



IRF22/3768

Gateway determination report – PP-2022-3733

Minimum Lot Size Reduction to permit a dwelling
house on Lot 1 and on Lot 2 DP 1278320, 7433
Castlereagh Highway, Ilford

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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 PP-2022-3733 – Mid-Western Regional Council (Amended Submission 08/11/2022)
Council Meeting Report – 19 October 2022

Council Meeting Minutes – 19 October 2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Mid-Western
PPA	Mid-Western Regional Council
NAME	Reduction of minimum lot size to permit a dwelling house on Lot 1 and on Lot 2 DP 1278320
NUMBER	PP-2022-3733
LEP TO BE AMENDED	Mid-Western Regional Local Environmental Plan 2012
ADDRESS	7433 Castlereagh Highway, Ilford 2850
DESCRIPTION	Lot 1 & Lot 2 DP 1278320
RECEIVED	20/10/2022
FILE NO.	IRF22/3768
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
DWELLING/JOBS	2 additional dwellings/0 jobs

1.2 Objectives of planning proposal

The planning proposal seeks to undertake housekeeping amendments to the Mid-Western Regional Local Environmental Plan 2012 in order to facilitate development of dwelling houses on 2 existing allotments.

The objective of this planning proposal is clear and adequately explains the intent of the proposal.

1.3 Explanation of provisions

The planning proposal seeks to amend the Mid-Western Regional LEP 2012 per the changes below:

Table 3 Current and proposed controls

Control	Current Mapping	Proposed Mapping	Existing Lot Size
Minimum lot size – Lot 1	100ha	40ha	49.98ha
Minimum lot size – Lot 2	40ha and 100ha	40ha	41.77ha

The proposed changes to the controls will result in a map only amendment and will not facilitate any further subdivision potential of the subject lots.

1.4 Site description and surrounding area

The planning proposal is in relation to two (2) lots known as Lot 1 & Lot 2 DP 1278320. The subject lots are part of thirteen (13) lots collectively addressed as 7443 Castlereagh Highway, Ilford. The lots are approximately 2km north-east of Ilford village.

Lot 1 DP 1278320 is an irregularly shaped RU1 Primary Production zoned lot with an approximate area of 49.98ha. The vacant lot consists of minimal vegetation, dams and Cafes Road traversing through the lot towards the south-west. The lot adjoins Heritage Item *117R Cemetery* (local significance) to the west. The lot is mapped bushfire prone, part biodiversity sensitivity and groundwater vulnerable.

Lot 2 DP 1278320 is an irregularly shaped RU1 Primary Production zoned lot with an approximate area of 41.77ha (excluding roads). The vacant lot consists of minimal vegetation and a dam and is split by a 20m wide road reserve depicted in DP 1278320 to the south. The lot adjoins Heritage Item *117R Cemetery* (local significance) to the south. The lot is mapped bushfire prone, part terrestrial biodiversity and groundwater vulnerable.

Both Lot 1 and Lot 2 are burdened by a positive covenant (DP 1278320) requiring the lot owners to be responsible for acquiring electricity supply.

