

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Cowra Shire Council
<b>PPA</b>	Cowra Shire Council
<b>NAME</b>	Cowra Local Environmental Plan 2012 – Clause Amendments (0 homes, 0 jobs)
<b>NUMBER</b>	PP_2018_COWRA_004_00
<b>LEP TO BE AMENDED</b>	Cowra Local Environmental Plan 2012
<b>ADDRESS</b>	The planning proposal will affect all properties in the Cowra Local Environmental Plan
<b>DESCRIPTION</b>	The planning proposal will affect all properties in the Cowra Local Environmental Plan
<b>RECEIVED</b>	7 September 2018
<b>FILE NO.</b>	IRF18/1136
<b>POLITICAL DONATIONS</b>	There are no donations known or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no known meetings or communications with registered lobbyists with respect to this proposal

## INTRODUCTION

### Description of planning proposal

The planning proposal involves five (5) separate amendments, a description of each can be found below:

#### Rural Boundary Adjustment – insert model clause

The planning proposal seeks to insert the boundary adjustment model clause into the Cowra Local Environmental Plan 2012. The clause will apply to all land zoned RU1 Primary Production and RU4 Primary Production Small Lots and aims to accommodate subdivisions under the minimum lot size where lots are already below the lot size and contain an existing dwelling.

#### Karst (Cave) Systems – Insert model clause

The planning proposal seeks to insert the karst model clause into the Cowra Local Environmental Plan 2012. The intent of the amendment is to increase Council's ability to manage and protect known karst systems in the Cowra Shire.

#### Varying Residential Lot Sizes – insert model clause

The planning proposal seeks to insert the model clause 4.1C into the Cowra Local Environmental Plan 2012. The clause will allow Council to grant consent to subdivisions involving lot sizes smaller than the minimum shown on the LEP lot size map, provided the Development Application also incorporates the dwelling design for consideration at the same time. This allows Council to ensure the dwelling is suited to and is appropriate for the smaller lot size.

#### Intensive Livestock Agriculture – amend clause 4.2A

To amend Cowra Local Environmental Plan 2012 by removing the requirement for licenced irrigation (clause 4.2A(4)(b)) when a new subdivision lot or dwelling house is proposed in relation to intensive livestock agricultural uses.

#### Community Title Subdivision – amend clause 4.1AA

To amend Cowra Local Environmental Plan 2012 by enabling land in the R1 General Residential zone to be subdivided into new Community Title lots that are less than the minimum lot size prescribed for the zone.

### **Site description**

The planning proposal will impact the vast majority of the Cowra Shire Council area.

### **Existing planning controls**

#### Rural Boundary Adjustment

Currently rural boundary adjustments is centred around two instruments, being the LEP and the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, which is known generally as the Codes SEPP. The SEPP allows for the adjustment of boundaries without Council consent where there are no additional lots created, no opportunities for additional dwellings created, only minor changes to the area of affected lots, and where undersized lots (less than MLS) will only be increased in area.

#### Karst (Cave) Systems

The existing provisions of Cowra Local Environmental Plan 2012 (Clauses 7.3, 7.4 and 7.5) together with the use of the relevant environmentally sensitive land mapping. These provisions, however, only relate to vulnerable groundwater aquifers, wetland environments, and biodiversity, and do not address sensitive land resource issues (and in particular known karst systems).

#### Varying Residential Lot Sizes

There are no provisions relating to varying lots sizes of this nature. Council rely on clause 4.6 Exception to development standards in the Cowra Local Environmental Plan 2012 to vary lot sizes.

#### Intensive Livestock Agriculture

### **4.2A Subdivision for the purposes of intensive livestock agriculture or intensive plant agriculture**

(1) *The objectives of this clause are as follows:*

(a) *to provide flexibility in the application of standards for subdivision for the purpose of intensive livestock agriculture or intensive plant agriculture in certain rural zones,*

- (b) *to encourage sustainable intensive livestock agriculture and intensive plant agriculture,*
  - (c) *to minimise unplanned rural residential development.*
- (2) *This clause applies to the following rural zones:*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU4 Primary Production Small Lots.*
- (3) *Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of intensive livestock agriculture or intensive plant agriculture to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*
- (4) *However, development consent must not be granted to such a subdivision if an existing dwelling house would, as a result of the subdivision, be situated on a lot created by the subdivision unless the consent authority is satisfied that:*
  - (a) *the lot will have an area of at least 40 hectares, and*
  - (b) *the lot is or is to be subject to irrigation requiring a water licence and the volume of, and entitlement to, water available under that licence is or will be adequate for the use of the land for the purpose of intensive livestock agriculture or intensive plant agriculture, and*
  - (c) *the lot is suitable for, and is to be used for, intensive livestock agriculture or intensive plant agriculture, and*
  - (d) *the dwelling house is required to support the carrying out of such a purpose.*
- (5) *Development consent may be granted for the erection of a dwelling house on a lot created by a subdivision under this clause or on an existing lot of any size that only contains land in a zone to which this clause applies if the consent authority is satisfied that:*
  - (a) *the lot complies with subclause (4) (a) and (b), and*
  - (b) *the lot is suitable for, and is being used for, the purpose of intensive livestock agriculture or intensive plant agriculture, and*
  - (c) *the dwelling house is required to support the carrying out of that purpose.*

