



Goulburn Mulwaree Council

Planning Proposal to remove Cemeteries as permissible with consent from E2 Environmental Conservation and E3 Environmental Management Zones

Goulburn Mulwaree Local Environmental Plan 2009

11 December 2018

Introduction

Goulburn Mulwaree Council (GMC) has been reviewing the impact of cemeteries in the E2 Environmental Conservation and E3 Environmental Management zones under *Goulburn Mulwaree Local Environmental Plan 2009*. This has been undertaken particularly in view of large scale development proposals and specifically their direct and indirect impacts on environmentally sensitive land. Cemetery development is considered to be an incompatible use with the objectives of the E2 Environment Conservation and E3 Environmental management zones. Furthermore, the GMC *Cemetery Plan of Management 2012* identifies sufficient capacity to meet current demand for the next 45 years in the Council operated cemeteries, in addition to this, there are a number of active privately operated cemeteries within the local government area. Further capacity for cemeteries would be easily accommodated in other zones should the demand arise.

The issues identified in this review were outlined in a report to Council. In summary it was concluded that *Goulburn Mulwaree Local Environmental Plan (LEP) 2009* does not adequately protect environmentally sensitive land from large scale cemetery development. As a result of this conclusion, and the report presented on 21 August 2018, Council resolved as follows;

1. *The report from the Graduate Strategic Planner on the definition of Cemeteries be received.*
2. *Council staff draft a planning proposal amend the Goulburn Mulwaree Local Environmental Plan 2009 to:*
 - a) *remove Cemeteries as being 'Permissible with Consent' in Zones E2 Environmental Conservation and E3 Environmental Management and;*
 - b) *include Cemeteries as an additional permitted use for the Bungonia (Lot 1 DP 89405 and Lot 2 DP 1130082) and Tallong (Lot 7312 DP 1145878) Cemeteries in Schedule 1 of the Goulburn Mulwaree LEP 2009.*
3. *The Planning Proposal once drafted - be submitted to the Minister of NSW Planning & Environment for a Gateway Determination in accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979.*
4. *The Department of Planning and Environment be advised that Council wishes to be issued with an authorisation to use delegation for the Planning Proposal.*
5. *In the event NSW Planning & Environment issues a Gateway Determination to proceed with the Planning Proposal, consultation be undertaken with the community and government agencies in accordance with any directions of the Gateway Determination.*

The Planning Proposal seeks to amend Goulburn Mulwaree LEP 2009 as outlined in Table 1:

Table 1 Proposed LEP amendments and supporting rationale

Amendment Proposed	Rationale
Remove <i>Cemeteries</i> as being 'Permissible with Consent' in Zones E2 Environmental Conservation and E3 Environmental Management.	<p>This has the desired outcome of prohibiting Cemeteries from land zoned for its environmental sensitivities. This will protect environmental values from potentially incompatible land uses.</p> <p>While the judgement referred to in the Council Report of 21 August 2018 referred to land zoned E3 Environmental Management, E2 Environmental Conservation Zones also allow for cemeteries as a permissible use. The E2 Environmental Conservation zone is generally considered to be land of higher environmental value therefore Council considered it a reasonable approach to extend the prohibition of cemeteries to both the E2 Environmental Conservation and E3 Environmental Management zones.</p>
Include <i>Cemeteries</i> as an additional permitted use for the Bungonia (Lot 1 DP 89405 and Lot 2 DP 1130082) and Tallong (Lot 7312 DP 1145878) Cemeteries in Schedule 1.	<p>Prohibiting cemeteries in the E3 Environmental Management zone could cause a potential issue for operational cemeteries in the E3 Environmental Management Zone.</p> <p>Two operational cemeteries have been identified in the E3 Environmental Management zone; Bungonia (Lot 1 DP 89405 and Lot 2 DP 1130082) and Tallong (Lot 7312 DP 1145878). It is noted that these cemeteries may be able to continue to operate under existing use rights; however, further interments would be made more difficult. This unnecessary difficulty would be avoided by including the two (2) existing cemetery sites to Schedule 1 (Additional Permitted Uses) of the GM LEP 2009.</p>

As noted in Part 5 of the Council resolution, Council is seeking delegation from the NSW Department of Planning and Environment (DPE) to make – and determine not to make – the proposed LEP under section 3.36 of the *NSW Environmental Planning and Assessment Act, 1979*. In *Circular PS 16 - 005*, the following types of draft LEPs were identified with the intention of being routinely delegated to councils to prepare and make following a Gateway determination that the planning proposal can proceed:

- mapping alterations
- section 73A matters (e.g. amending references to documents/agencies, minor errors and anomalies)

- reclassifications of land
- heritage LEPs related to specific local heritage items supported by an Office of Environment and Heritage endorsed study
- spot rezoning consistent with an endorsed strategy and/or surrounding zones, and
- other matters of local significance as determined by the Gateway.

In this case, it is considered that the rezoning is consistent with the endorsed strategies, zone objectives for the E2 Environmental Conservation and E3 Management zones; and the proposed amendments are of local significance only.

Part 1 – Objectives

1.1 Intended Outcomes

The intended outcome of this Planning Proposal is to amend *Goulburn Mulwaree Local Environmental Plan 2009* (GM LEP 2009) to prohibit ‘Cemeteries’ in zone E3 Environmental Management and zone E2 Environmental Conservation so that cemeteries and ancillary development do not impact on environmentally sensitive land. The second objective of the proposed amendment is to continue to allow historic operational cemeteries in their current locations under the GM LEP 2009.

Council wishes to protect environmentally sensitive land in line with the strategic framework set out by Federal, State and Local Government. Broadly, environmentally sensitive land has been identified by applying the zoning of E2 Environmental Conservation or E3 Environmental Management under the GM LEP 2009. The application of this zoning is intended to prohibit development that is inconsistent with the objectives of the zone (reproduced below for convenience) in order to protect environmentally sensitive land. Conversely, the land uses that are permissible with consent are considered compatible with the environmental sensitivity of the land.

Zone E2 Environmental Conservation

Objectives of zone

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Zone E3 Environmental Management

Objectives of zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To facilitate the management of water catchment areas, environmentally sensitive land and areas of high conservation value.*

As outlined in the attached Council Report, a development application (DA/102/1415) was lodged with Council in 2014 for, amongst other things: a cemetery with a building which was purportedly ancillary to the proposed use.

The DA (DA/102/1415) was found by Council to have impacts on the subject site, including but not limited to biodiversity, ecology, bushfire, and traffic management. The development application was subsequently determined by refusal by the Land Environment Court on 30 May 2018. It is noted that the refusal was primarily based on permissibility of the development as proposed.

Conversely, Council does not wish to place a burden on sites which have historically operated for many years as a cemetery, such as the Bungonia and Tallong cemeteries. It is therefore proposed to include these sites under Schedule 1 of the GM LEP 2009 to safeguard their operation as a cemetery and their historic significance for the surrounding community.

Part 2 – Explanation of Provisions

The planning proposal seeks to amend the *Goulburn Mulwaree Local Environmental Plan (LEP) 2009* by;

- i. Amending the Land Use Table for the Zone E2 Environmental Conservation by removing ‘*Cemeteries*’ as ‘permitted with consent’.
- ii. Amending the Land Use Table for the Zone E3 Environmental Management by removing ‘*Cemeteries*’ as ‘permitted with consent’.

As part of the review of cemeteries in the E2 Environmental Conservation and E3 Environmental Management zones, it was identified that the LGA has two (2) cemeteries currently in these zones.

- iii. Revising ‘Schedule 1 Additional permitted uses’ by including cemeteries as an additional permitted use for the following lots;
 - Lot 7312 DP 1145878 (Tallong)
 - Lot 1 DP 89405 (Bungonia)
 - Lot 2 DP 1130082 (Bungonia)

The cemetery located in Bungonia (**Figure 1**) has historic significance and is identified as local heritage item (I031) under Schedule 5 of the GM LEP 2009. This site is operational as occasional interments still occur. Environmental impacts on this site have been considered and as such occasional future interments are unlikely to compound the current environmental impact. To amend the GM LEP to prohibit cemeteries in the E3 Environmental Management zone, would then mean that this site would be relying on existing use rights to continue to operate. To provide some certainty for the community, it is recommended this site be included in *Schedule 1 Additional permitted uses* of the Goulburn Mulwaree LEP 2009 as a ‘cemetery’.



Figure 1 Location of the cemetery at Bungonia, just south of the rest of Bungonia (Lot 1 DP 89405 and Lot 2 DP 1130082)

The Cemetery in Tallong (**Figure 2**) is located within an E3 Environmental Management Zone and is also an operational cemetery according to *'Goulburn Mulwaree Council Cemetery Plan of Management 2012'*. If the proposed amendment to prohibit cemeteries in the E2 Environmental Conservation and E3 Environmental Management proceeds, this site would need to rely on existing use rights to continue to operate. However, the Plan of Management notes that it is intended to continue to serve the growing region of Marulan and Tallong and may require expansion in future. As such it is recommended that Council not rely on existing use rights for this site and include it in *Schedule 1 Additional permitted use* under GM LEP 2009.



