



IRF23/111

Gateway determination report – PP-2023-90

Tourist and Visitor Accommodation - Mid Western
Regional Council

April 23

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2023-90

Subtitle: Tourist and Visitor Accommodation - Mid Western Regional Council

© State of New South Wales through Department of Planning and Environment 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

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

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – Mid-Western Regional Council
Council Meeting Report – 14/12/2022
Council Meeting Minutes – 14/12/2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Mid-Western Regional
PPA	Mid-Western Regional Council
NAME	To include a local provision in the Mid-Western Regional LEP 2012 (MWRLEP 2012) to require land subject to a development application for Tourist and Visitor Accommodation to satisfy Clause 4.2A for the dwelling house permissibility.
NUMBER	PP-2023-90
LEP TO BE AMENDED	Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012)
ADDRESS	Throughout Mid-Western LGA – zones RU1, RU4, RU5, R5 and C3
DESCRIPTION	Throughout Mid-Western LGA
RECEIVED	16/01/2023
FILE NO.	IRF23/111
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 adequately explain the intent of the proposal.

The objective of the planning proposal is to ensure tourist and visitor accommodation (TVA) is only permitted on rural, conservation and large lot residential zoned lands (zones RU1, RU4, RU5, R5 and C3 (E3)) where a dwelling house is able to be lawfully erected on such land.

This amendment is consistent with and will give statutory weight to some aspects of clause 6.4 Tourist and visitor accommodation of Mid-Western Regional Development Control Plan 2013 (MWRDCP 2013) that requires that the land is to have dwelling house permissibility.

Council aim to have a consistent approach to permitting and assessing tourist developments in the abovementioned zones.

The objective of this planning proposal is clear and adequate.

1.3 Explanation of provisions

The planning proposal was submitted to amend the MWRLEP 2012 to insert a provisional clause (in either Part 5 Miscellaneous provisions or Part 6 Additional Local provisions) which requires all uses under the parent *tourist and visitor accommodation* term definition to only be granted development consent on land when a dwelling house is permitted to be erected under Clause 4.2A Erection of dwelling houses and dual occupancies (dwelling permissibility).

The planning proposal contains an explanation of provisions that adequately identifies how the objectives of the proposal will be achieved.

Note: The intended provision does not result in amendments to MWRLEP 2012 Land Use Tables or LEP maps.

Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain zones

Clause 4.2A(3) of MWRLEP 2012 prohibits the erection of a dwelling house unless it can meet the minimum lot size requirements or can demonstrate compliance with its other provisions that enables a lawfully erected dwelling house. The intention of the clause is to minimise unplanned rural residential development and control density affected by historical subdivision patterns.

Council considers TVA to be a form of residential accommodation (although it is not a subset of residential accommodation under the standard instrument definition), and it seeks to mitigate impacts to rural lands from unplanned rural residential development. The intended provision will support sustainable rural settlement, minimise rural land fragmentation and will prevent accommodation structures on undersized lots.

Agritourism Policy Changes

It is noted that as of 1 December 2022, agritourism policy changes were implemented in the Standard Instrument which resulted in two new terms (farm gate premises & farm experience premises) and an amended term (farm stay accommodation).

In addition to the new and amended terms, the *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022* includes two optional model clauses for *farm stay accommodation* (clause 5.24) (Figure 1 below) and *farm gate premises* (clause 5.25), which require development consent for farm stay accommodation to not be granted unless the land has an existing lawfully erected dwelling house or achieves the minimum lot size requirement for a dwelling house.

5.24 Farm stay accommodation [optional]

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

- (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,
- (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.

Direction—

Additional objectives may be included.

(2) Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied all buildings or manufactured homes used to accommodate guests on the landholding will be—

- (a) on the same lot as an existing lawful dwelling house, or
- (b) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.

(3) Subclause (2) does not apply if the development is a change of use of an existing dwelling to farm stay accommodation.

(4) Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered—

- (a) whether the development will result in noise or pollution that will have a significant adverse impact on the following on or near the land—
 - (i) residential accommodation,
 - (ii) primary production operations,
 - (iii) other land uses, and
- (b) whether the development will have a significant adverse impact on the following on or near the land—
 - (i) the visual amenity or heritage or scenic values,
 - (ii) native or significant flora or fauna,
 - (iii) water quality,
 - (iv) traffic,
 - (v) the safety of persons, and
- (c) whether the development is on bush fire prone land or flood prone land, and
- (d) the suitability of the land for the development, and
- (e) the compatibility of the development with nearby land uses.

