

ITEM 20 - PLANNING PROPOSAL – PROPOSED REZONING OF 3732 THE ESCORT WAY CUDAL FROM RU1 PRIMARY PRODUCTION TO PART E4 GENERAL INDUSTRIAL

REPORT IN BRIEF

Reason For Report	To seek council's determination of the planning proposal
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	3.1.1.1a - Receive and assess Development Applications.
Annexures	1. Planning Proposal - 3660 The Escort Way CUDAL_PP-2023-2772
File Number	\\OFFICIAL RECORDS LIBRARY\\LAND USE AND PLANNING\\PLANNING\\AMENDMENT 20 TO LEP 2012 - LOT 27 DP 750137, LOT 1 DP 121750 AND LOT 1 DP 1172771, 3732 THE ESCORT WAY, CUDAL - 1714116

RECOMMENDATION

THAT:

1. Council receive and note the Planning Proposal (PP-2023-2772) for the rezoning of part of Lot 27 DP 750137 and Lot 1 DP 1172771 known as 3732, The Escort Way, Cudal, from RU1 Primary Production to E4 General Industrial and amend the Minimum Lot Size Map for the E4 part from 100ha to 0.4ha and the remaining RU1 part from 100ha to 5ha;
2. The applicant be advised that the following studies, subject to a Gateway Determination from the NSW Department of Planning, Housing and Infrastructure, may be required to be completed prior to agency referral and public exhibition:
 - Strategic Bush Fire Study that meets the requirements of *Planning for Bushfire Protection 2019*;
 - Aboriginal Cultural Heritage Assessment Report that meets the Heritage NSW guidelines; and
 - Preliminary Contamination Assessment that meets the requirements of Ministerial Direction 4.4 - Remediation of Contaminated lands;
3. Council forward the planning proposal to the NSW Department of Planning Housing and Infrastructure for a Gateway Determination in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979*; and
4. If no submissions are received in response to public exhibition then delegate authority to the General Manager to finalise the planning proposal and associated Local Environmental Plan Amendment, however, if submissions are received then present a further report to council on submissions received during the exhibition phase.

DEPARTMENT LEADER - DEVELOPMENT SERVICES' REPORT

This report was previously reported to council's 28 May 2024 Ordinary Meeting and was deferred to a future meeting by council following a request from the applicant. This allowed time for the applicant to approach staff to more fully understand the additional studies required and to approach the NSW Department of Planning, Housing and Infrastructure (DPHI) to see whether there was leeway in the necessity to undertaking these, particularly the Aboriginal Cultural Heritage Assessment Report (ACHAR) which is a costly and time-consuming study (minimum 4 months to complete).

DPHI advised council staff at a meeting on 2 July 2024 that while they were currently liaising with Heritage NSW on the issue of ACHARs, that this would take some time and that council staff should put the same May 2024 report to council recommending that the outstanding studies be completed, but that in the recommendations that these studies be made subject to the provision of a Gateway Determination. The intention being that there would therefore be no possibility of conflicting determinations of council and DPHI on the planning proposal. This has been added to recommendation 2.

PREVIOUS REPORT (with Timing tasks updated)

Council received a planning proposal lodged via the NSW Planning Portal from Mr Peter Carman of PJ & FB Carman Pty Ltd to amend the Cabonne Local Environmental Plan 2012. The planning proposal relates to Lot 27 DP 750137 (16.19ha) and Lot 1 DP 1172771 (1.811ha [driveway along northern boundary of larger lot]) known as 3732 The Escort Way, Cudal.

The site currently has a concrete batching plant at the western end and two warehouse/factory (industrial) storage units located towards the centre of the site. The site is bounded by Boree Creek to the west and The Escort Way to the east.

