



Gateway determination report – PP-2024-989

Introduction of Zone R1 General Residential, rezone of land to R1, and MLS reduction to 450msq at part Lot 6 DP1275427

August 24

Published by NSW Department of Planning, Housing and Infrastructure

dpie.nsw.gov.au

Title: Gateway determination report – PP-2024-989

Subtitle: Introduction of Zone R1 General Residential, rezone of land to R1, and MLS reduction to 450msq at part Lot 6 DP1275427

© 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 (August 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	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	2
1.4	Site description and surrounding area	3
1.5	Mapping	5
1.6	Background	7
2	Need for the planning proposal	7
3	Strategic assessment	7
3.1	Regional Plan	7
3.2	Local	8
3.3	Section 9.1 Ministerial Directions	9
3.4	State environmental planning policies (SEPPs)	10
4	Site-specific assessment	10
4.1	Environmental	10
4.2	Social and economic	11
4.3	Infrastructure	11
5	Consultation	11
5.1	Community	11
5.2	Agencies	11
6	Timeframe	11
7	Local plan-making authority	12
8	Assessment summary	12
9	Recommendation	12

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Annexure A – Planning Proposal (Doc. “17483_PP_002B.pdf” dated 09/05/2024 in Planning Portal)
Annexure B – Council Report 17/07/2024 (Doc “CM20240717_1870_79_3.DOCX” in Planning Portal)
Annexure C – Council Minutes 17/07/2024 (Doc “Minutes (Public)- Council Meeting - 17.07.2024.pdf in Planning Portal)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Berrigan
PPA	Berrigan Shire Council
NAME	Introduce R1 zone, rezone land to R1 and reduce MLS to 450m ² (approx.80 residential lots, unknown jobs)
NUMBER	PP-2024-989
LEP TO BE AMENDED	Berrigan Local Environmental Plan 2013
ADDRESS	1 Bruton Street, Tocumwal
DESCRIPTION	Part Lot 6 DP1275427
RECEIVED	23/07/2024
FILE NO.	IRF24/ 1848
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 planning proposal (Annexure A) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Facilitate the development of new higher density housing supply in Tocumwal
- Implement the outcomes of the ‘Berrigan Shire Strategic Framework and District Plans 2024’

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Berrigan LEP 2013 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	R5 Large Lot Residential (majority) and RU5 Village	R1 General Residential
Minimum lot size	5000m ²	450m ²
Number of dwellings	17 lots (possible)	80 lots (indicative)
Number of jobs	N/A	Unknown

The planning proposal also seeks to introduce R1 General Residential Zone into the Berrigan LEP 2013 as follows:

R1 – General Residential zone

1 Objectives of zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Residential flat buildings; Respite day care centres; Semidetached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture

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

However, the *Standard Instrument—Principal Local Environmental Plan 2006* (the Standard Instrument) requires that roads are identified as permitted with or without development consent in this zone. The proposed R1 land use table supplied in the planning proposal does not identify either therefore it is recommended that the planning proposal be updated prior to exhibition to specify 'Roads' as permitted with or without consent under the proposed R1 land use table.

It is also recommended that Council consider whether to include dual occupancies and secondary dwellings in the proposed R1 land use table. This would further broaden permissible housing types in the area, capitalise on incoming infrastructure investment, and better align with recommendations of the Berrigan Shire Strategic Framework and District Plans 2024 to encourage medium density housing, close to amenity and services.

1.4 Site description and surrounding area

The proposal affects part Lot 6 DP1275427. The site is a southern portion of the lot with an approximate area of 9 hectares - see Figure 1, below. Lot 6 DP1275427 is subject to development consent for subdivision (134/22/DA/D9 issued 10 May 2022) and the planning proposal documents (Annexures A and B) note this site will likely be identified as Lot 2 of DP1275427 in future. The site is accessed from Bruton Street with services and infrastructure also located in Bruton Street.

The site is located to the north-west of Tocumwal and adjoins R5 Large Lot Residential land to the north and east, and RU5 Village land to the south and west. The adjoining RU5 land to the south is subject to development consent for residential subdivision (162/21/DA/D9 – see Appendix A of the Planning Proposal). The site adjoins RU1 Primary Production zoned land at the south-east corner and is located approximately 800m south-west of a Council sewer treatment plant.

