



REPORT: Planning Proposal to Amend Dubbo Local Environmental Plan 2011 Land Use Zone and Minimum Lot Size, 9R Belgravia Road Dubbo

AUTHOR: Senior Growth Planner
REPORT DATE: 25 June 2021
TRIM REFERENCE: ID21/704

EXECUTIVE SUMMARY

A Planning Proposal was lodged with Council on 23 March 2021 by iPLAN PROJECTS on behalf of the owners David and Carmen Isbester, for a site known as Lot 5 DP 817149, 9R Belgravia Road Dubbo (**Appendix 1**). The subject land is approximately 40.68 hectares.

The Planning Proposal seeks to rezone the land from RU1 Primary Production to R5 Large Lot Residential zone under the provisions of the Dubbo Local Environmental Plan (DLEP) 2011. The Planning Proposal also seeks to amend the existing Minimum Lot Size applicable to the subject land from 800 hectares to 8 hectares under the provisions of the DLEP 2011.

The Planning Proposal has been assessed in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979.

This report recommends that the Planning Proposal be endorsed by Council and that a Gateway Determination be sought from the NSW Department of Planning, Industry and Environment (DPIE). Following receipt of a Gateway Determination, Council will place the proposal on public exhibition for a minimum of 28 days. A further report will be provided to Council for consideration of the Planning Proposal, detailing the results of the public exhibition.

FINANCIAL IMPLICATIONS

In accordance with Council's adopted Revenue Policy, the Proponent has made a payment of \$12,500 at the time of lodgement of the Planning Proposal. The Proponent will be required to pay a further \$2,500 to Council once a Gateway Determination is received for the Planning Proposal.

POLICY IMPLICATIONS

The Planning Proposal is provided for consideration and endorsement to seek Gateway Determination from NSW DPIE. Receipt of a Gateway Determination from the Department will allow Council to, conditionally, undertake an amendment to the Dubbo LEP.

RECOMMENDATION

1. That the report of the Senior Growth Planner, dated 25 June 2021, be noted.
2. That Council endorse the Planning Proposal to amend the Dubbo Local Environmental Plan 2011 by rezoning Lot 5 DP817149 from RU1 Primary Production to R5 Large Lot Residential and amendment to the applicable Minimum Lot Size from 800 hectares to 8 hectares.
3. That Council forward the Planning Proposal to the NSW Department of Planning, Industry and Environment to request a Gateway Determination.
4. That Council support a minimum 28 day public exhibition period for the Planning Proposal.
5. That following the completion of the public exhibition period, a further report be provided to Council for consideration, detailing the results of the public exhibition period.

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Senior Growth Planner

BACKGROUND

A Planning Proposal was lodged with Council on 23 March 2021 by iPLAN PROJECTS on behalf of the owners David and Carmen Isbester, for a site known as Lot 5 DP 817149, 9R Belgravia Road Dubbo (**Appendix 1**). The Planning Proposal seeks to rezone the land from RU1 Primary Production to R5 Large Lot Residential under the provisions of the Dubbo Local Environmental Plan 2011 (DLEP 2011). The Planning Proposal also seeks to amend the existing Minimum Lot Size applicable to the subject site from 800 hectares to eight hectares under the provisions of the DLEP 2011.

It is to be noted that the Proponent initially submitted their proposal to Council as a submission to Council's draft Local Strategic Planning Statement (LSPS) that was exhibited in 2020. Subsequently, in June 2020, Council considered a report on the exhibited LSPS and reviewed a number of rezoning related submissions to the LSPS, including the Proponent's submission. Council identified initial merit for the Proponent's request at the time, and resolved to consider it as part of Council's review of the R5 Residential Large Lot zoned land and/or Stage 2 of Council's comprehensive Local Environmental Plan works. It was also identified in the LSPS that the landowner could submit a Planning Proposal if a shorter timeframe was sought.

This report recommends that the Planning Proposal be endorsed by Council and that a Gateway Determination be sought from the NSW Department of Planning, Industry and Environment (DPIE). Following receipt of a Gateway Determination, Council will place the proposal on public exhibition for a minimum of 28 days. A further report will be provided to Council for consideration of the Planning Proposal, detailing the results of the public exhibition period.

