

Planning Services

IRF19/477

Gateway determination report

LGA	Richmond Valley
PPA	Richmond Valley Council
NAME	Rezoning to permit large lot rural residential subdivision
NUMBER	PP_2019_RICHM_001_00
LEP TO BE AMENDED	Richmond Valley Local Environmental Plan 2012
ADDRESS	75 Gregors Road, Spring Grove
DESCRIPTION	Lot 4 DP 708496
RECEIVED	22 January 2019
FILE NO.	IRF18/477
POLITICAL DONATIONS	There are no donations or gifts disclosed and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists disclosed with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal proposes to amend the Richmond Valley LEP 2012 (RVLEP), as it applies to Lot 4 DP 708496, 75 Gregors Road Spring Grove (the site), by rezoning the land to facilitate large lot rural-residential development.

The proposal seeks to rezone part of the site from RU1 Primary Production to R5 Large Lot Residential, and to change the minimum lot size map for the R5 land from 40ha to 1ha and 2ha. A residue lot comprising the remaining RU1 land will have a minimum lot size of 20 hectares.

Site description

The site is located approximately 7km north-east of Casino, NSW (**Figure 1**).

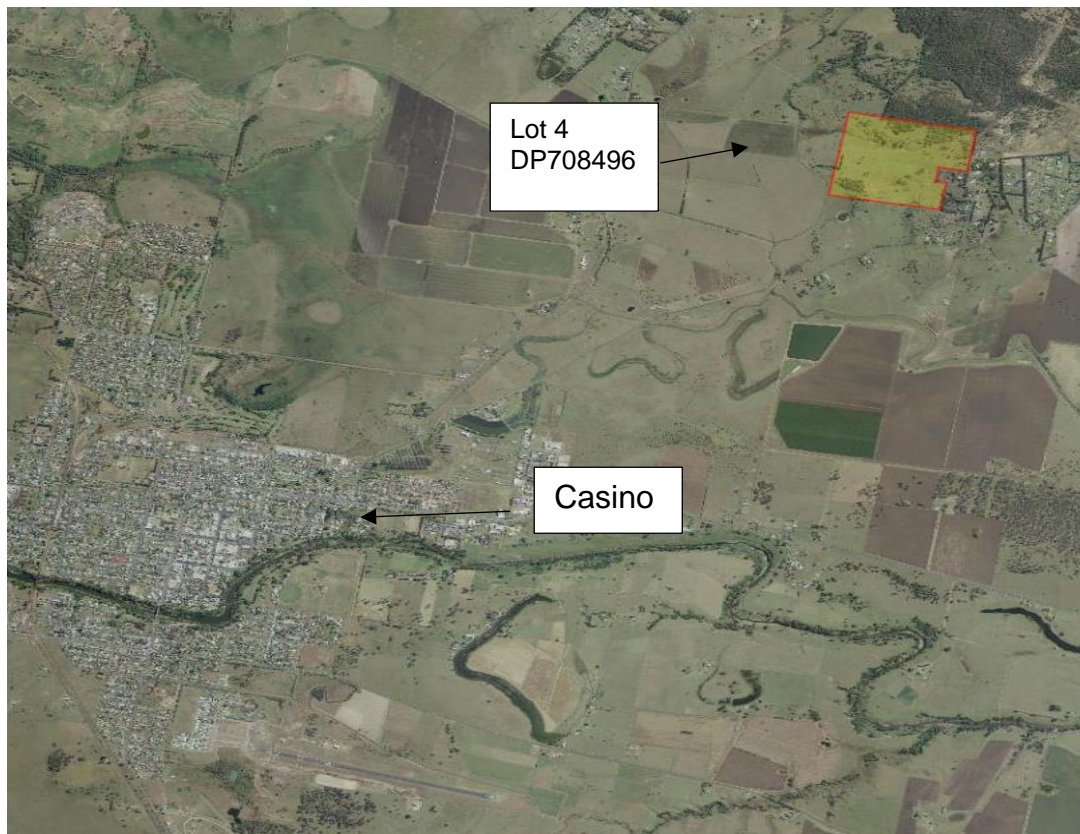


Figure 1. Locality Map (SixMaps 2019)

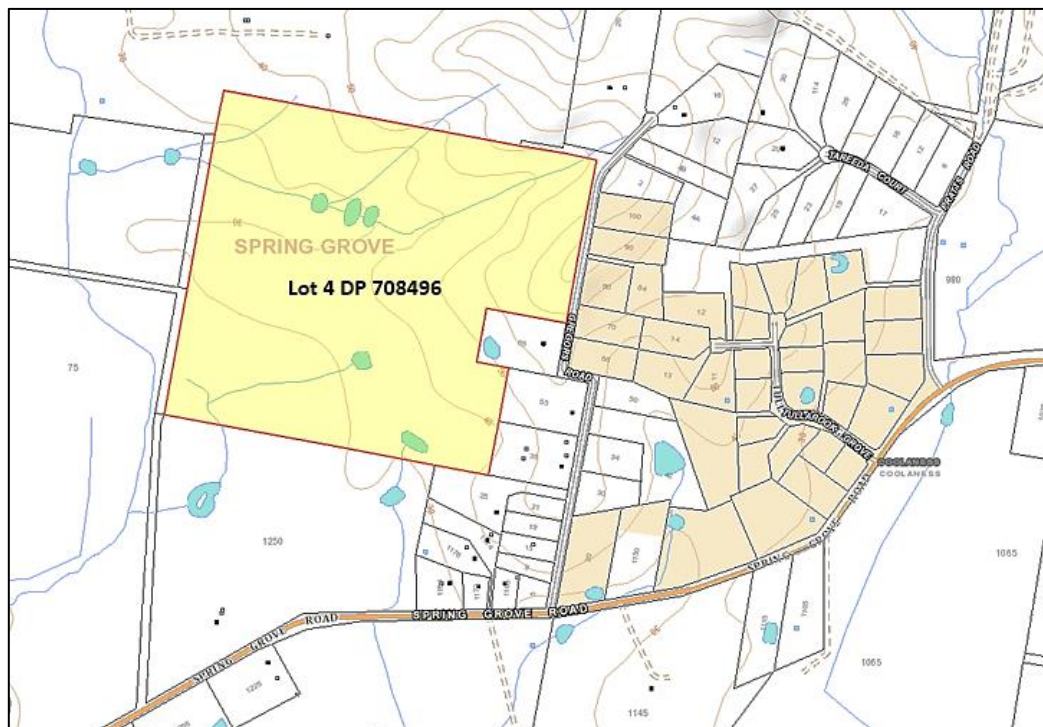


Figure 2. Site Map (SixMaps 2019)

Surrounding area

The site is located 7km north east of the town of Casino, in the Northern Rivers NSW. The land is bounded to the east by an existing rural residential area zoned R5 Large Lot Residential. The land is surrounded on the northern, western and southern boundaries by land zoned RU1 Primary production used primarily for grazing with some cropping activities. Land to the north of the site is vegetated and contains bushfire hazards. Further rural residential areas exist to the north-west in North Casino.

Summary of recommendation

It is considered that the proposal has merit to pass the Gateway. It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- the proposal will provide for an estimated 18 additional rural residential lots contributing to the variety of housing options in proximity to existing services and infrastructure within the Richmond Valley LGA;
- the proposal is consistent with the North Coast Regional Plan 2036, the Department's Settlement Planning Guidelines 2007 and Council's approved Rural Residential Development Strategy 1999; and
- subject to further site investigations it appears that the constraints of the site can be managed to enable rural residential use of part of the land, whilst retaining land of rural and environmental significance.

PROPOSAL

Objectives or intended outcomes

The planning proposal includes an objective which clearly describes the intent of the planning proposal. The intended outcome of the planning proposal is to rezone part of the subject land as R5 and to change minimum lot sizes for the site to facilitate a rural residential subdivision and development.

Explanation of provisions

To facilitate the proposed rural residential development the LEP requires amendment to:

- change the Land Zoning map by applying Zone R5 Large Lot Residential to part of the land.
- Change the Lot Size map by applying;
 - a minimum lot size (MLS) of 1ha to apply to the area zoned R5;
 - a 2ha MLS to apply to a single future lot to be created under a proposed future subdivision; and
 - a 20ha MLS to apply to a residue allotment containing the remaining RU1 zoned part of the land.



Figure 4. Proposed Land Use Zoning & MLS controls. (Newton Denny Chappelle, Oct 2018)

*Note that labelling of AB & AB2 are incorrect; these should be AB2 40ha & AB1 20ha.

The proposed 2ha MLS demonstrated as in **Figure 4** as 'Z1' corresponds to a proposed future lot to be created under subdivision subject to development consent. The 2ha control is intended to restrict further subdivision of the subject land due to constraints to achieving on-site wastewater requirements for a future lot.

It is noted that the proposed 1ha MLS could be applied to the entirety of the land being zoned R5 and that a 2ha lot could still be created under subdivision subject to a Part 4 determination of relevant constraints. There is a risk that unidentified constraints may necessitate changes to any future subdivision of the site and that the proposed 2ha MLS could become a constraint requiring further amendment of the LEP.

This matter was discussed with Mr Tony McAteer, Coordinator Planning Services, Richmond Valley Council on 5 February 2019. Council acknowledged that the 2ha lot could be constraint to assessment of any future development application. Council confirmed via email of 5 February 2019 that it is flexible to applying a 1ha MLS over the land zoned R5 and would agree to a condition of the Gateway Determination being that the proposal be amended accordingly prior to public exhibition.

Mapping

The planning proposal includes maps which show the location of the subject land, the contours of the land and a subdivision concept plan. An aerial photograph is also included. Council has provided draft LEP maps which show the proposed zoning and MLS for the land.

Mapping in Part 5 of the planning proposal should be amended to ensure labels correspond with relevant LEP mapping. Areas subject to 40ha MLS should be shown as AB2 and areas subject to 20ha MLS as AB1.

It is recommended that a condition be placed on the Gateway determination requiring the planning proposal to further consider the need for the proposed 2ha MLS over part of the site given this could be achieved under the 1ha control of the entirety of the proposed R5 zone. Where Council wishes to prevent further subdivision of any future lot that may be subject to constraints, then a further housekeeping amendment may be proposed to amend the LEP to reflect any future approved subdivision.

NEED FOR THE PLANNING PROPOSAL

Council wrote to the landowner in 2015 requesting the owner meet with Council to discuss progression of a planning proposal on this land. This site had been subject to an earlier proposal in 2006, however due to low demand and a high volume of undeveloped rural residential land it did not proceed.

The planning proposal is supported by site investigations undertaken in 2005 that relating to an earlier proposal for rezoning of the site and other more recent investigations prepared in support of the current proposal. The proposal acknowledges that further site investigations will be undertaken if a Gateway determination is issued which allows the proposal to proceed.

The rezoning of the land and changing the MLS is the best means of enabling the land to be developed for residential purposes.

STRATEGIC ASSESSMENT

State

The proposal is not inconsistent with the eighteen State priorities being actioned by the State Government.

Regional / District

The proposal is consistent with the directions and actions of the North Coast Regional Plan 2036 (NCRP). The proposal demonstrates consistency with Direction 3: Manage Natural Hazards & Climate Change, Direction 11: Protect and enhance productive agricultural lands, and Direction 24: Deliver well-planned rural residential housing areas.

The consistency of the proposal with the actions relating to the protection of areas of Aboriginal cultural significance, high environmental value, and/or State and regionally significant farmland are to be further demonstrated by completion of relevant site investigations as identified in the Planning Proposal.

While the proposal still requires a number of site investigations to be undertaken to determine the final configuration of the proposed R5 zone with regard to the constraints of the land, it is considered that sufficient preliminary justification has been provided for the Gateway determination to be issued, conditional on these site investigations being undertaken.

Local

The proposal is consistent with Councils' adopted RRDS 1999, with the exception of a portion of the proposed R5 zone land being outside of the rural residential strategy line. The planning proposal justifies this minor inconsistency on the basis that the proposed rural residential development outside of the strategy line will be offset by the retention of RU1 zoned land within strategy boundaries that is unsuitable for development due to identified constraints.

Section 9.1 Ministerial Directions

The following Section 9.1 Directions are considered to be of relevance to the planning proposal and are further discussed below;

Direction 1.2 Rural Zones is relevant to the planning proposal. The direction provides that a planning proposal must not rezone land from a rural to a residential zone.

The planning proposal seeks to rezone the subject land from RU1 Primary Production to R5 Large lot residential. The proposed R5 zone will allow more intensive low density rural residential development than the rural zones. The direction provides that a proposal may be inconsistent with the direction if it is justified in accordance with a relevant strategy approved by the Department. The subject land is identified Council's Rural Residential Development Strategy for the Richmond Valley area, which was approved by the Department in March 1999. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

That area outside of the strategy line, is considered to be justified as being of minor significance, due to its scale. This area is shown in **Figure 5** below.



Figure 5: Proposed subdivision layout, showing rural residential strategy line.

Direction 1.5 Rural Lands relevant to the planning proposal. The direction applies when a planning proposal will affect land within an existing or proposed rural zone, including alteration of any existing rural zone boundary, or that changes the existing minimum lot size on land within a rural zone. The Direction provides that in such instances a planning proposal must be consistent with the relevant principles listed in the SEPP (Rural Lands) 2008.

The proposal seeks to rezone land from rural to rural-residential purposes and change the minimum lot size within the RU1 zone to enable a residue lot. The proposal is not inconsistent with the principles for rural planning and rural subdivision listed under the SEPP. The planning proposal is considered consistent with this direction. The principles are further addressed below in relation to the SEPP.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must facilitate the protection and conservation of Aboriginal cultural heritage and historical heritage.

The proposal seeks to rezone the subject land from rural to a large lot rural-residential zone and a previous Aboriginal cultural heritage assessment undertaken in 2005 provided recommendation for rezoning of the site. A significant period has passed since consultation on the previous assessment and it is considered that until the Aboriginal cultural heritage investigations have been updated the suitability of the proposed zoning for the land is not known and any potential inconsistency of the proposal with the direction remains unresolved. It is recommended that the Gateway determination requires the preparation of an updated Aboriginal cultural heritage assessment for the site to determine whether the previous recommendation remain relevant or whether further considerations are required.

Direction 4.3 Flood Prone Land is relevant to the planning proposal. The direction provides that planning proposal must not permit a significant increase in the development potential of flood prone land.

The lower portions of the subject land are flood prone and identified as within the 1 in 100-year flood level as confirmed by Council. The land contains elevated areas above the flood planning level however investigations into the potential impacts on the site from a flood event or the impacts from proposed flood mitigation measures have not yet been undertaken. It is considered that until the flood impact investigations have been completed the suitability of the R5 zone for the land is not known and any potential inconsistency of the proposal with the direction remains unresolved. It is recommended that the Gateway determination requires the preparation of a flood impact assessment for the site to determine which areas of the site are suited to the proposed zone.

Direction 4.4 Planning for Bushfire is relevant to the planning proposal as part of the land to which the proposal applies is mapped as being bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway Determination is issued and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.3 Farmland of State and Regional significance is relevant to the planning proposal as the site includes land mapped as farmland of regional significance and is not contained within an urban growth area mapping in the NCRP. The proposal

seeks to retain mapped important farmland under the current rural zoning and seeks to rezone land identified as 'other rural land', which has been identified as suitable for rural residential development in a strategy approved by the Department. The proposal is consistent with this Direction.

Direction 5.10 Implementation of Regional Plans is relevant to the planning proposal. The direction provides that a planning proposal must be consistent with the NCRP. The consistency of the proposal with the NCRP is discussed previously in this report and it is considered that the proposal is generally consistent with the NCRP.

The proposal is otherwise consistent with the Section 117 directions.

State environmental planning policies (SEPPs)

SEPP 44 Koala Habitat Protection requires consideration of impacts on Koalas and their habitats. The planning proposal refers to an ecological assessment prepared in 2005 in relation to an earlier proposal and it is noted the current proposal provides a modified footprint. The planning proposal highlights that the previous investigation concluded that the site is predominantly cleared of native vegetation with some remnants along the northern boundary. The previous assessment provided recommendations relating to the earlier proposal that may or may not be relevant to the current planning proposal. The subject land is mapped as containing High Environmental Value, see **Figure 6** in the North Coast Regional Plan 2036. It is recommended a condition be included on any Gateway determination requiring a flora and fauna assessment for the subject land.

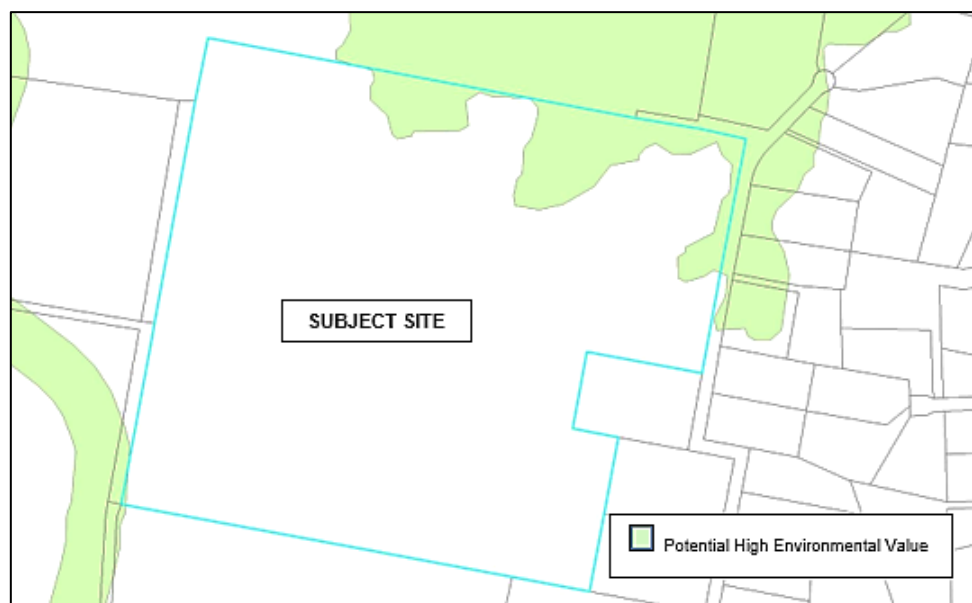


Figure 6: NCRP mapping of Potential High Environmental Value.

SEPP 55 – Remediation of Land requires consideration for potential contamination of the land.

A Contaminated Land Assessment was undertaken in 2005 and was supported by a Statutory Declaration from the site owner regarding past practices on the land covering a period until January 2018. An addendum to the 2005 assessment should be prepared in support of the statutory declaration and findings incorporated into planning proposal. Consequently, the planning proposal is not considered to include a preliminary site contamination assessment as required by SEPP 55. It is

recommended that the Gateway determination require the site contamination assessment report to be updated prepared prior to community consultation.

SEPP (Rural Lands) 2008 requires consideration of Rural Planning Principles and Rural Subdivision Principles which must be taken into consideration when preparing a planning proposal that will affect rural zones and changes to minimum lot size for rural lands.

A portion of the site is mapped as regionally significant farmland and is proposed to be retained within a residue lot maintaining the current rural zoning. The area to be rezoned rural residential is identified as 'other rural land' and subject to further consideration of existing constraints may be deemed suitable for rural residential development in accordance with Council's strategy approved by the Department in March 1999. The proposal is consistent with the Department's Settlement Planning Guidelines 2007 and the North Coast Regional Plan 2036.

Whilst a portion of the rezoned land is located partially outside of the rural residential boundary identified in Council's Rural Residential Development Strategy, the proposal demonstrates that required buffers can be achieved to address any conflict with rural uses.

The proposal is not expected to have an adverse impact on the supply of natural resources. It is considered adequate infrastructure will be available for the rural residential subdivision.

The residue land to be retained under the existing RU1 zone is irregular in shape due to existing constraints and required buffers to the proposed R5 zone.

SITE-SPECIFIC ASSESSMENT

Social

The proposal is not expected to have any adverse social impacts. The proposal will rezone land on the edge of an established rural residential area to enable the construction of new dwellings in an area identified in Council's strategy. The proposal will in this regard have a positive social impact by providing additional housing opportunities in Spring Grove, in relative proximity to the township of Casino.

Environmental

The planning proposal notes that no ecological investigations have yet been undertaken for the site. The site is mapped as containing high environmental value vegetation despite the fact that aerial photography shows the majority of the site being cleared land.

Until the ecological investigations have been completed the suitability of the proposed zoning for the land is unknown. It is recommended that the Gateway determination requires an updated ecological assessment for the site to determine whether any areas of vegetation on the site should be protected.

Economic

The proposal is expected to have positive economic impacts by releasing more land for the construction of new dwellings in the Richmond Valley LGA. The multiplier effect associated with increased population is also expected to benefit businesses in the Casino area.

Infrastructure

The development will not require reticulated water or sewerage infrastructure for the resulting additional dwellings. An indicative lot layout has been provided that indicates dwelling envelopes and wastewater disposal (OSWM) areas can be provided on site. The planning proposal indicates a preliminary OSWM Feasibility Assessment report has been completed, which concludes that the site is feasible for rural residential subdivision.

The site has frontage to Gregor's road and the planning proposal includes a conceptual subdivision layout identifying road connections between Gregors Road and all proposed lots. The planning proposal identifies that a traffic and access assessment report (TIA) will be prepared in support of the planning proposal.

It is recommended the TIA be prepared and any relevant recommendations incorporated into the planning proposal prior to community consultation.

CONSULTATION

Community

Council has nominated a 28-day public exhibition period. This matter meets the requirements of a low impact proposal in the Departments Guide to Preparing Local Environmental Plans and requires only a 14 day exhibition period. This does not prevent Council consulting for a longer period if they consider appropriate.

Agencies

Council proposes consultation with the NSW Rural Fire Service and the Department of Industry, Agriculture. This is considered appropriate, and it is also recommended that Council consult with the Office of Environment and Heritage regarding potential impacts of the development on Aboriginal Cultural Heritage.

TIME FRAME

The planning proposal includes a time frame which estimates completion of the LEP within seven months of the issue of gateway determination.

Given the need for Council to consult with State agencies and the community, it is suggested that a 12 month time frame is more suitable to permit time for required site investigation and community consultation.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. It is considered appropriate that Council be authorised as the local plan-making authority as the proposal is considered a local issue. It is recommended that an authorisation to exercise delegation be issued to Richmond Valley Council in this instance.

CONCLUSION

It is considered that the planning proposal has merit and it is recommended that the Gateway determination be issued subject to conditions for the following reasons:

- the proposal will provide for an estimated 18 additional rural residential lots contributing to the variety of housing options in proximity to existing services and infrastructure within the Richmond Valley LGA;

- the proposal is consistent with the North Coast Regional Plan 2036, the Department's Settlement Planning Guidelines 2007 and Council's approved Rural Residential Development Strategy 1999; and
- subject to further site investigations it appears that the constraints of the site can be managed to enable rural residential use of part of the land, whilst retaining land of rural and environmental significance.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with Section 117 Directions 1.2 are justified in accordance with the terms of the directions;
2. note that the inconsistencies with Section 117 Directions 2.3, 4.3 and 4.4 are unresolved until further consultation and investigations have been undertaken and these directions may require further justification.

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 community consultation the following site investigations are to be undertaken and the planning proposal amended where necessary to reflect the outcomes of the investigations;
 - (a) an updated ecological assessment;
 - (b) an updated Aboriginal cultural heritage assessment;
 - (c) an updated Contaminated land assessment including soil sampling as appropriate and to the satisfaction of Council;
 - (d) a traffic and access report; and
 - (e) a flood impact assessment;

The site investigations are to be included in the material used for community consultation.

2. Prior to community consultation the planning proposal is to be amended as follows:
 - (a) the content of the planning proposal is to be amended in accordance with the results of the site investigations require by Condition 1 of this Gateway determination;
 - (b) maps in the planning proposal are to be labelled consistent with mapping under the RVLEP 2012;
 - (c) a project time line is to be included in the planning proposal; and
 - (d) consideration is to be given to the application of a 1ha minimum lot size across the site.
3. Once the site investigations required by Condition 1 have been undertaken and the planning proposal has been amended in accordance with Condition 2, the planning proposal is to be forwarded to the Department for approval of the form of the proposal for community consultation in accordance with section 57(2) of the Act.

4. The planning proposal should be made available for community consultation for a minimum of 14 days.
5. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - NSW Department of Industry, Agriculture;
 - NSW Office of Environment and Heritage; and
 - The Local Aboriginal Land Council.
6. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
7. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.



14/2/19

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19/02/2019

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