within DPE) relating to heritage, environmental and water issues.
a) NSW Department of Primary Industries (NSW Agriculture) – regarding any potential land use conflicts with surrounding agricultural land;
b) NSW Department of Primary Industries (Office of Water) – regarding potential future bore water supply;
c) Local Land Services (LLS) including the former Lachlan Catchment Management Authority;
d) Orange City Council and Cabonne Council as the other key stakeholders in the Subregional Strategy.

5.5.2. Proposed Notification

In addition to the previous notification of key government agencies during the preparation of this Planning Proposal, Council is likely to provide a letter to all key agency stakeholders listed above of the dates that the Planning Proposal is on public exhibition and providing opportunity for further submissions (if required).

5.5.3. Proposed Public Exhibition & Community Notification

Public Exhibition

Council will provide public notice of a proposed resolution to rezone land and specify a 28 day (4 week) period during which submissions may be made to Council.

Notice will include:

a) Resolutions of Council that progress this Planning Proposal;
b) Notification in the *Blayney Chronicle* newspaper prior to the public exhibition period;
c) Notification through multiple media outlets;
d) Provision of a copy of the Gateway Determination, Planning Proposal and supporting information at the Council Offices in Blayney;
e) Any other requirements of the Gateway Determination made by the Department.

Submissions

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

Public Hearing

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

6. APPENDICES / ANNEXURES

6.1. LARGE LOT RESIDENTIAL - SITE ANALYSIS

6.1.1. Overview

A brief desktop review of known constraints and opportunities has been considered to inform the proposed amendment and determine if there are other factors that may affect the proposed planning outcomes.

The following references are used for the two areas:

a) Forest Reefs Road Zone 1(c) – Strategy Area SA9 ('SA9')

b) Browns Creek Road Zone 1(c) – Strategy Area SA10 ('SA10')

Please note that the Environmentally Sensitive Area maps in BLEP2012 CANNOT be used as a guide because the Deferred matters do not show any data within the Deferred matter boundaries. Therefore, we have relied on the original ESA mapping (2006/2008).

Environmental Constraint	SA9 – Forest Reefs Road	SA10 – Browns Creek Road
Topography	No issues (drainage issue below)	Some slopes > 18 degrees
Groundwater	Moderately high vulnerability	No vulnerability
Watercourses	1st, 2nd & 3rd order watercourses	1st, 2nd & 3rd order watercourses
Riparian Corridors	Cowriga Creek eastern boundary	Sugarloaf Creek central
Flooding & Drainage	Low lying lands – drainage issues	Limited drainage issues
Biodiversity	Limited sensitivity	Sensitivity to south & west (high)
Bushfire	No bushfire prone lands	Nearby bushfire prone lands
Land Capability	Class 3 & 4 lands	Class 5 & 6 lands
Strategic Agricultural Lands	Strategic Agricultural Land	Not Strategic Agricultural Land
Mineral Potential	Western area affected	Western area affected + Browns Creek Mine
Road infrastructure	Reasonable accessibility	Some areas limited access
Water infrastructure	No current access – but adjacent	Runs through eastern part
Electricity infrastructure	Reasonable access but extensions required	Significant extensions required in south and west

LEGEND - Development Potential for Dwellings	Few Constraints	Some Constraint (but manageable)	Moderate constraint (larger lot sizes may be required)	Significant constraint may preclude lifestyle development
Relative weightings				

6.1.2. Topography & Views

The Subregional Strategy highlights that there are no areas within FCR/SA9 where the slope exceeds 18 degrees and there would be a need to avoid significant development to protect against erosion and landslip. In general the topography is undulating and ranges from RL900-910 near Cowriga Creek to RL930 in the west (near Spring Terrace Rd) and RL940 in the north (off Spring Hill Rd).

As there are no regional views to this location or heritage sensitivities it is not significant in terms of scenic protection other than avoiding poorly located and designed development.

The greatest impact of topography in this area is that much of the land is low-lying and adjacent to watercourses/drainage lines so there are some potential flood prone lands and drainage issues that may affect development potential (see below).

In SA10 there are significant areas in the west, north and east of SA10 where slope exceeds 18 degrees and significant development is likely to be precluded (see diagonal hatching). Lowest levels are along the primary watercourses around RL900 rising up to the north at RL1010, west at RL980 and east at RL950.

As there are no regional views to this location or heritage sensitivities it is not significant in terms of scenic protection other than avoiding poorly located and designed development (Note that the areas in Blayney's scenic protection zone have already been removed from the former Zone 1(c) areas).

Therefore, topography is a significant constraint to achieving efficient large lot residential subdivision and reducing road and servicing costs meaning that larger lot sizes will be required and development is less likely to be economically or environmentally viable.

6.1.3. Water

Groundwater

The Natural Resource – Groundwater Vulnerability Maps in BLEP2012 in Appendix 2 (and the ESA – Sensitive Water Resources Maps in Appendix 3) do not currently apply to the Deferred matters. However, the original mapping shows there is a moderately high groundwater vulnerability extending across the entire SA9 area.

