



IRF21/2335

## Gateway determination report – PP-2021-3581

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Amendment to Blayney Local Environmental Plan 2012 by including dual occupancy subdivision provisions for R1 General Residential land in the Town of Blayney and amendment to minimum lot size for land around Browns Creek Road, Blayney and Browns Creek.

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**Table 1 Reports and plans supporting the proposal**

## Relevant reports and plans

Planning proposal report prepared by iPlan Projects

# 1 Planning Proposal

## 1.1 Overview and objectives of planning proposal

**Table 2 Planning proposal details**

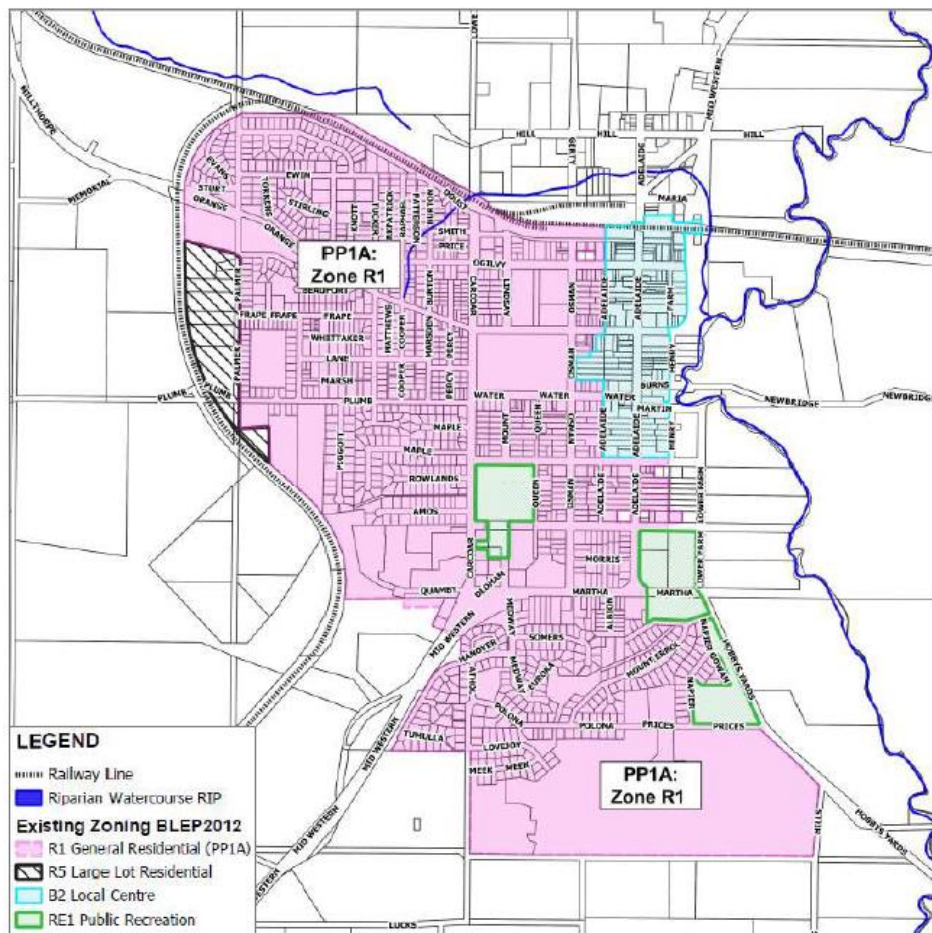
<b>LGA</b>	<b>Blayney Shire Council</b>
<b>PPA</b>	<b>Blayney Shire Council</b>
<b>NAME</b>	<b>Amendment to Blayney Local Environmental Plan 2012 by including dual occupancy subdivision provisions for R1 General Residential land in the Town of Blayney and amendment to minimum lot size for land around Browns Creek Road, Blayney and Browns Creek.</b>
<b>NUMBER</b>	<b>PP-2021-3581</b>
<b>LEP TO BE AMENDED</b>	<b>Blayney Local Environmental Plan 2012 (BLEP 2012)</b>
<b>ADDRESS</b>	<b>Land in Town of Blayney and around Browns Creek Road, Blayney and Browns Creek</b>
<b>DESCRIPTION</b>	<b>More details in section 1.3 of the report</b>
<b>RECEIVED</b>	<b>21/05/2021</b>
<b>FILE NO.</b>	<b>IRF21/2335</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

The objectives of this proposal are outlined in section 2.2.3 on page 8 and section 2.3.3 on page 14 of the planning proposal. The planning proposal seeks to increase housing choice, diversity and availability in the Town of Blayney and on land surrounding Browns Creek Road, west of Blayney by amending the following:

- Allow dual occupancy subdivision with a minimum lot size (MLS) of 300m<sup>2</sup> for each newly created lot within the R1 General Residential area of the Town of Blayney; and
- Decrease the MLS of the R5 Large Lot Residential land around Browns Creek Road down to a MLS of 2ha and with an 5ha average lot size average restriction in order to respond to the constraints of the land and to promote a mix of lot size and efficient use of the land.

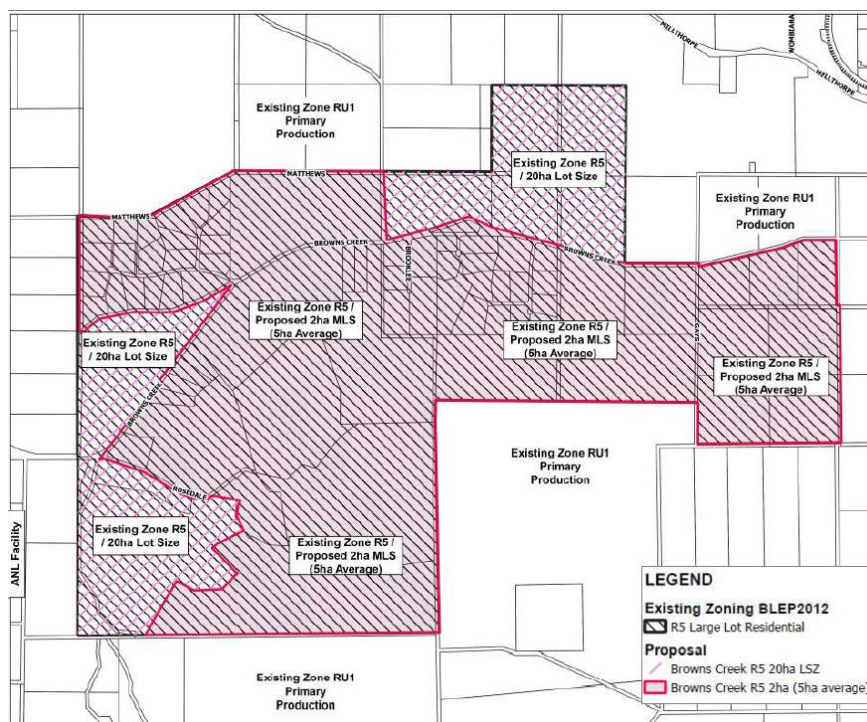
The planning proposal applies to two areas and will lead to two amendments to the BLEP 2012. The two areas are:

- Area A - the Zone R1 area of the Town of Blayney. The amendment will allow subdivision for dual occupancy down to 300m<sup>2</sup> for each newly created dual occupancy lot.



**Figure 1: Area A- Zone R1 General Residential within Town of Blayney.** (Source: Council planning proposal report, 2021).

- Area B - the Zone R5 area around Browns Creek Road west of Blayney, as shown in Figure 2, which seeks to amend the MLS from 20ha and allow subdivision down to 2ha with an average of 5ha.



**Figure 2: Area B- Land around Browns Creek Road within red overlay.** (Source: Council planning proposal report, 2021).

## 1.2 Explanation of provisions

### Area A:

Pages 9 and 10 of the planning proposal contain an explanation of provisions that adequately explains how the objectives of the proposal will be achieved for Area A. Council has suggested a clause be added to the BLEP 2012 under section 4.1. The proposed clause in the planning report identifies exceptions to the MLS for dual occupancies in the R1 General Residential zone in the Town of Blayney, provided that:

- the dual occupancy must have commenced or been constructed on the land lawfully;
- the area of each newly created lot is no less than 300m<sup>2</sup>; and
- only one dwelling will be located on each lot.

While the planning proposal suggests the amendment could be made without a map change (by referring to the affected area by words) it may be preferable to include an outline of the affected area to indicate to users that exceptions to the mapped lot size exist. This matter can be resolved at drafting by the Parliamentary Counsel.

### Area B:

Pages 16 and 17 of the planning proposal contain an explanation of provisions that adequately explains how the objectives of the proposal will be achieved for Area B. Council has suggested adding a clause to section 4.1 of the BLEP 2012 which has been drafted in the planning proposal.

The proposed clause contains the objectives of the clause, which is to ensure various lot sizes and subdivision patterns in Zone R5 Large Lot Residential near Browns Creek Road respond to the constraints of the land. The clause will contain reference to a map layer that identifies the land for which development consent may be granted, provided that:

- the consent authority is satisfied that the development addresses constraints on the land, such as slopes, environmental attributes and potential land use conflicts with nearby mineral potential land, extractive industries or agriculture.
- each lot to be subdivided will not be less than 2ha; and
- the average lot size of all lots resulting from the subdivision should not be less than 5ha.

The Lot Size Map will show a MLS of 5ha for all the land that is applicable to this clause. The planning proposal suggests inclusion of an overlay on the Lot Size Map to indicate the land to which the new clause would apply. Council may also need to update constraints to consider for the lot averaging clause following consultation.

In summary, the proposal seeks to amend the Blayney LEP 2012 as shown in Table 2:

**Table 3 Current and Proposed controls**

Control	Current	Proposed
LEP provision	Area A - no current provision for dual occupancy	Area A - new provision as above
	Area B - no current provision for lot averaging subdivision	Area B – new provision as above
Minimum lot size	Area A - 450m <sup>2</sup>	Area A - Allow for subdivision down to 300m <sup>2</sup> for dual occupancies
	Area B - 20ha	Area B - 2ha with an average lot size of 5ha



## Mapping

Area A - No overlay on maps for the subject land.

Area A – potential additional map overlay on the relevant map for identification of properties where provisions apply or indicate the area by words

Area B - No overlay on maps for the subject land.

Area B - additional map overlay on the relevant map for identification of properties affected by the 2ha lot size with 5ha lot average provision.

## 1.3 Site description and surrounding area

### Area A

Area A applies to all Zone R1 General Residential lots in the Town of Blayney which is shown below in figure 1. Zone R1 General Residential forms the majority of the Town of Blayney's urban area. Additional zones are Zone RE1 Public Recreation in the middle and south of the area, Zone B2 Local Centre on the North-East edge and Zone R5 Large Lot Residential area on the Western edge.

The zones outside of the perimeter are primarily RU2 Rural Landscape with smaller areas zoned IN1 General Industrial, IN2 Light Industrial and SP2 Infrastructure.

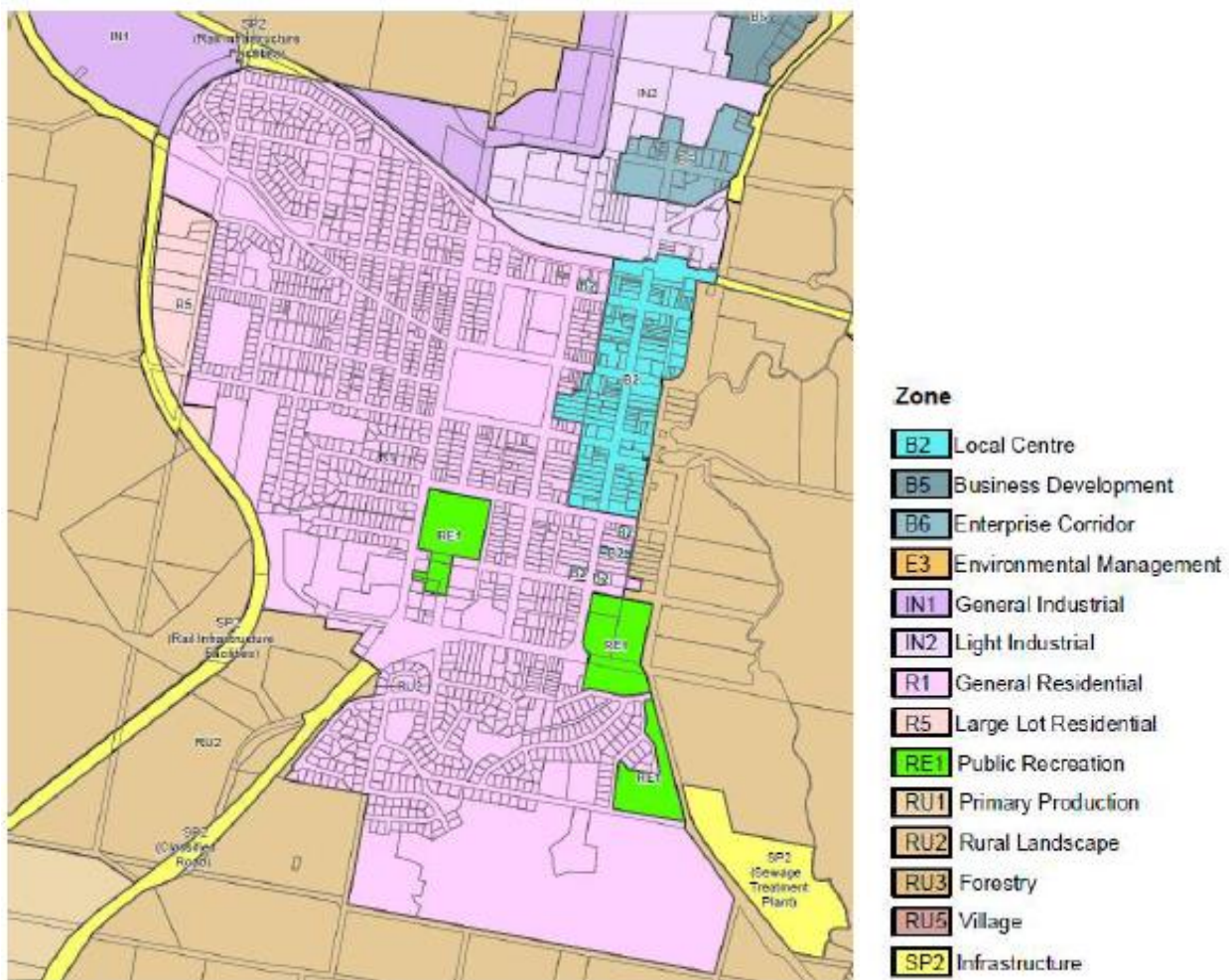


Figure 3: Excerpt of existing Land Zoning Map LZN\_004A from BLEP 2012 (Source: Council planning proposal report, 2021).



## Area B

Area B applies to most of the Zone R5 Large Lot Residential near Browns Creek Road, west of Blayney as identified in section 1.4 below. The site is surrounded by land zoned RU1 Primary Production and RU2 Rural Landscape.

Within the site, there are existing watercourses and some areas mapped in BLEP 2012 as containing sensitive biodiversity. There is an Australian Native Landscapes (ANL) facility to the west and other agricultural and grazing land around Browns Creek Road.



