

16 October 2024

Contact: Stuart Little  
Telephone: 0436 948 347  
Our ref: D2024/120379

Ms Kate Wooll  
Business Manager Strategic Planning  
Goulburn Mulwaree Council  
184 Bourke Street  
GOULBURN NSW 2580

**Planning Proposal to Rezone Part 129 Marys Mount Road and 110-118 Middle Arm Road to R2 Low Density Residential and Part C2 Environmental Conservation (REZ/0002/2324; PP-2023-1983; REF\_3166)**

Dear Ms Wooll,

I refer to the Post-Gateway Planning Portal referral of 19 September 2024 regarding the Planning Proposal to Rezone Part 129 Marys Mount Road and 110-118 Middle Arm Road to R2 Low Density Residential and Part C2 Environmental Conservation (September 2024, Version 3). WaterNSW provided earlier comments on the Proposal on 23 May 2024 (Our Ref: D2024/40486) which is included as Appendix 13 to the Proposal.

The subject land is currently zoned Part R2 Low Density Residential (44 ha) and Part RU6 Transition (12 ha). The Proposal seeks to rezone a portion of R2 zone to C2 Environmental Conservation and a portion of the RU6 Transition to either C2 or R2 based on the biodiversity significance of the land. We understand that the Proposal would result in approximately 47 ha of land being zoned R2 and 8.9 ha of land being zoned E2. The Minimum Lot Size (MLS) would also be amended so that a MLS of 700m<sup>2</sup> applies to the R2 area and 'no MLS' arrangement would apply to the proposed C2 zone.

Much of the subject site has been the subject of various development approvals requiring the concurrence of WaterNSW. We understand that the change in zoning is intended to deliver better conservation outcomes for biodiversity significant land while freeing up lower biodiversity value land for residential development (i.e., through proposed R2 zoning). The proposed rezoning is also intended to help facilitate a later change from Community title to Torrens title for the development area.

Our detailed comments are provided in Attachment 1. We have no objections to the Planning Proposal but recommend that the Proposal clarify the permissibility arrangements applying in the C2 zone for any stormwater management measures that may be required. Any future development application (DA) for works in the C2 land will need to consider the new permissibility arrangements that would apply.

If you have any questions regarding this letter, please contact Stuart Little at [stuart.little@waternsw.com.au](mailto:stuart.little@waternsw.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to be "JC", written over a light blue horizontal line.

**JUSTINE CLARKE**  
**A/Environmental Planning Assessments & Approvals Manager**

## **ATTACHMENT 1 – Detailed Comments**

### **Water Quality Risk**

In relation to water quality risks, we note that the site is located on the top of a hill and contains no defined watercourses. The area is not subject to riparian flooding risks although some overland flow risks occur over part of the site. The areas subject to overland flow risks occur in the east and west of the site and outside the proposed C2 land (see Figure 5, P. 20 of the Proposal). The site will be serviced by water and sewer.

### **Contamination Risk**

The contamination risk has been examined and assessed as part of development assessment process for 129 Marys Mount Road (Blakeley's Run) with a separate Preliminary Site Investigation (PSI) report addressing the area at 110-118 Middle Arm Road. The contamination report and site remediation for 'Blakeley's Run' are given effect through conditions imposed via the exiting consent and concurrence process. For the area at 110-118 Middle Arm Road, the PSI report identifies the risk of gross chemical contamination as being low. If further assessment and remediation is required, this can be undertaken at development application (DA) stage and an unexpected finds protocol implemented through that process.

The proposed C2 zone includes an area of fill material in the north (Stage 1E of the Blakeley's Run development). We understand that this area has been recently remediated. The Proposal may benefit by clarifying the nature and timing of remediation of this area with respect to the DA conditions and the proposed C2 zoning and outcomes intended for this area.

### **Stormwater Management**

Our current review of the Proposal has examined the stormwater issue in more detail. The Planning Proposal includes a supporting NorBE letter in Appendix 6 which outlines the intended stormwater management measures but without depicting the actual location of intended stormwater bioretention ponds and related structures. We assume that the stormwater management and drainage measures for the urban development will be contained on the R2 zoned land. If this is not the case, then this should be clarified in the Proposal. The permissibility of stormwater management measures may be restricted for the C2 zoned land depending on whether the measures are ancillary to roads or dwellings and how the measures are characterised. Intended management outcomes and vegetation management conditions or plans for the C2 land may also restrict such measures being located on the C2 land.

The Proposal would benefit by explaining the zones that are likely to contain the proposed stormwater management measures and how this would be achieved under the permissibility arrangements for the intended land use zones. Ideally, this would be supported by indicative locations of stormwater management measures to ensure that these are located on R2 zoned land or, if located on C2 zoned land, that the measures are compatible with the zoning, permissibility, and conservation outcomes envisaged for the C2 zone. Long-term management and maintenance of the stormwater management measures would also need to be considered. While the details of stormwater management can be addressed at subdivision DA stage, any permissibility issues should be considered at Planning Proposal stage.

### **Consideration of Previous Correspondence – C2 Zone and No Minimum Lot Size**

In our previous correspondence, we noted that the C2 zoning would implicitly protect water quality, through the protection of groundcover. However, we raised concerns over a 'no MLS' arrangement applying to the C2 land as it would potentially expose the C2 land to further subdivision and fragmentation. This is of concern as the conservation area adjoins the proposed R2 zoned land which will have a 700 m<sup>2</sup> MLS. Split zoning (R2/C2) arrangements may arise and fragment the C2 land, compromising the groundcover and condition of this land. In our previous correspondence, we suggested that a larger MLS (e.g. 10 ha) might be more

appropriate for the C2 zone. We also sought inclusion of a map verifying how the C2 zone accorded with the biodiversity values and describing how the C2 land was intended to be managed. Other minor refinements to the Proposal were also suggested to improve the understanding of the Proposal and intended changes.

The Proposal acknowledges our previous correspondence and responds to the issues raised. Section 1.1 of the Proposal provides further reasoning on exclusion of the C2 zone from the MLS provisions and discusses options for future management. This includes that dwelling houses are not permitted in the C2 zone and that biodiversity significant land requires 'avoidance' and that the C2 zone does not have flexibility in terms of MLS variations, a matter which may prove problematic for later urban subdivision development. The Proposal explains that the future C2 zone will likely be afforded conditions for vegetation management including a s. 88B instrument under the Conveyancing Act or be dedicated to Council as a reserve subject to a Planning Agreement. These options both protect groundcover and the biodiversity values of the area. The Proposal notes that details are intended to be sorted at later development application (DA) stage. We note that any further subdivision DA will need to have a neutral or beneficial effect (NorBE) on water quality and require our concurrence in accordance with Part 6.5 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

In terms of other refinements, the Proposal describes the total acreage of land including the areas covered by the existing R2 and RU6 and proposed R2 and C2 zones. It also more clearly identifies that boundary of the high biodiversity conservation significance area (Figure 3), justifying the boundary of the proposed C2 area.

### **Direction 3.3 Sydney Drinking Water Catchment**

The Proposal includes a comprehensive response to s 9.1 Direction 3.3 Sydney Drinking Water Catchment (Pp. 29 – 33). The response addresses water quality risks and responds to our previous comments as described above. The Proposal includes a relevant Strategic Land and Water Capability Assessment (SLWCA), previously provided by us, which indicates that the water quality risk varies from LOW to MODERATE. Based on the SLWCA, the site has a HIGH to MODERATE capability for sewered residential development based on water quality risks. The last two dot points in section 3.6.6 (Pp 32-33) could be amended to reflect that the SLWCA has been provided and that correspondence has occurred with WaterNSW.

### **Other - Community Title**

The Proposal appears to contain conflicting advice as to the mechanics of cl 4.1AA of the Goulburn Mulwaree Local Environmental Plan (LEP) and whether Amendment 19 (given effect in 2020) operates to include or exclude RU6 zoned land from its operation (P.6 *cf.* P. 12). Our understanding is that Amendment 19 added the RU6 zone to clause 4.1AA to apply the MLS requirements applicable for that zone and overcome the flexibility given to Community title subdivisions under clause 4.1 of the LEP. This matter requires clarification.

The Proposal (P.12) seems to suggest that removal of the RU6 zoning from the site would switch off clause 4.1AA and overcome the MLS restrictions for the land area subject to 'Community title'. Clause 4.1AA lists relevant zones where the MLS provisions apply to Community title development including both RU6 and C2 zoned land. Removing the RU6 zoning and replacing it with C2 zoning alone will not overcome the MLS restrictions given effect by the clause and applying to the site. We expect that the C2 zoned would be included in the scope of any future DA that proposes to change the subdivision arrangements from Community title to Torrens title over the current RU6 area. The Proposal would benefit by further clarifying the operation of clause 4.1AA of the LEP to the Planning Proposal development.