

8.4 Planning Proposal Gulgong - Heights of Buildings Amendment

REPORT BY THE MANAGER STRATEGIC PLANNING

TO 21 FEBRUARY 2024 ORDINARY MEETING

GOV400105, LAN900046

RECOMMENDATION

That Council:

1. **receive the report by the Manager Strategic Planning on the Planning Proposal Gulgong - Heights of Buildings Amendment;**
2. **provide initial support for amending the height of buildings map at Gulgong from 5m to 5.5m;**
3. **forward the Planning Proposal to amend the *Mid-Western Regional Local Environmental Plan 2012* to the NSW Department of Planning, Housing and Infrastructure seeking a Gateway Determination in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*; and**
4. **undertake community consultation as outlined in any approved Gateway determination.**

Executive summary

Council at its meeting, held on Wednesday, 16 August 2023, resolved to review maximum building heights in Gulgong. This decision arose following multiple building height variations in Development Applications and the need for the variations to be reported to Council as they exceed staff delegations.

The review has been undertaken and a Planning Proposal prepared, seeking an amendment to the *Mid-Western Regional Local Environmental Plan 2012* (LEP) to amend the Height of Buildings map to increase the maximum height of buildings for development in the Gulgong locality from 5m to 5.5m.

The intent of the Planning Proposal is not to alter the built form or increase the intensity or density of development in the subject area, but to achieve a reasonable development outcome for infill development. The current 5m maximum building height is considered overly restrictive.

The Planning Proposal provided as Attachment 1 has been prepared in accordance with the structure outlined in the NSW Department Planning, Housing and Infrastructure (DPHI) *Local Environmental Plan Making Guideline (August 2023)*. The report outlines the context, intended outcomes, explanation of provisions and justification for the Planning Proposal.

The Planning Proposal was referred to Council's Heritage Adviser and comments in support of the proposal have been received.

The staff recommendation is to provide support for the Planning Proposal and forward to DPHI with a request for a Gateway Determination to allow for community consultation to be undertaken. If the staff recommendation is supported, the Planning Proposal along with the Council resolution will be forwarded to the DPHI.

Disclosure of Interest

Nil

Detailed report

Planning Proposals

Planning Proposal is a term used to describe the 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. DPHI has issued the *Local Environmental Plan Making Guideline*, to provide guidance and information on the process for preparing Planning Proposals and making the amendment to the LEP.

The Gateway Process

DPHI is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in the *Local Environmental Plan Making Guideline* (August 2023).

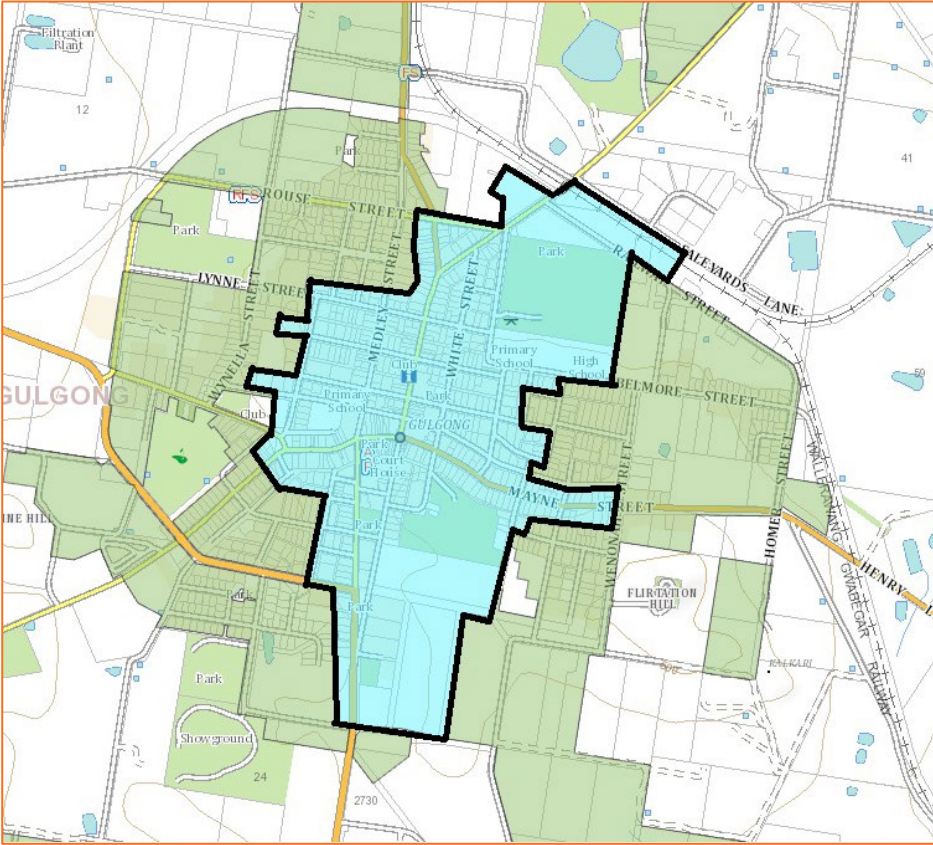
Gateway Timeline

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan (LEP) and the progress of the current Planning Proposal through the various stages. The below table demonstrates the Planning Proposal is within the initial stage of the process.

Stage	Completed	Comment
Preparation of a Planning Proposal		
Planning Proposal prepared by Council	✓	December/January 2023
Council Decision to Support Proposal		The Planning Proposal is being reported to the 21 February 2024 meeting
Issue of Gateway Determination		
Council Requests Gateway Determination		
DP&E Issues Gateway Determination		
Gateway Conditions Satisfied		
Consultation		
Consultation with Relevant Agencies		
Public Exhibition		
Post-Exhibition Report to Council		
Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		
Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

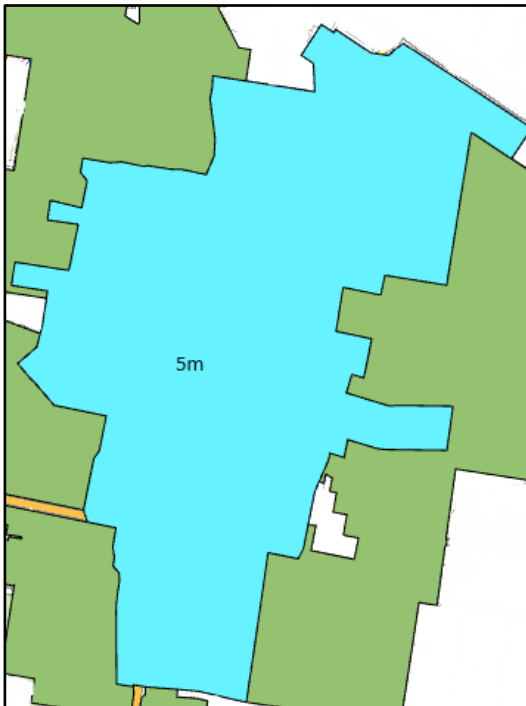
PROPOSAL CONTEXT

The Planning Proposal seeks to amend the Height of Buildings maps (HOB_005B; HOB_005C; HOB_005E) for certain land in Gulgong from a maximum height of 5m to 5.5m.

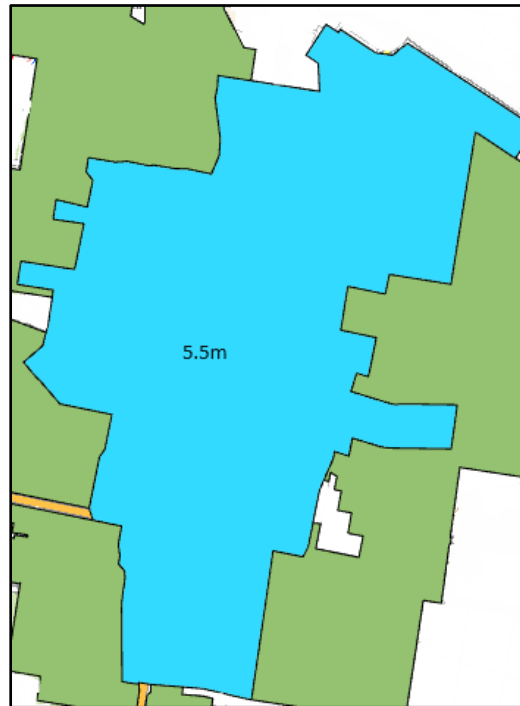


The map above demonstrates the area subject to the Planning Proposal. The subject area is generally within the Gulgong heritage conservation area.

The maps below highlight the current and proposed height of buildings.



Existing – Height of Building



Proposed – Height of Building

INTENDED OUTCOMES

The intended outcomes of the Planning Proposal are to:

- increase maximum building heights in the Gulgong locality to better reflect a reasonable outcome for infill development, whilst still respecting the heritage fabric of the Gulgong Heritage Conservation Area; and
- amend the relevant Mid-Western Regional Local Environmental Plan 2012 Height of Building maps.

The intent of the Planning Proposal is not to alter the built form or increase the intensity or density of development in the subject area, but to achieve a reasonable development outcome for infill development. The current 5m maximum building height is considered overly restrictive.

EXPLANATION OF PROVISIONS

The Planning Proposal details how the objectives and intended outcomes will be achieved by:

- Amending the building heights indicated on the Height of Building map – Sheets HOB_005B; HOB_005C; HOB_005E from 5m to 5.5m.

The Planning Proposal is a map only amendment with no amendments to the written instrument.

JUSTIFICATION

The DPHI *Local Environmental Plan Making Guideline* (August 2023) outlines questions to consider when demonstrating the justification. The questions most pertinent in consideration of this Planning Proposal are discussed below.

Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The Planning Proposal is not the result of an endorsed LSPS, strategic study or report however, it is consistent with the recommendations, goals and priorities of the *Our Place 2040 – Mid-Western Regional LSPS*. Specifically Planning Priority 2 Making available diverse, sustainable, adaptable and affordable housing options through effective land use planning.

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

The Planning Proposal is the best and only means of amending the Height of Building map within the Mid-Western LEP 2012 and achieve the intended outcomes and objectives of the Planning Proposal.

The proposed amendment will be further supported by a review of the Mid-Western Regional Development Control Plan 2013.

Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) and SEPPs?

The Planning Proposal is generally consistent with all the Ministerial Directions and State Environmental Planning Policies (SEPPs).

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

The proposal to increase maximum building heights will not have any direct adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats. Site specific constraints will be considered during the assessment of any future development applications.

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

The subject area is chiefly within the Gulgong Heritage Conservation area. The proposed amendment to allow a maximum building height of 5.5m would still require compliance with Clause 5.10 *Heritage Conservation* (MWRLEP 2012) to ensure, amongst other things, the conservation of heritage items and heritage conservation areas, including associated heritage fabric, settings and views.

The subject area is the only area within the LGA that has such a restrictive maximum height limit, including the other three conservation areas of Kandos, Mudgee and Rylstone that all have a maximum height limit of 8.5m. It is therefore considered that the modest increase to the maximum height to 5.5m is reasonable and respects the important heritage fabric of the Gulgong Heritage Conservation Area.

Council's Heritage advisor offers the following comments:

The proposed increase to 5.5m will achieve this purpose without adverse impacts on the heritage significance of the conservation area or of listed items within it. Indeed, it could and enhance heritage outcomes. For example, number of listed and contributory items have steeply pitched roofs, the upper parts of which would be well over 5 metres high. The higher limit could facilitate more sympathetic extensions in certain circumstances.

It would probably be just possible to construct a flat roofed two-storey building on a level site within a 5.5 m height limit without resorting to excavation, and such a building could be quite unsympathetic. However, such a building could not be constructed as complying development in the conservation area, and would not comply with the heritage provisions of the local environmental plan and development control plan. It would therefore be most unlikely to be granted consent under delegation.

The provision of Clause 4.3 Height of buildings will remain unchanged.

4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
 - (a) *to establish a maximum height limit to which buildings can be designed in particular locations,*
 - (b) *to enable infill development that is of similar height to existing buildings and that is consistent with the heritage character of the towns of Mudgee, Gulgong, Kandos and Rylstone.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

Consistency with the heritage character of Gulgong will still need to be addressed at the Development Application stage as well as having sympathetic regard to existing buildings and the heritage fabric of the locality.

What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The views of authorities and government agencies will be sought post Gateway. The Gateway determination will stipulate which authorities or government agencies are required to consult with.

NEXT STEP

If Council supports the recommendation, the next step would involve forwarding the Planning Proposal and a Council resolution of initial support to the DPE seeking a Gateway Determination.

Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Respect and enhance the historic character of our region and heritage value of our towns

Strategic implications

Council Strategies

Mid-Western Regional Local Strategic Planning Statement, Our Place 2040

Council Policies

The forwarding 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 provide initial support for the Planning Proposal, Council may resolve not to proceed with the Planning Proposal.

SARAH ARMSTRONG
MANAGER STRATEGIC PLANNING

ALINA AZAR
DIRECTOR DEVELOPMENT

5 February 2024

Attachments: 1. Planning Proposal - Gulgong Height of Buildings. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER