

WYONG LGA - Miscellaneous Amendment 2

Proposal Title : **WYONG LGA - Miscellaneous Amendment 2**

Proposal Summary : **This amendment seeks to address a number of issues that have arisen during the operation of Wyong LEP 2013 and includes:**
- correction of errors and anomalies; and
- clarification of certain development provisions within clauses.

PP Number : **PP_2016_WYONG_002_00** Dop File No : **16/04163**

Proposal Details

Date Planning Proposal Received :	19-Apr-2016	LGA covered :	Wyong
Region :	Hunter	RPA :	Wyong Shire Council
State Electorate :	SWANSEA THE ENTRANCE WYONG	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :		City :		Postcode :	
Suburb :					
Land Parcel :	LGA wide application				

DoP Planning Officer Contact Details

Contact Name : **Glenn Hornal**
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RPA Contact Details

Contact Name : **Lynda Hirst**
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DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Central Coast Regional Strategy	Consistent with Strategy :	Yes

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MDP Number :

Date of Release :

Area of Release (Ha) **0.00**

Type of Release (eg

N/A

:

Residential /

Employment land) :

No. of Lots : **0**

No. of Dwellings **0**

(where relevant) :

Gross Floor Area : **0**

No of Jobs Created : **0**

The NSW Government **Yes**

Lobbyists Code of

Conduct has been

complied with :

If No, comment :

Have there been **No**

meetings or

communications with

registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting

Notes :

ADDITIONAL INFORMATION

Council was asked to clarify a number of matters in the planning proposal. Council provided a revised planning proposal on 31 March 2016 and requested additional land to be included in the planning proposal on 19 April 2016.

External Supporting

Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

The objective of this proposal is to amend Wyong LEP 2013 by:

- correcting errors and anomalies; and

- clarifying certain development provisions within clauses.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment :

The explanation of provisions includes a list of the proposed changes. The proposed amendments relate to mapping and instrument amendments and are summarised below:

LAND ZONING MAPS

- **44 Thomas Walker Drive, Chittaway Bay**

This site was zone 2(a) under Wyong LEP 1991 and was erroneously zoned RE1 under Wyong LEP 2013. The land is privately owned and Council seek to rectify the error by rezoning it to R2.

The land is identified on Council's Acid Sulfate Soils Maps, is bushfire prone and located within the coastal zone under SEPP 71. A 450m2 minimum lot size applies to the land and rezoning the land to R2 would be consistent with the adjoining residential land uses.

- **34 Albert Warner Drive**

Part of the land is zoned RE1 however it is no longer required for the purposes of wetlands and storage and it is proposed to be rezoned to R2. Council proposes to remove part of the

land from the Land Reservation Acquisition Map and amend the minimum lot size to 450m2.

The land is bushfire prone and contains an existing dwelling on the site. Part of the land is no longer required by Council as 'local open space' for wetlands and storage and its removal from the Land Reservation Acquisition Map and rezoning to R2 is consistent with the surrounding residential land uses.

- 77-91 and 93-123 Warnervale Road, Warnervale.

Part of the land is zoned RE1 but is no longer needed for recreation purposes and Council proposes to rezone the land to SP2 Infrastructure (Stormwater Management).

The land contains two lots (Lot 72 DP 7091 and Lot 101 DP 829060) with an existing dwelling on each lot. Both lots are bushfire prone and Lot 101 is flood prone. Council has advised the RE1 land is no longer needed for recreation purposes and proposes to rezone the land to SP2 for stormwater management.

The 2 lots were part of a land release rezoning to enable development for residential, employment, commercial, environmental and recreational purposes in Precinct 7A and rezoned when Wyong LEP 2013 was gazetted. Open space provision and the subsequent RE1 zones were identified through supporting studies including an 'Open Space and Recreation Strategy' prepared by Council. The Strategy identified (p17) the multiple use open space/stormwater management will likely have a RE1 zone. The RE1 zone provides recreational opportunities for existing and future residents and the removal of the zone for Special Purposes will need to be justified. Council should provide discussion on the existing and future demand for open space in the area demonstrating the loss will not result in a deficit in the existing and planned open space requirements.

