

Planning Services

Plan Finalisation Report

Local Government Area: Yass Valley

File Number: IRF17/286

1. NAME OF DRAFT LEP

Yass Valley Local Environmental Plan 2013 Amendment No. 2 (draft LEP).

2. SITE DESCRIPTION

The planning proposals seek to rezone land located north and south of the village of Gundaroo (Figure 1) for urban development and environmental protection.

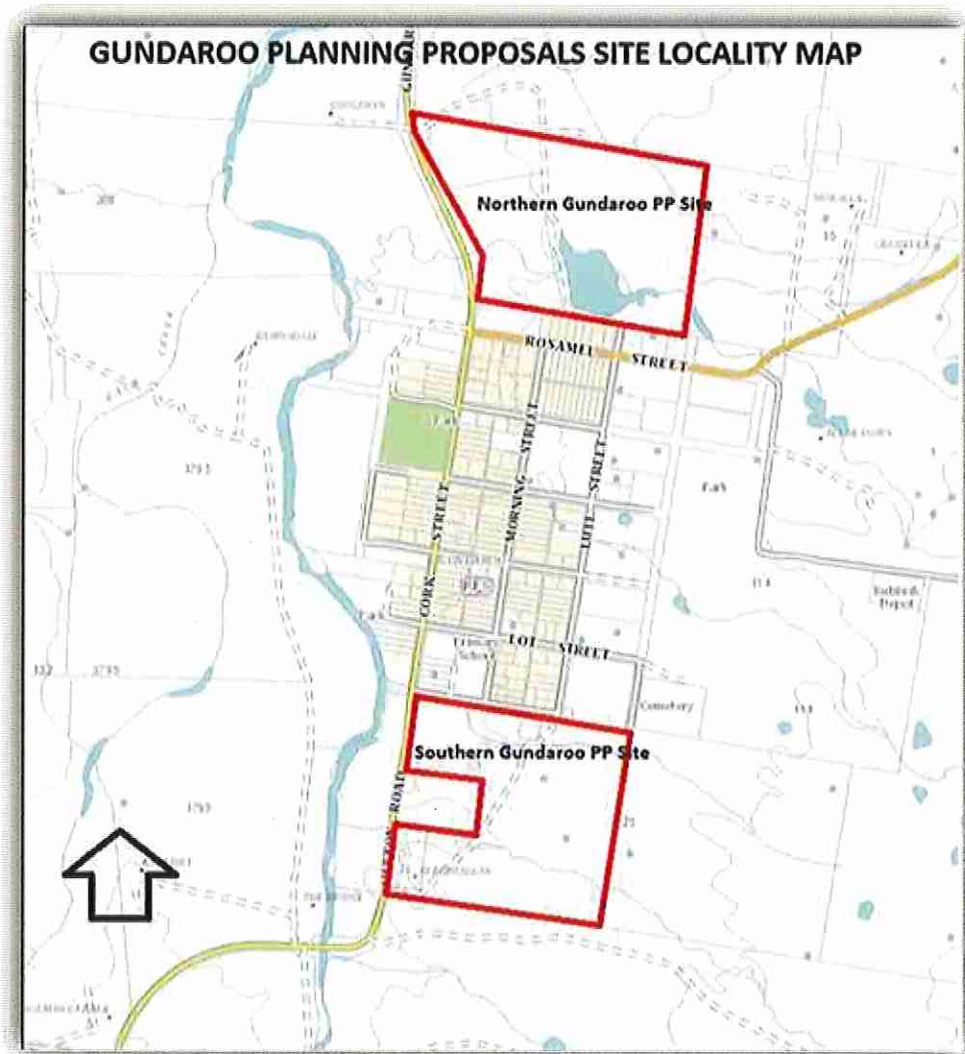


Figure 1: Site locations.

3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone land south of Gundaroo from RU1 Primary Production to part R2 Low Density Residential with a minimum lot size of 2,000m², part R2 Low Density Residential with a minimum lot size of 5,000m² and part E4 Environmental Living with a minimum lot size of 1 hectare (PP_2013_YASSV_001_00);
- rezone land north of Gundaroo from RU1 Primary Production to R2 Low Density Residential with a minimum lot size of 2,000m², E4 Environmental Living with a minimum lot size of 1 hectare, E3 Environmental Management with a minimum lot size of 2 hectares, E3 Environmental Management with a minimum lot size of 10 hectares, E2 Environmental Conservation with nil minimum lot size and apply a minimum lot size of 20 hectares to part lot 1 DP 850916 to be retained as RU1 Primary Production (PP_2013_YASSV_002_00);
- apply a minimum lot size for subdivision of land (5,000m²) and dual occupancy development (1 hectare) on land to be zoned R2 Low Density Residential in north and south Gundaroo where reticulated sewerage is not provided; and
- ensure proposed development within the R2 Low Density Residential Zone in Gundaroo is designed, sited and will be managed to avoid contamination of groundwater.

The number of dwellings created by the plan will depend on whether the sites are serviced by a reticulated sewerage system or on-site effluent disposal systems. The proposal will create approximately 82 serviced lots or 56 unserviced lots in south Gundaroo and 76 serviced lots or 38 unserviced lots in north Gundaroo, i.e. a total of 158 serviced lots or 94 unserviced lots.

4. STATE ELECTORATE AND LOCAL MEMBER

The sites fall within the Goulburn Electorate. The Hon Pru Goward MP is the State Member for Goulburn.

The Hon Angus Taylor MP is the Federal Member for Hume.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposals.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to these proposals.
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NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required
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5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determinations issued on 3 October 2013 determined that the proposals should proceed subject to conditions.

The Gateway determinations were altered on 24 October 2016 to amend the planning proposals in response to issues raised by the community and state agencies during consultation. The amendments to the planning proposals are summarised as follows:

- increase the lot size for unserviced urban development in the proposed R2 Low Density Residential Zone in response to concerns with the adverse water quality impacts of on-site effluent disposal on groundwater resources;

- include LEP provisions to ensure proposed urban development is designed, sited and managed to avoid contamination of groundwater; and
- introduce an E2 Environmental Conservation Zone (north Gundaroo) to provide a buffer area between urban development and Superb Parrot breeding habitat.

Gateway alterations were issued on 11 October 2017 to extend the time for finalising the draft plan by 3 February 2018.

6. PUBLIC CONSULTATION

The original planning proposals were exhibited from 14 July 2014 to 22 August 2014 and Yass Valley Council received 139 submissions, including 49 submissions objecting to the proposals.

The Department of Planning and Environment issued Gateway alterations on 24 October 2016 requiring Council to amend and exhibit the planning proposals.

In accordance with the altered Gateway determinations, community consultation was undertaken by Council from 16 January 2017 to 13 March 2017.

Council received 52 submissions on the revised planning proposals comprising 35 submissions supporting the proposals and 17 submissions objecting to the proposals.

The key issues raised in community submissions were as follows:

Support for the proposals

- Support the Department's requirement for a 5,000m² minimum lot size where reticulated sewerage and sustainable water supply is not provided.
- Commend Council for taking actions to determine a reticulated sewerage scheme for Gundaroo.
- Support the proposed environmental zones along McLeods Creek.
- Support the E2 buffer zone to protect the Superb Parrot habitat. The land zoned E2 should be within one lot and not on a lot with a split E2 Environmental Conservation Zone and E4 Environmental Living Zone.
- The planning proposals are consistent with the Yass Valley Towns and Villages Study 2010. The additional development will address the housing affordability issue by increasing supply and will enable business to continue to grow and develop.

Objections to the proposals

- The planning proposals will create development on a scale that is not in keeping with the character and values of Gundaroo and will have adverse environmental, social, health and heritage impacts.
- The planning proposals are inconsistent with the Yass Valley Towns and Villages Study 2010.
- The planning proposals are not consistent with state environmental planning policies and section 117 Directions Rural Zones and Flood Prone Land.
- The buffer zone between Superb Parrot habitat and the Kyeema development area will fail to protect the Superb Parrot because the development areas are within the foraging habitat of the parrot.
- There are likely to be environmental effects as a result of the planning proposals including contamination of groundwater, inadequacy of current waste facilities to cope

with population increase, impact on water quality on creeks and rivers, and impact on nature reserve areas.

- Land at Kyeema is segregated from the village by McLeods Creek and is not a desirable outcome for the village.
- The land is 'significant agricultural land' worthy of being retained as required under the Sydney Canberra Corridor Regional Strategy.
- The development will put enormous pressure on existing infrastructure, such as roads, footpaths, street lighting, public toilets, waste facilities, public recreation areas and bus shelters, and add to ongoing issues with water and sewage.
- Concerns with the planning process, e.g. finalisation of the Yass Valley Settlement Strategy 2016-2036 and the village master planning process should have preceded the exhibition of the planning proposals.
- Proposals will exacerbate current issues with the reliability of village electricity supply.
- The planning proposals are not the result of any strategic study or report. Council has not assessed the need, benefit, community endorsement or environmental suitability for the greenfields growth.
- No independent economic or social impact studies were completed to assess beneficial or adverse impacts of the proposals.
- Council is not in a financial position to adequately cater for the implications of the social and economic growth associated with the expansion of Gundaroo.
- The amended proposals do not reflect the issues raised by public authorities, i.e. Office of Environment and Heritage (flooding and cultural heritage issues), Local Lands Service (threatened species), Department of Primary Industries Water (proliferation of bores, water quality impacts, flooding of effluent disposal areas) and NSW Health (maintaining on-site wastewater treatment systems to protect groundwater).

A report on the assessment of the submissions was tabled at Council's meeting of 26 July 2017. Council's report concluded that the submissions did not raise any significant new issues warranting a rejection of the planning proposals. The report clarified reasons for recommending that the planning proposals be adopted as exhibited:

- the planning proposals are identified as urban release areas in Council's planning policies, i.e. Yass Valley Towns and Villages Study 2010 and the draft Yass Valley Settlement Strategy 2016-2036 (now adopted by Council);
- the planning proposals are consistent with the South East and Tablelands Regional Plan 2036 because the sites are identified in a local planning strategy;
- applying larger lot sizes to unserviced urban land to avoid cross-contamination between bores and on-site effluent disposal (bore buffer) addresses concerns raised by DPI Water and NSW Health regarding further contamination of groundwater resources;
- applying an E2 Environmental Conservation Zone as a 50m-wide buffer area between urban development and Superb Parrot breeding area addresses concerns raised by the Office of Environment and Heritage regarding the impact of development on this threatened species;
- Council is developing a master plan for Gundaroo village in consultation with the community that will address concerns with urban design, heritage conservation and retention of village character; and

- Council has completed the Gundaroo Floodplain Risk Management Study and Plan and has adopted a flood planning level for Gundaroo consistent with NSW Government policies and addresses inconsistencies with section 117 Direction 4.3 Flood Prone Land. (Note: This matter is also discussed in the assessment of advice from the Office of Environment and Heritage and inconsistencies with section 117 Direction 4.3 Flood Prone Land.)

Council has satisfactorily considered and addressed the submissions received during community consultation.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the following public authorities in accordance with the Gateway determinations:

- Office of Environment and Heritage (OEH);
- Murrumbidgee Catchment Authority (replaced by NSW Local Land Services);
- Department of Primary Industries Water (DPI Water);
- NSW Environmental Protection Authority (EPA);
- NSW Health; and
- NSW Education.

The report to Council's meeting on 26 July 2017 states that consultation was undertaken in accordance with the Gateway determinations and submissions were received from:

- Heritage Council of NSW;
- NSW Health;
- DPI Water;
- Roads and Maritime Services (RMS); and
- OEH.

There were no objections raised by any public authority on the planning proposals.

Heritage Council of NSW

The Heritage Council indicated that the proposed rezonings were well considered in terms of siting and minimal lot sizes.

NSW Health

NSW Health supported Council's intention to investigate options for a public sewerage treatment plant to service Gundaroo village.

NSW Health provided Council with information and recommendations in circumstances where on-site sewage management systems were proposed, including prohibiting these systems in areas within a medium or high flood risk precinct and prohibiting surface irrigation of effluent within a low flood risk precinct identified by the Gundaroo Floodplain Risk Management Study and Plan.

Council's assessment report on submissions addresses the matters raised by NSW Health by indicating that Council requires treatment/holding devices to be located above the 1% annual exceedance probability (AEP) flood level, and composting toilets or other systems that only provide primary sewage treatment will not be approved below the 1% AEP flood level.

DPI Water

DPI Water supported the requirement for reticulated sewerage and sustainable water supply to be provided to subdivision of lots less than 5,000m² and for a 1 hectare minimum lot size to be applied when lots are to be used as dual occupancy.

DPI Water advised Council that a 250m buffer between bores and an on-site sewerage management system should be applied to development and that bores are not to be used for potable purposes unless they are tested to be safe and/or suitably treated.

DPI Water recommended stabilisation of an erosion gully in the Faithfull Street planning proposal area (southern area).

Council's assessment report on submissions indicated that both Council and the proponent for the southern area accepted the necessary measures to stabilise gully erosion.

The revised planning proposals address concerns raised by DPI Water regarding potential groundwater contamination associated with the proximity of bores to on-site effluent disposal systems by applying a larger lot size for unserviced residential land.

Roads and Maritime Services

RMS indicated that vehicular access to the areas to be rezoned should be provided from the surrounding road network to minimise impact on the classified road network. RMS does not support the creation of additional access points to Gundaroo Road.

Council's assessment report on submissions addresses the matters raised by RMS by indicating that the Gundaroo master plan will include landscape buffers along Gundaroo Road to prevent new access points from future development to Gundaroo Road.

Office of Environment and Heritage

The revised planning proposals address previous concerns raised by OEH about the impact of development on the breeding habitat of the Superb Parrot by applying a 50m-wide E2 Environmental Conservation Zone (buffer area) between the parrot breeding area and future development.

Flood-prone land

The planning proposals acknowledge that the northern and southern sites are partly affected by flood-prone land (Figures 2 and 3).

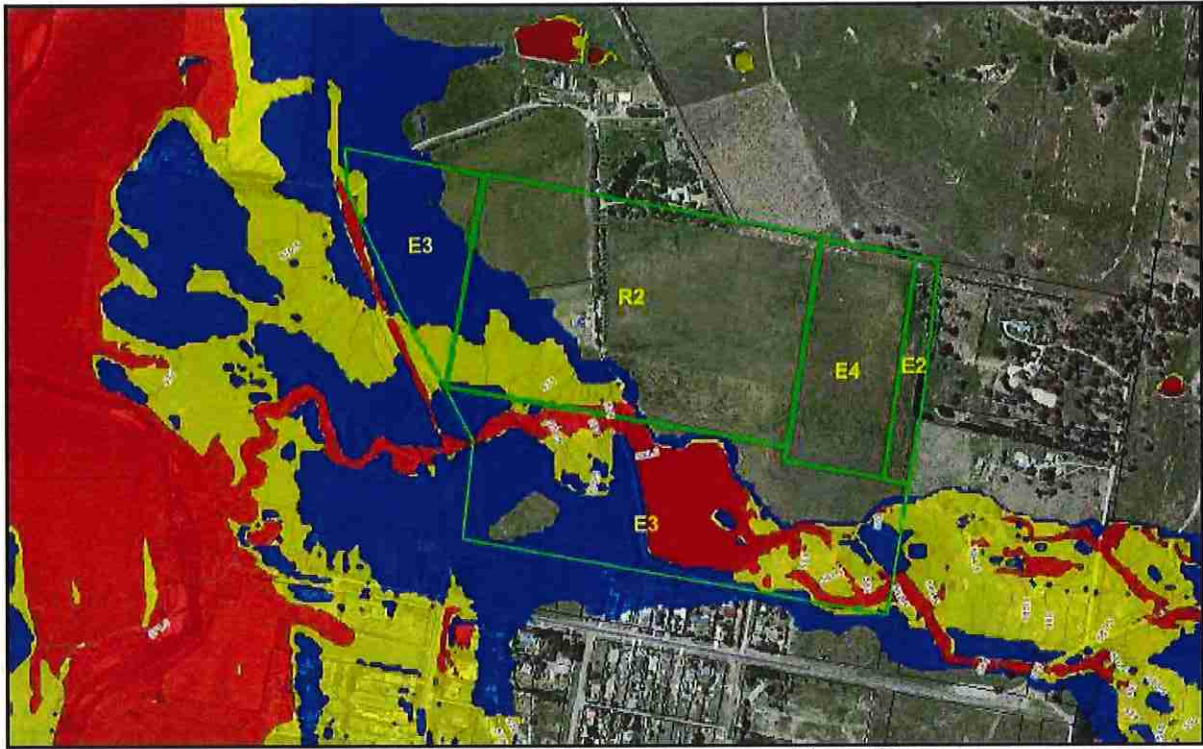


Figure 2: Flood Risk Precincts – Northern Area. High Risk - Red, Medium Risk – Yellow, Low Risk – Blue
(Source: Gundaroo FRMSP 2016 WMA).

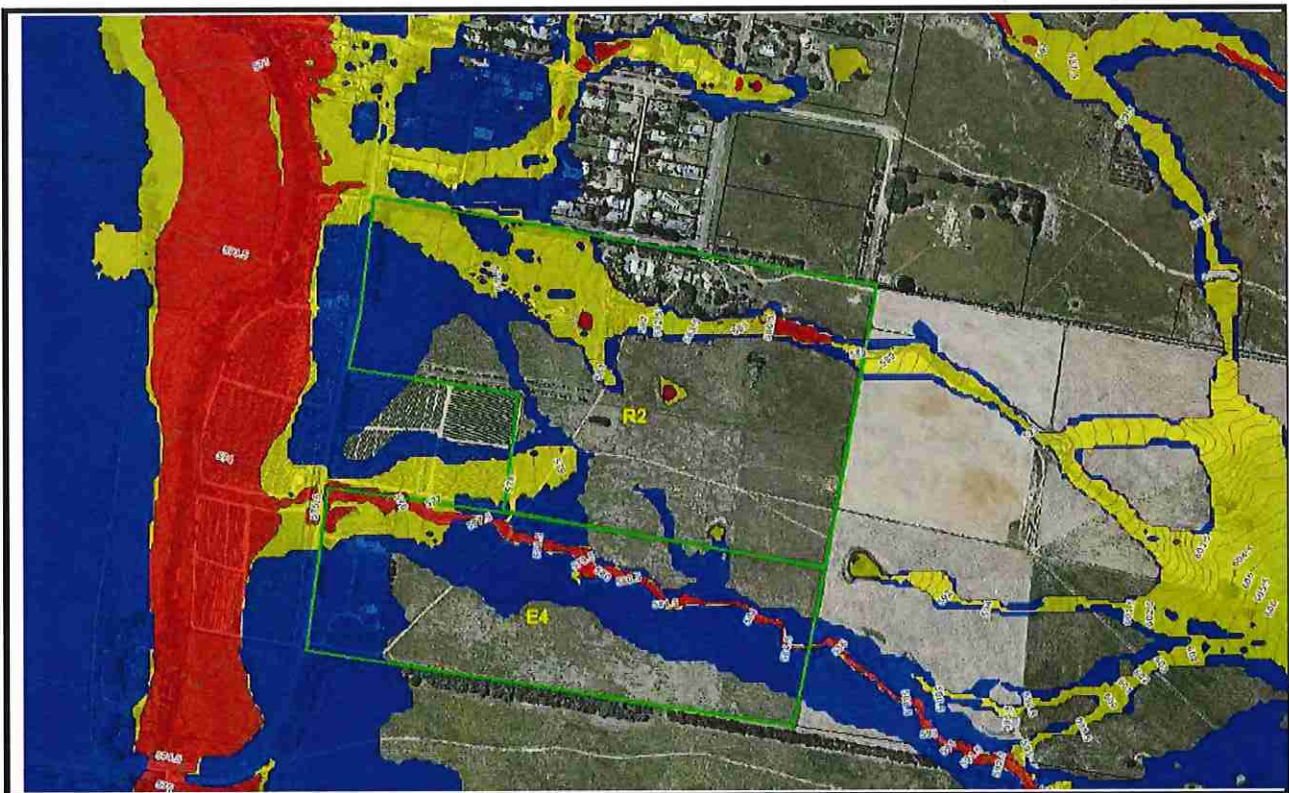


Figure 3: Flood Risk Precincts – Southern Area. High Risk - Red, Medium Risk – Yellow, Low Risk – Blue
(Source: Gundaroo FRMSP 2016 WMA).

The OEH Flood Unit has raised concerns with Council and the Department of Planning and Environment that the planning proposals have not adequately considered flood mitigation risks as detailed in the Gundaroo Floodplain Risk Management Study and Plan (Gundaroo FRMSP).

OEH's concerns are as follows:

- the probable maximum flood (PMF) is typically 5m higher than the 1% annual exceedance probability (AEP) event in Gundaroo;
- low flood risk areas in Gundaroo typically present significant risk to life in extreme floods;
- concerns with evacuation during floods:
 - short available warning times at Gundaroo make the provision of an effective flood warning service difficult;
 - Gundaroo can become isolated due to early flooding of roads;
 - the proposed development areas become isolated during floods; and
 - State Emergency Service assistance is unlikely during an extreme flood due to the above.
- a range of development controls should be applied to low flood risk areas (PMF), such as evacuation/access requirements; and
- exempt and complying development in low flood risk areas (PMF) would not be subjected to Council's development controls. This could result in poor outcomes in terms of potential isolation during flood events and risk to life in extreme floods. To address this, Council should consider defining flood control lots up to the PMF where appropriate.

The Gundaroo FRMSP of November 2016 and tabled at Council's meeting of 21 December 2016 recommended that sensitive land uses (e.g. nursing homes, hospitals and childcare centres) be prohibited below the PMF by including a floodplain risk management clause in the Yass Valley LEP 2013 (LEP) as per *Planning Circular PS 07-003 - New guideline and changes to section 117 direction and EP&A Regulation on flood prone land*. The guideline states that unless there are 'exceptional circumstances', councils should not impose flood-related development controls on residential development on land above the residential flood planning level (low flood risk areas).

At its meeting of 21 December 2016, Council resolved that:

- the Gundaroo and Sutton floodplain risk management studies and plans be endorsed;
- the flood planning level be set at 1% AEP event plus 0.5m for residential areas within Gundaroo and Sutton; and
- a further report be brought back to Council identifying a proposed action plan and priorities in relation to recommendations contained in the reports.

Council has confirmed that it does not intend to include new flood provisions in the LEP relating to low flood risk areas (i.e. land between the flood planning area and the PMF). Council will rely on flood controls in its proposed development control plan recommended by the Gundaroo FRMSP, e.g. general performance criteria to be used when assessing a development application, including development applications for sensitive land uses.

Under the NSW Government policies outlined in *Planning Circular PS 07-003 - New guideline and changes to section 117 direction and EP&A Regulation on flood prone land and Guideline on development controls on low risk areas – Floodplain Development Manual*, it is a matter for Council to decide if it wishes to present a case for 'exceptional circumstances' to the Department to impose flood controls on land located between the AEP event plus 0.5m freeboard and the PMF.

Council has resolved to adopt a flood planning level (AEP event plus 0.5m freeboard) for Gundaroo, including land within the proposed northern and southern urban release areas, which is in accordance with NSW Government policies on flood-prone land

It is recommended that the draft plan be approved because Council's decision to apply flood controls on land affected by the AEP event plus 0.5m freeboard is consistent with NSW Government policies on flood-prone land.

8. POST-EXHIBITION CHANGES

No amendments were made to the revised planning proposals by Council following public exhibition.

9. ASSESSMENT

Consistency with Gateway alterations

The draft plan reflects the Gateway alterations issued by the Department on 24 October 2016 requiring revised planning proposals be prepared to:

- increase the minimum lot size for future housing in north and south Gundaroo to address issues associated with residential development on unserviced land (i.e. groundwater contamination); and
- apply an E2 Environmental Protection Zone to act as a buffer area between residential development and the breeding habitat of the Superb Parrot threatened species.

The draft plan is consistent with the Gateway alterations issued by the Department on 24 October 2016.

Consistency with local strategies

The original Gateway determinations of 3 October 2013 were issued on the basis that the planning proposals were consistent with Council's land-use strategy, the Yass Valley Town and Villages Study 2010. The strategy identified areas north and south of Gundaroo to be investigated for urban development.

The proposals were also considered to be consistent with the Sydney Canberra Corridor Regional Strategy because the Yass Valley Town and Villages Study 2010 was endorsed by the Department on 20 June 2011.

In September 2017, Council adopted a new land-use strategy, the Yass Valley Settlement Strategy 2016-2036. The strategy identifies urban release areas north and south of Gundaroo consistent with the previous land-use strategy. Council has submitted the strategy to the Department for endorsement.

The planning proposals are consistent with the previous and current Yass land-use strategies.

Section 117 Directions

The Secretary's delegate agreed to the original planning proposals' inconsistencies with section 117 Directions 1.2 Rural Zones and 1.5 Rural Lands because they were identified as potential investigation areas in the Yass Towns and Villages Study 2010 endorsed by the Department on 20 June 2011.

Section 117 Direction 4.3 Flood Prone Land

The original planning proposals prepared in 2013 did not acknowledge that the sites were flood prone or that there were any inconsistencies with section 117 Direction 4.3 Flood Prone Land. However, parts of the land in the northern and southern sites are identified as flood prone under the Gundaroo FRMSP.

In the revised Gateway determinations, the Department directed Council to amend the planning proposals to address flood issues and any inconsistencies with section 117 Direction 4.3 Flood Prone Land.

The revised planning proposals acknowledge that the land in the northern and southern sites proposed to be zoned R2 Low Density Residential Zone is partly affected by flood-prone land (Figures 2 and 3).

The revised planning proposals are inconsistent with this Direction because they seek to rezone flood-prone land from RU1 Primary Production to R2 Low Density Residential.

Council has justified the inconsistencies with this Direction as follows:

- the planning proposals are consistent with the Gundaroo FRMSP adopted by Council in December 2016, which applies a flood planning level for Gundaroo set at the AEP event plus 0.5m freeboard; and
- the planning proposals are consistent with NSW Government *Guideline on development controls on low risk areas – Floodplain Development Manual* that states, “unless there are exceptional circumstances, councils should adopt the 100-year flood as the FPL for residential development”.

OEH has recommended that flood controls apply to land affected by the PMF. Under the NSW Government policies for flood-prone land, councils are only required to apply flood controls to land affected by the 100-year flood level (1% AEP plus 0.5m freeboard).

The draft plan should proceed because Council has adopted the Gundaroo FRMSP, which applies flood planning levels that are set at the 1% AEP event plus 0.5m freeboard consistent with the NSW Government policies on flood-prone land.

It is recommended that the Secretary agree that the planning proposals' inconsistencies with section 117 Direction 4.3 Flood Prone Land are justified because they are in accordance with NSW Government policies on flood-prone land.

Section 117 Direction 5.10 Implementation of Regional Plans

This Direction applies to the planning proposals because the Yass Valley LGA is one of several LGAs covered by the South East and Tablelands Regional Plan 2036. The plan was endorsed in July 2017, so consistency with the Direction was not considered in the preparation of the original planning proposals (2013) or revised planning proposals (January 2017).

Directions 14, 16 and 18 of the plan are relevant to the planning proposals.

The proposals are consistent with Direction 14: Protect important environmental assets, Action 14.2: Protect the validated high environmental land in local environmental plans and Action 14.3: Minimise potential impacts arising from development on areas of high environmental value) because they apply environmental zones to protect sensitive areas and breeding habitat of the Superb Parrot.

The planning proposals are consistent with Direction 16: Protect the coast and increase resilience to natural hazards, Action 16.2: Locate new urban release areas away from hazards, including flooding, to reduce the community's exposure to natural hazards and Action 16.2: Implement the requirements of the *NSW Floodplain Development Manual*. The planning proposals have been prepared in accordance with the principles and guidelines of the manual (including the *Guideline on development controls on low risk areas*).

The planning proposal is potentially inconsistent with Direction 18: Secure water resources, which states that an acceptable reticulated water supply is required for any land release or an increase in housing densities in existing areas. The provision of potable water must also provide a reliable supply to provide certainty for consumers.

Gundaroo does not have a reticulated water supply or reticulated sewerage system. The planning proposals and the draft LEP provide options for urban development to be either serviced or unserved by a reticulated sewerage supply.

The inconsistency with Direction 18 of the regional plan is justified because the draft LEP:

- is consistent with the Yass Towns and Villages Study 2010 endorsed by the Department on 20 June 2011 and the Yass Valley Settlement Strategy 2016-2036, which has been submitted to the Department for endorsement; and
- contains provisions that apply a larger minimum lot size for unserved development (residential subdivision and dual occupancy development) in north and south Gundaroo. The provisions of the draft LEP therefore encourage Council and developers to provide reticulated water and sewerage to service urban release areas to obtain higher housing densities.

It is recommended that the Secretary determine that the planning proposals' inconsistencies with section 117 Direction 5.10 Implementation of Regional Plans are justified:

- by the Yass Towns and Villages Study 2010 endorsed by the Director General in 2011; and
- because the draft LEP seeks to encourage Council and developers to provide reticulated water and sewerage to service urban development in north and south Gundaroo.

State environmental planning policies

The draft LEP is consistent with relevant SEPPs or deemed SEPPs.

10. MAPPING

The Department's GIS Team prepared and finalised amendments to draft LEP map sheets LSZ_005E and LZN_005E on 14 September 2017 in accordance with instructions from the Southern Regional team. The GIS team sent the draft maps to Parliamentary Counsel on 25 September 2017.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument and maps on 25 October 2017. Council confirmed on 25 October 2017 that it was happy with the draft maps and the draft instrument.

Council was again consulted on 30 October 2017 after Parliamentary Counsel made minor changes to the draft instrument. Council confirmed on 30 October 2017 that it was happy with the revised wording of the draft instrument and that the plan should be made.

12. PARLIAMENTARY COUNSEL OPINION

On 27 October 2017, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made (**Attachment PC**).

13. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP because:

- the draft plan is consistent with the Gateway alterations issued by the Department;
- the draft plan satisfactorily addresses issues raised by state agencies;
- the draft plan is consistent with the Yass Valley Settlement Strategy 2016-2036 and the South East and Tablelands Regional Plan 2036.

- The Secretary's delegate has agreed that the plan's inconsistencies with section 117 Directions 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans are justified.

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