



**Goulburn Mulwaree Council**

**Planning Proposal-**

**Rezone 189 Brayton Road, Marulan to SP 2  
Infrastructure (Public Utility Undertaking) under  
Local Environmental Plan 2009**

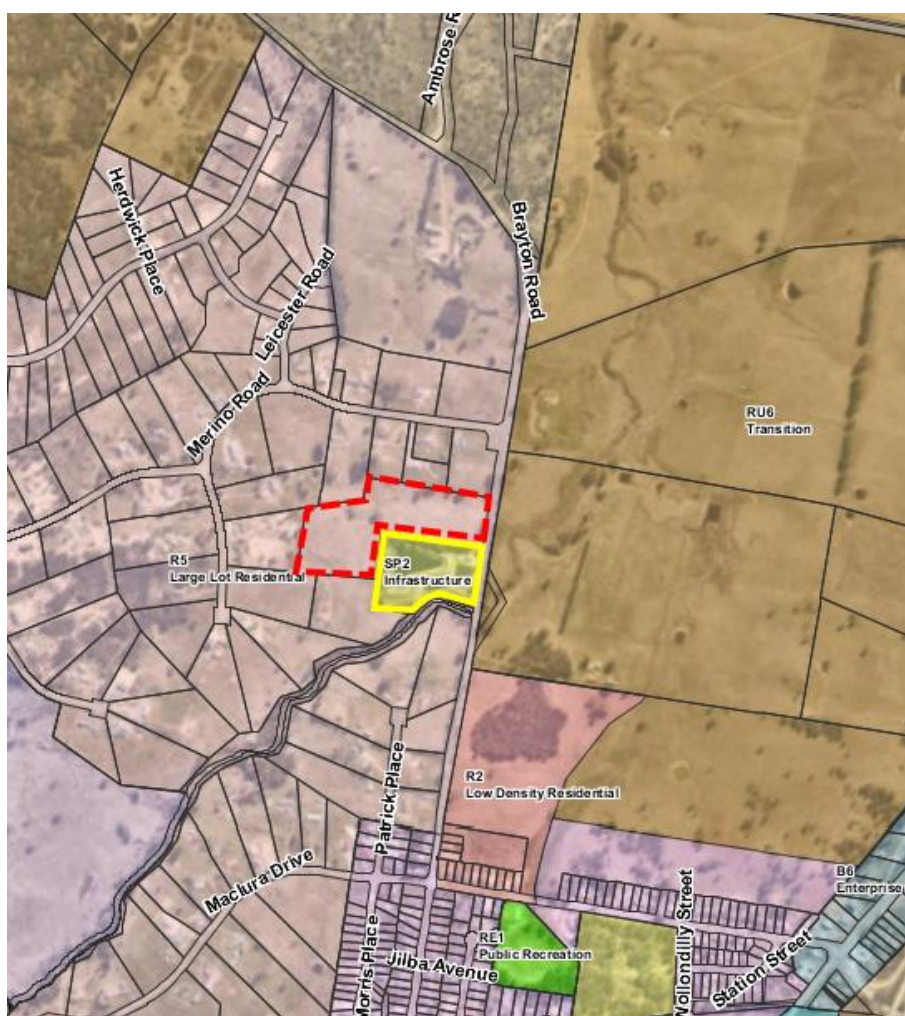
**2 March, 2022**

| Version | Comment   | Date              |
|---------|---|-------------------|
| 1       | Issued pre Gateway (for Water NSW)                      | 5 November, 2021  |
| 2       | For Gateway (including Water NSW submission)            | 29 November, 2021 |
| 3       | Post Gateway and State Agency Referral – For Exhibition | 2 March, 2022     |

## Introduction

Goulburn Mulwaree Council resolved at its meeting of 2 November, 2021 to prepare a Planning Proposal to rezone No. 189 Brayton Road (Lot 10 DP 1067488), Marulan from R5 Large Lot Residential with a minimum lot size of 2000m<sup>2</sup> to SP 2 Infrastructure (Public Utility Undertaking) with no minimum lot size under *Goulburn Mulwaree Local Environmental Plan (GM LEP) 2009*. A copy of the Council Report and Minutes in relation to this matter are attached (**Attachments 1 and 2**).

The intention of this Planning Proposal is to facilitate the expansion of the existing Marulan Drinking Water Treatment Plant site (Lot 1 DP 1000945) by expanding the SP 2 Infrastructure zoning onto an adjoining lot in Council's ownership. It is intended that the lot will be developed in future with additional treatment facilities, specifically treatment lagoons.



**Map 1:** Zone map showing boundary of Lot 10 DP 1067488 outlined in red with the location of the existing water treatment plant (WTP) outlined in yellow.

## Part 1 – Intended Outcomes

The **intended outcome** of the instrument proposed by this Planning Proposal is to rezone No. 189 Brayton Road (Lot 10 DP 1067488), Marulan from R5 Large Lot Residential with a minimum lot size of 2000m<sup>2</sup> to SP 2 Infrastructure (Public Utility Undertaking) with no minimum lot size under *Goulburn Mulwaree Local Environmental Plan (GM LEP) 2009*.

The zone change will allow development for the purposes of a water treatment facility either with consent under GM LEP 2009 or without consent under *State Environmental Planning Policy (Infrastructure) 2007*. This will provide a planning assessment pathway to allow the expansion of the water treatment facility subject to either a development application (DA) or review of environmental factors (REF).

The removal of the minimum lot size provision is consistent with all SP2 Infrastructure zoned land under *Goulburn Mulwaree Local Environmental Plan 2009*. The minimum lot size provision is not considered to be relevant for this particular zone.

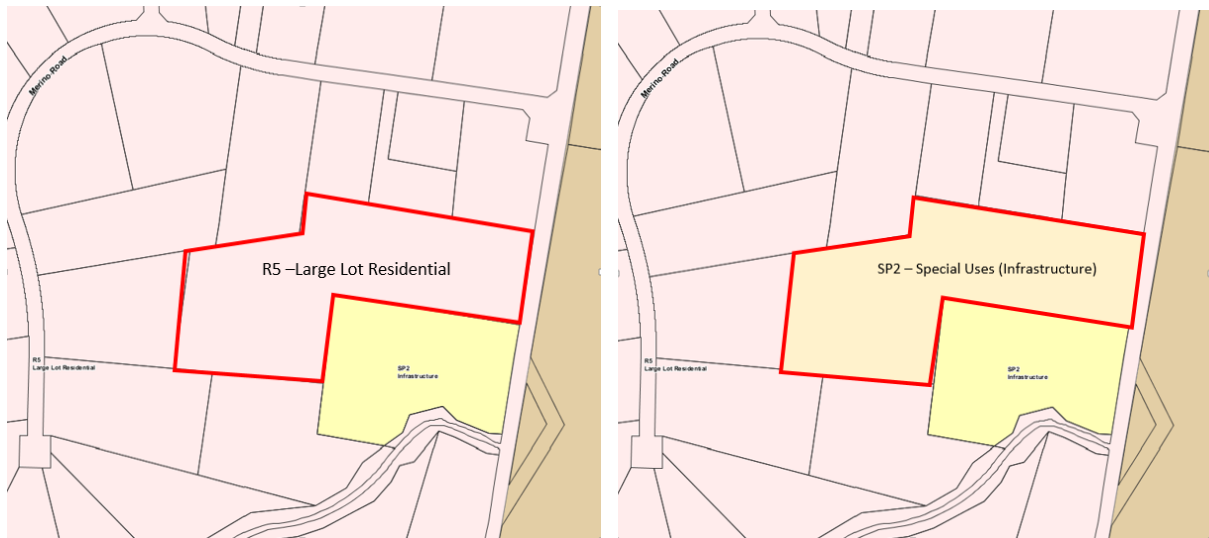
## Part 2 – Explanation of Provisions

The application of the SP 2 Infrastructure (Public Utility Undertaking) zone allows for a public utility undertaking (such as a water treatment facility) to be undertaken with consent under *Goulburn Mulwaree Local Environmental Plan 2009*. This zoning would however, be a “prescribed zone” under *State Environmental Planning Policy (Infrastructure) 2007*, Part 3, Division 24 Water Supply Systems (Clause 125 Development permitted without consent) and would allow for development for the purposes of a water treatment facility which is carried out by or for a public authority [the Council], to be undertaken without consent. It is likely that given the planning pathway provided under *State Environmental Planning Policy (Infrastructure) 2007* that a review of environmental factors (REF) under Part 5 of the *NSW Environmental Planning and Assessment Act, 1979* would be undertaken for a future expansion for the water treatment facility onto this site rather than a development application (DA).

Given the above, no changes to the land use table are proposed, with the amendment to the *Goulburn Mulwaree Local Environmental Plan 2009* being a map only amendment.

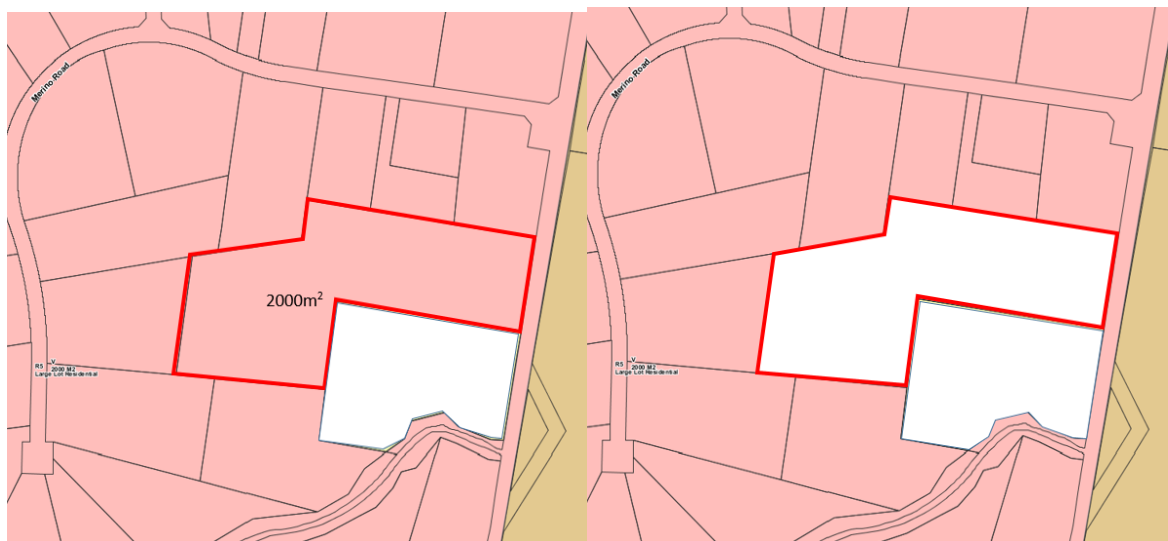
The proposed outcome will be achieved by map amendments as follows:

1. Amendment of the *Goulburn Mulwaree LEP 2009* zone map



**Map 2** Current and Proposed Zone

2. Amendment of the *Goulburn Mulwaree LEP 2009* minimum lot size map



**Map 3** Current Minimum Lot Size and Proposed (no minimum lot size)

## Part 3 – Justification

### Section A – Need for Planning Proposal

#### 3.1 Is the Planning Proposal a result of any strategic study or report?

No, the Planning Proposal is identified as a current operational requirement for the purposes of appropriately treating potable drinking water for the existing population in Marulan. The provision of potable drinking water to an existing and future population is considered to be critical infrastructure.

Under the *NSW Public Health Act 2010* Council is required as a water authority to provide drinking water which is fit for human consumption, with the relevant State Minister having the authority to intervene should drinking water be considered to be unfit for human consumption. Furthermore, under the Act, water suppliers must have a quality assurance program (Council's Drinking Water Management Plan) which identifies Council's roles and responsibilities regarding drinking water quality such as health based and aesthetic limits to ensure customers can safely and comfortably drink the water provided.

However, Council recently adopted a key strategic planning document for the future growth and development of the Local Government Area, namely the *Urban and Fringe Housing Strategy*. One of the intentions of the Strategy is to provide criteria for the consideration of Planning Proposals in future for land located on the fringe of the towns, specifically Goulburn and Marulan. Given the housing growth identified for Marulan, it is anticipated that increased support from local infrastructure such as drinking water supply will also increase. The adoption of the *Urban and Fringe Housing Strategy* assists with infrastructure planning by identification of future growth potential and urban release areas. On this basis the Planning Proposal is consistent with this Strategy.

#### 3.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal is the only means of addressing the permissibility of the proposed use.

The site is currently zoned R5 Large Lot Residential under GM LEP 2009 with a minimum lot size of 2000m<sup>2</sup>. Under the R5 Large Lot Residential zone "water supply systems" are listed as a prohibited use.

State Environmental Planning Policy (SEPP) (Infrastructure) provides an alternate pathway for approvals for some development/activities which fall under the definition of “water supply systems”. However, this alternate pathway is mainly applicable to “prescribed zones” listed under the SEPP. Unfortunately the R5 Large Lot Residential zone is not a prescribed zone under the SEPP. Therefore, in this case the proposed sludge ponds defined as a “water treatment facility” are actually prohibited given the current zoning.

## **Section B – Relationship to Strategic Planning Framework**

### **3.3 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?**

#### South East Tablelands Regional Plan

Goal 4 of the South East and Tablelands Regional Plan: Environmentally Sustainable Housing Choices, is the most relevant goal in relation to this Planning Proposal. The following directions are of particular relevance:

*Direction 25: Focus housing growth in locations that maximise infrastructure and services.*

The actions associated with Direction 25 are:

25.1 Focus future settlement to locations that:

- maximise existing infrastructure and services and minimise the need for new services;
- prioritise increased densities within existing urban areas; and
- prioritise new release areas that are an extension of existing strategic and local centres.

25.2 Plan for and prioritise services and infrastructure investment to maximise cost efficiencies, coordinate the delivery of different infrastructure assets, and achieve equitable sharing of responsibility, including funding, procurement and ongoing maintenance.

The Planning Proposed is consistent with the above actions as it is intended to provide for the orderly development of land within Marulan by maximising existing infrastructure and services.

### **3.4 Is the Planning Proposal Consistent with a council's local strategy or other local strategic plan?**

#### **3.4.1 Goulburn Mulwaree Local Strategic Planning Statement (LSPS) (2020)**

The LSPS seeks to direct how future growth and change will be managed up to 2040 and beyond and sets out key issues and opportunities for managing urban, rural and natural environments across the Local Government Area.

It establishes that the LGA's rural landscape is intrinsic to the character of our city and villages and seeks to balance a mix of land uses and minimise land use conflict whilst enabling planned growth which maintains a strong sense of place, accompanied by infrastructure which meets the needs of a growing community.

The Planning Proposal is consistent with the LSPS in that it seeks to enable infrastructure to be planned in a cohesive way to ensure that infrastructure meets the needs of a growing community.

#### **3.4.3 Goulburn Mulwaree Urban and Fringe Housing Strategy (2020)**

The *Goulburn Mulwaree Urban and Fringe Housing Strategy (adopted July 2020)* provides criteria for the identification of future urban land and criteria for the consideration of land to be used for rural residential lifestyle lots. This Planning Proposal will facilitate supporting critical infrastructure for the existing population and supports the future orderly development of land (in accordance with the criteria for identification and location of suitable land) in the Strategy.

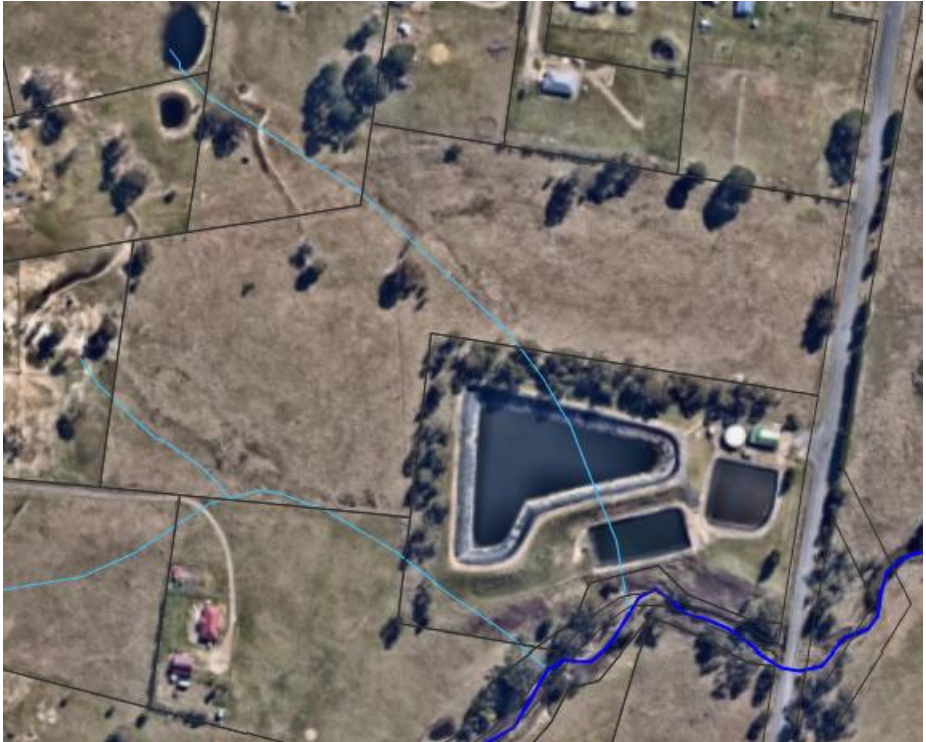
### **3.5 Is the Planning Proposal consistent with the applicable State Environmental Planning Policies (SEPP)?**

Most SEPP's are not applicable to this Planning Proposal. The Planning Proposal is consistent with the relevant SEPP's outlined below in **Table 2**.

