



IRF23/426

Gateway determination report – PP-2023-172

28 Hynes Road, Box Hill

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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
Council Report and Minutes (26 October 2022)
Title Search for Lot 2 DP 621465
Information checklist for proposals to reclassify public land

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	The Hills Shire
PPA	The Hills Shire Council
NAME	Reclassification of part of 28 Hynds Road, Box Hill from 'community' land to 'operational' land.
NUMBER	PP-2023-172
LEP TO BE AMENDED	State Environmental Planning Policy (SEPP) (Precincts – Central River City) 2021
ADDRESS	28 Hynds Road, Box Hill
DESCRIPTION	Part of Lot 2 DP 621465
RECEIVED	25/01/2023
FILE NO.	IRF23/426
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 objective of the planning proposal (**Attachment A**) is to facilitate the reclassification of surplus Council-owned land to assist in the construction of a local road link in accordance with its intended land use outcome under the Box Hill Precinct. The reclassification would allow for the sale of the land to an adjoining land owner.

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

1.3 Explanation of provisions

The proposal's objective will be achieved by the following amendments to SEPP (Precincts – Central River City) 2021:

- Amend Appendix 10 The Hills Growth Centre Precincts Plan, Schedule 4 Classification and reclassification of public land, Part 1 Land classified, or unclassified as operational land – no interests changed' to identify part of Lot 2 DP 621465 as 'Operational' land.
- Introduce a Land Reclassification Map – Part Lots map to identify the part of Lot 2 DP 621465 to be reclassified as 'Operational' land.

The land does not fall under the definitions of a 'public reserve' as defined in *the Local Government Act 1993*. The proposal states it will not require any interests in the land to be discharged however

for clarity, further details are required of the interests applying to the land to be reclassified which will be retained. A condition has been included on the Gateway determination in this regard. There are existing restrictions on title relating to easements for transmission lines and water drainage (Titles included in **Attachment E**).

Council advise that no interests are being changed and therefore there is no requirement for consideration by the Executive Council or to seek the Governor's approval.

The proposed amendments to the SEPP are shown in Table 3 below.

Table 3 Proposed amendments to SEPP Precincts – Central River City 2021

Schedule 4 Classification and reclassification of public land

Part 1 Land Classified, or reclassified, as operational land – no interests changed

Locality	Description
28 Hynds Road, Box Hill	Part of Lot 2 DP 621465, as shown edged heavy red on the Land Reclassification (Part Lots) Map

No additional amendments are required to the SEPP (Precincts – Central River City) 2021 controls to enable the reclassification of the surplus land.

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

The subject property is known as Lot 2 DP 621465, 28 Hynds Road, Box Hill and has a total area of 20,230m². The planning proposal applies to part of the land as shown in **Figure 4**.

The majority of the lot is zoned SP2 Local Drainage, however a small portion of the site (approximately 487m²) is zoned R3 Medium Density Residential (see **Figure 1**). The parcel in its entirety was acquired by Council in May 2016 and was classified as 'community' land under the *Local Government Act 1993*. The site is currently occupied by a single residential dwelling, however the land subject to reclassification is currently vacant.

The lot forms part of the Hynds Road Drainage Reserve under the Council's Parkland Management Plan, although the R3 portion of land was not intended to be developed as part of the future drainage infrastructure.

The site is located within the Box Hill Precinct within the SEPP (Precincts – Central River City) (**Figure 3** below). As shown in the figures below, the portion of land to be reclassified is intended to form part of a local road link.

The surrounding area is characterised by low density rural and residential dwellings. The site forms part of the Hynds Road Drainage Reserve and is adjacent to the future Anthony Skarratt Reserve. There is ongoing development surrounding the site as a result of the rezoning of Box Hill Precinct.



Figure 1 Subject site (source: Spatial Viewer 2022)

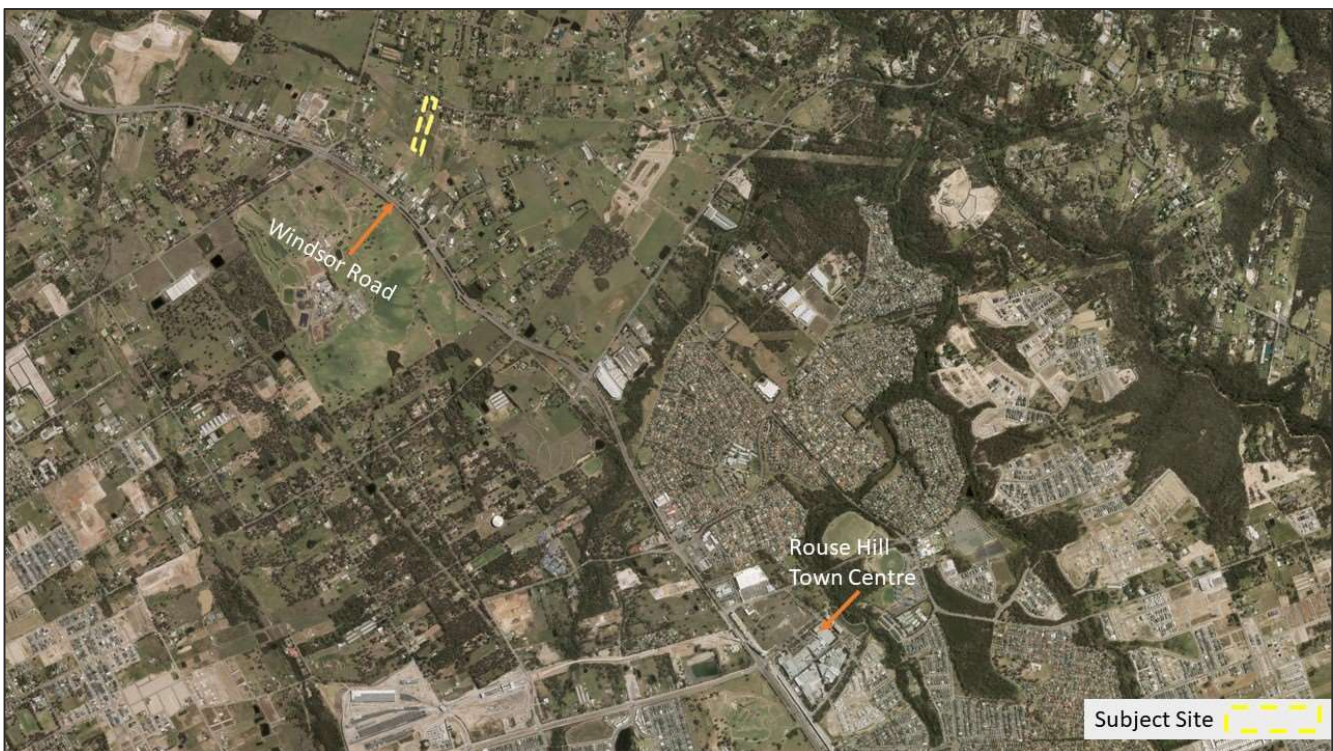


Figure 2 Site context (source: Spatial Viewer 2022)

