

Planning Services

Gateway Determination Report

LGA	Dubbo Regional Council
RPA	Dubbo Regional Council
NAME	Blackbutt Road
NUMBER	PP_2017_DUBRE_002_00
LEP TO BE AMENDED	Dubbo LEP 2011
ADDRESS	20R Peak Hill Road, Blackbutt Road
DESCRIPTION	Lot 172 DP 753233
RECEIVED	25 August 2017; DEEMED ADEQUATE: 12 October 2017
FILE NO.	17/10850-1
QA NUMBER	qA00000
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to amend the Lot Size Map for the site to introduce a range of lot sizes between 2000m² - 4000m², and 10ha. The current minimum lot size is 10ha. The land is currently zoned R5 Large Lot Residential under the Dubbo LEP 2011.

It is also proposed by the proponent to adjust the LEP Biodiversity map to remove the site from this map, however this has not been supported by the Relevant Planning Authority (RPA) at his time.

The site is located on the Newell Highway directly opposite the Taronga Western Plains Zoo. The area of the subject land is 93ha.

It is proposed to establish a community title subdivision for 137 lots, with 105 lots ranging in size from 2000m² to 5000m² and 32 lots ranging from approx. 4000m² to 8,700m².

Potential dwellings will be in the order of 137 if the Planning Proposal proceeds. The site is currently undeveloped, with evidence of a burnt dwelling and outbuildings. The site has a history of bushfire, with a Rural Fire Service site search confirming the site as bushfire prone.

Site Description

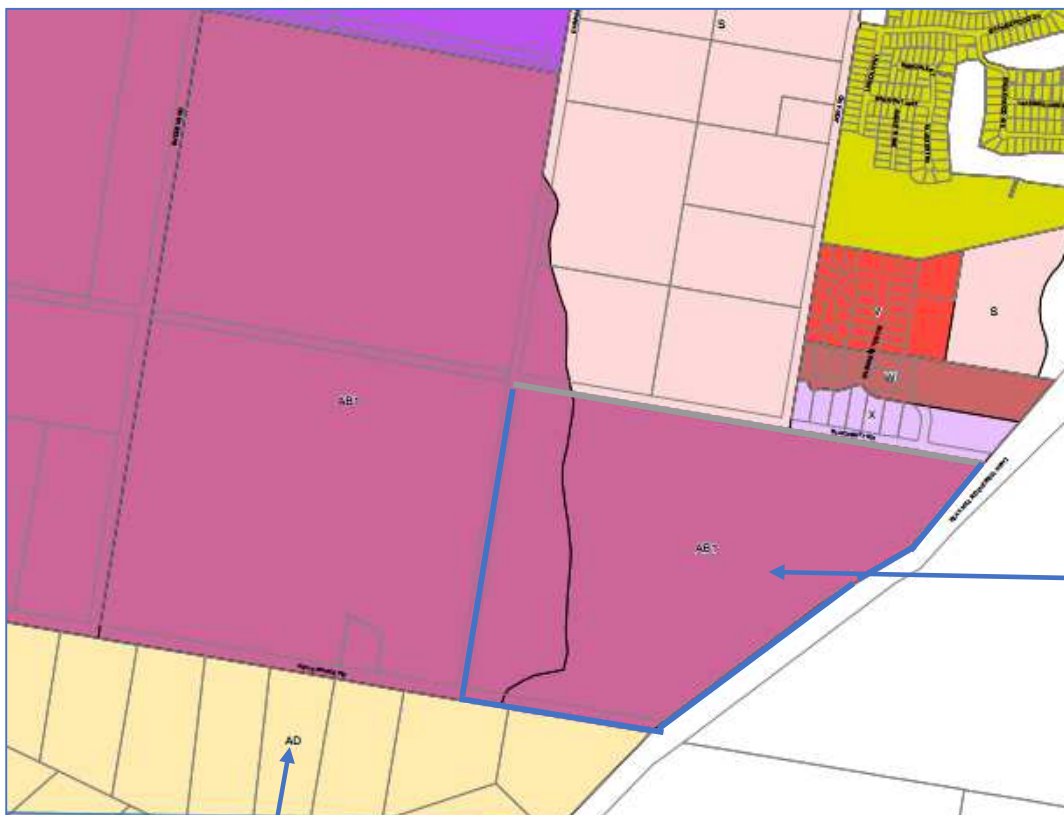
The site is located to the south west of Dubbo, at the entrance to the City opposite the Taronga Western Plains Zoo on the Newell Highway (eastern boundary). Blackbutt Road traverses the northern boundary, Chapmans Road to the west and Rifle Range Road to the south. The site is densely vegetated with native vegetation at various stages of growth. The locality is bushfire prone and there is a history of severe fires in the 1980's and 1990's.

There are remnants of buildings being a dwelling and sheds, and the site has been used in the past to dump fill and waste. Anecdotally, the site was used as an army camp some time ago.

Surrounding Area



Lot 172 DP 753233



Subject land
AB1 =10ha
MLS

AD=100ha MLS

PROPOSAL

Objectives or Intended Outcomes

The objectives and intended outcome of the proposal are to amend the minimum lot size for the subject site to facilitate a 137-lot community title residential subdivision and development.

Explanation of Provisions

It is proposed to amend the Dubbo LEP 2011 (LEP) by amending the Lot Size Map LSZ_008A for the subject site to facilitate a residential subdivision for 137 lots, with 105 of these lots ranging in size from 2000m² to 5000m² and the remaining 32 lots ranging in size from approximately 4,000m² to 8,700m². The residue of the 93ha site will be subject to the existing 10ha minimum lot size (MLS) to ensure the ongoing protection of native vegetation.

Mapping

The mapping submitted as part of the Planning Proposal is adequate and clearly identifies the intent of the proposal and proceed to community consultation. There may be some adjustment to the final maps following consultation with government agencies, particularly the Rural Fire Service and Office of Environment and Heritage.

Final mapping is to be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2015 at Section 59 stage.

NEED FOR THE PLANNING PROPOSAL

A planning proposal is the only mechanism to achieve the intended outcome. A planning proposal is required to rezone the site and amend the minimum lot size (MLS)

Former planning provisions

The subject site was zoned Rural 1(b) under the former Dubbo Local Environmental Plan 1998, with a minimum lot size of 8ha for a dwelling, or 20ha where a lot abutted a Transport Corridor (as in the subject site). Further, dwellings were not to be located any closer than 200 metres to a transport corridor.

The preparation of the Standard Instrument LEP for the former Dubbo local government area rezoned the site to R5 Large Lot Residential and put in place a 10ha minimum lot size where a dwelling was to be established. This appears to be a compromise of the former 8-20ha standard. It is noted that the form of the SI LEP did not permit the carryover of the former Dubbo LEP 1998 provisions setting out specific land use outcomes such as the restriction on development near transport corridors (in this case the Newell Highway).

STRATEGIC ASSESSMENT

Regional / District

The Central West and Orana Regional Plan 2036 (CWO RP) applies to the proposal. The planning proposal was prepared in 2015 and submitted to Dubbo City Council but subsequently returned to the proponents to resolve servicing issues.

The resultant planning proposal includes an Addendum report with updated information on the servicing of the site. However, the applicants have not assessed the now-launched CWORP as part of the planning proposal.

The following Directions and Actions from the CWO RP are specifically relevant to the planning proposal:

Direction 15: Increase resilience to natural hazards and climate change:

- Action 15.1 Locate developments, including new urban release areas away from areas of known high biodiversity value; areas with known high risk of bushfire or flooding; contaminated land; and designated floodways.

Direction 16: Respect and protect Aboriginal heritage assets:

- Action 16.1 Protect, manage and respect Aboriginal objects and places in accordance with legislative requirements.

In terms of both of these Actions, consultation with government agencies will provide guidance on the appropriateness of the proposal in terms of environmental impacts. The proposal intends to rezone land that has defined aboriginal archaeology, a history of contaminated land, inherent biodiversity values and bushfire risk.

Local Strategy

Dubbo Residential Strategy (endorsed 2012)

The endorsed Strategy for the former Dubbo local government area is composed of a suite of strategies that includes the Urban Areas Development Strategy 1996 and Rural Areas Development Strategy 1997. Both strategies and their components have been subsequently reviewed, and endorsed by the Department in 2012.

The subject land is identified as part of the 'Rural Buffer' around the urban area of Dubbo, known as the 'Central District'. The objectives for the Rural Buffer is to maintain separation between the outlying rural areas and the urban area of the City.

Within the Central District, The South Western Sub-District contains the site as shown in the above diagram. The Sub-District includes the long term residential land for Dubbo, the result of the of 'balancing' the city from [then] overdevelopment of the eastern side of the Macquarie River to directing new development to the western side. This would have the effect of protecting and enhancing the CBD as the administrative and geographical centre of Dubbo. The objectives of the South Western Sub-District are as follows:

- Protect the long-term role of the Sub-District in providing fully serviced residential expansion westward;
- Protect the transport corridor (Newell Highway);
- Provide the buffer area to protect agricultural areas, and
- Continuation of the existing urban fringe/country lifestyles on small acreages.



Excerpt from Dubbo Residential Strategy (endorsed 2012)

The planning proposal is broadly consistent with the Strategy and given the subject site is also identified as an urban release area under the Dubbo LEP 2011, any minor inconsistencies with the objectives of the Strategy can be deemed to be of minor significance. It also noted that the endorsed Strategy is due for a comprehensive review.

Section 117(2) Ministerial Directions

The following 117 Directions apply to the proposal:

Direction 2.1 Environment Protection zones

The site is mapped with 'Moderate' biodiversity values on Dubbo LEP 2011 map NRB_008. The consultant's report states that the site contains an Ecologically Endangered Community (ECC) known as Grey Box Grassy Woodland. There are also several endangered fauna species identified on site, according to the

The planning proposal is inconsistent with this Direction at this time and consultation is recommended prior to proceeding to community consultation.

Direction 2.3 Heritage Conservation

There is Aboriginal cultural heritage on the site. It is not known from the information provided by Council if the heritage sites will be appropriately protected from development.

The planning proposal is inconsistent with this Direction at this time and consultation is recommended with OEH prior to proceeding to community consultation.

Direction 3.1 Residential Zones

The proposal is considered to be consistent with this Direction as the proposal will facilitate further opportunity for large lot residential development.

Direction 4.4 Bushfire Prone Land

The site is affected by bushfire according to the mapping from the NSW Rural Fire Service (NSW RFS). The proponent has provided a Bushfire Constraints Assessment, in which it is determined that the proposal is suitable.

Advice from NSW RFS will be sought as part of this planning proposal to assess the site, as there is anecdotal history of destructive bushfires in the locality, and the site is 70% covered with vegetation including regrowth. The risks to 137 new dwellings and occupants in this locality need to be independently assessed.

The planning proposal is inconsistent with this Direction at this time and consultation is recommended with NSW RFS prior to proceeding to community consultation. The outcome of this consultation should be submitted

Direction 5.10 – Implementation of Regional Plans

The site has identified biodiversity values including EEC and is bushfire prone. There is also aboriginal cultural heritage on site. The planning proposal needs to address Directions 15 and 16 of the Central West and Orana Regional Plan in ensuring these values are appropriately assessed and conserved prior to the rezoning of the site. The advice of government agencies as per Directions 2.1 and 4.4 will assist in this matter.

State Environmental Planning Policies

SEPP 55 – Remediation of Land applies. The proponent has prepared a contamination report which has found the land to be suitable for residential use.

SEPP (Infrastructure) 2007 – the proponent has provided information to demonstrate consistency with the SEPP, including an acoustic assessment concerning the impacts of the Newell highway to the east of the site. Noise controls are recommended for future dwellings and Council may require this to be imposed through a DCP.

SITE SPECIFIC ASSESSMENT

Social

The planning proposal suggests that potential inhabitants of the subdivision will be able to access shopping and medical facilities at the nearby Delroy shopping complex. It is also suggested that by having permanent residents on the site, 'anti-social behaviour' such as illegal dumping, hazardous waste and trespass would be resolved. The release of additional and variety of housing in Dubbo is regarded generally as a 'social' benefit.

Environmental

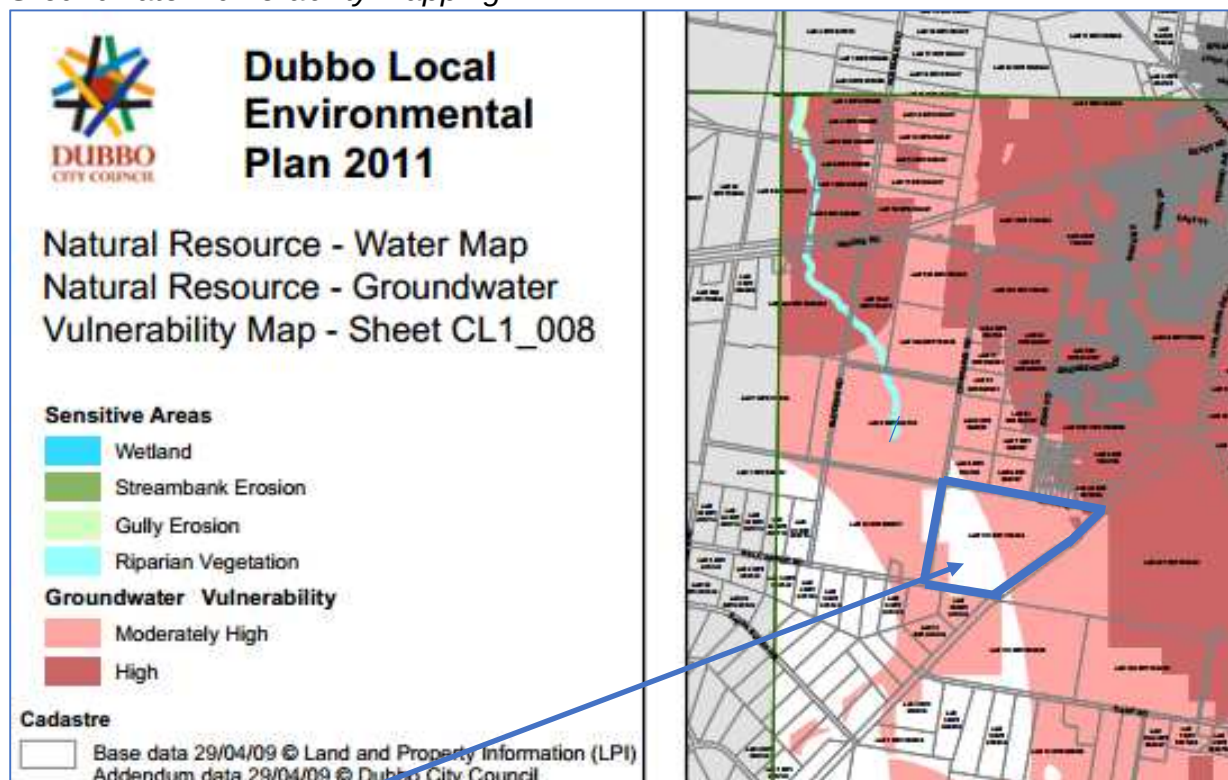
The proposal is supported by a study that indicate any potential environmental impacts can be managed through consultation with agencies and through the development assessment process. It is noted that the proponent requested the removal of the site from the Dubbo LEP 2011 Biodiversity mapping (NRB_008) and this was not supported by Council. The site is identified with 'moderate' biodiversity values in LEP mapping.

The following environmental matters are likely to be addressed through the agency consultation process:

- Biodiversity impact through clearing of vegetation for 137 house sites and infrastructure. The ecological constraints map prepared by the proponent indicates swathes of land through the centre of the site and on the boundaries that are classed as having 'high conservation value and low development potential'. There is land to the east and south of the site that has vegetation that is classed as 'moderate conservation value and high development potential'. Consultation with Office of Environment and Heritage is required in this regard.
- Groundwater Vulnerability –the site is identified as having low-moderate and moderately-high groundwater vulnerability. The implications of clearing land and developing with 137 dwellings will need to be assessed by experts in hydrogeology. Groundwater vulnerability is a function of several key factors such as underlying geology, groundwater aquifers, soil type and structure, rainfall, topography etc and requires specialist interpretation of potential impacts. It is noted that the 2011 LEP mapping is a modification of the 1996 Groundwater Vulnerability map, where the 'Low Moderate' classification has been removed.
- Consultation with the NSW Department of Primary Industries – Water is recommended prior to community consultation.
- Bushfire risk - The area is bushfire prone because of the amount and type of native vegetation in the locality. Consultation with the NSW RFS will be required prior to community consultation.
- Archaeology – there are known Aboriginal archaeological sites on the property, with the site having been important to Aboriginal people for food and shelter historically. Subsequent land clearing and rural activities may have altered archaeological sites that have been previously identified. Consultation with the Office of Environment and Heritage will be required in this regard.
- Noise and vibration from the Newell Highway – the site plan indicates a layout that locates lots adjacent to the Newell Highway, with a 100m setback. Consultation with the Roads and Maritime Service is required in this regard.

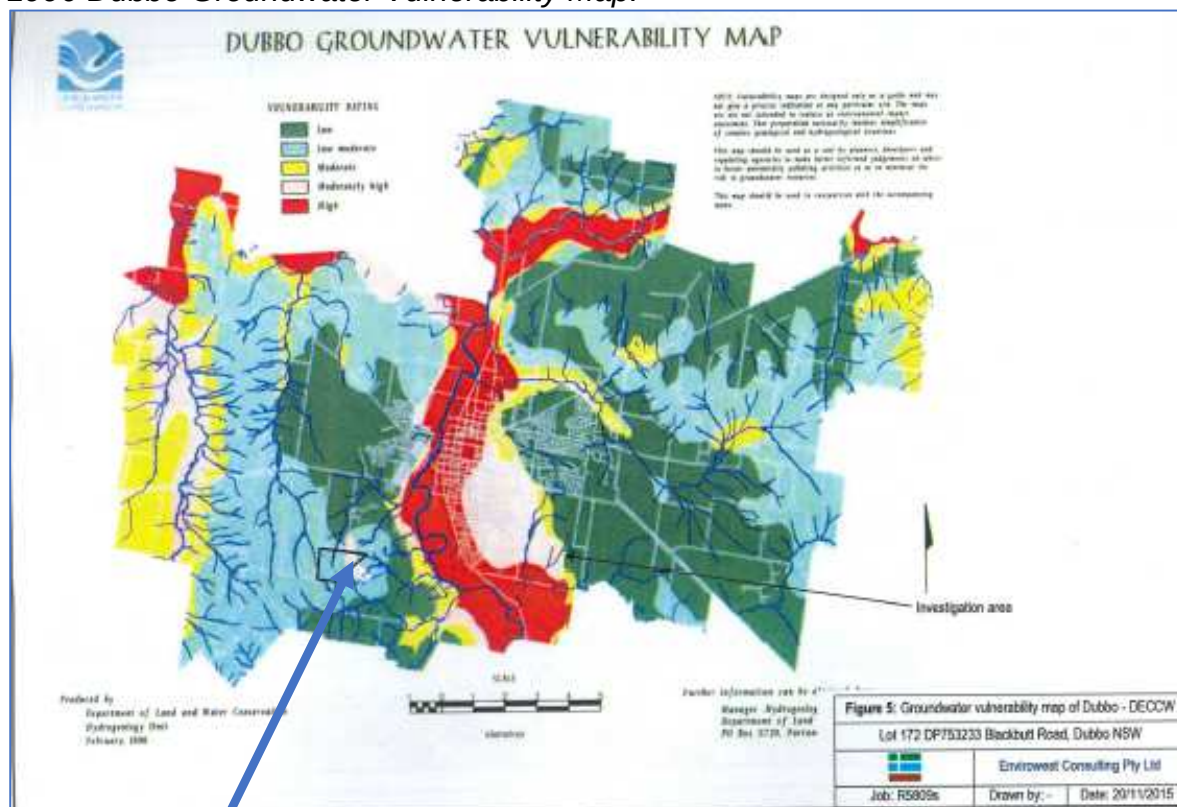
Consultation with government Agencies will assist in addressing these matters and inform the final design and density of the proposal.

Groundwater vulnerability mapping:



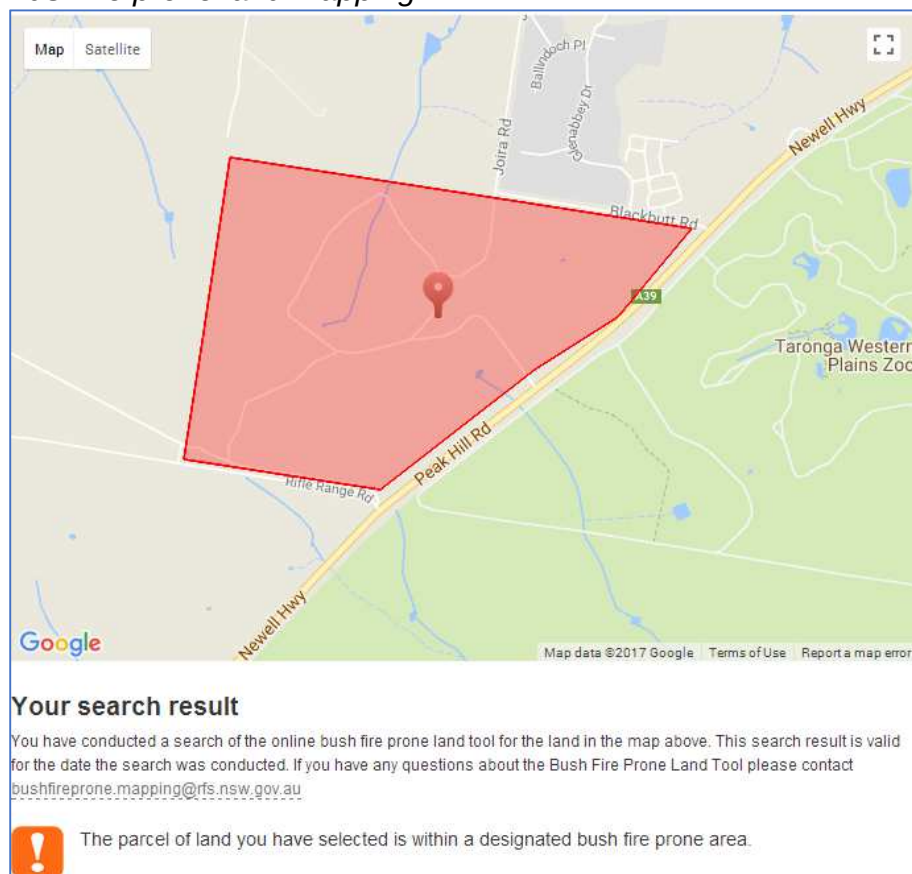
Subject site

1996 Dubbo Groundwater Vulnerability Map:



Subject site

Bushfire prone land mapping:



Bushfire prone land map - Rural Fire Service website

Economic

The proposal will result in positive economic benefits subject to the environmental impacts being balanced. The planning proposal details the work proposed to service the site with urban water and sewer, which is regarded as a social benefit by the applicant as the result of there not being an imposition on the general public for servicing.

Infrastructure

The proposal is identified as an Urban Release Area by the Dubbo LEP 2011. Arrangements will need to be made for the satisfactory provision of infrastructure at development application stage, however it is anticipated that the proposed development of the site will not meet necessary thresholds to require a State contribution to new infrastructure. The proponent will be required to upgrade and extend local infrastructure to adequately service the site. Council may elect to invoke the DCP provisions under Clause 6.3 of the Dubbo LEP 2011 which refers to a staging plan for infrastructure and servicing being in place prior to the development of land in an urban release area.

CONSULTATION

Community

The proposed 14-day community consultation proposed by Council is not considered adequate. The proposal is not considered to be a 'low impact proposal' due to the environmental issues and therefore a minimum 28-day community consultation is satisfactory.

Agencies

It is recommended that the following agencies/organisations be consulted:

- Roads and Maritime Services
- Department of Primary Industry – Water
- Office of Environment and Heritage
- NSW RFS

TIMEFRAME

It is recommended that the planning proposal be finalised in 12 months.

DELEGATION

Council has specifically requested it not to be authorised to exercise delegations. After consideration of the planning proposal in detail, it is also considered that Council not be authorised to exercise delegation due to the potential environmental impacts that are to be considered in consultations with agencies.

CONCLUSION

It is being recommended that the proposal proceed and that a conditional Gateway Determination be issued under the delegation of the Secretary.

Conditions will be required to ensure that government agencies are consulted as to the potential impacts of the proposal on the environment and infrastructure. It may be the case that the proposal will be amended after the environmental concerns have been addressed with agencies.

RECOMMENDATION

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

1. Prior to proceeding to community consultation, the Planning Proposal is required to undergo agency consultations as specified in Condition 3 to seek advice and resolve the inconsistencies with Section 117 Directions and known environmental impacts. The outcome of this consultation is required to be submitted to the Department, prior to proceeding to community consultation.
2. Community consultation is required under Sections 56(2)(c) and 57 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**;

- (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 & Environment 2016)*.
3. Consultation is required with the following public authority/ organisations under Section 56(2)(d) of the *Environmental Planning and Assessment Act, 1979*:
- Office of Environment and Heritage (Direction 2.1 Environment Protection Zones, 2.3 Heritage Conservation)
 - NSW Rural Fire Service (Direction 4.4 Bushfire Prone Land)
 - Department of Primary Industries – Water
 - Roads and Maritime Services

The public authorities are 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.

4. A public hearing is not required to be held into the matter by any person or body under Section 56(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).
5. Prior to submission of the Planning Proposal under Section 59 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*' 2015.
6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.
7. Authorisation to exercise delegation not be granted in this case as there are environmental issues that require resolution in consultation with agencies prior to Plan finalisation.



25.10.17

Wayne Garnsey
Team Leader, Region



26.10.17

Katrine O'Flaherty
Director Regions, Western Region
Planning Services