**Table 2** Planning Proposal compliance with relevant State Environmental Planning Policy's



| State Environmental Planning Policy (SEPP)                                 | Compliance of Planning Proposal  |
|--|--|
| SEPP (Infrastructure) 2007   | <p>This Planning Proposal is consistent with the SEPP as it is intended to introduce provisions which are intended to complement the following aims of the policy which are to facilitate the effective delivery of infrastructure across the State by:</p> <ul style="list-style-type: none"> <li><i>a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and</i></li> <li><i>b) providing greater flexibility in the location of infrastructure and service facilities, and</i></li> <li><i>c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and</i></li> <li><i>d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and</i></li> <li><i>e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and</i></li> <li><i>f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and</i></li> <li><i>g) providing opportunities for infrastructure to demonstrate good design outcomes.</i></li> </ul> <p>The outcome of the Planning Proposal is to rezone the land to a prescribed zone under the SEPP to permit “water supply systems” and more specifically “water treatment systems” without consent.</p> |
| State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 | <p>The aims of this Policy are:</p> <ul style="list-style-type: none"> <li><i>a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and</i></li> <li><i>b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and</i></li> <li><i>c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.</i></li> </ul> <p>The SEPP requires that development consent cannot be granted unless there is a neutral or beneficial effect on water quality, however, the proposed zone change is to facilitate the proposed development of the site without development consent as a prescribed zone under the Infrastructure SEPP.</p> <p>Notwithstanding the above, a Part 5 assessment (review of environmental factors -REF) would be required which would need to consider the impact of the development on water quality.</p>  |

| State<br>Environmental<br>Planning<br>Policy (SEPP) | Compliance of Planning Proposal  |
|---|--|
|   | <p>The site contains two water courses which drain to Jaorimin Creek to the south (via the existing WTP site) as shown in the map below.</p>  <p><b>Map 4-Jaorimin Creek and Water Courses</b></p> <p>As detailed in the map one of the watercourses already feeds directly into the existing water treatment plant facility and the other is located in the south wester corner closer to the boundary and also flows through the existing facility before entering Jaorimin Creek.</p> <p>The water treatment process uses the following chemicals:</p> <ul style="list-style-type: none"> <li>• Potassium Permanganate –for oxidation of manganese;</li> <li>• Powdered Activated Carbon (PAC) -for taste and odour; and</li> <li>• Aluminium Chlorohydrate (AC) - for coagulation.</li> </ul> |

| State<br>Environmental<br>Planning<br>Policy (SEPP) | Compliance of Planning Proposal   |
|---|---|
|   | <p>The sludge produced will likely be predominately PAC, aluminium (from the ACH) and flocculated material from the raw water, very similar to the sludge produced at the Goulburn water treatment plant.</p> <p>It is proposed at this point, that sludge produced as part of the treatment process will be held in a sludge lagoon/s, with a detention time of several months at least, dependant on the amount of sludge produced. The options for the site include 3 lagoons, with a 6 month filling time and 12 month drying time. The exact sizing of the lagoons will be verified at the design stage, however generally they have a 500mm freeboard. This can be modified if it is found that 500mm freeboard is not enough to prevent overflow in relation to the flooding risks to be considered with the review of environmental factors (REF).</p> <p>The lagoons would also be lined, to avoid seepage through the ground.</p> <p>The design of any new treatment facility would need to consider proximity and impact of the facility on the identified water courses and on water quality.</p> <p>Therefore both the construction and operation of any future treatment lagoons would need to be designed in accordance with the neutral or beneficial effect test principles in the SEPP.</p> <p>At this stage, no specific design has been developed however, Council has engaged a consultant to prepare Process Options report. Council is willing to engage with Water NSW as a stakeholder whether this is a part of the s.60 application process (under the <i>NSW Local Government Act 1993</i>) with the Department of Planning, Industry and Environment (DPIE) or during the assessment of options at concept design stage.</p> <p>It is noted that , Clause 9 of the SEPP requires:</p> <p><b><i>Recommended practices and performance standards of Water NSW</i></b></p> <p><i>(1) Any development or activity proposed to be carried out on land to which this Policy applies should incorporate Water NSW's current recommended practices and standards.</i></p> <p><i>(2) If any development or activity does not incorporate Water NSW's current recommended practices and standards, the development or activity should demonstrate to the satisfaction of the consent authority or determining authority how the practices and performance standards proposed to be</i></p> |

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal  |
|--|--|
|  | <p><i>adopted will achieve outcomes not less than those achieved by Water NSW's current recommended practices and standards.</i></p> <p><i>(3) Water NSW must ensure that:</i></p> <p><i>(a) a list of each of Water NSW's current recommended practices and standards is published on Water NSW's website, and</i></p> <p><i>(b) a copy of each of Water NSW's current recommended practices and standards is available for public inspection at the office of Water NSW without cost during ordinary office hours.</i></p> <p>Furthermore, Clause 12 of the SEPP requires:</p> <p><b><i>"Public authorities to consider effect on water quality</i></b></p> <p><i>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 neutral or beneficial effect on water quality."</i></p> |

### 3.6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The Planning Proposal is consistent with the relevant Section 9.1 Directions. The following directions are most relevant to the proposal:

#### s.9.1 Environment and Heritage

##### 2.1 Environment Protection Zones

This direction applies when a relevant planning authority prepares a planning proposal.

A planning proposal:

- (i) must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

- (ii) that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.

This Planning Proposal is considered to be of minor significance in relation to the area (small size) of the relevant parcel of land to be rezoned. Furthermore, a site inspection has not identified any significant biodiversity value associated with this site (apart from its proximity to Jaorimin Creek).

The proposed rezoning is intended to facilitate the development of critical infrastructure being the expansion of the drinking water treatment capacity of the existing Council facility on the adjoining lot.

### *2.3 Heritage Conservation*

This direction applies when a planning authority considers a planning proposal.

A planning proposal must contain provisions that facilitate the conservation of:

- (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,
- (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and
- (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

An Aboriginal Heritage Information Management System (AHIMS) search has been undertaken for the site which has not identified any Aboriginal sites or places on or near the site. Should the land be rezoned to SP2 Infrastructure, a review of environmental factors (REF) will be required prior to construction of the ponds or further works.

The proposal is considered to be of minor significance in relation to the size of the affected area and is also already zoned for residential development.

## *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 land is vacant with no known history of a potentially contaminating land use. The Planning Proposal is seeking to rezone the land to a “less sensitive” land use as it is proposed to be rezoned from a residential zone to a special uses zone. Accordingly, the Proposal is considered to be consistent with this direction.

## **S9.1 Housing, Infrastructure and Urban Development**

### **3.1 Residential Zones**

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:

- (i) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- (ii) any other zone in which significant residential development is permitted or proposed to be permitted.

A planning proposal must include provisions that encourage the provision of housing that will:

- a. broaden the choice of building types and locations available in the housing market, and
- b. make more efficient use of existing infrastructure and services, and
- c. reduce the consumption of land for housing and associated urban development on the urban fringe, and
- d. be of good design.

A planning proposal must, in relation to land to which this direction applies:

- (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- (b) not contain provisions which will reduce the permissible residential density of land.

The Planning Proposal is consistent with this direction, in that the proposed zone is to facilitate the expansion of critical infrastructure to support existing and future residential development. The loss of residential land in relation to land supply in Marulan is considered to be of minor significance.

#### **s.9.1 Hazard and Risk**

##### **4.3 Flooding**

This direction applies when a planning proposal authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

A planning proposal may be inconsistent with the terms of this direction only if the planning proposal authority can satisfy the Secretary of the Department of Planning, Industry and Environment (or their nominee) that:

(a) the planning proposal is in accordance with a floodplain risk management study or plan adopted by the relevant Council in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or

(b) where there is no council adopted floodplain risk management study or plan, the planning proposal is consistent with the flood study adopted by the council prepared in accordance with the principles of the Floodplain Development Manual 2005 or

(c) the planning proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority and is prepared in accordance with the principles of the Floodplain Development Manual 2005 and consistent with the relevant planning authorities' requirements, or

(d) the provisions of the planning proposal that are inconsistent are of minor significance as determined by the relevant planning authority.

It is noted that there is no adopted flood study for the Marulan area, however Council is currently undertaking a *Marulan Flood Study and Flood Risk Management Study and Plan* which would include this site. The results of this study will not be available in the short term and may impact the timing of the provision of the infrastructure required to allow water quality improvements. Furthermore, the

land is already in Council ownership and has been for a significant period of time with a view to future expansion of the existing facility.

As shown on the map below, the existing facility is located in closer proximity to Jaorimin Creek and already has one of the two identified water courses passing through it. Furthermore, the subject site is actually upstream of the existing facility.



***Map 5 - Creeks and Water Courses.***

It is considered that under the circumstances (that is given the current flood study which is underway and its timing, size of the affected area, current need to upgrade critical infrastructure, and location of existing water courses in relation to the current facility) that the planning proposal whilst inconsistent with the direction is of minor significance.

The potential impact of flooding will be considered in the design of the lagoons and in the review of environmental factors (REF) for the design.

#### **4.4 Planning for Bushfire Protection**

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.



The proposed rezoning is on bushfire prone land, however, the proposed zoning is not seeking to add any additional residential/commercial potential, and accordingly, a bushfire assessment is not required. Furthermore, the site is proposed to be occupied by dams (sludge lagoons) which are unlikely to be a fire source in relation to surrounding properties.

Given the above, it is likely that the NSW RFS will not object to the progression of the Planning Proposal.

The Proposal was referred to the NSW RFS post Gateway and a response was still pending as of 2 March, 2022. Council will obviously consider any submission made by this agency with the post exhibition report at this stage.

### **s.9.1 Regional Planning**

#### **5.2 Sydney Drinking Water Catchments**

*Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.*

The objective of the Direction is to protect water quality in the Sydney drinking water catchment (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. Water NSW does not hold SLWCAs relevant to water treatment facilities or treatment lagoons. Matters relevant to the SEPP have been previously discussed above.

Preliminary consultation has been undertaken prior to submission of this Proposal to the Gateway with Water NSW. Water NSW comments dated 24 November, 2021 (**Attachment 3**) have been considered and incorporated into the Proposal. Further consultation has occurred following the Gateway determination and further amendments made to the proposal to take in Water NSW advice dated 28 January, 2022 (**Attachment 4**).

It is noted that the covering letter for the Water NSW submission dated 21 November, 2021 requests that the following matters be addressed prior to submission of the Proposal to the Gateway:

- 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.

The Proposal has been updated with the above except there is a discrepancy in the advice between the covering letter and the detailed response in Attachment 1 to the letter as Attachment 1` states:

*“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.”*

Therefore the matter raised in relation to greater detail of the nature of the likely pollutants to arise in the new treatment lagoons was not included in the proposal at the Gateway stage. Water NSW in Attachment 4 later suggested that the clarification on potential pollutants and mitigation measures was warranted and the proposal has subsequently been amended to include this information. The later advice also requested that Council consider flooding as a part of any review of environmental factors and refer to Clauses 9 and 12 of the SEPP in the proposal which has been done. Water NSW request in relation to ongoing involvement in this process has also been provided to Council’s Utilities Directorate.

#### 5.10 Implementation of Regional Plans

*Applies when a relevant planning authority prepares a planning proposal.*

The Planning Proposal achieves the overall intent of the Regional Plan without undermining the achievement of its vision, land use strategy, goals, directions or actions. Refer to Section 3.3 of this document for an assessment of the Planning Proposal against the relevant directions of the *South East Tablelands Regional Plan*.

## Section C – Environmental, social and economic impact

### 3.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

No. Council's Environment and Biodiversity Assessment Officer has recently advised (in a pre-DA lodgement meeting) that:

- The site is not currently located on the Biodiversity Values Map (please review as you are preparing information to support your application as these maps may be revised periodically).
- Site inspection on 25th August, 2021 found that the site has been previously cleared and only a few remnant Cabbage Gums *Eucalyptus amplifolia* are present. The groundcover layer is largely dominated by exotic pasture species and weed species, including Phalaris *Phalaris aquatica*, Cock's Foot Grass *Dactylis glomerata*, Prairie Grass *Bromus catharticus*, Yorkshire Fog *Holcus lanatus*, Sheep's Sorrel *Acetosella vulgaris*, St John's Wort *Hypericum perforatum*, Sub Clover *Trifolium subterraneum*, Flatweed *Hypochaeris radicata* and Paterson's Curse *Echium plantagineum*. Parts of the site are very boggy, with some Rushes *Juncus* spp.
- The land is currently used for grazing by horses.
- No evidence was found of any threatened species, ecological communities or habitats at the time of the site inspection. It is unlikely that the proposed activity will have a significant impact on any threatened species, populations or habitats, but this will need to be verified by a more detailed site survey prior to commencing any works or lodgement of a Development Application.

On the above basis a Biodiversity Assessment Method (BAM) survey is not proposed to be undertaken for the Marulan site.

### 3.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are negligible environmental effects likely as a result of the amendments outlined in this Planning Proposal. The treatment of drinking water does not result in odour impacts. The main impact on the environment will be due to the construction and management of the site once developed. 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 and lining the ponds) or overflow (managed by procedures or depth of freeboard in the design). These matters are more relevant to the design and then development application (DA) assessment stage or in preparing a review of environmental factors (REF) for the site.

**3.9 Has the planning proposal adequately addressed any social and economic effects?**

There are significant positive social and economic impacts as a result of the amendments outlined in this Planning Proposal. The provision of potable drinking water to a town is fundamental to its existence and health and to future growth.

**Section D – State and Commonwealth interests**

**3.10 Is there adequate public infrastructure for the planning proposal?**

The Planning Proposal is intended to facilitate the capacity of existing infrastructure for both the existing and future population of Marulan.

**3.11 What are the views of State and Commonwealth public authorities [following] consultation in accordance with the gateway determination?**

Commonwealth public authorities have not been formally involved in this particular Planning Proposal as it is yet to receive a Gateway Determination. At this early stage it appears unlikely that there will be any issues of interest to Commonwealth authorities.

Water NSW was consulted prior to the submission of the Planning Proposal to the Gateway process and following the Gateway.

The NSW Rural Fire Service was consulted following the Gateway determination but has not made a submission to date on this matter, should any submission be received at this stage it will be considered in the post exhibition report.

## Part 4 – Mapping

The following amendments to the mapping are required as a result of this Planning Proposal:

Land Zone Map - Sheet LZN\_003C

Lot Size Map - Sheet LSZ\_003C

## Part 5 – Community Consultation

Consultation proposed includes the following:

Notification of the public exhibition of the Planning Proposal which includes:

- A newspaper advertisement that circulates in the area affected by the Planning Proposal (if available at the time);
- The website of Goulburn Mulwaree Council and the Department of Planning and Environment or NSW Planning Portal.
- Written notification of adjoining property owners.

The written notice:

- Providing a brief description of the objectives or intended outcomes of the Planning Proposal;
- Stating where and when the Planning Proposal can be inspected; and
- Providing detail that will enable members of the community to make a submission.

Exhibition Material:

- The Planning Proposal, in the form approved for community consultation by the Director General of the Department of Planning, Industry and Environment;
- The Gateway Determination - issued on 10 January 2022;
- Consultation with Public Authorities; and
- Report to Council Item No. 15.5 *“Planning Proposal to Rezone Land Adjoining Council (Drinking) Water Treatment Plants in Goulburn and Marulan”* dated 2 November, 2021; and Council Resolution.

## Part 6 – Project Timeline

|   |   |
|---|---|
| <b>Gateway Determination</b>                                    | Issued 10 January, 2022<br>Attachment 5 |
| <b>Timeframe for completion of technical studies</b>            | No further studies required             |
| <b>Timeframe for agency consultations</b>                       | Late January – February 2022            |
| <b>Public exhibition</b>  | March - April 2022 (28 days)            |
| <b>Public hearing</b>   | Not Required                            |
| <b>Anticipated date of submission of LEP to DPIE</b>            | August 2022                             |
| <b>Council to make LEP amendment (if delegated)</b>             | September 2022                          |
| <b>Anticipated date plan forwarded to DPIE for notification</b> | November 2022                           |

### Conclusion

Goulburn Mulwaree Council has initiated a Planning Proposal to modify its 2009 LEP to rezone No. 189 Brayton Road, Marulan (Lot 10 DP 1067488) from R5 Large Lot Residential with a minimum lot size of 2000m<sup>2</sup> to SP2 Infrastructure (Public Utility Undertaking) with no minimum lot size.

The planning proposal is broadly consistent with the South East Tablelands Regional Plan, SEPPs, and 9.1 Directions.

It is not considered that this Planning Proposal raises any issues that require further studies or detailed assessment.

Whilst the Planning Proposal is a relatively minor matter in terms of land area, it is facilitating the provision of critical infrastructure for Marulan. Council has requested and has been delegated to be the plan making authority for this proposed amendment. Council will be seeking to expedite this matter in order to address the current need for improved water treatment for the town supply.

## 15.5 PLANNING PROPOSAL TO REZONE LAND ADJOINING COUNCIL (DRINKING) WATER TREATMENT PLANTS, IN GOULBURN AND MARULAN

**Author:** Business Manager Strategic Planning

Director Planning & Environment

**Authoriser:** Warwick Bennett, General Manager

**Attachments:** Nil

|                           |  |
|---------------------------|--|
| <b>Reference to LSPS:</b> | Planning Priority 1: Infrastructure - Vision 2040 – Infrastructure meets the needs of a growing community  |
| <b>Cost to Council:</b>   | Nil anticipated – the land is already in Council ownership and it is presumed no site specific technical studies will be required for Marulan. A Biodiversity Assessment Method will be required for the Goulburn site but it is being undertaken in-house. Future costs associated with the development of either site are not considered in this report. |

### RECOMMENDATION

That:

1. The report from the Business Manager Strategic Planning on the planning proposal to rezone Council land (adjoining the Goulburn and Marulan Water Treatment Plants) at 234 Wheeo Road, Goulburn and 189 Brayton Road, Marulan be received.
2. Council prepare a planning proposal/s to amend the *Goulburn Mulwaree Local Environmental Plan 2009 (GM LEP 2009)* by rezoning:
  - a) No. 234 Wheeo Road, Goulburn (Lot 1 DP 1030749) from RE1 Public Recreation to SP2 Special Uses (Infrastructure).
  - b) No. 189 Brayton Road, Marulan (Lot 10 DP 1067488) from R5 Large Lot Residential with a minimum lot size of 2000m<sup>2</sup> to SP2 Special Uses (Infrastructure) with no minimum lot size.
3. The planning proposal/s once prepared, be submitted to the Department of Planning, Industry and Environment (DPIE) for a gateway determination in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*.
4. The Department of Planning, Industry and Environment be advised that Council wishes to be issued with an authorisation to use delegation for the planning proposal/s.
5. In the event that the Department of Planning, Industry and Environment issues a gateway determination to proceed with the planning proposal/s, consultation be undertaken with the community and government agencies in accordance with any directions of the gateway determination.
6. In the event that the one of the sites holds up processing of the planning proposal for the other site, that the planning proposal be split into separate proposals given the urgency to upgrade Marulan's water treatment facility.

