



Gateway determination report – PP-2024-68

Additional Permitted Uses (Stage 1) - Bayswater
Power Station

April 24



Published by NSW Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au

Title: Gateway determination report – PP number

Subtitle: Additional Permitted Uses (Stage 1) - Bayswater Power Station

© State of New South Wales through Department of Planning, Housing and Infrastructure 2024. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Housing and Infrastructure as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 24) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Housing and Infrastructure), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

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.

Contents

- 1 Planning Proposal 1**
 - 1.1 Overview and objectives of planning proposal 1
 - 1.2 Explanation of provisions 1
 - 1.3 Site description and surrounding area..... 2
 - 1.4 Mapping..... 6
- 2 Need for the planning proposal 6**
- 3 Strategic assessment 7**
 - 3.1 Regional Plan 7
 - 3.2 District Plan [If relevant] **Error! Bookmark not defined.**
 - 3.3 Local 7
 - 3.4 Local planning panel (LPP) recommendation **Error! Bookmark not defined.**
 - 3.5 Section 9.1 Ministerial Directions 7
 - 3.6 State environmental planning policies (SEPPs) 8
- 4 Site-specific assessment 8**
 - 4.1 Environmental..... 8
 - 4.2 Social and economic..... 8
 - 4.3 Infrastructure..... 9
- 5 Consultation..... 9**
 - 5.1 Community..... 9
 - 5.2 Agencies..... 9
- 6 Timeframe..... 9**
- 7 Local plan-making authority Error! Bookmark not defined.**
- 8 Assessment Summary..... Error! Bookmark not defined.**
- 9 Recommendation..... 9**

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Council Resolution – Prepare Planning Proposal - 20240227
PP 2024-24 – Bayswater (Stage 1) – Report to Council - 20240227
Planning Proposal – New England Highway Muswellbrook – Bayswater (Stage 1) – PP-2024-24
1264330 – REP – 0 _ Planning proposal Nurock only

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Muswellbrook Shire Council
PPA	Muswellbrook Shire Council
NAME	Additional Permitted Uses - Bayswater Power Station (50 Jobs)
NUMBER	PP 2024-24
LEP TO BE AMENDED	Muswellbrook Local Environmental Plan 2009
ADDRESS	New England Highway, Muswellbrook
DESCRIPTION	Part of Lot 1 DP 574168
RECEIVED	11/04/2024
FILE NO.	IRF24/812
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

1.2 Objectives of planning proposal

The objective of the proposal is to facilitate the ongoing transition of the existing AGL Power Station to allow for a broader range of employment activities and to make use of the available infrastructure.

The current proposal seeks to facilitate an additional permitted use for brick making from ash by-product from the power station on part of Lot 1 DP 574168. An estimated 50 jobs will be created.

The planning proposal contains objectives that adequately explain the proposal.

1.3 Explanation of provisions

The planning proposal seeks to amend the Muswellbrook Local Environmental Plan (LEP) 2009 through the inclusion of a new local provision and a key site map to achieve the stated objectives.

The new local provision seeks to permit with consent on the subject site the following uses:

- Environmental protection works
- Industries
- Public Utility Undertaking
- Public Utility Infrastructure

- Roads
- Sewage reticulation systems
- Sewage treatment plants
- Water supply systems

The inclusion of industries in a local provision is considered appropriate as it is not suitable to permit it across the entire SP2 Zone or to undertake a rezoning of a small area within the broader AGL site. The inclusion of the other proposed uses in the local provision is not supported as:

- public utility undertaking and public utility infrastructure are land use definitions that are unable to be included in a land use table in accordance with the SI LEP template drafting directions and can't be regulated through a local provision;
- sewage reticulation, sewage treatment plants and water supply systems (except for the sub term of water storage facility) are already permitted with consent under the SEPP (Transport & Infrastructure) 2021 on the site; and
- environmental protection works and roads are land uses that can be appropriately included within the SP2 Zone land use table and apply across the entire zone.

It is recommended that prior to consultation that the proposal be amended in accordance with the above to remove the identified uses from the local provision and include only environmental protection works, roads and water storage facilities in the SP2 Zone table.

These changes have been discussed with Council and no objection was raised.

1.4 Site description and surrounding area

The site is known as part of Lot 1 DP 574168, New England Highway, Muswellbrook. The area of the subject site is approximately 27 996m². The site is located within a highly disturbed landscape that does not possess any significant intact native vegetation.

The land is currently zoned SP2 Infrastructure and is located within the Bayswater and Liddell coal fired power station. This power station is currently being used for ancillary activities including the Bayswater Ash Dam, Coal Stockpile areas, coal conveyancing, electricity switching yards and electricity transmission lines.



Figure 1 Subject site (source: Planning Proposal)

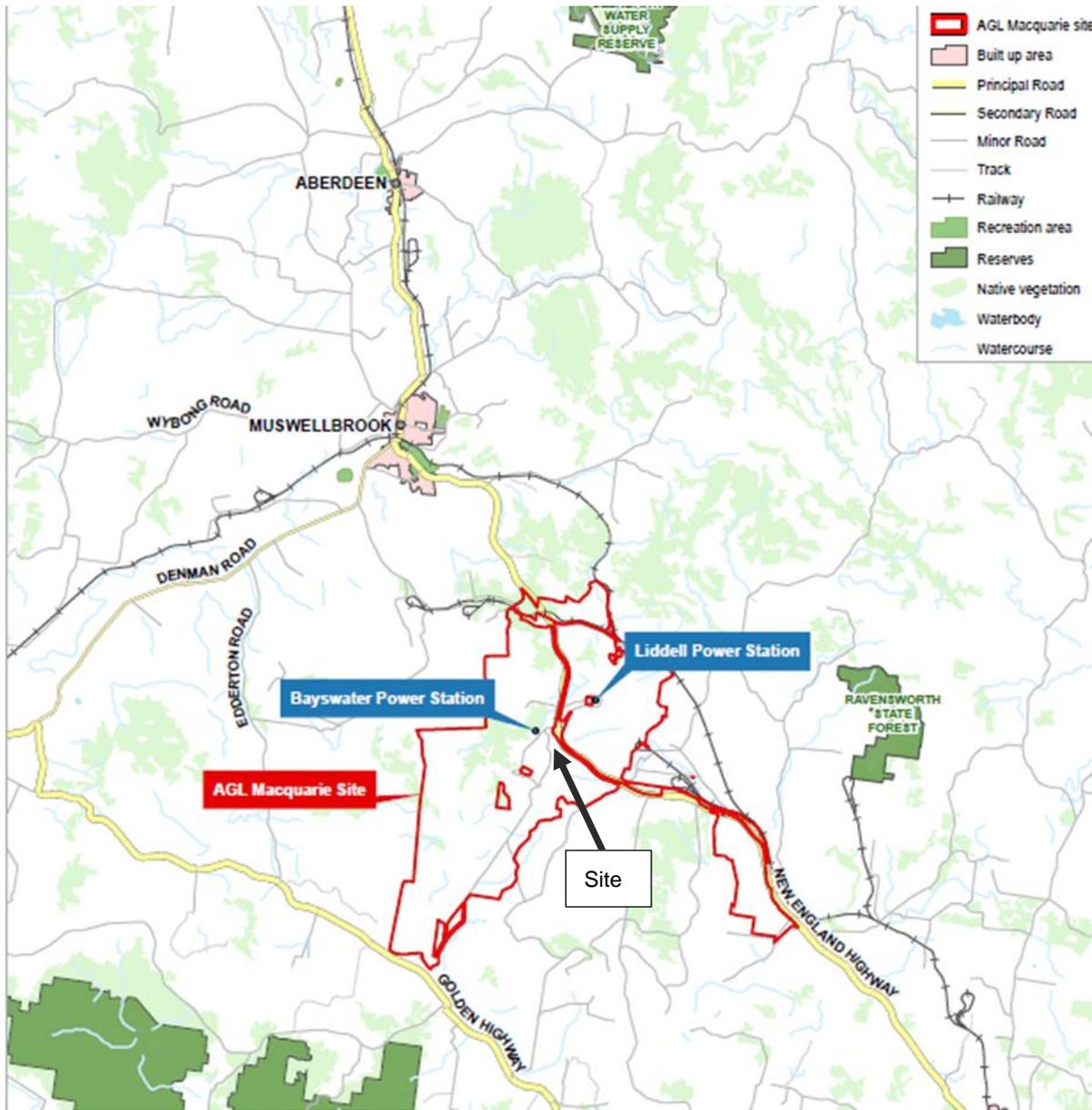


Figure 2 Site context – Bayswater and Liddell Power Station (Source: Planning Proposal)

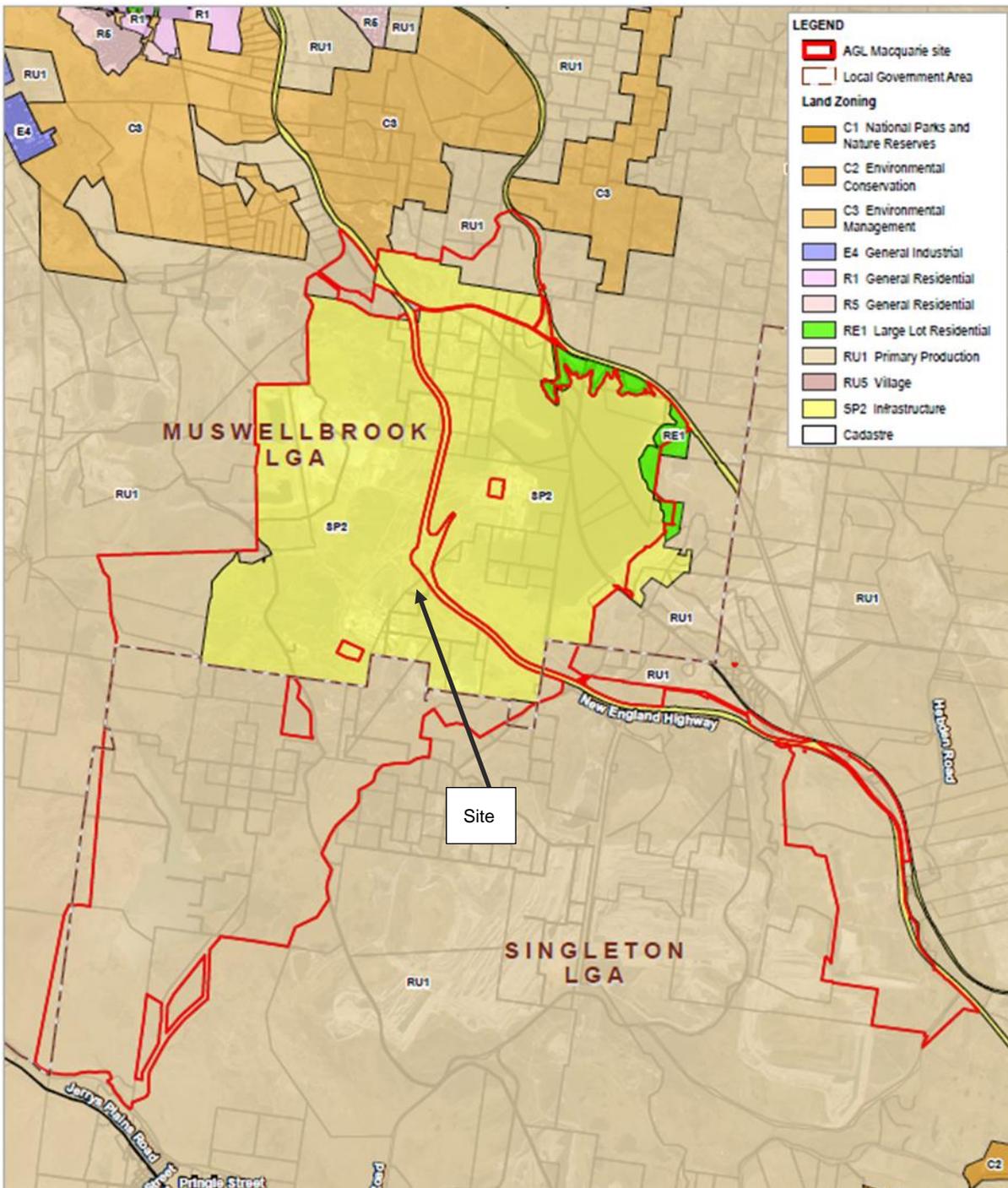


Figure 3: Muswellbrook LEP 2009 - Land Zoning Map Sheet (LZN-009)

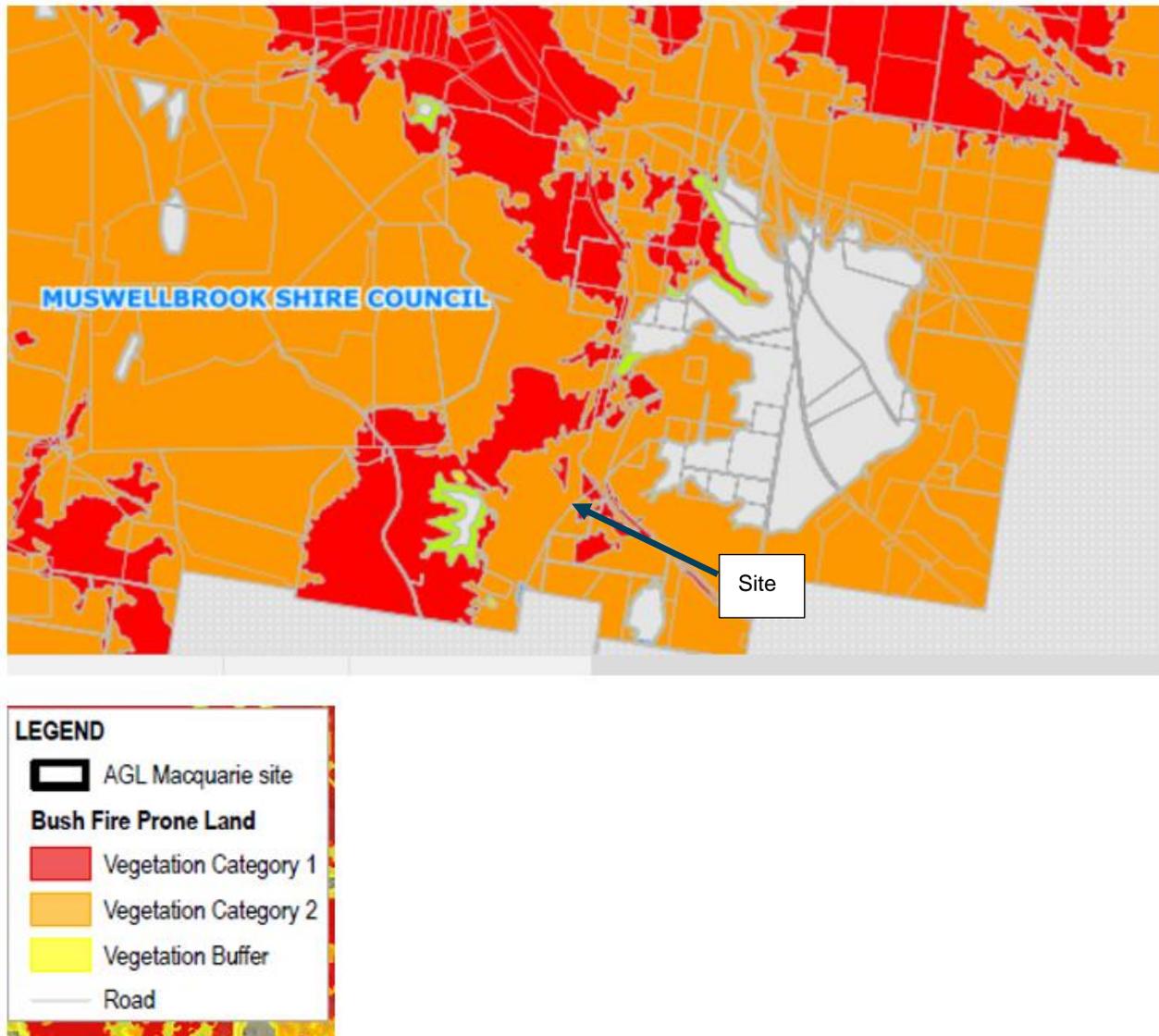


Figure 4: Bushfire Mapping (Source: e-spatial viewer)

1.5 Mapping

The planning proposal does not include mapping showing the proposed changes to the Key Sites maps. It is recommended that this be included prior to consultation.

2 Need for the planning proposal.

The planning proposal is not the result of a strategic study or report.

The proposal is the best means of achieving the objectives and intended outcomes to enable an industry (brick making) to reuse the ash by-products from the power station located on the site.

Alternative options other a local provision have been considered by Council and were determined not appropriate.

As discussed above, while the local provision to permit 'industries' is supported, the other proposed uses are recommended either to be removed or be more appropriately located in the SP2 zone land use table.

3 Strategic assessment

3.1 Regional Plan

The Hunter Regional Plan 2041 acknowledges the importance of planning for alternative land uses for former mine and power station sites. The planning proposal is consistent with the plan including the objectives to diversify the Hunter’s mining, energy and industrial capacity and to plan for other employment generating opportunities and activities in the Liddell and Bayswater power station and the surrounding regional significant growth area.

3.2 Local

The proposal is consistent with the following local plans and endorsed strategies.

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The Planning Proposal is consistent to Planning Priorities 1-3 in the Muswellbrook Local Strategic Planning Statement 2020 (LSPS).
Muswellbrook Shire Council Community Strategic Plan 2022-2032	The Planning Proposal is consistent with the Muswellbrook Council Community Strategic Plan.

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered consistent with relevant section 9.1 Directions except as discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justified	The proposal is inconsistent with this direction as it could permit an intensification of development on the site and is not supported by a flood study. This inconsistency is considered to be of minor significance as Council has confirmed that the site is not identified as being flood prone, the existing developed nature of the site, the low sensitivity of the proposed industrial use and as flood issues can be considered at the DA stage and in accordance with Council’s DCP if needed.
4.3 Planning for Bushfire Protection	Unresolved	The proposal is potentially inconsistent with this direction as it is located on bushfire prone land. The potential inconsistency is unable to be resolved until after consultation with the NSW RFS has been undertaken in accordance with the terms of the direction.

4.4 Remediation of Contaminated Land	Unresolved	<p>The proposal is potentially inconsistent with this direction as the site is located on land that has been used for power station uses (which is referred to in Table 1 to the contaminated land planning guidelines) and is not supported by a preliminary site investigation confirming the site is suitable for the proposed future land uses.</p> <p>It is recommended that this direction remain unresolved until a preliminary site investigation is completed to confirm that site is suitable for the proposed future uses and consultation is undertaken with the NSW EPA.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Unresolved	<p>The proposal is inconsistent with this direction as it will permit an additional use that once established could restrict the potential development of coal resources.</p> <p>Consultation with NSW Mining, Exploration and Geoscience is recommended to confirm the suitability of the proposal prior to determining the consistency of this direction.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

The site is not located on conservation land or land that is identified as having high biodiversity value. The site is in a highly disturbed landscape and no significant impacts to ecological or environmental value in considered likely.

4.2 Social and economic

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

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Traffic and Transport	<p>The proposal will have a positive economic impact with 50 additional jobs.</p> <p>No adverse traffic impact is considered likely noting the traffic generation of the previous land uses on the site that have now declined and as the site is connected to the surrounding road network via a purpose-built access road and grade-separated interchange to and from the New England Highway. Consultation with Transport for NSW is however recommended.</p>

4.3 Infrastructure

No additional infrastructure (including sewerage and reticulated water) is necessary or required to service the site.

5 Consultation

5.1 Community

Council proposes a community consultation period of 14 days.

The planning proposal is categorised as a standard under the LEP Making Guidelines (September 2022). 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

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

- NSW Rural Fire Service
- NSW EPA
- NSW Mining, Exploration and Geoscience
- Transport for NSW

6 Timeframe

Council proposes a 8 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

An LEP completion date of 8 months is in line with the benchmark timeframes and the Department's commitment to reducing processing times. A condition to the above effect is recommended in the Gateway determination.

7 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 4.1 Flooding is minor and justified; and
- Note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection, 4.4 Remediation of Contaminated Land and 8.1 Mining, Petroleum Production and Extractive Industries 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. Prior to agency and community consultation, the proposal is to be amended to:
 - remove Environmental protection works; Public Utility Undertaking; Public Utility Infrastructure; Roads; Sewage reticulation systems; Sewage treatment plants; Water supply systems from the proposed local provision;

- include Environmental protection works; Roads; and Water storage facilities in the SP2 Land Use Table with consent;
 - include a Key Sites Map; and
 - include a preliminary site investigation for potential contamination to confirm the suitability of the site for its intended future use.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - NSW EPA
 - NSW Mining, Exploration and Geoscience
 - Transport for NSW
 3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
 4. The timeframe for the LEP to be completed is on or before 8 months of the Gateway determination date.



30/4/24

_____ (Signature)

_____ (Date)

Craig Diss

Manager, Local & Regional Planning



30/4/24

_____ (Signature)

_____ (Date)

Jeremy Gray

Director, Northern and Hunter Region

Assessment officer

Rachel Murray

Planning Officer, Local & Regional Planning

4927 3191