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Gateway determination report – PP 2025-1733

Complying Development on C4 Zoned Land

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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 D - DPHI Advice on Scoping Proposal

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Queanbeyan Palerang
PPA	Queanbeyan Palerang Regional Council
NAME	Complying development on C4 zoned land
NUMBER	PP-2025-1733
LEP TO BE AMENDED	Codes SEPP 2008
ADDRESS	All C4 Zoned land in Queanbeyan Palerang LGA
DESCRIPTION	As above
RECEIVED	9/09/2025
FILE NO.	EF25/18067
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 contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Obtain a variation to the Codes SEPP 2008 to apply parts of the Inland Code to lands zoned C4 Environmental Living (C4) within the QPRC LGA.

The proposal outlines the intended outcomes to include:

- Provide low impact complying development opportunities in the C4 Zone, which will not impact upon lands with high environmental values; and
- Support landowners by providing a faster, efficient and cost-effective way to obtain approval of straightforward, minor development on their property.

The objectives/intended outcomes of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Codes SEPP 2008 per the draft clause shown below:

The Inland Code is varied in its application by inserting the following after clauses 3D.3(5):

- The alteration of, or an addition to, a dwelling house, alteration or addition of attached development, the erection of a farm building or detached development and the alteration of, or an addition to, a farm building or detached development, is development specified for this code if the development—
 - (a) is erected on a lot in Zone C4, and
 - (b) is ancillary to an existing dwelling house, and
 - (c) is erected in the asset protection zone for the dwelling house, and
 - (d) does not require removal of any native vegetation, and
 - (e) also complies with the following development standards specified in this code for its development type:
 - Division 5 Development standards for dwelling houses and attached development in Zone R5
 - Division 6 Development Standard for detached development in rural and residential zones
 - Division 8 Development standards for associated works including earthworks, retaining walls, drainage, protection of walls and protection of trees

In this clause—

- **asset protection zone** means an asset protection zone in accordance with *Planning for Bush Fire Protection*.

The Council report associated with the planning proposal outlines the types of developments that would be permitted as complying development as a result of the proposal, these include:

- Alterations and additions to a 1 or 2 storey dwelling house and any attached development
- Detached development and the alteration or addition to any detached development
- Cabana, cubby house, fernery, garden shed, gazebo or greenhouse
- Carport or garage
- A balcony, deck, patio, pergola, terrace or veranda
- A rainwater tank (above ground)
- A shade structure or shed
- Driveways, fences, pathways and paving, retaining walls, downpipes, electricity or gas meters, fascia, gutters, light fittings, aerials, antennae, awnings, chimneys, cooling or heating appliances, eaves, flues, pipes, structures associated with the provision of a utility service
- Swimming pool, swimming pool coping and decking, child resistant barrier
- Farm buildings (as defined in the Standard Instrument and only on lots 4000m² or larger and subject to meeting specific development controls (i.e. setbacks), ancillary office to a farm building
- Shipping containers
- Earthworks, retaining walls and structural support.

DPHI has considered the planning proposal as submitted by Council, and it is not supported in its current form as the proposal seeks to provide for development that extends beyond what is considered ‘minor development ancillary to existing approved dwellings’ and is therefore inconsistent with the advice provided to Council in extensive pre-lodgement consultation on an outcome that could be supported by DPHI and DCCEEW. Further justification is provided throughout this report.

However, a revised planning proposal is supported that only identifies the level of development consistent with the Bega provision in Schedule 3 Complying development Codes – variations 3A.5(3) (4).

1.4 Site description and surrounding area

The planning proposal applies to all C4 (Environmental Living) zoned land under the Queanbeyan Palerang Regional LEP 2022, as shown in areas under red hatching figure 1 below.