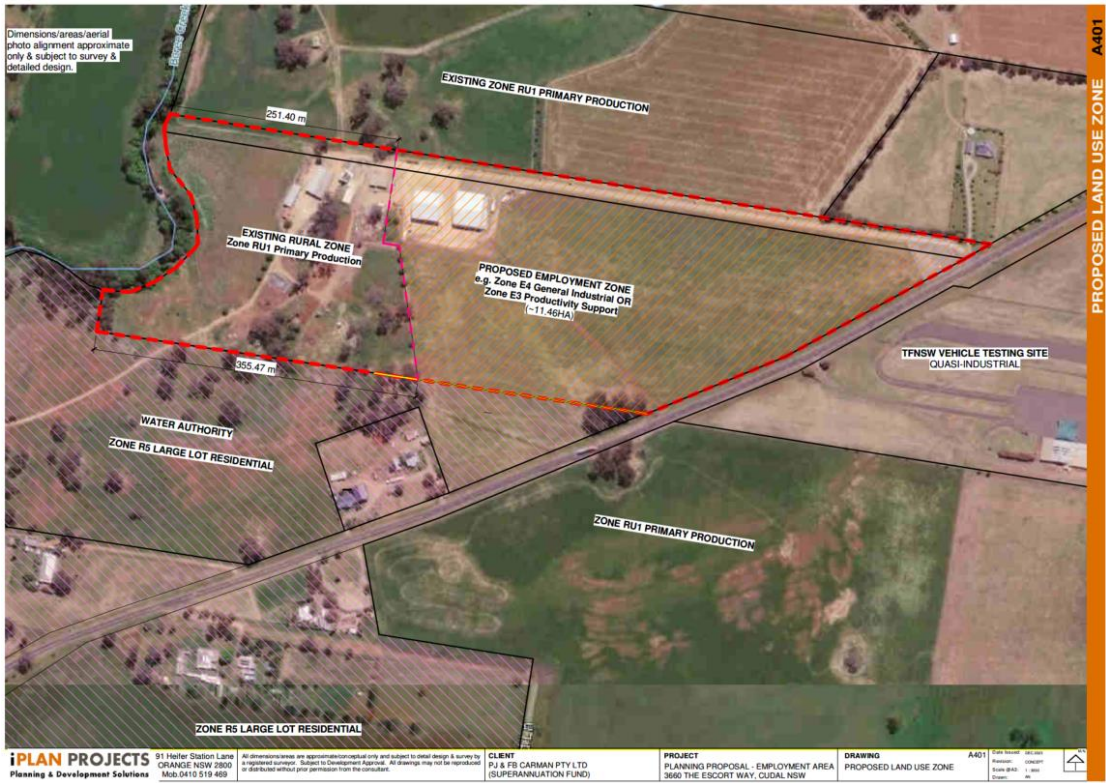
The eastern two thirds of the site where rezoning is sought are largely cleared of vegetation (for grazing) except for a few eucalypts in the south-east corner on The Escort Way.

The site slopes gradually down from the road towards where the sheds are located (approx. 12m in height over 500m in distance) then drops away to the creek (approx. 13m in height over 150m in distance).

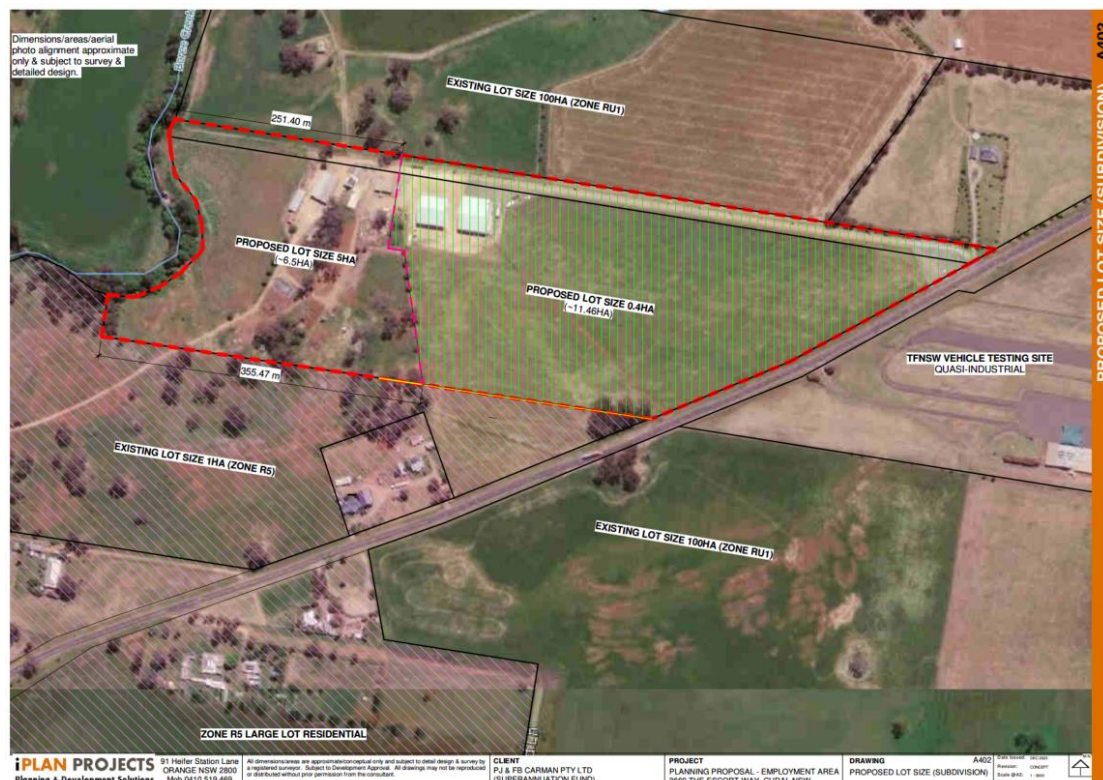
Proposal



Location/zoning map

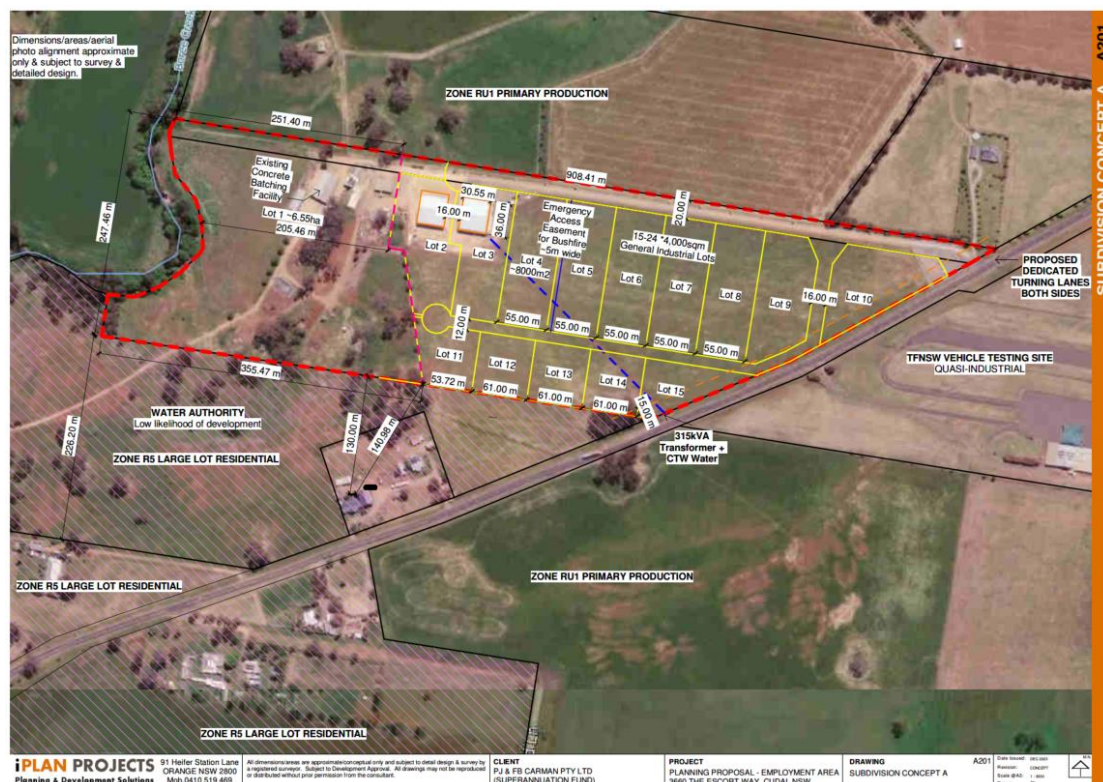


Proposed Zoning



Proposed Lot Size

The planning proposal seeks to change the mapped land use zone for the eastern part of site from Zone RU1 Primary Production to a suitable employment zone (preferably Zone E4 General Industrial). With the zone change it seeks to change the minimum lot size for the eastern part of site from 100ha to 0.4ha and the remaining western part of site to 5ha (to permit it to be in a separate lot). It also requests the possible inclusion of a Schedule 1 Amendment if it is deemed that the zone chosen by council does not permit storage premises or vehicle repair so that these become additional permitted uses on the site.



Concept plan

Storage premises are separately defined in the Cabonne Local Environmental Plan 2012 (LEP) as *a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment, local distribution premises or a warehouse or distribution centre.*

Storage premises, which include the separate definition of self-storage units, while not specifically mentioned in the land use table in the E4 General Industrial zone are permitted with consent as the zone is what is referred to as an 'open zone', where anything not specifically listed as prohibited is by default permitted with consent.

Under the LEP the following definitions apply in regard to vehicle repairs:

- **vehicle body repair workshop** means a building or place used for the repair of vehicles or agricultural machinery, involving body building, panel building, panel beating, spray painting or chassis restoration.
- **vehicle repair station** means a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.

Both of the above land uses are permitted with consent in the E4 General Industrial zone due to it being an 'open zone', where anything not specifically listed as prohibited is by default permitted with consent.

Therefore, a Schedule 1 Amendment to permit these land uses on this site is not required, just the change to the E4 General Industrial zone for the part being considered for development.

Strategic context

The Cabonne Settlement Strategy 2022 for Cudal identifies an area called CUD-IN2 for rezoning to industrial. An extract from the strategy is provided below:

5.8.9. CUD-IN2

This land consists of two lots (Lot 27 DP750137 & Lot 1 DP1172771 ~18ha) known as 3732 The Escort Way. It sits north-west of The Escort Way at the western end of the former Cudal Airport (now TfNSW safety testing facility) and is in the rural zone (adjacent to Zone R5 Large Lot Residential).

It currently has approval to build two (2) large sheds (one of which is constructed). There is anecdotal evidence that these sheds could be capable of supporting a range of activities, some of which are not linked to agricultural use and, therefore, may be outside uses permissible in the zone. It is a relatively flat site with an existing access to The Escort Way that is not used for or likely to support viable agriculture.

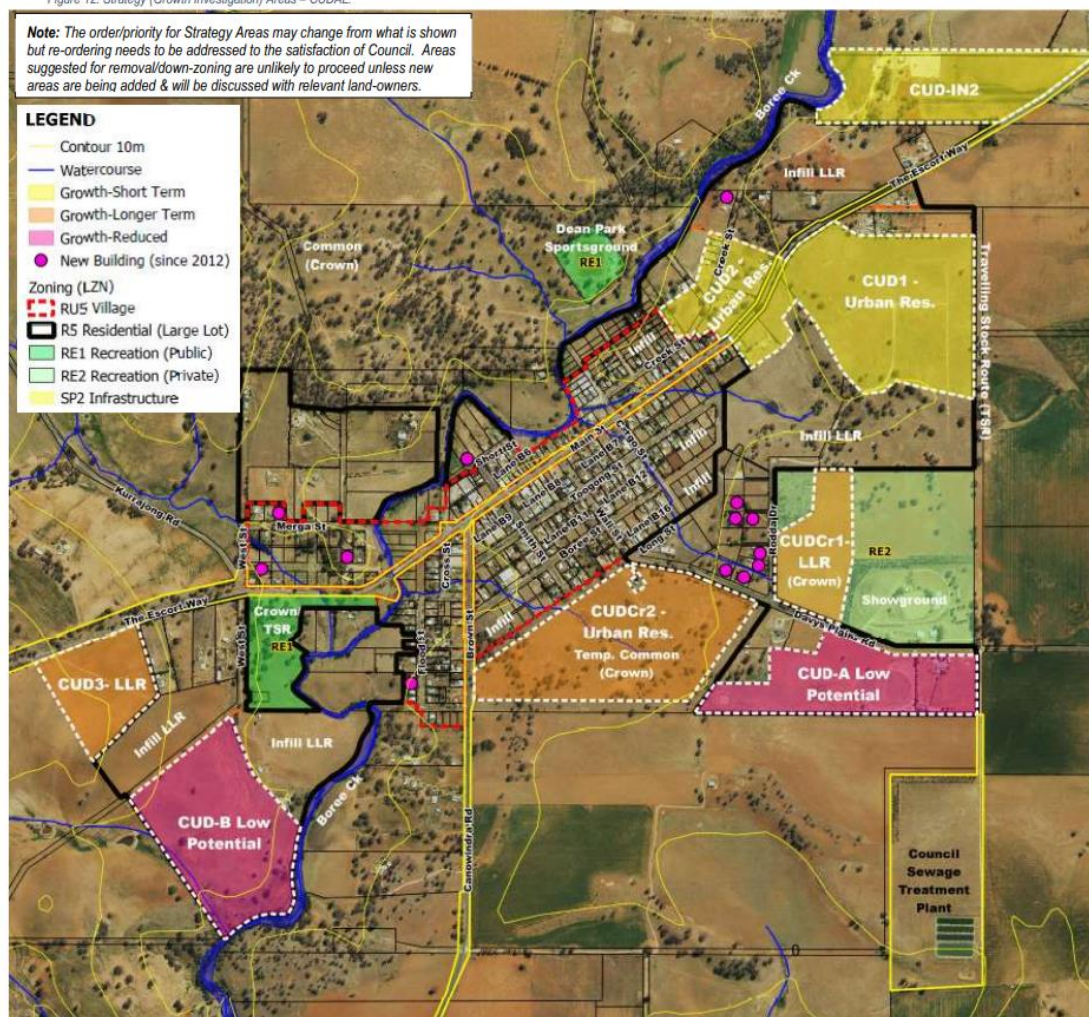
The land owner is keen to continue to construct a number of sheds for a variety of business and industrial purposes. They have a concrete batching plant and the skills to do this cost-effectively. However, if this were to occur then it is unlikely that most future uses would be approved as 'rural industry' and the current rural zone may be too restrictive.

One way to resolve this and facilitate additional businesses may be to rezone this land for Light Industrial uses (e.g., Zone IN2 Light Industrial). This would facilitate some economic growth for the town separated/well-buffered from the urban residential area.

It is interesting to note that in *Draft Cudal Village Strategy* (2005) land on the opposite side of The Escort Way (to the south of and adjacent to the former airport) was identified for industrial growth. This is roughly consistent with previous thinking. Whilst the 2020 Subregional Strategy does not identify industrial land opportunities for Cudal this is a minor amendment over existing quasi-industrial land.

The IN2 Light Industrial zone no longer exists in NSW following the State government's review of employment zones. The closest zone that would now be appropriate for this village location would be E4 – General Industrial.

Figure 12: Strategy (Growth Investigation) Areas – CUDAL



Settlement Strategy Map (CUD-IN2 top right)

Infrastructure

Access

The site currently has a gravel driveway along the northern boundary designed for heavy vehicles with 270-300m sight lines in both directions allowing for easy access. The planning proposal states that they understand that Transport for NSW (TfNSW) are currently investigating relocating access to the Vehicle Testing Facility opposite the site which may result in dedicated right- and left-hand turning lanes servicing both the TfNSW site and the rezoning site.

The Escort Way is a State road and referral of the planning proposal to TfNSW would be appropriate. Combined with the TfNSW Vehicle Testing Facility opposite a referral is essential to understand the interplay between the two developments, their entrances, and impacts on The Escort Way.

Sewer

The nearest sewer connection is greater than 1km (1,150m) from the site and the planning proposal states that it is not feasible to extend it to the site. It also states that it sees future development within the site being warehousing and

light industry which would have waste-water associated with kitchenettes and toilets in ancillary offices, rather than trade waste.

