

Shire of

Gunnedah

Land of Opportunity

Planning Proposal

- Amend the Lot Size Map for part of Lot 662 DP 39633 and part of Lot 680 DP 723481, 299 Kamilaroi Road Gunnedah from AB2 (40ha) to Y (1.2ha);
- Amend the Gunnedah Local Environmental Plan 2012 Lot Size Map legend from (AB4) 40ha to (AB2) 40ha;

Prepared by

Gunnedah Shire Council

30 January 2015

PART 1 – OBJECTIVES OR INTENDED OUTCOMES OF THE PROPOSED LEP

The objectives or intended outcomes of the Planning Proposal are as follows:

- a) Amend the lot size map for part of Lot 662 DP 39633 and Lot 680 DP 723481 to create minimum lot size of 1.2ha.
- b) Amend the legend of the Gunnedah Local Environmental Plan 2012 Lot Size Map from [AB4] 40ha to [AB2] 40ha.

The proposed change aims to achieve additional housing within a large lot residential locality.

**PART 2 – EXPLANATION OF PROVISIONS TO BE INCLUDED IN THE
PROPOSED LEP**

Objectives or intended outcomes of the Planning Proposal are to be achieved by amending the land zoning map for the subject land.

PART 3 – JUSTIFICATION

Section A – The need for the Planning Proposal.

1. *Is the Planning Proposal a result of any strategic study or report?*

This Planning Proposal is not the direct result of a Strategic Study or Report. A previous Planning Proposal – PP_2014_GUNNE_003_00 – (Gunnedah LEP 2012 amendment 3) received Gateway Determination on 29 July 2014, was adopted and made by Gunnedah Shire Council and notified by the Minister for Planning on 12 December 2014. However, during the final mapping process there was a minor error with the proposed Lot Size Map (LSZ_005AA) submitted, which has since been detected following notification of the amendment. This error involved a mis-description in the map legend and the location of the new lot size boundary for the subject lots on the notification maps.

The notified Gunnedah LEP 2012 Lot Size Map (LSZ_005AA) legend currently reads (AB4) 40ha, however it should read (AB2) 40ha. The adopted Lot Size Map (LSZ_005AA) also illustrates the amending lot size boundary as per the land zoning boundary, which is not as originally proposed and publicly exhibited. This error has occurred in the preparation of the final Lot Size Map.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The amendment of Lot Size Map (LSZ_005AA) is considered to be the most suitable method of achieving the intended outcomes of this planning proposal.

Section B – Relationship to strategic planning framework.

- 3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies?)**

The Namoi 2030 Regional Resource Strategy was a joint initiative between Councils in the Namoi catchment for the purpose of producing a regional land use management strategy with a focus on sustainable growth. The report refers to the current and projected growth of the Gunnedah region, in particular the anticipated growth in resource development and the impact this will have on supporting industries.

The Planning Proposal will provide additional large lot residential land to cater for the expected growth in Gunnedah's population.

- 4. Is the Planning Proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?**

Council's Community Strategic Plan identifies the value of retaining our quality of life, and in particular, how we live. The Planning Proposal aims to enable the subdivision of the subject land for the purpose of large lot residential development.

- 5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The Planning Proposal is considered to be consistent with all applicable State Environmental Planning Policies (appendix 1).

- 6. Is the planning proposal consistent with applicable ministerial directions (s.117 directions)?**

The Planning Proposal is considered to be consistent with all the applicable S.117 Ministerial Directions, with the exception of 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands (appendix 2).

Section C – Environmental, Social and Economic Impact

- 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

The planning proposal notes no known threatened vegetation or ecological communities on the site. However, the application notes the presence of White Box, which is an endangered ecological community. The proposal notes some localised tree removal, with building envelopes proposed to minimise the impact of future development. A full assessment of the impacts would be undertaken during the development application stage, which would include an assessment under SEPP 44 – Koala Habitat Protection.

- 8. Are there any other likely environmental impacts as a result of the planning proposal and how are they proposed to be managed?**

The site is not identified as being subject to flooding. However, the site is identified as bushfire prone land. A preliminary bushfire assessment was included with the previous proposal. A full assessment of the impacts would be undertaken during the development application stage.

- 9. Has the Planning Proposal adequately addressed any social and economic effects?**

A positive social and economic effect is expected as a result of the planning proposal, with additional large lot residential land having approval for subdivision, adding to housing choice and affordability in Gunnedah.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

The Planning Proposal is expected to have a similar impact on existing infrastructure as industrial development carried out under the current development standards. In terms of future subdivisions and associated need for new infrastructure, this would be required to be provided in similar manner and in accordance with Council's requirements.

11. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination?

Consultation with relevant State and Commonwealth Public Authorities (NSW Rural Fire Service and Office of Environment and Heritage) was previously undertaken as per conditions of Gateway Determination (PP_2014_GUNNE_003_00) (14/11896).

The response from the NSW Rural Fire Service noted that any future development (both subdivision and residential dwellings) will be required to comply with the NSW RFS 'Planning for Bushfire Protection 2006'. The design and construction stages will need to ensure compliance with this document and the specifications for asset protection zones, which may include the removal of vegetation.

The response from the Office of Environment and Heritage noted the impact of the future subdivision on the Endangered Ecological Community (EEC) of White Box, Yellow Box, Blakely's Red Gum Woodland and Koala habitat. The OEH recommended that future building envelopes be located to minimise or where possible exclude any impact on this EEC. The submitted proposed plan of subdivision does illustrate building envelopes to limit any impact on vegetation. These matters will be addressed during the assessment of any future development application for subdivision.

Gateway Determination (PP_2014_GUNNE_003_00) (14/11896) and the relevant authority responses have been attached for your referral (appendix 3).

PART 4 – MAPS

The Planning Proposal relates to a proposed amendment to the Gunnedah LEP 2012 Lot Size Map (LSZ_005AA). Preliminary maps have been attached for your referral (appendix 4).

PART 5 – COMMUNITY CONSULTATION THAT IS TO BE UNDERTAKEN

As per Gateway Determination (PP_2014_GUNNE_003_00), Draft Gunnedah LEP 2012 (amendment 3) was publicly exhibited for a period of not less than 14 days, with one submission received.

As a public exhibition process has previously been undertaken, Council is hoping to not have to undertake the process again.

PART 6 – PROJECT TIMELINE

The table below provides an indication of the timeline for the Planning Proposal.

Anticipated commencement date (date of Gateway determination)	March 2015 upon receipt of Gateway Determination by Council.
Anticipated timeframe for the completion of technical information	Technical studies have not been identified as a component of the Planning Proposal. The Department of Planning and Infrastructure may make prescriptions relating to technical information.
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	Council is hoping to not have to undertake government agency consultation as it has previously been undertaken in accordance with Gateway Determination (PP_2014_GUNNE_003_00) (14/11896)
Commencement and completion dates for public exhibition period	(14 days – If required) 10-24 March 2015
Dates for public hearing (if required)	Not identified as being required.
Timeframe for consideration of submissions	3 weeks
Timeframe for the consideration of a proposal post exhibition	4 weeks (partly in conjunction with consideration of submissions)
Date of submission to the Department of Parliamentary Counsel to finalise LEP	10th May 2015
Anticipated date RPA will make the plan (if delegated)	May 2015
Anticipated date RPA will forward to department for notification	May 2015

Appendix 1 – Consideration of State Environmental Planning Policies

The following SEPP's apply to the Gunnedah local government area, as at 10 February, 2015.

SEPP	Applicable	Consistent	Comment
No. 1 Development Standards	No	Not applicable	Not Applicable
No. 21 Caravan Parks	No	Not applicable	Not Applicable
No. 30 Intensive Agriculture	No	Not applicable	Not Applicable
No. 32 Urban Consolidation Re-development of Urban Land	No	Not applicable	Not Applicable
No. 33 Hazardous and Offensive Development	Yes	Yes	The planning proposal is consistent with this SEPP
No. 36 Manufactured Home Estates	No	Not applicable	Not Applicable
No. 44 Koala Habitat Protection	Yes	Yes	The planning proposal is consistent with this SEPP
No. 50 Canal Estate Development	No	Not applicable	Not Applicable
No. 55 Remediation of Land	Yes	Yes	The planning proposal is consistent with this SEPP
No. 62 Sustainable Aquaculture	No	Not applicable	Not Applicable
No. 64 Advertising and Signage	Yes	Yes	Not Applicable
No. 65 Design Quality of Residential/Flat Development	No	Not applicable	Not Applicable
Affordable Rental Housing 2009	No	Not applicable	Not Applicable
Building Sustainability Index: BASIX 2004	No	Not applicable	Not Applicable
Exempt and Complying Development Codes 2008	Yes	Yes	The planning proposal is consistent with this SEPP
Housing for Seniors and People with a Disability 2004	No	Not applicable	Not Applicable
Infrastructure 2007	Yes	Yes	The planning proposal is consistent with this SEPP
Major Development 2005	Yes	Yes	The planning proposal is consistent with this SEPP
Mining, Petroleum Production and Extractive Industries 2007	Yes	Yes	The planning proposal is consistent with this SEPP
Rural Lands 2008	Yes	Yes	The planning proposal is consistent with this SEPP

Appendix 2 – Consideration of Section 117 Ministerial Directions – Assessment relative to Planning Proposal – draft Gunnedah Local Environmental Plan 2012 (amendment No. 6)

1. Employment and Resources

Direction	Applicable	Consistent	Reason for inconsistency or comment
1.1 Business and Industrial zones	No	N/A	This Planning Proposal does not affect land located within an existing or proposed industrial zone.
1.2 Rural Zones	No	N/A	This Planning Proposal does not involve the rezoning rural land to residential. The subject land has is R5 Large Lot Residential and E3 Environmental Management.
1.3 Mining, Petroleum Production and Extractive Industries	Yes	Consistent	The subject land is currently zoned R5 Large Lot Residential and E3 Environmental Management, both of which mining is prohibited.
1.4 Oyster Aquaculture	No	N/A	Not applicable to LGA.
1.5 Rural Lands	Yes	Inconsistent	The Planning Proposal involves an amendment to the minimum lot size of a small section of agricultural land, zoned E3 Environmental Management. The section of agricultural land is located adjacent existing R5 Large Lot Residential zoned land. Given the size of the subject section of land, the proposal is considered to be of minor significance.

2. Environment and Heritage

Direction	Applicable	Consistent	Reason for inconsistency or comment
2.1 Environmental Protection Zones	Yes	Inconsistent	The Planning Proposal involves an amendment of the applicable minimum lot size on environment protection zoned land, which justifiably, could result in adverse impacts to this land. This impact however, is considered to be of minor significance as the subject land is adjacent existing R5 Large Lot Residential zoned land and Council will assess any possible impacts associated with development during the Development Application process.
2.2 Coastal Protection	No	N/A	Not applicable to LGA
2.3 Heritage	Yes	Inconsistent	The planning proposal does not contain provisions for the conservation and

Conservation			management of heritage items as these provisions already exist in the current instrument. In this respect, this inconsistency is considered to be of minor significance.
2.4 Recreation Vehicle Areas	Yes	Consistent	The Planning Proposal does not allow for the subject land to be used for the purpose of a recreational vehicle area.

3. Housing, Infrastructure and Urban Development

Direction	Applicable	Consistent	Reason for inconsistency or comment
3.1 Residential Zones	Yes	Consistent	The planning proposal does not include housing provisions as these provisions already exist in the current instrument and Council's development control plan (DCP). In this respect, the inconsistency is considered to be of minor significance.
3.2 Parks and Manufactured Home Estates	Yes	Inconsistent	The planning proposal does not include provisions for caravan parks and manufactures home estates as these provisions already exist in the current instrument and Council's DCP. SEPP 21 (Caravan Parks) & SEPP 36 (Manufactured Home Estates) are applicable to the subject land and prevail over the GLEP 2012. In this respect, this inconsistency is considered to be of minor significance.
3.3 Home Occupations	Yes	Inconsistent	The planning proposal does not contain provisions for home occupations as these provisions already exist in the current instrument. In this respect, this inconsistency is considered to be of minor significance.
3.4 Integrating Land Use and Transport	Yes	Inconsistent	The planning proposal does not include provisions for integrated land-use and transport as these provisions already exist in the current instrument. In this respect, this inconsistency is considered to be of minor significance.
3.5 Development Near Licensed Aerodromes	No	N/A	The Planning Proposal does not involve land located within or near a licensed aerodrome.
3.6 Shooting Ranges	No	N/A	The Planning Proposal does not involve land adjacent to and/ or adjoining an existing shooting range.

4. Hazard and Risk

Direction	Applicable	Consistent	Reason for inconsistency or comment
4.1 Acid Sulphate Soils	No	N/A	Not applicable to LGA
4.2 Mine Subsidence and Unstable	No	N/A	Not applicable to LGA

Land			
4.3 Flood Prone Land	No	N/A	The Planning Proposal does not involve development on flood prone land.
4.4 Planning for Bushfire Protection	Yes	No	The Planning Proposal is considered to be inconsistent with the Direction, as subject land is identified as being partially bushfire prone land. These provisions already exist in the current instrument and Council's development control plan (DCP). Any Development Assessment will also be assessed in accordance with <i>Planning for bushfire protection 2006</i> . In this respect, the inconsistency is considered to be of minor significance.

5. Regional Planning

Direction	Applicable	Consistent	Reason for inconsistency or comment
5.1 Implementation of Regional Strategies	No	N/A	Not applicable to LGA
5.2 Sydney Drinking Water Catchments	No	N/A	Not applicable to LGA
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A	Not applicable to LGA
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A	Not applicable to LGA
5.8 Second Sydney Airport: Badgery's Creek	No	N/A	Not applicable to LGA

6. Local Plan Making

Direction	Applicable	Consistent	Reason for inconsistency or comment
6.1 Approval and Referral Requirements	Yes	Yes	The Planning Proposal does not include provisions which increase approval and referral requirements as outlined in the

			Direction.
6.2 Reserving Land for Public Purposes	Yes	Yes	The Planning Proposal does not include provisions which affect the reservation of land for public purposes.
6.3 Site Specific Provisions	Yes	Yes	The Planning Proposal does not relate to enabling a particular development to be carried out on the site.

7. Metropolitan Planning

Direction	Applicable	Consistent	Reason for inconsistency or comment
7.1 Implementation of the Metropolitan Plan for Sydney 2036	No	N/A	Not applicable to LGA.

**Appendix 3 – Previous Gateway Determination & previous OEH & RFS
responses in relation to previous Planning Proposal –
(PP_2014_GUNNE_003_00 – (Gunnedah LEP 2012 amendment 3))**



Mr Eric Groth
General Manager
Gunnedah Shire Council
PO Box 63
GUNNEDAH NSW 2380

Our ref: PP_2014_GUNNE_003_00 (14/11896)

Dear Mr Groth

Planning proposal to amend Gunnedah Local Environmental Plan 2012

I am writing in response to your Council's letter dated 10 July 2014 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to rezone part of Lot 662, DP 39633 and part of Lot 680, DP 723481, 299 Kamilaroi Road, Gunnedah, from E3 Environmental Management to R5 Large Lot Residential and amend the minimum lot size map for the land from 40ha to 1.2 ha.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands and 2.1 Environmental Protection Zones are of minor significance. No further approval is required in relation to these Directions.

Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of S117 Direction 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing

clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Jon Stone of the Department's regional office to assist you. Mr Stone can be contacted on (02) 6701 9688.

Yours sincerely



29 JULY 2014

Stephen Murray
General Manager, Northern Region
Housing, Growth & Economics

Encl:
Gateway Determination
Written Authorisation to Exercise Delegation
Attachment 5 – Delegated Plan Making Reporting Template

Gateway Determination

Planning proposal (Department Ref: PP_2014_GUNNE_003_00): to rezone part of Lot 662, DP 39633 and part of Lot 680, DP 723481, 299 Kamilaroi Road, Gunnedah, from E3 Environmental Management to R5 Large Lot Residential and amend the minimum lot size map for the land from 40ha to 1.2 ha.

I, the General Manager, Northern Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Gunnedah Local Environmental Plan (LEP) 2012 to rezone part of Lot 662, DP 39633 and part of Lot 680, DP 723481, 299 Kamilaroi Road, Gunnedah, from E3 Environmental Management to R5 Large Lot Residential and amend the minimum lot size map for the land from 40ha to 1.2 ha should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning and Environment 2013)* and must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning 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 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Environment 2013)*.
2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and to comply with the requirements of relevant S117 Directions:
 - NSW Rural Fire Service
 - Office of Environment and Heritage

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).

4. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated 29th day of JULY 2014.



Stephen Murray
General Manager, Northern Region
Housing, Growth & Economics
Department of Planning and Environment

Delegate of the Minister for Planning



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Gunnedah Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2014_GUNNE_003_00	Planning proposal to rezone part of Lot 662, DP 39633 and part of Lot 680, DP 723481, 299 Kamilaroi Road, Gunnedah, from E3 Environmental Management to R5 Large Lot Residential and amend the minimum lot size map for the land from 40ha to 1.2 ha.

In exercising the Minister's functions under section 59, the Council must comply with the Department of Planning and Environment's "*A guide to preparing local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 29 JUL 2014

Stephen Murray
General Manager, Northern Region
Housing, Growth & Economics
Department of Planning and Environment



NSW RURAL FIRE SERVICE



The General Manager
Gunnedah Shire Council
PO Box 63
GUNNEDAH NSW 2380

Your reference dGLEP
Our reference L11/0015S14/0010
DA14081593391 AB

Attention Carolyn Hunt

8 September 2014

Dear Mrs Hunt

Agency Comment – draft Gunnedah Local Environmental Plan 2014; Large Lot Residential Rezoning of 299 Kamillaroi Road Gunnedah

I refer to your letter dated 12 August 2014 seeking comments and recommendations from the NSW Rural Fire Service (RFS) with respect to the above Planning Proposal.

The RFS has reviewed the Planning Proposal that will rezone part of lots 662 DP 39633 and lot 680 DP 723481 to R5 Large Lot Residential under Gunnedah LEP 2012. The proposed land use zone will augment with the existing R5 land use zone to permit the orderly and economic development of the land. The Planning Proposal also includes the amendment of the minimum areas size map to permit residential subdivision to a minimum 1.2 hectare land area.

The RFS notes that part of the land is mapped Bush Fire Prone by Gunnedah Shire Council. The RFS has no objection to the Planning Proposal proceeding and provides the following comments:

- Development applications for all development on bush fire prone lands will be required to comply with either S79BA of the Environmental Planning and Assessment Act 1979 or S100B of the Rural Fires Act 1997 depending upon the nature of the proposed development.
- Council should note that Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas includes grasslands as a hazardous vegetation category. Any future development will need to consider this at the design and construction stage.
- Council should also note that the minimum specifications for asset protection zones for residential and rural-residential subdivisions in Table A2.5 of *Planning for Bush Fire Protection 2006* do not correspond directly with the minimum separation distances for BAL-29 construction under Table 2.4.3 of AS 3959-2009 Construction of buildings in bushfire-prone areas, and may therefore have implications for future complying development proposals on lots created with a minimum asset protection zone between a bush fire hazard and the proposed building.
- Future residential activities on the subject land may require vegetation within the residential lots to be managed or cleared to permit the specification and requirements of *Planning for Bush Fire Protection 2006* to be satisfied.

Postal address

NSW Rural Fire Service
Coffs Harbour Customer Service Centre
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

Street address

NSW Rural Fire Service
Coffs Harbour Customer Service Centre
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

T (02) 6691 0400
F (02) 6691 0499
www.rfs.nsw.gov.au



For any queries regarding this correspondence please contact Alan Bawden on 1300 NSW RFS.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'John Ball', written in a cursive style.

John Ball
Manager – Customer Service Centre Coffs Harbour

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.



**Office of
Environment
& Heritage**

Carolyn Hunt
Manager Development and Planning
Gunnedah Shire Council
PO Box 63
Gunnedah NSW 2380

Your reference:
Our reference: DOC14/173525
Contact: Renee Shepherd
Ph: 02 6883 5355
Date: 8 September 2014

Dear Ms Hunt

RE Proposed Gunnedah Local Environmental Plan amendment

I refer to your letter dated 15 August 2014 requesting comments from the Office of Environment and Heritage (OEH) on the proposal to rezone and amend the minimum lot size map of part of Lot 662 DP 39633 and part of Lot 680 DP 723481.

We have the following primary areas of interest relating to strategic land use planning and the preparation of new Local Environmental Plans (LEPs):

1. The impacts of development and settlement intensification on biodiversity, Aboriginal cultural heritage, and water quantity;
2. Adequate investigation of the environmental constraints of affected land;
3. Avoiding intensification of land use and settlement in environmentally sensitive areas (ESAs); and
4. Ensuring that development within the floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans.

We also understand that draft LEPs must comply with current statutory matters such as the Local Planning Directions under s117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

We generally support strategic planning proposals which:

- Avoid rural settlement intensification in areas of biodiversity value, Aboriginal cultural heritage value and other environmentally sensitive areas;
- Include objectives such as 'no net loss of native vegetation' that will ensure the LEP supports State Natural Resource Management Targets and Catchment Action Plans; and
- Minimise flood risk to human life, property and the local environment while maintaining floodplain connectivity for environmental benefit.

Further information and issues to consider regarding biodiversity, flooding and Aboriginal cultural heritage issues in local government strategic planning has been included at **Attachment A**.

It is noted that the land in question is currently agricultural in nature and the current minimum lot size of 40 ha reflects that general use. Given that the land is adjacent to an existing large lot residential zoned area, the proposed amendment would not result in a substantial change to the amenity of the area. The current E3 Environmental Management zoning aims to protect and manage areas with special ecological values. The ecological values of the site have therefore previously been recognised and any change to the zoning and minimum lot size should take into consideration the matters that are discussed below.

Preliminary investigations indicate that the land in question is located in a NSW Rural Fire Service's designated 10/50 vegetation entitlement clearing area. Whilst no information was included within the Planning Proposal regarding building envelopes, the Council should consider the implications of vegetation clearance allowed under this Code in any future subdivision proposals. It is recommended that building envelopes are located in a manner that minimises the amount of clearing of native vegetation required to be compliant with the Code. In addition all clearing allowable under the Code should be contained to the land in question and not encroach onto the adjacent Crown land which is more densely vegetated.

The Planning Proposal alludes to the presence of White Box on the site. If the vegetation conforms to the White Box Yellow Box Blakely's Red Gum Woodland Endangered Ecological Community (EEC) the Council should consider how any future building envelopes may be located to minimise, or where possible exclude, any impact on this EEC.

Numerous sightings of Koalas have been recorded in the vicinity of the proposed site. In addition, it appears that mapping within the Draft Gunnedah LGA (Part) Comprehensive Koala Plan of Management 2013 has identified land directly adjacent to the proposed site, and potentially some of the lots in question, as 2B Secondary (Class B) Koala Habitat and/or 2A/2B combination Koala Habitat. The potential impact of the presence of Koala habitat on future development activities at this site should be considered by the Council.

Previous advice provided to the Council in November 2011 regarding the Draft Gunnedah LEP 2011 discussed the importance of the remnant vegetation near the Porcupine Hill lookout. Targeted surveys discovered the Pink-tailed worm-lizard (*Aprasia parapulchella*), listed as vulnerable under the *Threatened Species Conservation Act 1995*, in the Porcupine Hill lookout vicinity. Again, it is recommended that the impacts of any future development that may arise from the proposed rezoning and change to minimum lot size does not extend beyond the lots in question, and where possible development is focussed on land that has already been disturbed or cleared.

OEH has not reviewed the proposed amendment to the Gunnedah LEP with regards to potential impacts on Aboriginal cultural heritage issues. General information on Aboriginal cultural heritage with regards to strategic planning is included in **Attachment A**. OEH requests that the Council ensures that proponents involved in any future development applications adhere to the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (discussed in Section 4 [page 9] of the Aboriginal cultural heritage component of **Attachment A**).

Should you require further information regarding issues that are the responsibility of OEH please contact Renee Shepherd, Conservation Planning Officer on (02) 6883 5355.

Yours sincerely,



SONYA ARDILL
Senior Team Leader Planning, North West Region
Regional Operations

ATTACHMENT A

Office of Environment and Heritage (North West Branch) general advice for local government strategic planning.

BIODIVERSITY VALUES

Rural settlement intensification can have significant impacts on biodiversity. Development will have short and long-term negative impacts on biodiversity. These negative impacts are caused by activities such as:

- the clearing of house and building sites
- the disturbance caused by infrastructure (such as new roads, fence lines, dams and access to utilities), and
- the construction of asset protection zones for statutory fire protection.

The cumulative effect of multiple subdivisions will magnify these substantial impacts on biodiversity. These impacts are not regulated by the *NSW Native Vegetation Act 2003* (NV Act).

There is also a need to recognise climate change as a severe and wide ranging threat to biodiversity in NSW. Rising temperatures and sea-levels, changed rainfall and fire regimes will affect biodiversity in complex and often unpredictable ways. As a result of climate change, current threats to biodiversity, including habitat loss, weeds, pest animals and drought, are expected to intensify.

In many cases, existing approaches to biodiversity conservation (protection of intact vegetation, species recovery, mitigation of current threats and revegetation and restoration activities) will form the basis of adaptation programs to address the impacts of climate change. Reducing existing threats to biodiversity, such as habitat loss, pests and weeds is the most effective option for enabling species to adapt to climate change (at least in the short term) as this will increase the capacity of species to persist in their current locations and form the base from which migration can occur.

Council has the responsibility to control the location and, to a degree, development standards of settlement and other land use intensification. Local Environmental Plans (LEPs) can be used to avoid settlement and development in Environmentally Sensitive Areas (ESAs) including areas of remnant native vegetation.

The S117 Directions (*Environmental Planning and Assessment Act 1979*) require that Councils in preparing a new LEP must include provisions that facilitate the protection and conservation of ESAs. As a minimum, these provisions must aim to maintain the existing level of protection for ESAs within the LGA, as afforded by the current LEP.

As a matter of priority the OEH recommends six actions be taken by Councils when developing new LEPs. These will address the S117 Directions, and protect biodiversity from growth, development and associated pressures and changes:

1. Implement appropriate Environmental Zonings.
2. Avoid development in remnant native vegetation.
3. Establish large minimum lot sizes.
4. Conduct comprehensive environmental studies if areas of high environmental sensitivity occur in sites where there is a strong imperative to intensify land use.
5. Include a biodiversity overlay and clauses within the LEP.
6. Define biodiversity protection and management measures in Development Control Plans.

1. Implement appropriate Environmental Zonings

The zone, E1 'National Parks and Nature Reserves', should be applied to all of the OEH estate within the LGA. We also encourage Councils to apply other environmental and water ways zones in appropriate areas.

The E1 zoning is intended to apply to all lands acquired under the *National Parks and Wildlife Act 1974* (NP&W Act), and therefore is not limited to only the 'National Park' and 'Nature Reserve' classifications.

OEH is also strongly supportive of the implementation of appropriate environmental zonings to other areas identified to have high biodiversity or Aboriginal cultural sensitivity. Private and public lands with high conservation values, including those providing linkages or corridors, can be protected in LEPs through appropriate zoning and/or via overlays with associated development controls. Councils should implement land use zonings such as E2-E4 and W1-W2 to provide as much protection as possible to biodiversity and ecological communities.

In particular, we advocate the application of the E2 zone to areas of private or Crown lands that are presently managed primarily for conservation (such as crown reserves or areas under conservation covenants).

We also recommend that Travelling Stock Reserves (TSRs) with known conservation values are included in E3 zones at a minimum, although E2 zoning would be preferred. Mapping of TSRs, including identified conservation values, is available via the Grassy Box Woodlands Conservation Management Network. This mapping can be accessed via <http://gbwcmn.net.au/node/6>.

2. Avoid development in remnant native vegetation

- Council, through the Land Use Strategy and LEP, can protect biodiversity by avoiding development such as settlement and other land use intensification, in areas of remnant native vegetation.
- Development should be directed to areas that have already been cleared, unless such areas have been identified as having environmental importance (eg targeted by a Catchment Management Authority for revegetation to improve regional connectivity).

Avoiding development in areas of native vegetation will contribute to the achievement of Catchment and State biodiversity targets.

Settlement should also be avoided in locations that are likely to be targeted for investment by the Local Land Services (LLS). Landholders in such areas may receive incentive funding for protection and enhancement of native vegetation or revegetation of cleared areas.

OEH will not support strategic land use recommendations or LEP provisions that allow further settlement opportunities in these areas, particularly if Council assumes that ongoing management could be effectively controlled by complex DCP rules.

To assist, the best available mapping of remnant native vegetation has been supplied to Council as part of an interagency package of Environmentally Sensitive Area (ESA) mapping and associated Technical and Practice Notes to help Council identify areas where further settlement intensification should not be allowed. At the broad strategic level, these maps can be used to identify areas that are most likely to be free from significant land, water or biodiversity constraints, therefore more suited to development.

Excluding remnant native vegetation from development pressure on private land could be largely achieved by retaining such areas on relatively large holdings, within RU1 and RU2 zones for example. This would also allow the LLS approval processes, under the *Native Vegetation Act 2003*, to be applied.

Similarly, higher density settlement in 'fire prone' locations should be avoided in the first instance. Where residential areas abut native vegetation there is pressure for the required Asset Protection Zones and other hazard management measures to encroach on that vegetation, particularly where adequate existing cleared land has not been retained to fulfil that role.

Avoiding settlement in remnant native vegetation is also likely to avoid bushfire prone lands and protect any Aboriginal cultural heritage that may remain in such areas.

3. Establish large minimum lot size limits

Minimum lot size limits should be large in RU1 and RU2 zones as well as environmentally sensitive areas. This will reduce the pressures of development and settlement on biodiversity in rural lands.

Minimum lot size limits can be used to reduce the pressures of development and settlement on biodiversity. The LEP should define realistically large minimum lot size limits with associated dwelling provisions to control the intensity of development and settlement.

In particular, Council needs to ensure that minimum lot sizes in environmentally sensitive areas are of an appropriately large size to control the cumulative impact of any development and settlement intensification permitted in those areas by the LEP.

Council needs to adopt a risk-based approach to this matter. The selected sizes should be designed to meet expectations of rural living while minimising the adverse environmental impacts of any settlement that may occur with the sub division.

If Council is strongly of the opinion that lot sizes need to be reduced then this should not be applied uniformly across the shire with environmentally sensitive areas excluded from such revisions.

4. Conduct targeted environmental studies

Where development in areas of native vegetation or environmentally sensitive areas cannot be avoided, a targeted environmental study should be conducted. This should focus on ensuring a "maintain or improve" outcome for biodiversity.

Where Council is unable to avoid applying zonings or minimum lot sizes which permit essential development intensification in remnant native vegetation, a targeted study should be conducted to investigate the biodiversity values of the area. Any study should determine how potential impacts can be mitigated or, where this is not possible, offset through conservation management of other areas.

This study and any resulting objectives and zonings should aim to ensure a 'maintain or improve' outcome. This is a vital step in the strategic planning process and in effectively addressing the S117 Directions.

5. Include a biodiversity overlay and suitable clauses within the LEP

OEH strongly recommends the use of overlays and associated provisions with the LEP to provide additional protection for biodiversity.

It is particularly important to define assessment and development control provisions for those instances where development or settlement intensification cannot be avoided in remnant native vegetation.

LEPs should include objectives and provisions that require a 'maintain or improve' outcome for native vegetation and threatened species whenever clearing of native vegetation or environmentally sensitive areas cannot be avoided

Overlays can also be used to update any existing 'environmentally sensitive lands' provisions in current LEP and therefore meet the requirements of the S117 Directions to at least maintain existing environmental protection standards.

Importantly, the use of such overlays is consistent with the Department of Planning and Infrastructure (DoPI) Practice Note PN 09-002v (30 April 2009) on environmental zones¹ which states:

'Local environmental provisions may be applied where zone provisions need to be augmented in order to ensure that special environmental features are considered. For example, rural land that is still principally for agriculture but which contains environmentally sensitive areas may be zoned RU1 or RU2 and the environmental sensitivities managed through a local provision and associated ('overlay') map.

The benefits of this approach include:

- *The intended conservation or management outcomes for land can be clearly articulated in the LEP.*
- *Areas are clearly defined and controls streamlined.*
- *Sub-zones are not created. (These are not permitted under the standard instrument).*

Provisions for environmentally sensitive areas may include multiple natural resource or other features such as acid sulfate soils and riparian land. A local provisions clause may include objectives and, where the sensitivity is a mappable attribute, a map would accompany the provision'.

OEH advocates the inclusion of the environmentally sensitive land overlays developed by the former Departments of Water and Energy, Environment and Climate Change, and Primary Industries (Fisheries). These overlays and clauses have been prepared to provide Council with information on resource assets and environmental constraints and how these assets and constraints should be managed during the assessment of development applications. The use of the environmentally sensitive areas overlays supplied by agencies is now common-place in both exhibited and gazetted LEPs.

The use of these overlays and clauses and how these may affect land uses are outlined in the previously mentioned Practice Note and Technical Note. When implemented in this way the layers and clauses do not exclude development. Rather, they act as a flag for values that may be present at a site. Sites should be checked for these potential values prior to any development approval. If the values are present at the site, the impact should be avoided or, if this is not possible, at the very least minimised and mitigated.

6. Define biodiversity protection and management measures in Development Control Plans

Biodiversity protection and management measures should be defined in Development Control Plans (DCP) for all areas zoned for rural small holdings, residential and other development intensifications.

We view DCPs as a secondary mechanism to provide biodiversity protection and management measures. It is vital that biodiversity values are first considered strategically in zoning decisions and development assessment provisions. We do not consider it acceptable to completely defer consideration of these matters to the DCP stage.

It is also important to consider the threats to remnant native vegetation posed by adjoining land uses.

For example, threats to biodiversity associated with nearby growth and intensification of residential land use include (but are not limited to):

- clearing,
- domestic animals,
- invasive plants,
- effluent and waste dispersion,
- changes in hydrology and hydraulics,
- increasing access due to fire trails and other tracks, and
- firewood collection.

Particular attention should be paid to relevant Key Threatening Processes identified and listed under the TSC Act². Mechanisms to abate threats to ESAs (such as implementing codes of practice, best management practice, alternative designs and operations, control technology and buffers between remnant vegetation and small holdings) should be considered.

Council should recognise that buffers may be necessary between environmentally sensitive areas and other land uses. The size of the buffer will vary depending on the nature or activity being undertaken and the level of management control required to prevent or minimise adverse impacts. Provisions should be made to rigorously assess any developments within environmentally sensitive areas and adjoining buffers to prohibit land uses and activities that threaten the ecological integrity, values and function of the area.

Some forms of development adjacent to national parks and reserves can impact on their values and should be avoided or restricted. Council should consider how these areas could be buffered from incompatible development and activities so that potential conflicts can be minimised.

The OEH Guidelines for Developments Adjoining OEH Estate³ have been designed to assist Councils when they are assessing development on lands adjoining OEH estate. However, the issues identified in these guidelines are also relevant when considering buffers for protection of environmentally sensitive areas.

ABORIGINAL CULTURAL HERITAGE

Land Use Strategies, LEPs and DCPs should aim to identify and protect culturally sensitive areas, rather than relying on site by site development assessment.

Aboriginal objects, places and areas are protected across all land tenure under the *National Parks and Wildlife Act 1974*. However, Council should not rely on the site by site development assessment process as the only mechanism for considering the impact of development and settlement intensification on Aboriginal cultural heritage.

It is clear from the S117 directions and mandatory clauses in the Standard Instrument that DoP supports a **strategic approach** to the protection of Aboriginal cultural heritage. Provisions to facilitate the strategic conservation of Aboriginal cultural and heritage within a local government area should include a landscape framework for assessing potential impacts and partnership development with local Aboriginal people.

We strongly recommend that Councils develop planning strategies that result in the **avoidance** of impacts to Aboriginal cultural heritage and minimise impacts in instances where avoidance is not possible.

Specifically, it is important to:

- Develop a framework for effective Aboriginal engagement; and
- Identify sensitive and least sensitive areas through:
 - accessing existing Aboriginal site information;
 - cross reference to landscape information;
 - assessment of areas of potential development/settlement intensification;
 - use of the Department's search tools;
 - reports from previous studies.
 - Aboriginal knowledge; and by
 - Undertaking site surveys to ground truth assumptions.

We offer the following advice to aid Council efforts in adequately addressing Aboriginal cultural heritage assessment and protection within strategic planning documents and environmental planning instruments:

1. The Aboriginal Heritage Information Management System

Councils should contact the OEH to seek access to the Aboriginal Heritage Information Management System (AHIMS) prior to the drafting of any new Land Use Strategy or LEP. AHIMS is the State register of known Aboriginal site locations. A data licence agreement between the OEH and Council can be prepared on application. Information about obtaining a data licence is available on the OEH website⁴. Alternatively, the AHIMS Registrar can be contacted by phone on (02) 9585 6513 or (02) 9585 6345 or by email at ahims@environment.nsw.gov.au.

2. Aboriginal Heritage Study

We recommend using the AHIMS data, along with any previous landscape assessments of the occurrence of Aboriginal objects and sensitive areas, to assist in developing effective strategies to assess impacts to Aboriginal sites in areas being considered for future development. The selection of landscape mapping to overlay with AHIMS site data will highlight distribution

patterns between landscape features and Aboriginal sites. This information can assist in identifying potential areas of sensitivity in locations where no location information for Aboriginal sites exists.

OEH can be contacted to advise on data searches for previous cultural and heritage studies undertaken in each Council LGA, and discuss the potential for appropriate desktop tools for use in cultural heritage management.

We recommend that the strategic planning process be used to initiate the development of a strategic framework for engaging local Aboriginal community interests to ensure that active engagement with Aboriginal people evolves over time.

3. Implement a range of tools to ensure strategic management of Aboriginal cultural heritage

We strongly recommend that Councils aim to protect identified areas of Aboriginal cultural sensitivity through:

- The designation of appropriate zoning provisions and boundaries where possible,
- Inclusion on the Heritage Map of any specific important areas identified (which will enable the mandatory clauses in the Standard Instrument to be effectively applied),
- The generation of a cultural heritage constraints map which could be used in a similar way to the ESA layers provided by the natural resource management agencies,
- Appropriate provisions within DCPs to ensure adequate assessment and protection of Aboriginal cultural heritage values,
- Formation of an Aboriginal community Advisory Group to ensure on going input and dialogue on identification and management of Aboriginal cultural heritage for the LGA

4. Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales⁵

This code of practice is to assist individuals and organisations to exercise due diligence when carrying out activities that may harm Aboriginal objects and to determine whether they should apply for consent in the form of an Aboriginal Heritage Impact Permit (AHIP).

The *National Parks and Wildlife Act 1974* (NPW Act) provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without an AHIP.

The NPW Act allows for a generic code of practice to explain what due diligence means. Carefully following this code of practice, which is adopted by the *National Parks and Wildlife Regulation 2009* (NPW Regulation) made under the NPW Act, would be regarded as 'due diligence'. This code of practice can be used for all activities across all environments.

This code sets out the reasonable and practicable steps which individuals and organisations need to take in order to:

- identify whether or not Aboriginal objects are, or are likely to be, present in an area
- determine whether or not their activities are likely to harm Aboriginal objects (if present)
- determine whether an AHIP application is required.

When formulating DCPs and other planning controls, Council should require proponents to undertake due diligence in accordance with the Code of Practice. Proponents should provide Council with evidence that the due diligence process has been followed.

FLOODPLAIN MANAGEMENT

Comprehensive flood studies and floodplain management studies should be conducted, and a floodplain risk management plan prepared and adopted, for all urban and rural residential areas.

OEH considers that it is essential that Councils carry out comprehensive flood studies and floodplain management studies and use these to develop a floodplain risk management plan for all urban and in rural residential areas within the Local government area. This should be done prior to decision-making to inform the strategic selection of areas for development intensification.

We strongly believe that every Council in NSW should identify the floodplain in all identified urban centres within its administrative areas in order to ensure that the development within the floodplain is consistent with NSW Government's Flood Prone Land Policy and the principles set out in the Floodplain Development Manual (2005). This is also a requirement within the Section 117 Directions. If there is no formal identification of urban floodplains, then at least an effort must be made to identify floodplains through anecdotal evidence and information from historic flooding events.

OEH has been providing technical policy and financial assistance to Councils to encourage appropriate development to minimise damage to the local environment, life and property.

We strongly recommend the use of overlays of hydraulic hazard categories and associated provisions with the LEP to provide additional protective measures for floodplain values. It is also particularly important to define assessment and appropriate development control provisions for those instances where development or settlement intensifications are likely to occur within floodplains.

A comprehensive analysis should also be conducted for rural areas to inform the strategic selection of areas for development intensification.

A comprehensive analysis also needs to be conducted for areas outside urban and rural residential areas. This can use existing flooding-related information including:

- flood maps,
- atlases,
- rural flood studies and rural floodplain management studies
- floodplain risk management plans

Council should liaise with the OEH, the NSW Office of Water, and the Department of Industry & Investment – Fisheries. These departments can provide information about legislative compliance and the strategic selection of areas for development intensification prior to decision-making.

As for urban and rural residential areas, development should be consistent with the NSW Government's *Flood Prone Land Policy* and the principles set out in the *Floodplain Development Manual (2005)*.

Again, OEH strongly recommends the use of possible overlays of hydraulic hazard categories and associated provisions with the LEP to provide additional protective measures for the ecological, social and economic values of floodplains. It is also particularly important to define assessment and

appropriate development control provisions for those instances where development or settlement intensifications are likely to occur within rural floodplains.

Councils should also consider the impacts of climate change on flood risks

Sea level rise and possible changes to flood producing rainfall intensity are likely to increase the extent and depth of flooding, flow velocities and the recurrence intervals for flooding.

The existing mechanisms for managing flood prone land, through the floodplain risk management process, can accommodate expected changes if climate change effects on flooding are considered during flood investigations and associated management decisions.

Council should refer to both the *Floodplain Development Manual* and the *Draft Floodplain Risk Management Guideline – Practical Consideration of Climate Change*. The latter provides a means for exploring the sensitivity of a flood prone area to changes in flood producing rainfall events. It also contains advice on how Councils can consider the potential impacts of climate change in the floodplain risk management planning process.

Identification of evacuation and other emergency response matters are considered in the floodplain risk management process. This requires Councils to consider the full range of flood risk, including events up to the probable maximum flood (PMF), the largest flood event likely to happen at a particular location under existing climate conditions.

Consideration of the PMF is primarily aimed at the reduction of risk to people and may result in the need for specific flood related development conditions and emergency response planning for floods. The latter involves the development of local flood plans under the leadership of the State Emergency Service.

¹ http://www.planning.nsw.gov.au/planningsystem/pdf/pn09_002_envt_protection_zones.pdf

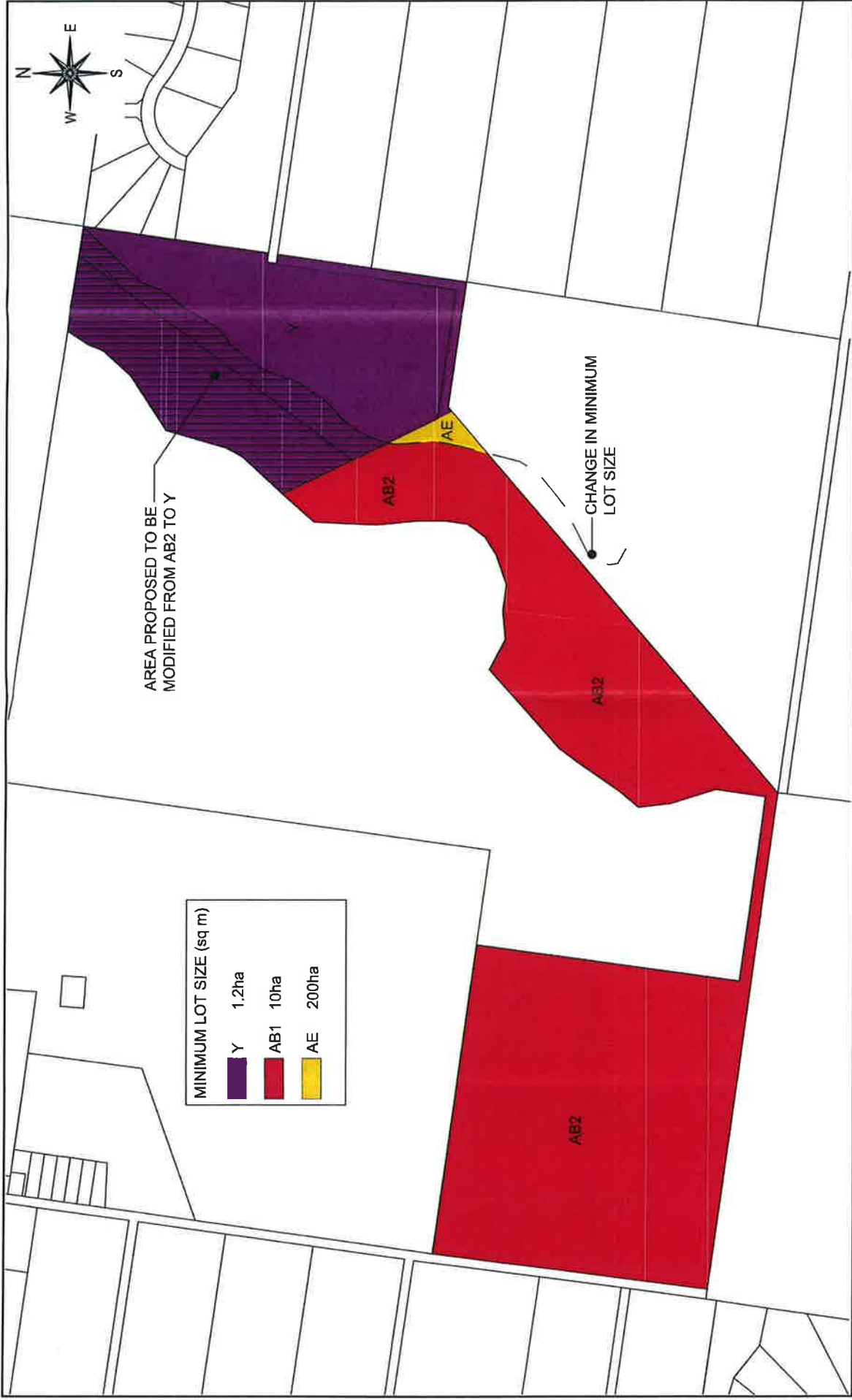
² **Key Threatening Processes:**
<http://www.environment.nsw.gov.au/threatenedspecies/KeyThreateningProcesses.htm>

³ **Guidelines for Development Adjoining DECCW Estate:**
<http://www.environment.nsw.gov.au/protectedareas/developmntadjoiningdecc.htm>

⁴ <http://www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm>

⁵ **Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW**
<http://www.environment.nsw.gov.au/licences/archinvestigations.htm>

Appendix 4 – Current and Proposed Lot Size Maps



 Stewart Surveys Surveying, Environmental & Landscape Architecture		STEWART SURVEYS Pty Ltd Inc in NSW ABN 65 002 866 508 109 Conadilly Street P.O. Box 582 GUNNEDAH NSW 2380 T 02 67422966 F 02 67420654 E office@stewart-surveys.com		CLIENT: MR G. AVARD		DESCRIPTION: PLAN SHOWING PROPOSED CHANGE TO LOT SIZE MAP LSZ_005AA IN GUNNEDAH LOCAL ENVIRONMENTAL PLAN 2012	
		PROJECT: LOT 662 IN DP39633 & LOT 680 IN DP723481		Drawn: KY		Scale: 1:8,000 @ A3	
		Date: 21 JANUARY 2014		File Ref: 2414		Sheet:	

