



IRF22/3424

Gateway determination report – PP-2022-3461

Amend Clause 6.11 of the Mid-Western Regional LEP
2012 – Mid-Western Regional Council

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal	2
1.1	Overview	2
1.2	Objectives of planning proposal	2
1.3	Explanation of provisions	3
1.4	Site description and surrounding area	5
1.5	Mapping	5
1.6	Background	5
2	Need for the planning proposal	6
3	Strategic assessment	6
3.1	Regional Plan	6
3.2	Local	7
3.3	Section 9.1 Ministerial Directions	7
3.4	State environmental planning policies (SEPPs)	8
4	Site-specific assessment	9
4.1	Environmental	9
4.2	Social and economic	9
4.3	Infrastructure	10
5	Consultation	10
5.1	Community	10
5.2	Agencies	10
6	Timeframe	10
7	Local plan-making authority	10
8	Assessment summary	10
9	Recommendation	11

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – Mid-Western Regional Council
Council Meeting Report – 21 September 2022
Council confirmation to proceed with Amendments – email dated 13 December 2022.

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Mid-Western
PPA	Mid-Western Regional Council
NAME	Temporary Workers' Accommodation
NUMBER	PP-2022-3461
LEP TO BE AMENDED	Mid-Western Regional Local Environmental Plan 2012
ADDRESS	Throughout Mid-Western LGA
DESCRIPTION	Throughout Mid-Western LGA
RECEIVED	27/09/2022
FILE NO.	IRF22/3424
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal
DWELLINGS/JOBS	0/0

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that explain the intent of the proposal.

The objectives of the planning proposal seek to undertake amendments to Mid-Western Regional Local Environmental Plan 2012 relating to clause 6.11 Temporary Workers' Accommodation (TWA) with the following objectives:

- Improve the characterisation of '*temporary workers' accommodation*' land use.
- Establish land use permissibility for '*temporary workers' accommodation*'.
- Facilitate developments by a public authority to develop TWAs beyond a 5-kilometre radius of a major project or mine.

Note: As discussed below, the first and second dot points cannot be pursued in this planning proposal at this time. The objective of the third dot point is not clear – it is unclear which public authority/ies Council is referring to and whether such an amendment is required given other existing provisions.

1.3 Explanation of provisions

The planning proposal was submitted to amend the Mid-Western Regional LEP 2012 (MWRLEP 2012) consisting of the following components:

- a) Amend the Dictionary to insert the following definition:

temporary workers' accommodation means any habitable buildings and associated amenities erected on a temporary basis for the purpose of providing a place of temporary accommodation for persons employed to carry out large-scale infrastructure, including development for the purposes of an extractive industry, mining, renewable energy or an electricity transmission or distribution network.

Note: This item is to be removed from the planning proposal - see Council email dated 13/12/2022 and as discussed below.

- b) Amend the Land Use Table to ensure '*temporary workers' accommodation*' is only permitted with consent under zones RU1 Primary Production and RU5 Village, and prohibited in all other zones.

Note: This item is to be removed from the planning proposal - see Council email dated 13/12/2022 and as discussed below.

- c) Amend the existing clause 6.11 *Temporary workers' accommodation* to enable public authorities to develop TWAs beyond a 5-kilometre radius of a major project or mine.

Council provided additional information on 13/12/2022 that included justification as to why the 5 kilometre radius should be removed and this needs to be included in the planning proposal. However, this advice does not discuss which public authority/ies Council is seeking to provide permissibility to and any relationship with SEPP (Planning Systems) Schedule 5 cl. 23.

Amendments to Dictionary and Land Use Table of MWRLEP 2012

Direction 5 to the Land Use Table of *Standard Instrument (Local Environmental Plans) Order 2006* (SI Order) stipulates that only developments listed in Direction 5 can be included in the Land Use Table. As '*temporary workers' accommodation*' is not a development listed in Direction 5, it cannot be inserted in MWRLEP 2012's Land Use Table. Therefore, the proposed Dictionary and Land Use Table amendments cannot be supported in this instance.

