



IRF24/43

## Gateway determination report – PP-2023-417

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Rezone land from RU1 to R5 and reduce MLS to 4,000sqm, Cargo Rd and Sherwin St, Cargo

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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

Council report to seek a Gateway determination (12 December 2023)
Council meeting resolution to seek a Gateway determination (12 December 2023)
Planning Proposal (Peter Basha Planning & Development, February 2022)
AHIMS (Aboriginal Heritage Information Management System) search result (Sam Basha, 17 February 2023)
Preliminary contamination investigation – separate report for each of the proposed 7 lots (Envirowest Consulting, November 2022)
On-site effluent management study – separate report for each of the proposed 7 lots (Envirowest Consulting, November 2022)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details.**

<b>LGA</b>	Cabonne.
<b>PPA</b>	Cabonne Council.
<b>NAME</b>	Cargo Rd and Sherwin St, Cargo – Rezone land from RU1 Primary Production Zone to R5 Large Lot Residential Zone (7 homes; 0 jobs).
<b>NUMBER</b>	PP-2023-417
<b>LEP TO BE AMENDED</b>	Cabonne Local Environmental Plan 2012.
<b>ADDRESS</b>	Cargo Rd and Sherwin St, Cargo
<b>DESCRIPTION</b>	Lots 33, 108, 202, and 203 in DP750145.
<b>RECEIVED</b>	2/01/2024
<b>FILE NO.</b>	IRF24/43.
<b>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.

## 1.2 Objectives of planning proposal

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

The objective of the planning proposal is to amend the planning controls to enable residential development on the subject land.

The planning proposal proposes to rezone the identified land to R5 Large Lot Residential Zone, and to amend its minimum lot size control to 4,000m<sup>2</sup>.

The objectives of this planning proposal are clear and adequate.

The proposed rezoning would result in a contiguous extension of the existing area zoned R5 Large Lot Residential which extends north of the existing Cargo RU5 Village Zone. The proposed minimum lot size of 4,000m<sup>2</sup> would be consistent with the minimum lot size control applying to adjacent R5 zoned land.

## 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	R5 Large Lot Residential
Minimum lot size	100 hectares	4,000m <sup>2</sup>

In addition to the four specified lots, the planning proposal also includes an unmade section of Hillside Street that forms the northern edge of the subject land.

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

## 1.4 Site description and surrounding area

The town of Cargo is located in the Cabonne local government area, in the Central West and Orana region. By road, Cargo is approximately 35km south-west of Orange, and approximately 20km north-east of Canowindra.

The site (consisting of 4 existing lots) is approximately 4.62 hectares in size plus a portion of unmade road and is located on the north-eastern side of the main urban area of Cargo. The southern edge of the site fronts Cargo Road, and the northern edge of the site includes an unmade section of Hillside Street – (**see Figures 1 and 2**)

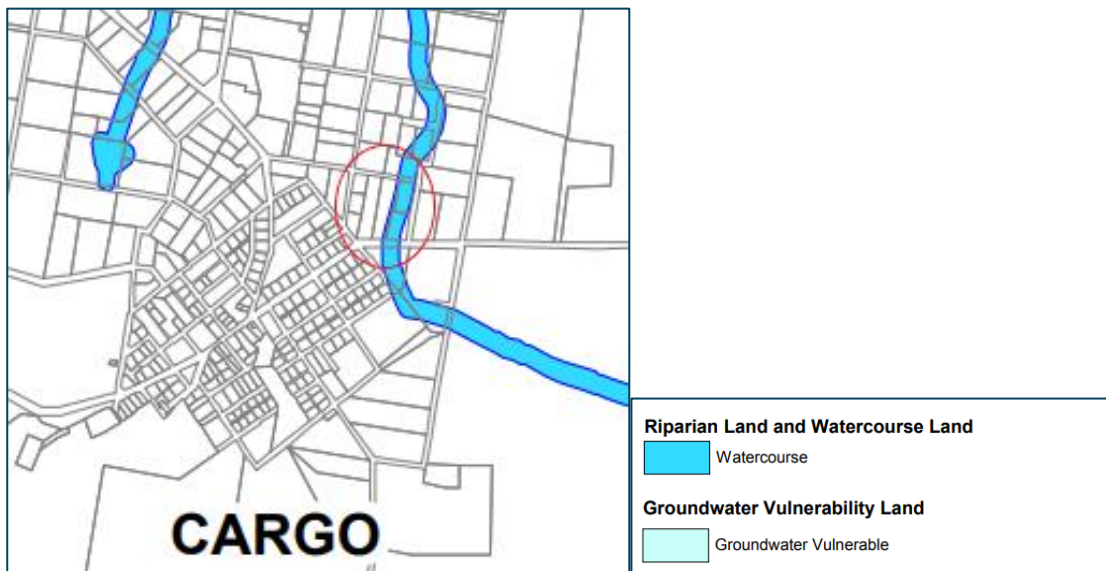


**Figure 1: Subject site and existing lot boundaries (source: NSW Planning Portal Spatial Viewer).**



**Figure 2: Site location relative to the town of Cargo (source: Cabonne Council report, 12 December 2023).**

The site slopes towards the watercourse mapped on the Cabonne LEP 2012 Riparian Lands and Watercourses Map (see Figure 3).



**Figure 3 Extract Cabonne LEP 2012 Riparian Land Watercourses Map (Source: NSW Planning Portal)**

The site contains vegetation (adjacent to the waterway) and is mapped on the Cabonne LEP 2012 Terrestrial Biodiversity Map (see Figure 4).





**Figure 4 Extract Cabonne LEP 2012 Terrestrial Biodiversity Map (source: Planning proposal)**

The site is adjacent to agricultural land zoned RU1 to the north, east and south. An olive farm is located north-east of the site, slightly more than 200m from its north-eastern corner. To the west and north-west of the site is R5 zoned land, some with lots of 4,000m<sup>2</sup> with dwellings and some not yet developed.

Cargo Oval is located south-east of the site, on the southern side of Cargo Road, zoned RE2 Private Recreation.

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Cabonne Local Environmental Plan 2012 maps, which are generally suitable for community consultation.

The proposal seeks to change the digital Land Zoning Map for the site from RU1 Primary Production to R5 Large Lot Residential and to change the Lot Size Map LSZ\_003D for the site from 100 hectares to 4,000m<sup>2</sup>. These proposed changes are shown in **Figure 5** and **Figure 6**.





## 2 Need for the planning proposal

The planning proposal intends to implement part of the Cabonne Settlement Strategy 2021-2041 by providing additional rural residential development in a strategically suitable area of Cargo.

In the Cabonne Settlement Strategy 2021-2041, the subject land was identified as CAR1 – North East Cargo as a candidate for future Large Lot Residential Development (**see Figure 7**). The proposed rezoning is intended to represent a logical extension of the existing R5 Large Lot Residential land located adjacent to the subject land.



**Figure 7 Extract of Cabonne Settlement Strategy 2021-2041**

Council has noted the Settlement Strategy identified there is sufficient existing zoned land in Cargo to meet future growth needs, however, it also recognised there is unmet demand for housing in Council's smaller settlements, largely driven by people wanting a larger holding/backyard and often owning the adjacent lot(s) without the intention of developing them for dwellings.

## 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.

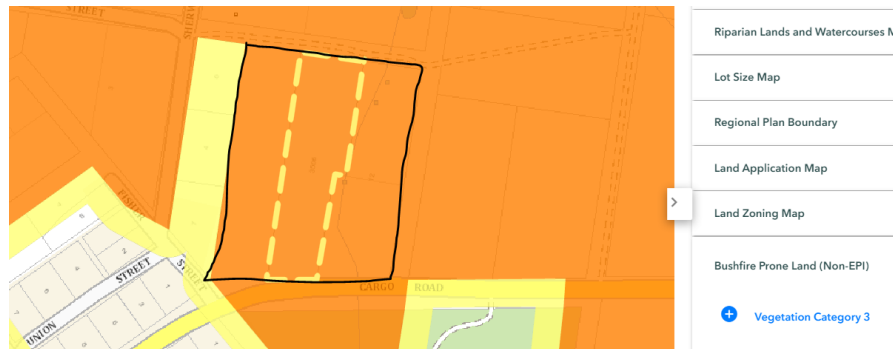
**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 5: Identify, protect and connect important environmental assets.	<p>The proposal is consistent with Strategy 5.2 by focusing development on areas with lower biodiversity values and integrating those values into the development.</p> <p>The site is located on land identified by the LEP terrestrial biodiversity mapping. The Cabonne Settlement Strategy 2021-2041 notes that the site includes some limited vegetation with biodiversity sensitivity that could be enhanced along the watercourse.</p>

The planning proposal notes that vegetation is identified on the Broad Scale Mapping as containing *Yellow Box – Blakelys Red Gum grassy woodlands on the tablelands, South Eastern Highlands Bioregion (PCT 1330)* which is listed as a Critically Endangered Ecological Community under the *Biodiversity Conservation Act 2016* and as Critically Endangered under the *Environment Protection and Biodiversity Conservation Act 1999*.

The planning proposal proposes building envelopes for the site which it claims can be positioned to not require adverse impacts on the site's biodiversity.

It is recommended that consultation be undertaken with the NSW Department of Climate Change, Energy, the Environment and Water in relation to this matter and whether further assessment is required at this stage or whether a future Biodiversity Development Assessment Report will be adequate to manage potential impacts.

Objective 6: Support connected and healthy communities.	<p>Consistent.</p> <p>The size of the site proposed to be rezoned is not considered to warrant the provision of additional public open space.</p>
Objective 7: Plan for resilient places and communities.	<p><u>Watercourse</u></p> <p>The site is affected by a watercourse (mapped on the Cabonne LEP 2012 Riparian Lands and Watercourses Map) traversing two of the existing lots on the eastern side of the site (lot 33 and lot 108). It also affects lot 202 in the centre of the site.</p> <p>Council considers the planning proposal to be adequate, however it does identify that the applicant needs to have a suitably qualified person undertake a flood study/assessment. Council identified the study needs to be completed prior to exhibition to confirm the extent of the site suitable for development. Council has not provided any assessment or information to indicate if this watercourse is likely to flood. An aerial photo of the site indicates the watercourse is either intermittent or ephemeral (ie. it is mostly dry but flows for brief periods after rainfall). Council has also not indicated how long a flood study might take to investigate potential flood impacts at this location.</p> <p>However, given both the Settlement Strategy and Council have identified the need for a flood study/assessment, it is recommended this be undertaken and completed prior to public exhibition of the planning proposal.</p> <p><u>Bushfire</u></p> <p>The site is mapped as Vegetation Category 3 on the Bushfire Mapping on the NSW Spatial Viewer (noting the planning proposal incorrectly identifies the site as being mapped as Vegetation Category 2).</p> 

	<p>The planning proposal notes that future development on the proposed lots would be subject to bushfire assessment at the development application stage, however it includes an assessment for the potential future dwelling. This level of assessment is not required at the planning proposal stage.</p> <p>In accordance with the requirements of the Section 9.1 Directions (see Section 3.3 of this report) it is recommended that prior to public exhibition, consultation take place with Rural Fire Service in relation to these issues.</p> <p><u>Contamination</u></p> <p>The planning proposal includes a preliminary contamination investigation for each of the proposed lots, prepared by Envirowest Consulting, that recommend the subject land is suitable for proposed residential land-use.</p> <p>For proposed lot 200, the report recommends that an Unexpected Finds Procedure should be adopted for site development works due to site history – including possible gold mining activities between 1881 and 1916 under the ownership of Ironclad Gold Mining Company.</p>
Objective 8: Secure resilient regional water resources.	<p>Consistent.</p> <p>The planning proposal (and the council assessment report) note that future development on the site would need to be serviced by rainwater tanks, and septic systems for wastewater. The planning proposal includes an on-site effluent management study to show how each of the proposed lots could accommodate an on-site septic system for wastewater.</p>
Objective 10: Protect Australia's first Dark Sky Park.	<p>Consistent.</p> <p>The site is within the area to which the Dark Sky Planning Guideline applies, for the area around the Sidings Spring Observatory in the Warrumbungle National Park. The assessment of any development applications for future development on the site will need to have regard to the requirements of the Guideline.</p>
Objective 12: Sustain a network of healthy and prosperous centres.	<p>Consistent.</p> <p>The proposed rezoning would support the role of Cargo as a small centre by providing capacity for additional housing adjacent to its existing urban area.</p>
Objective 13: Provide well located housing options to meet demand.	<p>Consistent.</p> <p>The proposed rezoning would provide capacity for additional housing adjacent to the existing urban area of Cargo.</p>
Objective 14: Plan for diverse, affordable, resilient and inclusive housing.	<p>Partly consistent.</p> <p>The proposed rezoning will provide some opportunity for housing diversity by providing large lot residential development close to an established urban centre.</p>

Objective 15: Manage rural residential development and Objective 19: Protect agricultural production values and promote agricultural innovation, sustainability and value-add opportunities.	<p>Consistent.</p> <p>The site is adjacent to the existing urban area of Cargo – which enhances the extent to which the use of existing infrastructure and services can be utilised.</p> <p>The site has been identified for development in the Cabonne Settlement Strategy 2021-41.</p> <p>The site is not identified as State Significant Agricultural Land (SSAL) on the draft SSAL map prepared by Department of Primary Industries.</p> <p>The council assessment report notes that the site has been mapped as being of class 4 agricultural suitability – and that in this regard, the site has moderate to severe limitations for some land uses that need to be managed to prevent soil and land degradation.</p>
Objective 17: Coordinate smart and resilient utility infrastructure.	<p>Consistent.</p> <p>The proposal applies to land adjacent to the existing urban area of Cargo – which enhances the extent to which existing infrastructure and services can be utilised.</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 6 Local strategic planning assessment**

Local Strategies	Justification
Cabonne Local Strategic Planning Statement 2020	The proposal is consistent with the Cabonne Local Strategic Planning Statement 2020 – specifically Priority 4 (Support and promote sustainable development within our villages and celebrate our history); and Priority 5 (Provide opportunities to ensure a variety of housing types are available across our shire) – which includes the strategic direction to identify strategic areas for growth opportunities around existing development.
Cabonne Settlement Strategy 2021-41.	The proposal is consistent with the Cabonne Settlement Strategy 2021-41. This matter has been addressed in this report - see further explanation in Section 2 of this report.

## 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency or inconsistency 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	Yes	The planning proposal is considered consistent with the Central West and Orana Regional Plan – see further explanation in section 3.1 (Regional Plan) in this report.

1.3 Approval and Referral Requirements	Yes	The planning proposal does not contain provisions that require concurrence, consultation or referral to a Minister, and does not identify development as designated development.
1.4 Site Specific Provisions	Yes	The planning proposal does not contain site specific planning controls.
3.1 Conservation Zones	No	The direction requires a planning proposal to include provisions that facilitate the protection and conservation of environmentally sensitive areas. The subject land is not identified as environmentally sensitive and the proposal will not reduce biodiversity values on the site. Therefore the proposal is consistent with the direction.
4.1 Flooding	To be determined	As discussed further in Section 3.1 of this report, potential flood impacts on future residential development on this site is to be identified through a flood study/assessment prior to public exhibition. The planning proposal will be required to be updated to address the findings of that flood study/assessment.
4.3 Planning for Bushfire Protection	No	The planning proposal applies to land that is entirely mapped as bushfire prone land (Vegetation Category 3).  As per the direction, it is recommended that the consultation take place with Rural Fire Service prior to public exhibition.
4.4 Remediation of Contaminated Land	Yes	The planning proposal includes a preliminary contamination investigation for each of the proposed lots, prepared by Envirowest Consulting.  The findings recommends that the subject land is suitable for residential land-use.  For proposed lot 200, the report recommends that an unexpected finds procedure should be adopted for site development works due to site history – including possible gold mining activities between 1881 and 1916.
5.1 Integrating Land Use and Transport	Yes	The planning proposal would provide capacity for additional housing adjacent to the existing urban area of Cargo – in a way which clusters urban development around existing services.
6.1 Residential Zones	Yes.	The planning proposal seeks to provide capacity for additional housing adjacent to the existing urban area of Cargo in a way which would make more efficient use of existing infrastructure and services.
6.2 Caravan Parks and Manufactured Home Estates	Yes.	The planning proposal does not diminish any existing opportunities for caravan parks and manufactured home estates.



8.1 Mining, Petroleum Production and Extractive Industries	Yes	The planning proposal does not diminish any existing opportunities for mining, petroleum production or extractive industries.
9.1 Rural Zones 9.2 Rural Lands	No	The planning proposal proposes to rezone land from RU1 Primary Production to R5 Large Lot Residential land but does not protect the agricultural production value of the land and is therefore inconsistent with directions 9.1 Rural Zones and 9.2 Rural Lands. These inconsistencies are considered justified as the subject land is identified in Council's future development strategy as being suitable for rural residential development.

### 3.4 State environmental planning policies (SEPPs)

The SEPPs which apply to the subject site, as not applicable to the planning proposal – as detailed in the table below.

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Chapters 3 and 4 of the SEPP relate to the protection of koala habitat and apply to the subject site.	Not Applicable	Chapters 3 and 4 of the SEPP relate to the determination of development applications – rather than planning proposals.
SEPP (Exempt and Complying Development Codes) 2008	The SEPP aims to provide exempt and development codes for NSW.	Not Applicable	The planning proposal does not deal with matters relating to exempt or complying development.
SEPP (Housing) 2021	The SEPP's principles include enabling the development of diverse housing types.	Not Applicable	The SEPP is intended to enable housing at the development application stage of the development process – rather than the planning proposal stage of the development process.  It is noted that the planning proposal seeks to enable more housing adjacent to the existing urban area of Cargo.
SEPP (Industry and Employment) 2021	The SEPP relates to the Western Sydney employment area, and to advertising and signage.	Not Applicable	The planning proposal does not deal with matters to which the SEPP relates.

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Planning Systems) 2021	The SEPP relates to State and regional development, and to land owned by an Aboriginal Land Council.	Not Applicable	The planning proposal does not deal with matters to which the SEPP relates.
SEPP (Primary Production) 2021	The SEPP's aims include to facilitate the economic use and development of land for primary production purposes, and to reduce land use conflict by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources. The SEPP separately applies to certain land in the Central Coast plateau areas.	Not Applicable	<p>The planning proposal does not relate to State significant agricultural land – so chapter 2.2 of the SEPP does not apply to the planning proposal.</p> <p>The other components of chapter 2 primarily relate to enabling certain types of agricultural development – which does not apply to planning proposals.</p> <p>Chapter 3 of the SEPP relating to Central Coast plateau areas, do not apply to the planning proposal.</p>
SEPP (Resilience and Hazards) 2021	The SEPP relates to coastal management, hazardous and offensive development, remediation of land	Not Applicable	The planning proposal does not relate to a coastal area, or to hazardous and offensive development. The parts of the SEPP which deal with remediation of land, apply at the development application stage of the development process – rather than the planning proposal stage of the development process.
SEPP (Resources and Energy) 2021	The SEPP relates to mining, petroleum production and extractive industries.	Not Applicable	The planning proposal does not deal with matters to which the SEPP relates.
SEPP (Sustainable Buildings) 2022	The SEPP aims to encourage the design and delivery of sustainable buildings – including through application of BASIX (Building Sustainability Index).	Not Applicable	The SEPP does not apply to planning proposals.
SEPP (Transport and Infrastructure) 2021	The SEPP aims to enable development for certain types of infrastructure, educational establishments and childcare facilities, major infrastructure corridors, port development, and freight intermodal development.	Not Applicable	The SEPP does not apply to planning proposals.

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP No 65 – Design Quality of Residential Apartment Development	The SEPP aims to improve the design quality of residential apartment development.	Not Applicable	The SEPP does not apply to planning proposals.

## 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 following table provides an assessment of the key social and economic impacts associated with the proposal.

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Additional dwellings	The planning proposal seeks to enable capacity for up to 7 additional dwellings adjacent to the existing urban area of Cargo. In this way, the planning proposal could potentially have a small, positive impact upon the economic viability of existing business and services that operate in Cargo – and, in doing so, could potentially have a small, positive social impact upon the community.
Loss of farmland	The planning proposal states that the site has a history of being used for small-scale livestock grazing. The planning proposal seeks to rezone the site from RU1 Primary Production to R5 Large Lot Residential. The planning proposal would reduce, by approximately 4.62 hectares, the amount of land available for primary production. In this way, it could have a small, negative economic impact.

### 4.3 Infrastructure

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

**Table 11 Infrastructure assessment**

Infrastructure	Assessment
Roads	The subject site has a frontage to Cargo Road (on the southern boundary) and Hillsdale Street (on the northern boundary). The planning proposal proposes that the site, if rezoned and subdivided, would rely upon road access from Cargo Road, and an upgraded section of Hillsdale Street which is currently a dirt track.

Water supply	The site is not serviced by town water. The planning proposal states that future dwellings (potentially up to 7 dwellings) would need to rely on rainwater tanks for water supply.
Sewer	The planning proposal includes an on-site effluent management study to show how each of the proposed lots could accommodate an on-site septic system for wastewater.

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as a standard under the LEP Making Guidelines (August 2023). 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 – as follows: Department of Primary Industries – Agriculture; Department of Planning and Environment – Biodiversity and Flooding; and NSW Rural Fire Service.

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

- NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) in relation to both biodiversity and flooding
- NSW Rural Fire Service (RFS)

## 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 planning proposal.

The Department recommends an LEP completion date of 1 May 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. This will also assist manage the timeframe to enable a flood study/assessment to be conducted for the site. 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 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:

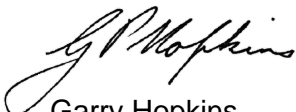
1. The planning proposal is to be updated to incorporate the findings of a flood study/assessment of the unnamed creek and its impact on the subject land
2. Prior to community consultation, consultation is required with the following public authorities:
  - NSW Rural Fire Service (RFS)
3. Prior to community 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 during community consultation:
  - NSW Department of Department of Climate Change, Energy, the Environment and Water (DCCEEW)
5. 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 May 2025 be included on the Gateway. The timeframe for the LEP to be completed is on or before 1 May 2025



6 March 2024

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