Figure 4: Browns Creek Road area and the ANL facility (Source: Google Maps, 2021).

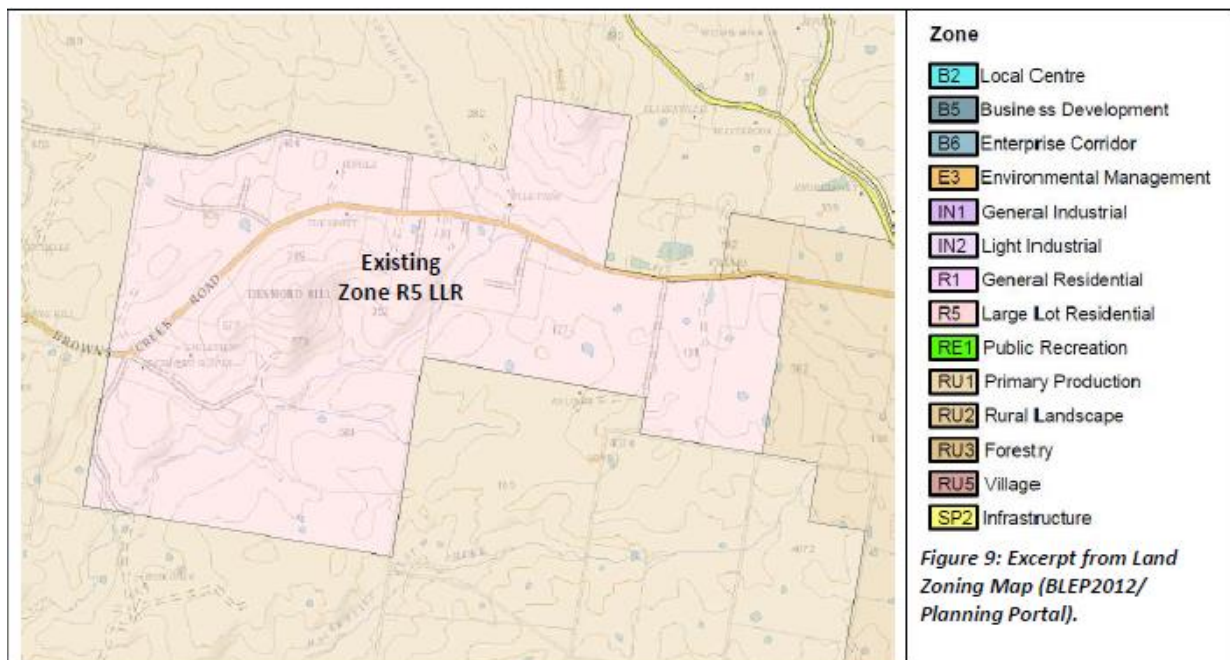
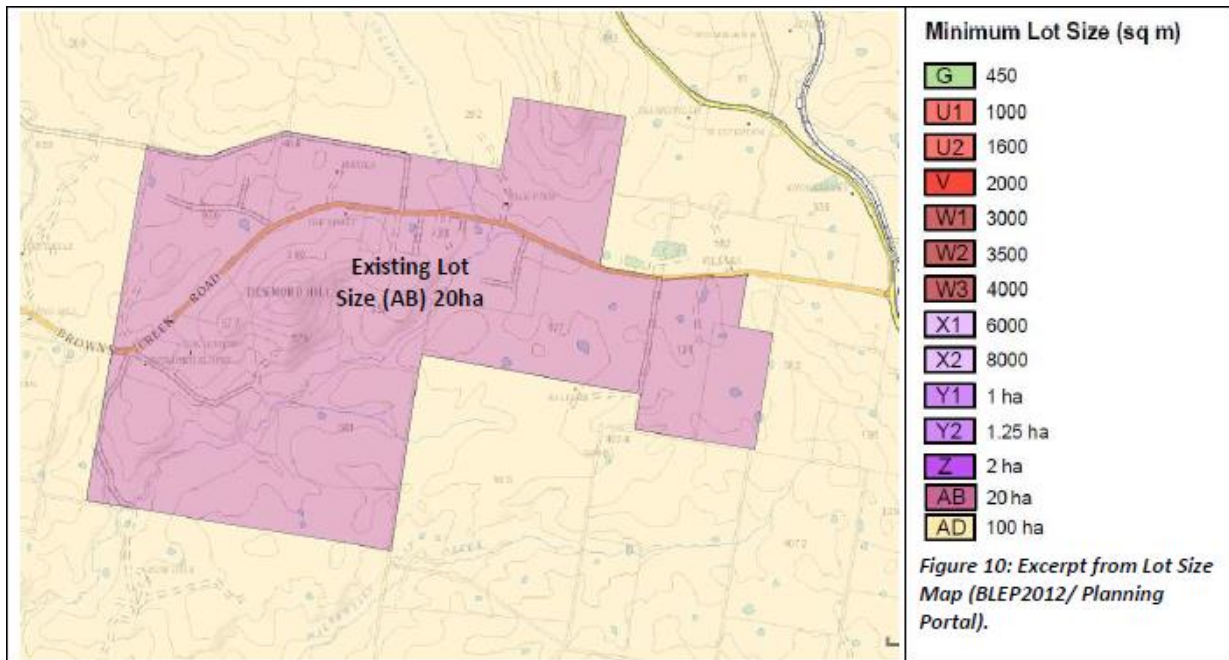


Figure 5: Excerpt from Land Zoning Map of Browns Creek Road from BLEP 2012 (Source: Council planning proposal report, 2021).



