



IRF25/2152

Gateway determination report – PP-2025-1689

Coffs Harbour LEP 2013 Housekeeping Amendment –
Part 2

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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
Attachment D- Council Minutes
Attachment E – Draft Coffs Harbour DCP 2015 – Am No 49

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Coffs Harbour
PPA	Coffs Harbour City Council
NAME	Coffs Harbour LEP 2013 Housekeeping Amendment - Part 2
NUMBER	PP-2025-1689
LEP TO BE AMENDED	Coffs Harbour Local Environmental Plan 2013
ADDRESS	Whole of LGA
DESCRIPTION	Whole of LGA
RECEIVED	2/09/2025
FILE NO.	IRF25/2152
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's objectives and intended outcomes are currently detailed in the background and explanation of provision sections. While these generally explain the intent of the proposal it is recommended that Part 1 of the proposal be updated prior to consultation to include a clear and concise outline the objectives and intended outcomes.

1.3 Explanation of provisions

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. The planning proposal seeks to amend the Coffs Harbour LEP 2013 by:

1. revising the permissibility of certain land uses within the R5 Large Lot Residential zone;
2. amending clause 4.2E *Erection of dual occuppies (detached) in Zone RU2* to:
 - apply the clause to detached dual occupancies within Zone R5 Large Lot Residential;
 - remove the development standard requiring dwellings to be located within 50m of each other;
 - not requiring a single vehicle access point in the R5 Zone;

- establishing a minimum lot size of 8000m² for detached dual occupancies in the R5 Zone;
3. replacing clause 4.2D *Boundary adjustments of land in certain rural, residential and conservation zones* to address recent case law;
 4. replacing clause 7.19 Development on certain land at Bark Hut Road and Newmans Road, Woolgoolga with a new clause 7.19 Development on Key Sites, removing those sites from the Key Sites Map and inclusion of five new key sites within the Coffs Harbour city centre;
 5. including Dams in Zone RU2 in Schedule 2 as Exempt Development; and
 6. amending clauses 7.4 Terrestrial Biodiversity and 7.8 Koala Habitat to identify land subject to these clauses as environmentally significant or ecologically sensitive areas, respectively, for the purpose of clause 1.19 of SEPP (*Exempt and Complying Development Codes*).

The planning proposal includes drafts of the proposed LEP clauses. As legal drafting of the proposed LEP amendments will be undertaken by Parliamentary Counsel's Office during finalisation, the planning proposal should be amended to include a plain English description of the intent of the proposed amendments. It is recommended that a condition be placed on the Gateway determination to this effect.

1.4 Site description and surrounding area

The planning proposal applies to various land in the Coffs Harbour Local Government Area (LGA).

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Coffs Harbour LEP Key Sites maps. These maps are considered adequate for consultation purposes subject to the inclusion of existing and proposed map sheets for both localities.

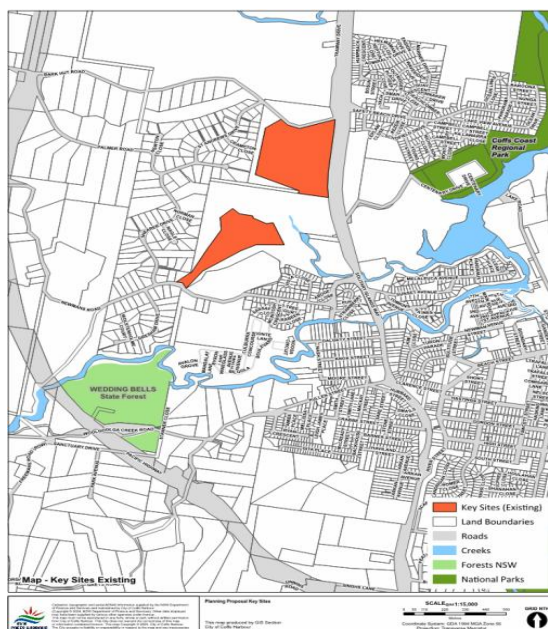


Figure 2 Current key site map (Proposal)



Figure 3 Proposed key site map (Source Planning Proposal)

1.6 Background

The Five Year Comprehensive Review identified a total of sixteen amendments to the Coffs Harbour LEP 2013. The Coffs Harbour LEP 2013 (Amendment No 31) implemented four of the

sixteen amendments. The amendment was notified on 11 February 2022. This planning proposal seeks to implement five amendments arising from the Five Year Comprehensive Review.

2 Need for the planning proposal

It is considered that the planning proposal is the best means of achieving the amendments to Coffs Harbour LEP 2013 that were identified as part of the five-year comprehensive review. Section 3.21 (1) of the Act requires councils to undertake regular and periodic reviews of their local environmental plans to ensure they are up to date and consistent with changing requirements.

The suitability of the proposed amendments is discussed below.

2.1.1 Permissibility of certain land uses in the R5 Large Lot Residential zone.

The planning proposal seeks to amend the land use table for the R5 large Lot Residential zone to:

- Permit dual occupancies (detached) with consent; and
- Prohibit animal boarding or training establishments, camping grounds and self-storage units.

The proposed change to permit detached dual occupancies with consent is considered to be appropriate. Attached dual occupancies are already permitted with consent in the R5 zone so the proposed amendment will not increase the intensity of residential development on the land but will enable flexibility in the built form of dual occupancy housing. It is noted that a number of the adjoining and adjacent LGAs also already permit detached dual occupancies in their rural zones.

The planning proposal does not provide reasons for the proposed prohibition of animal boarding or training establishments, camping grounds and self-storage units other than stating they are inconsistent with the zone objectives. It is noted that the review of land uses in the R5 zone is an action from Chapter 6 of Council's Local Growth Management Strategy. This action identifies animal boarding or training establishments and veterinary hospitals as examples of land uses that are incompatible but does not mention camping grounds or self-storage units. It is recommended that the Gateway determination include a condition requiring further explanation as to why these land uses are inappropriate in the R5 zone.

2.1.2 Amendment to Clause 4.2E Erection of dual occupancies (detached) in Zone RU2

Clause 4.2E currently applies to detached dual occupancies in the RU2 zone. The proposal seeks to apply the clause to detached dual occupancies in the R5 zone given the above amendment will make them permissible with consent in the R5 zone.

The proposed changes to clause 4.2E will:

- Include a consideration that detached dual occupancies shall not have an adverse impact on native flora or fauna or on water quality;
- Maintain the requirement that detached dual occupancies in the RU2 zone use the same vehicular access to a public road however this will not be a requirement for detached dual occupancies in the R5 zone;
- Require that detached dual occupancies must not be approved in the R5 zone unless the lot is at least 8000m²; and
- Remove the requirement that dwellings are situated within 50m of each other.

It is considered appropriate that the clause apply to detached dual occupancies in the R5 zone given the potential physical constraints of some R5 zoned land arising from the presence of native vegetation and the need to dispose of effluent on site.

Council advised that it has consistently varied the requirement for dwellings in a detached dual occupancy development to be no more than 50m apart on nine (9) occasions since 2021 in the RU2 Zone and therefore feels that it is no longer relevant. The clause still contains subclause 3(a) which requires that a detached dual occupancy not impair the use of the land (or adjacent land) for agriculture or rural industries and will include a new provision that they will not adversely affect agricultural productive capacity. These provisions are considered to be appropriate.

It is recommended that Council consult with the Department of Primary Industries and Regional Development – Agriculture and Biosecurity on the proposal to remove the maximum 50m separation distance.

2.1.3 Replacement of clause 4.2D Boundary adjustments of land in certain rural, residential and conservation zones

The proposal seeks to replace the existing clause 4.2D for boundary adjustments in response to interpretation of the existing provisions in a determination by the Land and Environment Court. The new clause intends to allow for boundary changes that would result in reconfiguration of lot boundaries that are not substantially the same as the existing lot boundaries, or that are considered to be major.

The draft clause is effectively the same as the clause included in Byron LEP 2014 (clause 4.1C) by Byron LEP Amendment 41. The Department's legal and rural policy teams did not object to the proposed changes to the clause in the Byron LEP but did note that Council should seek legal advice to confirm that the proposed changes achieve its intent.

The proposed amendment is considered reasonable, given the similarity to clauses in other LEPs, subject to consultation with the NSW Department of Primary Industries and Regional Development – Agriculture and Biosecurity and noting that the proposed changes will not prevent boundary adjustments on rural zoned land. The intent of the proposed changes to clause 4.2D is not however made clear in the planning proposal and further explanation should be included for community consultation. It is recommended that a condition be included in the Gateway determination to this effect.

2.1.4 Changes to Key Sites Map and Clause 7.19

The planning proposal seeks to remove clause 7.19 Development on certain land at Bark Hut Road and Newmans Road, Woolgoolga which required the preparation of a DCP to address specific matters for the subject land before development was approved on the land.

Clause 7.19 will be replaced with a general clause that applies to land included on the Key Sites Map. The new clause will include certain built form and urban design requirements to provide a visually interesting streetscape, improved pedestrian linkages and appropriate built scale.

The proposed clause will no longer apply to the land at Bark Hut Road and Newmans Road Woolgoolga as a DCP is now in place for those sites and the existing clause 7.19 has been satisfied.

Five (5) new land parcels located within the Coffs Harbour city centre are proposed to be added to the Key Sites Map. These are at the intersection of Bray Street, and the Pacific Highway and in proximity to the Albany Street and Hogbin Drive round-a-bout.

The planning proposal does not provide an adequate explanation as to why the new properties within the city centre are to be included on the Key Sites map. It is recommended that the Gateway determination include a condition requiring further justification of this proposed change.

2.1.5 Making Dams in Zone RU2 Exempt Development

The planning proposal seeks to enable farm dams as exempt development in the RU2 Rural Landscape zone, subject to certain criteria, by including them in Schedule 2 of the LEP.

There is precedent for permitting farm dams as exempt development in other local government areas (Nambucca, Greater Taree, Bathurst, Gunnedah).

The proposed development standards are extensive and would appear to ensure that environmental impacts are minor. The proposed amendment is considered reasonable though it is recommended that Council consult with DCCEE – Water, DPIRD Fisheries and the NSW Natural Resources Access Regulator.

The proposed exempt development provisions are not inconsistent with part 2.3 of State Environmental Planning Policy (Primary Production) 2021 as that part only applies to land within the area of operations of an irrigation corporation within the meaning of Part 1 of Chapter 4 of the Water Management Act 2000, and the land shown edged heavy black on the East Cadell Map, neither of which are located in Coffs Harbour LGA.

2.1.6 Identifying Terrestrial Biodiversity and Koala Habitat as environmentally sensitive and ecologically sensitive areas

The planning proposal seeks to amend clauses 7.4 Terrestrial Biodiversity and 7.8 Koala Habitat by adding a subclause that clarifies that for the purpose of clause 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP):

- Land mapped as “biodiversity” on the Terrestrial Biodiversity map is “environmentally significant land”; and
- Land mapped as “koala habitat” by the Coffs City Koala Management Plan 1999 as an “ecologically sensitive area”.

These amendments will effectively prevent complying development on the mapped land.

The Department’s Codes Team was consulted on this proposed amendment and advised that these are allowable exclusions and that clause 1.19(6) still allows complying development to be carried out on that part of the lot which is not mapped.

The Coffs City Koala Management Plan maps primary, secondary and tertiary koala habitat. The planning proposal does not specify whether all three categories are proposed to be identified as an ecologically sensitive area. The proposal also does not indicate the area of land that would be affected nor does it include a map showing the subject land.

It is recommended that a condition be included in the Gateway determination requiring the inclusion of a map of these areas.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is considered to be generally consistent with the objectives and overall intent of the North Coast Regional Plan 2041. The proposal does not rezone land or significantly increase the development potential of land. The proposed amendments to clauses are largely administrative. The proposal to permit detached dual occupancies in the R5 zone will enable flexibility in housing typology. The proposal to permit farm dams as exempt development contains extensive development standards to ensure the environmental impact is minimal while supporting agricultural land uses.

3.2 Local

The proposal is considered to be consistent with the local plans and endorsed strategies in table 4.

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	The planning proposal is considered to be consistent with the LSPS as it seeks to deliver greater housing supply, protect and conserve the natural and rural areas within the LGA.
MyCoffs Community Strategic Plan 2035	The planning proposal is not inconsistent with the relevant objectives and strategies of the CSP.
Local Growth Management Strategy	The planning proposal aligns with specific objectives in the Coffs Harbour LGMS including reviewing permissibility of land uses against objectives, reviewing boundary adjustments clauses, aligning key sites with key principles of the Compact City Program and exempt provisions for water storage facilities.
Coffs Harbour Regional City Action Plan 2036	The planning proposal is consistent with the City Action Plan as it aligns with the additional protection to terrestrial biodiversity and koala habitat proposed as environmentally sensitive land and its objective to enhance local biodiversity.

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with the relevant Section 9.1 Directions except as discussed in the table below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Inconsistent - unresolved	<p>The planning proposal is inconsistent with this Direction as it proposes to permit dams as exempt development on land within the LGA which may be within the flood planning area. The proposal is therefore inconsistent with 3(f) of the direction which requires that dams require development consent.</p> <p>The proposal also permits detached dual occupancies in the R5 zone. Since attached dual occupancies are already permissible this does not amount to an intensification of residential use on this land and no inconsistency with the Direction occurs for this issue.</p> <p>Consultation with the Department of Primary Industries and Department of Climate Change, Energy, the Environment and Water (DCCEEW – Flooding and Water) is recommended to determine if the criteria for dams as exempt development are suitable in the flood planning area. Until this consultation has occurred the inconsistency with the Direction remains unresolved.</p>

4.2 Coastal Management	Inconsistent - unresolved	The planning proposal will apply to land within the Coastal Zone. The planning proposal does not include a checklist as required by the Coastal Design guidelines. A condition is included on the Gateway determination for this checklist to be included prior to consultation. Until the checklist is completed the inconsistency of the proposal with the Direction remains unresolved.
4.3 Planning for Bushfire Protection	Unresolved	The planning proposal is potentially inconsistent with this Direction as parts of the LGA to which the planning proposal will apply are bushfire prone. The Direction provides that the Council must consult with the Commissioner of the NSW RFS after a Gateway Determination is issued and before community consultation is undertaken. As such, this Direction remains unresolved.
4.5 Acid Sulfate Soils	Inconsistent - justified	The planning proposal is inconsistent with this Direction as it seeks to permit detached dual occupancies on R5 zoned land which is affected by acid sulfate soils and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as attached dual occupancies are already permitted and as such the proposed amendment does not amount to a significant intensification of residential use of the land. Additionally the Coffs Harbor LEP 2013 already contains clauses to ensure that this matter can be appropriately addressed at development application stage.
9.2 Rural Lands	Inconsistent - unresolved	The planning proposal is inconsistent with this Direction as it does not implement all of the listed requirements such as supporting farmers exercising their right to farm and considering measures to minimise the fragmentation of rural land and reduce the risk of land use conflict. It is recommended that Council consult with DPIRD – Agriculture and Biosecurity before this inconsistency be resolved.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP)

The planning proposal seeks to amend clauses 7.4 Terrestrial Biodiversity and 7.8 Koala Habitat by adding a subclause that clarifies that for the purpose of clause 1.19 of the Codes SEPP:

- Land mapped as “biodiversity” on the Terrestrial Biodiversity map is “environmentally significant land”; and
- Land mapped as “koala habitat” by the Coffs City Koala Management Plan 1999 as an “ecologically sensitive area”.

These amendments will effectively prevent complying development on the mapped land.

The Department's Codes Team confirmed that these are allowable exclusions, and it is sensible to clearly make the distinction for the subject land and noting that clause 1.19(6) still allows complying development to be carried out on that part of the lot which is not mapped.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 6 Environmental impact assessment

Environmental Impact	Assessment
Flooding	<p>The proposed amendments will impact flood prone land. Specifically permitting dams in the RU2 zone as exempt development is likely to have a minor impact on local flood behaviour and is inconsistent with 3(f) of the Section 9.1 Direction 4.1 Flooding which requires development consent for dams.</p> <p>The planning proposal should provide more detail on the suitability of low impact dams in flood prone areas. It is recommended that consultation is undertaken with the DPIRD Fisheries, DCCEE – Water and Flooding and the Natural Resources Access Regulator to confirm the appropriateness of dams not requiring approval in flood prone areas.</p>
Biodiversity / Koala Habitat	<p>Overall, the amendments include provisions to ensure there is no adverse impacts on native vegetation. Proposed changes to clauses 4.2E and 4.2D require consideration of impacts on the natural environment. The criteria for dams to be exempt development includes requirements that will minimise environmental impacts.</p> <p>The proposal to identify terrestrial biodiversity as environmental sensitive land and koala habitat as an ecologically sensitive area will ensure potential impacts on this land are considered through the development assessment process.</p>
Important Agricultural Land	<p>The proposed amendment to clause 4.2E will remove the requirement for dwellings in a detached dual occupancy development to be no more than 50m apart. Council has consistently varied this requirement on nine (9) occasions since 2021 and therefore feels that it is no longer relevant. The clause still contains subclause 3(a) which requires that a detached dual occupancy not impair the use of the land (or adjacent land) for agriculture or rural industries and a new provision that they will not adversely affect agricultural productive capacity which is appropriate.</p> <p>The proposed changes to clause 4.2D will maintain the requirement that boundary changes are not to increase the number of lots or opportunities for additional dwellings which is appropriate.</p> <p>Consultation with DPIRD Agriculture and Biosecurity is recommended on these matters.</p>

The proposed amendments are not expected to result in significant negative environmental impacts. The specific provisions will ensure consideration of environmental issues prior to development consent, thereby strengthening protection of the environment whilst facilitating growth.

4.2 Social and economic

The planning proposal is not expected to result in any adverse social or economic impacts. The proposed changes to the LEP provisions will:

- provide flexibility in the built form of dual occupancies in the R5 zone;
- enable construction of farm dams as exempt development to support more resilient agricultural practises;
- achieve positive design outcomes for prominent land through additional controls for key sites in the Coffs Harbour city centre; and
- clarify requirements for rural boundary adjustments and where complying development can be undertaken.

4.3 Infrastructure

The proposed amendments will not enable a significant intensification of development on any land. The planning proposal does not include amendments that rezone land or enable increased densities within residential and/or employment zones. Attached dual occupancies are already permissible in the R5 zone and enabling detached dual occupancies will simply provide for an alternative built form. Therefore, it is expected that there will be no impact on State or regional infrastructure. Further, there is unlikely to be any servicing requirements that cannot be addressed through the development application process.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The planning proposal has been categorised as standard as described in the Local Environmental Plan Making Guidelines (Department of Planning and Environment, August 2023) and will need to be publicly available for a minimum of 20 working days.

5.2 Agencies

The proposal does not specifically identify which agencies will be consulted.

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

- Department of Primary Industries and Regional Development – Agriculture and Biosecurity
- Department of Primary industries and Regional Development - Fisheries
- Department of Climate Change, Energy, the Environment and Water – Flooding
- Department of Climate Change, Energy, the Environment and Water – Water
- Department of Climate Change, Energy, the Environment and Water - Conservation Programs Heritage and Regulation
- NSW Rural Fire Service

- NSW Natural Resources Access Regulator

6 Timeframe

Council proposes a nine (9) 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 standard.

An LEP completion date of nine (9) months is in line with the Department's 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 function as a local plan-making authority.

As the planning proposal deals primarily with matters of local significance it is recommended that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

Based on the assessment detailed in this report the planning proposal is supported to proceed with conditions for the following reasons:

- the proposal is consistent with the North Coast Regional Plan 2041;
- the proposal aligns with the actions in the Coffs Harbour Local Growth Management Strategy;
- the proposal aligns with the Planning Priorities and actions in the Coffs Harbour Local Strategic Planning Statement;
- the proposal will ensure that the Coffs Harbour LEP 2013 aligns with updates to the Environmental Planning and Assessment Act 1979.

Prior to community and agency consultation the planning proposal is to be updated to:

- include a clear and concise outline of the objectives and intended outcomes in Part 1 of the proposal;
- include a plain English description of the intent of each proposed LEP clause amendment;
- include further explanation and justification for the proposed changes to clause 4.2D and how they will achieve Council's intent;
- include further explanation as to why the land uses proposed to be prohibited in the R5 zone are incompatible with the zone objectives;
- include existing and proposed maps sheets for the amendments to the Key Sites Map;
- explain the strategic justification for the inclusion of the five new sites on the Key Sites map and the application of the proposed Key Sites clause to these properties;
- include justification for permitting dams in the RU2 zone as exempt development particularly in relation to clause 3(f) of Section 9.1 Direction 4.1 Flooding;
- include the completed checklist from Appendix 1 of the NSW Coastal Design Guidelines 2023; and
- include a map illustrating the terrestrial biodiversity and koala habitat that will be identified as environmentally significant land and / or an ecologically sensitive area.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 4.5 Acid sulfate soils, is of minor significance and justified in accordance with the terms of the direction; and
- Note that the inconsistencies with section 9.1 Directions 4.1 Flooding, 4.2 Coastal Management, 4.3 Planning for Bushfire Protection and 9.2 Rural Lands 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 community consultation the planning proposal is to be updated to:
 - include a clear and concise outline of the objectives and intended outcomes in Part 1 of the proposal;
 - include a plain English description of the intent of each proposed LEP clause amendment;
 - include further explanation and justification for the proposed changes to clause 4.2D and how they will achieve Council's intent;
 - include further explanation as to why the land uses proposed to be prohibited in the R5 zone are incompatible with the zone objectives;
 - include existing and proposed maps sheets for the amendments to the Key Sites Map for both localities;
 - explain the strategic justification for the inclusion of the five new sites on the Key Sites map and the application of the proposed Key Sites clause to these properties;
 - include justification for permitting dams in the RU2 zone as exempt development particularly in relation to clause 3(f) of Section 9.1 Direction 4.1 Flooding;
 - include the completed checklist from Appendix 1 of the NSW Coastal Design Guidelines 2023; and
 - include a map illustrating the terrestrial biodiversity and koala habitat that will be identified as environmentally significant land and / or an ecologically sensitive area.
2. Consultation is required with the following public authorities:
 - Department of Primary Industries and Regional Development – Agriculture and Biosecurity
 - Department of Primary industries and Regional Development - Fisheries
 - Department of Climate Change, Energy, the Environment and Water – Flooding
 - Department of Climate Change, Energy, the Environment and Water – Water
 - Department of Climate Change, Energy, the Environment and Water – Conservation Programs Heritage and Regulation
 - NSW Rural Fire Service
 - NSW Natural Resources Access Regulator
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.

The timeframe for the LEP to be completed is on or before 9 Months of the Gateway determination date.



_____ (Signature)

26 September 2025 (Date)

Paul Garnett

Manager, Hunter and Northern Region



_____ (Signature)

29 / 9 / 25

_____ (Date)

Craig Diss

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