

Rezone RU1 land known as part 'Kelso Station', Pooncarie Rd Wentworth to permit rural residential development

Proposal Title :	Rezone RU1 land known as part 'Kelso Station', Pooncarie Rd Wentworth to permit rural residential development		
Proposal Summary :	It is proposed to rezone Part Lot 1 DP 1193874, known as 'Kelso Station', Pooncarie Road North Wentworth from Primary Production RU1 to E4 Environmental Living for the purpose of rural settlement. The area of Part Lot 1 is approximately 28 ha. The entire holding is 1323 ha. The MLS for the RU1 zone is 10,000 ha.		
PP Number :	PP_2016_WENTW_004_00	Dop File No :	16/09395-1

Proposal Details

Date Planning Proposal Received :	25-Jul-2016	LGA covered :	Wentworth
Region :	Western	RPA :	Wentworth Shire Council
State Electorate :	MURRAY DARLING	Section of the Act :	55 - Planning Proposal
LEP Type :	Precinct		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	Lot 1 DP 1193874		

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	No

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MDP Number :		Date of Release :	
Area of Release (Ha) :	28.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	14
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

The subject land is located on the Darling River approximately 5km north of Wentworth township. The land is part of the property known as 'Kelso Station', a grazing property located on the Darling River.

The area is described by the proponent as part of the Murray Darling Depression Bioregion, comprising ancient sandy soils, dune fields, overflow lakes fed by rare floods, stony ridges and ranges, vegetation consisting of mulga and wilga and shrub like mallee form trees. Average annual rainfall is 286.5mm; temperature ranges from -0.1 to 48.5 deg C. There are few settlements other than Wentworth and Ivanhoe to the north east. The locality is dominated by the semi arid landscape, with extensive areas of irrigation supporting intensive cropping such as citrus and vineyards. The town of Mildura in Victoria is located over the Murray River and is the major settlement of the locality.

The subject site lies approximately 350m southwest of the Pooncarie Road, between the northern bank of a sharp meander bend of the Darling River. Aerial photography indicates a complex history of active river progression, evidenced by the swales and ridges of former old oxbow lakes and meanders. The Darling River in this location is substantial, being approximately 70m wide from bank to bank.

The floodplain in this location is very broad and supports both the Darling and Murray rivers; the LEP flood mapping shows that the entire site and locality is floodprone. There is also a flood channel running through the site to the Darling River. This channel is accommodated by the subdivision layout by two slightly larger lots.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The proposal put forward involves rezoning a portion of an operational dryland grazing property in an arid locality for the purpose of rural settlement. The land is zoned RU1 Primary Production under the Wentworth LEP 2011. The minimum lot size is 10,000 ha,

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indicative of a harsh environment and the prevailing dryland holding pattern.

The proponents have nominated the E4 Environmental Living zone as the preferred land use zone to accommodate rural settlement. The Wentworth LEP currently does not have this zone. Although it is proposed to be introduced with PP_2014_WENTW_001 (Pomona) which is due to be finalised in November 2016.

Other rural settlement amendments in Wentworth to date have used the R5 Large Lot Residential zone. There are approximately 300 zoned lots available for development in the Wentworth LGA for rural settlement (zoned R5). There is in excess of 2,600 residential lots (R1 zone) possible through Amendment 1 to the Wentworth LEP. There are also 925 lots less than 110ha in area in irrigation districts and 336 lots of less than 500 ha in non irrigated areas with 'dwelling opportunities' available through LEP provisions that recognise 'former rural lots' and existing holdings (as reported by consultants RMCG in 2015). This land is being used for agriculture.

In total, there are close to 1560 lots potentially available for rural settlement, both zoned as R5 and RU1. This equates conservatively to over 260 years supply at current take up rates, based on advice from RMCG's 'Agricultural Land Strategy - Wentworth Shire 2015 Final Report'.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : It is proposed to introduce a new Land Use Zone into the Wentworth LEP 2011. The E4 Environmental Living zone is not in the LEP. The proponents have provided justification for the introduction of such a zone as 'provide land stock to meet the demand for dwelling houses in rural localities', and to 'develop the land for rural residential purposes' and to 'ensure development in the zone gives priority to the particular environmental qualities of the land'. It is noted that these objectives can be served by the R5 zone which is already in the LEP. The clear purpose of the proposal is for rural living.

It is also proposed to introduce an amendment to the LSZ maps to reduce the minimum lot size for a dwelling to 7,500m² over the subject site.

