**BROKEN HILL CITY COUNCIL** 

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PLANNING PROPOSAL

# **BROKEN HILL LOCAL ENVIRONMENTAL PLAN 2013**

# FOR AN ADDITIONAL PERMITTED USE (ANIMAL POUND FACILITY)

AIRPORT, BROKEN HILL

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The purpose of this Planning Proposal is to seek an amendment to Broken Hill Local Environmental Plan 2013 (LEP) to enable the future development of a Council animal pound facility at land within the boundaries of the Broken Hill Airport.

The Planning Proposal has been prepared in accordance with the requirements of Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and associated guidelines prepared by the Department of Planning.

Amending Schedule 1 of the Broken Hill LEP 2013 to permit an additional use on the subject site will accommodate a need for Council to establish a Council animal pound facility, primarily for the impounding of companion animals.

It is expected that, pending Development approval with suitable conditions imposed which would mitigate the potential for any impact, that the site is considered suitable to accommodate an animal pound.

The planning proposal has strategic planning merit and the Minister or his delegate is requested to make a gateway determination under Section 56 of the EP&A Act.

# 1. INTRODUCTION

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This Planning Proposal is submitted by Broken Hill City Council who are seeking an amendment to the Broken Hill Local Environmental Plan 2013 (LEP) to permit the inclusion of a Council Animal Pound facility on part of Lot 1 DP 1162606 known as Airport Road, Broken Hill.

This Planning Proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and the associated guidelines 'A guide to preparing local environmental plans' and 'A guide to preparing planning proposals' prepared by the Department of Planning and Infrastructure dated October 2012 which require the following matters to be addressed:

- Objectives or intended outcomes of the proposal;
- Explanation of provisions to be in the amendment to Broken Hill LEP 2013;
- Justification for the proposal in terms of;
- Need for the planning proposal;
- Relationship to strategic planning framework;
- Environmental, social and economic impact;
- State and Commonwealth interests;
- Relevant maps showing the subject site; and
- Community consultation proposed to be undertaken.

This Planning Proposal has been prepared in order to demonstrate the strategic merit of the proposed LEP proceeding to a Gateway determination.

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Accordingly, Council requests the Minister or his delegate for a Gateway determination under Section 56 of the EP&A Act.

# 2. THE SITE

# 2.1 LOCATION AND CONTEXT

The subject site is located within the Broken Hill Airport, Broken Hill.

The location of the site of the proposed animal pound facility is shown in Figure 1.



Figure 1: Location Context of the site (site outlined in orange)

# 2.2 SITE DESCRIPTION

The subject site is known as part of the Airport, and described as part of Lot 1 DP 1162606.

The overall site area proposed for the Council animal pound facility is approximately 5900 square metres.

The site and surrounds are shown in Figure 2.

Figure 2: Location (aerial photography) showing the site and surrounds (site marked in orange)

# 2.3 EXISTING DEVELOPMENT

This site is located near the existing office of the Airport Reporting Officer, just west of an old disused Satellite Ground Station.

This site has access to all essential services i.e. landline phones, internet, Council's computer network, amenities, staff kitchen and showers.

The site is level, no obvious site restrictions and is situated more than 160 metres away from the nearest office building.

Access is proposed to be via a back road hence users will not travel past the terminal building. The proposed site will not be in public view of tourists and airport customers.



Photograph 1: Proposed site for animal pound

#### 2.4 SURROUNDING LAND USE AND DEVELOPMENT

The site is located near the existing office of the Airport Reporting Officer, just west of an old disused Satellite Ground Station. Current uses at the airport are the Airport terminal building, Royal Flying Doctor Service (offices and hangers), private hangers, fuel depot, Council yard and office (Airport Reporting Officer), and private aero clubs. To the west of the subject site is vacant land.



Photograph 2: Looking towards the subject site.

# 2.5 CURRENT ZONING UNDER BROKEN HILL LOCAL ENVIRONMENTAL PLAN 2013

The site is currently zoned as *SP1 – the purpose shown on the Land Zoning map is "Air Transport Facility, Light industry, Tourist and visitor accommodation, Transport depot"* under the Broken Hill Local Environmental Plan 2013 (LEP) as shown in **Figure 3**.



