



IRF22/528

Gateway determination report – PP-2022-436

Liverpool

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – February 2022
Council Report/Minutes – July 2020
Bushfire Report – December 2021
Liverpool Local Planning Panel Report/advice – June 2020
Sydney Water comments – November 2019
NSW RFS comments – March 2020

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Liverpool
PPA	Liverpool City Council
NAME	Liverpool LEP 2008 – Dwelling Density Map Amendment for three land Parcels at Pleasure Point Road, Pleasure Point (2 additional dwellings)
NUMBER	PP-2022-436
LEP TO BE AMENDED	Liverpool LEP 2008
ADDRESS	Lots 71-74 DP1134477, Lots 75,77 and 78 DP 113344783, Lots 761 and 762 DP 1217961, Lot 5 DP 239468
DESCRIPTION	To amend the Dwelling Density Map to increase dwelling density from existing four lot subdivision to allow five lot subdivision on the existing three land parcels.
RECEIVED	8/02/2022
FILE NO.	IRF22/528
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A**) requests a dwelling density map amendment. It contains objectives and intended outcomes that adequately explain the intent of the proposal.

Clause 7.12 of the Liverpool LEP applies a dwelling density restriction to certain land as shown on the dwelling density map. The planning proposal seeks to increase the existing 4 dwellings restriction to 5 dwellings via a map amendment on three sites. The impetus for the planning proposal is to increase the yield potential of these lots, and to formalise the existence of a five-lot subdivision that has been approved previously on one of the three lots (Site 2), to provide the same potential on all three lots. The configuration of the sites is shown in **Figure 1**.

The objectives and intended outcomes of this planning proposal are clear and adequate.



Figure 1 Subject site

1.3 Explanation of provisions

The planning proposal seeks to amend the Liverpool LEP 2008 Dwelling density map 4900_COM_DWD_015_020_20091013 to increase the residential yield on the three original large lots from four lots to five lots on the subject site. **Figure 2** shows the existing lot configuration.

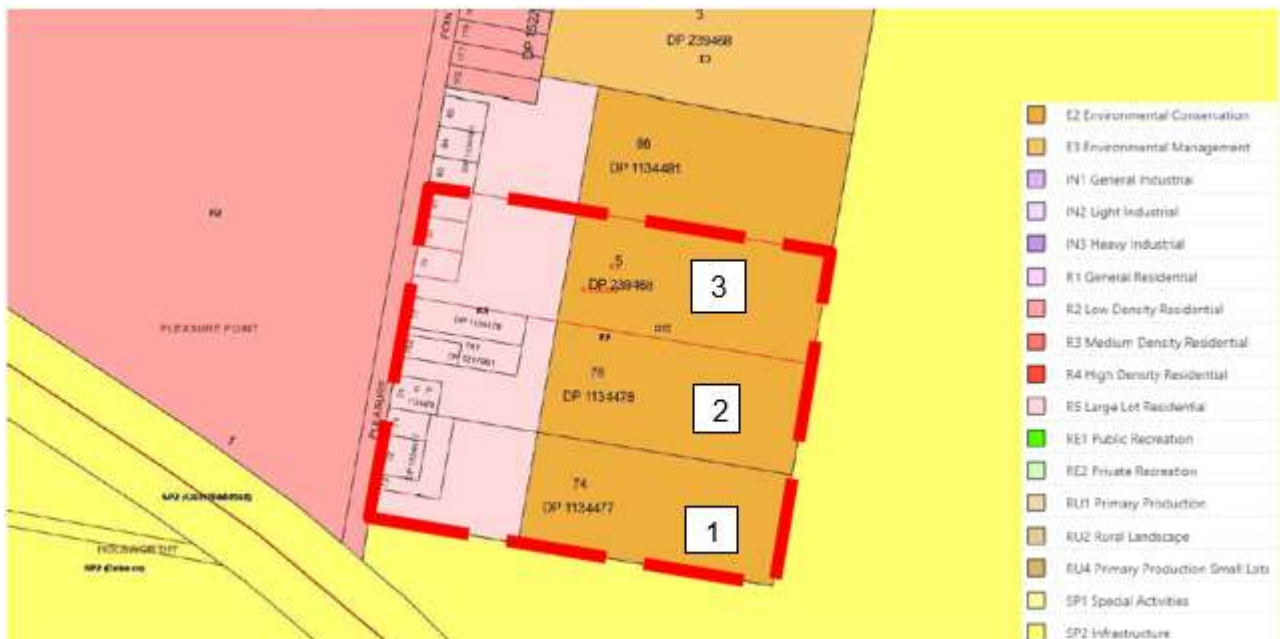


Figure 2 Existing lot configuration and zoning of Sites 1, 2 and 3





Figure 3 Extract from Dwelling density map 4900_COM_DWD_015_020_20091013


The dwelling yield restrictions have existed since the Liverpool LEP 2008 was made, and since subsequent subdivisions have occurred (**Figure 3**). **Table 2** shows the existing and proposed yield on the three land parcels.

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

It is noted that the proposal submitted to the Department contained maps showing Site 4 which is not part of this revised planning proposal (e.g. proposed Dwelling density map on page 32 of the planning proposal). The Gateway determination has been conditioned to remove references to Site 4 in the planning proposal, prior to exhibition to avoid confusion.

Table 2 Current Lot configuration

Site	Current lot configuration
<p>Site 1</p> <p>DA approved for four residential lots in June 2008.</p> <ul style="list-style-type: none"> • Lot 71 DP 1134477 • Lot 72 DP 1134477 • Lot 73 DP 1134477 • Lot 74 DP 1134477 <p>Currently, four residential dwellings including a dual occupancy dwelling have been built.</p>	
<p>Site 2</p> <p>DA approved for four residential lots in June 2008</p> <ul style="list-style-type: none"> • Lot 75 DP 1134478 • Lot 77 DP 1134478 • Lot 78 DP 1134478 • Lot 761 DP 1217961 • Lot 762 DP 1217961 <p>Currently, five residential dwellings and a secondary dwelling built on the land.</p>	

Site	Current lot configuration
<p>Site 3</p> <p>DA approved for four lot subdivision that has not been registered (in red).</p> <ul style="list-style-type: none"> Lot 5 DP 239468 	

1.4 Site description and surrounding area

The subject site is at the eastern edge of Liverpool LGA and is bounded by Pleasure Point Road to the west, with a vast vacant site on the western side of the road identified as an urban release area in the LEP, which is yet to be developed. To the east of the subject site is defence land (Sandy Point Military Reserve) land that contains environmentally significant bushland. This bushland is identified as Red Bloodwood – Grey Gum woodland in good condition and has regional connectivity. To the south is Heathcote Road, and defence land (Holsworthy Military Reserve) that is densely vegetated. To the north are further dwellings fronting Pleasure Point Road, and significant bushland that surrounds the creek corridor running down to the Georges River.

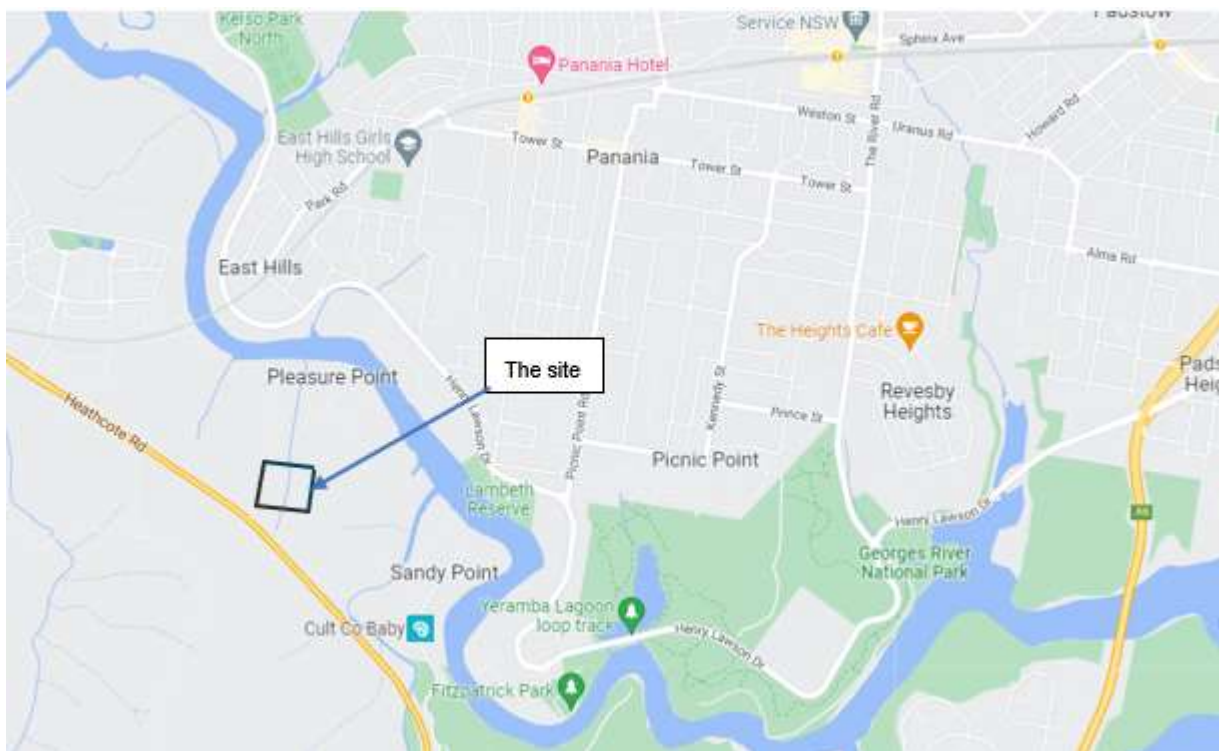


Figure 4 Subject sites along Pleasure Point Road, Pleasure Point.

The subject site is zoned R5 – Large Lot Residential along the western portion, and E2 – Environmental Conservation along the eastern portion (**Figure 4**). All land located 60m or further from Pleasure Point Road is identified as Environmentally Significant Land under the LLEP 2008. The PP does not apply to C2 Environmental Conservation zoned land. A Class 1 riparian corridor runs through the centre of the subject site, down the slope northwards to the Georges River.

The site lies in a designated bushfire prone area according to NSW RFS mapping. An informal unsealed fire trail (**Figure 1**) is located along the rear of the individual lots that is recognised and protected under section 2.6 of Part 2.13 the Liverpool Development Control Plan 2008 (LDCP 2008). The DCP requires an accessible fire trail that runs behind the existing development and parallel with Pleasure Point Road.

Residential development within the subject site is limited to the western edge fronting or connecting to Pleasure Point Road, mostly single dwelling houses, with two battle-axe lot configurations on Sites 1 and 2. Site 3 remains as a single site with an older dwelling. A development consent and a subdivision certificate has been issued for Site 3 for four lots but is yet to be registered.

1.5 Background

A previous planning proposal PP-2020-3566 to amend the Liverpool LEP to increase the maximum dwelling density control from four lots per site to five lots per site for the four sites fronting Pleasure Point Road, Pleasure Point was given a Gateway determination on 23 September 2020. These four sites included Sites 1 to 3 which are subject to this revised planning proposal PP-2022-436.

The previous Gateway determination required Council to consult with the NSW Rural Fire Service (RFS) regarding the planning proposal's unresolved inconsistency with former Section 9.1 Direction 4.4 Planning for Bushfire Protection. When consulted, the RFS indicated that Asset Protection Zone (APZ) setbacks and access road requirements as proposed do not allow capacity for additional lots on some of the sites and requested for a bushfire report to assist Council in determining the feasibility of the proposal (**Attachment E**).

On 6 September 2021, Council requested for Gateway time extension due to the delays with the bushfire report; budgetary constraints, as well as timeframes consulting with RFS. Extension of Gateway timeframe was not supported (**Attachment G**). The Gateway timeframe for the original planning proposal expired on 23 September 2021.

2 Need for the planning proposal

The revised planning proposal (**Attachment A**) is the best means of achieving the proposal's intended outcomes. It proposes to amend the Dwelling density map (4900_COM_DWD_015_020_20091013) for the site in the Liverpool LEP 2008.

The planning proposal is supported by Bushfire Assessment Report (20 December 2021) by Peterson Bushfire which supports Council's position to resubmit the amended planning proposal.

2.1 Bushfire Assessment Report

A bushfire assessment report prepared by Peterson Bushfire is at **Attachment F**. The report found the following:

- The APZ constraint measured from the forest hazard (C2 zone) leaves two of the four sites (Site 1 and 3) with potential developable area.
- Site 2 already has the proposed limit of five dwellings and the APZ constraint on Site 4 prevents from further residential development.

- The physical separation between Site 1 and Site 3 prevents a through road around the eastern side of the development to act as a continuous perimeter road. Therefore, Sites 1 and 3 would require their own individual access road and turning facility. Private property access roads can link up with the existing fire trail requirement to ensure through access to the rear of the sites is maintained. Hydrants would also need to be installed along the roads to ensure new dwellings have a compliant water supply for fire-fighters. Potential access road solutions for these properties are shown on **Figure 5**.

In conclusion, the report indicated that “the proposal was not considered incompatible with the surrounding environment and bushfire risk”, and that with “sound bushfire management, the proposal can exist adjacent with the bushland setting”.

Council advises that the report was prepared in consultation with Council’s Bushfire consultant and the NSW RFS and has addressed the RFS comments dated 4 March 2020. A written advice from RFS raising no objection to the current proposal proceeding is yet to be obtained.



Figure 5 Potential access solutions

3 Strategic assessment

3.1 District Plan

The site is within the Western City District Plan. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 3 District Plan assessment

District Plan Priorities	Justification
Planning Priority W5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport	The proposal has potential to provide two additional dwellings on the subject site with proximity to local jobs and services within the centres of Liverpool, as well as public transport access to the nearby Holsworthy train station.
Planning Priority W14 – Protecting and enhancing bushland and biodiversity	The proposal will not impact on the environmentally significant land towards the rear of the sites.

3.2 Local

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

Table 4 Local strategic planning assessment

Local Strategies	Justification
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Local Strategic Planning Statement	<ul style="list-style-type: none"> Direction 2: Strengthening and Protecting our Environment <p>The proposed amendment will not rezone the site, nor is there any amendments proposed to the existing environmentally significant land classification. The proposed amendment will facilitate the efficient development of the subject sites in a manner that retains the environmental protection restriction mechanisms within the LLEP 2008 and the LDCP 2008. This will improve the urban environment while ensuring mitigation against environmental impacts remains.</p> <ul style="list-style-type: none"> Direction 3: Generating Opportunity <p>The increase to the lot yield restriction proposed will help to ensure the efficient development of this existing urban land to facilitate the population growth occurring within Liverpool and the wider Metropolitan Sydney area.</p>
Connected Liverpool 2040	<ul style="list-style-type: none"> Planning Priority 8 – Community-focused low-scale suburbs where our unique local character and heritage are respected <p>The proposed amendment to the lot yield control will allow the subject site to reach its development potential within the unique area that it is located. It is noted that the existing R5 – Large Lot Residential zoning is to remain which will help to retain the low-scale and high amenity character of the area.</p> <ul style="list-style-type: none"> Planning Priority 14 – Bushland and waterways are celebrated, connected, protected and enhanced <p>The planning proposal will allow for the remaining developable area within the subject site to be utilised, while retaining the existing E2 – Environmental Conservation land to the east. The proposed amendment will allow for a small amount of additional development within areas mostly cleared for such purposes.</p> <ul style="list-style-type: none"> Planning Priority 15 – A green, sustainable, resilient and water-sensitive city <p>The proposed amendment has already been referred to the RFS and Sydney Water for initial consultation, and further consultation will occur should a Gateway determination be given. The proposal will not impact on the requirements of the Planning for Bushfire Protection 2019 to be satisfied as part of any future development.</p>
Liverpool Development Control Plan 2008	<ul style="list-style-type: none"> Part 2.13 Land Subdivision in Pleasure Point <p>The DCP requires a fire trail that runs behind the existing development and parallel with Pleasure Point Road. Any future additional lots facilitated by the proposed amendment will still be required to include this bushfire trail and ensure that it is accessible to the RFS.</p> <ul style="list-style-type: none"> Part 3.1 Dwelling Houses in the R5 zone <p>Control 3 within section 1. Preliminary of Part 3.1 states that “requirements for Setbacks and Landscaped Area and Private Open Space must be assessed on their merits” for the lots within the subject site. Therefore, future development as part of this proposed amendment will be assessed on a merit basis.</p>

3.3 Local planning panel (LPP) recommendation

The Liverpool Local Planning Panel (LLPP) considered the previous planning proposal PP-2020-3566. The LPP report dated 29 June 2020 stated that the proposal had strategic and site-specific merit and noted the site is constrained regarding water servicing, bushfire threat and because of

the existence of significant bushland. The report also stated the relevant 9.1 Ministerial Directions and State Environmental Planning Policies had been considered to confirm consistency **(Attachment H)**.

The LLPP advice noted the Rural Fire Service's concern about re-subdivision of Lot 86 DP1134481 (Site 4) but agreed with Council officers that this lot should be included in the planning proposal at the Gateway request stage. The Panel advised that Council resolve to progress the planning proposal to a gateway determination **(Attachment I)**.

Council has relied on the 29 June 2020 LPP advice for the previous planning proposal PP-2020-3566. Council, on 21/2/22 advised that in accordance with S9.1 Ministerial Directions it is their view that the LPP has been consulted. Council staff's view the revised proposal is not practically different to the previous amendment because Planning for Bushfire requirements means that Lot 4 is unable to be further subdivided regardless of the lot yield is amended. The updated proposal is considered an editing amendment that the CEO has delegation to make and considered no additional assessment by the LPP is required.

The Department has reviewed and agreed that additional local planning panel referral is not required in this instance.

3.4 Section 9.1 Ministerial Directions

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

Table 5 9.1 Ministerial Direction assessment

Directions	Reasons for Consistency or Inconsistency
3.1 Conservation zones	<p>The objective of this Direction is to protect and conserve environmentally sensitive areas. This Direction applies to land within an environment protection zone being E2 Environmental Conservation (C2 Environmental Conservation).</p> <p>The planning proposal does not propose to change the E2 zoned portion of the land. E2 zoning is supported by the environmentally significant land clause 7.6 in the LLEP.</p> <p>Department comment:</p> <p>The proposal is consistent with this Direction.</p>

Directions	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	<p>The sites are identified as a designated bushfire prone area according to RFS mapping (Figure 5 above). The Direction's objectives are to protect life, property and the environment from bush fire hazards and to encourage sound management of these areas.</p> <p>NSW Rural Fire Service (RFS) was consulted as part of the previous Gateway determination requirements. The RFS (RFS) comments dated 4 March 2020 are at Attachment E.</p> <p>Council advises that the bushfire report (Attachment F) was prepared in consultation with Council's Bushfire consultant and the NSW RFS and has addressed the RFS comments. Detailed discussion about the bushfire report is in paragraph 2.1 of this report on 6.</p> <p>Department comment:</p> <p>It is noted that no formal advice from RFS on the findings of the bushfire report and consistency with the RFS comments on the planning proposal was submitted. It is considered prudent to further consult with the NSW RFS on the revised proposal and the recommendations made in the final bushfire report and obtain a written advice from RFS raising no objection to the proposal proceeding. A Gateway condition is recommended to consult with NSW RFS to ensure consistency with this direction.</p>
4.5 Acid Sulfate Soils	<p>This Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>Council advises the subject site is identified as containing class 5 acid sulfate soils. Given the current and potential future development on the subject site, adverse impacts are not anticipated regarding acid sulfate soils. Any future development applications will be required to address this constraint in accordance with the acid sulfate soils provisions of the LEP 2008 (cl. 7.7).</p> <p>Department comment:</p> <p>It is considered the proposal is of minor significance and can be appropriately addressed at development stage.</p>
6.1 Residential Zones	<p>The objective of this Direction is to encourage housing diversity, make efficient use of infrastructure and services and minimise the impact of residential development on the environment and resources.</p> <p>The proposal will facilitate efficient development of the existing urban land to create subdivision for two additional dwellings. The inconsistency with Direction 3.1 on infrastructure and environment is of minor significance. The proposal Gateway condition requires consultation with relevant utility providers to confirm the serving requirements that support the proposal at the rezoning stage.</p> <p>Department comment:</p> <p>The proposal is consistent with this Direction.</p>

3.5 State environmental planning policies (SEPPs)

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

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021 – Chapter 4 Koala Habitat Protection 2021	The SEPP applies to the land. The proposal area is located within the approved koala management plan area for Central Coast in the SEPP (Schedule 2). The proposal is consistent with this SEPP as no known koala habitation exists within the R5 zoned portion of the subject site. Future development application will be required to provide evidence that there are no habitats in present.

4 Site-specific assessment

4.1 Environmental

The subject site is identified as bushfire prone land. The western portion of the site is specifically identified as 'vegetation buffer' and is not part of the proposal. Council advises that following consultation undertaken with the RFS, Council's bushfire consultant has determined that development will be able to meet requirements of Planning for Bush Fire Protection 2019.

There are no other likely environmental effects identified.

4.2 Social and economic

It is not anticipated that the proposed amendment will have any adverse social or economic impacts on the subject site, or surrounding locality. The proposed amendment will simply facilitate the efficient development of the existing urban land. The proposal will be publicly exhibited, and any social or economic concerns raised will need to be addressed by Council.

4.3 Infrastructure

The planning proposal will have a modest impact on public infrastructure, with potential future development resulting in a small increase in dwelling numbers along Pleasure Point Road. It is not anticipated that public infrastructure will be significantly impacted. Consultation with Transport for NSW is not considered necessary.

Sydney Water (**Attachment J**) was consulted for the previous planning proposal and advised that additional lot development would be serviceable under existing water infrastructure. It further advised that any potential extensions and amplifications to the existing water and wastewater mains will be considered once the development is referred to Sydney Water for a Section 73 application. Further consultation with Sydney Water is not required.

5 Consultation

5.1 Community

No community consultation timeframe is proposed. A period of 14 days is considered appropriate for the nature of the PP.

5.2 Agencies

Consultation is recommended with:

- NSW Rural Fire Service;
- Department of Planning, Industry and Environment – Environment, Energy and Science Group;
- State Emergency Services; and
- Endeavour Energy and Jemena Gas Works (NSW) Limited.

It is recommended the agencies be given 21 days to comment:

6 Timeframe

Council proposes a timeframe of approximately 6 months to finalise the proposal (**Table 7**) on page 13.

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

Table 7 Timeframes proposed by Council

Timeframe	Action
June 2020	Presented at the Local Planning Panel meeting
July 2020	Presented to Liverpool City Council
February 2022	Submission of revised Planning Proposal to DPE
March 2022	Gateway Determination issued
March 2022-April 2022	State agency consultation
March 2022-April 2022	Community consultation
April 2022	Consideration of submissions and proposal post-exhibition
May 2022	Post-exhibition report to Council
June-July 2022	Legal drafting and making of the plan

7 Local plan-making authority

Council did not request delegation to be the Local Plan-Making authority in the proposal, however, the officers have verbally advised it would like to be the LPA. The Department recommends that Council be authorised to be the local plan-making authority for the proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions, as it is considered to have strategic and site-specific merits and has the potential to give effect to the Western City District Plan.

The proposal seeks to increase the maximum dwelling density on the subject land to facilitate two additional dwelling lot yield in the existing large lot residential context.

9 Recommendation

It is noted that the consistency with Direction 4.3 Planning for Bushfire Protection is unresolved as a written advice from RFS raising no objection to the proposal proceeding is yet to be obtained.

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

1. Prior to public exhibition, Council is required to update Part 4 – Mapping to remove references to Site 4 to be consistent with the intent of the planning proposal.
2. Public Exhibition is required within **one month** under section 3.34(2) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **14 days**;
 - (b) the planning proposal 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 the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, December 2021).
3. Consultation is required with the following public authorities under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service;
 - Department of Planning, Industry and Environment – Environment, Energy and Science Group;
 - State Emergency Services; and
 - Endeavour Energy and Jemena Gas Works (NSW) Limited.

The public authorities are to be provided with a copy of the planning proposal and any relevant supporting materials and given at least 21 days to comment on the proposal.
4. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council is to be the local plan-making authority.
6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.



(Signature)

7 March 2022

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