

PLANNING PROPOSAL

Amendment to the Upper Hunter Local Environmental Plan 2013



Planning Proposal 1/2018 – Proposed Amendment to Upper Hunter Local Environmental Plan 2013.

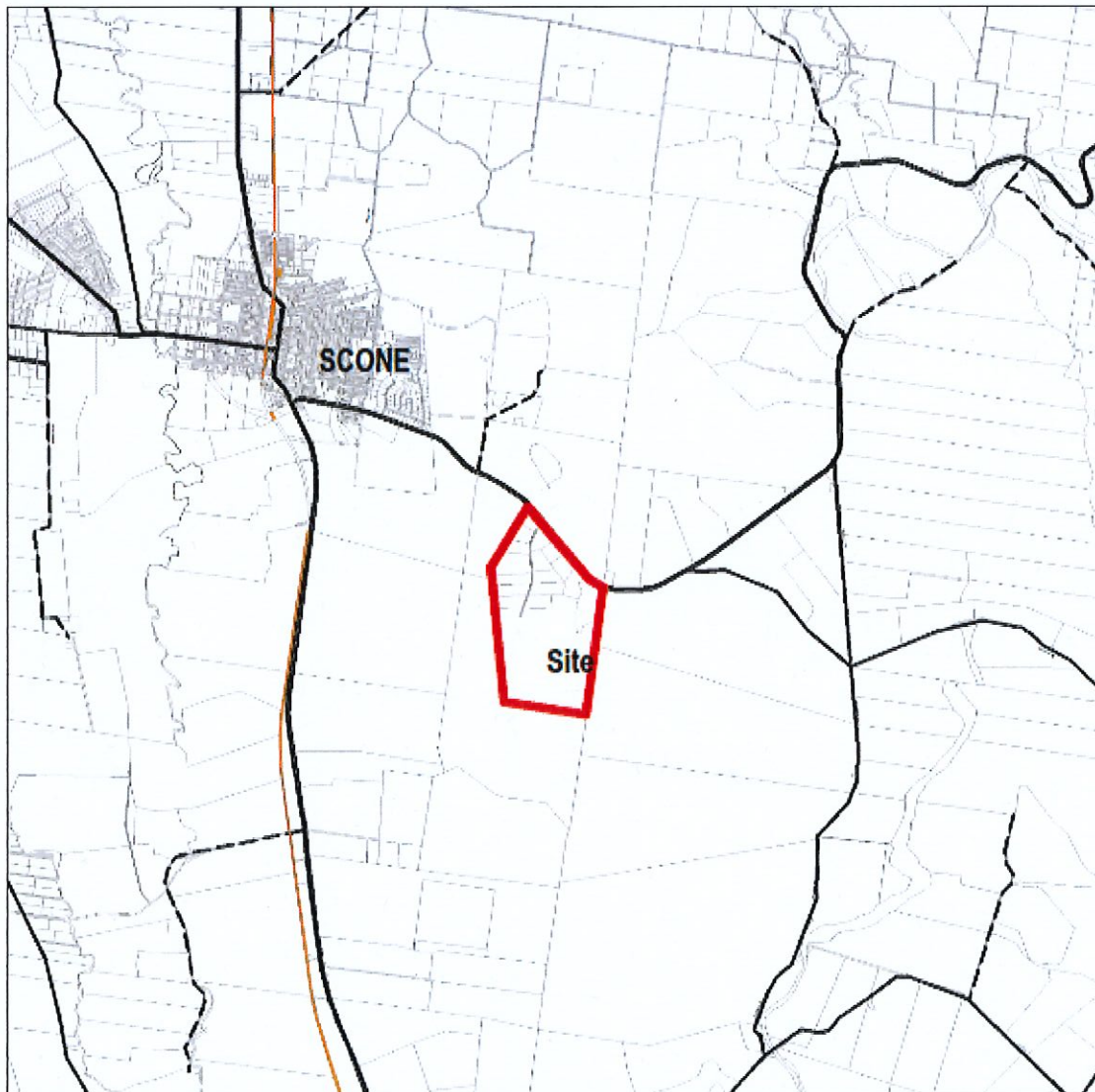
Reduce the Minimum Lot Size of Part Lot 17 DP 1196235, Gundy Road Scone

Version 01

PART 1: OBJECTIVES AND BACKGROUND

The objective of this planning proposal is to reduce the minimum lot size of Part Lot 17 DP 1196235 Gundy Road, Scone (currently zoned R5 Large Lot Residential) in order to increase the potential lot yield and ensure a more efficient use of land and infrastructure. As a result, agricultural land in the Upper Hunter Shire will be protected from the need for future rezoning to residential uses. Part of Lot 17 DP 1196235 Gundy Road Scone (Figure 1) was zoned 1(c) Small Rural Holdings under the Scone Local Environmental Plan 1986. Development Consent No. 277/2011 gave approval for 39 rural residential lots (with areas of approx. 4 ha) in three stages. To date, only Stage 1 has been completed. In 2012 the Scone Local Environmental Plan 1986 (Amendment No. 73) changed the minimum lot size from 4,000m² to 4ha. Upon the gazettal of the Upper Hunter Local Environmental Plan 2013 the land was zoned R5 Large Lot Residential with a minimum lot size of 4ha. This planning proposal seeks to change the minimum lot size to 1ha and hence increase the lot yield from available appropriately zoned land.

Figure 1. – Locality Map



PART 2: EXPLANATION OF PROVISIONS

In order to achieve the objective it is proposed that the *Upper Hunter Local Environmental Plan 2013 Lot Size Map – Sheet LSZ_008* be amended so that the land identified in Figure.1 has a minimum lot size of 1 hectare (Y).

PART 3: JUSTIFICATION

In accordance with the Department of Planning and Environment's Guide to Preparing Planning Proposals, this section provides a response to the following issues:

- Section A: Need for proposal
- Section B: Policy Context
- Section C: Potential Environmental, Social and Economic Impact; and
- Section D: Other Government Interests

SECTION A – NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal the result of any strategic study?

This planning proposal is not specifically the result of any strategic study or report. The Upper Hunter Land Use Strategy was adopted by Council in 2017. However, it does not propose to establish any priority or preliminary investigation area in relation to the site. There is also an adequate supply of rural living land for the timeframe of the Strategy. Notwithstanding, the Strategy establishes a broad policy framework that gives a high priority to the protection of agricultural land, recognising this as an important asset to the Upper Hunter Shire. The planning proposal to reduce the minimum lot size to 1ha would increase the lot yield to around 50-60 additional lots. This would further reduce the pressure for Council to seek to rezone agricultural land elsewhere.

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

The Land Use Strategy has incorporated a number of measures to protect agricultural land. This includes identifying future areas that could be rezoned to residential uses as priority or preliminary investigation areas. It also includes a "Framework for assessing the impacts on agricultural lands" in relation to planning proposals. These measures are not directly relevant to this planning proposal which effectively seeks to make more land available for rural residential uses.

3. Is there a community benefit?

There is a community benefit in the sense that it creates additional rural residential land for housing development without rezoning more agricultural land.

SECTION B –RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The Hunter Regional Plan 2036 is a broad strategic document that seeks to achieve a range of outcomes in relation to economy, biodiversity, thriving communities and greater housing choice and jobs. Direction 5 seeks to "Transform the productivity of the Upper Hunter". One of the actions under this section is to "Protect the availability and quality of resources to sustain agricultural industries in the region". Reducing the minimum lot size from 4ha to 1ha will reduce pressure to rezone agricultural land to residential uses.

5. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The Upper Hunter Shire Community Strategic Plan 2027 establishes a number of community priorities. Of relevance is Goal 4 – Plan for a sustainable future which includes the Community Strategy CS15 “Plan, facilitate and provide for a changing population for current and future generations”. The Upper Hunter Land Use Strategy predicts a small increase in population over the next fourteen years. The additional lots resulting from the reduced minimum lot size at this site will provide a small increase in the residential land supply thus helping to accommodate the growing population.

The planning proposal is also consistent with Community Strategies CS13 “Implement and regularly review Strategic Land Use Plans, Environmental Planning Instruments and Development Controls, which reflect the needs and expectations of the broad community” and CS17 “Implement policies to ensure the protection of strategic agricultural lands, equine critical industry clusters, natural resources and heritage”. As noted previously in this report, reducing the minimum lot size from 4ha to 1ha and thus increasing the lot density will reduce pressure to rezone agricultural land to residential uses.

6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The State Environmental Planning Policies (SEPPs) that are relevant to this planning proposal are outlined below.

Relevant SEPP	Consistency of Planning Proposal
SEPP No 55 Remediation of Land	<p>Clause 6 (1) requires:</p> <p><i>In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:</i></p> <p><i>(a) the planning authority has considered whether the land is contaminated, and</i></p> <p><i>(b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.</i></p> <p>Table 1 of Managing Contaminated Land Guidelines and Appendix B of the Upper Hunter Contaminated Lands Policy 2017 identify agricultural activities as potentially causing contamination. The land has a history of agricultural use. Perception Planning has not provided the required Preliminary Site Investigation report to enable Council to consider whether or not the site is contaminated. Since the planning proposal seeks to reduce the lot size there is a higher chance that a future lot and dwelling could be located on a site that has</p>

SEPP (Rural Lands) 2008

previously been used for a contaminating activity (eg sheep dip). It is recommended that a preliminary site investigation be provided following the gateway determination. The land is zone R5 Large Lot Residential and as such is not in a rural zone. In this regard the SEPP is not applicable.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 Directions)?

Each s117 Ministerial Direction is listed below with an annotation stating whether it is relevant to the Planning Proposal and confirming consistency.

s.117 Direction Title	Applies	Consistency of Planning Proposal
1.1 Business and Industrial Zones	NA	Not Applicable
1.2 Rural Zones	NA	Not Applicable
1.3 Mining, Petroleum Production and Extractive Industries	NA	Not Applicable
1.4 Oyster Aquaculture	NA	Not Applicable
1.5 Rural Lands	NA	Not Applicable
2.1 Environment Protection Zones	NA	Not Applicable
2.2 Coastal Protection	NA	Not Applicable
2.3 Heritage Conservation	NA	Not Applicable
2.4 Recreation Vehicle Areas	NA	Not Applicable
3.1 Residential Zones	Yes	<p>This Direction is applicable because the planning proposal affects land that is in a residential zone (R5 Large Lot Residential).</p> <p>Where this direction is applicable the planning authority must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>The planning proposal seeks to reduce the minimum lot size of an area that is already zoned R5 Large Lot Residential. This zone permits residential accommodation in the form of dwelling-houses and dual occupancies (attached). It is not proposing to alter the range of permissible uses or broaden the choice of building types.</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>The planning proposal makes a more efficient use of infrastructure in the sense that Gundy Road (a regional classified road) and an existing local road (Bakewell Circuit) will be used to access the site. The actual development of the site will require new infrastructure (or an extension of the existing</p>

		<p>infrastructure – roads (Bakewell Circuit), water, sewage, electricity and telecommunications. However, the planning proposal will result in a more efficient use of infrastructure than would otherwise be the case.</p> <p><i>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</i></p> <p>The planning proposal will have the effect of reducing <i>the consumption of land for housing and associated urban development on the urban fringe</i>, by reducing the minimum lot size.</p> <p><i>(d) be of good design.</i></p> <p>The Upper Hunter LEP and Upper Hunter DCP include a range of provisions to ensure development is of good design. It is not proposed to include any additional provisions in this regard.</p> <p><i>(5) A planning proposal must, in relation to land to which this direction applies:</i></p> <p><i>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</i></p> <p>The Upper Hunter LEP 2013 currently contains Clause 6.10 Essential Services. This requires that development consent must not be granted to development unless the consent authority is satisfied that water supply, supply of electricity, disposal and management of sewage, stormwater drainage or on-site conservation and vehicular access are available or that adequate arrangements have been made. This is considered sufficient to satisfy this requirement.</p> <p><i>(b) not contain provisions which will reduce the permissible residential density of land.</i></p> <p>The planning proposal does not have any provisions in this regard. Indeed, the proposal will increase the permissible residential density of the land.</p>
3.2 Caravan Parks and Manufactured Home Estates	NA	Not Applicable
3.3 Home Occupations	Yes	This requires that planning proposals must permit home occupations to be carried out in dwelling houses without the need for

		development consent. The current R5 Large Lot Residential zone is consistent with this direction.
3.4 Integrating Land Use and transport	NA	Not Applicable
3.5 Development Near Licensed Aerodromes	NA	Not Applicable
3.6 Shooting Ranges	NA	Not Applicable
4.1 Acid Sulfate Soils	NA	Not Applicable
4.2 Mine Subsidence and Unstable Land	NA	Not Applicable
4.3 Flood Prone Land	NA	Not Applicable
4.4 Planning for Bushfire Protection	Yes	<p>The land is identified as being bushfire prone (Medium Risk) on Council's Bushfire Prone Land Map.</p> <p>The planning proposal will not result in an increased bushfire risk to development relative to that under the current zoning of the land. In accordance with Direction 4.4, the Commissioner of the NSW Rural Fire Service will be consulted following receipt of a gateway determination.</p> <p>A detailed assessment of the proposal against this direction is provided in Appendix C.</p>
5.1 Implementation of Regional Strategies	NA	Not Applicable
5.2 Sydney Drinking Water Catchments	NA	Not Applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	NA	Not Applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	NA	Not Applicable
5.6 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	NA	Not Applicable
5.9 Second Sydney Airport: Badgerys Creek	NA	Not Applicable
5.10 Implementation of Regional Plans	Yes	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning. The Hunter Regional Plan was released in 2016. It does not impose any specific requirements on the land subject to this planning proposal.
6.1 Approval and Referral Requirements	NA	Not Applicable
6.2 Reserving Land for Public Purposes	NA	Not Applicable
6.3 Site Specific Provisions	NA	Not Applicable
7.1 Implementation of the Metropolitan Strategy	NA	Not Applicable

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal involves reducing the minimum lot size and as such there is potential for a greater number of lots to impact on the ecological values of the site. The site comprises Grassy Ironbark Woodland, Upper Hunter White Box-Ironbark Woodland, grassland and Ironbark-Spotted Gum Fence Plantings (Firebird Ecoconsultants Pty Ltd, 2018). The Preliminary Ecological Assessment identifies the Upper Hunter White Box-Ironbark Woodland EEC as being present. It also identifies a total of 23 remnant trees as mature and containing hollows that are suitable for fauna.

Overall the site is located within predominantly cleared areas and as such the biodiversity impacts associated with the rezoning and subsequent residential development of the land would be expected to be relatively minor and unlikely to have a significant impact on threatened species, endangered ecological communities or their habitats. However a further more detail ecological assessment is required. Notwithstanding an important objective of this planning proposal would be to ensure there is no loss of remnant native tree vegetation and where possible native tree vegetation is enhanced.

The rezoning and development plan provided by the proponent proposes that a "Public Reserve for Tree Preservation" is established. This implies there is some expectation that the land will be dedicated to Council for future sustainable management. It may be appropriate to consider negotiating a Planning Agreement to facilitate conservation outcomes and reserve management. There is potential that this site could be enhanced under the Biodiversity Stewardship Scheme to provide Biodiversity Credits. This will be further explored as part of the development application process.

9. Are there any other environmental effects as a result of the planning proposal and how are they proposed to be managed?

Bushfire

The land is identified as bush fire prone (Medium) on the Bush Fire Prone Land Map. The Bushfire Protection Assessment (Ecologic Pty Ltd, 2018) has given consideration to the bushfire issues. The assessment identifies the need for a range of bushfire protection measures including: asset protection zones, an APZ maintenance plan, construction standards, access and services.

Flooding

The land is not identified as being flood prone land.

Soil and Water

The land has the potential to be affected by soil erosion, land degradation and water quality decline through more intensive rural residential development. The site is located on a watershed between two sub-catchment areas. The majority of the site falls in an easterly direction and as such the majority of water would flow towards the Pages River (although it may not actually reach the Pages River). In addition, any future development application for subdivision would need to give consideration to soil and water management issues (including the submission of a Soil and Water Management Plan).

The land is also partly within or adjoins a saline catchment that drains to the west of the site. Preliminary investigations have identified high groundwater salinity levels on land around the aged care facility and Scone High School. Water flowing into this catchment area (either by surface flow or groundwater recharge) from the site has the potential to exacerbate a potential soil salinity issues. It is recommended that further investigations are undertaken to establish the extent to which the increased land use intensity is likely to cause increased soil salinity. In particular investigations would need to establish the extent to which the site acts as a recharge area for groundwater within the adjacent catchments.

10. How has the planning proposal adequately addressed any social and economic effects?

An Aboriginal Cultural Heritage Assessment (Insite Heritage, 2018) identified that a number of items of significance were found. The planning proposal and the subsequent subdivision of land is likely to result in the destruction of these isolated finds. The proponent will be required to obtain an Aboriginal Heritage Impact Permit (AHIP) from the NSW Office of Environment and Heritage before any development of the site can proceed.

SECTION D – COMMONWEALTH AND STATE INTERESTS

11. Is there adequate public infrastructure for the planning proposal?

The site is located within close proximity to existing road, water supply and electricity infrastructure. The public road network will need to be extended to service the future lots. The water supply infrastructure that services Stage 1 will need to be upgraded and extended to adequately service the additional lots. The applicant advises that the site will have access to reticulated sewer. Notwithstanding, the resultant lots are likely to have sufficient area (>1ha) to support on-site sewage management systems.

12. What are the views of State and Commonwealth public authorities in accordance with the Gateway determination?

Relevant State and Commonwealth public authorities will be consulted in accordance with the Gateway determination.

PART 5: COMMUNITY CONSULTATION

The planning proposal will be placed on public exhibition following the Gateway Determination.

PART 6: PROJECT TIMELINE

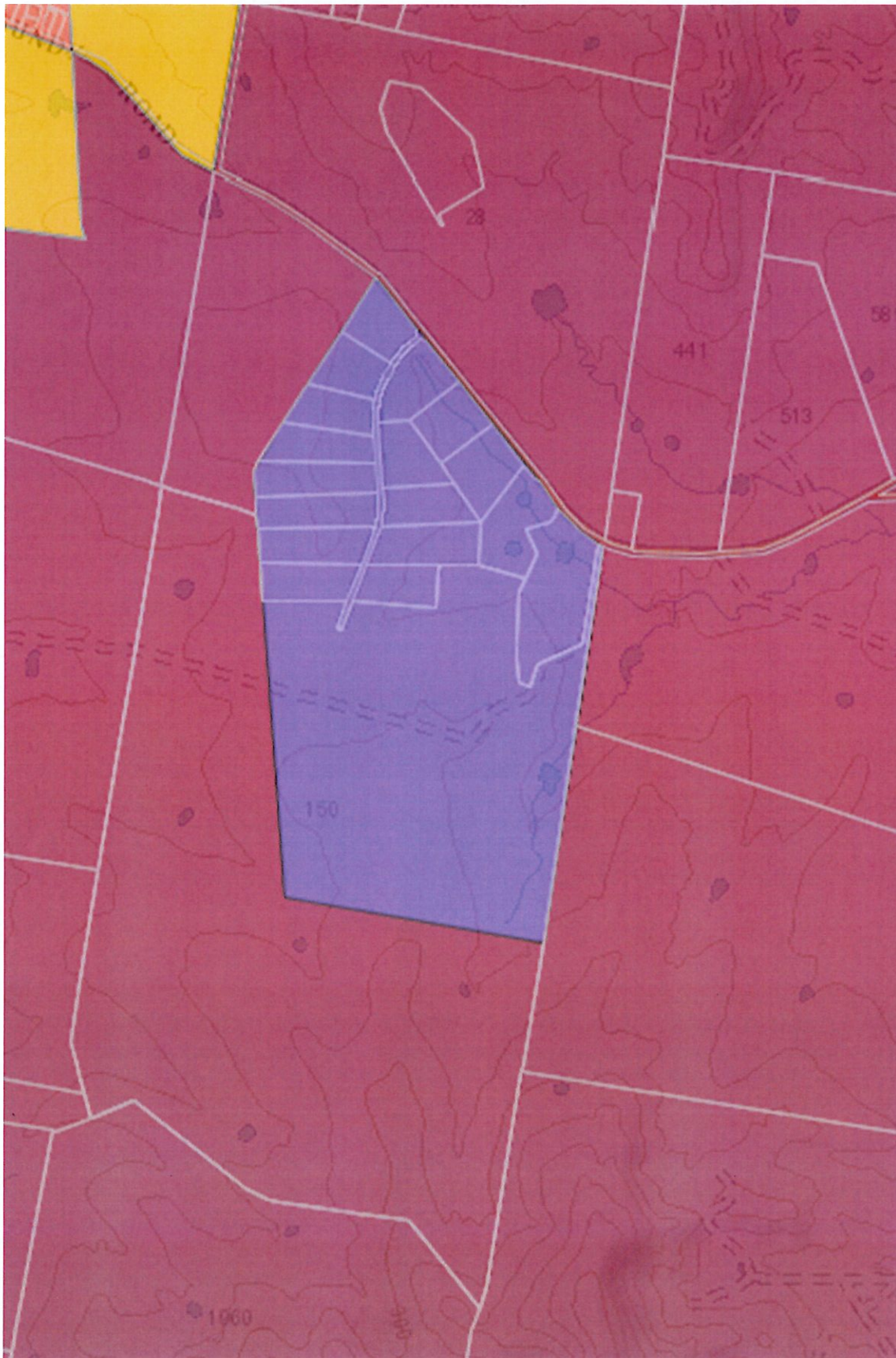
The project timeline in respect of the planning proposal is provided in the following diagram.

The anticipated timeframe for the proposed amendment to the Upper Hunter Local Environmental Plan 2013 from submission of the proposal to NSW Planning and Environment to gazettal of the LEP amendment is seven (7) months.

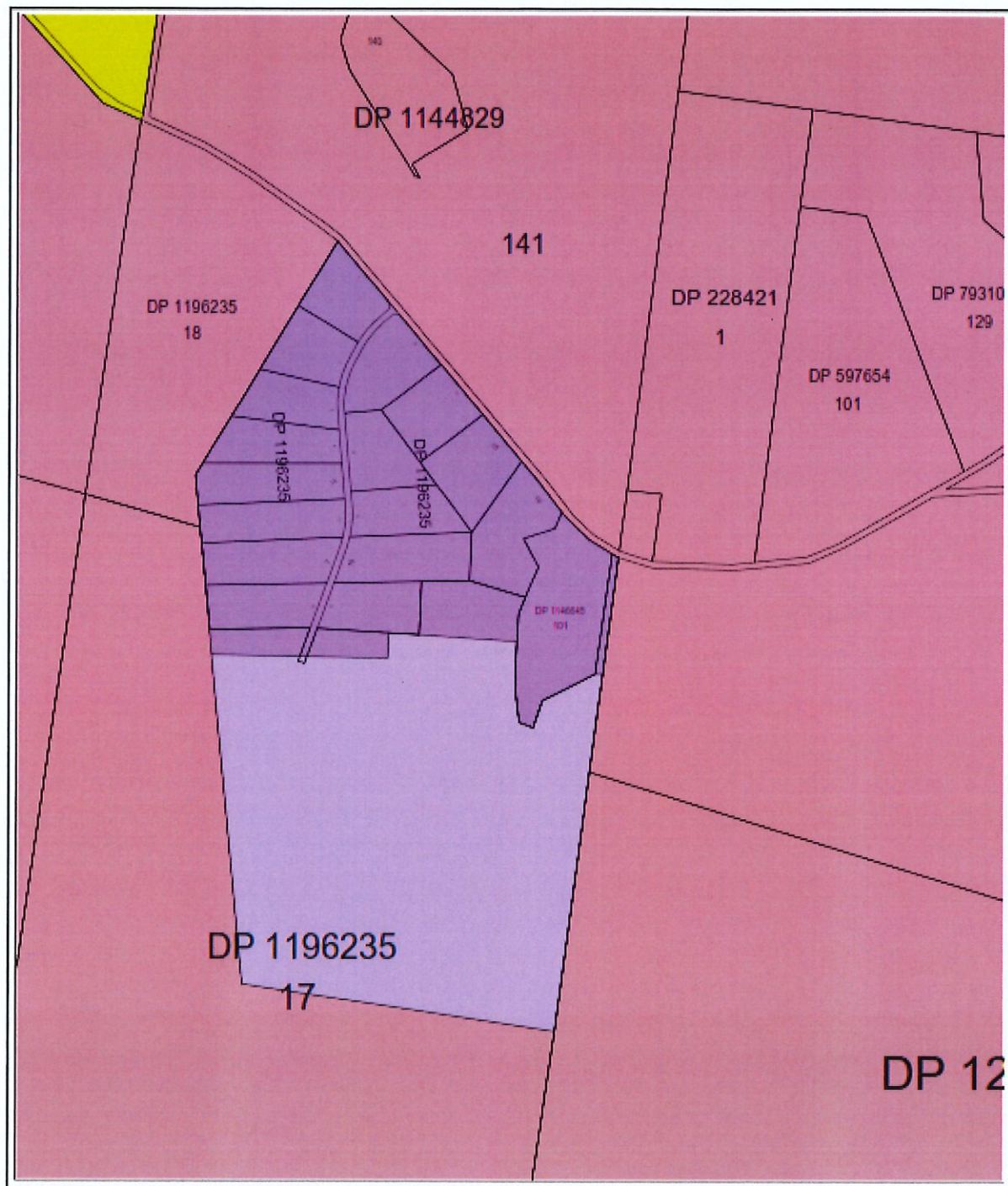
PROJECT TIMELINE

	December 2018	January 2019	February 2019	March 2019	April 2019	May 2019	June 2019
STAGE 1 Submit Planning Proposal to NSW Planning & Environment							
STAGE 2 Anticipated commencement date (Gateway Determination)							
STAGE 3 Consultation – Community/ Public Authorities							
STAGE 4 Review / consideration of submissions to public exhibition							
STAGE 5 Report to Council							
STAGE 6 Finalise the Local Environmental Plan using Minister's plan making delegations.							

APPENDIX A: EXISTING LOT SIZE MAP



APPENDIX B: PROPOSED LOT SIZE MAP



SCALE: 1 : 15260

LOCALITY: PARISH OF SCONE, COUNTY OF BRISBANE

Planning Officer: Paul Smith
Council File No. UHSC-570/18
Dept File No.
Govt Gazette of

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**UPPER HUNTER SHIRE COUNCIL
LOCAL ENVIRONMENTAL PLAN
2013 (Planning Proposal 2/2018)**

STATEMENT OF RELATIONSHIP
WITH OTHER PLANS

**AMENDS UHSC
L.E.P. 2013**

CERTIFIED IN ACCORDANCE
WITH THE ENVIRONMENTAL
PLANNING & ASSESSMENT ACT
1979 AND REGULATIONS

GENERAL MANAGER

DATE

APPENDIX C: CONSIDERATION OF SECTION 117 DIRECTION – PLANNING FOR BUSH FIRE PROTECTION

(4) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,

The Planning Proposal is yet to be referred to the NSW Rural Fire Service.

(5) A draft LEP shall:

(a) have regard to *Planning for Bushfire Protection 2006*,

(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and

(c) ensure that bushfire hazard reduction is not prohibited within the APZ.

The site is identified as Bush Fire Prone Land (Medium) on the Council's Bush Fire Prone Land Mapping. The proponent has submitted a Bushfire Protection Assessment (Ecologic Pty Ltd, 2018) that gives consideration Planning for Bush Fire Protection 2006. Specifically it gives consideration to asset protection zones, construction standards, access, water supply and gas and electrical services.

Asset protection zones (APZ) – the bush fire assessment establishes the dimensions of the APZs based on specific transect lines. It also establishes a APZ maintenance plan.

Construction standards – this would be relevant for future building design. It is suggested that a maximum of BAL-29 should be achievable using AS3959-2009.

Access – Public road access to the lots within the future subdivision would be provided through the Stage 1 road (Bakewell Circuit), which will loop around and connect back into Gundy Road. The conceptual plan provided with the Planning Proposal Application show two “dead-end” roads within the area subject to the reduction in the minimum lot size. Planning for Bush Fire Protection establishes the performance criteria that “public road widths and design that allow safe access for fire fighters while residents are evacuating an area”. The Planning Proposal does not comply with the Acceptable Solutions by not including a perimeter road and the inclusion of two “dead-end” roads. It will be necessary to establish whether or not these non-compliances are acceptable. It is noted that under Development Consent No. 277/2011 for the 39 lot rural residential subdivision the land was not all classified as Bush Fire Prone. However in 2017 a new Bush Fire Prone Land Map was adopted which incorporated the whole site as bush fire prone land.

Services – water, electricity and gas – the assessment report advises that these services can be made to comply. Notwithstanding it will be necessary to refer this Planning Proposal to the Rural Fire Service following the Gateway Determination.

(6) A planning proposal must:

(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:

(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and

(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,

The Bushfire Protection Assessment has not made provision for an Inner Protection Area bounded by a perimeter road. Firstly the concept plan is not proposing a perimeter road. It does however propose a 10m and 15m APZ at the boundary of the site and adjoining lands.

(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the draft LEP permit Special Fire Protection Purposes (as defined under section 100B of the *Rural Fires Act 1997*), the APZ provisions must be complied with,

Not applicable

(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,

The concept plan proposes a two-way circuit road and two internal 'dead-end' access roads. There is no perimeter road. It is unclear whether this arrangement is suitable in this particular circumstance. Further advice from the NSW Rural Fire Service is required.

(d) contain provisions for adequate water supply for firefighting purposes,

The Bushfire Protection Assessment does not provide any specific detail about the water supply for fire fighting purposes. It suggests it can comply with the Performance Criteria and Acceptable Solutions in Planning for Bushfire Protection 2006.

(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,

This has been achieved through the 10m and 15m APZ at the boundary of the site and adjoining lands.

(f) introduce controls on the placement of combustible materials in the Inner Protection Area.

This would form a condition of consent if applicable.