**Figure 6: Minimum Lot Size Map of Browns Creek Road area from BLEP 2012 (Source: Council planning proposal report, 2021).**

## 1.4 Mapping

The planning proposal includes mapping showing the proposed changes to the BLEP 2012 maps, which are suitable for community consultation. Additional overlay to Lot Size (LSZ) maps LSZ\_004 and possibly LSZ\_004B referencing relevant clause will be required when the proposal is finalised. Current maps under the proposal are adequate for the purpose of public exhibition.

## 2 Need for the planning proposal

The Blayney Shire Settlement Strategy 2020 identifies that the demand for housing is likely to be higher than projected by 2036 (560 dwellings rather than 300 dwellings needed by 2036). A few of the key issues in this housing strategy include, the need for more housing through efficient subdivision to accommodate increasing short-term housing demand, increasing rents and critically low vacancy rates. This proposal would facilitate provision of more houses that are compact, close to town and services by allowing dual occupancy subdivision down to 300m<sup>2</sup> in the Zone R1 of the Town of Blayney. Decreasing the Minimum Lot Size for the Zone R5 lands near Browns Creek Road would facilitate creation of additional lots for housing. This Planning Proposal would provide increased housing supply in the immediate future and long term for Blayney and Browns Creek Road area.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
--------------------------	---------------

Direction 1: Protect the region's diverse and productive Agricultural land.	The proposal for the Town of Blayney will facilitate additional housing within Blayney LGA and reduce the need to rezone valuable agricultural land by increasing density of land which is already fragmented or is in proximity to urban areas. The proposed lot averaging provisions for Browns Creek Road include consideration of the potential for conflict with agricultural land.
Direction 12: Plan for greater land use compatibility.	Additional dwelling opportunities will be provided in the existing town centre, limiting residential development away from environmental constraints and providing opportunities for dwellings in proximity to services.
Direction 21: Coordinate utility infrastructure investment.	Proposal for Blayney town centre will utilise existing services and access to facilities. Proposal for Browns Creek Road will provide large lot residential dwelling opportunities in proximity to available services.
Direction 25: Increase housing diversity & choice.	The proposed amendment will give effect to this direction by providing additional housing within Blayney in proximity to the town centre. These additional dwellings will utilise existing accessible services. The proposal also provides opportunities for additional rural residential development.
Direction 28: Manage rural residential development.	The proposal identifies suitable locations for additional rural residential living opportunities.

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 5 Local strategic planning assessment**

Local Strategies	Justification
Blayney Local Strategic Planning Statement (LSPS)	<p>The proposal will increase growth and provide diverse housing choices in Blayney, near an established centre. The new opportunities for residential dwellings are located to utilise existing infrastructure and reduce land use conflict. The intensification of the town centre and residential opportunities near the town centre will also support the local centre, commercial and agricultural activities at Blayney.</p> <p>To summarise, the proposal will give effect to:</p> <ul style="list-style-type: none"> <li>• Planning priority 4 Provide diverse housing choices and opportunities to meet the changing demographics and population needs.</li> <li>• Planning priority 6 Protect and conserve the natural environment and heritage qualities while adapting to the impacts of hazards and climate change.</li> </ul>



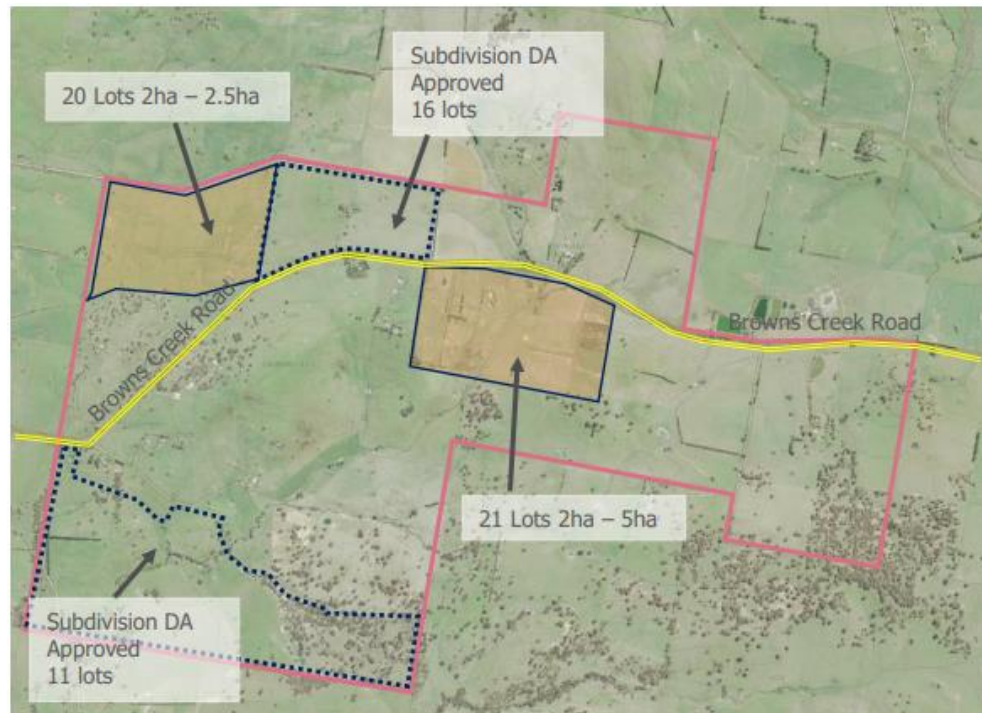
### Blayney Settlement Strategy (2020)