- 2 Cambridge Circle, Ourimbah

The land is zoned SP2 Emergency Services and the land contained a former Fire Station. The land is now in private ownership and Council proposes an R2 zone and applying a 450m2 minimum lot size.

The land is flood prone and the use for the land for a Fire Station is no longer required. Applying a R2 and 450m2 lot size would be consistent with the surrounding residential land uses.

- 19 Roper Road, Blue Haven

Council has advised the R2 zoning does not reflect the intended future use of the site. A development application for an local shopping centre (Aldi supermarket and 3 shops) was approved on the site and Council seeks to rezone the land to B1. The DA was approved in May 2013 under a local provision (clause 59) of Wyong LEP 1991 which permitted a local shopping centre on land in the former 2(e) Urban Release Area Zone in this location. The Wyong LEP 2013 when finalised zoned the land R2.

The land is bushfire prone, located within Swansea North Entrance Mine Subsidence District and within the coastal zone under SEPP 71. The rezoning to reflect the intended use for a local shopping centre corrects the anomaly and would service the local needs of the surrounding residential population. Council has advised an additional lot should be included in the rezoning as the DA approval applied to two lots (Lot 1 DP 1191698 and Lot 2 DP 1191698). A condition will be added to included Lot 2 DP 1191698 in the 'explanation of provisions'.

- 220 Vales Road (Lot 1 DP 1195202), Mannering Park

The site is zoned RE1, W2 and E2 and Council consider this is a mapping anomaly as the site contains infrastructure (an outlet canal) for the Vales Point Power Station and is proposed to be zoned SP2.

The lot is bushfire prone, flood prone, within Swansea North Entrance Mine Subsidence District, located in close proximity to a SEPP 14 Wetland, within the coastal zone and a sensitive coastal location under SEPP 71 and contains Class 1, 2 and 5 Acid Sulfate Soils. Given the site contains existing infrastructure for the Power Station, rezoning the land to SP2 would be consistent with the surrounding power station land uses however consultation with Crown Lands should also occur to confirm whether any Crown Land is affected.

- **220A Vales Road (Lot 1 DP 1198253), Mannering Point**

The site is zoned RE1 and SP2 and contains infrastructure (an inlet canal) for the Vales Point Power Station and is proposed to be zoned SP2.

The lot is bushfire prone, flood prone, within Swansea North Entrance Mine Subsidence District, within the SEPP 71 Coastal Zone and is a sensitive coastal location, and contains Class 1, 2 and 5 Acid Sulfate Soils.

Given the site contains existing infrastructure for the Power Station, rezoning the land to SP2 would be consistent with the surrounding power station land uses however consultation with Crown Lands should also occur to confirm whether any Crown Land is affected.

- **220 Vales Road (Lot 1 DP 562143 and Lot 109 DP 755266), Mannering Point**

The site is zoned SP2 and E2. Council considers the vegetation is not consistent with the definition of an endangered ecological community and seeks to rezone the E2 land to SP2.

The lot is bushfire prone and within Swansea North Entrance Mine Subsidence District. Council seek to rezone E2 land to SP2 as the site forms part of Vales Point Ash Dam. Subject to confirming the status of the EEC in consultation with OEH the SP2 zoning would be consistent with the surrounding power station land uses.

LOT SIZE MAPS

- **14-36 Ourimbah Street, Ourimbah**

The land is zoned E3 but has no minimum lot size. Council proposes to apply a 40 minimum lot size to be consistent with other E3 zoned land in the LGA.

The land is bushfire and flood prone. Applying a lot size of 40Ha to the lots is consistent with other E3 Environmental Management zones in the LGA.

- **11, 20 and 30 Pacific Highway, Doyalson**

The land is zoned RU6 but has no minimum lot size. Council proposes to apply a 40 minimum lot size to be consistent with other RU6 zoned land in the LGA.

The land is bushfire prone and located within the Swansea North Entrance Mine Subsidence District. Applying a lot size of 40Ha to the 3 lots is consistent with other RU6 Transition zones in the LGA.

- **145 Pacific Highway Ourimbah**

The land is zoned R2 and has a 40ha lot size. Council proposes to apply a 450m2 minimum lot size to the R2 zone land.

The land is bushfire and flood prone. Applying a lot size of 450m2 to the R2 part of the lot is consistent with the other surrounding R2 zoned land.

23 and 25 The Ridge, Wadalba

Both sites are zoned R2 however contain in part of the site a 40ha minimum lot size.

Council seeks to apply a 450m² minimum lot size.

The land is bushfire prone and within the Swansea North Entrance No 1 Mine Subsidence District. Applying a lot size of 450m² is consistent with the other surrounding R2 zoned land.

LAND RESERVATION ACQUISITION MAPS

- A number of sites have been identified for road widening by the Roads and Maritime Services. Council proposes to include the properties on the LRA Maps and apply an SP2 zoning on the land Zoning Maps.

Council proposes to include the sites on the LRA Maps and and apply an SP2 Infrastructure - Classified Road zone on the Land Zoning Maps. There are 6 LRA Map tiles affected and will also require amendments to the 6 associated Land Zoning Map tiles as well as formal approval from the RMS as required by S117 Direction 6.2 Reserving Land for Public Purposes.

INSTRUMENT CHANGES

- Permitted or Prohibited Development

Council seeks to prohibit 'vehicle repair stations' in the B7 zone as they were previously prohibited in the equivalent 4(c) Business Park zone under Wyong LEP 1991. Council has advised 'vehicle repair stations' are still permissible in a number of other zones (i.e. B5, B6, IN1 and IN2). Given the permissibility of the 'vehicle repair stations' in other land use zones, prohibiting 'vehicle repair stations' in the B7 zone could be supported.

- Principal Development Standards

Clause 4.1B(4) relates to dual occupancy development and only permits subdivision if the DA for subdivision is done at the same time as the erection of the dual occupancy. Council seeks to amend the clause to facilitate the subdivision of existing lawfully created dual occupancies.

It is reasonable to enable the subdivision of existing dual occupancies as the operation of clause 4.1B only permits subdivision as part of a development application for a new dual occupancy development. Modifying the clause to enable subdivision for dual occupancy developments only is considered appropriate however Council should clarify whether any additional considerations should apply (eg. a minimum lot size).

- Clause 7.11 Key Sites

Council seeks to include a requirement for increased public benefit in return for increased development potential on nominated Key Sites and identifies a formula from its Key Sites DCP which identifies the public benefit as 1.5 or 2 times the S94 contribution depending on the height bonus.

The specific nature of Council's provision may be problematic at PC drafting given the EP&A Act identifies 3 ways development contributions may be collected:

- A voluntary planning agreement
- fixed development consent levies or
- Section 96 contribution as a condition of development consent.

The inclusion of public benefit for additional development potential is generally supported and was endorsed by the Department through the existing clause 7.11 Key Sites provision when Wyong LEP 2013 was made. There is no objection to Council seeking to strengthen the existing provision however the method of how this occurs would need to be consistent with the EP&A Act. Further discussion on the wording between the Department and Council is recommended and Council should remove the specific reference to the formula from the planning proposal before exhibition and identify what it seeks to achieve in general terms noting the wording may be changed during legal drafting.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

- SEPP No 14—Coastal Wetlands**
- SEPP No 21—Caravan Parks**
- SEPP No 26—Littoral Rainforests**
- SEPP No 30—Intensive Agriculture**
- SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)**
- SEPP No 33—Hazardous and Offensive Development**
- SEPP No 36—Manufactured Home Estates**
- SEPP No 44—Koala Habitat Protection**
- SEPP No 50—Canal Estate Development**
- SEPP No 55—Remediation of Land**
- SEPP No 62—Sustainable Aquaculture**
- SEPP No 64—Advertising and Signage**
- SEPP No 65—Design Quality of Residential Flat Development**
- SEPP No 71—Coastal Protection**
- SEPP (Building Sustainability Index: BASIX) 2004**
- SEPP (Exempt and Complying Development Codes) 2008**
- SEPP (Housing for Seniors or People with a Disability) 2004**
- SEPP (Infrastructure) 2007**
- SEPP (Major Projects) 2005**
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007**
- SEPP (Affordable Rental Housing) 2009**

e) List any other matters that need to be considered :

Council has identified the proposal is consistent with the relevant SEPPs.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

S117 DIRECTIONS

The planning proposal is consistent with S117 Directions except where discussed below:

1.3 Mining, Petroleum Production and Extractive Industries - Council should address consistency with the direction following consultation with NSW Trade and Investment - Resources and Energy.

2.1 Environment Protection Zones

Council has identified a number of proposed zoning changes and provisions that affect environmental land and reduce the environmental protection standards that apply and is therefore inconsistent with the direction. The inconsistency will need to be justified following consultation with OEH.

3.1 Residential Zones

There are a number of proposed rezonings and provisions that affect residential land. Council proposes to rezone 19 Roper Road, Blue Haven from R2 Low Density Residential to B1 Neighborhood Centre which reduces the number of residential uses on the land. Given shop top housing is a permissible use in the B1 zone the Secretary could agree the inconsistency is of minor significance.

4.1 Acid Sulfate Soils

A number of sites are affected by land with a probability of containing acid sulfate soils and Council considers these matters will be addressed at the DA stage. The proposal is inconsistent with the direction and the inconsistency needs to be justified by a study or be of minor significance. Given the Wyong LEP 2013 contains existing provisions to regulate development on land containing acid sulfate soils the Secretary could agree the inconsistency is of minor significance.

4.2 Mine Subsidence and Unstable Land

The amendments proposed affect land on a number of sites identified within a Mine Subsidence District. Council is required to consult with the Mine Subsidence Board before addressing consistency with the direction.

4.3 Flood Prone Land

Council proposes to rezone 2 Cambridge Circle, Ourimbah and two sites at Vales Point Power Station and alter the MLS from 40Ha to 450m2 at 145 Pacific Highway, Ourimbah all of which are located on flood prone land and inconsistent with the Direction. Given the existing provisions under clause 7.2 Flood Planning and clause 7.3 Floodplain Risk Management in Wyong LEP 2013 regulate development on flood prone land before development consent can be granted and 145 Pacific Hwy is already developed for residential purposes the Secretary could agree the inconsistency is of minor significance.

4.4 Planning for Bushfire Protection

The planning proposal will affect land that is identified as being bushfire prone. Consultation with NSW Rural Fire Service is required before consistency with the direction can be determined.

6.2 Reserving Land for Public Purposes

Council is required to consult with Roads and Maritime Services and gain its agreement for the acquisition of the various sites for road widening before the Secretary can approve the alteration.

Two sites at Vales Point Power Station (220 Vales Road, Mannering Park and 220A Vales Road, Mannering Point) are proposed to be rezoned from RE1 to SP2 and require the approval of the public authority before the Secretary can approve the alteration. The site has recently been sold by Delta Electricity to Sunset Power International. Council should consult with Crown Lands to confirm whether any Crown land is affected by the rezonings.

Rezoning 44 Thomas Walker Drive, Chittaway Bay and 34 Albert Warner Drive, Warnervale from RE1 to R2 and 77-91 and 93-123 Warnervale Road, Warnervale from RE1 to SP2, Warnervale is supported as it will correct erroneous zoning and apply an appropriate zone subject to justification from Council that the land is no longer needed for local open space.

Under the direction the land cannot be altered without the approval of the Secretary. Council will need to seek the approval of the relevant public authority for the alterations to the RE1 zoned land to address the requirements of the direction.

6.3 Site Specific Provisions

The site specific provision proposed under clause 7.11 will only apply to identified Key Sites. The planning proposal seeks to impose additional requirements in addition to those already contained in the LEP and therefore is inconsistent with the direction. A planning proposal can be inconsistent with the direction provided it is of minor significance. Council will need to justify the inconsistency and seek the Secretary's agreement before the plan is made.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The mapping provided shows existing and proposed zones and lot sizes and which sites are to be included on the land reservation maps and are sufficient for assessment.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has proposed a 28 day exhibition period. This is supported.**

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **TIMELINE: Council anticipates finalisation in November 2016 (approximately 8 months). The timeframe appears tight and a 12 month timeframe to make the plan is recommended.**

DELEGATION: Council resolved to advise the Department it does not intend to apply for plan making delegations for the rezoning. This is supported given most of the Councillors have interests in the land being rezoned.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The planning proposal seeks to amend Wyong LEP 2013.**

Assessment Criteria

Need for planning proposal : **Council has advised the proposal is not the result of a specific study or report and is primarily a housekeeping exercise to resolve mapping, clause errors and anomalies in Wyong LEP 2013.**

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Consistency with strategic planning framework :

Central Coast Regional Strategy (CCRS)

Generally the proposal is consistent with the broad goals and actions of the CCRS and will assist to a minor extent in meeting regional dwelling and employment targets.

North Wyong Shire Structure Plan (NWSSP)

Some amendments are located within the NWSSP Area however the amendments are mostly minor and resolve mapping, clause errors and anomalies in Wyong LEP 2013. The proposal is not inconsistent with the NWSSP.

Draft Central Coast Regional Plan (dCCRP)

The matters are generally minor in nature to resolve mapping, clause errors and anomalies in Wyong LEP 2013. The proposal is not considered to be inconsistent with the dCCRP.

Wyong Community Strategic Plan 2030

Council has advised the proposal is consistent with the relevant parts of its Community Strategic Plan.

Settlement Strategy 2013

Council has advised the proposed amendments are mostly administrative and are consistent with its Settlement Strategy.

Economic Development Strategy (EDS) 2014

Council considers the proposal meets the objectives of its EDS.

Environmental social economic impacts :

ENVIRONMENTAL

Council has advised the planning proposal will have no detrimental effects upon critical habitats, threatened species or ecological communities. Generally this is acknowledged however some sites zoned for environmental protection purposes are proposed to be rezoned and the appropriateness of the zones proposed should be reviewed by OEH during agency consultation.

SOCIAL/ECONOMIC

Council has advised the proposal will provide some certainty for affected landowners as a result of correcting anomalies within the Wyong LEP 2013.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage
Mine Subsidence Board
NSW Rural Fire Service
Transport for NSW
Transport for NSW - Roads and Maritime Services
Other**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

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Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal - Miscellaneous Amendment 2 - April 2016.pdf	Proposal	Yes
Attachment 1 - Council Report and Resolution - 9 December 2015 .pdf	Proposal	Yes
Attachment 2 - Current & Proposed Maps - Land Zoning.pdf	Proposal	Yes
Attachment 3 - Current & Proposed Maps - Lot Size.pdf	Proposal	Yes
Attachment 4 - Current & Proposed Maps - Land Reservation Acquisition.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
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- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**

Additional Information :

The Planning Proposal should proceed subject to the following conditions:

1. Council update the planning proposals 'explanation of provisions' to:

- remove the reference to the Key Sites DCP formula and identify in general terms the intention to include a provision strengthening the requirement for public benefit in clause 7.11 noting the final wording may be subject to change or revision during legal drafting.

- identify Lot 2 DP1191698 is to be included in the rezoning at 19 Roper Road, Blue Haven.

- clarify whether any additional considerations should apply to the proposed clause that will permit dual occupancies (eg. a minimum lot size).

2. Council is to update the planning proposal to justify the loss of RE1 land at 77-91 and 93-123 Warnervale Road, Warnervale and demonstrate it will not result in a deficit in the existing and planned open space requirements on land in the former Precinct 7A.

3. Council is to update the planning proposal to include sufficient information to adequately demonstrate consistency or justify any inconsistency with the following S117 Directions:

- 1.3 Mining, Petroleum Production and Extractive Industries
- 2.1 Environment Protection Zones
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection.
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

3. The Secretary agrees the inconsistency with S.117 Directions 3.1 Residential Zones, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance.

4. Council is to satisfy the requirements of State Environmental Planning Policy (SEPP) 55 - Remediation of Land.

5. The planning proposal be made publicly available for a minimum of 28 days.

6. Consultation with:

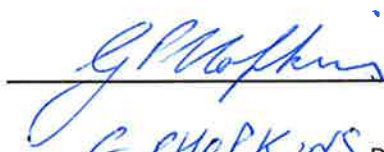
- Department of Primary Industry – Lands (Crown Lands)
- Mine Subsidence Board
- NSW Trade & Investment, Resources & Energy
- NSW Rural Fire Service
- Office of Environment and Heritage
- Transport for NSW – Roads and Maritime Services
- Sunset Power International Pty Ltd
- Department of Planning and Environment

7. 12 months timeframe to make the plan.

8. The Department retains plan making delegation for this planning proposal.

Supporting Reasons : *

Signature:



Printed Name:

G. HOPKINS

Date:

6 May 2016

