

Contact: Emma-Jayne Leckie
Your Reference: 12/17968



4 December 2015

Ms Linda Davies
Acting General Manager
NSW Department of Planning and Environment – Southern Region
PO Box 5475
Wollongong NSW 2520

Department of Planning
& Environment
RECEIVED
- 4 DEC 2015

Dear Ms Davis

Subject: Planning Proposal PP_2012_GOULB_002_00

Southern Region-Wollongong

I write to inform you regarding Council's recent decision on the abovementioned planning proposal.

At its meeting on the 17th November 2015 Council resolved (extract only):

That:

2. *The Council not proceed with Draft Goulburn Mulwaree LEP Amendment No. 6 and request the Minister for Planning to determine that the matter not proceed in accordance with Section 58(4) of the Environmental Planning & Assessment Act 1979.*

A copy of the officers' report is enclosed for your information. Should you wish to view the separate enclosure a copy can be accessed via the following link
<http://www.goulburn.nsw.gov.au/Information/20151117Agenda.aspx>.

Therefore in accordance with clause 58(4) of the *Environmental Planning and Assessment Act 1979* Council requests that the Minister for Planning determine that Planning Proposal PP_2012_GOULB_002_00 not proceed.

Please do not hesitate to contact me on (02) 4823 4535 should you require any further information.

Yours sincerely



Emma-Jayne Leckie
Manager Strategic Planning

Encl. Item 12.1 Goulburn Mulwaree Local Environmental Plan 2009 – Amendment No. 6 (#772477)

Officers' Reports to Ordinary Meeting of Council to be held on 17 November 2015

12. Items for Determination

Item 12.1 Goulburn Mulwaree Local Environmental Plan 2009 – Amendment No. 6 (Separate Enclosure)

Reporting Officer

Manager Strategic Planning – Emma-Jayne Leckie

Purpose of Report

The purpose of the report is to address Council resolution 14/151 of 6 May 2014 regarding proposed Goulburn Mulwaree LEP 2009 Amendment No. 6 (Lot 203 DP 870194, 152 Medway Road, Marulan).

Report

Background

Draft LEP Amendment No. 6 was initiated in July 2012 to achieve the following outcomes:

- To reduce the minimum lot size from 100ha to 10ha at 152 Medway Road, Marulan (see Separate Enclosure Part A – Attachment 1 for location map)
- To reduce the boundary of the Natural Resource Sensitivity Map – Biodiversity Map at 152 Medway Road, Marulan
- To reduce the minimum lot size from 100ha to 10ha for certain sites at the Kingsdale locality.

A Gateway Determination was received on the 10 January 2013. Prior to public exhibition of the proposal a number of consultations were required with government agencies. Following this consultation a draft Voluntary Planning Agreement and Draft DCP was prepared by the proponent.

The Draft LEP Amendment was publicly exhibited from 23 January 2014 to 28 February 2014. At its 6 May 2014 meeting Council considered a report on the public exhibition of Draft LEP Amendment No. 6 (refer to Separate Enclosure Part A - Attachment 2 and Separate Enclosure Part B – Attachment 1) and resolved (14/151):

That:

- A. The Medway planning proposal be deferred until Council has the benefit of the additional assessment information referred to in this report*
- B. The Kingsdale planning proposal and submissions requesting a reduction in the minimum lot size for the additional sites in Kingsdale and Wingello / Tallong be considered when Council has the opportunity to prepare a Council wide settlement strategy to be undertaken in association with a comprehensive review the current LEP.*

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The 6 May officer's report stated the following:

In view of the above it is recommended that the Medway Planning Proposal be deferred to allow further assessment with respect to:

1. The appropriate minimum lot size for parts of the site to create a suitable buffer distance to the private rail line and contain the remnant vegetation in a single allotment
2. The local noise environment and impact upon the internal and external amenity of proposed residences from operation activities of Peppertree Quarry
3. The above information being referred under Ministerial Direction 1.3 to the DoPI for their comment regarding the likely extent and significance of any land use conflict

The timeframe for completion of this amendment set by the Gateway Determination has been extended a number of times. Since February 2015 officers have continually liaised with Department of Planning and Environment about the proposal. A revised Gateway Determination now requires finalisation of the proposal by 17 April 2016.

New information

In response to Council's resolution on 6 May 2014 the proponent provided further information in correspondence dated 22 January 2015 (refer Separate Enclosure Part A – Attachment 3).

The additional information outlined the following matters:

- Noise environment: an acoustic report was prepared that found that 10 of the proposed 22 lots in the proponent's indicative subdivision plan (not part of the planning proposal – see Separate Enclosure Part A – Attachment 6) would not be compliant with standards for noise and would require a physical barrier & separation to mitigate noise impacts.
- Further consultation undertaken by the proponent with Boral.
- Amendment of the draft DCP (submitted with the proposal as supporting information) to include provisions addressing noise impacts
- Remnant vegetation: the proponent states that the planning proposal in its current form is superior to retaining vegetation on one lot or the currently approved and commenced seven lot subdivision approval
- Infrastructure upgrades and voluntary planning agreement: the proponent advised that the infrastructure improvements proposed in the VPA will be at no cost to Council
- No amendment of the exhibited planning proposal is necessary to address the issues raised by Council, the EPA and Boral.

These matters are addressed further in the report below.

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Consultation

State agencies

In response to Council's resolution of 6 May 2014 staff contacted a number of state agencies to discuss and clarify their previous submissions and extend an opportunity to comment on the additional information provided by the proponent. A summary of the outcomes of these discussions is included in the table below.

Table 1: Summary of post-exhibition comments from key State government agencies.

Agency	Summary - Post Exhibition Comments
Office of Environment and Heritage (OEH) – 2 July 2015 (meeting)	▪ A meeting was held with OEH and at that meeting officers confirmed that the advice of OEH provided in correspondence dated 20 May 2013 still stands (see Separate Enclosure Part A – Attachment 4). ▪ Page 1 of that correspondence states "...OEH considers that a 10ha lot size is not appropriate over the whole of the site. The advice of OEH previously provided to Council recommending that areas of moderate-high conservation value are contained within as few lots as possible is still relevant. OEH recommend that the Planning Proposal demonstrate that the area of moderate-high conservation value will not be fragmented." ▪ Page 3 states "Contrary to the Enviro Ecology report, the hill tops covered by the largest remnants on site and dominated by <i>Eucalyptus sieberi</i> or <i>Eucalyptus macrorhyncha</i>, are typical of forest types on rocky low-fertility sites with a sparse shrub layer and very few forbs or grasses. This should not necessarily be considered indicative of poor condition and vegetation degraded by grazing. Although grazing may have affected the diversity present these areas are still considered High Conservation Value. Indeed during the site visit it was noted that the whole site contained a great variety (6 eucalypt species) of canopy tree species as well as some forest casuarinas that are potential food trees for Glossy Black Cockatoos. These areas are also in close proximity to other areas of habitat to the south of the property and are not isolated as claimed."
Roads and Maritime Services (RMS) – 14 October 2015 (telephone discussion & correspondence)	▪ RMS cannot support the planning proposal until it is satisfied the proposed access arrangements between the precinct and the Hume Highway are acceptable and there is a legally binding mechanism to ensure that the upgrades are completed before, or as part of the first stage of, any future subdivision of the land. ▪ Suggests a concept plan of the proposed upgrades and road closures needs to be prepared and that a strategic estimate of works is also undertaken. ▪ RMS would need to consider the abovementioned concept plan before commenting on closing the at grade crossover opposite the service centre (RMS would need to do this). ▪ RMS supports the use of the VPA only if it is entered into prior to, or as part of, the amendment to reduce the minimum lot size being gazetted. ▪ In discussions with RMS officers it was also identified that the works proposed in the draft Voluntary Planning Agreement were not adequately described to identify the exact nature of the works.

