

Planning Services

Gateway Determination Report

LGA	Wingecarribee
PPA	Wingecarribee Shire Council
NAME	Planning proposal to permit a dwelling house on Lot 2 DP 854905, Park Avenue, Aylmerton (1 homes, 0 jobs)
NUMBER	PP_2018_WINGE_008_00
LEP TO BE AMENDED	Wingecarribee Local Environmental Plan 2010
ADDRESS	Park Avenue, Aylmerton
DESCRIPTION	Lot 2 DP 854905
RECEIVED	1 November 2018
FILE NO.	IRF18/6062
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.

INTRODUCTION

Description of planning proposal

The planning proposal (PP) seeks to amend Wingecarribee Local Environmental Plan 2010 (Wingecarribee LEP) to permit a dwelling house on land located at Park Avenue, Aylmerton (Lot 2 DP 854905) in the Wingecarribee Shire.

Site description

The subject site is legally described as Lot 2 DP 854905 and is located on Park Avenue, Aylmerton.

Aylmerton Village (and the subject site) is located approximately 10 km north-west of Bowral and approximately 5.5 km north-west of Mittagong in the Wingecarribee Shire (Figure 1).

The subject site is currently vacant, is irregular in shape and has an area of approximately 4 hectares.

The site fronts Park Avenue on its eastern boundary. Park Avenue is accessed by vehicle off the Old Hume Highway (via Aylmerton Road or Chalkerville Road and then Station Road).

The site contains scattered vegetation, including some Southern Highlands Shale Woodland (a Threatened Ecological Community) concentrated in the southern portion (Figure 4). The site is also mapped as bushfire prone land.

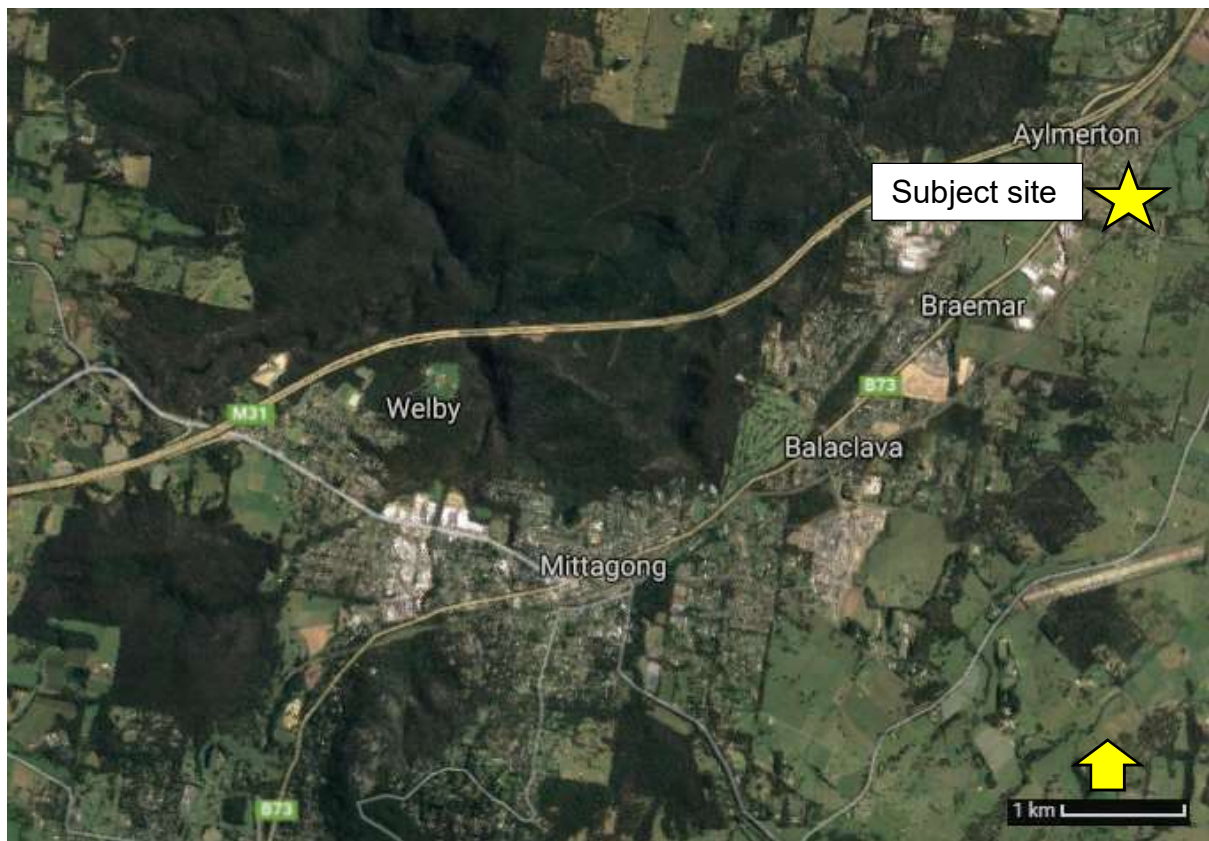


Figure 1 – Site map

Surrounding area

The Aylmerton residential area is located approximately 400 m to the north of the subject site (Figure 2). This area is zoned R2 Low Density Residential under the Wingecarribee LEP.

The site adjoins rural-residential properties to the south, west and north which are all zoned E3 Environmental Management and have a minimum subdivision lot size of 40 hectares (Figures 2 to 4).

Some of the rural residential properties to the further to west of the site are zoned RU2 Rural Landscape and retain a minimum subdivision lot size of 40 ha (Figure 3).

The subdivision pattern of the site and surrounding properties is irregular with dwellings located on all sites (except the subject lot). This has created a small lot rural residential area (Figure 2) with lots ranging in size from approximately 1,000 m² to 4 ha.

Park Avenue adjoins the site to the east and with additional rural residential properties located further beyond.

The Old Hume Highway is located approximately 650 m to the south-west of the site.



Figure 4 – Site and surrounding area

Existing planning controls

The site is zoned E3 Environmental Management (Figure 3) and has a minimum subdivision lot size of 40 hectares under the Wingecarribee LEP (Figure 4).

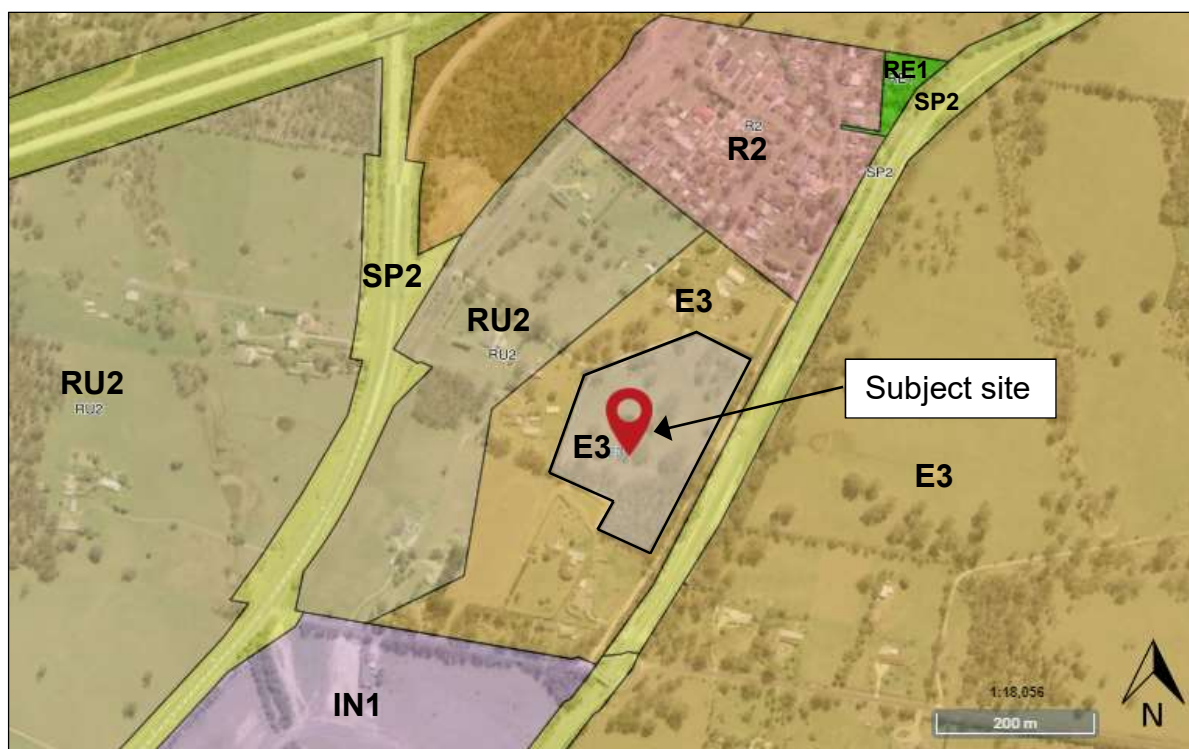


Figure 3 – Zoning map

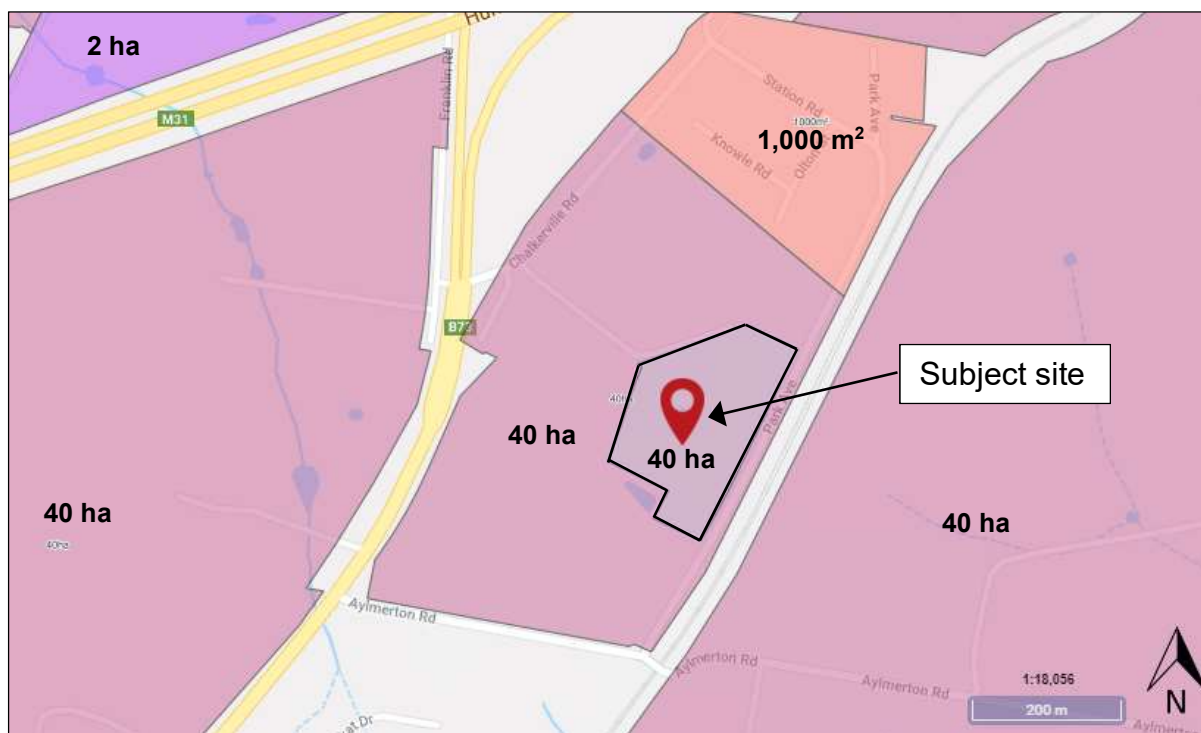


Figure 4 – Minimum lot size map

Clause 4.2A of the Wingecarribee LEP prohibits the erection of dwelling houses on the subject site unless the lot meets the 40 ha minimum subdivision lot size requirement.

Given the site has an area of approximately 4 hectares, dwelling houses are currently unable to be permitted on the subject site.

Previous zoning controls

The split E3 and RU2 zoning of the locality (Figure 3) is thought to be a reflection of the topography of the site (which drained into two different water catchments) and previous zonings under the now repealed Wingecarribee Local Environmental Plan 1989. Under this plan, the eastern (E3 zoned) portion of the locality (and subject site) was zoned 5 (c) Water Catchment and the western (RU2 zoned) portion was zoned 1 (b) Rural B (Figure 3).

When the Wingecarribee LEP 2010 was made, the zonings were rolled over into the equivalent zones under the Standard Instrument LEP. The current E3/RU2 zoning of the locality (and subject site) is therefore thought to be a result of maintaining the status quo from the previous LEP rather than any strategic planning recognition of the environmental character, sensitivity or capacity of the land.

Summary of recommendation

It is recommended that the planning proposal should progress to consultation as submitted.

PROPOSAL

Objectives or intended outcomes

The intended outcomes of the planning proposal are to:

- allow for the future residential development of the subject site, being a single dwelling entitlement; and

- provide the appropriate planning mechanism to give effect to the desired development outcome.

The planning proposal will (subject to development consent) allow infill development of the site, being the construction of a dwelling house on the subject land.

Comment – It is considered the statement of objectives is clear and meets the requirements of the Department's guide to preparing planning proposals.

The construction of a dwelling on the subject site would be compatible with residential development on adjacent sites and would give the landowner the same development opportunities afforded to surrounding properties.

Explanation of provisions

The explanation of provisions provided in the planning proposal is to amend Schedule 1 – Additional Permitted Uses of the Wingecarribee LEP to include an additional clause specifying development for the purposes of a dwelling house is permissible with consent on the subject site.

Comment – The explanation of provisions is simple and clearly outlines how the intended outcomes of the planning proposal would be achieved. It therefore meets the requirements of the Department's guide to preparing planning proposals.

Mapping

The Local Clauses Map in Schedule 1 of the Wingecarribee LEP would require amendment to include the subject site. The planning proposal does not include any draft maps.

Council will need to prepare draft maps to be included as part of the planning proposal for consultation purposes.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has been lodged by Council (on behalf of the Applicant) to enable the construction of a dwelling house (subject to development consent) on the subject site.

The planning proposal has considered a number of alternative options to achieve the intended outcomes, such as:

- Through the development application process. However, clause 4.2A of the Wingecarribee LEP prohibits the erection of dwellings on the site because the land is zoned E3 and does not meet the 40 ha minimum lot size requirement. Therefore, the outcomes cannot be achieved under Part 4 of the EP&A Act;
- A change to the land use zoning applying to the subject site with a minimum lot size for subdivision of 4 ha. The subdivision pattern of the site and surrounds has created a small lot rural residential area which Council consider would be more appropriately zoned RU4 Primary Production Small Lots. Further, the size of the subject site and surrounding lots (1,000 m² to 4 ha) are well below the minimum subdivision lot size requirement of 40 ha in the LEP. However, such changes were not considered reasonable for a single lot and would need to be considered across all surrounding small lot rural residential properties in the locality.

Comment – A planning proposal to amend the Wingecarribee LEP to include a dwelling house as an additional permissible use on the subject site via Schedule 1 is considered the most appropriate mechanism to achieve the intended objectives and outcomes.

The Department notes dwelling houses are permitted on the subject site under the existing E3 zoning, subject to compliance with the minimum lot size requirements of the clause 4.2A of the Wingecarribee LEP.

The subject site and surrounding lots (which already contain dwellings) are well below the 40 ha minimum subdivision lot size requirement in the LEP and the minimum lot size is not reflective of existing pattern of development in the locality.

The construction of a dwelling on the subject site would be compatible with residential development on adjacent sites, would give the landowner the same development opportunities afforded to surrounding properties, and is unlikely to result in land use conflicts.

For these reasons, the Department considers the planning proposal to be justified.

STRATEGIC ASSESSMENT

South East and Tablelands Regional Plan

Council has assessed the proposal against the South East and Tablelands Regional Plan and states that it is not inconsistent with the plan, specifically:

- Direction 24 - Deliver greater housing supply and choice;
- Direction 25 - Focus housing growth in locations that maximise infrastructure and services; and
- Direction 27 - Deliver more opportunities for affordable housing.

Comment – The planning proposal would facilitate the delivery of a small infill development providing additional housing for the region. The Department agrees with Council's assessment and is satisfied that the planning proposal is not inconsistent with the above directions, and the overall intent of the Regional Plan.

Local

Council noted the planning proposal is not inconsistent with the Wingecarribee Local Planning Strategy 2015-2031.

Council's Local Planning Strategy has been endorsed by the Department excluding Chapter 4 – Managing Housing Needs because sufficient potential greenfield housing release areas to meet housing needs across the LGA were not identified.

Chapter 4 identifies the need to ensure a supply of housing across the LGA for a range of needs. Council consider the planning proposal to be consistent with the objective of Chapter 4 by enabling (subject to development consent) additional housing stock in an established neighbourhood with access to essential services.

Comment – The planning proposal would facilitate the delivery of a small infill development providing additional housing for the region. The Department concurs that the planning proposal is not inconsistent with Council's Local Planning Strategy.

Section 9.1 Ministerial Directions

The planning proposal has identified applicable section 9.1 Directions.

Directions of particular relevance are discussed below:

2.1 Environmental Protection Zones

This Direction applies to planning proposals affecting environmental protection zones and aims to protect and conserve environmentally sensitive areas and ensure the environmental protection standards that apply to land are not reduced.

The site is zoned E3 and is within Sydney's Drinking Water Catchment and the Direction therefore applies to the planning proposal.

Much of the site is cleared providing sufficient room for the erection of a dwelling with minimal environmental impact potential.

The southern portion contains some Southern Highlands Shale Woodland which is a Threatened Ecological Community (TEC), however Council has resolved to initiate registration of a covenant on the property title to ensure no endangered vegetation is removed from the site at any time in the future.

Council is of the view residential development of the land represents a management risk to water quality and notes the planning proposal does not alter the requirement for any development (future dwelling) to properly address environmental issues, including potential vegetation and stormwater impacts.

Comment – The Department is satisfied the planning proposal is unlikely to have any significant impact on the environment and that any residual environmental issues can be suitably addressed through the development assessment process. It is noted that there are cleared areas on the site within which a dwelling could be erected.

The Secretary's delegate may be satisfied that any inconsistency with this Direction is of minor significance.

3.1 Residential Zones

This Direction applies to planning proposals affecting residential zones and other zones on which significant residential development is permitted or proposed. The Direction aims to encourage housing to meet local demand, ensuring new housing makes efficient use of existing infrastructure and services and minimise the impact of residential development on the environment.

Comment – While the Direction does not strictly apply due to the E3 zoning of the site, the Department considers the planning proposal to be consistent with the objectives of this Direction by facilitating a small infill development providing additional housing in an established neighbourhood with access to existing services.

4.4 Planning for Bushfire Protection

This Direction aims to protect life, the environment and property from bushfires and encourage the sound management of bushfire prone land. The Direction applies to all LGAs where Council is responsible for preparing bushfire prone land maps.

The subject site is mapped by Council as bushfire prone land. The Direction therefore requires the planning proposal to be referred to the NSW Rural Fire Service (RFS) prior to public exhibition.

The planning proposal is accompanied by a Bushfire Assessment Report (BAR) which identifies two potential dwelling site options and demonstrates both sites can comply with the relevant Asset Protection Zones requirements of RFS's *Planning for Bushfire Protection 2006*.

Comment – At this stage, the planning proposal is neither consistent nor inconsistent with this Direction as the Direction applies requires consultation with the RFS post Gateway determination and prior to public exhibition. The BAR accompanying the planning proposal provides assurance to the Department the requirements of the Direction can be met, subject to further consultation with RFS.

Recommendation: The Secretary's delegate can be satisfied that the requirements of the Direction can be met by including a condition on the Gateway Determination requiring consultation with the RFS prior to public exhibition.

5.2 Sydney Drinking Water Catchment

This Direction aims to protect water quality in Sydney's Drinking Water Catchment, including land within the Wingecarribee LGA.

This Direction requires consultation with the Sydney Catchment Authority (now Water NSW) prior to Gateway determination.

Council has advised the planning proposal does not represent a risk to water quality within the catchment as the site is within a developed residential area. Council is of the view residential development of the land represents a management risk to water quality and notes any development application/proposal would need to demonstrate a neutral or beneficial impact to water quality.

Comment – The Department is satisfied water catchment/quality issues associated with the potential construction of a dwelling on the subject site are likely to be minor and suitably addressed through the development assessment process.

Recommendation: The Secretary's delegate may be satisfied that any inconsistency with this Direction is of minor significance. Notwithstanding this, as a redundancy measure, it is recommended that the Gateway determination include a requirement for consultation with Water NSW.

State environmental planning policies

The planning proposal identifies all State Environmental Planning Policies (SEPPs) applying to the site. Key relevant SEPPs include:

- State Environmental Planning Policy No. 44 – Koala Habitat Protection;

Comment – Council has advised the subject site is unlikely to contain potential koala habitat and is not core koala habitat. An such, an environmental study in accordance with clause 16 of the SEPP is not considered to be required as part of the gateway determination.

- State Environmental Planning Policy No. 55 – Remediation of Land;

Comment – Clause 6 of the SEPP require planning authorities to consider whether land is contaminated and/or can be made suitable for the proposed use. Council has advised the land is not of a class identified in the SEPP (clause 6(4)) that requires consideration of potential contamination in preparing a planning instrument. Council notes the zoning/land use history of the site suggests it may be contaminated but considers this unlikely.

The Department concurs with Council and is satisfied that, on balance, the subject site is unlikely to be contaminated. The Department concludes potential contamination issues (including the requirement for contamination studies) can be suitably addressed through the development assessment process.

- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

Comment – As noted earlier in this report, the Department agrees with Council the planning proposal is unlikely to have any significant impact on water quality in the water catchment and is satisfied potential water quality impacts can be suitably addressed through the development assessment process.

The Department concludes the planning proposal is not inconsistent with relevant SEPPs.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal is likely to facilitate the provision of a dwelling on the subject site which will contribute to meeting the housing needs of the Wingecarribee community.

Environmental

Much of the site is cleared providing sufficient room for the erection of a dwelling with minimal environmental impact potential.

The southern portion contains some Southern Highlands Shale Woodland which is a Threatened Ecological Community (TEC), however Council has resolved to initiate registration of a covenant on the property title to ensure no endangered vegetation is removed from the site at any time in the future.

Council is of the view residential development of the land represents a management risk to water quality and notes the planning proposal does not alter the requirement for any development (future dwelling) to properly address environmental issues, including potential vegetation and stormwater impacts.

Comment – The Department is satisfied the planning proposal is unlikely to have any significant impact on the environment and that any residual environmental issues can be suitably addressed through the development assessment process.

Economic

Council considers the planning proposal will provide for the economic and best use of the land.

Comment – The Department concurs the proposal will provide for the orderly and economic use of the land. Noting the planning proposal seeks to enable the development of a single dwelling on the site, the Department concludes the economic significance of the planning proposal would be minor.

Infrastructure

Council has advised there is adequate public infrastructure (power, water etc) available to service a dwelling on the site and the local road network can accommodate any minor increase in traffic.

CONSULTATION

Community

Council has proposed a 28-day community consultation period which is considered adequate having regard to the nature of the planning proposal.

Agencies

Council has proposed consultation with Water NSW which is considered appropriate as the site is located in a water catchment.

Comment – Given the site is mapped as bushfire prone land and contains threatened vegetation, it is recommended that consultation also be undertaken with

RFS and the Office of Environment and Heritage (OEH). This will ensure potential bushfire and biodiversity issues are appropriately addressed.

TIME FRAME

Council anticipates a 5-month time frame to finalise the LEP. It is recommended that a 12-month period be provided to enable a buffer in case issues arise during consultation or any other part of the process.

LOCAL PLAN-MAKING AUTHORITY

Council has asked for plan-making authority in relation to this proposal. This is considered appropriate, as the proposal is minor in nature and is not inconsistent with regional and local strategic planning.

CONCLUSION

The planning proposal would facilitate the delivery of a small infill development providing additional housing for the region and is not inconsistent with applicable regional and local planning strategies.

The provision of a dwelling on the subject site which would be compatible with residential development on adjacent sites, would give the landowner the same development opportunities afforded to surrounding properties, and is unlikely to result in land use conflicts.

It is therefore recommended that the planning proposal should progress as submitted.

RECOMMENDATION

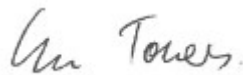
It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.1 Environmental Protection Zones and 5.2 Sydney Drinking Water Catchment are minor or justified; and
2. agree that the proposal will be consistent with Direction 4.4 Planning for Bushfire Protection following consultation with the NSW Rural Fire Service (prior to public exhibition).

It is recommended that the delegate of the Minister for Planning, 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 following public authorities:
 - Water NSW
 - Office of Environment and Heritage; and
 - NSW Rural Fire Service (prior to public exhibition of the planning proposal).
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 to make the plan.

5. Proposed Local Clauses Map/s should be prepared and included as part of the planning proposal prior to exhibition.



22/11/18

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23/11/2018

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