

24 November 2021

Contact: *Stuart Little*
Telephone: *0436 948 347*
Our ref: *D2021/121375*

Ms Kate Wooll
Business Manager Strategic Planning
Goulburn Mulwaree Council
Locked Bag 22
GOULBURN NSW 2580

Dear Ms Wooll,

RE: Pre-Gateway Referral – Draft Planning Proposal: Marulan Drinking Water Treatment Plant (REZ 0001_2122)

I refer to your email of 5 November 2021 seeking our pre-Gateway comments on a Draft Planning Proposal to rezone 189 Brayton Road Marulan (Lot 10 DP 1067488) to SP 2 (Infrastructure) to facilitate the expansion of the Marulan Drinking Water Treatment Plant (WTP).

The Planning Proposal seeks to rezone the land to facilitate a planning pathway that would enable new treatment lagoons to be located on Lot 10. While that lot is in Council ownership, it is currently zoned R5 Large Lot Residential where 'water supply systems' are a prohibited use. An alternative planning pathway under *State Environmental Planning Policy (Infrastructure) 2007* is also unavailable as the R5 zone is not one of the 'prescribed' zones where assessment pathways for such uses exist. To overcome these restrictions, it is proposed to rezone Lot 10 to SP2 Special Uses (Infrastructure) under the *Goulburn Mulwaree Local Environmental Plan 2009* (GM LEP) and remove the current 2,000 m² minimum lot size (MLS) requirement. This would be facilitated by amendments to the relevant zoning and MLS maps of the GM LEP.

WaterNSW does not object to the Proposal proceeding to Gateway but asks that we be consulted again following a Gateway decision, and once the matters raised in this letter have been addressed. This includes that the Planning Proposal:

- includes more information about the nature of the pollutants likely to arise in the new water treatment lagoons
- includes a map of the water-related constraints on the land including the location of existing waterways and farm dams, and information about the flood risk, and
- provides further detail and clarity on the relationship between the rezoning and the Infrastructure SEPP planning pathway, raising this matter earlier in the document.

In relation to the proposed works, we ask to be consulted as early as possible in the planning process, particularly in the development of options and concept and detailed designs. The options and designs will have a significant bearing on the ability of the proposed works to achieve a Neutral or Beneficial Effect (NorBE) on water quality under *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (SDWC SEPP). Council should note that the proposed Review of Environmental Factors should also include a NorBE assessment to meet the requirements under clause 12 of the SDWC SEPP. We also ask that we be kept updated when the upgrade is occurring.

Our detailed comments are provided in Attachment 1. If you have any questions regarding the issues raised in this letter, please contact Stuart Little at stuart.little@waterNSW.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alison Kniha', with a stylized, flowing script.

ALISON KNIHA
Catchment Protection Planning Manager

ATTACHMENT 1 – Detail

Planning Provisions and Pathways

The GM LEP Pathway

It is proposed to rezone Lot 10 from R5 to SP2 and remove the current 2,000 m² MLS requirement for the site. We draw to Council's attention that additional amendments to the GM LEP land use table or zoning map may also be required depending on Council's intended planning pathway for the proposed works. Under the GM LEP, the SP2 zone only permits roads without development consent. The land use table requires development consent for aquaculture and *for the purposes shown on the land zoning map* (including any development ordinarily incidental or ancillary to development for that purpose) (emphasis added). All other development is prohibited.

The Proposal would benefit by clarifying whether Council is intending to modify the land use table for the SP2 zoning and whether the zoning map will also be amended to specify to *purpose* of the SP2 zoning. Specifically, it needs to be clarified whether Council is also intending to categorise the new SP2 zone as 'water supply system' or 'public utility undertaking' (as currently identified for the existing WTP land) and identify this on the zoning map. This would then identify the 'purpose' of the SP2 zoning to allow the works to occur with development consent and thereby overcome the current prohibition in the GM LEP. Without further amendment to the land use table, the proposed works would require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). If the Part 5 EP&A Act pathway is desired, then Council may also be seeking to change the land use table to place the 'water supply system' works in the category of being permissible without consent under the GM LEP. If this is the case, then it should be stated in the Planning Proposal.

The Proposal would also benefit by explaining why removal of the MLS is proposed. Perhaps the change in MLS is simply to align the MLS provisions with what applies to other SP2 zoned land in the local government area (LGA), including the adjacent WTP land? We note that the proposed change to the MLS does not appear to affect the GM LEP or Infrastructure SEPP planning pathway (discussed below) for the proposed works.

Infrastructure SEPP

The Planning Proposal refers to the Infrastructure SEPP providing an alternative approval pathway for development/ activities that fall under the definition of 'water supply system', noting that such pathways are not available as R5 is not a prescribed zone for such purposes (pp. 5, 6, 8, 11). Some caution needs to be exercised here. Division 24 of the Infrastructure SEPP is entitled 'water supply systems', however, the Part 4 and Part 5 of the EPA& Act planning pathways is only available for 'water treatment facilities' (as defined) for prescribed zones, not the broader category of 'water supply systems' (as defined).¹ Council may wish to reposition the language to refer to 'water treatment facilities' (rather than 'water supply systems') when discussing 'prescribed zones' and the planning pathways available under the Infrastructure SEPP. The Proposal would also benefit by explaining the inter-relationship between the proposed rezoning and the Infrastructure SEPP earlier in the document (e.g. under Part 1 Intended Outcomes or Part 2 Explanation of Provisions).

Water Quality Risks

The treatment lagoons, also referred to as sludge ponds, will present a potential risk to water quality as they contain by-products from the water treatment process. Pollutants are likely to be held in solution and suspension. The main risk is seepage (managed by construction) or overflow (managed by procedures). These matters are more relevant to the development application stage or in preparing a REF for the site.

¹ See clauses 125(3A) and clause 126A(2) of the Infrastructure SEPP.

Flooding Risk

The Proposal does not currently address the flood risk associated with the site. More information should be provided to help identify whether the land is likely to be affected by flooding, noting that two watercourses traverse the site (described further below). This will help identify the overall suitability of the site for the proposed use and help identify those area which may and may not be suitable for water treatment ponds.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The Proposal includes consideration of *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (the SDWC SEPP), noting that development consent cannot be granted unless there is a neutral or beneficial effect (NorBE) on water quality. However, the response to the SDWC SEPP goes on to discuss how the Planning Proposal is designed to facilitate the 'development without consent' pathway through the prescribed zone provisions of the Infrastructure SEPP, with water quality impacts being considered in the Part 5 REF process.

Assuming that the proposed works are intended to be assessed against Part 5 of the EP&A Act, the response to the SDWC SEPP should include reference to the following:

- Clause 9 of the SDWC SEPP which advises that any development or activity should incorporate WaterNSW's current recommended practices (CRPs) and standards and, if these are not incorporated, demonstrate how the practices and standards will achieve outcomes not less than those of the WaterNSW CRPs and standards;
- Clause 12 of the SEPP which requires that a public authority must, before it carries out any activity to which Part 5 of the Act applies, consider whether the activity would have a NorBE on water quality.

The response to the SDWC SEPP notes that the site contains two watercourses. We agree and note that the watercourse in the south of the site is initially a first order stream but adjoins another first order watercourse at the southern boundary to create a second order stream. Another first order watercourse occurs in the middle of the site flowing in from north-west to south-east. Both watercourses drain into and across the existing neighbouring WTP land and into Jaorimin Creek. The Proposal notes that both the construction and operation of treatment lagoons would need to be designed in accordance with the NorBE principles of the SEPP. We agree with this statement and refer Council to the provisions of clauses 9 and 12 of the SDW SEPP as provided above. Also, while Lot 10 is located further away from Jaorimin Creek than the existing WTP site, the proximity of the proposed treatment ponds to the existing watercourses will need to be explored when options and concept designs are being considered.

The Proposal offers to consult with WaterNSW as a stakeholder either as part of the section 60 application process (under the *Local Government Act 1993*) or during the assessment of options at concept design stage. WaterNSW supports the need for early consultation when exploring options and at the concept design stage to help ensure that the Proposal effectively considers the NorBE requirement for water quality protection.

Direction 5.2 Sydney Drinking Water Catchment

The response to Direction 5.2 currently largely re-states what is provided in response to the SDWC SEPP. The requirements of Direction 5.2 are different to the SEPP so the information should be updated and repositioned. The objective of the Direction is to protect water quality in the SDWC. It requires Planning Proposals to be consistent with the SDWC SEPP, give consideration to the outcomes of any relevant Strategic Land and Water Capability Assessment (SLWCA), and zone Special Areas as stated in the Direction. With regard to this Proposal, no Special Areas are affected, so this matter is not relevant. WaterNSW does not hold SLWCAs relevant to water treatment facilities or treatment lagoons. Matters relevant to the SEPP have been previously discussed above. We acknowledge and thank Council for its earlier pre-Gateway referral of the Planning Proposal as required by Direction 5.2.