Direction—

Additional development standards for farm stay accommodation may be included.

Figure 1: Extract of optional clause 5.24 of the Standard Instrument (Source: NSW Legislation, version 01/12/2022).

Council at its meeting held on 14 December 2022 resolved to insert both the additional optional clauses to MWRLEP 2012 without the need to prepare a planning proposal. This is likely to come in to effect mid-2023, subject to Ministerial/Executive Council approval.

This planning proposal will introduce lawful dwelling house erection provisions for all uses covered by the parent term *tourist and visitor accommodation*, this includes *farm stay accommodation*. Subject to final drafting by Parliamentary Counsel's Office (PCO), the proposed amendment may remove the need to include optional clause 5.24 in the MWRLEP 2012. Advice to this effect has been included in the letter to Council.

Council is not required to provide indicative wording for the draft clause, only the intent, for consideration with the planning proposal. It is to be clearly noted that the mechanism to achieve the objectives of the planning proposal will be determined through final drafting by PCO.

1.4 Site description and surrounding area

The planning proposal intends to include a provision which requires consideration of clause 4.2A of MWRLEP 2012, the proposed amendment will apply to all land in the following zones:

- RU1 Primary Production
- RU4 Primary Production Small Lots
- RU5 Village
- R5 Large Lot Residential
- C3 (former E3) Environmental Management

1.5 Mapping

The proposal does not require any LEP map amendments to MWRLEP 2012.

1.6 Background

A TVA provision is currently a development control under Clause 6.4 of the Mid-Western Regional Development Control Plan 2013 (MWRDCP 2013). Council requests some of the DCP provision to be implemented in MWRLEP 2012 to ensure greater clarity of expectations and weight when assessing a TVA development application. This will be subject to final PCO drafting, as outlined in Section 1.3.

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 meeting held on 14 December 2022.

The planning proposal is supported by the Mid-Western Regional Comprehensive Land Use Strategy (CLUS). The CLUS requires the consideration of protecting rural land from land fragmentation and the prevention of dwelling houses on undersized lots. The proposed TVA provision requiring compliance with an MLS or a lot in which a dwelling house can lawfully be erected is consistent with the approach of the CLUS.

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

Whilst it is acknowledged that the proposed provision exists in the MWRDCP 2013, there are grounds to consider the need for the provision to be implemented in MWRLEP 2012. Given the significant residential accommodation demand Council is experiencing in its LGA, the need for LEP provisions to protect rural lands by reducing the potential impacts of TVAs is appropriate in this instance.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2041 (CWORP 2041). The CWORP 2041 supersedes the

2036 Regional Plan as a result of the first 5-yearly review recently undertaken to reset priorities and extend the plan's reach to 2041. An assessment against the objectives of the CWORP 2041 are discussed below:

Table 3 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 13: Provide well located housing options to meet demand	<p>The objective outlines the importance of well-located housing.</p> <p>The planning proposal is consistent with this objective as it will enable Council to ensure TVAs are appropriately located in rural areas.</p>
Objective 15: Manage rural residential development	<p>The objective outlines the importance of ensuring any land use conflicts and rural land fragmentation are minimised.</p> <p>The planning proposal will neither result in the intensification of tourist and visitor accommodation on rural lands nor reduction of rural zoned lands.</p>
Objective 22: Support a diverse visitor economy	<p>The objective outlines the importance of enabling a diverse visitor economy.</p> <p>The planning proposal is generally consistent with this objective as it will support the region's visitor economy by ensuring tourist and visitor accommodation are appropriately located on rural land. Consultation with Destination NSW has been recommended in the Gateway Determination to ensure ongoing collaboration between Destination NSW and Council.</p>

3.2 Local

The planning proposal is generally consistent with Council's Our Place 2040 – Mid-Western Regional Local Strategic Planning Statement and the Mid-Western Regional Comprehensive Land Use Strategy (CLUS) as it strategically provides TVA demand that does not adversely impact the region's rural lands.

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 site-specific provisions.
3.1 Conservation Zones	Consistent	The proposal is consistent as it will not change the provisions relating to the protection and conservation of environmentally sensitive areas. Some TVA uses are permitted on land zoned C3 Environmental Management, and these uses will have to comply with the minimum applicable lot size.

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 TVA 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 TVA 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 TVA development applications in accordance with SEPP (Resilience and Hazards) 2021.
9.1 Rural Zones/ 9.2 Rural Lands	Consistent	<p>The Directions states that a proposal must not contain provisions that will increase the permissible density or affect land within a rural zone.</p> <p>The proposed amendment is consistent with these Directions as it will not enable the further increase of permissible density of the land but will ensure adverse impacts to rural zones/lands are minimised by ensuring that TVA is developed on land that has dwelling permissibility.</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 TVAs for Mid-Western Regional LGA.

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 TVA development application in accordance with section 4.15 of the EP&A Act.

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.
Visual	During the development application stage, the consent authority is required to consider potential visual amenity impacts onto nearby land with heritage or scenic values. The Department recommends an eligibility criterion that considers visual amenity considerations. As MWRLEP 2012 identifies visually sensitive land throughout Mudgee, this eligibility criterion is appropriate in this instance.

In addition to the above, the Department recommends that the proposed provisions should consider development consent criteria for environmental impact matters similar to optional clause 5.24(4) of the Standard Instrument. The Department has reviewed the MWRDCP 2013 and notes that these environmental impact matters to be considered during a development application are absent from clause 6.4 of MWRDCP 2013. The inclusion of these matters in the MWRLEP 2012 is appropriate in this instance and forms part of the conditions of the Gateway determination.

4.2 Social and economic

The proposal will provide positive social and economic benefits by:

- Assisting in alleviating housing and temporary workers' accommodation supply pressures by providing separate housing for tourist and visitor purposes in Mid-Western Regional LGA
- Supporting a diverse visitor economy of the region that creates positive flow on economic impacts, including increase demand for local services
- Facilitate sufficient short-term visitor accommodation
- Allow sustainable agritourism and ecotourism, which is compatible with the surrounding land uses

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 EP&A Act when assessing subsequent development applications.

4.3 Infrastructure

It is anticipated that most of the TVA development applications that will be received by the consent authority in rural, conservation and large lot residential zones will likely be of low scale developments (backpackers', bed and breakfast & farm stay). These developments should be able to meet the infrastructure and service requirements of the consent authority. For larger scale developments

(hotel or motel accommodation & serviced apartments), the demand for infrastructure and services may be more significant.

Regardless of whether a future development application is for small or large scale development, the proponent is required to demonstrate to the consent authority that adequate infrastructure and services will be provided.

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.

Consultation with Destination NSW has been recommended in the Gateway Determination to ensure ongoing collaboration between Destination NSW and Council.

As the planning proposal will result in the further restriction of TVAs on rural, conservation and large lot residential zoned lands, consultation with Department of Industry – Agriculture is not required in this instance as the proposal intends to support sustainable rural settlement, minimise rural land fragmentation, prevent accommodation structures on undersized lots and only in land that already has dwelling permissibility.

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 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 visitor economy of the region, by placing visitor and tourist accommodations in the right locations; and

- The LEP amendment will assist in the strategic location of tourist and visitor accommodation to ensure impacts onto rural lands are minimised.

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

9 Recommendation

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

1. 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) Consider inclusion of development consent consideration criteria for environmental impact matters for Tourist and Visitor Accommodation (e.g. biodiversity, bushfire, contamination, flooding & visual impacts etc.) similar to clause 5.24(4) of the Standard Instrument.
2. The planning proposal should be made available for community consultation for a minimum of twenty (20) working days.
3. Consultation is required with Destination NSW under section 3.34(2)(d) of the Act.
4. A public hearing is not required.
5. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



_____(Signature)

15/03/2023 (Date)

Wayne Garnsey

Manager, Western Region



_____(Signature)

6/04/2023 (Date)

Garry Hopkins

Director, Western Region

Assessment officer

John Martinez

A/Senior Planning Officer, Western Region

02 5852 6828