



Mr Paul Devery
General Manager
Cowra Shire Council
Private Bag 342
COWRA NSW 2794

Attention: Ms Kate Alberry, Director – Environmental Services

Dear Mr Devery

Cowra Shire Council - Five (5) planning proposals – request for further information.

I am writing in response to Council's request for Gateway determinations in relation to five (5) planning proposal (listed below) which propose a number of amendments to the Cowra Local Environmental Plan (LEP) 2012.

Planning Proposal 1 - Schedule 5 Environmental Heritage Amendments

Planning Proposal 2 - Clause Amendments

Planning Proposal 3 - Rezoning of Ranken and Kite Streets

Planning proposal 4 - Land Use Table Amendments

Planning Proposal 5 - Schedule 4 Classification of Land Amendments

I also refer to a teleconference on 29 March 2018 and a meeting on 3 April 2018 between Council and Department officers to discuss the subject proposals.

The Department commends Council for preparing an Issues Paper and for undertaking a review of the Cowra LEP 2012 that resulted in the five (5) planning proposals. This will provide a clear connection between the Issues Paper and the planning proposals.

At this stage additional information is required for each planning proposal before the Department can complete its assessment. Specific comments relating to each planning proposal are provided at **Attachment A**.

In addition to the specific comments at **Attachment A**, it is recommended that each amendment contained in the planning proposals include details on how Council have addressed the specific comments provided by the Department in a letter dated 1 September 2017 (**Attachment B**). It is also recommended that Council update each planning proposal to include the specific findings or section that relates to the amendment identified in the Issues Paper.

Please complete an Initial Request for Gateway Determination form provided as **Attachment C**.

The Department is available to work with Council to progress these matters. Should you have any further questions in relation to this matter, please contact Mr Haydon Murdoch, Planning Officer, Western Region, at the Department on (02) 68412180.

Yours sincerely



16.4.18

Damien Pfeiffer
Director Regions, Western
Planning Services

Encl:

Attachment A – Request for further information

Attachment B - DPE's letter dated 1 September 2017

Attachment C – Initial request for Gateway determination form

Attachment A – Additional information required

Planning Proposal/Amendment	Comment
Planning Proposal 1 Amendments to Schedule 5 – Environmental Heritage	
<p>Rectify errors in Item 1 ANZ Bank and Item 22 Grave of John Grant.</p> <p>Amend mapping of Item 65 Cliefden Case and Needle Gap Area, to reflect the State heritage listed mapped area.</p> <p>Amend Item 30 St Raphael's Church and Brigidine Convent to reflect the heritage item on the lot.</p>	<p>The proposed amendments that are either rectifying an error or updating the mapping are of a relatively minor nature.</p> <p>It is recommended that each of the amendments are supported by advice from Council's Heritage Advisor.</p>
<p>Removal of Item 35 "Myoorie" from Schedule 5 - Environmental Heritage.</p>	<p>The amendment to remove Item 35 from Schedule 5 requires further justification. It is advised that Council either delay the assessment of the removal of Item 35 until Council has completed a Shire wide heritage study or if Council wish to pursue the removal of Item 35, it is to be supported by a Statement of Heritage Significance (prepared by an appropriately qualified person).</p> <p>The proposed amendment should also be supported by advice from Council's Heritage Advisor.</p>
<p>Insert Woodstock Memorial Park to Schedule 5.</p>	<p>The addition of the Woodstock Memorial Park should be supported by advice from Council's Heritage Advisor.</p>
<p>Insert Walli Memorial Hall to Schedule 5.</p>	<p>The addition of the Walli Memorial Hall should be supported by advice from Council's Heritage Advisor.</p>
<p>Insert Cowra Japanese Gardens to Schedule 5.</p>	<p>The addition of the Cowra Japanese Gardens should also be supported by advice from Council's Heritage Advisor.</p>

Planning Proposal 2

Cowra LEP 2012 - Clause Amendments

Karst Clause – is the insertion of the model clause and applicable mapping relating to karst topography subsistence risk identified in the Cowra Shire Council Local Government Area.

Please provided the relevant map referred to in Appendix 2.0 in the planning proposal.

Model Clause 4.1C – is the insertion of the model clause for the exceptions to minimum lot size subdivision (Torrens) in the R1 General Residential Zone.

The Departments letter dated 1 September 2017 requested further information on where the clause would be applied. The planning proposal states that it would apply to the entire R1 General Residential zone (R1).

The planning proposal has not clearly justified the need for the clause or whether it would apply to specific areas zoned R1 as identified in the Departments letter. From the Departments discussion with Council on 29 March 2018 it is understood that the style of development is becoming a popular development choice in the Cowra R1 zone. Council indicated it is attempting to provide more flexibility in dwelling and lot design to provide a wider range of housing choices.

Having considered the above, it is recommended that Council provide additional strategic justification with reference to the Departments advice of 1 September 2017 and subsequent meetings.

Intensive livestock subdivision – the amendment proposes to remove the need for an irrigation license and replace it with an application that demonstrates suitable water supply.

The Departments previous advice recommended consultation with Department of Primary Industries (DPI). Early consultation with DPI is recommended and will be beneficial. Please consult with DPI and provide such information to the Department.

Planning Proposal 3

Rezoning of Ranken and Kite Streets

Ranken Street, Cowra – is the rezoning of 25 lots from IN2 Light Industrial to R2 Low Density Residential and the introduction of a 2000m² minimum lot size. The planning proposal intends to introduce the R2 zone into the Cowra LEP 2012. The objective of the planning proposal is to apply a zone that reflects the existing residential use of the land whilst maintaining the existing IN2 uses.

The Issues Paper recommended Schedule 1 Amendments, the planning proposal has now recommended rezoning it R2 (this will be a new Zone inserted in the Cowra LEP 2012) which is inconsistent with Council's land-use strategy. The Departments previous correspondence suggested that Council further strategically investigate and clearly determine the best use of the land.

Council is commended on reviewing this land and making a decision that will provide certainty to the land owners in this area.

The planning proposal does not address the potential land use conflict between the two zones. It does suggest that the new R2 zone will be tailored to ensure no additional residential development will be permitted and the objectives of the zone will reflect the Ranken Street character, however no details have been provided demonstrating how this will be achieved.

It is recommended that a draft land use table and objectives are submitted with the planning proposal to assist in justifying and assessing the potential land use and conflict.

There appears to be other lots in this area (outside the identified rezoning area) that either contain an existing dwelling or are vacant land. It is recommended that the planning proposal also address these areas and make recommendations as to the future use of such land.

Kite Street Tennis Courts, Cowra – is the rezoning of RE1 Public Recreation to R1 General Residential Land.

There has been no overall analysis of recreation land/facilities and the relationship this facility has with its immediate surroundings. However, from

	<p>a site inspection undertaken with Council officers on 3 April 2018, the existing facility and tennis courts have been removed from the site.</p> <p>It recommended that Council update the planning proposal to include a recreational land analysis to demonstrate that the land is surplus to recreational needs to assist in justifying the rezoning. In addition, Council should update the planning proposal to provide the history of the site demonstrating the use as public tennis courts has ceased and provide photographic evidence of the facility and associated infrastructure have been removed.</p> <p>This information is required to enable section 9.1 Direction 6.2 Reserving Land for Public Purposes to be addressed.</p>
Planning Proposal 5 Land Use Table Amendments	
<p>Amend B5 Land Use Table – the amendment proposes to remove; 'Residential Flat Buildings', 'Semi-detached Dwellings', 'Seniors housing', 'Shop top housing' as being permissible development from the land use table.</p> <p>Note, 'Dwelling Houses' have been proposed to remain as permissible in the land use table.</p>	<p>The planning proposal aims to protect the business nature of B5 zone along Redfern Street.</p> <p>Council should consider 'Shop Top Housing' as a compatible permissible use and may wish to retain it.</p>
<p>Amend the IN2 land use table – the amendment proposes to include; 'Garden centres', 'Plant nurseries', 'Animal boarding and training establishments' and 'Places of public worship' as permissible development.</p>	<p>Note: 'Garden Centres' and 'Places of Public Worship' are already permissible with consent and are required to be removed from this planning proposal.</p> <p>The planning proposal relies on the Issues Paper as its justification for the inclusion of the new uses into the zone. It is recommended that Council update the planning proposal to include the</p>

	<p>relevant key findings in the Issues Paper.</p> <p>Both the Issues Paper and the planning proposal do not provide commentary on how each use is compatible with the existing uses in the IN2 zone. Rather Council relies on that the uses being permitted in the IN1 General Industrial Zone and therefore should be permitted in the IN2 zone. It is recommended that the planning proposal be amended to justify the suitability of 'Plant Nurseries' and 'Animal boarding and training establishments' in the IN2 zone.</p> <p>It is also recommended that the planning proposal analyses the suitability of the inclusion of 'Animal boarding and training establishments' in relation to the use and availability of IN2 land as per DPE advice on 1 September 2017</p>
Amend the RU1 & RU4 land use table – the amendment proposes to add 'Transport Depots', 'Dual Occupancies' and 'Function Centres' to the land use tables.	The Department advised Council on 1 September 2017 to provide strategic justification to include 'dual occupancy' in the RU4 zone, given the existing land uses permissible in the zone and the primary uses of the zone being intensive primary industries on small lots. The planning proposal has provided no commentary in response to the Departments advice. Please provide further information and justification to address this matter.
Planning Proposal 5 Schedule 4 Classification of Land Amendments	
The planning proposal includes the reclassification of 21 sites located in the Cowra Shire Council LGA.	Whilst each reclassification appears to be of a relatively minor nature the planning proposal attempts to address the section 9.1 Directions for all sites rather than address each site individually. The planning proposal is required to be updated to detail what Direction applies to each site and whether it is consistent or justifiably

	inconsistent. It is important for transparency that each site addresses the relevant section 9.1 Directions individually.
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17/11301

Mr Paul Devery
The General Manager
Cowra Shire Council
Private Bag 342
COWRA NSW 2794

Attention: Ms Kate Alberry, Director – Environmental Services

Dear Mr Devery

Draft Issues Paper for the review of the Cowra Local Environmental Plan (LEP) 2012

I am writing in response to Council's request received on 11 August 2017 in relation to the Draft Issues Paper for the review of the Cowra Local Environmental Plan (LEP) 2012.

Thank you for the opportunity to comment on the draft Issues Paper. Council is to be congratulated on its initiative in undertaking the review of the LEP and seeking amendments to streamline the current land use planning framework in Cowra.

The Department has reviewed the draft Issues Paper and comments are provided in **Attachment A**.

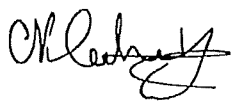
Given the broad range of amendments that Council is seeking to make to the LEP, it is recommended that the amendments be separated into individual Planning Proposals as follows:

Planning Proposal	Amendment type
1.	Insertion of Boundary Adjustment clause Insertion of Karst Model clause Insertion of Model Clause for residential subdivisions below minimum lot size where dwelling design is included Amendment to Intensive Agriculture clause Amendment to Community Title Subdivision clause
2.	Land Use Table Amendments
3.	Ranken Street Amendment
4.	Amendments to Schedule 4 - Land Reclassification
5.	Amendments to Schedule 5 - Heritage

The Department is available to work with Council to progress these matters and agree on a practical process to enable the LEP amendments to proceed in a timely manner.

Should you have any further questions in relation to this matter, please contact Jenna McNabb, Planning Officer at the Department's Western Region office on (02) 6841 2180.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. O'Flaherty', with a stylized flourish at the end.

1.9.17

Katrine O'Flaherty
Director Regions, Western
Planning Services

Attachment A – Comments on draft Issues Paper for the review of the Cowra LEP 2012

Issue	Department Comment
Expiration of Sunset clause	<p>It is noted that Council has conducted extensive community consultation in relation to the expiration of this clause.</p> <p>Should Council wish to allow the provision to expire, no amendment to the LEP is required.</p>
Insertion of Boundary Adjustment Clause	<p>The model clause provides for boundary adjustments for the rationalisation of rural and environmental zoned land, where development involves more than one lot that are currently below the minimum lot size.</p> <p>It is also noted that the provisions of Clause 2.75 of the State Environmental Planning Policy (Exempt and Complying Development) has recently been amended to facilitate boundary adjustment between undersized lots.</p> <p>There are no objections raised to the insertion of the boundary adjustment model clause if still required.</p>
Amendment to Intensive Agriculture Clause	<p>Currently Clause 4.2A of the Cowra LEP 2012 provides for the subdivision of land for the purposes of intensive plant agriculture and intensive livestock agriculture by allowing subdivision below the minimum lot size. A dwelling may be permitted where it can be demonstrated the dwelling is required to support the intensive agricultural use.</p> <p>Development controls included in clause 4.2A ensure that the land is suitable for intensive agriculture (including evidence of a sustainable water supply) and that there is a nexus between a proposed dwelling and the intensive agricultural use. The proposed amendment to remove the requirement for evidence of an irrigation licence, and demonstrate that adequate water supply is available will require consultation with Department of Primary Industries – Agriculture and Water.</p>

<p>Amendments to zone RU1 – Primary Production and zone RU4 Primary Production Small Lots Land Use Tables</p>	<p>Council seeks to include 'function centres' and 'dual occupancies (detached)' as development permissible with consent within zones RU1 Primary Production and RU4 Primary Production Small Lots.</p> <p>It is recommended that the proposed amendment to insert 'function centres' into the land use tables are supported by objectives in the land use table which support tourism related uses within the zone.</p> <p>The inclusion of 'dual occupancies (detached)' within both the RU1 and RU4 zones should be further justified, particularly given the existing land uses which are permissible within the zones. It is noted that 'secondary dwellings' are permissible with consent within the RU1 zone currently, subject to the provisions of clause 5.4 of the Cowra LEP. Further justification is required for the inclusion of 'dual occupancies (detached)', given the existing types of residential accommodation already permissible within zone RU1.</p> <p>In relation to the inclusion of 'dual occupancies (detached)' in zone RU4, additional information is required to justify the inclusion of additional residential options, given the purpose of the zone is to facilitate intensive primary industries on small lots, and the management of potential land use conflict.</p>
<p>Amendments to zone B5 – Business Development Land Use Table</p>	<p>Council wishes to amend the land use table of zone B5 – Business Development to prohibit residential development within the B5 zone.</p> <p>The current B5 land use table within the Cowra LEP lists 'residential accommodation' as prohibited, with the exception of 'dwelling houses', residential flat buildings' and 'seniors housing', which are permissible with development consent as a result of Council's request during the making of the Cowra LEP.</p> <p>The appropriateness of residential development within the B5 zone is currently determined by Council through the</p>

	<p>development application process, noting that the B5 zone is primarily a commercial zone.</p> <p>Council should consider the implications of removing these land uses, given Council's longstanding position on permitting certain types of residential accommodation within the zone.</p>
Amendments to Clause 4.1AA – Minimum subdivision size for community title schemes	<p>The intention of this amendment is to amend clause 4.1AA to remove subclause (2)(c), and not apply the clause to land within zone R1 General Residential.</p> <p>There are no objections to the amendment of this sub-clause as this is a local planning matter.</p>
Amendments to zone IN2 – Light Industrial Land Use Table	<p>Council seeks to insert the following land use terms as permissible with consent within the zone IN2 Light Industrial land use table: Garden centres, Plant nurseries, Animal boarding and training establishments, and Places of public worship.</p> <p>The land use table for the IN2 Light Industrial zone currently includes 'Garden centres' and 'Places of public worship' as permissible with consent within the Cowra LEP 2012. There is no amendment required in relation to these uses.</p> <p>The suitability of the inclusion of 'Animal boarding and training establishments' within this zone should be considered in relation to the use and availability of IN2 land.</p> <p>There are no objections to the inclusion of 'Plant nurseries' to the land use table.</p>
Amendments to Schedule 1 – Additional Permitted Uses (Ranken Street, Cowra)	<p>Council seeks to list a number of allotments within Schedule 1 of the Cowra LEP, currently zoned IN2 Light Industrial land bounded by Ranken Street Hartley Street and Olympic Way, to formalise the existing use of the allotments for residential purposes.</p>

	<p>As noted in the Draft Issues Paper, existing use right provisions in the Environmental Planning and Assessment Act 1979 would enable the continued use of the existing dwellings in this area, despite residential development being prohibited in the IN2 Light Industrial zone.</p> <p>It is noted that the Department has previously provided a Gateway determination (PP_2014_COWRA_001_00) (dated 16 December 2014) to include a dwelling on Lot 1 DP 872743, being 25 Ranken Street Cowra, as an Additional Permitted Use within Schedule 1 of the Cowra LEP.</p> <p>The zoning of the Ranken Street area under the (former) Cowra Local Environmental Plan 1990 was 4(c) Special Industrial and development for residential purposes was permissible with consent of Council at the time. This allowed Ranken Street to develop into an area that is used primarily for residential purposes, creating a planning anomaly whereby the zoning of the land does not properly reflect the predominant use of the land in the area.</p> <p>The preference is to clearly identify the preferred use of the land by zoning it appropriately rather than using additional permitted use provisions.</p> <p>Council is encouraged to further strategically investigate and clearly determine the best use of the land, noting the dominant use appears to be residential at this time.</p>
Amendment to Schedule 5 – Heritage Conservation	<p>Council seeks to amend Schedule 5 – Heritage Conservation of the Cowra LEP 2012 to update property descriptions and applicable mapping based on a heritage study/heritage advisor advice.</p> <p>Generally there are no objections to this amendment where justified.</p>