The Blayney Settlement Strategy (2020) is endorsed by Council, however not yet endorsed by DPIE. The land use strategy balances competing needs for additional housing with management of agriculture and mineral resources. The proposals are direct recommendations of the strategy (Section 4.3.1).

The recommendation for Browns Creek Road area is based on the discussion on page 80 of the strategy. The strategy proposes a buffer to the ANL facility however it is unclear how the proposed boundary achieves the buffer and requires further discussion.

Due to the potential Mineral Resources (as discussed under section 3.3 Direction 1.3 of the report), it may also not be suitable to amend the MLS for the parcels located in the north west of the Browns Creek Road area.

Additionally, the planning proposal report identifies these lots as already subdivided and, in this regard, the amendment may not be required for these parcels. Council is to provide further clarification on the reason for including these parcels for amended MLS.



**Figure 7: Aerial Map of Browns Creek Road area with Subdivision data (Source: Blayney Shire Settlement Strategy, 2020).**

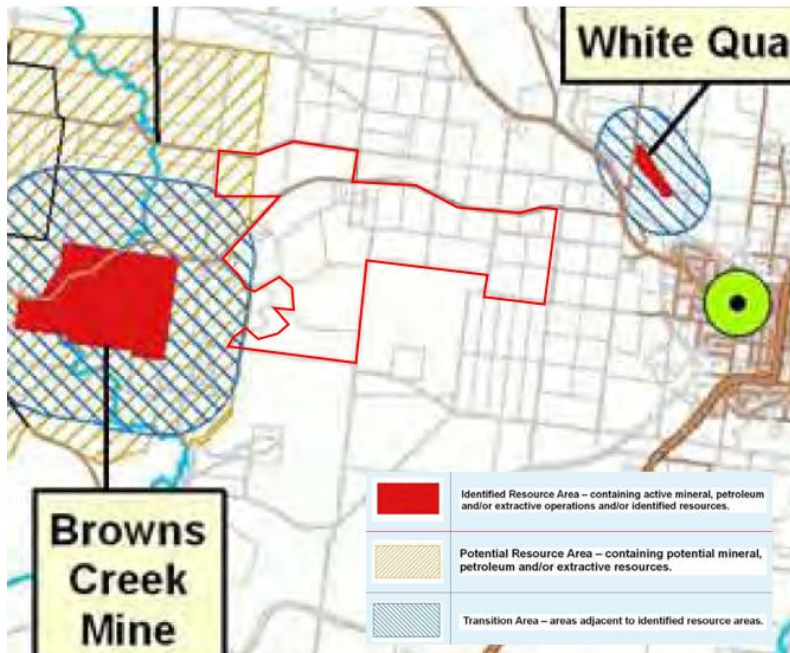
### Blayney, Cabonne and Orange Sub Regional Rural and Industrial Land Use Strategy (BCO Land Use Strategy)

The objectives stated in section 11 of the BCO Land Use Strategy are to provide a range of residential opportunities within the rural areas in accordance with real expressed demand, compatible with the natural environment, settlement patterns, community aspirations, and economic pursuits of people living and working in the rural areas of the Sub-Region. This proposal is consistent with this objective as the decreased MLS of Area B along Browns Creek Road area has potential to provide more dwellings in a rural residential area close to Blayney.

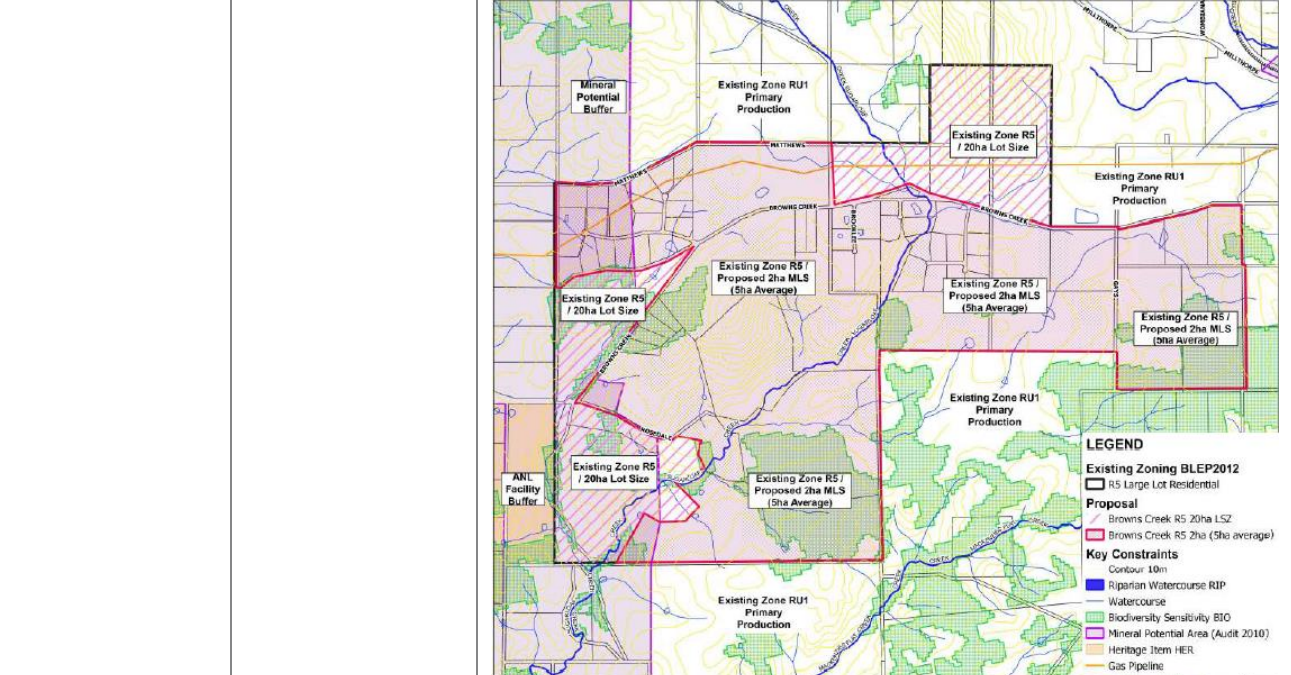
## 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 6 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.3 Mining, Petroleum Production and Extractive Industries	Not consistent-unresolved	<p>The western side of Browns Creek Road area is identified as having Potential Resources, particularly the north west of Browns Creek Road area (Page 19 of the Council report). Although the north western area is observed to be already subdivided into smaller lots, the proposed amendment may permit further subdivision in future and limit potential development of resources. Additionally, the planning proposal does not clearly define the Potential resources area and transition area as per the Mineral Resources Audit map for Blayney Shire dated August 2012.</p>  <p><b>Figure 8: Mineral Resources referral area near Browns Creek Road area, Blayney (Source: Mineral Resources Audit of Blayney Shire Map, 2012).</b></p> <p>In this regard, Council will be required to undertake pre-exhibition consultation with Department of Regional NSW (DRNSW) -Mining, Exploration and Geoscience to determine if the proposal is appropriate for Area B. Following the consultation, Council must amend the relevant discussions within the report to reflect comments received as well as update map/s with Mineral potential buffer boundary, differentiating referral areas as per the Mineral</p>





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2.1 Environment Protection Zones	Consistent	The proposal is consistent with this direction. The proposed clause includes heads of consideration to environmental issues at development stage and there are additional clauses in BLEP 2012 to assess impact to the sensitive areas in Browns Creek Road area and reducing the need to rezone rural and environmental land within proximity to the town centre.
2.3 Heritage Conservation	Consistent	The proposal is consistent with this direction as the proposed provisions amend zone and minimum lot size for the subject area only. The existing heritage provisions in the BLEP 2012 will enable appropriate impact assessment as required during development assessment stage. No further work is required for this direction.
3.1 Residential Zones	Consistent	Both sites are existing residential zones and the planning proposal will enable broader choice of building type in the area, reduce residential demand by increasing density and enforce good design.
3.4 Integrated Land Use and Transport	Inconsistent but justified	The planning proposal can improve access to housing, jobs and services within the urban area of Blayney by increasing housing density with dual occupancies. The proposal is justified by being supported by Blayney Settlement Strategy 2020.
5.10 Implementation of Regional Plans	Consistent	The Planning Proposal is consistent with the Central West Orana Regional Plan as stated in section 3.1 of this report.

6.3 Site Specific Provisions	Consistent	The proposal will facilitate intensification of the residential land use by including LEP provisions for dual occupancy subdivision and lot averaging.
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## 3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs except as discussed in the table below.

**Table 7 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Proposal	Complies
SEPP (Koala Habitat Protection) 2020/2021	Consideration must be given to development near any potential Koala Habitat.	BLEP2012 includes biodiversity sensitivity mapping for the Browns Creek Road area and Blayney town centre. Council has indicated that the proposed provision will facilitate adequate protection buffer for potential koala habitat as required, which can be assessed at development stage.	To be determined at the development application stage.
SEPP (Infrastructure) 2007	Consideration for development near Rail line and Gas pipeline	Certain areas of Town of Blayney and Browns Creek Road area is impacted by rail line and the gas pipeline. Consideration must be given to assess the impact of the development during development assessment stage as required. In this regard, the planning proposal's discussion in relation to this SEPP is to be updated to include comments of consideration for development near a pipeline corridor.	To be determined at the development application stage.


## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 8 Environmental impact assessment**

Environmental Impact	Assessment
Bushfire prone land	The subject areas are not currently mapped as Bushfire prone. The lot averaging provisions will provide opportunity to locate residential development away from dense vegetated areas. Council can determine if there is need to carry out further investigation during individual development assessment stage.

