



IRF21/4563

Gateway determination report – PP-2021-4679

Amendment to the Mid-Western Regional LEP 2012 to permit a bulk storage and reload facility (heavy industry) at 540 Buckaroo Road, Buckaroo.

November 21



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal prepared by Ryan Geospatial dated July 2021
Council Report prepared by Mid-Western Regional Council dated 13 October 2021

1 Planning proposal

1.1 Overview

Table 1 Planning proposal details

LGA	LGA name
PPA	Mid-Western Regional Council
NAME	Amendment to the Mid-Western Regional LEP 2012 (MWRLEP) to permit a bulk storage and reload facility (heavy industry) at 540 Buckaroo Road, Buckaroo, Lot 2 in DP1227923.
NUMBER	PP-2021-4679
LEP TO BE AMENDED	Mid-Western Regional LEP 2012
ADDRESS	540 Buckaroo Road, Buckaroo
DESCRIPTION	Lot 2 DP1227923
RECEIVED	1/11/2021
FILE NO.	IRF21/4563
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

1.2 Objectives of planning proposal

The planning proposal adequately articulates the objective of the LEP amendment which is to:

- permit a proposed bulk storage and reload facility (heavy industry) at 540 Buckaroo Road, Buckaroo (subject site).

1.3 Explanation of provisions

The planning proposal contains an explanation of provisions on page 8 which adequately explains that the objective of the amendment can be achieved by including the subject site in Schedule 1 Additional permitted uses of the Mid-Western Regional LEP 2012. Further details of alternative methods to provide permissibility are discussed below in Part 2, Question 2 of this report.

The proposed development is to store a range of Dangerous Goods that require compliance with Australian Standards and explosive storage controls. These details are provided on pages 4 and 6 of the planning proposal.

1.4 Site description and surrounding area

The subject site is located approximately 7km north-east of Mudgee on a 69.14ha land parcel with frontage to Buckaroo Road (refer to Figures 1, 2 and 3). The land is zoned RU1 Primary Production under the MWLEP. The land is vacant and contains approximately 20.4ha of cleared land used historically for grazing with the remainder being heavily vegetated with steeper terrain in this area, rising in elevation towards the south-west.

An established haul road runs through the south-west corner of the lot, connecting an existing Council owned gravel pit with a privately owned limestone quarry on the eastern adjoining lot.

The subject site has three (3) adjoining dwelling houses with each approximately set back from the proposed development footprint 900m (north), 500m (east) and 750m (south-east) respectively as depicted on Figure 1.

The subject site adjoins Crown Land in the south, called Mount Buckaroo Reserve, which extends into steep terrain with extensive vegetation zoned E3 Environmental Management. Land to the north is zoned R5 Large Lot Residential while the land directly west, northwest, and east of the site is zoned RU1 Primary Production with a mix of vegetated land and cleared grazing land.

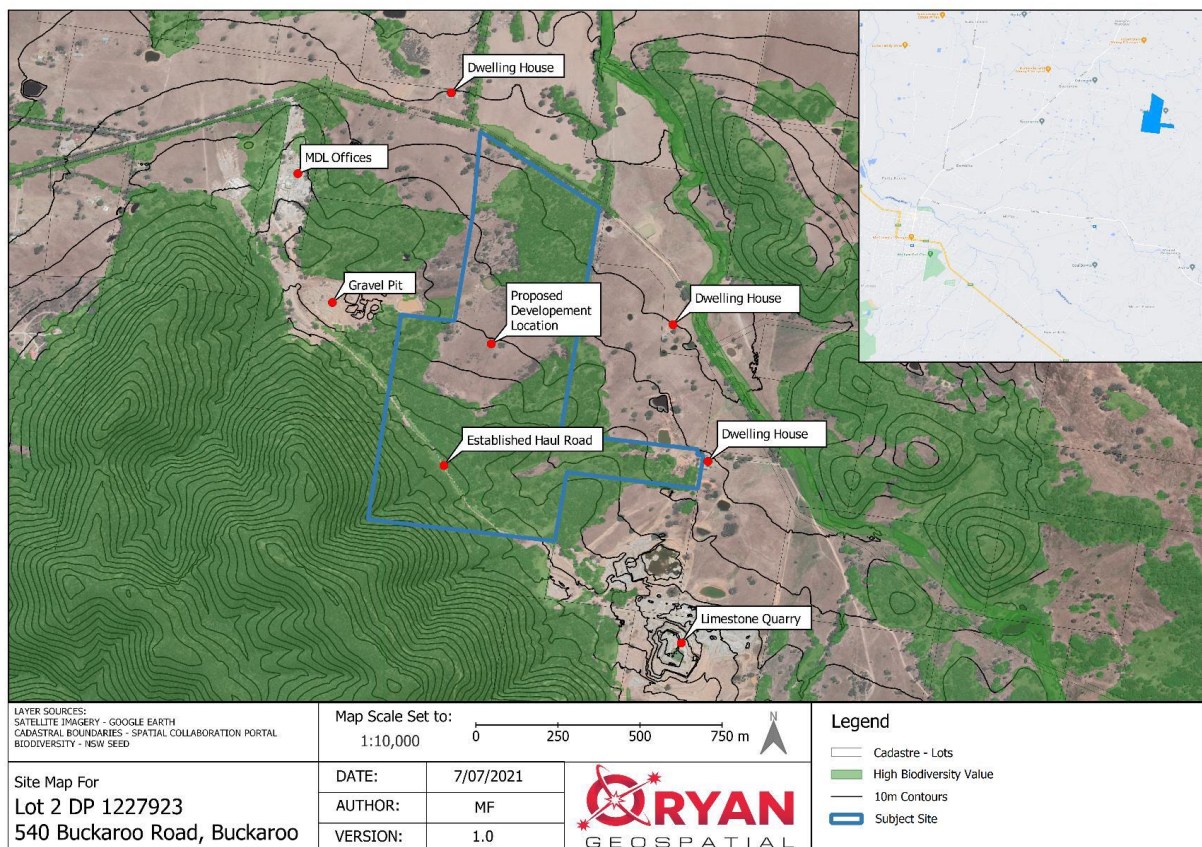


Figure 1- Subject site – locality map and surrounding land use (extract page 5 of planning proposal)

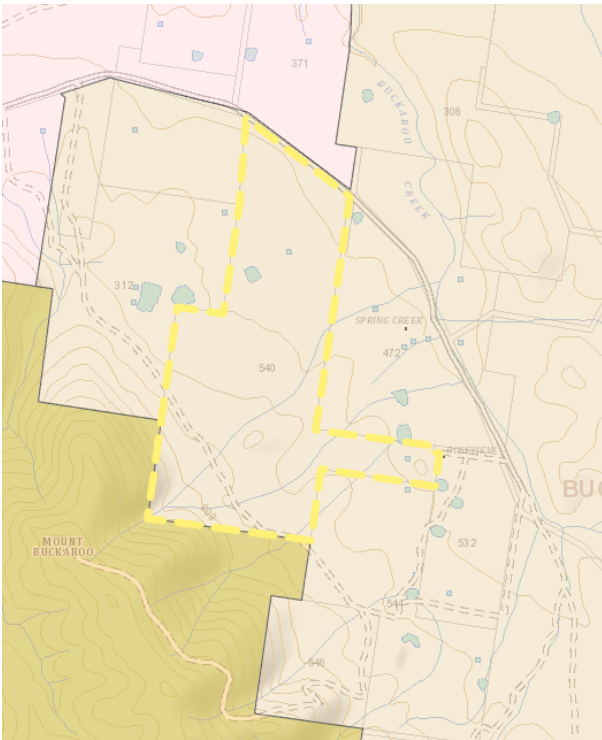


Figure 2 - Subject site locality map (ePlanning Spatial Viewer)



Figure 3 - Subject site context (ePlanning Spatial Viewer)

1.5 Mapping

The planning proposal includes adequate mapping which identifies the subject site to which the additional permitted use will apply.

A new LEP map will be required to identify the proposed additional permitted use.

2 Need for the planning proposal

The justification for the amendment is detailed in the planning proposal on pages 8-10. The planning proposal seeks to permit a bulk storage and reload facility on the subject site and suggests that including the subject site in MWRLEP Schedule 1 Additional permitted use of the LEP is the most suitable method of providing permissibility to the proposed development. The amendment to the MWRLEP will support the proposed use of the subject site, while not preventing the site to be used for other permitted agricultural land uses. Council supports this proposed mechanism that will identify the use for this land only.

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

No, the planning proposal is required to permit a dangerous goods bulk storage and reload facility, on the subject site. The planning proposal has considered the current land use strategies and justifies that the inconsistencies with local strategy are due to the hazardous nature of the proposed development which prevent it from adhering to the recommendations of these land use strategies to be located on industrial land. The planning proposal is generally consistent with the strategic studies that apply to the subject site, including the Mid- Western Regional LSPS dated May 2020. Further assessment of the planning proposal's consistency is provided in Table 3 below.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proposed amendment to Schedule 1 Additional permitted use of the MWRLEP to list a bulk storage and reload facility, is considered on merit to be the best means to achieve the intended outcome.

An alternative, to amend the land to a zone where a 'bulk storage and reload facility', (IN3 Heavy industrial zone) is permissible, was considered in the planning proposal but determined to be less appropriate given the range of inappropriate land uses that would be permitted on the subject site under a new industrial land use zone. Such inappropriate land uses would include garden centres, hardware and building supplies, vehicle sales or hire premises, warehouse or distribution centres and take away food and drink premises. Such uses are inappropriate in this locality.

Amending the land use table for zone RU1 primary production to permit heavy industry is not suitable for all other primary production land across the LGA.

In this instance, providing site specific permissibility to the proposed development by including it as an additional permitted use in the LEP is the most appropriate method and is supported subject to it being acceptable to NSW RFS and EPA.

The hazardous nature of the proposed development requires isolation from other sensitive receptors. The proponent and Council have not been able to find suitably zoned industrial land to achieve the required separation distances for the proposed hazardous storage facility. The planning proposal considered other development sites and provides justification why they are not suitable. The Industrial areas currently zoned, or proposed in the Mid-Western Regional Comprehensive Land Use Strategy (CLUS), have insufficient offset from roads, dwellings and public facilities. A more detailed analysis of each industrial site is evaluated on page 9 of the planning proposal. While there may be other suitable non-industrial zoned sites across the Mid-western LGA that would cater for the development's requirements, the planning proposal suggests that the site selection is suitable given the benefits of co-locating with the adjoining extraction

industries that the development would serve. The technical capability of the subject site to contain the proposed hazardous materials facility needs to be further scrutinised through consultation with NSW RFS and EPA prior to community consultation.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2041.

Table 2 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1: Protect the region's diverse and productive agricultural land	The facility footprint would be approximately 5,000m ² and agricultural practices could continue unimpeded outside this area. Overall, the proposed development is anticipated to have a negligible impact on agricultural interests at a local or regional scale. The planning proposal also does not seek to change the ability to carry out agricultural activities, rather provide permissibility to an additional land use. The subject land being of 69ha is not agriculturally viable on its own.
Direction 8: Sustainably manage mineral resources	The proposed development is not located on the mining lease and would not constrain the continued operation of the adjoining quarries. The site selection has been influenced by the location of the adjoining quarries, to which the proposed development will provide supportive services, such as blasting and storage of hazardous material. Consultation is proposed with DRNSW Mining, Energy and Geoscience with regard to any impact on the quarries, given the subject site is located within a Transition Area, identified on the Mid-Western Mineral Resource Map.
Direction 10: Promote business and industrial activities in employment land	While the proposed development is located outside an identified employment precinct, the nature of the development requires setback distances that are not offered in the existing industrial precincts. The co-location of the proposed development next to quarries is promoted by Direction 10 of the CWO Regional Plan.

3.2 Local

The planning proposal states that it is generally consistent with the following local plans and endorsed strategies as listed below in table 3.

Table 3 Local strategic planning assessment

Local Strategies	Justification
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OUR PLACE 2040 Mid-Western Regional Local Strategic Planning Statement (LSPS)	The planning proposal is consistent with the LSPS. Planning priority 7 of the LSPS identifies the need to support the attraction and retention of a diverse range of businesses and industries identifies the need to maintain and enhance a diverse local economy. The planning proposal will allow for the relocation and retention of a business in the LGA.
Comprehensive Land Use Strategy (CLUS)	Section 3.2 identifies several industrial development areas for expansion and provision of employment opportunities over the medium-long term. The land zoned for industrial use and identified for future expansion by the CLUS has been reviewed by the proponent and Council to determine if suitable industrial land is available for the proposed development. The nature of the proposed development prevents the strategically identified industrial land in the CLUS being taken up for this proposed development due to the surrounding sensitive receptors. (Refer to pages 9 and 10 of the planning proposal). Co-locating the proposed development along-side existing quarry operations is preferable and is sufficient justification to deviate from the directions provided in the CLUS in this case.

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.2 Rural Zones	Yes	This direction applies as the subject site is zoned rural - RU1 Primary production. The planning proposal is consistent with the objectives of this Direction. The planning proposal seeks to permit an additional use of the land and will not change the land zoning or development density. No further work is required in relation to this Direction.
Direction 1.5 Rural Zones	Yes	This direction applies as the subject site is zoned rural, RU1 primary production. The planning proposal is consistent with the objectives of this Direction. The proposed site is not associated with BSAL land and also not identified in draft State Significant Agricultural Land mapping. While the proposed facility would have a total footprint of approximately 0.5ha on cleared land, it doesn't preclude agricultural practices to continue on the remaining 19.8ha of cleared land. No further work is required in relation to this Direction.

Direction 2.3 Heritage Conservation	Yes	The planning proposal is consistent with the objectives of this Direction. The subject land is not associated with any state or local heritage items, and an AHIMS basic search identified no sites. No further work is required in relation to this Direction.
Direction 4.4 Planning for Bushfire Protection	Yes- consultation required with NSW RFS	This Direction applies as the subject site is identified on the NSW RFS bushfire prone land maps as being bushfire prone. The proposed development site location is conducive to the establishment of suitable outer and inner asset protection zones wholly within the allotment and without requiring extensive clearing to be undertaken. Consultation with NSW RFS will be required prior to community consultation.
Direction 5.10 Implementation of Regional Plans	Yes	The planning proposal is consistent with relevant Directions of the CWORP 2036, being Direction 1, Direction 8 and Direction 10 detailed in Table 2, Section 3.1. No further work is required in relation to this Direction.
Direction 6.3 Site Specific Provisions	Yes	The proposed additional permitted use enables the proposed development while not permitting heavy industry land uses across the entire RU1 zone. Also, rezoning the subject land to an isolated industrial zone would permit development that is not suitable to be located on this subject land being adjacent to extractive industry.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 5 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
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SEPP (Koala Habitat Protection) 2020	Consideration needs to be given to any native vegetation that may be considered for removal under development consent and what options may be available to conserve natural vegetation.	Not applicable	The consideration of SEPP (Koala Habitat Protection) 2020 is not considered applicable at the planning proposal stage. At the development application stage any potential impact to Koala habitat and feed trees should be undertaken. In addition, the proposed development area is 0.5ha on a cleared part of the subject site.
SEPP (Primary Production and Rural Development) 2019	Consideration needs to be given to the current land zone and proposed land zone in the subject site, and what impact the planning proposal may have.	Yes	The subject site has not been identified as state significant agricultural land under Part 2 of the SEPP nor is it identified under the draft state significant agricultural land mapping currently on public exhibition.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Consideration must be given to facilitate and manage land used for or surrounding extractive industries while considering conflicting or competing land uses.	Yes	<p>The subject site is located in proximity to a limestone quarry located approximately 1km to the southeast as well as a gravel pit approximately 500m to the west. The proposed development site has been selected to capture co-location benefits of being sited next to extractive industries, to which it will service. The proposal is not likely to jeopardise the current or future ability for extraction of minerals.</p> <p>However, given the subject site is mapped as being within a Transition Area under the Mid-Western Regional Resource Audit, it is recommended that DRNSW Mining, Energy and Geoscience be consulted to determine if the proposed development will impact the adjoining limestone quarry and gravel pit operations as well as the haul road that crosses through the subject site.</p>

State Environmental Planning Policy No 33—Hazardous and Offensive Development	This SEPP amends the definitions of hazardous and offensive industries and provides guidelines to assist with the evaluation of potentially hazardous or offensive industries during the development application stage.	Not applicable	Applies during the development application stage only. It is being recommended that consultation be undertaken with NSW RFS and EPA prior to community consultation to ensure that the proposed development can comply with the dangerous good storage requirements.
State Environmental Planning Policy No 55—Remediation of Land	This SEPP set out the requirements and procedures for the remediation of contaminated land during the development process.	Not applicable	The site does not appear on the list of NSW contaminated sites notified to the Environment Protection Authority. No preliminary contamination assessment is required in this case.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 6 Environmental impact assessment

Environmental Impact	Assessment
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Clearing of land

The subject site includes several areas of remnant native vegetation. The facility's proposed location is within an existing clearing that is not associated with any significant vegetation. The subject land is mapped under the LEP as being of high terrestrial biodiversity (see map Figure 4 below).