This is unlikely to be a significant issue in terms of use/storage of hazardous chemicals for a large lot residential zone (other than standard herbicides/pesticides for management). Large lot residential lots may require bores for non-potable uses but the large lot size combined with limited irrigation opportunities generally means that water consumption is unlikely to be a major impact but must still be addressed. However, these should both be considered as part of any future subdivision.

SA10 is not in a groundwater vulnerable area.

Drinking Water Catchment

Neither of the Strategy Areas are within a drinking water catchment for Suma Park Dam or Lake Rowlands (though they may be within downstream catchments for other LGA but pathogen decay is likely to reduce risk of contamination).

Watercourses

Watercourses are present throughout both Strategy Areas, most of which are not perennial (constantly flowing) and provide localised drainage as 1st, 2nd or 3rd order streams. It is assumed that only the main watercourses or riparian corridors (see below) are perennial and potential freshwater fish habitats and are more critical for environmental protection but contamination from on-site effluent disposal is an issue that needs to be addressed during any development application(s).

Riparian Corridors

For SA9 the most significant riparian corridor is Cowriga Creek that forms the eastern boundary of the area and drains to the south towards SA10.

For SA10 the most significant riparian corridor is Sugarloaf Creek that runs north-south through the middle of the Strategy Area and drains to the south-west towards Cowriga Creek.

Generally, where building envelopes and on-site effluent management are outside of 40m from these systems the impact is likely to be minimal and can be address through the DA process.

Flooding & Stormwater Management

There are no Flood Planning Maps in BLEP2012 for the two Strategy Areas. There is anecdotal evidence that localised flooding or poor drainage conditions occur along low-lying areas in SA9 during heavy stormwater events. This may also affect Sugarloaf Creek in SA10. However, no widespread flooding is likely to impact on large lot residential subdivision where dwellings are setback from watercourses and on higher elevation land.

6.1.4. Flora, Fauna & Potential Biodiversity

There is no data in the original 2006 ESA mapping that suggests that specific threatened flora or fauna is present in either Strategy Area. In addition, we have utilised Council's GIS data and the NSW Natural Resource Atlas to confirm there are no known threatened or endangered species (flora or fauna) or ecological communities in the Strategy Areas including no sensitive wetlands or reserves or former DECC estates. Generally the change of zoning is not likely to significantly increase activities that would impact on the Threshold Sustainability Criteria.

There is very limited biodiversity sensitive vegetation remaining in SA9 – mostly made up of vegetation that has been over-cleared (<30% remaining in the LGA). This is primarily in the northern part of the area along near Spring Hill Road and most of this has already been subdivided with limited small areas along the watercourses. This is not a major constraint to further subdivision.

There are some significant areas of biodiversity sensitive vegetation in the southern and western areas of SA10 - – mostly made up of vegetation that has been over-cleared (<30% remaining in the LGA). These areas are generally well away from the primary road systems where access is poor and there is a lower likelihood of short term subdivision. These areas could be better protected by partial removal from the large lot residential zone.

6.1.5. Bushfire

According to the Rural Fire Service (2009) *Bushfire Prone Land Map* there are no bushfire prone lands within the Strategy Areas. However, there is some bushfire prone land to the south and south-west of SA10. This is unlikely to significantly impact on development potential of SA10 though some additional asset protection zones may be required to manage grass fires that extend from any bushfire prone lands.

6.1.6. Land

Historical Land Use(s) & Contamination

There are no known listed contaminated sites listed in SA9 or SA10 under the *Contaminated Land Management Act 1997* shown on the EPA website but that does not mean that contaminated site don't exist. The predominant historic use of land in these areas has been for grazing and other agricultural practices and there could be some expectation of chemical use with low level soil contamination. However, the change in zoning from Zone 1(c) to Zone R5 does not increase the development potential of these lands. Site specific contamination can be dealt with during the development assessment process for any residential uses.

Geology & Soils

The ESA – Sensitive Land Resource mapping for the Shire (See Appendix 3) suggests that SA9 is not affected by many sensitive land issues except for small patches of salt affected land. As discussed below, the Land Capability Class 5 & 6 lands throughout SA10 have a moderate sensitivity and reduced agricultural potential. The NSW Natural Resource Atlas mapping also suggests the areas are not affected by dry-land salinity (this occur generally to the east and south east of the Shire).

Mineral Potential & Mine Subsidence

According to the Mineral Resources Audit Map (Aug, 2012)(see Appendix 3) prepared by the former Department of Mineral Resources (see map excerpt below) the Forest Reefs Potential Resource Area extends over the western edge of both Strategy Areas.

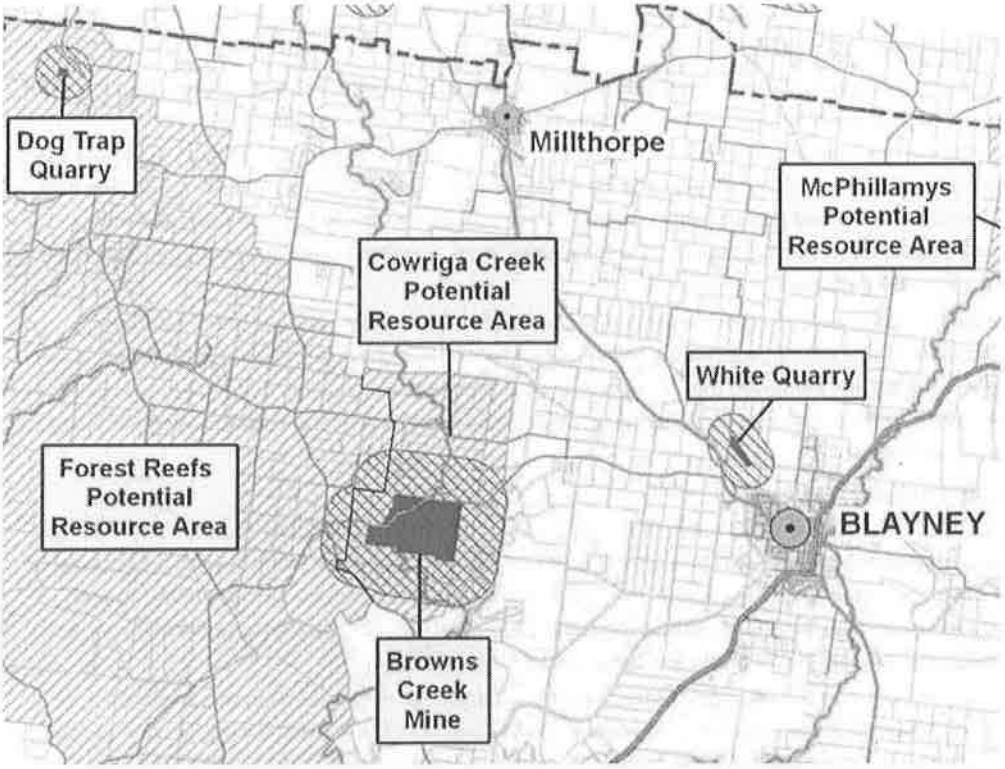

FIGURE 8: EXCERPT FROM MINERAL RESOURCE AUDIT MAP (2012) (SOURCE: DPI)

For SA10 there is the additional overlay of Browns Creek Mine and its buffer zone. Whilst this mine is currently inactive it is used by Australian Native Landscapes (ANL) for stockpiling landscape materials and could potentially be reactivated if the economic conditions were suitable (though Resources & Energy letter of 1/9/14 states that this is unlikely due to logistical difficulties and if mining were to resume most of the activity is expected to take place to the west of the existing open cut, away from the LLR zone and proposed dwellings).

Under the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* Councils must consider the impact of development on an existing mine or extractive industry. A significant part of the reasoning in the Subregional Strategy for down-zoning of land in the western areas of both SA9 and SA10 was the potential conflict between existing and future mining and large lot residential uses.

However, since that time several development applications for subdivision at the western margins of SA9 and SA10 have been lodged with Council and forwarded to DPI for comment. In general these have been approved. DA114/2012 (Milner) is indicative of the amended position of DPI (as clarified by letter of 1/9/14 attached).

Whilst the Mineral Resource Audit map extends the Potential Resource Area at least 800m across the Zone 1(c) / SA10 area and this was the original position of DPI (letter dated 29 March 2012 Appendices), the DPI has subsequently reduced their 'area of concern' to 500m to the Browns Creek existing mining leases (~50m into the Zone 1(c) / SA10 area – by letter dated 1 September 2014).

Therefore, the argument that protection of mineral resources may sterilise large areas of SA10 have proven to be unsupported by DPI and therefore, Council cannot justify removal of these areas on this basis alone.

6.1.7. Agricultural Potential

Role of Agriculture in Blayney Shire

It is important to put this amendment in perspective of the role of agriculture in Blayney Shire. In 2011 (Australian Bureau of Statistics – Region Summary) the Blayney Shire (SA2) had 134,271ha of agricultural land (out of 164,254ha) of which there were 222,498ha sheep, 66,280 meat cattle and 1,021 dairy cattle – so it was dominated by grazing. Only very limited areas were used for broad-acre crops (2,590ha) and fruit and nuts excluding grapes (32ha). The agriculture, forestry and fishing industry employed the largest percentage (12.8%) of the workforce. The gross value of agricultural production was $38.2 million dollars.

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

Agricultural Land Classification

Agricultural land classification refers to the agricultural capacity of the land and the restrictions on land use arising from landform, soils and agronomic data. The Land Capability of the Site has been mapped by NSW Agriculture using the eight (8) class system of the Soil Conservation Service (1988)/ former Department of Land & Water Conservation (2002) (See Agfact AC.25). According to the mapping in the Subregional Strategy (Local Profile – Figure 6.8 – Land Capability):

a) SA9 is mostly on Land Capability Class 3 which is suitable for regular cultivation with good conservation and management. There are small pockets of Class 4 which is suitable for occasional cultivation / permanent pasture. Whilst this land has relatively high agricultural potential the existing subdivision and development pattern has effectively removed it from this land use.
b) SA10 is outside the Land Capability Classes 1/2/3 (prime agricultural land) and Classes 7/8 (constrained lands). For SA10 the key issue is Land Capability Class 5 & 6 lands to the south of the Strategy Area that limits agricultural potential and may pose some constraints to development.

Central West Pilot Mapping Project

In 2011-2012 the NSW Department of Primary Industries (DPI) investigated a new process for mapping agricultural lands in a pilot project for the Central West including the Site. It looks at agricultural development potential and resources and implications for land use planning. This study found that:

a) SA9 was important for grazing land and medium wool land;
b) SA10 had some important grazing land and medium wool land but less so to the south.

This accords with the land capability classifications above.

Biophysical Strategic Agricultural Land Mapping

Biophysical Strategic Agricultural Land (BSAL) is land with high quality soil and water resources capable of sustaining high levels of productivity. The BSAL Mapping is given legal authority by *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and is primarily a tool to avoid conflicts between mining and prime agricultural land and NOT for determining prime agricultural land.

Strategic Agricultural Land Map Sheet STA_023 covers the Strategy Areas and demonstrates that there is biophysical strategic agricultural land to the west of Millthorpe (SA9) but not to the west of Blayney (SA10). However, again the existing development pattern of SA9 has to a large extent reduced its agricultural potential and there is limited additional impact from subdivision of the remaining larger lots.

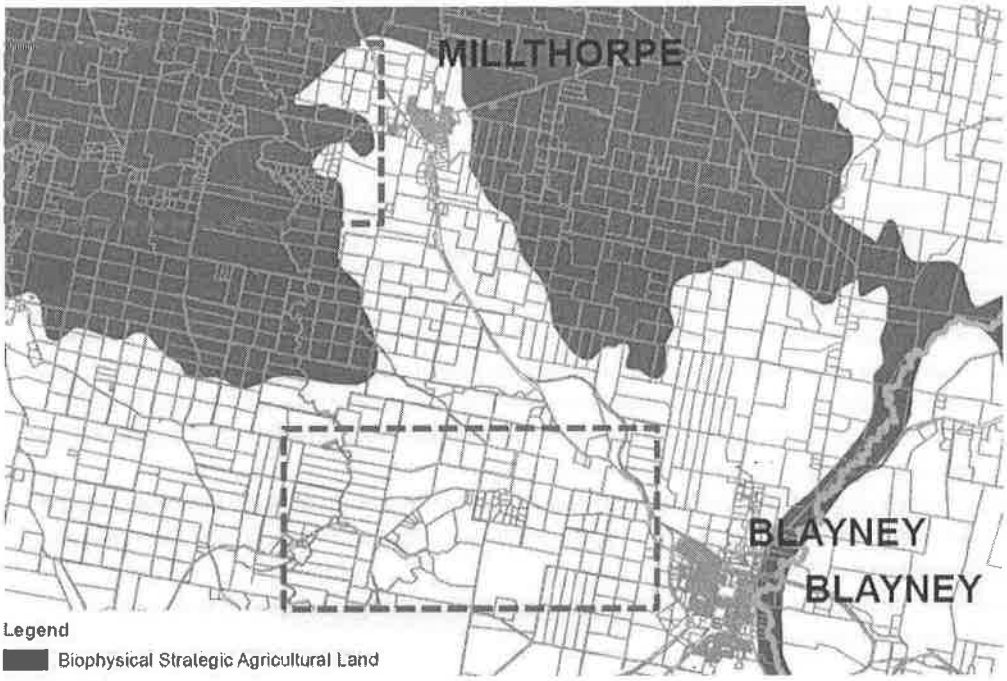

FIGURE 9: EXCERPT FROM STRATEGIC AGRICULTURAL LAND SHEET STA_023.

6.1.8. Culture & Heritage

There are no listed non-indigenous heritage items in BLEP2012 in either Strategy/Deferred Area according to a 2012 AHIMS Search. However, this doesn't preclude items of Aboriginal heritage being found along significant watercourses and key ridgelines including Cowriga Creek, Sugarloaf Creek and possibly ridgelines around Blayney. However, as this is a proposed change from Zone 1(c) to Zone R5 – the main potential impact arises from the continued potential for subdivision in these areas that is perhaps best addressed during the development assessment process.

6.1.9. Roads

There is a higher density / road frontage in SA9 with Forest Reefs Rd / Carcoar Tallwood Mill Rd / Spring Hill Rd / Sprint Terrace Rd compared to SA10 where Browns Creek Road provides the primary road access for the entire area. Internal roads will be required wherever sight lines restrict new access points and/or densities do not have sufficient road frontage. Road costs will be a significant constraint to development of much of western and southern SA10.

6.1.10. Utilities

Potable water lines extend to the end of Charles Booth Way to the east of SA9 and pass through the eastern section of SA10. However, any further connections are likely to be limited by the cost and security of supply of the CTW water systems. This is a slight opportunity for the eastern sections of both areas but extension to the western areas is less likely. Most lots will require rainwater for drinking and possibly a bore for non-potable uses. Sewer is not extended to either Strategy Area and unlikely to occur. On-site effluent management is likely to be supported on 2 hectare lots (subject to site specific studies). Low voltage electricity extends down most public roads. As stated above, there is a lower degree of access to existing lines in SA10 and extension of these lines may be a significant constraint to development of much of western and southern SA10.

