



Planning,
Industry &
Environment

IRF21/3157

Gateway determination report – PP-2021-4862

Amendment to Schedule 1 (Additional Permitted Use) of the Lithgow Local Environmental Plan 2014 to permit one (1) dwelling house on Lot 1 DP 914028, No. 32 Ian Holt Drive, Lidsdale.

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Table 1: Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal report prepared by Lithgow City Council
Council Report prepared by Lithgow City Council
Email Consultation with Water NSW dated 30 July 2021

1 Planning Proposal

1.1 Overview and objectives of planning proposal

Table 2: Planning proposal details

LGA	Lithgow City Council
PPA	Lithgow City Council
NAME	Amendment to Schedule 1 (Additional Permitted Use) of the Lithgow Local Environmental Plan 2014 to permit one (1) dwelling house on Lot 1 DP 914028, No. 32 Ian Holt Drive, Lidsdale.
NUMBER	PP-2021-4862
LEP TO BE AMENDED	Lithgow Local Environmental Plan 2014
ADDRESS	32 Ian Holt Drive, Lidsdale
DESCRIPTION	Lot: 1 DP: 914028
RECEIVED	3/08/2021
FILE NO.	IRF21/3157
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 the planning proposal

The objectives of the planning proposal are outlined in the Lithgow City Council Planning Proposal, dated August 2021, page 7. The planning proposal seeks to enable a dwelling house to be constructed on Lot 1 DP 914028 (herein referred to as the 'subject site') with Council consent. The subject site is zone IN2 Light Industrial which does not permit a dwelling house.

The objectives of this planning proposal are considered to be clear and adequate.

Early in 2021 the subject site was the subject of planning proposal - PP-2021-2808 – to rezone the land to zone R5 and with a Minimum Lot Size (mls) of 2000m². Detailed information about the site and historical circumstances of the zoning of the land can be found with PP-2021-2808. This planning proposal was withdrawn. The subject planning proposal and Council Report discusses this matter.

1.3 Explanation of provisions

Lithgow City Council Planning Proposal, dated August 2021, page 7; provides an explanation of provisions that adequately explains how the objectives of the planning proposal will be achieved.

This planning proposal seeks to amend Schedule 1 Additional Permitted Use of the Lithgow Local Environmental Plan 2014 to permit a dwelling house on Lot 1 DP 914028, with development consent.

1.4 Site description and surrounding area

The subject site is located at Lot 1 DP 914028, No. 32 Ian Holt Drive, Lidsdale, which is zoned IN2 Light Industrial under the Lithgow LEP 2014. The subject site is located 4km north-east of Wallerawang and 12km north-west of Lithgow. The subject site is a triangular shape and has an area of 8,127m² with 23m of frontage to Ian Holt Drive on the north-eastern boundary. The land is currently vacant with no existing structures.

North of the subject site are existing dwelling houses on zone R5 Large Lot Residential land. East of the subject site, across Ian Holt Drive, are existing industrial land uses including a landscaping business, machinery shed and industrial supplies outlet. Immediately south-east is an existing residential dwelling on zone IN2 Light Industrial land which adjoins an established pipe manufacturer/supply business.

Adjoining the north and west boundaries is Crown Land subject to an enclosure permit EP327367.

The subject site and site context are shown in Figures 1 and 2 below.



Figure 1: Subject site (source: Lithgow City Council Planning Proposal, dated August 2021, page 5)



Figure 2: Site context (source: Lithgow City Council Planning Proposal, dated August 2021, page 6)

1.5 Mapping

The planning proposal includes an indicative map (Figure 3 below) showing the proposed changes to Schedule 1 of the Lithgow LEP 2014. The map provided is suitable for community consultation, however, the final LEP mapping will need to meet LEP map technical guidelines prior to finalisation.



Figure 3 Proposed APU applicable to the subject site (Source: Lithgow City Council Planning Proposal, dated August 2021, page 7)

2 Need for the planning proposal

Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

This planning proposal is not the result of a local strategic planning statement (LSPS) although the Lithgow Land Use Strategy 2010 – 2030 does indicate that the land should be residential. Lithgow City Council undertook a review of the planning controls for the site at the request of the landowner who felt that adequate consultation was not undertaken during the adoption of the Lithgow LEP 2014. There is no evidence provided by Council that suggests demand for large lot residential land within the Wallerawang/Lidsdale precinct is not being met with 37 lots being created in the last 5 years which once developed would satisfy future dwelling demand based on current take-up levels.

Council advise that there has been no additional industrial development or take-up of industrial land at Lidsdale since the commencement of the Lithgow LEP 2014. Four landowners in Lidsdale indicated that they would prefer their land to be zoned R5 Large Lot Residential rather than IN2 Light Industrial as considered by Council at a meeting on 25 January 2021. Council sought to rezone the subject land to R5 by PP-2021-2808 which was subsequently withdrawn. On 28 June 2021 Council resolved to seek dwelling house permissibility on the subject site through this planning proposal as it will be in keeping with nearby development and minimise land use conflict.

Council advised that the key change since the Lithgow LEP 2014 and the LSPS is that the former Wallerawang power station site is being developed into a new industrial precinct which will further reduce the need for industrial land in the Lidsdale area. As the IN2 Light Industrial land zone prohibits residential land use, a planning proposal is required to achieve the intended outcome of permitting a dwelling. There is limited strategic merit or obvious demand for the proposal and Council should review the strategic direction for land use at Lidsdale.

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

A planning proposal to amend the Lithgow LEP 2014 is the only way to allow a dwelling house on the subject site as dwelling houses are prohibited on zone IN2 land. At this point the use of an additional permitted use is an acceptable mechanism rather than rezoning the land to R5 Large Lot Residential. The IN2 zone will be retained and this will allow industrial use and a single dwelling on the land could be used as an ancillary residence in that case.

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 (CWORP) 2036.

Table 3: Regional Plan assessment

Regional Plan Objectives	Justification
Direction 21: Coordinate utility infrastructure investment	The subject site is serviced by water, sewer and electricity services, including a sealed road frontage to Ian Holt Drive. The proposal will utilise existing services and access to facilities due to its location near Wallerawang town centre and nearby R5 Large Lot Residential land.
Direction 25: Increase housing diversity and choice	The subject site is located close to Wallerawang town centre and will provide large lot residential type living at Lidsdale. This will contribute to the increased availability and variety of residential land in the area.
Direction 28: Manage Rural Residential Development	The planning proposal would provide for an additional dwelling near a rural residential setting, close to the small urban settlement of Wallerawang and will be efficiently serviced by existing infrastructure and utilities. Land use conflict can be managed as the site area is sufficient to enable separation from nearby industrial uses. An existing dwelling is located on the adjoining industrial land to the south. The land to the north is large lot residential. The proposal is consistent with nearby residential uses.

3.2 Local

The proposal addresses consistency with the following local plans and endorsed strategies as stated in the table below:

Table 4: Local strategic planning assessment

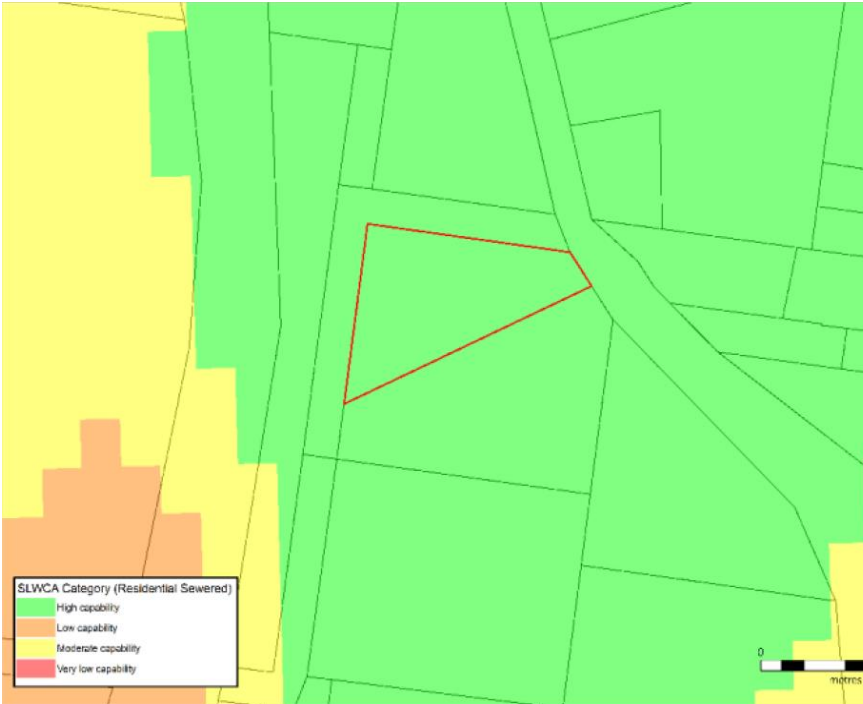
Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is inconsistent with the LSPS that indicates the land as industrial. However the proposal will create the opportunity for a dwelling on a large lot in a rural residential setting that is less than 5 minutes away from Wallerawang town centre and accessible to existing infrastructure and is therefore consistent with planning priority 5 – Align development with essential infrastructure. The planning proposal is also partly consistent with planning priority 3 – Plan and appropriately manage rural lifestyle development. This proposal has the potential to create dwelling permissibility and facilitate development that is consistent with the surrounding R5 Large Lot Residential zone while maintaining the IN2 Light Industrial opportunities on the land.</p>
Lithgow Land Use Strategy 2010-2030 (endorsed by DPIE 24 May 2012)	<p>The planning proposal is consistent with various growth management principles (GMP) in the Lithgow Land Use Strategy 2010-2030 as shown below.</p> <p>The planning proposal creates a development opportunity near established centres and existing infrastructure which has the potential to strengthen and support existing commercial centres and make use of existing infrastructure. This is consistent with the GMP 1 – Thresholds to growth and GMP 3 – Infrastructure provision which aim to strengthen the settlement hierarchy, support commercial centres, maximise infrastructure and service effectiveness, access to urban areas, and to ensure the development does not create the demand for the uneconomic provision of infrastructure.</p> <p>Council advise the site has not had any previous land uses that could impact on the land being used for a residential dwelling, such as contamination. The site is identified as bushfire prone land which will require consultation with NSW RFS. There are no other known hazards or environmental constraints associated with the land. This is consistent with the GMP 2 – Land use suitability and capability as the guiding principles aim to prevent development on unsuitable land due to constraints such as environmental significance, hazards economic/ resource potential and heritage.</p> <p>The proposal to permit the construction of a single dwelling on a large lot is consistent with the surrounding R5 Large Lot Residential land and would be of a similar density. The subject site has adequate site area to allow a dwelling house site to be located away from nearby industrial uses and highway while still being able to access services. This is consistent with GMP 4 – Diversity of lifestyle and GMP 5 – Character, identity, and urban design as the guiding principles are to provide a diverse range of residential accommodation, rural residential areas should have access to urban centres and future development should retain and enhance the character of the area.</p>

