



## Gateway determination report – PP-2023-2772

Rezone land from RU1 Primary Production to E4  
General Industrial and amend the minimum lot size at  
3732 The Escort Way, Cudal

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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

Attachment A Planning Proposal, iPlan Projects, December 2023

Attachment B On-site effluent management study, Envirowest Consulting, 30 November 2023

Attachment C Preliminary Flora and Fauna assessment, Envirowest Consulting, 22 November 2023

Attachment D Bushfire Assessment, Envirowest Consulting, 27 November 2023

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

LGA	Cabonne
PPA	Cabonne Shire Council
NAME	Rezone land from RU1 Primary Production to E4 General Industrial and amend the minimum lot size at 3732 The Escort Way, Cudal
NUMBER	PP-2023-2772
LEP TO BE AMENDED	Cabonne Local Environmental Plan (LEP) 2012
ADDRESS	3732 The Escort Way, Cudal
DESCRIPTION	Lot 27 DP 750137 Lot 1 DP 1172771
RECEIVED	17/09/2024
FILE NO.	IRF24/2353
POLITICAL DONATIONS	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
LOBBYIST CODE OF CONDUCT	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 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 are to:

- Provide additional employment lands on the site through the rezoning of part of the subject land from RU1 Primary Production to E4 General Industrial.
- Reduce the minimum lot size of the land from 100ha to 4,000m<sup>2</sup> to facilitate the creation of up to 15 industrial lots;
- Reduce the minimum lot size of the remainder of RU1 Primary Production land from 100ha to 5ha.

The planning proposal makes reference in Section 2.2 (page 8) to zone E4 General Residential being the preferred land use zone subject to discussion regarding potential Additional Permitted Uses. It is unclear which land uses are sought to be included as an Additional Permitted Use. A condition is recommended on the Gateway determination requiring the planning proposal to be

updated to clarify the intent for inclusion of land uses in Schedule 1 of the Cabonne LEP 2012, prior to community consultation.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Cabonne LEP 2012 per the changes below:

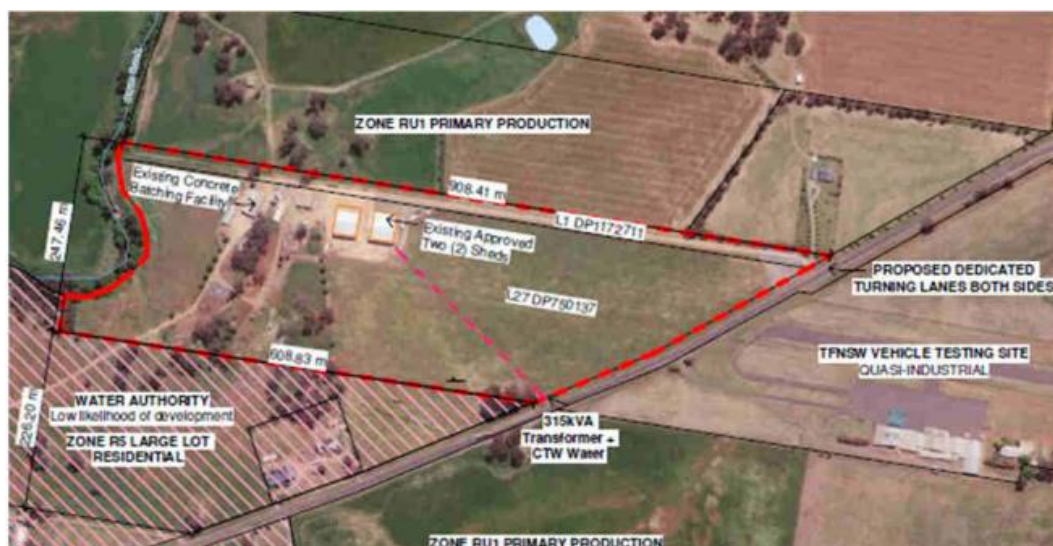
**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	RU1 Primary Production	RU1 Primary Production E4 General Industrial
Minimum lot size	RU1 portion - 100ha	RU1 portion - 5ha E4 portion – 4000m <sup>2</sup>
Number of jobs	N/A	100

The planning proposal (Attachment A) 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 land is located to the north-east of the village of Cudal. It is comprised of two (2) allotments (Lot 27 DP 750137 and Lot 1 DP 1172771). Lot 1 DP 1172771 is a narrow lot which forms a 202m access along the northern boundary of the site. The total area of both allotments is 17.9ha.



