

**Planning Proposal – Administrative Amendment – Lot 4 DP  
1220491, Muswellbrook  
PP-2023-1**

Local Government Area:		Muswellbrook Shire Council (MSC)
Name of Draft LEP:		Muswellbrook Local Environment Plan 2009 - PP-2023-1
Subject Land:		Lot 4 DP 1220491, Muswellbrook.
Land Owner:		Muswellbrook Coal Company Pty Ltd.
Applicant:		Muswellbrook Coal Company Pty Ltd.
Folder Number:		PP 020
Date:		17 April 2023
Author:		Tanya Jolly & EMM Consulting Pty Limited
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	3	Current Land Zoning
	4	Minimum lot size
	5	Terrestrial Biodiversity
	6	Heritage Conservation
	7	Bushfire Prone Land
	8	Contaminated Land
	9	Mine Subsidence

Attachments:	No.	Details
	1	The Business Paper and Meeting Minutes of the 12 April 1977 Denman Ordinary Council Meeting.
	2	Evaluation criteria for the delegation of plan making functions.

## Part 1 – OBJECTIVES OR INTENDED OUTCOMES

The objective of the Planning Proposal is to amend Muswellbrook Local Environmental Plan 2009 (MLEP 2009) to remove “Muswellbrook Brick Works (Item I112)” from Schedule 5 of the Muswellbrook Local Environmental Plan 2009.

## Part 2 – EXPLANATION OF PROVISIONS

The proposed objective will be achieved by amending the MLEP 2009 by: -

Amendment Applies to	Explanation of provision
Schedule 5 Environmental Heritage	To remove item I112 from the Schedule.
Heritage Map	To remove item I112 from the Map.

## Part 3 – JUSTIFICATION

### Section A – Need for the Planning Proposal

#### **1. *Is the planning proposal a result of an endorsed LSPS, strategic study or report?***

This proposal is not a result of an endorsed LSPS, strategic study or report. This proposal is in response to a historic heritage assessment that concluded that Item I112 no longer contains historical heritage significance. Removal of the item from the LEP heritage schedule is, therefore, necessary to ensure appropriate land use decisions can be made with respect to the land.

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

The proposal is the only means of achieving the stated objectives. The only alternative is to retain the item within the heritage schedule and map, which would potentially have an adverse impact on land use decisions within the Muswellbrook Shire.

### Section B – Relationship to Strategic Planning Framework

#### **3. *Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?***

##### The Hunter Regional Plan 2041

This regional plan is a 20-year land use plan prepared under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. It applies to the local government areas (LGAs) of Cessnock, Dungog, Lake Macquarie, Maitland, MidCoast, Muswellbrook, Newcastle, Port Stephens, Singleton, and Upper Hunter. This regional plan sets the strategic land use framework for continued economic growth and diversification in one of Australia's most diverse and liveable regions.

Objective 6 under this Plan is to “*Conserve heritage, landscapes, environmentally sensitive areas, waterways and drinking water catchments, with performance outcomes specifying that items, areas, objects and places of heritage significance are conserved.*”

The proposal is not inconsistent with the Hunter Regional Plan as the item of Heritage Significance no longer exists on the site as the building was demolished in May 2012 and Archival recording of the site was undertaken by Muswellbrook Shire Local & Family History Society Inc.

#### Muswellbrook Community Strategic Plan 2022-2032

The Muswellbrook Community Strategic Plan is an overview document that identifies the community's vision and goals for the future. It covers a minimum time frame of 10 years.

Goal 4 of the Muswellbrook Community Strategic Plan is to create a *“culturally rich and diverse community with strong identities, history and sense of belonging”*, one of which is to *“conserve the heritage and history of the Shire”*.

The removal of the Muswellbrook brickworks from Schedule 5 of the Muswellbrook LEP is considered a minor administrative amendment and not considered to be inconsistent with the goals set out in the Muswellbrook Community Strategic Plan as the subject site no longer contains historical heritage significance.

#### Muswellbrook Shire Council 2022-2023 Operational Plan

The Muswellbrook Shire Council 2022-2023 Operational Plan is a one-year plan that spells out the details of the Delivery Program, identifying the individual projects and activities that will be undertaken in a specific financial year to achieve the commitments made in the four-year Delivery Program.

Council's operational plan references the goals set out in the Community Strategic Plan but does not reference any specific actions that are relevant to the proposal.

#### Muswellbrook Shire 2022 – 2026 Delivery Program

Goal 4.1 of the Muswellbrook Shire 2022 – 2026 Delivery Program seeks to *“Support the conservation and restoration of the Shire's heritage items”*. The measures proposed to enact this goal is:

- Funding allocation for heritage conservation and restoration is available, and;
- Local Heritage Grants and Council budget allocation

#### **4. *Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?***

#### Muswellbrook Local Strategic Planning Statement 2020 - 2040

The Muswellbrook Local Strategic Planning Statement (LSPS) is part of a hierarchy of strategic land use planning documents and is a mandated requirement of the NSW State Government under the Environmental Planning and Assessment Act 1979.

The Muswellbrook LSPS implements the actions in the Hunter Regional Plan and Council's own priorities as set out in the Muswellbrook Community Strategic Plan and other adopted strategies and actions.

Planning Priority 14 under this plan is to ensure that “*Aboriginal and Non- Aboriginal cultural heritage is protected and celebrated.*”

The Muswellbrook Brick works site no longer contains any items of heritage significance and therefore is not contrary to this planning priority.

**5. *Is the planning proposal consistent with any other applicable State and regional studies or strategies?***

Muswellbrook Shire Council Heritage Strategy

The Muswellbrook Heritage Strategy has been prepared to set the future direction for heritage initiatives in Muswellbrook Shire. It is also prepared to meet the requirements of the NSW Office of Environment and Heritage in association with the Three-Year funding agreement to support local government heritage management in NSW.

The Strategy discusses a number of ways in which Council aims to retain, enhance, and protect the local Heritage of the locality, including the management of local Heritage in a positive manner.

The proposed removal of the Heritage Item assists in the management of the local Heritage, ensuring that Items that no longer contain Heritage significance, and cannot be restored are no longer registered in the Muswellbrook Local Environmental Plan.

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

The Planning Proposal is consistent with the following relevant State Environmental Planning Policies (SEPPs) outlined in Table 1 below.

Table 1: Assessment of the Planning Proposal against relevant SEPPs

SEPP	Relevance	Implications
SEPP (Biodiversity and Conservation) 2021	This SEPP provides planning controls for the conservation of Biodiversity in NSW.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Building Sustainability Index: BASIX) 2004	This SEPP sets out provisions to regulate the energy efficiency of residential buildings to encourage sustainable residential development	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Exempt and Complying Development Codes) 2008	The SEPP provides exempt and complying development codes for types of development that are of minimal environmental impact that may be carried out without the need for development consent or in accordance with a complying development certificate.	This proposal would allow the applicability of this SEPP as land that contains heritage items are excluded from exempt and complying development codes. Therefore, removal of the I112 from the LEP heritage schedule would allow for more efficient use of land.

SEPP (Housing) 2021	This SEPP aims to enable the development of diverse housing types by encouraging the development of housing that will meet the needs of more vulnerable members of the community.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Industry and Employment) 2021	This SEPP provides provisions: <ul style="list-style-type: none"> <li>➤ To promote economic development and the creation of employment in the Western Sydney Employment Area.</li> <li>➤ To regulate signage and advertisements.</li> </ul>	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP No 65—Design Quality of Residential Apartment Development	This Policy provides provisions for development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Planning Systems) 2021	This policy aims to identify State Significant Development, regionally significant development, and critical state significant development.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Primary Production) 2021	Aims of the SEPP include to facilitate the orderly economic use and development of lands for primary production.	The subject land is zoned RU1. The proposal will facilitate the orderly and economic use and development of the land for primary production.
SEPP (Resilience and Hazards) 2021	This SEPP sets out provisions for coastal management, hazardous and offensive development, and the remediation of land.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Resources and Energy) 2021	This SEPP sets out provisions for Mining, petroleum production and extractive industries and Extractive industries in Sydney area.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Transport and Infrastructure) 2021	This SEPP sets out provisions relating to Transport and Infrastructure.	The proposal does not involve any provisions which would be inconsistent with the SEPP.

## **7. Is the planning proposal consistent with applicable Ministerial Directions?**

An assessment of the Planning Proposal and its consistency against the applicable Ministerial Directions is provided at Table 4 below.

Table 2: Consistency with applicable Ministerial Directions

Ministerial Direction	Objective/s	Consistency / Comment
<b>Focus Area 1: Planning Systems</b>		
1.1 Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions, and actions contained in Regional Plans.	This Planning Proposal is consistent with the Hunter Regional Plan
1.2 Development of Aboriginal Land Council land	The objective of this direction is to provide for the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.	This proposal does not propose any changes in the land shown on the relevant Land application Map.
1.3 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	This planning proposal is consistent with the objectives of this direction as the removal of a remnant heritage Item with no Heritage value will reduce the likelihood of complications resulting in reduced efficiency for future developments.
1.4 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.	This planning proposal is consistent with the objectives of this direction as the removal of a remnant heritage Item with no Heritage value removes a restrictive planning control.
<b>Focus area 1: Planning Systems – Place-based</b>		
The proposed development does not involve any changes relevant to any of the areas in the Place based directions.		
<b>Focus Area 2: Design and Place</b>		
[This Focus Area was blank when the Directions were made]		
<b>Focus Area 3: Biodiversity and Conservation</b>		
3.1 Conservation Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	This Planning proposal does not reduce the conservation standard for any environmentally sensitive areas.
3.2 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	This proposal relates to the removal of an item that no longer has any heritage significance and cannot be restored or conserved from the Muswellbrook LEP 2009.
3.3 Sydney Drinking Water Catchments	The objective of this direction is to provide for healthy catchments and protect water quality in the Sydney drinking water catchment	Not Relevant
3.4 Application of C2 and C3 Zones and	The objective of this direction is to ensure that a balanced and	Not Relevant

Environmental Overlays in Far North Coast LEPs	consistent approach is taken when applying conservation zones and overlays to land on the NSW Far North Coast.	
3.5 Recreation Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.	This proposal relates to the removal of an item that no longer has any heritage significance and cannot be restored or conserved.
3.6 Strategic Conservation Planning	The objective of this direction is to protect, conserve or enhance areas with high biodiversity value.	The proposal relates to a site that has been identified as being ecologically sensitive land, however, this planning proposal does not involve any changes to the environmental protection of the area but rather, an administrative amendment relevant to heritage conservation.
3.7 Public Bushland	The objective of this direction is to protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland.	The proposal is not expected to impact any bushland in urban areas.
Focus Area 4: Resilience and Hazards		
The proposed development involves only an administrative amendment to remove an item of Heritage Significance from the Muswellbrook LEP 2009. This change is not expected to have any impact on the Resilience and Hazards on the land.		
Focus Area 5: Transport and Infrastructure		
6.1 Approval and Referral Requirements	Ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Proposal does not include provisions that require the concurrence, consultation, or referral.
Focus Area 6: Housing		
Not Applicable		
Focus Area 7: Industry and Employment		
Not Applicable		
Focus Area 8: Resources and Energy		
The subject site has been used for mining operations by Muswellbrook Coal Company. The proposed amendment is not expected to have any impact on the future extraction of any resources.		
Focus Area 9: Primary Production		
Not Applicable		

## **Section C – Environmental, Social and Economic Impact**

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

The proposed amendment is purely administrative and will not increase the likelihood that any critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

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

The subject site is bushfire prone, contaminated and affected by mine subsidence, however, this planning proposal only involves an administrative amendment and is not expected to have any change on the existing conditions and management of the site.

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

It is unlikely that there would be any adverse impacts in terms of either social or economic associated with the planning proposal.

## **Section D – State and Commonwealth Interests**

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

This Planning proposal only involves an administrative change to remove an item from the Muswellbrook LEP Heritage List as the item no longer exists and does not have any Heritage significance. There is no public infrastructure required for the proposal.

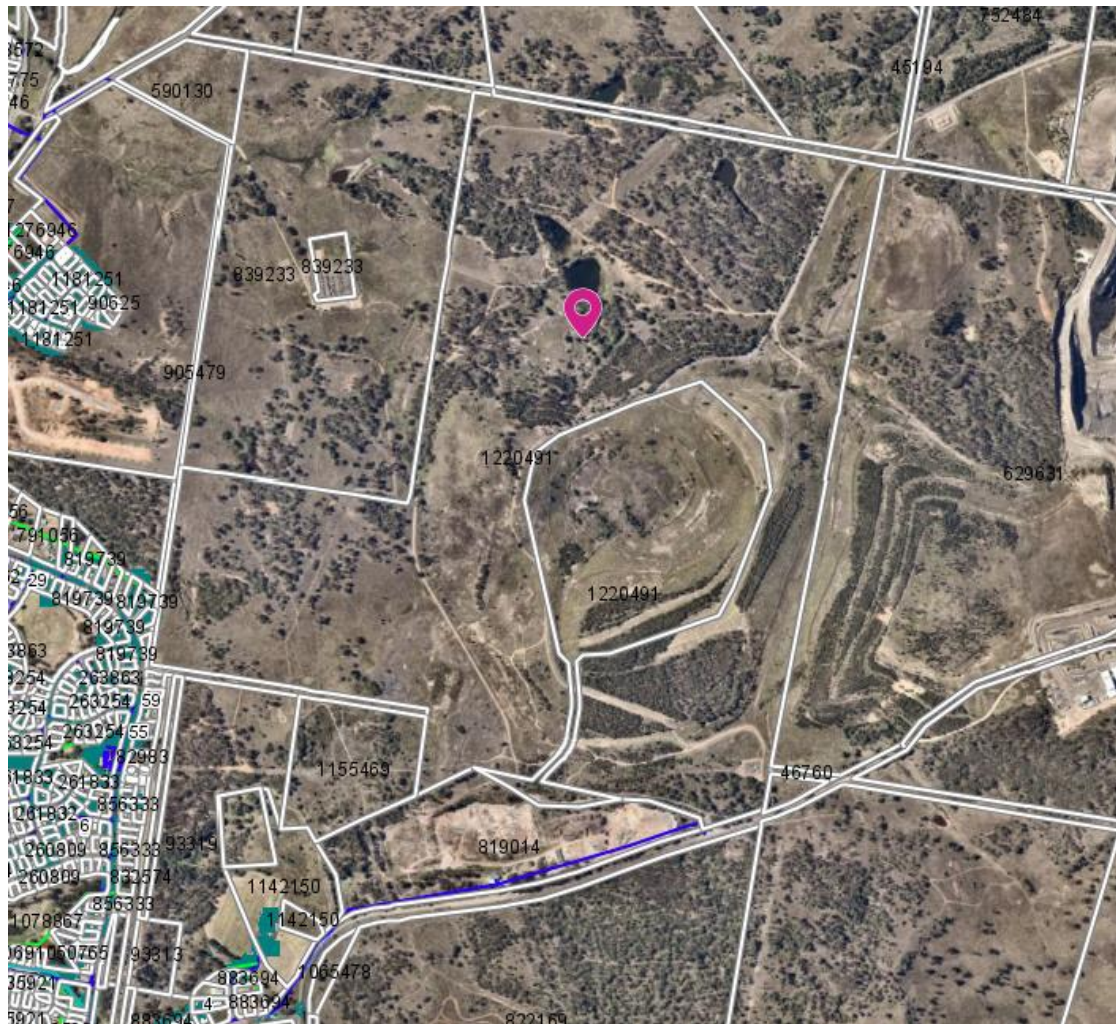
**12. *What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?***

Determination not yet issued.

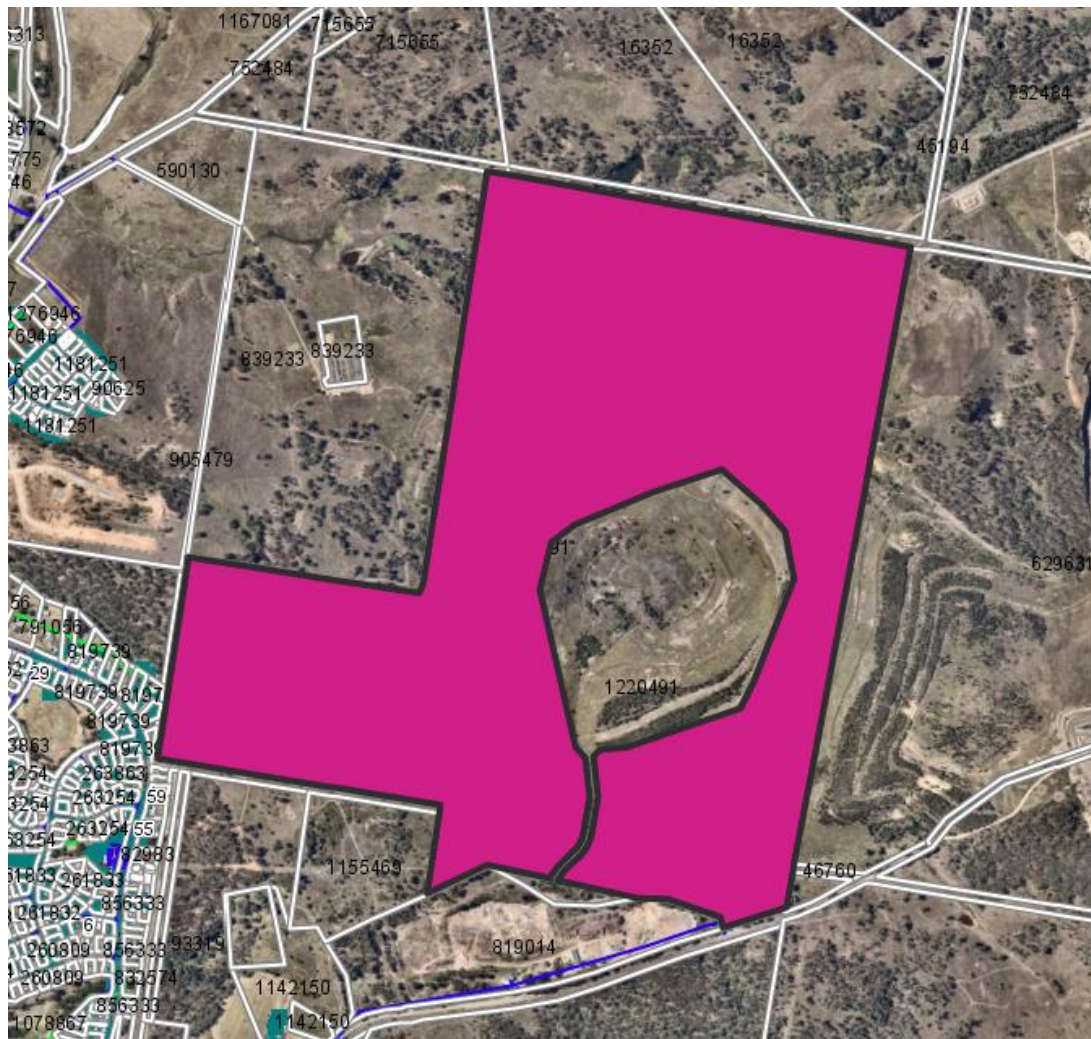


## Part 4 – MAPPING

### Map 1 – Locality

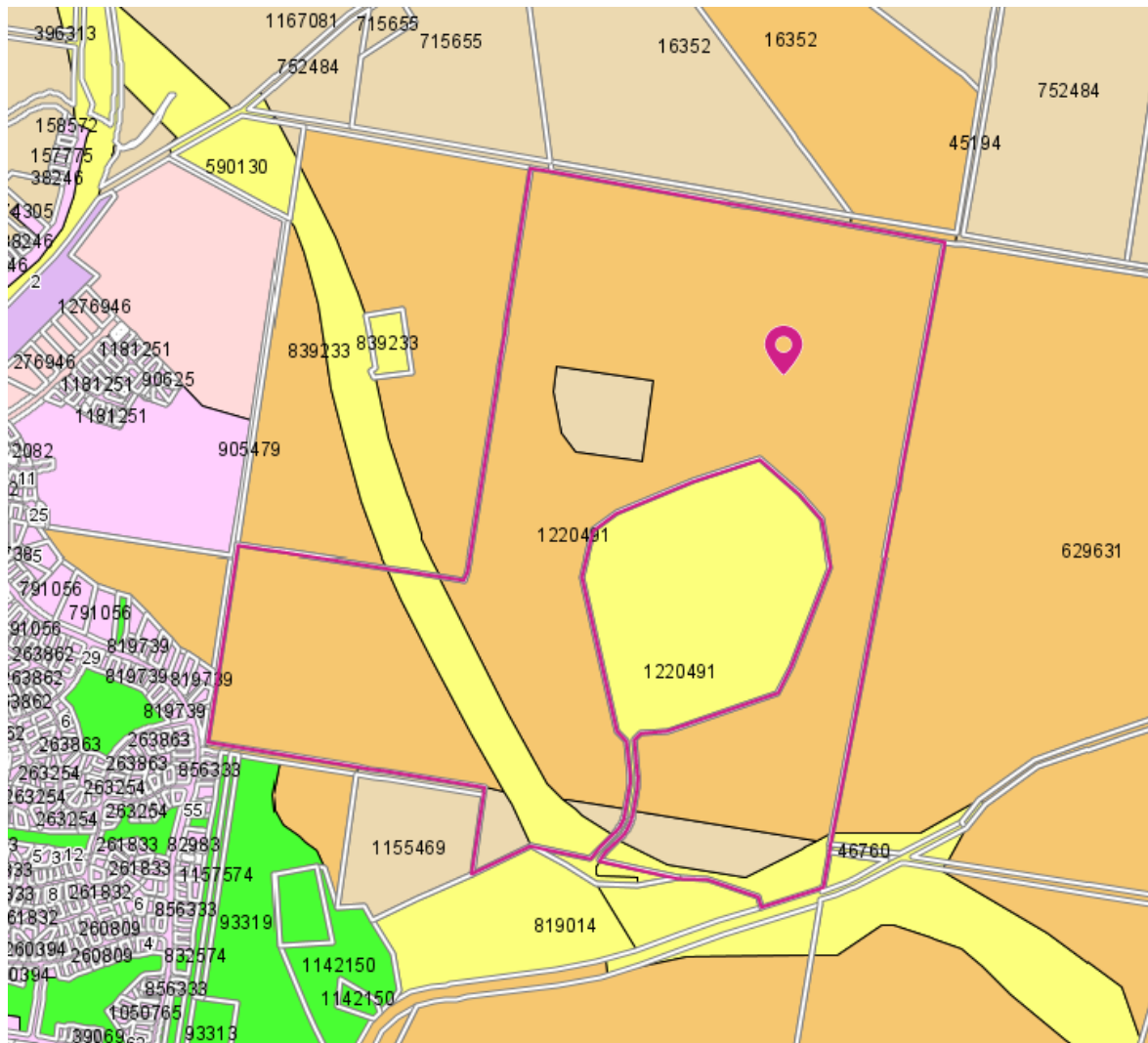


## Map 2 - Site Identification Map

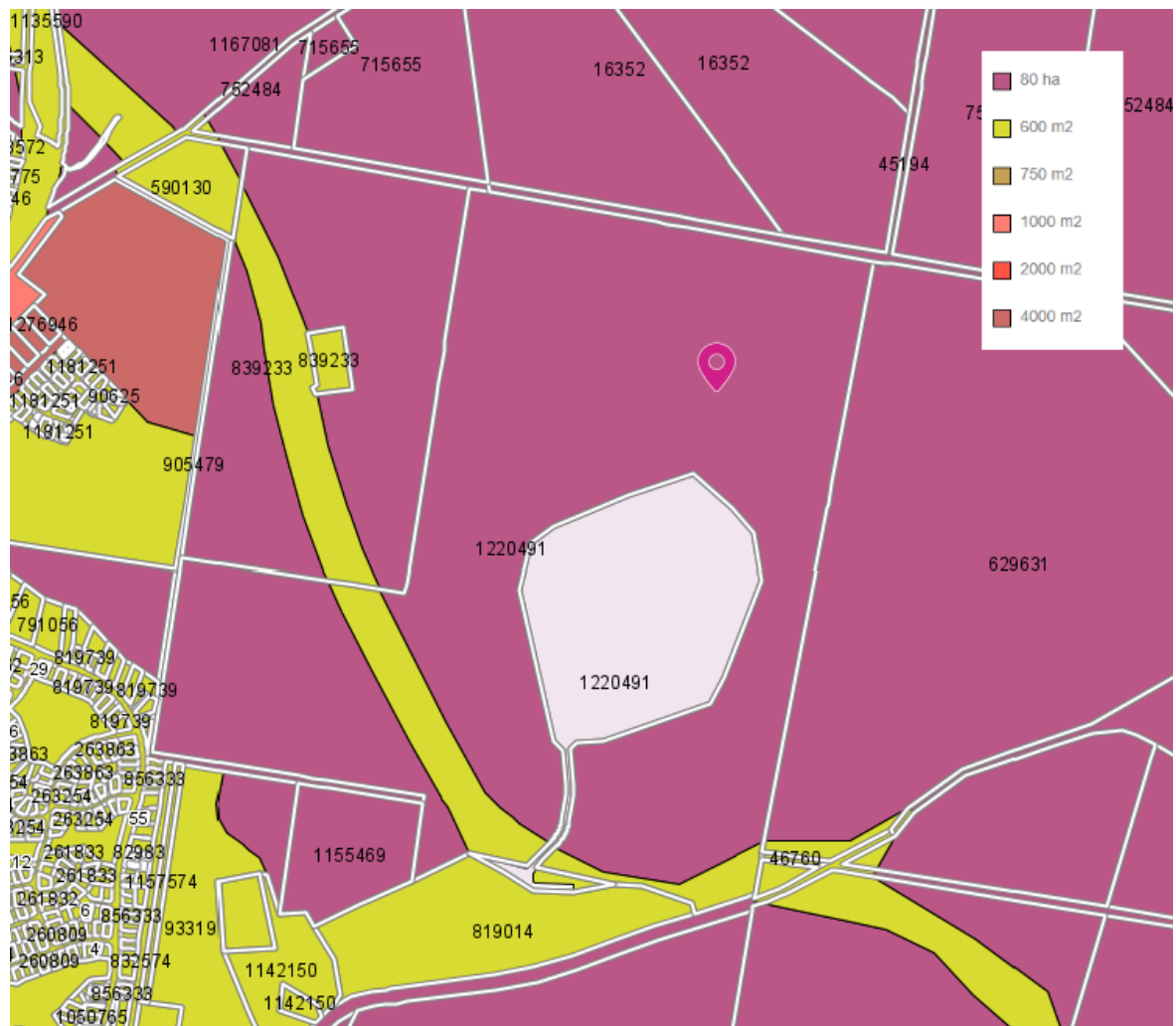




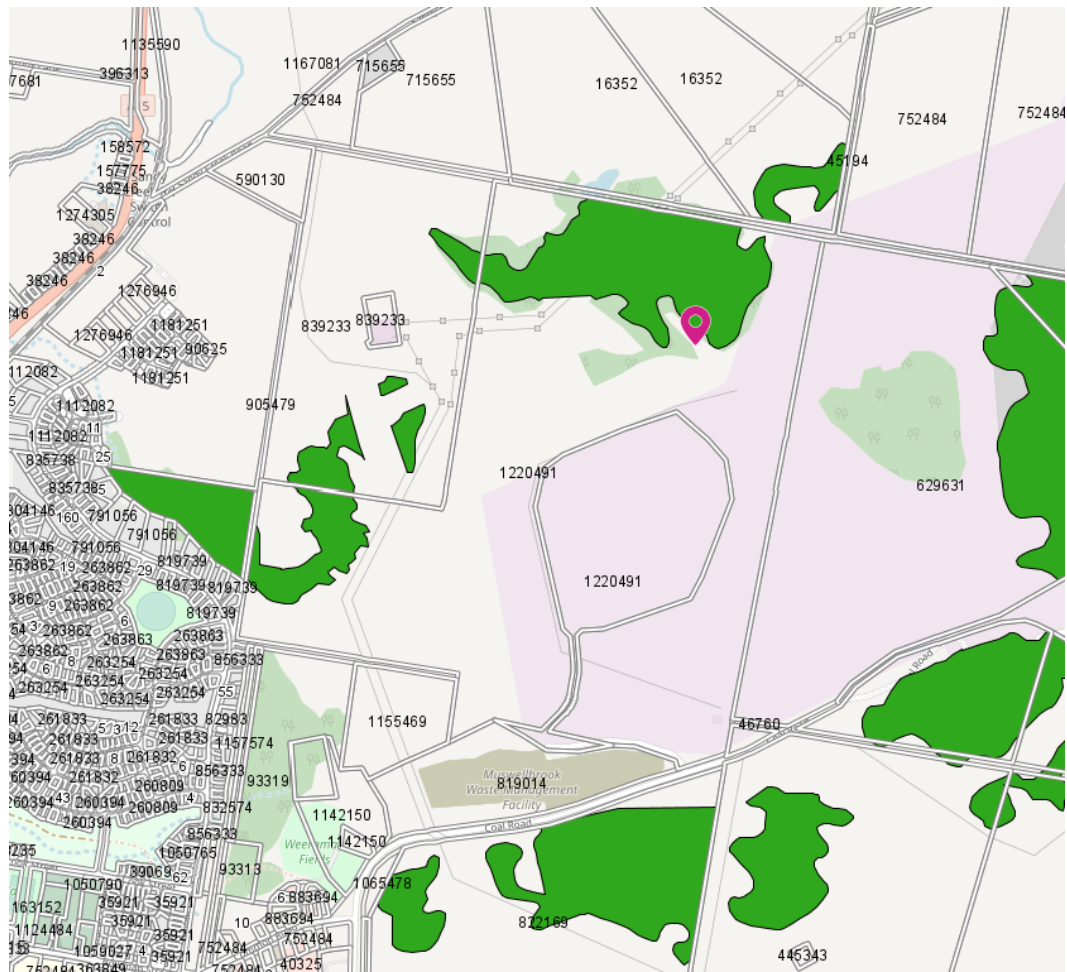
### Map 3 - Current Land Zoning – C3 Environmental Management



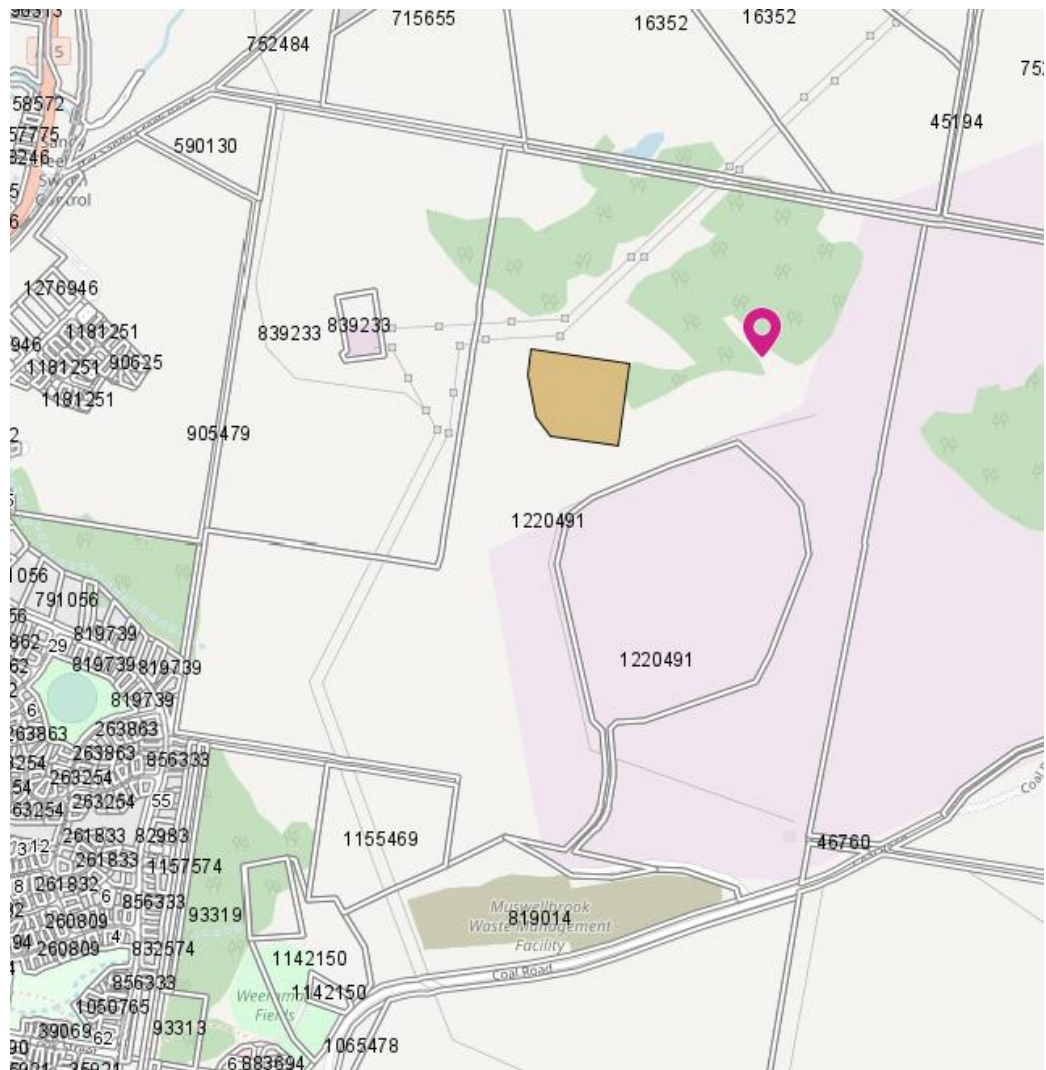
### Map 4 - Minimum Lot Size – 80ha



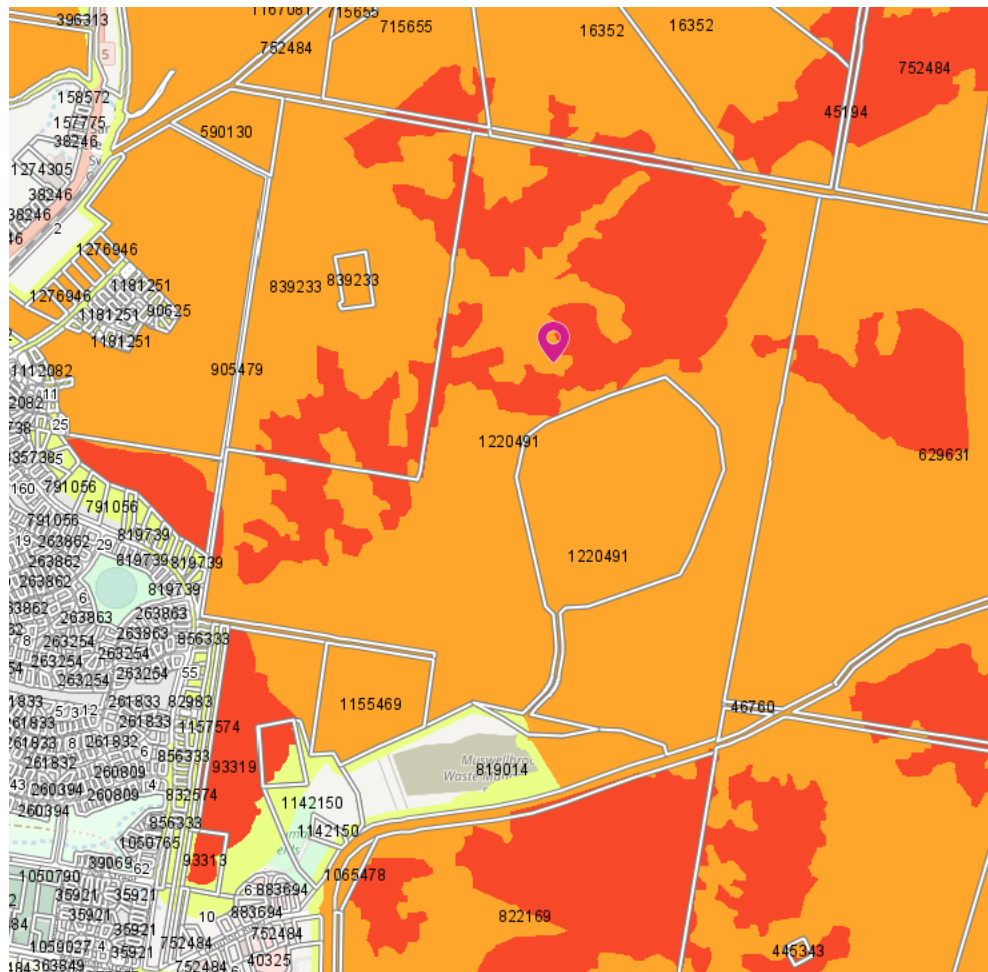
## Map 5 – Terrestrial Biodiversity



## Map 6 – Heritage Conservation Items

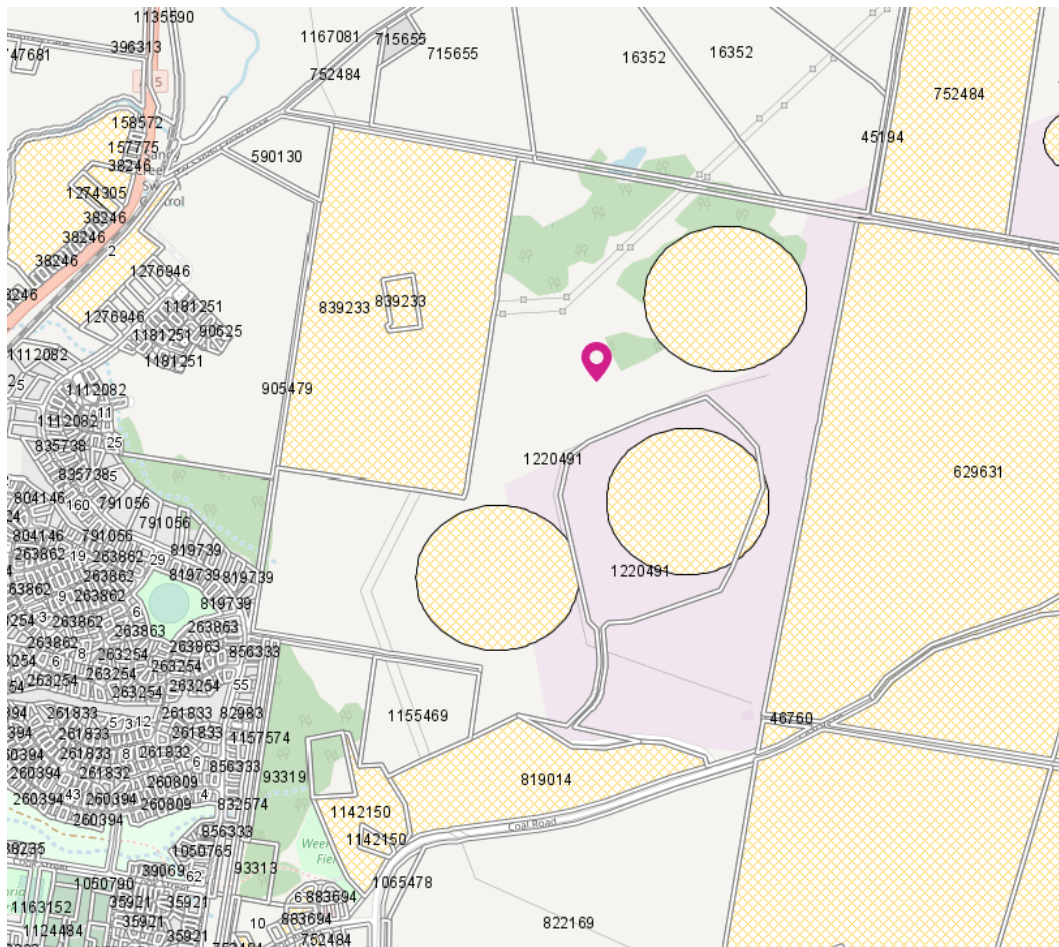


## Map 7 – Bushfire Prone Land



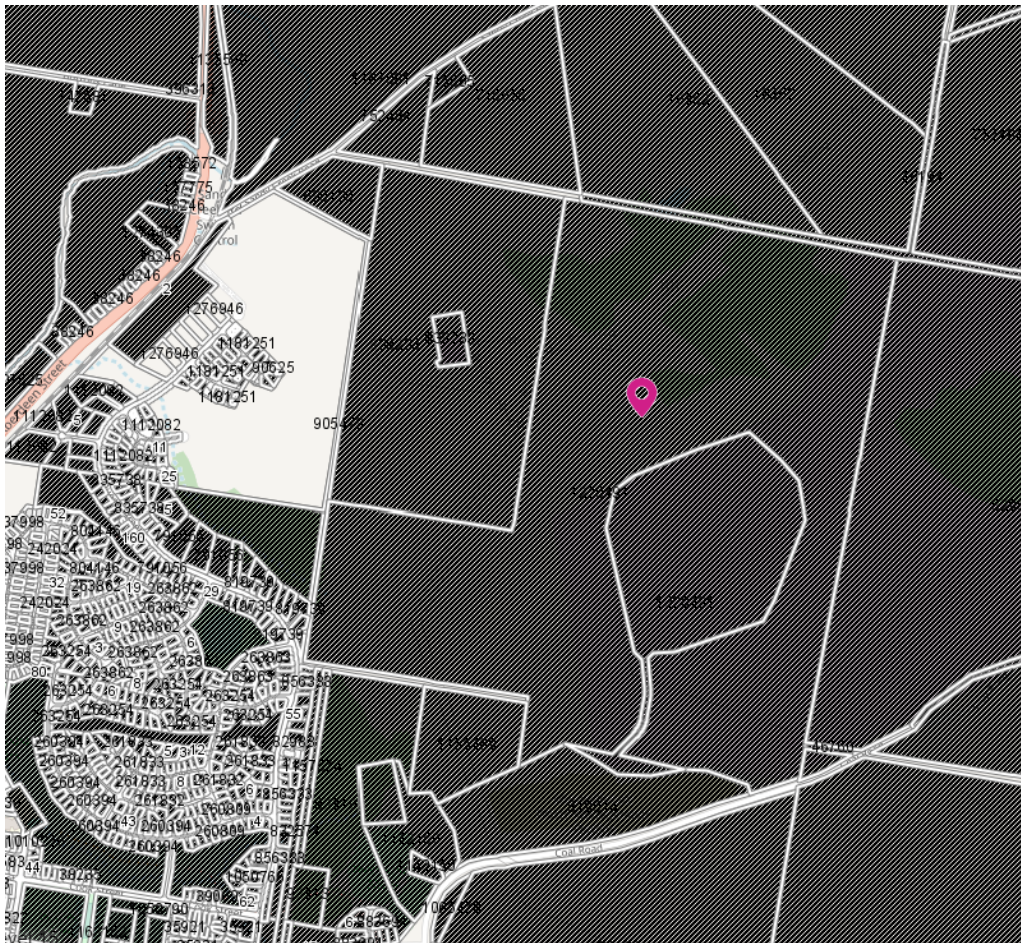


## Map 8 – Contaminated Land





## Map 9 – Mine Subsidence



## Part 5 – COMMUNITY CONSULTATION

A 28-day exhibition period is proposed. The Gateway Determination will confirm the exhibition period.

## Part 6 – PROJECT TIMELINE

Action	Timeframe
Anticipated commencement date (date of Gateway determination)	28/08/2023
Anticipated timeframe for completion of required technical information	28/10/2023
Timeframe for government agency consultation (pre-exhibition)	28/10/2023
Public exhibition (commencement and completion dates)	Dependent on LEP amendment Option
Date of Public hearing (if required)	
Consideration of submissions	
Timeframe for government agency consultation (post exhibition if required)	
Post exhibition planning proposal consideration / preparation	
Submission to Department to finalise LEP	
Date RPA will make Plan (if delegated)	
Date RPA will forward to the Department for notification (if not delegated)	

Council intends to utilise delegations under s3.36 of the EP & A Act 1979 to finalise the Planning Proposal.

**Attachment A**

The Business Paper and Meeting Minutes of the Ordinary Council Meeting on 28 February 2023.

## Attachment B

### Evaluation Criteria for the Issuing of an Authorisation

Evaluation criteria for the issuing of an Authorisation				
(Note – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not Relevant	Agree	Disagree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain detail related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		✓		
Heritage LEPs				
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	Y			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N			
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			
Reclassifications				
Is there an associated spot rezoning with the reclassification?	N			

If yes to the above, is the rezoning consistent with an endorsed Plan of management (POM) or strategy?		✓		
Is the planning proposal proposed to rectify an anomaly in a classification?		✓		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		✓		
Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions, or covenants on the public land and included a copy of the title with the planning proposal?		✓		
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval?		✓		
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding <i>classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		✓		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		✓		
Spot Rezoning				
Will the planning proposal result in a loss of development potential for the site (i.e., reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		✓		
Does the planning proposal create an exception to a mapped development standard?	Y			
Section 3.22 matters				
Does the proposed instrument	Y			
a) Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provision, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?				

- |  |  |  |  |  |
|--|--|--|--|--|
| <p>b) Address matter in the principal instrument that are of a consequential, transitional, machinery or other minor nature? or</p> <p>c) Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(Note – the Minister/GSC (or Delegate) will need to form an Opinion under section 3.22 of the Act in order for a matter in this category to proceed).</p> |  |  |  |  |
|--|--|--|--|--|

## Notes

- Where a council responds, ‘yes’ or can demonstrate that the matter is ‘not relevant’, in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, or any other local strategic planning document that is endorsed by the Secretary of the Department.
- Matters that will routinely be delegated to a Council under administration are confirmed on the Department’s website [www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning](http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning)