



Walgett Shire Council

ABN 88 769 076 385

Council Reference: LC:JM
Council Contact: Environmental Services Department
Date: 23 June 2020

NSW Planning, Industry & Environment
Western Region
Level 1 188 Macquarie Street
DUBBO NSW 2817

Dear Sir/Madam,

RE: Request for Gateway Determination

At Council's Ordinary Meeting on 23 June 2020, Council considered a Planning Proposal to amend the Walgett Local Environmental Plan 2013 (WLEP) by inserting a part of the land parcel at Lot 2 DP1153975, Crystal Road, Lightning Ridge, to Schedule 1 of the WLEP as an additional permitted use to enable the lawful development of a dwelling.

This Planning Proposal has been submitted by Premise Australia Pty Ltd on behalf of George and Anne-Marie Deane.

Council resolved:

Resolution 5/2020/18

That Walgett Shire Council resolve to:

- 1. Accept the Planning Proposal to amend the Walgett Local Environmental Plan 2013 by allowing a dwelling to be an additional permitted use for Lot 2 DP 1153975 located at Crystal Road, Lightning Ridge in Schedule 1 of the Walgett Local Environmental Plan 2013;*
- 2. Forward the Planning Proposal to NSW Planning, Industry & Environment with a request for a Gateway Determination;*
- 3. Request delegation from the Minister to "make" the amendment to the Walgett Local Environmental Plan 2013;*
- 4. Give delegation to the General Manager to make any minor alterations as requested by NSW Planning, Industry & Environment; and*
- 5. Undertake the state agency and public consultation as per the requirements of the Gateway Determination and Schedule 1, Clause 4 of the Environmental Planning & Assessment Act 1979,*

Walgett Shire Council

Based on this, Council would like to request your consideration for a Gateway Determination and delegation to "make" the amendment.

Attached is all relevant documentation for your consideration.

Should you have any queries, please contact Council on 02 6826 1399 or email admin@walgett.nsw.gov.au , quoting the reference number above.

Yours faithfully,



Jessica McDonald
Director Environmental Services

Encl:

1. Planning Proposal – Premise Australia
2. Ordinary Council Report – 23 June 2020
3. Council Resolution 5/2020/18 – 23 June 2020
4. Evaluation for the Issuing of an Authorisation
5. Anticipated Timeline



Premise

Amendment to the Walgett Local Environmental Plan 2013

PLANNING PROPOSAL

Report No: 220247

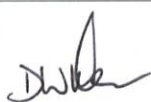


Rev: 001B

9 June 2020

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Document reference: O:\Synergy\Projects\220\220247\Out\Reports\220247_REP_001B.docx

DOCUMENT AUTHORISATION					
Revision	Revision Date	Report Details			
A	29/02/20	Draft for client review and consultation			
B	09/06/20	Final			
Prepared By		Reviewed By		Authorised By	
David Walker		Sam Burns		David Walker	

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1. BACKGROUND

1.1 Introduction

Premise Australia Pty Ltd has been commissioned by George and Anne-Marie Mulder to prepare a planning proposal to amend the *Walgett Local Environmental Plan 2013* (WLEP) by inserting a part of the land parcel at Lot 2 DP1153975, Crystal Road, Lightning Ridge, to Schedule 1 of the WLEP as an additional permitted use.

The portion of the lot to be included in Schedule 1 contains an existing dwelling, developed by George Mulder and defined by Mining Purposes lease 278 (MPL278). George and Ann-Marie Mulder are currently seeking to convert MPL278 to a Western Lands Lease.

Endorsement of this planning proposal is sought from Walgett Shire Council to enable the planning proposal to be forwarded to the Department of Planning, Industry and Environment (DPIE) and gain a Gateway determination.

1.2 Scope of the report

This planning proposal has been prepared in accordance with the NSW Department of Planning's advisory documents '*A Guide to Preparing Local Environmental Plans*' and '*A Guide to Preparing Planning Proposals*'. The latter document requires the planning proposal to be provided in five (5) parts, those being:

- Part 1 – A statement of the objectives or intended outcomes of the proposed LEP;
- Part 2 – An explanation of the provisions that are to be included in the proposed LEP;
- Part 3 – The justification for those objectives, outcomes, and provisions and the process for their implementation;
- Part 4 – Mapping; and
- Part 5 – Details of the community consultation that is to be undertaken on the Planning Proposal.

It is noted that Part 4 would be confirmed following a Gateway Determination of this Planning Proposal by the NSW DPIE.

1.3 Structure of the report

This planning proposal is provided in the following structure;

- **Section 2** provides an overview of the subject site; the development intent; and development constraints;
- **Section 3** provides a statement of the objective and explanation of provisions of the planning proposal;
- **Section 4** provides justification regarding the need for the planning proposal; outlines its relationship to strategic planning strategies; and overviews the environmental, economic, and social impacts of the proposal;
- **Section 5** provides the proposed mapping amendments relating to the planning proposal area; and
- **Section 6** details how community consultation is to be undertaken with respect to the planning proposal.

2. OVERVIEW

2.1 The subject site

The site is formed of part Lot 2 DP1153975, Crystal Road, Lightning Ridge, as defined by Mining Purpose Lease 278 (MPL278). The host lot is depicted in **Figure 1**.

The host lot features the Lightning Ridge golf course and race track and the dwelling the subject of this planning proposal.

The portion of the lot the subject of this planning proposal has an area of 4,625 square metres as defined in **Figure 2**. This area contains an existing dwelling. The proponent seeks to convert 4,625 square metres of the current MPL278 to a Western Lands Lease

Figure 1 – The host lot (Source: NSW Planning Portal)

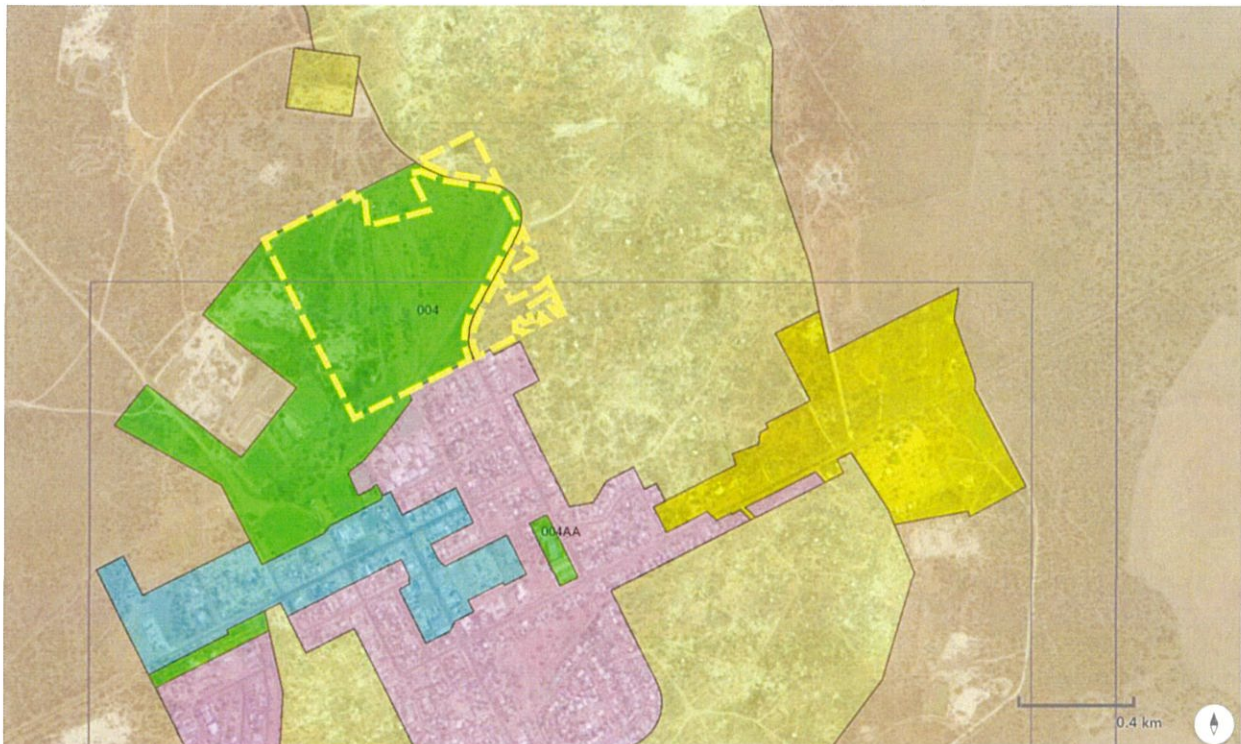
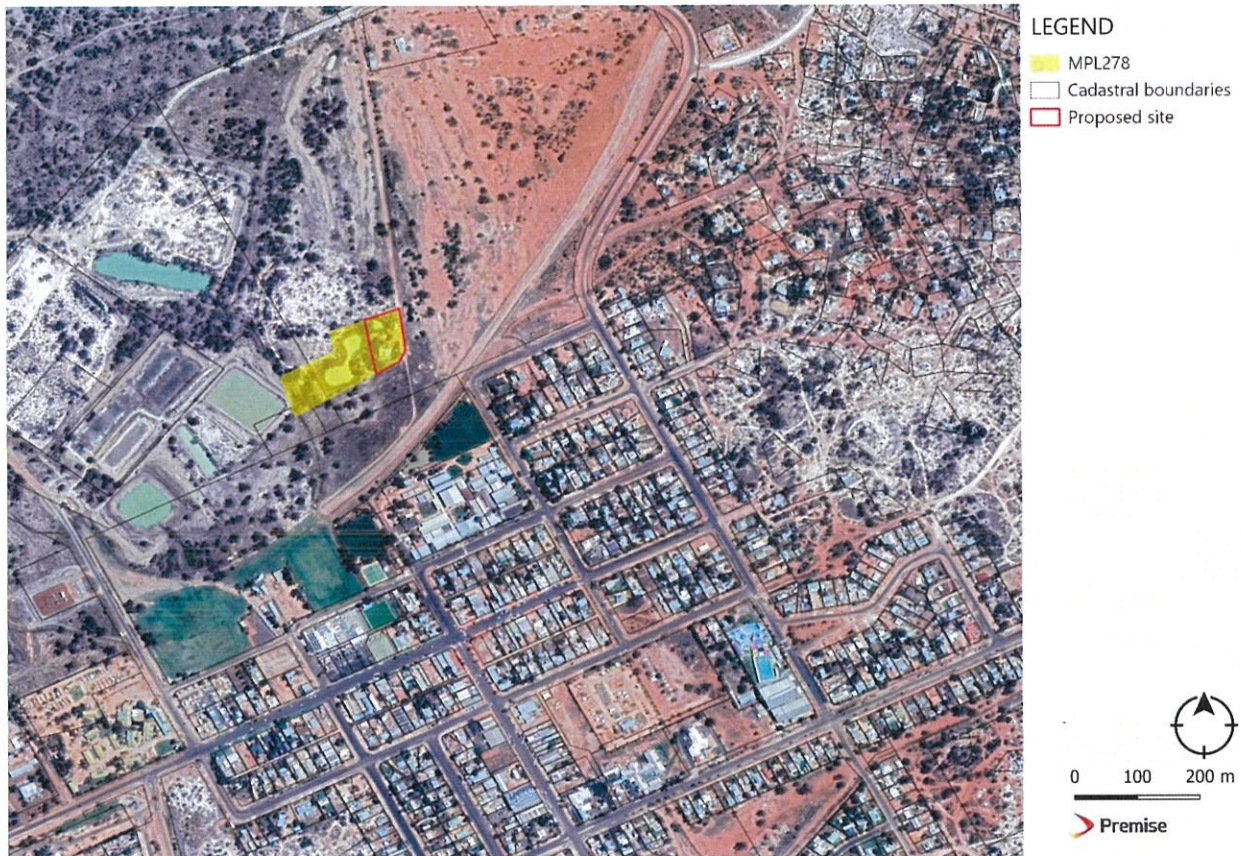


