

## Item 8: Development

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### 8.1 Planning Proposal Lot 1 DP130555, Lots 93, 94, 97 and 98 DP755426 and Lot 1 DP712926, 37, 39, 139 and 141 Calderwood Road, Rylstone

REPORT BY THE MANAGER, STRATEGIC PLANNING  
TO 18 MAY 2022 ORDINARY MEETING  
GOV400088, LAN900120, GOV400098

#### RECOMMENDATION

##### That Council:

- A. **receive the report by the Manager, Strategic Planning on the Planning Proposal Lot 1 DP130555, Lots 93, 94, 97 and 98 DP755426 and Lot 1 DP712926, 37, 39, 139 and 141 Calderwood Road, Rylstone; and**
- B. **exercise its delegation in the preparation of the amendment to the Mid-Western Regional Local Environmental Plan 2012 in relation to the rezoning of from RU1 Primary Production to R5 Large Lot Residential and change the minimum lot size from 40 and 100 hectares to either 2 or 5 hectares subject to the Opinion issued by Parliamentary Counsel.**

#### Executive summary

At Council's 17 February 2021 meeting, Council resolved to support the Planning Proposal and to forward it to the NSW Department of Planning and Environment (DPE) for a Gateway Determination. The Planning Proposal relates to, 37, 39, 139 and 141 Calderwood Road, Rylstone and proposes to rezone the land from RU1 Primary Production to R5 Large Lot Residential and reduce the minimum lot size from 40 and 100 hectares to either 2 or 5 hectares.

A conditional Gateway Determination was granted on 29 March 2021 and an Alteration was issued 16 December 2021. A copy of the Gateway Determination and Alteration is provided as Attachment 1.

Condition 1 of the Gateway Determination required that prior to the commencement of community consultation a revised Planning Proposal be resubmitted to DPE that addresses Condition 1(a) – (d).

A revised Planning Proposal which addressed this requirement was subsequently submitted and approved by DPE. Approval to proceed to public exhibition was received in January 2022, a copy of this is provided as Attachment 2. A copy of the amended Planning Proposal is provided as Attachment 3.

The Planning Proposal was placed on public exhibition on Friday 18 March 2022 until Friday 15 April 2022 in accordance with Gateway Determination Condition 2. One submission was received during

the exhibition period and one post. The matters raised are summarised and a staff comment provided in the body of the report.

The purpose of this report is to provide Council with a post exhibition report and to seek Council's approval to exercise its delegation in finalising the Planning Proposal.

## Disclosure of Interest

Nil

## Detailed report

### Planning Proposals

Planning Proposal is a term used to describe the application and process of rezoning or making an amendment to a Local Environmental Plan (LEP). A Planning Proposal application is a document that explains the intended effect of the LEP amendment and provides a strategic justification for doing so. DPE has issued Local Environmental Plan Making Guideline, dated December 2021 to provide guidance and information on the process for preparing planning proposals.

### The Gateway Process

DPIE is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in DPIE's A Guide to Preparing Local Environmental Plans.

### Gateway Timeline

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan 2012 and the progress of the current Planning Proposal through the various stages.

Stage	Completed	Comment
<b>Preparation of a Planning Proposal</b>		
Planning Proposal lodged with Council	✓	October 2020.
Staff Undertake Initial Assessment	✓	October 2020 – January 2021
Council Decision to Support Proposal	✓	17 February 2021
<b>Issue of Gateway Determination</b>		
Council Requests Gateway Determination	✓	18 February 2021
DPIE Issues Gateway Determination	✓	30 March 2021
Gateway Conditions Satisfied	✓	January 2022
<b>Consultation</b>		
Consultation with Relevant Agencies	✓	Agency consultation with: <ul style="list-style-type: none"> <li>- Department of Planning, Industry and Environment – Water and Environmental Protection Authority.</li> <li>- Department of Planning, Industry and Environment – Environment, Energy and Science.</li> <li>- NSW Rural Fire Services.</li> </ul>
Public Exhibition	✓	Friday 18 March 2022 – 15 April 2022.
Post-Exhibition Report to Council	✓	Planning Proposal Post Exhibition is being reported to 18 May 2022 meeting.

Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		
Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

## GATEWAY DETERMINATION

A conditional Gateway Determination was received on 26 March 2021 and included seven standard conditions. Condition 1(a) required a preliminary contamination investigation to be undertaken to address potential contamination to demonstrate that the subject land is suitable or can be made suitable for the proposed large lot residential use. The report was provided and the Planning Proposal was updated.

## CONSULTATION

### *Community Consultation*

Condition 2 of the Gateway Determination required Council to undertake community consultation with a public exhibition period of 28 days. During the public exhibition, one submission was received from a landowner within the locality, another submission was received from an adjoining landowner post the exhibition period. The matters and comments raised in the submissions are summarised below with a staff comment provided. The submissions are provided as Attachment 4.