**Figure 1 Subject site (source: Planning Proposal, iPlan)**

The site has frontage to The Escort Way (a classified road) and contains a concrete batching plant and associated buildings on the north-western corner. The site is opposite the TfNSW Testing Facility on the site of the former Cudal Airport. The eastern portion of the site is vacant and largely cleared of vegetation, except for a stand of eucalyptus and windbreak trees which are identified as terrestrial biodiversity LEP layer.

The concrete batching plant located on the western portion of the site is assumed to have an existing use right. The site also has an existing development approval (DA2012/71 – approved 23 July 2012) for a *warehouse and factory (industrial) storage units*, comprising two (2) large shed and demountable offices. These buildings have been constructed and are currently occupied.

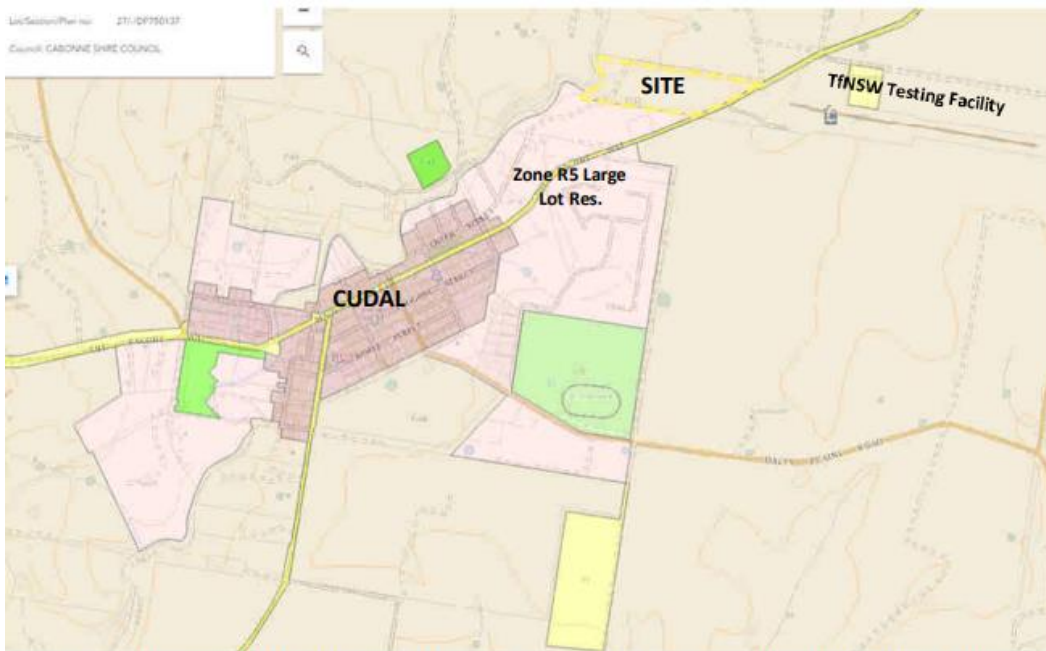


Figure 8: Location of the Site (yellow outline) in relation to Cudal and key road connections (NSW Planning Portal).

Figure 2 Site context (source: Planning Proposal, iPlan)

## 1.5 Mapping

Mapping included in the planning proposal shows the current minimum lot size and zoning of the site. The planning proposal will need to be updated to include mapping showing the proposed changes to the appropriate LEP zoning and lot size maps, prior to community consultation. It is noted that the map legend of the Land Zoning Map series will need to be amended to include zone E4.

