



Draft Planning Proposal

Walgett Local Government Area

September 2020 ■ 17

Submitted to

NSW Planning, Industry & Environment
On Behalf of Walgett Shire Council

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Local Government Area:		Walgett Shire Council
Name of Draft LEP:		As per issue of Gateway Determination
Subject Land:		All Land zoned RU1
Land Owner:		Numerous
Applicant:		Walgett Shire Council
File Number:		11/145
Date:		Draft – 17 September 2020
Author:		Libby Cumming
Tables:	Table No.	Details
	1	Assessment of the Planning Proposal against relevant SEPPs
	2	Assessment of the Planning Proposal against relevant draft SEPPs
	3	Consistency with applicable Ministerial Directions
Figures		
	Nil	
Maps:		
	Nil	
Attachments:	No.	Details
	1	Appendixes A. Report to Ordinary Council – 25 August 2020 B. Resolution XXX of Ordinary Council – 25 August 2020
	2	Evaluation criteria for the delegation of plan making functions

Part 1 – OBJECTIVES OR INTENDED OUTCOMES

The objective of the Planning Proposal is to amend *Walgett Local Environmental Plan 2013* in order to relocating “**intensive plant agriculture**” from **Permitted with consent** to **Permitted without consent** in the RU1 Primary Production zone. It is intended to amend the RU1 Land Use Table.

The intended outcome is to enable intensive plant agriculture to be undertaken without consent.

Part 2 – EXPLANATION OF PROVISIONS

The proposed objective will be achieved by amending the MLEP 2009 by relocating “**intensive plant agriculture**” from **Permitted with consent** to **Permitted without consent** in the RU1 Primary Production Land Use Table.

Part 3 – JUSTIFICATION

Section A – Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is supported by the Walgett Shire Council adopted by Council at its ordinary meeting on 25 August 2020.

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

The planning proposal is considered to be the best means of achieving the permissibility of intensive plant agriculture within the RU1 primary Production zone.

Section B – Relationship to Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Far West Regional Plan 2036

The Far West Regional Plan 2036 sets out a vision for the Far West Region. The proposed amendment to *Walgett Local Environmental Plan 2013* will address:

Direction 1:- Grow the economic potential of the agribusiness sector.

Action 1.2 – Promote agribusiness diversification by reviewing local plan and removing planning barriers.

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Walgett Community Strategic Plan 2017-2027

The proposal is considered consistent with the following goals within the Walgett Community Strategic Plan 2017-2027:

Issue: *Economic Development*

Goal E2.1: *An attractive environment for business, tourism and industry.*

Strategy 2.1.1: *Implement tools to simplify development processes and encourage quality commercial, industrial and residential development.*

Goal E2.2: *Employment opportunities that supports local industries*

Strategy 2.2.3: *Support and encourage existing business and industry to development grow.*

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with the following relevant State Environmental Planning Policies (SEPPs) outlined in Table 1 below.

Table 1: Assessment of the Planning Proposal against relevant SEPPs

SEPP	Relevance	Implications
SEPP 19 — Bushland n Urban Areas	The SEPP aims to protect and preserve bushland within the urban areas because of its value to the community as part of the natural heritage, its aesthetic value, and its value as a recreational, educational and scientific resource.	Not Applicable
SEPP 21 — Caravan Parks	The SEPP ensures that where caravan parks or camping grounds are permitted under an environmental planning instrument, movable dwellings, as defined in the Local Government Act 1993, are also permitted.	Not Applicable
SEPP 33 — Hazardous and Offensive Development	The SEPP provides considerations for consent for hazardous & offensive development.	Not Applicable

SEPP 36 – Manufactured Homes Estates	The SEPP helps establish well-designed and properly serviced manufactured home estates in suitable locations.	Not Applicable
SEPP 44 — Koala Habitat Protection	This SEPP applies to land across NSW that is greater than one (1) hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	It is not proposed to include any provisions which would be inconsistent with the SEPP.
SEPP 47 – Moore Park Showground	Applies to the land shown edged heavy black on the map marked “ <i>Moore Park Showground Amendment No 1</i> ”	Not Applicable
SEPP 50 Canal Development	This SEPP bans new canal estates from the date of gazettal, to ensure coastal and aquatic environments are not affected by these developments.	Not Applicable
SEPP 55 — Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.	Applicable It is not proposed to include any provisions which would be inconsistent with the SEPP
SEPP 64 — Advertising and Signage	The SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish.	Not Applicable
SEPP 65 — Design Quality of Residential Flat Development	The SEPP relates to residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential flat development.	Not Applicable
SEPP 70 – Affordable Housing (Revised Schemes)	This SEPP identifies that there is a need for affordable housing across the whole of the State, and describes the kinds of households for which affordable housing may be provided, and makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing.	Not Applicable

