



## NSW RURAL FIRE SERVICE

Wagga Wagga

Your reference: PP\_2019\_WAGGA\_007\_00  
Our reference: SP-2019-00096

**ATTENTION:** Adam Wood

Date: Wednesday 13 November 2019

Dear Sir/Madam,

**Strategic Planning Instrument**  
**Draft LEP -**  
PLANNING PROPOSAL - TO AMEND WAGGA WAGGA LEP 2010

I refer to your correspondence dated 03/10/2019 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The planning proposal will reduce the potential of the site to be used for residential occupation by changing the Wagga Wagga minimum lot size map to 200 hectares. The site will retain dwelling entitlement through Clause 4.2A(3)(b) of the Wagga Wagga Local Environmental Plan 2010.

The NSW Rural Fire Service has no objection to the planning proposal provided the following;

1. Future occupation of the site for residential purposes shall have regard to the current version of Planning for Bushfire Protection.

For any queries regarding this correspondence, please contact Peter Dowse on 1300 NSW RFS.

Yours sincerely,

Nika Fomin  
**Manager Planning & Environment Services**  
**Planning and Environment Services**

**Postal address**

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Our ref: DOC19/840327  
Senders ref: PP2019\_007

Mr Adam Wood  
Strategic Town Planner  
Wagga Wagga City Council  
PO Box 20  
WAGGA WAGGA NSW 2650

Via email: [wood.adam@wagga.nsw.gov.au](mailto:wood.adam@wagga.nsw.gov.au)

25 October 2019

Dear Adam

**Subject: Planning Proposal 2019\_007 - Adjust zone boundaries of Lot 1, DP 605970 and increase minimum lot size of part of lot, 7307 Holbrook Road, Wagga Wagga**

Thank you for your email dated 24 September 2019 regarding the abovementioned planning proposal and seeking comments from the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment (the Department).

BCD was formerly part of the Office of Environment and Heritage (OEH). It forms part of the new Environment, Energy and Science Group in the Department (see <https://intranet.dpie.nsw.gov.au/>). The Environment, Energy and Science Group works to protect and strengthen NSW's natural environment by managing the conservation of our environment and energy resources. We support the community, as well as business and government, in developing their ability to achieve these outcomes.

BCD has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal cultural heritage and flooding. For matters relating to national parks estate matters please refer these to the National Parks and Wildlife Service.

We have reviewed the documents supplied and provide the following comments at **Attachment A**.

As this planning proposal increases the likelihood of harm to threatened species, we consider that Council should fully understand the nature of that harm, and mechanisms to remedy it, at the planning proposal stage. We recommend that Council:

- Require the proponent to apply Stage 1 of the Biodiversity Assessment Method (BAM) to all development that is anticipated as a result of the proposal which involves the clearing of native vegetation
- Demonstrate how OEH's previous conditions of support have been met by the current proposal, in particular, how:

- the proposal supports the maintain and improve requirement of the biodiversity certification of the Wagga Wagga Local Environmental Plan 2010
- how the landholder has entered into a Planning Agreement that commits to the long term, legally binding protection of the E2 zone
- the Lloyd Conservation Management Plan has been implemented.

Regarding potential impacts on Aboriginal cultural heritage, we recommend that Council require the proponent to demonstrate due diligence in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW'.

We also recommend that Council consider how the development anticipated as a result of the proposal will impact on recharge to the saline water table in Lloyd.

If you have any questions about this advice, please contact Marcus Wright, Senior Conservation Planning Officer via [rog.southwest@environment.nsw.gov.au](mailto:rog.southwest@environment.nsw.gov.au) or 02 6983 4917.

Yours sincerely



Andrew Fisher

**Senior Team Leader Planning**

**South West Branch**

**Biodiversity and Conservation Division**

**Department of Planning, Industry and Environment**

**Attachment A      Detailed comments on Planning Proposal 2019\_007 - Lot 1 DP 605970,  
7307 Holbrook Road**

Biodiversity

We note the previous response from the then Office of Environment and Heritage (April 2013), and reiterate the conditional nature of that response, namely that:

- The existing E2 boundary on the subject land was critical to the decision to confer Biodiversity Certification on the Wagga Wagga LEP
- Any proposal that reduces the sites environmental values has the potential to put certification, and the extension of certification, at risk
- The bulk of the woodland is retained
- Connectivity is maintained
- Asset Protection Zones (APZ) are limited to the RU1 (developable) land
- The landholder enters a Planning Agreement and commits to the long term, legally binding protection of the E2 zone and implementation of the Lloyd Conservation Management Plan.

We do not consider that Council's assessment of the planning proposal has demonstrated how these previous conditions of support have been met.

Since 25 February 2018, Council has a duty to satisfy Part 7 of *Biodiversity Conservation Act 2016* (BC Act) when considering planning proposals.

BCD's preference is that Council consider the nature of likely harm to threatened species, and any measures to mitigate and remedy that harm, at the planning proposal stage. This should involve the applicant applying Stage 1 of the Biodiversity Assessment Method (BAM) to all development that is anticipated as a result of the proposal which involves the clearing of native vegetation.

This assessment should include all ancillary clearing including services, access, storm water disposal, both on and off the subject land. The advantage of this approach is that Council only assesses the evidence once, assuming all clearing associated with subsequent development is included. This approach will require a Biodiversity Development Assessment Report (BDAR) to accompany the proposal.

Alternatively, Council's duty requires that any subsequent clearing of native vegetation within the rezoned area, including all clearing ancillary to each development application, is assessed in accordance with Part 7 of the BC Act. If Council elects this approach, each subsequent development application must be accompanied by a Biodiversity Offset Scheme Entry Threshold (BOSET) report, a Test of Significance, and potentially a BDAR, or all three. Council may not consent to development applications without being satisfied that no harm to threatened species will occur, or that harm will be offset under the Biodiversity Offset Scheme.

We strongly recommend that for efficiency, Council require the BDAR once at this planning proposal stage.

BCD notes that the land is subject to the Order conferring biodiversity certification on the *Wagga Wagga Local Environmental Plan 2010*. Schedule 2 of the Order establishes certain measures to be taken that will lead to the overall improvement and maintenance of biodiversity values including, but not limited to, the Lloyd Development Control Plan. The subject land has an important function in the connectivity and overall resilience of threatened species populations which are inherent in those measures. Council should consider the proposal in this broader context and ensure that it does not compromise the improvement and maintenance of biodiversity values or limit its assessment to habitat loss on the subject land.

While clearing native vegetation on RU1 land is regulated by the *Local Land Services Act 2013* (LLS Act), it is important to note that the clearing provisions of that act are limited to development that is permitted without consent only. In this way, the clearing provisions of the LLS Act do not apply to any clearing that is ancillary to the dwelling houses that are anticipated as a result of this proposal. Rather it must be assessed in a BDAR either associated with this planning proposal or in a BDAR associated with each subsequent development application. We note that Asset Protection Zones are limited to the developable (RU1) land.

We do not consider that the proposal protects the high value Box Gum Woodland on the land proposed to become RU1. Clearing of native vegetation ancillary to development that is permitted without consent on the proposed RU1 lands is more likely to be permitted by the provisions of the LLS Act and less likely to trigger the Biodiversity Offset Scheme.

BCD does not consider that the proposal is consistent with the Riverina Murray Regional Plan 2017 because it reduces the area of E2 land. The associated change in development activities permitted with consent is likely to increase the potential for development to harm threatened species and their habitats. In addition, as the proposal reduces the area of E2 land and increases the likelihood of clearing threatened species habitat associated with the endangered Box Gum Woodland, we do not consider that the proposal is consistent with either the Community Strategic Plan 2040 – Wagga View or the Spatial Plan 2013-2043.

As Council did not adopt clause 5.9(9) of the *Standard Instrument – Principal Local Environmental Plan*, Routine Agricultural Management Activities (RAMAs) remain available in certain zones of the Wagga Wagga LEP, including E2. RAMAs are always limited to development that is permitted without consent only. RAMAs are currently available on E2 land but will not be available on RU1 land. In this way the availability of RAMAs is reduced by the proposal.

We consider that increasing the minimum lot size is not an appropriate way to manage rural residential development. Increasing the minimum lot size from 2 ha to 200 ha will greatly reduce the likelihood of the threshold for entry into the Biodiversity Offset Scheme being triggered.

The Wagga Wagga Development Control Plan (DCP) includes a Tree Preservation Order. This establishes the need for applicants intending to remove trees to first gain a permit from Council. This requirement is not diminished by the requirements of the BC Act.

We recommend that Council consider the potential of this proposal to cause harm to Box Gum Woodland, noting that the habitat loss anticipated is subject to the *Environmental Protection and Biodiversity Conservation Act 1999*.

### Salinity and Recharge

Council should quantify how development anticipated as a result of the proposal will impact on recharge to the saline water table and its broader obligation to minimise recharge in Lloyd.

### Aboriginal Cultural Heritage

BCD has a statutory role under the *National Parks and Wildlife Act 1974* (NPW Act) in the protection and preservation of Aboriginal sites. It is an offence to do any of the following things without an exemption or defence provided for under the NPW Act and penalties apply:

- Knowingly harm or desecrate an Aboriginal object (the 'knowing' offence)
- Harm or desecrate an Aboriginal object or Aboriginal place (the 'strict liability' offence)

We note the information provided in the Planning Proposal does not include an assessment or due diligence process for Aboriginal cultural heritage. Prior to undertaking works the proponent needs to ensure that all reasonable precautions are taken to prevent the occurrence of damage to Aboriginal objects (known and unknown). As a minimum, the proponent needs to demonstrate due diligence in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*

([www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf](http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf)) (the Code) in determining whether the proposed activity will harm ACH.

Investigations under the Code include the following:

- A search of the Aboriginal Heritage Information Management System (AHIMS) to assist in the identification of previously recorded Aboriginal objects or places in the project area
- Identification of landscape features including, land within 200 metres of water, dune systems, ridge tops, headlands, land immediately above or below cliff faces and/or shelters
- Desktop assessment including a review of previous archaeological and heritage assessments and any other relevant material
- Visual inspection of the project area for the identification Aboriginal objects (if present)
- Assessment as to whether an AHIP is required.

Attention is drawn to the generic due diligence process steps 1-4 and flowchart on pages 10-14 of the Code. The proponent should be aware that if ACH is harmed while carrying out the proposal they could be liable to prosecution under the strict liability unless they can demonstrate they have followed a due diligence process. The code sets out reasonable and practical steps which individuals and organisations need to take in order to:

- To identify whether or not Aboriginal objects are, or are likely to be, present in the proposed development area
- To determine whether or not the proposed activities are likely to harm Aboriginal objects (if present)
- To determine whether further assessment in the form of an Aboriginal Cultural Heritage Assessment (ACHA) and/or an Aboriginal Heritage Impact Permit (AHIP) application is required.

It is important that all statements and conclusions made in relation to ACH are confirmed with appropriate supporting material. If Aboriginal objects are found to be directly or indirectly adversely affected by the proposed development, the proponent will need to apply for, and be issued, an Aboriginal Heritage Impact Permit (AHIP) by BCD to comply with the NPW Act. Details on how to apply for an AHIP can be obtained from the website at:

[www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf](http://www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf).

Should it be determined that an AHIP is not required, then documentation of the due diligence process can be used to support a defence against prosecution in the event of unanticipated harm.

## Atkinson, Crystal

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**From:** Marcus Wright <Marcus.Wright@environment.nsw.gov.au>  
**Sent:** Friday, 15 May 2020 10:42 AM  
**To:** Wood, Adam  
**Cc:** ROG South West Region Mailbox  
**Subject:** RE: Wagga Wagga City Council - Planning Proposal LEP18/0012 (att: Marcus Wright)

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Dear Adam

**Subject: Planning Proposal 2019\_007 - Adjust zone boundaries of Lot 1, DP 605970 and increase minimum lot size of part of lot, 7307 Holbrook Road, Wagga Wagga**

Thank you for your email regarding the above matter. The Order of 21 November 2017 limiting the extent of biodiversity certification in the Wagga Wagga LEP has the effect of excluding all of the subject land from certification. Since that day, and regardless of prior support by the previous Office of Environment and Heritage, Council has a duty to apply Part 7 of the *Biodiversity Conservation Act 2016* to all clearing that becomes anticipated as a result of the proposal. We refer you to our previous response of 25 October 2019 for details on how that duty ought to be exercised.

It is our understanding that the provisions of the *Threatened Species Conservation Act 1995* do not provide for adding the subject land to the current biodiversity certification, whether or not it is extended.

Transitional arrangements for the implementation of the *Biodiversity Conservation Act 2016* only apply to development applications that were submitted prior to commencement of that act on 25 February 2018. As such those provisions do not apply to this planning proposal.

Please do not hesitate to contact me if you have any questions about this advice, or email [rog.southwest@environment.nsw.gov.au](mailto:rog.southwest@environment.nsw.gov.au).

Sincerely

**Marcus Wright**  
**Senior Conservation Planning Officer**

South West Branch | Biodiversity and Conservation Division

T. 02 6983 4917 F. 02 6021 0610 M. 0429 226 895 E. [marcus.wright@environment.nsw.gov.au](mailto:marcus.wright@environment.nsw.gov.au)

PO Box 5336 WAGGA WAGGA NSW 2650

7161 Olympic Highway MOORONG NSW 2650

Contact the Conservation and Biodiversity South West Planning Team about biodiversity and Aboriginal cultural heritage planning and regulation matters by emailing [rog.southwest@environment.nsw.gov.au](mailto:rog.southwest@environment.nsw.gov.au).



*The Department of Planning, Industry and Environment acknowledges that it stands on Aboriginal land. We acknowledge the traditional custodians of the land and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.*

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**From:** Wood, Adam <Wood.Adam@wagga.nsw.gov.au>  
**Sent:** Tuesday, 12 May 2020 9:50 AM  
**To:** ROG South West Region Mailbox <rog.southwest@environment.nsw.gov.au>  
**Cc:** Marcus Wright <Marcus.Wright@environment.nsw.gov.au>  
**Subject:** Wagga Wagga City Council - Planning Proposal LEP18/0012 (att: Marcus Wright)

Hi Marcus,

Council has obtained a response to DPIE - BCD's earlier comments on this Planning Proposal from the applicant.

The response details a process the applicant went through with then-OEH involvement before submission of the current planning proposal. This occurred over several years.

This background was not known to me when the proposal was referred to me for my initial pre-Gateway assessment at Council, hence this was not communicated to you upon referral either.

I am hopeful that this additional information outlined will provide a pathway to resolving the outstanding concerns with the planning proposal.

Your review would be appreciated in order to verify the information being put forward by the applicant and to inform discussions between BCD and Council as to the ultimate effect that this planning proposal may have.



I hope to discuss with you again soon.

Best regards,

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# **Response to BCD Attachment A Comments**

**Planning Proposal & Draft LEP 18-0012**

**at**

**Lloyd**

**Wagga Wagga**

**Prepared by**

**Kim Kennedy & Associates**

**Consultant Planners**



## RESPONSE TO BCD COMMENTS

This response to the BCD Attachment A comments first provides the history of the site in relation to the biodiversity certification and LEP process to show that the current Planning Proposal is a delayed correction or addendum to the biodiversity certification for the LEP in which the site was an integral part of that certification process.

The Planning Proposal is not a new proposal subsequent to and separate from the Biocertification for the LEP and for this reason, apart from the six dot points of the first paragraph, the BCD comment provided is inappropriate to apply to the present Planning Proposal.

The present Planning Proposal is an amended Proposal which was amended at Council's request to simplify it and exclude the history of the site through the biodiversity certification and LEP process. Hence the BCD comments are not informed by this very relevant history of the site.

The subject site was included in all aspects of the biodiversity certification process except that the subject landowner was not consulted by Council and did not have the opportunity to make representations in relation to developable land offsets and the process for negotiating planning agreements. That is, the owner of the subject site was not consulted in determining a suitable balance of development and conservation for the site as was the case for all other sites and their owners in the Lloyd area. Although submissions were made to Council in 2009 in regard to the omission, essentially the LEP process was considered too advanced to adjust for the omission and delay the LEP. The detail of the process involved and the omission of the landowner from proper process during the biodiversity certification and LEP process is set out in more detail below.

Subsequent to providing the history of the site, this response addresses the BCD comments.

### **History of Biodiversity Certification Process Omissions and DECC and OEH Assessment of the Site**

In the course of the initial local environmental study for the new standard instrument LEP for Wagga Wagga, the ecological values of the Lloyd area were recognised, and resulted in a study by Ecological Australia Pty Ltd. This study recognised the biodiversity values of the Lloyd area and the excellent connectivity of the extant vegetation across the estate and the wider Wagga area.

In relation to the biodiversity studies and planning decisions for Lloyd area, the DECC report notes that:

*"In consideration of the outstanding biodiversity values of the site, and the potential impacts of urban subdivision on the endangered woodlands, WWCC, the landholders, and DECC agreed to the conduct of biodiversity studies (Ecological Australia Pty. Ltd. 2007; Thompson 2007) to inform planning decisions that would ensure an improve or maintain outcome for the site's biodiversity."*

During this process of consultation, the owner of the subject land, Leslie Forster was not consulted.

During the negotiation process the other landowners in the release area commissioned GHD Wagga Wagga to provide an additional report which considered the findings of the *Ecological Australia* report. This report, in part, refined the mapped extent of the significant habitat areas.

The subject landowner was not consulted in relation to this additional report and did not have the opportunity to make representations in relation to the property or developable land, offsets, and the like. That is, the owner of the subject site was not consulted in determining a suitable balance of development and conservation for the site as was the case for all other sites in the Lloyd area.

The DECC further report notes, in relation to the negotiations between landholders, DECC and Council for the Lloyd area together with the studies and the mapped vegetation:

*“Further, private landholders, WWCC and DECC have agreed that the land within the E2 zone will transfer to the ownership of WWCC, and that WWCC will prepare and implement a Conservation Management Plan for the site. The private landholders and WWCC have indicated a willingness to enter into a Planning Agreement to this effect...”*

The owner of the subject site was not included in the negotiations with Council, DECC and other landowners in relation to land zonings, development rights and planning agreements.

In May 2009 a planning submission was made to the Council on behalf of the landowner in regard to, alternate zone boundaries for the site. In September 2009 DECC; recognising the omission of appropriate consideration of the site and biodiversity offsets, supported and issued the Council two alternate zone boundary layouts for the property, following negotiations with planning consultants for the owner.

The LEP was eventually made with the present zone boundaries. It is understood the Council may have had concerns about access to the site, and that the planning agreement process was too advanced to include the subject landowner.

Hence, despite DECC support to correct the omission of the subject landowner from the process, this was not completed at the time and the LEP was made without the appropriate amendments required.

In September 2012 the landowner, through planning consultants Kim Kennedy and Associates and Newland Planning, approached the NSW Office of Environment and Heritage (OEH) and began discussions in relation to the subject land with OEH officers - who were familiar with the Wagga Wagga LEP Biocertification process and the various discussions held from 2007-2009.

Two site inspections were held with OEH officers and the consultants to walk over and examine the land in detail. In effect the discussions and negotiations with OEH were similar to the process carried out with other Lloyd landowners in 2007-2009. The discussions resulted in a draft subdivision plan which took into account the extant vegetation, and in particular mature hollow bearing trees and local features such as drainage lines and dams, and areas of native grassland (eastern boundary). The draft subdivision plan was based on a boundary adjustment to the current RU1/E2 zones.

A meeting was also held with the Council’s Manager of Strategic Planning on November 27, 2012 to ensure the Council was aware of the discussions.

To ensure that access and services to the land would be available, a meeting was held on 19 December 2012 between planning consultants for the landowner and Mr Peter Fitzpatrick, representing the Catholic Diocese of Wagga Wagga, the adjoining landowner to the west. The Diocesan representative had no objection to allowing access to the subject land, provided that the access and servicing arrangements would be at no cost to the Diocese.

Initially with OEH support, a Planning Proposal for the site was part of a submission to the draft Spatial Plan in 2013 but nothing proceeded from that submission at the time. Subsequently negotiations continued with Council who advised that a simpler approach with a Planning Proposal that omitted details of the historical process would be more acceptable for the Gateway application.

In accordance with Council's advice, the original Planning Proposal was amended and the present Planning Proposal was submitted.

The Planning Proposal would provide the following benefits:

- The protection of the majority of the White Box woodland on the site, the consolidation of existing protected regrowth and opportunity for extended regrowth into the west of the site;
- Enable limited future residential development of the land, subject to the Lloyd urban release area urban salinity mitigation performance requirements for Stages 3 and 4;
- Provide a mechanism through which the Environmental Conservation (E2) land can be handed to Council to form a vital connection between the Willans Hill and Lloyd open space and biodiversity network. The E2 land will also contain the extension of the Wiradjuri Walking Track, as was originally intended for this land;
- The preparation of a Voluntary Planning Agreement (VPA) to allow the handover of the woodland into public hands – also providing the final connection of the Lloyd biodiversity area to the Willans Hill biodiversity area and a continuation of the Wiradjuri Walking Track;
- The preservation in public hands of the visually sensitive north facing hillscape which is a major attribute to the people of Wagga Wagga (the development area is well below the elevation of the adjoining hilltop to the east);
- The economic and efficient use of the remaining land for housing purposes – subject to the Lloyd urban release area urban salinity mitigation performance requirements for Stages 3 and 4, and;
- The more effective management of the E2 land, along with the body of the E2 conservation lands, by dedication to the public.

## **Response to BCD 6 Dot Points of First Paragraph Comments**

The first two BCD dot points are:

- The existing E2 boundary on the subject land was critical to the decision to confer Biodiversity Certification on the Wagga Wagga LEP

- Any Planning Proposal that reduce the site’s environmental values, and its contribution to the environmental values of the Wagga Wagga area generally, would have the potential to present a risk to the conferral of certification, as LEP may no longer result in biodiversity outcomes being improved or maintained

The 1<sup>st</sup> and 2<sup>nd</sup> BCD dot points are considerations taken into account by OEH and noted in the OEH letter of 12 April 2013 before OEH concluded that:

***“OEH considers that the draft Planning Proposal, as presented to us, can result in a sound conservation outcome for the site and the Lloyd area generally, and would not place a certification of the Wagga Wagga LEP at risk. OEH would therefore support the Proposal in any consultation required under a s56 gateway determination.”***

Hence the 1<sup>st</sup> and 2<sup>nd</sup> BCD dot points are satisfactorily addressed by the Planning Proposal and supported by OEH advice.

In responding to the 1<sup>st</sup> BCD dot point, an error should be pointed out for clarity. The BCD comment states to “reiterate” the conditions of OEH support to the Planning Proposal.

The 1st BCD dot point is:

“The existing E2 boundary on the subject land was critical to the decision to confer Biodiversity Certification on the Wagga Wagga LEP” (underlining added for emphasis).

This is not an accurate reiteration of the OEH requirements. The OEH advice states:

“The zoning of the bulk of this site as E2 - Environmental Conservation, was critical in the decision to confer certification of the LEP” (OEH advice of 12 April 2013)

There is no mention of “boundary” in the OEH letter and the OEH letter has a markedly different emphasis. The point in the OEH letter is that “the bulk”, the major area of the site and its E2 zoning was critical in conferring certification of the LEP. The areas zoned E2 under the present Planning Proposal would constitute approximately 75% or more of the site area.

Until the site became part of the present Planning Proposal process, there was no pathway in place to ensure “*the long-term legal protection of the E2 zone land*” as required by OEH. The landowner has confirmed their willingness to enter into a planning agreement in conjunction with the Planning Proposal process. That agreement would ensure the long-term legal protection of the E2 zoned land within the site. The end result of implementation of the planning agreement would be the transfer of the E2 zone land to Council for addition to the Lloyd Conservation Area.

The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> BCD dot point requirement are:

- The bulk of the woodland is retained
- Connectivity is maintained
- Asset Protection Zones (APZ) are limited to the RU1 (developable) land

OEH advice dated 12 April 2013 addresses these dot points:

***“OEH has considered information provided to us (Attachment One) and supports the Planning Proposal. It will result in the bulk of the Box-Gum Wood land on the site being retained in the E2***

***Zone. The configuration of the E2 zone will maintain connectivity to other E2 zones to the east, west and north. OEH also notes that the Asset Protection Zones are located within the developable zones, consistent with Rural Fire Service Guidelines”.***

Hence BCD dot points 3, 4 and 5, as set out in the above quotation from the OEH letter of support, would be satisfied by the Planning Proposal.

While the BCD report in the second paragraph states “We do not consider that Council’s assessment of the planning proposal has demonstrated how these previous conditions of support have been met”, very clearly, as set out above, all OEH conditions for support are met except for a planning agreement which the owners have agreed a willingness to enter.

### **Response to Remainder of BCD Attachment A Comments**

The remainder of the BCD document addresses concerns that would be raised if the Planning Proposal was a new proposal completely separate to the biodiversity certification and LEP process. This is not the case. The present Planning Proposal is a delayed correction or addendum to but integral part of the biodiversity certification and LEP process. The present Planning Proposal is to address the omission of the site owner from discussions with Council in regard to developable offsets and the negotiation of planning agreements. The subject site was included in all other aspects of the biodiversity certification and LEP process and hence it is not appropriate to treat the Planning Proposal as a proposal that was not part of that process.

For this reason, the BCD comments in the third paragraph and in subsequent paragraphs of their Attachment A submission are inappropriate to the present Planning Proposal. However brief response to the BCD comments are provided below.

The BCD comment notes in the third paragraph, the requirements of Council in regard to Part 7 of the Biodiversity Conservation Act 2016 in consideration of planning proposals.

Part 7 of the Biodiversity Conservation Act 2016 has provisions for “development or activity likely to significantly affect threatened species” or ecological communities or their habitats.

These have been considerations in the biodiversity certification of the LEP in which the site was included. These are also considerations OEH mentioned in their advice of 12 April 2013 and about which OEH concluded that the Planning Proposal could “*result in a sound conservation outcome for the site and the Lloyd area generally, and would not place the certification of the Wagga Wagga LEP at risk*”.

From this advice it is obvious there could be no “significant” effect on threatened species. Rather, the Planning Proposal would result in conservation of 75% of the site area and “*the bulk of the Box-Gum Woodland on site being retained in an E2 Zone. The configuration of the E2 zone will maintain connectivity to other E2 zones to the east, west and north*”, a very positive outcome for threatened species.

The remainder of the BCD comments in regard to conservation are not relevant given the assessment process that the site has been through as part of the biodiversity certification for the LEP.



Salinity and recharge reports were carried out for the site as a forerunner to the Planning Proposal process and there is therefore no need for reconsideration or reinvestigation of this aspect.

Similarly, Aboriginal Cultural heritage was part of the biodiversity certification process of which the site was part, and there is no need for further investigation in this regard.

The present Planning Proposal is a vital part of the process by which an agreement will be put into place to provide the transfer of the major part of the site that is zoned E2 into public ownership for conservation purposes as has similarly been done for all other sites in the Lloyd area.

What the present Planning Proposal seeks to redress is that the owner of the subject site was not included in the negotiations with the Council, DECC and other landowners in relation to land zonings, development rights and planning agreements.

The aim of the site meetings, investigations and discussions between OEH and planning consultants for the owner was to correct the omission of the site from the previous proceedings and provide a balance between some development of the site and conservation of the major area of the site. This process was equivalent to the process previously carried out for all of the other sites in the Lloyd area except the subject site.

## **Conclusion**

What the present Planning Proposal seeks to redress is that the owner of the subject site was not included in the negotiations with the Council, DECC and other landowners in relation to land zonings, development rights and planning agreements.

The aim of the site meetings, investigations and discussions between OEH and planning consultants for the owner was to correct the omission of the site from the previous proceedings and provide a balance between some development of the site and conservation of the major area of the site. This process was equivalent to the process previously carried out for all of the other sites in the Lloyd area except the subject site.

Apart from the six dot points in the first paragraph of the BCD response, the comments provided by BCD are inappropriate as they are not informed by the history of the site.

The Planning Proposal is a correction or addendum to the Biocertification and LEP process and not a completely new proposal distinct from the Biocertification and LEP process where the BCD comments would be appropriate.

The only outstanding matter needing to be addressed in the BCD comments is a planning agreement whereby the approximately 75% of the site area zoned E2 would be transferred to public ownership for conservation.

The landowner has indicated willingness to enter into such an agreement.

The Planning Proposal provides a pathway for transfer of the E2 land into public ownership where none exists at the moment.