



AGENDA

EXTRAORDINARY COUNCIL MEETING

8 MAY 2017

MEMBERSHIP:
Mr M Kneipp (Administrator).

The meeting is scheduled to commence at 5:30pm.

PRAYER:

O God, Grant that by the knowledge of thy will, all we may resolve shall work together for good, we pray through Jesus Christ our Lord. Amen!

ACKNOWLEDGEMENT OF COUNTRY:

"I would like to acknowledge the Wiradjuri People who are the Traditional Custodians of the Land. I would also like to pay respect to the Elders both past and present of the Wiradjuri Nation and extend that respect to other Aboriginal peoples from other nations who are present".

Page

CCL17/48 LEAVE OF ABSENCE (ID17/763)

CCL17/49 PUBLIC FORUM (ID17/764)

ADMINISTRATOR MINUTES:

CCL17/50 DEVELOPMENT APPLICATION (D16-482) - EXTRACTIVE INDUSTRY (QUARRY)

PROPERTY: 20L SHERATON ROAD, DUBBO

APPLICANT/OWNER: REGIONAL HARDROCK PTY LTD (ID17/733)

3

The Council has before it the Administrator Minute regarding Development Application (D16-482) - Extractive Industry (Quarry) Property: 20L Sheraton Road, Dubbo Applicant/Owner: Regional Hardrock Pty Ltd.

CCL17/51 PLANNING PROPOSAL - OPERATIONAL REVIEW OF THE DUBBO LOCAL ENVIRONMENTAL PLAN 2011 (PDC17/10) (ID17/734)

14

The Council has before it the Administrator Minute regarding Planning Proposal - Operational Review of the Dubbo Local Environmental Plan 2011 (PDC17/10).

CCL17/52 PLANNING PROPOSAL - OPERATIONAL REVIEW OF THE WELLINGTON LOCAL ENVIRONMENTAL PLAN 2012 (PDC17/11) (ID17/735)

23

The Council has before it the Mayoral Minute regarding Planning Proposal - Operational Review of the Wellington Local Environmental Plan 2012 (PDC17/11).



ADMINISTRATOR MINUTE: Development Application (D16-482) - Extractive Industry (Quarry)

Property: 20L Sheraton Road, Dubbo
Applicant/Owner: Regional Hardrock Pty Ltd

AUTHOR: Administrator
REPORT DATE: 1 May 2017
TRIM REFERENCE: ID17/733

To the Council
Ladies and Gentlemen

Office of the Administrator
Civic Administration Building
Church Street, Dubbo

I refer to the subject matter and attach the report of the Director Environmental Services dated 1 May 2017 as **Appendix 1** to this report.

It is recommended that the recommendation of the Director Environmental Services be adopted.

RECOMMENDATION

1. That the reports of the Director Environmental Services dated 18 April 2017 and 1 May 2017 in respect of CCL17/42 be noted.
2. That it be further noted that Development Application D16-482 for an Extractive Industry (Quarry) at 20L Sheraton Road, Dubbo has been referred to the Western JRPP for determination.
3. That following such determination by the Western JRPP, a further report on the outcomes of this matter be submitted to Council.

Michael Kneipp
Administrator

Appendices:

- 1 [Report from DEVS - Development Application \(D16-482\) - Extractive Industry \(Quarry\)](#)

EXTRAORDINARY COUNCIL MEETING
8 MAY 2017



REPORT: Development Application (D16-482) - Extractive Industry (Quarry)
Property: 20L Sheraton Road, Dubbo
Applicant/Owner: Regional Hardrock P/L

AUTHOR: Director Environmental Services
REPORT DATE: 1 May 2017
TRIM REFERENCE: ID17/732

EXECUTIVE SUMMARY

Council is in receipt of a Development Application that seeks to undertake an *extractive industry (quarry)* on Lot 211 DP 1220433, 20L Sheraton Road, Dubbo. Council, at its meeting on 24 April 2017, considered a report from the Director Environmental Services dated 18 April 2017 (Item CCL17/42).

During Public Forum, Council heard from Mr Wes Maas in respect of Item CCL17/42. Mr Maas also tabled correspondence from Mr Steve Guy dated 24 April 2017 which is attached here as **Appendix 1**. In respect of CCL17/42 Mr Mass requested that “*Council change the recommendation to refuse the development and alternatively support Development Application D16-482 for an extractive industry without further delay due to the ongoing and significant cost in holding the development the development from the consideration and determination of the JRPP.*”

Following the submission by Mr Maas Council resolved “*that the matter be deferred pending further consideration as a result of the submission received by Council during Public Forum.*”

This report addresses the submission made by Mr Mass (**Appendix 1**) and recommends that the matter proceed to determination by the Western JRPP.

ORGANISATIONAL VALUES

Customer Focused: The application as submitted has been assessed against the relevant legislation and Council policy while taking into consideration the public submissions received.

Integrity: The application has been assessed against the requirements of Section 79C of the Environmental Planning and Assessment Act, 1979, as well as other relevant legislation and Council policy.

One Team: Council staff across the organisation have been involved in the assessment of this application, which has been undertaken in accordance with relevant legislation and Dubbo Regional Council policy.

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

FINANCIAL IMPLICATIONS

Should the application be refused by the JRPP, the proponent may appeal the decision in the NSW Land and Environment Court, resulting in legal costs being required to defend the decision. Alternatively, should the application be approved by the Western JRPP, there will be consequential financial implications for Council with the resources required to undertake any necessary amendments to the LEP to mitigate future land use conflicts.

POLICY IMPLICATIONS

Should the subject application be approved by the Western JRPP, it will necessitate amendments to the Dubbo LEP to mitigate future land use conflicts between the subject development and adjacent land in Sheraton Road and to avoid similar situations arising across the Local Government Area.

RECOMMENDATION

That in respect of D16-482, the reports of the Director Environmental Services dated 18 April 2017 and 1 May 2017 be noted.

Melissa Watkins
Director Environmental Services

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

REPORT

Council is in receipt of a Development Application that seeks to undertake an *extractive industry (quarry)* on Lot 211 DP 1220433, 20L Sheraton Road, Dubbo. Council, at its meeting on 24 April 2017, considered a report from the Director Environmental Services dated 18 April 2017 (Item CCL17/42) which recommended to Council as follows:

- “1. That Council not support Development Application D16-482 for an extractive industry at Lot 211 DP1220433, 20L Sheraton Road, Dubbo for the following reasons:
 - (i) The development does not represent orderly development of land containing extractive material, given the proximity of rural/residential, residential zoned land, local schools and the nature of extractive industry (quarry). (Cl.2 SEPP (Mining, Petroleum Production and Extractive Industries) 2007, as per S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979 and S5(a)(ii) Environmental Planning and Assessment Act, 1979;
 - (ii) Both agriculture and industry are prohibited in the RE2 Private Recreation zone under Dubbo Local Environmental Plan 2011 and therefore the development should also be prohibited pursuant to Cl.3(a) SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979);
 - (iii) The proposed development is deemed to be incompatible with the locality given the proximity of rural/residential, residential zoned land, local schools and the nature of extractive industry (quarry), despite the mitigated measures proposed (Cl.12 SEPP (Mining, Petroleum Production and Extractive Industries) 2007, as per S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979);
 - (iv) The development is contrary to the RE2 Private Recreation zone objectives of Dubbo Local Environmental Plan 2011 (S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979); and
 - (v) The development, given the proximity of rural/residential, residential zoned land, local schools and the nature of extractive industry (quarry), is considered to be contrary to the public interest (S79C(1)(e) Environmental Planning and Assessment Act, 1979).
2. That the report in relation to Development Application D16-482 for an extractive industry (quarry) at Lot 211 DP 1220433, 20L Sheraton Road, Dubbo be noted and referred to the Western Joint Regional Planning Panel for their determination.
3. That those who made submissions be advised of the outcome of the matter following determination by the Western Joint Regional Planning Panel.
4. That should Development Application D16-482 for an extractive industry (quarry) be approved by the Western Joint Regional Planning Panel, a separate report be provided to Council including options for the proposed rezoning of the adjacent land at Lot 2 DP 880413, 24R Sheraton Road, Dubbo to consider an appropriate density for development and any buffer of the land having regard to the likely impacts of the proposed development.”

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

During Public Forum, Council heard from Mr Wes Maas in respect of Item CCL17/42. Mr Maas also tabled correspondence from Mr Steve Guy dated 24 April 2017 which is attached here as **Appendix 1**. In respect of CCL17/42 Mr Mass requested that *“Council change the recommendation to refuse the development and alternatively support Development Application D16-482 for an extractive industry without further delay due to the ongoing and significant cost in holding the development the development from the consideration and determination of the JRPP.”*

Item CCL17/42 was subsequently deferred by Council as follows:

“That the matter be deferred pending further consideration as a result of the submission received by Council during Public Forum.”

This report addresses the submission made by Mr Mass (**Appendix 1**) and recommends that the matter proceed to determination by the Western JRPP.

CONSIDERATION OF MATTERS RAISED IN THE SUBMISSION DATED 24 APRIL 2017

1. Determination of the development application

Mr Mass requested that *“Council change the recommendation to refuse the development and alternatively support Development Application D16-482 for an extractive industry without further delay due to the ongoing and significant cost in holding the development the development from the consideration and determination of the JRPP.”*

Comment:

As stated in the report of the Director dated 18 April 2017:

“As the determining authority for this application is the JRPP, Council is not required to make a determination in relation to the matter. However, while this report is provided to Council for notation, it also recommends further action to be taken by Council in the event that the JRPP determines to approve the development.”

The recommendation of the Director is for *“Council (to) not support Development Application D16-482 for an extractive industry”*. As explained by the Director Environmental Services at the Council meeting on 24 April 2017, the report does not require the determination of Council to proceed to the JRPP. To this end the report was actually referred to the JRPP on 21 April 2017. Council’s determination of the matter does not further delay the consideration of the matter by the JRPP.

2. The development is permissible

The submission states that *“the development is permissible as presented within our legal advice to Council, Council’s own legal advice and the interpretation provided to Council from the Department of Planning NSW.”*

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

Comment:

The issue of permissibility is dealt with at length in the report of the Director Environmental Services.

In part, the Director's report states that despite the applicant's legal advice, as the group term *agriculture* is prohibited in the RE2 zone, *extractive industry* is also intended to be prohibited. Whether any subset land use terms are permissible is considered inconsequential in determining permissibility.

While Council understands the provisions of the SEPP and the literal interpretation that has been applied by the applicant's legal advisors, it is the implications of the precedent that are likely to be created by such an interpretation. Sound planning practice would dictate that the intent of the Standard Instrument and the interpretation of Group Terms would not be to undermine the entire LEP and facilitate development in locations clearly not intended based on the zone objectives and the strategic planning that underpins the Dubbo LEP. Accordingly, the literal interpretation being applied in this instance is not accepted.