Flood prone land	The proposed amendment will impact land that is located away from flood prone or flood affected land. Any impact from potential flooding is not deemed to affect the new dwellings.
Contamination	The proposal only seeks to reduce MLS for Browns Creek. As such, the need for preliminary contamination investigation can be determined during the development assessment stage.
Biodiversity	<p>There are mapped biodiversity areas in Browns Creek which call up the provisions of the Terrestrial Biodiversity clause in BLEP 2012. The lot averaging provision includes consideration of environmental attributes in the determination of subdivision applications.</p>  <p><b>Figure 10: BLEP 2012 Biodiversity Mapping (Source: Blayney Local Environmental Plan 2012).</b></p>
Heritage	As discussed in section 3.3 (Direction 2.3) the proposal can potentially increase density near heritage items, which will need to be managed and assessed during development application process, if required.

## 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 9 Social and economic impact assessment**

Social and Economic Impact	Assessment
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Housing Diversity and Availability	This proposal will add additional dwellings that will facilitate for a diversity of housing choice and availability. Dual occupancy dwellings close to services and infrastructure will utilise infrastructure. The Zone R5 Large Lot Residential area will provide additional lifestyle dwelling options within close proximity to the town centre.
Employment	The additional dwellings can create construction jobs within Blayney that will service short term employment. Also, an increasing density in Blayney's Urban area could increase demand for local services which may result in additional long-term employment opportunities.

## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

**Table 9 Infrastructure assessment**

Infrastructure	Assessment
Infrastructure - General	<p>The additional dwellings in the town centre will be serviced by existing infrastructure and development for the sites will result in utilisation of existing services. All urban services are available to the town centre.</p> <p>An increase in density at Browns Creek may require upgrades to existing infrastructure, such as roads, electricity, and telecommunications. Consultation with Central Tablelands Water during the public exhibition on the suitability of proposed utilisation of on-site water for new dwellings is required.</p>
Gas Pipeline	Northern part of Area B is indicated to be traversed by a pipeline owned by APA Group. Planning circular PS 18-010 Development adjacent to high pressure pipelines transporting dangerous goods seeks to consider risk assessment as part of development application for certain uses. In this instance, the proposed amendment will not facilitate any high density residential, commercial or sensitive uses such as hospitals, schools, child care and aged care facilities, however, consultation with APA group is required to confirm that the intended development for the Browns Creek Road area is suitable for the area and will not impact the pipeline. Additionally, the Clause 4.1C(2)(d) may need to be updated, if land impacted by the gas pipeline is to be included for the proposed amendment.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms one of the conditions of the Gateway determination.

### 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Pre exhibition
  - APA Group for comments on the development near the gas pipeline.
  - Department of Regional NSW - Mining, Exploration and Geoscience for the lands mapped as having mineral potential.
- During exhibition
  - Central Tablelands Water for requirement for water service in the Browns Creek area

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

Council will be going into caretaker mode from end of July until after the Council election in September. The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has indicated that it would like to exercise its functions as a Local Plan-Making authority.

Having regard to the nature of the planning proposal is the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal will provide additional dwellings options to meet housing needs of the area;
- The proposal will encourage a variety and choice of housing type in Blayney;
- The proposal will provide opportunities to protect environmentally sensitive areas;
- The proposal will contribute to utilisation of existing infrastructure and services; and
- The proposal is consistent with Council's land use strategy.

Based on the assessment outlined in this report, the proposal must be updated before public exhibition to:

- Incorporate any concerns raised by APA Group and DRNSW - Mining, Exploration and Geoscience for the land in Browns Creek Road area.
- Confirm how the buffer around the ANL facility and areas of potential extractive resources are achieved.
- Justification for amendment for the areas already approved for subdivision.
- Amend discussion for SEPP (Infrastructure) for gas pipeline and direction 1.3 Mining, Petroleum Production and Extractive Industries
- Include gas pipeline as a constraint for the proposed lot averaging clause for Browns Creek Road area.



## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries is unresolved and will require further consultation.

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

1. Prior to community consultation, consultation is required with the following public authorities:
  - DRNSW- Mining, Exploration and Geoscience for the land affected by Mineral resources .
  - APA Group for the land near the gas pipeline.
2. Prior to community consultation, the planning proposal is to be revised to address conditions 1 and below and forwarded to the Department for review and approval:
  - Amend Mineral Potential Area boundary on relevant map/s to clearly identify Potential Resource Area and Transition Area as per Mineral Resource Audit of Blayney Shire Map dated August 2012.
  - Clearly identify buffer for the ANL facility. Update the boundary for the MLS amendment accordingly to achieve appropriate buffer.
  - Incorporate any recommendation by APA group and DRNSW- Mining, Exploration and Geoscience for the affected land in Browns Creek Road Area.
  - Clarify reasons to amend MLS for the land parcels which are identified to be already approved for subdivision, located around Browns Creek Road area.
  - Amend proposed clause 4.1C(2)(d) to include reference to gas pipeline as required.
3. Consultation is required with the following public authorities:
  - Central Tablelands Water for requirement for water service around Browns Creek Road area.
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
5. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



19/7/2021

Oyshee Iqbal  
Acting Manager, Western Region



21/07/2021

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22/6/21

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