### Community Title Subdivision

Currently, the subdivision of R1 General Residential zoned land into Community Title lots is controlled under Clause 4.1AA of the LEP. This clause currently operates so as to require new Community Title lots in the R1 General Residential zone to be not less than the MLS of 700m<sup>2</sup>.

### **Summary of recommendation**

Proceed with conditions, as the planning proposal has adequately demonstrated consistency with the relevant section 9.1 Directions and the State Environmental Plans.

## **PROPOSAL**

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### **Objectives or intended outcomes**

The planning proposal states:

#### Rural Boundary Adjustment

*To amend Cowra Local Environmental Plan 2012 by enabling greater flexibility to undertake boundary adjustments involving land in the RU1 or RU4 zones, and where the lots involved have areas less than the minimum lot size and accommodate existing dwelling(s).*

### Karst (Cave) Systems

*To amend Cowra Local Environmental Plan 2012 by including provisions which increase Council's ability to manage and protect known karst systems in the Cowra Shire.*

### Varying Residential Lot Sizes

*To amend Cowra Local Environmental Plan 2012 by including provisions which enable Council to approve the subdivision of land in the R1 General Residential zone, where the lots are smaller than the minimum lot size for the area, but still suitable for dwelling development.*

### Intensive Livestock Agriculture

*To amend Cowra Local Environmental Plan 2012 by removing the requirement for licenced irrigation when a new subdivision lot is proposed for intensive livestock agriculture and ancillary dwelling-house purposes.*

*To amend Cowra Local Environmental Plan 2012 by removing the requirement for licenced irrigation when a new dwelling is proposed as an ancillary component to an intensive livestock agricultural activity.*

*To amend Cowra Local Environmental Plan 2012 to ensure that adequate and sustainable water supply is provided when subdivision or ancillary dwelling development is proposed in relation to intensive livestock agricultural uses.*

### Community Title Subdivision

*To amend Cowra Local Environmental Plan 2012 by enabling land in the R1 General Residential zone to be subdivided into new Community Title lots that are less than the minimum lot size prescribed for the zone.*

Comment: The objective of each amendment is considered to be adequate and can be supported.

## **Explanation of provisions**

The planning proposal states:

### Rural Boundary Adjustment

*The objective (detailed in Section 2.2) will be achieved by inserting the boundary adjustment model clause that has already been settled by the NSW Department of Planning & Environment.*

*The wording of the clause is detailed in Appendix 1 to this report.*

### Karst (Cave) Systems

*The objective (detailed in Section 3.2) will be achieved by inserting the karst model clause that has already been settled by the NSW Department of Planning & Environment.*

*The wording of the clause is detailed in Appendix 2 to this report.*

*A new Map series will also be prepared and inserted into Cowra Local Environmental Plan 2012 showing the location and extent of the known karst systems in the Cowra Shire. A draft map is also included in Appendix 2.*

The standard LEP map condition will be imposed.

#### Varying Residential Lot Sizes

*The objective (detailed in Section 4.2) will be achieved by inserting the Model Clause 4.1C that has been settled by the NSW Department of Planning & Environment for use in Standard Instrument LEP's.*

*Model Clause 4.1C is included in Appendix 3.*

*It is intended that Model Clause 4.1C will apply to the Torrens Title subdivision of any land in the R1 General Residential zone under Cowra Local Environmental Plan 2012, and where: - The number of lots proposed in the subdivision is not less than 2. - The size of each proposed lot is equal to or greater than 300m<sup>2</sup> for the erection of a dwelling, semi-detached dwelling, or attached dwelling.*

*These parameters align with the existing provisions contained in the Cowra Shire Comprehensive Development Control Plan 2014, and in particular Part E.2 relating to medium density residential development.*

#### Intensive Livestock Agriculture

*The objective of this Planning Proposal will be achieved by amending the wording contained in existing Clause 4.2A of Cowra Local Environmental Plan 2012.*

*The suggested wording of the clause is detailed in Appendix 4 to this report.*

#### Community Title Subdivision

*The objective of this Planning Proposal (detailed in Section 6.2) will be achieved by amending the wording contained in existing Clause 4.1AA of Cowra Local Environmental Plan 2012.*

*The suggested wording of the clause is detailed in Appendix 5 to this report.*

Comment: The explanation of intended affects has been clearly stated under each amendment section in the planning proposal. The suggested wording of each proposed amended/new clause in the appendices are suitable for public exhibition however the final wording may change and is subject to Parliamentary Counsel opinion.

### **Mapping**

Mapping is proposed for the new Karst Clause. The mapping provided in the planning proposal is suitable for consultation. Final maps must comply with the Departments technical guidelines.

## **NEED FOR THE PLANNING PROPOSAL**

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#### Rural Boundary Adjustment

The planning proposal relies on the recent amendments to the State Environmental Planning Policy (Exempt and Complying Development Codes). The recent amendment require Council to be satisfied that a boundary adjustment involving rural land will not result in more than a minor change in area of any lot. Amending Cowra Local Environmental Plan 2012 to include the settled boundary adjustment clause is therefore considered to be best way of enabling greater flexibility to undertake boundary adjustments involving land in the RU1 or RU4 zones, and where the lots involved have areas less than the minimum lot size and accommodate existing dwelling(s). As a result

it is considered that the planning proposal is the best means to achieve the desired outcome.

#### Karst (Cave) Systems

The amendment was identified in the Cowra issues paper and will increase Councils ability to effectively manage and protect karst systems in the Cowra Council area. The planning proposal is the best means of achieving the desired outcome.

#### Varying Residential Lot Sizes

The amendment was identified in the Cowra issues paper, the objective of the amendment is to provide housing diversity throughout the Cowra township. Rather than reduce the minimum lot size in the R1 General Residential Zone, Council have proposed a 300m<sup>2</sup> minimum lot size when 2 or more lots are proposed and incorporate the construction of dwellings. This allows Council to adequately assess the suitability of the subdivision of the site and the proposed built form. The planning proposal is considered to be the best means of achieving the desired outcome. This is also consistent with the existing Cowra DCP.

#### Intensive Livestock Agriculture

The amendment intends to remove the need for licenced irrigated water when undertaking an intensive agricultural subdivision and replace it with a need to demonstrate that suitable water supply is available. The amendment is the best means of achieving the desired outcome, consultation with NSW Department of Primary Industries (Water & Agriculture) is recommended.

#### Community Title Subdivision

The amendment intends on removing the R1 General Residential Zone from clause 4.1AA of the CLEP 2012. The intent of the amendment is to not prohibit community title subdivision under the minimum lot size in the R1 General Residential zone. It is considered that the planning proposal is the best means of achieving the desired outcome.

### **STRATEGIC ASSESSMENT**

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#### **Central West and Orana Regional Plan 2036**

The planning proposal is considered to be consistent with the relevant Directions of the regional plan. Council have identified the following directions as being relevant for each amendment:

- Rural Boundary Adjustment
  - o Direction 1 – Protect the region's diverse and productive agricultural land
  - o Direction 2 – Grow the agribusiness sector and supply chains
- Karst (Cave) Systems
  - o Direction 13 – Protect and manage environmental assets
- Varying Residential Lot Sizes
  - o Direction 25 – Increase housing diversity and choice
- Intensive Livestock Agriculture

- Direction 1 – Protect the region's diverse and productive agricultural land
- Direction 2 – Grow the agribusiness sector and supply chains
- Community Title Subdivision
  - Direction 25 – Increase housing diversity and choice

### **Local – Cowra Issues Paper**

Each amendment in the planning proposal has resulted from the Cowra Issues Paper. The Issues Paper was endorsed for the purposes of public exhibition by Council at the Ordinary Meeting held 24 July 2017. The public exhibition occurred from Tuesday 1 August 2017 to Monday 28 August 2017. All submissions were considered by Council at the Ordinary Meeting on 23 October 2017.

DPE on 1 September 2017 provided comment on the issues paper and can be found at Attachment E.

### **Section 9.1 Ministerial Directions**

The planning proposals is considered to be consist with each Section 9.1 Direction as shown below:

#### **Rural Boundary Adjustment**

**1.2 RURAL ZONES:** This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural zone.

The proposal is considered to be CONSISTENT with this direction as affects rural land generally, but there is no proposal to rezone land from a rural zone to a residential, business, industrial, village or tourist zone.

**1.5 RURAL LANDS:** This Direction does apply to the planning proposal as it will affect land within an existing rural zones and provides flexibility when undertaking subdivision for rural boundary adjustments.

The proposal is considered to be CONSISTENT with this direction as the proposed clause includes assessment criteria to ensure that rural boundary adjustments do not compromise the viability of productive agricultural land, either through increasing fragmentation, increasing land-use conflict, or creating further opportunities for dwelling entitlement.

#### **Karst (Cave) Systems**

**1.2 RURAL ZONES:** This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural zone.

The proposal is considered to be CONSISTENT with this direction as affects rural land generally, but there is no proposal to rezone land from a rural zone to a residential, business, industrial, village or tourist zone.

**1.5 RURAL LANDS:** This Direction does apply to the planning proposal as it will affect land within an existing rural zones.

The proposal is considered to be CONSISTENT with this direction as the proposed clause includes provides greater environmental protection around known Karst areas.

**2.1 ENVIRONMENT PROTECTION ZONES:** This Direction does apply to the planning proposal as it will affect land within an environment protection zone or land otherwise identified for environment protection purposes.

The proposal is considered to be CONSISTENT with this direction, by inserting the karst model clause and associated mapping will facilitate the protection and conservation of all environmentally sensitive karst systems in the Cowra Shire.

**2.3 HERITAGE CONSERVATION:** This Direction does apply to the planning proposal as it affects items, places, buildings, works, relics moveable objects or precincts of environmental heritage significance.

The proposal is considered to be CONSISTENT with this direction as the Cliefden Caves are listed on the State Heritage Register. There is no proposal to alter the terms of, or remove this listing.

### **Varying Residential Lot Sizes**

**3.1 RESIDENTIAL ZONES:** This Direction does apply to the planning proposal as it will affect land within an existing residential zone.

The proposal is considered to be CONSISTENT with this direction as the objective of Model Clause 4.1C is to encourage housing diversity without adversity impacting on residential amenity. This objective aligns closely with the requirements of this Ministerial Direction. The new clause will enable higher density living opportunities in the Cowra Township and ensure that future dwelling design is considered upfront to ensure suitability of lot design and residential amenity.

**3.4 INTEGRATING LAND USE AND TRANSPORT:** This Direction does apply to the planning proposal as it will alter a provision relating to urban land.

The proposal is considered to be CONSISTENT with this direction as future developments will be able to utilise existing walking, cycling and public transport systems.

### **Intensive Livestock Agriculture**

**1.2 RURAL ZONES:** This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural zone.

The proposal is considered to be CONSISTENT with this direction as affects rural land generally, but there is no proposal to rezone land from a rural zone to a residential, business, industrial, village or tourist zone.

**1.5 RURAL LANDS:** This Direction does apply to the planning proposal as it will affect land within an existing rural zones.

The proposal is considered to be CONSISTENT with this direction as the amendment recognises that many forms of intensive livestock agriculture are sustainable without licenced irrigation, and that the ability to live on the land and manage the agricultural activity is an important part of most intensive agricultural pursuits.

**2.1 ENVIRONMENT PROTECTION ZONES:** This Direction does apply to the planning proposal as it will affect land within an environment protection zone or land otherwise identified for environment protection purposes.

The proposal is considered to be NOT INCONSISTENT with this direction, There is no proposal to reduce the amount of land zoned for environmental protection, and safeguards are built into provisions separate to Clause 4.2A of the LEP to ensure proper consideration of environmental values.

### **Community Title Subdivision**

**3.1 RESIDENTIAL ZONES:** This Direction does apply to the planning proposal as it will affect land within an existing residential zone.

The proposal is considered to be CONSISTENT with this direction as the objective of the proposed changes to Clause 4.1AA will provide the local community with more choice in terms of the type of subdivision possible for existing and new residential developments in Cowra.

**3.4 INTEGRATING LAND USE AND TRANSPORT:** This Direction does apply to the planning proposal as it will alter a provision relating to urban land.

The proposal is considered to be CONSISTENT with this direction as future developments will be able to utilise existing walking, cycling and public transport systems.

### **State environmental planning policies**

#### **Rural Boundary Adjustment**

- SEPP (Rural Lands) 2008

The planning proposal is considered to be consistent with the aims of the SEPP and in particular will facilitate the orderly and economic use and development of rural lands for rural and related purposes. The proposal is consistent with the rural subdivision principles. Safeguards are built into the wording of the proposed clause to ensure that new rural boundary adjustments do not increase fragmentation or land-use conflict potential, and to ensure that natural and physical constraints and opportunities of affected land is taken into consideration by Council as part of the development assessment process.

- SEPP (Exempt and Complying Development Codes) 2008

There are no issues of inconsistency with the existing provisions contained in the SEPP relating to boundary adjustments involving rural land.

#### **Karst (Cave) Systems**

The amendment is not inconsistent with any SEPPs.

#### **Varying Residential Lot Sizes**

- SEPP No. 1 – Development Standards

The planning proposal does not present any inconsistencies with SEPP No. 1 – Development Standards, as it no longer applies to the Cowra Council area. The planning proposal allows for flexible residential development.

#### **Intensive Livestock Agriculture**

- SEPP (Rural Lands) 2008

The proposal is consistent with the aims of the SEPP and in particular will facilitate the orderly and economic use and development of rural lands for rural and related purposes. No changes are proposed to minimum lot size provisions. Changes to the water supply requirements for development associated with intensive livestock agricultural uses of the land is not expected to lead to increases in rural land-use conflict issues.

- SEPP No. 30 – Intensive Agriculture

The provisions of the SEPP do not apply to development scenarios involving the creation of new subdivision lots or construction of ancillary dwelling houses linked to intensive livestock agricultural uses of the land. For this reason, the proposed amendments to Clause 4.2A of Cowra Local Environmental Plan 2012 do not create any issues of inconsistency with the provisions of the Intensive Agriculture SEPP.

### **Community Title Subdivision**

- SEPP No. 1 – Development Standards

The planning proposal does not present any inconsistencies with SEPP No. 1 – Development Standards, as it no longer applies to the Cowra Council area. The planning proposal allows for flexible residential development.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social, Environmental and Economic**

The planning proposal amendments provides opportunity to improve social, environmental and economic matters in the Cowra Council area. Each amendment has adequately justified its impact having regard to the possible social, environmental and economic impacts in the area.

## **CONSULTATION**

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### **Community**

The following adequate consultation strategy has been proposed by Cowra Council for the Planning Proposal.

- Advertisement on Council's website for 28 days.
- Advertisement in the Cowra Guardian on at least two occasions.

The following material will be made available for inspection throughout the exhibition period:

- Issues Paper for the Review of Cowra Local Environmental Plan 2012 – July 2017
- Issues Paper for the Review of Cowra Local Environmental Plan 2012 – July 2017 – Summary of Recommendations.
- Planning Proposal.
- Gateway Determination, as issued by NSW Department of Planning & Environment.

### **Agencies**

Council have proposed the following government agencies are considered to have interests that are particularly relevant to the issues being addressed by this planning proposal, will be consulted as part of the public exhibition:

- NSW Office of Water.
- NSW Department of Primary Industries.
- NSW Office of Environment and Heritage.

- Housing NSW.

Council will also consult in accordance with the requirements of the Cowra Shire Council's Aboriginal Consultation Policy.

The proposed agency consultation is satisfactory.

## **TIME FRAME**

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Council have provided a timeframe for completion of the planning proposal, which concludes in March 2019. Given the nature and consultation requirements of the planning proposal, a 12 month timeframe is considered to be appropriate.

## **LOCAL PLAN-MAKING AUTHORITY**

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Council have requested local plan-making authority. Given the nature of the planning proposal, being a local matter, it is considered appropriate to issue Council with delegation to exercise plan making functions for this proposal.

## **CONCLUSION**

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- Preparation of the planning proposal is supported to proceed with conditions.
- The planning proposal addresses the Department's 'A guide to preparing planning proposals'.
- The Director Regions, Western can use delegation to determine this proposal as it is consistent with broader government policy.

## **RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. note that the planning proposal is consistent with Section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation and 3.4 Integrating Land Use and Transport and no further work is required.

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

1. Community consultation is required under section 3.34(2)(c) and schedule 1 clause 4 of the *Environmental Planning and Assessment Act 1979* as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 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 Local Environmental Plans* (Department of Planning & Environment August 2016).
2. Consultation is required with the following public authorities under section 3.34(2)(d) of the *Environmental Planning and Assessment Act, 1979* and/or to comply with the requirements of relevant section 117 Directions:



## Planning & Environment

- NSW Office of Water.
- NSW Department of Primary Industries.
- NSW Office of Environment and Heritage.
- Housing NSW.
- NSW Department of Primary Industries

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. Prior to submission of the planning proposal under section 3.36 of the *Environmental Planning and Assessment Act, 1979*, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the *Environmental Planning and Assessment Act, 1979* subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
  - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objection from public authorities.
5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the *Environmental Planning and Assessment Act, 1979*. 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).
6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.



4/10/2018

**Wayne Garnsey**  
Team Leader, Western



5.10.18

**Damien Pfeiffer**  
Director Regions, Western  
Planning Services

Contact Officer: Haydon Murdoch  
Planning Officer, Western  
Phone: 6229 7914