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

### BACKGROUND

This matter has not previously been reported to Council.

## REPORT

### Introduction

Council's Business Manager Water Operations has made two requests that Council rezone land in its ownership which is adjacent to the current water treatment plants (WTPs) at Goulburn and Marulan. The request has been made in order to facilitate the expansion of the existing facilities.

Council's Business Manager Water Operations has advised in relation to Goulburn:

*The Utilities department are looking to construct two new sludge lagoons at the Goulburn water filtration plant. Unfortunately this work will encroach on the neighbouring block of land (Lot 1 DP 1030749) which is currently zoned RE1 Public Recreation. The proposed lagoons will not add capacity to the existing treatment plant or process, rather it will formalise an existing process that has been expanded ad hoc to ensure Council can manage and dispose of its sludge. The new lagoons will work alternately, with one lagoon filling while the other will be offline, allowing the sludge within to dry. The lagoons will also allow for easier collection and disposal of the sludge [effective through this improved dewater process], with the sludge and backwash water being transported to a single lagoon (that is currently online) rather than constantly pumping it between various lagoons on site.*

*The Utilities team are seeking to rezone the land in question from RE1 to SP2 (Infrastructure) which will allow the construction of these lagoons without consent [but would be subject to a review of environmental factors- REF].*

Council's Business Manager Water Operations has advised in relation to Marulan:

*The Utilities department are looking to upgrade the Marulan water filtration plant within the next few years and are aiming to rezone the land neighbouring the existing site (189 Brayton Road). The water quality in Marulan is not meeting residents' expectations, with regular complaints being received by Council. We have identified some issues with the water supply, and the likely outcome will involve upgrading the existing treatment plant and adding additional treatment processes. Given the constrained nature of the existing parcel of land, it is likely Council will need to construct infrastructure on the neighbouring block at 189 Brayton Road. Nothing is definite at this stage, however given the current options proposed to Council at the very least the construction of sludge lagoons will be required which will not be possible on the existing water treatment site. [Council has since been advised by Department of Planning Industry and Environment that further treatment will be required and cannot be accommodated onsite.]*

This report supports both requests from the Utilities Directorate as the zoning change will be required to allow for the required upgrades on both sites thereby benefiting existing and future residents of Goulburn and Marulan.

Water Operations has indicated that the Marulan upgrade is more urgent/time sensitive as the water quality issues are current, whilst the upgrades to Goulburn whilst necessary are not as pressing. On this basis it may be necessary to process the rezoning of each site as a separate planning proposal.

### Council's Legislative Public Health Requirements for Drinking Water

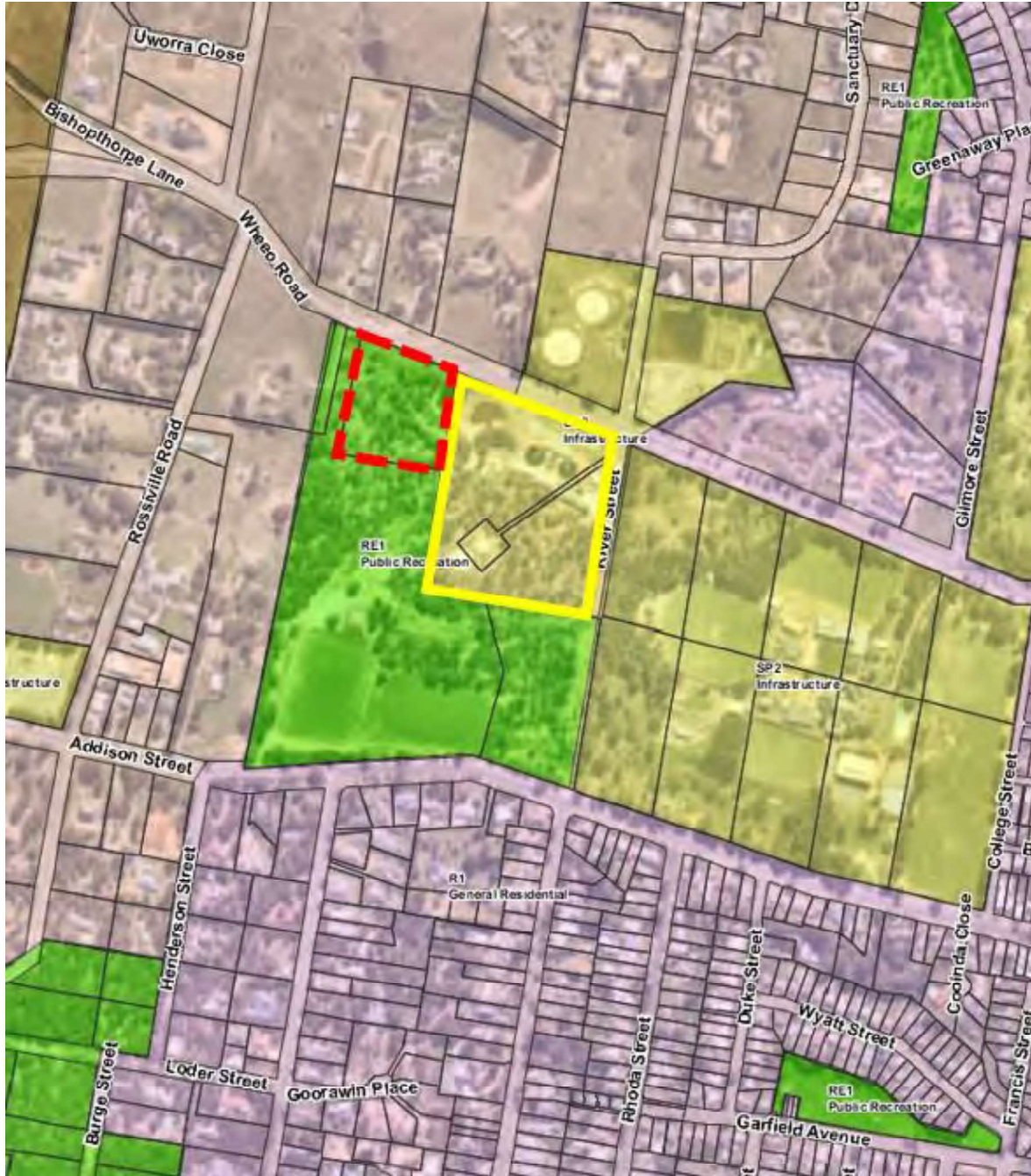
Under the *NSW Public Health Act 2010* Council is required as a water authority to provide drinking water which is fit for human consumption, with the relevant State Minister having the authority to intervene should drinking water be considered to be unfit for human consumption. Furthermore, under the Act, water suppliers must have a quality assurance program (Council's Drinking Water Management Plan) which identifies Council's roles and responsibilities regarding drinking water quality such as health based and aesthetic limits to ensure customers can safely and comfortably drink the water provided.



## Subject Sites

### Goulburn Site

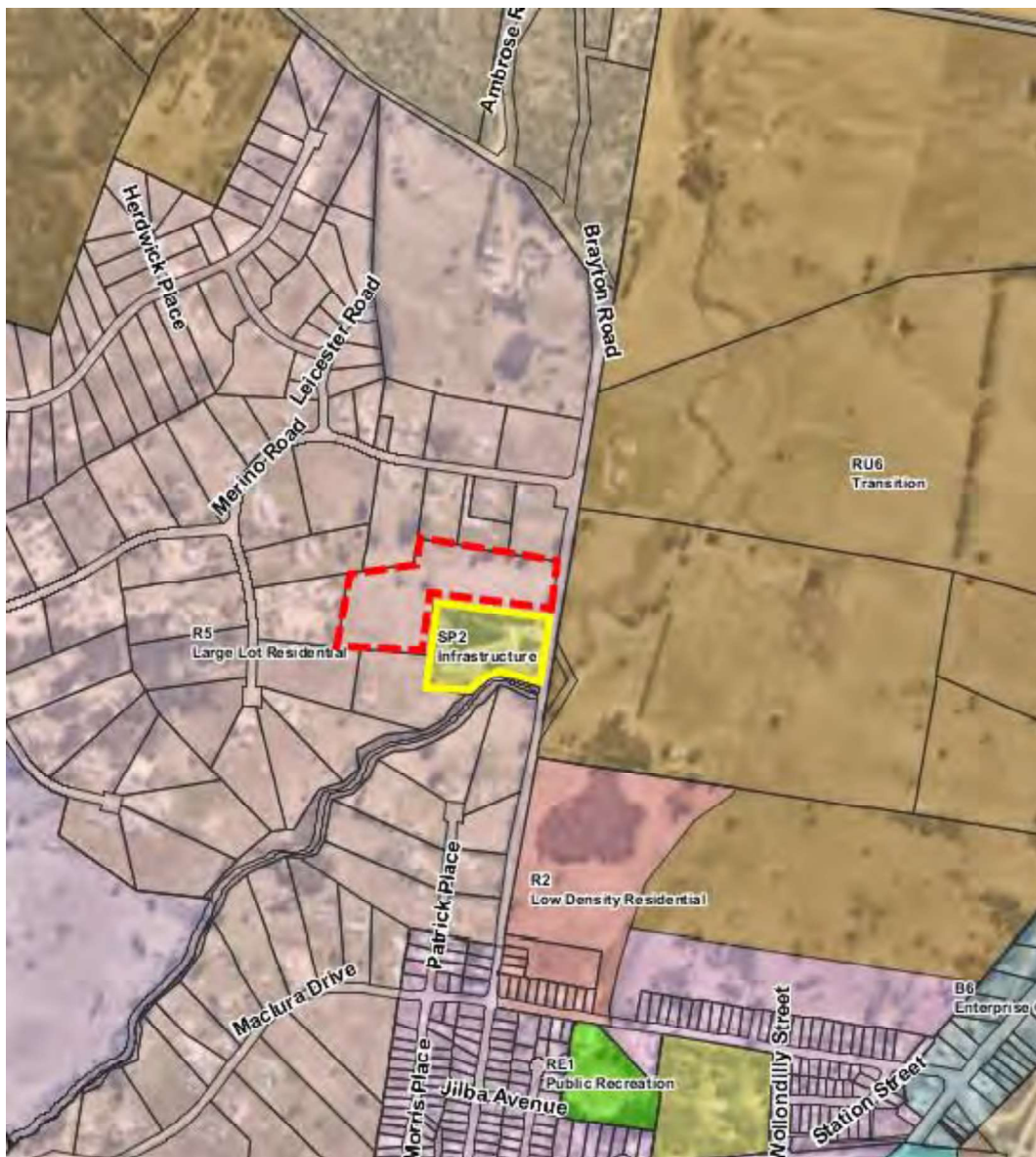
The subject site for Goulburn is No. 234 Wheeo Road (Lot 1 DP 1030749), Goulburn and is located to the north and north-west of the existing water treatment plant (WTP) (Refer map in **Figure 1** below).