3. Compliance with statutory policy and best practice guidelines

The submission suggests that the development should be approved as it *"is compliant with statutory policy and best practice guidelines as provided and committed to in the submitted EIS. In this regard the development is considered to meet and exceed all prescribed requirements of environmental management and impact as presented within our EIS, consultant reports, issued General Terms of Approval from government authorities and the presentation of draft conditions of approval as provided within the attached report"*.

Comment:

The exact 'statutory policy and best practice guidelines' with which the development is said to be compliant with have not been sighted in the submission however, it should be noted that any development application is required to be assessed in accordance with Section 79C of the Environmental Planning and Assessment Act, 1979. This assessment is included in the report of the Director.

Section 79C states:

"79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

- or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),
- that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest."

Accordingly, a consent authority, whether it is a Council or the JRPP, is required to evaluate a development application in accordance with Section 79C which clearly extends beyond the issue of permissibility and compliance with 'statutory policy and best practice guidelines'.

4. Council's report is misleading and contradictory

The submissions states that:

"Council's report is considered to be misleading and contradictory given the detailed assessment and discussions provided within the application and the concurrence and legal counsel, Council staff, other government agency staff and such concurrence given between both parties during the course of the assessment."

Comment:

The report of the Director is considered to be complete. Details of any misleading comments or contradictions have not been provided in the submission. Accordingly, this is a difficult matter for Council to address without details.

5. Council officers are supportive of the development

The submission makes the following statement:

"We are of the opinion that all Government Officers including Council's own Assessment Planner who have physically been on site are supportive of the development which has led to a favourable assessment and the drafting of recommended conditions of consent and General Terms of Approval."

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

Comment:

The opinion of others is not relevant in this instance. The report was authored by Council's most senior, qualified, Town Planner, being the Director Environmental Services. The Director is required to undertake development assessment and, where required, these assessments are referred to Council for determination. It is the normal practice of staff to provide draft conditions of consent for any development application. This is also the usual practice of the Land and Environment Court and the JRPP despite the recommendation of the report. The inclusion of draft conditions do not pre-empt in anyway the recommendation of the assessment officer whether that be the Director or any of Council's other Town Planners.

It should be noted that, as is the normal assessment process, matters that have been resolved or addressed have been identified in the report as well as matters that have not been resolved or where there is a difference of professional opinion. It is not the role of the report to only focus on the negative or positive aspects of a proposal; its role is to evaluate the proposal.

6. Operating outside of conditions of approval/licence requirements

The submission states that:

"It would not be in the interest of any operator to manage a development of this importance outside the recommended conditions of approval and future licensing requirements. The proposal is for the controlled and orderly development of the land in accordance with the submitted reports which have considered all surrounding sites their use both current and proposed."

Comment:

While not disagreeing with the first part of this statement, in general terms, the report details the Director's concerns in respect of the potential impacts of the development over the 30 year operating life of the quarry on the nearby residential development and the fact that the development in this location is clearly not consistent with the adopted strategic land use direction of Council. Council, in the assessment of applications, must take a broader strategic view of any development proposal as opposed to the view taken by a proponent undertaking a development application for a particular site. This has been undertaken in respect of the subject development proposal.

7. Good planning practice

The submission states that:

"It is good planning practice to consider a development in detail and for such development to demonstrate acceptable impact upon the surrounds. We have done this."

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

Comment:

While it is agreed that “it is good planning practice to consider a development in detail and for such development to demonstrate acceptable impact upon the surrounds.” The issue remains to be with what level of impact is ‘acceptable’ for a development that has a life span of at least 30 years in a location which has been determined by Council since 1996 to be the area that would protect existing quarries from residential impacts that may limit their commercial viability and vice versa in the protection of the future amenity of the adjoining residential area. This development will encroach onto the land identified by Council as a buffer between the existing quarries and the future residential land.

CONCLUSION

Based on the additional information provided and the comments above, it is considered that there has been no additional information provided that would impact on the recommendation from the Director Environmental Services dated 18 April 2017. Accordingly it is recommend that the reports of the Director Environmental Services dated 18 April 2017 and 1 May 2017 be noted and that in due course when the application is determined by the Western Joint Regional Planning Panel, a further report on the outcome of this matter be submitted to Council.

Appendices:

- 1 Submission from Mr W Maas dated 24 April 2017

APPENDIX NO: 1 - SUBMISSION FROM MR W MAAS DATED 24 APRIL 2017

ITEM NO:

Steve Guy

From: Steve Guy
Sent: Monday, 24 April 2017 3:52 PM
To: Wes Maas; Bill Kelly
Subject: FW: Address Council Meeting 24/04/17 - PDC 17/10 & CC17/42

Thankyou for the opportunity to address Council on these matters:

1. Regarding PDC 17/10 we request that recommendation 1 be amended as follows:

That Council support the proposed amendments contained in the Operational Review of the Dubbo Local Environmental Plan 2011 with the exception of the following:

- The recommended changes to permissible land use activities for the RE2 Private Recreation Zone; and
- the recommended changes to the subdivision controls for Community Title and Torrens Title Development for R1 and R2 zoned land.

As these matters are not considered minor operational matters and are not simply a 'translation' of the planning uses or requirements as currently drafted in the Dubbo LEP 2011 and any further amendment from what exists would have significant impact on greater community. This would make community title development unfeasible and therefore would impact many.

Regarding the changes to the RE2 permissible land use zone this could have a significant impact on the current development application for a new quarry at 20L Sheraton Road which is to be presented to the JRPP for determination.

The consequence of adoption as drafted by the officer are that the consent authority would have to give due regard to these provisions when determining an application which would include these additional matters beyond that of the current LEP.

2. Regarding CC17/42 we request that Council change the recommendation to refuse the development and alternatively support Development Application D16-482 for an extractive industry without further delay due to the ongoing and significant cost in holding the development from the consideration and determination of the JRPP.