Figure 2 – The land affected by this planning proposal



3. INTENT AND PROVISIONS

3.1 Objective

To include a portion of Lot 2 DP1153975, Crystal Road, Lightning Ridge, to Schedule 1 of the WLEP as an additional permitted use to enable the lawful development of a dwelling.

3.2 Explanation of provisions

The planning proposal affects Schedule 1 of the *Walgett Local Environmental Plan 2013* and the Additional Permitted Uses Map Sheet APU_004AA.

The planning proposal seeks to include the APU for the land affected, allowing a dwelling to be erected with consent.

The specific wording of the proposed clause would be determined in consultation with DPIE and parliamentary counsel.

The current arrangement of LEP Map Sheet APU_004AA is as per **Figure 3** and would be indicatively amended as per **Figure 4**.

Figure 3 – LEP Map Sheet APU_004AA



Figure 4 – LEP Map Sheet APU_004AA as proposed



4. JUSTIFICATION

4.1 Introduction

The overarching principles that guide the preparation of planning proposals are:

- The level of justification should be proportionate to the impact the planning proposal would have;
- It is not necessary to address a question if it is not considered relevant to the planning proposal; and
- The level of justification should be sufficient to allow a Gateway determination to be made with confidence that the LEP can be finalised within the timeframe proposed.

The following justification addresses each relevant question applicable to the planning proposal to ensure confidence can be given to the Gateway determination.

4.2 Need for the planning proposal

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

A planning proposal is required as an amendment to the WLEP is proposed.

The objective is to add a part of Lot 2 DP1153975, Crystal Road, Lightning Ridge, with an area of 4,265 square metres to Schedule 1 of the WLEP as an additional permitted use to enable the lawful development of a dwelling.

The proposal is not specifically addressed via a strategic study or report.

The Walgett Shire Growth Management Study and Strategy was prepared in 2011 to 'provide a future direction for the settlements and land within the rural areas of the Shire' (Edge Land Planning, 2008). The Strategy formed a basis for the preparation of the 2013 LEP.

The Strategy confirms that Lightning Ridge, similar to other settlements in the LGA, have been established in associated with opal mining fields. The strategy states:

They are on the 'preserved opal fields; and are a result of the mineral claims (Edge Land Planning, 2011).

The proposal seeks to regularise a dwelling on a mining lease, which is consistent with many other sites within the town of Lightning Ridge, as reflected by **Figure 3**.

The strategy recognises this arrangement as reflected above. The proposal is not inconsistent with the strategy, given the minor nature of the proposal.

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

The proposed approach is considered the best means of achieving the project objective.

Other alternatives considered include:

- Rezoning the site to R1 – General Residential

As adding the land to Schedule 1 would achieve the project objective without any unintended consequences, it is considered the most appropriate approach.

4.3 Relationship to strategic planning framework

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

The Far West Regional Plan 2036 is the NSW Government's strategy for guiding land use planning decisions for the Far West Region for the next 20 years. At its heart is a core vision for the region supported by four supporting goals:

Vision: A unique part of Western NSW with a diverse economy, supported by the right infrastructure, an exceptional natural environment and resilient communities

Goals:

- A diverse economy with efficient transport and infrastructure networks
- Exceptional semi-arid rangelands traversed by the Barwon-Darling River
- Strong and connected communities

This is discussed further in relation to Ministerial Direction 5.10.

The proposal is considered to be generally consistent with the objectives and actions of the Plan.

Is the planning proposal consistent with Council's local strategy or other local strategic plan?

There is no local strategy or strategic plan specifically addressing the site, however, as discussed above, the proposal is not inconsistent with the adopted strategy applying to the area. The minor nature of the planning proposal, and the consistency with the current (existing) land use demonstrates the minor nature of the proposal.

Is the planning proposal consistent with applicable State Environmental Planning Policies?

The planning proposal is broadly compliant with all relevant State Environmental Planning Policies (SEPPs). The following specific comments are made in relation to applicable SEPPs.

State Environmental Planning Policy No 55 – Remediation of Lands

State Environmental Planning Policy 55– Remediation of Lands (SEPP55) aims to:

...promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment...

This policy applies to the whole of the State, including the Walgett LGA. SEPP55 defines 'contaminated land' as per the definition in Part 5 of the *Contaminated Land Management Act 1997 No 140* as the presence in, on or under the land of a substance a concentration above the concentration at which the substance is normally present in, on, or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Given the current dwelling use of the land, and the continuation of this use as envisaged by this planning proposal, the land is considered likely to be suitable for the intended purposes, on the basis that the receptor pathway for potential contamination to future users of any use is consistent with the current level of usage.

Further a review of the online resources maintained by the Environment Protection Authority with respect to contamination do not reveal any historic contaminating land uses.

State Environmental Planning Policy (Infrastructure) 2007

The aim of the State Environmental Planning Policy (infrastructure) 2007 (ISEPP) is to facilitate the effective delivery of infrastructure across the state by:

- a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services*
- b) greater flexibility in the location of infrastructure and service facilities*
- c) allowing for the efficient development, redevelopment or disposal of surplus government owned land*
- d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development)*
- e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development*
- f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.*

Given the proposal entails amending the zoning to authorise a dwelling on the land, and does not affect any infrastructure, the ISEPP has no direct application.

Is the planning proposal consistent with applicable Ministerial Directions (s5.10 directions)?

Direction 3.1 – Residential Zones

Direction 3.1 is applicable where:

- (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),*
- (b) any other zone in which significant residential development is permitted or proposed to be permitted.*

The proposal does not impact an existing or proposed residential zone.

The proposal does not seek to permit or proposed to be permitted, any significant residential development.

Direction 3.1 is not applicable.

Direction 3.4 – Integrating Land Use and Public Transport

Ministerial Direction 3.4 applies where a planning proposal will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

Direction 3.4 is not considered to be directly relevant to the proposal.

Direction 4.2 – Mine subsidence and unstable land

This direction applies to land that:

- (a) is within a Mine Subsidence District proclaimed pursuant to section 15 of the Mine Subsidence Compensation Act 1961, or*

(b) has been identified as unstable land.

The land is not within a mapped mine subsidence district and has not been identified as unstable land. Direction 4.2 does not, therefore, apply.

Direction 5.10 – Implementation of Regional Plans

Direction 5.10 seeks to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

The direction applies to land to which a Regional Plan has been released by the Minister of Planning. The Far West Regional Plan has been approved and applies to the Walgett LGA.

The Vision of the Regional Plan is:

A unique part of Western NSW with a diverse economy, supported by the right infrastructure, an exceptional natural environment and resilient communities.

The Vision of the Regional Plan is delivered by three key goals and 30 specific directions. Relevant to this planning proposal are a number of goals and directions, outlined and discussed below:

Goal 1: A diverse economy with efficient transport and infrastructure networks

Direction 11: Support new planning and land management arrangements

Goal 2: Exceptional semi-arid rangelands traversed by the Barwon-Darling River

Direction 18: Respect and protect Aboriginal cultural heritage assets

Goal 3: Strong and connected communities

Direction 20: Manage change in settlements

Direction 30: Create healthy built environments

The planning proposal is of minor significance in that it relates to the rezoning of land to reflect the current residential use of the land. It therefore corrects an anomaly in the existing planning framework and via this promotes economic development and growth. The planning proposal, whilst minor in nature, is important in assisting with the delivery of the above goals and directions. The planning proposal is considered to be consistent with the intent and vision of the Regional Plan. The planning proposal is therefore consistent with Direction 5.10.

Direction 6.1 – Approval and Referral Requirements

Ministerial Direction 6.1 – Approval and Referral Requirements applies to all planning proposals forwarded for Gateway Determination by a local authority.

To be compliant with Direction 6.1, a planning proposal must be consistent with the following provisions;

"A planning proposal must:

(a) Minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and

(b) Not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:

- (i) The appropriate Minister or public authority, and*
- (ii) The Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and*
- (c) Not identify development as designated development unless the relevant planning authority:*
 - (i) Can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and*
 - (ii) Has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act".*

The proposed planning proposal does not generate the need for any explicit concurrence, consultation or referral to the Minister or public authority and is therefore consistent with Direction 6.1.

Direction 6.3 – Site Specific Provisions

Ministerial Direction 6.3 – Site Specific Provisions applies to all planning proposals forwarded for Gateway Determination by a local authority.

To be compliant with Direction 6.3, a planning proposal must be consistent with the following provisions:

- (a) A planning proposal that would amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:*
 - Allow that land use to be carried out in the zone the land is situated on, or*
 - Rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
 - Allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*
- (b) A planning proposal must not contain or refer to drawings that show details of the development proposal.*

The development is consistent with the above.

4.4 Environmental, social and economic impacts

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

No. The affected land features an existing dwelling that has been developed for many years and no change to this arrangement is proposed as a result of this planning proposal.

Any further development would be the subject of future DA's for specific proposed land uses. The ongoing use of the land for a residential purpose, confirms that the land is suitable for development for this purpose.

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

Environmental effects associated with the use of the land for a business purpose are consistent with the current residential use of the land.

Any future development of the land would be the subject of detailed design including considering known site environmental constraints and the need to provide appropriate environmental controls.

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

The development is considered to result in social and economic benefits to the locality, through providing residential accommodation.

The *Draft Centres Policy 2009* (Policy) provides a number of questions that should be considered in determining whether to proceed with a rezoning; referred to as the Net Community Benefit Test. These questions together with a response are provided in **Table 1**.

The Policy identifies that if it is judged that the rezoning would produce a net community benefit, the proposal should proceed through the rezoning process. If no benefit is identified, the proposed rezoning should not proceed.

The outcome of the discussion provided in **Table 1** confirms that the rezoning would have a net community benefit and accordingly it is considered that the rezoning should proceed.

Table 1 – Net community benefit test

Evaluation criteria	Community costs and benefits			
	Base case – current situation	Planning proposal	Qualitative Community Benefit per Criteria	Quantitative Community Benefit per Criteria
Would the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors)?	A range of adopted directions and strategies apply to the site, as discussed earlier in this planning proposal.	The proposed LEP seeks to amend Schedule 1 of the LEP to provide for the lawful development of a dwelling house; consistent with the current use of the site.	Provides additional residential land in town, and addresses an inconsistency in the current zoning.	No external cost to the community. Increased investment would be a benefit.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or another regional/sub-regional strategy? Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	The site is within the area of the Far West Regional Plan. The proposal is not inconsistent with the vision and goals of the Regional Plan.	The proposed LEP seeks to amend Schedule 1 of the LEP to provide for the lawful development of a dwelling house; consistent with the current use of the site.	The development of dwellings on mining leases in Lightning Ridge is widespread and is unlikely to lead to a precedent.	No external cost to the community
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	No other spot re-zonings are known to have occurred in the locality.	The Planning Proposal provides for the rezoning of the land to reflect the existing and future use of the land for dwelling purposes.	No external cost to the community	No external cost to the community
Would the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The land affected is currently zoned RE1 but contains an existing dwelling.	The LEP reflects the current use of the land	No external cost to the community	No external cost to the community

Evaluation criteria	Community costs and benefits			Qualitative Community Benefit per Criteria	Quantitative Community Benefit per Criteria
	Base case – current situation	Planning proposal			
Would the LEP impact upon the supply of residential land and therefore housing supply and affordability?	<p>The existing zone is RE1 within which dwelling houses are prohibited.</p> <p>The change would provide for the lawful use of the site for residential purposes.</p>	There is no change in terms of housing provision.		No external cost to the community	No external cost to the community
<p>Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site?</p> <p>Is there good pedestrian and cycling access?</p> <p>Is public transport currently available or is there infrastructure capacity to support future public transport?</p>	Yes	Cost of service provision would be borne by the applicant.		No external cost to the community	No external cost to the community
Would the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	A dwelling is located on the land.	No change as a result of the planning proposal with respect to distances travelled.		No external cost to the community	No external cost to the community
Are there significant Government investments in infrastructure or services in the area whose patronage would be affected by the proposal? If so, what is the expected impact?	No significant assets in the region that would be affected	The LEP seeks to provide capacity for one additional dwelling house, for the benefit of the local community		No external cost to the community	No external cost to the community

Evaluation criteria	Community costs and benefits				Quantitative Community Benefit per Criteria
	Base case – current situation	Planning proposal	Qualitative Community Benefit per Criteria		
Would the proposal impact on land that the Government has identified a need to protect (eg land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	The land is not unduly constrained.	By virtue of the current and continued use of the land for dwelling house purposes, the general suitability of the land is confirmed.	No external cost to the community	No external cost to the community	
Would the LEP be compatible/ complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Would the public domain improve?	The subject site currently hosts a dwelling house undue impact to the surrounding environment. The development has operated without significant impact to surrounding recreational land uses for many years.	The LEP would allow for the lawful use of the land for dwelling house purposes	Clarification of approvable uses within the zone provides greater certainty for developers and improves the likelihood of investment.	No external cost to the community	
Would the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	Existing dwelling house use of the site.	The LEP would rezone the land to enable a dwelling house as a permitted land use.	The proposal improves housing supply in the area and broader locality.	No external cost to the community	
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	Not relevant to this planning proposal.			No external cost to the community	
What are the public interest reasons for preparing the draft plan? What are	Residential development is not currently permissible in the zone.	Dwelling houses would be permissible with consent in	Public Interest is best served by enabling a wider range of permissible uses	Potential external cost to community if LEP does not proceed due to potential	



Evaluation criteria	Community costs and benefits			Qualitative Community Benefit per Criteria	Quantitative Community Benefit per Criteria
	Base case – current situation	Planning proposal			
the implications of not proceeding at that time?		line with the proposed land use table.		and thereby fostering local competition and improving vitality and viability.	loss of economic opportunities noted above.
	Net Community Benefit =			Positive	Positive

4.5 State and commonwealth interests

It is not considered that the minor change proposed via this planning proposal would conflict with any State or Commonwealth interests. The formal views of State and commonwealth public authorities would be ascertained following the Gateway Determination.

Informal consultation with the DPIE Crown Lands and Minerals has commenced. At the time of writing no response had been received from those departments, but when received, these will be provided to Council and DPIE Western Region.

5. COMMUNITY CONSULTATION

5.1 Type of community consultation required

Section 6.5.2 of 'A Guide to Preparing Local Environmental Plans' identifies two different exhibition periods for community consultation;

- Low Impact Proposals – 14 days; and
- All other planning proposals (including any proposal to reclassify land) – 28 days.

The Guide describes Low Impact Proposals as having the following attributes;

- A 'low' impact planning proposal is a planning proposal that, in the opinion of the person making the gateway determination, is;
 - *Consistent with the pattern of surrounding land use zones and/or land uses;*

The current use of the land is for a dwelling purpose. The proposal would confirm this arrangement and allow for the ongoing use for this current purpose.

- *Consistent with the strategic planning framework;*

Responses have been provided detailing the proposal's compliance with local and regional planning strategies, SEPPs, and ministerial directions.

- *Presents no issues with regard to infrastructure servicing;*

All essential services are currently being provided to the site and these would be augmented as required by the applicant in the context of any future development of the land.

- *Not a principle LEP; and*

The planning proposal is not for a principle LEP.

- *Does not reclassify public land.*

The planning proposal does not seek to reclassify public land.

In accordance with the responses to the above points, the planning proposal is considered to be of low impact. It is therefore considered that a community consultation period of 14 days is justified.



APPENDIX A

CONSULTATION CORRESPONDENCE

David Walker

From: Bruce Flood <bruce.flood@crownland.nsw.gov.au>
Sent: Thursday, 12 March 2020 10:26 AM
To: David Walker
Subject: FW: Planning proposal to Amend Walgett Local Environmental Plan 2013
Attachments: Notice - WLL Application - Mulder & Deane.pdf; 220247_REP_001A.pdf

12 March 2020

Our Ref: 12/02951

Mr David Walker
Senior Town Planner
Premise Australia Pty Ltd

Dear Mr Walker,

I refer to your correspondence below which has been forwarded on to me for reply.

Thank you for the opportunity to comment on your client's draft planning proposal to amend the Walgett Local Environmental Plan 2013 to include a portion of Lot 2 DP1153975 up to 4625m² as an additional permitted use to authorise a residential dwelling.

The Department has no objections to your client's draft proposal and looks forward to further consultation as the proposed amendment process proceeds.

You should note that Lot 2 DP1153975 is within Crown reserve 1024168 which is managed locally by the Lightning Ridge and Surrounding Opal Fields Reserve Land Manager (LROR).

The LROR can be contacted for comment on your client's proposal at:

David Sullivan
Reserve Manager
Lightning Ridge Opal Reserve
PO Box 1008 | Lightning Ridge NSW 2834
T: 02 6829 2450 | M: 0488 423 885 E: dsullivan@lrer.org

If you have any questions my contact details are below.

Regards,

Bruce Flood | Property Management Officer
Crown Lands - Far West Area | NSW Department of Planning, Industry and Environment
Level 1 | 45 Wingewarra Street | DUBBO NSW 2830
PO Box 2185 | Dangar NSW 2309
T: 02 6883 5435 | E: bruce.flood@crownland.nsw.gov.au
T: 1300 886 235 | E: cl.western.region@crownland.nsw.gov.au | W: www.dpie.nsw.gov.au
Please note: Our office opening hours are 9.00am to 12.00pm Monday to Friday and outside of these hours by appointment only.

----- Forwarded message -----

From: **David Walker** <David.Walker@premise.com.au>
Date: Sat, 29 Feb 2020 at 10:48
Subject: Planning proposal to Amend Walgett Local Environmental Plan 2013
To: cl.enquiries@crownland.nsw.gov.au <cl.enquiries@crownland.nsw.gov.au>, RRD CO MinRes Environment
Mailbox <minres.environment@planning.nsw.gov.au>
Cc: Jess McDonald <jmcdonald@walgett.nsw.gov.au>

Good morning

Premise has been engaged by George and Ann-Marie Mulder to prepare a planning proposal to amend the Walgett Local Environmental Plan 2013 with respect to land at part Lot 2 DP1153975, Crystal Road, Lightning Ridge for the purpose of enabling a dwelling as an additional permitted use. The area currently hosts an existing dwelling located on Mining Purposes Lease 0278 (MPL0278).

In discussing the planning proposal with the Western Region Planning team from Department Planning, Industry and Environment, it was requested that consultation with Crown lands and Minerals Resources teams be completed.

Attached is a copy of the draft planning proposal for review and comment. Please provide any comments within 14 days of the date of this email.

Also attached is correspondence from Crown Lands with respect to a concurrent application by the proponent to convert part of MPL0278 to a Western Lands Lease for context.

Please contact the undersigned with any questions.

Kind regards



DAVID WALKER
Senior Town Planner

T 02 6393 5000 | **M** 0437 621 057
E David.Walker@premise.com.au
A 154 Peisley St, Orange NSW 2800





Premise

premise.com.au

PLANNING PROPOSAL – PART LOT 2 DP 1153975 – ADDITIONAL PERMITTED USE FOR A DWELLING

REPORTING SECTION: Environmental Services
AUTHOR: Libby Cumming, Contract Town Planner
FILE NUMBER: 11/145

1. Summary:

This report is to consider a Planning Proposal to amend the Walgett Local Environmental Plan 2013 (WLEP) by inserting a part of the land parcel at Lot 2 DP1153975, Crystal Road, Lightning Ridge, to Schedule 1 of the WLEP as an additional permitted use to enable the lawful development of a dwelling.

This Planning Proposal has been submitted by Premise Australia Pty Ltd on behalf of George and Anne-Marie Deane.

2. Background:

Council contacted Council in March 2019 to request assistance with allowing the existing dwelling to be made a lawful use of the land. The dwelling was constructed by the Mulder and Deane without development consent pre circa 1996. The dwelling would not have been able to have been approved at the time under the *Interim Development Order No. 1 - Shire of Walgett 1968* and cannot currently be approved under the WLEP.

This matter came to light when Mulder and Deane applied to convert Mining Purposes Lease 278 (MPL278) to a Western Lands Lease and the then Department of Primary Industries undertook consultation with Council.

A report was put to an Ordinary Meeting of Council in September 2016. A copy is attached to this report. Council resolved to note the report – Resolution 10/2016/26.

After a presentation to Council by Mr Mulder in June 2019, the Director of Environmental Services investigated the matter and placed a report before the Ordinary Meeting of Council in August 2019 for consideration. A copy of the report is attached to this report. Council resolved to:

Resolution 7/2019/23

Write to Mr Mulder and advise that he should engage the appropriately qualified person/s to prepare a planning proposal for the rezoning of the affected land for submission to Department of Planning and Environment.

A review of both reports found they presented all facts of the matter and relevant legislative requirement and implication for Council's consideration.

3. Current position:

A Planning Proposal has been prepared and submitted by Premise Australia Pty Ltd and is attached to this report.

It has been prepared as per the NSW Planning Industry & Environment (NSW Planning) document *A Guide to Preparing Planning Proposals* and will meet the legislated requirement under the *Environmental Planning & Assessment Act 1979* for a request for a Gateway Determination, thus allowing public consultation.

If Council determines that this is a suitable Planning Proposal, the process will be:

1. Council requests a Gateway Determination from NSW Planning. The Western Regional NSW Planning Office will assess and make a recommendation to the Minister on the merit of the Planning Proposal, and will make recommendation on any conditions that should be attached to the Planning Proposal progressing. This will also determine the consultation state agency/public requirement and timeframe.
2. After Consultation, all written submissions are considered by an Ordinary Meeting of Council. The applicant may be asked to address any submissions received, thus providing Council with a response to any issues raised.
3. If accepted by Council, and Opinion is requested from Parliamentary Counsel, who provide the written legal opinion as to how the WLEP may be amended.
4. This opinion will be presented to Council to "make" the amendment to the WLEP. This is the term whereby Council has been given delegation from the Minister for NSW Planning under the Gateway Determination to act on his behalf and adopt the amended instrument.
5. Once "made", the amended WLEP is gazetted and uploaded to the NSW Planning Portal.

A request has been made in a covering letter to the Planning Proposal, that Council request the delegation from the Minister to "make" the amendments to the WLEP. A copy of this is attached to this report.

This matter has been unresolved for several years and requires resolving. Staff have had numerous discussions with all the different stakeholder, and a rezoning of the land is the best way of resolving this technically difficult situation.

If left unresolved, the dwelling may need to be demolished, and Council will be left to bear the full restoration of the site, including the demolition as the dwelling is a structure on a Crown Reserve under Council control.

If the additional permitted use is formalised, it will result in Mulder and Deane being able to own the land, including the dwelling, removing the above implication from Council.

4. Relevant Reference Documents:

- *Environmental Planning & Assessment Act 1979*
- *Environmental Planning & Assessment Regulation 2000*
- *Walgett Local Environmental Plan 2013*
- *Interim Development Order No. 1 - Shire of Walgett 1968*
- Sundry emails and letters between Mr Mulder NSW Department of Industry - Resources and Energy, Department of Primary Industries – Lands and Walgett Shire Council
- Reports to and resolutions dated Council 27th September 2016 and 19 August 2019

Governance issues:

Council's charter:- Section 8 of the *Local Government Act 1993* establishes Council's charter, which includes:

- to exercise community leadership

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to engage in long-term strategic planning on behalf of the local community
- to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights.

Environmental issues:

Nil

Stakeholders:

Public, NSW Industry - Resources and Energy, NSW Primary Industries – Land & Water Division, NSW Planning, Industry & Environment, Walgett Shire Council, Mr Mulder and Ms Deane.

Financial implications:

All costs of the Planning Proposal are to be invoiced to Mulder and Deane.