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Agency	Summary - Post Exhibition Comments
Environment Protection Authority (EPA) – 13 July 2015 (meeting & correspondence)	▪ The EPA reviewed the Acoustic Report prepared by the proponent and had a number of comments (below). ▪ There were a number of areas identified which could be expanded upon to provide a more accurate assessment of the potential impacts of train movements and quarry operation arising from the Boral Peppertree Quarry including the three matters raised below. ▪ Noise modelling did not consider the potential northern expansion of existing quarry operations to the south-east. ▪ The report does not recommend any particular form for the noise attenuation barrier (between the railway line and dwellings). The EPA would expect that a barrier which could provide at least the recommended 11db(A) noise reduction would probably need to be in the form of an earthen mound or solid wall without gaps within or underneath the structure. ▪ The report does not measure or model the impacts of other noise sources including the Hume Highway or the Great Southern Rail Line. A cumulative noise impact assessment for all potential noise sources may be more useful as a decision making tool than the current noise assessment which only considers the Boral spur line and current quarry operations.
Water NSW – 7 July 2015 (site inspection)	▪ A site inspection was undertaken with Water NSW officers on 7 July 2015. The following matters were raised. ▪ The site has dispersive soils and salinity in the top soil layers and there has been previous evidence of scalding occurring. ▪ Remnant vegetation is important and plays an important function in the rocky terrain on the higher parts of the site which are groundwater recharge areas. ▪ About 800 square metres would be needed for effluent disposal for each proposed dwelling (for a three bedroom house).
NSW Trade and Investment Resources and Energy (Resources & Energy Division) Geological Survey of NSW (GSNSW)– 17 February 2015 (correspondence & telephone discussion)	▪ Previous advice provided in February 2013 (as part of a coordinated response by the Department of Primary Industries) raised no concerns in relation to the site as it was located outside the buffer zone to Boral's Peppertree Quarry. Further information has been received and their advice has been reviewed. ▪ GSNSW has concerns with Amendment No. 6 (if approved) in regard to the potential intensification of dwellings in the Marulan area generally, and the possibility for increased land use conflict on a broader scale. ▪ Large quarries in the Marulan area are planned to be important sources of aggregate for the Sydney market. The quarries have large resources and expected long life and are identified as state and regionally significant resources in the NSW Mineral Resource Audit (MRA). ▪ The granodiorite rock being extracted and processed at Peppertree Quarry extends further north, beyond the current resource boundary, towards the subject site (on Boral's property) (refer to Separate Enclosure Part A – Attachment 5). The GSNSW has concerns about the potential for future land use conflict in the 'Medway' area should Amendment No. 6 be approved and extraction on adjacent land occurs. ▪ South Marulan Quarry and Boral's private rail line are both covered by Consolidated Mining Lease No. 16. The rail line is used by Boral on a 24 x 7 basis. GSNSW has concerns regarding potential land use conflict in the 'Medway' area adjacent to the railway line. ▪ In a subsequent discussion with GSNSW officers on 8 July 2015 staff clarified that the 17 February 2015 letter constituted advice from 'DPI' pursuant to Section 117 Direction 1.3 and was not an 'objection' to the proposal.

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Proponent (JW Planning) & landowner

Staff met with the landowner on 28 January 2015 and discussed the site and approvals history, past consultation completed by the landowner with Boral and use of Goulburn Mulwaree LEP 2009 clause 4.1C (lot averaging). Staff indicated at that time that further consultation would likely be required with State agencies about noise impacts, impacts on extractive resources and management of vegetation.

Following a detailed review of the proposal & further consultation with State agencies a letter was sent to the landowner in July 2015 advising them of staff concerns about the suitability of the proposal.

Staff then met with the landowner to discuss the available options and what might be involved to achieve them. The three options tabled were: proceed as proposed (which staff indicated may not be supported); opt for a 40/20 hectare minimum lot size across the site or not proceed with the proposal and rely on the existing consent for a seven lot subdivision.

