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Gateway determination report – PP-2021-7425

BlueScope Holdings, Kembla Grange

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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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Table 1 Reports and plans supporting the proposal

| Relevant reports and plans |
|--|
| Wollongong City Council. Ordinary Meeting of Council. 19 July 2021. <i>Draft Planning Proposal and draft Neighbourhood Plan – BlueScope Lands Holdings, Kembla Grange.</i> |
| Bushfire Assessment (Peterson Bushfire, June 2020) |
| Preliminary Site Investigations (Cardno, May 2019) |
| Ecological Constraints Assessment (Ecoplanning, June 2020) |
| Water Cycle Management Study (Cardno, June 2020) |
| Traffic Impact Assessment (Cardno, June 2020) |
| West Dapto Lands, Kembla Grange: Aboriginal Cultural Heritage Assessment Report (Biosis, March 2020) |
| West Dapto Lands, Kembla Grange: Archaeological Report (Biosis, March 2020) |
| Arboricultural Development Assessment Report (Moore Trees, June 2020) |
| West Dapto Road, Kembla Grange: Historical Heritage Assessment and Statement of Heritage Impact (Biosis, April 2020) |
| Wollongong DCP 2009 – Chapter D16 West Dapto Urban Release Area (Neighbourhood Plans) |

1. Planning proposal

1.1 Overview

Table 2 Planning proposal details

| | |
|---------------------------------|--|
| LGA | Wollongong |
| PPA | Wollongong City Council |
| NAME | BlueScope Holdings, Kembla Grange |
| NUMBER | PP-2021-7425 |
| LEP TO BE AMENDED | Wollongong LEP 2009 |
| ADDRESS | West Dapto Road, Kembla Grange |
| DESCRIPTION | Various lots and DPs (refer to planning proposal document) |
| RECEIVED | 18/12/2021 |
| FILE NO. | IRF22/124 (EF21/18780) |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal |

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The primary objective of the planning proposal is to enable urban development – being medium density residential and industrial development – while protecting significant environmental values within the precinct by rezoning the site as follows:

- Rezone parts of Lot 1 DP 588139 adjoining Paynes Road, from R2 Low Density Residential to R3 Medium Density Residential, with a Minimum Lot Size changed from 449 m2 to 300 m2 and an amended Floor Space Ratio of 0.75:1 from 0.5:1.
- Rezone land along West Dapto Road within Lot 1 DP 588140 from C3 (formerly E3) Environmental Management to C2 Environmental Conservation, with a minimum lot size of 8.9 ha from 39.99 ha
- Rezone land within Lot 1 DP 588139 from C2 (formerly E2) Environmental Conservation to IN2 Light Industrial to with a Minimum Lot Size changed from 39.99 ha to 999 m2 and an amended Floor Space Ratio of 0.5:1 from No FSR.
- Rezone land within Lot 1002 DP 1192327, Lot 1 DP 588140 and Lot 1 DP 588139 from C3 (formerly E3) Environmental Conservation to IN2 Light Industrial with a variety changes to minimum lot sizes, and an amended Floor Space Ratio of 0.5:1 from Nil.

- Rezone part of the private railway from SP2 Infrastructure (Rail) to IN3 Heavy Industrial with a minimum lot size of 2999 m² from Nil.
- Various minimum lot size changes within Lot 1 DP 588139, Lot 1 DP 588140, Lot 1192327 and Lot 230137.

Council also proposes to establish a 48.51 ha Biodiversity Stewardship site across Lot 1 DP 588139 and Lot 1 DP 588140 in consultation with the Biodiversity Conservation Trust and the NSW Department of Planning, Industry and Environment (DPIE).

This will not involve an amendment to the Wollongong LEP 2009 so falls outside of the planning proposal process. However, Council intends to run the processes concurrently to provide a full picture of the outcomes for the site. Council intends to exhibit the details of the proposed Biodiversity Stewardship with the planning proposal.

The proposal should be updated prior to exhibition to make it clear that this agreement sits outside the planning proposal and will occur concurrently.

The proposal as submitted by Council includes:

2. Rezone land on the corner of West Dapto Road and Darkes Road within Lot 1 DP 588140 from C3 (formerly E3) Environmental Management to R3 Medium Density Residential with a Minimum Lot Size changed from 39.99 ha to 300 m² and an amended Floor Space Ratio of 0.75:1 from No FSR.

The Council resolution excludes this land from the planning proposal so the Gateway will need to require the removal of this component of the proposal.

1.3 Explanation of provisions

The planning proposal seeks to amend the Wollongong LEP 2009 per the changes below:

Table 3 Current and proposed controls

| Control | Current | Proposed |
|---------------------|---|--|
| Zone | R2 Low Density Residential C3 Environmental Management C2 Environmental Conservation SP2 Infrastructure (Rail) | R3 Medium Density Residential IN2 Light Industrial IN3 Heavy Industrial C2 Environmental Conservation C3 Environmental Management |
| Floor space ratio | Various FSR controls – see mapping | Various FSR controls – see mapping |
| Minimum lot size | 39.99ha 449m ² 999m ² | Various MLS controls ranging from 299m ² to 12.9ha – see mapping. The range of minimum lot sizes is based on existing lots in the area to prevent further subdivision beyond that envisaged by the proposal. |
| Number of dwellings | Information not provided | 580 |

| | | |
|----------------|-----|-----|
| Number of jobs | N/A | 900 |
|----------------|-----|-----|

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

The proposal should be updated prior to exhibition to make it clear that the Biodiversity Stewardship agreement sits outside the planning proposal and will occur concurrently.

1.4 Site description and surrounding area

The subject land comprises 5 lots with a total area of approximately 215ha.

The site is bisected by West Dapto Rd to create two irregular rectangular parcels. The eastern portion of the site is bound by West Dapto Rd to the north and west; the Illawarra Railway line to the east and private recreation land (part of Kembla Grange Golf Club holdings) to the south. The western portion of the site is bound by West Dapto Rd to the east; industrial land to the north and residential land to the west and south.

There is an existing 39ha biobanking site on the land which was established in 2019.

The site has many environmental constraints/values including EECs, threatened flora and fauna, bushfire and flood affected land; and heritage items.

The proposal also applies to an industrial parcel to the north of West Dapto Rd which is not part of the BlueScope holdings but the only proposed changes relate to the rezoning of the railway corridor on the southern edge of that lot.

A locality map and site map for the land are at Figures 1 and 2.

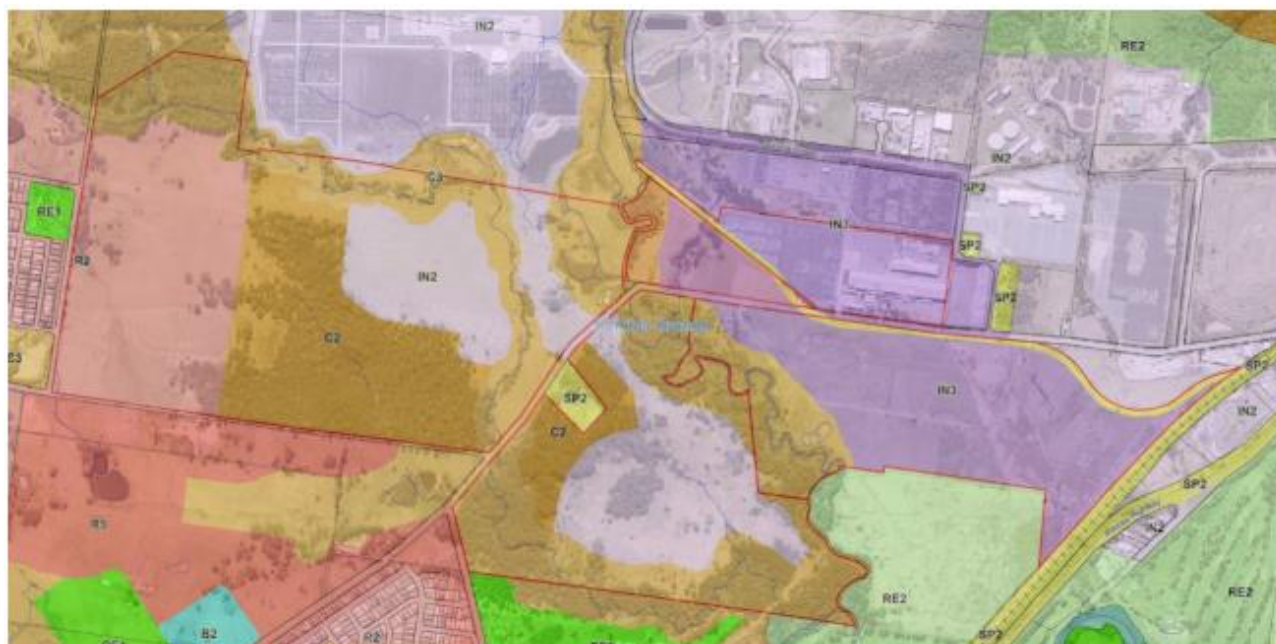


Figure 1 Subject site (source: Council planning proposal)



The planning proposal includes mapping showing the proposed changes to the Wollongong LEP 2009 maps, which are suitable for community consultation.



