



IRF22/2842

Gateway determination report – PP-2022-1494

Rezone land from RU1 Primary Production to R5
Large Lot Residential at part Lot 6 DP 703806, 51
Winter Lane, Summer Hill Creek – Cabonne Shire
Council

September 22

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

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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

Planning Proposal – Peter Basha Planning & Development – April 2022 – Ref: PP-SFB21079

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Cabonne
PPA	Cabonne Shire Council
NAME	Rezone land at Winter Lane, Summer Hill Creek to provide a total of 3 large lot residential lots, change minimum lot size (MLS) and retain existing dwelling on zone RU1 land
NUMBER	PP-2022-1494
LEP TO BE AMENDED	Cabonne LEP 2012
ADDRESS	51 Winter Lane, Summer Hill Creek
DESCRIPTION	Part Lot 6 DP 703806
RECEIVED	10/08/2022
FILE NO.	IRF22/2842
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
DWELLINGS/JOBS	Total of 4 dwellings being 1 existing and 3 additional dwellings/0 jobs

1.2 Objectives of planning proposal

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

The objectives of the planning proposal are to:

- Rezone part of the subject land from zone RU1 Primary Production to zone R5 Large Lot Residential and change MLS to 2ha; and
- Provide additional supply of large lot living opportunities through an extension of the existing R5 large lot residential area in the Spring Glen residential estate.

The planning proposal states that is also proposed to reduce the MLS from 100ha to 2ha for proposed lots 1-3, while retaining the existing zone RU1 zone and 100ha MLS for the eastern part of the land with the existing dwelling house (proposed Lot 4).

Only the western portion of the site is to be rezoned and have the MLS reduced to 2ha, to provide a concept of 3 additional large lot residential allotments. The eastern portion of the site will be retained as zone RU1, containing the existing dwelling and reflect the existing rural use of the land.

No additional subdivision opportunity will be created for this land, with the land being well under the 100ha minimum lot size applicable to zone RU1 Primary Production land. Council will clarify the appropriate mechanism as to how proposed Lot 4 with the existing dwelling house will be created under the LEP. This proposed lot contains land that is bushfire prone land and of biodiversity value.

The objectives of this planning proposal will be required to be updated to reflect the proposed change to proposed Lot 4.

1.3 Explanation of provisions

The planning proposal seeks to amend the Cabonne LEP 2012 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	Part R5 Large Lot Residential
Minimum lot size	100ha	2ha and 25ha
Number of dwellings	1	3 additional lots @ 2ha MLS, 1 existing dwelling to be retained on zone RU1 with 100ha MLS
Number of jobs	N/A	N/A

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

1.4 Site description and surrounding area

Lot 6 DP 703806, 51 Winter Lane, Summer Hill Creek is located on the northern side of Winter Lane and to the east of Ophir Road. The land is located approximately 8km north east of the city of Orange CBD and is about 7km south east of Mullion Creek.

The site has an area of 40.4ha and contains an existing dwelling house and ancillary farm buildings. The bitumen sealed Winter Lane forms part of the southern boundary, and Ophir Road forms the western boundary. The land is undulating, vegetated in the centre and eastern portions of the site.

The land adjoins an existing large lot residential area to the north, and agricultural land to the south.

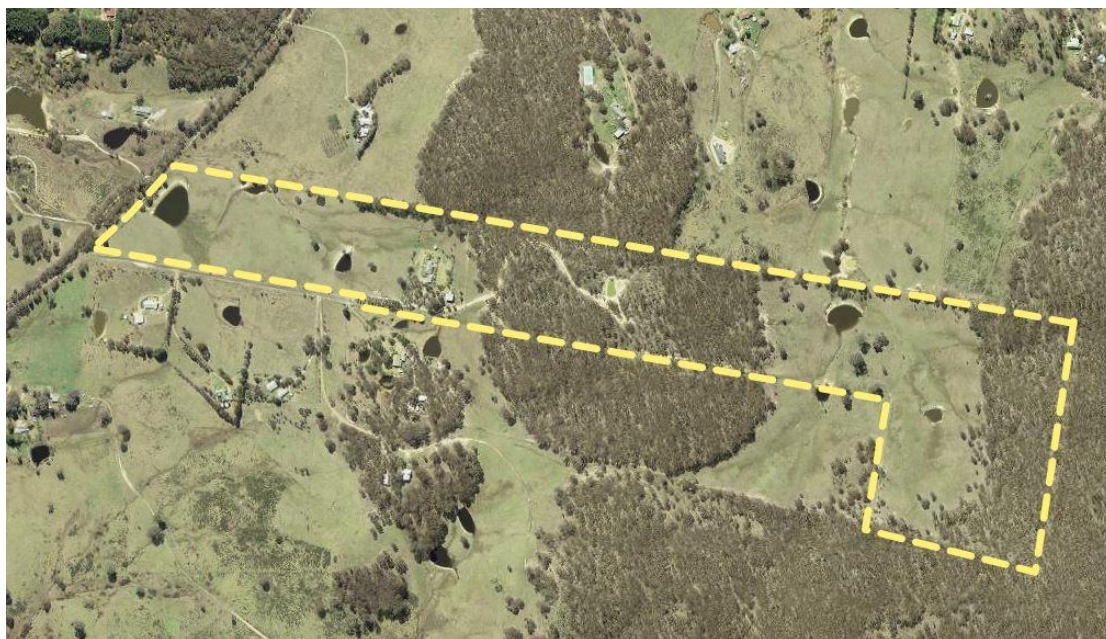


Figure 1 Subject site (source: ePlanning Spatial Viewer)



Figure 2 Site context (source: ePlanning Spatial Viewer)

The proposal will allow the proposed development of the land as follows:

1. Lot 1 - 2.55ha Vacant land intended for R5 large lot residential zone permissible uses with MLS of 2ha
2. Lot 2 - 3.23ha Vacant land intended for R5 large lot residential zone permissible uses with MLS of 2ha

3. Lot 3 - 2.98ha Vacant land intended for R5 large lot residential zone permissible uses with MLS of 2ha
4. Lot 4 - 31.64ha Existing dwelling and associated infrastructure – intended to retain zone RU1 Primary Production permissible uses and change to MLS of 100ha. The creation of this lot, containing an existing dwelling, would establish a rural allotment having an area of less than the MLS of 100ha as permitted under the current provisions of the CLEP 2012. Council is to confirm mechanism to retain the existing dwelling on the zone RU1 land. This will provide a buffer between the R5 Large Lot Residential land and adjoining RU1 Primary Production land, avoids biodiversity and bushfire prone land. It also prevents further subdivision opportunities to the site.

1.5 Mapping

The planning proposal includes extracts of mapping showing the proposed changes to the Land Zoning and Lot Size maps, which are suitable for community consultation. This proposal is a map only amendment.



Figure 3 Current and Proposed zoning map (source: Planning Proposal – Peter Basha Planning & Development)

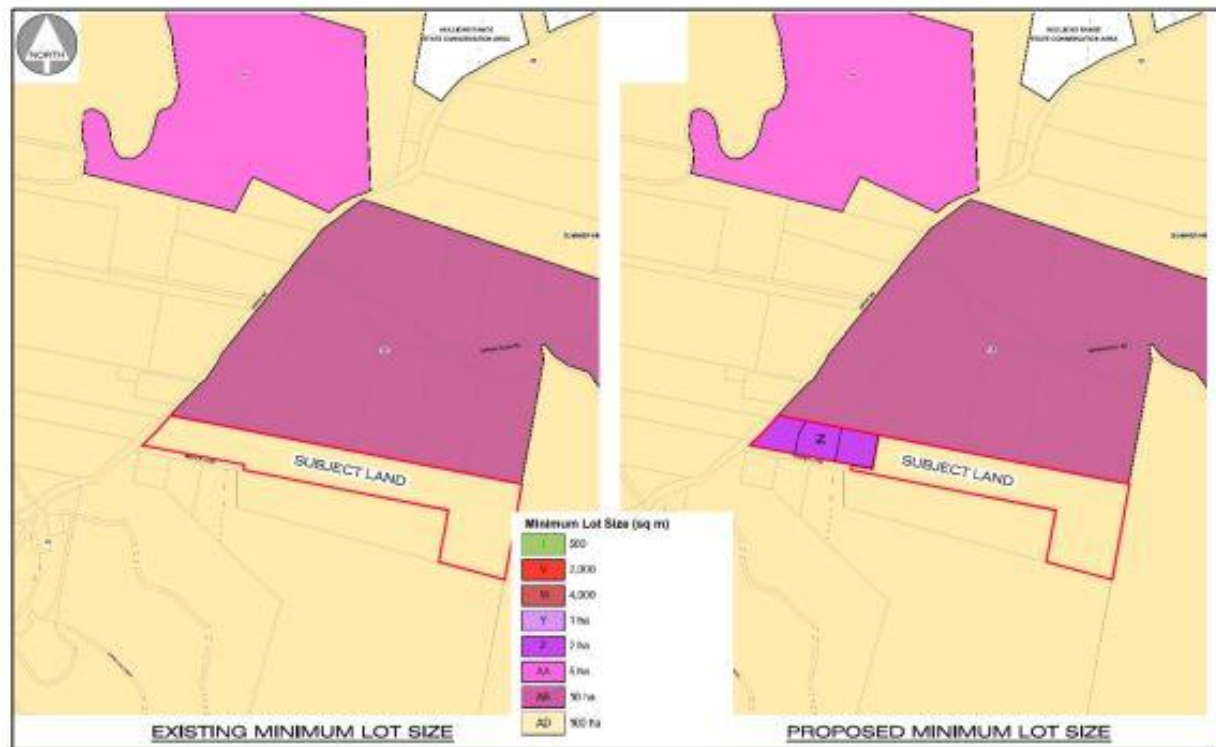


Figure 4 Current and Proposed minimum lot size map (source: Planning Proposal – Peter Basha Planning & Development)

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

Cabonne Council resolved to support the planning proposal at a meeting on 28 June 2022.

The Cabonne Settlement Strategy 2021-2041 (May 2021) (CCS) (not endorsed by Department) identifies the western portion (unvegetated) of the site as suitable for rural residential use, being Strategy (Growth) Area SG1. The proposal is consistent with the CCS.

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

A planning proposal is the only method of achieving the proposed rezoning and minimum lot size change.

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 2036 (CWORP). The Draft Central West and Orana Regional Plan 2041 (dCWORP) was exhibited from 6 December 2021 to 18 February 2022.

