



Planning Proposal – Secondary Dwellings in Certain Rural Lands

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List of Abbreviations	
Abbreviation	Term
Blueprint 100: Part 2: LSPS 2020	Tamworth Regional Blueprint 100: Part Two: Local Strategic Planning Statement 2020 adopted 26 May 2020
DPHI	Department of Planning, Housing and Infrastructure
EOI	Expression of Interest
<i>EP&A Act 1979</i>	Environmental Planning and Assessment Act 1979
FPA	Flood Planning Area
IPA	Identified Production Area
LEP	Local Environmental Plan
LGA	Local Government Area
Namoi RJP	Namoi Regional Jobs Precinct
NENW Regional Plan 2041	New England North West Regional Plan 2041
PMF	Probable Maximum Flood
RGDC	Regional Growth NSW Development Corporation
SEPP	State Environmental Planning Policy
Tamworth Tomorrow Strategy 2022-2026	Tamworth Tomorrow – Economic Development and Investment Strategy 2022-2026
TfNSW	Transport for NSW
TRDCP 2010	Tamworth Regional Development Control Plan 2010
TRLEP 2010	Tamworth Regional Local Environmental Plan 2010
TRHS 2024	Tamworth Regional Housing Strategy 2024

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Chapter 1 Introduction

Background

The Tamworth Regional Local Environmental Plan 2010 (*TRLEP 2010*) is the principal land use planning instrument for the Tamworth Regional Local Government Area (Tamworth Regional LGA). It establishes the zoning of land, minimum lot size for subdivision, permitted and prohibited land uses and other key development standards.

The *TRLEP 2010* is subject to periodic review to ensure that the planning controls remain up-to-date, support communities and promote the continued growth of the region consistent with the Vision of *Blueprint 100: Our Community Plan: 2023-2033*.

OUR VISION

“Our region will be thriving, modern and prosperous, with compassion for our people, reverence for our culture, and respect for nature.”

We will build a more resilient, inclusive community. We will protect and support our natural environment. We will celebrate our rich culture and heritage. We will expand our proud identity. We will enable prosperity by supporting businesses to grow, through better housing options, thriving town centres and productive employment areas.

We will deliver water infrastructure and security that supports the growth of our region and economic aspirations. We will attract new businesses, support educational opportunities, and make it easier to do business. We will connect our region and its citizens through a safe and efficient movement network.

And we will achieve this with openness and accountability.

Blueprint 100: Our Community Plan: 2023-2033

To guide a comprehensive review of the *TRLEP 2010*, on 26 May 2020 Council adopted the *Tamworth Regional Blueprint 100 Part Two: Local Strategic Planning Statement 2020 (Blueprint 100: Part 2: LSPS 2020)*. In addition, the NSW Department of Planning, Housing and Infrastructure (DPHI) have published the *New England North West Regional Plan 2041 (NENW Regional Plan 2041)*, which identifies specific objectives for the growth of the Tamworth Regional LGA.

Purpose of the Planning Proposal

The Planning Proposal for the Phase 1 Review of the *Tamworth Regional Local Environmental Plan 2010* (Phase 1 Planning Proposal) was undertaken in 2024. A component of the Phase 1 Planning Proposal was to amend the *TRLEP 2010* by permitting secondary dwellings in the RU1 Primary Production and RU4 Primary Production Small Lots zones to support housing diversity in rural areas in a manner that is unlikely to have a significant impact on agricultural lands or primary production.

Following agency consultation as part of the Phase 1 Planning Proposal Gateway Determination, the Department of Primary Industries – Agriculture (DPI – Ag) and NSW Environment Protection Authority (NSW EPA) raised concern in relation to the potential impact on the proposed Namoi Regional Jobs Precinct (Namoi RJP). Council officers agreed that permitting secondary dwellings in Namoi RJP would be a poor land use planning outcome as the proposed Namoi RJP lands cover some of the most appropriate land for intensive livestock agricultural production, both poultry and beef, and this area should be protected from encroachment by additional sensitive receivers. However, the opportunity for secondary dwellings in appropriate rural lands is also important as this

supports housing diversity and will enable ageing in place and succession planning on rural properties.

Therefore, it was recommended that the Phase 1 Planning Proposal be amended to only permit secondary dwellings in RU1 Primary Production and RU4 Primary Production Small Lots zoned lands outside of the proposed Namoi RJP. The amended Phase 1 Planning Proposal was adopted at the Ordinary Council meeting held on 13 August 2024. Council is now proceeding with the finalisation of the Phase 1 Planning Proposal; however, this is reliant upon public exhibition of the Namoi RJP.

The Namoi RJP material, which includes mapping for the Identified Production Areas where secondary dwelling will be excluded, was to be exhibited in August 2024 but this has since been delayed to February 2025. In addition, the Namoi RJP mapping is embargoed by the NSW Government and cannot be exposed to the public prior to public exhibition. There also remains the issue of uncertainty over the Namoi RJP process. Meaning that it may be exhibited in an unexpected form or even not exhibited at all.

This poses a significant risk to the finalisation of the Phase 1 Planning Proposal.

The recommended finalisation option is to remove the secondary dwelling component from the Phase 1 Planning Proposal to facilitate the finalisation prior to 24 February 2025. However, to maintain the option for secondary dwellings in suitable rural lands the Phase 1 Planning Proposal would not be amended until such time a Gateway Determination was issued for this draft Planning Proposal for Secondary Dwellings in Certain Rural Lands.

The Gateway Process

Irrespective of the previous process relating to Phase 1 Planning Proposal, the DPHI gateway process stages remain applicable to this Planning Proposal. The process has a number of steps outlined in **Table 1: Outline of Planning Proposal Process**¹. The preparation of this Planning Proposal is the first step in DPHI's process for amending the *TRLEP 2010*.

Table 1: Outline of Planning Proposal Process

No.	Step	Explanation
1	Planning Proposal	Council prepares a planning proposal explaining the intended effect of a proposed Local Environmental Plan (LEP) and sets out the justification for making the LEP.
2	Gateway Determination	DPHI, as a delegate of the Minister for Planning, determines whether a planning proposal should proceed. If DPHI determine that the planning proposed should proceed, a Gateway Determination is issued subject to conditions.
3	Consultation	The Planning Proposal is placed on public exhibition in accordance with the conditions of the Gateway Determination. Consultation is also undertaken with other relevant agencies.
4	Assessment	Council considers the comments from other agencies and any submissions received in response to public exhibition. At an Ordinary Meeting of Council, it will be determined whether the planning proposal should be finalised, varied or not proceed.
5	Drafting	To be finalised, Parliamentary Counsel will draft the LEP.
6	Approval	The relevant Planning Authority approves the LEP, making it law.

This draft Planning Proposal – Secondary Dwelling in Certain Rural Lands has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)* and the “*Local Environmental Plan Making Guidelines*” published by DPHI in August 2023.

This planning proposal includes the following components for each amendment to the *TRLEP 2010*:

- **Part 1** - A statement of the objectives and intended outcomes of the proposed instrument;
- **Part 2** - An explanation of the proposed provisions that are to be included in the proposed instrument;
- **Part 3** - The justification for those objectives, outcomes and the process for their implementation;
- **Part 4** - Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies; and
- **Part 5** - Details of the community consultation that is to be undertaken on the planning proposal.

Chapter 2 The Planning Proposal

Part 1: Objectives and Intended Outcomes

The **Objective** of this planning proposal is to amend the *TRLEP 2010* by permitting secondary dwellings with consent in the RU1 Primary Production and RU4 Primary Production Small Lots zones, outside of the proposed Namoi RJP.

The **Intended Outcome** of this planning proposal is to:

- Increase housing diversity in rural areas in a manner that is unlikely to have a significant impact on agricultural lands or primary production; and
- Support primary producers by providing additional options for succession planning and ‘ageing in place’.

Part 2: Explanation of Provisions

It is proposed to permit secondary dwellings with consent in RU1 Primary Production and RU4 Primary Production Small Lots zones, outside of the proposed Namoi RJP.

Due to the specific reference to the proposed Namoi RJP, this amendment would likely be enacted as an Additional Permitted Use (Schedule 1) or via a new Local Clause (Part 7) in the *TRLEP 2010*. The final method of permitting this development would be determined at the drafting stage in consultation with DPHI and Parliamentary Counsel.

It is noted, Clause 5.5 of the *TRLEP 2010* already provides controls on secondary dwellings in rural zones even though they are currently prohibited.

Part 3: Justification

Section A: Need for the planning proposal

Question 1 – Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The amendments proposed within this Planning Proposal will support the Themes of *Blueprint 100: Part 2: LSPS 2020*.

The *Tamworth Regional Housing Strategy 2024 (TRHS 2024)* identifies the permissibility of secondary dwellings in RU1 and RU4 zones should be investigated (Action 2.5) as an option for the provision of housing diversity in the region.

Question 2 – Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is the only means of amending the permissibility of land uses within a land use zone. The current LEP provisions do not permit secondary dwellings in the RU1 Primary Production and RU4 Primary Production Small Lots zones.

Section B: Relationship to the Strategic Planning Framework

Question 3 – Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal gives effect to the following directions contained within the *New England North West Regional Plan 2041 (NENW Regional Plan 2041)*:

Objective 13: Provide well located housing options to meet demand

The *NENW Regional Plan 2041* is projected to see an increase in older age groups. The *NENW Regional Plan 2041* recognises that older people should have the ability to be comfortably housed as they age, including the option to remain in their home. Permitting secondary dwellings in the RU1 Primary Production and RU4 Primary Production Small Lots zones will enable ageing in place and succession planning on rural properties.

Strategy 13.2 of the Regional Plan is to “ensure local plans encourage and facilitate a range of housing options in well located areas to accommodate the projected household change”. Of note, is the need to provide “options”. It is acknowledged that housing in urban centres is a suitable option due to proximity to services. However, an equally suitable alternative is the provision of secondary dwellings on rural land which enables people to retain family, community and cultural connections. The rural areas of the Tamworth Regional LGA are also well serviced by rural communities, such as Barraba and Nundle.

Question 4 – Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?

Blueprint 100: Part 2: Local Strategic Planning Strategy 2020

The Planning Proposal is consistent with the Themes of *Blueprint 100: Part 2: LSPS 2020* to facilitate smart growth and housing choices, create a prosperous region and build resilient communities.

Primary industry will be supported through secondary dwellings that support ageing in place and succession planning (Action RC2). Rural land use conflicts are minimised through the exclusion of secondary dwellings from the proposed Namoi RJP and application of Clauses 5.5 and 5.16 of the *TRLEP 2010* to secondary dwellings outside of this precinct.

Tamworth Regional Housing Strategy 2024

The TRHS 2024 was endorsed by the DPHI on 26 September 2024. Action 2.5 of the TRHS 2024 is to:

Investigate the potential of permitting secondary dwellings in zones RU1 Primary Production and RU4 Primary Production Small Lots, outside of the Namoi Regional Jobs Precinct, to enable additional rural housing and ageing in place.

The Planning Proposal is consistent with the TRHS 2024.

Question 5 – Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Standard Instrument (Local Environmental Plans) Amendment (Secondary Dwellings) Order 2020

Between 29 July 2020 and 9 September 2020, the Department of Planning exhibited an Explanation of Intended Effect (EIE) for a proposed new Housing Diversity State Environmental Planning Policy. The EIE stated that “Councils can, if they choose to, permit secondary dwellings in rural zones under their local environmental plans”.

The EIE also proposed to provide Council’s the discretion to set a maximum size for secondary dwellings in rural zones. This discretion was formalised by the introduction of a new Clause 5.5 into the *Standard Instrument—Principal Local Environmental Plan (2006 EPI 155a)* on 1 February 2021 (published 18 December 2020).

It is considered that this Planning Proposal is consistent with the strategic recognition by the State Government, that secondary dwellings on rural land, can be an acceptable form of housing diversity.

The NSW Housing Strategy 2041

The planning proposal gives effect and is consistent with the NSW Housing Strategy 2041 which sets the long-term vision for housing in NSW. Consistent with the NSW Housing Strategy 2041, the planning proposal supports housing diversity which enables the changing and varied needs of the rural communities to be met.

Question 6 – Is the planning proposal consistent with applicable SEPPs?

The Planning Proposal is consistent with all applicable SEPPs.

Question 7 – Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?

This Chapter is considered consistent with all applicable Ministerial Directions and justifiably inconsistent with Ministerial Directions, ‘3.2 Heritage Conservation’, ‘4.1 Flooding’, ‘4.3 Planning for Bush Fire Protection’, ‘5.3 Development Near Regulated Airports and Defence Airfields’, ‘Direction 5.4 Shooting Ranges’ and ‘Direction 9.2 Rural Lands’, which are discussed below in **Table 2**.

Table 2: Ministerial Directions

Ministerial Direction	Discussion
3.2 Heritage Conservation	This direction requires that a planning proposal must contain provisions that facilitate the conservation of heritage and Aboriginal cultural significance. The inconsistency is considered to be of minor significance as the planning proposal does not alter the existing conservation measures of heritage and Aboriginal cultural significance of the area in which this proposal apply. Therefore, it is considered this Ministerial Direction is justifiably inconsistent.
4.1 Flooding	This direction applies to a planning proposal that alters a provision that affects flood prone land. Based on the extent of rural zones, it is considered likely that some land may be subject to both the Flood Planning Level (FPL) and Probable Maximum Flood (PMF). In this instance, it is considered that the inconsistency of this chapter is of minor significance as:

	<ul style="list-style-type: none"> • Other forms or residential accommodation and tourist and visitor accommodation are already permitted in rural zones; and • Secondary dwellings would be subject to the merit-based development assessment process which would consider clause 5.21 of <i>TRLEP 2010</i>. <p>Therefore, it is considered this Ministerial Direction is justifiably inconsistent.</p>
4.3 Planning for Bushfire Protection	<p>Given the intent to permit secondary dwellings in rural zones outside of the proposed Namoi RJP, rather than specific sites, it is not feasible to undertake an assessment against <i>Planning for Bush Fire Protection 2019</i> as part of this Planning Proposal. Rather, bush fire assessments would be undertaken as part of merit-based Development Application process.</p> <p>It is noted that secondary dwellings are not “special fire protection purposes” under Section 100B of the <i>Rural Fires Act 1997</i>.</p> <p>Consistent with this Ministerial Direction, following receipt of Gateway Determination consultation will be undertaken with the Commissioner of the NSW Rural Fire Service. The Planning Secretary (or an officer of the Department nominated by the Secretary) may support inconsistency with this Ministerial Directions if the NSW Rural Fire Service does not object to the progression of the planning proposal.</p> <p>Therefore, it is considered this Ministerial Direction is justifiably inconsistent.</p>
5.3 Development Near Regulated Airports and Defence Airfields	<p>This direction applies as the planning proposal seeks to permit with consent, secondary dwellings, in rural zones. The Tamworth Regional Airport, which is a regulated airport, is located adjacent to RU1 Primary Production and RU4 Primary Production Small Lot zones.</p> <p>In this instance, it is considered that the inconsistency of this chapter is justifiable in consideration of;</p> <ul style="list-style-type: none"> • Other forms or residential accommodation and tourist and visitor accommodation are already permitted in rural zones; • Secondary dwellings would be subject to clauses 7.6 and 7.7 of the <i>TRLEP 2010</i> which specify development standards to protect the ongoing operation of the airport; • Secondary dwellings would be subject to clause 5.5 of the <i>TRLEP 2010</i> which restricts the size and placement of secondary dwellings in rural zones; and • Secondary dwellings would be subject to clause 5.16 of the <i>TRLEP 2010</i> which requires consideration of existing and preferred land use conflicts in the vicinity of the secondary dwelling. <p>Therefore, it is considered this Ministerial Direction is justifiably inconsistent.</p>
5.4 Shooting Ranges	<p>This direction applies as the planning proposal seeks to permit with consent, secondary dwellings in rural zones, which may include land adjacent or adjoining shooting ranges. This is considered minor significant in consideration of:</p>

	<ul style="list-style-type: none"> • The planning proposal does not seek to rezone land adjacent to or adjoining an existing shooting range; • Other forms of residential accommodation and tourist and visitor accommodation are already permitted in rural zones; • Secondary dwellings would be subject to clause 5.16 of the <i>TRLEP 2010</i> which requires consideration of existing and preferred land use conflicts in the vicinity of the development; and • Secondary dwellings would be subject to clause 5.5 of the <i>TRLEP 2010</i> which restricts the size and placement of secondary dwellings in rural zones. <p>Therefore, it is considered this Ministerial Direction is justifiably inconsistent.</p>
9.2 Rural Lands	<p>This direction applies as the planning proposal seeks to amend a planning provision of land in a rural zone. This inconsistency is considered to be of minor significance as the planning proposal broadly aligns with strategic plans which include delivering a variety of dwelling types and levels of affordability, including for temporary workers, supporting agritourism and encouraging opportunities for innovation in agribusiness to support the agricultural industry. This is consistent with <i>Blueprint 100: Part 2: LSPS and NENW Regional Plan 2041</i>.</p> <p>Furthermore, other forms of residential accommodation and tourist and visitor accommodation are already permitted in rural zones, and secondary dwellings will be controlled by the provisions in clause 5.5 and clause 5.16 of the <i>TRLEP 2010</i>. Therefore, it is not considered likely to increase the potential for rural land use conflict, fragmentation or impair a farmer's 'right to farm'.</p> <p>Therefore, it is considered this Ministerial Direction is justifiably inconsistent.</p>

Section C: Environmental, social and economic impact

Question 8 – Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The planning proposal is not considered to adversely impact critical habitat or threatened species, populations or ecological communities, or their habitats.

The secondary dwellings proposed to be permitted by this planning proposal are subject to the merit-based development assessment process, which amongst other matters will consider biodiversity impacts in accordance with the *Biodiversity Conservation Act 2016*.

Question 9 – Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

The primary environmental effect to be considered as part of this planning proposal is potential land use conflict associated with secondary dwellings in a rural area.

As part of the Phase 1 Planning Proposal and the *TRHS 2024*, feedback from government agencies highlighted the need to carefully consider potential land use conflicts arising from secondary dwellings in rural areas.

Land use conflicts occur when one land user is perceived to infringe upon the rights, values or amenity of another. In rural areas, land use conflicts commonly occur between agricultural and residential uses. Agricultural practices can have impacts on residential neighbours ranging from noise, light, dust and other impacts. This can result in complaints to Council or other agencies, which places pressure on agricultural enterprises to change their operation or relocate. In addition, residential uses in rural areas can have direct impacts on farming operations, such as poor management of pests and weeds.

Firstly, it must be recognised that the potential for land use conflict already exists in the RU1 Primary Production and RU4 Primary Production Small Lot zones under the *TRLEP 2010*. Residential accommodation comprising dwelling-houses, attached dual occupancies (2 dwellings on one lot) and rural worker's dwelling, are already permitted in the RU1 Primary Production and RU4 Primary Production Small Lot zones, including on land subject to the proposed Namoi RJP. In addition to 'residential accommodation' other forms of tourist and visitor accommodation are permitted in rural areas as supported by the Agritourism reforms introduced by the NSW Government in 2022. Although not residential by definition, agritourism has a similar land use conflict and can result in similar impacts.

Secondly, the definition of a secondary dwelling under the *TRLEP 2010* requires that it can only be undertaken in conjunction with another dwelling (the principal dwelling). Therefore, a secondary dwelling does not introduce a new residential land use into a rural area. Rather, the residential land use already exists (the principal dwelling) and the secondary dwelling is a small-scale intensification.

The potential risk of land use conflict resulting from this small-scale intensification to an established residential land use in a rural area is further reduced through:

- Excluding secondary dwellings from the proposed Namoi RJP, an Identified Production Area for intensive livestock agriculture: *Note: At this stage, other forms of residential accommodation (e.g., dwelling-houses, dual occupancies (attached) are likely to remain permissible within the proposed Namoi RJP;*
- The application of Clause 5.5 of the *TRLEP 2010*, which limits the maximum size of a Secondary Dwelling and its distance from the principal dwelling; and
- The application of Clause 5.16 of the *TRLEP 2010*, which requires consideration of existing and preferred land uses adjoining development and their compatibility with a dwelling. This clause provides the legislative framework to prevent inappropriate secondary dwellings, regardless of permissibility or compliance with Clause 5.5 of the *TRLEP 2010*.

In summary, permitting secondary dwellings with consent in the RU1 Primary production and RU4 Primary Production Small Lots zone is not considered to significantly exacerbate potential rural land use conflict.

Other site-specific environmental effects associated with secondary dwellings are best considered as part of the merit-based development assessment process in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

Question 10 – Has the planning proposal adequately addressed any social and economic effects?

The additional permitted use of secondary dwellings is considered to stimulate economic growth in rural areas and provide positive social outcomes to support rural communities.

Section D: Infrastructure (Local, State and Commonwealth)

Question 11 – Is there adequate public infrastructure for the planning proposal?

Typically, reticulated water and sewer services will not be available in the RU1 Primary Production and RU4 Primary Production Small Lot zones. It is not expected new or additional local or state infrastructure will be required as a result of this planning proposal.

However, the secondary dwellings proposed to be permitted by this planning proposal are subject to the merit-based development assessment process, which amongst other matters will consider infrastructure requirements.

Section E: State and Commonwealth Interests

Question 12 – What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Considerable consultation was undertaken with Government agencies in connection with the Phase 1 Planning Proposal and the *TRHS 2024*. A common theme was the concern relating to a potential increase in sensitive receivers (secondary dwellings) in rural zones and, in particular, within the proposed Namoi RJP.

Council officers agreed that permitting secondary dwellings in the proposed Namoi RJP would be a poor land use planning outcome as the proposed Namoi RJP lands cover some of the most appropriate land for intensive livestock agricultural production, both poultry and beef, and this area should be protected from encroachment by additional sensitive receivers.

However, as discussed within this planning proposal, the opportunity for secondary dwellings in appropriate rural lands is also important as this supports housing diversity and will enable ageing-in-place and succession planning on rural properties.

It is anticipated, further consultation with the public authorities will be undertaken in accordance with the Gateway Determination for this planning proposal.

Part 4: Mapping

A map of the proposed Namoi RJP will be required. The planning proposal will be updated prior to public exhibition to include this map.

Part 5 Community and Agency Consultation

Community Consultation will be undertaken in accordance with the requirements of the Gateway Determination. It is anticipated that this would include:

- Publish this planning proposal on the Tamworth Regional Council website and NSW Planning Portal;
- Notice in:
 - Northern Daily Leader;
 - Nundle and Barraba Community News; and
 - Community and school newsletters (subject to agreement);
- Notices on Council's social media; and
- Meetings by appointment with Council officers.

Subject to a Gateway Determination, the agencies in **Table 3** are proposed to be consulted in relation to the planning proposal. It is noted that the additional agencies may be identified as part of the Gateway Determination.

Table 3: Agencies proposed to be consulted

Agencies to be Consulted
Heritage NSW
Transport for NSW
DPI Agriculture
Airservices Australia
Civil Aviation Safety Authority
NSW Rural Fire Service
Tamworth Local Aboriginal Land Council
Nungaroo Local Aboriginal Land Council
NSW Biodiversity and Conservation Division
NSW Environment Protection Authority

Chapter 3 Project Timeline

The anticipated timeframe to undertake Phase 1 of the comprehensive review of the *TRLEP 2010* is shown in **Table 4: Project Timeline**.

Table 4: Project Timeline

Plan Making Step	Estimated Completion
Anticipated date of Gateway Determination	13 December 2024
Completion of required technical information	24 February 2025
Government agency consultation as required by Gateway Determination	7 April 2025
Public exhibition period	11 March 2025 – 10 April 2025
Review of submissions, agency comments and any further amendments to the planning proposal	2 June 2025
Post-exhibition report to Council	22 July 2025
Finalisation of the Planning Proposal	12 September 2025