REPORT

1. Particulars of the Planning Proposal Application

Owner:	David and Carmen Isbester
Applicant:	iPLAN PROJECTS
Subject land:	Lot 5 DP 817149 (9R Belgravia Road Dubbo)
Calculated site area:	Approximately 40.54 hectares
Current zoning:	RU1 Primary Production
Proposed LEP amendment:	Rezoning Lot 5 DP817149 RU1 Primary Production to Zone R5 Large Lot Residential, and amending the Minimum Lot Size from 800 hectares to 8 hectares
Lodgement date:	23 March 2021.

2. Amendments to Local Environmental Plans

The NSW Department of Planning, Infrastructure and Environment (DPIE) introduced a process for the consideration of amendments to local environmental plans in 2009. The process for the consideration of an amendment to a Local Environmental Plan (LEP)

commences with Council's consideration of a Planning Proposal. The Planning Proposal process is shown in Figure 1.

PLANNING PROPOSAL PROCESS

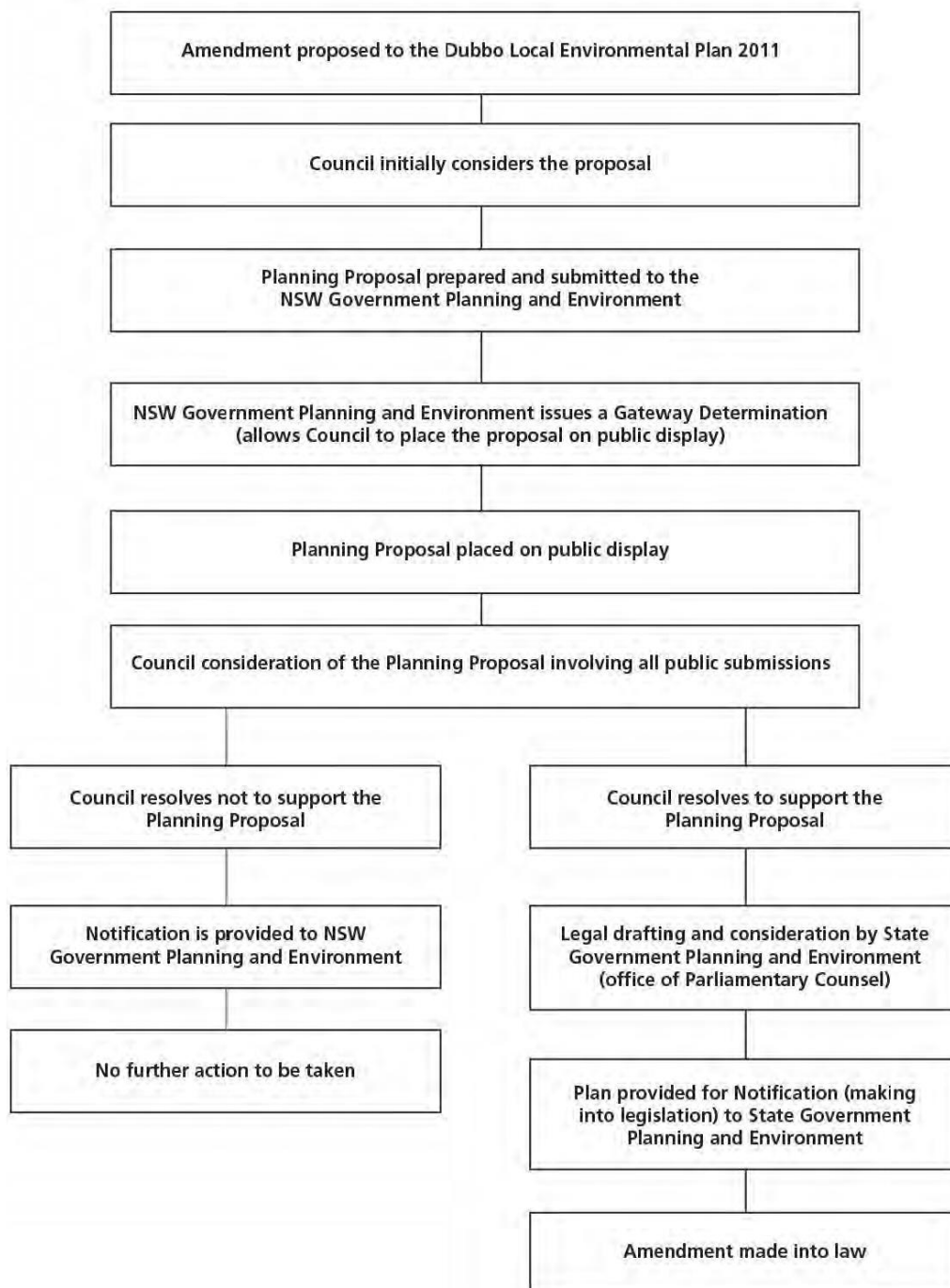


Figure 1. Planning Proposal process

The role of a Planning Proposal is to explain the intended effects of a proposed Local Environmental Plan amendment and the justification for undertaking the amendment. Council has a role of considering the Planning Proposal. If Council resolves to endorse the

Planning Proposal, it will be provided to NSW DPIE to seek a Gateway Determination. After consideration by DPIE, Council will receive a Gateway Determination for the LEP Amendment.

The Gateway Determination will specify that the Department will allow the proposed amendment to proceed, as well as the level of public and State Government consultation required, and any matters that require additional information. After any additional matters have been addressed and the required consultation carried out, a further report will be provided to Council for consideration. Following Council's consideration, the Planning Proposal will be submitted to NSW DPIE for finalisation of the LEP amendment.

3. Planning Proposal

The objective of this Planning Proposal is to rezone the land from RU1 Primary Production to R5 Large Lot Residential under the provisions of the Dubbo Local Environmental Plan 2011 (DLEP 2011). The Planning Proposal also seeks to amend the existing Minimum Lot Size applicable to the subject site from 800 hectares to eight hectares under the provisions of the DLEP 2011.

The intent of the Planning Proposal is to:

1. enable future development on the subject land via rezoning to permit a dwelling house on each allotment (through future development application/s); and
2. to facilitate the future subdivision of the subject land by amending the existing Minimum Lot Size controls.

4. Site Characteristics

The subject land is approximately 40.54 hectares and currently contains one dwelling house. The site has frontage to Belmont Road (currently sealed) and Belgravia Road (not fully sealed at this stage), as shown below in Figure 2. Two lower order streams traverse the property.



Figure 2. Aerial imagery of the site fronting Belmont and Belgravia Road and surroundings.

The site is within 10km of Dubbo CBD, approximately 3-4km west of the Macquarie River and 2-3km south of the Dubbo Western Plains Zoo. The site is also in the 'Macquarie District' as identified in the Dubbo Rural Areas Development Strategy 1995-2015.

The site is currently zoned RU1 Primary Production under the provisions of the DLEP 2011 and is adjacent to an existing R5 Large Lot Residential zoned area to the east. Zoning of the site and surrounds are shown in Figure 3:

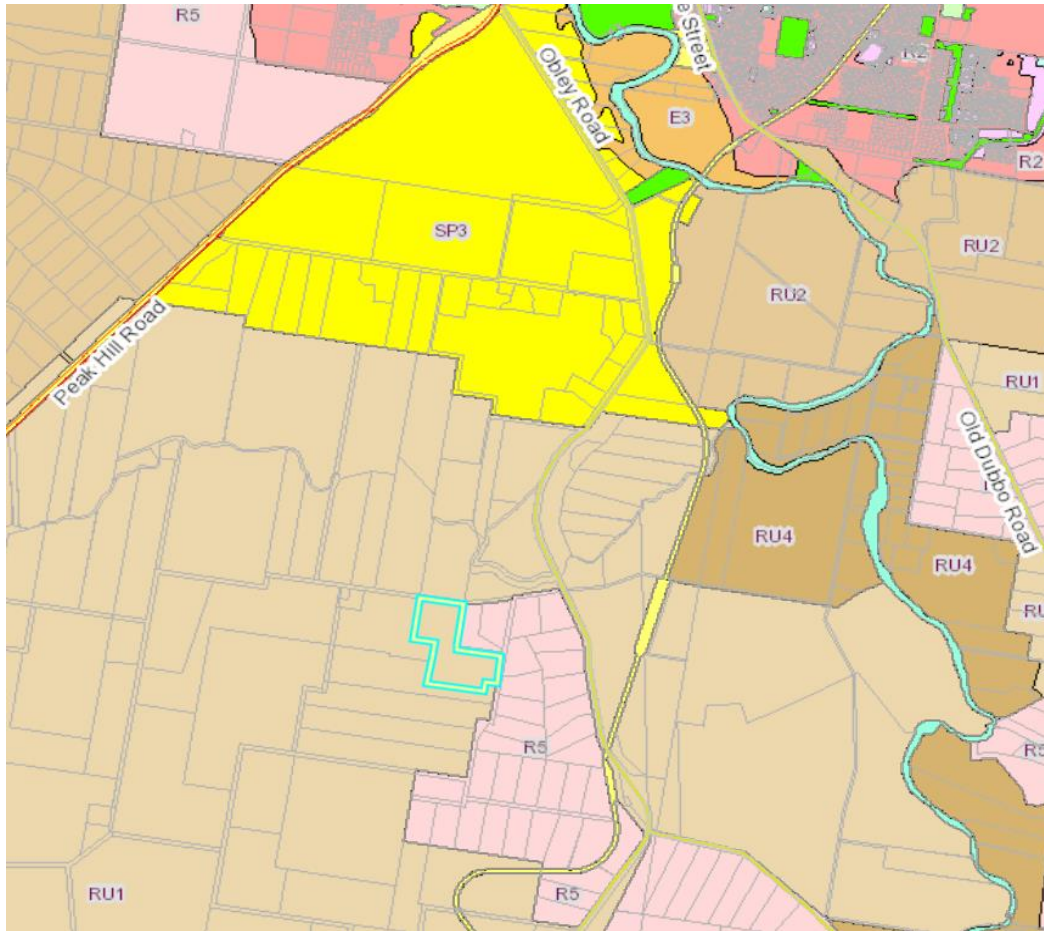


Figure 3. Current zoning context of the site.

5. Planning Considerations

The purpose of this section is to outline significant matters for consideration under Section 3.33 of the Environmental Planning and Assessment Act 1979, including consideration of the proposal within the overarching strategic planning framework, as discussed below:

(i) Central West and Orana Regional Plan

The following goals and directions of the Central West and Orana Regional Plan are applicable to the Planning Proposal:

Direction 1: Protect the region's diverse and productive agricultural land

Direction 1 (Action 1.2) of the CWORP intends to *"protect important agricultural land from land use conflict and fragmentation, and manage the interface between important agricultural lands and other land uses."* In this regard, the Plan refers to the NSW Government Biophysical Strategic Agricultural Land (BSAL) mapping which identifies quality agricultural land in NSW that need to be protected and retained as prime agricultural land.

The subject site is not identified as BSAL land.

Direction 25: Increase housing diversity and choice

Direction 25 (particularly Action 25.2) of the Plan aims to increase housing choice in regional cities near or accessible to services and jobs. The planning proposal will result in more R5 zoned large lot housing in a rural setting being available to the market, providing additional housing in the community.

Direction 28: Manage rural residential development

Direction 28 of the CWORP identifies that rural residential development can create land use conflict and cause further fragmentation of valuable agricultural land. Action 28.1 of this direction specifies that new rural residential development should be *“close to existing urban settlements to maximise the efficient use of existing infrastructure and services, including roads, water, sewer and waste services, and social and community infrastructure;”* and away from *“productive, zoned agricultural land and natural resources.”*

It is considered that the Planning Proposal is unlikely to result in any additional rural land use conflict.

(ii) 2040 Community Strategic Plan

Council’s 2040 Community Strategic Plan (CSP) guides the actions and initiatives of Council. One of the visions of the 2040 CSP for the next 20 years is to *“provide for housing choice and housing affordability to meet the needs of our community.”* The Planning Proposal is consistent with this vision, as well as the following objectives of the Plan as follows:

CSP strategic objective	Comment
<i>1.1.1A variety of residential housing types are located close to appropriate services and facilities</i>	The subject site is within 10km of Dubbo CBD services and facilities.
<i>1.4.1 There is adequate land suitably zoned to meet a variety of residential development opportunity</i>	The intended outcomes of the proposal will result in additional R5 zoned land being available for residential development.
<i>1.4.4 Residential development does not adversely impact on the agricultural production potential of rural land</i>	The site is already fragmented and will not adversely impact on Dubbo’s prime agricultural potential of rural land.

The Planning Proposal is consistent with the 2040 Community Strategic Plan.

(iii) Dubbo Regional Council Local Strategic Planning Statement

The Local Strategic Planning Statement (LSPS) aims to protect Dubbo’s primary production lands from land use conflicts. The Planning Proposal is consistent with the following direction:

“13.1 Review the LEPs zone boundaries, land use tables and subdivision minima to ensure rural lifestyle development is contained within existing zoned areas or highlighted areas

contained in Rural Issue Paper 2019 and does not have the potential to adversely impact on the primary production potential of rural land."

(iv) Dubbo Rural Areas Development Strategy

The Dubbo Rural Areas Development Strategy (RADS) 1995-2015 was adopted by Council as a rural policy package for the former Dubbo City Council in 1995 and subsequently reviewed in 2003, 2007 and again with the adoption of the Dubbo Local Environmental Plan in 2011. The Strategy has the following priority statement for rural land:

"settlement of the rural area is the lowest priority as it has the least long-term economic consequence for Dubbo... (Settlement) is to be directed to specific appropriately zoned areas where conflicts with other uses can be avoided or minimised."

The subject site is located within the 'Macquarie District' as identified in the RADS. At the time the Strategy was prepared, this district was recognised to contain high quality agricultural land, but also characterised by considerable fragmentation from the 1970s. The subject site itself within the district is mapped as an area between dryland/extensive agriculture and settlement.

The Planning Proposal submitted by the Proponent (**attached as Appendix 1**) adds that the subject site *"has an area of ~40.68ha (compared to a Minimum Lot Size of 800ha) so it has limited agricultural potential... (and) minimum buffers of 50 - 100m between proposed dwelling envelopes and adjacent agriculture, most houses >250m from the rural interface... should substantially reduce the potential for land use conflict."*

(v) Dubbo Local Environmental Plan 2011

The subject site is zoned RU1 Primary Production under Dubbo Local Environmental Plan 2011, with a minimum lot size for subdivision being 800Ha. The proposed zoning, R5 Large Lot Residential has the objective to *"provide residential housing in a rural setting..."* and also *"minimise conflict between land uses within this zone and land uses within adjoining zones."*

The proposed rezoning will enable large lot housing to take place, but any future development will still be subject to the 8Ha minimum lot size. This will allow for sufficient buffers to and from future dwellings on the land. Under the DLEP 2011, the R5 zone will contribute to retaining a rural character in the locality.

Part 4 of the DLEP 2011 [Section 4.1, Minimum subdivision lot size - Clause 1a] applies to subdivision of any land shown on the Lot Size Map, with a key objective *"to protect and enhance the production capacity of rural lands, by maintaining farm sizes and the status of productive lands."* Whilst the subject lot has an 800Ha minimum lot size, the site is considered to already be fragmented, on account of the size, shape and adjoining existing R5 zoned land.

(vii) State Environmental Planning Policies

The following State Environmental Planning Policies are relevant to the Planning Proposal:

Policy	Comment
State Environmental Planning Policy No 55—Remediation of Land	The site is not listed on Council's register of potentially contaminated land. As previously farmed land however, there is potential for agricultural contamination. This can be determined at the Development Application stage and will not act as a constraint to the proposal.
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	<p>The aims of this SEPP are (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. Whilst the SEPP does not apply to the current RU1 Primary Production zone, it would apply to the proposed R5 Large Lot Residential zone.</p> <p>Under the Dubbo Local Environmental Plan 2011, part of the subject site is currently identified as containing high value biodiversity. The section of the site facing Belmont Road is identified as high value biodiversity in the DLEP 2011 and is mapped through the Central West/Lachlan vegetation map. Additionally, part of the land facing Belgravia Road is also mapped but is not identified as high or moderate value biodiversity under the DLEP 2011. It is concluded that the presence of remnant native vegetation is not an impediment to the proposed rezoning.</p> <p>Development on the land will need to address biodiversity in compliance with the Biodiversity Conservation Act (2016).</p>

(vii) Section 9.1 Directions

The Planning Proposal's consistency with relevant Section 9.1 Directions are outlined below:

Direction	Consideration	Consistency/ Comment
1.2 Rural zones	The objective of this direction is to protect the agricultural production value of rural land. A planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy that the provisions of the planning proposal that are inconsistent are of minor significance.
1.5 Rural lands	This direction applies when a planning proposal:	The site is also adjoined by existing R5 zoned land to its

Direction	Consideration	Consistency/ Comment
	(a) 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 (b) changes the existing minimum lot size on land within a rural or environment protection zone.	east, limiting the likelihood of land use conflicts with adjoining rural land.
2.3 Heritage conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	The site is not identified to contain Heritage Conservation areas under DLEP 2011.
2.6 Remediation of Contaminated Land	The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.	The site is not listed on Council's register of potentially contaminated land. Any potential contamination from previous agricultural uses on site may need to be addressed at the Development Application stage for any future development on the subject site.
3.1 Residential Zones	The objectives of this direction include the following: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services...	The Planning Proposal is consistent with this Direction as the intended outcomes of this proposal will provide additional housing to the market, particularly Large Lot Residential housing types.
3.3 Home occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses. The Direction is applicable when any Planning Proposal is prepared.	The Planning Proposal is considered to be consistent with the Direction.
4.4 Planning for bushfire	This direction applies when a relevant planning authority prepares a planning proposal	The site is identified to contain bushfire land. It is acknowledged that consultation

Direction	Consideration	Consistency/ Comment
protection	that will affect, or is in proximity to land mapped as bushfire prone land.	will be required with the NSW Rural Fire Service for the Planning Proposal.
5.10 Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	The Planning Proposal is considered to be consistent with the Central West and Orana Regional Plan.

(viii) Site Access and Infrastructure

The land currently fronts both Belgravia Road (currently sealed) and Belmont Road (not fully sealed). Future development on the land will be required to ensure appropriate vehicular access is in place in accordance with Council's requirements.

If the proposed changes to the LEP are endorsed, and a development application for subdivision is subsequently lodged in the future, the following preliminary comments are provided from Council's Infrastructure Division:

If the proposed subdivision is for four lots, where two lots front Belgravia Road and two lots front Belmont Road, sealing of Belmont Road will be required for the full frontage of the development at the developer's cost, and to Council's satisfaction.

If the proposed subdivision is for three lots, where two lots front Belgravia Road and one lot fronts Belmont Road, then sealing of Belmont Road may not be required.

For any future development, if the proponent/developer wants to service the proposed lots with reticulated water and sewage, the developer will also need to extend reticulated water and sewage from the existing location to the proposed lots (resulting from any future subdivision) at their own cost to Council's satisfaction.

(ix) Environmental Impacts

The following comments are from Council's Environmental Systems Planner and cover a range of environmental considerations, as discussed below:

“(a) Noise Pollution and Vibration

The proposed rezoning will not add to noise pollution or vibration issues locally. If subdivided, the lot will act as an extension of the existing R5 zoning that currently adjoins the site, and the proposed size of the large lots will also make noise and vibration issues nominal. Each proposed use of the site will also be assessed separately through the Development Application (DA) process and there is a possibility that some proposed uses will produce excessive volumes of noise or vibration. Those issues can be addressed at DA stage.