The site is located approximately 1km west of the Tocumwal Airport and mapped by the Berrigan LEP 2013 Obstacle Limitation Surface Map - see Figure 2 and 3.

The planning proposal cites that the land was historically used for agricultural purposes prior to being rezoned to R5 Large Lot Residential (in 2013). The current use of the site is not specifically identified in the proposal documents (Annexure A and B). The land is not mapped or known to be affected by natural hazards (flood, bushfire, land slip) and does not contain any vegetation. The Council officer's report (Annexure B) notes the site is not known to be contaminated.

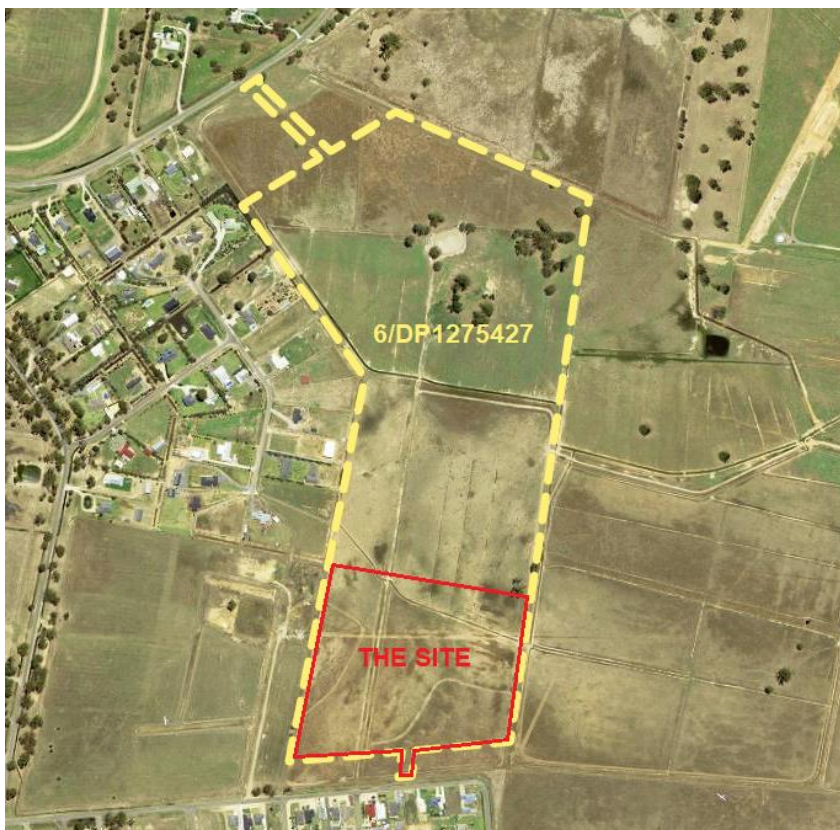


Figure 1 Subject site (source: NSW Planning Portal Spatial Viewer, 2024)

