

## Planning and Assessment

IRF20/4605

### Gateway determination report

<b>LGA</b>	Mid-Western Regional Council (MWRC)
<b>PPA</b>	MWRC
<b>NAME</b>	Bunnings Relocation - Rezone land from RU4 to B5, apply a minimum lot size of 2000m <sup>2</sup> and apply a 25m wide no development buffer to facilitate a hardware and building supplies
<b>NUMBER</b>	PP_2020_MIDWR_001_00
<b>LEP TO BE AMENDED</b>	MWLEP 2012
<b>ADDRESS</b>	134 Lions Drive BURRUNDULLA
<b>DESCRIPTION</b>	Lot 2, DP1079362
<b>RECEIVED</b>	24/09/2020
<b>FILE NO.</b>	IRF20/4605
<b>POLITICAL DONATIONS</b>	There are no know donations 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

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend Mid-Western Regional Local Environmental Plan 2012 as follows-

- rezone subject land from zone RU4 Primary Production Small Lot to zone B5 Business Development to allow the relocation of Bunnings, and
- amend the minimum Lot size map for the subject land from a minimum lot size of 20ha to no minimum lot size.

The planning proposal was reported to MWRC on 16 September 2020 with an alternative proposal and a recommendation to:

- partially zone the land to B5 Business Development (2.8ha), with the residue retaining the zone RU4 Primary Production Small Lot.
- apply an MLS of 2000m<sup>2</sup>, and
- apply a 25m wide no development buffer area fronting the Castlereagh Highway.

Council resolved to:

- rezone the full subject land to zone B5 Business Development (5.37ha),
- apply a minimum lot size of 2000m<sup>2</sup> and,
- apply a 25m wide no development buffer area fronting the Castlereagh Highway.

## 1.2 Site description

The subject land is described as Lot 2 DP1079362, 134 Lions Drive Burrundulla. The land has an area of 5.37ha and has a frontage to Lions Drive and the Castlereagh Highway (Sydney Road). The subject land contains a single dwelling, a machinery shed and other ancillary structures. The subject land slopes from west to east.

The subject land is adjacent to existing large retail format developments (refer to Figure 1 below) with an existing Bunnings development located across the Castlereagh Highway.

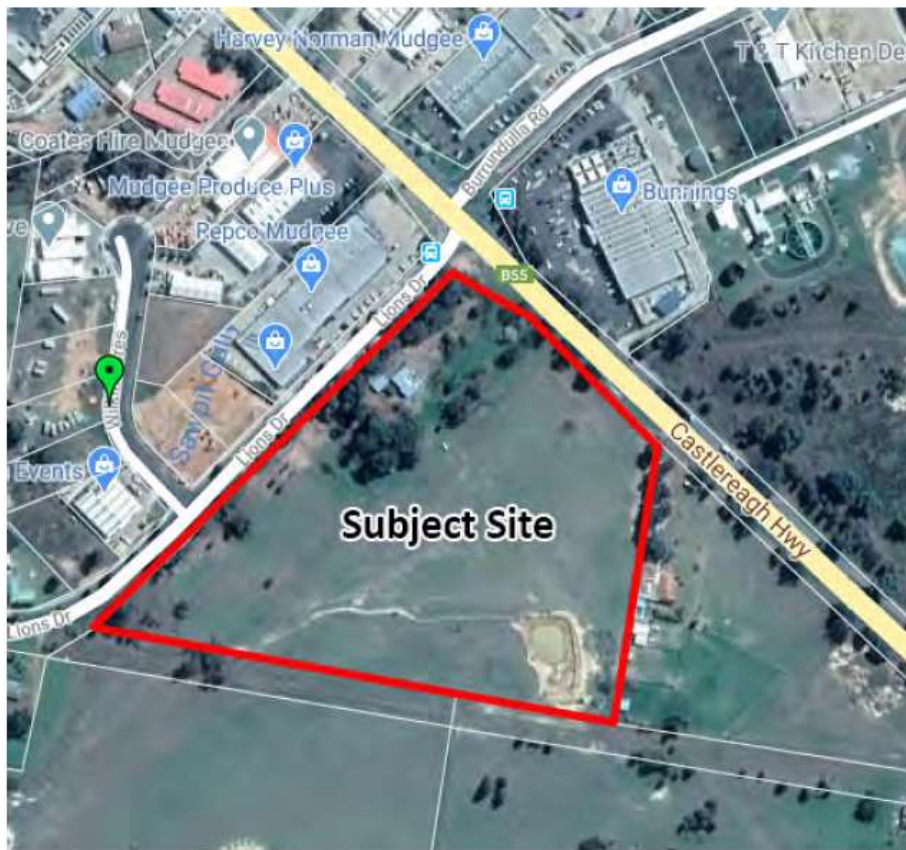


Figure 1 Subject land map: Source- Mid-Western Planning Proposal report, 2020

## 1.3 Existing planning controls

The site is zone RU4 Primary Production Small Lot and has a minimum lot size (MLS) of 20ha. The land is also groundwater vulnerable.



Figure 2: Existing zoning. Source- Mid-Western Planning Proposal report, 2020

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The objectives of the proposal are contained in Section 2, page 6 of the planning proposal. The objectives clearly articulate the intended outcome of the planning proposal which is to facilitate retail/business subdivision and development of a hardware and building supplies (relocation of Bunnings) at 134 Lions Drive, Burrundulla.

MWRC resolved to also include provisions in the planning proposal to protect the visual amenity of the southern entry into Mudgee. The intended outcome is to restrict development within 25m of the Castlereagh Highway. Additionally, Council resolved to apply a 2000m<sup>2</sup> minimum lot size.

### 2.2 Explanation of provisions

The explanation of provisions is contained in Part 2, page 7 of the planning proposal. The proposal intends to achieve its objectives by amending Land Zoning Map (LZN\_006H) from zone RU4 to zone B5 and Lot Size Map (LSZ\_006H) from 20ha to 2000m<sup>2</sup> under MWLEP 2012.

MWRC resolved to also include provisions in the planning proposal to protect the visual amenity of the southern entry into Mudgee. The LEP mechanism to deliver this outcome has been identified in the planning proposal as a mapping overlay. Council does not clearly identify what it is proposing in relation to restricting development within the 25m setback. This is to be resolved prior to community consultation. The mechanism to facilitate this buffer will then be developed in consultation with PCO and Council following public exhibition. Additionally, Council resolved to apply a 2000m<sup>2</sup> minimum lot size.

### 2.3 Mapping

The proposal will require Land Zoning Map (LZN\_006H) and Lot Size Map (LSZ\_006H) to be updated to show the new zone (Figure 3) and MLS provisions (Figure 4). It may be necessary to create a new buffer map to facilitate the proposed 25m wide no development buffer area.

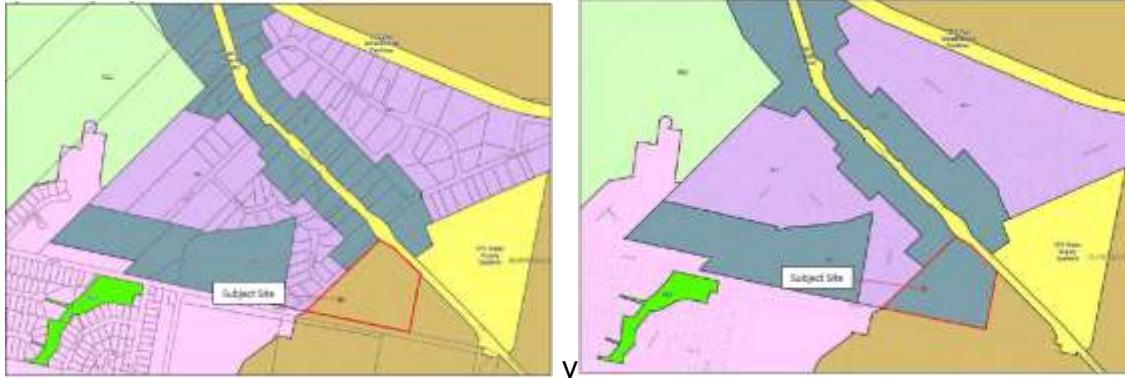


Figure 3: Existing Zoning and Proposed Zoning. - Mid-Western Planning Proposal report, 2020

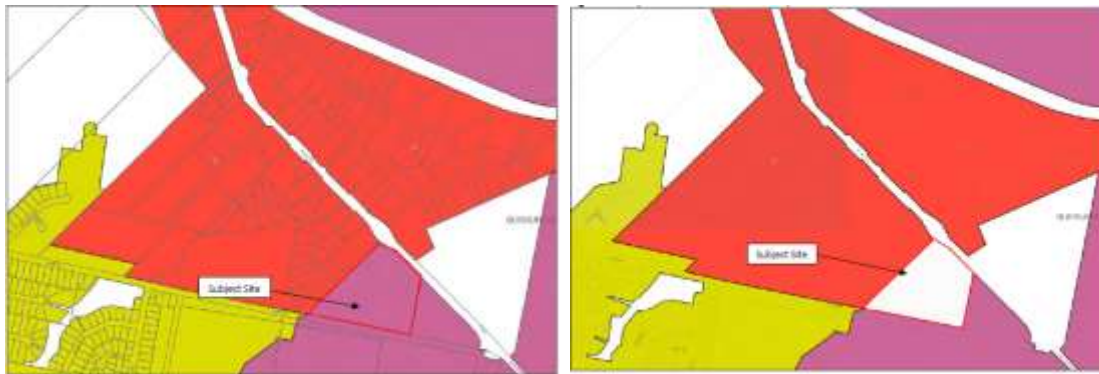


Figure 4: Existing MLS and Proposed MLS maps. Source- - Mid-Western Planning Proposal report, 2020

It is noted that the minimum lot size map in the planning proposal will need to be amended to reflect the Council resolution to apply a 2000m<sup>2</sup> to the subject land.

### 3. NEED FOR THE PLANNING PROPOSAL

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The planning proposal seeks to facilitate future retail development (relocation of Bunnings and future development) of the site. It also seeks to restrict development along Castlereagh Highway as a visual buffer.

The planning proposal would allow the land to be both subdivided and developed for retail purposes, in line with the surrounding area development to the west of the site along the Castlereagh Highway. It is agreed that proposal is the best means for achieving the overall intended outcome however further work is required to justify and determine the best means of achieving the proposed visual buffer.



## 4. STRATEGIC ASSESSMENT

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### 4.1 State

There are no State strategies applicable to the proposal.

### 4.2 Regional / District

The planning proposal is consistent with the objectives of the Central West and Orana Regional Plan 2036 by providing for growth in Mudgee, an identified strategic centre. Section 4.2.1.1, page 19, of the planning proposal provides detailed justification which adequately demonstrates that the proposal is consistent with the relevant directions of the Regional Plan.

Action 10.7 of the Regional Plan specifically deals with proposals for retail developments and is as follows:

*Require proposals for new retail development to demonstrate how they:*

- *respond to retail demand;*
- *respond to innovations in the retail sector;*
- *maximise public transport and community infrastructure commensurate with the scale of the proposal; and*
- *enhance the quality of public areas.*

The first and second points are dealt with by the planning proposal's supporting Economic Assessment prepared by Ethos Urban. This Economic Assessment provides justification of the additional retail floorspace demand in the Mudgee area. A land supply audit was undertaken as part of the Economic Assessment which determined that the existing supply of retail/business zoned land in Mudgee cannot accommodate a new relocated Bunnings store. The assessment identified relatively low vacancy levels and overall strong demand for employment land in the Sydney Road Precinct, where the subject land is located.

The population in Mudgee is projected to increase by 2,350 from 2016 to 2041. This implies a growing demand for retail/business to meet the needs of the growing population.

The third dot point is justified in that the proposal will be located near an existing area large format retail development area and therefore further support existing public transport arrangements in this area, notwithstanding that the demand for public transport is less for access to this type of retail development.

In terms of the fourth point, enhancing the quality of public areas, the subject site is at the gateway to Mudgee and provides an opportunity for streetscape works to improve this entrance into Mudgee.

The proposal satisfactorily addresses action 10.7 of the Regional Plan.

### 4.3 Local

#### Mid-Western Regional LSPS (Our Place 2040)

The planning proposal does not provide commentary on its alignment with the Mid-Western Regional LSPS. However, on assessment of the planning proposal, it is not inconsistent with the LSPS. The planning proposal gives effect to Planning Priority 7, 'Support the attraction and retention of a diverse range of businesses and industries'.

Maintaining economic diversity and continuing to promote a range of employment and business opportunities across a range of industries is a key priority in the LSPS. The proposal to change the land use permissibility and provide for additional supply of retail/business land will continue to accommodate new economic opportunities.

### Mid-Western Regional Comprehensive Land Use Strategy (MWCLUS)

The Mid- Western Regional Comprehensive Land Use Strategy (MWCLUS), endorsed by the Department on 1 August 2011, provides direction and guides future land use changes in the Mudgee LGA. Section 3.2.3 Bulky goods retailing of the MWCLUS states that bulky goods retail development should be encouraged along the Sydney Road. The planning proposal is consistent with this direction in that the subject land is located on Sydney Road (Castlereagh Highway). The MWCLUS also identifies the urban edge for the southern approach to Mudgee as being the Broadhead/Spring Flat Road intersection with the Castlereagh Highway (Figure 5 below). The proposal is within the boundary of the urban edge and is identified as being within an area flagged for urban purposes.

It is therefore considered that the proposal is consistent with the MWCLUS.

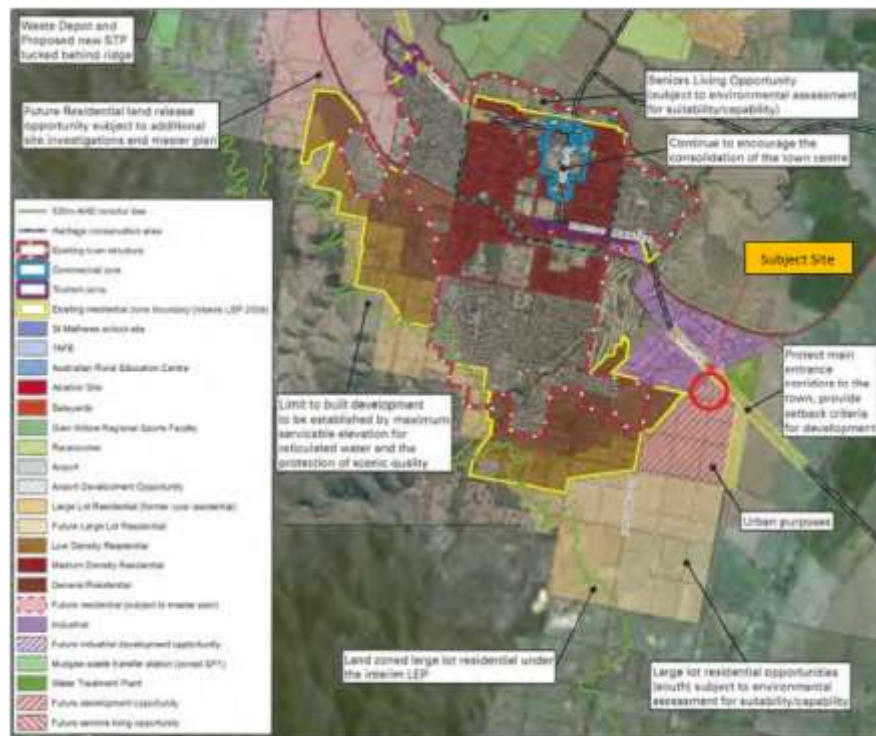


Figure 5 Mid-Western CLUS structure plan: Source Mid-Western Regional CLUS

### Mudgee and Gulgong Urban Release Strategy (MGURS)

The Mudgee and Gulgong Urban Release Strategy (MGRUS) is focussed primarily on the residential land uses. The MGRUS identifies the subject land for potential large lot residential with a minimum lot size of 2ha. However, the recently exhibited 'MWRC Strategically Identifying Large Lot Residential Opportunities around Mudgee', does not identify the subject land as suitable for large lot residential development. While the proposal to develop the subject land for business uses is not consistent with the recommendations of the MGURS, the fact that the MWCLUS and the draft strategically

identifying Large Lot Residential opportunities around Mudgee do not specifically identify large lot residential for the subject land provides adequate strategic justification for the proposal. It also provides that the land should not be used for large lot residential. The potential for rural living in the southern part of Mudgee is not compromised by the proposal.

#### **4.4 Section 9.1 Ministerial Directions**

Assessing the proposal, it is determined to be consistent with the following section 9.1 Directions:

- 1.1 Business and Industrial Zones.
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport.
- 3.5 Development Near Regulated Airports and Defence Airfields
- 5.10 Regional Plans
- 6.1 Approval and Referral Requirements.

The proposal is inconsistent with the following Section 9.1 Ministerial Directions:

Direction 1.2 Rural Zones is relevant to the planning proposal. This Direction provides that a planning proposal must not rezone land from rural to a business zone or increase the permissible density of land. The proposal may be inconsistent with this direction if it is consistent with relevant local strategies.

The planning proposal satisfactorily demonstrates that it is consistent with the Mid-Western Comprehensive Land Use Strategy, in that the strategy identifies the subject land for urban purposes. The strategy also delineates the urban edge with the objective to prevent urban creep into the rural zoned land. The proposal is consistent with this given it is located within the urban boundary.

In addition, the recent MWRC “Strategically Identifying Large Lot Residential Opportunities Around Mudgee” report does not identify this land as being suitable for large lot residential.

The Mid-Western Comprehensive Land Use Strategy provides strategic merit for this proposal. The inconsistency with Direction 1.2 Rural zones is justified in accordance with the terms of the Direction.

Direction 1.5 Rural Lands is relevant to the planning proposal. This Direction provides that a planning proposal must address considerations listed in the Direction and any inconsistency must be justified by a strategy.

The assessment of Direction 1.2 Rural Zones above, also applies to this Direction in that the Mid-Western Comprehensive Land Use Strategy adequately justifies the inconsistency of the reduction in rural land and the change in the minimum lot size to allow for subdivision of land.

The proposal is not inconsistent with the Central West and Orana Regional Plan 2036 with regards to fragmentation of rural land.

The inconsistency with Direction 1.5 Rural Land is justified in accordance with the terms of the direction.

Direction 4.3 Flood Prone Land is relevant to the planning proposal, although the land is not identified in the MWLEP 2012 as being within a flood planning area. The subject land is identified as being flood prone by a site specific Flood Study that was undertaken in relation to this planning proposal. The Direction states that a planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. While the land is not identified to be within a flood planning area, the land has been identified as flood prone. Consultation is required with Department of Planning, Industry and Environment – Biodiversity Conservation and Science with regard to potential impact of flooding. Until this consultation has occurred the inconsistency of the proposal with the Direction remains unresolved and is to be addressed prior to community consultation.

Direction 6.3 Site Specific Provisions is relevant to the planning proposal. Given that Council has specified site specific controls to be applied to the land with respect to the proposed 25m wide no development buffer along the Castlereagh Highway, the planning proposal should be amended to address Direction 6.3 Site Specific Provisions prior to community consultation.

An assessment of this Direction demonstrates that the site-specific controls are strategically justified by the Mid-Western Comprehensive Land Use Strategy which seeks to protect the visual amenity of entry ways into Mudgee. The inconsistency with Direction 6.3 Site Specific Provisions will need to be addressed prior to community consultation.

Furthermore, Council needs to develop clear strategies and development standards to address the visual amenity standards for entry ways into Mudgee.

#### **4.5 State environmental planning policies (SEPPs)**

The planning proposal identifies the following SEPPs as applicable: -

- SEPP Koala Habitat Protection
- SEPP No. 55 – Remediation of Land
- SEPP No. 64 – Advertising and Signage
- SEPP (Infrastructure) 2007

The abovementioned SEPPs are not relevant to determining the strategic merit of the planning proposal and may be considered as part of any future development applications on the land.



## 5.1 Social

The planning proposal identifies the social benefits of the proposal as:

- capital investment of approximately \$13.0m
- support 32 full time equivalent construction jobs,
- 75 full-time, part-time and casual positions, an additional 20 on top of the existing Mudgee Bunnings development.

The planning proposal will facilitate a new Bunnings hardware store on the subject land. This will result in the existing Bunnings premises, located directly across the Castlereagh Highway, being vacated. This may result in a temporary negative social impact with the site being unused development. However, the planning proposal suggests that the existing Bunnings site will be reconfigured to allow leasing or 'backfill' of the building for uses such as large format retail, trade supplies or showrooms. It is agreed that the high-profile location and existing infrastructure offered by the existing Bunnings site will mean the potential social impacts of a vacant premises will most likely be temporary.

## 5.2 Environmental

### Visual impacts

Council's planning report states that the subject site is located on the main entrance corridor to Mudgee. The report recommends that visual amenity be protected. Council resolved to incorporate a 25m wide no development buffer area fronting the Castlereagh Highway. Council's resolution to include this buffer control is given strategic merit through the Mudgee Town Structure Map, Part C of the Comprehensive Land Use Strategy, endorsed by DPIE on 1 August 2011, which seeks to protect the main entrance corridors across the Mid-Western LGA.

Given the Council resolution is strategically supported, the proposed 25m wide buffer to limit development is supported, however, this requires further detailed information on the purpose and operation of the buffer. Council is to amend the planning proposal to resolve and reflect this buffer, outlining why it is required, the extent of the buffer and how it is given strategic merit. The amended planning proposal should also clarify the intended development restrictions on land within the 25m wide buffer area and consider options for achieving the intended outcome. This amendment is to be made prior to the planning proposal being placed on public exhibition.

### Biodiversity

The land subject to this planning proposal has been investigated for potential ecological impacts. A Due Diligence Assessment was prepared by Firebird ecoSultants and submitted with the planning proposal. This Assessment established that the subject land does not contain areas of known high biodiversity value. The report does recommend that if possible, the native vegetation within, and along, the subject land road frontage should be retained. The clearing required is likely to be less than the Area Criteria trigger. Therefore, it is unlikely that the Biodiversity Offset scheme would apply. Future development applications on the site will need to consider existing vegetation and any requirements for clearing under the Biodiversity Conservation Act.

### **5.3 Economic**

#### **Supply and demand**

The planning proposal provides assessment and justification for the additional land zoned B5 Business Development. It also provides justification that the existing available supply of land which permits a hardware and building supplies is not appropriately located or suitably sized to facilitate the proposed large format premises.

The planning proposal is supported by an Economic Assessment Report at Appendix 8, page 67, of the planning proposal. This report provides details of the supply and demand justification for the proposed use and the additional zone B5 Business Development. While there is no adopted best practice quantity of available land supply for zoned land, the general rule of 10 years supply is often applied. The planning proposal also refers to a 10 year supply and provides two demand scenarios. In a high demand scenario, there would be approximately 7 years supply and at a low demand, 10-15 years supply.

Council considers there is an oversupply of land zoned B5 Business Development. The Council report identifies that the land to be rezoned should be reduced to the footprint of the future Bunnings development. The planning proposal's Economic Assessment Report provides a Comparative Sites Assessment does recognise the existing supply of approximately 30ha (64 lots) of zone B5 Business Development across the LGA. However, the assessment has determined that the available supply is not suited to the proposed development for the following reasons:

- Insufficient site size,
- Inappropriate access arrangements, and
- Conflicts with adjacent or nearby land uses.

It is considered that the supply and demand analysis provided in the planning proposal sufficiently demonstrates strategic merit for the proposed additional 5.37ha of land zone B5 Business Development.

To ensure that the employment land supply is adequately monitored Council should establish a system that tracks the demand to enable a more accurate estimate for the supply requirements in the future

#### **Minimum lot size**

The planning proposal submitted to Council intended to remove the minimum lot size applying to the subject land. Council resolved to apply a 2000m<sup>2</sup> minimum lot size for the subject land. This development standard is consistent with the minimum lot size applied to the zone B5 Business Development and the development generally within the adjoining Sydney Road industrial precinct. Maintaining a 2000m<sup>2</sup> minimum lot size also limits the further potential for land use fragmentation and additional visual impact.

## **5.4 Infrastructure**

A Preliminary Services Infrastructure Strategy has been included with the planning proposal. This Strategy provides details in relation to servicing the site for water supply, sewerage, power and communications. This Strategy confirmed that all essential services are readily available to be connected to the subject site. The site has frontage, with no direct access proposed, to the Castlereagh Highway and consultation with Transport for NSW will be required.

## **6. CONSULTATION**

### **6.1 Community**

The planning proposal suggests the proposal would be classed as a low impact proposal and seeks a 14 day public exhibition. Given there are inconsistencies with the section 9.1 Directions and the proposed zone B5 Business Development is not consistent with the surrounding land zoning, it is recommended that the Gateway determination be conditioned requiring the planning proposal to be publicly exhibited for 28 days.

### **6.2 Agencies**

Consultation is required with the following agencies prior to public exhibition to satisfy consistency with the Section 9.1 Direction Flood Prone Land:

- Department of Planning, Industry and Environment – Biodiversity, Conservation and Science.

Consultation is also required with Transport for NSW with regard to potential impact on the Castlereagh Highway, being a state highway.

## **7. TIME FRAME**

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The planning proposal does not provide a timeframe to finalise the LEP amendment. The Gateway determination requires an amended planning proposal and agency consultation prior to public exhibition which will add some time to the overall timeframe. However Council should be able to finalise the planning proposal within 9 months from issue of the Gateway determination.

The planning proposal is required to be amended prior to public consultation to include the proposed timeframe for making the LEP amendment.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has not specifically requested to be the local plan-making authority. Council should be authorised to be the local plan-making authority in this case.

## **9. CONCLUSION**

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The planning proposal is recommended to proceed with conditions as it:

- Demonstrates strategic and site merit.
- Is consistent with the relevant Regional Plan, local plans and strategies.

- Local flooding impacts can be further investigated through consultation with the Department of Planning, Industry and Environment – Biodiversity, Conservation and Science.

## 10. RECOMMENDATION

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It is recommended that the delegate of the Secretary agree that:

- Inconsistencies with section 9.1 Directions 1.2 Rural zones and section 9.1 Direction 1.5 Rural Lands are justified in accordance with the terms of the Direction.
- Inconsistencies with section 9.1 Direction 4.3 Flood Prone will be addressed through further investigation and consultation with DPIE – Biodiversity, Conservation and Science and addressed prior to undertaking community consultation.

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

1. Prior to undertaking community consultation, the following is required:
  - (a) Consultation with Department of Planning, Industry and Environment – Biodiversity, Conservation and Science regarding flooding.
  - (b) Address and resolve details and inconsistencies with section 9.1 Direction 6.3 Site Specific Provisions.
  - (c) Details of the proposed 25m wide “no development buffer” and the 2000m<sup>2</sup> minimum lot size development standard proposed. Clarification is to be provided on the intent of the 25m “no development buffer” area.
  - (d) Details of the timeframes to complete the LEP amendment.

Council is to update the planning proposal to take into account the outcomes of the above and seek approval from the Department of Planning, Industry and Environment prior to undertaking community consultation.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal is to be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with Transport for NSW under section 3.34(2)(d) of the *Act*. Transport for NSW 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.



4. 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 Act. 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. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination and
  - (b) there are no outstanding written objections from public authorities.
6. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
7. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.



27.10.20

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28.10.20

**Garry Hopkins**  
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