Aboriginal Land 2019	This SEPP provides for development delivery plans for areas of land owned by Local Aboriginal Land Councils to be considered when development applications are considered, and declares specified development carried out on land owned by Local Aboriginal Land Councils to be regionally significant development.	Not Applicable
Affordable Rental Housing 2009	The SEPP provides for an increase in the supply and diversity of affordable rental and social housing in NSW.	Not Applicable
Building Sustainability Index: BASIX 2004	The SEPP provides for the implementation of BASIX throughout the State.	Not Applicable
Coastal Management 2018	This SEPP promotes an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the <i>Coastal Management Act 2016</i> , including the management objectives for each coastal management area.	Not Applicable
Concurrences 2018	This SEPP allows the Planning Secretary to act as a concurrence authority.	Not Applicable
Educational Establishments and Child Care Facilities 2017	This SEPP facilitates the effective delivery of educational establishments and early education and care facilities across the state.	Not Applicable
Exempt and Complying Development Codes 2008	The SEPP provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate.	Applicable It is not proposed to include any provisions which would be inconsistent with the SEPP.
Gosford City Centre 2018	This SEPP applies to the Gosford City Centre.	Not Applicable

Housing for Seniors or People with a Disability 2004	The SEPP aims to encourage provision of housing for seniors, including residential care facilities. The SEPP provides development standards.	Not Applicable
Infrastructure 2007	The SEPP provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	Not Applicable
Kosciuszko National Park – Alpine Resorts 2007	This SEPP applies to part of Kosciuszko National Park, and to Kosciuszko Road and the Alpine Way. The part of Kosciuszko National Park to which the Policy applies is the land described as the <i>ski resort area</i> in Part 8A of Schedule 6 to the Act.	Not Applicable
Kurnell Peninsula 1989	This SEPP applies to the land within the Shire of Sutherland, known as Kurnell Peninsula, and adjacent waterways.	Not Applicable
Mining, Petroleum Production & Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	Not Applicable
Miscellaneous Consent Provisions 2007	This SEPP provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity.	Not Applicable
Penrith Lakes Scheme 1989	This SEPP applies to the land shown edged heavy black on the structure plan relating to Penrith Lakes.	Not Applicable
Primary Production and Rural Development 2019	This SEPP facilitates the orderly economic use and development of lands for primary production; reduce land use conflict and sterilisation of rural land.	Applicable It is not proposed to include any provisions which would be inconsistent with the SEPP.
State and Regional Development 2011	This SEPP identifies development that is State significant development or State significant infrastructure and critical State significant infrastructure and to confer functions on joint regional planning panels to determine development applications.	Not Applicable

State Significant Precincts 2005	This SEPP facilitates the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State, and facilitates service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.	Not Applicable
Sydney Drinking Water Catchment 2011	This SEPP provides for healthy water catchments that will deliver high quality water while permitting compatible development.	Not Applicable
Sydney Region Growth Centres 2006	This SEPP co-ordinates the release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre and the Wilton Growth Area	Not Applicable
Three Ports 2013	This SEPP provides a consistent planning regime for the development and delivery of infrastructure on land in Port Botany, Port Kembla and the Port of Newcastle.	Not Applicable
Urban Renewal 2010	This SEPP establishes the process for assessing and identifying sites as urban renewal precincts, and facilitates the orderly and economic development and redevelopment of sites in and around urban renewal precincts,	Not Applicable
Vegetation in Non-Rural Areas 2017	This SEPP protects the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserves the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Not Applicable
Western Sydney Employment Area 2009	This SEPP protects and enhances the land known as the Western Sydney Employment Area for employment purposes	Not Applicable

Western Sydney Parklands 2009	This SEPP puts in place planning controls that will enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland for the region of western Sydney	Not Applicable
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The Planning Proposal is consistent with the following relevant draft State Environmental Planning Policies (SEPPs) outlined in Table 2 below.

Table 2: Assessment of the Planning Proposal against relevant draft SEPPs

SEPP	Relevance	Implications
SEPP 44 – Koala Habitat Protection	The key changes in the proposed amended SEPP relate to the definitions of koala habitat; list of tree species; list of councils; and development assessment process.	Applicable It is not proposed to include any provisions which would be inconsistent with the draft SEPP.
SEPP 55 – Remediation of Land	The proposed SEPP will provide a state-wide planning framework for the remediation of land; require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly list the remediation works that require development consent; and introduce certification and operational requirements for remediation works that can be undertaken without development consent.	Applicable It is not proposed to include any provisions which would be inconsistent with the draft SEPP.
SEPP (Environment)	This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.	Not Applicable
SEPP (Codes)	<p>The SEPP review program is examining the existing policies to consider:</p> <ul style="list-style-type: none"> • whether they are still relevant • the need to update and integrate into a new SEPP or elsewhere in the planning framework. <p>The review intends to remove policy and controls that are duplicated in strategies, regional plans and LEPs.</p>	Applicable It is not proposed to include any provisions which would be inconsistent with the draft SEPP.