<p>Insertion of Karst topography subsistence risk model clause and mapping</p>	<p>Council intends to insert the model clause and applicable mapping relating to karst topography subsistence risk identified in the Cowra Local Government Area.</p> <p>There are no objections to the insertion of this type of clause and an example is clause 6.6 and mapping in Wellington LEP 2012.</p>
<p>Amendments to Schedule 4 – Classification and reclassification of public land</p>	<p>The classification and reclassification of land can only be undertaken through an amendment to the LEP and may require the Governors approval.</p> <p>Please refer to LEP Practice Note PN16-001. Any future planning proposal would need to disclose any interests which Council has in the land, and if these are being amended, discharged or will remain. The Department is available to provide advice to Council about this process.</p>
<p>Insertion of Model Clause for residential subdivisions below minimum lot size where dwelling design is included</p>	<p>Council intends to include Model Clause 4.1C – Exceptions to minimum lot sizes for certain residential development to allow consent for residential subdivisions where the lot created is below the minimum lot size, and, it is demonstrated that a dwelling can be sited on the allotment.</p> <p>Further justification is required for any future planning proposal to consider the insertion of this clause in the Cowra LEP 2012, particularly the areas to which this clause would apply (broadly throughout the Cowra LGA, or in specific identified areas on relevant mapping), and any other provisions, which would require compliance for subdivisions made under this clause.</p> <p>It should also be noted that this clause would be unable to be applied to any community title subdivisions within zone R1 General Residential, following the proposed amendments to clause 4.1AA, detailed above.</p>
<p>Clarification of drought provisions within 'Intensive Livestock Agriculture' definition</p>	<p>Council has requested clarification of the dictionary term 'intensive livestock agriculture',</p>

	<p>specifically the reference to the wording 'drought or similar emergency relief'.</p> <p>The NSW Department of Primary Industries - Agriculture is the Government body responsible for the declaration of official drought conditions in NSW. Council may choose to rely on this declaration when enabling the 'drought' provisions of this definition.</p> <p>The Department recommends that Council obtain its own legal advice in relation to establishing the circumstances that meet the definition of a drought.</p> <p>The upcoming review of the State Environmental Planning Policy (Rural Lands) 2008 may also clarify this further.</p>
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Request for Initial Gateway Determination

Instructions to Users

1. When forwarding a planning proposal to the Minister under section 3.33, the planning proposal authority must provide the information specified in this form.
2. Please send this completed form and one (1) electronic copy and two (2) hard copies of the completed Planning Proposal and other information as applicable, to your local Regional Office.

Relevant Planning Authority Details

Name of the Planning Proposal Authority:

Contact Person:

Contact Phone and Email:

Planning Proposal Details - Attachments

1. LAND INVOLVED *[if relevant - e.g. Street Address and Lot and Deposited Plan]*

Attached/Completed *[Check the box]*

2. MAPS *[If applicable – provide 1 electronic and 2 hard copies]*

☐ Location map showing the land affected by the proposed draft plan in the context of the LGA *[tagged 'location map']*

☐ Existing zoning map showing the existing zoning of the site and surrounding land and proposed zoning change for the site/s *[tagged 'comparative existing/proposed zoning']*

3. PHOTOS and other visual material *[if applicable]*

☐ Aerial photos of land affected by the Planning Proposal

☐ Photos of land involved and surrounding land uses

4. COMPLETE PLANNING PROPOSAL *[provide 1 electronic and 2 hard copies]*

☐ Council's must address all relevant matters in a planning proposal – including the Secretary's requirements for the justification of all planning proposals (other than those that solely reclassify public land) as set out in the Department of Planning publications; a 'Guide to preparing local environmental plans' and a 'Guide to preparing a planning proposal'. These requirements must be completed prior to submitting the Planning proposal to the Regional Office.

5. PLANNING PROPOSAL HAS BEEN SUPPORTED BY COUNCIL

☐ Council has considered the written planning proposal prior to sending it to the Department of Planning

☐ Council has resolved to send the written planning proposal to the Department of Planning *[attach Council's resolution]*

Signed for and on behalf of the Planning Proposal Authority

DATE DD/MM/YY

