



Office of the Director General

Mr Warwick Bennett
General Manager
Mid Western Regional Council
PO Box 156

11/02233

Dear Mr Bennett

Mid Western Regional Interim Local Environmental Plan 2008 – Amendment 1, Draft Mid Western Local Environmental Plan 2011, and Mid Western Comprehensive Land Use Strategy 2010.

I refer to the numerous correspondence between the Mid Western Regional Council and the Department of Planning and Infrastructure concerning the future of Council's Principal Local Environmental Plan (LEP) and how the draft LEP has been delayed by the consideration of a site specific rezoning at Perry Street in Mudgee.

Perry Street Amendment – Mid Western Regional Interim LEP 2008 – Amendment 1

Following a review of the draft reports that have been prepared by the Department on this matter I have determined that the key issue of flooding on the Perry Street site is a matter that can be resolved during the development assessment phase of any development on the site. As a consequence of my review, I have determined that the inconsistency of the site specific LEP (Mid Western Regional Interim LEP 2008 – Amendment No.1) with the section 117 Direction 4.3 Flood Prone Land, is a minor inconsistency and that the draft LEP can be made.

I am, as a result of my review, pleased to advise that as delegate of the Minister for Planning and Infrastructure, I have made the draft LEP as requested by the Council. As outlined in section 34(5) of the Act, the Plan will take effect when published on the NSW legislation website www.legislation.nsw.gov.au

Principal LEP – Draft Mid Western LEP 2011 and Comprehensive Land Use Strategy

As a consequence of my making of the draft LEP for Perry Street, I am now in a position to consider and finalise a decision on a section 65 certificate for the Draft Principal LEP to allow its public exhibition.

I am pleased to advise that I have conditionally certified the draft LEP for exhibition. The section 65 certificate and a copy of the certified draft LEP Instrument are enclosed. As the

draft LEP was submitted to the Department prior to the recent amendments to the Standard Instrument (Local Environmental Plans) Amendment Order 2011 the conditional certification is required to ensure consistency with the Order and to address Department of Planning and Infrastructures policies and guidelines. An Explanatory Table of the changes made in the Certified Instrument is enclosed.

I have also conditionally endorsed the Comprehensive Land Use Strategy to accompany the exhibition of the draft LEP. As part of my endorsement of the Land Use Strategy I am requiring that the land north west of Goolma (as shown proposed village on *Figure 4-9 Village Zones – Birriwa and Goolma*) be amended to be rural living.

Council is reminded that the additional work recommended by the Strategy, including a rural and residential land release strategy and monitor, heritage studies, infrastructure analysis and detailed site specific assessments, should continue to be progressed. This additional work forms an important component of the Strategy and the Department would like to receive a timetable for and copies of the completed works.

Specific issues and requirements of the section 65 certificate

In issuing the section 65 certificate for the draft Principal LEP I have identified a number of conditions and requirements.

Please note that the proposed clauses 4.2C(3)(e) (land within the R5 Large Lot Residential Zone), 4.2C(3)(f) (land within 500m of a village zone), 4.2C(3)(g) (dwellings on certain rural land) and 7.11 (land above the 520 m AHD contour near Mudgee) have been retained for exhibition purposes to allow the intent to be conveyed and to seek public comment. Council is required to provide Explanatory Information to accompany each of these clauses for exhibition. It is to be clearly noted that these clauses have not been endorsed by the Department. Council is required to provide justification and consider alternative mechanisms to achieve desired outcomes such as mapping standards, zoning and Development Control Plan options prior to the section 68 submission.

In relation to tourism uses proposed in zones RU1 Primary Production and RU4 Primary Production Small Lots, it is considered the full range of uses (accommodation and facilities) have not been justified at this time having regard to the guidelines provided in PN09-006 "Providing for tourism in Standard Instrument local environmental plans" dated 2 December 2009. The widespread tourism uses within the rural zones is also inconsistent with Council's draft Strategy. While the Council proposed clause 7.10 has been omitted from the certified instrument the uses have been retained in the land use table so as to seek the views of the public during the exhibition period. Council is to clearly convey the intent and range of the tourism uses proposed in rural areas to the public with Explanatory Information during exhibition. Full consideration and justification of the issue is required to be provided to the Department with the section 68 submission.

The portion of this letter relating to the draft Mid Western LEP 2011 is to be placed on exhibition identifying that the issues relating to proposed clauses 4.2C(3)(e), 4.2C(3)(f), 4.2C(3)(g) and 7.11 and tourism uses in rural areas are yet to be resolved.

It is requested that you provide the Western Region office with a copy of the amended draft LEP prior to exhibition that satisfies the conditions of the section 65 Certificate.

As an Opinion has not been issued by Parliamentary Counsel that the draft LEP may be legally made, the Department has issued this certificate on the understanding that Council, when exhibiting the draft LEP, makes it clear to the public that the draft LEP may be

changed to satisfy legal drafting requirements. Council must also provide a plain English version of the draft LEP for exhibition explaining what the draft LEP does.

All relevant State Environmental Planning Policies, any Regional Environmental Plans (deemed SEPPs) and section 117 Directions that apply will need to be placed on exhibition with the certified draft Plan.

Section 117 directions affecting the draft Principal LEP

It has been identified that the draft LEP is inconsistent with the section 117 Directions 1.2 – Rural Zones and 1.5 – Rural Lands. I am satisfied that the inconsistencies are justified by the draft Mid Western Regional Comprehensive Land Use Strategy and supporting justification or are of minor significance in this case. It has also been identified that the draft LEP is inconsistent with the section 117 Direction 4.3 Flood Prone Land in relation to the proposed residential zoning of land in Perry Street, Mudgee. I am satisfied that the inconsistency is a minor inconsistency. Placing this letter on exhibition will demonstrate that these inconsistencies have been addressed.

The draft LEP is considered to be inconsistent with Section 117 Direction 3.5 – Development near Licensed Airports. Consultation with the Civil Aviation Safety Authority is required during the section 66 exhibition period and consistency is to be reviewed prior to the section 68 submission.

Further consultation on the draft Principal LEP

It is important that community consultation on the draft Local Environmental Plan engages key stakeholders including the following government agencies:

NSW Department of Primary Industries
Office of Environment and Heritage
NSW Transport - Roads and Traffic Authority
NSW Crown Land
NSW Rural Fire Service
Central West Catchment Management Authority
Hunter/Central Rivers Catchment Management Authority
Civil Aviation Safety Authority

Please note that references to the particular sections of the Act in this letter relate to the previous plan making provisions repealed on 1 July 2009.

Council should ensure that any final draft Local Environmental Plan (Instrument and Maps) submitted to the Department following community consultation is consistent with the Act and Regulation. It is recommended that you work closely with the Department's Western Region office in reviewing and finalising the Local Environmental Plan.

If you have any questions in relation to this matter, please contact Wayne Garnsey, Senior Planner of the Department of Planning's Western Region office in Dubbo on (02) 68412180.

Yours sincerely


Sam Haddad
Director General

1/8/2011.