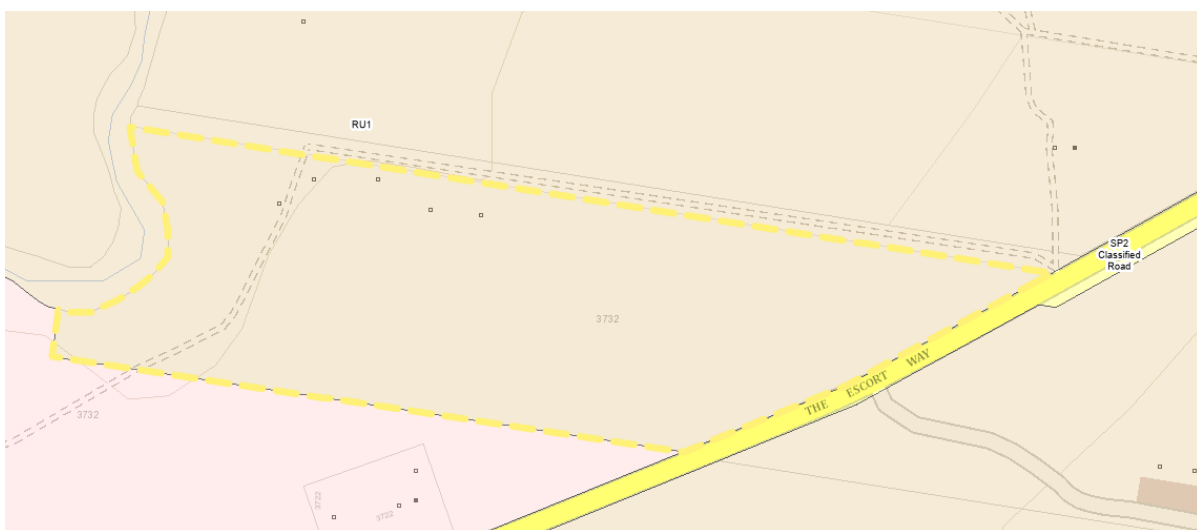
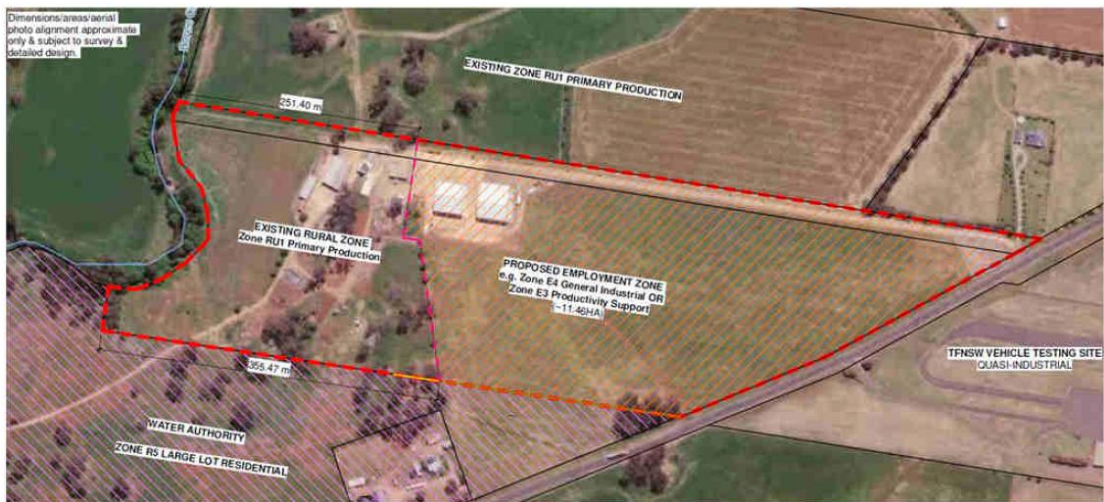
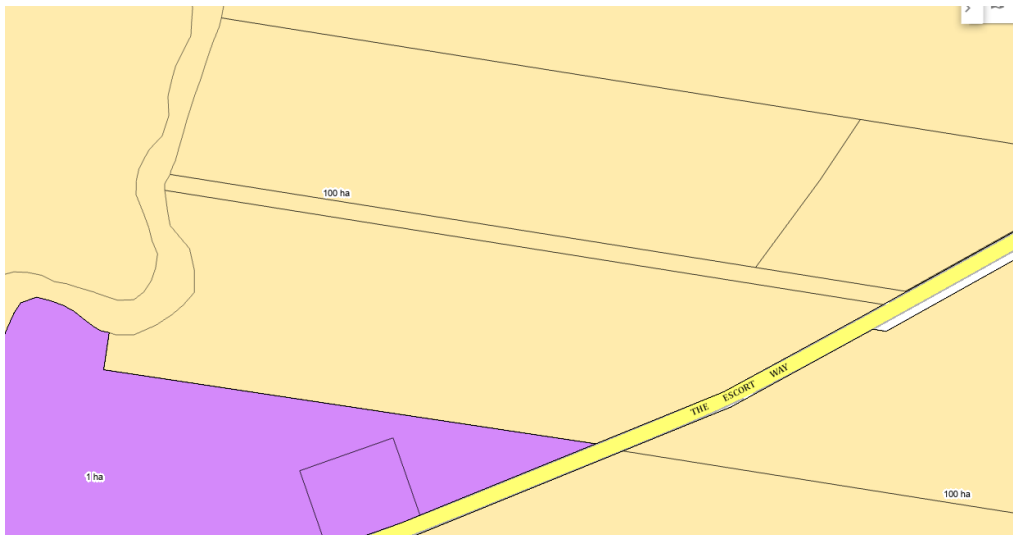


Figure 3 Current zoning map (source: <https://www.planningportal.nsw.gov.au/spatialviewer>)





**Figure 4 Proposed zoning map**



**Figure 4 Current minimum lot size map (source: <https://www.planningportal.nsw.gov.au/spatialviewer>)**



**Figure 5 Proposed minimum lot size map**

## 1.6 Background

Council reviewed the draft planning proposal in 2023 as part of pre-lodgement discussions. Additional studies were requested by Council to support the planning proposal, including bushfire assessment (Attachment D), flora and fauna report (Attachment C), an effluent report (Attachment B), and preliminary site contamination assessment and Aboriginal Cultural Heritage Report (ACHAR).

Council has previously required all planning proposals to include an ACHAR based on the advice of Heritage NSW. Following discussions between Council, Heritage NSW and the applicant, it was agreed that in this case DPHI would assess the need for the ACHAR and include as a condition of Gateway, if required. Further discussion in relation to aboriginal cultural heritage is provided in Section 3 of this report.

## 2 Need for the planning proposal

The subject land is identified within the Cabonne Settlement Strategy 2021-2041 (the Strategy) as Strategy Area CUD-IN2 for industrial purposes. The Strategy was endorsed by the Department of Planning on 15 October 2012. The planning proposal is consistent with the intent of the strategy and can only be achieved via an amendment to the Cabonne LEP 2012.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2041.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 5 – Identify, protect and connect important environmental assets	<p>The subject land has no mapped Terrestrial Biodiversity, existing native vegetation and identified as flood prone. A preliminary flora and fauna assessment was provided as part of the proposal. No threatened flora or fauna species were identified on the site.</p> <p>The draft subdivision plan shows that the proposed industrial land and future subdivision of the site can avoid identified environmental hazards. The stands of eucalyptus trees located in the south-eastern corner and western edge of the site are proposed to be retained.</p> <p>The proposal is consistent with this objective.</p>
Objective 6 – Support connected and healthy communities.	<p>The proposal will provide additional employment lands consistent with the Strategy for the village of Cudal.</p> <p>The proposal is consistent with this objective.</p>
Objective 7 – Plan for resilient places and communities	<p>The planning proposal is consistent with this objective as the proposed employment lands are to be in an area that can be located in hazard-free locations. The proposal is consistent with this objective.</p>



Objective 9 – Ensure site selection and design embraces and respects the region’s landscapes, character and cultural heritage.	<p>The subject site is located within 200m of Boree Creek. Creek areas are known to be utilised for aboriginal settlements. An Aboriginal Cultural Heritage Assessment Report (ACHAR) has not been provided as part of the planning proposal, however an AHIMS report has not identified any known objects within a 200m radius of the subject land.</p> <p>Council has previously required all planning proposals to include an ACHAR report, based on advice from Heritage NSW. The applicant has disputed the need for the ACHAR in pre-lodgement discussions, based on the evidence provided through the AHIMS search and no listed items within Schedule 5 Environmental Heritage of the LEP.</p> <p>It is recommended that a Gateway condition be included to require consultation with Heritage NSW prior to public exhibition, to determine whether an ACHAR report is required for the proposed rezoning.</p>
Objective 18 – Leverage existing industries and employment areas, and support new and innovative economic enterprises	<p>The site is identified within the Strategy as suitable for rezoning to industrial. Currently, industrial uses operate on part of the site (concrete batching plant and warehouse/industrial units). The proposed rezoning will leverage the existing infrastructure and employment lands on the site to co-locate appropriate industries together.</p> <p>The proposal is consistent with this objective.</p>
Objective 19 – Protect agricultural production values and promote agriculture innovation, sustainability and value-add opportunities	<p>The planning proposal is inconsistent with this objective as it involves the rezoning of agricultural land to employment lands.</p> <p>A portion of the site currently operates as a concrete batching plant and warehouse/industrial sheds. To the east of the site is a vehicle testing site. The site also directly adjoins R5 Large Lot Residential land to the south.</p> <p>The agricultural productivity and viability of the land with the surrounding land uses and current use of the land is significantly reduced.</p> <p>It is considered that given the existing use of the site, and that the strategy does not identify any further development on the periphery of Cudal, that the loss of agricultural land in this instance is justified.</p>

## 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 5 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is considered to be consistent with the following Planning Priorities detailed in the Cabonne LSPS:</p> <ul style="list-style-type: none"> <li>4. Support and promote sustainable development within our villages and celebrate our history</li> <li>6. Ensure that infrastructure and facilities cater for the changing needs of our</li> </ul>

community.

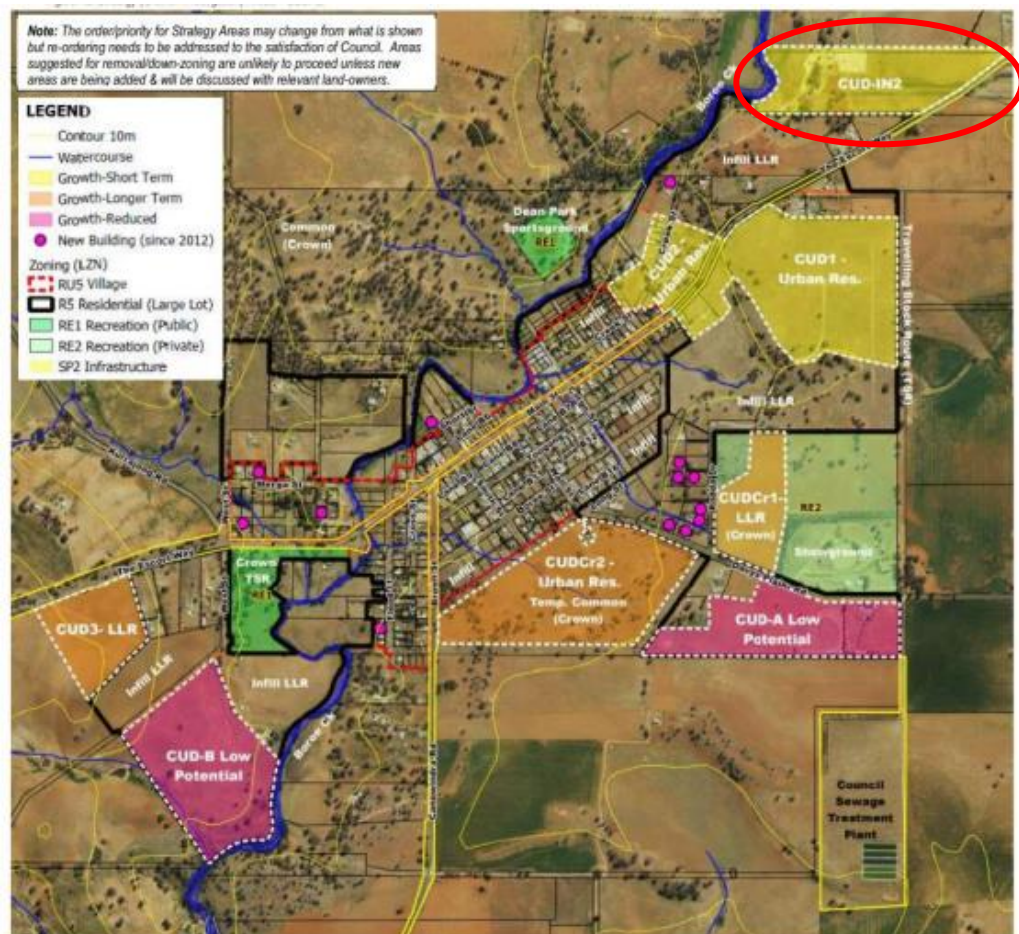
- 7. Protect and enhance our landscape, biodiversity and waterways.
- 8. Manage natural hazards to mitigate their impacts on our communities.

The planning proposal is considered to be generally consistent with the Cabonne LSPS as the planning proposal:

- Is located on land which has a current industrial use;
- will provide for an identified industrial land need within Cudal, and
- is located in an area which is resilient to flooding.

Cabonne Settlement Strategy 2021-2041.

The Cabonne Settlement Strategy aims to guide Council and Government on future commercial and residential growth over the next 20 years. The Strategy identifies the land as a future growth area for use for industrial purposes, in the short term, being area CUD-IN2.



**Figure 6 Cudal Settlement Option (source: Cabonne Settlement Strategy)**

Following employment land reforms, the IN2 General Industrial zone has been replaced with the E4 General Industrial zone. This change in zone name is considered like-for-like and is consistent with the intent of the use of the land. The planning proposal discusses the intent to include additional land uses as permitted with consent on the land, this detail is to be clarified and included in an amended planning proposal prior to exhibition.

The planning proposal is considered generally consistent with this strategy.

Draft Sub-Regional Rural and Industrial Land Use Strategy (2019-2036)

This strategy is yet to be adopted by Council, however does not include the subject site in Cudal.

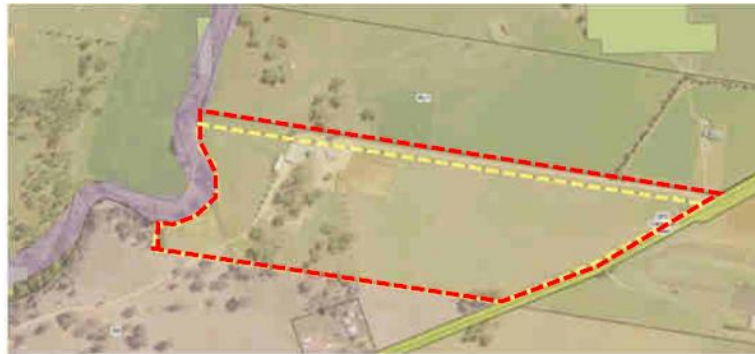
The planning proposal is generally consistent with the principles and key actions within the draft strategy, identifying key precincts of industrial land for future development which leverages existing infrastructure and minimises land use conflict.

### 3.3 Section 9.1 Ministerial Directions


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

**Table 6 9.1 Ministerial Direction assessment**

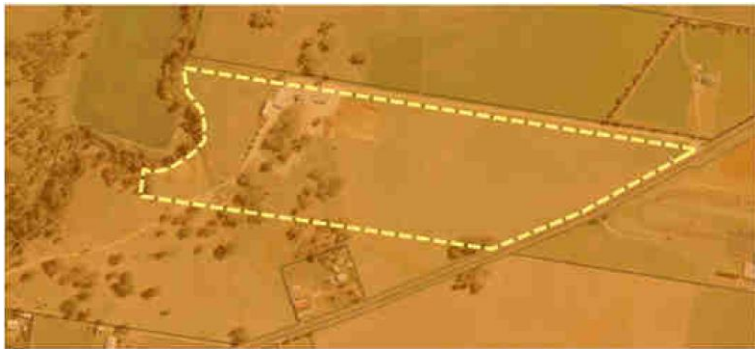
Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The proposed amendment is considered consistent with the objectives of the Central West and Orana Regional Plan 2041.
1.4 Site specific provisions	Further justification required	<p>The planning proposal makes reference in Section 2.2 (page 8) to zone E4 General Residential being the preferred land use zone subject to discussion regarding potential Additional Permitted Uses. It is unclear which land uses are sought to be included as an Additional Permitted Use. A condition is recommended on the Gateway determination requiring the planning proposal to be updated to clarify the intent for inclusion of land uses in Schedule 1 of the Cabonne LEP 2012, prior to community consultation.</p> <p>The proposal does not seek to impose any additional development standards or requirements in addition to those already contained in the Cabonne LEP 2012. The planning proposal does not contain or refer to drawings that show details of development proposed on the land.</p> <p>Inclusion of Additional Permitted Uses in Schedule 1 of the Cabonne LEP 2012 will be subject to further assessment via an application for a Gateway alteration.</p>
3.1 Conservation Zones	Yes	<p>The subject land contains some vegetation identified biodiversity species along Boree Creek, however, is not identified as a conservation zone and will retain its current rural zone.</p> <p>No threatened flora or fauna species were identified on the site. Stands of eucalyptus were identified in the south-eastern corner and on the western edge of the site, however indicative subdivision designs demonstrate that a lot layout can be achieved and retain this vegetation.</p> <p>The flora and fauna report accompanying the planning proposal has identified sufficient protection measures. The proposed amendment is consistent with this direction.</p>



**Figure 7 Biodiversity Values (Purple) (NSW Planning Portal) – Site in red outline.**

3.2 Heritage Conservation	Further justification required	<p>The planning proposal was accompanied by an AHIMS search, which did not identify any known items on the site or within a 200m radius.</p> <p>Pre-lodgement advice from Heritage NSW has indicated that an Aboriginal Cultural Heritage Assessment (ACHAR) is required given the location of the site to Boree Creek. Heritage NSW have also advised in pre-lodgement discussions that an AHIMS database is based on findings of the ACHAR reporting.</p> <p>To satisfy this direction, it is recommended that the proposal be referred to Heritage NSW prior to public exhibition.</p> <div><p>A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:</p><table border="1"><tr><td><input type="checkbox"/></td><td>Aboriginal sites are recorded in or near the above location.</td></tr><tr><td><input type="checkbox"/></td><td>Aboriginal places have been declared in or near the above location. *</td></tr></table></div>	<input type="checkbox"/>	Aboriginal sites are recorded in or near the above location.	<input type="checkbox"/>	Aboriginal places have been declared in or near the above location. *
<input type="checkbox"/>	Aboriginal sites are recorded in or near the above location.					
<input type="checkbox"/>	Aboriginal places have been declared in or near the above location. *					
4.1 Flooding	Yes	<p>There is no flood study available for the village of Cudal. The subject site adjoins the Boree Creek, however Council have indicated in its report that the land with increased subdivision potential is located more than 200m east of Boree Creek and is approximately 12-20m above the height of the creek, and could be unaffected in the event of a flood. Council has no concerns in relation to flooding of the site.</p> <p>The site generally drains from the north-east to the south-west.</p>				



		<p>and drainage would be required to be incorporated into any future subdivision of the site. No further detail is required at the planning proposal stage.</p> <p>The proposal is therefore considered to be consistent with this direction.</p>
4.3 Planning for Bushfire Protection	Further justification required	<p>The subject land is identified as bushfire prone land Vegetation Category 3 – grasslands. The proposal notes that the risk is relatively low due to limited trees and the proposed development is also limited to the eastern part of the site which is cleared. An asset protection zone (APZ) and on-site water storage is proposed in the Bushfire Report (Attachment D).</p> <p>Consultation with the NSW Rural Fire Service is required prior to community consultation to satisfy the inconsistency with this direction.</p>  <p><b>Figure 9 Bush Fire Prone Land Mapping (NSW Planning Portal)</b></p>
4.4 Remediation of contaminated land	Further justification required	<p>Consistency with this direction requires the planning proposal authority to have regard for a preliminary site contamination investigation.</p> <p>Given the site is currently partially being utilised for industrial activities (concrete batching plant), and its historical agricultural use, the instance of contamination is low, however is required to be confirmed.</p> <p>It is recommended that a condition of Gateway be applied to require a preliminary site investigation to be undertaken prior to finalisation.</p>
7.1 Employment Zones	Yes	<p>The proposal is consistent with this direction. The rezoning of the site is consistent with the Strategy which has identified the land as suitable for industrial/employment lands.</p>
9.1 Rural Zones & 9.2 Rural Lands	Inconsistency justified	<p>The planning proposal is inconsistent with these directions as it rezones rural land to employment land and reduces the minimum lot size of agricultural land.</p> <p>The inconsistency is justified as the subject land is identified for the purposes of employment lands within the Strategy, which was endorsed 15 October 2012.</p>