As the development:

- i. Is permissible as presented within our legal advice to Council, Council's own legal advice and the interpretation provided to Council from the Department of Planning NSW;
- ii. Is compliant with statutory policy and best practice guidelines as provided and committed to in the submitted EIS. In this regard the development is considered to meet and exceed all prescribed requirements of environmental management and impact as presented within our EIS, consultant reports, issued General Terms of Approval from government authorities and the presentation of draft conditions of approval as provided within the attached report;
- iii. Council's report is considered to be misleading and contradictory given the detailed assessment and discussions provided within the application and the concurrence and legal counsel, Council staff, other government agency staff and such concurrence given between both parties during the course of the assessment;
- iv. We are of the opinion that all Government Officers including Council's own Assessment Planner who have physically been on site are supportive of the development which has led to a favourable assessment and the drafting of recommended conditions of consent and General Terms of Approval;
- v. It would not be in the interest of any operator to manage a development of this importance outside the recommended conditions of approval and future licensing requirements. The

proposal is for the controlled and orderly development of the land in accordance with the submitted reports which have considered all surrounding sites their use both current and proposed;
vi. it is good planning practice to consider a development in detail and for such development to demonstrate acceptable impact upon the surrounds. We have done this.

Steven Guy
General Manager
**MAAS
GROUP
PROPERTIES** Mob: 0428 298 916
PO Box 332, Dubbo NSW 2830
www.maasgroupproperties.com.au
<http://maasgroupproperties.com.au>



ADMINISTRATOR MINUTE: Planning Proposal - Operational Review of the Dubbo Local Environmental Plan 2011 (PDC17/10)

AUTHOR: Administrator
REPORT DATE: 1 May 2017
TRIM REFERENCE: ID17/734

To the Council
Ladies and Gentlemen

Office of the Administrator
Civic Administration Building
Church Street, Dubbo

I refer to PDC17/10 and attach the report of the Manager City Strategy Services dated 1 May 2017 as **Appendix 1** to this report.

It is recommended that the reports of the Manager City Strategy Services dated 18 April 2017 and 1 May 2017 respectively be adopted.

RECOMMENDATION

1. That Council support the proposed amendments contained in the Operational Review of the Dubbo Local Environmental Plan 2011.
2. That Council support a minimum 28 day public exhibition period for the Planning Proposal.
3. That Council resolve to not use its delegation under Section 59 of the Environmental Planning and Assessment Act, 1979 to draft the amendments to the Dubbo Local Environmental Plan 2011.
4. That following the completion of the public exhibition period, a further report be provided to Council detailing the results of the public exhibition and for further consideration of the Planning Proposal.
5. That a further report be provided to Council for consideration that includes a suite of proposed measures Council could consider to guide the provision of dual occupancy development across the Dubbo Regional Local Government Area.
6. That Mr Wes Maas be advised of Council's determination in this matter.

Michael Kneipp
Administrator

Appendices:

- 1 [Report of Manager City Strategy Services dated 1 May 2017 - Planning Proposal - Operational Review of the Dubbo Local Environmental Plan 2011 \(PDC17/10\)](#)

EXTRAORDINARY COUNCIL MEETING
8 MAY 2017



REPORT: Planning Proposal - Operational Review of the Dubbo Local Environmental Plan 2011 (PDC17/10)

AUTHOR: Manager City Strategy Services
REPORT DATE: 1 May 2017
TRIM REFERENCE: ID17/730

EXECUTIVE SUMMARY

Council at its meeting on 24 April 2017 considered a report from the Manager City Strategy Services in respect of Planning Proposal – Operational Review of the Dubbo Local Environmental Plan 2011 (PDC 17/10) dated 18 April 2017.

During Public Forum Council heard from Mr Wes Maas in respect of item PDC 17/10. Mr Maas also tabled correspondence in relation to PDC 17/10 which is provided attached as **Appendix 1**. In respect of item PDC17/10, Mr Maas requested the following:

“That Council support the proposed amendments contained in the Operational review of the Dubbo Local Environmental Plan 2011 with the exception of the following:

- *The recommended changes to permissible land use activities for the RE2 Private Recreation Zone; and*
- *The recommended changes to the subdivision controls for Community Title and Torrens Title development for R1 and R2 zoned land.”*

Mr Maas provided the following justification in support of the requested amendments:

“As these matters are not considered minor operational matters and are not simply a ‘translation’ of the planning uses or requirements as currently drafted in the Dubbo LEP 2011 and any further amendment from what exists would have significant impact on the greater community. This would make community title development unfeasible and therefore would impact many.

Regarding the changes to the RE2 permissible land use zone this could have a significant impact on the current development application for a new quarry at 20L Sheraton Road, which is to be presented to the JRPP for determination.

The consequence of adoption as drafted by the officer are that the consent authority would have to give due regard to these provisions when determining an application which would include these additional matters beyond that of the current LEP.”

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

Council in consideration of PDC 17/10 resolved as follows:

"That the matter be deferred pending further consideration as a result of the submission received by Council during public forum."

This report provides details of Council's consideration of the submission made by Mr Maas and recommends that Council endorse the recommendations of the Manager City Strategy Services in his report dated 18 April 2017 (PDC17/10).

ORGANISATIONAL VALUES

Customer Focused: The Operational Review will provide cohesion between the use of the Dubbo Local Environmental Plan 2011 and the Wellington Local Environmental Plan 2012 for professionals and the community alike.

Integrity: The Operational Review will provide professionals with a local planning instrument that meets the requirements of the new Dubbo Regional Council.

One Team: Input and comments from across Council have been included in the report.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

The Planning Proposal is provided for consideration and endorsement to allow Council to seek a Gateway Determination from the Department of Planning and Environment. Receipt of the Determination will allow Council to further the proposed amendments to the LEP including consultation with the community and state agencies.

RECOMMENDATION

1. **That in respect of PDC17/10 the reports of the Manager City Strategy Services dated 18 April 2017 and 1 May 2017 be adopted.**
2. **That Mr Wes Maas be advised of Council's determination in this matter.**

Steven Jennings
Manager City Strategy Services

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

REPORT

1. Overall Intent of the Planning Proposal

As outlined in PDC17/10, the objectives of the LEP operational review are to amend/address any administrative concerns with the operation of the Dubbo Local Environmental Plan 2011 and to seek to provide a level of parity between the provisions as contained in the Dubbo LEP 2011 and the Wellington Local Environmental Plan 2012.

It is considered that each of the proposed amendments as included in the Planning Proposal are of an administrative nature and are consistent with the provisions of the Dubbo Rural Areas Development Strategy and/or the Dubbo Urban Areas Development Strategy.

2. Aquaculture in the RE2 Private Recreation zone

The Dubbo LEP 2011 currently allows for the provision of aquaculture on land zoned RE2 Private Recreation. Under the provisions of the Standard Instrument (Principal Local Environmental Plans) Order, 2006, aquaculture is a sub-component of the agriculture group term, which is as follows:

“Agriculture means any of the following:

- (a) aquaculture,*
- (b) extensive agriculture,*
- (c) intensive livestock agriculture,*
- (d) intensive plant agriculture.”*

Under the provisions of a number of State Environmental Planning Policies, the permissibility of aquaculture on the land, as a component of the Dubbo Local Environmental Plan 2011, could potentially allow for the possible development of other land use activities that are incompatible with the intent of the RE2 Private Recreation zone, including mining and extractive industry activities.

It should be noted that aquaculture was included as a permissible land use activity on land zoned RE2 Private Recreation above and beyond the provisions of State Environmental Planning Policy No. 62 – Sustainable Aquaculture. The intent of this provision was to ensure the majority of provisions associated with development were included in the Dubbo LEP 2011.

The submission provided to Council also includes information that the proposed removal of aquaculture as a permissible land use activity on the land in the Dubbo LEP 2011 could have a significant impact on Development Application No. D2016-482 which is for a new quarry development at 20L Sheraton Road, Dubbo (CCL17/42). The Environmental Planning and Assessment Act, 1979 includes specific provisions in respect of the consideration of a draft Local Environmental Plan or Planning Proposal as a component of the development assessment process. In particular, Section 79C(1)(a)(ii) requires a consent authority to take into consideration the provisions of the following in the assessment of a development

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

application:

“(ii) any proposed instrument that is or has been the subject of public consultation under this Act and has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved),”

It should be noted however that the subject Planning Proposal has not been adopted by Council and thus is not deemed to be a draft instrument for the purposes of Section 79C as the Planning Proposal is not currently or previously been the subject of public consultation.

Following Council adoption, the Planning Proposal is then required to be provided to the Department of Planning and Environment for assessment and provision of a Gateway Determination this determination, if granted will include permission to place the Planning Proposal on public exhibition and specify for how long the public consultation period should be. Council is not permitted to place any Planning Proposal on public exhibition until a Gateway Determination has been received.

Accordingly, given the current status of the Planning Proposal as no more than a proposal at this stage and the fact that the subject Development Application (DA) will be shortly considered by the Western Joint Regional Planning Panel (JRPP), the Planning Proposal does not have any status as part of the development assessment process in respect of Section 79C of the Environmental Planning and Assessment Act, 1979. It is therefore considered that the issue raised in the submission in respect of the potential impact of the proposed changes to the LEP on the consideration of a DA currently before the JRPP for determination do not require further consideration.

It is recommended that aquaculture be removed as a permissible land use activity in the RE2 Private Recreation zone as proposed.

3. Community Title and Torrens Title Subdivision

The Dubbo Local Environmental Plan 2011 includes specific minimum lot size mapping which provides a minimum allotment size for the majority of land subject to the provisions of the Dubbo LEP 2011. It should be noted that some lands do not have a minimum allotment size for subdivision. In addition, the Dubbo LEP 2011 also provides specific requirements associated with the subdivision of land under Community Title and Torrens Title.

Council over time has had numerous representations from developers and land owners that have sought to undertake Greenfield Community Title subdivision below the minimum lot size as included in the Dubbo LEP 2011. Council has also had representations from developers and land owners that have sought to undertake either Community Title or Torrens Title subdivision of a dual occupancy or multi-dwelling housing development that has not been completed in accordance with the requirements of an applicable development consent but which is reliant on the proposed development to ensure compliance with the subdivision objectives.

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

As an example most recently Council has received representations from a proponent of an approved multi-unit housing and serviced apartments (43 units) development and Community Title subdivision seeking the creation of vacant allotments significantly less than the minimum allotment size permitted which is 300 m². This developer is seeking to create vacant allotments with areas in the order of approximately 125m² or less without having to construct the approved units upon the lots.

(a) Clause 4.1AA Minimum Subdivision Lot Size for Community Title Schemes

Clause 4.1AA regulates the minimum lot size provisions for Community Title subdivisions. The Clause aims to ensure speculative subdivision is not undertaken below the minimum lot size. The subject Planning Proposal has sought to amend Clause 4.1AA to ensure the subdivision of Greenfield land under Community Title meets the minimum allotment size for the land. It is also proposed to extend the operation of Clause 4.1AA to the following zones:

- R1 General Residential;
- R2 Low Density Residential;
- R5 Large Lot Residential; and
- RU5 Village.

The Planning Proposal has also proposed to amend the Dubbo LEP 2011 to ensure subdivision of an approved dual occupancy or multi dwelling housing development is only released following the completion of the subject development. However, it should be noted that for land subject to the Clause that does not have a minimum allotment size for subdivision in the Dubbo LEP 2011, the proposed amendments to the subject clause will still allow for a Community Title subdivision be undertaken that is not in connection with a development consent for dual occupancy or multi dwelling housing.

Notwithstanding, it should be noted that the subject Planning Proposal has not been adopted by Council and thus is not deemed to be a draft instrument for the purposes of Section 79C as the Planning Proposal is not currently or previously been the subject of public consultation.

Following Council adoption, the Planning Proposal is then required to be provided to the Department of Planning and Environment for assessment and provision of a Gateway Determination this determination, if granted will include permission to place the Planning Proposal on public exhibition and specify for how long the public consultation period should be. Council is not permitted to place any Planning Proposal on public exhibition until a Gateway Determination has been received.

Accordingly, it is not until the Planning Proposal has been publically exhibited that it is required to be considered in relation to the assessment of an application.

(b) Clause 4.1A Minimum Subdivision Lot Size for zones RU5 and R2

Clause 4.1A allows for the Torrens Title subdivision of an approved and constructed dual occupancy development on land zoned R2 Low Density Residential and land zoned RU5

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

Village.

The Dubbo LEP 2011 allows subdivision of a lot below the minimum lot size on the Lot Size Map for dual occupancy development situated on land zoned RU5 Village and R2 Low Density Residential. Following gazettal of the LEP, Council has received numerous representations from developers and land owners that similar provisions are not available for development undertaken on land zoned R1 General Residential.

In addition, Council has received a number of representations from developers and land owners that have sought to undertake a Torrens Title subdivision of land that may include a partially completed development or in fact no development despite approval of the subdivision development being based on and reliant on the approved development consent for the overall development.

It is proposed to generally amend Clause 4.1A to include land zoned R1 General Residential and to include multi-dwelling housing as an applicable development type. It is also proposed to amend the clause to require the dual occupancy or multi-dwelling housing development to be constructed on the land prior to any Torrens Title subdivision being undertaken. However, it should be noted that for land subject to the Clause that does not have a minimum allotment size for subdivision in the Dubbo LEP 2011, the proposed amendments to the subject clause will still allow for a Torrens Title subdivision to be undertaken that is not in connection with a development consent for dual occupancy or multi dwelling housing.

Appendices:

- 1 Maas Submission - Planning Proposal - Operational Review of the Dubbo Local Environmental Plan 2011

Steve Guy

From: Steve Guy
Sent: Monday, 24 April 2017 3:52 PM
To: Wes Maas; Bill Kelly
Subject: FW: Address Council Meeting 24/04/17 - PDC 17/10 & CC17/42

Thankyou for the opportunity to address Council on these matters:

1. Regarding PDC 17/10 we request that recommendation 1 be amended as follows:

That Council support the proposed amendments contained in the Operational Review of the Dubbo Local Environmental Plan 2011 with the exception of the following;

- The recommended changes to permissible land use activities for the RE2 Private Recreation Zone; and
- the recommended changes to the subdivision controls for Community Title and Torrens Title Development for R1 and R2 zoned land.

As these matters are not considered minor operational matters and are not simply a 'translation' of the planning uses or requirements as currently drafted in the Dubbo LEP 2011 and any further amendment from what exists would have significant impact on greater community. This would make community title development unfeasible and therefore would impact many.

Regarding the changes to the RE2 permissible land use zone this could have a significant impact on the current development application for a new quarry at 20L Sheraton Road which is to be presented to the JRPP for determination.

The consequence of adoption as drafted by the officer are that the consent authority would have to give due regard to these provisions when determining an application which would include these additional matters beyond that of the current LEP.

2. Regarding CC17/42 we request that Council change the recommendation to refuse the development and alternatively support Development Application D16-482 for an extractive industry without further delay due to the ongoing and significant cost in holding the development from the consideration and determination of the JRPP.

As the development:

- i. Is permissible as presented within our legal advice to Council, Council's own legal advice and the interpretation provided to Council from the Department of Planning NSW;
- ii. Is compliant with statutory policy and best practice guidelines as provided and committed to in the submitted EIS. In this regard the development is considered to meet and exceed all prescribed requirements of environmental management and impact as presented within our EIS, consultant reports, issued General Terms of Approval from government authorities and the presentation of draft conditions of approval as provided within the attached report;
- iii. Councils report is considered to be misleading and contradictory given the detailed assessment and discussions provided within the application and the concurrence and legal counsel, Council staff, other government agency staff and such concurrence given between both parties during the course of the assessment;
- iv. We are of the opinion that all Government Officers including Council's own Assessment Planner who have physically been on site are supportive of the development which has led to a favourable assessment and the drafting of recommended conditions of consent and General Terms of Approval;
- v. It would not be in the interest of any operator to manage a development of this importance outside the recommended conditions of approval and future licensing requirements. The

- proposal is for the controlled and orderly development of the land in accordance with the submitted reports which have considered all surrounding sites their use both current and proposed;
- vi. It is good planning practice to consider a development in detail and for such development to demonstrate acceptable impact upon the surrounds. We have done this.

