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Coonabarabran - Coolah - Dunedoo - Baradine - Binnaway - Mendooran

Please address all mail to:
The General Manager

Please refer enquiries to:

Ashleigh Stewart

20 October 2016

The Regional Director
Western Region Office
Department of Planning and Environment
PO Box 58
Dubbo NSW 2830

Dear Sir,

Re: Planning Proposal Dwelling Entitlement for 2013 Wambelong Bushfire Affected Land. Gateway Determination.

Council resolved on 18 June 2015 as follows:

Item: 387/1415 - RESOLVED that Council resolves to prepare a Planning Proposal for Gateway Determination so that it is permissible with consent to erect a dwelling on a lot recorded on the Council Wambelong Bushfire Recovery Centre list as having lost a dwelling in the Wambelong fire of 2013.

Your consideration and advice regarding Councils Planning Proposal and Gateway Determination is requested.

Please find attached the following documents in support of this request:

- Request for initial Gateway Determination
- Planning Proposal
- Appendices

To discuss these matters further, please do not hesitate to contact Council's Town Planner, Ashleigh Stewart on 6849 2000.

Yours Sincerely,

Robert Jehu
Manager Regulatory Services

Request for Initial Gateway Determination

Relevant Planning Authority Details

Name of Relevant Planning Authority: Warrumbungle Shire Council

Contact Person: Ashleigh Stewart

Contact Phone and Email: Phone 68492000 email - ashleigh.stewart@warrumbungle.nsw.gov.au

Planning Proposal Details - Attachments

1. LAND INVOLVED

The land involved is zoned RU1 under the Warrumbungle Local Environmental Plan 2013. It involves only those properties where dwelling houses were destroyed by the Coonabarabran bush fires of 2013..

2. MAPS

- ☒ Location map showing the land affected by the proposed draft plan in the context of the LGA
- ☒ Existing zoning map showing the existing zoning of the site and surrounding land and proposed zoning change for the site/s

3. PHOTOS and other visual material

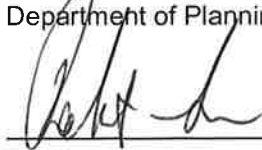
- ☐ Aerial photos of land affected by the Planning Proposal
- ☐ Photos of land involved and surrounding land uses

4. COMPLETE PLANNING PROPOSAL

- ☒ *Council's must address all relevant matters in a planning proposal – including the Director-General's requirements for the justification of all planning proposals (other than those that solely reclassify public land) as set out in the Department of Planning publications; a 'Guide to preparing local environmental plans' and a 'Guide to preparing a planning proposal'. These requirements must be completed prior to submitting the Planning proposal to the Regional Office.*

5. PLANNING PROPOSAL HAS BEEN SUPPORTED BY COUNCIL

- ☐ Council has considered the written planning proposal prior to sending it to the Department of Planning
- ☒ Council has resolved to send the written planning proposal to the Department of Planning.



Signed for and on behalf of the Relevant Planning Authority

DATE: 20 October 2016



Warrumbungle Shire Council

Planning proposal

Dwelling Entitlement for 2013 Wambelong
Bushfire Affected Land

Prepared by WSC October 2016

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Attachments

Appendix A – Current Zoning Map.

Appendix B – Map and property schedule.

This Planning Proposal report has been prepared by Warrumbungle Shire Council Town Planner, Ashleigh Stewart. The content of this report is in accordance with the directions and intentions of Council and does not reflect the professional opinion or objectives of the Town Planner.

Introduction

On 12 January 2013 a fire commenced in the Wambelong Valley within the Warrumbungle National Park. The fire escaped the confines of the National Park and escalated into a catastrophic section 44 declared event (Rural Fires Act 1997). According to Council records, 50 dwelling buildings and approximately 54,000 hectares of land were destroyed. On Tuesday 15th January, the event was declared a Natural Disaster.

Since the Wambelong fire, Warrumbungle Shire Council have been committed to assisting bushfire affected people in the recovery and rebuild process, including but not limited to the establishment of the Council Wambelong Bushfire Recovery Centre and Warrumbungle Shire Mayors Bushfire Appeal.

On 29 November 2013 the Warrumbungle Local Environmental Plan 2013 (WLEP) was gazetted and the majority of bushfire affected land became zoned RU1 Primary Production. Council staff have found that there are a number of bushfire affected properties on which a dwelling is not permissible under the WLEP.

It is Council's intention to ensure that those who have endured the Natural Disaster have the opportunity to lawfully rebuild a dwelling, or that they are able to sell the land with confidence of dwelling entitlement.

Note: The use of the term 'affected lots' in this report is in reference to those lots listed by the Council Wambelong Bushfire Recovery Centre as having lost a dwelling in the Wambelong fire of 2013.

Background

For a dwelling to be permissible with Council consent (dwelling entitlement) on land zoned RU1 Primary Production, in summary one of the following must apply: the lot achieves the applicable minimum lot size; the lot was created under a previous environmental planning instrument and it was permissible to erect a dwelling immediately before the commencement of the WLEP; the land forms an 'existing holding'; or the new dwelling is to replace a lawfully erected dwelling.

Council Development Services Department have concluded after investigation that a proportion of dwelling buildings destroyed were not previously subject to planning/building approvals and some of the allotments do not currently have a dwelling entitlement under the WLEP. The exact number of affected lots without dwelling entitlement has not been confirmed due to the limited property file records for each site and the limited Council staff resources available to undertake investigations into the history of each building and parcel of land.

It is also noted, due to the sensitive nature of recovery, that some bushfire affected people have had difficulty in coming forward to Council to provide details of buildings lost. Therefore the number of dwellings destroyed may be higher than Council's records. It is hoped that public exhibition of the Planning Proposal will provide the opportunity for bushfire affected people to come forward to provide information to Council so that they can have confidence of dwelling entitlement.

An amendment to the WLEP is required if Council is to ensure that dwelling entitlement exists for all bushfire affected lots.

On 18 June 2015, Council resolved as follows:

Item: 387/1415 - RESOLVED that Council resolves to prepare a Planning Proposal for Gateway Determination so that it is permissible with consent to erect a dwelling on a lot recorded on the Council Wambelong Bushfire Recovery Centre list as having lost a dwelling in the Wambelong fire of 2013.

Part 1 – Objectives or Intended Outcomes

The objectives and intended outcomes of the proposed LEP amendment are:

1. To ensure that it is permissible to erect a dwelling with consent on land on which a dwelling was destroyed by the 2013 Wambelong Bushfire, as recorded by Council.
2. To ensure that environmental impacts associated with rural-residential development are appropriately managed at the development application stage.

Such considerations include: bushfire risk and protection; fragmentation of agricultural land and residential/agricultural buffers; protection of natural resources and native fauna and flora; access and servicing, contamination/remediation.

Part 2 – Explanation of Provisions

It is proposed that the objectives and intended outcomes as described in Part 1 will be achieved by the inclusion of a provision relating to *Clause 4.2A Erection of dwellings and dual occupancies in the RU1 Zone*.

It is intended that the provision would allow applications to be lodged for the erection of a dwelling in the following circumstances:

- a) A dwelling was destroyed on the allotment by the 2013 Wambelong Fire, as recorded by Council; **and**
- b) The allotment is zoned RU1 Primary Production under the WLEP; **and**
- c) If the allotment has been further subdivided since the 2013 Wambelong Fire and the only dwelling that existed on the original lot was the one that was destroyed by fire, that this provision only applies to one of the new lots (this does not include lots affected by a minor realignment of its boundaries that did not create an additional lot, or subdivision creating or widening a public road or public reserve or for another public purpose, or a consolidation with an adjoining public road or public reserve for another public purpose). – aimed at preventing the creation of new lots with dwelling entitlement.

It is expected that this provision would refer to an LEP Map or schedule which shows those affected allotments as recorded by Council. It would then have to be demonstrated by the applicant and confirmed by the consent authority if and how the provision could be applied if subdivision of the lot has occurred.

Amend
MLS Map
Need
List of
affected lot
sizes

It is understood that the only Zones affected are the RU1 Primary Production Zone and R5 Large Lot Residential Zone. It is not considered necessary to apply the provision to affected land in the R5 Large Lot Residential Zone given that there is no current minimum lot size or other restrictive requirement under the WLEP for dwelling permissibility in that Zone.

It is not proposed to apply a 'sunset period' to this amendment; Council understands that it can take years before people affected by a natural disaster can recover psychologically and financially, and thus the process of rebuild can be somewhat drawn out.

It is considered that environmental factors (such as bushfire risk and protection, fragmentation of agricultural land and residential/agricultural buffers, protection of natural resources and native fauna and flora, access and servicing, contamination/remediation) can be addressed and assessed at Development Application stage.

The provision should still apply in circumstances where there were two or more existing dwellings on a lot and only one was destroyed. That is, the provision should enable rebuild of any dwelling destroyed regardless of how many dwellings already existed on the land.

if a lot originally contained 2 dwellings
Allow 2 dwellings?

Part 3 – Justification

Section A – Need for the Planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

This planning proposal is a result of a report to Council (June 2015) which considered 'loss of dwelling entitlement' for existing dwelling houses on rural allotments under the RU1 Primary Production Zone (Clause 4.2A) that were destroyed by the Wambelong fire in January 2013. The report included advice from the NSW Department of Planning and Environment stating that the NSW Rural Fire Service consultation process would be required as part of the process. In addition to this, the NSW Department of Planning and Environment have not raised any issues with the Planning Proposal thus far.

On 18 June 2015, Council resolved to:

Prepare a Planning Proposal for Gateway Determination so that it is permissible with consent to erect a dwelling on a lot recorded on the Council Wambelong Bushfire Recovery Centre list as having lost a dwelling in the Wambelong fire of 2013.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

WSC considers that the planning proposal is the best means of achieving the objectives outlined in Part 1 of this report.

There are some affected lots that will not otherwise be able to rebuild/erect a dwelling under current planning controls. It is only intended that destroyed dwelling houses through the bush fires will form part of the planning proposal.

The development application assessment process and appropriate conditions of consent would ensure that environmental impacts and risks are mitigated appropriately.

Section B – Relationship to strategic planning framework.

Q3. 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)?

There are currently no strategies in place for the region.

Q4. Is the planning proposal consistent with a Council local strategy or other local strategic plan?

The Planning proposal is generally consistent with the intent of the Warrumbungle Shire Council Land Use Strategy (2013), which outlines an agreed vision for the future of the shire. The Strategy ensures that growth and development of the shire occurs within a strategic policy framework. This enables orderly and sustainable land use and development

minimising conflict between land uses as well as protecting existing and potential future uses.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

SEPP	Comment/Consistency
1—Development Standards	Not relevant
14—Coastal Wetlands	Not relevant
15—Rural Landsharing Communities	Not relevant
19—Bushland in Urban Areas	Not relevant
21—Caravan Parks	Not relevant
26—Littoral Rainforests	Not relevant
29—Western Sydney Recreation Area	Not relevant
30—Intensive Agriculture	Not relevant
32—Urban Consolidation (Redevelopment of Urban Land)	Not relevant
33—Hazardous and Offensive Development	Not relevant
36—Manufactured Home Estates	Not relevant
39—Spit Island Bird Habitat	Not relevant
44—Koala Habitat Protection	The SEPP will be of relevance in the assessment of dwelling applications under the proposed provision if the site is located within Core or Potential Koala Habitat. It is noted that land within Warrumbungle Shire is listed in Schedule 1 of the SEPP.
47—Moore Park Showground	Not relevant
50—Canal Estate Development	Not relevant
52—Farm Dams and Other Works in Land and Water Management Plan Areas	Not relevant
55—Remediation of Land	The SEPP will be of relevance in the assessment of dwelling applications under the proposed provision to ensure that the site is suitable for the residential land use.
59—Central Western Sydney Regional Open Space and Residential	Not relevant

62—Sustainable Aquaculture	Not relevant
64—Advertising and Signage	Not relevant
65—Design Quality of Residential Flat Development	Not relevant
70—Affordable Housing (Revised Schemes)	Not relevant
71—Coastal Protection	Not relevant
Affordable Rental Housing 2009	Not relevant
Building Sustainability Index: BASIX 2004	The SEPP will apply in the assessment dwelling applications under the proposed provision with respect to dwelling design.
Exempt and Complying Development Codes 2008	The Exempt development provisions apply on land within 18km of Siding Spring Observatory.
Housing for Seniors or People with a Disability 2004	Not relevant
Infrastructure 2007	Not relevant
Kosciuszko National Park—Alpine Resorts 2007	Not relevant
Kurnell Peninsula 1989	Not relevant
Major Development 2005	Not relevant
Mining, Petroleum Production and Extractive Industries 2007	Not relevant
Miscellaneous Consent Provisions 2007	Not relevant
Penrith Lakes Scheme 1989	Not relevant
Rural Lands 2008	Refer to comments below.
53 Transitional Provisions 2011	Not relevant
State and Regional Development 2011	Not relevant
Sydney Drinking Water Catchment 2011	Not relevant
Sydney Region Growth Centres 2006	Not relevant
Three Ports 2013	Not relevant
Urban Renewal 2010	Not relevant
Western Sydney Employment Area 2009	Not relevant
Western Sydney Parklands 2009	Not relevant

Rural Lands SEPP (2008)

The primary resource-based sector (agriculture) is the most significant economic contributor in the WSC LGA (WSC Land Use Strategy 2013); thus the Rural Lands SEPP (2008) is of particular significance to the Shire.

Council considers that the proposed amendment would be consistent with *Clause 7 Rural Planning Principles*, in particular subclause (g), provided the development assessment process gives due consideration to the protection of agriculture land.

Clause 10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings would support Council in its assessment of dwelling applications under the proposed provision with regards to appropriate dwelling location and determining preferred land uses and land use buffers and minimising land use conflict. Councils DCP 2015 will assist in this process..

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

SECTION 117 DEIRECTION	APPLICABLE	CONSISTENT/COMMENT
1. Employment and Resources		
1.1 Business & Industrial zones	N/A	
1.2 Rural zones	Yes	Refer to comments below
1.3 Mining, Petroleum Production and Extractive Industries	N/A	
1.4 Oyster Aquaculture	N/A	
1.5 Rural Lands	Yes	Refer to comments below
2. Environment & Heritage		
2.1 Environment Protection Zones	N/A	
2.2 Coastal Protection	N/A	
2.3 Heritage Conservation	N/A	
2.4 Recreation Vehicle Areas	N/A	
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	N/A	
3.2 Caravan Parks and Manufactured Home Estates	N/A	
3.3 Home Occupations	N/A	
3.4 Integrating Land Use and Transport	N/A	

3.5 Development Near Licensed Aerodromes	N/A
3.6 Shooting range	N/A

4. Hazard and Risk

4.1 Acid Sulfate Soils	N/A
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	N/A
4.4 Planning for Bushfire Protection	Yes Refer to comments below.

5. Regional Planning

5.1 Implementation of Regional Strategies	N/A
5.2 Sydney Drinking Water Catchments	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	N/A
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	N/A
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	N/A
5.8 Second Sydney Airport: Badgerys Creek	N/A
5.9 North West Rail Link Corridor Strategy	N/A

6. Local Plan making

6.1 Approval and Referral Requirements	N/A
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	N/A

7. Metropolitan Planning

7.1 Implementation of the Metropolitan Strategy	N/A
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117s Directions

1.2 Rural Zones

The objective of this Direction is to protect the agricultural production value of rural land. The subject proposal will affect land within an existing rural zone and therefore the Direction applies.

Pursuant to Clause 4(a), the planning proposal does not involve any rezoning of land from a rural zone to a residential, business, industrial, village or tourist zone. The planning proposal is therefore considered to be consistent with this Direction and consistent with the intent of the endorsed Warrumbungle Shire Land Use Strategy 2013.

1.5 Rural Lands

The objectives of this Direction are to:

- (a) protect the agricultural production value of rural land,*
- (b) facilitate the orderly and economic development of rural lands for rural and related purposes.*

The planning proposal will affect land within an existing rural zone and therefore the Direction applies.

The replacement of dwellings on the identified lands in the Planning Proposal will restore the status quo. There will be no additional impacts on the use of agriculture land on the sites or adjoining lands. The existing agricultural production value of land will remain in tact.

The replacement of dwellings on the identified lots will continue to facilitate the orderly and economic development of rural lands for rural and related purposes..

Consistency with SEPP (Rural Lands) 2008 - Rural Planning Principles:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (d) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (e) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (f) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (g) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

Council recognises the social and economic significance of rural lands and the primary (resource-based) sector within the Shire.

It is considered that the social and economic interests of the community can be served in providing the opportunity for a dwelling in certain circumstances where permissible prior to the WLEP. This is particularly the case for small time farming operations where the dwelling is to be used in association with the agricultural use of the land.

As mentioned earlier in this report, environmental impacts associated with residential development in rural areas will be addressed by Councils DCP 2015 relating to development of rural lands.

The planning proposal is considered to be consistent with the Rural Planning Principles of the SEPP (Rural Lands) 2008 and is based on the endorsed Warrumbungle Shire Council Land Use Strategy 2013.

4.4 Planning for Bushfire Protection

The objectives of this direction are:

- a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and*
- b) (b) to encourage sound management of bush fire prone areas.*

This Direction applies in so far as the planning proposal will affect land in the RU1 Zone which is predominantly mapped as bushfire prone land.

As such, the following consultation must be undertaken:

(4) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,

Additionally:

(5) A planning proposal must:

- (a) have regard to Planning for Bushfire Protection 2006,*
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and*
- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.*

The planning proposal through replacement of dwellings destroyed in the bush fires may create limited opportunity for additional rural residential development in bushfire prone land than would have lawfully existed under the WLEP 2013. Council proposes that applications for all rural residential development address the suitability of the site with regards to bushfire risk and protection, specifically the ability of the development to comply with the requirements of Planning for Bushfire Protection guidelines 2006. In some cases referral of development applications to NSW Rural Fire Service will be required.

Q7. 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 majority of land of environmental value within the Shire (and mapped 'Biodiversity' on the Terrestrial Biodiversity Map) is located within the RU1 Zone. As such, there is the potential that Council will receive applications for dwellings on environmentally sensitive land.

Council proposes that the assessment of impacts on 'terrestrial biodiversity, critical habitat, threatened species, populations or ecological communities, and their habitats' is provided for in Councils DCP 2015. The Biodiversity areas will be avoided to ensure minimal impact on these areas occurs.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Any potential environmental impacts will be adequately addressed pursuant to Section 79C matters under the Environmental Planning & Assessment Act 1979 and the Warrumbungle LEP 2013 and DCP 2015. The matters to be addressed will include:

- Biodiversity and native fauna and flora;
- Natural resource protection;
- Bushfire risk and protection;
- Contamination/remediation;
- Access and servicing;
- Minimising land use conflict;

Q9. Has the planning proposal adequately addressed any social and economic effects?

Should the planning proposal not proceed there may be social and economic hardship caused to property owners who are unable to rebuild their bushfire destroyed homes due to current planning controls under Warrumbungle LEP 2013. The rebuilding of dwelling houses will enable more efficient use of vacant rural holdings.

There will be minimal social and economic impact on the continued use of adjoining rural properties should the dwelling houses be reinstated.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

The planning proposal will not result in any increased demand for public infrastructure/residential service delivery. The planning proposal will enable previously existing dwelling houses destroyed in the bush fires to be reinstated.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

It is planned to undertake consultation with the following government agencies after gateway determination:

- Commissioner of the NSW Rural Fire Service

This consultation will be carried out in accordance with Ministerial *Direction 4.4 Planning for Bushfire Protection*. The planning proposal is likely to increase the amount of residential development on land mapped 'bush fire prone'.

- NSW Department of Primary Industries (Agriculture)

This consultation is considered necessary given the potential impacts on the local primary (resource-based) sector.

The consultation process is to be confirmed with the gateway determination.

Part 4 – Mapping

Proposed LEP Map:

Council understands the planning proposal could be implemented by LEP Map referred to in Clause 4.2A or by use of Schedule 1 Additional Permitted Uses under the Warrumbungle LEP 2013..

Assistance would be sought by The Department to prepare any LEP Map/s.

Planning Proposal Application Map:

Council has prepared a map and property schedule (**Appendix B**) to demonstrate the location and number of properties affected by the planning proposal.

Part 5 – Community Consultation

The planning proposal is considered to fit within the category ‘all other planning proposals’ as outlined by *A guide to preparing local environmental plans*. The type of development permitted under the proposed provision (residential) has the potential to be inconsistent with the pattern of surrounding land use zones/land uses (primary production).

Accordingly, the following community consultation is proposed:

- A public exhibition period of 28 days commencing on the date that a notice of exhibition is printed in the local news press, advertised on Council’s website and in writing to relevant landowners.
- The public exhibition period will also be advertised on Council’s website for the duration of the exhibition period.
- The planning proposal, gateway determination and WSC Land Use Strategy will be made available for inspection at Council Offices (Coonabarabran and Coolah) for the duration of the exhibition period.

The content of the written notice will:

- Give a brief description of the objectives or intended outcomes of the planning proposal;
- Indicate the land affected by the planning proposal;
- State where and when the planning proposal can be inspected;
- Give the name and address of the RPA for the receipt of submissions; and
- Indicate the last date for submissions.

The community consultation process will be complete when the consent authority has considered any submissions made concerning the planning proposal.

Part 6 – Project Timeframe

It is expected that the planning proposal should be realised within 6 -7 months of the date of the Gateway Determination, in accordance with the following timeframe.

MILESTONE	TIMEFRAME
Anticipated Commencement (Gateway Determination)	February 2017
Completion of technical information	N/A
Agency Consultation	February 2017 to March 2017
Public Exhibition	March to April 2017
Agency Consultation – post exhibition	April to May 2017
Consideration of Submissions	June 2017
Consideration of proposal post exhibition	June to July 2017
Mapping and Drafting (in consultation with the Department)	July/August 2017
Date of submission to Department	August 2017
RPA makes plan	August 2017
RPA forwards to DoP for notification	August 2017

It is noted that the above timeframe may be subject to change dependant on the requirements specified by The Department as part of the Gateway Determination.

Appendix A

Map: Current Zoning Map (WLEP)

Appendix B

Map: Location Map and schedule of affected properties