Council acknowledged the Department's view of not supporting the proposed amendments to MWRLEP 2012's Dictionary and Land Use Table at this time. In response, Council requested via email (13/12/2022) to proceed with the planning proposal excluding the amendments to the Dictionary and Land Use Table. A Gateway determination condition is recommended requiring Council to remove these components of the planning proposal prior to exhibition.

The current clause 6.11 of MWRLEP 2012 (existed from principal plan 10/08/2012) is as follows:

6.11 Temporary workers' accommodation

(1) The objectives of this clause are as follows—

- (a) to enable development for temporary workers' accommodation if there is a demonstrated need to accommodate employees due to the nature of the work or the location of the land on which that work is carried out,
- (b) to ensure that temporary workers' accommodation is appropriately located,
- (c) to ensure that the erection of temporary workers' accommodation is not likely to have a detrimental impact on the future use of the land or to conflict with an existing land use,
- (d) to minimise the impact of temporary workers' accommodation on local roads and infrastructure.

(2) Development consent must not be granted to development for the purposes of temporary workers' accommodation unless the consent authority is satisfied of the following—

- (a) the development is to be located—
 - (i) if the development relates to a mine—within 5 kilometres of the relevant mining lease under the *Mining Act 1992*, or
 - (ii) in any other case—within 5 kilometres of the large-scale infrastructure in which persons are to be employed,
- (b) there is a need to provide temporary workers' accommodation due either to the large-scale infrastructure or because of the remote or isolated location of the land on which the large-scale infrastructure is being carried out,
- (c) the development will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument,
- (d) water reticulation systems and sewerage systems will be provided to adequately meet the requirements of the development,
- (e) when the development is no longer in use, the land will, as far as practicable, be restored to the condition in which it was before the commencement of the development.

(3) In this clause—

temporary workers' accommodation means any habitable buildings and associated amenities erected on a temporary basis for the purpose of providing a place of temporary accommodation for persons employed to carry out large-scale infrastructure, including development for the purposes of an extractive industry, mining, renewable energy or an electricity transmission or distribution network.

Figure 1: Extract of clause 6.11 of Mid-Western Regional LEP 2012 (Source: NSW Legislation, version 01/12/2022)

It is noted that whilst clause 6.11(3) of MWRLEP 2012 defines '*temporary workers' accommodation*', the development is still an innominate use as it is neither established in the Dictionary nor Land Use Table. Therefore, the use is permissible under all 'open zones' in the MWRLEP 2012 Land Use Table which have the phrase '*Any other development not specified in item 2 or 4*' within item 3 of a zone in the Land Use Table (refer to section 1.4 below). Any development applications relating to TWAs is subject to Council's merit assessment of the permissibility justification by the proponent.

Prohibiting TWA in certain zones is not supported and the planning proposal will need to be amended prior to community consultation.

Note: The Department's Housing Supply Policy team is currently refining a Seasonal and Temporary Workers Accommodation Toolkit. The toolkit will include a standard instrument definition for temporary workers' accommodation, model clauses and locational and zoning consideration guidelines. The policy contents of the toolkit are intended to be publicly exhibited in the first half of 2023. Council was made aware of the toolkit and has considered this when it agreed on 13/12/2022 to remove the proposed Dictionary and Land Use Table amendments from the planning proposal.

Amendments to clause 6.11 of MWRLEP 2012

Council requests clause 6.11 to be amended to include provisions for public authorities to develop TWAs beyond a 5km radius from a major project or mine. The current clause 6.11 (Figure 1) requires all TWAs to be located within a 5km radius of a mine or large-scale infrastructure development.

Council has provided justification via email (13/12/2022) that any public authority wishing to develop outside the 5km radius will allow TWAs to either be:

- a) Strategically located in an area close to multiple development sites; or
- b) In an area within or adjoining urban limits where it could be developed for housing temporary construction workforce and then later be converted to provide permanent housing.

Council considers the proposed provisions appropriate as it will enable public authorities to undertake a coordinated approach in providing TWAs in the LGA.

Whilst the Department considers the proposed provisions to be acceptable, a Gateway determination condition is recommended requiring the planning proposal to be amended prior to exhibition to include justification on why the proposed provisions are acceptable. The inclusion of additional justification will provide further context to the community and relevant stakeholders as to why it is suitable for TWAs to be located on sites outside the existing 5km radius restriction and which public authority/ies are intended to use the provisions.