6.2. LARGE LOT RESIDENTIAL - DEVELOPMENT UPDATE

The most recent comprehensive review of development in these areas occurred in October 2012. Subsequently, a Desktop Update was completed in November 2014 of any additional Development Approvals for Subdivision or new Dwellings or newly registered lots. In January 2016 this desktop review was updated again and only highlighted a limited number of changes so the actual figures below have not been amended since November 2014.

It is important to note that the 2012 assessment was of all of the former Zone 1(c) land along Forest Reefs Road and Browns Creek Road which is larger than the current Deferred matters / Strategy Areas that are currently being considered, particularly for Forest Reefs Road – so this has been adjusted accordingly.

This review suggested there are some findings in the Subregional Strategy which need to be updated:

a) In particular, recent subdivision and dwelling development across the Forest Reefs Road LLR area has meant that it can no longer be said that there has been 'limited take-up of this subdivision opportunity' in SA9 and pockets of large lot residential development exist through most of this area reducing the argument to support down-zoning.

b) There has also been additional take-up of opportunities in Browns Creek Road LLR area (SA10) but not to the same extent but down-zoning would still leave isolated pockets of large lot residential land that is less than ideal.

Therefore, this necessitates a re-think about the appropriate development controls to be applies to these areas for the future.

6.2.1. Existing & Approved Lots & Development (November 2014)

We have utilised the data from the internal October 2012 report and updated it by desktop review including any approved subdivisions, dwellings or registered lots up to November 2014 **(Note: This has not been confirmed by site analysis)**.

Total Lots	Existing Lots (Registered LPI)	Approved Additional Lots	Existing/App. Dwellings	Vacant Lots	Other
Forest Reefs Road Zone 1(c)					
257	131	126	101	155	1 (2GZ Radio Antennae)
Browns Creek Road Zone 1(c)					
109	46	63	20	89	0
Total Zone 1(c) BLEP1998 – Forest Reefs Road + Browns Creek Road					
366	177	189	121	245	1 (2GZ Radio Antennae)

Forest Reefs Road SA9

A desktop review in November 2014 in SA9 suggests there are at least 77 registered lots; 27 additional approved lots (not registered); and a total of 104 lots.

Whilst there are still 5-8 larger parcels greater than 5-10ha, these are limited. On this basis, there is only limited additional subdivision potential in SA9 – possibly in the order of 40-50 lots. For this reason, there is little justification for down-zoning this area as it would leave a large number of lifestyle lots in a rural zone. If there is continued registration of lots and dwelling construction then there are arguments to state that the additional supply this land offers may not prevent other areas around Millthorpe from being developed for large lot residential purposes.

Browns Creek Road SA10

Only five (5) lots at the eastern margin have been removed from the former Zone 1(c) area as part of BLEP2012 so the results noted above are to a large extent compatible with the results for the Deferred Area (SA10). Whilst there are 6-8 larger parcels greater than 5-10ha that have not yet been subdivided, these are again limited.

To down-zone the entire area to a rural zone would leave significant pockets of isolated development that would continue to conflict with agricultural activities. Whilst Council has considered removing some of the un-subdivided land around the margins, it has determined that this will occur once a three (3) year transition period has passed to determine if the market would support any further subdivision in these areas. It is likely that the down-zoning of un-subdivided areas would need to occur prior to switching on new areas.

6.2.2. Estimated Additional Subdivision Potential

Forest Reefs Road

There were only limited lots that by November 2014 were not already been subdivided to their maximum capacity. The following assumptions of future subdivision capacity are made in this Review **(Note that this does NOT indicate that these subdivision yields are achievable or would be approved by Council):**

Very limited additional subdivision potential

The previous review assumed that the following lots (4) would have no additional subdivision potential:

- Lot 14 DP1078285 (741 Forest Reefs Road – Owner: Mayville Pty Ltd ~30.7ha of the total 43.4ha) – split lot with rural zone / within the Forest Reefs Potential Resource Area and buffer to the Browns Creek Mine (this is subject to the current development application not being approved);
- Lot 811 DP818110 (648 Spring Terrace Road – Owner: Mr CA Bourke ~17.8ha) - within the Forest Reefs Potential Resource Area;

In addition a large number of lots of less than 4 hectares in size are not expected to have any additional subdivision potential with an MLS of 2 hectares.

Limited additional subdivision potential

The following lots (5) could possibly produce up to **5 lots**:

- Lot 413 DP1053962 (Mr RJ Carney) – access – assume additional 1 lot;
- Lot 21 DP1000756 (Mr BL Abra) – drainage – assume additional 1 lot;
- Lots 2, 4 & 5 DP1070394 (mixed owners) – assume additional 1 lot each – total 3 lots.