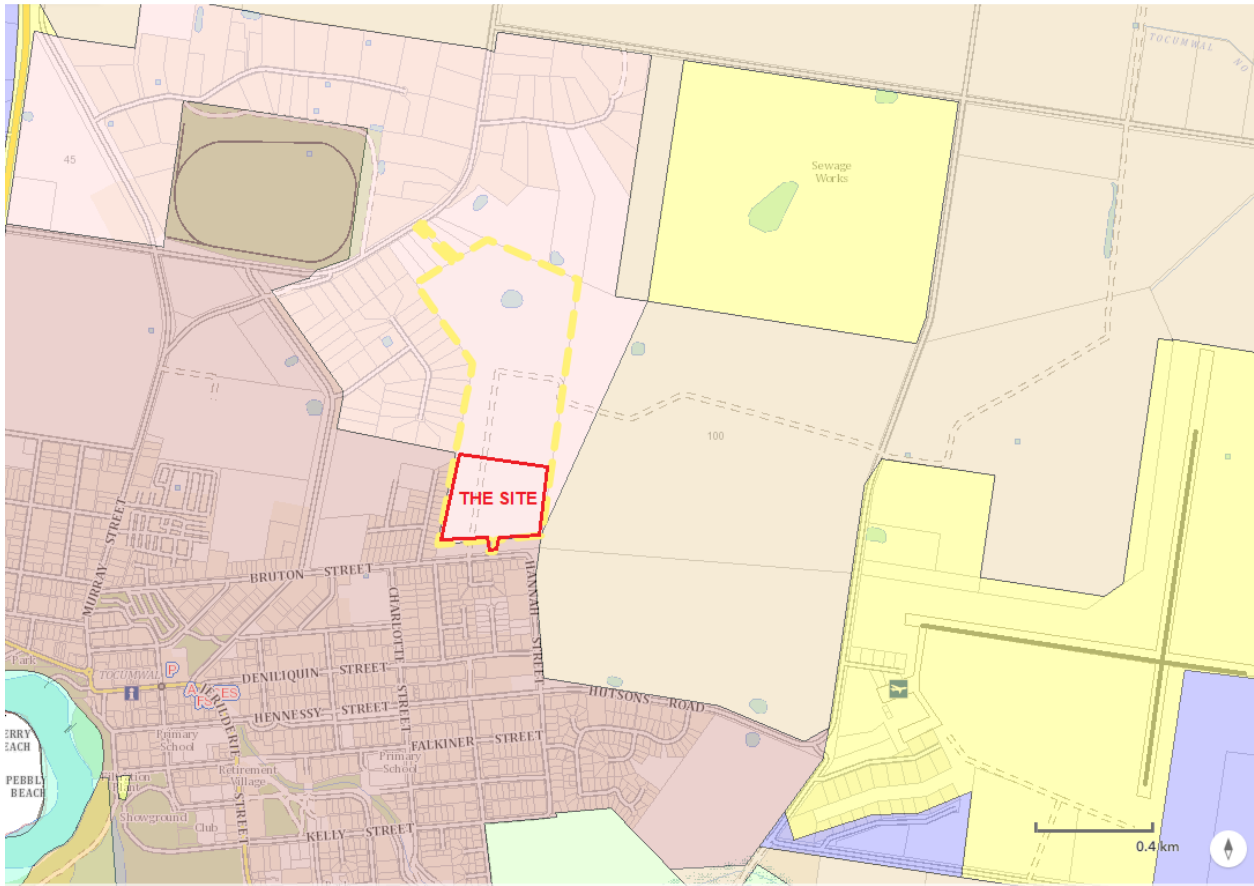


Figure 2 Site context (source: NSW Planning Portal Spatial Viewer, 2024)

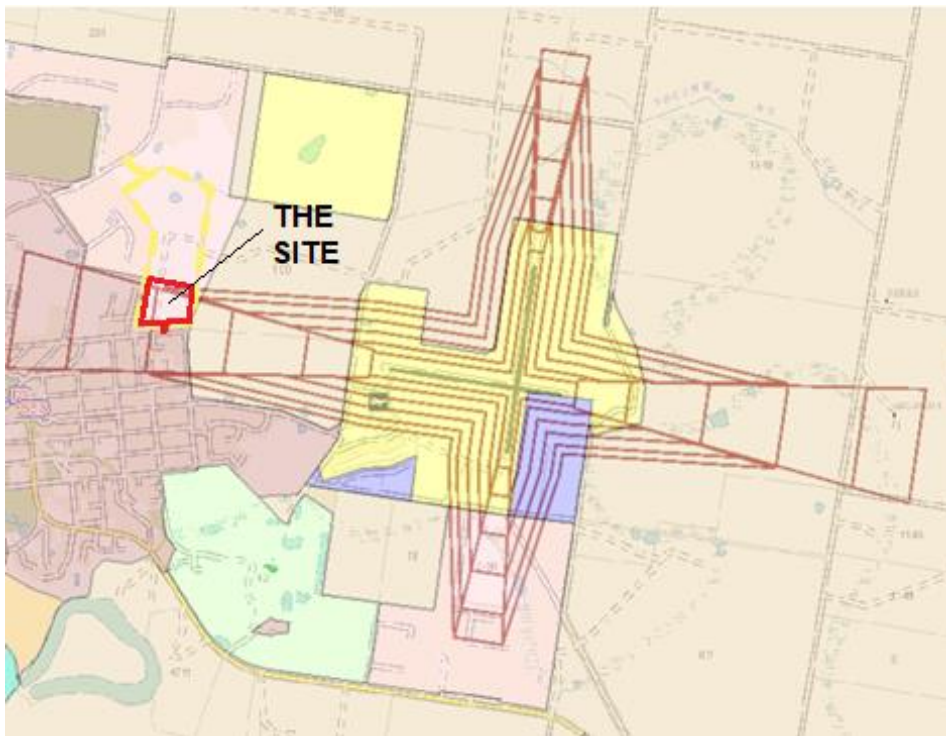


Figure 3 Obstacle Limitation Surface Map coverage (source: NSW Planning Portal Spatial Viewer, 2024)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Berrigan LEP 2013 zoning and minimum lot size maps, which are suitable for community consultation.

The planning proposal (Annexure A, p7) references the required update of Land Zoning Map – Sheet LZN_004A, a former PDF zoning map which was superseded by an LGA wide digital zoning map on 25 April 2023. The zoning map reference is incorrect and should be updated prior to exhibition to refer to the current digital zoning map to provide clarity to the community.

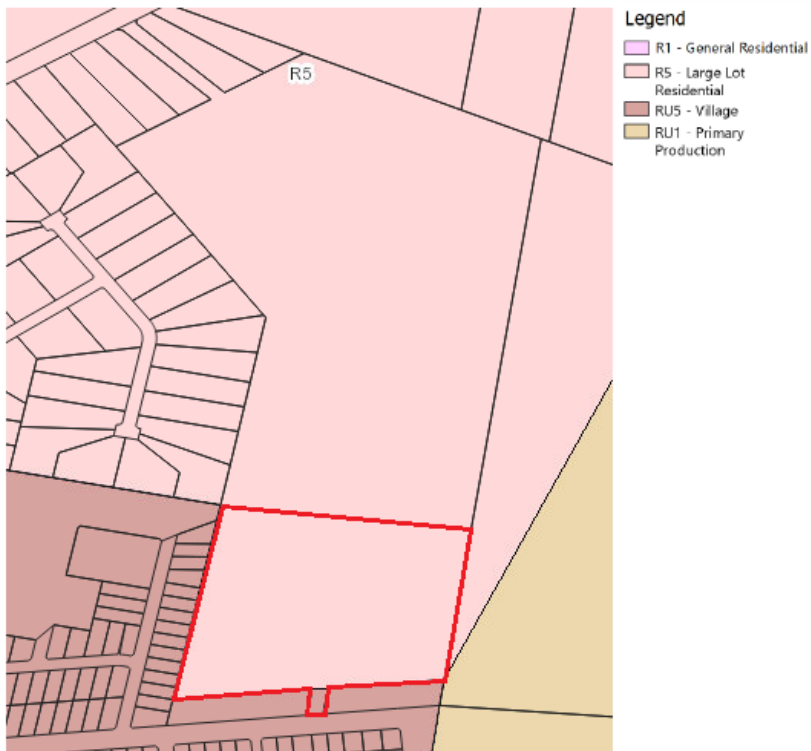


Figure 4 Current zoning map

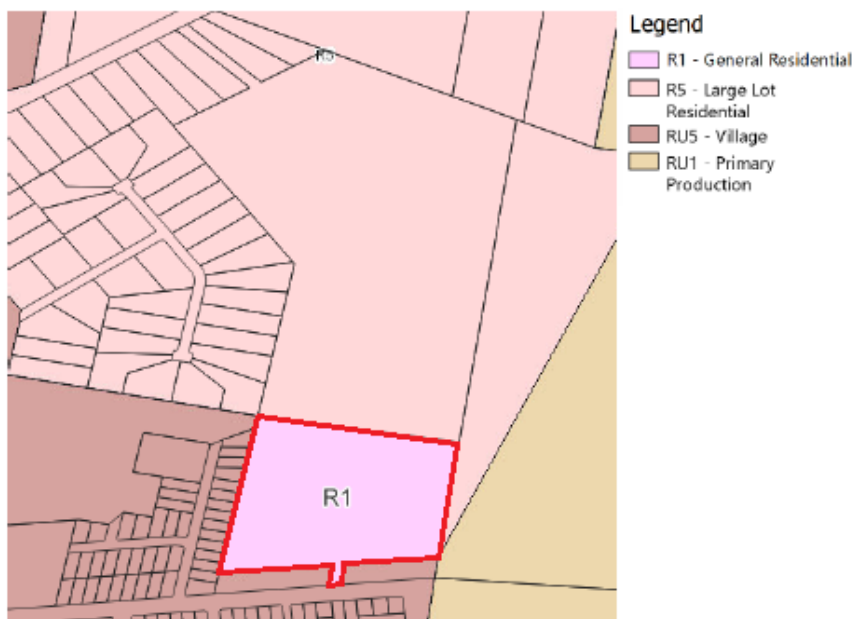


Figure 5 Proposed zoning map

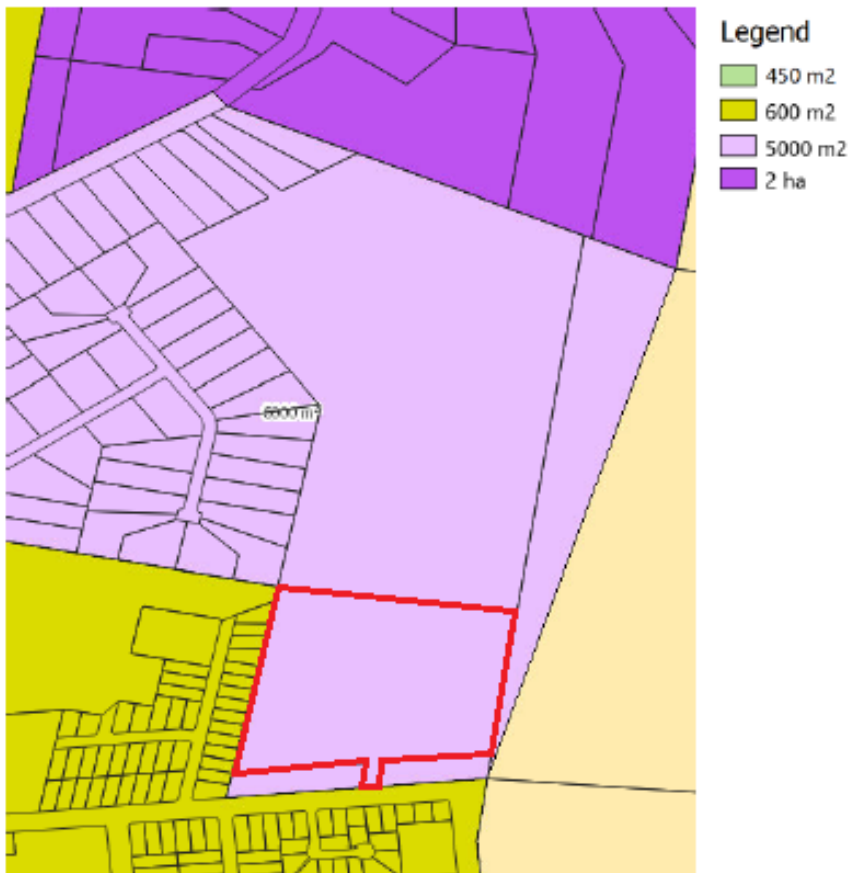


Figure 6 Current MLS map

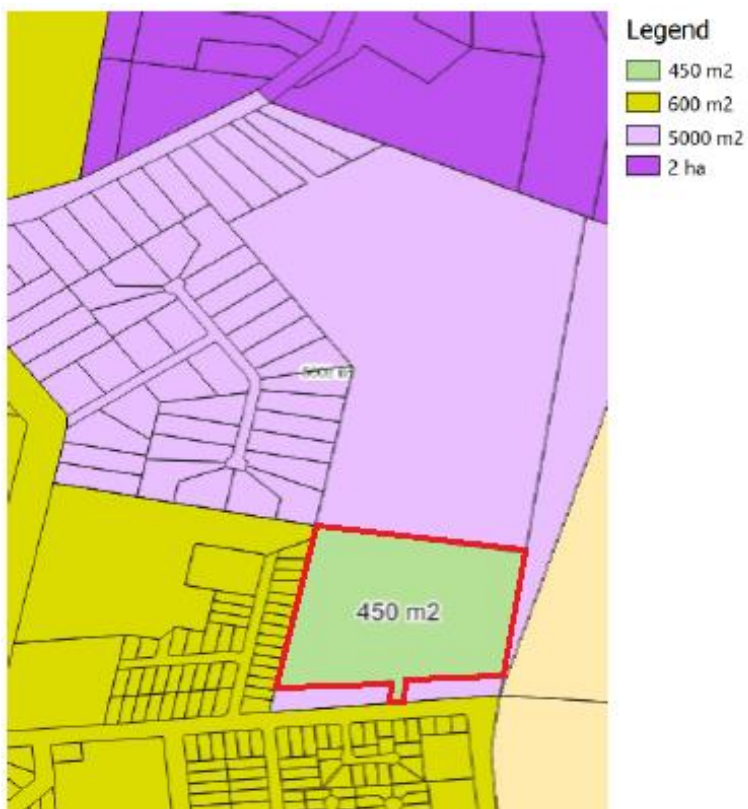


Figure 7 Proposed MLS map

1.6 Background

A planning proposal (PP-2023-606) seeking to rezone the subject land from R5 Large Lot Residential to RU5 Village was endorsed by Berrigan Shire Council in 2021 and submitted to the Department for assessment. The planning proposal was returned, citing the need to include the following information in an amended proposal:

- Data and rationale to support the site being released approximately 15 years earlier than the Berrigan Shire Land Use Strategy 2018 plans for (the site was flagged for medium term investigation under that strategy).
- Responses to Ministerial Direction 4.4 Remediation of Contaminated Land, and Ministerial Direction 5.3 – Development Near Regulated Airports and Defence Airfields