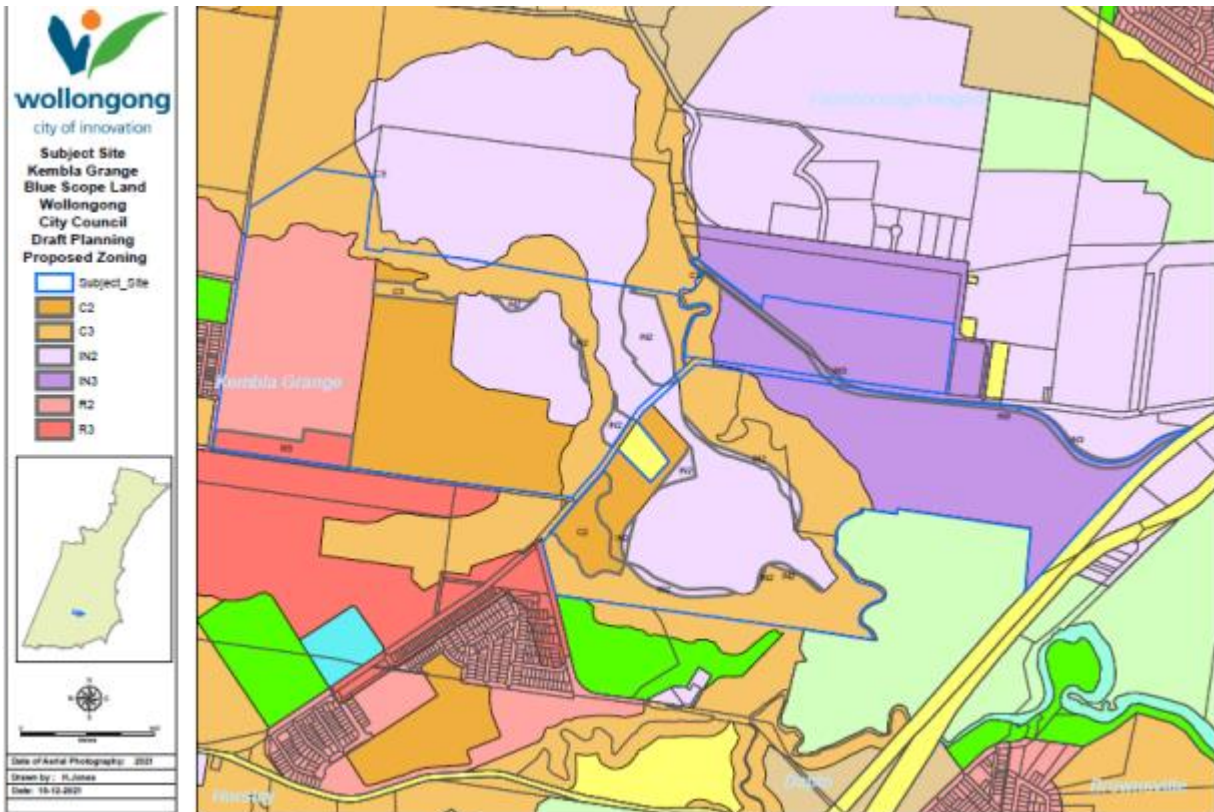


Figure 4 Proposed zoning map

2. Need for the planning proposal

The proposal will amend zone boundaries to increase the amount of industrial land available for employment uses; and to allow for additional dwellings by rezoning a small area of land from R2 to R3. Much of the site is already zoned for industrial uses and environmental management/conservation. This proposal amends the boundaries between the industrial and environmental lands to facilitate an improved development and environmental protection outcome.

Council considers that this rezoning provides an opportunity to negotiate a Biodiversity Stewardship agreement over 48.5ha to provide long term protection of environmental values on the site.