<p align="center">PLANNING PROPOSAL – Lot 1 DP 1153975 – ADDITIONAL PERMITTED USE OF A DWELLING</p>
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Recommendation:

That Walgett Shire Council resolve to:

1. **Accept the Planning Proposal to amend the *Walgett Local Environmental Plan 2013* by allowing a dwelling to be an additional permitted use for Lot 2 DP 1153975 located a Crystal Road, Lightning Ridge in Schedule 1 of the *Walgett Local Environmental Plan 2013*;**
2. **Forward the Planning Proposal to NSW Planning, Industry & Environment with a request for a Gateway Determination;**
3. **Request delegation from the Minister to “make” the amendment to the *Walgett Local Environmental Plan 2013*;**
4. **Give delegation to the General Manager to make any minor alterations as requested by NSW Planning, Industry & Environment; and**
5. **Undertake the state agency and public consultation as per the requirements of the Gateway Determination and Schedule 1, Clause 4 of the *Environmental Planning & Assessment Act 1979*,**

Moved:

Seconded:

Attachments

1. Planning Proposal as prepared by Premise Australia Pty Ltd
2. Planning Proposal Covering letter dated 9 June 2020
3. Report and attachments to Ordinary Council Meeting - 19 August 2019
4. Report and attachments to Ordinary Council Meeting - 27 September 2016

**MINUTES OF THE ORDINARY MEETING OF THE WALGETT SHIRE COUNCIL HELD AT
THE WALGETT SHIRE CHAMBERS ON
TUESDAY 26 MAY 2020 AT 11.41am**

5/2020/18 Planning Proposal – Lot 1 DP 1153975 – Additional Permitted Use of A Dwelling

Resolved:

That Walgett Shire Council resolve to:

1. Accept the Planning Proposal to amend the Walgett Local Environmental Plan 2013 by allowing a dwelling to be an additional permitted use for Lot 2 DP 1153975 located at Crystal Road, Lightning Ridge in Schedule 1 of the Walgett Local Environmental Plan 2013;
2. Forward the Planning Proposal to NSW Planning, Industry & Environment with a request for a Gateway Determination;
3. Request delegation from the Minister to “make” the amendment to the Walgett Local Environmental Plan 2013;
4. Give delegation to the General Manager to make any minor alterations as requested by NSW Planning, Industry & Environment; and
5. Undertake the state agency and public consultation as per the requirements of the Gateway Determination and Schedule 1, Clause 4 of the Environmental Planning & Assessment Act 1979

Moved: Woodcock

Seconded: Walford

CARRIED

PLANNING DIVISION

For

Clr Manuel Martinez
Clr Ian Woodcock
Clr Robert Turnbull
Clr Kelly Smith
Clr Michael Taylor
Clr Jane Keir
Clr Tanya Cameron
Clr Bill Murray
Clr Lawrence Walford

Against

Nil

Absent

Nil

Our Ref: 220247_LET_001A.docx

9 June 2020

The General Manager
Walgett Shire Council
PO Box 31
WALGETT NSW 2832

Attention: Jess McDonald

Dear Ms McDonald

PLANNING PROPOSAL IN RELATION TO LAND AT LOT 2 DP1153975

Please find attached to this correspondence a planning proposal seeking to amend the *Walgett Local Environmental Plan 2013* (LEP) by inserting the identified portion of Lot 2 DP1153975 as an additional permitted use at Schedule 5 of the LEP for the purposes of a dwelling house.

We request that Councils accepts delegation for plan making with respect to this planning proposal.

We confirm that the applicants, George and Ann Marie Mulder accepts Council's fees in this matter, as outlined in Council's email of 1 June 2020.

Please contact the undersigned with any questions.

Yours sincerely



DAVID WALKER

Senior Town Planner

Attachments:

1. Finalised planning proposal
2. Evaluation Criteria for the Issuing of an Authorisation
3. Timeline as per Part 6 of the DPIE Guidelines for Preparing Planning Proposals

Evaluation Criteria for the Issuing of an Authorisation

(Note – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not Relevant	Agree	Disagree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain detail related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?		X		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs				
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N			
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			
Reclassifications				
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan of management (POM) or strategy?		X		
Is the planning proposal proposed to rectify an anomaly in a classification?	N			

Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		X		
Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions or covenants on the public land and included a copy of the title with the planning proposal?		X		
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval?		X		
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding <i>classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		X		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		X		

Spot Rezonings

Will the planning proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		X		
Does the planning proposal create an exception to a mapped development standard?	N			

Section 73A matters

Does the proposed instrument	N			
<ul style="list-style-type: none"> a) Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provision, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b) Address matter in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c) Deal with matters that do not warrant compliance with the conditions precedent for the making of the 				

instrument because they will not have any significant adverse impact on the environment or adjoining land?

(Note – the Minister/GSC (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).

Notes

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, or any other local strategic planning document that is endorsed by the Secretary of the Department.
- Matters that will routinely be delegated to a Council under administration are confirmed on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning

Attachment 3 – Anticipated Timeline

Step	Anticipated timeframe	
	Start	Finish
• Anticipated commencement date (date of Gateway determination)	2/8/20	31/8/20
• Anticipated timeframe for the completion of required technical information	N/A	N/A
• Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	1/9/20	29/9/20
• Commencement and completion dates for public exhibition period	1/9/20	29/9/20
• Dates for public hearing (if required)	N/A	N/A
• timeframe for consideration of submissions	5/10/20	16/10/20
• Timeframe for the consideration of a proposal post exhibition	5/10/20	16/10/20
• Date of submission to the Department to finalise the LEP	28/10/20	28/10/20
• Anticipated date the local plan-making authority will make the plan (if authorised)	16/11/20	20/11/20
• Anticipated date the local plan-making authority will forward to the PCO for publication.	25/11/20	25/11/20