- Assessment against the Riverina Murray Regional Plan 2041
- Accurate and consistent reference/identification of the site throughout the proposal
- Land use conflict assessment to consider proximity of the site to the Tocumwal Airport facility, nearby sewerage treatment plant, and any impact arising from intensifying residential development in proximity to the nearby RU1 zoned land.

Since the return of PP-2023-606, Berrigan Shire Council has adopted a new strategy (Berrigan Strategic Framework & District Plans 2024 – Adopted March 2024) and the new planning proposal seeks to implement the outcomes of that strategic plan.

2 Need for the planning proposal

The planning proposal (Annexure A) cites the need to meet short-term housing demand in Tocumwal that is aligned with Council's preferred strategic direction and development vision. The desired housing product (medium density Torrens titled lots) is not achievable under the current LEP and a planning proposal to rezone the area and reduce the minimum lot size is the most appropriate method to add lots to the short-term housing pipeline in Tocumwal and achieve the planning proposal objectives. The planning proposal identifies Zone R1 General Residential as the most logical land use zone when considering site context, character of the area, and alignment with the Berrigan Strategic Framework & District Plans 2024.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Riverina Murray Regional Plan 2041.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
OBJECTIVE 1: Protect, connect and enhance biodiversity throughout the region	The land does not contain biodiversity significance. The proposal is consistent with the broad aims and strategy of Objective 1.
OBJECTIVE 3: Increase natural hazard resilience	The land is not known to be, or mapped as effected, by natural hazards. The proposal is consistent with Strategy 3.1 of Objective 3.

OBJECTIVE 5: Ensure housing supply, diversity, affordability and resilience and

OBJECTIVE 11: Plan for integrated and resilient utility infrastructure

The Berrigan Strategic Framework & District Plans 2024 and Berrigan Local Strategic Planning Statement are consistent with Strategy 5.1 of Objective 5 and this proposal aligns with those Council endorsed documents. The proposal is consistent with Strategy 5.3 of Objective 5 – Annexure A includes information to support the proposal is not considered to generate significant risk of land use conflict and the site can be integrated with existing urban development and infrastructure. The proposal will introduce new opportunities for increased housing density and variety and the incoming R1 zone will ensure commercial style uses are directed into RU5 Village areas.

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 5 Local strategic planning assessment

