

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Dubbo Regional LGA
<b>PPA</b>	Dubbo Regional Council
<b>NAME</b>	Consolidated LEP
<b>NUMBER</b>	PP_2018_DREGI_001_00
<b>LEP TO BE AMENDED</b>	Dubbo LEP 2011 and Wellington LEP 2012
<b>ADDRESS</b>	Applies to all Dubbo Regional Council LGA
<b>RECEIVED</b>	23 April 2018 – FI & meeting 3 July 2018
<b>FILE NO.</b>	IRF18/2661
<b>POLITICAL DONATIONS</b>	There are no donations known or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no known meetings or communications with registered lobbyists with respect to this proposal

## INTRODUCTION

### Description of planning proposal

The planning proposal seeks to consolidate two environmental planning instruments (Wellington LEP 2012 and Dubbo LEP 2011) into a single LEP for the amalgamated Dubbo Regional Council local government area.

The planning proposal is primarily a consolidation and is not a comprehensive review of planning provisions.

The Department is supportive of the proposal but not the mechanism proposed.

### Site Description

The planning proposal applies to the entire Dubbo Regional Council local government area.

### Summary of Recommendation

A conditional Gateway determination is recommended. The timeframe for finalising the plan should be set at 12 months and delegation to finalise the plan should be retained.

## PROPOSAL

### Objectives or Intended Outcomes

Although the objectives of the proposal are clearly stated it would be beneficial to

add additional text to state that the planning proposal is not a comprehensive review of planning provisions and that this is proposed to occur through subsequent strategic planning work.

### **Explanation of Provisions**

The planning proposal contains detailed documentation of how Council has undertaken the consolidation process. This report suggests several areas where Council should reconsider its approach and where documentation could be improved to provide a rationalised single consolidated LEP.

### **Mapping**

Maps have not been provided with the planning proposal.

It is proposed that DPE E-Business Team will undertake the mapping work required to consolidate the maps.

Other LEP mapping layers are not proposed to require amendments.

## **NEED FOR THE PLANNING PROPOSAL**

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The need for the planning proposal arises from the Council's intent to create a single Standard Instrument (SI) compliant LEP for the newly amalgamated council area. While the existing LEPs can continue to operate and there has been no directive from DPE to undertake consolidation, Council has resolved to prepare a consolidated plan and has already expended considerable effort in progressing to this stage. On balance Council's wish to proceed with a planning proposal for a single SI compliant LEP is supported as it signals progress towards a single amalgamated Council.

On balance Council's decision to prepare a consolidated plan is supported.

### **Combining the LEPs**

The planning proposal to combine the Wellington LEP 2012 and the Dubbo LEP 2011 into a single consolidated LEP for the Dubbo Regional Council LGA seeks to retain all existing LEP provisions from the Wellington and Dubbo LEPs. The planning proposal contained an indicative draft Dubbo Regional LEP (draft LEP). The draft LEP relies on the identification of the pre-amalgamated LGA alongside each LEP provision to differentiate where the provisions apply.

An issue of concern is where a land use is identified as being permitted with consent in the former Wellington LGA and not in the former Dubbo LGA. For example, dual occupancies are permitted with consent in the zone R5 in the former Wellington LGA and not in the former Dubbo LGA, as shown in the draft R5 Large Lot Residential land use table below:

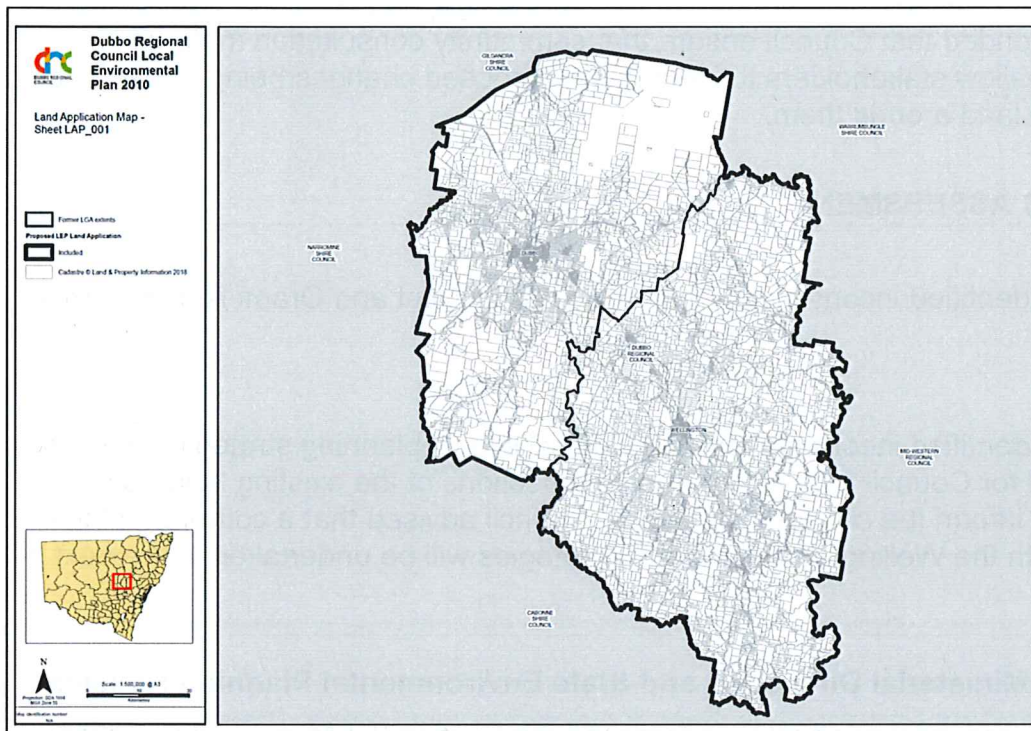
### 3 Permitted with consent

Agricultural produce industries (Dubbo); Bed and breakfast accommodation; Dairies (pasture-based) (Dubbo); Dual occupancies (Wellington); Dwelling houses; Home-based child care (Wellington); Home industries; Horticulture (Dubbo); Neighbourhood shops (Dubbo); Plant nurseries (Dubbo); Roads (Wellington); Water reticulation systems (Dubbo); Water storage facilities (Wellington); Any other development not specified in item 2 or 4

Figure 1: Extract Draft R5 Large Lot Residential land use table (Draft Dubbo Regional LEP 2018).

This essentially creates a subzone and is contrary to Standard Instrument (Local Environmental Plans) Order 2006.

The pre-amalgamated Council LGA boundaries are identified in the draft LEP on a proposed land application map (Map 1).



Map 1: Draft land application map (source: Dubbo Regional Council planning proposal).

Council should seek to further rationalise the draft LEP to align with the Standard Instrument (Local Environmental Plan) Order 2006 and the Standard Instrument - Principle LEP to ensure compliance with section 3.20 of the EP&A Act.

There needs to be some clear criteria as to how Council has decided to retain or omit items. To assist Council, the following example rationalisation criteria on how the decisions have been made. This may assist Council in rationalising land use tables, clause anomalies and provides a clear method for Council to record its decision-making process. It also provides transparency for the decision making process to the community, land owners and stakeholders

## **Example LEP Rationalisation Criteria**

- Consistent approach to zone objectives, principles and application across the local government area.
- Consistency in permissible land uses across similarly zoned lands within the former Dubbo and Wellington LGA's.
- Retention of appropriate development standards as mapped within the Dubbo LEP 2011 and the Wellington LEP 2012. The use of accurate mapping will assist here.
- Retention of additional permitted uses that exist within the Dubbo LEP 2011 and the Wellington LEP 2012.
- The retention of land use permissibility through additional permitted uses where the use will become prohibited under the consolidated Dubbo Regional LEP.
- The review and update of clauses to address current planning issues.

It is recommended that Council ensure that community consultation material is adequate to allow stakeholders to identify the proposed changes being made to their land and the land around them.

## **STRATEGIC ASSESSMENT**

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### **State**

There is no identified inconsistency with the Central West and Orana Regional Plan (CW&ORP).

### **Local**

There is no identified inconsistency with Council's local planning strategies. It would be beneficial for Council to review the related sections of the existing land use strategies to inform the changes proposed. Council advised that a comprehensive review of both the Wellington and Dubbo Strategies will be undertaken in the next 2 years.

## **Section 9.1 Ministerial Directions and State Environmental Planning Policies**

The planning proposal adequately addressed the Section 9.1 Ministerial Directions and State Environmental Planning Policies for the Indicative Draft Dubbo Regional LEP (draft LEP). Given the format of the draft LEP is not in a format that can be supported and will require amendment. As a result of these amendments, the planning proposal will also require an updated assessment of the relevant Section 9.1 Ministerial Directions and State Environmental Planning Policies.

It is being recommended that a conditional Gateway determination be issued that requires Council to submit a revised planning proposal and draft LEP prior to community consultation. This can also contain additional assessment of the relevant Section 9.1 Ministerial Directions and State Environmental Planning Policies that arise from the rationalisation/consolidation process.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social**

The objective of one single planning instrument for the Dubbo Regional Council LGA with modernised controls will have social and economic benefits. Benefits will also result through the ease of interpretation and consistency with local planning provisions in a consolidated format.

### **Environmental**

The planning proposal will not result in any known negative environmental effects.

### **Economic**

Council considers economic benefits will be realised through greater certainty from harmonised, certain and consistent planning controls.

### **Infrastructure**

There is no known adverse impacts of the LEP consolidation on existing infrastructure or the provision of new infrastructure in the LGA.

## **CONSULTATION**

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### **Community**

The planning proposal proposes a community consultation period of not less than 28 days. Council will also undertake consultation with State agencies as required by any Gateway determination from the Department. The Gateway determination recommends 28 days as a minimum but Council able to extend this period if required.

### **Agencies**

The relevant state agencies will be consulted with as part of the Gateway determination consultation requirements. These agencies include:

- Department of Planning and Environment – Resources and Energy
- Department of Primary Industries – Agriculture
- Department of Industry – Land and Water
- NSW Rural Fire Services
- NSW Office of Environment and Heritage
- NSW Roads and Maritime Services
- Transport for NSW
- Dubbo Local Aboriginal Land Council
- Wellington Local Aboriginal Land Council

## **TIME FRAME**

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A 12-month period is considered feasible provided the plan remains a priority for the Council.

Council have several planning proposals underway and proposed. Council and the Department will need to manage the finalisation of all planning proposals to ensure their staging considers the status of the consolidated plan.

### **LOCAL PLAN-MAKING AUTHORITY**

Delegation to make the plan should remain with the Department. Council has not requested planning making delegation.

### **CONCLUSION**

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The planning proposal is supported to proceed with conditions. The intent of the proposal is supported but the mechanism proposed is not and the conditions of the gateway determination reflect this.

### **RECOMMENDATION**

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It is recommended that the Director Regions, Western as delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, Council is to update the planning proposal to:
  - Add additional text to Statement of Objectives to clearly identify this is a consolidation of existing planning instruments and not a comprehensive review of planning controls;
  - Reflect and clarify Councils rationalisation criteria which will guide the drafting of a single consolidated Local Environmental Plan.
  - Update the planning proposal to include additional information to adequately demonstrate consistency (following rationalisation of the Local Environmental Plans) with the Section 9.1 Directions and relevant State Environmental Planning Policies.

The abovementioned planning proposal amendments are to be submitted to the Department of Planning and Environment for approval prior to undertaking community consultation.

2. Community consultation is required under sections 2.22 and 3.34(2)(c) of the *Environmental Planning and Assessment Act 1979* as follows:
  - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs* (Department of Planning & Environment August 2016).

3. Consultation is required with the following public authorities under section 3.34(2)(d) of the *Environmental Planning and Assessment Act, 1979* and/or to comply with the requirements of relevant section 9.1 Directions:

- Department of Planning and Environment – Resources and Energy
- Department of Primary Industries – Agriculture
- Department of Industry – Land and Water
- NSW Rural Fire Services
- NSW Office of Environment and Heritage
- NSW Roads and Maritime Services
- Transport for NSW
- Dubbo Local Aboriginal Land Council
- Wellington Local Aboriginal Land Council

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the *Environmental Planning and Assessment Act, 1979*. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. Prior to submission of the planning proposal under section 3.36 of the *Environmental Planning and Assessment Act, 1979*, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.



25.7.18

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26.7.18

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