**Figure 1:** Zone map showing boundary of Lot 1 DP 1030749 outlined in red with the location of the existing water treatment plant (WTP) outlined in yellow.

### Marulan Site

The subject site for Marulan is No. 189 Brayton Road (Lot 10 DP 1067488), Marulan and is located to the north and north-west of the existing water treatment plant (WTP) (Refer map in **Figure 2** below).



**Figure 2:** Zone map showing boundary of Lot 10 DP 1067488 outlined in red with the location of the existing water treatment plant (WTP) outlined in yellow.

- *Zoning and Land Use - Goulburn*

The site is currently zoned RE1 Public Recreation under *Goulburn Mulwaree Local Environmental Plan 2009* (GM LEP 2009). Under the RE1 Public Recreation Zone “water supply systems” are listed as a prohibited use.

*State Environmental Planning Policy (SEPP) (Infrastructure)* provides an alternate pathway for approvals for some development/activities which fall under the definition of water supply systems. However, this alternate pathway is mainly applicable to “prescribed zones” listed under the SEPP. Unfortunately the RE1 Public Recreation Zone is not a prescribed zone under the SEPP. Therefore, in this case the proposed sludge ponds are actually prohibited given the current zoning.

It is noted that the ownership of this site dates back to the former Goulburn City Council and that its location adjoining the current WTP suggests that the land was strategically acquired by Council to allow for the future expansion of the existing WTP. The site already contains an existing sludge lagoon that dates back to sometime between 1975 and 1985 (based on aerial photography).

It would appear that the RE1 Public Recreation zoning of the site is an anomaly which should have been corrected with GM LEP 2009 when prepared.



- *Zoning and Land Use - Marulan*

The site is currently zoned R5 Large Lot Residential under GM LEP 2009 with a minimum lot size of 2000m<sup>2</sup>. Under the R5 Large Lot Residential zone “water supply systems” are listed as a prohibited use.

*State Environmental Planning Policy (SEPP) (Infrastructure)* provides an alternate pathway for approvals for some development/activities which fall under the definition of water supply systems. However, this alternate pathway is mainly applicable to “prescribed zones” listed under the SEPP. Unfortunately the R5 Large Lot Residential zone is not a prescribed zone under the SEPP. Therefore, in this case the proposed sludge ponds are actually prohibited given the current zoning.

It is noted that the ownership of this site dates back to Greater Argyle Council and that its location adjoining the current WTP suggests that the land was strategically acquired by Council to allow for the future expansion of the existing WTP. It would appear that the R5 Large Lot Residential zoning of the site is an anomaly which should have been corrected with Goulburn Mulwaree LEP 2009 when prepared.

- *Aboriginal Cultural Heritage*

An Aboriginal Heritage Information Management System (AHIMS) search has been undertaken for both of the sites and has not identified any Aboriginal sites or places on or near the site. Should the land be rezoned to SP2 (infrastructure), a review of environmental factors (REF) will be required prior to construction of the ponds or further works at either site.

- *Biodiversity Goulburn*

The site is not mapped as terrestrial biodiversity under GM LEP 2009. However, a preliminary investigation by Council’s Environment and Biodiversity Assessment Officer has found it is likely to contain a Critically Endangered Ecological Community being Box Gum Woodland and Derived Grasslands. Accordingly, site survey using the Biodiversity Assessment Method under the *Biodiversity Conservation Act 2016* has commenced.

Strictly speaking, the planning proposal process should be used to avoid impacts on endangered biodiversity where possible (i.e. avoiding zones which increase the development capability of a site or sensitive portion of a site). In this instance, however, impacts upon biodiversity may be unavoidable. Water Operations has considered the feasibility of using other land around the WTP but found that this is limited due to other factors such as the:

- presence of the same plant community as the subject site;
- location of existing infrastructure such as pipework and reservoirs;
- need for the lagoon to be located within close proximity of the treatment plant;
- location of the existing lagoons/sludge ponds; and
- extent of land in Council ownership.

Given the biodiversity issues associated with the Goulburn site this may delay the processing of the planning proposal for this site. Accordingly, given the time sensitivity of the Marulan upgrade, it may be required to separate the two proposals at a later date. Initial discussion with DPIE (Biodiversity and Conservation) would suggest that it will not be possible to expedite the planning proposal for the Goulburn site.

- *Biodiversity Marulan*

The site is not mapped as terrestrial biodiversity under GM LEP 2009.

Council’s Environment and Biodiversity Assessment Officer has recently advised (in a pre-DA lodgement meeting) that:

- The site is not currently located on the Biodiversity Values Map (please review as you are preparing information to support your application as these maps may be revised periodically).
- Site inspection on 25th August, 2021 found that the site has been previously cleared and only a few remnant Cabbage Gums *Eucalyptus amplifolia* are present. The groundcover layer is largely dominated by exotic pasture species and weed species, including Phalaris *Phalaris aquatica*, Cock's Foot Grass *Dactylis glomerata*, Prairie Grass *Bromus catharticus*, Yorkshire Fog *Holcus lanatus*, Sheep's Sorrel *Acetosella vulgaris*, St John's Wort *Hypericum perforatum*, Sub Clover *Trifolium subterraneum*, Flatweed *Hypochoeris radicata* and Paterson's Curse *Echium plantagineum*. Parts of the site are very boggy, with some Rushes *Juncus* spp.
- The land is currently used for grazing by horses.
- No evidence was found of any threatened species, ecological communities or habitats at the time of the site inspection. It is unlikely that the proposed activity will have a significant impact on any threatened species, populations or habitats, but this will need to be verified by a more detailed site survey prior to commencing any works or lodgement of a Development Application.

On the above basis a Biodiversity Assessment Method (BAM) survey is not proposed to be undertaken for the Marulan site.

- *Water Quality*

Both sites are located within the Sydney Drinking Water Catchment.

Goulburn: the site does not contain any creeks or natural drainage paths, although the site would drain to the Wollondilly River via a nearby drainage line/water course that connects to the river. The site contains an existing sludge lagoon.

Marulan: the Marulan site contains two water courses which drain to Jaorimin Creek to the south (via the existing WTP site).

- *Bushfire*

Both the Goulburn and Marulan sites are located on bushfire prone land, however, the proposed zoning is not seeking to add any additional residential potential accordingly a bushfire assessment is not required.

- *Contamination*

Both the Goulburn and Marulan sites are not identified on Council's Contamination Register and the proposed use/zoning is not facilitating the development of a sensitive use so no further contamination assessment is required.

The Marulan site is vacant land with no known history of a potentially contaminating land use.

The Goulburn site does partly contain an existing sludge lagoon. Consideration of potential contaminants in the existing sludge lagoon would be undertaken in any future review of environmental factors as a part of the proposed expansion of the lagoons. Management of any construction or decommissioning of the existing sludge pond would also need to consider water quality impacts.

- *Noise/Odour*

The proposed expansion of the WTPs is for the construction of additional sludge lagoons and it is noted that the Marulan site adjoins a large lot residential area. There is no anticipated noise generation associated with this use beyond the construction phase.

In relation to odour, Council has never received any odour complaints for the sludge lagoons at the Goulburn and Marulan WTP sites.

- *Local Government Act – Land Classification*

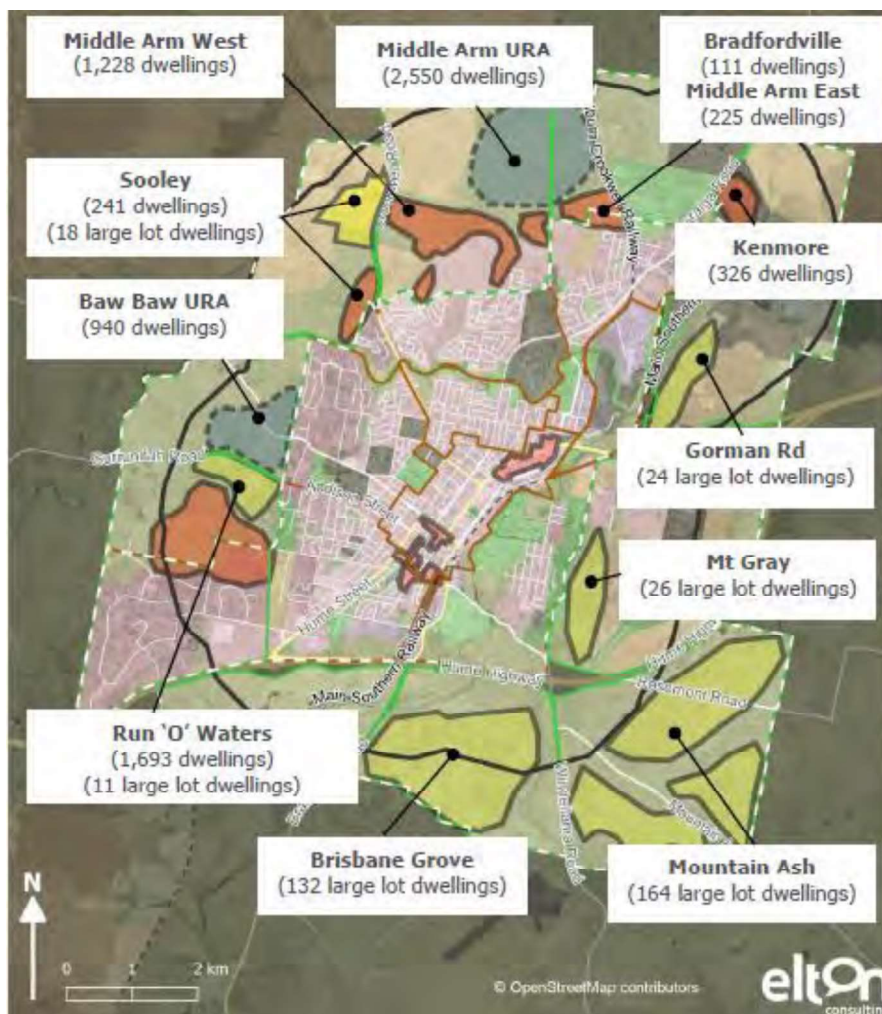
Both the Goulburn and Marulan sites are currently classified as “operational land” under the *Local Government Act, 1993* and therefore do not require reclassification prior to or during the planning proposal.

### Strategic Context Assessment

The request from Council's Business Manager Water Operations is to facilitate the upgrade essential Council water supply infrastructure to meet the existing and future needs of Goulburn and Marulan for clean potable water supply. As previously discussed this aligns with Council's legislative responsibilities for the provision of drinking water under the NSW Public Health Act.

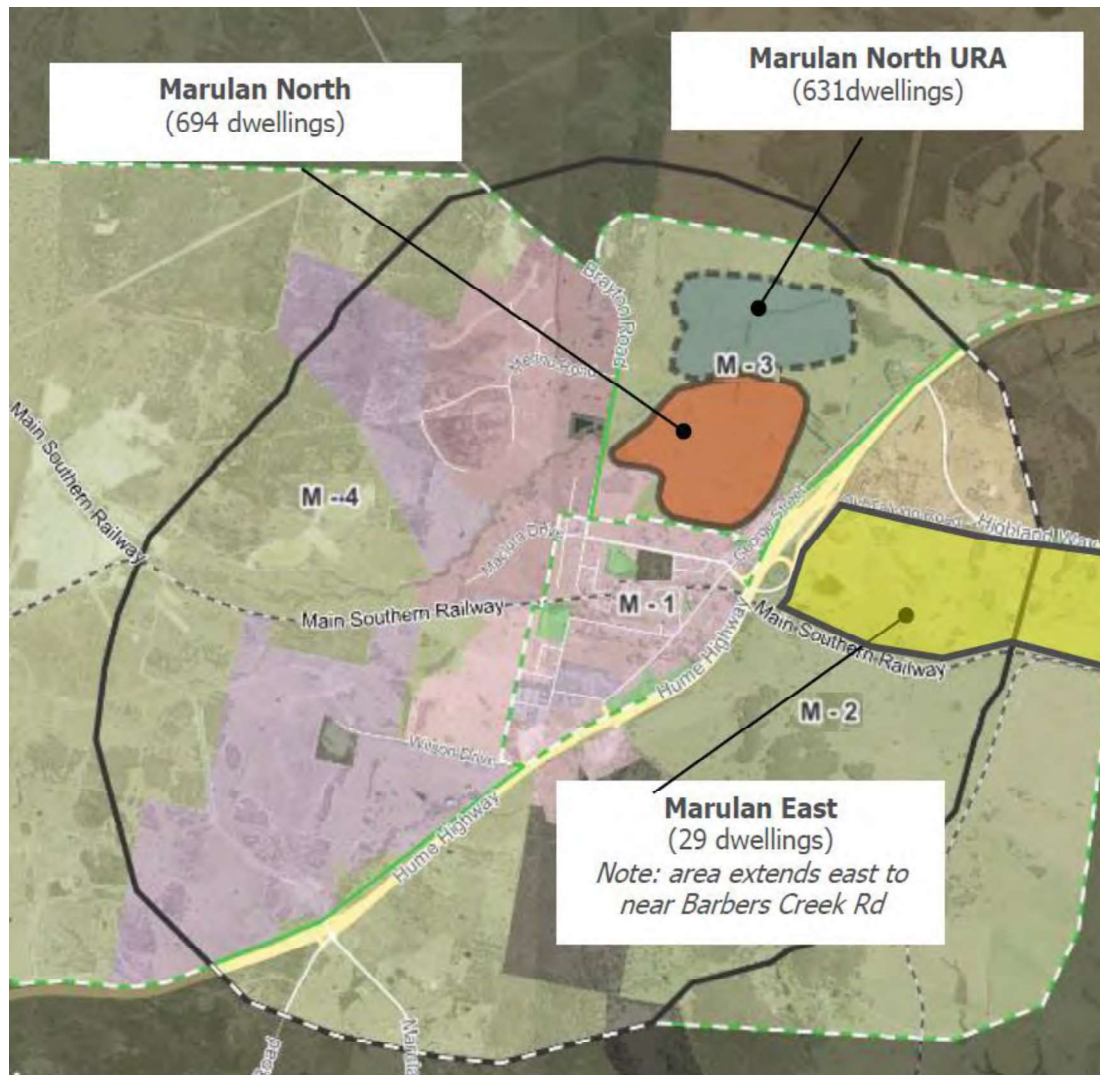
Council's Local Strategic Planning Statement (LSPS) has a vision for 2040 being “Infrastructure meets the need of a growing community”, the proposed rezoning aligns with this vision as it is providing for expansion of water supply infrastructure to meet the needs of the community.

Goulburn is identified in Council's *Urban and Fringe Housing Strategy* (**Figure 3**) as an area which will be subject to further growth and expansion based on the availability of reticulated water and sewer systems. The provision of potable water for existing and future residents is considered to be critical.



**Figure 3:** Extract from *Urban and Fringe Housing Strategy* with the approximate location of the urban release areas in Marulan.

Marulan is identified in Council's *Urban and Fringe Housing Strategy* (**Figure 4**) as an area which will be subject to further growth and expansion based on the availability of reticulated water and sewer systems. The provision of potable water for existing and future residents is considered to be critical.



**Figure 4:** Extract from *Urban and Fringe Housing Strategy* with the approximate location of the urban release areas in Marulan.

Both of the identified sites are located next to the existing water treatment facilities and are best positioned in terms of the technical requirements for expansion.

There are no identified environmental constraints in relation to the Marulan site, although biodiversity will be a significant potential constraint in relation to the Goulburn site. The difference between the environmental constraints, and urgency in relation to the public health issues for the two sites, will make it likely that the amendments to the GM LEP 2009 will be processed separately.

### Conclusion and Recommendation

It is recommended that the requests from Water Services to rezone both Lot 1 DP 1030749 from RE1 Public Recreation to SP2 (Infrastructure) and Lot 10 DP 1067488 from R5 Large Lot Residential with a minimum lot size of 2000m<sup>2</sup> to SP2 (Infrastructure) with no minimum lot size be supported by Council. If the recommendation is supported, the planning proposal/s will be reported back to Council for final consideration after agency consultation and public exhibition is completed in accordance with the gateway determination.

As identified earlier in the report, the biodiversity issues for the Goulburn site will be likely to complicate the planning proposal process for this site. The issues around water quality in Marulan are identified as being urgent and as such Council will be seeking to have the planning proposal for the Marulan site expedited. It is likely therefore that this will result in separate planning proposals for each site.



**15.5 PLANNING PROPOSAL TO REZONE LAND ADJOINING COUNCIL (DRINKING) WATER TREATMENT PLANTS, IN GOULBURN AND MARULAN****RESOLUTION 2021/531****Moved: Cr Sam Rowland****Seconded: Cr Andrew Banfield****That:**

1. The report from the Business Manager Strategic Planning on the planning proposal to rezone Council land (adjoining the Goulburn and Marulan Water Treatment Plants) at 234 Wheeo Road, Goulburn and 189 Brayton Road, Marulan be received.
2. Council prepare a planning proposal/s to amend the *Goulburn Mulwaree Local Environmental Plan 2009 (GM LEP 2009)* by rezoning:
  - a) No. 234 Wheeo Road, Goulburn (Lot 1 DP 1030749) from RE1 Public Recreation to SP2 Special Uses (Infrastructure).
  - b) No. 189 Brayton Road, Marulan (Lot 10 DP 1067488) from R5 Large Lot Residential with a minimum lot size of 2000m<sup>2</sup> to SP2 Special Uses (Infrastructure) with no minimum lot size.
3. The planning proposal/s once prepared, be submitted to the Department of Planning, Industry and Environment (DPIE) for a gateway determination in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*.
4. The Department of Planning, Industry and Environment be advised that Council wishes to be issued with an authorisation to use delegation for the planning proposal/s.
5. In the event that the Department of Planning, Industry and Environment issues a gateway determination to proceed with the planning proposal/s, consultation be undertaken with the community and government agencies in accordance with any directions of the gateway determination.
6. In the event that the one of the sites holds up processing of the planning proposal for the other site, that the planning proposal be split into separate proposals given the urgency to upgrade Marulan's water treatment facility.

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

**CARRIED**

In Favour: Crs Bob Kirk, Andrew Banfield, Sam Rowland, Leah Ferrara, Carol James and Denzil Sturgiss

Against: Nil

**CARRIED**





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 m<sup>2</sup> 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](mailto: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 m<sup>2</sup> 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).<sup>1</sup> 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.

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<sup>1</sup> 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.

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28 January 2022

Contact: *Stuart Little*  
Telephone: *0436 948 347*  
Our ref: *D2022/4544*

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

Dear Ms Wooll,

**RE: REF 1123 Post-Gateway Referral – Draft Planning Proposal: Marulan Drinking Water Treatment Plant (REZ 0001\_2122)**

I refer to the ePlanning referral of 17 January 2022 regarding the Planning Proposal (dated 29 November 2021) to rezone 189 Brayton Road Marulan (Lot 10 DP 1067488) to SP2 Infrastructure (Public Utility Undertaking) to extend the Marulan Water Treatment Plant (WTP) facility. The lot adjoins the current WTP and is in Council ownership but is currently zoned R5 Large Lot Residential under the Goulburn Mulwaree Local Environmental Plan 2009 (LEP). The rezoning is intended to permit development for the purposes of a water treatment facility, specifically treatment lagoons, either with consent under the LEP or without consent under State Environmental Planning Policy (Infrastructure) 2007. The Proposal notes that the development without consent planning pathway is likely to be used and a review of environmental factors (REF) prepared for the proposed works. The 2,000 m<sup>2</sup> minimum lot size (MLS) would also be removed as part of the rezoning process as it is not considered relevant to the SP2 zone.

WaterNSW provided Pre-Gateway comments on the Proposal on 24 November 2021 (our ref: D2021/121375). The main issues raised by us at that time included that the Proposal should:

- include more information about the nature of the pollutants likely to arise in the new water treatment lagoons
- include 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
- provide further detail and clarity on the relationship between the rezoning and the Infrastructure SEPP planning pathway, raising this matter earlier in the document.

Taking into account information in the current Proposal and addressing these matters in order:

1. With regard to the request for more information about the nature of the pollutants likely to arise in the new water treatment lagoons, the current Proposal notes that such information has not been included because of an apparent discrepancy with information contained in Attachment 1 of our previous letter. In that Attachment we said:

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.

To clarify, the term ‘these matters’ referred to the seepage and overflow risks, with these issues being more relevant to the REF stage. It would be helpful if the Planning Proposal briefly canvassed the types of pollutants that could be expected in the treatment lagoons. This could be based on the chemical analysis and contents of the existing WTP lagoons. It would also be helpful if the Proposal briefly mentioned the types of controls that might be included to help reduce risks to the new proposed treatment ponds, particularly given the presence of drainage features on the subject land. This could include locating ponds outside of the drainage features or noting that the proposed ponds would be created as turkey-nest dams reducing the risk of flooding and overflow from up-catchment run-on entering the ponds and reducing their overall capacity. This would then help address the consideration of water quality risk as per the objective of s 9.1 Direction 5.2 Sydney Drinking Water Catchment. It would also help as a response to any potential flooding risk to the site.

2. The Proposal (Map 4, p.10) now provides a map of the watercourses as requested. It identifies that two watercourses cross the site, one of which already feeds directly in the existing WTP facility. The other, located in the south-western corner of the site, also flows through the existing facility before entering Jaorimin Creek. The Proposal identifies that the construction and operation of any future treatment lagoons would need to be designed in accordance with the Neutral or Beneficial Effect (NorBE) principles of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (SDWC SEPP). We agree with this statement and refer Council to the provisions of clauses 9 and 12 of the SDWC SEPP as provided below. The proximity of the proposed treatment ponds to the existing watercourses and NorBE considerations will need to be addressed when options and concept designs are being considered.

The Planning Proposal now provides a consideration of the flooding risk albeit noting there is no relevant flood study or floodplain risk management study or plan relevant to the Marulan area. Council is currently preparing such studies and plans that would include the site, but these documents are unlikely to be available in the short term. The Proposal notes that the site is upstream of the current WTP and that the site is further distant from Jaorimin Creek than the existing facility. The Proposal notes that it is inconsistent with s 9.1 Ministerial Direction 4.3 Flooding due to the absence of such studies and states that the inconsistency with the Direction is of minor significance. We ask that that flooding risk to the site, in terms of mobilising and releasing contaminants from the proposed lagoons, be considered in the preparation of the REF.

3. The Planning Proposal (p.4) provides a clearer explanation regarding the rezoning and planning pathways that would be available to Council under State Environmental Planning Policy (Infrastructure) 2007 for the proposed works. It also clarifies (pp. 4-5) that no changes are proposed to the land use table of the LEP and that the Proposal involves mapping amendments only (i.e. to facilitate the change in zoning and removal of the MLS).

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 requests to be consulted when exploring options and at the concept design stage to help ensure that the Proposal effectively considers the NorBE requirement for water quality protection, particularly given the presence of two watercourses on site. We also ask that we are kept updated when the upgrade is occurring.

### **State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011**

The Proposal provides the aims of the SDWC SEPP and notes that water quality considerations would be considered under any Part 5 EP&A Act assessment (i.e. the REF). The Proposal would benefit by referencing that clause 12 of the SDWC SEPP 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. It would also benefit by referring to Clause 9 of the SDWC SEPP that advises developments or activities should incorporate WaterNSW’s current recommended practices (CRPs) and standards or otherwise demonstrate how the practices and standards will achieve outcomes not less than those of the WaterNSW CRPs.

Information on watercourses, consideration of the NorBE requirement on water quality, and further consultation on design and options are included as addressed above.

### **Direction 5.2 Sydney Drinking Water Catchment**

In response to Direction 5.2 Sydney Drinking Water Catchment, the Planning Proposal refers to the objective and requirements of the Direction and our previous advice and on this matter. It acknowledges that Special Areas are unaffected by this Proposal and WaterNSW does not hold any relevant Strategic Land and Water Capability Assessments for water treatment facilities or associated lagoons. For land in the Sydney Drinking Water Catchment, the Direction also requires that the relevant planning authority (Council) ensure that the proposal is consistent with the SDWC SEPP. This matter is addressed above.

We ask that the Proposal be updated to take account of the advice provided.

If you have any questions regarding the issues raised in this letter, please contact Stuart Little at [stuart.little@waterNSW.com.au](mailto:stuart.little@waterNSW.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alison Kniha', with a stylized flourish at the end.

**ALISON KNIHA**  
**Catchment Protection Planning Manager**

## Gateway Determination

***Planning proposal (Department Ref: PP-2021-7126) to rezone 189 Brayton Road, Marulan to SP2 Infrastructure (Public Utility Undertaking).***

I, the Acting Director, Southern Region at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Goulburn Mulwaree Local Environmental Plan 2009 as described above should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as standard as described in the Local Environmental Plan Making Guidelines (Department of Planning, Industry and Environment, 2021) and must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan-Making Guidelines (Department of Planning, Industry and Environment, 2021).

2. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:

- Rural Fire Service
- WaterNSW

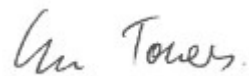
Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the gateway determination;



- (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.
5. The LEP should be completed within **12 months** of Gateway determination date or before 10 January 2023

Dated 10<sup>th</sup> day of January 2022.



**Graham Towers**  
**Acting Director**  
**Southern Region**  
**Department of Planning and**  
**Environment**

**Delegate of the Minister for Planning**