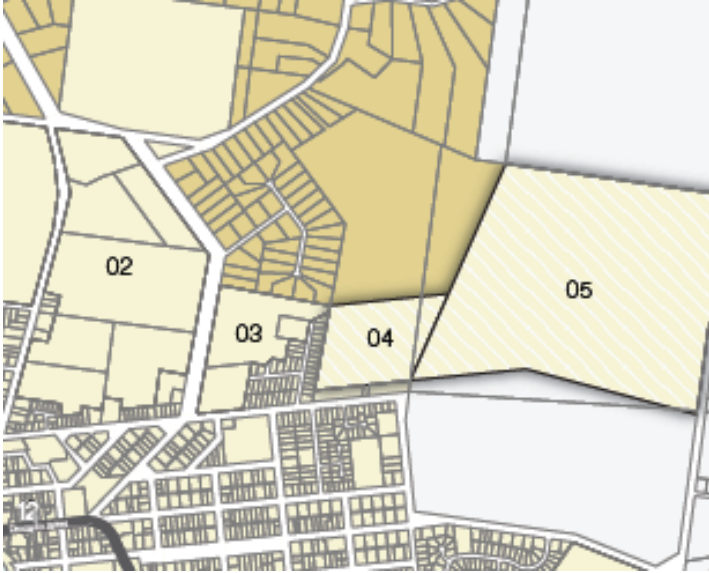
Local Strategies	Justification
Berrigan Local Strategic Planning Statement (LSPS)	While the proposal is not linked to a specific planning action of the Berrigan LSPS, the proposal is broadly aligned with Priority 5 (Urban Amenity) which seeks to deliver more housing diversity in response to changing demographics.
Berrigan Strategic Framework & District Plans 2024	<p>To meet demand for forecast growth in Tocumwal, several areas are identified in the Berrigan Strategic Framework & District Plans 2024 to support new housing development. The subject site is identified for short term release (Site No.4) with a recommended zoning of R1 General Residential and a proposed minimum lot size of 450m² (Figure 8). The Berrigan Strategic Framework & District Plans 2024 has not been formally endorsed by DPHI however Department comments were provided to Council during exhibition of the draft version in March 2024. There were no issues identified with this site specifically. The Berrigan Strategic Framework & District Plans 2024 supersedes the Berrigan Land Use Strategy 2018.</p> 

Figure 8 Tocumwal Residential Investigation Sites

3.3 Section 9.1 Ministerial Directions

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

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	As discussed in Table 4, the proposal aligns with the objectives and strategies of the Riverina Murray Regional Plan 2041.
4.4 Remediation of Contaminated Land	Inconsistency justified	<p>This direction applies as the planning proposal effects land on which development for a purpose referred to in Table 1 of the contaminated land planning guidelines (agriculture) has been previously carried out. Annexure A and B cite that the land is not identified or known to be contaminated however as a Preliminary Site Investigation has not been obtained, the proposal is technically inconsistent with the requirements of Direction 4.4(2). For the purposes of the proposal, Council is satisfied of the following (as identified in the endorsed planning proposal – Annexure A):</p> <ul style="list-style-type: none"> • The site was rezoned to R5 Large Lot Residential in 2013 and the likelihood of recent contaminating activities has been evaluated by the proponent/Council to be negligible. • Consent 134/22/DA/D9 issued 10/05/2022 for the subdivision of this land confirms Council is satisfied the site is suitable for residential development without remediation action. <p>As such, inconsistency with this direction is considered of minor significance in this instance</p>
5.1 Integrating Land Use and Transport	Yes	The proposal identifies that suitable access to transport network will be available to this proposed housing area.
5.3 Development Near Regulated Airports and Defence Airfields	Yes	The land is located approximately 1km west of the Tocumwal Airport. As Council is the owner and manager of the airport, the endorsement of the proposal is considered to satisfy Direction 5.3(a) and (b). The Berrigan LEP 2013 contains local provisions (Clause 6.8 Airspace Operations) to manage development in proximity to the airport and as the proposal does not seek to alter these provisions, consistency with 5.3(c) is also achieved. The R1 zone and the proposed use of the site is unlikely to yield an application for a controlled activity specified in Section 182 of the <i>Airports Act 1996</i> and Annexure A cites that the land levels of the site will provide adequate clearance from the Obstacle Limitation Surface set for the airport (satisfying 5.3(d) of the direction). Based on the characteristics of the site and proposal, the remainder of Direction 5.3 does not apply.
6.1 Residential Zones	Yes	The existing provisions of the Berrigan LEP 2013 and the incoming R1 Zone will facilitate consistency with this direction. The proposal

		will enable an increased housing density to what is presently permissible under the current zoning and MLS controls.
6.2 Caravan Parks and Manufactured Home Estates.	Inconsistency justified	<p>The proposal is technically inconsistent with Direction 6.2(1) and (2) based on the following:</p> <ul style="list-style-type: none"> • The Berrigan LEP 2013 Zone R5 land use table permits caravan parks with consent and the incoming proposed Zone R1 land use table will prohibit caravan parks • Annexure A does not consider 6.2(2)(a) or (b) • While the land is mapped within an obstacle surface limitation area, the site is not a category of land set out in Schedule 6 of <i>State Environmental Planning Policy (Housing) 2021</i> identifying where manufactured home estates should not be located. <p>Based on the objectives of the proposal to provide new average density housing stock on Torrens titled lots, and the preferred vision of Berrigan Shire Council to meet housing demand, the inconsistency with Direction 6.2 is of minor significance.</p>

While the following listed directions apply to all planning proposals, the proposal does not seek to alter the Berrigan LEP 2013 in a manner inconsistent with the objectives and requirements of the directions. Additional discussion in Table 6 is not required:

- 1.3 Approval and Referral Requirements
- 1.4 Site specific provisions
- 3.1 Conservation Zones
- 3.2 Heritage Conservation
- 3.5 Recreation Vehicle Areas
- 5.2 Reserving Land for Public Purposes

Directions not listed in Table 6 or in the preceding dot-points are not applicable to the subject proposal.

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. Council is satisfied the land will be suitable for the proposal.

The remaining SEPPs in force are either not triggered for application 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

The proposal does not pose significant environmental impact. As discussed throughout this report, the land is not known to be affected by natural hazards (flood, bushfire, land slip) and is not identified to include any items, objects, or areas of heritage significance. The site is cleared of vegetation and the land is currently zoned for large lot residential use. Future planning to realise the intent of the proposal will be subject to further assessment and responses to avoid, mitigate and minimise environmental impact.

4.2 Social and economic

The proposal is anticipated to produce a positive impact by expanding available housing in Tocumwal to meet projected demand. The provision of new average density housing stock will better suit identified changing housing needs and is also predicted to increase rental opportunities within Tocumwal. Positive flow on impacts to the local economy (increased local spend) are also expected.

4.3 Infrastructure

The planning proposal (Annexure A) identifies that adequate road, water, sewer, power, and telecommunication infrastructure is available or can be extended (at cost) to service the proposal. Annexure B cites that a contributions plan will be applied at subdivision stage and as part of the endorsement of the planning proposal (Annexure B), Council included the following recommendation:

2. *Support the Officer recommendation to send the Planning Proposal to the Department of Planning, Housing and Infrastructure for Gateway Determination, and, direct Council Officers to initiate a draft infrastructure agreement with the developer for infrastructure upgrades and financial contributions, and, direct Council Officers that an Infrastructure Agreement be signed prior to the LEP Amendment being finalised.*

This recommendation was carried (see Annexure C). This private agreement will further ensure that the developer fairly contributes to the upgrade and or/expansion of critical infrastructure, in a timely manner.

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 days.

The planning proposal is categorised as a standard proposal 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

The proposal does not specifically identify agencies to be consulted.

Based on the nature of the proposal and the characteristics of the site, agency consultation is not considered necessary.

6 Timeframe

Council proposes a 9 month timeframe to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. Accordingly, the Department recommends an LEP completion date by 9 May 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 has advised that it would like to exercise its functions as a local plan-making authority.

As the site of the planning proposal is private land with no encumbered council interest identified in the planning proposal documents (Annexure A and B) the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal seeks to implement locally endorsed Council strategy.
- The land is unconstrained by hazard or site considerations impacting future development.
- The site can be suitably serviced with required utilities and infrastructure, subject to expansion.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions *4.4 Remediation of Contaminated Land* and 6.2 *Caravan Parks and Manufactured Home Estates* are minor and justified.

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 community consultation, the planning proposal is to be updated to:
 - Insert 'Roads' as a land use that is permitted with or without consent in the proposed Zone R1 General Residential land use table
 - Consider the inclusion of 'Dual occupancies' and 'Secondary dwellings' as land uses permitted with consent in the proposed Zone R1 General Residential land use table
 - Correct zoning map references from PDF map number (superseded) to the current digital zoning map
2. Agency consultation is not required
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. A public hearing is not required.
5. The LEP should be completed on or before 9 May 2025.
6. 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 9 May 2025 be included on the Gateway.



9/8/24

Tim Collins

Acting Manager, Southern, Western and Macarthur Region



19/8/2024

Chantelle Chow

Acting Director, Southern, Western and Macarthur Region



07/08/2024

Assessment officer

Llyan Smith

Acting Senior Planning Officer, Southern, Western and Macarthur Region

02 9274 6347