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Attachments:	{attachment-list-do-not-remove}
Responsible Officer:	Sharon Pope - Director - Planning & Environment
Author:	{authors-names-with-position}
Community Plan Issue:	1 - <i>Economic Prosperity</i>
Community Plan Goal:	<i>A dynamic local economy with full employment for current and future residents in a diverse range of high value industries.</i>
Community Plan Strategy:	<p>1.2.3 - Review the Local Environmental Plan and Development Control Plan to improve investment certainty for industry.</p> <p>1.1.1.2 - Progress the Place - Delivery Group framework, identified in the Hunter Region Plan 2041, for transition of the Liddell Power Station and Muswellbrook Coal Mine sites.</p>

PURPOSE

Council has received a request to amend Muswellbrook Local Environmental Plan 2009 (MLEP 2009) to permit additional uses on part of the site of the former Liddell Power Station and part of the site of the current Bayswater Power Station (see Attachment A). The intent of the change is to allow industry and compatible infrastructure in three discrete locations, in addition to the Stage 1 Planning Proposal already considered for a site near the Bayswater Ash Dam.

The amendment will enable compatible additional uses to occur and will support the ongoing clean energy transition and an integrated industrial energy hub as identified in the Hunter Regional Plan 2041.

The purpose of this report is to obtain Council's support to refer the request to the Department of Planning, Housing, and Infrastructure (DPHI) for a Gateway Determination.

OFFICER'S RECOMMENDATION

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Council RESOLVES to:

1. Prepare a Planning Proposal, pursuant to Section 3.33 of the Environmental Planning and Assessment Act 1979, for an amendment to the Muswellbrook Local Environmental Plan 2009 (MLEP 2009) to allow additional permitted uses on part Lot 601 DP1019325, part Lot 2 DP1095515, part Lot 34 DP 752486 and part Lot 145 DP 752486 as outlined in Attachment A;

2. Request a Gateway Determination from the Department of Planning and Environment, and exhibit the proposal in accordance with that determination, pursuant to Sections 3.34-3.35 of the Environmental Planning and Assessment Act 1979; and
3. Request that the Director General of the Department of Planning and Environment issues a Written Authorisation to Council to exercise delegation of the plan making functions under Section 3.36 of the Environmental Planning and Assessment Act 1979 in respect of the planning proposal.

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Moved: _____ **Seconded:** _____

BACKGROUND

AGL Macquarie Pty Limited (AGL) owns approximately 10,000 hectares of land surrounding the Bayswater Power Station (PS) and the former Liddell Power Station (PS).

The Liddell PS was initially constructed by the NSW Government owned State Electricity Commission and operated from the early 1970s until its closure in April 2023. AGL has recently applied for state significant development consent under the Environmental Planning and Assessment Act 1979 (EP&A Act) to demolish the former Liddell PS and ancillary structures. On completion of the demolition works, the Liddell PS site will be rehabilitated in line with regulatory requirements.

Bayswater PS was initially constructed by the NSW Government owned State Electricity Commission and has remained in operation since being commissioned between 1985 and 1986. Electricity generation in Australia is undergoing a significant transition towards more distributed, intermittent generation sources. Bayswater PS is scheduled to cease generating between 2030 and 2033.

The AGL site could provide for employment generating development to offset employment loss anticipated due to closure of the power stations and local mining operations.

CONSULTATION

The first step in the assessment of the request to amend MLEP 2009, is to seek a Gateway Determination from the DPHI. The Gateway Determination will outline the required community and Agency consultation.

If a Gateway Determination is declined the request would proceed no further.

REPORT

The intention of the requested change to MLEP 2009 is to permit compatible additional uses to support the ongoing clean energy transition and support an integrated industrial energy hub.

Compatible uses that have been identified by the Applicant include:

- Energy generation and storage.
- Manufacturing of renewable energy components (i.e., solar panels).
- Recycling of renewable energy components (i.e., material recycling facilities for solar panels and/or lithium batteries).
- Manufacture of building materials using materials sourced from on-site such as coal ash from power station activities.
- Agricultural produce industry to support ongoing agricultural land uses in the region as coal fired power stations and mines progressively close.

- Ancillary activities and services to support the needs of businesses and workers.

Agricultural produce industry is defined by the MLEP 2009 as a building or place used for the handling, treating, processing, or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables, or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

The Liddell and Bayswater Power Station sites are zoned SP2 - Infrastructure (Power Station). The zone objectives and Land Use Table are reproduced below:

Zone SP2 Infrastructure

1 Objectives of zone

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To recognise existing railway land and to enable future development for railway and associated purposes.*
- *To prohibit advertising hoardings on railway land.*
- *To recognise major roads and to enable future development and expansion of major road networks and associated purposes.*
- *To recognise existing land and to enable future development for utility undertakings and associated purposes.*

2 Permitted without consent

Nil.

3 Permitted with consent

Aquaculture; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose; Roads.

4 Prohibited

Any development not specified in item 2 or 3.

MLEP 2009 Amendment

The requested change to MLEP 2009 seeks to make the additional uses permissible with consent in the SP2 zone via the inclusion of an additional Local Provision, and the creation of a new key sites map, on 3 sites totalling 105.24 hectares of AGL's landholdings, as shown in Figure 1.1 below.

The new site-specific provision proposed is as follows:

7.11 Development on land associated with part Lot 601 DP1019325, part Lot 2 DP1095515, part Lot 34 DP 752486 and part Lot 145 DP 752486

(1) The objectives of this clause are as follows:

- (a) to facilitate the ongoing transition of existing Power Station Sites from coal fired power station operations to a broader range of employment generation activities which support the renewable energy transition.*
- (b) to facilitate development that is compatible with or related to the special characteristics of the site and recognises the site constraints and the available infrastructure.*

(2) This clause applies to land identified as part of Lot 601 DP1019325, and part of Lot 2 DP1095515 on the Key Sites Map.

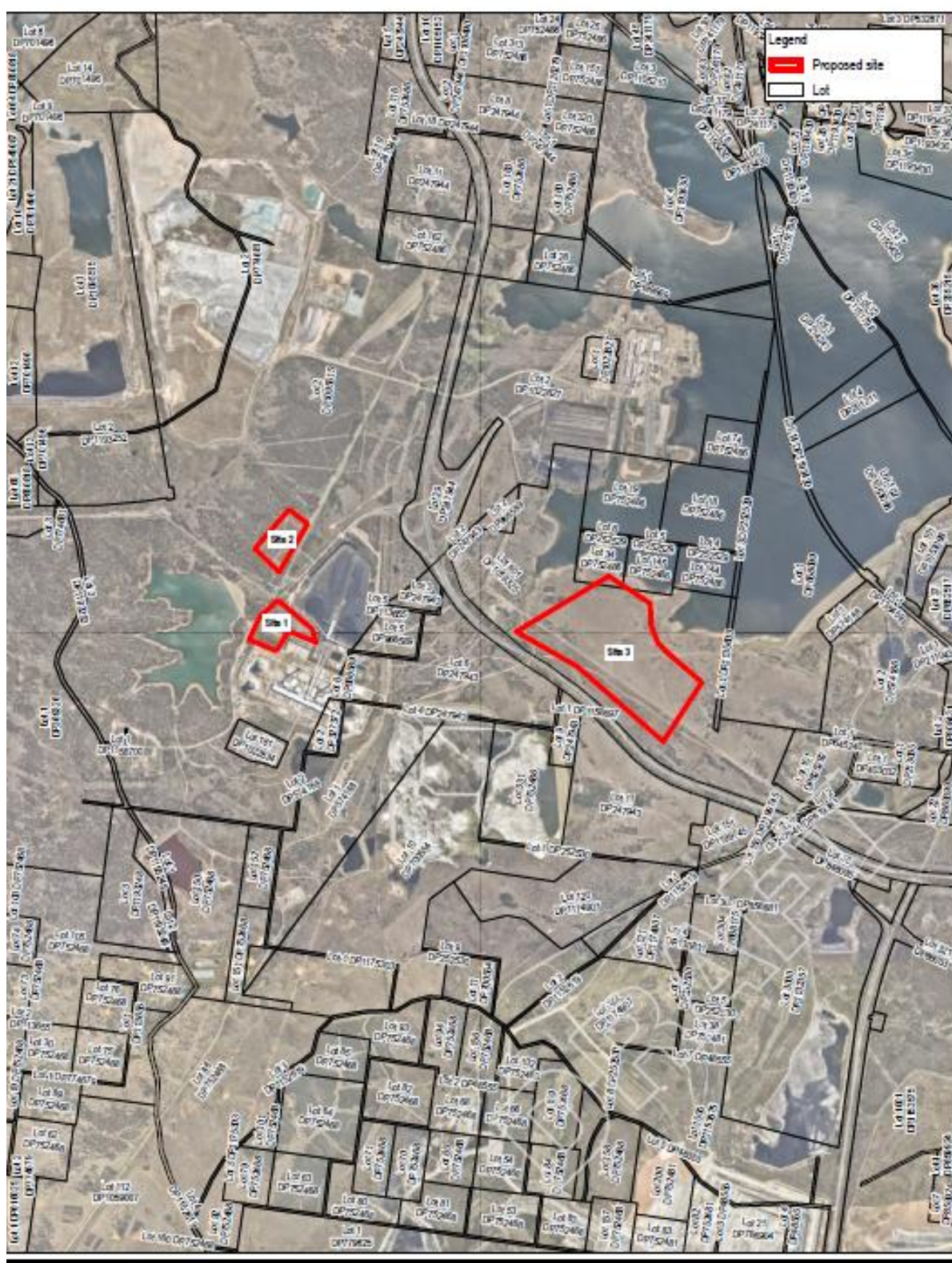
(3) Despite clause 2.3, development consent may be granted to development for the purpose of:

Environmental protection works; Industries; Public Utility Undertaking; Public Utility Infrastructure; Roads; Rural Industry; Sewage reticulation systems; Sewage treatment plants; Water supply systems

(4) Development consent must not be granted to development on land referred to in subclause (2) unless the consent authority is satisfied that:

(a) there are no significant land use conflicts between the proposed development and the land uses conducted on the adjoining parts of the site; and

(b) the uses are compatible with or otherwise relate to the special characteristics of the site.



Paper Size ISO A4
0 250 500 750 1,000
Millimetres

Map Projection: Transverse Mercator
Horizontal Datum: GDA2020
Grid: GDA2020 MGA Zone 58



AGL
Broader Employment
Transition Area Planning Proposal

Site Map

Project No. 12624330
Revision No. A
Date 23/02/2024

FIGURE 1

The intent of the additional local provision is to enable the lodgement of development applications for industrial land uses over the site. All other planning controls applying to the site will remain unchanged.

The three locations included in the request have been substantially cleared and modified, to accommodate the coal fired power station activities or past agricultural activities.

The Regional Plan 2041 supports the development of alternative land uses dependant on the characteristics of each site and its surrounds. New uses could occur while other existing uses continue to operate.

Industry is defined under the LEP as follows:

“industry” means any of the following—

- (a) general industry,
- (b) heavy industry,
- (c) light industry,

but does not include—

- (d) rural industry, or
- (e) extractive industry, or
- (f) mining”.

Each of the ‘child’ definitions of ‘industry’ are reproduced from the LEP below:

general industry means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.

heavy industry means a building or place used to carry out an industrial activity that requires separation from other development because of the nature of the processes involved, or the materials used, stored, or produced, and includes—

- (a) hazardous industry, or
- (b) offensive industry.

It may also involve the use of a hazardous storage establishment or offensive storage establishment.

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit, or oil, or otherwise, and includes any of the following—

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry,
- (d) creative industry.

hazardous industry means a building or place used to carry out an industrial activity that would, when carried out and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the activity from existing or likely future development on other land in the locality), pose a significant risk in the locality—

- (a) to human health, life, or property, or
- (b) to the biophysical environment.

rural industry means the handling, treating, production, processing, storage, or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- (a) agricultural produce industries,
- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

OPTIONS

Council may:

1. Resolve to prepare a Planning Proposal to amend MLEP 2009 generally in accordance with the request in Attachment A. This is the preferred option as this will allow for potential use of the ash by-product and commence job diversification on the site.
2. Reject the request and take no further action.

Where Council does not support a request to prepare a planning proposal, Council is required to notify the Proponent as soon as practicable in writing that the proposal is not supported. The Proponent may seek a review of the decisions by DPHI.

CONCLUSION

Amending the permitted uses in the SP2 zone for the three discrete sites, to broaden industry related uses permissible with consent, is in the public interest, given these activities are required to support the transition to clean and renewable fuel sources, including the recycling and reuse of materials. All future development would continue to be assessed on its merits as part of a robust Development Application in accordance with Part 4 of the EP&A Act.

The proposal has strategic merit, and it is recommended that Council resolves to prepare a Planning Proposal and seek a Gateway Determination to enable the amendment to progress.

SOCIAL IMPLICATIONS

Permitting additional uses on the site will allow for the diversifying of employment opportunities, thereby reducing the impact of the eventual closure of the Power Stations on the local economy and community.

FINANCIAL IMPLICATIONS

Nil. An application fee has been paid in accordance with Council's adopted fees and charges.

POLICY IMPLICATIONS

MLEP 2009 is Council's land use policy for the Shire. This proposal would amend that Policy.

STATUTORY IMPLICATIONS

The LEP amendment process is regulated by the Environmental Planning and Assessment

Act. Preparing a Planning Proposal and seeking a Gateway Determination are the next steps in the process.

LEGAL IMPLICATIONS

Nil.

OPERATIONAL PLAN IMPLICATIONS

1.1.1.2 - Progress the Place - Delivery Group framework, identified in the Hunter Region Plan 2041, for transition of the Liddell Power Station and Muswellbrook Coal Mine sites.

The Place Strategy process is likely to take 3 to 5 years to complete. Waiting until then to permit new uses on the site will slow the diversification of employment opportunities, which ideally needs to commence before the Power Station closes.

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