3.3 Section 9.1 Ministerial Directions

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

Table 5: 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Business and Industrial Zones	Inconsistent - Justified	This proposal affects land that is zoned for industrial use. The APU means the land still retains the potential for light industrial use. The inconsistency is of minor significance and no further work is required.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent	The proposal to permit a dwelling house on the subject site has the potential to restrict the extraction of resources however the land will remain zone IN2 where resource extraction is permissible. No further work is required.
2.1 Environment Protection Zones	Consistent	The subject site is identified as being environmentally sensitive land - groundwater vulnerable. Council advise the future dwelling house can be serviced by water and sewer services which mitigates impact on groundwater. The proposal is consistent with this direction and no further work is required.
2.3 Heritage Conservation	Consistent	The subject site is near Heritage item I197 – Windmill Lad Stud, located at Lot 1 DP 531335 (opposite the subject site to the east and separated by Ian Holt Drive). This is a local heritage item listed in Schedule 5 of the LEP. The proposal does not change the LEP heritage provisions and any impact of future development will be considered at development application stage. No further work is required in relation to this direction.
2.6 Remediation of contaminated land	Inconsistent - Unresolved at this time	Council advise this site has not been identified as being potentially contaminated from historical land uses. Council is to obtain and have regard to a report detailing the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines prior to community consultation.
3.4 Integrating Land Use Transport	Consistent	The planning proposal will not impact on transport and can be provided with services. No further work is required in relation to this direction.
4.4 Planning for Bushfire Protection	Inconsistent – Unresolved at this time	The subject site is indicated as being category 3 bushfire prone land. Consultation with NSW RFS will be required to resolve consistency prior to the LEP being finalised.

5.2 Sydney Drinking Water Catchments	Inconsistent - Unresolved	<p>The subject site is within the Sydney Drinking Water Catchment. Council consulted early with Water NSW. Water NSW advised on 30 July 2021 that the proposal is low risk if sewerred and requested to be consulted. A map of the Strategic Land and Water Capability Assessment can be seen below.</p>  <p>Strategic Land and Water Capability Assessment (Source: Planning Proposal prepared by Lithgow City Council)</p>
5.10 Implementation of Regional Plans	Consistent	<p>The planning proposal is consistent with the Central West Orana Regional Plan as discussed in section 3.1 of this report. No further work is required in relation to this direction.</p>

3.4 State environmental planning policies (SEPPs)

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

Table 6: Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Proposal	Complies
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	Development is to provide for healthy water catchments that will deliver high quality water and support the maintenance or achievement for the Sydney drinking water catchment	Lithgow City Council consulted early with Water NSW regarding the proposal. Water NSW advised Council on 30 July 2021 that consultation is required.	To be determined by consultation with Water NSW

SEPPs	Requirement	Proposal	Complies
State Environmental Planning Policy 55 Remediation of Land	Consideration must be given to potential contamination	Council advised that historical land use does not indicate potential contamination. A preliminary contamination report is to be required prior to community consultation to demonstrate that land can be used for residential purposes.	Preliminary contamination report required

4 Site-specific assessment

4.1 Environmental

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

Table 7: Environmental impact assessment

Environmental Impact	Assessment
Bushfire Prone Land	The subject site is mapped as being category 3 bushfire prone land. Consultation with NSWRFSS is required to address the potential impacts of the proposed development. (discussed in section 3.3)
Contamination	As discussed in sections 3.3 (Direction 2.6) and 3.4 SEPP No 55 Remediation of land. A preliminary contamination report is required prior to community consultation.
Heritage	As discussed in section 3.3 (Direction 2.3).
Terrestrial Biodiversity	The subject site is not identified as being of terrestrial biodiversity value.
Groundwater Vulnerability	The subject site is identified as having moderately high groundwater vulnerability in the Lithgow LEP 2014. This is expected to have minimal to no impact from residential use if the proposed dwelling house is connected to sewer. Future development on the site will need to address the impact of groundwater vulnerability during the development application stage. Consultation with Water NSW in relation to the Sydney Drinking Water Catchment is required (See section 3.3)

4.2 Social and economic

The planning proposal is unlikely to create a negative social or economic impact. The proposed dwelling house is consistent with the adjoining R5 Large Lot Residential zoned land. The subject site is zone IN2 and there are industrial land uses nearby. The potential for land use conflict is minimised because the subject site has adequate site area to allow separation distance between the proposed residential use and nearby industrial uses. The proposed APU allows the land to be used for IN2 Light Industrial uses if required in the future. Council advised that there has been minimal interest in industrial uses at Lidsdale and there is more interest in large lot residential use

and that industrial land needs can be met elsewhere. The proposal is consistent with adjoining large lot residential uses.

4.3 Infrastructure

Council advise the subject site is located within the Lithgow Development Servicing Plan area and can be serviced by reticulated infrastructure. The site also has adequate access to existing roads and transport due to its proximity to the Wallerawang town centre and existing the Lidsdale settlement.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms the conditions of the Gateway determination.

5.2 Agencies

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

- NSW Rural Fire Service in relation to Section 9.1 Direction 4.4 Planning for Bushfire Protection.
- Water NSW regarding the site being located within the Sydney Drinking Water Catchment.
- DPIE Crown land in relation to Enclosure Permit (EP) ID No. 327367, located on the northern and western boundaries of the subject site.

6 Timeframe

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

The Department recommends a time frame of nine (9) months given upcoming Council elections and Christmas period. It is recommended that if the gateway is supported it also includes conditions requiring Council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Lithgow City Council requested utilisation of its functions as a local plan-making authority for the planning proposal. Given the local nature of the proposal Council should be authorised to be the local plan-making authority.

8 Assessment Summary

The planning proposal is supported to proceed with conditions. The proposal will enable the development and land use of the subject site through an APU to allow for one (1) dwelling house to be erected on the land. This will reflect the character and density of the surrounding large lot land use.

The proposed APU will permit the development of a dwelling house at the subject site; this is considered the best option rather than proposing to rezone the subject site to a residential zone.

The proposed APU mechanism will retain the option of using the land for light industrial purposes if required in the future. Consultation with agencies, listed in Section 5.2 is recommended to support the planning proposal.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistency with Section 9.1 Direction, 1.1 Business and Industrial Zones, is minor and justified, and no further work is required; and
- Note that the inconsistencies with Section 9.1, Directions 2.6 Remediation of contaminated land, 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments, are unresolved at this time and will require consultation with the relevant agencies and further work. Resolution of the inconsistencies prior to finalisation.

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 a revised planning proposal is to be resubmitted that includes a preliminary contamination investigation undertaken to satisfy Council that the subject land is suitable or can be made suitable for the proposed residential use.
Council is to seek approval from the Department of Planning, Industry and Environment - Western Region office prior to undertaking community consultation.
2. The planning proposal must be exhibited within **3 months** from the date of the Gateway determination. 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 made publicly 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 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.
 - NSW Rural Fire Service
 - Water NSW
 - Department of Planning, Industry and Environment - Crown Land regarding the adjoining Enclosure Permit ID No. 327367.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

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 or if 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 and
 - (b) the planning proposal is consistent with section 9.1 Directions or 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 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 time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.



(Signature)

31 August 2021 (Date)

Wayne Garnsey
Manager, Western Region



(Signature)

8 September 2021 (Date)

Garry Hopkins
Director, Western Region

Assessment officer
Philippa Sokol
Planning Officer, Western Region