Figure 2 Location of the cemetery at Tallong, a couple of kilometres east of the rest of Tallong on the right and just south of Highland Way (Lot 7312 DP 1145878).

These statutory amendments are the best way to achieve the desired outcome of protecting environmentally sensitive lands from incompatible development while still facilitating ‘cemeteries’ in specific locations across the LGA. It should be noted that following this amendment ‘cemeteries’ will remain permissible with consent under the Goulburn Mulwaree LEP 2009 within the following zones: RU1 Primary Production, RU2 Rural Landscape, RU5 Village, RU6 Transitional, R1 General Residential, R2 Low Density Residential, B2 Local Centre, IN2 Light Industrial, SP2 Infrastructure (Cemeteries) and any site identified in *Schedule 1* of the *GM LEP 2009* as a result of this proposal.

Part 3 – Justification

Section A – Need for Planning Proposal

3.1 Is the Planning Proposal a result of any strategic study or report?

No - A report titled *Permissibility of Cemeteries in Environmental Zones* was provided to Council (refer Attachment 1) highlighting the deficiencies in the Goulburn Mulwaree LEP 2009 to protect environmental sensitive land from potentially damaging development.

Council's experience with *Al-Mabarat Benevolent Society Limited v Goulburn Mulwaree Council [2018] NSWLEC 1261* (henceforth referred to as 'Al-Mabarat'), identified the need to ensure inappropriate development is excluded from environmentally sensitive lands. This Planning Proposal does not prevent further cemeteries from being developed in the LGA as there are still a number of non-environmental zones including rural zones which permit cemeteries.

The connection between the development and the impact that cemeteries would have on environmentally sensitive land, was highlighted by the scale of development and the additional permitted uses that could be considered as ancillary to cemeteries. With no development standards applicable to cemeteries or ancillary development, the decision in *Al-Mabarat* prompted Council to reconsider that development of a necropolis in these zones would inherently involve the clearing of land both through direct and indirect development impacts. This would thereby be in direct conflict with the objectives of the *E2 Environmental Conservation* zone and the *E3 Environmental Management* zone under *GM LEP 2009* as previously stated.

3.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proposed Amendments to the *GM LEP 2009* are the most effective way to achieve the desired outcome of protecting environmental protection zones from cemetery which would potentially have a negative impact on the biodiversity and ecology of the land. The issues associated with cemetery development and the potential impacts associated with this type of development are quite broad. These issues include: direct and indirect impacts on biodiversity due to the need to clear land for plots, access, fencing, on site infrastructure (roads, car parking, amenities etc.). Sites zoned E2 and E3 are generally located outside of urban environments on rural roads in bushfire prone land locations. The inherent issues with clearing to provide suitable asset protection zones and conflicts with biodiversity legislation are therefore more problematic. The potential need to provide for the safe assembly of large numbers of people attending ceremonies on these sites is in itself a land management issue.

The statutory definition of cemeteries provided by the LEP (below) provides that ancillary development is tentatively permitted, whether or not it contains an associated building for conducting memorial services.

***cemetery** means a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services.*

The definition is therefore, providing for more than interment and sets up the expectation that a larger facility catering for services is permissible. Permissibility issues surrounding the definition have proven to be complex as demonstrated in the judgement in *Al-Mabarat*.

It is considered that the most effective option of ensuring that cemeteries are excluded from Environmental Zones is through an LEP amendment prohibiting the land use. Other options outlined below were also considered:

- ***Revision of the definition***

Revision of the definition under the dictionary with the inclusion of development standards to clarify what is defined as *an associated building for conducting memorial services*, was considered, however, the judgement in *Al-Mabarat* demonstrates that it is difficult to provide a universal definition or development standards, due to the various ways in which ancillary buildings are used by different religions.

The cemetery definition provides no limitation on the number of *associated buildings* that could be used for memorial services. This could result in the proliferation of structures on any given site and the need to provide further development (land clearing, car parking access and amenities buildings) with both direct and indirect impacts.

The definition is also a standard instrument definition and any change proposed would need to be endorsed by the NSW Department of Environment and Planning and would then apply to all standard template LEPs. This approach was not considered appropriate in this instance. The definition as currently worded may be appropriate for other zones and therefore, it is not necessary to change the definition, it is more important to refine the definition as a permissible use to the appropriate zones only.

- ***Regulation by a Development Control Plan (DCP)***

The Council report considered controlling this development type through Council's Development Control Plan, however, this would not prevent future legal challenges and does not address the fundamental potential for incompatibility with the environmental zone objectives.

While it may be possible to control the scale and characteristics of development through a Development Control Plan (DCP), these are guidelines only and a proponent can argue for their variation. The subject site in *Al-Mabarat* had other characteristics (bushfire, traffic, ecology and the permissibility of the intended use of the hall) that enabled Council to successfully argue that the scale of development would have a detrimental impact on the site.

Similarly, the characteristics of an *associated building for conducting memorial services* could also be widely interpreted however, containing the impact of this ancillary development by means of a development control plan would remain open to challenge and expose environmentally sensitive land to Serious and Irreversible Impacts (SAII).

Controlling the scale of either the specified use or any ancillary development is less likely to be successful if a DCP is relied upon to regulate the impact of development on the environment.

Council resolved to proceed with an amendment to the *GM LEP 2009* via a planning proposal as it was considered the only process that would achieve the intended outcome and provide certainty to future consideration of both the location and impact of necropolis.

The introduction of a cemetery use to land with identified ecological or environmental sensitivity is considered to be inconsistent with the relevant zone objectives and therefore, this use should be removed from the list of permissible uses thereby, preventing situations where such a compatible use can occur on an inappropriate site.

Section B – Relationship to Strategic Planning Framework

3.3 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Yes. The Planning Proposal is consistent with the *South East and Tablelands Regional Plan 2036* (SETRP, 2036).

Goal 2 of the SETRP, 2036 seeks to achieve ***A diverse environment interconnected by biodiversity corridors***. This Directions include the following actions that will leverage desirable environmental outcomes:

- Direction 14: Protect important environmental assets – the planning proposal is to prohibit development that has a high propensity to damage land in environmental zones. The affected zones are by definition identified as being of ecological or environmental value identified in the LEP; Council is acting to protect this land in line with the Regional Plan.
- Direction 15: Enhance biodiversity connections – the planning proposal will enhance biodiversity connections through prevention of development which could sever key connections on environmentally sensitive land from taking place.
- Direction 17: Mitigate and adapt to climate change – the planning proposal will protect environmentally sensitive land by preventing development that may degrade land already identified due to its environmental sensitivities. This will help develop a more protected environment in response to climate change pressures.
- Direction 18: Secure Water Resources: the planning proposal will protect the Sydney Drinking Water Catchment. The majority of Goulburn Mulwaree falls within Sydney's Drinking Water Catchment, the planning proposal seeks to protect environmentally sensitive lands which will have a beneficial effect on water quality throughout the region.

This planning proposal is consistent with the South East and Tablelands Regional Plan 2036 as it seeks to protect environmentally sensitive land from potentially incompatible land uses.

3.4 Is the Planning Proposal Consistent with a council's local strategy or other local strategic plan?

3.4.1 Goulburn Mulwaree Strategy 2020

Yes - The Planning Proposal is consistent with the Goulburn Mulwaree Strategy 2020 in terms of the community vision and environmental themes outlined in the strategy.

3.4.2 The Tablelands Regional Community Strategic Plan 2036

Yes - The Planning Proposal is consistent with the Tablelands Regional Community Strategic Plan (TRCSP) 2030 as follows:

- Strategy EN1 – Protect and enhance the existing natural environment, including flora and fauna native to the region.
- Strategy EN2 - Adopt environmental sustainability practices.
- Strategy EN3 - Protect and rehabilitate waterways and catchments.
- Strategy EN4 - Maintain a balance between growth, development and environmental protection through sensible planning.

The planning proposal seeks to protect identified environmentally sensitive land through prohibiting cemeteries in environmental zones. This will help protect the existing natural environment and is in accordance with environmentally sustainable practice used across the state. This proposal will also protect waterways, the Sydney drinking water catchment, and maintain a balance between development and environmental protection by allowing cemetery development to continue in non-environmental zones such as rural, residential and special purpose zones.

3.4.3 Goulburn Mulwaree Biodiversity Strategy

Yes - The Goulburn Mulwaree Biodiversity Strategy (2007) recommends that the E2 Environmental Conservation and E3 Environmental Management zones provide for environmentally sensitive uses and prohibit uses which would have a negative environmental impact. Specifically the Biodiversity Strategy states;

- E2 – Environmental Conservation- This zone is primarily for public and private conservation, with scope for restoration, recovery and maintenance of ecological values including aquatic and terrestrial habitat values, and water quality. To maintain ecological values this zone restricts clearing to a very limited number of activities that are permissible with consent.
- E3 – Environmental Management - The land uses that are permitted with consent identify that any activity that involved clearing would require consent. The environmental sensitivity of land identified within this zone, particularly those involving large numbers of people, must consider the impacts of all activities particularly, for example Bio-solid waste application.

The planning proposal is consistent with the Goulburn Mulwaree Biodiversity Strategy by seeking to make cemeteries prohibited which will help protect the environmental value of the zones.

3.5 Is the Planning Proposal consistent with the applicable State Environmental Planning Policies (SEPP)?

Most SEPP's are not applicable to this planning proposal. The planning proposal is consistent with the relevant SEPP's outlined below in **Table 2**.

Table 2 Planning Proposal compliance with relevant State Environmental Planning Policy's

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP (Rural lands) 2008	This Planning Proposal is intended to prohibit cemetery developments in E zones. No new rural or residential housing will result from this Planning Proposal. It is consistent with the rural planning principles in the SEPP. See below. s.117 1.5 Rural Lands (page 16). Adequate cemetery infrastructure is available within the LGA to meet the demand for rural communities.
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	The SEPP requires that development consent cannot be granted unless there is a neutral or beneficial effect on water quality. It is unlikely that any of the proposed amendments in this Planning Proposal will result in a negative effect on water quality. It is likely that this planning proposal will have a beneficial effect on water quality.
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	<p>This planning proposal is consistent with all the aims of this SEPP, the aims of the policy are as follows;</p> <ul style="list-style-type: none"> a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. <p>The proposal seeks to prohibit potentially harmful development from taking place in environment protection zones as such protecting the biodiversity values and preserving amenity.</p>

3.6 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

The planning proposal is consistent with all relevant s.9.1 directions, consistency with all directions is outlined in table 3 below;

Table 3 – s9.1 Directions

Direction	Justification	Consistent (yes or No)
Direction 1.1 – Business and Industrial Zones	Not applicable as this Planning Proposal does not seek to amend or effect Business or Industrial zoned land.	N/A
Direction 1.2 - Rural Zones	<p><i>A planning proposal must:</i></p> <p><i>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</i></p>	N/A – E zones are not considered to be rural zones.

	<p><i>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village)</i></p> <p>The planning proposal will not alter any zones or alter the density of future development. It is consistent with this direction.</p>	
Direction 1.3 – Mining Petroleum and Extractive Industries	Not applicable	N/A
Direction 1.4 – Oyster Aquaculture	Not applicable.	N/A
Direction 1.5 – Rural Lands	<p><i>Applies when:</i></p> <p><i>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or</i></p> <p><i>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</i></p> <p><i>A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</i></p> <p><i>A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</i></p> <p>The Rural Planning Principles are as follows:</p> <p>(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</p> <p>(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,</p> <p>(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,</p> <p>(d) in planning for rural lands, to balance the social, economic</p>	Yes - Consistent

	<p>and environmental interests of the community,</p> <p>(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,</p> <p>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</p> <p>(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</p> <p>(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</p> <p>Cemeteries are not a rural land use as such, being more a type of service infrastructure (whether publicly or privately owned/operated). Furthermore, the E zones are not strictly speaking rural zones. Substantial areas within the Goulburn Mulwaree LGA are zoned to permit cemeteries (excluding the E2 and E3 zones), thereby allowing these uses to be located within a rural environment and within areas required to service existing communities.</p> <p>The Planning Proposal seeks to prohibit 'cemeteries' in the E2 Environmental Conservation and the E3 Environmental Management zones. By doing so, the environmental values of the land will be protected from potentially incompatible land uses. The Planning Proposal is consistent with this direction.</p>	
Direction 2.1 – Environment Protection Zones	<p><i>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</i></p> <p><i>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".</i></p> <p>The Planning Proposal seeks to prohibit 'Cemeteries' in the E2 Environmental Conservation and E3 Environmental Management zones. By doing so, environmental values will be protected from potentially incompatible land uses.</p>	<p>Yes the planning proposal is consistent.</p>

