

## Planning and Assessment

IRF20/5222

### Gateway determination report

<b>LGA</b>	Dubbo Regional
<b>PPA</b>	Dubbo Regional Council
<b>NAME</b>	Nanima Village Sewage Treatment Plant
<b>NUMBER</b>	PP_2020_DREGI_002_00
<b>LEP TO BE AMENDED</b>	Wellington LEP
<b>ADDRESS</b>	300 Nanima Village Road WELLINGTON
<b>DESCRIPTION</b>	Part Lot 244 DP 756920
<b>RECEIVED</b>	9/11/2020
<b>FILE NO.</b>	IRF20/5222
<b>POLITICAL DONATIONS</b>	There are no known donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend the Wellington Local Environmental Plan 2012 by rezoning a small portion of land at Lot 244 DP 756920 from zone RU5 Village to zone SP2 Infrastructure – sewerage system. The rezoning will reflect the existing use of the subject land as a sewage treatment plant for the Nanima Village. The rezoning will allow for the expansion of the sewage treatment plant (STP) by permitting it with consent under the Wellington LEP 2012 and also without consent under the SEPP (Infrastructure) 2007.

### 1.2 Site description

The subject land is described as part of Lot 244 DP 756920 (approximately 40 ha), 300 Nanima Village Road, Wellington. The subject land on which the STP is located is approximately 1.3ha in area and contains the Nanima village sewage treatment plant comprising of two oxidisation ponds and one evaporation pond.

The subject land is owned by the Wellington Local Aboriginal Land Council and is approximately 180m east of the Nanima village. The subject land has the Macquarie River on the eastern side, agricultural land to the north and open village to the west and south, refer to Figure 1 below.



Figure 1 – Subject site (Source: DPIE – Water Planning Proposal, 2020)

### 1.3 Existing planning controls

The subject land is currently zoned RU5 Village under the provisions of the Wellington LEP 2012, refer to Figure 2, with a minimum lot size of 4000m<sup>2</sup>.

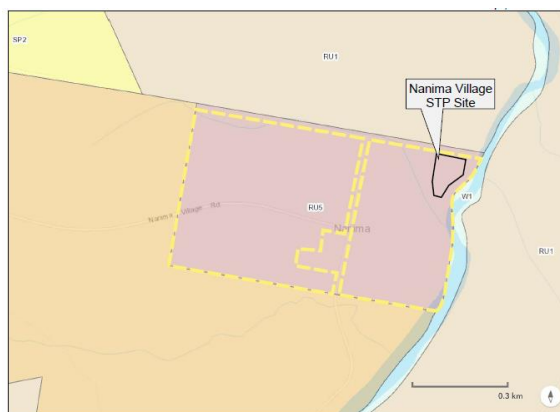


Figure 2-3 Nanima Village STP Site - Land Zoning Map

Source: NSW Planning Portal Spatial – Land Zoning Map Layer

Figure 2 – Existing land use zoning of subject land (Source: Planning proposal, 2020)

The current use of the site as a sewage treatment plant is prohibited under the RU5 Village zone, and not permissible under the provisions of the SEPP (Infrastructure) as RU5 Village is not a prescribed zone for the purposes of the proposed sewage treatment plant.

The site is identified as being groundwater vulnerable under the Wellington LEP, refer to Figure 3.

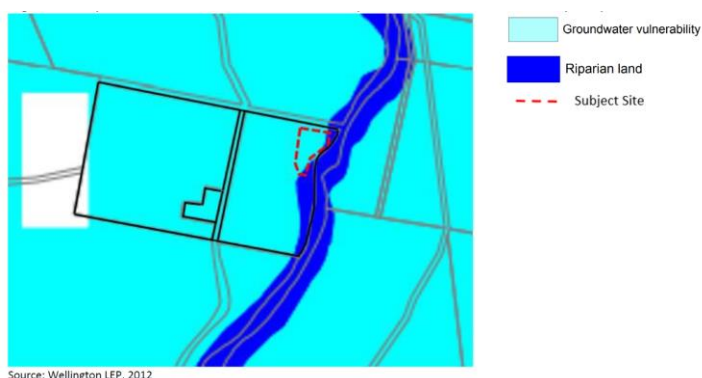


Figure 3 – Groundwater vulnerability of the subject land (Source: Council report, 2020)

The subject land is not identified as being within the Flood Planning Area under the Wellington LEP. However, in Council's report it is noted that Council's internal flood mapping indicates is partially within the 1 in 100-year flood event plus 0.5m freeboard level, refer to Figure 4.



Figure 4 – Subject land partially within Council mapping of 1 in 100-year flood event plus 0.5m freeboard (Source: Council report, 2020)

The subject land is identified as being partially within the bushfire buffer under the draft Wellington Bushfire Prone Land Map, refer to Figure 5.

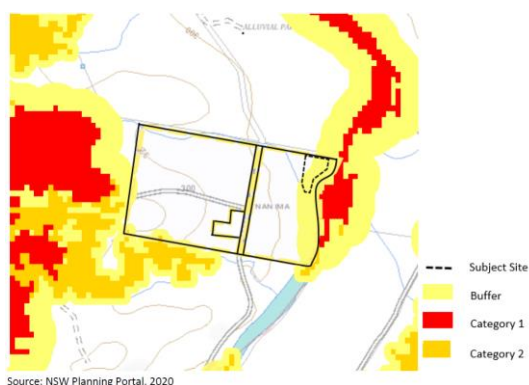


Figure 5 – Subject land partially within buffer zone for bushfire prone land (Source: Council report, 2020)

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The objectives of the proposal are contained in Section 2, page 3 of the planning proposal dated September 2020. The objectives clearly articulate the intended outcome of the planning proposal which is to amend the Wellington LEP to reflect the existing and future intended use of the subject land as a sewage treatment plant for the Nanima Village, and to permit the future development of the sewage treatment plant under the provisions of the ISEPP

### 2.2 Explanation of provisions

The explanation of provisions is outlined in Section 3, page 5 of the planning proposal. The proposal intends to achieve its objectives by amending Land Zoning Map (LZN\_004) from zone RU5 Village to zone SP2 Infrastructure – sewerage system for a part of Lot 244 DP 756920.

### 2.3 Mapping

The proposal will require Land Zoning Map (LZN\_004) to be updated to show the new zone for part of Lot 244 DP 756920, refer to Figure 6.



Figure 6 – Existing Zoning (left image) and proposed zoning (right image) (Source: DPIE – Water Planning Proposal, 2020)

## 3. NEED FOR THE PLANNING PROPOSAL

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The planning proposal seeks to reflect the existing and intended future uses of the subject land as a sewage treatment plant (STP) for Nanima Village.

The planning proposal is not the direct result of any strategic study or report. However, the planning proposal has linkages with the recommendations of the STP augmentation options identified within the “Nanima Village Sewage Treatment Plant Options Study” dated 2017, prepared by Public Works Advisory. The Options Study recommended major capital works including a new oxidation pond to augment the existing STP and relining the existing two oxidation ponds to repair leakage issues.

The existing RU5 Village zone prohibits the use of the land as a sewage treatment plant. Rezoning the land to SP2 Infrastructure- sewerage system is the only means to recognise the use of the land and its ongoing future development

It is agreed that the planning proposal to amend the land use zone is the best means for achieving the intended outcome.

## **4. STRATEGIC ASSESSMENT**

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### **4.1 State**

There are no State strategies applicable to the proposal.

### **4.2 Regional / District**

The planning proposal is consistent with the objectives of the Central West and Orana Regional Plan 2036 by reducing existing and future land use conflict as well as facilitating infrastructure investment.

Section 4, page 7 of the planning proposal provides detailed justification which adequately demonstrates consistency with the Regional Plan.

The rezoning of the subject land will facilitate greater land use compatibility between the existing sewage treatment plant and the Nanima Village as well as facilitate future augmentation works. This is consistent with Direction No. 12: *Plan for greater land use compatibility*, especially Action 12.4 which states “*Amend planning controls to deliver greater certainty of land use*”.

The planning proposal would also facilitate improvements to the sewage infrastructure which then have positive public health outcomes for the Nanima Village as well as reduce the risk of environmental pollution of groundwater resources and the Macquarie River. This is consistent with Direction No. 13: *Protect and manage environmental assets* and Direction No. 14: *Manage and conserve water resources for the environment*.

### **4.3 Local**

#### Dubbo Regional Council LSPS

Section 4, page 8 of the planning proposal outlines consistency with the Dubbo Regional Council LSPS.

The planning proposal would enable a more streamlined planning approval pathway for future sewage infrastructure upgrades under Part 5 of the EP&A Act. This is consistent with Planning Priority 1: *Plan for the delivery of infrastructure to support growth*.

The planning proposal would also ensure that the existing and intended future uses of the subject land as a sewage treatment plant can adequately service the existing village and cater for any future population growth. This is consistent with Planning Priority 11: *Plan for growth in villages*.

#### Dubbo Region Community Strategic Plan

The planning proposal outlines consistency with the visions in the Dubbo Region Community Strategic Plan in Section 4, page 9.



The planning proposal in particular addresses Strategy 2.3 of the Dubbo Region Community Strategic Plan which states: *“Infrastructure meets the current and future needs of our community”*.

The rezoning of the subject land would facilitate a more streamlined planning approval pathway for the ongoing STP maintenance and future augmentation works. This is consistent with Strategy 2.3.1: *“Council’s water and sewer infrastructure and services comply with appropriate regulations to meet the current and future needs of the community and facilitate a future population of 100,000”*.

The planning proposal would also facilitate improved public health outcomes for the community in Nanima Village through having a functional and adequately performing sewage treatment plant. This is consistent with Strategy 5.3.3: *“The health, education and socio-economic status of the Aboriginal Community is improved”*.

#### **4.4 Section 9.1 Ministerial Directions**

Section 9.1 Directions are addressed in Table 4.2 page 13 of the planning proposal.

Assessing the planning proposal, it is determined to be consistent with the following Section 9.1 Ministerial Directions:

- 2.3 Heritage Conservation
- 5.10 Implementation of Regional Plans
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.6 Site Specific Provisions

The proposal is inconsistent with the following Section 9.1 Ministerial Directions:

Direction 2.6 Remediation of Contaminated Land is relevant to the planning proposal. This Direction provides that a planning proposal must consider contamination and remediation of land to reduce risk of harm to human health and the environment.

The planning proposal is inconsistent with sub-clause 2(b) as sewage treatment activities, a form of waste storage and treatment activity which is currently undertaken on the subject land may cause land contamination. Section 4, page 6 of the planning proposal also indicates that the oxidation ponds are currently leaking via a subsurface route into the Macquarie River, resulting in likely groundwater, surface water and soil contamination. The spatial and temporal extent of the land and water contamination is not specified in the planning proposal.

However, the planning proposal does not change the land use, and the subject land is suitable for ongoing sewage treatment activities in accordance with the permitted land uses within the SP2 Infrastructure zone. Therefore, the planning proposal satisfies sub-clause 4(b).

Nevertheless, the proposed future augmentation works to be undertaken will need to consider the existing contamination and remediation of the subject land as part of the environmental impact assessments under Part 5 of EP&A Act.

Direction 4.3 Flood Prone Land is relevant to the planning proposal despite the subject land not being identified as within a flood planning area in the Wellington LEP. The

subject land is identified within Council's internal flood mapping as partially within the 1 in 100-year flood event plus 0.5m freeboard level.

The planning proposal is inconsistent with sub-clause 6(e) as the rezoning of the subject land to SP2 Infrastructure would enable development to be carried out without development consent. However, the planning proposal is for a relatively small portion of land (i.e. 1.3ha) that has existing infrastructure on-site and the location of the new oxidation pond can be placed above the Council's mapped 1 in 100-year flood event plus 0.5m freeboard level.

Therefore, the planning proposal satisfies subclause 9(b) as the inconsistencies with the Direction are of minor significance. However, consultation with DPIE – Environment, Energy & Science should still occur as a condition of the Gateway determination to confirm that the inconsistencies of the planning proposal are minor nature.

Direction 4.4 Planning for Bushfire Protection is relevant to the planning proposal. The subject land is mapped as being partially within a buffer zone for bushfire prone land. This Direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) as per sub-clause 4. Until this consultation has occurred the inconsistency of the planning proposal with the Direction remains unresolved and is to be addressed during community consultation as a condition of the Gateway determination.

#### **4.5 State environmental planning policies (SEPPs)**

The planning proposal provides an assessment of the rezoning against the State Environmental Planning Policies (SEPP) in Table 4.1, page 10.

SEPP (Infrastructure) 2007 is relevant to the planning proposal as a sewage treatment plant is permissible development within the SP2 Infrastructure zone. The proposed rezoning of the subject land is consistent with this SEPP and will not restrict ongoing and future use of the subject land as an existing sewage treatment plant. Zone SP2 Infrastructure is a 'prescribed zone' under the provisions of the ISEPP and will permit future augmentation works to be undertaken with and without consent on the site by a public authority.

SEPP No. 55 – Remediation of Land is relevant to the planning proposal as future developments will need to consider the remediation of the existing contaminated land from the leaking sewage treatment plant.

The above-mentioned SEPPs are not relevant to determining the strategic merit of the planning proposal and may be considered as part of any future development applications / Part 5 assessments on the land.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social and economic**

The planning proposal considers that the social and economic effects would be limited and predominately positive.

The rezoning of the subject land would ensure that planning approval for the future augmentation works at the existing sewage treatment plant would be undertaken in a

streamlined manner under Part 5 of the EP&A Act. A streamlined planning approval pathway would ensure reduced delays and costs associated with the assessment process of this essential facility.

Future upgrade works will also ensure that the Nanima Village has sewage treatment infrastructure that is operating effectively, upgraded and adequate to current design capacity. This will ensure that there are improved public health outcomes for the community.

The planning proposal also outlines that a heritage due diligence was undertaken at the site and determined that there were no Aboriginal cultural heritage constraints at the site (page 23 of planning proposal).

## **5.2 Environmental**

The planning proposal will facilitate improved environmental outcomes through the proposed upgrades to the sewage infrastructure including relining the existing oxidation ponds to address the likely cause of the pond leakages.

However, the planning proposal and the council report do not identify if any mitigative action will be taken in the interim period until the construction of augmentation works to prevent the ongoing pollution of groundwater and the Macquarie River.

Whilst the purpose of the planning proposal is to rezone the subject land to reflect current and future sewage treatment activities, there is a concern regarding the timeframe until maintenance and the augmentation works will be carried out to resolve the leaking pond issue. Mitigative action should be investigated and undertaken in the interim period to prevent ongoing environmental pollution and public health impacts. This is a matter for council and relevant agencies.

There may also be limited negative impacts to the Nanima Village during construction of the augmentation works including noise, dust and odour.

Lastly, the planning proposal does not specify the size or area of the new SP2 Infrastructure zone for the subject land. However, the Council report in section 1, page 4 indicates that the area will be approximately 1.3ha. There is no clear justification for the boundary of the new SP2 Infrastructure Zone. It is assumed that the zone boundary relates to the fencing around the existing STP site. Therefore, the area of the rezoned subject land will need to be identified and justified in the planning proposal documents prior to community consultation as a condition of the Gateway.

The planning proposal also refers to the Options Study for an augmented STP as including the construction of a new oxidation pond. However, the planning proposal does not clearly outline that a new pond will fit within the footprint of the new SP2 Infrastructure zone, it appears that the planning proposal assumes that new pond will be located within the SP2 Infrastructure zone. This should be clarified prior to community consultation.

## **6. CONSULTATION**

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### **6.1 Community**

The planning proposal suggests it is a low impact proposal with an exhibition period of not less than 14 days. Public exhibition was also to include notification on Council



website, newspapers and letters to adjoining landowners. The planning proposal also outlines that the owners of land (i.e. Wellington Local Aboriginal Land Council) have already been informally consulted by DPIE - Water.

However, since there are inconsistencies with section 9.1 Directions 4.3 and 4.4, it is recommended that the Gateway Determination be conditioned to require the planning proposal to be exhibited for 28 days.

## **6.2 Agencies**

Consultation is required with the following agencies prior to public exhibition to satisfy consistency with the Section 9.1 Direction 4.3 Flood Prone Land and Direction 4.4 Planning for Bushfire Protection:

- Department of Planning, Industry and Environment – Environment, Energy and Science - flooding
- NSW Rural Fire Service - bushfire

The planning proposal also identifies the following government agencies for consultation:

- NSW Health
- NSW Environment Protection Authority
- DPIE – Environment, Energy and Science
- NSW Rural Fire Service

It is recommended that the above-mentioned government agencies are to be consulted due to inconsistencies with section 9.1 Directions 4.3 and 4.4 as well as concerns about the health outcomes and environmental pollution of waters from the leaking oxidation ponds on the subject land.

The planning proposal also identifies that informal community consultation has already occurred with the Wellington Local Aboriginal Land Council, the owners of the subject land. It is recommended that consultation with the Wellington Local Aboriginal Land Council be added as a condition of the Gateway determination.

## **7. TIME FRAME**

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The planning proposal provides a project timeline in Section 7, page 30 to finalise the LEP amendment in 10 months. The project timeline provided does not account for agency consultation and consultation over the Christmas and New year period.

However given the nature of and necessary LEP amendment it is considered that this matter can be finalised in 9 months.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has specifically requested to be the local plan-making authority.

It is noted that Council operates the Nanima Village STP under contract on behalf of DPIE – Water. Council does have an interest in this proposal and it is therefore appropriate that Council take carriage of this matter and Council exercise plan-making delegations for this essential infrastructure.

## 9. CONCLUSION

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The planning proposal is recommended to proceed with conditions as:

- As the subject proposal facilitates maintenance, augmentation and upgrading to current standards of an existing sewage treatment plant
- Improved environmental and public health outcomes
- Is consistent with the relevant Regional Plan, local plans and strategies.

## 10. RECOMMENDATION

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It is recommended that the delegate of the Secretary agree that:

- Inconsistencies with section 9.1 Direction 2.6 Remediation of Contaminated Land are minor and/or justified and no further work is required; and
- Inconsistencies with section 9.1 Direction 4.3 Flood Prone Land will be addressed through further investigation and consultation with DPIE – Environment, Energy and Science during community and agency consultation and addressed prior to the plan being made.
- Inconsistencies with section 9.1 Direction 4.4 Planning for Bushfire Protection will be addressed through further investigation and consultation with NSW Rural Fire Service and addressed during community and agency consultation and addressed prior to the plan being made.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, the planning proposal is to be updated to reflect the exact area of land to be rezoned to zone SP2 Infrastructure – sewerage systems.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal is to be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act:
  - NSW Health

- NSW Environment Protection Authority
- Department of Planning, Industry and Environment – Environment, Energy and Science – regarding flooding
- NSW Rural Fire Service
- 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 Act. 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 Act, the final LEP maps must be prepared to be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
6. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.
7. Given the nature of the planning proposal, Council be authorised to be conditioned as the local plan-making authority to make the plan as this is essential infrastructure upgrading.



26.11.20

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2.12.20

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