The proposal was not the result of a strategic study but evolved through more detailed examination of the site during the preparation of a draft Neighbourhood Plan for the area which considered constraints, values, road connections, drainage management, etc..

A planning proposal is the only option for reconfiguring the zones in the area to reflect 'on-ground' values and constraints – and to apply amended lot size and FSR controls.

3. Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Illawarra Shoalhaven Regional Plan (ISRP).

Council has identified that the proposal is generally consistent with the ISRP.

Table 4 Regional Plan assessment

| Regional Plan Objectives | Justification |
|---|---|
| Objective 18: Provide housing supply in the right locations. Objective 19: Deliver housing that is more diverse and affordable | This land is within Stage 1 of the West Dapto Urban Release Area. The ISRP identifies West Lake Illawarra as the focus for housing supply in the region. This proposal will facilitate additional housing. The proposal will allow for medium density development and will provide for greater housing diversity through smaller lots and increased FSRs. |
| Objective 23: Celebrate, conserve and reuse cultural heritage | The proponent is undertaking additional archaeological studies that will be finalised prior to exhibition of the proposal. The site contains locations recorded under the Aboriginal Heritage Information Management System showing historic use of the land by local Aboriginal people. These are generally located in areas of environmental value and will be protected through the environmental zoning of significant areas. Further work is being done in this area to ensure appropriate recognition and protection of Aboriginal Heritage, European Heritage and Natural Heritage. While not part of the planning proposal, the Neighbourhood Plan also recommends that interpretation and signage associated with the former Dapto radio telescope be included to recognise the role the site played in the development of this technology. |

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

| Local Strategies | Justification |
|---|---|
| Wollongong Local Strategic Planning Statement | The West Dapto URA is identified in the LSPS as a significant source of housing supply and employment opportunities. The proposal will also provide protection of environmental assets. |
| Community Strategic Plan Wollongong 2028 | The proposal is consistent with the objective to protect the natural environment, waterways and terrestrial areas. And the community goal to value and protect the environment. |

| | |
|---|--|
| West Dapto Vision 2018 | The planning proposal implements the aims and objectives of the West Dapto Vision by providing housing and employment opportunities in the West Dapto Urban Release Area. |
| Urban Greening Strategy 2017-2037 | The planning proposal seeks to enhance connectivity throughout the site with the and contribute to increased tree canopy cover by appropriate location of environmental zones. |
| Illawarra Escarpment Strategic Management Plan 2015 | The proposal is consistent with the principles in this plan. Council chose not to support an R3 zoning on land closer the Escarpment (which was part of the original submitted proposal by BlueScope) to protect the environment including visual impacts. |

3.3 Local planning panel (LPP) recommendation

The Wollongong Local Planning Panel did not object to the proposal and its recommendations were addressed/included in the report considered by Council.

3.4 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment

| Directions | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|-----------------------------------|----------------------------|---|
| 1.1 Business and Industrial Zones | Yes | <p>The objective of this direction is to support employment in suitable locations – and to retain existing areas identified for employment uses.</p> <p>This proposal reconfigures and increases land zoned and available for employment.</p> <p>The proposal is considered to be consistent with this direction and no further approval is required.</p> |

| | | |
|------------------------------|------------------|--|
| 2.1 Environmental Protection | No | <p>The objective of this direction is to protect and conserve environmentally sensitive areas. A planning proposal must not reduce the environmental protection standards that apply to land in an environmental zone.</p> <p>This proposal does rezone pockets of existing environmental land to an industrial zone so the proposal is technically inconsistent with this direction. However, the areas proposed to be rezoned were found to be of lower environmental value. The proposal preserves the existing Biobank site and will support the addition of a future Biodiversity Stewardship agreement on the land.</p> <p>A proposal may be inconsistent with this direction if the inconsistency is justified or minor. In this case the proposal provides for positive environmental outcomes and is consistent with the strategic planning for West Dapto.</p> <p>The proposal is considered to be justifiably inconsistent and no further approval is required.</p> |
| 2.2 Coastal Management | To be determined | <p>The objective of this direction is to protect and manage coastal areas. It notes that a proposal must now allow increased development on land within a coastal wetland.</p> <p>Council has asked the applicant to provide additional flood information which will better inform consistency with this direction.</p> |
| 2.3 Heritage Conservation | To be determined | <p>The planning proposal is supported by Aboriginal and non-Aboriginal cultural heritage assessments which identify the presence of Aboriginal and non-Aboriginal cultural heritage items.</p> <p>Council has asked the proponent to undertake further heritage studies prior to exhibition of the planning proposal.</p> <p>Council anticipates that the proposal will be consistent with this direction however this will be determined following the provision of additional information prior to exhibition.</p> |

| | | |
|--|---|---|
| 2.6 Remediation of Contaminated Land | To be determined | <p>The objective of this direction is to reduce the risk of harm through the consideration of contamination and remediation by a planning proposal authority.</p> <p>A preliminary site investigation has identified various potential areas of concern. Council will require a letter from an accredited auditor. This will be required prior to exhibition.</p> <p>Council anticipates the proposal will be consistent with this direction however this will be determined following the provision of additional information prior to exhibition.</p> |
| 3.1 Residential Zones | Yes | The proposal will provide opportunity for low and medium density housing close to employment and infrastructure. |
| 4.3 Flood Prone Land | No – to be determined following additional flood investigations | <p>This direction requires that a proposal must not rezone land in a flood planning area from an environmental zone to a residential or industrial zone.</p> <p>This proposal is inconsistent with this direction. Flood information supporting the proposal identifies that the proposal is consistent with environmental controls for floodplain management, stormwater management and water sensitive urban design.</p> <p>Council considers that further information is required to justify the inconsistency with this direction.</p> |
| Direction 4.4 Planning for Bushfire Protection | To be determined | The site contains areas mapped as bushfire prone land. A bushfire strategic study has been prepared to support the planning proposal. Council considers the proposal can comply with the Direction. The Direction requires Council to consult the Rural Fire Service on the proposal prior to exhibition. |

3.5 State environmental planning policies (SEPPs)

The proposal is considered consistent with relevant SEPPs apart from those discussed in the table below:

Table 8 Assessment of planning proposal against relevant SEPPs

| SEPPs | Requirement | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|------------------------------|--|----------------------------|---|
| SEPP55 – Remediation of Land | The SEPP does not provide specific requirements for planning proposals. Rather it requires consent authorities to consider whether a site is contaminated and if so whether the site can be remediated during the determination of development applications. | To be determined | Preliminary site investigations have identified several areas of potential concern that need further investigation. Council has asked the proponent to arrange for an accredited site auditor to provide an Interim Advice Letter relating to the future management and monitoring and Site Audit requirements for the land. |
| SEPP Coastal Management | The SEPP does not provide specific requirements for planning proposals. Rather it provides matters for consideration for mapped “coastal management areas” for consent authorities during the determination of development applications. Development within areas mapped as coastal wetlands is designated development requiring the preparation of an environmental impact statement. | Yes | The land to which the SEPP applies is currently zoned IN3 Heavy Industrial. This issue will be further considered through future development application processes. |

4. Site-specific assessment

4.1 Environmental

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

Table 9 Environmental impact assessment

| Environmental Impact | Assessment |
|----------------------|------------|
|----------------------|------------|

| | |
|--------------------|---|
| Flora and Fauna | <p>The site contains several threatened fauna species and areas of EECs (Illawarra Lowlands Grassy Woodland). These areas are generally protected through the application of environmental zones and within the existing Biobank site and future Biodiversity Stewardship area.</p> <p>Biodiversity and environmental investigations supporting the proposal have identified that areas that are being rezoned from an environmental to an industrial zone are unlikely to contain threatened or endangered species.</p> <p>However, given the values of the site there remains a potential for industrial and residential development to have an impact on native flora and fauna.</p> <p>Future development will likely require survey and assessment under the Biodiversity Assessment Method and the preparation of Biodiversity Development Assessment Reports to support the applications.</p> <p>DPE – EES will be consulted on the proposal if a Gateway determination is issued.</p> <p>The protection of flora and fauna will be further considered through future development application processes.</p> |
| Flooding | <p>The site is within the Mullet Creek catchment and parts of the site are flood affected. Development of the industrial areas will require landform medication to mitigate flood impacts.</p> <p>Council found that additional flood investigations are required to determine whether the proposed zone boundaries and required mitigation measures are appropriate with respect to flooding. This work will be completed prior to exhibition and may result in changes to the proposal.</p> |
| Bushfire | <p>A bushfire report was undertaken in accordance with Planning for Bushfire Protection 2019. The report identifies vegetated areas as a potential bushfire hazard and makes recommendations for mitigating potential impacts.</p> <p>Council considers that bushfire impacts will be managed through road/subdivision design at the development application stage.</p> <p>NSW Rural Fire Service will be consulted on the proposal as a requirement of Ministerial Direction 4.4. Planning for Bushfire Protection.</p> |
| Site Contamination | <p>The site is identified as contaminated land with several Potential Areas of Concern identified. SEPP55 will apply to future development of the site. As a result, Council has required a NSW EPA accredited site auditor to issue an Interim Advice Letter to support the planning proposal. Council will want this information prior to exhibition of the proposal.</p> |

4.2 Social and economic

The proposal will support positive economic and social outcomes by providing housing and employment within the West Dapto Urban Release Area.

The site contains areas of Aboriginal and Non-Aboriginal heritage which will be further considered prior to exhibition of the proposal.

It is considered that heritage values will be generally protected through the application of environmental zones and appropriate development controls to prevent development in these locations.

4.3 Infrastructure

The site has the potential to be serviced by all utilities. It has good road access from West Dapto Road, Sheaffes Road and the future extension of Northcliffe Drive.

5. Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal.

It is recommended the following agencies be consulted on the planning proposal and given 28 days to comment:

- NSW Heritage
- NSW DPE – Environment, Energy and Science
- NSW DPE – Natural Resource Access Regulator
- Department of Education
- Endeavour Energy
- Transport for NSW/Roads and Maritime Services
- Sydney Water
- Illawarra Local Aboriginal Land Council
- NSW Rural Fire Service
- State Emergency Service
- Jemina Gas

6. Timeframe

Council proposes a 18 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure it is completed in line with its commitment to reduce processing times.

7. Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the site is identified in the Illawarra Shoalhaven Regional Plan, Council's Local Strategic Planning Statement and West Dapto Vision as an urban release area, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8. Assessment summary.

The planning proposal is supported to proceed with conditions for the following reasons:

- It will facilitate housing and employment within the West Dapto Urban Release Area which is identified for development in the Illawarra Shoalhaven Regional Plan, Council's Local Strategic Planning Statement and West Dapto Vision 2018.
- The proposal will provide a diverse mix of new homes (577), protect environmental areas and cultural heritage, provide employment opportunities, and support the local economy.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Amend Part 2 Explanation of provisions to remove *“Rezone land on the corner of West Dapto Road and Darkes Road within Lot 1 DP 588140 from C3 (formerly E3) Environmental Management to R3 Medium Density Residential with a Minimum Lot Size changed from 39.99 ha to 300 m2 and an amended Floor Space Ratio of 0.75:1 from No FSR.”* to reflect Council's resolution for this proposal.
- Clearly identify that the Biodiversity Stewardship agreement falls outside of the scope of the planning proposal.
- Incorporate the outcomes of the additional studies/investigations identified by Council in the proposal including: Aboriginal and non-Aboriginal cultural heritage; flooding; and contamination.
- Incorporate the outcomes of consultations with the Rural Fire Service as required by Ministerial Section 9.1 Direction 4.4 Planning for Bushfire Protection.

9. Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 2.1 Environmental Protection Zones are minor or justified; and
- Note that the inconsistencies with section 9.1 Directions 2.3 Heritage Conservation; 2.6 Remediation of Contaminated Land; 4.1 Flood Prone Land; and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

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, the planning proposal is to be updated to:
 - Remove the reference to proposed rezoning of land on the corner of West Dapto Road and Darkes Road from C3 to R3 to reflect the proposal that was supported by Council.
 - Clarify that the proposed Biodiversity Stewardship agreement does not involve an amendment to the Wollongong LEP so therefore sits outside of the planning proposal process.
 - Incorporate the outcomes of the further studies into heritage; flooding and contamination proposed by Council as identified in the planning proposal, and
 - Incorporate the outcomes of consultations with the NSW Rural Fire Service
2. Prior to community consultation, consultation is required with the following public authority:
 - NSW Rural Fire Service
3. Consultation is required with the following public authorities/organisations:
 - NSW Heritage

- NSW DPE – Environment, Energy and Science
 - NSW DPE – Natural Resource Access Regulator
 - Department of Education
 - Endeavour Energy
 - Transport for NSW/Roads and Maritime Services
 - Sydney Water
 - Illawarra Local Aboriginal Land Council
 - NSW Rural Fire Service
 - State Emergency Service
 - Jemina Gas
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
 5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
 6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



4 February 2022

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4 February 2022

(Signature)

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