(a) *Waterways/Stormwater Quality/Erosion and Sediment Control*

Two lower order streams flow across the property, neither of which are mapped as “riparian” under the DLEP 2011. Neither stream retains woody vegetation cover, both are well grassed however and non-erosive at this stage. The proposed change in zoning will not impact these waterways, nor is it likely to impact stormwater quality or lead to additional erosion. Should the proposal be endorsed and a DA submitted for subdivision, the appropriateness of potential housing sites/location and fencing design will be considered.

(b) *Groundwater Vulnerability*

In accordance with the DLEP 2011, the land is currently mapped as including moderate to high vulnerability groundwater. The Planning Proposal would not impact groundwater if endorsed and any future subdivision can minimise impact to the groundwater aquifer by limiting the number of additional lots. Ensuring adequate lot sizes at the subdivision stage would also serve to dissipate any potential groundwater contamination. Lot sizes and dwelling envelopes provided by the proponent are conceptual at this rezoning stage, but, if adopted, would appear to minimise any potential impact. Final subdivision layout and dwelling envelope proposals would be considered at the DA stage for any future subdivision. Similarly, specific site uses would be proposed through DA at a future point and would be assessed appropriately at that time.

(c) *Salinity*

There is no known salinity issue within the vicinity of this site and no visible signs of surface salinity. While there is no site specific salinity data available, the subject site is located within the Cumboogle Hydro-Geological Landscape which was determined by DPIE in 2010 to be of low salinity hazard. Detailed assessment will be required at the time of lodgement of any subsequent DA. For the purposes of the Planning Proposal, salinity is not an impediment.

(d) *Native Vegetation Removal/Wildlife Habitats/Threatened Species/Biodiversity*

Under the DLEP 2011, part of the land is currently identified as containing high value biodiversity. The section of the subject site facing Belmont Road is identified as high value biodiversity in the DLEP 2011 and is mapped through the Central West/Lachlan vegetation map prepared by NSW DPIE as containing mixed box woodland (Plant Community Type (PCT) 248), Queensland Bluegrass, Redleg Grass, Panic grass, Rats Tail grass, Spear grass derived grasslands (PCT 511) and derived grasslands (PCT 796). Additionally, part of the land facing Belgravia Road is also mapped to contain PCT 248 but is not identified as high or moderate value biodiversity under the DLEP 2011.

The presence of remnant native vegetation is however not an impediment to the proposed rezoning. Subsequent subdivision and building DAs will need to address biodiversity issues on site in compliance with the Biodiversity Conservation Act (2016).

(e) *Environmentally Sensitive Areas*

The site is identified on the DLEP 2011 to include environmentally sensitive areas, specifically the better vegetated northern quadrant of the site facing Belmont Road. The environmental sensitivity related to remnant vegetation is not an impediment to rezoning.

(f) *Aboriginal Archaeology and European Heritage*

The proponents have undertaken an AHIMS search which found no known sites, objects or artefacts located on or near the site. The proponents have also applied the "Due Diligence Code of Practise for the Protection of Aboriginal Objects in NSW" to the site and have reasonably determined that there are no impediments to the proposed rezoning.

Future DAs will need to address this issue through a formal Due Diligence Code investigation. Based on the site's position in the broader landscape, and other historical information, it is expected there will be no Aboriginal Heritage issues associated with future DAs but that assessment must be based on the information supplied with each DA. There are also no European Heritage issues associated with the site and therefore is not an impediment to the proposal."

SUMMARY

Council is in receipt of a Planning Proposal that seeks to rezone 9R Belgravia Road Dubbo (Lot 5 DP817149) from the RU1 Primary Production zone to R5 Large Lot Residential zone under the provisions of Dubbo Local Environmental Plan 2011 (DLEP 2011). The Planning Proposal also seeks to amend the existing Minimum Lot Size applicable to the subject site from 800 hectares to eight hectares under the provisions of DLEP 2011.

The intended outcome of the Planning Proposal will facilitate future subdivision and development of the land, including the potential for the development of a dwelling house on each future lot.

It is recommended that the Planning Proposal be endorsed and submitted to the NSW Department of Planning and Environment for a Gateway Determination.

Appendices:

- 1 [!\[\]\(91f916b54a4c6447ad9638d4638be954_img.jpg\)](#) Planning Proposal - 9R Belgravia Road Dubbo