

## Item 8: Development

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### 8.1 General Amendment to Mid-Western Regional Local Environmental Plan 2012

REPORT BY THE MANAGER, STRATEGIC PLANNING  
TO 17 APRIL 2019 ORDINARY MEETING  
GOV400067, LAN900098

#### RECOMMENDATION

##### That Council:

1. **receive the report by the Manager, Strategic Planning on the General Amendment to Mid-Western Regional Local Environmental Plan 2012;**
2. **provide initial support for the Planning Proposal in relation to the review of Visually Sensitive Land Map, amendment to Clause 6.10 Visually Sensitive Land near Mudgee and prohibiting Electricity Generating Works within the RU4 Primary Production Small Lots zone;**
3. **forward the Planning Proposal to amend the Mid-Western Regional Local Environmental Plan 2012 to the NSW Department of Planning and Environment seeking a Gateway Determination, in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*; and**
4. **undertake community consultation as outlined within any approved Gateway Determination.**

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#### Executive summary

Council has prepared a General Amendment to the Mid-Western Regional Local Environmental Plan 2012 (Planning Proposal). The Planning Proposal is to implement a review of the Visually Sensitive Land Map, amendment to Clause 6.10 Visually Sensitive Land near Mudgee and change the permissibility of Electricity Generating Works within the RU4 Primary Production Small Lots zone.

Council has prepared this Planning Proposal in response to an increasing number of renewable energy projects proposed in the Mid-Western Region and the visual outcomes of recent projects in rural areas including the Beryl Solar Farm. The Planning Proposal has also been prepared in response to the importance of the visual setting of the regions towns highlighted in the Comprehensive Land Use Strategy and continuing to value the entrances to town evident through imposing development applications conditions to minimise visual intrusion along the entrances to town. The increasing number of renewable energy projects on land zoned RU4 Primary Production Small Lots has highlighted the inappropriate permissibility of the Electricity Generating Works land use.

This Planning Proposal, in particular the amendment to the Visually Sensitive Land Map focuses on the entrance to Mudgee from the southeast. In a subsequent Planning Proposal, staff will identify the visually significant landscape entrances for the other towns within the region and also map those as Visually Sensitive Land.

The Planning Proposal provided as Attachment 1 has been prepared generally in accordance with the structure outlined in the NSW Department of Planning and Environment's (DP&E) Guide to Preparing Planning Proposals. The report outlines the context, intended outcomes, explanation of provisions and justification for the Planning Proposal.

The staff recommendation is to provide initial support for the Planning Proposal and to send to DP&E for a Gateway Determination. If the staff recommendation is supported, the Planning Proposal along with the Council resolution will be forwarded to DP&E for Gateway Determination.

## Disclosure of Interest

Nil.

## Detailed report

### **Planning Proposals**

Planning Proposal is a term used to describe the process of rezoning or making an amendment to a Local Environmental Plan (LEP). A Planning Proposal application is a document that explains the intended effect of the LEP amendment and provides a strategic justification for doing so. NSW Department of Planning & Environment (DP&E) has issued A Guide to Preparing Planning Proposals, to provide guidance and information on the process for preparing planning proposals.

### **The Gateway Process**

DP&E is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in DP&E's A Guide to Preparing Local Environmental Plans.

### **Gateway Timeline**

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan and the progress of the current Planning Proposal through the various stages. The below table demonstrates the Planning Proposal is within the initial stage of the process (i.e. at preparation of a Planning Proposal stage).

Stage	Completed	Comment
Preparation of a Planning Proposal		
Planning Proposal Drafted	✓	March 2019.
Staff Undertake Initial Assessment	✓	No assessment required of the Planning Proposal as staff have prepared the document.
Council Decision to Support Proposal		Planning Proposal is being reported to 17 April 2019 meeting.
Issue of Gateway Determination		
Council Requests Gateway Determination		
DP&E Issues Gateway Determination		
Gateway Conditions Satisfied		
Consultation		
Consultation with Relevant Agencies		
Public Exhibition		
Post-Exhibition Report to Council		
Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		

Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

## CONTEXT

Council is receiving an increasing number of enquires for renewable energy projects, with a number located on visually significant / dominant sites. Through Council's decision making processes it has consistently valued the protection of the entrances to town with the imposition of development application conditions to minimise the visual impact of development.

The increasing number of enquiries for renewable energy projects has highlighted the inappropriate permissibility of Electricity Generating Works within the RU4 zone. Electricity Generating Works are currently permissible with the consent of Council.