Table 4 Regional Plan assessment

CWO Regional Plan Objectives	Justification
Direction 1 – Protect the region's diverse and productive agricultural land	The land is zoned RU1 Primary Production and has previously been used for grazing. The agricultural potential of the site is limited, given the vegetation located in the centre and eastern portion of the site, as well the as the surrounding small rural residential lots. As the site adjoins an existing large lot residential Estate, is not mapped as Biophysical Strategic Agricultural Land (BSAL) or as Strategic Regional Agricultural Land under the provisions of the Strategic Regional Land Use Policy (SRLUP) and has been identified in Blayney Cabonne and Orange Sub Regional Rural and Industrial Land Use Strategy (BCO) and Cabonne Settlement Strategy 2021-2041 (CCS) for future large lot residential development, the proposal is consistent with this Direction.
Direction 12 – Plan for greater land use capability	<p>The planning proposal identifies that land use conflicts have been addressed through lot design, buffer distances and consideration of natural hazards, biodiversity and any other identifiable environmental constraints.</p> <p>The CSS identifies that the agricultural land capability for the site is Class 4 and 6, being medium to low capability. The fragmented land ownership, small holding size and topography suggest that high agricultural productivity is unlikely to be viable on the site. Additionally, the vegetated portion of the site is identified along Ophir Road as bushfire prone. The land is a natural extension of the Spring Glen residential area and doesn't significantly increase interface or impact on surrounding land. In this regard the proposal is consistent with this Direction.</p>
Direction 15 – Increased resilience to natural hazards and climate change	<p>The land is mapped as being bushfire prone, vegetation Category 1 and Vegetation Category 3.</p> <p>Further consultation is required with the RFS to satisfy consistency with this Direction.</p>
Direction 21 – Coordinate utility infrastructure investment	<p>The proposal seeks to utilise existing bitumen sealed Winter Lane road infrastructure to access the site. Upgrades and connections to electricity and telecommunications are available.</p> <p>The proposal is consistent with this Direction.</p>
Direction 22 – Manage growth and change in regional cities and strategic and local centres	<p>The subject land has been identified for future large lot residential growth in BCO and CSS.</p> <p>The consolidation of large lot residential growth in a high demand area near existing development and infrastructure is consistent with this Direction.</p>
Direction 25 – Increase housing diversity and choice	<p>The BCO and CSS identifies the land as appropriate for future rezoning to provide large lot residential and reduction in minimum lot size, which has high demand and currently low supply in Cabonne LGA and the adjoining Orange LGA.</p> <p>The proposal is consistent with this Direction.</p>

Direction 28 – Manage rural residential development	The proposal is consistent with the BCO and CSS and is therefore consistent with this Direction.
dCWORP	The proposal is consistent with the dCWORP

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 5 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The proposal is consistent with the LSPS Direction 5, providing opportunities to ensure a variety of housing types are available throughout the shire. The site is identified in and consistent with BCO and CSS.
Blayney Cabonne and Orange Sub Regional Rural and Industrial Land Use Strategy (BCO)-endorsed by the Department 30 June 2011.	<p>The subject land is part of land identified in the Blayney Cabonne Orange Sub Regional Rural and Industrial Land Use Strategy 2008 as SA1 – as part of a future investigation area for the release area for large lot residential development. The area adjoins the Spring Glen large lot residential estate.</p> <p>The planning proposal does not address this strategy, however it is noted that the proposal is identified as a strategy area and is consistent with the outcomes of the strategy.</p>
Draft BCO Subregional Rural and Industrial Lands Strategy (2019 – 2036)	<p>This Strategy applies to land within the Orange, Cabonne and Blayney LGAs.</p> <p>The strategy has been publicly exhibited by Cabonne Council, however exhibition by Orange Council has been delayed and is yet to be adopted. It is intended that this report, by Elton Consulting (2020) will supersede the BCO upon adoption.</p> <p>The draft does not include a review of R5 Large Lot Residential Land, instead requiring each LGA to undertake its own independent review of the Strategy.</p>

Cabonne
Settlement Strategy
2021 – 2041 (CSS).
Not endorsed by
the Department.

The western unvegetated portion of the subject land is specifically identified in the CSS as SG1 Winter Lane Summer Hill Creek Settlement Option and cited forming a logical extension of the existing R5 area to the north of Spring Glen with limited additional land use conflict with agriculture.

It is proposed to provide 3 allotments on this portion of land with a MLS of 2ha and maintain the existing dwelling to the east on zone RU1 with a MLS of 100ha (no change to zone or MLS) proposed for this part of the land.

It is considered that the proposal is expressly consistent with the outcomes of the CSS.

3.3 Section 9.1 Ministerial Directions

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

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans (Old Direction 5.10)	Yes	<p>Discussed in Table 4 above. The proposal is consistent with the relevant Directions and priorities for Cabonne. The proposal will assist in implementing the plan.</p> <p>The draft CWORP has been on exhibition and the proposal is consistent with the objectives of the draft Plan at this time.</p> <p>No further work is required regarding this Direction</p>

3.1 Conservation Zones (Old Direction 2.1)	Yes	<p>The centre of the site is identified as Terrestrial Biodiversity under the provisions of the Cabonne LEP 2012. The land is not identified as a conservation zone for the purposes of this Direction however the terrestrial biodiversity status of the land should be noted.</p> <p>The proposed lot layout considers the terrestrial biodiversity of the site, by providing new lots on the western side of the lot, and the existing dwelling and vegetation to be retained on the eastern side of the site.</p> <p>The delegate of the Secretary can be satisfied that the proposal is consistent with this direction.</p>
4.4 Remediation of Contaminated Land (Old Direction 2.6)	Yes	<p>The planning proposal states that the site is not identified as contaminated under the Environment Protection Authority (EPA) Contaminated Land Record or the Protection of the Environment Operations Act 1997 (POEA Act) public register. The site is zoned RU1 Primary Production, and the proposal states the land has not been utilised for any agricultural or horticultural activities.</p> <p>In terms of the Direction, insufficient information has been provided to demonstrate consistency at this time. Prior to community consultation Council should demonstrate that it is satisfied that the land is not potentially contaminated and is, or can be made suitable for living purposes.</p>
5.1 Integrating Land Use and Transport (Old Direction 3.4)	Yes	Road network upgrades may be required at the development stage of the proposal. The proposal is consistent with this Direction.
6.1 Residential Zones (Old Direction 3.1)	Yes	The proposal is consistent with this Direction and will offer a range of housing options, consistent with the requirements of this Direction. In turn, this will ensure that residential land development is undertaken within the residential zones, and not in unsuitable zones or locations. The proposal is consistent with BCO and CSS.
8.1 (Old Direction 1.3) Mining, Petroleum production and Extractive Industries	Yes	There is no change to the permissibility of mining, petroleum production and extractive industries as such uses are permitted under SEPP (Resources and Energy) 2021 where agriculture is permitted. Extensive agriculture is permitted without consent in zone R5 under the Cabonne LEP 2012.

9.1 Rural Zones (Old Direction 1.2)	No – but justified	<p>This Direction is relevant as the proposal is to rezone land from a rural zone to a residential zone and reduce the minimum lot size.</p> <p>In terms of the Direction, the subject land is identified in the BCO and CSS as suitable for continuation of the large lot residential subdivision of the Spring Glen residential estate. In addition, the land is fragmented, and the existing lot is not large enough to be agriculturally productive.</p> <p>The Delegate of the Secretary can be satisfied that the inconsistency in relation to the change in zoning and minimum lot size is consistent with an endorsed BCO Strategy and CSS and no further work is required in relation to the Direction.</p>
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3.4 State environmental planning policies (SEPPs)

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

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
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SEPP – (Biodiversity and Conservation) 2021	Vegetation in primary production areas Koala Habitat Protection 2020 Koala Habitat Protection 2021	Yes	The planning proposal identifies some flora and fauna communities on the site that will require preservation. Future development would need to consider the Biodiversity Conservation Act. Consultation with BCS is recommended. Cabonne is an LGA to which the Koala Habitat Protection (KHP) chapters of this SEPP apply. Rezoning from RU1 to R5 changes which KHP chapter applies and enables Chapter 4 KHP 2021 to apply to the land. Part 4.2 of the Chapter will apply to any future development consent issued on the land, to ensure any impact on Koala Habitat is appropriately assessed.
SEPP (Resilience and Hazards) 2021	Remediation of Land	No	Inconsistent at this time – further assessment required by Council.
SEPP (Transport and Infrastructure) 2021		N/A	There is no access proposed to main roads.
SEPP (Primary Production) 2021		Yes	Justified by consistency with CWORP, dCWORP, LSPS, BCO and CSS

4 Site-specific assessment

4.1 Environmental

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

Table 8 Environmental impact assessment

Environmental Impact	Assessment
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Contamination	Due to the subject land zoning of RU1 Primary Production, there is a risk of the site being contaminated. The planning proposal has considered contamination and states that a preliminary inspection of the site does not indicate any areas or sources of potential contamination. The site has not been reported to have been used for small-scale grazing and rural residence since the erection of current dwelling, is consistent with Table 1 of managing land contamination planning guidelines SEPP 55 – Remediation of Land. Further information from Council prior to community consultation is required to demonstrate consistency with Ministerial Direction 4.4 Remediation of Land.
Biodiversity	The proposal does not include any ecological or biodiversity reports but does identify to have Terrestrial Biodiversity within the centre of the site and is mapped on broad scale mapping as Yellow Box - Blakelys Red Gum grassy woodland on the tablelands; South Eastern Highlands Bioregion (PCT 1330) which under both the Environment Protection and Biodiversity Conservation Act. 1999 and the Biodiversity Conservation Act 2016 is listed as being Critically endangered. Red Stringybark - Inland Scribbly Gum open forest on steep hills in the Mudgee - northern section of the NSW South Western Slopes Bioregion (PCT 323) was also identified on the site. The proposed R5 land is not identified to have biodiversity value, notwithstanding, consultation with BCS is recommended. The proposed dwelling house sites and proposed new lots are located to avoid biodiversity impacts.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 9 Social and economic impact assessment

Social and Economic Impact	Assessment
Heritage	An AHIMS search has been provided as part of the proposal. No registered sites have been identified within 200m of the site.
Visual	Future Residential development of 4 proposed lots within the proposal will maintain and be consistent with rural residential character of the surrounding Summer Hill Creek area.
Demand and Supply	The proposal will provide for three (3) additional lots for the Summer Hill Creek area. The CSS provides that there is no existing supply of R5 Large Lot residential Land in this area (SA1). The demand rate is identified as 2 dwellings per year. The proposal will also provide positive socio-economic benefits for residents and business owners in the LGA due to future increase in dwelling supply.

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 10 Infrastructure assessment

Infrastructure	Assessment
Servicing	<p>The Summer Hill Creek is not connected to town water, stormwater drainage or sewage though both water and sewage is domestically supplied with the use of rainwater collection tanks and the utilisation of septic tanks and absorption trenches. Both electricity and telecommunications are connected to the existing dwelling and will be extended for future development.</p> <p>This will be considered by council in further detail at the development application stage in accordance with local requirements.</p>
Roads	<p>The planning proposal identifies that all lots will utilise the existing bitumen sealed Winter Lane for road access. This is considered appropriate and can be further considered by Council at development application stage in terms of upgrades required.</p>

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days. The proposal is categorised as a 'standard' proposal under the LEP Making Guideline and a 20 working day exhibition is appropriate.

The exhibition period of 28 days proposed is considered is included as a condition of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

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

- Biodiversity Conservation and Science Directorate
- NSW Rural Fire Service

6 Timeframe

The proposal does not provide a time frame to complete the LEP.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is also recommended that the planning proposal be updated to include a proposed timeframe for the completion of the proposal.

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

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/planning proposal is considered to be a standard planning proposal and consistent with relevant strategies 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:

- The planning proposal is directly consistent with the CSS
- The proposal will provide additional large lot residential land supply opportunity for Cabonne LGA,
- The land can be serviced, is not constrained and is an extension of the existing Spring Glen Estate settlement area.
- The biodiversity land is being avoided.

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

- Update the Project Timeline of the proposal to reflect the submission of the proposal in August 2022 and subsequent milestones for finalisation in 9 months.
- Council to consider the potential contamination of the land.

9 Recommendation

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 revised to include:-
 - Update the Project Timeline of the proposal to reflect the submission of the proposal in August 2022 and subsequent milestones to finalise the plan in 9 months.
 - Council to consider potential contamination.
 - The mechanism to create proposed Lot 4 and retain the existing dwelling house.The approval of the Department is required prior to community consultation.
2. Consultation is required with the following public authorities:
 - Biodiversity Conservation and Science Directorate
 - NSW Rural Fire Service
3. The planning proposal should be made available for community consultation for a minimum of 28 days
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.

5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



(Signature)

6 September 2022

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