The proponents have provided a proposed Land Use Table for the E4 zone that includes the land use definitions of 'Farm stay accommodation', 'plant nurseries', 'Roadside stalls', 'Cellar door premises' as permitted with consent; and 'farm buildings' and 'intensive plant agriculture' permitted without consent.

These land uses are deemed inappropriate on account of the requirement for an established farming enterprise in the case of ancillary uses, but also due to the potential for rural land use conflict with amenity housing. Further, the development of intensive plant industries belies the reasoning behind the implementation of the E4 zone, particularly in this location.

If this proposal was to proceed, it would be recommended that the R5 zone be implemented, with appropriate river setbacks and lot sizes.

It should be noted that PP_2014_WENTW_001_00 Pomona is rezoning RU1 Primary Production land to E4 Environmental Living for 49 lots of between 5-10 ha. This decision was made after a post-Gateway review by the JRPP.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

3.1 Residential Zones

3.3 Home Occupations

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3.4 Integrating Land Use and Transport
4.3 Flood Prone Land
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP No 1—Development Standards
SEPP No 44—Koala Habitat Protection
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Rural Lands) 2008
Murray REP No. 2 - Riverine Land**

e) List any other matters that need to be considered :

The RPA has identified section 117 Directions and SEPPs that do not apply to the Planning Proposal; and have also justified consistency through the application of a 'rural residential strategy' that has not been endorsed by the Department. The proponents state that strategic consistency with the Rural Lands SEPP is available 'as a consequence of the land being contained within a long standing rural residential development strategy identified and immediately adjacent to an area that is the subject of a current Gateway Determination'.

This comment refers to the recent approval of PP_2014_WENTW_001-00 to Gateway by the JRPP after the Department recommended refusal on lack of strategic justification.

There is a brief assessment of the proposal against the Rural Lands SEPP; that states the proposal achieves 'an appropriate balance' between social, environmental and economic interests of the community by providing opportunities for additional housing choice within an area that is not adversely affected by any significant constraints. It is also stated that the proposal will provide large lot lifestyle housing which will benefit Wentworth township, and it is consistent with the recommendations of the Wentworth Shire Council Rural Residential Strategy of the site.

Comment: the above reasons do not provide a case for rezoning the subject land in terms of the objectives of the Rural Lands SEPP which refer to protecting agricultural land and the provision of rural settlement opportunities that are in accordance with an endorsed land use strategy.

The fact that the Wentworth Shire Council Rural Residential Strategy has not been endorsed by the Department means that the proposal remains inconsistent with policy.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

As noted throughout this report, Council's Rural Residential Strategy has not been endorsed by the Department. The proponent considers that the proposal is consistent with the RL SEPP on the grounds of 'appropriate balance' between social, environmental and economic opportunities for additional housing choice; large lot residential lifestyle development will benefit the township of Wentworth, proximity to Wentworth in terms of servicing and consistent with an 'unendorsed' strategy.

The applicant states that the proposal is consistent with the Murray REP No 2, where 'future residential development will not adversely affect land within the surrounding LGA or result in a redistribution of flood water', 'foreshore setbacks are adopted (30m) to ensure the aesthetic quality and high amenity of the Darling River is maintained', 'riverbank integrity will be maintained and not compromised by residential development'. These claims are made in the absence of any specialist reporting, evidence or advice from government agencies.

It is noted that the subdivision layout provided with the planning proposal indicates 14 lots with full frontage to the Darling River, with each lot being approximately 7,500m² in area, apart from two lots of 1.9ha in area to accommodate the flood channel. The lots are relatively short, being around 160-180 metres long, which provides a reduced area

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in which to position a dwelling-house and infrastructure away from the river. There are two roads proposed to access the riverfront lots, necessary due to the flood channel in the middle of the site.

The proponents state that Council has determined the flood planning levels 'already' and by this it is meant that the level of a 1:100 ARI flood event plus 0.5m freeboard is achievable along the river frontage and this is 'not inconsistent with the NSW Floodplain Development Manual 2005'. The proponents state that the proposal will implement 'a direction of council' that no future residential development will be allowed under a level of 0.75 freeboard of the flood planning level of 34.65m AHD. It is noted that Pooncarie Road is constructed at 1:20 year flood level (RL 34.00 AHD) and 'the future occupants of the site will be readily accessible to emergency services'.

It appears that new dwelling houses in this locality will be located at the 1:100 flood level plus 0.5m freeboard, but the access route Pooncarie Road is built at 1:20 ARI. This does not give an indication of how high dwellings will need to be constructed or of the likely height of water over the site in a 1:100 ARI event.

While there are clearly concerns over flooding and riverine processes, these issues are not fully addressed; the benefits of the Planning Proposal are simply put as providing additional housing choice.

Consistency with section 117 Direction 4.3 Flood Prone Land is claimed through statements to the effect that dwellings will be setback from the River and flood free access will be provided. Further, it is claimed there is consistency with the provisions for low risk hazard, however it is further stated that the land has a 'medium to high flood risk' due to flow depths, flow velocities or a combination of the two'.

There is cursory consideration given to emergency services in the event of flooding, with the Pooncarie Road cited as providing access; however, LEP flood mapping CL1_002D-020_2011 shows that the entire locality is inundated. There is no clear indication of the height of water over the site. It should be noted that the neighbouring property was rezoned in 2015 by the JRPP and this has 1.32m of floodwater across the land in the 1:100 ARI event.

The proposal is inconsistent with section 117 Direction 4.3 Flood Prone Land and the NSW Government's Floodplain Development Manual.

Demand and supply

There is an excess of rural settlement living opportunities in the Wentworth, the subject of many amendments to rezone land for a range of settlement types. Recent planning proposals amount to a theoretical land release of approximately 300 lots over 726 ha. This is far in excess of the take up rate which is anecdotally 6 lots per annum. There is no investigation of the demand and supply for rural settlement in Wentworth by the proponent. It should also be noted that Wentworth LEP has generous provisions to 'recognise' former rural lots and existing holdings. In the absence of a census, there is an estimated 1560 lots already existing in the RU1 Primary Production zone, both irrigated and non-irrigated and less than 500ha in area. The proposal does not address the excess supply nor provide an estimate of demand.

Consistency with the section 117 Rural Directions 1.2 Rural Zones and 1.5 Rural Lands are claimed through consistency with the 'Wentworth Shire Council Rural Residential Strategy Report 2007' - however this has not been endorsed by the Department.

Note: section 117 Directions 3.1 Residential Zones, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport are mentioned as relevant to the PP but are not relevant to the

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proposal.

Since 2013 Wentworth Shire Council has been developing a Rural Land Use and Rural Residential Strategy which has not been endorsed by Council or submitted to the Department.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Mapping is provided as per the survey drawn by the proponents. LEP mapping is not provided.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **28 days**

Additional Director General's requirements

Are there any additional Director General's requirements? **Unknown**

If Yes, reasons : **Demonstrated consistency with an strategy required to justify rezoning floodprone rural land for settlement should the proposal proceed.**

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **No**

If No, comment : **The proposal is inadequate in that it does not address or attempt to justify the lack of strategic justification or flood constraints.**

Reliance on the recently approved (JRPP) Planning Proposal nearby is evident as justification.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

There has been seven amendments brought by Wentworth Shire Council since the plan was notified on 16.12.2011. Amendment 1 involved the release of 2600 residential lots. Subsequent amendments have permitted over 300 R5 zoned lots and about 430 'former rural lots' which at the current take up rates for new dwellings (estimated 6 per annum equate to over 50 years supply).

This is in addition to the RU1 zoned land held in lots of less than 500ha which is used for agriculture including irrigation that may qualify as a 'former rural lot' or 'existing holding' under the Wentworth LEP 2011.

Assessment Criteria

Need for planning proposal :

A Planning Proposal is required to amend either the land use zone or minimum lot size or both. In this instance it is intended to introduce a new land use zone, E4 Environmental Living. There is no justification for this zone nor is there palpable difference between the R5 zone in terms of intended outcomes.

Consistency with strategic planning framework :

The proposal is inconsistent with the section 117 Directions on account that there is no endorsed strategy to inform new development of this nature.

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Environmental social
economic impacts :

There are minimal social benefits to be obtained from this proposal on account of the existing supply of land for this use, the fragility and lack of suitability of the site and the environmental constraints.

The proposal will not increase growth as per the reason for Wentworth Shire Council for supporting the proposal: 'Contribute 14 dwellings to the Shire meeting in part Council's Community Strategic Plan Vision 2012-22 to 'improve population growth and residential expansion' and 'improve the built urban environment by encouraging residential housing options that meet the needs of all community sectors'.

Comment: Subdivision will not increase population growth; there is an excess of land zoned for this very purpose and Council's strategy has not been endorsed by the Department. While 14 additional lots and dwellings is small numerically, the compounding impact of precedent is substantial.

Assessment Process

Proposal type : **Inconsistent** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **NII**

Public Authority
Consultation - 56(2)(d)
:

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **The proposal is not justified on planning merit on account of the site being floodprone and there being an excess of land already zoned for rural settlement in the immediate locality (undeveloped).**

The floodprone nature of the land has not been investigated in detail by the proponent, instead relying on a nearby road as an escape route in the event of a flood. The implications of rezoning this land are potentially of unacceptable risk in terms of emergency services, land owners and individuals.

The proposal is not justified strategically as Wentworth Shire Council has not prepared it's Rural Strategy and sought Department endorsement. Council has presumed the 2007 Strategy has currency when this has not been endorsed by the Department.

The proposal undermines the need for Council to prepare and finalise a comprehensive land use strategy and in effect delays this process through piecemeal proposals. This is an undesirable position for a low growth LGA such as Wentworth; there is already an oversupply of rural settlement opportunities including non-strategic LEP provisions and there is little consideration of agricultural production potential.

An LGA such as Wentworth relies heavily on primary production opportunities and yet this is not a factor in the numerous rural settlement proposals. Wentworth would benefit from a comprehensive review of its housing stock, demand and supply and an overview of economic drivers in the development of a new land use strategy. Council should proceed to finalise the Draft Rural Land Use and Rural Residential Strategy as a matter of urgency.

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Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
PlanningTeamReport July 2016.pdf	Determination Document	No
Location map Pooncarie Road.docx	Photograph	No
Wentworth Cover letter to Department of Planning Environment ~ for Planning Proposal submitted by Danson Blaby Pty Ltd on behalf of OM RM McLeod.docx	Proposal Covering Letter	Yes
Wentworth Ordinary Council 29June2016.pdf	Proposal	Yes
Wentworth Planning Liaison Committee 31May2016.pdf	Proposal	Yes
Wentworth Planning Proposal Kelso station - O M R M McLEOD.pdf	Proposal	Yes
Wentworth Attachment_4_-_Evaluation_criteria_for_the_delegation_of_plan_.doc	Proposal	Yes
Wentworth Request for Gateway Determination.pdf	Proposal	Yes
Wentworth Section 117 Direction Checklist.docx	Proposal	Yes
Wentworth SEPP Checklist.docx	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 4.3 Flood Prone Land**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information : **The planning proposal should not proceed for the following reasons:**

- 1. The planning proposal to rezone land zoned RU1 Primary Production to E4 Environmental Living is not strategically supported and is inconsistent with government policy (Section 117 Directions and RLSEPP).**
- 2. The planning proposal has the potential to place individuals at unacceptable risk due to flood inundation across the site. The subject land is located on an active bend of the Darling River and is completely inundated in 1:100 flood. There is a flood channel traversing the subject site. Reliance on yet to be constructed roads connecting to the Pooncarie Road for escape in this instance is not justified or further explored by the**

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planning proposal.

3. The planning proposal does not address the inconsistencies with the Section 117 Directions 1.2, 1.5. or 4.3. The planning proposal may lead to potential land use conflict with surrounding agricultural enterprises and create a precedent for more non-strategic land releases. The flood prone nature of the site has not been adequately assessed.

4. The proposed introduction of the E4 Environmental Living zone is not justified and is not supported in this instance on account of lack of strategic justification.

5. The planning proposal has not justified strategic merit, and cites consistency with the Council's 2007 Rural Strategy which has not gained Department endorsement. Council has been advised to complete this body of work before approaching the Department for support for rezonings. Council has also been preparing a draft Strategy which has not been finalised or presented to the Department seeking endorsement.

There is no strategic justification and there is no assessment of the demand and supply for rural settlement in Wentworth LGA.

Supporting Reasons :

Non-strategic, the proposal is not justified.

There is a gross oversupply of land zoned for this use, and available through LEP provisions.

There is limited merit given the location on the floodplain.

There is no assessment of agricultural value of the land, adjoining rural enterprises or of potential land use conflict.

Planning proposal is complicated by the E4 zone introduction and is not supported.

The site is flood prone and the ensuing risk to all parties has not been fully assessed;

The level of risk and costs to environment and socially unacceptable due to flood constraints.

Signature: _____

Printed Name: _____

Date: _____

*Endorsed
W Gansay
TKWR 23/9/16*

