



IRF24/1342

Gateway determination report – PP-2024-1037

Removal of minimum lot size from RU5 Village zone
and rezoning land from RU1 Primary Production to R2
Low Density Residential zone in Hay

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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 PP-2024-1037	Attachment D – Land Use Conflict Risk Assessment Report (LUCRA)
Attachment B - Council report & minutes	Attachment E - Hay Local Strategic Planning Statement
Attachment C – Preliminary Site Investigation (PSI)	Attachment F - Hay Structure Plan

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Hay
PPA	Hay Shire Council
NAME	Hay Housing Facilitation Project
NUMBER	PP-2024-1037
LEP TO BE AMENDED	Hay Local Environmental Plan 2011
ADDRESS	Various
DESCRIPTION	Various, Hay Town
RECEIVED	6/06/2024
FILE NO.	IRF24/1342
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
PCO or Map Only	PCO and Mapping changes required.

1.2 Objectives of planning proposal

The objectives of this amendment are to encourage urban renewal/infill development to support population growth and encourage greater housing diversity within Hay.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

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

- For land zoned RU5 Village in the township of Hay – Amend the Lot Size map (LSZ_005A) to remove the 550m² minimum lot size.
- For land at Lot 2, DP448476 and Lot 135, DP756755 (229 Bourke Street) and Lot 168, DP756755 (41 Cemetery Road):
 - Amend the land zoning map (digital) to rezone the site from RU1 Primary Production to R2 Low Density Residential.
 - Amend Lot Size maps (LSZ_005A and LSZ_009A) to reduce the minimum lot size for the site from 90 hectares to 1,500m².
- Introduce R2 Low Density Residential Zone into the land use table for in the LEP (Figure 1).

R2 Low Density Residential**1 Objectives of zone**

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

2 Permitted without consent

Environmental Protection Works; Home-based child care; Home occupations; Roads

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Centre-based child care facilities; Dual occupancies; Dwelling houses; Group homes; Home industries; Oyster aquaculture; Pond-based aquaculture; Respite day care centres; Secondary dwellings; Tank-based aquaculture; Any other development not specified in item 2 or 4.

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Camping grounds; Car parks; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Emergency services facilities; Entertainment facilities; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Function centres; Health services facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Local distribution premises; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Restricted premises; Rural industries; Service stations; Sewerage systems; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water treatment facilities; Wholesale supplies; Wharf of boating facilities;

Figure 1 Proposed land use table for R2 Low Density Zone (source: planning proposal)

It is estimated that this planning proposal would create an additional 362 dwellings within the township of Hay.

It is noted that the planning proposal refers to previous LEP zoning maps that have since been replaced with digital maps. The planning proposal should be updated to reflect this change.

The proposal includes an extensive list of land uses within the R2 Low Density Residential Zone, however, does not include an explanation or justification for why certain land uses have been permitted or prohibited. The planning proposal should be updated to include further explanation of these uses prior to agency and community consultation.

1.4 Site description and surrounding area

The planning proposal relates to all land zoned RU5 Village in the township of Hay, as well as land identified as Lot 2, DP448476 and Lot 135, DP756755 (229 Bourke Street) and Lot 168, DP756755 (41 Cemetery Road) located on the eastern fridge of Hay township (**Figure 2**).

Hay is a town in the western Riverina region of southwestern NSW, it is situated approximately midway between Sydney and Adelaide, and about 150km West of Griffith. The town is located besides the Murrumbidgee River and has a population of 2,882.

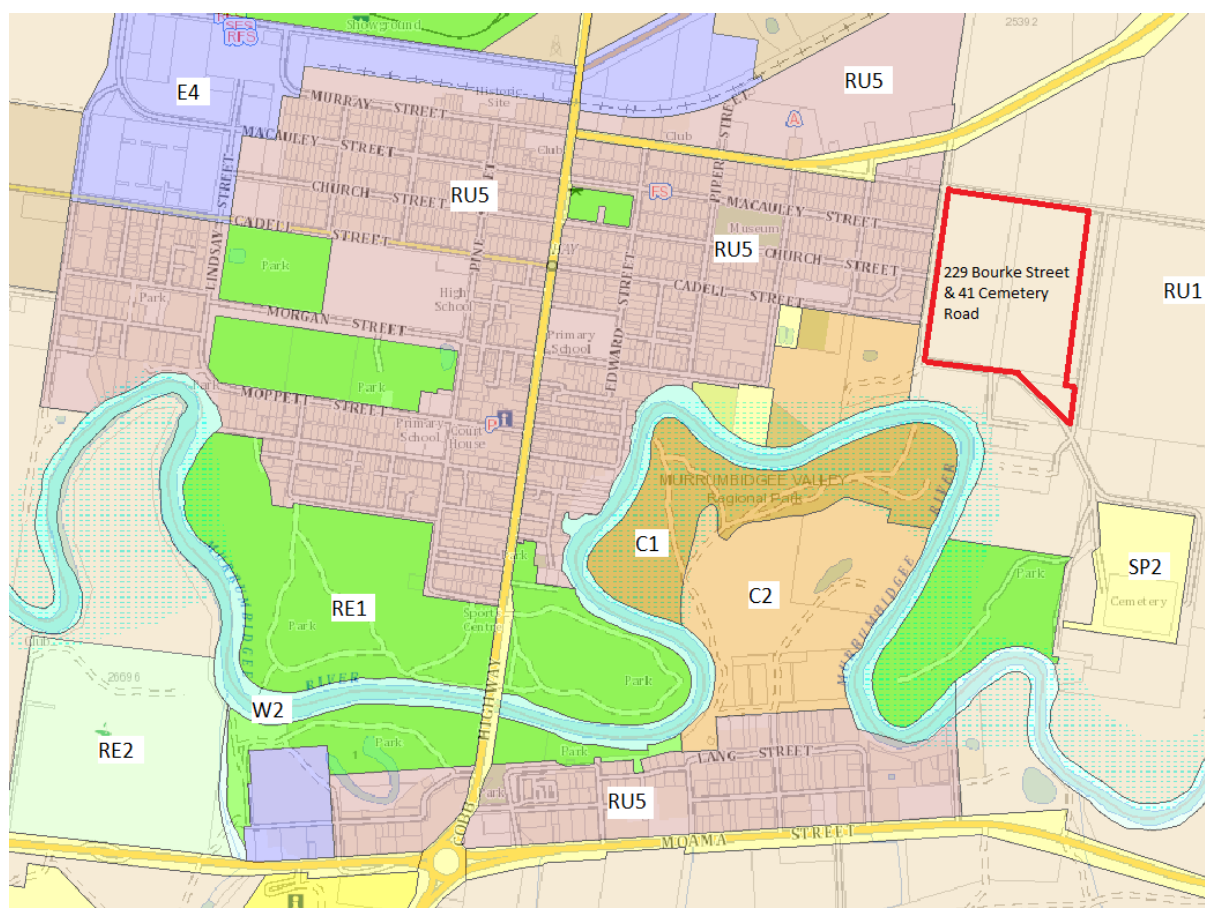


Figure 2 Hay township subject sites identified as RU5 zoned land and outlined red (source: ePlanning spatial viewer)

The Bourke and Cemetery Road sites (**Figure 3**) are predominantly cleared and currently utilised for agricultural purposes. Lot 2, DP 448476 contains a dwelling and agricultural structures. There are two Crown land parcels within the subject area, highlighted in blue in **Figure 3**. It is noted that the proposal does not address these sites, and it is recommended that Crown Lands is consulted on the proposed amendments. Crown Land have indicated to the Department that they don't foresee any issues with including the Crown Land and it being zoned R2. Consultation with Crown Lands forms a condition of the Gateway determination.



Figure 3 229 Bourke Street (outlined red) and 41 Cemetery Road (outlined yellow) subject sites, Crown land parcels (highlighted blue) (source: ePlanning spatial viewer)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the land zoning (digital) and lot size (LSZ_005A and LSZ_009A) maps, which are suitable for community consultation.

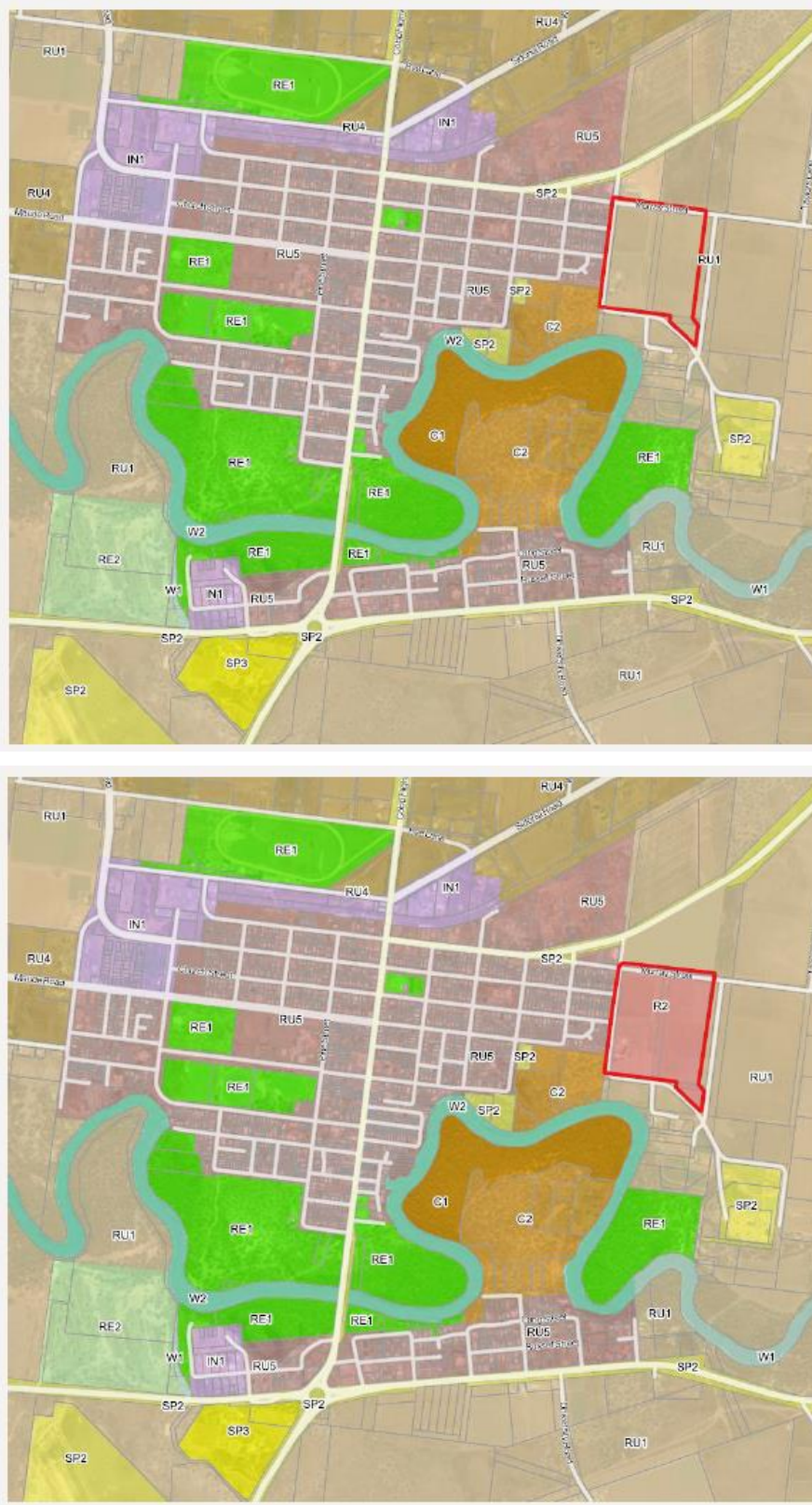


Figure 4 Current (top) and proposed (bottom) zoning map (source: planning proposal)

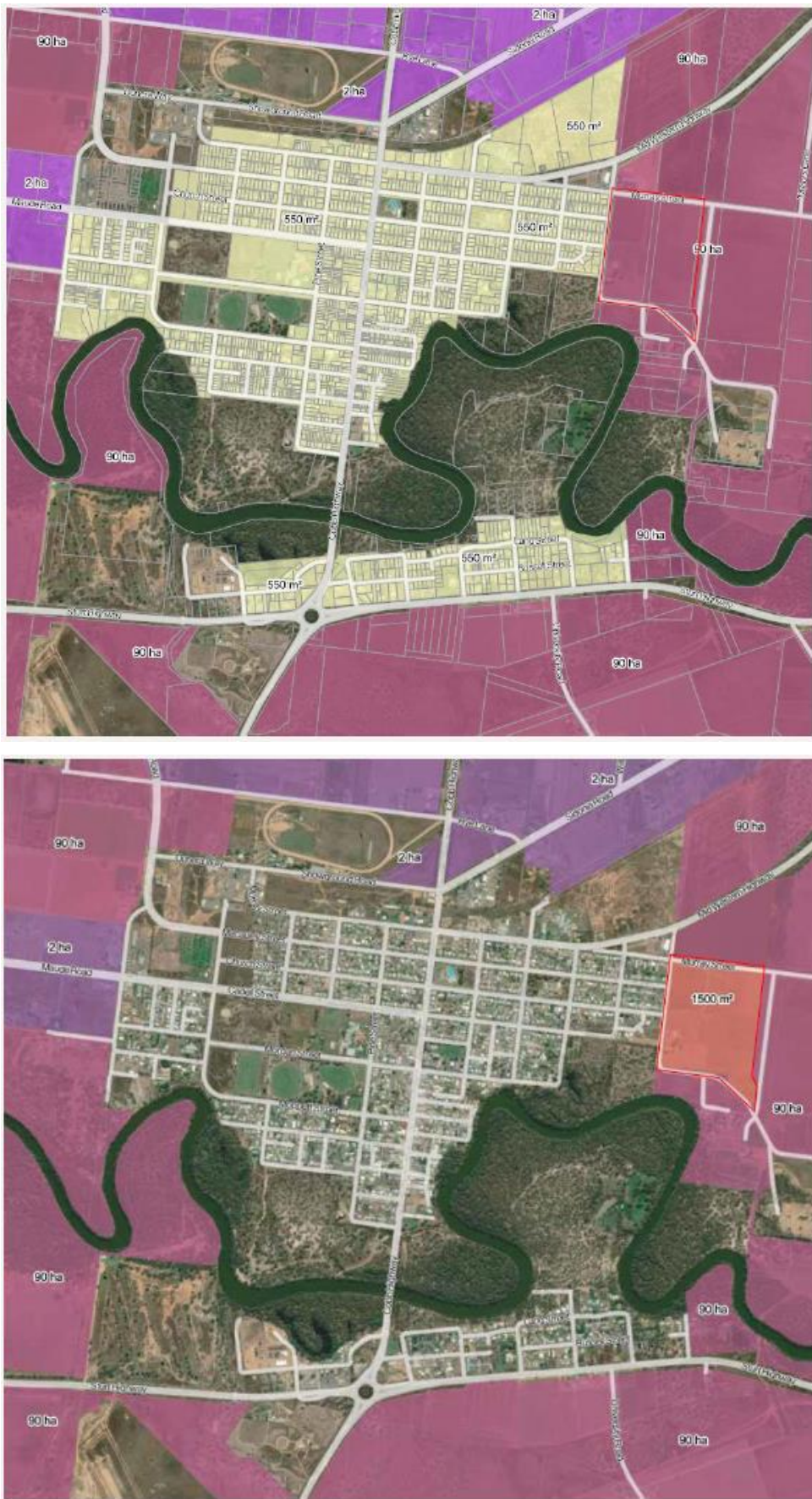


Figure 5 Current (top) and proposed (bottom) lot size maps (source: planning proposal)

2 Need for the planning proposal

The planning proposal is intended to implement the recommendations identified in the Hay Structure Plan, prepared in July 2022. The Hay Structure Plan implements the recommendations of Hay Shire Community and Settlement Sustainability Strategy 2012 (the Strategy) by zoning part of the site identified as 'Option 3' for residential expansion and removing the MLS from the Village zone (see **Figure 6**).

The proposal is consistent with Priority 1 of the Hay Local Strategic Planning Statement (LSPS) prepared in May 2020.



Figure 6 Identified extent of RU5 zoned land proposed for reduction of MLS in the Hay Structure Plan (source: Hay Structure Plan).

The Hay Structure Plan (section 5.2) identifies sites for residential expansion both for low density residential and rural residential purposes. The Bourke and Cemetery Road sites are recommended for rezoning from RU1 Primary Production to R2 Low Density Residential with a MLS of 1500m². Based on the current uptake, the subject land proposed to be rezoned would equate to approximately 56 years supply (based on 2 dwellings per year).

The Structure Plan contains detailed staging for the proposed residential expansion area and identifies the site subject to this proposal as suitable for release as Stage A 0-10 years (northern portion) and Stage B 10-20 years (southern portion). The staging plan (**Figure 7**) reflects considerations including proximity to the urban fringe allowing for practical, efficient and cost-effective augmentation of infrastructure, services and utilities necessary to service the area.



Figure 7 Development staging plan (source: Hay Structure Plan).

The planning proposal is considered the most appropriate solution for encouraging urban renewal/infill development and housing diversity in Hay. This is based on consistency with the Hay Structure Plan and council's LSPS, connectivity to existing residential development, efficient servicing, minimal land use conflict and environmental constraints.

3 Strategic assessment

3.1 Regional Plan

The proposal is generally consistent with relevant objectives of the Riverina Murray Regional Plan 2041.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
<p>Objective 1 - Protect, connect and enhance biodiversity throughout the region</p> <p>Objective 2 – Manage development impacts within riverine environments</p>	<p>The proposal states it will not harm biodiversity by focusing development within the town and expanding only into rural areas without biodiversity constraints. The proposal states that the development is not expected to adversely affect the river, though minor impacts might occur if not managed properly at the development assessment stage.</p>

Regional Plan Objectives	Justification
Objective 3 - Increase natural hazard and resilience	<p>The proposal seeks to rezone bushfire prone land. The hazard is generally categorised as vegetation buffer which is lower risk. The proposal includes consideration of the applicable NSW Planning for Bushfire Protection and Guidelines and considers provision of an asset protection zone (APZ).</p> <p>Further assessment on bushfire prone land can be found in Section 3.3 of this report. Consultation with NSW RFS is required as a condition of the Gateway.</p>
Objective 5 - Ensure housing supply, diversity, affordability and resilience	<p>The proposal seeks to provide a supply of residential land by rezoning rural land to permit low density residential development a suitable location. The proposal also seeks to increase housing supply, diversity, and affordability by removing the MLS in the RU5 village zone.</p>
Objective 11 – Plan for integrated and resilient utility infrastructure	<p>The proposal aligns with this objective, and in particular Strategy 11.1 by promoting development around existing infrastructure. Intensifying under-developed land within the town would enhance infrastructure efficiency and reduce pressure on the town fringe. Proposed development adjacent to the town will be staged to ensure adequate services can be delivered. Council has confirmed that existing infrastructure can support development of this land.</p>

3.2 Local

The proposal states that it is consistent with local plans and endorsed strategies. Section 2 above outlines how the proposal is generally consistent with the Hay Structure Plan and Hay LSPS.

The Structure Plan states that there is adequate supply of land zone RU4 Rural Small Holdings for a 30-year planning horizon. It recognises an immediate demand for rural residential land and identifies a site of 33ha adjoining the eastern boundary of the site subject to rezoning in this proposal. The land identified for rural residential development (low density residential and rural residential) is included in the Staging Plan (**Figure 7**).

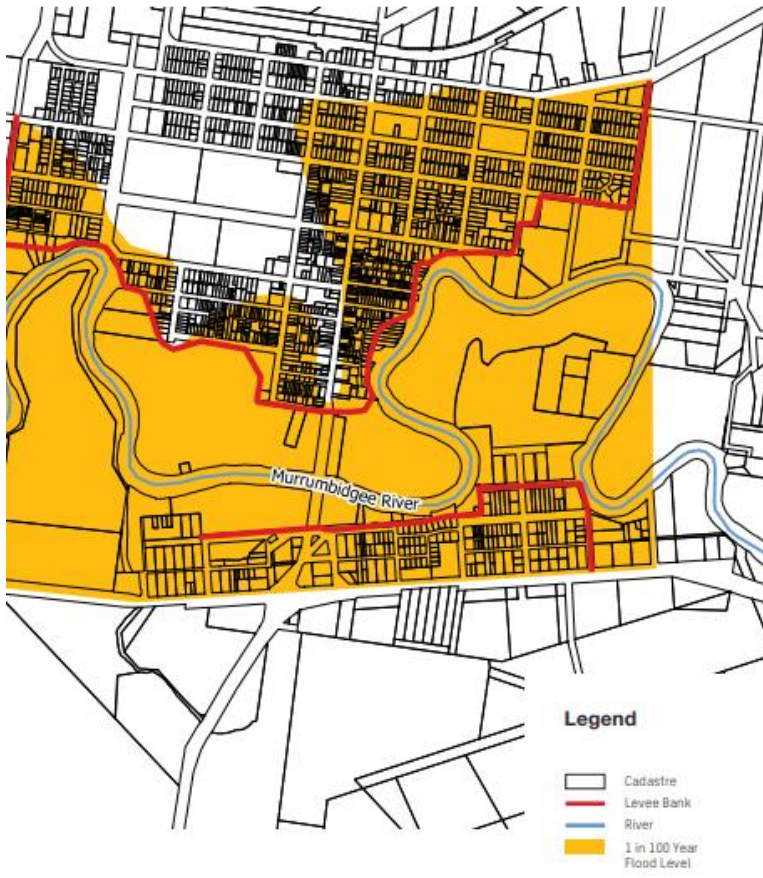
To ensure development of the residential expansion area is guided appropriately, the Hay Structure Plan recommends that prior to development of the site a Development Control Plan be adopted. A condition has been included in the Gateway determination that the planning proposal be amended to include the intent to adopt a local clause to ensure development consent is not granted for development on the land zoned R2 Low Density Residential unless a development control plan has been prepared for the land.


3.3 Section 9.1 Ministerial Directions

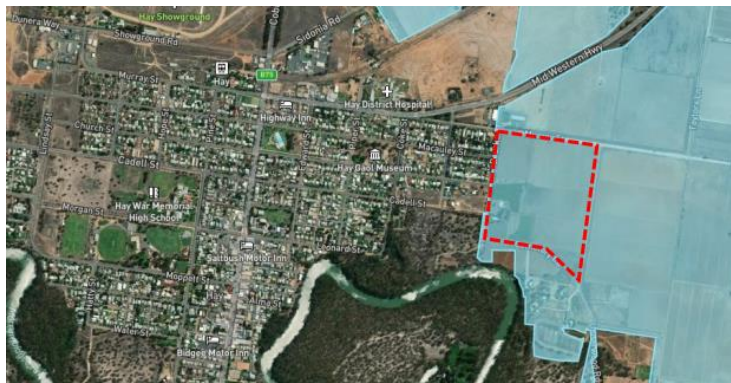
The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistency	Reasons
1.1 Implementation of Regional Plans	Consistent	As identified above the proposal is generally consistent with the relevant regional plan.

3.2 Heritage Conservation	Consistent	The proposal will not alter the existing provisions within the Hay LEP to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.
4.1 Flooding	Inconsistent, consultation required with DCCEEW	<p>The proposal affects flood affected land that is zoned RU5 and proposes an increase in density on this land. The proposal is inconsistent with this Direction.</p> <p>The proposal notes that the parts of the site affected by inundation during the 1 in 100-year API flood event is protected by a levee.</p> <p>Consultation with Department of Climate Change, Energy, Environment and Water (DCCEEW), Biodiversity and Conservation Division is required to determine consistency or justify inconsistency with this direction.</p> <p>The land proposed to be rezoned from RU1 to R2 is not flood prone.</p>  <p>Figure 8 1 in 100 year flood levee (source: Hay Structure Plan).</p>

4.3 Planning for Bushfire Protection	Inconsistent, consultation required with RFS	<p>The proposal includes land mapped bushfire prone and in accordance with this direction, consultation with the NSW Rural Fire Service is required prior to public exhibition. A condition of Gateway has been included to this affect.</p> <p>The subject site to be rezoned R2 is mainly categorised as Vegetation Buffer, being grassland, except for a small portion in the southeast that is Vegetation Category 2. The proposal has regard to the Planning for Bushfire Protection and discusses Asset Protection Zones. The subject site where it is proposed to remove the MLS is developed urban land, and is largely free of bush fire hazard, however it does contain, or is adjacent to various categories of bush fire hazard.</p>  <p>Figure 9 Bushfire Prone Land on proposed R2 site (source: Planning Proposal).</p>
4.4 Remediation of Contaminated Land	Consistent	<p>The planning proposal identifies that a Preliminary Site Investigation (PSI) (Attachment C) has been conducted and identified the site proposed to be rezoning from RU1 Primary Production to R2 Low Density Residential is potentially contaminated.</p> <p>Potential sources of contamination include persistent use of agricultural chemicals across the site, chemical storage, fuel storage tanks, rubbish, asbestos, septic systems and unknown fill sources.</p> <p>The PSI has recommended a Detailed Site Investigation (DSI) is undertaken prior to the LEP being finalised. This can be undertaken during the development application process.</p>
5.1 Integrating Land Use and Transport	Consistent	<p>The proposal would provide capacity for additional housing within and adjacent to the existing village centre. No further assessment is required in relation to this direction.</p>

6.1 Residential Zones	Consistent	<p>The proposal states it is consistent with this direction, as it supports various residential densities and housing types, to meet current and future needs. Infill housing would optimise infrastructure use and reduce urban fringe pressures. Council has confirmed that the existing infrastructure can handle the expected development and has also included a staging plan for the rezoning. The proposal minimises environmental and resource land impacts by rezoning land that is not sensitive and has minimal constraints and aligns with the Hay Structure Plan.</p>
9.1 Rural Zones 9.2 Rural Lands	<p>Justified inconsistency.</p> <p>Consultation required with DPI</p>	<p>The proposal is inconsistent with this Direction as it seeks to rezone land from a rural zone to residential. The proposal has justified this inconsistency as it is consistent with the recommendations of the Hay Structure Plan.</p> <p>The proposal has noted that the rural zone is included on the draft State Significant Agricultural Land map (Figure 9). During consultation with the Department of Primary Industries (DPI) on the draft the Hay Structure Plan, NSW DPI made no objection to the land being identified for future residential expansion. The agency comments on the draft Hay Structure Plan were not included in the planning proposal.</p> <p>Consultation with DPI forms a condition of the Gateway determination.</p>  <p>Figure 9: Draft State Significant Agricultural Land Map</p>

3.4 State environmental planning policies (SEPPs)

The proposal is consistent with the aims of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of land. The proposal has included a Preliminary Site Investigation (PSI) which indicates parts of the site may be contaminated. The PSI has recommended a detailed site investigation is conducted prior to the LEP being finalised. See Section 3.3 Ministerial Directions for further information.

The remaining SEPPs in force are either not triggered at planning proposal stage, relate to development assessment stage, or relate to specific application areas outside of the subject land.

4 Site-specific assessment

4.1 Environmental

Environmental impacts have been discussed in other sections (mainly Section 3.3) of the report in relation to flooding, bushfire and contamination. This section discusses biodiversity and heritage.

The proposal states the land to be rezoned contains limited vegetation. The site is not identified on the Natural Resource – Biodiversity map within the Hay LEP, nor on the State Vegetation map. While the site is located nearby to identified areas of biodiversity value, indirect impacts may occur and should be considered at a future development application stage.

The proposal discusses Aboriginal heritage and avoids areas closest to the Murrumbidgee River. There are no known heritage items on the site proposed to be rezoned, and it is currently used for agricultural purposes.

While there are non-Aboriginal heritage items that fall within the land zone RU5 subject to the proposed minimum lot size amendment, it is considered appropriate that this can be considered at the development application stage where each infill development would be assessed on merit and with regard to heritage items.

4.2 Social and economic

The planning proposal states that it will have positive social and economic impacts by providing opportunities for additional and varied residential and village development. There is the potential for land use conflict with future residential development as the proposal seeks to rezone land adjoining (and comprising) agricultural uses which have been identified in a Land Use Risk Conflict Assessment submitted with the proposal.

Demand and supply for housing is addressed in the Structure Plan, which states Hay currently has a residential land supply of 44 years. The proposal is estimated to increase the supply of residential land by 112 lots zoned R2 Low Density Residential equivalent to an additional 56-year supply and could yield approximately 250 additional infill lots zoned RU5 Village. The requirement for a DCP to be prepared for the residential expansion area is important to ensure development of the R2 zoned site (potential 112 lots) is guided appropriately.

The planning proposal is considered a suitable way to achieve the objective to:

“encourage and consolidate residential development within areas proximate to services, amenities, infrastructure and encourage a gentle increase in density”, the removal of the MLS “will therefore have a positive social and economic impact as it seeks to better use currently under-utilised land”.

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 11 Infrastructure assessment

Infrastructure	Assessment
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Sewer and water Infrastructure	<p>The RU5 village zone is already developed and has access to all relevant infrastructure, including connections to potable water and sewer.</p> <p>The Structure Plan states that the land to be zoned R2 Low Density Residential has access to existing services including sealed road, raw and filter water, sewerage and utilised.</p>
Roads and Transport	<p>The proposal does not assess the impact on the local and regional road network. The site is intersected by the Mid-Western Highway and Cobb Highway, connecting south towards the Sturt Highway.</p> <p>Various roads intersect the township of Hay including classified and local roads.</p> <p>As the proposal is related to land that is serviced by a classified road, consultation with Transport for NSW is required by the conditions of the Gateway.</p>
Open space	<p>The Structure Plan identifies a portion of the proposed R2 zoned land to be rezoned to RE1. The proposal states:</p> <p><i>“Whilst is acknowledged that the subject Planning Proposal does not seek approval to rezone a portion of the subject land as RE1 Public Recreation, in the absence of completing a master plan for this site, the exact location of this facility is unknown. Consequently, it is recommended that the rezoning of this land for recreational purposes be deferred until after the completion of a site-specific master plan. This will likely form part of a future Council housekeeping/LEP Review amendment.”</i></p>

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days. The exhibition period proposed is considered appropriate and forms a condition of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. It does note that the Hay Structure Plan which forms the basis for this proposal and is consistent with the proposal (except for the South Hay portion), was referred to agencies who were all supportive of the proposed land use recommendations. This included the former Department of Planning and Environment, Water NSW, Transport for NSW, NSW Department of Primary Industries Agriculture.

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

- Rural Fire Service (RFS)
- Transport for NSW
- Department of Industry – Agriculture
- Crown Lands
- Department of Climate Change Environment Energy and Water – Biodiversity and Conservation Division

6 Timeframe

Council proposes a 3 month time frame to complete the LEP. This is not considered enough time for council to undertake the planning proposal process.

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 7 July 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 local and consistent with Council's local strategy 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 Direction 9.1 Rural Zones and 9.2 Rural Lands are minor or justified and
- Note that the inconsistency 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:
 - reflect that the amendment requires the land zoning maps (digital) to be updated,
 - provide an assessment and justification of the land uses proposed to be included in the Land Use Table for R2 Low Density Residential,
 - include the intent to introduce a local clause to ensure development consent is not granted for development on the land zoned R2 Low Density Residential unless a development control plan has been prepared for the land and detail the matters to be included, and
 - reflect the new project timeline.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).

3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:

- NSW Rural Fire Service
- Transport for NSW
- NSW Department of Industry – Agriculture
- Crown Lands
- DCCEEW Biodiversity and Conservation Division

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 working days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the Act subject to the following:
- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
 - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. The LEP should be completed on or before 7 July 2025.



19/8/2024

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26/8/2024

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