



25 October 2018

ADVICE FOR A GATEWAY DETERMINATION REVIEW THE GAP ROAD, URALLA (PP_2018_URALL_001_00)

1. INTRODUCTION

1. On 11 September 2018, the Independent Planning Commission NSW (the **Commission**) received a request for advice from the NSW Department of Planning and Environment (the **Department**) regarding a Gateway Determination review of a planning proposal for land at The Gap Road, Uralla (the **planning proposal**).
2. Croft Surveying & Mapping (the **Proponent**) seeks, through the planning proposal, to amend the planning controls of the *Uralla Local Environmental Plan 2012 (ULEP 2012)* including rezoning the land from RU1 Primary Production to RU4 Primary Production Small Lots and decrease the Minimum Lot Size from 200 hectares (ha) to 20ha.
3. The Commission has been requested by the delegate of the Minister of Planning, in accordance with Section 3.34(5) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, to review the decision of the Gateway Determination that the planning proposal not proceed and prepare advice on the merits of the planning proposal.
4. Professor Mary O’Kane, Chair of the Commission, nominated Dr Peter Williams (Chair) and Catherine Hird to constitute the Commission to review the Gateway Determination.

1.1 Proponent’s request for Gateway Determination review

5. On 9 April 2018, Uralla Shire Council (the **Council**) submitted to the Department a planning proposal to amend the planning controls under the ULEP 2012 for Gateway Determination.
6. On 13 June 2018, the delegate of the Minister of Planning issued a Gateway Determination that the planning proposal should not proceed as it is:
“inconsistent with the New England North West Regional Plan 2036, State Environment Planning Policy (Rural Lands) 2008, section 9.1 Directions 1.2 Rural Zones, 1.5 Rural lands and 5.10 Implementation of Regional Plans and Council’s local growth management strategy (NSW Planning Policies)”
7. The Proponent submitted a Gateway Review Application to the Department (**Review Application**), dated 17 July 2018.
8. The Department made the following clarification in relation to Section 9.1 Direction 1.2 Rural Lands in its Gateway Review Justification Assessment Report:
“... While the Gateway Determination also identifies inconsistency with section 9.1 Direction 1.2 Rural Lands, upon further review, the Department considers that no inconsistency with this Direction exists...”

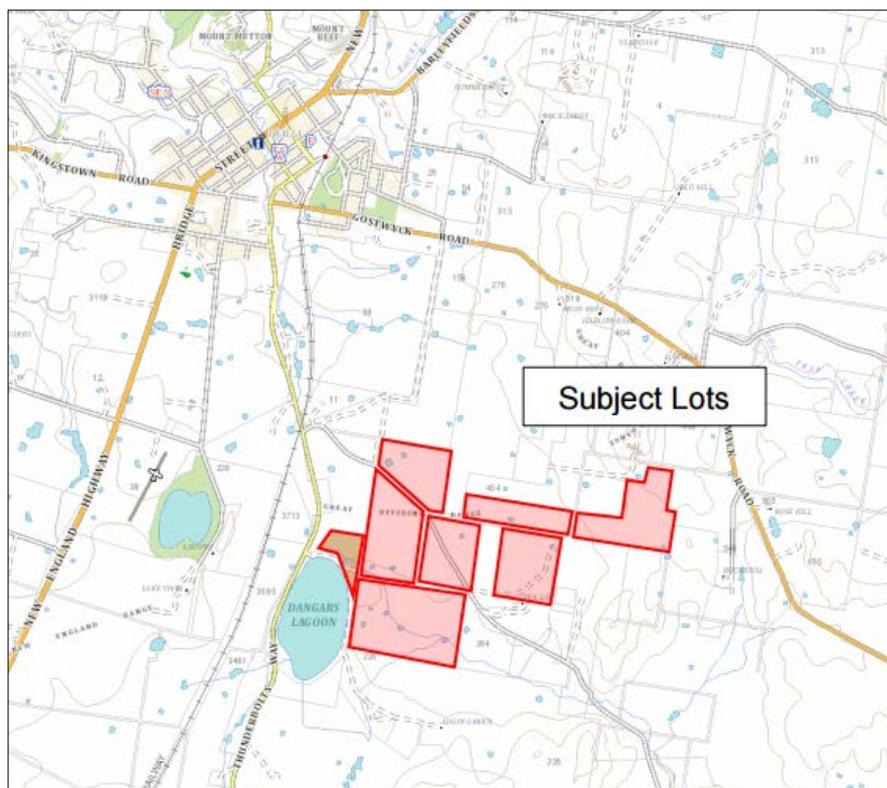
1.2 Referral of Gateway Determination to the Commission

9. On 11 September 2018, the Commission was requested to review the decision not to issue a Gateway Determination and prepare advice concerning the merits of the request.

1.3 Summary of Planning Proposal and Gateway Determination

10. The Gateway Determination relates to a planning proposal to amend the ULEP 2012. The proposed amendments, as described in the Department's Gateway Review Justification Assessment, are to amend the ULEP 2012 to:
 - rezone the subject land, *shown in Figure 1 below*, from RU1 Primary Production to RU4 Primary Production Small Lots; and
 - amend the Minimum Lot Size from 200ha to 20ha.
11. The Site currently has one dwelling entitlement under the ULEP 2012.

Figure 1 – Subject Land (The Site)



Source: Department's Gateway Determination Report

2. THE COMMISSION'S MEETINGS

12. On 8 October 2018, the Commission met with the Department and held a teleconference with the Proponent as part of its review. On 10 October 2018, transcripts of both the meeting and the teleconference were made available on the Commission's website.
13. The Commission determined that a site inspection was not necessary as part of this review as the key issues relating to the Gateway Determination and planning proposal could be assessed based on the information provided by the Department and the Proponent.

14. Notwithstanding, the Commission notes that Department officers undertook a site inspection on 4 May 2018 as part of its assessment of the planning proposal.
15. On 2 October 2018, the Commission invited Council to meet with them, but Council advised that they did not wish to meet with the Commission.

2.1 Meeting with the Department

16. On 8 October 2018, the Department met with the Commission on the planning proposal and Gateway Determination. The key points of the discussion included:
 - the Site is in single ownership and capable of being used as productive agricultural land, based upon size, soil capability and rainfall;
 - the proposal provided insufficient justification of consistency with *New England North West Regional Plan 2036, State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP)*, Section 9.1 Directions and Council's endorsed strategy (**New England Development Strategy**);
 - the planning proposal provided insufficient evidence to support the demand for a reduction in the minimum lot size or intensive agriculture in this locality;
 - the proposal will result in fragmentation of rural land creating small lots allowing for potentially intensive land uses that are out of character for the area;
 - potential impacts to biophysical strategic agricultural land; broadacre grazing; and environmental values of Dangar Lagoon;
 - the Site is not serviced and the suitability of each allotment for effluent disposal has not been established;
 - it was noted that the strategic analysis undertaken by Council to justify new rural residential development under the ULEP 2012, identified approximately 20 years of land (excluding the subject land) available for small lot holdings within the local government area (LGA).

2.2 Teleconference with the Proponent

17. On 8 October 2018, the Commission held a teleconference with the Proponent on the planning proposal and the request for a review of the Gateway Determination. The key points of the discussion included the following:
 - the Site is currently used for cattle grazing;
 - past practices on the Site have included sheep grazing with some fodder cropping (e.g. hay and barley);
 - the Site has experienced climatic limitations on cropping;
 - the planning proposal intends to seek small lot production to allow for agricultural / rural activities that would support tourism and additional employment;
 - rezoning of the Site is considered necessary to:
 - establish future development options that would grow employment opportunities in particular for the township of Uralla;
 - allow for flexibility in land uses to enable emerging land use opportunities resulting from agriculture uses (e.g. vineyard and function centre);
 - the area is experiencing increased demand for flexibility in land uses from people migrating to the area and the next generation from traditional family farms;

- flexibility in planning controls will unlock opportunities to increase income from the entire Site, rather than relying on grazing as the main source of revenue;
- the proposed land uses will encourage clustering of similar activities in the area, supporting local business and providing additional employment opportunities;
- the Site is strategically located on significant tourist routes including the 'Fossicker's Way' to Port Macquarie and the New England Highway;
- water supply is not considered a constraint with potential for groundwater extraction on some lots, and rainwater harvesting and potential connection to the water supply servicing a nearby industrial site;
- the Proponent noted that past planning practices in the region allowed for small rural holdings outside of the immediate town centre that support agricultural land use at a smaller scale; and
- the Proponent also noted that (in its view) since the introduction of the *Standard Instrument Local Environmental Plan 2006* many rural Councils have started to manage small rural holdings seemingly as large lot residential zones. This practice ultimately resulted in the clustering of small rural holdings around the fringe of many townships and restricting future agricultural land use activity.

3. THE COMMISSION'S CONSIDERATION

18. In reviewing the Gateway Determination, the Commission has carefully considered the following material (the **Material**):
 - the planning proposal prepared by the Proponent, dated February 2018;
 - the Proponent's supplementary information, dated 23 March 2018;
 - the Department's Gateway Determination, dated 13 June 2018, including all attachments;
 - the Department's Uralla Gateway Determination PP_2018_URALL_001_00 memorandum, dated 13 June 2018 (the **Gateway Report**);
 - the Proponent's Gateway Review Application, dated 17 July 2018, including all attachments (the **Review Application**);
 - the Department's Gateway Review Justification Assessment Report, including all attachments (the **Justification Report**), dated 11 September 2018;
 - State Environmental Planning Policy (Rural Lands) 2008;
 - the New England North West Regional Plan 2036 (the **Regional Plan**);
 - Section 9.1 Direction 1.2 Rural Zones, 1.5 Rural Lands and 5.10 Implementation of Regional Plans;
 - the New England Development Strategy (2010) (the **Local Plan**);
 - information discussed with the Commission at its meeting with the Department on 8 October 2018 and provided in the transcript published on the Commission's website; and
 - information discussed with the Commission at its meeting with the Proponent on 8 October 2018 and provided in the transcript published on the Commission's website.
19. In undertaking a review of the Gateway Determination, the Commission has considered the strategic and site-specific context of the Gateway Determination.

3.1 Strategic context

20. The Commission has reviewed the planning proposal and considered the NSW Planning Policies identified by the Department, as set out in paragraph 6.
21. The Commission has reviewed the planning proposal against the following Section 9.1 Directions and makes the following comments:
 - Direction 1.2 Rural Zones does not apply to the planning proposal as the Site is located within an existing or proposed rural zone as detailed in paragraph 8;
 - Direction 1.5 Rural Lands applies to all planning proposals to which the Rural Lands SEPP applies. The direction applies to Uralla LGA. The direction applies when “a relevant planning proposal will affect land within an existing or proposed rural or environmental protection zone”. A planning proposal “must be consistent with the Rural Planning principles listed in State Environmental Planning Policy (Rural Lands) 2008”;
 - Direction 2.3 Heritage Conservation applies to all Relevant Planning Authorities. This Direction aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The subject land adjoins Dangars Lagoon which is a local heritage item; and
 - Direction 5.10 Implementation of Regional Plans applies to land which the Minister for Planning has released a Regional Plan. The *New England North West Regional Plan* is the applicable Regional Plan.
22. The Rural Planning principles set out in clause 7 of the Rural Lands SEPP include: “ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General”.
23. The Commission notes that the *New England Development Strategy* (2010) is the applicable local strategy.

3.1.1 Proponent’s Consideration

24. The Proponent provided the following comment in support of the planning proposal’s consistency with the NSW Planning Policies (relevant extracts detailed below):
 - Section 9.1 Direction 1.2 Rural Zones: the “*planning proposal proposes to retain a rural zone for the site. The site is located within 3km of the Uralla Township. The site and surrounding land is already fragmented land with lot sizes below the proposed minimum lot size*”;
 - Section 9.1 Direction 1.5 Rural Lands: “*the planning proposal is consistent with the Rural Planning Principles and the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008*”.
 - The Regional Plan: “*the planning proposal is consistent with the objectives of the relevant actions identified in the New England West Regional Plan...seeks to provide suitable small lots that will encourage and promote diversity and employment opportunities related to primary industry and tourism enterprises in a location close to the Uralla township. Rezoning the land to RU4 Small Primary Production Lots is consistent with the existing small primary production land uses adjoining and to the east of the site. Altering the lot size standards from 200 ha to 20 ha is consistent with the existing lot sizes of the site and allows for small primary production lots with dwelling entitlements*”;
 - the Local Plan: “*the proposed rezoning ...is justified for the following reasons:*
 - *the site is suitable for small primary production purposes in terms of its natural attributes as well as proximity to the Uralla Township*

- *the site is contiguous with surrounding small primary production lots*
- *the clustering of future small lot primary production and tourism enterprise will encourage and promote diversity and employment opportunities in close proximity to the Uralla Township*
- *the proposed rezoning is considered to be consistent with the key assessment criteria of the New England Development Strategy that was used to identify locations for new rural small holdings...while the site is not one of the identified potential small rural holding locations...the site is the most consistent with the location criteria listed...”;*

3.1.2 Department’s Consideration

25. The Department assessed the planning proposal against the identified planning policies as set out in paragraph 6. A summary of key relevant comments is detailed below:

- Section 9.1 Direction 1.2 Rural Zones, the planning proposal is inconsistent “*as it seeks to reduce the minimum lot size and rezone the subject lots from rural smallholdings within the broader rural zone*”. As noted in paragraph 8 however, the Department no longer considers that any inconsistency exists with this Direction;
- Section 9.1 Direction 1.5 Rural Lands, the planning proposal is inconsistent “*as it is unable to comply with the rural planning and subdivision principles of Rural Lands SEPP*”;
- Section 9.1 Direction 2.3 Heritage Conservation, the subject land adjoins “*Dangars Lagoon...it is understood that the wetland is likely to have heritage cultural value for the Aboriginal community and played an important role in the early local mining industry that underpinned European settlement in the area. Further investigation and consultation with the Office of Environment and Heritage is required to determine the consistency with the Direction should the planning proposal proceed*”;
- Section 9.1 Direction 5.10 Implementation of Regional Plans, “*the planning proposal is inconsistent with the New England North West Regional Plan 2036*”;
- The Rural Lands SEPP: “*aims primarily to facilitate the orderly and economic use and development of rural lands for rural and related purposes. The SEPP identifies rural planning principles and rural subdivision principles to assist in the proper management, development and protection of rural lands.*

It is not considered that the planning proposal or the Proponent’s supplementary information provided sufficient evidence or justification to demonstrate the proposal’s consistency with the Rural Lands SEPP, how primary production will be protected or rural land conflict use avoided. While the land is already fragmented for historic reasons, the fragmented lots do not have the ability for individual dwellings, and the land is under one ownership and is collectively farmed. The existing fragmentation does not allow for additional dwelling entitlements on each of the existing lots”;

- The Regional Plan: “*identifies the importance of agriculture for the future development of the region and the need for the council to support the growth of the industry, including strategically planning for intensive agriculture. This proposal does not adequately consider or address these issues and is inconsistent with Council’s Department-approved local strategy for the location of rural smallholdings*”; and

- the Local Plan: *“the planning proposal is inconsistent with Council’s Department-approved...Strategy, ... [the plan] identified ...suitable strategic locations for rural smallholdings (Primary Production Small Lots). The subject site is not in close proximity to any of these locations...*

While the proposal seeks to justify the rezoning as being consistent with the intent of the local strategy’s criteria for the selection of the already identified areas, it fails to recognise the existing nature of the identified areas or the large supply of rural smallholding land that these areas already provide for the Shire”.

3.1.3 Commission’s Consideration

26. The Commission accepts the Proponent’s finding as set out in paragraph 24 that the planning proposal broadly aligns with Action 1.4 of the Regional Plan, in so far as the intent is to diversify agricultural activities and encourage tourism activity to support local communities.
27. The Commission accepts the Department’s findings as set out in paragraph 25 that the planning proposal is inconsistent with Section 9.1 Direction 1.5 Rural Lands, as it may result in a loss of agriculturally productive land, and 5.10 Implementation of Regional Plans, as it is inconsistent with both the Regional Plan and the Local Plan.
28. In regard to Section 9.1, Direction 2.3 Heritage Conservation, the Commission supports the Department’s position as set out in paragraph 25, that further information and consultation with the Office of Environment and Heritage regarding potential impact on Dangars Lagoon would be required if the planning proposal was to proceed.
29. The Commission finds that the planning proposal does not adequately demonstrate consistency with the Rural Planning Principles of the Rural Lands SEPP as insufficient evidence has been provided to demonstrate how the intensification of rural lands could be balanced against the social, economic and environmental interests of the community.
30. Notwithstanding the lack of sufficient evidence, the Commission also finds that the planning proposal is inconsistent with Rural Subdivision Principles as the proposal will result in rural land fragmentation. Further consideration needs to be given to existing agricultural holdings in the area and planned future supply of rural smallholdings.
31. Action 1.3 of the Regional Plan sets out the need to *“protect intensive agriculture clusters in local plans to avoid land use conflicts, particularly with residential and rural residential expansion”*. The Commission finds that the information provided to support the planning proposal does not adequately address intensification of land activities and the potential adverse impacts on surrounding lands and is inconsistent with this Action.
32. The Commission notes Action 3.2 of the Regional Plan limits *“urban and rural residential development on important agricultural land, including mapped Biophysical Strategic Agricultural Land, unless it is in a strategy that is: agreed between the council and the Department; and consistent with the guidelines for councils on important agricultural land”*.
33. The Regional Plan maps a small part of the Site as ‘Biophysical Strategic Agricultural Land’. As identified by the Proponent as set out in paragraph 38, the Site has a long history of agricultural activity. Therefore, without further detailed investigation of the broader area, the Commission finds the proposal to be inconsistent with this Action.

34. However, the Commission notes Action 3.4 under the Regional Plan requires councils to “*secure the ongoing agricultural viability of rural land holdings by incorporating minimum subdivision standards and local planning provisions for rural dwellings in local plans to manage potential conflicts with agricultural activities, and monitoring annual changes in landholding sizes for each local government area*”.
35. The Commission considers a review of the viability of rural land holdings in the area should form part of the strategic analysis undertaken by Council when preparing a Local Strategic Planning Statement as required by the EP&A Act.
36. The Commission also notes that the Site was not identified as an ‘urban expansion area’ in the Local Plan. As such, the Commission finds that the planning proposal is inconsistent with the Local Plan.
37. As set out in paragraphs 26 – 36, the Commission finds that the planning proposal is inconsistent with the NSW Planning Policies and that the planning proposal does not demonstrate strategic merit.

3.2 Site-specific context

3.2.1 Proponent’s Consideration

38. As part of the review process the Proponent provided the following statements in the Review Application, dated 17 July 2018, concerning key site-specific matters raised in the Gateway Review by the Department (relevant extracts as follows):

- The Department: “*the site is not in close proximity to any existing or proposed rural smallholding areas identified in Council’s local strategy*”;

Proponent’s response: “*the site is located within 3km of the Uralla Township ... While the site is not one of the identified potential small rural holding locations... the site is the most consistent with the location criteria ... The surrounding land consists of small rural holdings. The site adjoins the main proposed future industrial area for the Uralla Shire ...*”;

- The Department “*the site is prime agricultural land in a primarily broadacre production area*”;

Proponent’s response: “*the land is not a primary broadacre production area. The land has a long history of grazing and has not undertaken broadacre cropping production*”;

- The Department “*Council staff advised ...that adequate rural smallholding land to meet the demand for at least another 20 years already exists in the Shire in a range of locations*”;

Proponent’s response: “*It is unclear how Council has identified that there are adequate rural smallholdings to meet the demand for at least another 20 years ... It is noted a draft planning proposal was provided to Council’s Manager Planning and Regulation on 30 October 2017 seeking planning advice and input. On 16 February 2018, Council’s Manager Planning and Regulation provided the following advice:*

“It will need to be amended to incorporate the New England North West Regional Plan. Generally, I’m not a fan of rezoning agricultural land to permit small blocks, however the Council may take a different view.”

The Council advice did not indicate that adequate rural smallholding supply existed”.

3.2.2 Department's Consideration

39. The Department concluded in its Gateway Report that,

“the land is not in close proximity to any existing or proposed rural smallholdings or rural residential areas and is located on prime agricultural land in a primarily broadacre production area. The proposal will fragment rural land that is currently farmed under single ownership and will lead to an increase in potential land use conflict due to the introduction of 11 additional dwellings into the rural landscape. Council staff have advised that sufficient rural smallholding land to meet demand for at least another 20 years already exists in the Shire across a range of locations”.

40. As set out in its Gateway Review Justification Report, with regard to the justification and merit of the planning proposal, the Department stated:

- *“The planning proposal has not adequately demonstrated that the land is suitable and notes that:*
 - *... Dangars Lagoon is a naturally occurring wetland adjoining the site and provides important habitat for many bird species. Increasing fragmented ownership of the land in close proximity of the wetland could adversely affect the biodiversity of the wetland, particularly in relation to sediment and nutrient loads and the introduction of different land management practices. The planning proposal is not supported by any detailed studies addressing the potential impacts on Dangars Lagoon or the broader environment;*
 - *The land is located on an unsealed gravel road and is not proposed to be serviced by water or sewer;*
 - *The existing rural smallholdings in the area referred to in the proposal, are understood to have been created in the 1990s under the provisions of the former Uralla LEP 1988 for intensive agriculture purposes. Advice from Council staff and the Department's site inspection of the area indicates that these lots are now generally being used for rural residential/lifestyle purposes rather than on-going intensive agriculture purposes; ...*
 - *Benefits associated with the co-location of land use activities, that also avoid conflict and servicing issues, will generally only result when the best and highest use of the land is holistically considered and strategically planned rather than undertaken in an ad hoc fashion”.*

3.2.3 Commission's Consideration

41. The Commission notes the Proponent's comments, as set out in paragraph 38, that the site is located within 3km of the Uralla Township. However, as outlined in the Regional and Local Plan, the Site is located outside of the immediate boundary of the Uralla urban area.
42. The Commission notes that the land uses immediately surrounding the Site include primary production, which consists predominately of cattle grazing land.
43. As stated in the teleconference with the Proponent on 8 October 2018, past activities on Site have also included grazing and cropping for stockfeed. This is notwithstanding the information in the Review Application and comments by the Proponent as set out in paragraph 38.
44. The Commission notes that the Proponent states the Site is already effectively fragmented as it consists of a number of separate land parcels (as outlined in *Figure 1* above). However, given the Site has only a single dwelling entitlement it can be reasonably assumed that the land is capable of being used as a single production unit

and thereby not considered to be fragmented from an agricultural land use perspective.

45. Conversely, the planning proposal will result in the fragmentation of land by creating 11 dwelling entitlements across the Site. Accordingly, the Commission accepts the Department's view, as set out in paragraphs 39 - 40 that the planning proposal will result in fragmentation of lots and impact on the ability to manage and protect the productive agricultural land.
46. The Commission notes that, as set out in the Department's Gateway Review Justification Report and paragraph 40, the potential adverse impacts associated with intensification of activities on site, including demand for water and sewer services and environmental values have not been addressed in the planning proposal.
47. Further, the Commission notes that the planning proposal has not considered the potential environmental impact on surrounding land, in particular Dangars Lagoon.
48. The Commission accepts the Department's view, as set out in paragraph 40 that a strategic approach should be taken to the expansion of agricultural land uses and subdivision of rural zones to minimise land use incompatibility and fragmentation of productive rural lands.
49. The Commission also accepts the Department's view, provided during the teleconference on 8 October 2018 and set out in paragraph 40 that the justification for the planning proposal and specifically the supporting evidence including economic analysis and community benefit outlined in the Review Application is insufficient.
50. As set out in paragraphs 45 - 49, the Commission finds that the planning proposal has not adequately demonstrated site-specific merit because:
 - the planning proposal will result in fragmentation of lots and impact on the ability to manage and protect the productive agricultural land;
 - there are potential adverse impacts associated with intensification of activities on site which have not been addressed;
 - a more strategic approach should be taken to the expansion of agricultural land uses and subdivision of rural zones to minimise land use incompatibility and fragmentation of productive rural lands; and
 - justification for the planning proposal is insufficient, in particular economic analysis and community benefits.

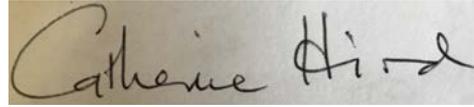
4. THE COMMISSION'S ADVICE

51. The Commission reviewed and considered the Material before it and met with the Proponent and Department.
52. For the reasons set out in paragraphs 26 - 37, the Commission finds that the planning proposal is inconsistent with NSW Planning Policies and does not demonstrate strategic merit.
53. For the reasons set out in paragraph 50, the Commission finds that the planning proposal does not provide sufficient site-specific merit. Decisions on future land use of the Site may be more appropriately considered in a broader strategic planning context, such as Council's review of its local environmental plan as set out in paragraph 35.

54. The Commission advises the Minister's delegate that the Gateway Determination should be retained and the planning proposal should not proceed.



Dr Peter Williams (Chair)
Member of the Commission



Catherine Hird
Member of the Commission