6. *Is the planning proposal consistent with applicable Ministerial Directions?*

An assessment of the Planning Proposal and its consistency against the applicable Ministerial Directions is provided at Table 3 below.

Table 3: Consistency with applicable Ministerial Directions

Ministerial Direction	Objective/s	Consistency / Comment
1. Employment and Resources		
1.1 Business and Industrial Zones	(a) Encourage employment growth in suitable locations, (b) Protect employment land in business and industrial zones, and (c) Support the viability of identified strategic centres.	Not Applicable
1.2 Rural Zones	To protect the agricultural production value of rural land.	This Direction is consistent because there is no rezoning involved.
1.3 Mining, Petroleum Production and Extractive Industries	To ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Not Applicable
1.4 Oyster Aquaculture	(a) to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, (b) to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.	Not Applicable
1.5 Rural Lands	(a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic use and development of rural lands for rural and related	Applicable This Direction is consistent because there is no rural land fragmentation and it will not adversely affect the operation and viability of any rural land use or their related

	<p>purposes,</p> <p>(c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State,</p> <p>(d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,</p> <p>(e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land</p> <p>(f) support the delivery of the actions outlined in the New South Wales Right to Farm Policy</p>	<p>enterprises, including support infrastructure and facilities that are essential to rural industries or supply chains.</p> <p>This change will open up large scale irrigation cropping for cereal and cotton farmers, which are one of the biggest agricultural industries in the local government area, and region.</p>
2. Environment and Heritage		
2.1 Environment Protection Zones	To protect and conserve environmentally sensitive areas.	Not Applicable
2.2 Coastal Protection	To protect and manage coastal areas of NSW.	Not Applicable
2.3 Heritage Conservation	To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Not Applicable
2.4 Recreation Vehicle Areas	To protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.	Not Applicable
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	To ensure that a balanced and consistent approach is taken when applying environmental protection zones and overlays to land on the NSW Far North Coast.	Not Applicable

3. Housing, Infrastructure & Urban Development		
3.1 Residential Zones	<ul style="list-style-type: none"> (a) Encourage a variety and choice of housing types to provide for existing and future housing needs, (b) Make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) Minimise the impact of residential development on the environment and resource lands. 	Not Applicable
3.2 Caravan Parks and Manufactured Home Estates	<ul style="list-style-type: none"> (a) To provide for a variety of housing types, and (b) To provide opportunities for caravan parks and manufactured home estates. 	Not Applicable
3.3 Home Occupations	To encourage the carrying out of low-impact small businesses in dwelling houses.	Not Applicable
3.4 Integrating Land Use and Transport	<p>To ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <ul style="list-style-type: none"> (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. 	Not Applicable

3.5 Development Near Licensed Aerodromes	<ul style="list-style-type: none"> (a) Ensure the effective and safe operation of aerodromes, and (b) Ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and (c) Ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise. 	<p>Applicable</p> <p>Both the Walgett and Lightning Ridge Airport are regulated airports. Only Walgett Airport adjoins the RU1 zone.</p> <p>The proposed change in permissibility is considered to have a negligible impact on the airport.</p> <p>Consultation has not been undertaken, but it is expected that it will be required as part of the Gateway Determination.</p>
3.6 Shooting Ranges	<ul style="list-style-type: none"> (a) to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range, (b) to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land, (c) to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range. 	<p>Not Applicable</p>
3.7 Reduction in non-hosted short-term rental accommodation period	<ul style="list-style-type: none"> (a) To mitigate significant impacts of short-term rental accommodation where non-hosted short-term rental accommodation period are to be reduced, and (b) ensure the impacts of short-term rental accommodation and views of the community are considered. 	<p>Not Applicable</p>

4. Hazard & Rise		
4.1 Acid Sulfate Soils	To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	Not Applicable
4.2 Mine Subsidence and Unstable Land	To prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Not Applicable
4.3 Flood Prone Land	<p>(a) To ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i>, and</p> <p>(b) To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>Applicable</p> <p>This Direction is consistent because the proposed change in permissibility does not impact on residential development. The land would still be flood prone and intensive plant agriculture is an agricultural use that would be impacted by flood waters, whether it required consent to undertake or if it is permissible without consent.</p>
4.4 Planning for Bushfire Protection	<p>(a) To Protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</p> <p>(b) To encourage sound management of bush fire prone areas.</p>	<p>Applicable</p> <p>This Direction is consistent because the change in permissibility will have negligible impact on bushfire. It is expected that consultation with the NSW Rural Fire Service will be a requirement of the Gateway Determination.</p>
5. Housing, Infrastructure & Urban Development		
5.1 Implementation of Regional Strategies	Revoked 17 October 2017	
5.2 Sydney Drinking Water Catchment	To protect water quality in the Sydney drinking water catchment.	Not Applicable

5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<ul style="list-style-type: none"> (a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre, (b) to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and (c) to reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas. 	Not Applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	<ul style="list-style-type: none"> (a) to protect the Pacific Highway's function, that is to operate as the North Coast's primary inter and intra-regional road traffic route; (b) to prevent inappropriate development fronting the highway; (c) to protect public expenditure invested in the Pacific Highway; (d) to protect and improve highway safety and highway efficiency; (e) to provide for the food, vehicle service and rest needs of travellers on the highway; and (f) to reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns. 	Not Applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Revoked 18 June 2010	

5.6 Sydney to Canberra Corridor	Revoked 10 July 2008	
5.7 Central Coast	Revoked 10 July 2008	
5.8 Second Airport: Badgerys Creek	Revoked 20 August 2018	
5.9 North West Rail Link Corridor Strategy	<p>(a) promote transit-oriented development and manage growth around the eight train stations of the North West Rail Link (NWRL)</p> <p>(b) ensure development within the NWRL corridor is consistent with the proposals set out in the NWRL Corridor Strategy and precinct Structure Plans.</p>	Not Applicable
5.10 Implementation of Regional Plans	To give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	<p>Applicable</p> <p>This Direction is consistent because it directly relates to <i>Direction 1 (Grow the economic potential of the agribusiness sector)</i> and specifically <i>Action 1.2 (Promote agribusiness diversification by reviewing local plan and removing planning barriers)</i> within the <i>Far west Regional Plan 2036</i>.</p>
5.11 Development of Aboriginal Land Council Land	To provide for the consideration of development delivery plans prepared under State Environmental Planning Policy (Aboriginal Land) 2019 when planning proposals are prepared by a planning proposal authority.	Not Applicable
6. Local Plan Making		
6.1 Approval and Referral Requirements	To ensure that LEP provisions encourage the efficient and appropriate assessment of development.	<p>Applicable</p> <p>This Direction is consistent because it is not proposed to include any provisions which would be inconsistent.</p>

6.2 Reserving Land for Public Purposes	<p>(a) To facilitate the provision of public services and facilities by reserving land for public purposes, and</p> <p>(b) To facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p>	Not Applicable
6.3 Site Specific Provisions	To discourage unnecessarily restrictive site-specific planning controls.	Not Applicable
7. Metropolitan Planning		
7.1 Implementation of A Plan for Growing Sydney	To give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	Not Applicable
7.2 Implementation of Greater Macarthur Land Release Investigation	To ensure development within the Greater Macarthur Land Release Investigation Area is consistent with the Greater Macarthur Land Release Preliminary Strategy and Action Plan (the Preliminary Strategy).	Not Applicable
7.3 Parramatta Road Corridor Urban Transformation Strategy	<p>(a) facilitate development within the Parramatta Road Corridor that is consistent with the Parramatta Road Corridor Urban Transformation Strategy (November, 2016) and the Parramatta Road Corridor Implementation Tool Kit,</p> <p>(b) provide a diversity of jobs and housing to meet the needs of a broad cross-section of the community, and</p> <p>(c) guide the incremental transformation of the Parramatta Road Corridor in line with the delivery of necessary infrastructure.</p>	Not Applicable

7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	To ensure development within the North West Priority Growth Area is consistent with the North West Priority Growth Area Land Use and Infrastructure Strategy (the Strategy).	Not Applicable
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	To ensure development within the Greater Parramatta Priority Growth Area is consistent with the Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan dated July 2017 (the interim Plan).	Not Applicable
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Plan	To ensure development within the Wilton Priority Growth Area is consistent with the Wilton Interim Land Use and Infrastructure Implementation Plan and Background Analysis.	Not Applicable
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	To ensure development within the precincts between Glenfield and Macarthur is consistent with the plans for these precincts.	Not Applicable

Section C – Environmental, Social and Economic Impact

7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

Currently any intensive plant agriculture would require the submission of a development application and consent of Council. The development application would be require supporting investigation into biodiversity impact. As Council does not have the technical resources to interrogate the supporting documentation, consultation would be undertaken with relevant agencies for advice.

As irrigation and land clearing are normal establishment practices for the establishment of *intensive plant agriculture*, result of changing the permissibility within the *Walgett Local Environmental Plan 2013* would be that NSW Water would become the approval authority for the dam construction and Local Land Services for the land clearing. Both would require supporting documentation as part of their application process, and both have the technical resources to properly integrate that supporting investigation documentation. Both agencies have the relevant legislative controls to act appropriately based on the assessed biodiversity impact.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed

All environmental impacts would be managed by the approval put in place from NSW Water and Local Land Services.

9. How has the planning proposal adequately addressed any social and economic effects?

It is unlikely that there would be any adverse impacts in terms of either social or economic associated with the planning proposal.

Section D – State and Commonwealth Interests

10. Is there adequate public infrastructure for the planning proposal

Yes, there is no proposed change or impact.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

No agencies have been consulted.

Part 4 – MAPPING

There are no proposed mapping changes.

Part 5 – COMMUNITY CONSULTATION

The Planning Proposal, and other supporting information, has not been placed on public exhibition. It is considered that an appropriate public exhibition period would be 14 days.

Part 6 – PROJECT TIMELINE

Action	Timeframe
Anticipated commencement date (date of Gateway determination)	October
Timeframe for government agency consultation	November
Public exhibition (commencement and completion dates)	November
Date of Public hearing (if required)	Not Applicable
Consideration of submissions	December
Timeframe for government agency consultation (post exhibition if required)	December
Post exhibition planning proposal consideration /	December

preparation
Submission to Department to finalise LEP

January

Council intends to utilise delegations under s3.36 of the EP & A Act 1979 to finalise the Planning Proposal.

Attachment 1

APPENDICES

Appendix A: Report to Ordinary Council – 25 August 2020

Appendix B: Resolution 9/2020/23 of Ordinary Council – 25 August 2020

10.3.2 PLANNING PROPOSAL - INTENSIVE PLANT AGRICULTURE

REPORTING SECTION: Planning
AUTHOR: Libby Cumming, Contract Planner
FILE NUMBER: 11/145

Summary:

This report is to amend the *Walgett Local Environmental Plan 2013* (WLEP 2013) by relocating “**intensive plant agriculture**” from **Permitted with consent** to **Permitted without consent** in the RU1 Primary Production zone.

Background:

Council has recently received development enquiries from 2 landholders wishing to construct a dam being 250 – 400 megalitre dam to support 200-250 ha of cropping. This will involve approximately 150 – 200 ha of land clearing with each. The actual crop may either be cotton or a cereal crop.

As the crops will be irrigated, Local Land Services consider the approval process to be Council’s responsibility as it is classified as being “**intensive plant agriculture**”, there a development application would be required.

Current Position:

The WLEP 2013 defines “**intensive plant agriculture**” as *being any of the following—*

- a) *the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),*
- b) *horticulture,*
- c) *turf farming,*
- d) *viticulture.*

A review of surrounding Shires found that only Brewarrina required development consent for “**intensive plant agriculture**” where the remainder Shires had it as **Permitted without consent**.

Discussions with the NSW Planning, Industry & Environment have stated that the area is a grey area and that cotton crops would definitely be classified as being “**intensive plant agriculture**”, but cereal crops may not be. They provided the attached Department of Industry Fact Sheet for information purposes. Their advice was to prepare a Planning proposal to amend the WLEP by relocating “**intensive plant agriculture**” from **Permitted with consent** to **Permitted without consent** in the RU1 Primary Production zone.

If Council determines that this amendment is appropriate amendment to the WLEP 2013, the process from there will be:

1. Prepare a Planning Proposal as per the NSW Planning Industry & Environment (NSW Planning) document *A Guide to Preparing Planning Proposals* and will meet the legislated requirement under the *Environmental Planning & Assessment Act 1979*
2. Council requests a Gateway Determination from NSW Planning. The Western Regional NSW Planning Office will assess and make a recommendation to the Minister on the merit of the Planning Proposal, and will make recommendation on any conditions that should

be attached to the Planning Proposal progressing. This will also determine the consultation state agency/public requirement and timeframe.

3. After Consultation, all written submissions are considered by an Ordinary Meeting of Council.
4. If accepted by Council, an Opinion is requested from Parliamentary Counsel, who provide the written legal opinion as to how the WLEP 2013 may be amended.
5. This opinion will be presented to Council to “make” the amendment to the WLEP. This is the term whereby Council has been given delegation from the Minister for NSW Planning under the Gateway Determination to act on his behalf and adopt the amended instrument.
6. Once “made”, the amended WLEP 2013 is gazetted and uploaded to the NSW Planning Portal.

Relevant Reference Documents:

Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000
Walgett Local Environmental Plan 2013
A Guide to Preparing Planning Proposals

Governance issues:

Council’s charter: - Section 8 of the *Local Government Act 1993* establishes Council’s charter.

Stakeholders:

NSW Planning, Industry & Environment,
Walgett Shire Council
Rural land Holders

Financial Implications:

Nil

Alternative Solutions/Options:

If Council does nothing, it will be required to accept a development application for all land owners who wish to establish a dam for irrigation, and consider land clearing and crop type as part of the development assessment process.

Conclusion:

To alleviate this issue, the best way is to amend the WLEP 2013 by relocating “**intensive plant agriculture**” from **Permitted with consent** to **Permitted without consent** in the RU1 Primary Production zone. This would result in Local Land services becoming the approval authority for land clearing, and NDSW Water for the being the approval authority for the dam construction.

Planning Proposal – Intensive Plant Agriculture
<p>Recommendation:</p> <p>That Walgett Shire Council resolve to:</p>

1. Prepare a Planning Proposal to amend the Walgett Local Environmental Plan 2013 by relocating “intensive plant agriculture” from Permitted with consent to Permitted without consent in the RU1 Primary Production zone.
2. Forward the planning proposal to NSW planning, industry & environment with a request for a gateway determination;
3. Request delegation from the Minister to “make” the amendment to the Walgett Local Environmental Plan 2013;
4. Give delegation to the General Manager to make any minor alterations as requested by NSW Planning, Industry & Environment; and
5. Undertake the state agency and public consultation as per the requirements of the Gateway Determination and Schedule 1, Clause 4 of the Environmental Planning & Assessment Act 1979,

Moved:

Seconded:

Attachments:

Department of Primary industries – Fact Sheet – Preparing Intensive Plant Agriculture Development Applications

Preparing Intensive Plant Agriculture Development Applications

Mary Kovac, Glenda Briggs, David Davis, Melissa Kahler

Introduction

This factsheet sets out the relevant issues to consider when preparing a development application for intensive plant production.

The factsheet focuses on agricultural issues rather than the full range of issues that applicants must address. Intensive plant agriculture includes horticulture and viticulture.

This factsheet helps applicants, consultants and the general public to identify issues to be addressed when undertaking intensive plant agriculture development opportunities and minimising the risk of land use conflict.

Intensive plant agriculture development applications (DAs) may require the applicant or Council to seek additional specialist advice from other government agencies and independent planning, agricultural and/or agri-business consultants. Other factsheets which may provide further information include [Preparing a development application for intensive agriculture in NSW](#) and [Assessing intensive plant agriculture development applications](#).

Councils are the usual planning and development consent authority in NSW, so all DA enquiries should be directed to the relevant local council in the first instance.

What is Intensive Plant Agriculture?

Intensive plant agriculture and various component activities are defined in the Standard Instrument - Local Environmental Plans (LEP) Order 2006¹.

Table 1 lists the types of agriculture covered by each term as defined in the Standard Instrument. Older LEPs have varied definitions that may not be in the Standard Instrument.

Table 1 Standard Instrument Definitions

Standard LEP Definitions	Type of development
Intensive Plant Agriculture	Any of the following carried out for commercial purposes: <ul style="list-style-type: none"> a) cultivation of irrigated crops (other than pasture or fodder crops), b) horticulture, c) turf farming, d) viticulture
Horticulture	The cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include retail sales or viticulture
Turf farming	Commercial cultivation of turf for sale and the removal of turf for that purpose
Viticulture	Cultivation of grapes for commercial purposes for use in the production of fresh or dried fruit or wine

The Standard Instrument LEP does not specifically define what comprises an irrigated crop (other than pasture or fodder crops), but this might include any irrigated vegetable, flower, fruit or nut, cotton or rice crop grown for commercial purposes.

Is Development Consent Required?

The Standard Instrument LEP provides considerable flexibility by allowing councils to:

¹ Standard Instrument (Local Environmental Plans) Order 2006

- ☑ identify if development consent is required for various forms of intensive plant agriculture and in what zone
- ☑ specify different minimum lot sizes (for a dwelling) in specific locations and/or zones, and
- ☑ to zone land suitable for smaller scale intensive plant agriculture as a Rural Small Holdings Zone (RU4).

Some forms of intensive plant agriculture may require development consent, depending on the Local Environmental Plan or the land use zone, for example:

- ☑ Broadacre irrigated crops such as cotton or lucerne are also usually considered to be extensive agriculture and do not require consent. However, a LEP may prescribe that irrigated agriculture, or developments that involve aerial spraying may require consent.
- ☑ Horticulture or viticulture might require consent in an Environmental zone, but not in a rural zone. All forms of intensive agriculture may be prohibited in a Rural Residential zone.

Pre-application Enquiries

Given the flexibility provided by the Standard Instrument LEP it is important applicants contact the local councils before commencing an intensive plant agriculture development, to verify if development consent is required.

Pre lodgement advice from council can be critical for ensuring sustainable development of rural lands. Useful assistance from council may include:

- ☑ a copy of the relevant sections of the LEP, Development Control Plans (DCPs) and State Environmental Planning Policies (SEPPs)
- ☑ a written guide as to the type of supporting information to accompany the DA
- ☑ indicating Council's policy on intensive agricultural development in that zone or locality
- ☑ providing a copy of this factsheet.

Land Use Conflict

Intensive plant agriculture can involve a range of activities that might lead to conflict with adjoining properties.

Land use conflict may result from many factors such as dust generation, noise from harvesting activities, chemical usage and spray drift and pest control methods such as "lawful" shooting of pests.

The factsheet, [Land Use Conflict Risk Assessment](#) provides information on assessing the potential for land use conflict between neighbouring land uses.

Good communication between neighbours and monitoring (eg checking wind direction before cultivating paddocks) can greatly reduce the incidence and intensity of conflict and reduce opposition to intensive agricultural activities.

The overriding principal is that agricultural operations should not have significant adverse "off site" impacts on the environment. This includes; soil, water, vegetation and the local amenity (air quality, noise levels and visibility).

In all cases, early and regular consultation with consent authorities is recommended.



Intensive production of blueberries under netting- Photo NSW DPI

Where a high risk of conflict is identified possible consent conditions might include:

- ☑ developing an Environmental Management Plan that documents the key environmental issues and proposed management actions to mitigate / avoid conflicts and is periodically updated (eg annually)
- ☑ maintaining a log of key farm activities (eg major traffic movements, cultivation or harvesting activities)
- ☑ maintaining a record of complaints and remedial actions can help to readily identify the issues and whether any further remediation is required and making these documents available for Council inspection in response to reasonable requests
- ☑ ensuring new non-agricultural developments on adjoining land (eg new dwellings) include mitigation of potential conflicts as part of their own approval

Recommended Information to accompany Development

Applications (including subdivision and a dwelling)

A development application using the prescribed form must be lodged with the relevant local council.

It is also necessary to provide sufficient documentation to demonstrate that all significant environmental impacts have been identified and can be reasonably mitigated.

A Statement of Environment Effects (SEE) normally accompanies the Development Application. If the proposal is a designated development an Environmental Impact Statement will be required. Both documents cover similar site related issues.

In some council areas further detail may also be required as part of a property management or farm plan. Photos can be used to explain features.

A risk management approach is recommended when considering possible impacts and consent conditions.

Where agricultural lands and agricultural activities are dominant elements of the proposal, NSW DPI additionally recommends that the application should demonstrate the merits and sustainability of the proposal. This requires specific assessment of the capability of the subject land, any land use limitations, and economic sustainability.

Specific details that should accompany an application include:

Applicant and Property details

- ☒ applicant name, address, contact details
- ☒ owner name, lot and DP, local government area
- ☒ zoning of the land and a list of the relevant planning provisions (eg Rural SEPP, LEP clauses, DCP clauses)
- ☒ current lot configuration, lot size and land use
- ☒ proposed subdivision, lot configuration, lot sizes and intended uses.

Existing Environment and Suitable Resources for Intensive Agricultural Development:

An aerial photograph or a map/s of the property showing:

- ☒ general location of the property
- ☒ property boundary and existing lot configuration

- ☒ key agricultural industries in the general locality
- ☒ the relative location of existing and proposed residences on the property and nearby
- ☒ utilities and easements, crown lands and rights-of-way, roads and access tracks, buildings on the property
- ☒ relevant farm infrastructure (eg paddock layout, dams and existing irrigation systems, farm sheds) and other structures, and
- ☒ topography and natural features including aspect, slope, drainage, waterways, creeks and native vegetation.



Production of eggplants – Photo NSW DPI

Additional information concisely describing (or mapping):

- ☒ land use history on the site and an assessment of the potential impact of the subdivision on such land use
- ☒ local climatic conditions and the suitability / risks for the proposed intensive plant development
- ☒ existing and proposed vegetation (cropping areas, improved pastures, windbreaks, plantations, native vegetation remnants, riparian zones etc.)
- ☒ soils of the property and providing an overview of their suitability and value for the proposed use including soil testing results and an estimate of productive or carrying capacity
- ☒ environmentally sensitive features of the property such as wetlands, remnant vegetation, groundwater resources, important fish habitat, heritage items or places
- ☒ an assessment of the risk of contaminated land (e.g. due to previous chemical

applications, dip sites, storage facilities) and how this will be managed

- ☒ ground and surface water resource quality, availability and relevant licence details. Include current water sharing plan and access conditions. This should document / tabulate the amount of water available from all sources (eg dams, bores, tanks, effluent re-use, town water and harvestable rights). This can be verified by a copy of all water licences setting out their volumes and conditions. For bores a copy of recent pump test showing water recovery should also be provided. For new horticultural developments evidence should also be provided of consultation with the NSW Office of Water.
- ☒ an overview of water quality test results relevant to irrigation methods and crop suitability
- ☒ research into the production systems proposed, the suitability of these for this location, available processing facilities in the region and market prospects. Where relevant this should include details of contracts to process or purchase food grown on site and proposed sales outlets.
- ☒ services (power, water, communications) and current farm infrastructure (eg dwellings, sheds, yards, fences, dams, bores, pumps, tracks, bridges). This should include an assessment of condition and suitability for the proposed development, and
- ☒ proposed adaptations, monitoring proposals and Environmental Management Plans to ensure environmental values are protected.

Detailed subdivision proposals

For each of the proposed lots describe the lot sizes and intended uses and infrastructure. This should be accompanied by an assessment of:

- ☒ the useable area for the intended intensive plant agriculture landuse (eg the planted or plantable area)
- ☒ the potential productivity and likely returns from each separate lot relative to the current holding
- ☒ areas to be protected or rehabilitated, including items of cultural heritage
- ☒ areas required for the application of effluent or manure, or for infrastructure and on site handling, processing or sales facilities

- ☒ buffer zones and strategies to mitigate and manage the risk of land use conflict and complaints
- ☒ proposed use and design of any crop protection, shade or shelter structures and an assessment of the visibility of this, and
- ☒ any environmental hazards (eg flood or fire risk) or contaminated lands and how these will be managed.

Justification for the proposal, detailing:

- ☒ how it satisfies the LEP and zone objectives and relevant provisions of state, regional or local planning policies and strategies
- ☒ the natural resources of the proposed lots and their suitability for the proposed development. In particular legal access to water rights and identification of impacts with suggested measures for eliminating these.
- ☒ the advantages of this site for the proposed intensive plant agriculture development relative to other locations
- ☒ socio-economic benefits including assessment of direct on farm employment, service requirements and local processing options, and
- ☒ SEPP 1 (or Clause 4.6 Standard Instrument LEP) justification for any proposed variation to minimum subdivision standard.

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (December 2011). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

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9/2020/23 Planning Proposal – Intensive Plant Agriculture

Resolved:

That Walgett Shire Council resolve to:

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2. Forward the planning proposal to NSW planning, industry & environment with a request for a gateway determination;
3. Request delegation from the Minister to "make" the amendment to the Walgett Local Environmental Plan 2013;
4. Give delegation to the General Manager to make any minor alterations as requested by NSW Planning, Industry & Environment; and
5. Undertake the state agency and public consultation as per the requirements of the Gateway Determination and Schedule 1, Clause 4 of the Environmental Planning & Assessment Act 1979,

Moved: **Clr Keir**
Seconded: **Clr Murray**
CARRIED

DIVISION DECISION

For

Clr Keir
Clr Woodcock
Clr Murray
Clr Taylor
Clr Walford
Clr Martinez

Against

Nil

Absent

Clr Smith
Clr Cameron
Clr Turnbull

Attachment 2

Evaluation Criteria for the Issuing of an Authorisation

(Note – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not Relevant	Agree	Disagree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		X		
Does the planning proposal contain detail related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		X		
Heritage LEPs				
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		X		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		X		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		X		

Reclassifications				
Is there an associated spot rezoning with the reclassification?		X		
If yes to the above, is the rezoning consistent with an endorsed Plan of management (POM) or strategy?		X		
Is the planning proposal proposed to rectify an anomaly in a classification?		X		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		X		
Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions or covenants on the public land and included a copy of the title with the planning proposal?		X		
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval?		X		
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding <i>classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		X		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		X		
Spot Rezonings				
Will the planning proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		X		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		X		
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		X		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		X		
Does the planning proposal create an exception to a mapped development standard?		X		
Section 73A matters				
Does the proposed instrument		X		
a) Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provision, a wrong cross-reference, a				

spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;

- b) Address matter in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or
- c) Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?

(Note – the Minister/GSC (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).

Notes

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, or any other local strategic planning document that is endorsed by the Secretary of the Department.
- Matters that will routinely be delegated to a Council under administration are confirmed on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning