



IRF22/2356

## Plan finalisation report – PP-2021-477

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Map Amendment No.7 – Hydro Kurri Kurri

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Cessnock Local Environmental Plan 1011 (Map Amendment No.7)

The planning proposal aims to rezone the former Hydro Aluminium Smelter and surrounding buffer lands to permit employment, industrial and residential development.

A previous planning proposal (PP-2015-CESSN-006) was discontinued due to ongoing delays in resolving traffic and biodiversity issues. An updated planning proposal addressing issues raised by Council, Government agencies and technical reports, received a Gateway determination to proceed on 1 December 2020.

The objectives of the planning proposal have remained unchanged throughout the process. These objectives are:

- to rezone certain land, as shown in Figure 1 below and outlined in the planning proposal (**Attachment A**), comprising of the former Hydro Aluminium Smelter and surrounding buffer land in the Loxford area to permit employment, industrial and residential development
- to manage the interface between the land uses
- to minimise the fragmentation of the residual rural and environmental land
- to respond to the environmental constraints on the site.

This local environmental plan amendment is a subsequent part to the planning proposal, following an initial rezoning of land (Map Only Amendment 4), gazetted in December 2022 (PP-2022-477). This local environmental plan (LEP) amendment rezoned additional residential and employment lands above the Probable Maximum Flood (PMF) event level, as redefined through additional flood modelling work.

This amendment also defers the rezoning of the remaining area of land under section 3.36(3) of the *Environmental Planning and Assessment Act 1979* for consideration at a later date.

A new planning proposal is not required to proceed with subsequent LEP amendments to rezone the land subject to the PMF event, if it can be demonstrated that it is suitable for urban development.

A site-specific development control plan will be prepared for the developable land at Hydro. The plan will address the design, conservation and management measures to reduce negative impacts relating to future development on the land.

Local infrastructure will be upgraded in accordance with the site-specific development control plan and through conditions of consent at the development subdivision stage. Amendments to the Cessnock section 7.11 contributions plan for local infrastructure will also be required to support future development within the land. It is anticipated the costs of the acquisition over part of the South Maitland Railway will be recovered through the contributions plan.

### 1.1.2 Site description

**Table 1 Site description**

Site Description	The planning proposal (Attachment A) applies to land at the former Hydro Aluminium Smelter site in Kurri Kurri
Type	Area
Council/LGA	Cessnock

The site includes the former Hydro Aluminium Smelter and surrounding buffer land. The site covers 330 hectares and has land fronting Hart Road at Loxford, Cessnock Road at Cliftleigh and Bowditch Avenue at Loxford. The Hunter Expressway also links to the site via the Hart Road interchange.

The South Maitland Railway traverses the site and is privately owned to service coal mines in the Cessnock area. There are currently two trains per day and this is expected to continue.

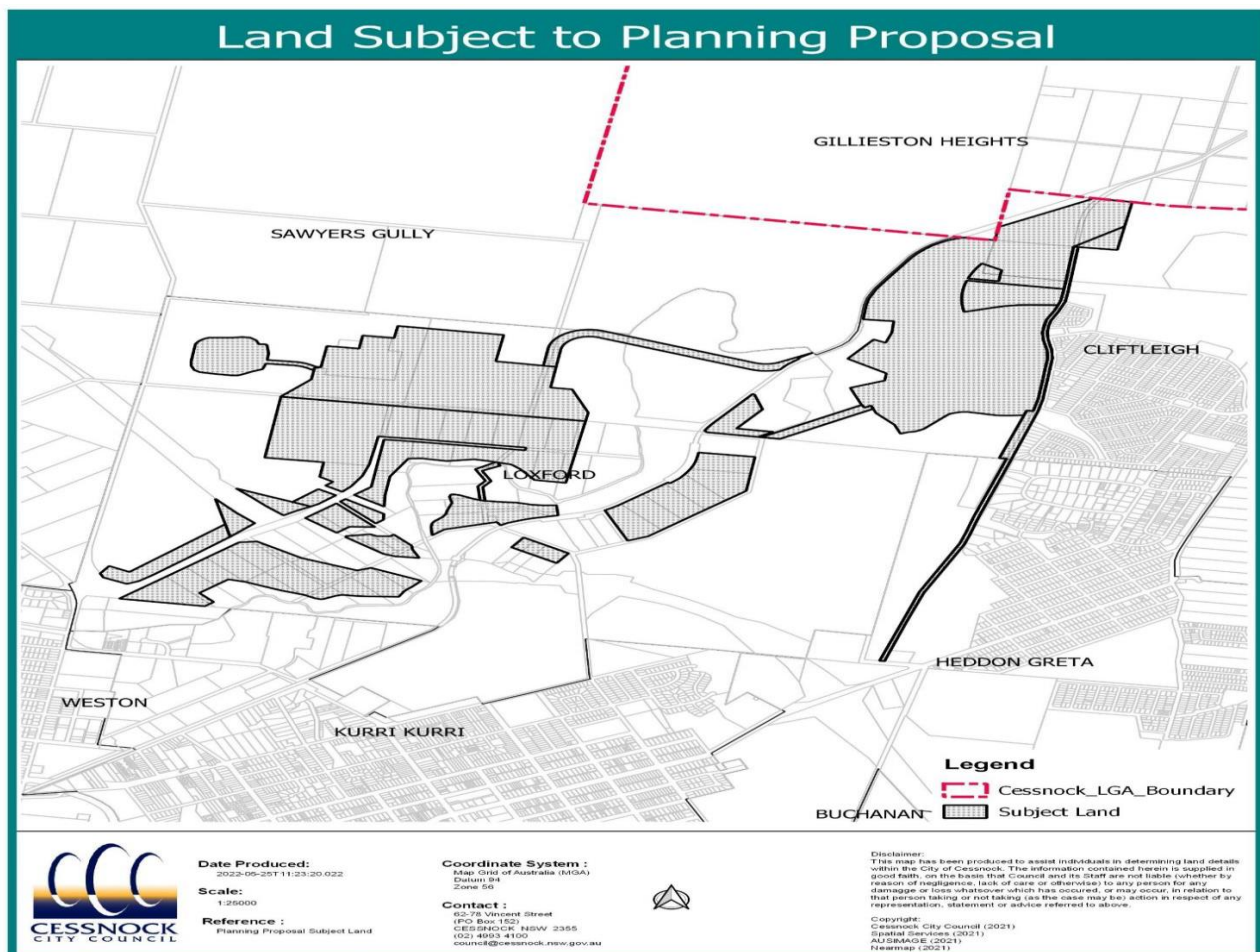
### Surrounding areas

The site is located close to existing urban areas of Kurri Kurri, Heddon Greta and Cliftleigh, and contains expanses of bushland and wetland areas to the north and west.

The surrounding land is residential towards the east of the South Maitland Railway line with access to the Cessnock Road catchment in the Cliftleigh and Heddon Greta urban areas.

Land on the southern side of the Hunter Expressway is vegetated north of Hart Road where surrounding land uses are rural residential in nature, and partly cleared south of Hart Road which adjoins an existing industrial area. The Kurri Kurri Sewer Treatment facility is located off McLeod's Road on the southern side of the Hunter Expressway.

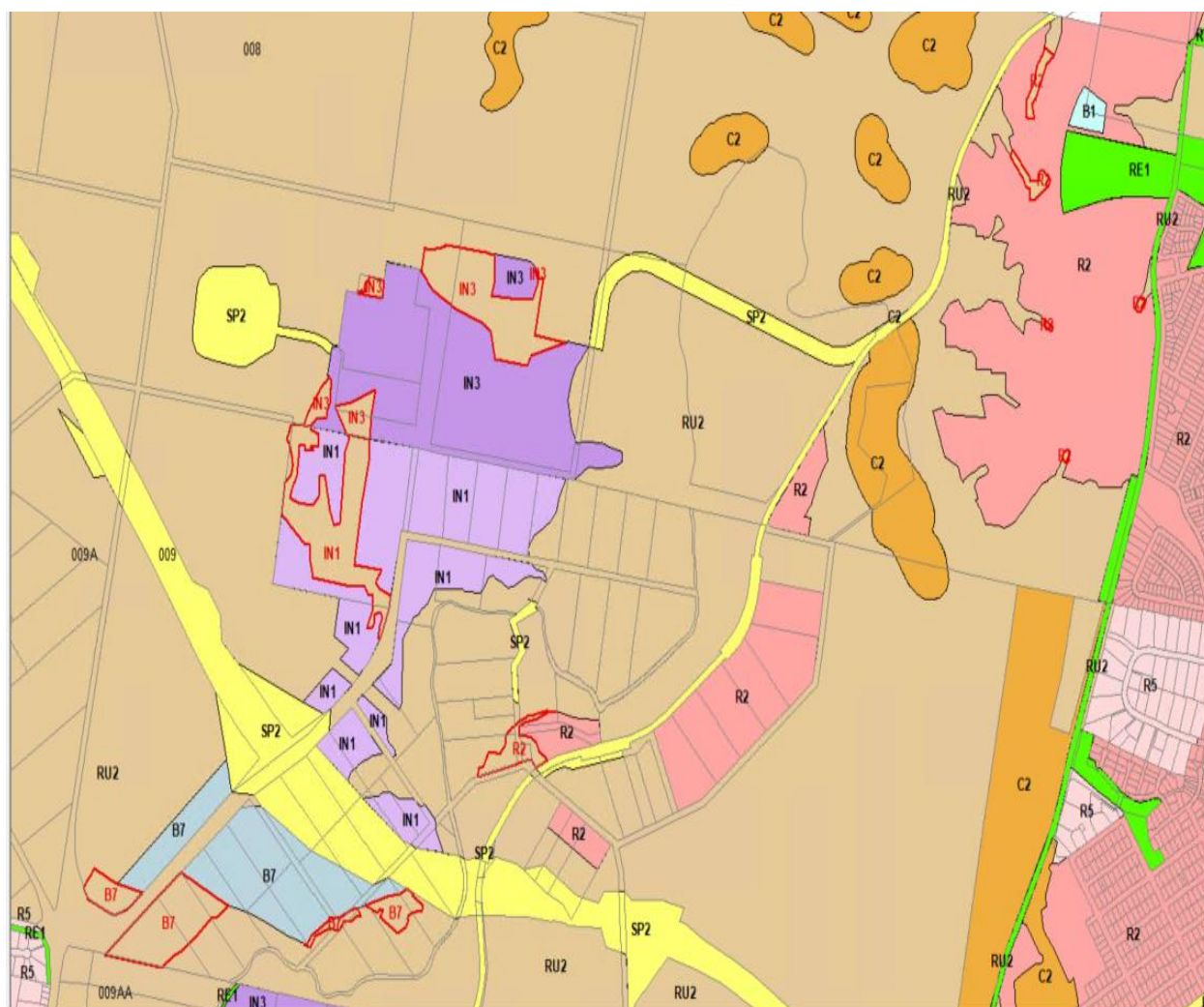
To the north of the site is the Maitland local government area (LGA). A separate planning proposal for the remainder of the Hydro lands, which continues the residential zone further north towards the existing urban areas of Gillieston Heights, was progressed concurrently with this planning proposal and has been finalised (PP\_2020\_MAITL\_002 and PP-2021-4400).



**Figure 1 Subject site**

### 1.1.3 Purpose of plan

This amendment only applies to additional land identified as being above the PMF level in accordance with additional flood modelling work. The land subject to this amendment is identified in red in Figure 2 below.



**Figure 2 Land subject to this Amendment**

The table below outlines the current and proposed controls for the *Cessnock Local Environmental Plan 2011*.

**Table 2 Current and proposed controls**

Control	Current	Proposed
Zone	RU2 Rural Landscape	E3 Productivity Support E4 General Industrial E5 Heavy Industrial R2 Low Density Residential RE1 Public Recreation SP2 Infrastructure
Minimum lot size	40 hectares	450sqm (for R2 zoned land) No minimum lot size (for other proposed zones)



### 1.1.4 State electorate and local member

The site falls within the Cessnock state electorate. Clayton Barr MP is the State Member.

The site falls within the Hunter federal electorate. Dan Repacholi MP is the Federal Member.

To the Central Coast and Hunter team's knowledge, neither MP has made any written representations regarding the planning proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 1/12/2020 (**Attachment B**) determined the planning proposal should proceed subject to conditions. The planning proposal's inconsistencies with section 9.1 Ministerial directions; 1.2 Rural Zones, 1.5 Rural Lands and 6.3 Site Specific Provisions were approved and the reservation of land for public purposes under direction 6.2 was agreed to.

The Gateway determination required further consultation with government agencies and the resolution of outstanding traffic and biodiversity issues.

In terms of traffic, the primary concerns were in relation Transport for NSW's advice on traffic impacts along the Hunter Expressway and Main Road 195 (MR195). At the time of the Gateway determination, Transport for NSW was preparing a MR195 Corridor Strategy and undertaking modelling for the Hart Road Interchange, including an investigation of a potential connection between Motorway 15 and MR195. This work has now been completed and the planning proposal has been adjusted to reflect the outcomes.

Transport for NSW has calculated that the Hart Road Interchange needs to be upgraded somewhere between 0 and 500 dwellings. However, the agency has advised the landholder their choices are to:

- not undertake further analysis and upgrade the intersection at 0 dwellings released, or
- undertake further modelling to determine where the nexus point is between the two figures.

In terms of biodiversity, the primary concerns were in relation to environmental outcomes being considered through a biodiversity conservation assessment report that was being prepared in parallel with the planning proposal. This was a change from the previous planning proposal that had recommended a conservation zone be applied to parts of the site. Since that previous planning proposal, land management and biodiversity conservation reforms had commenced under the *Biodiversity Conservation Act 2016*. The Biodiversity Certification Assessment Report has progressed through the public exhibition stage and is now being finalised. The Biodiversity Conservation Division has advised it is not aware of any biodiversity issues that would require changes to the proposed zone boundaries.

The Gateway determination was altered on 23/12/2021 to extend the date for finalisation of the planning proposal to 1/12/2022. The Gateway determination was subsequently altered on 12/12/2022 to modify the required exhibition period to 27 days.

Council has complied with all the applicable Gateway determination conditions.

## 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 15/12/2020 to 1/02/2021, as required by section 29 of the *Local Government Act 1993*.

### 3.1 Submissions during exhibition

#### 3.1.1 Submissions objecting to and/or raising issues about the proposal

A total of four community submissions were received. Council's response to the key issues raised is provided in Table 3 below.

**Table 3 Council's response to key issues raised in submissions**

Community Comments	Council response
<p>The region is rural and should retain this feel and outlook.</p> <p>The R5 Large Lot Residential Zone should be considered in lieu of the R2 Low Density Residential Zone.</p>	<p>The land is located within a regionally significant growth area identified in the <i>Hunter Regional Plan 2041</i>.</p> <p>An assessment has identified that the planning proposal does not include any regionally significant agricultural land and only a small part of the rezoning footprint could be considered suitable for agriculture.</p> <p>The Hydro land is classified 3, 4, and 5 by the Department of Primary Industries. Under these classifications the land is suitable for "cropping, but not continuous cultivation", "grazing but not cultivation", or "not suitable for agriculture or only light grazing", respectively.</p> <p>The application of a R5 Large Lot Residential Zone to the land is inappropriate in consideration of:</p> <ul style="list-style-type: none"> <li>the zoning of other urban release land in the regionally significant growth area nearby</li> <li>the principles of the regional plan to create compact centres and promote housing diversity</li> <li>the availability of infrastructure within the regionally significant growth area to support a more intense use of the land.</li> </ul>
<p>Anything that promotes active transport is to be commended. However, it would be good to see where the cycleway links up to.</p> <p>There is a statistical increase in crime associated with the provision of cycleways.</p> <p>What additional security measures does council propose for this area?</p>	<p>The planning proposal nominates land within the former rail corridor for acquisition and rezoning for a possible cycleway connection in the future.</p> <p>Further information regarding cycleway connectivity will be available at the detailed design stage, should the cycleway proposal proceed.</p> <p>Cyclist and pedestrian safety and possible security measures are matters for consideration at the detailed design stage for any future cycleway within the land.</p>



Community Comments	Council response
<p>The increase of land for low density housing in the area will decrease the area available for native flora and fauna.</p> <p>The environmental conservation areas do not link to each other. As a minimum a corridor linking these conservation areas should be provided.</p> <p>How do we know that the land proposed as a stewardship site will be sufficient to offset future development?</p>	<p>The planning proposal does not specifically rezone land to an environmental conservation zone, a parallel process is occurring under the <i>Biodiversity Conservation Act 2016</i> to certify the rezoning footprint. This process will involve the conferring of a Biodiversity Certification Assessment Report (BCAR) in relation to the site.</p> <p>The BCAR includes details of how the land owner proposes to compensate for the clearing of land for future development. These measures may include creating and maintaining a large stewardship site over much of the adjoining areas of significant conservation land.</p> <p>The details of this process, assessment results and proposed mitigation measures will be included in the associated BCAR, which will be publicly exhibited.</p>
<p>There will be no road upgrades to respond to the extra traffic development within the site will produce.</p> <p>Will there be on/off ramps added to Hart Road for traffic to access both directions?</p>	<p>Necessary upgrades to the local and state road network have been identified by Council and Transport for NSW.</p> <p>One of the state road upgrades identified is the need for north facing ramps at the Hunter Expressway and Hart Road Interchange.</p>
<p>LSPS Planning Priority 1 Our urban areas are compact. It is difficult to see the proposed residential area is 'compact' given it is 2.5km from the Kurri Kurri centre.</p> <p>LSPS Planning Priority 7 Urban development is encouraged in areas with existing infrastructure. The documentation supporting the planning proposal states that it will cost \$5,794,630 to provide water to the residential area and \$17,710,000 to provide sewer. Clearly this is not an area with existing infrastructure.</p>	<p>The land is located within a regionally significant growth area, identified in the <i>Hunter Regional Plan 2041</i>.</p> <p>The land is proposed to be rezoned from RU2 Rural Landscape that is identified above the PMF level to a range of urban and employment zones.</p> <p>The broader regionally significant growth area includes land at Heddon Greta, Cliftleigh and Avery Village, which has been serviced with infrastructure.</p>
<p>How will Council ensure that all the contaminated areas within the site have been identified and removed or remediated?</p>	<p>Areas of the site to be used for urban purposes are located close to the former aluminium smelter site. Some residual contamination may be present as a result of the activities of the smelter.</p> <p>Preliminary investigation of the land has been carried out and the land has been deemed suitable for its intended use, subject to some remedial actions. These remedial actions are to be embedded in a site specific development control plan for the former aluminium site, prior to development occurring within the land.</p>

Community Comments	Council response
Will affordable housing opportunities be included within the new residential area?	This will ultimately be a consideration for the site specific development control plan that will support future development within the urban release area.

Council has adequately responded to the key concerns raised by the community. Council's approach to address some key issues through a site specific development control plan at the development application stage is appropriate and measured.

## 3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

**Table 4 Advice from public authorities**

Agency	Advice raised	Council response
Crown Lands	Crown Lands provided advice noting several Crown roads exist within the land. The agency recommended Council assess whether public road access is required to service present and future access needs or whether roads can be closed and replaced with a private right of carriageway where access is required.	Road access and potential transfer of Crown roads will be considered during the assessment of future development applications.
Transport for NSW	Transport for NSW provided advice on 8 November 2021 that it supports the progression of the planning proposal within the Cessnock LGA, subject to the requirements outlined in its correspondence of the same date and as agreed to between the parties.	Council staff had proposed that prior to finalisation there be evidence of an agreement being entered into with Transport for NSW regarding infrastructure upgrades. This was not adopted by Council in its decision on 15 June 2022.  <i>Note: Transport for NSW advised the Department they had no objection to the employment lands. The MR195 Corridor Strategy has incorporated the residential release areas of Hydro in Cessnock and Maitland and the Cliftleigh and Gillieston Heights release areas.</i>

Agency	Advice raised	Council response
Hunter Water Corporation	<p>Hunter Water Corporation provided advice on 14 May 2020 that it does not object to the proposed B7 Business Park or IN1 General Industrial zoning within the Hydro site, but that it does object to the R2 Low Density Residential Zone within the Kurri Kurri Wastewater Treatment facility buffer area.</p> <p>Further advice was provided by Hunter Water Corporation on 25 May 2022 that it no longer objects to the planning proposal, subject to upgrades of the Kurri Kurri Wastewater Treatment facility and the retention of an odour buffer between the Hydro residential land and Hunter Water Corporation's public wastewater treatment facility at Kurri Kurri.</p> <p>Hunter Water Corporation has requested that no land is to be rezoned residential beyond 90 metres to the southwest of Mcleod Road.</p>	<p>The boundary of the R2 Low Density Residential Zone to the southwest of McLeod Road has been amended to address the requirements of Hunter Water Corporation.</p>

Biodiversity  
Conservation  
DivisionBiodiversity

Biodiversity Conservation Division response was received by Council on 17 November 2021 and further advice on 5 April 2022 that it will not be requesting any further avoidance of impacts that relate to swift parrot and regent honeyeater or their habitat.

The agency is not aware of any other biodiversity issues that would require changes to the proposed zone boundaries.

Flooding

1. The agency agrees flood planning levels are likely to be based on the backwater levels produced by Hunter River flooding because this creates the higher planning levels in the backwater impacted areas of the development.
2. The development proposal has not assessed local flooding and at present is proposing that residential zoning be extended across local waterways including local floodways. No flood impact assessment has been provided to assess if filling of these areas produces higher flood levels off site or will result in higher local planning levels.
3. Filling of floodway areas is inconsistent with local planning direction 9.1 (2) Part 4.1 clause (3)(a) to (d) and may also have adverse offsite impacts.
4. The figures provided by Council show the Hunter River 1% AEP levels and assumed flood free access routes. The map does not demonstrate that proposed development will have flood free access (up to the PMF) as required by condition 1(b) of the gateway determination. The applicant should demonstrate flood free access proof of concept in the final planning proposal.
5. The required flood assessment should be included in the final planning proposal to ensure that unreasonable expectations of developable area are not created. Alternatively, the waterways and flood planning area may be retained as a more flood compatible land use zone such as a conservation zone which would enable the

Biodiversity

The advice of Biodiversity Conservation Division regarding biodiversity was confirmed by Council on 29 April 2022 and is considered sufficient to allow the planning proposal to proceed to finalisation.

The Biodiversity Certification Assessment Report has progressed through the public exhibition stage and is now being finalised.

Flooding

Point 1 is noted.

Regarding point 2 and 3, the portion of the residential zoning that extends over the floodway is to contain a local road. It is appropriate to consider the design of the road (and whether or not it is located on fill) at the development application stage. Council considered that there are engineering solutions available to a future developer to minimise the impact of the road on the floodway, for example, a bridge or culverts, which would also elevate the road.

Regarding point 4, a new Gateway determination was issued in respect of the updated planning proposal on 1 December 2020. The agencies response refers to a condition in the previous Gateway determination that no longer applies.

Notwithstanding this, a flood free access from the Hydro northern residential precinct to Gillieston Heights is capable of being achieved via the development of an internal spine road. A flood free evacuation route is capable of being achieved via Ridgeview Drive Clifleigh through to Main Road 195. For the Hydro southern residential precinct, a flood free evacuation route is capable of being achieved through Bowditch Avenue and McLeod Road.

The applicant's egress plan, which considers the PMF, demonstrates flood free access and egress from the site. The applicant has also demonstrated that filling parts of the site located below the 1% AEP Hunter River backflow, will have a negligible impact on the floodplain.

Agency	Advice raised	Council response
	remaining land to be rezoned as residential or industrial use.	Regarding point 5. As above, it is appropriate for the local flood assessment to be carried out at the development application stage, when greater detail is available regarding subdivision layout.
NSW Rural Fire Service	No objection	The recommendations of the strategic bushfire study and the requirements of <i>Planning for Bushfire Protection 2019</i> should be considered in the preparation of the development control plan for the land and in relation to future development applications within that land.
Mindaribba Local Aboriginal Land Council	<p>1. The planning proposal includes several parcels of Crown land, which are proposed to be rezoned E2 Environmental Conservation. These parcels of land are the subject of a land claim by Mindaribba Local Aboriginal Land Council (LALC). Mindaribba LALC does not agree to the rezoning of this land to environmental conservation.</p> <p>2. In response to the heritage investigations undertaken by AECOM, it is necessary to undertake a revised and more rigorous Aboriginal culture and heritage investigation that includes the impacts this development has on the cultural landscape; particularly in relation to the areas of Black Waterholes, Black Creek and Swamp Creek which are highly significant features of the Cultural Landscape for Local Wonnarua People.</p> <p>3. The Mindaribba LALC has concerns regarding the implications of biocertification of the rezoning footprint on the socio-economic future of Aboriginal Peoples within the Cessnock and Maitland LGAs. The Mindaribba LALC would like to be consulted with during the preparation and finalization of any Biodiversity Certification Assessment Report prepared over this area.</p>	<p>In response to points 1 and 2, the land that was originally proposed to be rezoned E2 Environmental Conservation no longer forms part of the planning proposal.</p> <p>In response to point 3, the exhibition of the Biodiversity Certification Assessment Report will be facilitated by the Biodiversity Conservation Division.</p>

South  
Maitland  
Railway

1. A comprehensive noise and vibration assessment shall be completed.
2. Security fencing along the full length of the rail corridor.
3. Development must not compromise or diminish the ability to utilise the rail corridor.
4. Revised historic heritage assessment and statement of heritage impact.
5. Sensitive design along heritage item.
6. The authorities rail corridors as asset protection zones are not supported unless a separate agreement is reached with the developer.
7. Wangara Bridge considerations.

In response to point 1, the noise and vibration assessment submitted with the planning proposal is considered acceptable by Council based on the existing rail and road environment and likely future intensification of the railway, noting there are currently no known arrangements to increase capacity of this line. The proposal does not interfere with the operations of the South Maitland Railway.

In respect to point 2, 3, 4 and 5 it is appropriate to address the following matters in a site specific development control plan:

- recommendations of the acoustic report
- territorial ownership through the implementation of boundary fencing
- heritage interpretation strategy.

The delivery of flood immunity access through the northern portion of the site was deemed critical as it is a requirement of the Gateway determination. Given the provision of vehicular access would truncate the disused rail spur, the corridor is unable to be preserved in its entirety.

Council's Heritage Officer acknowledges this requisite and has requested that a heritage interpretation strategy be considered as part of the development control plan. An acquisition layer is proposed on the remainder of the corridor to support the adaptive reuse of the railway for the purposes of a cycleway. Controls will be implemented to acknowledge sensitive urban design requirements for development within proximity to the heritage item.

In relation to point 6, Asset Protection Zones (APZ) are not supported by Council on adjoining land. The applicant prepared a strategic bushfire assessment report. The report indicates that the APZ areas contained within the Hydro site boundaries and that no constraints to achieving these criteria are apparent.

In relation to point 7, access concerns relating to Wangara Bridge are only relevant to Maitland City Council's planning proposal. The Maitland planning proposal



Agency	Advice raised	Council response
		did deal with concerns relating to access to Wangara Bridge.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

As the land is to be mapped as an Urban Release Area, it requires adequate arrangements to be made for services, including access road and connectivity, prior to the issue of any development consent.

Transport for NSW has held ongoing discussions with the proponent relating to this and the wider Maitland release area and is agreed to continue with this arrangement. It is determined an agreement in the form of memorandum of understanding or voluntary planning agreement is not required at this stage, as further modelling and analysis is likely to change the development staging and trigger points for road upgrades.

The Department has continued liaison with Transport for NSW and Biodiversity Conservation Division to finalise any outstanding issues. This is discussed in more detail in Section 4.1 below.

## 3.3 Post-exhibition changes

### 3.3.1 Council resolved changes

Council endorsed the finalisation of the planning proposal on 15/6/2022. The Council's report outlining the outcome of public and agency consultation is provided as **Attachment C**. Council endorsed the following post exhibition changes to the planning proposal:

1. Part of the site was identified at the exhibition stage to be rezoned B5 Business Development. This part of the site is now proposed to be zoned B7 Business Park (to become E3 Productivity Support).

Council comment: Council does not presently utilise the B5 Business Development zone and its inclusion would require the zone to be introduced in the *Cessnock Local Environmental Plan 2011*. Council considered there to be little benefit to Council and the community in adopting an entirely new zone for the sake of permitting specialised retail premises at Hydro when the use is already permitted with consent in the existing B7 Business Park zone (to become E3 Productivity Support).

Department response: It should be noted the previous planning proposal also proposed to apply a B7 Business Park zone to the site. This was changed when this proposal was lodged, which replaced the proposal with the B5 Business Development zone.

At the time of the Gateway determination, the B5 Business Development zone was considered the more appropriate zone for the proposed location. The B5 Business Development zone objectives under the principle local environmental plan are to enable a mix of businesses and warehouse uses, and specialised retail premises that require large floor area in locations close to and that support the viability of centres.

Due to the potential traffic generating impacts of the proposed business zone and potential inconsistency with Action 23.1 of the *Greater Newcastle Metropolitan Plan 2036*, consideration of consistency with section 9.1 Ministerial direction 7.1 Business and Industrial Zones was deferred until completion of the Main Road 195 Corridor Strategy being prepared by Transport for NSW. The Strategy considered modelling for the Hart Road Interchange, including investigation of a potential connection between M15 and MR195.

At the time of the Gateway determination, the Department was drafting a Hunter Expressway strategy to provide guidance for employment uses along the expressway. A draft strategy was exhibited in December 2020 and stated development of bulky goods, 'big box' superstores and

factory outlet style retailing in the interchange growth areas needs to be in accessible locations that will not lead to queuing onto the Hunter expressway.

Since then, the new *Hunter Regional Plan 2041* has been made and includes the site as part of the Hunter Expressway regionally significant growth area. It states that bulky goods, 'big box' superstores and factory outlet style retailing will be located outside of the regionally significant growth area unless subject to an existing planning proposal. The *Hunter Regional Plan 2041* also repealed the draft Hunter expressway strategy.

2. A regional recreational facility is no longer proposed as was exhibited.

Department response: The facility was originally intended to provide, among other facilities, netball courts in lieu of their removal from the Molly Worthington site at Kurri Kurri. However, it is noted Council is presently considering Booth Park in Kurri Kurri for this purpose.

In any event, to achieve a regional recreation facility at Hydro, Council would have been required to acquire 5 hectares of additional open space at the site. This would have come at considerable cost to Council as the land would need to be purchased at a residential land rate.

Instead, consideration will be given to a district level sportsground and park in the nominated RE1 Public Recreation zone, subject to future design, siting and constraints analysis. The total amount of land to be zoned RE1 Public Recreation is 8.4 hectares, although the usable portion of this land for recreation is more likely to be in the vicinity of 6.6 hectares, which may not be sufficient for district level facilities.

3. An area of land originally proposed to be rezoned R2 Low Density Residential, will retain its RU2 Rural Landscape zoning to preserve an odour buffer between the Hydro residential land and Hunter Water Corporation's public wastewater treatments facility at Kurri Kurri.

Department response: This change addresses Hunter Water Corporation's advice on both this, and the previous, planning proposal.

### 3.3.2 The Department's recommended changes

Following receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as follows:

- Excluded certain land at Dawes Ave due to the potential for land contamination. These amendments were supported by Council.
- Following consideration of the section 9.1 Ministerial directions; 1.4 Site Specific Provisions and 7.1 Business and Industrial Zones, the site specific clause relating to the capping of gross floor area in the proposed business zones has been removed. This change was supported by Council.

Department comment: The *B1 and B7 Economic Assessment Review 2017* provided with the previous planning proposal recognised the demand in the retail catchment and recommends a cap on floor space to manage the impact on the existing retail areas in Weston/Kurri Kurri and Cessnock. The report also recognised the sites locational advantages with access to the Hunter Expressway and how 'footloose, regionally focussed businesses' might be attracted to this area adding to the demand for land. On this basis, Council had proposed a local clause in the explanation of provisions to implement floor space caps as recommended by the report.

The Department raised with Council concerns regarding how effectively the clause is able to be monitored and enforced in accordance with the review. Council noted these concerns and due to the age of the review and agreed not to proceed with a local provision to limit the floor area of 'retail premises' in the B1 Neighbourhood Centre zone (to become E1 Local Centre) and the floor area of 'specialised retail premises' in the B7 Business Park zone (to become E3 Productivity Support).

It is Council's intention to prepare an economic assessment in the future, which may inform amendments to the Cessnock development control plan. Among other things, the economic assessment would assess the existing provision and location of retail floorspace across the

shire and consider whether additional controls are required in the development control plan to manage the impact on our existing centres of releasing additional retail floorspace.

- Following an independent review, additional investigations were recommended to determine the acceptable flood risk level of lands within the PMF event area. As a result, the land affected by the PMF event has been excluded from this LEP amendment.

Department comment: The land identified as subject to the PMF has been redefined through additional flood modelling by the proponent. Council raised concerns as to the accuracy of the data due to its age and suggested an additional 300-400mm freeboard above this level. Noting Council's concerns, the proposal has been progressed with the data provided by the applicant and a recommendation to Council that any additional freeboard level may be incorporated into the requirements within the site specific development control plan.

Whilst much of the land where future development is proposed is not within the floodplain of either the Hunter River or its tributary (Wallis and Swamp Fishery Creek), there are some portions of the land proposed to be rezoned that are materially flood affected.

The planning proposal acknowledges the proposal is inconsistent with section 9.1 Ministerial direction 4.1 Flooding. In particular, it seeks to rezone land within a flood planning area from rural and conservation zones to residential, business and industrial zones, some parts of which are located within high hazard floodways.

The potential impacts of flooding have been separately considered by an independent review (**Attachment E**). The report's finding is that additional documentation has not sufficiently identified and assessed the risk hazard categories for the development site in the PMF event.

In efforts to give Council additional time to conduct these assessments, the majority of the land subject to the PMF event be excluded from this LEP amendment and be considered at a later date.

Land proposed to be rezoned RE1 Public Recreation and SP2 Infrastructure is unlikely to contain habitable or hazardous land uses, therefore it is recommended to proceed as part of this amendment.

It is also recommended the outcomes of the flood studies and reports be incorporated into a site specific development control plan. As the site is mapped as an urban release area, it requires the adoption of a development control plan prior to any development consent being granted on the land. Council's existing development control plan also provides additional protections for sensitive land uses.

### 3.3.3 Justification for post-exhibition changes

The Department notes the post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the community and relevant public authorities.
- Ensures lands of undetermined flood risk are further investigated before proceeding to complete the rezoning.
- Allows Council to determine whether gross floor area restrictions are required in its site specific development control plan after undertaking further analysis of its hierarchy of commercial centres.
- Ensures transport and access arrangements are addressed in an orderly fashion in conjunction with land release and funding arrangements at the development stage.
- Does not alter the intent of the planning proposal.

## 4 Department's assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant section 9.1 Ministerial directions, SEPPs, *Hunter Regional Plan 2041* and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment D**), the planning proposal submitted to the Department for finalisation:

- remains consistent with the Council's Local Strategic Planning Statement
- remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

**Table 5 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

**Table 6 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

## 4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

### 4.1.1 *Hunter Regional Plan 2041*

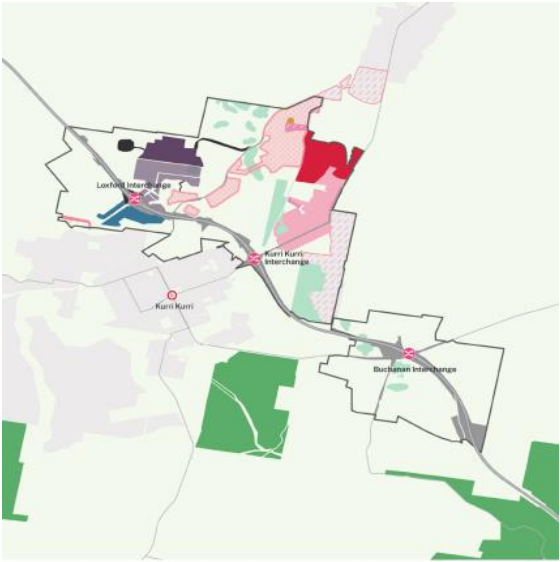
The *Hunter Regional Plan 2041* was in draft format when Council requested finalisation. An assessment against the most relevant objectives of the *Hunter Regional Plan 2041* is provided below.

Hunter Regional Plan 2041 section	Justification
<p><b>Strategy 3.1:</b> Planning proposals that propose a residential, local centre or commercial centre zone will not prohibit the following land uses within urban core, general urban, inner suburban and general suburban contexts:</p> <ul style="list-style-type: none"> <li>• Business premises</li> <li>• Restaurants or cafes</li> <li>• Take-away food and drink premises</li> <li>• Neighbourhood shops and supermarkets</li> <li>• Education establishments</li> <li>• Early education and care facilities</li> <li>• Health service facilities</li> <li>• Markets</li> <li>• Community facilities</li> <li>• Recreation areas</li> </ul>	<p>The R2 Low Density Residential zone in the <i>Cessnock Local Environmental Plan 2011</i> does not permit the following land uses:</p> <ul style="list-style-type: none"> <li>• Business premises (except for a home-based business, which is permissible)</li> <li>• Restaurants or cafes</li> <li>• Take-away food and drink premises</li> <li>• Neighbourhood supermarkets</li> <li>• School-based education</li> <li>• Health service facilities (except for a hospital, which is permissible)</li> <li>• Markets</li> </ul> <p>The centres of Kurri Kurri, Heddon Greta, Cliftleigh, Gillieston Heights and Maitland are connected by regular public transport.</p> <p>This provides future residents with accessibility to local supermarkets, primary and secondary schools, neighbourhood shops, health services, cafes and take-away food and drink premises.</p> <p>The performance standard for general suburban is for homes to be within a 15-minute walk, bike or public transport to some daily and weekly needs.</p> <p>The planning proposal is also proposing to include E1 Local Centre that will provide access to neighbourhood services and amenities.</p> <p>The planning proposal can demonstrate consistency with the E1 Local Centre zoned land. However, the R2 Low Density Residential zone is not consistent with the strategy. In this case, the relevant performance standard have been met with this zone's proximity to new neighbourhood shops and existing local centres.</p>

Hunter Regional Plan 2041 section	Justification
<p><b>Strategy 3.2:</b> Planning proposals will incorporate:</p> <ul style="list-style-type: none"> <li>• a small neighbourhood centre if the proposed residential yield exceeds 1,500 dwellings or</li> <li>• a large neighbourhood centre if the proposed residential yield exceeds 4,000 dwellings.</li> </ul> <p>The neighbourhood centre will:</p> <ul style="list-style-type: none"> <li>• support a floor area informed by a local retail demand analysis</li> <li>• have enough developable area to accommodate the uses over one level with at grade parking to reduce costs</li> <li>• be located to maximise its convenience for the vast majority of residents of which it serves</li> <li>• be located in a high profile location (i.e., main arterial road or precinct with strong pedestrian traffic)</li> <li>• be supported by a walkable catchment and pedestrian friendly environment.</li> </ul>	<p>The planning proposal will result in a residential increase of over 1,500 dwellings and does propose a neighbourhood centre.</p> <p>The floor area had been informed by a <i>B1 and B7 Economic Assessment Review 2017</i>.</p> <p>Council is yet to determine whether gross floor area restrictions are required in its site specific development control plan. This will occur after undertaking further analysis of its hierarchy of commercial centres.</p> <p>This work will also need to consider the location and walkability of the future local centre in line with the strategy.</p> <p>Objective 3's performance outcomes include:</p> <ul style="list-style-type: none"> <li>• neighbourhoods provide local access to education, jobs, services, open space and community activities.</li> <li>• neighbourhoods encourage healthy lifestyles with opportunities to experience and engage in the cultural, entertainment, sport and recreation and education and activities.</li> </ul> <p>The planning proposal includes an E1 Local Centre which will provide access to local services and amenities. However, without the additional information that would be contained in the site specific development control plan, the planning proposal can only demonstrate broad consistency with the strategy and performance outcomes.</p>



Hunter Regional Plan 2041 section	Justification
<p><b>Strategy 5.3:</b> Planning proposals will not prohibit the following housing typologies within residential zones that apply to urban core, general urban, inner suburban and general suburban contexts:</p> <ul style="list-style-type: none"> <li>• Attached dwellings</li> <li>• Boarding houses</li> <li>• Dual occupancies</li> <li>• Group homes</li> <li>• Multi-dwelling housing</li> <li>• Secondary dwellings</li> <li>• Semi-detached dwellings</li> </ul>	<p>The R2 Low Density Residential zone in the <i>Cessnock Local Environmental Plan 2011</i> does not permit multi-dwelling housing. However, the R2 Low Density Residential zone does permit dual occupancies and semi-detached dwellings.</p> <p>The planning proposal is inconsistent with the strategy only for the purposes of prohibiting multi-dwelling housing.</p> <p>The <i>Hunter Regional Plan 2041</i> recognises that in order to achieve the many public interest intentions of the plan, new developments will have to be different. There needs to be greater diversity of housing to improve affordability.</p> <p>This is reflected in Objective 5's performance outcomes of:</p> <ul style="list-style-type: none"> <li>• A variety and choice of housing types for existing and future housing needs.</li> <li>• Densities support local businesses and public transport services.</li> <li>• A diversity of housing provides for choice, independence and affordability to match the specific needs of different communities.</li> </ul> <p>The planning proposal is broadly consistent with the performance outcomes to provide a range of housing types, although this has limited the development on some medium density housing forms (multi-dwelling housing) in the R2 Low Density Residential zone.</p>
<p><b>Strategy 6.4:</b> Planning proposals should promote enterprises, housing and other uses that complement the biodiversity, scenic and water quality outcomes of biodiversity corridors. Particularly, where they can help safeguard and care for natural areas on privately owned land.</p>	<p>The development reduces biodiversity values on the site and offsets are being provided through the Biodiversity Certification Assessment Report.</p> <p>The report outlines how the landowner proposes to compensate for the clearing of land for future development. The report has progressed through the public exhibition stage and is now being finalised.</p> <p>Finalisation of the Biodiversity Certification Assessment Report will determine consistency with the strategy.</p>

Hunter Regional Plan 2041 section	Justification
<p><b>HEX regionally significant growth area</b></p> <p>The Kurri Kurri and Loxford interchanges could operate as a single Interchange Growth Area. These interchanges have unique characteristics and different potential for growth and change in the short, medium and long term.</p>  <p>Figure 11b: HEX regionally significant growth area</p> <p>Legend:</p> <ul style="list-style-type: none"> <li>HEX interchange growth area</li> <li>Strategic centre</li> <li>Centre</li> <li>Environmental zone</li> <li>Existing urban areas</li> <li>Infrastructure</li> <li>Proposed infrastructure</li> <li>Recreation</li> <li>Proposed recreation</li> <li>Under construction</li> <li>Proposed business</li> <li>Proposed heavy industrial</li> <li>Proposed general industrial</li> <li>Residential zone (developed)</li> <li>Residential zone (undeveloped)</li> <li>Proposed residential</li> <li>Proposed neighbourhood centre</li> <li>Railway</li> <li>Highway</li> <li>Road</li> <li>Expressway interchange</li> <li>National park and state forest</li> </ul>	<p>The site is identified for future residential, and employment uses in the <i>Hunter Regional Plan 2041</i>.</p> <p>The plan states land currently zoned for development or subject to a gateway determination will not need to address any additional matters to be consistent with the interchange regionally significant growth areas.</p> <p>This planning proposal enables the Kurri Kurri and Loxford interchanges to operate as a single growth area by providing a natural extension of the growth area to the north of the Hunter Expressway.</p> <p>The planning proposal proposes a range of uses and supports the reuse of the Hydro Aluminium Smelter site for longer term uses.</p>

Council's request to finalise the LEP amendment was made to the Department on 22/6/2022, following its endorsement at the meeting of Council on 15 June 2022.

Given this occurred prior to the *Hunter Regional Plan 2041* being adopted on 5/12/2022, the inconsistency with the strategies in the regional plan are justified. Particularly, in light of the proposed development being reflected in the Hunter Expressway regionally significant growth area.

#### 4.1.2 Section 9.1 Ministerial directions

An assessment against the most relevant Ministerial directions is provided below.

Ministerial direction	Justification
<b>1.1 Implementation of Regional Plans</b> The planning proposal was potentially inconsistent with Action 23.1 of the <i>Greater Newcastle Metropolitan Plan 2036</i> .	<p>With the completion of the MR195 Corridor Strategy by Transport for NSW, concerns regarding the traffic generating impacts of the proposed business zones have been resolved.</p> <p>The planning proposal is consistent with the <i>Greater Newcastle Metropolitan Plan 2036</i>. It is also consistent with the Hunter Expressway regionally significant growth area in the <i>Hunter Regional Plan 2041</i>.</p>
<b>3.1 Conservation Zones</b> The planning proposal is inconsistent with this direction as Council has not undertaken a full assessment of the environmental impacts (clause 4).	<p>As the biodiversity conservation assessment report has not been finalised, the planning proposal remains inconsistent with this direction.</p> <p>The Biodiversity Conservation Division has advised Council it will not be requesting any further avoidance of impacts that relate to swift parrot and regent honeyeater or their habitat.</p> <p>The agency is not aware of any other biodiversity issues that would require changes to the proposed zone boundaries.</p> <p>The inconsistency is justified by being in accordance with the <i>Greater Newcastle Metropolitan Plan 2036</i> and the advice of the relevant public authority. The planning proposal will also be supported by a Biodiversity Certification Assessment Report which is currently being finalised.</p>
<b>3.2 Heritage Conservation</b> Consultation was required with the Mindaribba Local Aboriginal Land Council.	<p>The advice from Mindaribba Local Aboriginal Land Council and the response by Council are outlined in the report.</p> <p>The inconsistency is justified by indigenous heritage being conserved by existing and proposed LEP amendments.</p>

Ministerial direction	Justification
<p><b>4.4 Remediation of Contaminated Land</b></p> <p>The planning proposal was inconsistent with this direction as Council has not undertaken an assessment of the preliminary investigations to verify that the land is suitable for its intended use following remediation. The landowner has been requested to provide a Phase 1 – Preliminary Investigation consistent with the 'Managing Land Contamination Planning Guidelines' over the subject land.</p>	<p>In accordance with Clause 2 of the direction, preliminary investigation of the land has been carried out and the land has been deemed suitable for its intended use, subject to some remedial actions.</p> <p>These remedial actions are to be embedded in a site specific development control plan prior to development occurring within the land.</p> <p>The planning proposal authority has undertaken steps in accordance with the direction.</p>
<p><b>5.1 Integrating Land Use and Transport</b></p> <p>The planning proposal was potentially consistent with this direction, and an assessment for consistency was to be undertaken once analysis by Transport for NSW is completed.</p>	<p>With the completion of the MR195 Corridor Strategy by Transport for NSW, concerns regarding the traffic generating impacts of the proposed business zones have been resolved.</p> <p>The planning proposal is consistent with the direction.</p>
<p><b>4.3 Planning for Bushfire Protection</b></p> <p>Consultation was required with the NSW Rural Fire Service.</p>	<p>The advice from NSW Rural Fire Service and the response by Council are outlined in the report.</p>

## 5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 7 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	2 map sheets and 1 digital map has been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment F)</i>.</p> <p>Council confirmed on 31/05/2023 that it approved the draft and that the plan should be made (<b>Attachment F</b>).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

It is recommended the Minister's delegate as the local plan-making authority determine to make the draft local environmental plan under clause 3.36(2)(a) of the Act because:

- The draft local environmental plan has strategic merit being consistent with the *Greater Newcastle Metropolitan Plan 2036* and the Hunter Expressway regionally significant growth area in the *Hunter Regional Plan 2041*.
- It is consistent with the Gateway determination.
- There are not outstanding inconsistencies with relevant section 9.1 Ministerial directions.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.

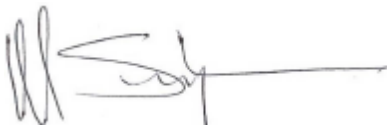


7/6/2023

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## Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination and Alterations
C	Public Submissions
D	Gateway Determination Report
E	Independent Flood Review
F	Council Consultation