

Planning Services

IRF19/2652

Gateway determination report

| | |
|---------------------------------|---|
| LGA | Shoalhaven LGA |
| PPA | Shoalhaven City Council |
| NAME | Dwelling house as additional permitted use South Nowra Industrial Expansion (4 homes) |
| NUMBER | PP_2019_SHOAL_002_00 |
| LEP TO BE AMENDED | Shoalhaven LEP 2014 |
| ADDRESS | 28 lots along Prosperity Road, The Links Road, Central Avenue and Oxford Street, South Nowra and Nowra Hill |
| DESCRIPTION | The Lot and DP details are included in the planning proposal |
| RECEIVED | 4 March 2019 Additional information 17/4/19 and 24/5/19 |
| FILE NO. | EF19/13000 & IRF19/2652 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required. |
| LOBBYIST CODE OF CONDUCT | There have been no 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 Schedule 1 Additional Permitted Use and the Clauses Map of the Shoalhaven LEP 2014 to allow dwelling house as an additional permitted use on certain land in South Nowra Industrial Expansion for a limited 10-year period of time.

1.2 Site description

The site is 144ha of industrial zoned land which is currently occupied by rural and rural residential development and home business uses in the south west portion of South Nowra and northern portion of Nowra Hill (Figure 1).

The land has been identified for the ongoing and longer-term expansion (30-40 years) of the existing Flinders Industrial Estate in South Nowra. It was rezoned from general rural and rural living uses to industrial uses in 2014.

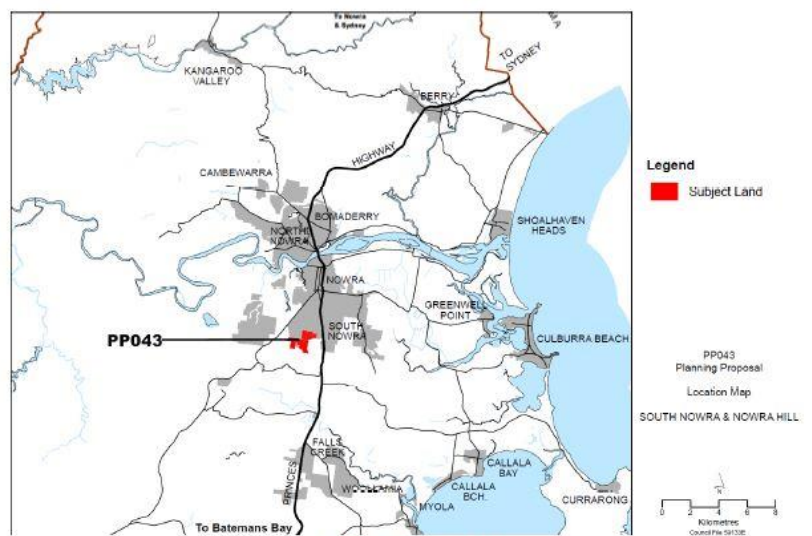


Figure 1: Location Map

The site consists of 28 lots as identified in Figures 2 and 3 of which only four do not have an existing approved dwelling.

The lots within the South Nowra area are smaller in size (0.12ha- 3.99ha), predominately rectangular in shape and comprises a mix of lots with cleared lands with dwellings and lots predominately covered with native vegetation with a dwelling. Four lots do not have an existing dwelling.

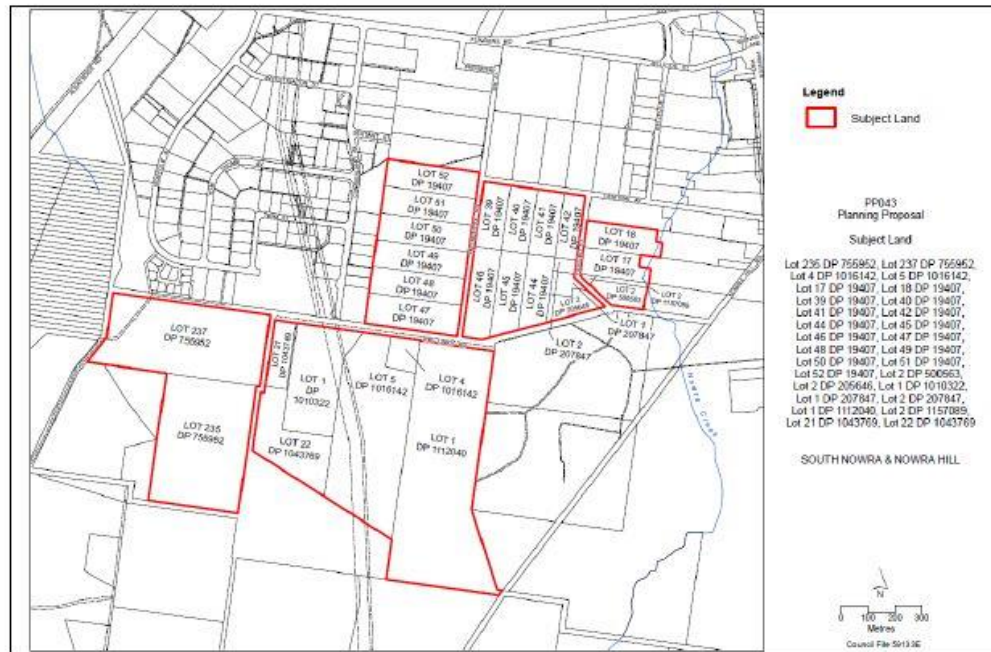


Figure 2: Subject Land



Figure 3: Subject Land Aerial Photo

The 8 lots within the northern Nowra Hill area are larger in size (1.34ha to 27.28ha). Two of the lots are vacant with no existing dwellings. The lots have either been cleared for animal grazing or have remained uncleared along the southern portions.

The site includes the upper tributaries of Browns Creek and has flood prone lands along the riparian zones.

Shoalhaven City Council has undertaken a desktop assessment to review the property details, development approvals and/existing dwellings, land area and previous zone in the Shoalhaven LEP 1985 of each lot within the site area (Table1).

Table 1: Subject Land Properties

| | Property Description | Address | Existing Approved Dwelling | SLEP1985 LZN | Land Area (ha) |
|-----|----------------------|---------------------------------|----------------------------|--------------|----------------|
| 1. | Lot 52, DP 19407 | 21 Prosperity Road, South Nowra | YES | 1(c) | 3.48 |
| 2. | Lot 51, DP 19407 | 25 Prosperity Road, South Nowra | YES | 1(c) | 3.48 |
| 3. | Lot 50, DP 19407 | 29 Prosperity Road, South Nowra | YES | 1(c) | 3.48 |
| 4. | Lot 49, DP 19407 | 33 Prosperity Road, South Nowra | YES | 1(c) | 3.48 |
| 5. | Lot 48, DP 19407 | 37 Prosperity Road, South Nowra | YES | 1(c) | 3.48 |
| 6. | Lot 47, DP 19407 | 148 The Links Road, South Nowra | YES | 1(c) | 3.99 |
| 7. | Lot 46, DP 19407 | 106 The Links Road, South Nowra | YES | 1(c) | 3.42 |
| 8. | Lot 45, DP 19407 | 92 The Links Road, South Nowra | YES | 1(c) | 3.11 |
| 9. | Lot 44, DP 19407 | 80 The Links Road, South Nowra | YES | 1(c) | 2.68 |
| 10. | Lot 42, DP 19407 | 8 Central Avenue, South Nowra | YES | 1(c) | 1.96 |
| 11. | Lot 41, DP 19407 | 6 Central Avenue, South Nowra | YES | 1(c) | 2.45 |
| 12. | Lot 40, DP 19407 | 4 Central Avenue, South Nowra | NO | 1(c) | 2.45 |
| 13. | Lot 39, DP 19407 | 2 Central Avenue, South Nowra | YES | 1(c) | 2.45 |

| | | | | | |
|-----|--------------------|--------------------------------|--------------------------|------|-------|
| 14. | Lot 2, DP 500563 | 41 Oxford Street, South Nowra | YES | 1(c) | 1.80 |
| 15. | Lot 2, DP 205646 | 40 Oxford Street, South Nowra | YES | 1(c) | 1.58 |
| 16. | Lot 2, DP 1157089 | 33 Oxford Street, South Nowra | YES | 1(c) | 0.12 |
| 17. | Lot 1, DP 207847 | 32 Oxford Street, South Nowra | YES | 1(c) | 0.81 |
| 18. | Lot 17, DP 19407 | 21 Oxford Street, South Nowra | YES | 1(c) | 2.40 |
| 19. | Lot 2, DP 207847 | 20 Oxford Street, South Nowra | YES | 1(c) | 0.40 |
| 20. | Lot 18, DP 19407 | 13 Oxford Street, South Nowra | NO | 1(c) | 2.80 |
| 21. | Lot 1, DP 112040 | 109 The Links Road, Nowra Hill | YES | 1(d) | 27.28 |
| 22. | Lot 4, DP 1016142 | 129 The Links Road, Nowra Hill | YES | 1(d) | 1.34 |
| 23. | Lot 5, DP 1016142 | 147 The Links Road, Nowra Hill | Likely pre IDO* dwelling | 1(d) | 17.14 |
| 24. | Lot 1, DP 1010322 | 167 The Links Road, Nowra Hill | YES | 1(d) | 7.91 |
| 25. | Lot 22, DP 1043769 | 175 The Links Road, Nowra Hill | YES | 1(d) | 6.15 |
| 26. | Lot 21, DP 1043769 | 181 The Links Road, Nowra Hill | YES | 1(d) | 2.00 |
| 27. | Lot 237, DP 755952 | 183 The Links Road, Nowra Hill | NO | 1(d) | 16.19 |
| 28. | Lot 235, DP 755952 | The Links Road, Nowra Hill | NO | 1(d) | 16.19 |

1.3 Existing planning controls

The land is zoned a mix of General Industrial IN1 (110ha), Rural Landscape RU2 (22ha), E2 Environmental Conservation (9ha) and E3 Environmental Management (2ha) in the Shoalhaven LEP 2014.

The land use zoning of the site and surrounding locality is identified in Figure 4.

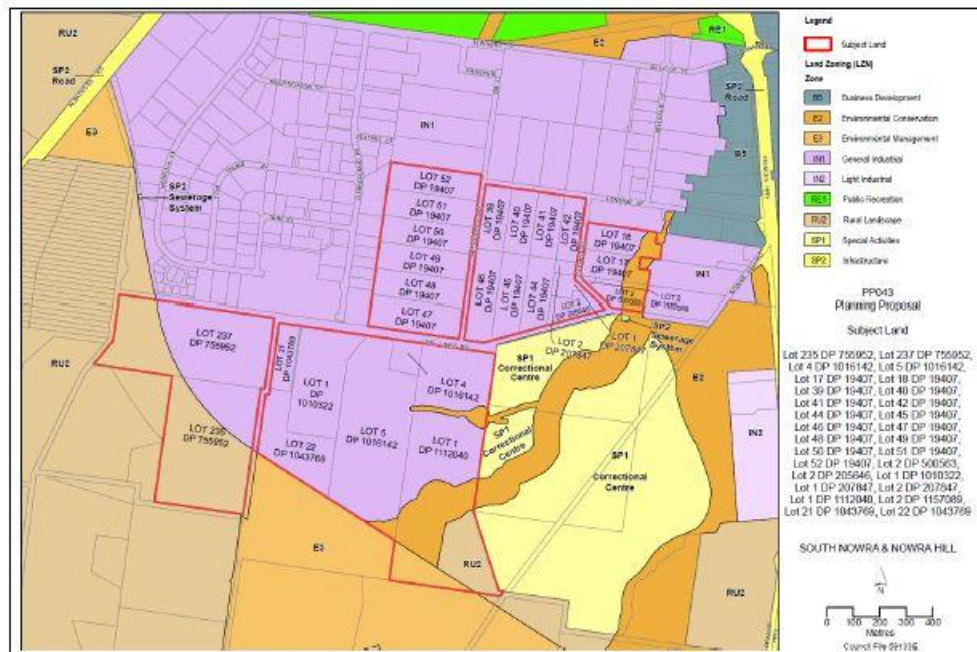


Figure 4: Current Land Use Zones – SLEP 2014

Residential accommodation is a nominated prohibited use within the IN1 General Industrial zone and therefore dwelling house is a prohibited use.

The General Industrial IN1 zone does not have any development controls – minimum lot size, maximum building height or maximum floor space ratio.

Parts of the southern portion of the site are affected by Clause 7.21 development on land in the vicinity of the Western Bypass Corridor as identified on the Clauses Map (Sheet CLS_013F) (Figure 5). The land affected by Clause 7.21 is excluded from the application of the proposed additional permitted use Clause Map.

The site, whilst in close proximity to HMAS Albatross and its airport, does not fall within the HMAS Albatross buffer on the Buffer Map (Sheet BUF_013)

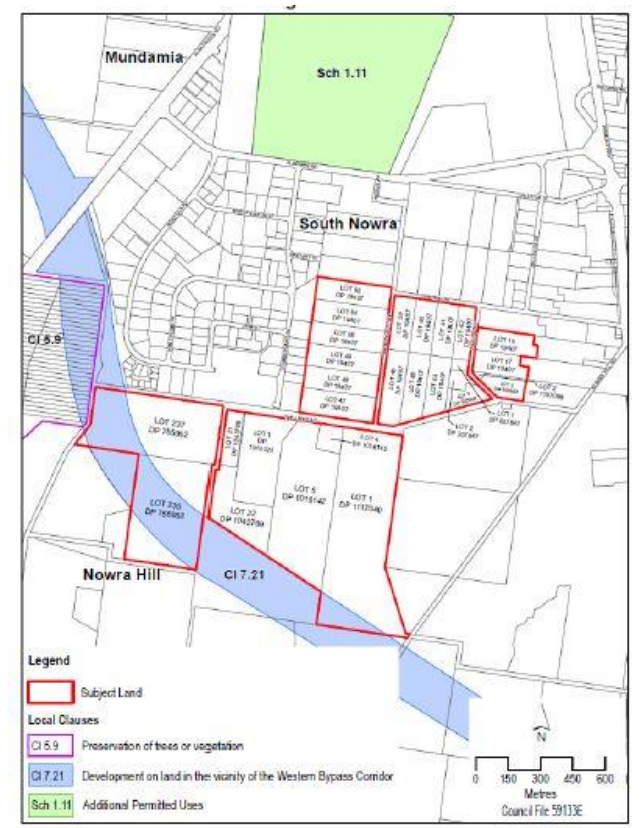


Figure 5: Clauses Map

1.4 Surrounding area

The surrounding area is characterised by general industry and warehousing, large format and bulky goods retail outlets, service stations and fast food retailing to the north and east, and historic rural residential and small rural holding uses and the South Coast Correctional Centre to the south and west.

HMAS Albatross is located to the south west at Nowra Hill.

The Nowra central business district is approximately 5km to the north.

1.5 Summary of recommendation

It is recommended that the planning proposal should proceed as submitted with conditions.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the planning proposal is to amend the Shoalhaven Local Environmental Plan (LEP) 2014 to secure a dwelling entitlement for each property in the subject land for a limited period, being 10 years from when the plan is made. The objective is clear and appropriate for the planning proposal.

2.2 Explanation of provisions

It is proposed to amend the Shoalhaven LEP 2014 by:

- Amending Schedule 1 Additional Permitted Uses by the addition of a new clause to permit with consent a dwelling on each lot. Development consent must not be granted after 10 years from the commencement of the plan.
- Amending the Clauses Map to identify the subject site.

The explanation of provisions is clear and appropriate for the planning proposal.

2.3 Mapping

The existing and proposed Clauses Map is included in the planning proposal. The map is suitable for public consultation.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is a result of a Council resolution resulting from ongoing consultation with affected landholders. Landholders are concerned that they cannot lawfully continue or expand their current residential land use, and the change of zone has seen their properties devalued on the property market and demand for the properties is low.

The planning proposal recognises the existing and historical use of the land for rural residential purposes. Allowing dwelling houses as an additional permitted use on the land for the next 10 years, is a measured approach that balances the current land use situation and community expectations with projected longer-term future employment and industrial growth and needs.

Allowing a dwelling house will ensure security of a dwelling entitlement without relying on existing use rights. The Department of Planning's Circular "Changes to existing use rights" encourages "where possible, councils to identify development that would have existing use rights and include permitted additional use on that land in their LEP, so that the land use is no longer prohibited".

Council considered another option to change the zoning of the land to a zone which permits residential development, however, this option is not consistent with the

identified strategic planning framework for the land for future industrial growth, and was therefore eliminated by Council.

The planning proposal is the most appropriate mechanism to provide a dwelling for the subject site lands.

4. STRATEGIC ASSESSMENT

The Planning Proposal is not a result of any specific strategic study or report but arose out of landholders' representations to Council.

4.1 State

The planning proposal is not inconsistent with the state strategic planning framework.

4.2 Regional / District

Illawarra Shoalhaven Regional Plan

The Regional Plan considers the viability of industrial and employment lands in the region. The site is located within land identified as industrial lands in the Plan and ear-marked for future industrial growth.

The proposal has been considered against Direction 1.4 – Support new and expanded industrial activity by providing well located and serviced supplies of industrial land.

The planning proposal is inconsistent with this direction however the inconsistency is minor in that:

- the land is not required for industrial uses for 30-40 years as there is growth capacity in other locations to meet present and medium-term requirements. 30% of all of Shoalhaven's zoned employment lands is currently undeveloped;
- there are no changes to the industrial zone of the land. The land can still be used for industrial or employment uses;
- Residential uses are the current use of the land on 24 of the 28 lots. Only 4 lots are benefitting from the planning proposal permitting a dwelling house. Development consent for these additional four houses and any replacement dwellings can only be provided for within a 10-year period; and
- The land does not presently have adequate infrastructure to accommodate industrial development.

Employment Lands Guidelines for the Illawarra 2008

The Department of Planning and Environment's Employment Lands Guidelines for the Illawarra 2008 also apply to the planning proposal. The planning proposal is consistent with the Guidelines' focus to preserve land for employment uses taking into consideration projected future demand. The Guidelines highlight that compatible uses should be provided for at such land in the interim (prior to the land being taken up for employment uses) to ensure the viability and economic potential of the land is maintained.

Given that the land is not anticipated to be developed for employment related uses for potentially the next 30-40 years, depending on demand and economic activity, formalising the existing use of the land, without restricting the future potential of the

land, is considered to be an appropriate and compatible use of the land in the interim.

4.3 Local

The planning proposal is of a minor inconsistency with Shoalhaven Council's local planning strategies.

The subject land has been identified in the Nowra Bomaderry Structure Plan for future industrial growth since at least 2006. The land was subsequently rezoned from rural residential to industrial uses in the Shoalhaven LEP 2011.

The Shoalhaven Community Strategic Plan promotes prosperous communities as employment related uses are important to the community.

The inconsistencies are justified for the same reasons as the inconsistencies with the Illawarra Shoalhaven Regional Plan.

4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with the s9.1 Directions 1.2 Rural Zones; 1.5 Rural Lands; 2.1 Environment Protection Zones; 3.4 Integrating Land Use and Transport; 3.5 Development Near Regulated Airports and Defence Airfields; and 4.3 Flood Prone Land.

Three lots have split zones with a RU2 Rural Landscape zoning whilst six lots have a split zone with E2 Environmental Conservation or E3 Environmental Management zones. These lots have sufficient area zoned IN1 Industrial to allow for a dwelling outside the rural and environmental areas as well as areas of flood prone land. The planning proposal is not reducing the controls affecting rural, environmental and flood prone lands.

The planning proposal applies to land within the vicinity of a defence airfield – HMAS Albatross. However, the land is not affected by the operational airspace and consultation with the Department of Defence is not required.

The planning proposal applies to mapped bushfire prone land. It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s9.1 Direction 4.4 Planning for Bushfire Protection. Council has identified that it will consult with NSW Rural Fire Services to meet the requirements of the Direction.

The planning proposal is inconsistent with s9.1 Directions 1.1 Business and Industrial Zones and 5.10 Implementation of Regional Plans. The inconsistencies are minor as:

- the land is not required for industrial uses for 30-40 years as there is growth capacity in other locations to meet present and medium-term requirements. 30% of all of Shoalhaven's zoned employment lands is currently undeveloped;
- there are no changes to the industrial zone of the land. The land can still be used for industrial or employment uses;
- Residential uses are the current use of the land on 24 of the 28 lots. Only 4 lots are benefitting from the planning proposal permitting a dwelling house. Development consent for these additional four houses and any replacement dwellings can only be provided for within a 10-year period; and
- The land does not presently have adequate infrastructure to accommodate industrial development.

4.5 State environmental planning policies (SEPPs)

The planning proposal has identified that it is consistent with a number of SEPPs. The planning proposal is consistent with the Primary Production and Rural Lands 2019 SEPP. SEPP 55 Remediation of Land and SEPP Vegetation in Non-Rural Areas SEPP do not apply as the land is not being rezoned.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal may have a positive social effect as it will confirm the dwelling entitlements on the land.

There is the potential for negative social effects as land use conflicts between residential and industrial uses may arise in the future. This conflict already exists as the majority of the land is currently used for residential purposes and only four additional dwellings are allowed through the proposal.

5.2 Environmental

The planning proposal states that the proposal will not create a situation that promotes residential development of an intensity greater than is already existing on the subject land, and therefore the potential for adverse environmental impacts remains low.

All lots contain vegetation which has been mapped as bushfire prone land. Consultation with NSW RFS is to be undertaken to address any bushfire issues.

The upper tributaries of Browns Creek transverse the majority of lots on the site. Flood prone areas along the riparian corridors are mapped on a flood affection map.

5.3 Economic

The planning proposal may have a positive economic impact on the landowners in relation to land valuation and market demand.

The outcome of the planning proposal does not restrict the land from being developed for industrial and employment related uses. The market conditions will dictate the future development of the land.

Council considers that providing a sunset clause allowing consent to be granted for the additional permitted use for a period of 10 years is an appropriate mechanism to manage any possible economic and social impacts.

5.4 Infrastructure

The site has domestic water and electricity supply. It is unsewered, with no stormwater drainage infrastructure and unsealed roads. The expansion and delivery of industrial land is generally managed by Council's Economic Development Unit.

The additional residential development and associated infrastructure requirements facilitated by the planning proposal is expected to have a negligible impact on the existing infrastructure.

No infrastructure upgrades have been proposed.

6. CONSULTATION

6.1 Community

Initial consultation between Council and the landowners has occurred. Council has advised that the landowners are generally in favour of the intended outcomes of the planning proposal.

Council proposes to publicly exhibit the planning proposal for 28 days. Public notification will include notifications in local newspaper; notice on Council's website and a mail out to affected and adjoining landowners. Hard copies of the planning proposal provided at Council's administration building.

This community consultation is considered appropriate.

6.2 Agencies

Council has proposed to consult with the Department of Defence and NSW Rural Fire Service to address the Section 9.1 Directions 3.5 Development near Regulated Airports and Defence Airports and 4.4 Planning for Bush Fire Protection. The planning proposal is consistent with the Section 9.1 Direction 3.5 and as such consultation with the Department of Defence is not required.

TECHNICAL STUDIES

The planning proposal does not include or need to include any technical studies. This is considered acceptable.

7. TIME FRAME

Council has proposed a 9-month project timeframe to complete the rezoning process.

A 12-month timeframe is considered appropriate to complete the consultation with affected landowners and the wider community and finalise the plan.

8. LOCAL PLAN-MAKING AUTHORITY

The planning proposal identifies that Council requests delegation of local plan making functions. Appendix 4 – Evaluation Criteria for the Delegation of Plan Making Functions is included in the planning proposal.

Due to the local nature of the proposal and as the land is already zoned for industrial uses with all but four of the 28 lots having an existing approved dwelling house, it is considered appropriate to provide delegations to Council.

9. CONCLUSION

Preparation of the planning proposal is supported to proceed with conditions for the following reasons:

- The planning proposal will resolve an outstanding issue where the rezoning of rural residential lands to an industrial use in the Shoalhaven LEP 2014 has resulted in the lands no longer having a dwelling house as a permitted use with consent.
- The planning proposal is consistent with the Department of Planning's Circular "Changes to existing use rights".
- The planning proposal is generally consistent or of a minor inconsistency with applicable regional and local strategic plans.

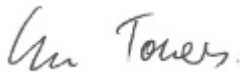
10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zones and 5.10 Implementation of Regional Plans are of minor significance; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the NSW Rural Fire Service.
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



14/6/19

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19/6/19

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