Figure 3: Current Land Zoning Map of the site under Broken Hill LEP 2013

The objectives of the SP1 Zone and permissible and prohibited uses in it are as follows:

# Zone SP1 Special Activities

#### 1 Objectives of zone

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- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

#### 2 Permitted without consent

Environmental protection works

#### 3 Permitted with consent

Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

#### 4 Prohibited

Any development not specified in item 2 or 3.

Pursuant to the Land Zoning Map (sheets 006A and 006), permissible uses are "air transport facility, light industry, tourist and visitor accommodation and transport depot".

The uses nominated for the land are defined under the Principle Local Environmental Plan (Standard Instrument) as follows:

*air transport facility* means an airport or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures.

*light industry* means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

(a) high technology industry,

(b) home industry.

Note. Light industries are a type of industry—see the definition of that term in this Dictionary.

*tourist and visitor accommodation* means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments, but does not include:
- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

*transport depot* means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking.

Of those, only light industry may be relevant to the proposal. However, it requires consideration of the term "industrial activity".

#### That term is defined as follows:

*industrial activity* means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

The proposed development is not capable of being characterised as those that are permissible on the subject land, as the use will not feature any activity of an industrial nature as required by the definition above.

Having regard to the permissible uses under the SP1 zoning, and the definitions of those uses, the proposed animal impound facility is prohibited on the land.

The intent of this Planning Proposal is to request that an Animal Pound be considered for inclusion as an "additional use" allowed in the SP1 Zone, specifically at the subject location (within the Airport site).

# 2.6 BROKEN HILL BACKGROUND

A summary of strategic studies and development in the city of Broken Hill is provided :

• Broken Hill Local Environmental Plan 2013 zoned the subject site SP1 – the purpose shown on the Land Zoning map is "Air Transport Facility, Light industry, Tourist and visitor accommodation, Transport depot".

# 2.7 OBJECTIVES OR INTENDED OUTCOMES

The objectives and intended outcomes of the planning proposal are:

- to seek land to be used for a Council animal pound facility;
- to amend the Local Environmental Plan 2013 to permit the development of the site for the purposes of an animal pound by inclusion of a site specific enabling clause under Schedule 1 of the Broken Hill Local Environmental Plan 2013.

The planning proposal is considered to have a net community benefit in the following respects:

- it provides a service to the community
- the proposed location is considered suitable for the intended use as there are no residential properties in close proximity
- it is considered to be in Council's financial interest to establish and operate their own animal pound facility
- there are no significant environmental costs of the proposal
- the pound facility will be constructed so as to ensure the design of the structures/shelters and the operation of the facility comply with current regulations and best practice guidelines.

# 2.8 EXPLANATION OF PROVISIONS

The planning proposal is for an amendment to the Broken Hill Local Environmental Plan 2013 to allow an additional use of *animal pound* to be permitted within the SP1 zone as per Section 2.5 of the LEP as follows:

(1) Development on particular land that is described or referred to in Schedule 1 may be carried out:

(a) with development consent, or

(b) if the Schedule so provides-without development consent,

in accordance with the conditions (if any) specified in that Schedule in relation to that development.

(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

In particular, this Planning Proposal seeks to insert an item within Schedule 1 to include *animal pound facility* as an additional use pertaining solely to the subject site.

#### Land to which planning proposal applies

The LEP amendment is to apply to part of Lot 1 DP 1162606 being known as part of the Airport site, Broken Hill (as shown in **Figure 2** of this report).

#### Zoning and Permitted Uses

It is proposed to amend Schedule 1 – Additional Permitted Uses in Broken Hill Local Environmental Plan 2013 to permit the additional use of an *Animal Pound*.

There are already two additional permitted uses contained within Schedule 1 of the LEP. Although the uses currently contained within Schedule 1 relate to a different context, it demonstrates that the planning system is sufficiently flexible for Council to set a precedent to reconsider prescribed land uses in terms of their broader implication and allow for other uses to occur in a particular location.

# **3. JUSTIFICATION**

The inclusion of the use of an animal pound on the subject site is considered appropriate (subject to Development consent).

The existing site has the capacity to accommodate an animal pound with appropriate design and management at the Development Application stage. There are existing services available to the site, regular security patrols of the area, and a satisfactory distance to the nearest sensitive receiver (approximately 170 metres to RFDS). Another reason why this site is considered suitable is the close proximity to other Council staff and facilities which will greatly reduce risk and associated OHS issues. This location also negates the construction of a staff room and amenities, therefore being an advantage financially.

The issues of car parking, access, signage, security, noise and construction matters are detailed design matters that will be considered and assessed at the development application stage.

# 3.1 NEED FOR THE PLANNING PROPOSAL

# 3.1.1 Is the planning proposal a result of any strategic study or report?

This Planning Proposal is not the direct result of any a strategic plan or report.

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

One alternative way to seek the possibility of using the site for an animal pound is by rezoning the land. It is considered that to undertake a spot-rezoning is not the preferred option as it then provides for the possibility of various uses being able to be applied for and considered. Instead, the intention of providing for the use as an "additional permitted use" means that that one particular use can be considered on the merits of the individual case. Retaining the Special Activities Zone (SP1) is considered most appropriate for long-term planning due to the location of being within the overall boundaries of an Airport facility.

Council has considered alternative sites, including both Council owned land and also the possibility of seeking to purchase private land, however for various reasons there was nothing more suitable than the subject site at the Airport.

# 3.2 RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

# 3.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

There is no regional or subregional strategy applying to Broken Hill City Council area.

# 3.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?

There are no SEPPs relevant to the planning proposal.

# 3.2.4 Is the planning proposal consistent with applicable Ministerial Directions (Section 117 directions)?

#### Section 117 Direction - 6.3 Site Specific Provisions

#### S.117 Direction No.6.3 states the following:

#### Objective

(1) The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

#### Where this direction applies

(2) This direction applies to all relevant planning authorities.

#### When this direction applies

(3) This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.

#### What a relevant planning authority must do if this direction applies

(4) A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

(e) allow that land use to be carried out in the zone the land is situated on, or (f) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or

(g) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.

#### Consistency

(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

The planning proposal is to allow a particular land use on the subject site, and is therefore subject to S.117 Direction No.6.3.

The planning proposal is consistent with clause 4 and 5 of this S.117 Direction in the following respects:

- This proposal is to amend Schedule 1 of the LEP to allow the proposed land use to be carried out in the current SP1 zone; and
- The planning proposal does not contain or refer to drawings showing details of the development proposal.

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# 3.3 ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

# 3.3.1 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 land is zoned for infrastructure and special purpose type use. It is considered that the proposal is unlikely to adversely affect critical habitat or threatened species, populations or ecological communities or their habitats.

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

The site and locality have the environmental capacity and capability of supporting the proposed land uses without significant unreasonable environmental effects. The site and

locality are not identified as having any significant environmental attributes, constraints or hazards. The land is not identified as being significant in the natural landscape, is not steep or subject to landslip, has no vegetation of significant biodiversity value, and is not bushfire or flood prone.

The proposed land use of an Animal Pound raises some matters that will be required to be addressed and managed in a future development application proposal.

These environmental planning issues would include:

- Access/internal road;
- Noise;
- Design of structures/shelters;
- Security; and
- Compliance with Building Code of Australia provisions.

These issues are detailed design matters that will be considered and assessed at the development application stage. The site has the capacity to accommodate the proposed use with appropriate design considerations and management of the environmental planning issues at the Development Application stage.

# 3.3.3 How has the planning proposal adequately addressed any social and economic effects?

The proposal is expected not to adversely impact the area either from the perspective of social or economic effect.

### 4. MAPPING

This planning proposal does not seek to amend existing mapping. As described in Section 3.1, the aim is to amend the Broken Hill Local Environmental Plan 2013 to permit the development of the site for the purposes of an animal pound by inclusion of a site specific enabling clause under Schedule 1 of the Broken Hill Local Environmental Plan 2013.

# 5. COMMUNITY CONSULTATION

# 5.1 STATUTORY REQUIREMENTS

It is anticipated that upon Gateway Determination formal public consultation with the community will be undertaken. The exhibition period is suggested to be for a period of 14 days, and will be advertised in the local newspaper, and notification letters to surrounding neighbouring leaseholders and land owners, and a notice placed on site. There are no relevant State Government bodies that are required to be consulted with.

# 6. TIMELINE

- Estimated date of commencement (date of Gateway determination)
   late September 2016
- Commencement of public exhibition late September 2016
- Completion of public exhibition late October 2016
- Consideration of submissions/referral to Council meeting if necessary late November 2016
- Legal drafting (referral to PCO) December 2016
- Making of LEP January/February 2017

# 7. CONCLUSION

The planning proposal is considered to have strategic planning merit and a net community benefit in that it:

- it is consistent with relevant State Environmental Planning Policies and S.117 Ministerial Directions;
- it provides a service and facility for a community purpose;
- the improvement of the appearance of the site by way of landscaping and general ancillary improvements;
- there are no significant environmental attributes, constraints or hazards on the land or locality that would preclude the proposal; and
- there is limited number of other more feasible or appropriately located sites to achieve the objectives of the proposal.

Given the above strategic planning merit, Council requests the Minister or his delegate make a gateway determination under section 56 of the EP&A Act.

#### **APPENDICES**

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- Excerpt from relevant Zoning mapping sheet, with site marked. Council report. Council resolution. -
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#### ORDINARY MEETING OF THE COUNCIL

June 14, 2016

#### BROKEN HILL CITY COUNCIL REPORT NO. 130/16

 SUBJECT:
 PROPOSED AMENDMENT TO BROKEN HILL LOCAL

 ENVIRONMENTAL PLAN 2013 - SITE SPECIFIC PLANNING

 PROPOSAL TO ALLOW FOR ADDITIONAL PERMITTED USE AT

 BROKEN HILL AIRPORT PRECINCT
 11/529

#### **Recommendation**

- 1. That Broken Hill City Council Report No. 130/16 dated June 14, 2016, be received.
- That Council support preparing a site specific Planning Proposal to amend Schedule 1 of Broken Hill Local Environmental Plan 2013 to allow for an additional permitted use (being "Council Animal Pound Facility") on Lot 1 DP 1162606 known as 86 Airport Road, Broken Hill,
- 3. That the planning proposal be submitted to the Department of Planning and Environment for consideration in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979.*
- 4. That Council request to exercise its delegations under Section 59 of the *Environmental Planning and Assessment Act 1979.*
- That Council undertake community consultation in accordance with the Gateway Determination and requirements of the Department of Planning and Environment, and legislative requirements.

#### **Executive Summary:**

The purpose of this report is to seek support from Council for a Planning Proposal for land at the Broken Hill Airport Precinct. The Proposal seeks to list the subject site in Schedule 1 of Broken Hill Local Environmental Plan 2013 (LEP) to permit "Council Animal Pound Facility" as an additional permitted use on the site. The site is zoned SP1 – Special Activities. This amendment is required to allow for consideration to be able to be given for possible development as a Council Animal Pound Facility.

The proposal does not seek to amend the zoning of the subject site but seeks to include the additional land use on the site.

#### Report:

Broken Hill City Council resolved at the May 2016 Council meeting that "Council proceed with the preliminary design and planning approval for a new pound facility near the office of the Airport Reporting Officer."

Council's Planning section consulted with the Department of Planning and Environment re the probability to develop a Council animal pound facility at the Airport Precinct. The Department advised that Council seeks a legal opinion on the matter due to the ambiguity that exists re permissible land uses that apply to the land. . •

Legal advice is of the opinion that an animal pound facility would be considered as prohibited development on aforementioned land, but advised that Council prepare a planning proposal to amend Schedule 1 of the Local Environmental Plan 2013 to add an additional permitted use to Lot 1 DP 1162606 in lieu of rezoning the land.

Lot 1 DP 1162606 is zoned as SP1 – Special Activities. The purpose of this zone is shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose. The purpose shown on the Zoning Map is Air Transport Facility, Light industry, Tourist and Visitor Accommodation, Transport Depot.

The land use table for Light Industry prohibits "Animal Boarding or training establishments". In the definitions to the BHLEP 2013 an animal boarding facility is defined as *"a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes* (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital." A Council Animal Pound is not included into this definition as it is not operated for Commercial Purposes.

A Council Animal Pound Facility is unfortunately not defined in the dictionary of BHLEP 2013. Though a Council Animal Pound is not operated for Commercial Purposes, a pound facility presently does not meet the objectives of Light Industry, hence is considered as a prohibited use in the SP 1 - Special Activity Zone.

To address this situation, it is considered that the most appropriate way of amending Council's LEP is by allowing for an "additional permitted use" on the specific site. Schedule 1 of the LEP would need to be amended for this purpose.

This also therefore would not involve a rezoning of the land, but rather would allow only for consideration of "Council Animal Pound Facility" to be developed.

The use of Schedule 1 – additional permitted uses – allows flexibility for this site, without having to "spot" rezone the area to a zone, which would open up the possibility of a large range of uses.

Existing provisions in the LEP outline the following:

Additional permitted uses for particular land

(1) Development on particular land that is described or referred to in Schedule 1 may be carried out:

(a) with development consent, or

(b) if the Schedule so provides—without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.

(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

In this situation, it is considered most appropriate that the additional permitted use may only be carried out with development consent. Lodging of a Development Application allows for Council to then assess the proposal further and should approval be given allow opportunity for conditions to be imposed (such as hours of use of the site, providing of a certain number of parking spaces etc.).

Should Council decide to proceed with this matter, a planning proposal will be prepared by Council staff and submitted to the Department of Planning and Environment for gateway determination. The determination will likely provide an indication as to whether or not the proposal is likely to be supported. The determination will also indicate if the plan making

powers are delegated to Council (as Council will request to occur in this case). Upon receiving this determination, Council will place the proposal and subsequent LEP amendment on exhibition for community consultation. It is anticipated that the consultation period will be between 14 and 28 days.

Upon completion of the consultation period and consideration of any submissions, if Council considers it appropriate to proceed, then it will request that Parliamentary Counsel give an opinion as to whether the Plan can be legally made. The matter will then be reported back to Council to adopt and delegate the General Manager to legally make the plan.

#### Strategic Direction:

Broken Hill Local Environmental Plan 2013 sets out a number of overall objectives. Among these objectives are:

(a) to encourage sustainable economic growth and development in Broken Hill,

(b) to encourage and provide opportunities for local employment growth, and the retention of the population, in Broken Hill,

(c) to encourage the retention of mining and acknowledge that industry's heritage and regional significance.

(d) to allow for the equitable provision of services and facilities for the community.

It is considered that the amendment is consistent with these objectives.

#### **Relevant Legislation:**

Environmental Planning and Assessment Act 1979.

#### **Financial Implications:**

Operational costs (staff time etc.)

#### Attachments

There are no attachments for this report.

ANDREW BRUGGY ACTING DEPUTY GENERAL MANAGER

JAMES RONCON GENERAL MANAGER

TEM 8 - BROKEN HILL CITY COUNCIL REPORT N DISABILITY INCLUSION ACT - ACTION PLAN	IO. 129/16 - DATED JUNE 03, 2016 - 11/432
RESOLUTION Minute No. 45297 Councillor M. Browne moved ) Councillor D. Turley seconded )	<ol> <li>That Broken Hill City Council Report No. 129/16 dated June 3, 2016, be received.</li> </ol>
	<ol> <li>That the Disability Access Committee be re - tasked to form a new Disability Inclusion Action Plan Working Group to support the Plan's development and implementation.</li> <li>That membership of the newly formed</li> </ol>
	Working Group be determined by the General Manager and include the current Councillor delegate (Councillor Turley) and the "Our Community" Portfolio Councillor and alternate (Councillors Gallagher and Adams).
ITEM 9 - BROKEN HILL CITY COUNCIL REPORT	

ITEM 9 - BROKEN HILL CITY COUNCIL REPORT NO. 130/16 - DATED JUNE 14, 2016 -PROPOSED AMENDMENT TO BROKEN HILL LOCAL ENVIRONMENTAL PLAN 2013 - SITE SPECIFIC PLANNING PROPOSAL TO ALLOW FOR ADDITIONAL PERMITTED USE AT BROKEN HILL AIRPORT PRECINCT 11/529

#### Recommendation

- 1. That Broken Hill City Council Report No. 130/16 dated June 14, 2016, be received.
- That Council support preparing a site specific Planning Proposal to amend Schedule 1 of Broken Hill Local Environmental Plan 2013 to allow for an additional permitted use (being "Council Animal Pound Facility") on Lot 1 DP 1162606 known as 86 Airport Road, Broken Hill,
- 3. That the planning proposal be submitted to the Department of Planning and Environment for consideration in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979.*
- 4. That Council request to exercise its delegations under Section 59 of the *Environmental Planning* and Assessment Act 1979.
- 5. That Council undertake community consultation in accordance with the Gateway Determination and requirements of the Department of Planning and Environment, and legislative requirements.

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RESOLUTION	
Minute No. 45298	
Councillor B. Algate moved	
Councillor J. Nolan seconded	

That the recommendation of item 9 be adopted.

CARRIED