



IRF 24/357

## Gateway determination report – PP-2023-2320

Minimum Lot Size Amendments at 20L Rocky Road,  
Dubbo

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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
1. Planning Proposal (October 2023)
2. Preliminary Contamination Investigation (23 September 2023)
3. Council Report (8 January 2024)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

LGA	Dubbo
PPA	Dubbo Regional Council
NAME	Minimum Lot Size Amendments at 20L Rocky Road, Dubbo
NUMBER	PP-2023-2320
LEP TO BE AMENDED	Dubbo Regional Local Environmental Plan 2022
ADDRESS	20L Rocky Road, Dubbo
DESCRIPTION	Lot 13 DP 258406
RECEIVED	20/02/2024
FILE NO.	IRF24/357
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
MAP ONLY/PCO ONLY/PCO & MAPS	Map only

## 1.2 Objectives of planning proposal

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

The objectives of the planning proposal are to rectify a perceived error in the application of the 20ha lot size to the R5 zoned portion of the subject land. This will be achieved by reducing the minimum lot size from 20ha on the R5 zoned portion of the land to facilitate the development of large lot residential blocks with a minimum lot size of 8ha. This would increase the number of dwellings from 4 lots to 10 lots on the subject site.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Dubbo Regional LEP 2022 to change the minimum lot size on the R5 zoned portion of land from 20ha to 8ha.

A map-only amendment would be required to achieve the lot size changes, amending the NSW Planning Portal Digital EPI for a portion of Lot 13 DP 258406 (for reference the PDF map sheet is Lot Size Map Sheet LSZ\_002).

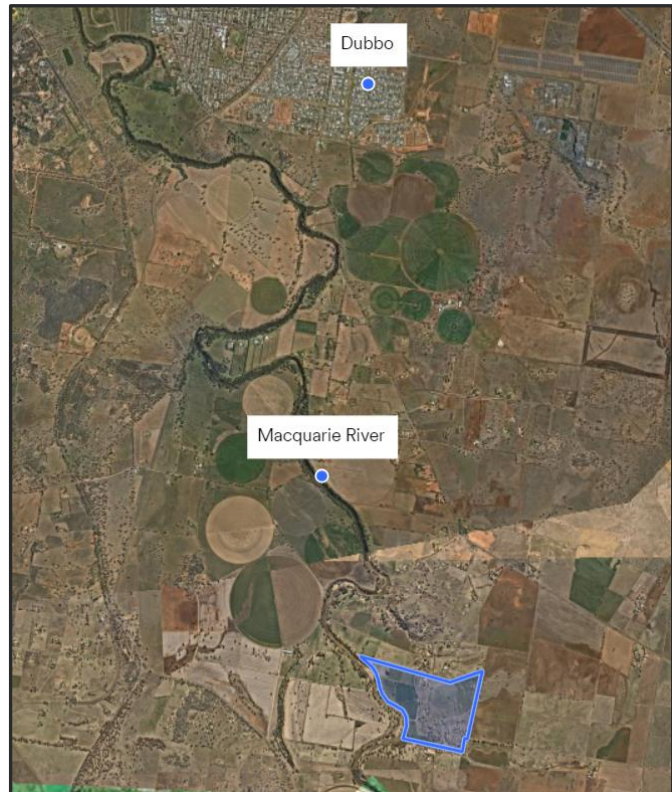
The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The site is located at 20L Rocky Road Dubbo, NSW, 10km south of Dubbo, about a 15-minute drive south on Old Dubbo Road (Figure 1). It is surrounded by various land uses, with the Macquarie River forming the Western border of the site, agricultural land to the east, south and northwest and large lot residential to the north. Rocky Road which runs South from Old Dubbo Road is the main connection to the site.

The site is approximately 81ha, which is made up of 29.93 ha of RU4 Primary Production Small Lots and 51.26 ha of R5 Large Lot Residential (see Figure 2 and 3).

The site is potentially contaminated with buried waste and asbestos and has some vegetation (including LEP mapped terrestrial biodiversity and groundwater vulnerability). There is also a small stream traversing the eastern part of the site.



**Figure 1 Site context (source: Nearmap 2024)**



**Figure 2 Subject site (source: Nearmap March 2024)**

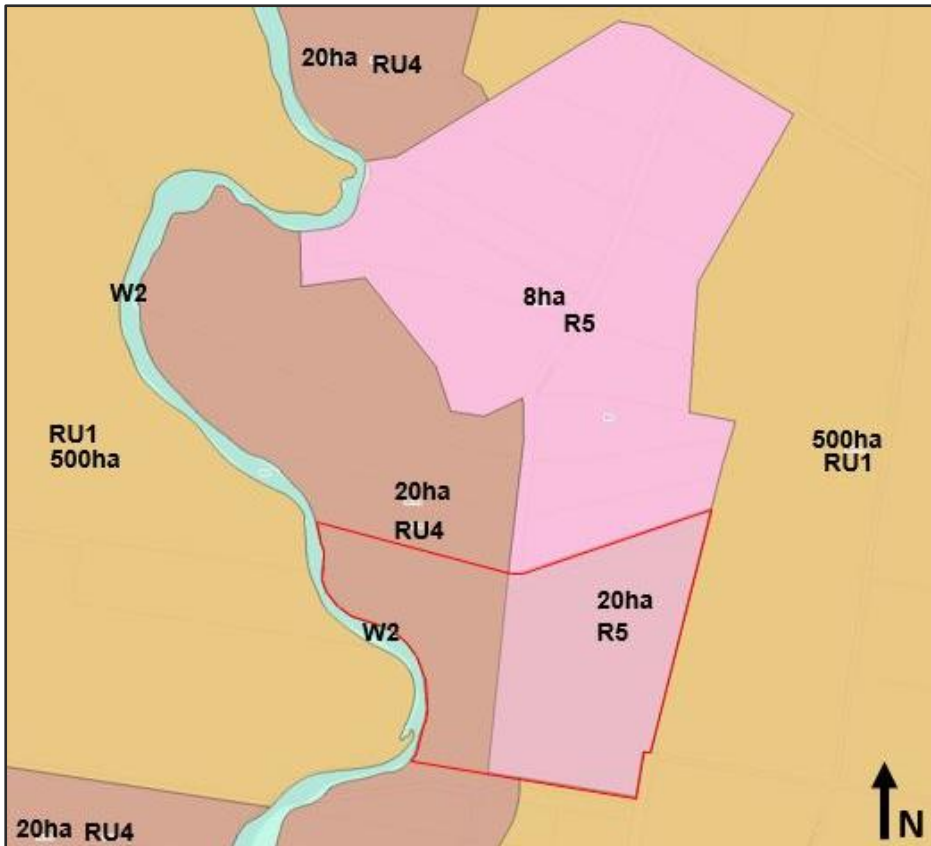


Figure 3 Subject site zoning and lot size context, subject site is outlined in red (Spatial Viewer, Accessed March 2024).

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Lot Size maps, which are suitable for community consultation.

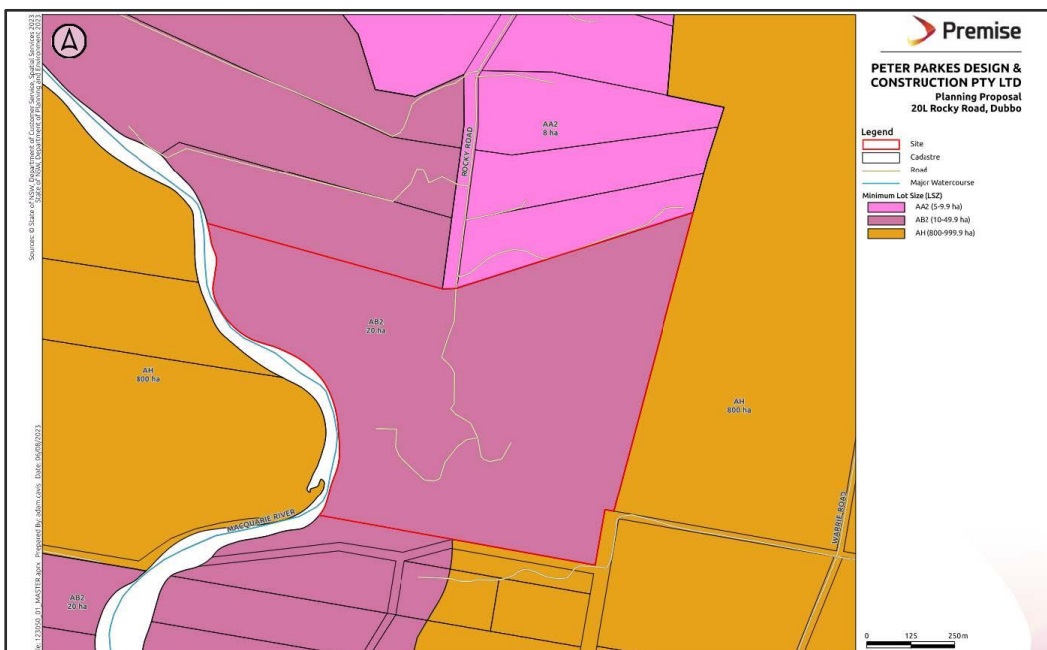


Figure 4 Current minimum lot size map (source Planning proposal, 2023)



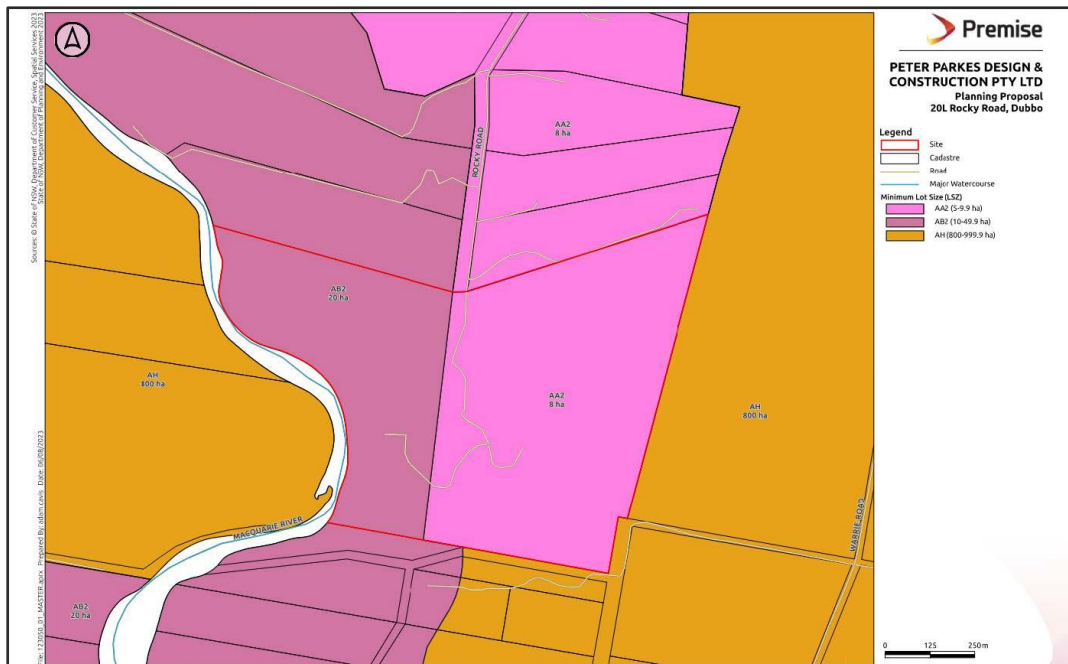


Figure 5 Proposed minimum lot size map (source: Planning proposal, 2023)

## 1.6 Background

The site has not been subject to a previous planning proposal.

Council has stated that the subject land R5 portion of the site previously had a minimum lot size of 8ha under the former Dubbo Local Environmental Plan 1997 – Rural Areas. However, under the Dubbo LEP 2011 this was changed to the current lot size of 20ha which was carried through to the most recent Dubbo LEP 2022. The planning proposal report has inferred this was due to a drafting error, however Council has confirmed that it was changed in the Dubbo LEP 2011 and was not an error.

Further information and confirmation of this forms part of the Gateway conditions to be included in the planning proposal prior to public exhibition.

## 2 Need for the planning proposal

The planning proposal aims to change the lot size applying to the R5 Large Lot Residential Zoned land by reducing the minimum lot size from 20ha to 8ha to facilitate options for developing the land and to achieve consistency with adjoining R5 zoned land.

The planning proposal states this is a housekeeping amendment inferring there was an error made when drafting the Dubbo LEP 2022 however Council has confirmed it was not an error, and the same lot size was in the Dubbo LEP 2011. The Department has considered therefore this is a “Standard” proposal, not a “Basic” proposal and assessed the proposal accordingly.

Although the planning proposal is not directly linked to any specific strategic study or report it is consistent with the Central West and Orana Regional Plan 2041, the Towards 2040 Community Strategic Plan, the Local Strategic Planning Statement and the Dubbo Rural Areas Development Strategy.

Reducing the minimum lot size under the LEP is the best means of achieving the objectives and outcomes of the proposal. Council has submitted the proposal on the basis it has strategic merit.

The proposal has not explored other options, however considering the scope of the proposal and the relationship to the zone objectives of large lot residential development it is apparent this is the

best way to achieve and facilitate the objectives of delivering housing in this area while being consistent with the surrounding land uses.

## 3 Strategic assessment

### 3.1 Regional Plan

The proposal is largely consistent with the intent of the Central West and Orana Regional Plan 2041. The proposal relates to Objective 15: Manage rural residential development, Strategy 15.2 which seeks to enable rural residential development only where it has been identified by a local strategy and endorsed by the department. The proposal is for a site that has been zoned R5 for rural residential development and identified as a settlement area in the Macquarie District Strategy which forms with a part of the Dubbo Rural Areas Development Strategy (1995-2015).

### 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 3 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement	The proposal is consistent with the Local Strategic Planning Statement and gives effect to both Planning Priority 9 and 13, which seek to provide diversity and housing choice to cater for the needs of the community and manage R5 zoned land, respectively. The proposal also gives effect to Action 13.1 – “to review LEPs zoned boundaries, land use tables and subdivision minimums to ensure rural lifestyle development is contained within existing zoned areas or highlight areas contained in the Rural issues Paper 2019 and does not have the potential to adversely impact on the primary production potential of rural land.” by seeking to facilitate subdivision of existing R5 zoned land consistent with the adjoining land to minimum lot size regime adjoining the site to the north.
Towards 2040 Community Strategic Plan	The site is zoned R5, the intent of the planning proposal is to facilitate development by creating the provision for subdivision of this land to meet the zone objectives. The proposal is broadly consistent with the Community Strategic Plan.
Dubbo Rural Areas Development Strategy	The Development Strategy (updated in 2003) informs land use zoning of rural areas across Dubbo. This site exists within the Macquarie District Strategy, which forms part of the broader development strategy, identifying this site as a settlement area.

### 3.3 Section 9.1 Ministerial Directions

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

**Table 4 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 the Central West and Orana Regional Plan 2041 and assessment against the Plan has been included.



3.1 Conservation zones	Yes	<p>Part of the subject site is mapped as containing terrestrial biodiversity and aerial investigations confirm the presence of vegetation on the site.</p> <p>Furthermore, it is noted that a Biodiversity Development Assessment Report may be required at DA stage.</p>
3.2 Heritage Conservation	Yes	<p>The proposal will not alter the existing provisions within the Dubbo LEP to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p>
4.1 Flooding	Yes	<p>This direction applies as the site is potentially flood prone, located adjacent to the Macquarie River, which forms the western boundary of the site. It is noted that the R5 portion of the site that is the subject of the lot size amendment is on the eastern half of the site and on higher ground. A small stream also traverses the south eastern portion of the site subject to the amendment of this planning proposal.</p> <p>Council has identified it does not have any flood modelling in this area, and the only available data is the flooding extents from a Flood in February 1955. It notes the proposal will not result in a land use change in this area, rather 10 instead of 4 rural residential dwellings. The proposal provides an assessment of flooding and identifies the western part of the site as flood prone. Council notes there is sufficient buffer to ensure future development and associated access will be located outside of flood zones.</p> <p>A more detailed assessment of flooding would occur at a future Development Application stage for subdivision.</p> <p>While Council is satisfied that flooding has been adequately addressed at this stage of the proposal, consultation with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) is warranted to ensure that adequate consideration of potential flood impacts has been addressed. Consistency with this direction will remain unresolved until this consultation has been undertaken and DCCEEW advice provided.</p>
4.3 Planning for Bushfire Protection	Unresolved and consultation required	<p>While the LEP does not contain provisions for this site regarding bush fire - The site is identified on Council's draft bushfire prone land map.</p> <p>Council states that the proposal is consistent with the Direction, with the planning proposal stating that future development on the site would likely be able to achieve the requirements of the RFS Planning for Bush Fire Protection, 2019, which forms the basis of this Direction.</p> <p>Nonetheless, Council has identified it would consult NSW RFS as part of the Gateway, this forms part of the Gateway conditions.</p> <p>Until this consultation has occurred the consistency with this Direction is considered unresolved.</p>
4.4 Remediation of Contaminated Land	Yes	<p>Due to the site's history of potentially contaminating land uses and current uses of plant-based cropping, this Direction applies.</p> <p>A preliminary contamination investigation has been prepared to support the proposal. The investigation identified areas where</p>

		waste has been buried, which may present risk of asbestos to be exposed. Beyond this there is little evidence of historical land uses causing contamination. The investigation found the site can be made suitable for future residential land uses with appropriate management and remediation, therefore the assessment undertaken at this stage is suitable for the proposal to proceed.  Further investigations can be undertaken at the DA stage.
5.1 Integrated Land Use and Transport	Yes	The site is already zoned for R5 Large Lot residential, with 6 additional lots permissible by the reduction in lot size.  Any increase in traffic is of minor significance.
6.1 Residential Zones	Yes	The site is already zoned for residential development.
8.1 Mining, Petroleum Production and Extractive Industries	Yes	Existing Mining Exploration Licence (EL9468) on the site, however extractive industries are prohibited in the R5 zone. As there is no amendment to zoning, the proposal is not inconsistent with this direction.
9.1 Rural Zones	Yes	The proposal is consistent with this direction as the rural zoned land will not be affected by the proposal. The only change will be on the land zoned R5 Large Lot Residential.
9.2 Rural Lands	Yes	The proposal is consistent with this direction as the rural zoned land will not be affected by the proposal. The only change will be on the land zoned R5 Large Lot Residential, where there would be a reduction in lot size to facilitate development as per the zone objectives.

### 3.4 State environmental planning policies (SEPPs)

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

**Table 5 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation)	To protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Yes	The proposal has not assessed how the rezoning would be capable of addressing the requirements of this SEPP and has not been supported by any specialist studies or reports which assess the potential biodiversity on the site.  However the proposal at this stage is not inconsistent with this SEPP.
SEPP (Housing) 2021	Planning proposals must enable and encourage the development of diverse housing.	Yes	The proposal would facilitate the delivery of a range of housing types identified in the <i>State Environmental Planning Policy (Housing) 2021</i> , within the broader Dubbo area.

SEPP (Resilience and Hazards) 2021	Planning proposals must not increase the risk of harm to human health and the environment through contamination.	Yes	<p>The proposal has included a preliminary site investigation which identifies the potential for contamination. See table 7 Ministerial Directions.</p> <p>Therefore, the proposal at this stage has considered this SEPP and would likely be able to achieve its requirements.</p>
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## 4 Site-specific assessment

### 4.1 Environmental

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

**Table 6 Environmental impact assessment**

Environmental Impact	Assessment
Bushfire	The proposal states the subject site is not mapped as bushfire prone land. This has been confirmed from a search of the RFS website. However, Council has stated it is preparing a draft bushfire prone land map and this site is identified and it has also listed the RFS as a state agency to consult. See Section 3.3 for more information.
Biodiversity	The site is mapped as containing terrestrial biodiversity. Aerial images also show the presence of vegetation on site, with a large portion of this occurring on the part of the site subject of the minimum lot size change (south-eastern portion). It is likely that minimal clearing would be required given the proposed lot size and the density of the vegetation on the site. However, this would be addressed at the DA stage.
Flooding	The Macquarie River forms the Western border of the site and is prone to flooding. The RU4 zoned portion of the site (which would remain as RU4) is more prone to impacts from flooding due to the topography of the subject land. Consultation with DCCEEW will be required. See further discussion in Section 3.3 Ministerial Directions.
Groundwater vulnerability	<p>The site is mapped on the Dubbo LEP 2022 as groundwater vulnerable. As the subject site is not connected to water supplies, any development would rely on rainwater tanks and on-site effluent disposal.</p> <p>The proposal states it is unlikely that the development resulting from a reduction in lot size would have any significant impact on groundwater systems.</p>
Contamination	The proposal includes a Preliminary Contamination Investigation. This identified buried waste at two locations, presenting risk of asbestos contamination. The investigation concludes the site can be made suitable for residential purposes. See assessment in section 3.3 for further detail.

### 4.2 Social and economic

The proposal for additional residential lots within this area is unlikely to create any adverse social or economic impacts. The proposal would facilitate the delivery of residential development, creating additional employment during construction and development, a positive economic impact. Social

impacts would be minor in nature, noting the site is already zoned for Large Lot Residential development.

Further, the information submitted with the proposal indicates that the subject site is not of cultural or heritage significance.

## 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 7 Infrastructure assessment**

Infrastructure	Assessment
Services and utilities – Water, Sewer, Electricity and Stormwater	<p>There is existing electrical and telecommunications infrastructure which connects to the existing dwelling house.</p> <p>Water and sewerage would be contained on site, with rainwater tanks and onsite septic sewerage systems. This could be further assessed and further detailed at any future development application stage.</p>
Access / Transport	<p>Vehicular access is provided from the north via sealed bitumen road (Rocky Road). Access is also possible from Lambar Road to the south east if required.</p>

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as a standard under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to 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 working days to comment:

- Rural Fire Service (RFS)
- Department of Climate Change, Energy, the Environment and Water (DCCEEW)

## 6 Timeframe

Council proposes a 5 month time frame to complete the LEP. However, this is not considered appropriate.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard

The Department recommends an LEP completion date of 3 February 2025 in line with its commitment to reducing processing times and with regards to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is a minor lot size change the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Recommendation

It is recommended the delegate of the Secretary:

- note that the inconsistencies with section 9.1 Directions 4.1 Flooding and 4.3 Planning for Bush Fire Protection are unresolved and will require justification.

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

1. Prior to public exhibition, the planning proposal is to be amended to recognise the application of the 20ha lot size was not an error and the proposal is therefore a policy change and is classified as a “standard” planning proposal. The project timeline is also to be updated in accordance with the classification as “standard”.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning Housing and Infrastructure, August 2023) and must be made publicly available for a minimum of 20 working days; and
  - (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 *Local Environmental Plan Making Guideline* (Department of Planning Housing and Infrastructure, August 2023).
3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
  - NSW Rural Fire Service
  - Department of Climate Change, Energy, the Environment and Water

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 working days to comment on the proposal.
4. 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 (for example, in response to a submission or if reclassifying land).

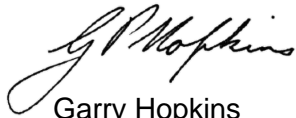


Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 3 February 2025 be included on the Gateway.



8 April 2024

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11 April 2024

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