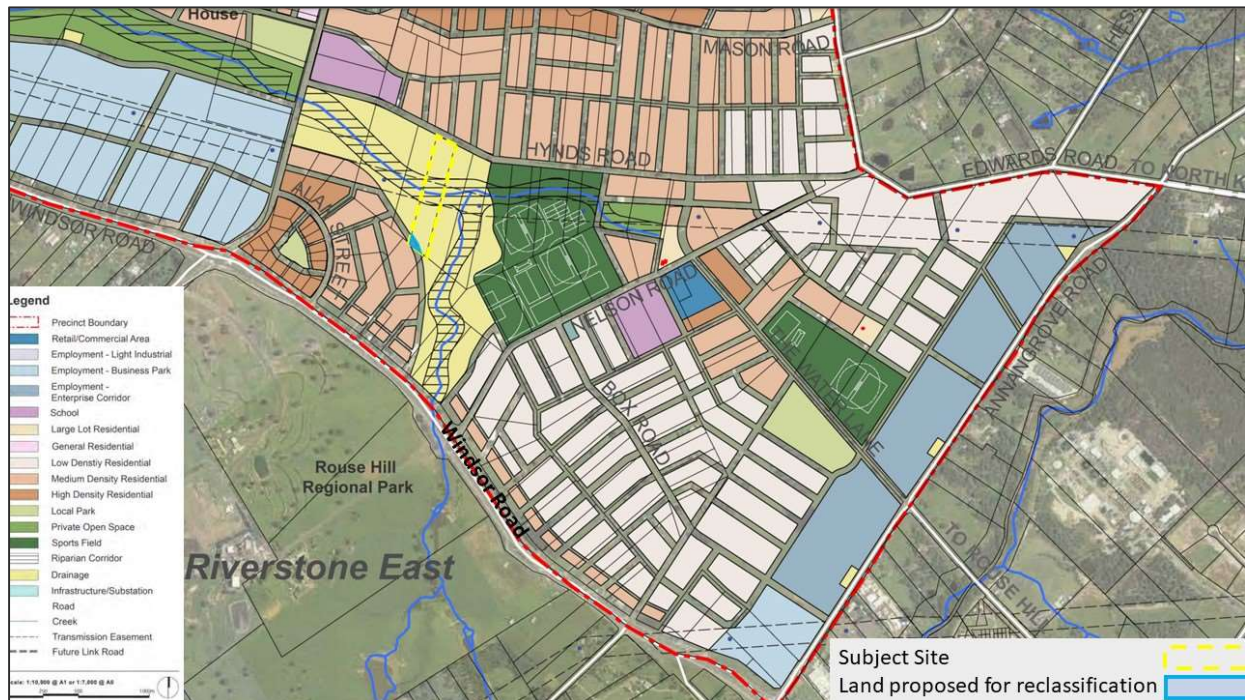


Figure 3 Layout plan from Box Hill Precinct DCP (source: DPE 2022)

1.5 Mapping

The planning proposal includes an excerpt of the proposed new SEPP map 'Land Reclassification Map – Part Lots' to support the amendment to Schedule 4 Classification and reclassification of public land, Part 1 Land classified, or unclassified as operational land – no interests changed'.

The mapping provided within the planning proposal is suitable for community consultation.

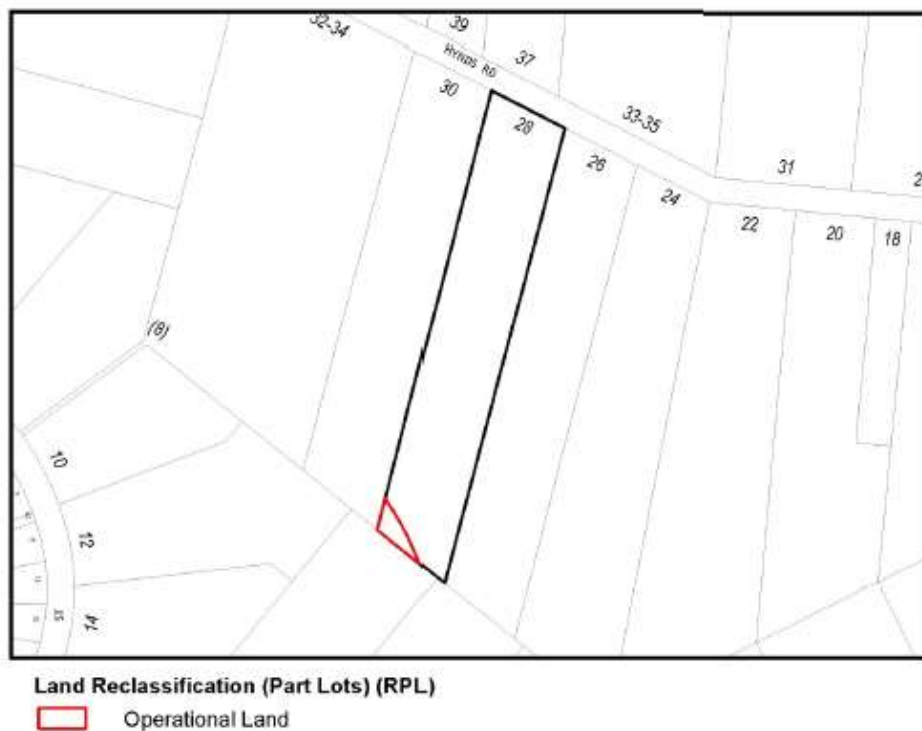


Figure 4 Proposed Land Reclassification – Part Lots map

1.6 Background

The owner of the adjoining property to the south at 793 Windsor Road, Box Hill has approached Council and expressed an interest in purchasing portion of the site subject to this planning proposal to enable the construction of the road link (**Figure 3**), as part of their development of the land to the south. Given the site is classified as ‘community’ land, it is unable to be sold or transferred by Council under the requirements of the *Local Government Act 1993*.

Under the Ministerial Local Planning Panels Direction – Planning Proposal (2018), planning proposals are required to be referred to the Local Planning Panel (LPP) for advice, unless the General Manager determines that the planning does not meet the threshold to be forwarded to the LPP.

In this instance, the General Manager determined that the planning proposal did not need to be forwarded to the LPP, as:

- The planning proposal corrects an error, whereby the portion of 28 Hynds Road, Box Hill which is zoned R3 Medium Density Residential was classified as ‘community land’.
- The proposed changes are of a minor nature and seeks to ensure the outcomes articulated under the current planning framework, being the construction of a local road, can be delivered.
- The proposed changes will not have any adverse impact on the environment or adjoining land.

The Department agrees with Council’s position and forwarding the proposal to the LPP was not warranted in this instance.

2 Need for the planning proposal

The planning proposal is not the result of a local strategic planning statement, or Department approved strategy or report. The proposal aligns with precinct planning outcomes under the SEPP Precincts - Central River City and Box Hill DCP.

The subject land has not been identified for community use in any strategic plan nor intended for this use and therefore its classification as ‘community’ land is an anomaly which requires correction. The *Local Government Act 1993* stipulates that a planning proposal is the mechanism to reclassify land from ‘operational’ to ‘community’. Accordingly, an LEP to amend the SEPP is the most suitable mechanism to achieve the objectives of the planning proposal.

In terms of disposing the surplus land following reclassification, the owner of an adjoining property has approached Council and expressed interest in purchasing the R3 zoned portion of land should the classification of the land change. The sale of the land would allow for it to be developed in line with its identified use as a road under the SEPP Precincts - Central River City and Box Hill DCP.

3 Strategic assessment

3.1 District Plan

The site is within the Central River City District and the Greater Sydney Commission released the Central City District Plan on 18 March 2018. 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, productivity, 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 5 District Plan assessment

District Plan Priorities	Justification
Priority N1 – Planning for a city supported by infrastructure;	The planning proposal will support this planning priority as it will encourage infrastructure provision to align with the forecasted growth for the Box Hill precinct.
Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport.	The reclassification will support the ability for the subject land to contribute to housing supply, through the provision of a link road, as envisaged under the precinct plan.

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 6 Local strategic planning assessment

Local Strategies	Justification
The Hills Local Strategic Planning Statement (LSPS)	<p>The LSPS sets out the land use planning context and Council's 20-year vision to manage future land use planning decisions and guide how growth will be managed to provide for more housing, jobs, parks and services for the growing population.</p> <p>The proposal is consistent with the LSPS as it facilitate the provision of infrastructure to align with the forecasted growth within Box Hill.</p>
The Hills Future Community Strategic Plan (CSP)	<p>The CSP outlines the communities and Council's shared vision, values, aspirations, and priorities with reference to other local government plans, information and resourcing capabilities.</p> <p>The proposal is consistent the goals and priorities of the CSP as the reclassification seeks to facilitate the provision of new infrastructure to support the needs of the future population.</p>

3.3 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Yes	<p>The objectives of this Direction are to ensure that development within the North West Priority Growth Area is consistent with the North West Priority Growth Area Land Use and Infrastructure Strategy.</p> <p>The reclassification will assist Council and developers in the delivery of identified infrastructure to service the future residential population in Box Hill</p> <p>The proposal is considered to be consistent with this Direction as it will assist in Council in achieving the overall intent of the Strategy and does not undermine the achievement of its objectives, planning principles and priorities for the North West Priority Growth Area.</p>
Direction 4.1 Flooding	Justifiably inconsistent	<p>This Ministerial direction is to ensure development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.</p> <p>The subject site is mapped as a flood-controlled lot. While it is noted that the proposal is not supported by any flood studies, it does not seek changes to the proposed use of the land. Council has identified part of the subject site to be used as a future drainage reserve, however the land being reclassified does not form part of this reserve.</p> <p>Any future development application for the redevelopment of the site would need to demonstrate that the application would meet the Council's relevant flood controls.</p> <p>The inconsistency with this Direction is of minor significance as the proposal will not impact the drainage function of the drainage reserve and therefore is unlikely to create any additional flooding impacts.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 4.3 Planning for Bushfire Protection	Unresolved	<p>The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas and encourage sound management of bush fire prone areas.</p> <p>The subject site is mapped as bushfire prone land, with the SP2 portion of the land classified Medium Risk and the R3 portion of the land classified as a vegetation buffer. Should the adjacent residential zoned land be cleared as part of a future subdivision application, this would remove or significantly reduce the bushfire risk on the site.</p> <p>Notwithstanding the above, any future development application for the redevelopment of the site would need to assess the bushfire risk and any Asset Protection Zones will be determined at this point.</p> <p>As part of the Gateway Determination, formal consultation with NSW Rural Fire Service to ensure the proposal complies with the specific requirements of this Direction will be required. Until this occurs the consistency of this proposal with the Direction will remain unresolved.</p>
Direction 5.2 Reserving Land for Public Purposes	Consistent	<p>The objectives of this Direction are to facilitate the provision of public services and facilities by reserving land for public purposes and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p> <p>The R3 zoned portion of the site has not been identified for community use in any strategic plan and its current classification prevents its intended land use outcome from being achieved. The reclassification and potential sale of the R3 zoned land would not result in any material loss for the community.</p> <p>The proposal is consistent with this Direction as the proposed reclassification of part of the site from community to operational is consistent with the intended development outcome for the site as envisaged under the Box Hill structure plan.</p>

3.4 State environmental planning policies (SEPPs)

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

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Precincts— Central River City) 2021	The objective of the SEPP is to guide the bulk and scale of future development within the Precincts to deliver housing choice and affordability by accommodating a wide range of residential dwelling types that cater for housing diversity. Additionally, the SEPP also seeks to identify land within the Precincts that is proposed to be brought into public ownership for the purposes of roads, parks, drainage and schools.	Consistent	<p>The Planning Proposal seeks to amend Schedule 4 of Appendix 10 of the SEPP to facilitate the reclassification of 'community' land to 'operational' land. The proposal will enable the future development of the land in line with the Box Hill structure plan, which identifies the reclassified land as a road.</p> <p>The proposal is considered consistent with the SEPP as it seeks to provide infrastructure, in line with the Box Hill structure plan, to assist in the delivery of housing choice.</p>

4 Site-specific assessment

4.1 Environmental

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

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Environmental	Vegetation protection mapping within SEPP (Precincts – Central River City) 2021 does not identify the subject site as an existing native vegetation area and does not identify the site as a native vegetation retention area. Council's vegetation mapping does not identify any mapped vegetation communities on the portion of land proposed to be reclassified.
Bushfire Prone Land	The site contains bushfire prone land as discussed under Section 3.4 of this report. The proposed reclassification will not impact the site's bushfire risk.
Flooding	The site is identified as being flood prone as discussed under Section 3.4 of this report. The proposed reclassification will not impact the site's flooding risk.

4.2 Social and economic

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

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Social Impact	<p>The reclassification supports priorities within Council's LSPS including assisting with the provision of new infrastructure to meet the needs of a growing community.</p> <p>The proposal will help to deliver a local road link which will enhance accessibility within the Box Hill Precinct.</p>
Economic Impact	<p>If the land is reclassified and a sale was to occur, this would result in income to Council which would be accounted for as contributions income under their Contribution Plan No.15 – Box Hill. These funds would be applied towards other infrastructure items identified under the Contributions Plan. The sale of the land will also transfer the burden of constructing the portion of the local road to the adjoining developer.</p>

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 11 Infrastructure assessment

Infrastructure	Assessment
Infrastructure	<p>There will be no notable impact on infrastructure demand for the subject site as the proposal will not facilitate any population over and above what was accounted for within the Contributions Plan No. 15 – Box Hill.</p>

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 calendar days.

Under the new *Local Environmental Plan Making Guide* (September 2022), the exhibition period for a standard planning proposal is 20 working days. This forms a condition of the Gateway determination.

5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal. It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- NSW Rural Fire Service,
- Sydney Water, and
- Endeavour Energy.

6 Timeframe

Council proposes a 10-month time frame to complete the LEP. Given this would place finalisation of the proposal within the Department's end of year shut down period, a finalisation timeframe of 11 months is recommended. A condition of Gateway requires the Project Timeline be updated to reflect the timelines included in this determination.

7 Local plan-making authority

Council has not indicated if it requests delegation to be the Local Plan-Making authority.

As the planning proposal relates to the reclassification of Council land, the Department recommends that Council not 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:

- There is regional, district and local strategic merit for the proposal. The reclassification will facilitate the delivery of new infrastructure to support the objectives of the region, district and local strategic plans.
- An amendment to the SEPP (Precincts – Central River City) 2021 is the best means of achieving the objectives of the planning proposal.
- The R3 portion of the Council-owned land falls outside of the area identified and required for the Hynds Road Drainage Reserve.
- The R3 zoned portion of the site has been identified for use as a local road under the SEPP (Precincts – Central River City) 2021 and its current classification prevents its intended land use from being achieved. Any reclassification and potential sale of the R3 zoned land would not result in any material loss for the community.

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

- To clarify if any interests are located on the proposed portion of the site to be reclassified through the provision of a deposited plan showing the interests location.
- Update the Project Timeline to reflect the timelines included in this determination

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 4.1 Flooding are minor and justified and
- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require consultation with NSW Rural Fire Service.

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

- To clarify if any interests are located on the proposed portion of the site to be reclassified through the provision of a deposited plan showing the interests location.
 - Update the Project Timeline to reflect the timelines included in this determination
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service,
 - Sydney Water, and
 - Endeavour Energy.
 3. The planning proposal should be made available for community consultation for a minimum of 20 working days
 4. Public hearing is required to be held in accordance with Section 29 of the Local Government Act 1993 and the Department's Practice Note PN 16-001.
 5. The timeframe for completing the LEP is to be 11 months from the date of the Gateway determination.
 6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



(22/02/2023)

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