## 3.4 State environmental planning policies (SEPPs)

With exception of Biodiversity and Conservation, and Resilience and Hazards, the planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 7 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Biodiversity & conservation) 2021  Chapter 3 – Koala Habitat Protection 2020	Chapter 3 of the Biodiversity and Conservation SEPP aims to encourage conservation and management of areas that provide habitat for koalas.	Yes	Eucalyptus trees are identified on the site; however no removal of trees form part of this application. Indicative subdivision plan shows the trees are not impacted. Council's report has not raised issue with removal of koala habitat.
State Environmental Planning Policy (Resilience and hazards) 2021  Chapter 4 – Remediation of land	Clause 4.6 of the Resilience and Hazards SEPP requires the consent authority to contamination and remediation issues prior to granting consent.	No	No scheduled activities notices have been issued by the EPA for the site, and the land is not listed on the NSW EPA register of contaminated sites.  A Preliminary Contamination Investigation assessment for the site has not been prepared.  As discussed earlier in this report, a Gateway condition will be required to complete a preliminary site investigation prior to finalisation.

## 4 Site-specific assessment

### 4.1 Environmental

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

**Table 8 Environmental impact assessment**

Environmental Impact	Assessment
Aboriginal Cultural Heritage	The planning proposal states that there is a low risk of impact on any remaining Aboriginal heritage or cultural significance as: <ul style="list-style-type: none"><li>- The area for proposed development and/or future subdivision potential</li></ul>



	<p>(eastern part of site) has been cropped for a significant length of time with likely extensive disturbance to the soil; and</p> <ul style="list-style-type: none"> <li>- The development area is set back more than 200m from Boree Creek and the floodplain.</li> </ul> <p>Council has previously advised proponents based on Heritage NSW advice that the change in zoning of the land from agricultural to any other zone requires an ACHAR to be considered.</p> <p>Pre-lodgement discussions between the Department officers and Heritage NSW have indicated that an ACHAR should be prepared given the proximity of the land to Boree Creek, and the basis that there have been no studies undertaken on the land to demonstrate that there are no artefacts or heritage significance.</p> <p>As previously discussed, it is recommended that the proposal be referred to Heritage NSW prior to community consultation to determine whether an ACHAR is required.</p>
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## 4.2 Social and economic

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

**Table 9 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social impact	The planning proposal will provide up to 40 jobs following the subdivision and development of the site for employment purposes. This will have a positive impact on the village of Cudal.
Economic impact	The development of employment lands within the village of Cudal will provide positive economic impacts, given there is no additional industrial land identified within the strategy.

## 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 10 Infrastructure assessment**

Infrastructure	Assessment
Roads	The site will have frontage to The Escort Way which is a sealed State road. Referral to Transport for NSW is considered appropriate.
Sewer/water	The site has the ability to extend existing infrastructure to provide reticulated water and sewer to the site.
Electricity/telecommunications	The site has the ability to extend connections to future additional lots.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 30 days.

The exhibition period proposed is considered appropriate and forms to the conditions 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 working days to comment:

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

## 6 Timeframe

Council proposes a 12 month time frame to complete the LEP.

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 24 October 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.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

## 7 Local plan-making authority

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

The Department recommends that Council 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:

- It is consistent with the Regional and Local strategic plans; and
- It enables employment lands to support the community.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 9.1 Rural Land and 9.2 Rural Zones are minor or justified and

- Note that the consistency with section 9.1 Directions 1.4 Site specific provisions, 3.2 Heritage Conservation, 4.3 Planning for Bushfire Protection and 4.4 Remediation of Contaminated Land are unresolved and will require further 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 authorities:
  - Rural Fire Service to determine the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection.
  - Heritage NSW to determine the consistency with section 9.1 Direction 3.2 Heritage Conservation.
2. Prior to community consultation, the planning proposal is to be amended to include the following:
  - proposed lot size and land zoning maps,
  - the intent to include and justification for proposed additional permitted uses on the site, and
  - a revised project timeline.
3. Prior to community consultation, the planning proposal is to be revised to address conditions 1 and 2 and forwarded to the Department for review and approval.
4. Consultation is required with the following public authorities:
  - Transport for NSW
5. Prior to finalisation, a Preliminary Site Investigation is to be undertaken to determine consistency with section 9.1 Direction 4.4 Remediation of Contaminated Land
6. The planning proposal should be made available for community consultation for a minimum of 20 working days.
7. 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 24 October 2025 be included on the Gateway.
8. The timeframe for the LEP to be completed is on or before 24 October 2025



22 October 2024

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