The vision of Council's Comprehensive Land Use Strategy (CLUS) highlights the importance of rural character. Specifically Clause 2.2.2 of Part C of the CLUS stipulates requirements for town gateways. The two stipulations are for the protection and improvement of town gateways and protection of ridgelines and rural views.

The CLUS established a town character for Mudgee. Mudgee's character is given by a unique combination of the natural and physical elements of a place. The undulating hills around Mudgee create a sense of enclosure and a sense of openness is given by the relatively flat agricultural land located along the Cudgong River. This character is visually appreciated at the approaches to Mudgee. The most impressive of these is the approach into Mudgee from the southeast. A means of protecting this character was the mapping of visually sensitive land during the preparation of the Mid-Western Regional Local Environmental Plan 2012. This mapping identifies the ridgelines to the southwest of the Cudgong River. However, it fails to identify the ridgelines to the northeast Cudgong River or the agricultural flats.

Significant community consultation occurred across the Mid-Western Region in the preparation of the CLUS. The community consultation presented a high level of appreciation of landscape and rural character. The CLUS states 'it is these important landscapes and rural character that attract tourists and contribute strongly to the local government areas' sense of place' and 'there is an established community value of the scenic qualities of our towns'.

The Impact on Public Domain Views Planning Principle defines a 'public domain view is one that is for the enjoyment of the whole population, old or young and whether able-bodied or less mobile'. These approach to town views are enjoyed by the whole population and more than 500,000 visitors to the area each year, and it is therefore appropriate to protect them.

The intended outcomes of this Planning Proposal accords with the above Clause and the Planning Principle. For the context outlined above, the Planning Proposal has been prepared in response to this.

## INTENDED OUTCOMES

The intended outcome is that the visually significant approach to Mudgee be mapped as Visually Sensitive Land and Clause 6.10 be amended to support this mapping.

The intended outcome is that the land use Electricity Generating Works be prohibited within the RU4 Primary Production Small Lots zone.

## EXPLANATION OF PROVISIONS

The intended outcomes outlined above will be achieved through the amendment to the Visually Sensitive Land map and Clause 6.10 LEP.

The intended outcome will also involve a change to the RU4 Primary Production land use table. Electricity Generating Works are currently listed as permitted with consent. The intended outcome will be achieved with listing Electricity Generating Works as prohibited. This will result in Electricity Generating Works becoming a prohibited land use.

In determining the area of application of the Visually Sensitive Land map, the viewpoint must be determined. The viewpoint is the point at which the view of the approach to town becomes visible. The location of the viewpoint will be different depending on the landscape that the road traverses. In the case of the approach to Mudgee from the southeast, the coordinates for the viewpoint is approximately -32.648, 149.658.

Once the viewpoint has been located, the visual catchment (also known as viewshed or visual envelope map) is to be determined. In the case of Mudgee, this was partially undertaken with the current Visually Sensitive Land mapping of the ridgelines above the 520 contour to the south-west of Mudgee. The proposed mapping will capture the ridgelines to the northeast above the 520 contour and the visually significant agricultural flats between the 2 ridges and extend to the south eastern urban limit of Mudgee.

It is proposed the other entries to Mudgee will be progressively mapped along with entries to Gulgong, Kandos and Rylstone. This mapping will form another Planning Proposal.

Clause 6.10 Visually Sensitive Land near Mudgee will be amended, both the objective and development requirements. The clause will be amended to not only address both ridgelines, but also the agricultural flats between the ridgelines. It will be amended to incorporate wording similar to the below:

*Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

- *incorporates appropriate measures to minimise any adverse visual impact on the landscape,*
- *will be screened from view from the Castlereagh Highway and other public places by existing vegetation or by planting indigenous vegetation,*
- *the development will be designed and sited to respond sympathetically to the land form of which it will form a part,*
- *the development will use unobtrusive and non-reflective materials to blend structures into the natural environment, and*
- *the development will incorporate appropriate measures to minimise the reflection of sunlight from glazed surfaces.*

## JUSTIFICATION

The DP&E guide to preparing Planning Proposals outlines eleven questions to be addressed in the Planning Proposal; the Planning Proposal has addressed these eleven questions.

## NEXT STEP

The recommendation of staff is to provide initial support for the Planning Proposal and forward to DP&E for a Gateway Determination. If Council accepts this recommendation, the next step would involve forwarding the Planning Proposal and a Council resolution of initial support to DP&E seeking a Gateway Determination.

## Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Maintain and promote the aesthetic appeal of the towns and villages within the Region

## Strategic implications

### Council Strategies

The Planning Proposal is consistent with Clause 2.2.2 of Part C of the Comprehensive Land Use Strategy stipulates requirements for town gateways.

### Council Policies

The forwarding of the Planning Proposal will not require any change to relevant policies.

### Legislation

The Planning Proposal has been considered in accordance with Division 3.4 Environmental Planning Instruments - LEPs (previously Division 4) Local Environmental Plans of the *Environmental Planning and Assessment Act 1979* and the Mid-Western Regional Local Environmental Plan 2012.

## Financial implications

Nil.

## Associated Risks

Without the further mapping of Visually Sensitive Land, visually intrusive land uses may be located on the entrances to town and determinately impacting the visual character and attractiveness of the region.

SARAH ARMSTRONG  
MANAGER, STRATEGIC PLANNING

JULIE ROBERTSON  
DIRECTOR DEVELOPMENT

20 March 2019

*Attachments:* 1. Planning Proposal.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER

*Looking After  
our Community*

## PLANNING PROPOSAL GENERAL AMENDMENT 2019

REVIEW OF VISUALLY SENSITIVE  
LAND, AMENDMENT TO CLAUSE 6.10  
VISUALLY SENSITIVE LAND NEAR  
MUDGEES & PROHIBITION OF  
ELECTRICITY GENERATING WORKS  
PROHIBITED WITHIN THE RU4 ZONE

4 MARCH 2019

MID-WESTERN REGIONAL COUNCIL  
DEVELOPMENT: STRATEGIC PLANNING

■ ■ ■ ■ ■ TOWARDS 2030



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THIS DOCUMENT HAS BEEN PREPARED BY THE DEVELOPMENT DIRECTORATE FOR MID-WESTERN REGIONAL COUNCIL.

ANY QUESTIONS IN RELATION TO THE CONTENT OF THIS DOCUMENT SHOULD BE DIRECTED TO:  
SARAH ARMSTRONG OR (02) 6378 2850

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## Overview

### Introduction

The Planning Proposal Mid-Western Regional Local Environmental Plan General Amendment (the Planning Proposal) explains the intent of, and justification for, the proposed amendment to the Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012).

The Planning Proposal is to implement a review of the application of the Visually Sensitive Land Mapping, amendment to Clause 6.10 Visually Sensitive Land near Mudgee and prohibition of Electricity Generating Works within the RU4 Primary Production Small Lots zone.

The proposal has been prepared in accordance with Section 3.32 and 3.33 of the Environmental Planning and Assessment Act 1979 (the Act) and the relevant Department of Planning and Environment guidelines, including A Guide to Preparing Local Environmental Plans and A Guide to Preparing Planning Proposals.

### Background

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012) came into effect on 10 August 2012. MWRLEP 2012 is the consolidation of the previous planning controls into one local environmental plan. It is also a translation of those controls into the NSW Government's Standard Instrument Principal Local Environmental Plan.

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## Part 1 – Objectives or Intended Outcome

The objective of the Planning Proposal is to implement an amendment to the Visually Sensitive Land Map, amendment to Clause 6.10 Visually Sensitive Land near Mudgee and prohibition of Electricity Generating Works within the RU4 Primary Production Small Lots zone.

## Part 2 – Explanation of Provisions

The objectives and intended outcomes as described in Part 1 will be achieved through the amendment to the Visually Sensitive Land map and Clause 6.10 MWRLEP 2012.

Clause 6.10 Visually Sensitive Land near Mudgee will be amended, both the objective and development requirements. The clause will be amended to not only address both ridgelines, but also the agricultural flats between the ridgelines. It will be amended to incorporate wording similar to the below:

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- incorporates appropriate measures to minimise any adverse visual impact on the landscape;
- will be screened from view from the Castlereagh Highway and other public places by existing vegetation or by planting indigenous vegetation;
- the development will be designed and sited to respond sympathetically to the land form of which it will form a part;
- the development will use unobtrusive and non-reflective materials to blend structures into the natural environment; and
- the development will incorporate appropriate measures to minimise the reflection of sunlight from glazed surfaces.

The intended outcome will also involve a change to the RU4 Primary Production land use table. Electricity Generating Works are currently listed as permitted with consent. The intended outcome will be achieved by listing Electricity Generating Works as prohibited. This will result in Electricity Generating Works becoming a prohibited land use in the RU4 Primary Production Small Lots zone.

## Part 3 – Justification

### Section A - Need for the Planning Proposal

#### Q1: Is the planning proposal the result of any strategic study or report?

The Comprehensive Land Use Strategy (CLUS) established a town character for Mudgee. Mudgee's character is given by a unique combination of the natural and physical elements of a place. The undulating hills around Mudgee create a sense of enclosure and a sense of openness is given by the relatively flat agricultural land located along the Cudgegong River. This character is visually appreciated at the approaches to Mudgee. The most impressive of these is the approach into Mudgee from the southeast. A means of protecting this character was the mapping of visually sensitive land during the preparation of the Mid-Western Regional Local Environmental Plan 2012. This mapping identifies the ridgelines to the southwest of the Cudgegong River. However, it fails to identify the ridgelines to the northeast or the agricultural flats.

Significant community consultation occurred across the Mid-Western Region in the preparation of the CLUS. The community consultation presented a high level of appreciation of landscape and rural character. The CLUS states 'it is these important landscapes and rural character that attract tourists and contribute strongly to the local government areas' sense of place' and 'there is an established community value of the scenic qualities of our towns'.

Accordingly, the amendment to the Visually Sensitive Map and to Clause 6.10 is a result of the strategic work undertaken by Council in the preparation of the CLUS.

The change to the permissibility of the RU4 Primary Protection Small Lots is consistent with the 2031 Vision of the CLUS.

#### Q2: Is the planning proposal the best means of achieving the objectives or outcomes or is there a better way?

The amendment to the Visual Sensitive Land Map and Clause 6.10 Visually Sensitive Land near Mudgee is the best means to achieve the objectives.

The amendment to the RU4 Primary Production Small Lots land use table is the best means to achieve the objectives.

### Section B - Relationship to Strategic Framework

#### Q3: Is the planning proposal consistent with the application regional or sub-regional strategy?

The Central West and Orana Regional Plan 2036 applies to the Mid-Western Regional Local Government Area. Protecting visually significant and agricultural land is consistent with the intent of the Plan.

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**Q4: Is the proposal consistent with Council's Community Strategic Plan or other local strategic plan?**

Council's Towards 2030, Mid-Western Region Community Plan Protecting visually significant and agricultural land is consistent with the key themes of the Plan.

**Q5: Is the planning proposal consistent with applicable state environmental planning policies?**

Yes. An analysis of the applicable State Environmental Planning Policies (SEPP's) is included in the following table. The proposal is either consistent with or not offensive to any applicable SEPP's.

SEPP	CONSISTENCY / RESPONSE
1 – DEVELOPMENT STANDARDS	Not relevant
14 – COASTAL WETLANDS	Not relevant
19 – BUSHLAND IN URBAN AREAS	Not relevant
21 – CARAVAN PARKS	Not relevant
26 – LITTORAL RAINFORESTS	Not relevant
30 – INTENSIVE AGRICULTURE	Not relevant
33 – HAZARDOUS AND OFFENSIVE DEVELOPMENT	Not relevant
44 – KOALA HABITAT PROTECTION	Not relevant
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	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	Not relevant
71 - COASTAL PROTECTION	Not relevant
AFFORDABLE RENTAL HOUSING 2009	Not relevant
BASIX 2004	Not relevant
EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES 2017	Not relevant
EXEMPT AND COMPLYING DEVELOPMENT CODES 2008	Not relevant
HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY 2004	Not relevant
INFRASTRUCTURE 2007	Not relevant
INTEGRATION AND REPEALS 2016	Not relevant
KOSCIUSZKO NATIONAL PARK - ALPINE RESORTS 2007	Not relevant
KURNELL PENINSULA 1989	Not relevant
MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES 2007	Not relevant
MISCELLANEOUS CONSENT PROVISIONS 2007	Not relevant
RURAL LANDS 2008	Consistent
STATE AND REGIONAL DEVELOPMENT 2011	Not relevant
STATE SIGNIFICANT PRECINCTS 2005	Not relevant
SYDNEY DRINKING WATER CATCHMENT 2011	Not relevant

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SEPP	CONSISTENCY / RESPONSE
SYDNEY REGION GROWTH CENTRES 2006	Not relevant
THREE PORTS 2013	Not relevant
URBAN RENEWAL 2010	Not relevant
VEGETATION IN NON-RURAL AREAS 2017	Not relevant
WESTERN SYDNEY EMPLOYMENT AREA 2009	Not relevant
WESTERN SYDNEY PARKLANDS 2009	Not relevant

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

The relevant section 117 Directions are addressed in Appendix 1. The proposal is consistent with the relevant 117 Directions.

## Section C - Environmental, Social and Economic Impact

**Q8: 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 aims to protect the landscapes features within the mapped areas, accordingly, no critical or threatened species, populations or ecological communities, or their habitats are likely to be impacted upon.

**Q9: Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

As set out in A Guide to Preparing Planning Proposals, the purpose of this question is to ascertain the likely environmental effects that may be relevant. The nature of the planning proposal is such that no technical information is required.

**Q10: How has the planning proposal adequately addressed any social and economic effects?**

Not applicable.

## Section D - State and Commonwealth Interests

**Q11: Is there adequate public infrastructure for the planning proposal?**

Not applicable as the Planning Proposal will not trigger an upgrade or reliance on public infrastructure.

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Q12: What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Any consultation will be undertaken in accordance with any future Gateway Determination condition. However, due to the minor nature of the Planning Proposal it is considered unlikely any conditions will be agency consultation will be required.

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## Part 4 – Mapping

Map Sheet CL1\_006 Visually Sensitive Land will be amended to capture the ridgelines to the northeast above the 520 contour and the visually significant agricultural flats between the 2 ridges and extend to the south eastern urban limit of Mudgee.



## Part 5 – Community Consultation

The proposal is of minor significance and is considered to be a low impact proposal as outlined in 5.5.2 Community Consultation “Guide to preparing local environmental plans” is:

- Consistent with the pattern of surrounding land use zones and/or land uses
- Consistent with the strategic planning framework
- Presents no issue with regard to infrastructure servicing
- Not a principal LEP
- Does not reclassify public land

As such the following consultation is proposed:

- An exhibition period of 14 days commencing on the date that a notice of exhibition is printed in the local news press
- Advertising in the local newspaper at the start of the exhibition period
- Advertising on Council's website for the duration of the exhibition period

Consultation with agencies external to Council is not considered necessary.

## Part 6 – Project Timeline

The Planning Proposal is a minor amendment to the Mid-Western Local Environmental Plan 2012 and should be able to be achieved within 3 months of the date of the Gateway Determination.

### Proposed Timeline

MILESTONE	DATE
Gateway Determination	April 2019
Completion of Technical Information	N/A
Agency Consultation	N/A
Public Exhibition	26 April 2019 – 10 May 2019
Consideration of Submissions	19 June 2019
Mapping, Legal Drafting & Opinion	June 2019
RPA makes Plan	June / July 2019

## Appendix 1 – Section 117 Directions

The Section 117 Directions have been identified in the table below. The planning proposal is generally consistent with the directions.

SECTION 117 DIRECTION	APPLICABLE	CONSISTENT	COMMENT
<b>1. Employment and Resources</b>			
1.1 Business & Industrial zones	No	N/A	
1.2 Rural zones	Yes	Yes	The Planning Proposal does not involve the rezoning of rural land, the land use permissibility change will support the continuation of agricultural practice.
1.3 Mining, Petroleum Production and Extractive Industries	No	N/A	
1.4 Oyster Aquaculture	No	N/A	
1.5 Rural Lands	No	N/A	The Planning Proposal does not involve the rezoning of rural land, the land use permissibility change will support the continuation of agricultural practice.
<b>2. Environment &amp; Heritage</b>			
2.1 Environment Protection Zones	No	N/A	
2.2 Coastal Protection	No	N/A	
2.3 Heritage Conservation	No	N/A	
2.4 Recreation Vehicle Areas	No	N/A	
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	No	N/A	
<b>3. Housing, Infrastructure and Urban Development</b>			
3.1 Residential Zones	Yes	N/A	
3.2 Caravan Parks and Manufactured Home Estates	No	N/A	
3.3 Home Occupations	No	N/A	
3.4 Integrating Land Use and Transport	No	N/A	
3.5 Development Near Licensed Aerodromes	No	N/A	
3.6 Shooting Ranges	No	N/A	
<b>4. Hazard and Risk</b>			

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4.1 Acid Sulfate Soils	No	N/A
4.2 Mine Subsidence and Unstable Land	No	N/A
4.3 Flood Prone Land	No	N/A
4.4 Planning for Bushfire Protection	No	N/A
<b>5. Regional Planning</b>		
5.1 Implementation of Regional Strategies	No	N/A
5.2 Sydney Drinking Water Catchments	No	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.8 Second Sydney Airport: Badgerys Creek	No	N/A
5.9 North West Rail Link Corridor Strategy	No	N/A
5.10 Implementation of Regional Plans	Yes	Yes
<b>6. Local Plan making</b>		
6.1 Approval and Referral Requirements	No	Yes
6.2 Reserving Land for Public Purposes	No	N/A
6.3 Site Specific Provisions	No	Yes
<b>7. Metropolitan Planning</b>		
7.1 Implementation of A Plan for Growing Sydney	No	N/A
7.2 Implementation of Greater Macarthur Land Release Investigation	No	N/A
7.3 Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and	No	N/A

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Infrastructure
Implementation Plan