In light of this the applicant supplied 3 onsite effluent disposal reports from Envirowest Consulting covering 2 lots closer to the creek to demonstrate that onsite effluent disposal is achievable and a third report based on a concept of a shared effluent disposal area possible under a community title scheme that could alternatively be used.

While it would be preferred for this site to be connected to sewer to allow for the range of uses possible in the proposed zone, it is acknowledged that this is a costly exercise and not necessarily warranted for the industries envisaged. The applicant has acknowledged that the use of onsite effluent disposal will be a limiting factor for future development but has shown in the 2 reports that cover proposed lots closer to the creek that it is possible – these reports are supported by council.

The third report dealing with a potential shared disposal area raise a number of issues regarding operation and maintenance that would need to be investigated further at the development application stage should this option be pursued.

Electricity

High-voltage overhead power lines run along The Escort Way along the front of the site and a 315kVA transformer currently connects the site to underground three-phase power (to the 2 recently connected sheds). Electricity connection is considered available.

Water

Central Tablelands Water have a potable water line that terminates at the south-eastern corner of the site and it is considered that there is capacity for extension and additional connections. Should there be any limitations on this, rainwater tanks (especially considering the likely size of available roof area) would be a back-up option for the development of this site.

Adequacy of Planning Proposal and supporting studies

Bush fire

The site is mapped as Vegetation Category 3 – grasslands as per the *Cabonne Council Bush Fire Prone Land Map*, certified by NSW Rural Fire Service Commissioner on 21/06/2022.

The bushfire assessment provided with the planning proposal by Envirowest Consulting is considered a preliminary assessment and is adequate to determine that the application should proceed, however a full strategic bush fire study that meets the requirements of *Planning for Bushfire Protection 2019* is required to be submitted prior to exhibition. This study will also need to be referred to the NSW Rural Fire Service prior to exhibition for agreement on adequacy in meeting relevant Ministerial planning requirements.

Although the concept subdivision plan provided in the planning proposal is purely indicative to support the progression of the application, the outcomes of the strategic bush fire study will inform the revision of this plan, which is particularly important moving forward to the development application stage. There will be a requirement for the subdivision to have perimeter roads to meet *Planning for Bushfire Protection 2019*, which are only partially realised in the current concept.

Aboriginal Cultural Heritage

The Planning Proposal states that:

We strongly suggest that there is a LOW risk of impact on any remaining Aboriginal heritage or cultural significance as:

- *All the area for proposed development and/or future subdivision potential (eastern part of Site) has been cropped for a significant length of time with a likely extensive disturbance to the soil;*
- *The development area is setback more than 200m from Boree Creek and the floodplain. As such, we request Council's consideration of this Report as addressing these matters as a suitable Due Diligence and have not provided an Aboriginal Cultural Heritage Assessment Report (ACHAR).*

The Windera East Planning Proposal took a similar approach and was referred as a Gateway condition to Heritage NSW who provided the following response:

Due diligence is not an adequate level of assessment to inform the planning proposal

Heritage NSW does not have a role in assessing or endorsing due diligence assessments. However, we advise Council that an assessment under the *2010 Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* is not considered an archaeological assessment or substitute for an Aboriginal cultural heritage assessment report (ACHAR).

The due diligence process does not adequately assess the impacts of this planning proposal on Aboriginal cultural heritage as required by Local Planning Direction 3.2. This is because without Aboriginal community consultation and detailed archaeological assessment the extent of the impacts on Aboriginal objects and heritage values through the planning proposal and future development is not known.

An ACHAR should be prepared in accordance with Heritage NSW guidelines and requirements, and include:

- Formal Aboriginal community consultation
- An archaeological assessment, including test excavation.

The results of the ACHAR need to inform the proposed zoning, particularly in relation to protection of Aboriginal cultural heritage values. Early assessment provides the best opportunity to identify and protect Aboriginal cultural heritage values. It also provides certainty to all parties about any future Aboriginal cultural heritage management requirements.

It is important that any management, mitigation and conservation mechanisms are developed at the planning proposal stage to help mitigate the cumulative impact of development in this region on Aboriginal cultural heritage.

On this basis it is concluded that this planning proposal, as it is also changing the zoning of the land, will also need to undertake an ACHAR and that council has an obligation to identify this requirement. Based on the applicant's identified low-risk it would be reasonable that council support the planning proposal for a Gateway Determination but require that an ACHAR be

prepared prior to exhibition and that this be referred to Heritage NSW for agreement on adequacy in meeting Ministerial Direction 3.2.

Boree Creek

Boree Creek is a third order stream and due to the distance of existing and proposed development, proximity is not seen as a major issue for this planning proposal. The existing concrete batching plant is approximately 100m from the creek, the recently constructed sheds are at least 200m away and the area proposed to be rezoned also approximately 200m away. The creek is not considered a constraint to the rezoning as proposed.

Flooding and drainage

There is no flood study available for Cudal, however, it is obvious that the creek would be subject to flooding at times. The area to be rezoned is generally 12-20m above the creek height making it unlikely to be affected by flooding. No further analysis is considered warranted in this regard.

The site generally drains from the north-east to the south-west and drainage would need to be incorporated into the subdivision design at the development application stage dealing with stormwater runoff (quantity and quality) from the street network and individual lots. No further detail is required for this scale/type development at the planning proposal stage.

Biodiversity

A Preliminary Flora and Fauna Assessment was undertaken by Envirowest Consulting and submitted with the Planning Proposal. The scope of the assessment was to assess the existence of key habitats for threatened species, provide an overview of the flora and fauna species present and assess the impact of the proposed industrial subdivision on the flora and fauna.

No threatened flora or fauna species were identified on the site. The stands of eucalyptus trees located in the southeastern corner and on the western edge of the site are proposed to be retained and may provide fauna with nesting sites and foraging habitat.

As a result of this study the area to be rezoned had the abovementioned western trees excluded from it. The grove of trees in the south eastern corner are included in the area to be rezoned but are along the boundary and the opportunity exists at the development application stage to design the retention of these trees into a perimeter road or lot in a way that ensures they will be retained.

This study is deemed adequate for the purposes of the planning proposal.

Land contamination

A planning proposal is normally accompanied by a preliminary contamination assessment to meet relevant legislation and satisfy council and State agencies that the risk to the future development is low.

The planning proposal states that:

The intent is for the Site to be used for light industrial and warehousing purposes that has a much higher threshold for contaminants. We suggest that its current approval for quasi-industrial uses (on a limited area) and the lower sensitivity of industrial uses means that site contamination is less of an issue than if residential uses were proposed. We suggest that for the proposed use more detailed soil sampling could be conducted at the DA Stage as each shed is constructed.

Furthermore, the planning proposal states that this position meets State Environmental Planning Policy (Resilience & Hazards) 2021 and in answering Ministerial Direction 4.4 Remediation of Contaminated lands states that the site is likely to be suitable for its intended purposes and that further detail can be provided at the development application stage.

While this may sound reasonable, a reading of Ministerial Direction 4.4 has confirmed the following:

(2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

In light of this, the applicant is required to undertake a preliminary contamination assessment to support this planning proposal. Acknowledging the previous agricultural use and current industrial uses of the land, and due to the fact that it is for an employment (industrial) rezoning, it is considered reasonable that this study be prepared prior to exhibition but not prior to forwarding for a Gateway Determination.

External referrals

Proposed referrals include:

- NSW Rural Fire Service
- Transport for NSW
- Heritage NSW

Timing

Task	Timeframe
Council seeks Gateway Determination	Late July 2024
Department issues Gateway	August - September 2024
Proponent undertake additional studies	Sept 2024 – January 2025
Agency Referral	February - March 2025
Exhibition	April - May 2025
Consideration of submissions	Late May 2025
Report to council to finalise	June 2025
Plan made	July - August 2025

Conclusion

Strategic merit exists for council to support this planning proposal proceeding to a Gateway Determination, however, the applicant will need to undertake the

identified further studies prior to agency referral and public exhibition in order for council to confirm that all site-specific constraints have been addressed and legislative requirements met.