Steven Guy

General Manager

**MAAS
GROUP
PROPERTIES**

Mob: 0428 298 916

PO Box 332, Dubbo NSW 2830

www.maasgroupproperties.com.au

<http://maasgroupproperties.com.au/>



ADMINISTRATOR MINUTE: Planning Proposal - Operational Review of the Wellington Local Environmental Plan 2012 (PDC17/11)

AUTHOR: Administrator
REPORT DATE: 1 May 2017
TRIM REFERENCE: ID17/735

To the Council
Ladies and Gentlemen

Office of the Administrator
Civic Administration Building
Church Street, Dubbo

I refer to the subject matter and attach the report of the Manager City Strategy Services dated 1 May 2017 as **Appendix 1** to this report.

It is recommended that the recommendation of the Manager City Strategy Services be adopted.

RECOMMENDATION

1. That Council support the proposed amendments contained in the Operational Review of the Wellington Local Environmental Plan 2012.
2. That Council support a minimum 28 day public exhibition period for the Planning Proposal.
3. That Council resolve to not use its delegation under Section 59 of the Environmental Planning and Assessment Act, 1979 to draft the amendments to the Wellington Local Environmental Plan 2012.
4. That following the completion of the public exhibition period, a further report be provided to Council detailing the results of the public exhibition and for further consideration of the Planning Proposal.
5. That Mr Wes Maas be advised of Council's determination in this matter.

Michael Kneipp
Administrator

Appendices:

- 1↓ [Report of Manager City Strategy Services dated 1 May 2017](#)

EXTRAORDINARY COUNCIL MEETING
8 MAY 2017



REPORT: Planning Proposal - Operational Review of the Wellington Local Environmental Plan 2012 (PDC17/11)

AUTHOR: Manager City Strategy Services
REPORT DATE: 1 May 2017
TRIM REFERENCE: ID17/731

EXECUTIVE SUMMARY

Council at its meeting on 24 April 2017 considered a report from the Manager City Strategy Services in respect of Planning Proposal – Operational Review of the Wellington Local Environmental Plan 2012 (PDC 17/11).

During Public Forum, Council heard from Mr Wes Maas in respect of item PDC 17/10 which is for Planning Proposal – Operational Review of the Dubbo Local Environmental Plan 2011. Mr Maas also tabled correspondence in relation to PDC 17/10. In respect of the item, Mr Maas requested the following:

“That Council support the proposed amendments contained in the Operational review of the Dubbo Local Environmental Plan 2011 with the exception of the following:

- *The recommended changes to permissible land use activities for the RE2 Private Recreation Zone; and*
- *The recommended changes to the subdivision controls for Community Title and Torrens Title development for R1 and R2 zoned land.”*

In relation to Mr Maas’ request, the following justification was provided for the amendments sought to PDC 17/10 and while not specifically mentioned, it has been determined that they should consequently apply to PDC17/11 in respect of the Wellington Local Environmental Plan as well.

“As these matters are not considered minor operational matters and are not simply a ‘translation’ of the planning uses or requirements as currently drafted in the Dubbo LEP 2011 and any further amendment from what exists would have significant impact on the greater community. This would make community title development unfeasible and therefore would impact many.”

The submission made by Mr Maas is provided here in **Appendix 1**.

PDC 17/11, Planning Proposal, Operational Review of the Wellington Local Environmental Plan 2012, also includes similar amendments in respect of the controls for Community Title and Torrens Title subdivision as proposed to be included in the Dubbo Local Environmental

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

Plan 2011. Given the synergies between the Dubbo LEP 2011 and the Wellington LEP 2012, Council in consideration of PDC 17/11 resolved as follows:

"That the matter be deferred pending further consideration as a result of the submission received by Council during public forum."

This report provides details of Council's consideration of the submission made by Mr Maas and recommends that Council endorse the recommendations of the Manager City Strategy Services in his report dated 18 April 2017.

ORGANISATIONAL VALUES

Customer Focused: The Operational Review will provide cohesion between the use of the Wellington Local Environmental Plan 2012 and the Dubbo Local Environmental Plan 2011 for professionals and the community alike.

Integrity: The Operational Review will provide professionals with a local planning instrument that meets the requirements of the new Dubbo Regional Council.

One Team: Input and comments from across Council have been included in the report.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

The Planning Proposal is provided for consideration and endorsement to seek a Gateway Determination. Receipt of the Gateway Determination from the Department of Planning and Environment will allow Council to further the proposed amendments to the LEP including consultation with the community and state agencies.

RECOMMENDATION

1. **That in respect of PDC17/11, the reports of the Manager City Strategy Services dated 18 April 2017 and 1 May 2017 be adopted.**
2. **That Mr Wes Maas be advised of Council's determination in this matter.**

Steven Jennings
Manager City Strategy Services

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

REPORT

1. Overall Intent of the Planning Proposal

The objectives of the Operational Review are to amend/address any administrative concerns with the operation of the Wellington LEP 2012 and to seek to provide a level of parity between the provisions as contained in the Wellington LEP 2012 and the Dubbo LEP 2011.

It should also be noted that the Operational Review of the Wellington LEP 2012 has considered the need for developable residential land in Wellington in an attempt to meet the potential growing demand for housing associated with the new Wellington Gaol.

It is considered that each of the proposed amendments as included in the Planning Proposal are of an administrative nature only.

2. Community Title and Torrens Title Subdivision

The Wellington LEP 2012 includes specific minimum lot size mapping which provides a minimum allotment size for the majority of land subject to the provisions of the Wellington LEP 2012. It should be noted that some lands do not have a minimum allotment size for subdivision. In addition, the Wellington LEP 2012 also provides specific requirements associated with the subdivision of land under Community Title.

Council over time has had numerous representations from developers and land owners that have sought to undertake a Greenfield Community Title subdivision below the minimum lot size as included in the Wellington LEP 2012. Council has also had representations from developers and land owners that have sought to undertake either Community Title or Torrens Title subdivision of a dual occupancy or multi-dwelling housing development that has not been completed in accordance with the requirements of an applicable development consent, but which is reliant on the proposed development to ensure compliance with the subdivision objectives.

(a) Clause 4.1AA Minimum Subdivision Lot Size for Community Title Schemes

Clause 4.1AA regulates the minimum lot size provisions for Community Title subdivisions. The Clause aims to ensure speculative subdivision is not undertaken below the minimum lot size. The subject Planning Proposal has sought to amend Clause 4.1AA to ensure the subdivision of Greenfield land under Community Title meets the minimum allotment size for the land. It is also proposed to extend the operation of Clause 4.1AA to the following zones:

- R1 General Residential;
- R2 Low Density Residential;
- R5 Large Lot Residential; and
- RU5 Village.

**EXTRAORDINARY COUNCIL MEETING
8 MAY 2017**

The Planning Proposal has also proposed to amend the Wellington LEP 2012 to ensure subdivision of an approved dual occupancy or multi-dwelling housing development is only released following the completion of the subject development. However, it should be noted that for land subject to the Clause that does not have a minimum allotment size for subdivision in the Wellington LEP 2012, the proposed amendments to the subject clause will still allow for a Community Title subdivision to be undertaken that is not in connection with a development consent for dual occupancy or multi-dwelling housing.

(b) Clause 4.1A Minimum Subdivision Lot Size for zones RU5 and R2

The Wellington LEP 2012 does not currently allow for the subdivision of an approved residential development, including dual occupancies or multi-dwelling housing below the minimum allotment size for subdivision in the relevant zone. Often in these situations a proponent will not have the ability to undertake a Torrens Title subdivision of an approved development.

It is proposed to include a new Clause 4.1A that will allow Torrens Title subdivision of an approved residential development on land zoned RU5 Village, R1 General Residential or R2 Low Density Residential. In this instance an approved residential development will include a dual occupancy or multi-dwelling housing. However, it is also proposed that the residential development on the land is required to be completed prior to the Torrens Title subdivision being undertaken.

It should be noted that for land subject to the Clause that does not have a minimum allotment size for subdivision in the Wellington LEP 2012, the Clause will allow a Torrens Title subdivision to be undertaken that is not in connection with a development consent for dual occupancy or multi dwelling housing.

Appendices:

- 1 Submission from Mr W Maas dated 24 April 2017

APPENDIX NO: 1 - SUBMISSION FROM MR W MAAS DATED 24 APRIL 2017

ITEM NO:

Steve Guy

From: Steve Guy
Sent: Monday, 24 April 2017 3:52 PM
To: Wes Maas; Bill Kelly
Subject: FW: Address Council Meeting 24/04/17 - PDC 17/10 & CC17/42

Thankyou for the opportunity to address Council on these matters:

1. Regarding PDC 17/10 we request that recommendation 1 be amended as follows:

That Council support the proposed amendments contained in the Operational Review of the Dubbo Local Environmental Plan 2011 with the exception of the following;

- The recommended changes to permissible land use activities for the RE2 Private Recreation Zone; and
- the recommended changes to the subdivision controls for Community Title and Torrens Title Development for R1 and R2 zoned land.

As these matters are not considered minor operational matters and are not simply a 'translation' of the planning uses or requirements as currently drafted in the Dubbo LEP 2011 and any further amendment from what exists would have significant impact on greater community. This would make community title development unfeasible and therefore would impact many.

Regarding the changes to the RE2 permissible land use zone this could have a significant impact on the current development application for a new quarry at 20L Sheraton Road which is to be presented to the JRPP for determination.

The consequence of adoption as drafted by the officer are that the consent authority would have to give due regard to these provisions when determining an application which would include these additional matters beyond that of the current LEP.

2. Regarding CC17/42 we request that Council change the recommendation to refuse the development and alternatively support Development Application D16-482 for an extractive industry without further delay due to the ongoing and significant cost in holding the development from the consideration and determination of the JRPP.

As the development:

- i. Is permissible as presented within our legal advice to Council, Council's own legal advice and the interpretation provided to Council from the Department of Planning NSW;
- ii. Is compliant with statutory policy and best practice guidelines as provided and committed to in the submitted EIS. In this regard the development is considered to meet and exceed all prescribed requirements of environmental management and impact as presented within our EIS, consultant reports, issued General Terms of Approval from government authorities and the presentation of draft conditions of approval as provided within the attached report;
- iii. Council's report is considered to be misleading and contradictory given the detailed assessment and discussions provided within the application and the concurrence and legal counsel, Council staff, other government agency staff and such concurrence given between both parties during the course of the assessment;
- iv. We are of the opinion that all Government Officers including Council's own Assessment Planner who have physically been on site are supportive of the development which has led to a favourable assessment and the drafting of recommended conditions of consent and General Terms of Approval;
- v. It would not be in the interest of any operator to manage a development of this importance outside the recommended conditions of approval and future licensing requirements. The

1

proposal is for the controlled and orderly development of the land in accordance with the submitted reports which have considered all surrounding sites their use both current and proposed;
vi. it is good planning practice to consider a development in detail and for such development to demonstrate acceptable impact upon the surrounds. We have done this.

Steven Guy

General Manager

**MAAS
GROUP
PROPERTIES**

Mob: 0428 298 916

PO Box 332, Dubbo NSW 2830

www.maasgroupproperties.com.au

<http://maasgroupproperties.com.au>