Figure 4 MWRC LEP2012 Sensitivity Biodiversity Map (source: Planning Proposal)

The subject site also contains vegetation of high biodiversity value as identified on the Biodiversity Values Map published by DPIE (see map Figure 5 below). The proposed development is able to be sited outside the mapped high biodiversity value area. However, it is likely that upgraded site entry access from Buckaroo Road through to the proposed development site may require clearing of vegetation. Consultation with Biodiversity, Conservation and Science Directorate will be required to better understand this impact.

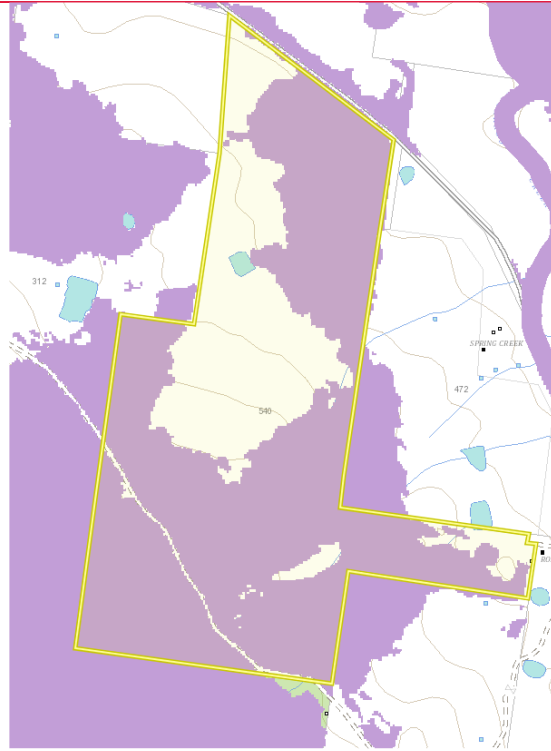


Figure 5 Biodiversity Values Map (source: Planning Proposal)

The subject site is mapped as being bush fire prone land. The proposed location of the development includes 20.3ha of cleared land that can be utilised to prepare suitable inner and outer asset protection zones therefore not requiring the removal of the subject site's remnant vegetation.

Consultation with NSW RFS will be undertaken prior to public exhibition to satisfy the requirements of the section 9.1 Ministerial Direction 4.4 Planning for Bushfire Protection. This process will inform any bushfire protection requirements that may jeopardise the subject site's vegetation.

While the planning proposal suggests that the proposed development is able to be sited on cleared land used historically for grazing, consultation with the Biodiversity, Conservation and Science Directorate will be required during public exhibition to better understand any potential biodiversity impacts of permitting the development on this subject site.

Groundwater

The subject site is partially mapped as being groundwater vulnerable on the Groundwater Vulnerability map within the LEP. The requirements relating to ground water impact in the LEP apply at the development application stage. However, the planning proposal states that the proposed development will not involve any broad excavations or new bores. Additionally, the site of the proposed development is to be located in the clearing south of the mapped groundwater vulnerable area. There is potential for groundwater pollution due to the nature of the hazardous materials to be stored onsite. Compliance with the Australian Standards and EPA requirements will be necessary to prevent groundwater impacts.

4.2 Social and economic

The development resulting from this planning proposal would have several beneficial direct and indirect economic outcomes for the region. The facility would be located 7kms from Mudgee and would provide employment opportunities. The proposal would also indirectly benefit the extraction and construction industries throughout the region by providing a local drill and blast service.

Impacts on neighbouring landholders, particularly the three (3) adjacent landholders where dwellings are located, will need to be considered and impacts mitigated during the development application stage. However, given the proposed development will require an environment protection licence to operate the proposed development, Environment Protection Authority (EPA) will be consulted prior to community consultation. While mitigating measures would be considered during the development application stage, early consultation with EPA will allow for any development standard, such as buffers, or other impacts to be addressed through this proposed LEP amendment, if required.