Significant subdivision potential

The following lots (13) could possibly produce up to **90 lots**:

- Lot 736 DP807786 (Mr GN Simmons) – watercourses & drainage – assume additional 9 lots;
- Lot 324 DP815503 (Mr GN Simmons) – watercourses & drainage – assume additional 9 lots;
- Lot 1 DP1079796 (Mr DA Wallace) – access – assume additional 3 lots;
- Lot 178 DP750360 (Mr YE Wallace) – watercourses & drainage / access– assume additional 12 lots;
- Lot 209 DP1086768 (Mr BR Kingham) – approved subdivision isolates majority of land / main homestead less likely to be subdivided / heritage item – assume an additional 5 lots;
- Lot 1 DP1086268 (Mr AH Oborn) – watercourses / drainage / heritage item – assume add. 9 lots;
- Lot 1 DP546309 (Mr RB Hayne) – riparian corridor / drainage / contours / heritage item – assume additional 9 lots;
- Lot 1 DP1072137 (Mr RA Kleinshafer) – watercourse / drainage /access – assume additional 3 lots;
- Lot 2 DP546309 (Mr PA Logan) – riparian corridor / drainage / contours – assume additional 6 lots;

- Lot 3 DP546309 (Mr PW Amos) – assume additional 11 lots;
- Lot 2 DP901611 (Mr GD Seligman) – drainage / access – assume additional 4 lots;
- Pt Lot 70 & 142 DP750384 (Mr FG Oborn) – heritage / railway – assume additional 5 lots.

Total Estimated Subdivision Potential

Therefore, the Forest Reefs Road Zone 1(c) area may only have the capacity for an additional ~**95 lots** in the existing zoning boundary (in addition to the approved vacant small lots).

Browns Creek Road

As summarised above, several of the lots in the existing Zone 1(c) area are heavily constrained and would not be able to subdivide down to 2 hectare, if at all. The following assumptions were made in the previous review:

Very limited additional subdivision potential

The following lots (12) would have no additional subdivision potential:

- Lots 182, 191, 192, 193, 194 & 300 DP750390 (Mr GJ Keen) – steep / heavily vegetated / scenic protection / limited access (**most not in Deferred Area**);
- Lots 201 & 202 DP750390 (Mr RH Matthews) – too steep / limited access;
- Lot 3 DP819600 (Mr AD Kent) – too steep / limited access / riparian corridor;
- Lot 202 DP6013351 (Mr PND Blake) – too steep / limited access / riparian corridor;

In addition there are a number of existing and approved lots of less than 4 hectares in size that are not expected to have any additional subdivision potential with an MLS of 2 hectares.

Limited additional subdivision potential

The following lots (8) could possibly produce up to **18 lots**:

- Lot 485 DP1081771 (Mr RA Baker) – limited land area / access – assume 1 additional lot;
- Lot 1 DP1166095 (Mr MJ Fisher) – steep / limited access - assume 4 additional lots;
- Lot 1 DP34775 & Lot 215 DP750390 (Mrs KM Hartley) – steep / limited access / watercourse – assume 2 additional lots;
- Lot 201 DP603351 (Mr DJ Quinn) – steep / rocky / access issues to road – assume 6 additional lots;
- Lots 195 & 196 DP750390 (Mr GD King) – access / steepness – assume additional 2 lots;
- Lot 197 DP750390 (Mr GJ Keen) - access – assume additional 2 lots;
- Lot 4 DP1015818 (Mrs EA Tooke) – assume additional 1 lot.

Significant subdivision potential

The following lots (7) could possibly produce up to **30 lots**:

- Lot 103 DP874276 (Mr RA Matthews) – riparian corridors & drainage – assume additional 8 lots;
- Lots 5 & 12 DP750390 (Mr RA Matthews) – watercourses / drainage – assume additional 9 lots;
- Lots 6 & 7 DP750390 (Mr AE Oldham) – watercourses / drainage / road access – assume add. 9 lots;
- Lots 183 & 184 DP750390 (Mr GD King) – watercourses/drainage/ road access – assume add. 4 lots.

Total Estimated Subdivision Potential

Therefore, the previous review assumed that Browns Creek Road Zone 1(c) area may only have had the capacity for an additional ~**48 lots** in the existing zoning boundary (in addition to the approved vacant small lots).

Note: The increase to 20ha for BCR is likely to reduce the potential yield to around 10-20 additional lots above the approved subdivision number in 2016. See Section at end of this Appendix.

6.2.3. Demand Analysis

Historic Dwelling Approvals / Construction

The existing areas of Zone 1(c) Rural Small Holdings land were created in response to the *Rural 1(c) (Rural Small Holding) Strategy Study* (March 1993) by Wayne McDonald on behalf of Blayney Shire Council that formed the basis for the Draft Local Environmental Plan in 1993 and was subsequently realised by the creation of the zones in BLEP1998.

At the time of preparation of this strategy it was estimated that demand for LLR in the Blayney Shire (in proximity to Blayney and Millthorpe) would be in the order of 10-20 lots per year – with an estimate of 15 lots per year adopted by the strategy.

Therefore, these zoned areas have been in existence since BLEP1998 was published in Gazette No 71 of 24.4.1998 and 13 to 14 years have elapsed since they were created (to 2012). Assuming that there were limited existing dwellings in these areas at the time of gazettal and that subdivision/development commenced in 1999, over the life of these Zone 1(c) areas up to October 2012 there were 95 dwellings constructed in the Forest Reefs Road area and 20 dwellings in the Browns Creek Road area in 2012.

Area	Total Dwellings Constructed	Years Elapsed	Average Dwellings / Year
Forest Reefs Road	101	14	7.2
Browns Creek Road	22	14	1.6
Total	123	14	8.8

Therefore, Forest Reefs Road LLR area has had significantly higher dwelling demand compared to Browns Creek Road over the life of these LLR areas (total average demand of 8-9 dwellings per year for all LLR areas). Therefore, the original estimates of demand were slightly inflated. The actual take-up of 8-9 dwellings per year was consistent with the historical rate of take up of rural dwellings in the Shire from 1990-1993 as suggested in the 1993 strategy.

Recent Dwelling Approvals / Construction

Council has prepared a brief review of the number of dwelling approvals that have occurred in the last five (5) years in the existing LLR areas. Whilst it is accepted that dwelling approvals may not be the same as dwelling constructions there appears to be a high correlation and, therefore, it gives a reasonable estimate of dwelling take-up or demand.

In summary it can be seen that dwelling demand at Forest Reefs Road (within 20 kilometres / 15-20 minute drive of Orange's service area - within the distributor road) is significantly higher than demand at Browns Creek Road (within 30 kilometres / 25-35 minute drive of Orange's service area).

Forest Reefs Road

Approval Year (July – June)	Dwelling Approvals
2007-2008	7
2008-2009	7
2009-2010	5
2010-2011	6
2011-2012	7
2012-2014	6
Total / Average	**38 Total / 5.4 Average per Year over 7 years**

This suggests that there is an average demand for 5-6 dwellings per year up to 2012. This is consistent with the average across the 14 years and is generally consistent each year in the last 5 years. Therefore, this demand is likely to continue for the medium term at this rate (subject to availability and suitability of land).

Browns Creek Road

Approval Year (July – June)	Dwelling Approvals
2007-2008	0
2008-2009	1
2009-2010	0
2010-2011	0
2011-2012	4
2012-2014	2
Total / Average	**7 Total / 7 Years / 1 Average per Year**

This suggests that there is an average demand for 1-2 dwelling per year. The fact that most of this demand has occurred in a year when the Draft LEP suggested the proposed removal of subdivision potential in this area may have inflated the figure and the long term demand may be lower. However, it is consistent with the demand over the last 14 years of 1-2 dwellings per year.

6.2.4. Comparison of Estimated Supply / Demand

This seeks to summarise the potential supply in the existing Zone 1(c) areas against the estimated demand from historical take-up of dwellings in each of these areas.

Area	Existing Vacant Lots	50% Additional Subdivision Potential	Total Potential Vacant Lots	50% of Total Pot. Vacant Lots Dwell. Constructed	Average Projected Annual Demand	Estimated Lifespan for Dwelling Construction
Forest Reefs Rd	155	48	203	102	5-6 dwellings/year	17-20 years
Browns Creek Rd	89	24	113	57	1-2 dwellings/year	In excess of 25 years
TOTAL	244	72	316	159	--	--

In summary, whilst the potential supply of vacant land or land with additional subdivision potential may result in up to 20 years supply (or more along Browns Creek Road), there are a number of variables that have not been addressed including increasing growth / demand (associated with mining and manufacturing around Blayney), the distinct lack of supply of larger lots in the Orange Commuter Zone, and the fact that many vacant lots already have owners so they don't really form part of the supply equation.

6.2.5. Indicative Subdivision Impact of 20ha Minimum Lot Size for Browns Creek Road

In 2016, according to registered lots on Council's system, there are up to 41 holdings (some with multiple lots)(without reviewing the ownership pattern of lands subdivided below 5ha). Of the 41 holdings ~24 have already been subdivided below 4ha. In addition another 4 holdings have lodged or had approved significant subdivisions including:

a) DA89/206 – 21 lots (approved 14/03/06);
b) DA39/2012 – 16 lots (approved 2/7/15);
c) DA107/2012 – 7 lots (approved 18/10/12);
d) DA114/2012 – 11 lots requested (clock stopped).

This leaves ~11-12 larger lots that are likely to be significantly affected by this proposal. The following table highlights the potential impact (only based on holding size – there may be other factors that prevent the potential number of lots from being realised) of the 20ha MLS rule:

No.	Holding Area	No of lots @ 20ha/lot	Existing Dwelling(s)	Additional lot potential
1	39.4	2	1	1
2	39.96	2	1	1
3	41.5	2	1	1
4	41.79	2	1	1
5	42.82	2	1	1
6	10.5	0	1	0
7	69.7	3	1	2
8	96.6	4	1	3
9	(residue) 50.0	2	1	1
10	33.0	0	0	1
11	94.5	4	1	3
Total		23	10	15

6.3. 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:

6.3.1. Department of Planning & Environment (DPE)

The following key meetings have occurred with officers at DPE:

Date	Officers	Comments/Outcomes
1/2/16 10/2/16	Meeting with Wayne Garnsey, Erin Strong & Tim Collins at Blayney	Brief overview of the expanded Planning Proposal with intention to include boundary adjustment clause, vary Clause 4.2A, and extend existing holdings. DPE provided feedback by email dated 10/2/16 that was generally supportive of the approach subject to detail being provided and suggest delegation to Council may be appropriate.
16/9/14	Meeting with Erin Strong of DPE Dubbo	Brief overview of the Planning Proposal. Erin had also previously discussed this with the Director of Environmental Services (Mark Dicker) at Blayney Shire.
31/10/14 3/10/14	Email to Erin Strong Telephone Erin Strong	Review of tools to achieve 'sunset' of existing LLR areas that are not subdivided in next 3 years. Telephone response from Erin was that there was no means in SILEP to automatically sunset the remnant lands into a rural zone so a further Planning Proposal would need to be lodged to down-zone land at a future time.

6.3.2. Office of Environment & Heritage (OEH)

The following key meetings have occurred with officers at OEH:

Date	Officers	Comments/Outcomes
2/10/14	Email to Erica Baigent – Conservation Officer and brief discussion with David Kerring	Email overviewing Planning Proposals (LLR only) and seeking preliminary comments to assist in drafting. Telephone discussion followed indicating that previous submission to BLEP2012 was still applicable. The original response to BLEP2012 Public Exhibition did not mention the proposed down-zoning of the Strategy Areas other than to recommend avoiding rural settlement intensification in areas of biodiversity value, aboriginal cultural heritage value and other environmentally sensitive areas (which only affect limited areas of the Strategy Areas). Extension of the Existing Holdings clause or Boundary adjustment was not discussed with OEH during the preparation of this proposal.

6.3.3. Central Tablelands Local Land Services (LLS)

The following key meetings have occurred with officers at OEH:

Date	Officers	Comments/Outcomes
2/10/14	Email to Casey Proctor of LLS	Email overviewing Planning Proposals (LLR only) and seeking preliminary comments to assist in drafting. No response as at 22/11/14. The original response to BLEP2012 Public Exhibition did not mention the proposed down-zoning of the Strategy Areas. Extension of the Existing Holdings clause or Boundary adjustment was not discussed with LLS during the preparation of this proposal.

6.3.4. NSW Agriculture

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

Date	Officers	Comments/Outcomes
2/10/14	Mary Kovac – Resource Management Officer – NSW Agriculture	The general discussion was that as the LLR areas has previously been zoned for large lot residential purpose, there are limited additional impacts from retaining a similar zone. However, the increased risk of land use conflict from further subdivision is noted. The original BLEP2012 Public Exhibition response did not provide detail on this issue as at that time the downzoning was proposed with improved outcomes for agriculture. Extension of the Existing Holdings clause or Boundary adjustment was not discussed with NSW Agriculture during the preparation of this proposal.

6.3.5. Correspondence – Large Lot Residential & Mineral Resource Buffers

Please see the attached letter from NSW Trade & Investment (Resources & Energy) dated 1/9/14 regarding DA114/2007 for a subdivision near the western edge of the BCR LLR area.

4(a)
DA11

NSW GOVERNMENT | Trade & Investment Resources & Energy

1 September 2014

The General Manager
Blayney Shire Council
PO Box 62
Blayney NSW 2799

Your Reference: 334139
Our Reference: OUT14/28908

Attention: Patsy Moppett, Senior Town Planner

Dear Patsy

Re: DA114/2007 – M Milliner – subdivision of Lot 1 DP131685, 126 Rosedale Rd, Blayney

Thank you for your correspondence of the 29 July in relation to this matter. The Mineral Resources Branch (MRB) of NSW Trade & Investment appreciates the developer taking our previous advice into consideration and repositioning the dwelling envelopes to reduce potential conflict between future residents and possible extraction of nearby mineral resources.

The proposed development lies adjacent to metalliferous and industrial mineral resources as well as an operation where rock extraction, crushing and stockpiling takes place. Ideally, in order to avoid land use conflict, MRB would prefer to see dwellings outside of the one kilometre transition zone of the Browns Creek mining leases and the Cowriga Creek Potential Resource Area, for the reasons previously outlined to Council.

However, MRB has given further consideration to this proposal and acknowledges that the development is permissible under the LEP which took into consideration earlier (and subsequently superseded) mineral resource Section 117 advice.

Although there remains a small gold and copper resource beneath the Browns Creek open cut it is acknowledged that within the foreseeable future that resource is unlikely to be exploited due to logistical difficulties. If mining were to resume it is envisaged that most of the activity will take place in the vicinity of, and to the west of, the open cut. Therefore the proposed dwellings will be situated more than one kilometre away from the main mining and processing activities.

The Cowriga Creek Potential Resource area contains several limestone bodies which could potentially be quarried in the future and one such body occurs 850 m southwest of the newly proposed dwelling envelope for Lot 6. However, this is a substantial improvement upon the previous proposal which positioned a dwelling envelope (Lot 7) less than 700 m away from the potential resource.

The new housing layout sees dwellings located at least 500 m away from the Browns Creek mining leases. This is consistent with our previous advice with regards to the current

NSW Department of Trade and Investment, Regional Infrastructure and Services
RESOURCES & ENERGY DIVISION
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activities of Australian Native Landscapes, in order to avoid possible issues with dust, noise and odour.

MRB therefore considers the modified planning proposal to be acceptable with regards to potential impact upon mineral resources. It is desirable, however, that any prospective buyers of the lots be informed of their proximity to an identified gold and copper resource and a potential limestone resource, either or both of which may be exploited in the future.

Any further queries regarding the above information, and future requests for advice in relation to this matter, should be directed to the MRB Land Use team at landuse.minerals@industry.nsw.gov.au.

Yours sincerely

Cressida Gilmore
Team Leader Land Use