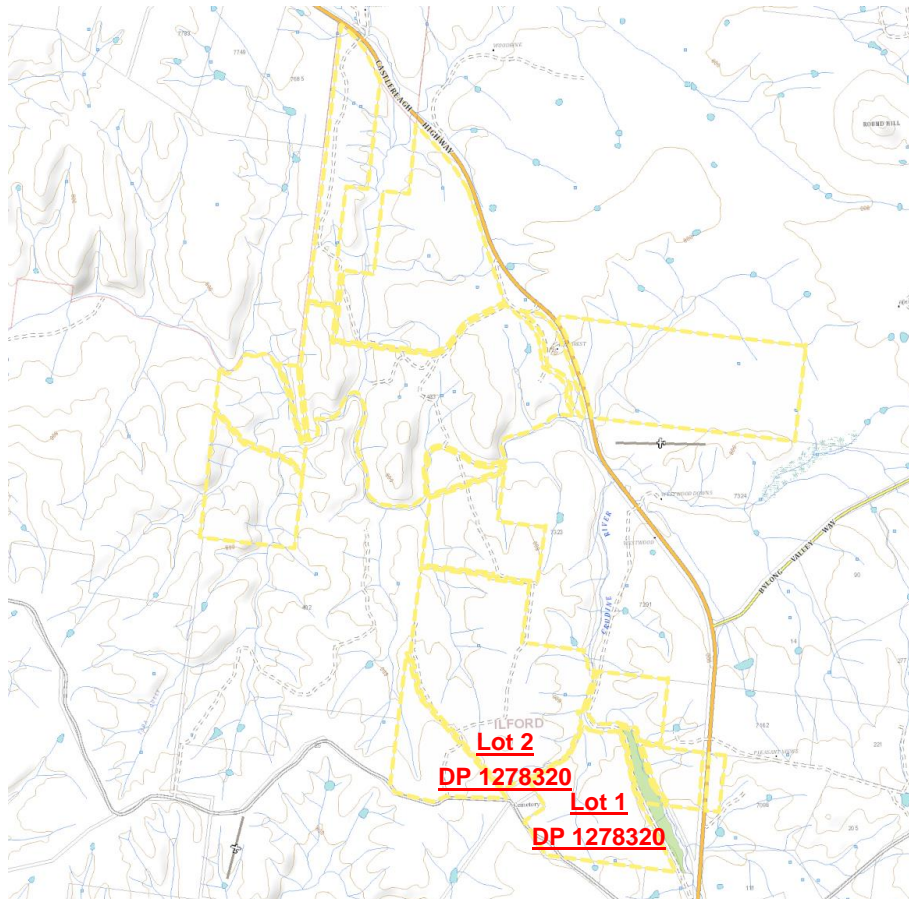


Figure 1: Locality Map of 7433 Castlereagh Highway, Ilford, outlined in yellow (Source: ePlanning Spatial Viewer, annotated by the Department in red)

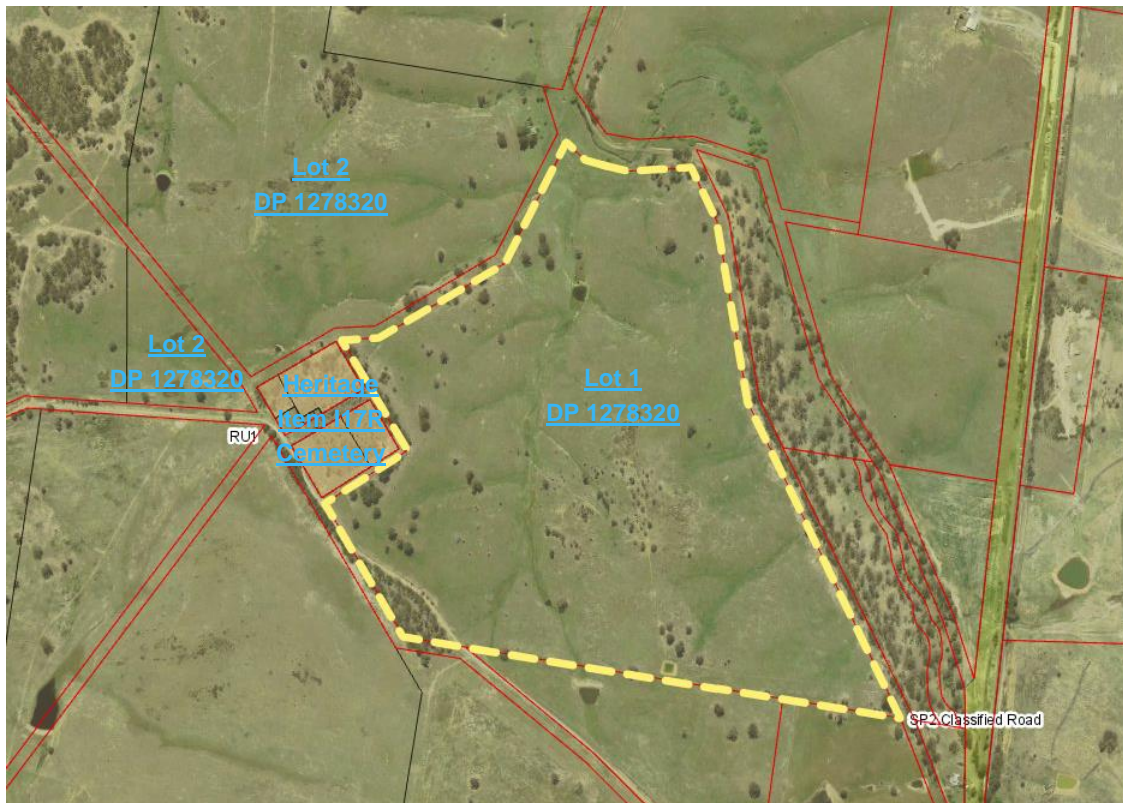


Figure 2: Aerial photograph of Lot 1 and surrounds (Source: ePlanning Spatial Viewer, annotated by the Department in blue)

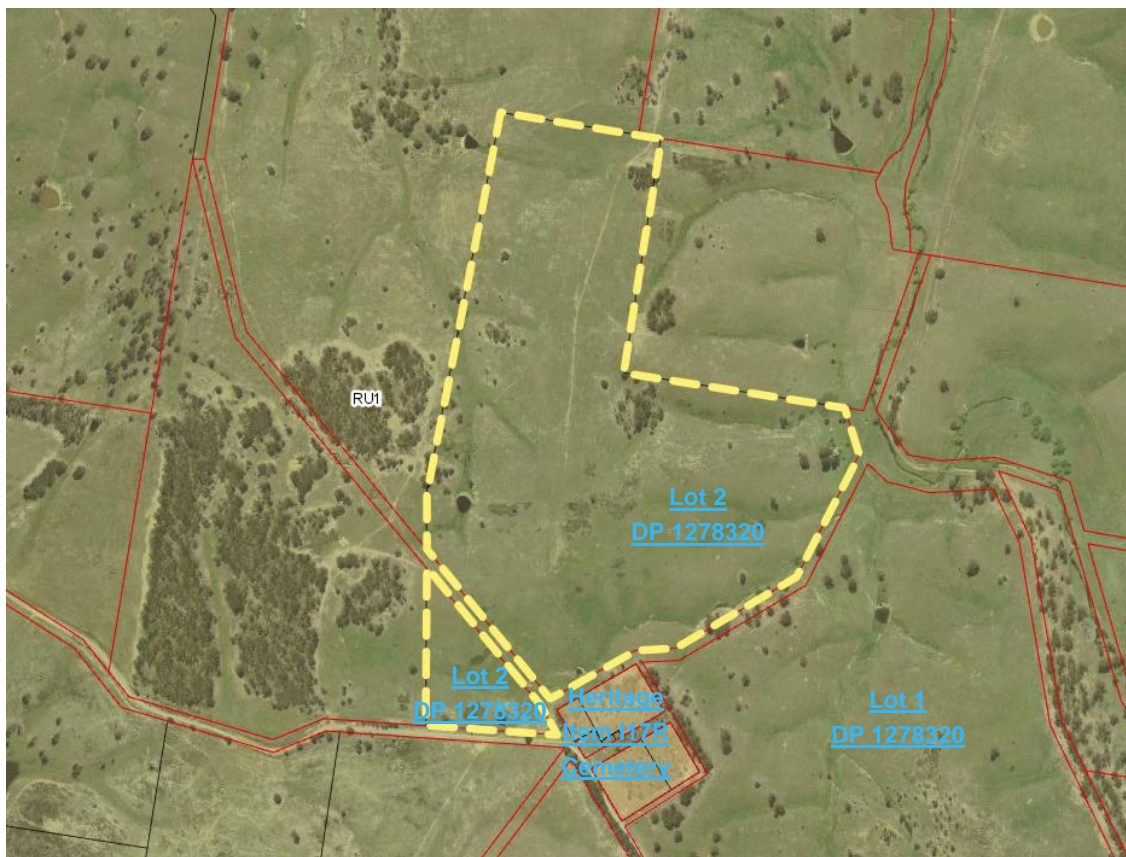


Figure 3: Aerial photograph of Lot 2 and surrounds (Source: ePlanning Spatial Viewer, annotated by the Department in blue)

1.5 Mapping

As a result of the proposed amendments detailed in Section 1.3 above, the planning proposal will require amendments to the Minimum Lot Size Map (Sheet LSZ_007) of MWRLEP 2012.

Council did not provide maps to demonstrate the proposed mapping amendments. A Gateway determination condition is recommended requiring Council to provide the proposed amended Minimum Lot Size map prior to exhibition. This condition is appropriate given that the objectives and provisions of the housekeeping amendments are clear, adequate and results in negligible impacts.

1.6 Background

Council approved Development Application DA0351/2012 on 21 January 2013 for Torrens title subdivision of 7 lots into 8 lots with minimum lot size of 40ha at 7433 Castlereagh Highway, Ilford. The subdivision was anticipated for each lot to have dwelling entitlement and legal means of access.

The development application was lodged on 28 May 2012 prior to the commencement of the *Mid-Western Regional Local Environmental Plan 2012* (MWRLEP 2012) on 10 August 2012. As a result, the development application was assessed and approved against the previous environmental planning instrument *Rylstone Local Environmental Plan 1996* (RLEP 1996) in accordance with *Clause 1.8A Savings provision relating to development applications* of MWRLEP 2012.

The minimum lot size for the subject lots in RLEP 1996 was 40ha, whereas the minimum lot size for the subject lots in MWRLEP 2012 is 100ha. Council's assessment of the development application under Clause 13 & 22 of RLEP 1996 concluded the approved subdivision lot sizes were capable of accommodating dwelling houses without generating adverse impacts onto the area's agricultural uses. Each of the approved subdivided lots were intended to have dwelling entitlement.

Clause 4.2A(3)(c) of MWRLEP 2012 states the following:

(3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on land in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the land—

...

(c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or

...

Notwithstanding the applicable savings provisions considered by Council, development consent and registration of the subdivision (Plan of subdivision signed by Council on 6 May 2021 - SC034/2021) were made after the commencement of MWRLEP 2012. Therefore, Lot 1 and Lot 2 do not have dwelling entitlement under MWRLEP 2012 as the lot sizes are below 100ha.

The planning proposal is seeking dwelling entitlement for Lot 1 and Lot 2 by reverting the minimum lot size back to 40ha, consistent with RLEP 1996. The planning proposal is acceptable on merit given the unclear development assessment procedures Council would have needed to consider when transitioning to a new environmental planning instrument with contradicting provisions whilst savings provisions apply. The reduction in minimum lot size is also considered acceptable as no further subdivision opportunity will be created as a result of the planning proposal.

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?

Mid-Western Regional Council resolved to support the planning proposal at a Council meeting held on 19 October 2022.

The planning proposal relating to minimum lot size amendments are generally in accordance with the relevant planning priorities stated in Council's *Our Place 2040 Mid-Western Regional Local Strategic Planning Statement*.

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

The planning proposal is the best mechanism to achieve Council's intended objective and outcome as it will result in providing greater planning certainty for dwelling houses to be permissible for the subject lots. The planning proposal is consistent with Direction 12 of the *Central West Orana Regional Plan 2036* as it will deliver land use certainty.

3 Strategic assessment

3.1 Regional Plans

3.1.1 Central West Orana Regional Plan 2036

The following table provides an assessment of the planning proposal against relevant aspects of the Central West Orana Regional Plan 2036.

Table 4 Regional Plan assessment

Regional Plan Directions	Justification
Direction 12: Plan for greater land use compatibility	<p>The direction outlines the importance of delivering land use certainty.</p> <p>The proposed minimum lot size (MLS) standard amendment to MWRLEP 2012 is consistent with this direction and its relevant actions as reducing the MLS to 40ha will grant dwelling entitlement and will deliver greater land use certainty. This certainty will reduce potential planning issues during the development assessment stage for future dwelling houses.</p>
Direction 15: Increase resilience to natural hazards and climate change	<p>The direction outlines the importance of considering natural hazards and climate change. Action 15.1 requires developments to be located away from areas of high biodiversity value, high risk bushfire or flooding, contaminated land and designated waterways.</p> <p>The subject lots are constrained by biodiversity and bushfire. The subject lots are able to accommodate future dwellings by locating them away from these constraints. Assessment of future development applications will consider acceptable locations of the dwellings.</p> <p>No information has been submitted to suggest whether the subject lots are contaminated. Matters of contamination are required to be considered by Council when assessing future development applications under SEPP (Resilience and Hazards) 2021.</p>

Direction 28: Manage rural residential development

The direction outlines the importance of managing rural residential development. The reduction in the minimum lot size standard will enable development of two (2) dwelling houses on land zoned RU1 Primary Production.

The proposed amendment to the minimum lot size to grant dwelling entitlement is consistent with this direction and its relevant actions.

The subject lots are not in an area of state or regional significance for agricultural, environmental or other purposes under any instrument or plan, and the proposed development does not raise any matters of state or regional significance.

Future dwelling houses for the subject lots are not considered to be an incompatible use for the subject site and locality. It is noted that Council has considered the lots having minimum area of 40ha to be capable of accommodating dwelling houses during the assessment of the subdivision development application under the former Rylstone LEP 1996. The dwelling houses are unlikely to adversely impact agricultural land uses within the area and will not increase pressure on infrastructure and services. No further subdivision opportunity will be available once the amendment is finalised.

3.1.2 Draft Central West Orana Regional Plan 2041

The draft Central West Orana Regional Plan 2041 was on public exhibition from 22 November 2021 to 18 February 2022. The draft plan is the first 5-yearly review to reset priorities and extend the plan's reach to 2041.

As the draft plan is nearing finalisation, an assessment against relevant objectives of the draft plan is demonstrated below.

Table 5 Draft Regional Plan assessment

Regional Plan Objectives	Justification
Objective 3: Plan for resilient places and communities	<p>The objective outlines the importance of considering natural hazards and climate change.</p> <p>The subject lots are bushfire prone land and the objective requires consideration of a development's proximity to bushfire hazards. The subject lots are mapped as Vegetation Category 2 and are lower risk parcels with remnant vegetation. Consultation with NSW RFS will be required as a condition of Gateway. Development for the purpose of dwelling houses on the subject lots may be considered acceptable, and final location and construction standards will be determined during Council's assessment of future development applications.</p>
Objective 5: Ensure site selection and design embraces and respects the region's landscapes, character and cultural heritage	<p>The objective outlines the importance of Aboriginal and non-Aboriginal cultural heritage.</p> <p>The subject lots are within close vicinity to Heritage Item <i>117R Cemetery</i> (local significance). The proposed reduction to the minimum lot size standard will not result in cumulative impacts to the existing heritage item.</p>

Objective 9: Manage rural residential development

Refer to discussion above regarding Direction 28, Central West Orana Regional Plan 2036.

3.2 Local

The following table provides an assessment of the planning proposal against relevant Planning Priorities of Council's Our Place 2040 Mid-Western Regional Local Strategic Planning Statement.

Table 6 Local Strategic Planning Statement assessment

Planning Priorities	Justification
Planning Priority 1: Respect and enhance the historic character of our Region and heritage value of our towns.	<p>The planning priority outlines the importance of heritage value.</p> <p>The subject lots are within close vicinity to Heritage Item I17R Cemetery (local significance). The proposed reduction to the minimum lot size standard will not result in cumulative impacts to the existing heritage item.</p>
Planning Priority 3: Maintain and promote the aesthetic appeal of the towns and villages within the Region.	<p>The planning priority outlines the importance of protecting and enhancing the natural and built environment of the LGA.</p> <p>The proposal is in accordance with this direction as amendment to the minimum lot size standard will not result in future dwelling houses detracting the surrounding scenic quality of the locality.</p>
Planning Priority 4: Provide infrastructure and services to cater for the current and future needs of our community.	<p>The planning priority outlines the importance of community infrastructure and services.</p> <p>The subdivision development consent required Section 94 Contributions to be paid by the proponent.</p> <p>The infrastructure requirements of the subdivision have been considered in Council's development assessment and have considered the proposed infrastructure acceptable with exception to electricity services.</p> <p>The subject lots are burdened by a positive covenant which requires lot owners to be responsible for establishing electricity services connections. Council would need to consider future infrastructure requirements when assessing future development applications.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant Section 9.1 Directions (as from 1 March 2022) is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The planning proposal is consistent with both the Central West Orana Regional Plan 2036 and draft Central West Orana Regional Plan 2041. Refer to Section 3.1 above.

3.2 Heritage Conservation	Yes	The subject lots are within close vicinity to Heritage Item I17R Cemetery (local significance). The proposed reduction to the minimum lot size standard will not result in cumulative impacts to the existing heritage item.
4.3 Planning for Bushfire Protection	Yes, subject to consultation with NSW RFS.	<p>Whilst the subject lots are bushfire prone land, it is considered that Council is not required to prepare a bush fire prone land map.</p> <p>In accordance with the Direction, Council is required to undertake consultation with the Commissioner of NSW RFS. A Gateway condition is recommended to this effect.</p>
9.1 Rural Zones	Yes	The Direction prohibits rezoning of rural zoned land to residential, business, industrial, village or tourist zone. The planning proposal does not propose rezoning.
9.2 Rural Lands	Yes	<p>The Direction states:</p> <p><i>(2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:</i></p> <p><i>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</i></p> <p><i>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</i></p> <p><i>(c) where it is for rural residential purposes:</i></p> <p><i>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</i></p> <p><i>ii. is necessary taking account of existing and future demand and supply of rural residential land.</i></p> <p>The proposed changes to the minimum lot size standard will not result in rural land fragmentation and will not adversely affect the operation of existing and future rural land uses within the locality. Any future dwelling houses will not increase pressure on infrastructure and services. The subdivision was approved by Council with the intention to allow a dwelling house on each created lot.</p> <p>The planning proposal is in accordance with the Direction.</p>

3.4 State environmental planning policies (SEPPs)

The proposed amendment to the minimum lot size standard is generally consistent with the following relevant SEPPs:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Sustainable Buildings) 2022 (gazetted, commences 1 October 2023)
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Primary Production) 2021

- State Environmental Planning Policy (Resilience and Hazards) 2021

It is noted that for any new subsequent development applications made, Council will be required to consider the abovementioned SEPPs for assessment.

4 Site-specific assessment

4.1 Environmental

The subject lots are constrained by bushfire, biodiversity and groundwater vulnerability. The planning proposal will not be adversely affected by the constraints of the lots. In addition, Council is required to consider the likely environmental impacts and suitability of future development as required by the Act when assessing subsequent development applications.

4.2 Social and economic

The planning proposal is considered to generate minimal social and economic impacts to the subject lots and locality. In addition, Council is required to consider the likely social and economic impacts and suitability of future development as required by the Act when assessing subsequent development applications. During the development application stage, Council will assess the impact of the proposed dwelling houses on the adjacent heritage item *117R Cemetery*.

4.3 Infrastructure

The planning proposal is not likely to result in an increased infrastructure demand. Council's previous assessment of the subdivision development application concluded the approved lots can accommodate future developments with sufficient infrastructure.

Notwithstanding, the subject lots are burdened by a positive covenant (DP 1278320) requiring the lot owners to be responsible for acquiring electricity supply.

The land has access and frontage to public roads that are capable of accommodating traffic generated by two dwelling houses.

5 Consultation

5.1 Community

Council proposes a community consultation period of ten (10) working days, in line with planning proposals categorised as 'Basic' under the Local Environmental Plan Making Guideline 2022.

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

5.2 Agencies

The proposal states that consultation with agencies is not applicable due to the nature of the proposed amendments.

As the subject lots are bushfire prone land, it is recommended that consultation with the Commissioner of NSW Rural Fire Service be undertaken to satisfy Direction 4.3(1) of the Section 9.1 Ministerial Directions – Local Planning Directions.

6 Timeframe

Council proposes a three (3) month time frame to complete the LEP.

The Department recommends a time frame of six (6) months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the Gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

7 Local plan-making authority

Council has not advised whether it would like to exercise its functions as a Local Plan-Making Authority.

As the planning proposal consists of basic LEP amendments, 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 is generally consistent with the relevant local, regional and State legislation and policies;
- It is not expected to result in adverse environmental, social, economic and infrastructure impacts;
- It will enable the delivery of Council's original intentions of facilitating dwelling houses for the subject lots, noting the contradiction of the previous and current LEPs; and
- The planning proposal process is a transparent mechanism to allow dwelling house permissibility on the subject land.

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

- Include existing and proposed Minimum Lot Size maps for the subject lots.

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 updated to include existing and proposed Minimum Lot Size maps for the subject lots.
2. Prior to community consultation, the Commissioner of the NSW Rural Fire Service is to be consulted in accordance with Direction 4.3(1) of the Section 9.1 Ministerial Directions – Local Planning Directions.
3. The planning proposal should be made available for community consultation for a minimum of 10 working days.
4. The timeframe for completing the LEP is to be six (6) 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)

17 November 2022 (Date)

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18 November 2022 (Date)

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