	The Planning Proposal is consistent.	
Direction 2.2 – Coastal Management	Not applicable.	N/A
Direction 2.3 – Heritage Conservation	<p><i>A planning proposal must contain provisions that facilitate the conservation of:</i></p> <p><i>(a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</i></p> <p>The planning proposal will not have a negative impact on heritage conservation in fact it seeks to protect an historical use for local item inventory No. I035. The GMLEP 2009 heritage provisions are not proposed to be amended with this proposal.</p>	Yes the planning proposal is consistent.
Direction 2.4 – Recreational Vehicle Areas	Not applicable	N/A
Direction 2.5 – Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable	N/A
Direction 3.1 – Residential Zones	Not applicable	N/A
Direction 3.2 – Caravan Parks and Manufactured Home Estates	Not applicable	N/A
Direction 3.3 – Home Occupations	Not applicable	N/A
Direction 3.4 – Integrating Land Use and	Not applicable	N/A

Transport.		
Direction 3.5 – Development Near Licensed Aerodromes	Not applicable	N/A
Direction 4.1 – Acid Sulphate Soils	Not applicable	N/A
Direction 4.2 – Mine Subsidence and Unstable Land	Not applicable	N/A
Direction 4.3 – Flood Prone Land	Not applicable	N/A
Direction 4.4 – Planning for Bushfire Protection	<p><i>Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</i></p> <p><i>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.</i></p> <p><i>A planning proposal must:</i></p> <ul style="list-style-type: none"> <i>a) have regard to Planning for Bushfire Protection 2006,</i> <i>b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</i> <i>c) ensure that bushfire hazard reduction is not prohibited within the APZ.</i> <p><i>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</i></p> <p><i>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</i></p> <ul style="list-style-type: none"> <i>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the</i> 	Yes the planning proposal is consistent

	<p><i>land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</i></p> <p><i>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</i></p> <p><i>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</i></p> <p><i>(c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,</i></p> <p><i>(d) contain provisions for adequate water supply for fire fighting purposes,</i></p> <p><i>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</i></p> <p><i>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</i></p> <p>The Planning Proposal seeks to remove a use from E2 Environmental Conservation and E3 Environmental Management Zones. Much of the land with this zoning is identified as being bush fire prone land as such, minimising uses which may encourage large gatherings and are incompatible with the potential threat is of benefit. The Planning Proposal is consistent with <i>Planning for Bushfire Protection 2006</i>, as it will not place inappropriate development in a hazardous area and will not prohibit bushfire hazard reduction within any APZ's. Consultation with the NSW Rural Fire Service will be undertaken should a positive gateway be received under section 3.34 of the Act.</p>	
Direction 5.2 – Sydney Drinking Water Catchment	<p>Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.</p> <p>The Planning Proposal affects land within the Sydney Drinking Water Catchment. Development within the catchment is to have a neutral or beneficial effect on water quality. It is</p>	Yes the planning proposal is consistent.

	<p>unlikely that this Planning Proposal will result in a negative effect on water quality.</p> <p>The planning proposal is likely to have a beneficial impact on water quality and consultation Water NSW will occur should a positive Gateway Determination be received under section 3.34 of the Act.</p>	
Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable	N/A
Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable	N/A
Direction 5.8 – Second Sydney Airport: Badgerys Creek	Not applicable	N/A
Direction 5.9 – North West Rail Link Corridor Strategy	Not applicable	N/A
Direction 5.10 – Implementation of Regional Plans	<p><i>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary), that the extent of inconsistency with the Regional Plan:</i></p> <p><i>a) is of minor significance, and</i></p> <p><i>b) the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.</i></p> <p>The Planning Proposal is consistent with all parts of the plan</p>	Yes the planning proposal is consistent

	and will facilitate the implementation of Goal 2: A diverse environment interconnected by biodiversity outcomes and actions contained within the <i>South East and Tablelands Regional Plan 2036</i> . As such the planning proposal achieves the overall intent of the Regional Plan and is consistent with the direction.	
Direction 6.1 – Approval and Referral Requirements	<p><i>A planning proposal must:</i></p> <p><i>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</i></p> <p><i>(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></p> <p><i>(i) the appropriate Minister or public authority, and</i></p> <p><i>(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</i></p> <p><i>(c) not identify development as designated development unless the relevant planning authority:</i></p> <p><i>(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</i></p> <p><i>(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.</i></p> <p>The planning proposal does not contain a provision that requires concurrence, consultation or referral of development applications.</p> <p>Consultation with the community and relevant Government Agencies will occur should a positive Gateway Determination be received under section 3.34 of the Act.</p>	Yes the planning proposal is consistent.
Direction 6.2 Reserving Land for Public Purposes	Not applicable	N/A
Direction 6.3 – Site Specific Provisions	The planning proposal seeks to amend Schedule 1 Additional permitted uses of the GM LEP 2009 to be consistent with direction 6.3.	Yes the planning proposal is consistent.