Matter/comment raised in the Submission	Staff comment
<i>Community Submissions</i>	
<p><b>Potential future land use conflict</b></p>	<p>The rezoning of the subject site and change in minimum lot size will result in additional dwellings and residents within the locality. Concern is raised regarding the potential new residents complaining about existing agricultural operations occurring within the vicinity of the subject site.</p> <p>If land use conflict between new residents and existing agricultural pursuits were to become a matter for concern in the future, once advised in writing, Council would investigate the matter. The investigation would involve (but is not limited too) determining if the established agricultural use is lawful. When a land use is lawful and operating in accordance with relevant controls, it is acknowledged when considering any complaint.</p> <p>Council has the opportunity to consider the Right to Farm Act 2019 and other relevant legislation depending on the potential nuisance.</p>
<p><b>Preference of the 5 hectare over the 2 hectare minimum lot size to maintain the existing 'rural and semi-rural setting'.</b></p>	<p>The Planning Proposal has been considered in accordance with Council's Comprehensive Land Use Strategy (CLUS), specifically parts B and C. Part C details the location of the future large lot residential land supply around Rylstone, this is visually displayed in Figure 3-3 Rylstone Town Structure Plan. The CLUS details the need for this</p>

	<p>supply of rural lifestyle lots. Part B outlines the methodology used to identify the most appropriate sites.</p> <p>It is acknowledged the introduction of rural lifestyle lots will create a change the locality. However, a considered methodology adopted by Council has determined the most appropriate location for this form of development.</p>
<p><b>Reduced Privacy</b></p>	<p>Future potential lots will be created at either 2 or 5 hectares. A lot of this area can achieve the minimum setbacks for development stipulated in Council’s Development Control Plan. These setbacks have been determined to maintain amenity for adjoining landowners.</p>
<p><b>Rylstone reticulated water system is already at capacity.</b></p>	<p>A Council water main is located within Calderwood Road at the northern end of the site, as previously highlighted, Council will not connect any future lots with a minimum lot size of 2 hectares (or greater) to Council’s reticulated water system due to various operating challenges including maintaining water quality to properties.</p> <p>Council has previously received advice from the Department of Primary Industries – Office of Water (DPI – Office of Water) in relation to water supply volumes and source. The DPI – Office of Water publication ‘How much water do I need for my rural property’ stipulates the required water volumes for rural properties, including rural lifestyle properties. Previous experience in considering water supply for rural lifestyle lots has demonstrated that. in this region with rainfall volumes, roof rainwater catchment is not of a sufficient volume to satisfy the required volumes, therefore a secondary source is required.</p> <p>In previous rural lifestyle proposals, a community bore scheme or the creation of lots of a greater size to accommodate individual bores were explored. Lots with a minimum lot size of 5 hectares can generally achieve the required bore buffers/setbacks to onsite sewerage disposal management systems.</p>
<p><b>Communication between landowners of the development site.</b></p>	<p>The submissions outline discussions between neighbours and the current landowners of the development site. This is not a matter for consideration by Council.</p>
<p><b>Potential future increase in traffic.</b></p>	<p>Two concept plans were submitted with the Planning Proposal. Any future development application will include a subdivision plan. Future traffic generated from the development and traffic impact will be considered by Council’s Development Engineer in the assessment of the development application.</p>

### **Agency Consultation**

In accordance with Condition 1(b), (c) and 3, the Planning Proposal was referred to the Department of Planning, Industry and Environment – Water and Environmental Protection Authority, the Department of Planning, Industry and Environment – Environment, Energy and Science and the NSW Rural Fire Services.

A submission was received from Biodiversity, Conservation and Science Directorate of the Department of Planning, Industry and Environment. The submission provides guidance for any future subdivision of the site, the *Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017* (section 7.1) will apply. A copy of this submission is provided as Attachment 5.

### **FINALISATION OF PLANNING PROPOSAL**

The recommendation of staff is to proceed with the finalisation of the Planning Proposal. This will involve drafting LEP provisions and amending maps.

### **Draft LEP**

Included, as part of the Gateway Determination is a written Authorisation to Exercise Delegation of the Minister's functions under Section 3.36 (previously Section 59) of the *Environmental Planning and Assessment Act 1979*. The documentation will be forwarded to the Office of Parliamentary Counsel to draft the amendment to the LEP and seek an Opinion that the plan may be made. A copy of the request will be forwarded to DPIE – Western Region. Following the receipt of the Opinion, a request that the LEP amendment be notified will be made.

### Community Plan implications

<b>Theme</b>	<b>Looking After Our Community</b>
Goal	Vibrant towns and villages
Strategy	Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning

### Strategic implications

#### **Council Strategies**

Mid-Western Regional Comprehensive Land Use Strategy, August 2010.

#### **Council Policies**

The steps involved towards the notification of the Planning Proposal will not require any change to relevant policies.

#### **Legislation**

The Planning Proposal has been considered in accordance with Division 3.4 Environmental Planning Instruments - LEPs (previously Division 4) Local Environmental Plans of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Local Environmental Plan 2012*.

### Financial implications

Nil

## Associated Risks

If Council does not wish to proceed with finalisation of the Planning Proposal, it can withdraw its support at this stage in the Gateway Process. Council would be required to formally resolve not to proceed with the Planning Proposal and advise the landowners and DPE accordingly.

SARAH ARMSTRONG  
MANAGER, STRATEGIC PLANNING

ALINA AZAR  
ACTING DIRECTOR DEVELOPMENT

26 April 2022

*Attachments:*

1. Gateway determination and alteration. (separately attached)
2. Confirmation to proceed to public exhibition. (separately attached)
3. Planning proposal. (separately attached)
4. Community submissions. (separately attached)
5. Biodiversity, Conservation and Science, Department of Planning and Environment submission. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER