



EXTRAORDINARY COUNCIL MEETING

Monday 21 October, 2024

at 9:00am

MSTeams



Agenda

Our Vision

Our diverse population and productive natural landscape fuel a vibrant economy and a harmonious and thriving community.

COMMUNITY STRATEGIC PLAN

Berrigan Shire Council's Community Strategic Plan Berrigan Shire 2040 is a common framework for measuring the achievement of Berrigan Shire 2040 strategic outcomes of:

CO. Our Community

EC. Our Economy

EN. Our Environment

IN. Our Infrastructure

CL. Our Civic Leadership

The Community Strategic Plan can be found here: [Community Strategic Plan 2040](#)

RISK MANAGEMENT POLICY & FRAMEWORK

Berrigan Shire Council is committed to managing its risks strategically and systematically in order to benefit the community and manage the adverse effects to Council.

Risk Management is everyone's responsibility. It is an activity that begins at the highest level and is applied consistently through all levels of Council. All workers are required to integrate risk management procedures and practices into their daily activities and must be competent and accountable for adequately managing risk within their area of responsibility.

The Risk Management Policy & Framework can be found here:

[Risk Management Policy and Framework](#)



Extraordinary Council Meeting

Monday 21 October, 2024

BUSINESS PAPER

The Extraordinary Council Meeting of the Shire of Berrigan will be held in the MSTeams, on Monday 21 October, 2024 when the following business will be considered:-

ITEMS OF BUSINESS

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No business, other than that on the Agenda, may be dealt with at this meeting unless admitted by the Mayor.

K. Ewer

KARINA EWER
CHIEF EXECUTIVE OFFICER



1 OPENING OF MEETING

In the spirit of open, accessible and transparent government, Berrigan Shire's Council meetings are audio recorded. By speaking at a Council Meeting, members of the public agree to being recorded. Berrigan Shire Council accepts no liability for any defamatory, discriminatory or offensive remarks or gestures that are made during the course of the Council. Opinions expressed or statements made by individuals are the opinions or statements of those individuals and do not imply any form of endorsement by Berrigan Shire Council.

Confidential matters of Council will not be audio recorded.

Recordings are protected by copyright and owner by Berrigan Shire Council. No part may be copied, recorded, reproduced or transmitted without the prior written consent of the Chief Executive Officer. Any recording is not, and shall not, be taken to be an official record of Berrigan Shire Council or discussion depicted therein. Only the official minutes may be relied upon as an official record of the meeting.

An audio recording of the Council Meeting will be taken for administrative and minute preparation purposes only and is provided to the public for listening purposes to support Council's statutory obligations.

2 ACKNOWLEDGEMENT OF COUNTRY

"We acknowledge the original inhabitants whose country we are gathered on, and we pay respect to the elders, past, present, and future and extend respect to all first nations people."

3 APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE OR ATTENDANCE VIA AUDIO-VISUAL LINK BY COUNCILLORS

3.1 Apologies/Leave of Absence

Nil

3.2 Attendance Via Audio-Visual Link

Nil

4 DISCLOSURES OF INTERESTS



5 REPORTS TO COUNCIL

5.1 Planning Proposal PP2023 2603 92 Strathvale Road Berrigan

Author:	Manager Planning and Development, Sarah Griffiths
Strategic Outcome:	EN. Our Environment
Strategic Objective:	EN-C. Robust planning systems support the liveability of our shire
Delivery Program:	EN.7. Developers provide positive social and environmental contributions EN.6. Our public spaces and residential developments are designed to support health, safety, and connection.
Council's Role:	Strategic Partner: The Council partners with other agencies, stakeholders, community groups etc in the delivery of a Council provided service or activity that aligns with Councils Strategic outcomes or Delivery Program.
Appendices:	<ol style="list-style-type: none">1. Department Gateway detremination 16 May 2024 (under separate cover)2. Planning Proposal Version 4 (under separate cover)3. Submission - Lee Browne (under separate cover)4. Submission - Paul and Helen Barrett (under separate cover)5. Submission - Steven Malcolm (under separate cover)6. Submission - Tracey Moroney and Rodney Stephens (under separate cover)7. Applicants response to submissions report (under separate cover)

Summary

Applicant:	James Laycock from Blue Print Planning
Owner:	McNaught's Grain and Fertilisers Pty Ltd
Proposal:	This report outlines what the submitted Planning Proposal is for, the exhibition that occurred, the submissions received and the applicant's response. It puts forward a recommendation (next steps) to Council
Location:	92 Strathvale Road Berrigan
Division:	
In Favour:	
Against:	



Recommendation

That Council support the recommendation and submit Planning Proposal for PP2023-2603 to Department of Planning and Environment (the Department) for Finalisation.

Purpose

This report outlines to Council the reasons why Planning Proposal PP2023-2603 (to rezone the land and alter the minimum lot size) should be submitted to the Department, for Finalisation. Planning Proposal Process

There are 6 Stages of any Planning Proposal process:

- Stage 1 Pre-lodgement
- Stage 2 Council to support or reject the Planning Proposal
- Stage 3 Gateway Determination. Submit planning proposal to DPE, DPE confirms administrative requirements.
- Stage 4 Post Gateway. Conditions prior to public exhibition.
- **Stage 5 Public exhibition and Assessment – We are here**
- Stage 6 Finalisation. DPE will make recommendations to Minister.

This Planning Proposal is at Stage 5.

Summary

The subject site is known as Lot 2 DP1222893, addressed as 92 Strathvale Road, and is approximately 16.19 hectares in size.

Planning Proposal PP2023-2603 is an applicant (proponent) initiated Planning Proposal prepared by BluePrint Planning. It is a standard amendment to the Berrigan Shire Local Environmental Plan 2013 (LEP) in that it seeks a change in planning controls to the subject site, which are consistent with Council's Strategic Planning Framework.



Figure1: Aerial of site and surrounds

The intent of the Planning Proposal is to allow better and more efficient use of the subject site for agricultural production and rural industry. The LEP amendment will essentially rezone the subject site from R5 Large Lot Residential (R5) to IN1 General Industry (IN1) to:

- a) facilitate the development of the subject site for bulk storage and integrate it with a west adjoining grain bunker; and
- b) allow McNaught's Grain and Fertilisers Pty Ltd expand their operation.

The Planning Proposal has been lodged because the R5 zone prohibits the use of the subject site for 'rural industry'. Rezoning the land will allow the subject site to be used for 'grain storage'.

In terms of the changes to the LEP, the Planning Proposal will require the following:

- a) An amendment to the Land Zoning Map 006A from R5 to IN1.
- b) Increase the minimum lot size to be consistent with the R5, increasing it from 2ha to 10ha.
- c) An amendment to the Lot Size Map 006A.

No change is required to the LEP instrument in terms of specific clauses and provisions.

In summary, the Planning Proposal was approved by Council at the 20 March 24 Council Meeting. It was then lodged with the Department on 13 April 24; the Department issued the Gateway Determination on 6 July 24; the applicant lodged the Planning Proposal on the Portal on 19 June 24; the Planning Proposal was exhibited for 20 days with letters to adjoining properties and an advertisement in the Southern Riverina newspaper on 3 and 10 July 24. Four (4) submissions have been received.



Background

At the 20 March 2024 Council Meeting, Council supported the Planning Proposal (refer to Appendix 1 for the Council Report) and the Planning Proposal was thereby submitted to the Department for Gateway Determination.

Gateway Determination was issued by the Department on 16 May 2024 (refer to **Appendix 1**) and included 4 Gateway Conditions (see image below):

Gateway Conditions

1. Prior to exhibition, the planning proposal is to be amended to address the points listed below in this condition:
 - a) address the suitability of the site to accommodate the Berrigan LEP 2013 E4 General Industrial Zone more broadly than the proposed land use;
 - b) amend the digital zoning mapping rather than Map Sheet LZN_006A;
 - c) reflect its assessment is against the Riverina Murray Regional Plan “2041” not “2036”; and
 - d) reflect a timeline for planning proposal completion in line with the Gateway determination timeframe.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).
3. No consultation is required with public authorities or government agencies under section 3.34(2)(d) of the Act.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

On 19 June 2024, to address the Department’s Gateway Condition 1 parts a), b), c) and d), the applicant updated the Planning Proposal (to version 4 - dated June 2024 – refer to **Appendix 2**) and lodged it to the Department via the NSW Planning Portal.

Version 4 of the Planning Proposal updated it in the following ways:

- To address Condition 1(a) – pages 11-12 of the Planning Proposal were updated to address the suitability of the site to accommodate the Berrigan LEP 2013 E4 General Industrial Zone more broadly than the proposed land use.



- To address Condition 1(b) – pages 4 and 14 of the Planning Proposal were updated to amend the digital zoning mapping rather than Map Sheet LZN_006A (in other words, the Planning Proposal will need to be updated to change any reference from Land Zoning Map LZN_006A (the old format) to Digital Zoning Map (the new format).
- To address Condition 1(c) – pages 22 and 32 of the Planning Proposal were updated to correct a typo and reflect the assessment against the Riverina Murray Regional Plan “2041” not “2036”.
- To address Condition 1(d) – pages 14 to 16 of the Planning Proposal were updated to reflect a timeline for Planning Proposal completion in line with the Gateway determination timeframe.

To acknowledge Conditions 2 a), 2b), 3 and 4, the applicant updated pages 14 to 16 of the Planning Proposal to reference the fact that the Department had confirmed that public exhibition was required; no consultation was required with public authorities or government agencies under section 3.34(2)(d) of the Act; and a public hearing was not required.

Public Exhibition

In July / August 2024 the Planning Proposal went on public exhibition for 20 days, with letters sent to adjoining properties and an advertisement placed in the Southern Riverina newspaper on 3rd and 10th July 2024.

The [Local Environmental Plan Making Guideline – August 2023 \(nsw.gov.au\)](https://www.nsw.gov.au/local-environmental-plan-making-guideline), and specifically Public Exhibition (page 54) states that *Council can conduct a public hearing into any issue associated with a Planning Proposal, including in response to requests made by a member of the public during the public exhibition period.*

The Department, in their Gateway Determination of 16 May 2024, confirmed that in their opinion a public hearing was not required to be held. However, their wording did (at condition 4) provide flexibility in the event that Council had an obligation to conduct a public hearing (for example, in response to a submission or if reclassifying land). A public hearing was not held during the public exhibition period due to the following:

- Officers are confident that the extent of notification encapsulated all possibly affected properties.
- The subject site does is in a peripheral area of Berrigan and separate from residential interfaces.
- The Local Environmental Plan (LEP) has been exhibited and the Planning Proposal is consistent with the strategic vision of Council.
- The subject site is already partially used in a similar manner to what is proposed under the rezoning.
- Officers are across the issues raised and are able to respond to the issues in this report.

Four (4) submissions (from Steven Malcolm; Paul and Helen Barrett; Lee Browne; and Tracey Moroney and Rodney Stephens) were received. Copies of the submissions are attached at **Appendices 3, 4, 5, 6**.

Listed below is a summary of the submitter issues:

- Reduction in land value (which is not a planning consideration)
- Impact on biodiversity
- Impact on Council assets and infrastructure
- Impact on residential amenity (off-site)

Post Exhibition Stage

On 21 August 2024, the applicant was given 21 days to provide a ‘response to submissions report’ and advise Council if they would like to revise the Planning Proposal in an attempt to address the submitter issues.



