

Subject: PES - Planning Proposals for Rezoning Failford Road
Index: Planning Proposal for Rezoning Failford Road (Lot 1 DP 1177392 and Lot 2 DP 1177393)
Author: Strategic Land Use Planner - Rebecca Underwood
Strategic Committee Meeting: 10 February 2015

SUMMARY OF REPORT:

This report presents issues raised during the public exhibition of the Planning Proposal (PP) for Lot 1 DP 1177392, Failford Road, Failford. It also seeks Council's endorsement to finalise the PP which will have the effect of reducing the minimum lot size for subdivision over that part of the land where a lesser density of trees is required to be maintained (see Annexure C) along with clarifying the area to which the PP applies.

SUMMARY OF RECOMMENDATION:

That Council:

1. Endorse the planners responses to the matters raised in public submissions, as contained in this report.
2. In order to correct a minor mapping anomaly, include Lot 2 DP 1177393 in the physical description of the land to which the Planning Proposal applies.
3. Pursuant to s59 of the *Environmental Planning and Assessment Act, 1979*, adopt the Planning Proposal to amend the minimum lot size over part of Lot 1 DP 1177392 and Lot 2 DP 1177392 Failford Road, Failford as detailed in Attachment A to this report.
4. Submit the Planning Proposal to Parliamentary Counsel's Office for drafting of the corresponding Local Environmental Plan.
5. Once drafted by Parliamentary Counsel's Office, use its delegations under s59 of the *Environmental Planning and Assessment Act 1979*, as granted by the Office of Environment and Heritage in the Gateway Determination dated 29 September 2014, to make the plan.
6. Submit the draft Local Environmental Plan to the Office of Environment and Heritage for notification by the Parliamentary Counsel's Office on the NSW legislation website.

FINANCIAL/RESOURCE IMPLICATIONS:

The preparation of the Planning Proposal and the corresponding draft amendment to Great Lakes Local Environment Plan 2014 is being accommodated within the Strategic Planning Work Programme.

POLICY IMPLICATIONS:

Nil.

LEGAL IMPLICATIONS:

Nil.

LIST OF ANNEXURES:

- A: Map showing whole of Lot 1 DP 1177393.
- B: Map showing that part of Lot 1 DP 1177393 to which the Planning Proposal applies along with approved subdivision plan.
- C: Gateway Determination dated 29 September 2014.

LIST OF ATTACHMENTS:

- A: Planning Proposal - Draft Amendment No. 3 to Great Lakes Local Environmental Plan 2014 (Failford Road Reduced Lot Size).

Due to its large size, Attachment A has been circulated in hard copy to Councillors and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.

REPORT:

Background

On 13 May 2014, Council considered rezoning requests received during the public exhibition of its new comprehensive Local Environmental Plan. One of the matters considered was a request from the owner of Lot 1 DP 1177392, Failford Road, Failford to increase the potential lot yield of the land in question. The location of Lot 1 DP 1177393 is shown in Annexure A.

After considering the issues in association with the above requests, Council resolved to progress with a Planning Proposal (PP) to reduce the minimum lot size required for subdivision from 5000m² to 4000m² over that part of the site where a Property Vegetation Plan (PVP), executed under the Native Vegetation Act requires a lesser density of trees to be retained. Land to which the PP applies is depicted in Annexure B to this report.

In accordance with Council's resolution a PP was prepared and submitted to the Department of Planning and Environment (DPE). DPE granted a Gateway Determination on 29 September 2014 to proceed with the proposal (see Annexure C). The PP is contained in Attachment A.

Existing Approval – 52 Lot Subdivision

There is an existing Development Approval (DA) to subdivide the whole of Lot 1 DP 1177392 into 52 individual allotments. Of the 52 approved allotments, 23 are significantly affected by the PVP developed in association with the subdivision DA, and require the retention of identified trees. These allotments are located on the eastern portion of the site and are identified as lots 10-22 and 40-49 on the subdivision plan provided in Annexure B.

A reduction from 5000m² to 4000m² over those areas of the site not subject to the provisions of the PVP could increase the potential yield of the site from the approved 52 lots, to approximately 59 allotments. Council considers that this minor increase in development yield would not significantly change the character of the existing subdivision as approved, and would offset the unexpected costs of providing essential infrastructure in association with the original subdivision approval. The PP also takes into consideration the significant environmental offset provided by the land owner at the time the land was rezoned.

Public Exhibition

The PP was placed on public exhibition for a period of 23 days from Wednesday 26 November 2014 to Friday 19 December 2014.

- An advertisement was placed in the local newspaper;
- The statutory exhibition material was made available at the Forster Customer Service Centre and Council Chambers from Monday to Friday, 8:30 – 4:30pm; and
- Exhibition material was placed on Council's website during the exhibition period.

Land owners and those affected by the proposal were directly notified of the exhibition of the PP and asked for comments on the draft plan.

Public Submissions

During the exhibition period one (1) submission was received from a member of the public. The issues raised in the submission including the planners response are provided in the following table:

Submission Issue	Planner's Response
It appears that a lot size reduction is solely to appease the landowner to pay for extra costs.	Council's decision to reduce the minimum lot size over the western part of the land was made after careful consideration of the issues involved. The following matters were considered as part of this process: • Water and Sewer Infrastructure costs – including full funding of a new pump station and rising main in the south eastern corner of the land to provide sewage for the proposed allotments. This is in addition to substantial headwork charges from MidCoast Water. Note: Prior to the physical commencement of the above, additional construction details revealed costs over and above what were originally anticipated for this work. • Purchase, excision and ongoing management of the environmental offset lot provided under the PVP in association with the original subdivision DA. The environmental offset contains significant areas of Scribbly Gum Woodland habitat with a significantly higher density of trees than the subject site. • Construction of a landscape mound along The Lakes Way. Council considers the minor reduction in lot size over the western part of the lot not subject to the PVP would not significantly change the character of the existing approved subdivision and would offset the unforeseen cost in association with the subdivision approval. Council was of the view that the minor reduction in lot size would enable the development to proceed without any adverse impacts.
The PP states that the land will be developed in keeping with surrounding development. Based on this will the individual lots have constrictive building envelopes as does Highland Estate?	Building envelopes in Highlands Estate were created for bushfire protection purposes and for environmental reasons. The existing subdivision approval for Lot 1 DP 1177392 does not require a similar provision as the future lots are not subject to the same level of bushfire threat that exists in Highlands Estate. This does not mean that if a future DA is lodged for the site that this will not be required.
Building envelopes at Highlands Estate are tightly controlled with regards to the size and location of all buildings on the blocks. If the lots	See above comment.

within the new development don't have constrictive building envelopes, then Highlands Estate building constraints should be lifted in accordance with the same requirements as for Lot 1 DP 1177392.	
Highland Estate residents are tied up in a Community Plan, one that Council has no part in maintaining footpaths fire trails or parkland/bushland, this expense has been laid upon the residents under the Community Plan. Hopefully in keeping with the surrounding area the lot we are discussing will be Community Plan also?	The existing approval for Lot 1 DP 1177392 is for a Torrens Title subdivision. The type of subdivision arrangement is at the land owner/developers discretion.

Government agency submissions

In accordance with the Gateway Determination Council consulted with the Rural Fire Service who raised no issues in regards to the PP.

Mapping anomaly

The purpose of this PP was to reduce the minimum lot size required for subdivision from 5000m² to 4000m² over the area depicted in red outline as contained within Annexure B. The Gateway Determination, notification and exhibited PP are consistent with this aim. The report to the Strategic Committee meeting of 13 May 2014 clearly referred to a reduction in lot size over all of the western part of the land to which the 52 lot subdivision approval applied. This is the area where less trees had to be retained.

The request for a reduced lot size was made only by the owner of Lot 1 DP 1177392 and much of the discussion related to this particular property. There is another small lot (Lot 2 1177392) covered by the approval for the 52 lot subdivision. It was clearly Council's intention to include this other land (Lot 2 1177392) in the planning proposal. The mapping in the PP does include Lot 2 DP 1177392.

Council's resolution of 13 May 2014 only referred to Lot 1 DP 1177392 and the recommendation has been structured to address on this oversight.

CONCLUSION

As a result of the exhibition period, there are no changes proposed to the draft PP other than to make it clear that it applies to Lot 2 DP 1177393.

It is now recommended that Council forward a copy of the PP to Parliamentary Counsels Office along with a copy of the Gateway Determination with a request to draft and finalise the plan. Once Parliamentary Counsels Office has drafted and finalised the plan Council will use its delegations issued in accordance with the Gateway Determination for to make the plan.

RECOMMENDATION:

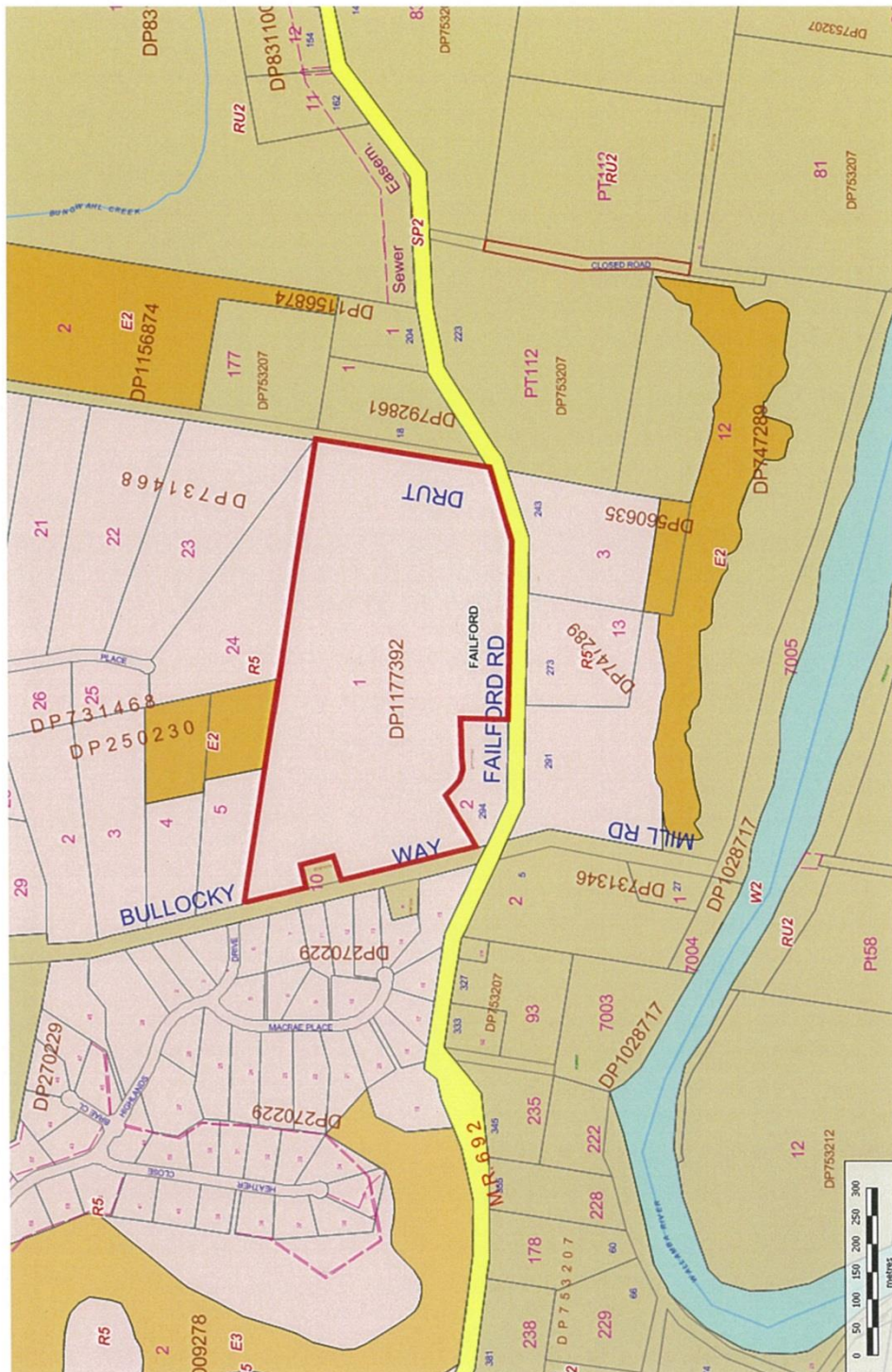
That Council:

1. Endorse the planners responses to the matters raised in public submissions, as contained in this report.

2. In order to correct a minor mapping anomaly, include Lot 2 DP 1177393 in the physical description of the land to which the Planning Proposal applies.
3. Pursuant to s59 of the *Environmental Planning and Assessment Act, 1979*, adopt the Planning Proposal to amend the minimum lot size over part of Lot 1 DP 1177392 and Lot 2 DP 1177392 Failford Road, Failford as detailed in Attachment A to this report.
4. Submit the Planning Proposal to Parliamentary Counsel's Office for drafting of the corresponding Local Environmental Plan.
5. Once drafted by Parliamentary Counsel's Office, use its delegations under s59 of the *Environmental Planning and Assessment Act 1979*, as granted by the Office of Environment and Heritage in the Gateway Determination dated 29 September 2014, to make the plan.
6. Submit the draft Local Environmental Plan to the Office of Environment and Heritage for notification by the Parliamentary Counsel's Office on the NSW legislation website.

A: Map showing whole of Lot 1 DP 1177393.

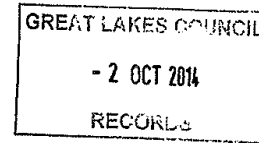
A: Map showing whole of Lot 1 DP 1177393.



B: Map showing that part of Lot 1 DP 1177393 to which the Planning Proposal applies along with approved subdivision plan.



C: Gateway Determination dated 29 September 2014.



Mr Glenn Handford
General Manager
Great Lakes Council
PO Box 450
FORSTER NSW 2428

Our ref: PP_2014_GLAKE_004_00 (14/15796)
Your ref: SP-PP-17

Att: Rebecca Underwood

Dear Mr Handford,

Planning Proposal to amend Great Lakes Local Environmental Plan 2014 – Reduced minimum lot size at Failford Road - PP_2014_GLAKE_004_00

I am writing in response to your Council's letter dated 15 September 2014 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to reduce the minimum lot size for land at Failford Road, Failford from 5000m² to 4000m².

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with S117 Direction 4.1 Acid Sulfate Soils and 4.4 Flood Prone Land are of minor significance. No further approval is required in relation to these Directions.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Attached for your assistance is a simplified guide to the plan making process and reporting requirements to ensure that the LEP Tracking System is kept updated.

Should you have any questions regarding this matter, I have arranged for Dylan Meade from the Hunter office to assist you. Mr Meade can be contacted on (02) 4904 2718.

Yours sincerely,

29 September

**David Rowland
General Manager
Hunter and Central Coast Region
Planning Services**



Gateway Determination

Planning Proposal (Department Ref: PP_2014_GLAKE_004_00): to reduce the minimum lot size for land at Failford Road, Failford from 5000m² to 4000m².

I, the General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Great Lakes Local Environmental Plan (LEP) 2013 to reduce the minimum lot size for land at Failford Road, Failford from 5000m² to 4000m² should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Planning & Infrastructure 2013)* and must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning 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 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
2. Consultation is required with the NSW Rural Fire Service under section 56(2)(d) of the EP&A Act in respect of Section 117 Direction 4.4 Planning for Bushfire Protection. The NSW Rural Fire Service 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.
3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).
4. The timeframe for completing the LEP is to be **6 months** from the week following the date of the Gateway determination.

Dated 29th day of September 2014.

Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning



Planning & Environment

WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Great Lakes Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2014_GLAKE_004_00	Planning proposal to reduce the minimum lot size for land at Failford Road, Failford from 5000m ² to 4000m ²

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guideline for the preparation of local environmental plans" and "A guide to preparing planning proposals".

Dated 29th September 2014

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegated plan making reporting requirements

(attachment 5 from "A Guide to preparing local environmental plans)

Notes:

- The department will fill in the details of Table 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the Department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department with the RPA's request to have the LEP notified

Table 1 – To be completed by the Department

Stage	Date/Details
Planning Proposal Number	PP_2014_GLAKE_004_00
Date Sent to Department under s56	17/9/14
Gateway determination date	29/9/14

Table 2 – To be completed by the RPA

Stage	Date/Details
Dates draft LEP exhibited	
Date of public hearing (if held)	
Date sent to PCO seeking Opinion	
Date Opinion received	
Date Council Resolved to Adopt LEP	
Date LEP made by GM (or other) under delegation	
Date sent to Department requesting notification (planmaking.monitoring@planning.nsw.gov.au)	
Brief Description of Purpose of planning proposal	

Table 3 – To be completed by the Department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

PLAN MAKING PROCESS POST GATEWAY – FOR DELEGATED MATTERS

1. Post Exhibition Review

- If planning proposal is revised, council is to email a copy of the revised proposal to the regional planning team - hunter@planning.nsw.gov.au under Section 58(2) of the Act prior to requesting LEP to be made.
- If changes to planning proposal are substantial then may no longer be authorised by the Gateway determination and a new Gateway may be required before LEP is made. Councils are encouraged to contact regional planning team to seek advice before finalising the LEP under delegation.
- Any unresolved s117 directions must be finalised before progressing with LEP

2. Legal Drafting of the LEP

- Council's request to draft and finalise the plans should be made directly to Parliamentary Counsel's Office (PCO) - parliamentary.counsel@pco.nsw.gov.au as soon as possible to ensure timeframes are met.
- The request to parliamentary.counsel@pco.nsw.gov.au is to include the planning proposal, a copy of the gateway determination and details of any change to the proposal arising from the gateway determination. The name and contact details of the Council contact officer should also be supplied.
- A copy of the request should also be forwarded to the department for administrative purposes only - planmaking.monitoring@planning.nsw.gov.au.

3. Maps

- Council should upload the maps and GIS data directly to the department's FTP site (ftp://lepup:lep_upload@203.3.194.247/).
- Once uploaded Council should email POCGIS@planning.nsw.gov.au and advise that maps are available for checking. Any questions can be directed to Brent Condcliffe or Noo Porima phone 02 9228 6542.
- Unless otherwise negotiated the department will only undertake a technical review of any maps to ensure they comply with LEP mapping technical guidelines.
- No maps or mapping/GIS data is to be sent directly to PCO

4. Making of the draft LEP s59

- Council's delegate resolves to finalise the LEP by signing the instrument (see example below).
- If council's delegate decides not to make plan or defer a matter, council should liaise with regional team for assistance.
- Council must also notify PCO if plan not proceeding

5. Notification of LEP

- Council advises plan is made and requests the department to notify the plan to planmaking.monitoring@planning.nsw.gov.au and the following documents to be provided for notification
 1. Signed LEP - which includes full name of LEP and PCO file reference,
 2. Signed map cover sheet and associated maps,
 3. Name and position of the delegate who signed the LEP and date,
 4. Completed Attachment 5 - delegated plan making reporting template,
 5. Copy of council's (s59) assessment which is usually the council, report/minutes and if revised, a copy of council's revised planning proposal
 6. PC opinion.
- Request to planmaking.monitoring@planning.nsw.gov.au by Tuesday of the week will enable notification by Friday.

Example of signature front page

Fred Smith
General Manager

As delegate for the Minister for Planning
12/12/14

User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Resolved Items Action Statement

Action is required for the following item as per the Council Decision or Resolution Under Delegated Authority.

Subject: PES - Planning Proposals for Rezoning Failford Road
Index: Planning Proposal for Rezoning Failford Road (Lot 1 DP 1177392 and Lot 2 DP 1177393)
Author: Strategic Land Use Planner - Rebecca Underwood
Strategic Committee Meeting: 10 February 2015

RECOMMENDATION:

That Council:

7. Endorse the planners responses to the matters raised in public submissions, as contained in this report.
8. In order to correct a minor mapping anomaly, include Lot 2 DP 1177393 in the physical description of the land to which the Planning Proposal applies.
9. Pursuant to s59 of the *Environmental Planning and Assessment Act, 1979*, adopt the Planning Proposal to amend the minimum lot size over part of Lot 1 DP 1177392 and Lot 2 DP 1177392 Failford Road, Failford as detailed in Attachment A to this report.
10. Submit the Planning Proposal to Parliamentary Counsel's Office for drafting of the corresponding Local Environmental Plan.
11. Once drafted by Parliamentary Counsel's Office, use its delegations under s59 of the *Environmental Planning and Assessment Act 1979*, as granted by the Office of Environment and Heritage in the Gateway Determination dated 29 September 2014, to make the plan.
12. Submit the draft Local Environmental Plan to the Office of Environment and Heritage for notification by the Parliamentary Counsel's Office on the NSW legislation website.

RESOLUTION

(Moved L Roberts/Seconded J Weate)

That the above recommendation be adopted.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

The results of this division were as follows:

FOR VOTE - Cr J McWilliams, Cr J Morwitch, Cr L Roberts, Cr C McCaskie, Cr A Summers, Cr L
Gill, Cr L Vaughan, Cr J Weate
ABSENT. DID NOT VOTE - Cr K Hutchinson