The landowner was asked to consider the options presented and inform staff of the chosen option. A response was received from the proponent in correspondence dated 30 September 2015 which favoured proceeding as proposed and urged Council to consider the matter without further delay.

Key Assessment Issues

The key issues associated with this proposal include:

1. Consistency with the strategic planning framework
2. Suitability of the site for 10 hectare lots & Council's previous reasons for deferring the proposal

1. Consistency with the strategic planning framework

The proposal is not consistent with the Goulburn 2020 Strategy although at the time of initiation of the proposal it was deemed by the Department of Planning that the variation was of minor significance. Several plans for the land have been considered over the past 6 years from urban, to B6 Enterprise corridor to industrial and now to rural residential. It is unlikely that any rural residential development would be supported by Council on the eastern side of the highway in future for the reasons that make rural residential development on the subject site undesirable. The mapped extension of the granodiorite resource up to and past the subject site and the operation of the private railway line will continue to limit the potential for intensification on that side of the highway for residential purposes.

In terms of the statutory planning framework the planning proposal requires amendments to:

- satisfactorily address three State Environmental Planning Policies (SEPP 55, SEPP (Infrastructure) and SEPP (Mining, Petroleum Production & Extractive Industries) 2007
- satisfactorily address four Ministerial Directions (1.3 Mining, Petroleum Production and Extractive Industries, 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments)
- address the existing LEP controls applying to the site i.e. terrestrial biodiversity and mineral resource overlays

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- address Indigenous & non-Indigenous heritage
- satisfactorily address potential impact on threatened species

A copy of the publicly exhibited planning proposal is included in Separate Enclosure Part B – Attachment 2.

2. Suitability of the site for 10 hectare lots

Retention and management of existing vegetation and the potential for land use conflict are key matters underpinning the unsuitability of the site for 10 hectare lots. These matters were raised in the 6th May 2014 staff report.

6/5/14 Report Issue 1: Minimum lot size - suitable buffer to the private rail line & remnant vegetation in one lot

The width and configuration of any buffer (amongst other things like topography and dwelling design) will affect how far a dwelling would need to be separated from the private rail line to achieve compliance with noise standards.

The proponent's acoustic report states:

"Based upon measured rail traffic noise levels, noise modelling was conducted to determine the likely impact of rail traffic on the proposed subdivision of the Medway property. Based upon the assessment, it was found that noise mitigation in the form of a noise bund near the house will be required on 10 of the 22 lots [in the proposed subdivision concept – see Separate Enclosure Part A – Attachment 6], with 2 lots being marginally compliant without a barrier". Further "the barrier must break line of sight between the noise source and the receiver to achieve a significant reduction".

The proponent's noise assessment indicates that a buffer distance of 600m would achieve compliance with the required noise standard of 35dBA. The assessment also indicates that under adverse conditions or in some locations site noise mitigation in the form of a bund or barrier will be required to reduce noise levels to the required standard based on the proponent's indicative lot layout. Given the topographic and vegetation constraints of the site it is reasonable to assume that some houses in a future 22 lot subdivision of the site (however configured) will require noise mitigation of some sort.

6/5/14 Report Issue 2: Impact of Peppertree Quarry activities on proposed residences

Based on previous noise assessment reports prepared in support of Peppertree Quarry the proponent's acoustic report asserts the following (page 10): "...so assuming the Noise Impact Assessment is correct, the proposed development will be unaffected by operations at the Quarry, except for transport activities along the rail spur".

The proponent's acoustic report considers the current impacts of Peppertree Quarry on the site but not any potential expansion. This matter was raised by the EPA (refer to Table 1).

6/5/14 Report Issue 3: DPI comments - Ministerial Direction 1.3

The planning proposal was referred to the relevant government agency pursuant to Direction 1.3. As stated in Table 1 above GSNSW has concerns about the proposal.

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Options

1. Not proceed with the Amendment (Recommended)

Explanation: On 27 January 2007, conditional development consent was granted by Council (DA/0501/0506) for a seven (7) lot rural subdivision at the Medway site (152 Medway Road, Marulan). The application at the time was referred to the Rural Fire Service, Roads and Maritime Services, Sydney Catchment Authority (now Water NSW), Australian Rail Track Corporation, Catchment Management Authority (now Local Land Service) and the Department of Natural Resources. Each agency consented to the development subject to conditions that were imposed on the development consent.

The development has been physically commenced and as such the consent will not lapse.

Justification: Officers have formed the view (due to the constraints of the land) that a 10 hectare minimum lot size (and the dwelling yield it might facilitate) is not appropriate on the site. The primary constraints include remnant vegetation, topography and proximity to Boral's private railway line.

Up until 6th May 2014 (when the Kingsdale component was removed), Amendment No. 6 was about facilitating rural residential development in two areas as a carryover from LEP Amendment No. 2 (the rural lands planning proposal). The timeframe for assessment and processing of this proposal has been protracted and the issues to address more complex than Council may have anticipated when they initiated the proposal. Considerable resources have been expended by both the landowner and Council during this time. It is the view at officer level that this proposal should not proceed and that staff resources are better focussed on the broader strategic planning work program.

Next Steps: Should Council decide on this option the Department of Planning & Environment will be notified accordingly.

2. Proceed with the Amendment (Not recommended) subject to amendments to the planning proposal, voluntary planning agreement and draft DCP outlined in this report (Not recommended)

Explanation: As this officer's report suggests there are a number of matters that require more attention in the planning proposal (and related documents) in order for it to proceed i.e. addressing site contamination & the requirements of SEPP 55 Managing Land Contamination, access, consideration of cumulative noise impacts and potential impact upon extractive resources. This option is not recommended.

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Next steps:

Should this proposal proceed as proposed the planning proposal will need to be updated to more appropriately outline the impacts of the planning proposal including an assessment pursuant to SEPP 55.

As the scope of the proposal has changed since exhibition an amended Gateway Determination will be required. The Draft DCP provisions for the site require amendment, exhibition and adoption in order to have the controls in place prior to receipt of a development application for the subdivision. The provisions of the Voluntary Planning Agreement may need to be revisited in light of comments from NSW RMS and to identify those works that have a public benefit and those works required predominantly to service the development. Further discussions will need to be undertaken to seek to address OEH and GSNSW concerns about the proposal.

Summary comments:

The proponent has continued to advocate strongly for the proposal despite staff concerns about site suitability and identification of alternate options. That said any suitable alternate option would likely necessitate a lesser lot yield than what is currently proposed in order to deal with site constraints and issues raised by State agencies. If the proponent wishes to pursue an alternate option in future a revised proposal would be assessed on its merits according to Council's fees and charges.

Budget (and Resource) Implications

Since January approximately 50 staff hours have been spent on this private planning proposal which if charged to the proponent in accordance with Council's current fees and charges would equate to \$6500. Should Council decide to continue with the proposal the proponent should be charged for staff time in accordance with Council's fees and charges for private planning proposals.

Recommendation

That:

- The report from the Manager Strategic Planning on Goulburn Mulwaree Local Environmental Plan 2009 – Amendment No. 6 be received.**
- The Council not proceed with Draft Goulburn Mulwaree LEP Amendment No. 6 and request the Minister for Planning to determine that the matter not proceed in accordance with Section 58(4) of the *Environmental Planning & Assessment Act 1979*.**

Section 375A of the *Local Government Act 1993* requires General Managers to record which Councillors vote for and against each planning decision of the Council, and to make this information publicly available.

Councillor	For the Motion	Against the Motion
Cr Banfield	☐	☐
Cr O'Neill	☐	☐
Cr Rowland	☐	☐
Cr Sturgiss	☐	☐
Cr Kirk	☐	☐
Cr Saville	☐	☐
Cr James	☐	☐
Cr Walker	☐	☐
Cr Kettle	☐	☐