

Cabonne LEP 2012 – Amendment 5 - Rezone land from R1 General Residential to B2 Local Centre and RE1 Public Recreation, and insert Clause – Boundary adjustments in certain rural and environmental management zones.

Proposal Title : Cabonne LEP 2012 – Amendment 5 - Rezone land from R1 General Residential to B2 Local Centre and RE1 Public Recreation, and insert Clause – Boundary adjustments in certain rural and environmental management zones.

Proposal Summary : To rezone Lot 272 DP 750170 and adjacent Crown road reserve, Hill Street (Mitchell Highway), Molong from zone R1 General Residential to part B2 Local Centre and part RE1 Public Recreation respectively.

To include a provision which permits low impact boundary adjustments on land in certain rural and environmental protection zones.

PP Number : PP_2016_CABON_001_00 Dop File No : 16/11846-1

Proposal Details

Date Planning Proposal Received : **24-Aug-2016** LGA covered : **Cabonne**

Region : **Western** RPA : **Cabonne Shire Council**

State Electorate : **ORANGE** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : **Lot 272 DP 750170 - Hill Street (Mitchell Highway) Molong**

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 :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
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 : **No known meetings with registered lobbyists**

Supporting notes

Internal Supporting Notes : **The planning proposal seeks to amend the Cabonne Local Environmental Plan 2012 to allow boundary adjustment subdivision for rural and environmental zoned land through the addition of a model 'boundary adjustment' clause, and also rezone the Molong Country Women's Association (CWA) Hall Lot 272 DP 750170 from zone R1 General Residential to zone B2 Local Centre. it is also proposed to rezone adjoining recreational land to zone RE1 Public Recreation.**

BOUNDARY ADJUSTMENT SUBDIVISION CLAUSE:

Prior the introduction of the Standard Instrument, many LEPs had capacity to permit boundary adjustments to lots where dwellings were located, and where the lot created would be below lot size, provided no further dwellings or lots were created.

Clause 4.2 of the Cabonne LEP 2012, allows for the creation of a lot below lot size but only where there is no existing dwelling on the lot or potential for a dwelling.

The only other provision open for boundary adjustment subdivision in Cabonne LGA is under Clause 2.75 of the SEPP (Exempt and Complying Development Code)2008. The intent of the current clause 4.2 and Clause 2.75 of the SEPP is to allow rational alteration and flexibility of rural and environmental land to meet agricultural need.

The model clause will provide the flexibility and clarity required to allow for boundary adjustments for the rationalisation of rural and environmental zoned land, particularly where houses exist and lots are below minimum lot size.

The Department is supportive of the inclusion of these clauses within the Cabonne LEP 2012.

REZONING:

Lot 272 DP 750170 (556.4m2)and the adjoining Crown reserve is currently zoned R1 General Residential. Prior to the implementation of the Cabonne LEP 2012 the subject land was

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zoned 2(v) Village by the former Cabonne LEP 1991.

Situated on the lot is a weatherboard building which was previously used by the CWA as meeting/rest rooms and baby health clinic, as well as most recently being used as a café/gallery from 2004-2015. The owner of the site has actively been seeking a commercial tenant for the site, however, the premises has been vacant for 12 months and the 'existing use rights' of the property have been extinguished due to the previously operations being ceased for over 12 months.

The previous use of the building as a café was lawfully granted through a development consent in 2004, where a 'food and drink premises' was permissible with consent within the zone 2(v) Village. The implementation of the Cabonne LEP 2012 and introduction of zone R1 General Residential on the site has prohibited the use of the site as a 'food and drink premises'.

The subject land is identified as a local heritage item I196.

It is proposed to rezone the subject land from zone R1 General Residential to zone B2 Local Centre. The B2 zone will provide the site with greater flexibility to provide commercial opportunities being consistent with the zone B2 land opposite.

Adjoining Lot 272 is a Crown reserve which is also proposed to be rezoned from zone R1 General Residential, to zone RE1 Public Recreation. The application of the RE1 zone to the road reserve is appropriate given its Crown reserve status. The road reserve is an unformed section of road.

This proposal will require the amendment of Land Zoning Map – Sheet LZN_004A by removing the zone R1 from the subject land, and applying the zone B2 Local Centre to Lot 272 DP 750710, and zone RE1 Public Recreation over the adjacent road reserve, and also removing the minimum lot size which applies to Lot 272 DP 750170. No minimum lot size is applicable to the subject land.

The subject land is identified as being within the 1 in 20 year floodway and no changes are being proposed to the flood controls. Indeed zone RE1 and B2 are less sensitive zones in terms of flooding considerations.

Council has requested delegations to complete the planning proposal and this is considered appropriate.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment :

The statement of objectives provides that the intended outcomes of the proposal are to:

- 1. Rezone land at Molong from zone R1 General Residential to part B2 Local Centre and part RE1 Public Recreation. The intended outcome is to permit an appropriate range of land uses, including the commercial use of the building located on the site; and**
- 2. To allow for the rationalisation and consolidation of agricultural land to enhance agricultural sustainability.**

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

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions is consistent with the Statement of Objectives.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

- b) S.117 directions identified by RPA : **1.2 Rural Zones**
1.5 Rural Lands
* May need the Director General's agreement **3.1 Residential Zones**
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified? **SEPP (Rural Lands) 2008**

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

Section 117 Directions:

1.2 Rural Zones:

The Ministerial Direction is relevant to the planning proposal as the proposal affects land within existing rural zones. The Direction requires a planning proposal must not rezone land from a rural zone to a residential zone or contain provisions that will increase the permissible density of land within a rural zone. The planning proposal is consistent with the Direction, it does not propose to amend the land use zone or permit an increased density of residential development.

1.5 Rural Lands:

The Ministerial Direction is relevant to the planning proposal as the planning proposal affects land within a rural zone. The Direction requires the planning proposal be consistent with the rural planning principles and rural subdivision principles in the SEPP (Rural Lands) 2008.

The planning proposal is consistent with this Direction and supports productive sustainable economic activities by providing a mechanism which permits low impact boundary adjustments on rural land. The proposal does not permit an increase in the number of dwellings permitted on rural land or the creation of additional allotments. It will not result in the fragmentation of rural land and does not impact on services and infrastructure.

2.3 - Heritage Conservation:

The former CWA rooms are identified as a local heritage item (I196). The proposed rezoning does not affect the existing heritage provisions and will indeed permit flexibility for future use of the item. The proposal is consistent with this Direction.

3.1 – Residential Zones

The planning proposal intends to rezone Lot 272 DP 750170 from R1 General Residential to zone B2 Local Centre. Whilst the proposal removes the opportunity for residential development on the site, the proposed B2 zone is more compatible with the existing building, its location, flooding, and historical use. The proposal is therefore considered to be consistent with this direction. Any inconsistencies with this Direction are considered to be of minor significance.

The planning proposal also intends to rezone the Crown land reserve adjacent to Lot 272 DP 750170 from R1 General Residential to zone RE1 Public Recreation. The

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proposed RE1 zone is considered more appropriate for the subject site, being within Crown ownership and not large enough for the construction of a dwelling.

The proposal is consistent with this direction.

4.3 – Flood Prone Land

Lot 272 DP 750710 and the adjoining Crown land reserve are identified as being flood prone land on the Flood Planning Map. The Molong Flood Study 1997 applies to the area. Future development of the site would be subject to the requirements within the flood study. The proposal is therefore consistent with this Direction.

4.4 – Planning for Bushfire Protection

Council advised that the Hill Street land is not bush fire prone. While the new boundary adjustment clause may affect land that is bush fire prone this can not be assessed until a development application is received. Compliance will then be required with Planning for Bushfire Protection 2006. To satisfy this section 117 direction, consultation with NSW Rural Fire Service is required prior to community consultation.

6.2 – Reserving land for public purposes

The proposal seeks to more accurately zone an area of road reserve from residential to public recreation, given its location and function within an existing open space corridor. No existing other zones or reservations would be affected. The proposal is consistent with this Direction.

SEPPS:

SEPP (Rural Lands) 2008

The SEPP is relevant as the planning proposal affect rural land and the introduction of the boundary adjustment clause providing flexibility for boundary adjustments for the rationalization of rural and environmental zoned land, particularly where houses exist and lots are below minimum lot size.

The planning proposal is consistent with the rural planning and rural subdivision principles of the SEPP.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Indicative mapping has been provided however final LEP mapping prepared in accordance with the Department's Standard Technical Requirements for Spatial Datasets and Maps" (2015) will be required to be submitted at the section 59 stage.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The need for community consultation in the proposal has been acknowledged however Council has not proposed a time period for community consultation. It is considered appropriate that the proposal be placed on public exhibition for 28 days.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

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Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **January 2013**

Comments in relation to Principal LEP : **Cabonne LEP 2012 was notified on 18 January 2013.**

Assessment Criteria

Need for planning proposal : **To enable the land to be developed for commercial uses, and to provide more flexibility in rural boundary adjustments within the Cabonne LGA, a planning proposal is required.**

Consistency with strategic planning framework : **The Cabonne Settlement Strategy (endorsed by the Department 15 October 2012) recommends that the subject land be located within a proposed residential zone, which is consistent with the existing zoning under the provisions of the Cabonne LEP 2012. The suitability of the site for residential use is likely to be limited, given the previous use of the building for commercial uses, and its separation from adjoining residential uses, as well as being flood prone land. Whilst not consistent with the recommendation of the Strategy, the proposed rezoning will provide a superior planning outcome for the site, and can be considered to be of minor significance in this instance.**

The introduction of the boundary adjustment clause is consistent with the Blayney, Cabonne, Orange Rural and Industrial Land Use Strategy (endorsed by the Department 30 June 2011).

Environmental social economic impacts : **Lot 272 DP 750170 is identified as being flood prone land. An existing building is currently sited on the land, and there are existing planning controls in place to assess and manage development within the floodway, flood plain and flood fringe.**

Any environmental impacts from boundary adjustment subdivision of rural land can be assessed through merit based assessment of development applications.

Assessment Process

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

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

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

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

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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
01_letter to DOP LEP amendment 5 15 August 2016.docx	Proposal Covering Letter	No
02_Planning Proposal for CWA hall molong and rural boundary adjustment clause.docx	Proposal	No
03_Request for initial Gateway Determination amendment 5.docx	Proposal	No
04_evaluation checklist delegation for PP amendment 5.pdf	Proposal	No
05_Planning Proposal 5 evaluation list.pdf	Proposal	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 3.1 Residential Zones**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 6.2 Reserving Land for Public Purposes**

Additional Information : **That Ministers delegate determines and supports the planning proposal, subject to the following conditions:**

1. Prior to community consultation being undertaken consultation is required with the NSW Rural Fire Service under Section 56 (2)(d) of the Environmental Planning and Assessment Act 1979 to comply with the requirements of section 117 Direction 4.4 Planning for Bushfire Protection. Council is to forward the NSW Rural Fire Service response to the Department and seek approval to proceed to community consultation. The NSW RFS 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 planning proposal.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 as follows:

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- 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 & Infrastructure 2013).
3. A public hearing is not required to be held into the matter by any person or body under section 56(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).
4. The final LEP maps shall be prepared in accordance with the requirements of the Department’s “Standard Technical Requirements for Spatial Datasets and Maps” (2015).
5. The final timeframe for completing the LEP is to be 12 months from the week following the date of Gateway determination.

Supporting Reasons :

The planning proposal justifies permitting the inclusion of the proposed model boundary adjustment clause in the Cabonne LEP 2012 which will provide the flexibility and clarity required for the subdivision of rural and environmental zoned land, where a dwelling already exists but does not meet the minimum lot size requirements. Such boundary adjustment subdivision provision is not currently available in the Cabonne LEP 2012.

The planning proposal will also allow the building on Lot 272 DP 750170 to be utilised for a more suitable commercial use. The location adjacent to existing commercial land and historical use is more compatible with the proposed B2 Local Centre zone. The Director Regions, Western is able to exercise delegations in this case as the proposal is consistent with an endorsed local strategy and broader government policy.

Signature:



Printed Name:

Ella Wilkinson

Date:

14/9/2016

Endorsed
W. Gammey TVWR
14/9/16