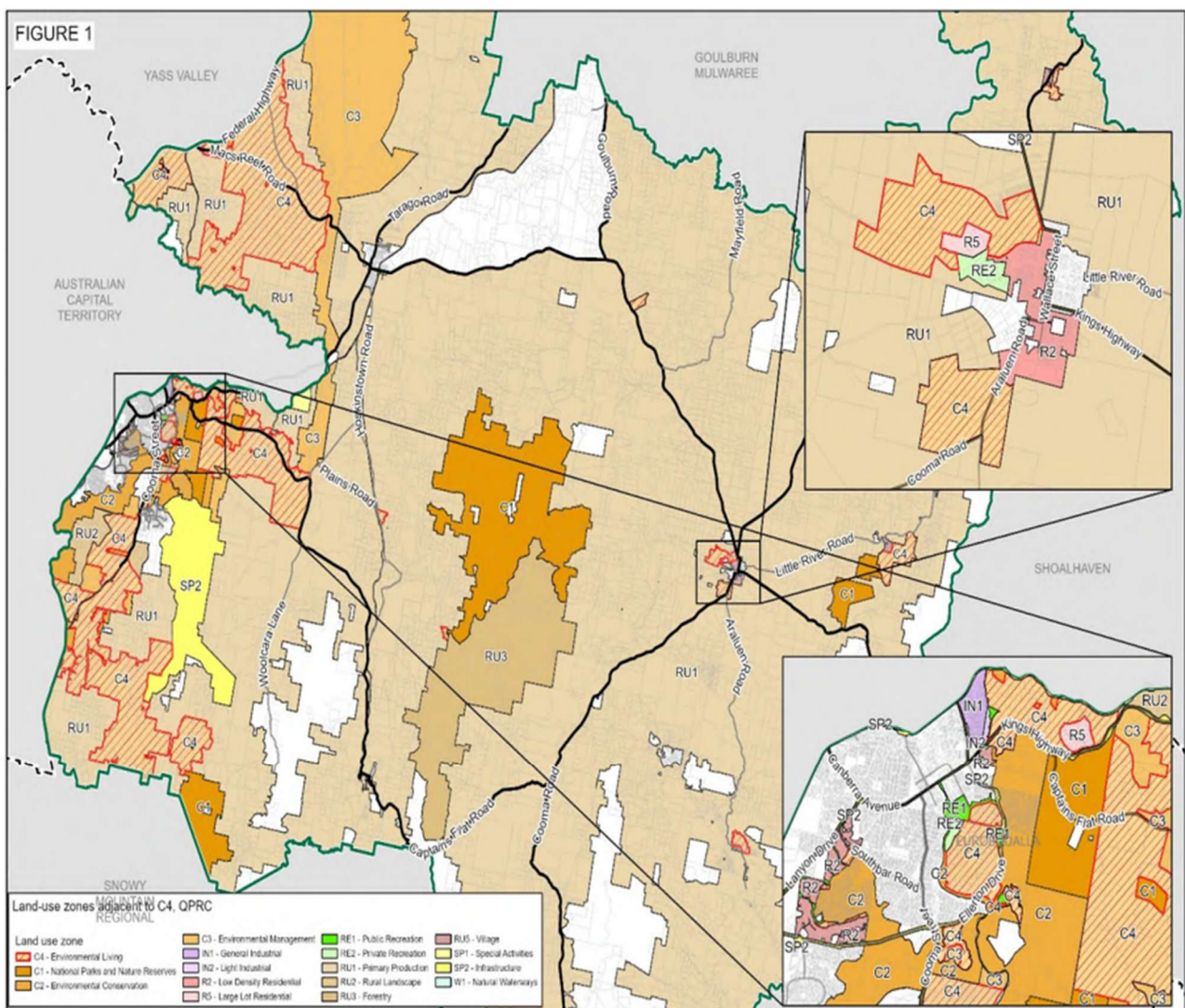


Figure 1 Subject land (source: Planning Proposal)

1.5 Mapping

No LEP mapping is required to be changed as an outcome of this proposal, nor included in the proposed SEPP provisions.

The planning proposal includes a single map as shown above in figure 1 that identifies at LGA wide scale all C4 zoned land covered by the QPRC LEP 2022 to which this planning proposal applies. The mapping included in the planning proposal should be expanded to provide greater resolution and improved legibility ahead of any future community consultation.

Any revised planning proposal should also include relevant constraint mapping including biodiversity and bushfire to provide context to the application of the proposed amendments.

1.6 Background

There is a considerable planning history, including as outlined by Council in the planning proposal:

- 2015 - 2019 Planning proposal to increase exempt & complying provisions in the E4, RU5 and RU1 zones received Gateway determination; Council resolved to not progress in anticipation of pending changes to the Codes SEPP.
- Aug 2022 Completion of Biosis Detailed Biodiversity Values Assessment Study.
- Sept 2022 Planning proposal to rezone E4 zoned land in Bywong & Wamboin to R5; Council resolved to not progress and instead revisit merits of previous planning proposal.
- Feb 2023 Scoping proposal seeks to enable a range of complying development types in C4 zone. Council deferred consideration of the scoping proposal pending the outcome of a Councillor workshop and a separate community workshop.
Aug 2023 Consultation with key government / agency stakeholders on scoping proposal.
Dec 2023 Councillor and community workshops held.
- May 2024 Submissions report to Council; resolution passed to prepare a planning proposal.

The planning proposal submitted for Gateway determination differs from the proposal agreed to by agencies (DPHI / DCCEEWW) following the scoping proposal process, as will be discussed later in this report.

2 Need for the planning proposal

The planning proposal is not the result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report.

Council initiated the planning proposal that seeks to enable a range of complying development on land zoned C4 Environmental Living following representations from landowners.

At present, complying development in the C4 zone within the Queanbeyan Palerang LGA is not an available development pathway under either Council's LEP, or the State Environmental Planning Policy Codes SEPP 2008.

The QPRC LEP 2022 does not specifically list complying development anywhere within the LGA, rather refers to what is available under the Codes SEPP.

In order to achieve the desired planning outcomes there are 2 options, one is to amend the Codes SEPP as proposed in this planning proposal, the other would be to list land uses within QPRC LEP 2022 Schedule 3 (Complying development).

3 Strategic assessment

3.1 Regional Plan

The planning proposal states that it gives effect to following three directions from the South East and Tablelands Regional Plan (SETRP) 2036:

- Direction 14 Protect important environmental assets
- Direction 15 Enhance biodiversity connections
- Direction 28 Manage Rural Lifestyles

The following table provides an assessment of the planning proposal against relevant aspects of the SETRP 2036. DPHI concludes that the proposal is inconsistent with the South East and Tablelands Regional Plan 2036.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 14 Protect important environmental assets	The proposal states it is consistent with the Direction as any proposed minor development must be sited within a prescribed Asset Protection Zone which will ensure critical habitat and flora and fauna are not disturbed. Comment - The proposal seeks to allow a wide range of alterations and additions to dwellings and other development, new farm buildings and detached development as complying development on land zoned C4 Environmental Living. Whilst Council proposes some consideration of the environmental impacts in its proposed clause, the application of complying development as proposed will inherently reduce the assessment of environmental impacts compared to the development application process. This has the potential for cumulative environmental impacts and therefore, the planning proposal as submitted is inconsistent with this Direction.
Direction 15 enhance biodiversity connections	An increase in complying development within environmentally significant areas will not enhance biodiversity connections as impacts on these connections will not be considered. The proposal is inconsistent with this Direction.
Direction 28 Manage Rural Lifestyles	The Direction notes a strategic planning approach to managing rural residential housing, acknowledges environmental constraints and potential impacts, bushfire challenges and the risk of land use conflict. Noting that the proposal does not change zonings or development standards, but rather approval pathways it is neither consistent nor inconsistent with this Direction.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies:

- Queanbeyan Palerang Regional Council Local Strategic Planning Statement: Towards 2040 (LSPS)

Planning Priority 5 – We consider the environmental impacts of future development

Planning Priority 6 – Our natural landscapes and water resources are sustainably managed

Planning Priority 8 – We ensure the future planning of the region is well coordinated and provides for its sustainable management

Planning Priority 12 – Our Council is efficient, innovative and actively seeking partnerships to deliver outcomes to the community

Planning Priority 13 We have a well informed and engaged community.

- Community Strategic Plan 2018-2028
- Queanbeyan Residential and Economic Strategy 2031
- QPRC Rural Lands Strategy
- QPRC Digital Economy and Smart Community Strategy

DPHI has considered the local strategic planning and given the intent of the proposal to facilitate alterations and additions to existing dwellings and other related development as complying development and therefore not requiring a development application, it is likely to be generally consistent with local strategic plans, with the possible exception of the LSPS Planning Priority 5 – We consider the environmental impacts of future development.

3.3 Section 9.1 Ministerial Directions

The planning proposal provides a consideration against relevant Ministerial Directions.

The table below discusses consistency with relevant section 9.1 Directions:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Justified as minor	As discussed in Section 3.1 of this report. A revised planning proposal in accordance with the recommended Gateway conditions will reduce the amount of development to which the complying development provisions would apply to and therefore the inconsistency with the Regional Plan which could then be considered minor.

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Justified as minor	The planning proposal states consistency with the Direction as the proposal does not reduce the environmental protection standards for the affected land and includes mechanisms to ensure environmental sensitive areas remain undisturbed and protected. Whilst there are some mechanisms proposed, and others already in place within the SEPP to protect the environment, the extent of development proposed as complying development (including alterations and additions to dwellings, attached and detached development as well as new farm buildings) present the potential for impacts on the environment, particularly when applied broadly to lands within the C4 zone with environmental values. As recommended, a revised planning proposal will reduce the extent of development permitted as complying development and therefore be consistent with this Direction.
3.2 Heritage Conservation	Yes	The planning proposal states that there are no known or mapped items of environmental heritage and further notes the provisions within the Codes SEPP relating to the management of Heritage. DPHI does not consider the proposal to be inconsistent with this direction.
3.3 Sydney Drinking Water Catchment	Yet to be determined.	Proposal will apply to land within the Sydney drinking water catchment. The extent of development proposed in Councils planning proposal has the potential to impact upon the catchment/water quality if not managed effectively. A revised planning proposal will reduce the extent of complying development and therefore, potential impacts on the catchment. Consultation with Sydney Water should be required as a condition of the Gateway in order to ensure consistency with the Direction.
4.1 Flooding	Yes	The Codes SEPP contains adequate provisions relating to development of flood prone land and the proposal is not inconsistent with the Direction.
4.3 Planning for Bushfire Protection	Yet to be determined.	Whilst the Codes SEPP contains provisions relating to bushfire prone land, consultation with the NSW RFS is required and any comments considered to achieve consistency with the Direction. Consultation with NSW RFS is to be required by the Gateway.
4.4 Remediation of Contaminated Land	Yes	The Codes SEPP (2008) contains provisions relating to the management of contaminated lands. DPHI considers that the planning proposed is consistent with this Direction.

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.3 Development near Regulated Airports and Defence Airfields	Yes	The planning proposal states that there are 4 properties in Sutton and 41 properties in Googong that are zoned C4 and traversed by the ANEF 20 contour. Further, the proposal states that it will not impact upon the safe and effective operation of Canberra Airport as the maximum allowable height for complying detached development under the Inland Code of the Codes SEPP is 4.8m above ground level (existing), and for detached balconies, decks, patios, pergolas, terraces and verandahs it is 600 mm above ground level (existing). Both measures are substantially less than the maximum allowable height of 9m in the C4 Zone. The maximum height of farm buildings is 7m on lots between 4,000m² – 10ha. On properties greater than 10ha, a maximum height of 10m applies. The Codes SEPP 2008 contains provisions relating to the management of land in the 20 – 25 ANEF contours. DPHI considers that the planning proposal is consistent with this Direction.
6.1 Residential Zones	Yes	Applicable as the C4 zone permits residential development. The proposal does not facilitate new residential development however seeks to facilitate development associated with existing dwellings and other land uses as complying development. The proposal is not inconsistent with this direction.
9.1 Rural Zones	Yes	The proposal does not apply to rural zoned land.
9.2 Rural Land	Yes	Whilst applying to a conservation zone, it is known that rural land uses are undertaken on and adjacent to land subject to this proposal. The proposal does not seek to increase the types of development that may otherwise be considered through a development application, and considerations are in place within the Codes SEPP to address the protection of rural land and land uses and land use conflict.

3.4 State environmental planning policies (SEPPs)

The planning proposal is generally considered to be consistent with applicable SEPP's, with exception of the Codes SEPP 2008. An assessment against the Codes SEPP is provided.

The planning proposal states:

Consistency with the with the aims of the Codes SEPP 2008, which are to “provide streamlined assessment processes for development that complies with specified development standards by—

- A) providing exempt and complying development codes that have State-wide application, &
- B) identifying, in the exempt development codes, types of development that are of minimal environmental impact that may be carried out without the need for development consent, &
- C) identifying, in the complying development codes, types of complying development that may be carried out in accordance with a complying development certificate as defined in the Act, &
- D) enabling the progressive extension of the types of development in this Policy, &
- E) providing transitional arrangements for the introduction of the State-wide codes,

including the amendment of other environmental planning instruments”.

The proposal outlines that complying development is currently not permitted within the C4 Zone and that a variation is sought to the Codes SEPP 2008 to permit minor complying development in the C4 Zone within the QPRC LGA, in prescribed locations where it will not impact biodiversity or features of high environmental value.

Comment: As the proposal seeks to amend the Codes SEPP (2008) through a variation to Part 3D inland Code, there has been extensive consultation between Council and DPHI including the Codes policy team prior to lodgement of this planning proposal.

The Codes team have provided advice along with other state agencies which has underpinned the Departments position on the proposal.

The Codes SEPP does not otherwise apply to C4 land across NSW, apart from the Rural Housing Code which allows very minor ancillary development on C4 land only within the Bega Valley LGA. This is limited to minor works (e.g. swimming pools, spas, pool fencing, and small outbuildings, as well as alterations/additions to those structures).

The extent of development proposed as complying development extends well beyond the Bega variation as shown below:

Land in Zone C3 or C4 under *Bega Valley Local Environmental Plan 2013*

The Rural Housing Code is varied in its application by inserting the following after clause 3A.5(3)—

(4)

The erection of a new swimming pool or spa pool and child-resistant barrier, or an outbuilding, or alterations or additions to an existing swimming pool or spa pool and child-resistant barrier, or an outbuilding, is development specified for this code if the development—

(a) is erected on a lot in Zone C3 or C4, and

(b) is ancillary to an existing dwelling house, and

(c) is erected in the asset protection zone for the dwelling house, and

(d) also complies with the development standards specified in this code for development on land in Zone R5.

(5)

In this clause—

asset protection zone means an asset protection zone in accordance with *Planning for Bush Fire Protection*.

The advice provided to Council in response to the scoping proposal was a co-ordinated position of DPHI and DCCEEW that only “**minor development ancillary to existing approved dwellings**” within an existing cleared APZ would be supported.

The planning proposal lodged for a Gateway determination has established development types beyond what would be considered ‘minor development ancillary to existing approved dwellings’ as in the Bega variation and therefore, the extent of variation to Part 3D of the Inland Code of the Codes SEPP 2008 is not supported.

4 Site-specific assessment

4.1 Environmental

The planning proposal concludes that there is no likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected.

The proposal outlines that the requirements and development controls of the Inland Code and the proposed variation to the Codes SEPP 2008 have been thoroughly considered and a proposed clause deliberately crafted in relation to this proposal. Flagged is that any proposed minor development must be sited within a prescribed APZ to ensure critical habitat and flora and fauna

are not disturbed. If the criteria are not met, approval must be sought via a formal Development Application, which requires an environmental assessment.

DPHI notes that any proposed clause for the SEPP would need to be approved by Parliamentary Counsel and as such it is not certain that Council's suggested provisions will be agreed to, or able to be implemented.

DPHI has received advice from DCCEEW regarding the planning proposal which has noted that there is a residual risk that there are threatened species and habitats within non-native vegetation within the APZ. DCCEEW also share the concerns of the DPHI Codes team about the level of development proposed as complying and have recommended some minor wording changes to the draft clause in relation to environmental protection considerations of any future provision.

The planning proposal seeks to facilitate the complying development pathway for development types that have the potential to increase the footprint of development, residential occupation and to allow new structures associated with both the residential occupation/use, and farm related activities without development assessment.

Despite existing restrictions under the Codes SEPP 2008 and Council's proposed provisions, as the proposal applies to all land zoned C4 and to a range of development including farm buildings and alterations and additions to dwellings, it is considered that there is the potential for adverse impacts on critical habitat, threatened species and ecological communities. Further, the proposal would set an undesirable precedent for other LGA's across the State.

4.2 Social and economic

The planning proposal foreshadows positive social and economic impacts the facilitation of a secondary, more efficient and effective development approval process for minor complying development. It states that the use of the proposed Codes SEPP 2008 variation will ensure adequate criteria is in place to determine which lands are appropriate for complying development and provide public authorities and private landowners with certainty around the development planning controls on their land.

DPHI acknowledges some potential economic benefits to landowners by removing the need for development applications for development types proposed under this planning proposal. Council may also benefit through a reduction of development applications in the C4 zone.

4.3 Infrastructure

The provision of infrastructure is not relevant to this proposal.

5 Consultation

5.1 Community

Council does not specify a consultation period.

The planning proposal, which seeks to amend a SEPP, is categorised as a complex under the LEP Making Guidelines (September 2023). Accordingly, a community consultation period of 30 working days is recommended and will form part of the conditions to the Gateway determination.

5.2 Agencies

Prior to lodgement of this planning proposal, significant consultation has occurred involving Council, both DPHI Regional and Codes Policy teams and DCCEEW (Biodiversity and Conservation).

Council's proposal has nominated a list of agencies, authorities and Aboriginal land councils to be consulted about the planning proposal. The Department recommends agency consultation to include the following agencies as a minimum due to the recommended reduced scope of the proposal, and recommends they be given 30 working days to comment:

- DCCEEW – Biodiversity, Conservation and Science
- NSW Rural Fire Service
- Sydney Water
- Ngambri Local Aboriginal Land Council
- Batemans Bay Local Aboriginal Land Council
- Ulladulla Local Aboriginal Land Council
- Mogo Local Aboriginal Land Council

6 Timeframe

Council proposes a 6 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 complex as it requires the amendment of a SEPP.

The Department recommends an LEP completion date of 12 months from the date of this Gateway Determination in line with its commitment to reducing processing times and with regard to the benchmark timeframes. This will provide adequate time for consideration of a revised planning proposal and for the drafting and amending a SEPP. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the planning proposal involves the amendment of a SEPP, Council cannot be authorised to be the local plan-making authority for this proposal and DPHI will be the local Plan Making Authority.

8 Assessment summary

The planning proposal as submitted by Council is not supported to proceed for the following reasons:

- The proposal seeks to provide for development that extends beyond what is considered 'minor development ancillary to existing approved dwellings' and is therefore inconsistent with the advice provided to Council in extensive pre-lodgement consultation on an outcome that could be supported by DPHI and DCCEEW.
- The proposal applies to the entire C4 zone and proposes a range of development as complying development. These development types have the potential for adverse environmental impacts which should be considered through the development assessment process.
- The proposal would set an undesirable precedent.

To reduce potential environmental impacts the proposal should be updated prior to exhibition to:

- Include only the level of development consistent with the Bega provision in Schedule 3 Complying development Codes – variations 3A.5(3) (4).
- Update the mapping to more clearly show the areas subject of the planning proposal, and the biodiversity and bushfire constraints that apply to these areas.

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

- The use of a complying development pathway for some minor development ancillary to a dwelling house in the C4 Environmental Living zone is supported.

9 Recommendation

It is recommended the delegate of the Secretary:

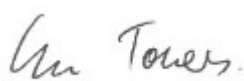
- **agree** that any inconsistency with section 9.1 Directions 1.1 Regional Plans and 3.1 Conservation Zones are justified in accordance with the terms of the Directions; and
- **note** that consistency with section 9.1 Directions 3.3 Sydney Drinking Water Catchment and 4.3 Planning for Bushfire Protection remains unresolved until further justification has been provided.

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 exhibition, the planning proposal is to be updated as detailed below and referred to DPHI for approval:
 - Include only the level of development consistent with the Bega provision in Schedule 3 Complying development Codes – variations 3A.5(3) (4)
 - Update the mapping to more clearly show the areas subject of the planning proposal, and the biodiversity and bushfire constraints that apply to these areas
2. Consultation is required with the following public authorities:
 - DCCEEW – Biodiversity, Conservation and Science
 - NSW Rural Fire Service
 - Sydney Water
 - Ngambri Local Aboriginal Land Council
 - Batemans Bay Local Aboriginal Land Council
 - Ulladulla Local Aboriginal Land Council
 - Mogo Local Aboriginal Land Council
3. The planning proposal should be made available for community consultation for a minimum of 30 working days.

The timeframe for the LEP to be completed is on or before 12 Months from the date of the Gateway determination.



20/11/25

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