It is noted that the consent authority is required to consider TWA development impacts as stipulated in clause 6.11(2) of MWRLEP 2012 for any future development applications. The existing provisions within this clause are adequate and do not require any changes under this planning proposal.

It is to be noted that some Major Projects/SSD developments may include TWAs as part of such developments and are assessed and approved under relevant SEPPs. It is also noted that SEPP (Planning Systems) Schedule 5 cl. 23 includes construction accommodation and may overlap with the intention of the part of the planning proposal that remains.

1.4 Site description and surrounding area

On the 13/12/2022 Council advised that the planning proposal will no longer propose to amend the Dictionary and Land Use Table. TWA will still be considered an innominate use and will continue to be permitted with consent for all open zones in MWRLEP 2012.

Council wish to proceed with an amended planning proposal to permit public authorities to develop TWAs beyond the 5km radius of a major project or mine. The proposed amendment will apply to the following open zones of MWRLEP 2012:

- RU1 Primary Production
- RU4 Primary Production Small Lots
- RU5 Village
- R5 Large Lot Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- IN1 General Industrial
- IN2 Light Industrial
- IN3 Heavy Industrial

Whilst TWAs are permitted with consent for the abovementioned open zones, all proponents lodging development applications for TWAs are required to clearly demonstrate to the consent authority how the development is permissible due to the nature of the TWA being an innominate use.

1.5 Mapping

The proposal amends Clause 6.11 of MWRLEP 2012 and LEP mapping is not required.

1.6 Background

The Mid-Western Regional LGA contains a portion of the Central-West Orana Renewable Energy Zone (REZ) resulting in the development of renewable energy infrastructure within the region. The construction of these and other major projects requires the provision of accommodation for the associated temporary workforce. To reduce the cumulative impacts of multiple major projects in the LGA, Council has been working with public authorities on identifying areas suitable for the development of temporary workers' accommodation. The planning proposal will further reduce the cumulative impacts being generated by the major projects in the region. It is intended that the planning proposal will enable flexibility for future temporary workers' accommodation to be utilised by multiple major projects.

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

Mid-Western Regional Council resolved to support the planning proposal at a Council meeting held on 21 September 2022.

The planning proposal is not supported by a particular strategic study. However, Council advised the proposed amendment responds to a growing need for workforce accommodation and the lack of appropriate short term rental housing in the Mid-Western LGA.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Given the changes required to the planning proposal and the current lack of justification for the remaining part of the planning proposal, it is not possible to determine if the planning proposal is the best means of achieving Council's objectives or intended outcomes.

The Gateway determination requires Council to justify the remaining component of the planning proposal and the Gateway letter both advises of upcoming work on temporary worker accommodation by the Department's policy team and the readiness of the Department to further discuss Council's objectives and determine an appropriate planning response.

3 Strategic assessment

3.1 Regional Plan

The planning proposal was lodged to the Department for Gateway determination prior to the finalisation of the Central West and Orana Regional Plan 2041 on 2 December 2022. This plan supersedes the 2036 Regional Plan as a result of the first 5-yearly review undertaken to reset priorities and extend the plan's reach to 2041. An assessment against the objectives of the 2041 Regional Plan are discussed below:

Table 3 Regional Plan 2041 assessment

Regional Plan Objectives	Justification
Objective 2: Deliver the Central-West Orana Renewable Energy Zone	The planning proposal is consistent with this objective as it seeks to aid the provision of worker accommodation for the REZ.
Objective 13: Provide well located housing options to meet demand	The objective outlines the importance of well-located housing. The planning proposal is consistent with this objective as it will enable Council and public authorities to identify appropriate locations for TWAs.
Objective 14: Plan for diverse, affordable, resilient and inclusive housing	The objective outlines the importance of providing housing to the local community. The planning proposal is consistent with this objective as it will enable the provision of additional temporary worker housing supply, housing diversity, affordability and resilience in the LGA's housing system.

Objective 16: Provide accommodation options for seasonal, temporary and key workers

The objective outlines the importance of providing accommodation for temporary workers.

High demand for workforce accommodation can increase pressure to the housing market, leading to higher rental costs, housing affordability issues, low availability of housing for tourists and visitors and overall poor outcomes for rural centres.

The planning proposal is consistent with this objective as it provides flexible planning controls for public authorities developing TWAs and reduces cumulative impacts.

3.2 Local

The planning proposal is not inconsistent with Council's Our Place 2040 – Mid-Western Regional Local Strategic Planning Statement and the Mid-Western Regional Comprehensive Land Use Strategy as it assists in providing the variety of housing needed to support employment opportunities

3.3 Section 9.1 Ministerial Directions

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

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The proposal is consistent with the Central West and Orana Regional Plan 2041. Refer to Section 3.1 above.
1.4 Site Specific Provisions	Consistent	The proposal is consistent as it does not introduce new site-specific provisions however proposes to amend clause 6.11. It seeks to facilitate specific housing in response to the increased demand for worker accommodation associated with new large scale employment generating projects in Mid-Western LGA.
4.1 Flooding	Consistent	The proposal does not affect the existing flooding controls as it is not site specific. Flooding impacts will be considered during the assessment of any subsequent TWA development application by the consent authority.
4.3 Planning for bushfire protection	Consistent	The proposal does not specifically affect bushfire protection controls as the proposal is not site specific. Bushfire requirements will be considered during the assessment of any subsequent TWA development application by the consent authority.
4.4 Remediation of contaminated land	Consistent	The proposal does not specifically address land contamination as the proposal is not site specific. Land contamination is a matter required to be considered by the consent authority when assessing any subsequent TWA development applications in accordance with SEPP (Resilience and Hazards) 2021.

5.1 Integrating land use and transport	Consistent	Whilst the proposal will further enable TWA developments beyond a 5km radius from a major project or mine, the existing clause 6.11 already contains an objective to minimise impact on local roads. The proposal is not amending this objective and should remain as is.
6.1 Residential zones	Consistent	<p>The proposal is consistent with this Direction as it will increase housing choice by the delivery of purpose-built housing for temporary workers. The proposal would also alleviate pressure on limited rental supply and tourist accommodation in the LGA by delivering separate housing for workers associated with large scale projects.</p> <p>The proposed amendments will not impact clause 6.11(2)(d) of MWRLEP 2012 regarding satisfactory arrangements for water reticulation and sewerage systems and is therefore consistent with Direction 6.1(2)(a).</p>
9.1 Rural Zones/ 9.2 Rural Lands	Inconsistent & justified	<p>The Directions states that a proposal must not contain provisions that will increase the permissible density of or affect land within a rural zone.</p> <p>The proposed amendment to clause 6.11 will further facilitate TWAs in rural areas. As the proposal is responding to Objective 16 of the Central West and Orana Regional Plan 2041, the Director of Western Region (as a delegate of the Secretary) can be satisfied that the inconsistency is justified and no further work is required.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is generally consistent with the following relevant SEPPs:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Sustainable Buildings) 2022 (gazetted, commences 1 October 2023)
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Planning Systems) 2021

The specific controls and provisions in the abovementioned SEPPs are not relevant to determining the strategic merit of this planning proposal. There are no SEPPs with controls and provisions specifically relating to TWAs however SEPP (Planning Systems) Schedule 5 cl. 23 includes construction accommodation.

4 Site-specific assessment

4.1 Environmental

The following table provides a general and broad assessment of the potential environmental impacts associated with the proposal.

As the proposal is not site specific, the following environmental impacts will be considered in greater detail by the consent authority during the assessment of any TWA development application in accordance with section 4.15 of the Act.

It is to be noted that major developments are considered under relevant SEPPs and development assessment processes.

Table 5 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	During the development application stage, the consent authority is required to consider the relevant biodiversity provisions of MWRLEP 2012 and the <i>Biodiversity and Conservation Act 2016</i> for any sites identified to comprise biodiversity significance. The proposal does not change this consideration.
Bushfire	During the development application stage, the consent authority is required to consider the relevant bushfire provisions of the <i>Rural Fires Act 1997</i> and <i>Planning for Bush Fire Protection 2019</i> for any sites identified as bushfire prone land. The proposal does not change this consideration.
Contamination	During the development application stage, the consent authority is required to undertake assessment against the relevant contamination provisions of clause 4.6 of SEPP (Hazards and Resilience) 2021 for all sites. The proposal does not change this consideration.
Flooding	During the development application stage, the consent authority is required to consider the provisions of the relevant NSW Flood Policies, Floodplain Development Manual and Council's Flood Policies, LEP and DCPs for any sites identified as being flood prone land. The proposal does not change this consideration.

4.2 Social and economic

The proposal will provide positive social and economic benefits by:

- Assisting in alleviating housing and tourist and visitor accommodation supply pressures by providing separate purpose-built housing for temporary workers in Mid-Western Regional LGA
- Assisting in attracting investment opportunities for large scale employment generating projects by providing certainty around supply of essential infrastructure and housing for workers
- Supporting economic growth of other industries in the region are not adversely impacted
- Supporting jobs (construction and operational) in the region
- Assisting in creating positive flow on economic impacts, including increased demand for local services

- Supporting the development of the Central-West Orana Renewable Energy Zone

It is noted that the consent authority is required to consider the likely social and economic impacts and suitability of future developments as required by the Act when assessing subsequent development applications.

4.3 Infrastructure

As agreed with Council, the amended planning proposal will only consist of a minor amendment to clause 6.11 of MWRLEP 2012 to permit public authorities to develop TWAs beyond a 5km radius of a major project or mine.

Clause 6.11 (Figure 1 above) contains existing requirements for the provision of essential infrastructure such as water reticulation and sewerage systems. For any future TWA development application, the proponent is required to demonstrate to the consent authority that adequate infrastructure and services will be provided.

The existing provisions within clause 6.11(2) relating to essential infrastructure are adequate and do not require any changes under this planning proposal.

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days.

In accordance with the LEP Making Guideline 2022, the exhibition period for a standard proposal is 20 working days. The proposed exhibition period is appropriate, and the Gateway determination has been conditioned accordingly.

5.2 Agencies

The proposal does not propose agency consultation. Due to the nature of the proposal consultation should be undertaken with Energy Corporation of NSW.

6 Timeframe

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

The Department recommends a time frame of 6 months to ensure it is completed in line with its commitment to reduce processing times.

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

7 Local plan-making authority

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

As the planning proposal is of local and low risk in nature, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

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

- It is generally consistent with the relevant local, regional and State legislation and policies;

- It is not expected to result in adverse environmental, social, economic and infrastructure impacts;
- It supports the development of the Central-West Orana Renewable Energy Zone and other employment generating proposals;
- Alleviates housing and tourist and visitor accommodation supply pressures by providing separate purpose-built housing for temporary workers in Mid-Western Regional LGA; and
- The LEP amendment will assist in the strategic location of temporary workers' accommodation to accommodate the cumulative construction workforce mobilising in the LGA.

Based on the assessment outlined in this report, the proposal requires minor amendments prior to community consultation as demonstrated in section 9 below.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that the proposal's inconsistency with Direction 9.1 Rural Zones and 9.2 Rural Lands of the section 9.1 Ministerial Directions is justified and no further work is required.

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

1. Prior to community consultation, the planning proposal is to be updated to address the following matters:
 - a) Amend the Project Timeline to reflect the Gateway determination of the proposal and subsequent milestones for finalisation in six (6) months.
 - b) Remove all matters related to the proposed Dictionary and Land Use Table amendments.
 - c) Include justification for the proposed provisions to permit public authorities to develop TWAs beyond a 5km radius of a major project.
2. Consult with Energy Corporation of NSW.
3. The planning proposal should be made available for community consultation for a minimum of twenty (20) working days.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



_____(Signature)

24 January 2023 (Date)

Wayne Garnsey

Manager, Western Region



_____(Signature)

2 February 2023 (Date)

Garry Hopkins

Director, Western Region

Assessment officer

John Martinez

Planning Officer, Western Region

02 5852 6828