4.3 Infrastructure

The subject site adjoins Buckaroo Road, a minor local road which is predominately sealed. The proposed development is expected to generate 1-3 trucks per week during operation. Further traffic impact assessment will be considered at the development application stage regarding impact on road infrastructure, access requirements and on-site traffic matters such as parking.

The subject site is not currently serviced and may require onsite waste-water treatment and a potable and firefighting water supply. Access to electricity is available.

5 Consultation

5.1 Community

The planning proposal and Council Report both do not propose a timeframe for community consultation. The Gateway determination has been conditioned to require surrounding landowners to be notified of the planning proposal during the public exhibition. The consultation with EPA may influence the extent of the surrounding landowner notification.

Given the additional permitted use is not within character of the surrounding rural land uses and also is not consistent with the Comprehensive Land Use Strategy, it is recommended that a community consultation period of 28 days be required.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service: consultation required prior to community consultation to satisfy the requirements of Ministerial Direction 4.4 Planning for Bushfire Protection given the subject site is mapped as bushfire prone land.
- Environment Protection Authority (EPA): The hazardous nature of the proposed development will require an Environment Protection Licence. The planning proposal may need to respond to this hazard with local provisions such as buffers or other impact mitigation measures, particularly for the surrounding sensitive receptors. Given the nature of the proposed development it is appropriate that consultation with EPA occurs prior to community consultation.
- DPIE Biodiversity, Conservation and Science Directorate: there are high value biodiversity areas on the subject site, which may be impacted, particularly any upgraded access from Buckaroo Road to the proposed development site.
- DRNSW - Mining, Energy and Geoscience: Proposed development is located within transition zone of 2 adjoining extractive industries.

6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

It is recommended that a timeframe of 9 months is more appropriate given Christmas period and to allow required agency consultation to occur.

7 Local plan-making authority

Council has requested to utilise its functions as a local plan-making authority for the proposal. Council should be authorised to be the local plan-making authority as they have no identified interests in the land or proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions.

Consultation with the NSW RFS and EPA is to be undertaken prior to community consultation to ascertain if the site is suitable for the proposed development.

The proponent and Council have considered alternate industrial land and plan making mechanisms to enable the proposed development to continue in Mid-Western Regional Council LGA. Given the nature of the development, separation distance requirements and the subject land is near extractive industry clients it has been assessed that the proposal proceed conditional Gateway determination.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that there are no inconsistencies with section 9.1 Directions.

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

1. Prior to community consultation, consultation is required with the following public authorities:
 - a. NSW Rural Fire Service to satisfy the requirements of section 9.1 Ministerial Direction 4.4 Planning for Bushfire Protection and rural fire safety requirements for the storage of hazardous materials.
 - b. Environment Protection Authority regarding impact of the proposal on surrounding sensitive receptors and licencing requirements.

If required, the proposal can be reassessed subject to the advice of NSW RFS and EPA prior to community consultation, including any requirements for notification of the surrounding property owners. Approval from DPIE – Western Region will be required prior to proceeding to community consultation.

2. Public exhibition is required under section 3.34(2)(c) and Schedule 1 Clause 4 of the Act, as follows:
 - (a) The planning proposal must be publicly made available for a minimum of 28 days; and
 - (b) The planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with the planning proposals as identified in section 6.5.2 of A Guide to Preparing Local Environmental Plans (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act regarding environmental, infrastructure and social impacts of the development:
 - a) DPIE - Biodiversity, Conservation and Science Directorate
 - b) DRNSW - Mining, Energy and Geoscience.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission of or reclassifying land).
5. The planning proposal authority is authorised as the local plan making authority to exercise the functions under section 3.36(2) of the Act, subject to the following:
 - a) The planning proposal authority has satisfied all the conditions of the Gateway determination;
 - b) The planning proposal is consistent with section 9.1 Directions and the Secretary has agreed that any inconsistencies are justified; and
 - c) There are no outstanding written objections from public authorities.
6. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps (Additional permitted use map) must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
7. The timeframe for completing the LEP is to be 9 months following the date of the Gateway determination.



(Signature)

26 November 2021

(Date)

Wayne Garnsey
Manager, Western



(Signature)

26 November 2021

(Date)

Garry Hopkins
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