	<p><i>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</i></p> <p><i>(a) allow that land use to be carried out in the zone the land is situated on, or</i></p> <p><i>(b) 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</i></p> <p><i>(c) 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.</i></p> <p>This planning proposal removes the relevant land use from the specified zones and provides for a limited number of properties already undertaking that use by amending schedule 1. This is consistent with (c) or direction 6.3.</p>	
Directions Part 7 – Local Plan Making	Not applicable	N/A

Section C – Environmental, social and economic impact.

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

No. The Planning Proposal seeks to protect environmentally sensitive land, much of which incorporates endangered ecological communities (EEC) and critical habitat of threatened species from incompatible and potentially damaging impacts. The intent of the planning proposal is to remove the land use of cemeteries to ensure that development does not impact environmentally sensitive land in E zones. As such these habitats will not be adversely affected as a result of the proposal.

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

Negative environmental effects are not likely as a result of this planning proposal and environmental effects are likely to be positive. The planning proposal seeks to protect environmentally sensitive land from incompatible land uses, in doing so this proposal will likely have a positive impact on environmentally sensitive land.

The addition of the Bungonia and Tallong cemeteries to Schedule 1 of the GM LEP 2009 is simply facilitating an existing activity. As both of these sites are operational cemeteries, development is unlikely to have additional negative environmental impact. The only alternative to adding these existing cemeteries to Schedule 1 of GMLEP 2009 would be to rezone these sites to a Special Uses SP2 zoning. However, if the SP2 zoning is applied the environmental objectives associated with the existing zoning would be lost. It is considered that this approach would be inconsistent with Local Planning Direction 2.1. The retention of these sites within E zones will allow any future application to be assessed against the relevant environmental objectives.

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

There are negligible social and economic impacts as a result of the proposed amendments outlined in this Planning Proposal. There are approximately 39 cemeteries located within the Goulburn Mulwaree Council LGA. Of these the following are managed by the Goulburn Mulwaree Council:

Active:

- General Cemetery
- Kenmore Cemetery (Also known as Catholic or St. Patrick's Cemetery)
- Tarago Cemetery
- Tallong Cemetery

Inactive:

- Jewish Cemetery
- Mortis Street Cemetery

The Goulburn area has more than sufficient capacity within the Council operated cemeteries to accommodate future capacity demands. The capacity of the private cemeteries is not known, however the attached list of private cemeteries (Attachment 2) indicates whether the cemeteries are still active. Presumably, there is additional capacity within the private cemeteries to that identified in the Council cemeteries.

The *Goulburn Mulwaree Cemetery Plan of Management 2012* (Attachment 3) applies to Council operated cemeteries and states:

Current consumption of graves indicates Council's current facilities will last approximately 45 years, assuming the proportions of lawn interments and ashes interments remaining constant. The development of alternate options of interment, most particularly an increase in the availability of desirable options for the interment of ashes, will greatly increase the life expectancy of the Council managed cemeteries.

The table below highlights the current usage and availability of cemetery plots within the cemeteries:

Cemetery	Estimated number of surveyed sites	Estimates number of surveyed sites reserved	Estimated number of unsurveyed sites	Average annual consumption of sites	Available Sites
General Cemetery	4200	2000	0	150	
Kenmore Cemetery	2300	1500	6000	20	
Tallong	200	50	880	1	50
Tarago	560	128	0	1	430

The loss of potential cemetery capacity in E2 and E3 zones is considered to be of minimal impact in terms of the capacity to provide for this infrastructure within the LGA. Furthermore, this planning proposal does not prevent cemetery development from taking place in the Goulburn Mulwaree LGA, within the following zones subject to development consent:

- RU1 Primary Production,
- RU2 Rural Landscape,
- RU5 Village, RU6 Transitional,
- R1 General Residential,
- R2 Low Density Residential,
- B2 Local Centre,
- IN2 Light Industrial,
- SP2 Infrastructure (Cemeteries) and;
- Any site identified in schedule 1 as a result of this proposal.

As such Goulburn Mulwaree LGA is well positioned to take advantage of the positive economic and social impacts cemeteries can have while protecting environmental values.

Section D – State and Commonwealth interests

3.10 Is there adequate public infrastructure for the planning proposal?

As stated in Section 3.9 above, the provision of cemeteries is a form of public infrastructure. There is sufficient capacity within the LGA within the existing Council operated cemeteries. Further private capacity is also found within the active privately owned cemeteries.

The planning proposal seeks to limit incompatible development on environmentally sensitive land only, as such there is sufficient public infrastructure as set out in the *Cemetery Plan of Management*, furthermore, there are many more suitably zoned sites across the Goulburn Mulwaree LGA for ‘cemeteries’ to be developed.

3.11 What are the views of State and Commonwealth public authorities' consultation in accordance with the gateway determination?

Commonwealth public authorities have not been formally involved in this particular Planning Proposal as it is yet to receive a Gateway Determination. At this early stage it appears unlikely that there will be any issues of interest to Commonwealth authorities.

The subject Planning Proposal will be referred to the following State Agencies prior to the public exhibition:

- NSW Rural Fire Service;
- Office of Environment and Heritage; and
- Water NSW.

Part 4 – Mapping

No Maps require amendment as part of the planning proposal.

Part 5 – Community Consultation

Council will commence community consultation post-Gateway Determination. For the purposes of public notification, Council considers that a twenty-eight (28) day (public exhibition period is appropriate.

Notification of the exhibited Planning Proposal will include:

- A newspaper advertisement that circulates in the area affected by the Planning Proposal;
- The website of Goulburn Mulwaree Council and the Department of Planning and Environment.

Written notice will be provided to affected land owners of the two cemeteries to be included in Schedule 1 of the LEP and will:

- Provide a brief description of the objectives or intended outcomes of the Planning Proposal;
- State where and when the Planning Proposal can be inspected; and
- Provide details of how members of the community can make a submission.

Exhibition Material:

- The Planning Proposal, in the form approved for community consultation by the Director General of the Department of Planning and Environment; and
- The Gateway Determination, and
- Report to Council titled *Permissibility of Cemeteries in Environmental Zones*

The Gateway Determination will confirm the public consultation requirements.

Part 6 – Project Timeline

Gateway Determination	February 2018
Timeframe for completion of technical studies	April 2018 (if required)
Timeframe for agency consultations	May 2019
Public exhibition	June 2019
Public hearing	Not required.
Consideration of submission	July 2019
Date of submission of LEP to DoPI	October 2019
Anticipated date of plan made	November 2019
Anticipated date plan forwarded to DoPI for notification	December 2019

Conclusion

Goulburn Mulwaree Council has initiated a planning proposal to modify its *Local Environmental Plan 2009* to prohibit 'Cemeteries' from Zones E2 Environmental Conservation and E3 Environmental Management. This was due to a review of the implications of cemeteries, and their potential direct and indirect impacts on environmentally sensitive land. As part of this review council identified and resolved to make (prepare) a planning proposal which would prohibit 'cemeteries' from Environmental Zones.

Council has sufficient capacity within the Council managed cemeteries to meet demand for the next forty years. In addition to this there are a number of private cemeteries which are still active. Furthermore, cemeteries will continue to be a permissible use in a variety of zones under GM LEP 2009.

Council's review identified two (2) operational cemeteries in these zones which could be negatively impacted by prohibiting cemeteries in environmental protection zones (they would still have some protections under existing use rights but these were not considered sufficient). To prevent any future issues and to be consistent with Local Planning Directions, the planning proposal seeks to add these two sites under Schedule 1 Additional permitted uses under Goulburn Mulwaree LEP 2009 at the following sites: Bungonia (Lot 1 DP 89405 and Lot 2 DP 1130082); and Tallong (Lot 7312 DP 1145878), with 'cemeteries' as an additional permitted use.

The subject planning proposal is broadly consistent with the South East and Tablelands Regional Strategy (SETRS, 2036) and SEPPs. It is also generally consistent with the relevant Local Planning Directions. It is not considered that this planning proposal raises any issues that require further studies or detailed assessment.

As noted in Part 5 of the Council resolution, Council is seeking delegation from the NSW Department of Planning and Environment (DPE) to make – and determine not to make – the proposed LEP under section 3.36 of the *NSW Environmental Planning and Assessment Act, 1979*. The proposed amendments are consistent with adopted strategies and the zone objectives, furthermore, the plan is only of local significance. The resolution only seeks delegation to the Council and does not specify that the delegation will extend to a specific officer (such as the General Manager or Director).
