



IRF24/436

Gateway determination report – PP-2023-2746

Creation of additional permitted use (service station)
on RU1 zoned land at 310 Moama Street, Hay South

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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
Hay Shire Council report (and minutes) seeking a Gateway determination (27 February 2024).
Planning Proposal report (TFA Project Group, 6 December 2023).
Preliminary Site Investigation (McMahon Earth Science, July 2023).
Conceptual site layout (TFA Project Group, 21 November 2019).

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Hay.
PPA	Hay Shire Council.
NAME	Creation of additional permitted use (service station) on RU1 zoned land at 310 Moama Street, Hay South (0 homes, 0 jobs).
NUMBER	PP-2023-2746.
LEP TO BE AMENDED	Hay Local Environmental Plan 2011.
ADDRESS	310 Moama Street, Hay South.
DESCRIPTION	Lot 2, DP1212081.
RECEIVED	29/02/2024
FILE NO.	IRF24/436.
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 contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal is to amend planning controls to enable the subject land to be used for an “unmanned” truck refuelling facility (a service station).

1.3 Explanation of provisions

The planning proposal seeks to amend the Hay LEP 2011 as per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Schedule 1 Additional permitted uses (310 Moama Street, Hay).	Nil.	Permit with consent a service station.

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 site is approximately 42,055m² in area and is zoned RU1 Primary Production. It is located in the Hay Shire local government area in Hay South – on the southern edge of the Hay urban area. It has a frontage of approximately 200m to Moama Street (which is part of the Sturt Highway), and a frontage to University Road of approximately 240m.

The subject site is relatively flat and has a recent history of being used for agricultural production – including as a vineyard. Other than crops associated with agricultural production, the site appears to contain negligible vegetation. The site does not contain any buildings or structures.

To the east and south of the site is RU1 zoned land which appears to contain some native vegetation and which does not look to have been used for agricultural production in recent times. To the west of the site (on the western side of University Road) is RU1 zoned land being used for agricultural production and agricultural services. To the north of the site (north of Moama Street) is RU5 Village zoned land developed for low-density residential development. North-east of the site is a caravan park.



Figure 1 Subject site (source: Council report)



Figure 2 Site context (source: image in planning proposal, sourced from SIX Maps)

1.5 Mapping

The proposed additional permitted use applies to the whole lot and therefore the planning proposal does not propose to amend any mapping to identify the additional permitted use. The planning proposal contains suitable maps for the purpose of community consultation.



Figure 3 Current zoning map (source: NSW Spatial Viewer)

2 Need for the planning proposal

The planning proposal intends to make a service station permissible on the subject site, as this is a use not permissible under the current zoning of RU1 Primary Production. More specifically, it is proposed to use the site as an “unmanned” truck refuelling facility (for heavy vehicles – large trucks) – which falls under the definition of service station. Development consent for such a facility would need to be sought subsequent to the amendment (for an additional permitted use) being sought by this planning proposal.

The Hay Structure Plan (July 2022) identifies the need to rezone more land for industrial (employment) purposes. The Structure Plan identifies two areas/precincts for additional industrial land supply: Township Industrial Precinct; and South Hay Industrial Precinct. The subject site is within the South Hay Industrial Precinct – which the Structure Plan identifies as a future General Industrial zoned area.

The planning proposal is needed to make permissible on the subject site (in an expedited way) a use which would be generally consistent with the future use of the identified area south of the Sturt Highway as an industrial precinct.

The Department provided preliminary comments on the planning proposal to Hay Shire Council on 31 May 2023, and on 27 October 2023. A key comment from the Department on 31 May 2023 noted that the subject site is within a broader precinct identified for future employment land – and indicated that it would be useful for the planning proposal to detail why it is not proposed to rezone the site to a General Industrial zoning to align with the Hay Structure Plan. The comments also

noted that an additional permitted use would be satisfactory if it is the intention of the council to rezone the identified precinct at a later time.

In response to those comments, the planning proposal notes that council currently has funding to progress land rezoning related to the future housing precinct identified in the Structure Plan – with further funding still required to progress rezoning associated with the industrial aspects of the Structure Plan. The planning proposal states that, given the uncertain timeframe related to council rezoning the South Hay Industrial Precinct, a proposed amendment to Schedule 1 of Hay LEP 2011 (to allow an additional permitted use for a service station) is appropriate.

The planning proposal states that the proposed service station (“unmanned” truck refuelling facility) is a response to the perceived demand for these services within this locality.

This position is considered reasonable – and accordingly, there is considered to be a justified need for the planning proposal.


The planning proposal includes a conceptual site layout plan of a potential “unmanned” truck refuelling facility for the site; and also provides a description of such a facility.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Riverina Murray Regional Plan 2041.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 1: Protect, connect and enhance biodiversity throughout the region.	<p>Consistent.</p> <p>The planning proposal is consistent with this objective.</p> <p>The subject site is partly mapped (around its northern, eastern and southern edges) as containing terrestrial biodiversity on the NSW Spatial Viewer (Figure 4 below).</p>  <p>Figure 4 Terrestrial Biodiversity Map (source: NSW Spatial Viewer)</p> <p>However, the planning proposal draws attention to the fact that the Hay Structure Plan includes a (proposed) amended Terrestrial Biodiversity Map at figure 46. The Hay Structure Plan notes (on page 64) “the current [terrestrial biodiversity] map needs to be reviewed as it applies to land that has been developed for urban</p>

purposes and which contains no significant vegetation as identified in the State Vegetation Map”.

The planning proposal includes an annotated version of the (proposed) amended Terrestrial Biodiversity Map (Figure 5 below) – which shows the subject site as not being affected. This is consistent with the fact that the entire site appears to have been cleared of vegetation to facilitate agricultural production.

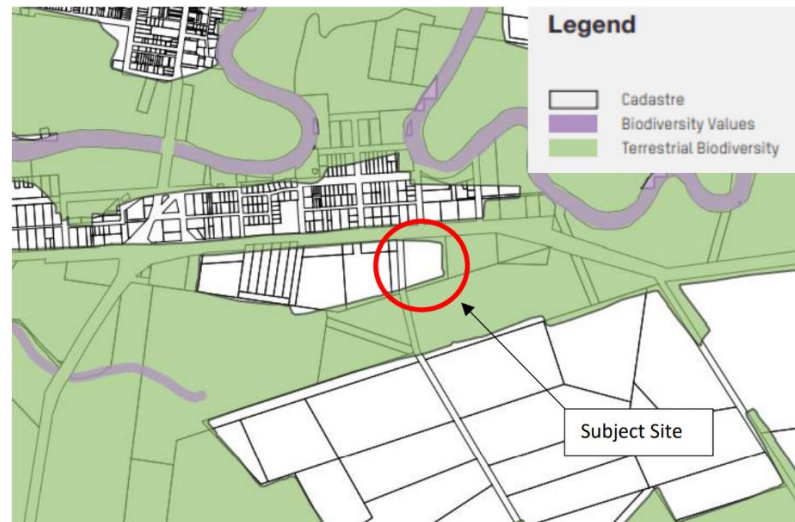


Figure 5 Proposed amended terrestrial biodiversity map as included at figure 46 of Hay Structure Plan July 2022 (source: planning proposal)

On this basis, it is considered that the matter of terrestrial biodiversity is adequately addressed in the planning proposal.

Objective 2:
Manage
development
impacts within
riverine
environments.

Inconsistent (flood risk).

The planning proposal is inconsistent with this objective in relation to the extent to which it takes account of flooding. It is recommended that consultation on this issue take place with NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) during the community consultation period. This is also recommended given the requirements of Ministerial Direction 4.1 Flooding – (which is addressed below at section 3.3 of this report).

The Department's comments to council on 27 October 2023 recommended early consultation with DCCEEW. This consultation has not yet occurred – and the planning proposal proposes that it take place during the community consultation period.

The subject site is within the area covered by the Hay and Maude Flood Study (June 2023, Hay Shire Council). The study shows the nature of flooding associated with the Murrumbidgee River. The subject site is mapped as having flood hazard vulnerability. Figures 6 and 7 below are extracts from the Flood Study and show the flood hazard vulnerability classification for the site in the case of a 1% AEP (annual exceedance probability) flood event, and an extreme flood event.

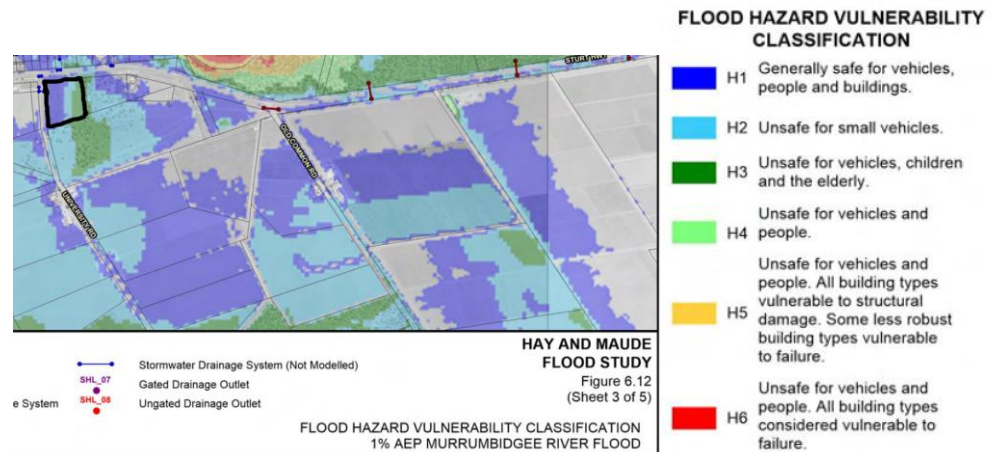


Figure 6: Subject site (black outline approximate) and flood hazard vulnerability classification mapping for 1% AEP flood (source: Hay and Maude Flood Study June 2023)

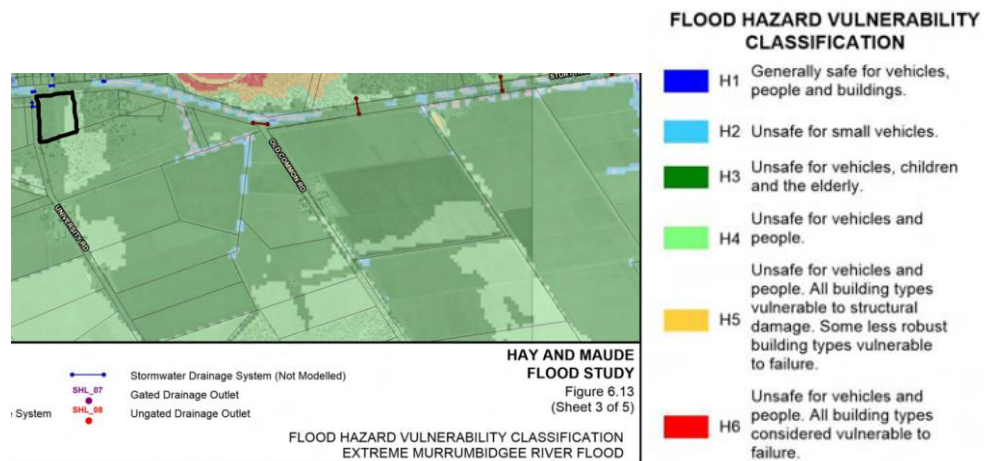


Figure 7: Subject site (black outline approximate) and flood hazard vulnerability classification mapping for extreme flood (source: Hay and Maude Flood Study June 2023)

In the Department's comments to council on 27 October 2023, it was noted that the subject site is identified in the Hay and Maude Flood Study as being impacted by a 1% AEP flood event, and extreme flood event. The comments also noted that as the planning proposal seeks to place a potentially hazardous industry (fuel storage) on flood prone land, the planning proposal should address the appropriateness of the proposed use on the subject site – with regard to Section 9.1 Ministerial Direction 4.1 Flooding.

The planning proposal states that, with regard to “potentially hazardous industry” on flood prone land, it is noted under section 7.1 (page 16) of the former *Applying SEPP 33 Guideline* (now Resilience and Hazards SEPP) that “if combustible liquids of class C1 are present on site and are stored in a separate bund or within a storage area where there are on flammable materials stored they are not considered to be potentially hazardous.” – and appears to imply that, on this basis, the proposed facility is not considered to be a “potentially hazardous industry”.

The planning proposal proposes that future development (to be progressed by a subsequent development application) would feature fuel tanks and fuel equipment

appropriately designed to ensure flood immunity; and that any detailed flood study be provided as part of a development application.

Since the planning proposal was formally submitted, the Department has made contact with the BCD (in DCCEEW) in relation to these flooding issues. The BCD has advised that it will take account of the 1% AEP flood hazard classification in the Hay and Maude Flood Study – in assessing the planning proposal against Ministerial Direction 4.1 Flooding – and that there is enough information in the planning proposal to enable this assessment.

On this basis, it is recommended that consultation be undertaken with the BCD (in DCCEEW) in relation to flooding, during the community consultation period – to enable an appropriate response to this issue.

Objective 3:
Increase natural
hazard resilience.

Inconsistent (flood risk - see Objective 2 above).

Consistency unresolved (bushfire risk).

In relation to bushfire risk, it is recommended that consultation take place with the NSW Rural Fire Service (RFS) prior to the community consultation period. This is required by Ministerial Direction 4.3 Planning for Bushfire Protection (which is addressed below at section 3.3 of this report).

The Department's comments to council on 27 October 2023 recommended early consultation with RFS. This consultation has not yet occurred – and the planning proposal proposes that it take place during the community consultation period.

In relation to bushfire risk, much of the subject site is mapped as vegetation buffer (vegetation category 3) on the NSW Spatial Viewer (Figure 8 below).

A very small (negligible) part of the south-western corner of the site is mapped as vegetation category 1.

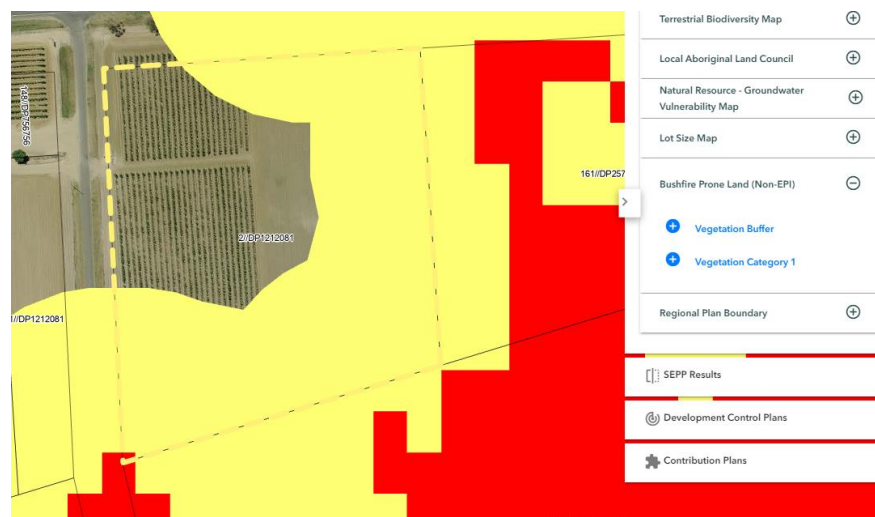


Figure 8 Bushfire Prone Land Map (source: NSW Spatial Viewer)

The planning proposal proposes that future fuel tank locations as part of future development (to be progressed by a subsequent development application) would be located outside areas affected by the Bushfire Prone Land, and that any detailed bushfire study be provided as part of a development application.

On this basis, it is recommended that consultation be undertaken with RFS in relation to bushfire risk, prior to the community consultation period (in accordance

with the requirements of Local Planning Direction 4.3) – to enable an appropriate response to this issue.

Objective 11: Plan for integrated and resilient utility infrastructure.

Consistency unresolved (groundwater vulnerability).

In relation to groundwater, it is recommended that consultation take place with the NSW Department of Natural Resources Access Regulator (NRAR) during the community consultation period.

The Department's comments to council on 27 October 2023 recommended early consultation with NRAR. This consultation has not yet occurred – and the planning proposal proposes that it take place during the community consultation period.

Much of the subject site is shown on the groundwater vulnerability map on the NSW Spatial Viewer (Figure 9 below).

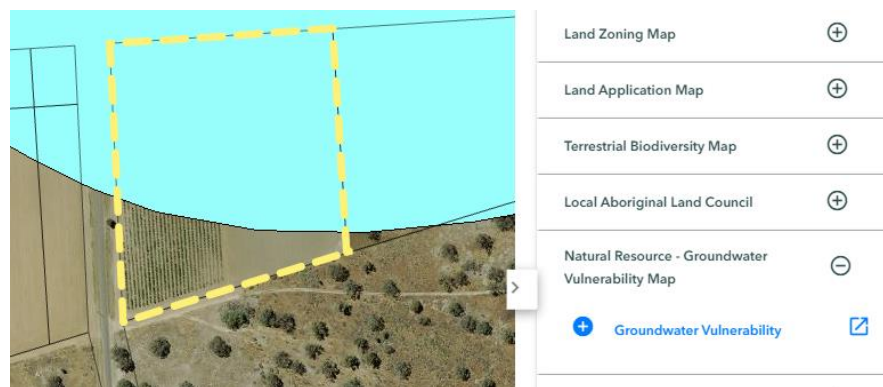


Figure 9 Natural Resource – Groundwater Vulnerability Map (source: NSW Spatial Viewer)

The planning proposal notes that the future development (to be progressed by a subsequent development application) is not considered to significantly impact the environmental constraints and will provide adequate controls for oil water and stormwater management so that the impacts on water quality in receiving water is minimised.

On this basis, it is recommended that consultation be undertaken with NRAR in relation to groundwater vulnerability, during the community consultation period – to enable an appropriate response to this issue.

Objective 14: Protecting and promoting industrial and manufacturing land.

Consistent.

The planning proposal seeks to enable development generally consistent with the intended future industrial use of the area. The Hay Structure Plan (July 2022) identifies the need to rezone more land for industrial (employment) purposes. The Structure Plan identifies two areas/precincts for additional industrial land supply: Township Industrial Precinct; and South Hay Industrial Precinct. The subject site is within the South Hay Industrial Precinct – which the Structure Plan identifies as a future General Industrial zoned area.

Objective 18: Integrate transport and land use planning.

Consistent.

In relation to transport issues, it is recommended that consultation take place with Transport for NSW (TfNSW) during the community consultation period.

The planning proposal seeks to help enable employment land near the Sturt Highway (freight infrastructure). The planning proposal seeks to limit incompatible land uses by seeking to enable the proposed land use on a site within an area identified for future industrial use in the Hay Structure Plan (July 2022).

The council received preliminary comments from TfNSW on 4 July 2023. The comments relate mainly to vehicle access arrangements – and note that TfNSW will require that the vehicle access driveway to the site be via University Road (rather than Moama Street).

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
Hay Local Strategic Planning Statement 2020.	Consistent. The proposal is consistent with Hay Local Strategic Planning Statement 2020 – specifically Planning Priority 8: Industry – which includes an action to investigate opportunities for the expansion of existing and new industrial precincts to the north and south of the Hay township.
Hay Structure Plan (July 2022).	Consistent. The Hay Structure Plan (July 2022) identifies the need to rezone more land for industrial (employment) purposes. The Structure Plan identifies two areas/precincts for additional industrial land supply: Township Industrial Precinct; and South Hay Industrial Precinct. The subject site is within the South Hay Industrial Precinct – which the Structure Plan identifies as a future General Industrial zoned area.

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
1.1 Implementation of Regional Plans	No	<p>The planning proposal is considered generally consistent with the Riverina Murray Regional Plan – see further explanation in section 3.1 (Regional Plan) in this report.</p> <p>Section 3.1 details those aspects of the planning proposal which are inconsistent with the Regional Plan (or for which consistency is unresolved) – and the instances in which it is proposed that consultation be undertaken with relevant NSW agencies, during the consultation period – to enable an appropriate response to the issues of</p>

		flooding, bushfire, groundwater, and agricultural land.
1.4 Site Specific Provisions	Yes	<p>The planning proposal essentially seeks to allow a particular development to be carried out on the land.</p> <p>The planning proposal is consistent with Direction 1.4 – to the extent that it is consistent with 1.4(1)(c) – as it seeks to allow a land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p>
4.1 Flooding	No	<p>Section 3.1 of this report (under objective 2 of the regional plan) details the flood risk that exists for the subject site – with regard to the Hay and Maude Flood Study, June 2023.</p> <p>It is recommended that consultation be undertaken with the Biodiversity Conservation Division (BCD) of the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) during the community consultation period – to enable an appropriate response to this issue.</p>
4.3 Planning for Bushfire Protection	No	<p>The site is mapped as vegetation buffer (vegetation category 3) on the Bushfire Prone Land Map.</p> <p>Section 3.1 of this report (under objective 3 of the regional plan) details the bushfire risk that exists for the subject site.</p> <p>As per the requirements of this Local Planning Direction, it is recommended that consultation be undertaken with the NSW Rural Fire Service (RFS) in relation to bushfire risk, prior to the community consultation period – to enable an appropriate response to this issue.</p>
4.4 Remediation of Contaminated Land	Yes	<p>The planning proposal includes a preliminary site investigation (PSI) report prepared by McMahon Earth Science (July 2023).</p> <p>The executive summary of the report includes:</p> <p>“Findings of the investigation include:</p> <ul style="list-style-type: none"> • A site inspection was conducted and found the development area was generally well-maintained agricultural/horticultural land with no indicators of gross contamination. • The PSI identified persistent pesticides that may have been used as the source of potential

		<p>contamination that may affect the development.</p> <ul style="list-style-type: none"> • The soil analysis returned results below the criteria for commercial/industrial land use. • In conclusion, the identified potential contamination sources are assessed to be of low significance in terms of risk to future site users and the site is suitable for the proposed development." <p>No further work is required with regards to this direction.</p>
5.1 Integrating Land Use and Transport	Yes	<p>The planning proposal is generally consistent with Direction 5.1. In particular, it is consistent with objective (e) by providing for the efficient movement of freight.</p> <p>The planning proposal will enable a truck refuelling facility to service local and regional freight and transport networks. The site is located within an area identified for future industrial use in the Hay Structure Plan (July 2022), and is adjacent to the Sturt Highway – which is a key freight route.</p> <p>It is recommended that consultation take place with Transport for NSW (TfNSW) during the community consultation period – to enable an appropriate response to this issue.</p>

9.1 Rural Zones	Yes	<p>The planning proposal seeks to enable development generally consistent with the intended future industrial use of the area. The Hay Structure Plan (July 2022) identifies the need to rezone more land for industrial (employment) purposes. The subject site is within the South Hay Industrial Precinct – which the Structure Plan identifies as a future General Industrial zoned area.</p> <p>The planning proposal is consistent with recent strategic planning work (Hay Structure Plan) undertaken by the council – and on this basis the inconsistency of the planning proposal with Local Planning Directions 9.1 and 9.2, is considered to be justified.</p>
9.2 Rural Lands		

3.4 State environmental planning policies (SEPPs)

There are no SEPPs which are applicable to the planning proposal.

4 Site-specific assessment

4.1 Environmental

See detailed assessment in sections 3.1 and 3.3 of this report.

4.2 Social and economic

The potential social and economic impacts associated with the planning proposal essentially relate to it enabling development which supports the movement of local and regional freight.

The planning proposal seeks to enable development generally consistent with the intended future industrial use of the area. The Hay Structure Plan (July 2022) identifies the need to rezone more land for industrial (employment) purposes. The subject site is within the South Hay Industrial Precinct – which the Structure Plan identifies as a future General Industrial zoned area.

4.3 Infrastructure

The following table provides an assessment of the adequacy of key infrastructure to service the site and the likely development resulting from the planning proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Roads	<p>The site has a frontage to Moama Street (which forms part of the Sturt Highway) and University Road.</p> <p>The preliminary comments received by council from Transport for NSW on 4 July 2023, notes that, for a potential vehicle refuelling station, vehicle access would need to be only via University Road (part of the local road network). Transport for NSW would not allow vehicle access via Moama Street, which is classified as a “state” road.</p>
Sewer	The planning proposal notes that, as part of a vehicle refuelling facility, toilet and shower facilities would connect to an onsite sewerage treatment system and dispersed to 40m ² dispersal area for treated water.
Water supply	The planning proposal notes that water supply is available either along the site frontage or within proximity to the site.

5 Consultation

5.1 Community

The planning proposal is categorised as a standard planning proposal under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this has been conditioned in the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- NSW Rural Fire Service (RFS)
- NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) in relation to flooding
- NSW Department of Natural Resources Access Regulator (NRAR)
- Transport for NSW (TfNSW).

6 Timeframe

Council proposes a 10 month timeframe to complete the LEP.

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

The Department recommends an LEP completion date of 30 January 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the planning proposal is categorised as a standard planning proposal under the Local Environmental Plan Making Guideline, 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:

- Agree that any inconsistencies with Section 9.1 Directions, 9.1 Rural Zones and 9.2 Rural Land, are justified, and
- Note that the consistency with Section 9.1 Directions, 1.1 Implementation of Regional Plans, 4.1 Flooding and 4.3 Planning for Bushfire 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.

The following conditions are recommended to be included on the Gateway determination:

1. Prior to community consultation, consultation is required with the following public authority:
 - NSW Rural Fire Service (RFS)
2. Prior to community consultation, the planning proposal is to be revised to address condition 1 and forwarded to the Department for review and approval.
3. Consultation is required with the following public authorities:
 - NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) in relation to flooding
 - NSW Department of Natural Resources Access Regulator (NRAR) in relation to groundwater
 - Transport for NSW.
4. The planning proposal should be made available for community consultation for a minimum of 20 working days.

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 1 December 2024 be included on the Gateway.

The timeframe for the LEP to be completed is on or before 30 January 2025



3/4/2024

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