

Planning and Assessment

IRF19/4763

Gateway determination report

LGA	Orange
PPA	Orange City Council
NAME	Amendment 26 to Orange LEP 2011 to facilitate retail development at 1517 Forest Road (0 homes, less than 209 jobs)
NUMBER	PP_2019_ORANG_001_00
LEP TO BE AMENDED	Orange Local Environmental Plan 2011
ADDRESS	1517 Forest Road, Orange
DESCRIPTION	Lot 1 DP 549856 and Lot 100 DP 1147525
RECEIVED	09 July 2019 – Adequate 28/04/2020
FILE NO.	IRF19/4763
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The proposal seeks to amend planning controls related to precinct 1 (Lot 1 DP 549856 and Lot 100 DP 1147525) of the Orange Private Hospital site located at 1517 Forest Road, Orange. Amending these controls will facilitate retail development at the proposed Orange Private Hospital to support staff, patients and visitors to the health facility precinct. Proposed changes to precinct 1 include:

- Rezone from R1 General Residential to B2 Local Centre.
- Creation of Floor Space Ratio (FSR) controls on the land, of 0.185:1.
- Creation of a site specific provision to restrict the FSR controls to 'retail premises' only.

1.2 Site description and surrounding area

The subject site is approximately 3.5km south of Orange CBD, along Forest Road (**Figure 1**) and is currently zoned R1 General Residential. Major developments surrounding the subject site are the health and agriculture precincts. These include the Orange Agricultural Institute and School of Rural Health. The subject site is adjacent to the Orange Health Service and Gosling Creek Aged Care centres. The major R2 Low Density Residential zone to the south-west is the future subdivision of the DPI Agriculture site. As shown in **Figure 2**, the subject site is currently under construction for the Orange Private Hospital and supplementary development including a child care centre and motel.

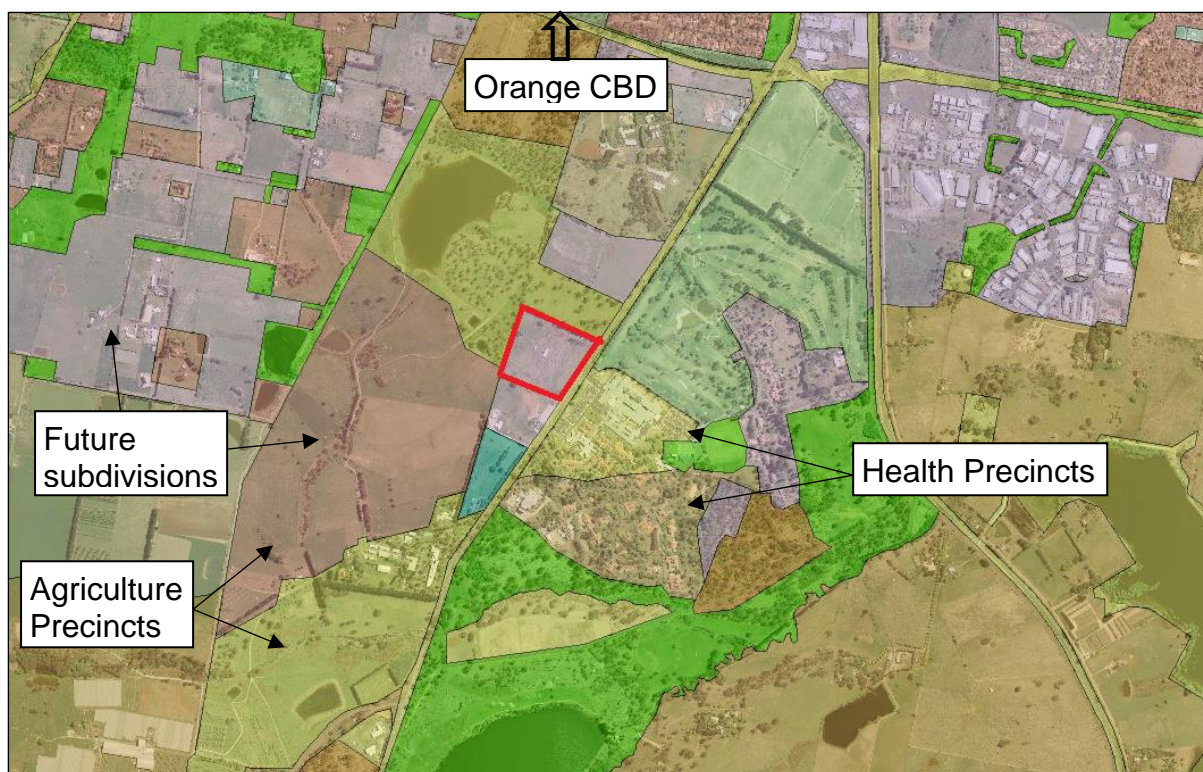


Figure 1: Land zoning surrounding the subject site.

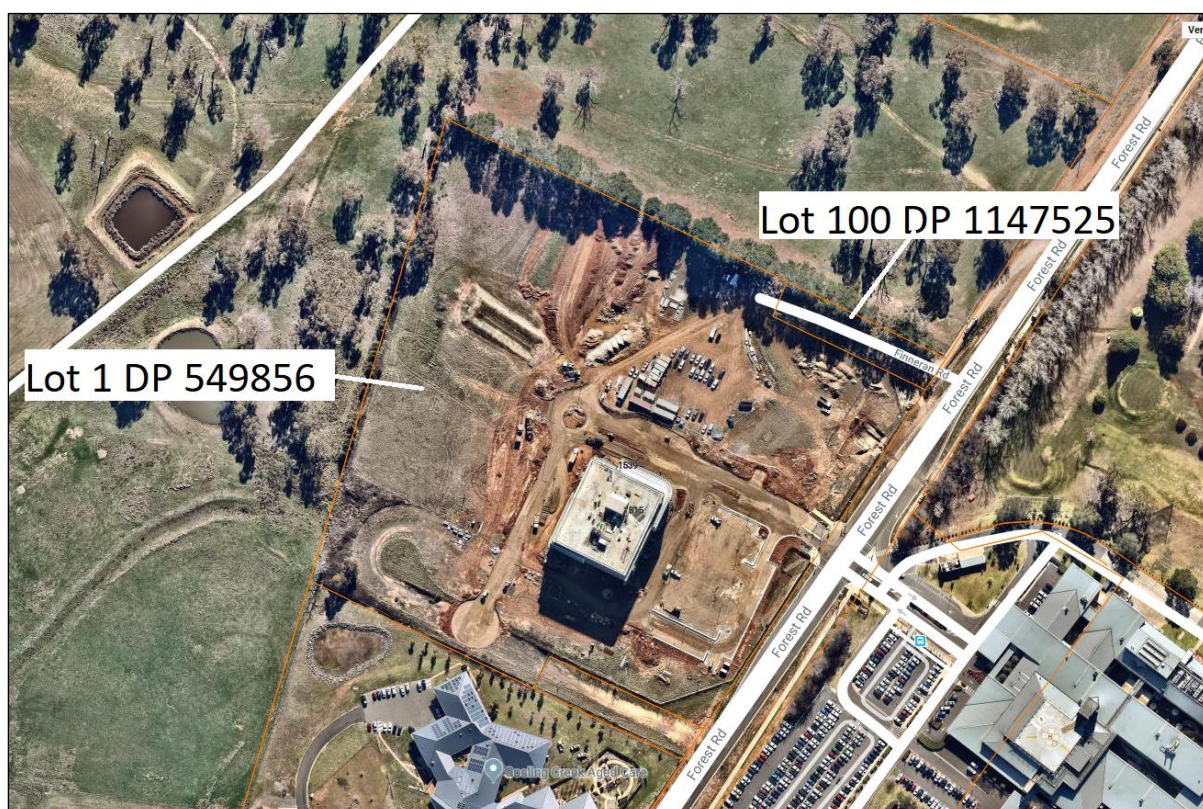


Figure 2: Aerial imagery of the subject site.

1.3 Existing planning controls

The subject site has the following existing planning controls:

- Zoned R1 General Residential.
- No Minimum Lot Size, Floor Space Ratio (FSR), or Height of Building limits.
- Mapped as being on groundwater vulnerable land, but not within the Orange drinking water catchment.
- Next to Bloomfield Hospital, State significance heritage item (I21).

The subject site was subject to a Part 3A project approval (MP 07_0072) to expand the health facilities of Orange and is split into four precincts. On 4 February 2020, the Part 3A approval for precinct 1 was relinquished to allow for this LEP amendment to proceed. The planning proposal relates to precinct 1 (**Figure 3**), which will create a small retail area to support visitors, staff and patients to the hospital facilities.

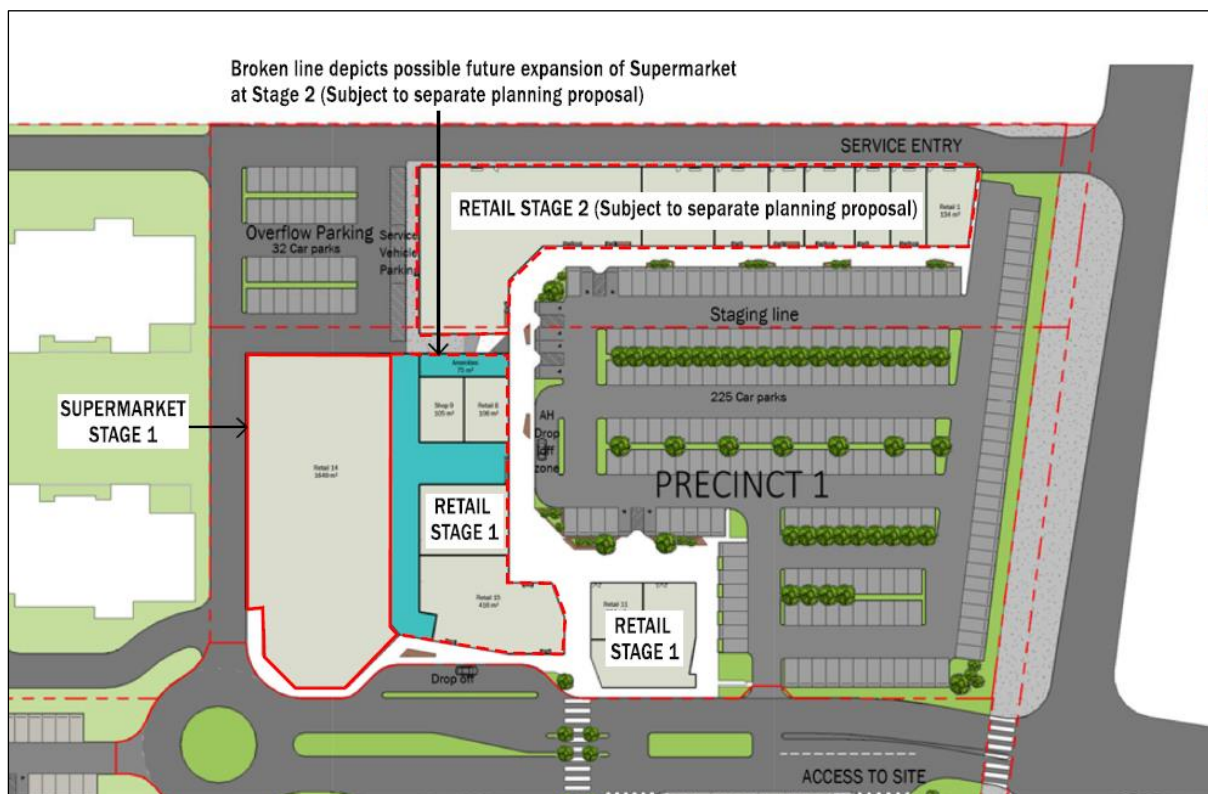


Figure 3: Masterplan of the health facilities upgrade, with design for precinct 1.

1.5 Summary of recommendation

Proceed with condition – The planning proposal will permit development of retail services to support the Orange Private Hospital, which is currently under construction. The proposal is consistent with State, regional and local planning strategies and the only outstanding item is consistency with section 9.1 Ministerial Direction 6.3 Site Specific Provisions. This will be resolved once the site specific provision to restrict the FSR to 'retail premises' only is decided.

The draft LEP map changes proposed in the planning proposal will require updating prior to community consultation to show the FSR will be 0.185, not 0.37. The proponent initially suggested a FSR of 0.37:1, however, this was negotiated with Council and later changed to 0.185:1.

2. PROPOSAL

2.1 Objectives and explanation of provisions

Proposed changes to precinct 1 include:

- Rezone from R1 General Residential to B2 Local Centre. This will more accurately reflect the intended use of the land and permits 'commercial premises' with consent. This will allow for a greater variety of commercial uses of the land than permissible under the existing zone.
- Creation of Floor Space Ratio (FSR) controls on the land to 0.185:1. This will ensure the size of permitted developments is small. The intent is to avoid commercial competition which detracts from the CBD.
- Creation of a provision to restrict the FSR controls to 'retail premises' only. The intent is to ensure large retail uses are not permissible on the land, without limiting other uses such as office or business developments.

2.3 Mapping

The proposal will require amendments to LEP maps FSR_008B and LZN_008B. Depending on the method of restricting FSR to 'retail premises' an Additional Permitted Uses (APU) map may also be required for map sheet APU_008B. This will be determined once a draft Plan is created.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal has been submitted to support development of the Orange Private Hospital Site. Specifically, the proposal will support precinct 1 to accommodate health facilities such as pathology, radiology, medical suites and chemists; and retail activities including convenience stores, newsagency, hairdressers and, food and drink premises. Not all the intended land uses of the subject site are currently permissible under zone R1 of the Orange LEP, therefore a LEP amendment is required to permit the development.

Orange City Council have requested for the limitation of FSR controls to be applied through Schedule 1 APU provision. While this approach is permissible, a more appropriate avenue to achieve the same outcome may be creation of a specific Part 4 development standard or Part 7 additional local provision in the Orange LEP. This mechanism will be resolved at legal drafting of the planning proposal, however, the intent of the restriction to FSR is supported. All other proposed amendments to the Orange LEP are considered the best means to achieve the intent of the proposal.

4. STRATEGIC ASSESSMENT

4.1 State

There is no relevant State strategic planning framework for this proposal.

4.2 Regional / District

The relevant regional strategic planning framework is the Central West Orana Regional Plan 2036 (CWORP). The planning proposal is consistent with:

- Direction 5: Improve access to health and aged care services – As the proposal is associated with the Bloomfield Private Hospital health precinct upgrade the planning proposal is consistent with Actions 5.1, 5.2 and 5.3.

- Direction 10: Promote business and industrial activities in employment lands – As the proposal is supported by an economic impact assessment and will be in a mixed-use health related employment area, it is consistent with actions 10.2, 10.6 and 10.7.
- Direction 12: Plan for greater land use compatibility – As the planning proposal is technically not required and is merely to update the LEP to better reflect land use, it is consistent with Action 12.4.

4.3 Local

Council has the following local strategies:

- Blayney Cabonne Orange Sub-regional Rural and Industrial Land Use Strategy – Not directly relevant to the proposal.
- Orange Sustainable Settlement Strategy – The proposal is located within the LU11 investigation area. This area is considered for medium to long term residential growth. The planning proposal isn't inconsistent with this strategy.
- Activate Orange – The proposal is located within the Life Sciences Precinct and Orange Health and Innovation Precinct Road. The proposal is consistent with the objective to attract investment, diversify the economy and create jobs, by facilitating mixed use commercial development to support the health service facilities.
- Orange Community Strategic Plan – Not directly relevant to the proposal.

4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with the following relevant section 9.1 Ministerial Directions:

- 2.3 Heritage Conservation.
- 3.3 Home Occupations.
- 3.4 Integrating Land Use and Transport.
- 5.10 Implementation of Regional Plans.
- 6.1 Local Plan Making.

Direction 1.1 Business and Industrial Zones

This direction applies as the planning proposal will create a new business zone. An Economic Impact Assessment (EIA) has been completed to support the planning proposal. The EIA found if the proposed B2 zone was introduced, it would detract approximately 3.2% of trade from the Orange CBD. This is minor and an acceptable level of impact.

There is currently an undeveloped B2 zone approximately 200m south of the proposal at 1471 Forest Road (**Figure 4**). The B2 zone at 1471 Forest Road was established to create a neighbourhood shopping centre for the future development of Shiralee and the DPI Agricultural subdivision. Since the rezoning in 2011, there has been no intention to begin development of this subdivision. Establishment of a B2 zone at 1517 Forest Road would compete and potentially create an oversupply of B2 land, thus removing the need for a B2 zone at 1471 Forest Road. Council have assessed this concern and decided the proposed B2 zone at 1517 Forest Road

would service a greater portion of the population by being within walking distance of the TAFE (**Figure 4**).

As the planning proposal will impede the viability of the 1471 Forest Road local centre, the proposal is inconsistent with Direction 1.1. This inconsistency is considered justified as it is supported by a relevant study which considers the objectives of this Direction.

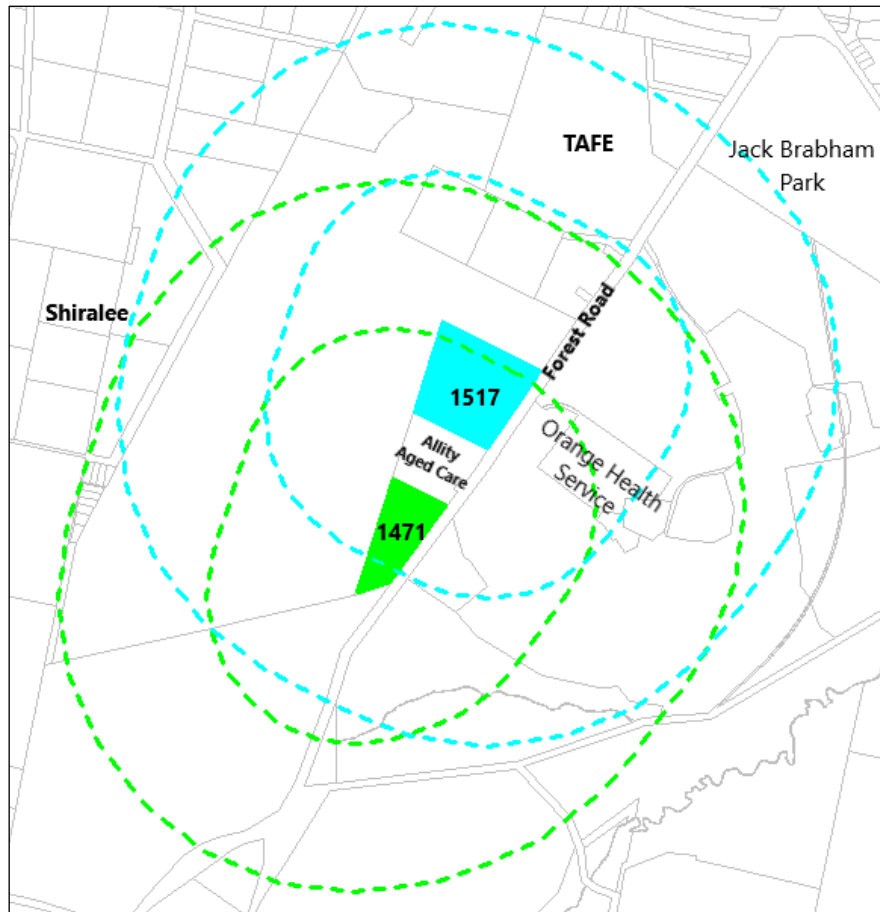


Figure 4: Location of existing (1471) and proposed (1517) B2 Local Centre zones, showing 400m and 800m service radius.

Direction 3.1 Residential Zones

This direction applies as the planning proposal will convert approximately 1.9ha of R1 General Residential to B2 Local Centre. The planning proposal is inconsistent with this direction as does not align with the objectives of the direction by removing residential land. As the proposed development already has Part 3A approval, the subject site will not be used for residential purposes. Therefore, the proposed rezoning is an administrative amendment only and will not reduce the actual supply of residential land. There is existing adequate supply of residential zoned land in the vicinity with the undeveloped land at Shiralee and DPI Agriculture site. Therefore, the inconsistency with Direction 3.1 is considered justified as it is of minor significance.

Direction 6.3 Site Specific Provisions

This direction applies to all planning proposal. Council have proposed an APU be created to restrict the FSR to 'retail premises' only, which is inconsistent with this direction. However, an APU may not be used, instead a specific development control

or additional local provision may be used, which will be determined with negotiations with Parliamentary Counsel. Until this is decided the proposal's consistency with this direction is unresolved.

4.5 State environmental planning policies (SEPPs)

The planning proposal does not require any further work to be consistent with any SEPPs. The previous soil contamination testing found the subject site is suitable for residential use as per *State Environmental Planning Policy No 55—Remediation of Land*. Therefore, the subject site is considered suitable for rezoning to B2 for commercial uses, without any further work.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal has already undergone vigorous assessment to obtain Part 3A approval and is not expected to have a significant impact on the community. Impacts to local heritage items, noise, dust, and parking and traffic have been resolved through specialist studies. The expected increase in retail services and associated jobs are expected to be a positive impact to the local community.

5.2 Environmental

The subject site is already cleared of all vegetation and construction has begun for precinct 1 and 2 of the Orange Private Hospital. The planning proposal will allow for a greater diversity of commercial uses of the land, which is not expected to cause any further environmental impact.

5.3 Economic

The EIA estimates a total of 209 jobs will be created directly and indirectly as a result of proposal with a FSR of 0.37:1. The estimated job number is reduced as a decreased FSR of 0.185:1 will apply to the subject site. While the exact number of jobs generated by the proposal is uncertain, increasing the diversity of commercial uses of the land will result in more jobs and a positive local economic impact.

6. CONSULTATION

6.1 Community

A 28 day community consultation has been suggested for this proposal. This timeframe is considered appropriate as it does not meet the criteria for a low impact proposal.

6.2 Agencies

No agency consultation has been proposed by Council. No agencies consultation has been identified as necessary through the Gateway determination assessment due to consistency with local and regional planning policy.

7. TIME FRAME

No time frame for completing the LEP was proposed by Council. A 12 month timeframe is recommended to complete the LEP.

8. LOCAL PLAN-MAKING AUTHORITY

Council requested to be the local plan-making authority, when additional information was provided on 28 April 2020. Council should be authorised to be the local plan-making authority as they have no interest in the land.

9. CONCLUSION

The proposed LEP Amendments are required to permit development of retail services to support the Orange Private Hospital, since the Part 3A Approval was relinquished. The proposed amendments are consistent with State, regional and local planning strategies. The only outstanding item is consistency with section 9.1 Ministerial Direction 6.3 Site Specific Provisions. This will be resolved once the site specific provision to restrict the FSR to 'retail premises' only is decided.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions (1.1 Business and Industrial Zones and 3.1 Residential Zones) are minor or justified; and
2. note that the consistency with section 9.1 Directions (6.3 Site Specific Provisions) is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be updated to show the intent of the proposal being:
 - (a) proposed Floor Space Ratio (FSR) will be 0.185, not 0.37; and
 - (b) to apply the FSR controls to 'retail premises' only.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 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 section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2016).
3. No consultation is required with public authorities/organisation 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).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;

- (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
7. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.



4.5.20

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5.5.20

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