

Planning Services

Gateway Determination Report

LGA	Cessnock
RPA	Cessnock
NAME	Cessnock City Wide Administrative Amendment 2017 (0 dwellings, 0 jobs)
NUMBER	PP_2017_CESSN_001_00
LEP TO BE AMENDED	Cessnock LEP 2011
ADDRESS	Various (refer to the planning proposal)
DESCRIPTION	Various (refer to the planning proposal)
RECEIVED	16 August 2017
FILE NO.	17/ 04827
QA NUMBER	qA00000
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.

INTRODUCTION

Description of Planning Proposal

The proposal is an administrative proposal which seeks to make several unrelated changes to the LEP. This includes:

- rezoning land recently added to National Park estate to E1 National Parks and Nature Reserves with a 200 ha minimum lot size applying;
- correcting a minor zoning anomaly on a parcel of land in the Cessnock Central Business District;
- permitting “General industries” with development consent in the IN2 Light Industrial zone;
- allowing the subdivision of land that is split zoned RU5 Village and R5 Large Lot Residential where the minimum lot size for subdivision is unable to be achieved on a lot that would result from the subdivision; and
- permit A-frame and real estate directional signage as exempt development subject to certain conditions being satisfied.

Site Description and Surrounding Area

The proposal includes site specific changes as well as changes which affect the entire local government area.

Rezoning of land recently added to National Park estate

This includes various sites located at Buchanan (Werakata State Conservation Area), Paynes Crossing (Yengo National Park), Yengo (Yengo National Park), Cedar Creek,

Sweetmans Creek, Corrabare and Watagan Creek. The sites are heavily vegetated and generally in areas with limited accessibility.

The land adjoining these areas consists of rural landscape zoned land, existing national park estate and land used for forestry. These areas are substantially vegetated also.

Zoning anomaly on a parcel of land in the Cessnock Central Business District

This change relates to part of lot 1 DP 1097308 which is located in Cessnock and forms part of the existing Big W complex. The area circled yellow on the zone map extract (Figure 2) is to change zone.



Figure 1: Site aerial (SIX maps 7/9/2017)

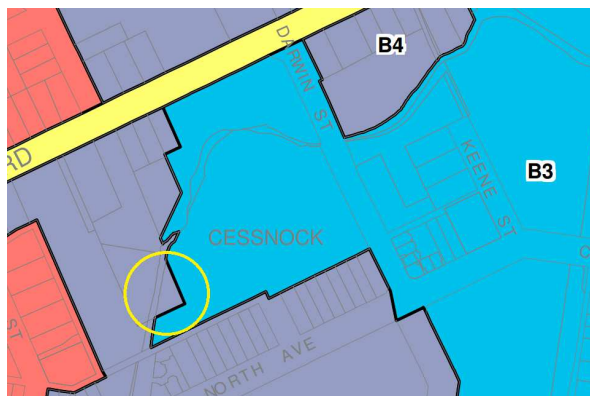


Figure 2: LEP Zone map extract

Permitting "General industries" with development consent in the IN2 Light Industrial zone

The IN2 Light Industrial zone applies to land at Kurri Kurri (off Railway Parade and Government Road), Cessnock (off Maitland Road, and McGrane Street), Branxton (off Maitland Street and Station Street). These areas are generally already developed for industrial purposes and adjoin existing low density residential areas.

Allowing the subdivision of land split zoned RU5 Village and R5 Large Lot Residential

Land currently split zoned RU5 and R5 is located at Nulkaba and Paxton. Figures 3 and 4 show the land uses (residential) in the vicinity of the Nulkaba land that may benefit from the proposed change (circled yellow).



Figure 3: Nulkaba aerial (Nearmap 7/9/2017)

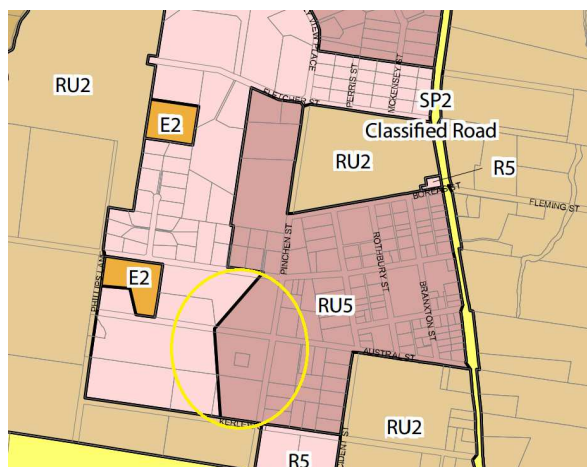


Figure 4: LEP Zone map extract

Figures 5 and 6 show the land uses in the vicinity of the Paxton land that may benefit from the proposed change (circled yellow).

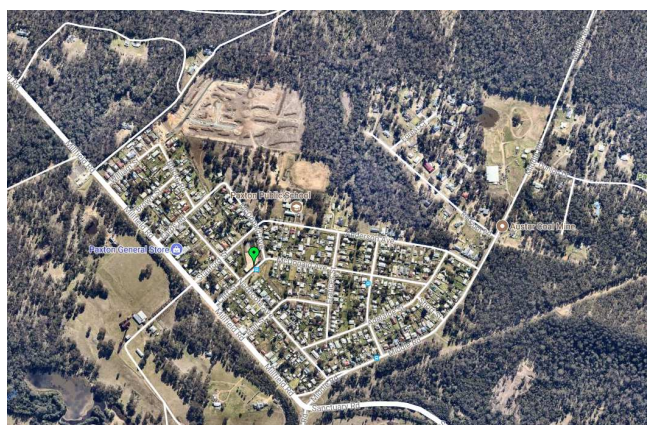


Figure 3: Paxton aerial (Nearmap 7/9/2017)

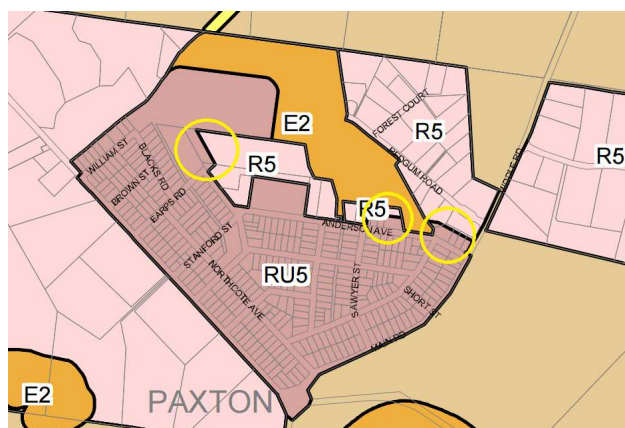


Figure 4: LEP Zone map extract

Permit A-frame and real estate directional signage as exempt development

The proposed change to allow A-frame signage would apply to any lawfully established business located in the Cessnock local government area.

The proposed change to allow real estate directional signage as exempt development would apply to land zoned RU2 Rural Landscape, RU4 Primary Production Small Lots, RE2 Private Recreation, SP2 Infrastructure and SP3 Tourist.

Summary of Recommendation

The proposal should proceed subject to conditions. Overall the changes proposed are relatively minor and so their progression past Gateway is supported. However, not all the proposed changes should proceed.

The proposed change to the split zoned lot subdivision clause (cl. 4.1B) is not wholly supported. The same outcome (facilitating the subdivision of this land) may be better addressed by removing the split zoning and applying a consistent minimum lot size across each lot. Council should be required to consider this option.

The split zoned lot subdivision clause should however be altered to include land zoned RU2 Rural Landscape. This would facilitate the subdivision of the B7 zoned land in central Cessnock which is currently unable to be subdivided due to being part zoned RU2.

Since lodging the planning proposal with the Department, Council has reconsidered the need for the real estate direction signs component. It has requested that this component be excluded from the proposal.

PROPOSAL

Objectives or Intended Outcomes

The objectives of the planning proposal are to:

- rezone land recently added to National Park estate to E1 National Parks and Nature Reserves;
- resolve a mapping anomaly in the B3 Commercial Core Zone in Cessnock;

- amend the IN2 Light Industrial zone land use table to permit “General industry” with consent;
- resolve issues relating to minimum lot sizes for subdivision for RU5 Village and R5 Large Lot Residential split zones; and
- streamline the approvals process for A-frame signage and real estate direction signage.

The objectives adequately describe the intended outcomes of the of the proposal. They will require amendment to align with the conditions of the Gateway determination ie to alter the proposed change to the split zoned lot subdivision clause and to remove the real estate direction signage component. The justification for these two changes is discussed further below in the “Need for the Planning Proposal” section.

Explanation of Provisions

Rezoning of land recently added to National Park estate

The land use zone and minimum lot size LEP maps are to be amended. Council has identified each site and detailed the specific changes to occur. The sites are currently zoned either RU2 Rural Landscape or RU3 Forestry and would be rezoned to E1 National Parks and Nature Reserves. The minimum lot size for these sites would change from 40 ha to 200 ha. These changes are clearly described and do not require amendment.

Zoning anomaly on a parcel of land in the Cessnock Central Business District

The land use zone LEP map is to be amended. A portion of the site would be changed from B4 Mixed Use to B3 Commercial Core. No other mapping changes are proposed. This change is clearly described and does not require amendment.

Permitting “General industries” with development consent in the IN2 Light Industrial zone

This change is clearly described and does not require amendment.

Allowing the subdivision of land split zoned RU5 Village and R5 Large Lot Residential

Council has included a draft clause which is a marked-up version of the existing LEP clause 4.1B Minimum lot sizes for certain split zones. The purpose of the changes is to enable land that is split zoned RU5 Village and R5 Large Lot Residential to be subdivided when it would otherwise not meet the minimum lot size standard.

This change is not wholly supported and it should be expanded to include the RU2 zone. These matters are discussed further under the “Need for the Planning Proposal” section of this report.

Permit A-frame and real estate directional signage as exempt development

Council has included draft provisions to permit A-frame and real estate directional signage as exempt development. These provisions are to be inserted in Schedule 2 Exempt Development of the LEP.

As Council has advised that it no longer wants the real estate direction signage component to proceed, it should be removed from the explanation of provisions prior to community consultation.

Mapping

Maps have been provided which adequately show the land that would benefit from the relevant provisions. Proposed LEP map changes have also been included. This is sufficient for community consultation.

NEED FOR THE PLANNING PROPOSAL

Rezoning of land recently added to National Park estate

Council states that it has been advised by OEH (National Parks) that the land has been added to National Parks estate. As a result, Council has sought to change the zone and minimum lot size standard to reflect this change in status.

This change is supported. Amending the LEP to reflect the National Park status of the land is an appropriate response and ensures that the LEP controls are up-to-date. Council should be required to consult with OEH to ensure that the proposed changes align with that desired by National Parks.

Zoning anomaly on a parcel of land in the Cessnock Central Business District

Council advises that the current B4 Mixed Use zoning which applies to a portion of the Big W complex is an anomaly. It should be zoned B3 Commercial Core consistent with the remainder of the lot.

This change is supported. The land affected by the change has been developed and while B4 zoned land adjoins the site, it is separated by a drainage channel and is on a separate lot. There is no reason why the B4 zoning should be retained. Amending the LEP to correct this error ensures the LEP is accurate.

Permitting "General industries" with development consent in the IN2 Light Industrial zone

Council asserts that this change is to maintain consistency across the IN2 Light Industrial zone in the LGA and thereby provide clarity for developers seeking to develop in this zone. "General industries" is already permitted on IN2 zoned land at Blackhill, consistent with the approach taken in the Newcastle LEP 2012 for its IN2 zoned land at Blackhill.

Council's desire to ensure that permitted uses are consistent across its IN2 zoned land is supported. This improves the transparency of the LEP controls and in this instance, provides a greater range of location/ land options for future developers of "General industries". This change effectively would result in "General industries" being permitted on all industrial zoned land in the Cessnock LGA (it is already permitted in the IN1 and IN3 zones).

In considering the need for this change, Council has not adequately discussed the potential for land use conflict and how this would be avoided, particularly in those IN2 zoned areas which adjoin existing residential areas. Council should detail how these matters would be managed in the proposal.

Notwithstanding, the Department's view is that the IN2 zone objectives, coupled with DA merit assessment and the availability of alternative sites (IN1, IN3), provides a sufficient basis for ensuring that "General industries" which locate in IN2 zoned areas are unlikely to

have adverse impacts on residential neighbours. Those “General industries” which may result in adverse impacts would need to consider locating in the IN1 or IN3 areas.

Allowing the subdivision of land split zoned RU5 Village and R5 Large Lot Residential

Council indicates that this change is to resolve development constraints relating to land split zoned RU5 Village and R5 Large Lot Residential and in turn facilitate the subdivision of this land.

The proposed change originates for a s.96 DA modification where a landowner sought to modify the lot alignment of an approved two lot subdivision on land split zoned RU5/ R5 at Paxton. The application was refused because the R5 component was unable to achieve the minimum lot size standard. The amount of variation from the standard was also too great to allow the use of LEP cl. 4.6 Exceptions to Development Standards.

While Council’s approach would potentially facilitate the subdivision of R5/RU5 split zoned land, it would not address the underlying issue i.e. whether the split zoning and corresponding minimum lot sizes remain appropriate. Review of the LEP zoning maps suggests that this issue is relevant to land at Paxton and Nulkaba. Different zone and lot sizes appear to have been used to manage interface issues (refer to Figures 5 to 8 below).

Nulkaba

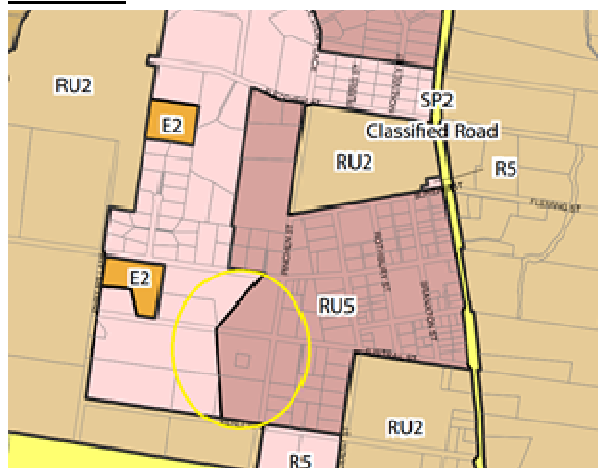


Figure 5: LEP zone map

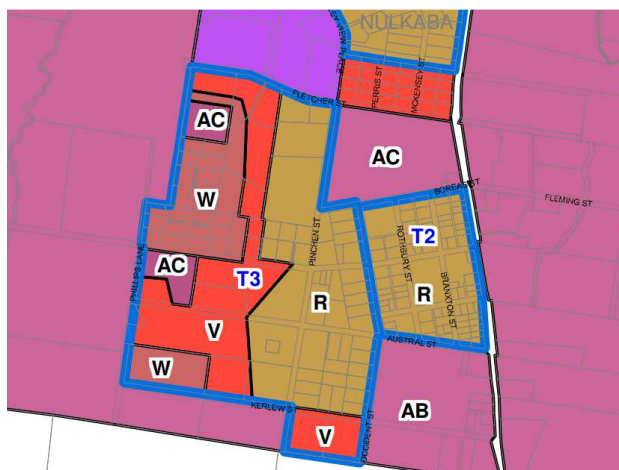


Figure 6: Lot size map (R= 750 sq.m, V= 2000 sq.m, W= 4000 sq.m, AC= 80ha, T3 = 2 ha if not serviced)

Paxton

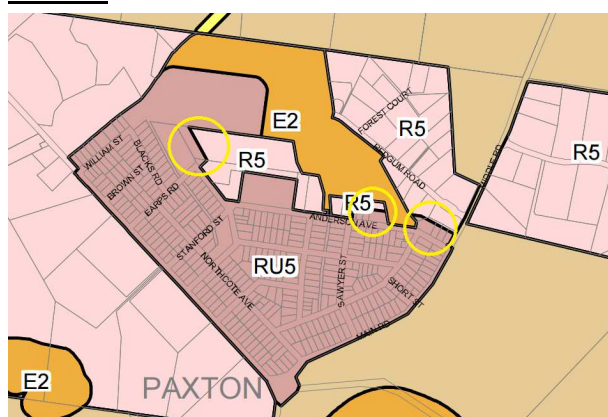


Figure 7: LEP zone map

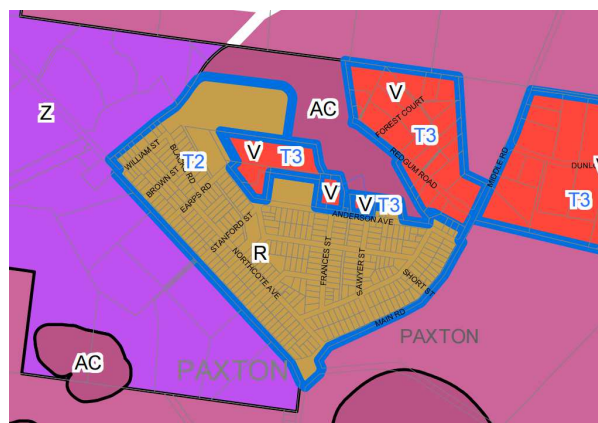


Figure 8: Lot size map (R= 750 sq.m, V= 2000 sq.m, AC= 80ha, T2 = 2000 sq.m if not serviced, T3 = 2 ha if not serviced)

These planning controls are complex and this approach does not appear to have been taken elsewhere in the LGA. Council should review the controls to determine whether they remain appropriate and whether alternative mechanisms, such as DCP provisions, can be utilised to manage potential interface issues. The RU5/ R5 split zone provision could potentially be removed from the proposal following this review, and alternative zone and lot size provisions used instead. This should be confirmed prior to exhibition.

It has however been noted that clause 4.1B Minimum lot sizes for certain split zones does not apply to rural zoned land, specifically RU2 Rural Landscape zoned land. This means that the existing large parcel of split zoned B7 Business Park/ RU2 Rural Landscape zoned land in Cessnock (south of the TAFE) is unable to be developed (refer to Figures 9 and 10). Council should update the proposal to include the RU2 Rural Landscape zone.

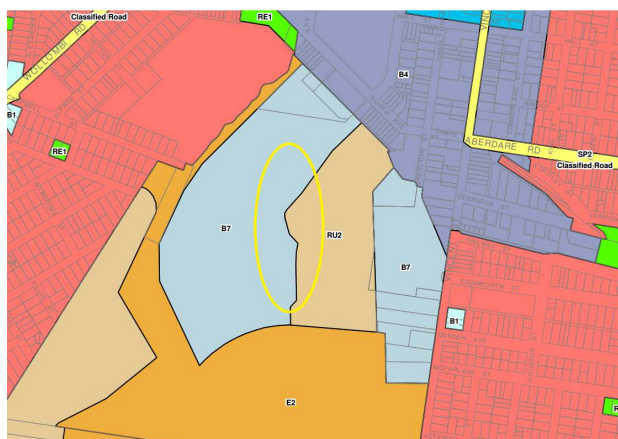


Figure 9: LEP zone map

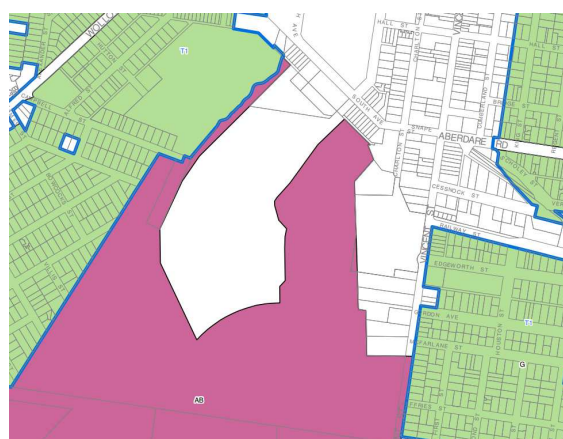


Figure 10: Lot size map (Pink is AB = 40 ha)

Permit A-frame and real estate directional signage as exempt development

Council notes that signage erected in road reserves require both development consent under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and separate approval under the *Roads Act 1993* from Council. It considers this to be unnecessary duplication and so intends to remove the requirement for approval under the EP&A Act.

This change is supported. Council has included specific requirements for A-frame signage which must be met in order to qualify as exempt development. Among other requirements, this includes specific standards about size, location, stability and that they must not obstruct access to premises or use of footpaths.

Council has requested that the real estate signage component of the proposal be removed. This is because of concerns that the provisions may be exploited such that they are used as estate advertising signage rather than directional signage.

The Department does not raise issue with the removal of this item and the Gateway can condition this accordingly.

STRATEGIC ASSESSMENT

Hunter Regional Plan 2036

The Hunter Regional Plan (HRP) is a high level strategic document which sets out the high-level goals and objectives for the region.

Given the administrative nature of the changes proposed, there is limited guidance in the HRP which is relevant to the proposal. The exception however is guidance relating to achieving Goal 2: A biodiversity-rich natural environment. Rezoning land recently brought into National Park estate to correctly reflect its new conservation status is consistent with the HRP's direction to protect and connect natural areas.

Council's City Wide Settlement Strategy

Council has advised that the administrative amendments are not inconsistent with its settlement strategy.

Council's Community Strategic Plan

Council has stated that the proposal is consistent with its local Community Strategic Plan.

Section 117(2) Ministerial Directions

6.2 Reserving Land for Public Purposes:

As the proposal would rezone an existing reservation of public land (National Park estate), clause 4 of the Direction requires the relevant public authority and the Secretary to agree to the change.

OEH should therefore be consulted on the LEP changes proposed for the land. Once OEH has confirmed its support, the Secretary may approve the change as required by the Direction.

State Environmental Planning Policies

No State Environmental Planning Policies are relevant to this direction.

SITE SPECIFIC ASSESSMENT

Social

Direct social impacts resulting from the proposal are likely to be minimal. Some minor subdivision may be able to occur following the review of the split zoning provisions at Nulkaba and Paxton which may in turn result in an increase in housing.

Environmental

Environmental impacts are anticipated to be positive. Updating the LEP to correctly reflect the conservation status of the National Park land will ensure it has the appropriate level of protection afforded to it by the EP&A Act.

The inclusion of "General industries" as a permitted use in the IN2 zone may have the potential for land use conflicts. However, as already discussed, the Department considers this unlikely. Council should update the proposal to detail how it considers this would be avoided.

Economic

Economic benefits may result from enabling “General industries” in the IN2 zone across the LGA. In addition, allowing urban zoned land which is split zoned RU2 to be subdivided (such as the B7 zoned land in Cessnock) is likely to have a positive benefit should the land be later subdivided and jobs result.

Infrastructure

There are no infrastructure issues relevant to the administrative matters dealt with in this proposal.

CONSULTATION

Community

Council has proposed a 28 day community consultation period. As the proposal introduces some land use policy shifts across the LGA, a 28 day consultation period can be supported.

Agencies

Consultation with OEH should occur.

TIMEFRAME

Council has indicated that it would take six months to progress the proposal to LEP finalisation. As this does not account for the finalisation stage or the need for Council to review the LEP provisions for Nulkaba and Paxton, a nine month completion timeframe is recommended.

DELEGATION

Council has requested plan-making delegation. Given the nature of the amendments, this can be supported. Notwithstanding, Council would still need to confirm the suitability of continuing with the RU5/ R5 split zone provision and seek the Secretary’s approval to Direction 6.2 following consultation with OEH.

CONCLUSION

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

Overall these are administrative changes which are relatively minor and so their progression past Gateway is supported.

Not all the proposed changes however should proceed. The proposed change to the split zoned lot subdivision clause (cl. 4.1B) for RU5/ R5 should be reconsidered following a review of the planning controls in the affected areas. The split zone lot clause should be amended to include RU2 zoned land to address an existing site issue.

Since lodging the planning proposal with the Department, Council has reconsidered the need for the real estate direction signs component. It has requested that this component be excluded from the proposal.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Note that the consistency with Section 117 Directions 6.2 Reserving Land for Public Purposes is unresolved and will require justification.

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

1. Prior to community consultation Council is to:
 - consider whether the zone and lot size provision applying to the RU5 Village/ R5 Large Lot Residential split zoned land remains appropriate and if not, update the proposal to introduce new planning controls and remove the proposed RU5/ R5 change to clause 4.1B;
 - update the proposed change to clause 4.1B to include the RU2 Rural Landscape zone;
 - detail Council's consideration of how land use conflicts would be unlikely to result from permitting "General industries" in the IN2 Light Industry zone in the proposal;
 - seek the Secretary's approval to altering the zone of land reserved for a public purpose for the proposed E1 zoned land as required by s117 Direction 6.2;
 - remove the real estate direction signage provision from the proposal; and
 - forward the amended planning proposal to the Department for review.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the Planning Proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning 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 5.5.2 of A Guide to preparing local environmental plans (Department of Planning and Environment 2016).
3. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
 - Office of Environment and Heritage

The public authority 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 56(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 timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.



11/9/2017

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