On 2 September 2024, the applicant lodged their 'response to submissions report'. Refer **Appendix 7**. And in an email to Council on the same day, advised Council that *no changes to the existing Planning Proposal are proposed to be made*.

Following the [Local Environmental Plan Making Guideline – August 2023 \(nsw.gov.au\)](https://www.nsw.gov.au/local-environmental-plan-making-guideline-august-2023), and specifically the 'response to submissions stage' at page 55 of the Guidelines, Council must:

- consider all submissions and the proponent's response and report this in finalising the plan or submitting to the Department for finalisation;
- review the Planning Proposal and address any community, agency or other objections and responses by the proponent;
- prepare a recommendation for decision by the Council.

The Guidelines state that "*Council is encouraged to liaise or meet with authorities and government agencies to resolve and key issues*". It does not reference Council liaising with submitters (objectors).

The [Local Environmental Plan Making Guideline – August 2023 \(nsw.gov.au\)](https://www.nsw.gov.au/local-environmental-plan-making-guideline-august-2023) state that "Council is encouraged to liaise or meet with authorities and government agencies to resolve any key issues" but in terms of liaising with submitters, the Guidelines require Council to consider, review and address all submissions in a report and recommendation to Council. In other words, there is no requirement for Council to meet or facilitate a meeting with the submitters at this stage.

Submitter Issues

In considering the submissions received, Council Officer's response to the issues is as follows:

- Reduction in land value

"Land value" is not a consideration for Council under the *Environmental Planning and Assessment Act 1979*.

- Impact on biodiversity

The Planning Proposal does not include the removal of native vegetation. The removal of native vegetation requires development consent and as such would require a future Development Application to be lodged and approved by Council.

- Impact on Council assets and infrastructure

The intent of the Planning Proposal is to allow better and more efficient use of the subject site for agricultural production and rural industry. In rezoning the subject site from R5 Large Lot Residential (R5) to IN1 General Industry (IN1) it will facilitate the development of the subject site for bulk storage and integrate it with the west adjoining grain bunker allowing McNaught's Grain and Fertilisers Pty Ltd to expand their operation. It is anticipated that the existing crossover on Strathvale Road would be used. Any new vehicle crossover to Strathvale Road would require Council approval.

The west adjoining grain bunker is already connected to services including reticulated water and sewer and these would be integrated into the subject site.

In addition to rezoning the subject site from R5 Large Lot Residential (R5) to IN1 General Industry (IN1), a 10 hectare minimum lot size is proposed. The subject site is approximately 16.19 hectares in size and so if a development application for subdivision was to be lodged to Council, no second lot (would meet the 10 hectare minimum lot size requirement. Indirectly this means that an increased or detrimental infrastructure demand is unlikely to be an issue.

There are fire services in the locality to service the subject site to be used as a grain bunker storage facility.



➤ Impact on residential amenity (off-site)

The use of the subject site for grain storage will affect local vehicle traffic, including the type of vehicles and frequency of them. It could also impact neighbouring properties in terms of acoustics, odour, noise levels and dust generation, and also the use of chemicals and sprays and potentially attract vermin.

Appropriate documentation and information will be required to be lodged with any development application (for use and development) and off-site amenity will be assessed as part of the process, which could include condition if consent is issued.

Options

1. Support the Planning Proposal and refer to the Department for Finalisation, with a copy of the Council Report and resolution.
 2. Advise the Minister (or delegate) that the matter does not proceed.
 3. Request more time. As Council act as the Local Plan Making Authority (LPMA) for Standard LEP amendments, Council can withhold finalisation of the LEP amendment until it is completely satisfied with the outcome. Council can ask for further studies, information or clarification from the applicant or from Officers.
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6 CONCLUSION OF MEETING

The next Extraordinary Council Meeting will be held on Wednesday 20 November 2024 from 9:00am in the Council Chambers, 56 Chanter Street, Berrigan.

There being no further business the Mayor, Mayor Julia Cornwell McKean closed the meeting at [type time](#).