

## Rezoning Review Briefing Report – RR-2024-11.

*Rezone 207 Broulee Road, Broulee (Lot 1 DP 1256287) (“The Farm”) to C2 Environmental Conservation Zone - 25.3ha, and C4 Environmental Living Zone - 100ha, to permit 800 dwellings.*

Element	Description
Date of request	13 March 2024
Department ref. no	RR-2024-211 – File number IRF24/173
LGA	Eurobodalla
LEP to be amended	Eurobodalla LEP 2010
Address	207 Broulee Road, Broulee
Reason for review	Council notified the proponent it will not support the proposed amendment outlined in planning proposal PP-2023-1734. Council made the decision to refuse the proposal at its meeting 20 February 2024 ( <b>Attachment C1 and C2</b> ).
Has council nominated PPA role	No
Consultation	<p>The Department sought comment from the applicant and Council on the rezoning review request. The applicant provided a letter, dated 9 April 2024, to the Department justifying its request for a rezoning review of Council's refusal of the planning proposal (<b>Attachment B3</b>).</p> <p>Council advised the Department by email dated 22 March 2024 confirming Council had refused the planning proposal (Revision A) at its meeting 20 February 2024 (<b>Attachment C3</b>).</p> <p>Acknowledgment letters, that included an invitation to provide any further information on the proposal within 21 days, were sent to both the applicant and Council on the 10 April 2024.</p> <p>No further responses were received from the applicant or Council by 9 May 2024 and the Department has therefore relied on information in the planning proposal, the additional information provided by the applicant on the 9 April 2024, Council's email 20 February 2024 and the Council report/Minutes to prepare the planning report to the Panel.</p>
Brief overview of the timeframe/progress of the planning proposal	<ul style="list-style-type: none"><li>• Planning proposal lodged on Planning Portal on 10 August 2023.</li><li>• Planning proposal reported to Council on 20 February 2024.</li><li>• Application for rezoning review (RR) submitted on the Portal on 13 March 2024.</li><li>• RR fees were paid on the 4 April 2024 (<b>Attachment B2</b>).</li><li>• The Applicant submitted additional information (statement to support application) on 9 April 2024 (<b>Attachment B3</b>).</li></ul>

	<ul style="list-style-type: none"> <li>Letters of Acknowledgement sent to the Panel, Applicant and Council on the 10 April 2024. Comments due by 1 May 2024 (21 days).</li> </ul>
Department contact:	Graham Judge 6229 7906

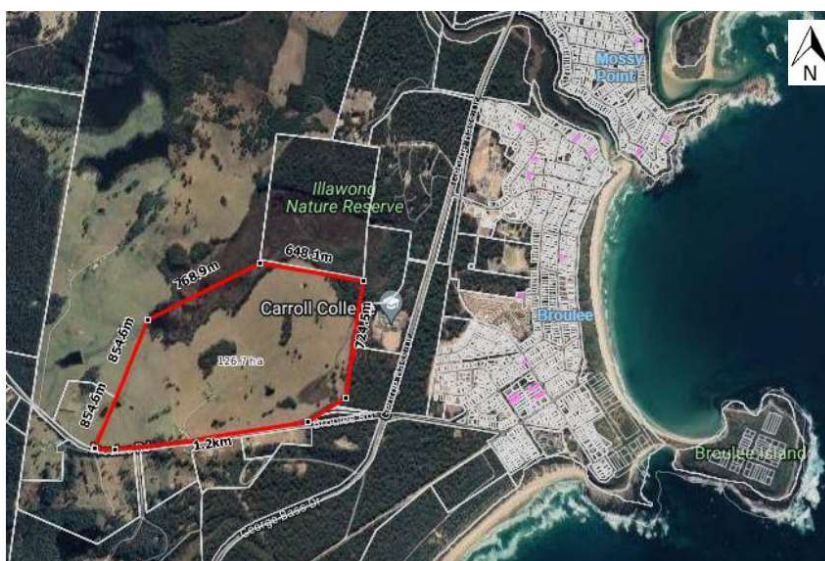
## Planning Proposal

**Table 1. Overview of planning proposal**

Element	Description
Site Area	125.3 hectares
Site Description	<p><b>Proposal applies to 207 Broulee Road (Lot 1 DP 1256287), Broulee</b></p> <p>The eastern boundary of the site is located approximately 520 metres from the western edge of Broulee. The site has a 1.2km frontage to Broulee Road in the south and adjoins Illawong Nature Reserve to the North and Carroll College to the east (Figure 1). The site is described in the planning proposal comprising “<i>gentle rolling hills that are mostly clear of vegetation</i>”. The site is an irregular shaped rural land holding with a single dwelling on site.</p>
Proposal summary	<p>The planning proposal (<b>Attachment A</b>) seeks to rezone land from C2 Environmental Conservation Zone and RU1 Primary Production Zone to C2 Environmental Conservation Zone (25.3ha) and C4 Environmental Living Zone (100 ha) to accommodate a “unique community that integrates agriculture with a residential neighbourhood.” The proposal is referred to as an ‘agrihood’ in the planning proposal and a concept masterplan of the proposal is <b>Attachment D4</b>.</p> <p>The Planning proposal is accompanied by the following supporting studies and assessment (<b>Attachments D1-D13</b>):</p> <ul style="list-style-type: none"> <li>Attachment D1 Agriculture Assessment</li> <li>Attachment D2 Biodiversity Report</li> <li>Attachment D3 Bushfire Report</li> <li>Attachment D4 Concept Masterplan</li> <li>Attachment D5 Heritage Constraints</li> <li>Attachment D6 Housing Study</li> <li>Attachment D7 Housing Study – Key Findings</li> <li>Attachment D8 Sewer and Water Feasibility Assessment</li> <li>Attachment D9 Site Suitability Analysis</li> <li>Attachment D10 Survey Plan</li> <li>Attachment D11 Traffic Report</li> <li>Attachment D12 Urban Design presentation</li> <li>Attachment D13 Concept design presentation</li> </ul>
Relevant State and Local Planning Policies, Instruments	<p>(Source: Planning Proposal)</p> <ul style="list-style-type: none"> <li>Eurobodalla LEP 2010</li> <li>Eurobodalla Local Strategic Planning Statement</li> <li>Eurobodalla Rural Lands Strategy 2016</li> </ul>

	<ul style="list-style-type: none"> <li>• Eurobodalla Settlement Strategy 2006-2031</li> <li>• South East and Tablelands Regional Plan</li> <li>• Exhibited draft South East and Tablelands Regional Plan</li> <li>• Biodiversity and Conservation SEPP</li> <li>• Primary Production SEPP</li> <li>• Resilience and Hazards SEPP</li> </ul>
<b>Relevant section 9.1 Ministerial Direction</b>	<p>(Source: Planning Proposal)</p> <ul style="list-style-type: none"> <li>• 1.1 Implementation of Regional Plans</li> <li>• 1.4 Site Specific Provisions</li> <li>• 3.1 Conservation Zones</li> <li>• 3.2 Heritage Conservation</li> <li>• 4.1 Flooding</li> <li>• 4.3 Planning for Bushfire Protection</li> <li>• 4.4 Remediation of Contaminated Land</li> <li>• 4.5 Acid Sulfate Soils</li> <li>• 5.1 Integrated Land Use and Transport</li> <li>• 5.3 Development Near Regulated Airports and Defence Airfields</li> <li>• 6.1 Residential Zones</li> <li>• 9.1 Rural Zones</li> <li>• 9.2 Rural Lands</li> </ul>

**Figure 1. Subject site (source: planning proposal)**

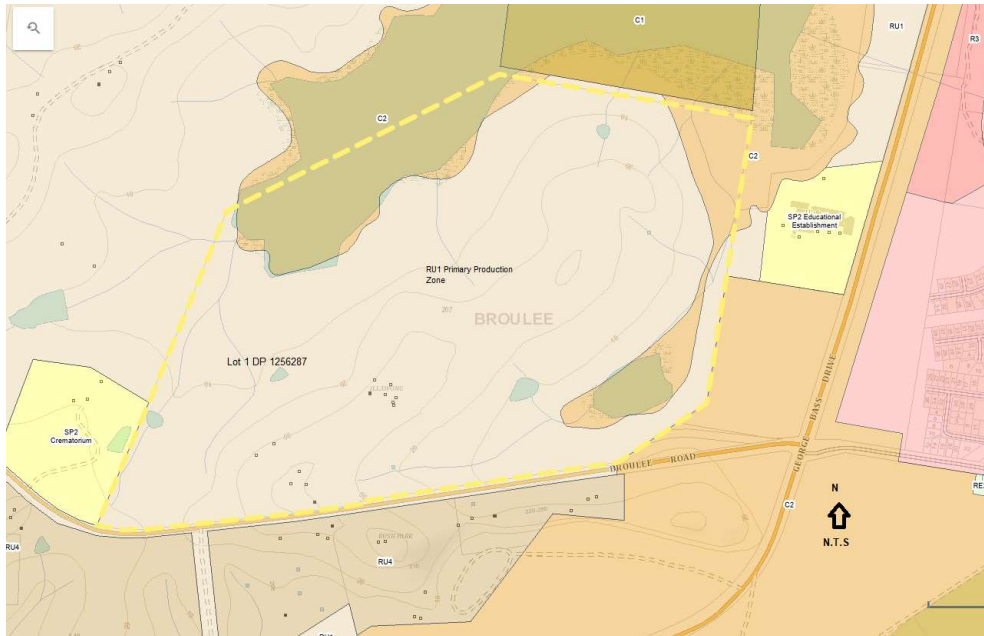


The planning proposal seeks to amend the Eurobodalla LEP 2010 per the changes shown in Table 2.

**Table 2. Current and proposed controls**

Control	Current	Proposed
<b>Zone</b>	RU1 Primary Production Zone C2 Environmental Conservation Zone.	C4 Environmental Living Zone (100 ha) C2 Environmental Conservation Zone (25.3ha)
<b>Maximum height of the building (HOB)</b>	Nil	8.5 m HOB proposed to be applied to C4 Environmental Living Zone.
<b>Minimum lot size</b>	RU1 Primary Production Zone – 100 ha. C2 Environmental Conservation Zone – Nil.	C4 Environmental Living Zone- 8 dwellings per hectare (100 ha area) C2 Environmental Conservation Zone – Nil (25.3 ha area).
<b>Other Site Specific Provisions</b>	N/A	Include provision to require minimum 50% of the subject site being provided as conservation area, green space, market gardens etc.
<b>Number of dwellings</b>	1 dwelling house permitted in the RU1 Zone.	<i>“Allow residential development of the C4 zoned lands subject to a density control of up to 8 dwellings per hectare (e.g. 8 x 100ha = 800 dwellings).”</i>  Note: Residential accommodation prohibited in the C2 Environmental conservation zone.
<b>Number of jobs</b>	N/A	Unknown

**Figure 2. Current zoning (source: NSW Spatial Viewer)**



**Figure 3 Proposed zoning (Source: Planning Proposal)**



## Key Issues

### **Issue no. 1 – Strategic Merit**

#### **Consistency with the draft South-East and Tablelands Regional Plan 2041**

##### **Council view**

The planning proposal is inconsistent with the draft South-East and Tablelands Regional Plan 2041 because it has not demonstrated consistency with the following objectives and strategies of the plan:

- **Objective 13 Sustainable agriculture and aquaculture**
  - Strategy 13.1 – The proposal has not demonstrated that areas of high environmental value bordering the development area to the north, north-east and south-east can be protected, and impacts of the development on aquatic habitats in freshwater systems and aquaculture estuaries can be avoided.
- **Objective 17 Plan for a supply of housing in appropriate locations**
  - Strategy 17.1 – The proposal has not demonstrated that:
    - existing services in Broulee can cater for an increase in population (i.e. social infrastructure, education and health), and can encourage walking and cycling.
    - There is proximity to public transport commensurate with the need generated by the target ‘seniors living’ character of the population.
  - Strategy 17.2 – The proposal has not demonstrated it focuses on new housing development in existing centres, where supported by strategic land use plans such as local housing strategies.

##### **Proponent view**

The planning proposal provides statements to indicate that the proposal is consistent with the following ‘Themes’ in the draft regional plan:

- Theme 1 Recognising Country, people, and place.
- Theme 2 Enhancing sustainable and resilient environments.
- Theme 3 Leveraging diverse economic identities.
- Theme 4 Planning for fit for purpose housing and services.
- Theme 5 Supporting a connected and active region.

The applicant’s submission dated 9 April 2024 also states there is no consideration in regional and local strategies or Ministerial Directions for “*diverse rural residential developments as agrihoods*”. The submission further indicates that the proposal will assist in dealing with the changing circumstances in the shortage of housing supply in Eurobodalla LGA that is not recognised by existing strategic planning framework.

#### **Consistency with Eurobodalla Local Strategic Planning Statement 2020 - 2040**

##### **Council view**

The proposal is inconsistent with the Eurobodalla Local Strategic Planning Statement 2020- 2040 because it does not:

- Planning Priority 2 enhance the distinctive character and heritage of towns, villages, and hamlets.
- Planning Priority 3 consolidate development within towns and village centres.
- Planning Priority 5 conserve and celebrate bushland and waterways.
- Planning Priority 8 align local infrastructure delivery with planned growth.

- Planning Priority 9 develop highly accessible town and activity centres and
- Planning Priority 11 activate town and village centres.

## Proponent view

- The planning proposal is consistent with the Eurobodalla Local Strategic Planning Statement. It states that the proposal's vision "to create great places through more liveable, sustainable, productive and collaborative communities" is achieved *"through the development of planning priorities that are formulated under the following four (4) broad planning principles: 1. Our place 2. Our environment 3. Our connection 4. Our business"*.
- Existing undeveloped zoned land in Broulee is identified as being constrained and will not provide for affordable housing.

## Consistency with the Eurobodalla Rural Lands Strategy 2016

### Council view

The proposal is inconsistent with the following Directions and Actions of the Eurobodalla Rural Lands Strategy 2016:

- Action 5.2.3 – Conserve properties over 100ha in larger ownerships and limit further fragmentation of ownership where access is poor.
- Direction 5.8.3 – There is an adequate supply of residential and rural residential land in the existing rural residential zones to address at least 5-10 years demand for all types of rural residential living experience.
- Action 5.9.2.1 - The R5 Large Lot Residential Zone should continue to be used for small lot (generally 5ha or less) rural living and smaller scale hobby farm activity in estate style developments covering predominantly cleared lands. The C4 Environmental Living Zone should be used to define areas where there is an emphasis on rural living in bushland surroundings.

### Proponent view

The Agricultural Consulting Report responds directly to the directions in sections 5.7.2.1, 5.7.2.2 and 5.7.2.3 and 5.7.3 of the Eurobodalla Shire Council 'Rural Lands Strategy (volume 1)'. The report indicates:

- the land is not highly productive and is generally suited to cattle grazing,
- a cattle enterprise on the project area is not considered to be commercially viable.

## Consistency with the Eurobodalla Settlement Strategy 2006-2031

### Council view

The proposal is inconsistent with the following actions in the Eurobodalla Settlement Strategy 2006 – 2031:

- Direction 5.2.2: Settlements are contained within existing settlements separated to maintain character and avoid urban sprawl.
- Direction 5.3.2: urban residential land is developed in an orderly sequence that responds to the market and is able to be serviced economically.
- Action NH3: aged housing is to be prohibited in rural areas or areas subject to natural hazard.
- Action NE7: restrict development in catchments that contribute to essential domestic water supply, irrigation waters and environmental flows in streams.
- Action NE8: apply a conservation zone and vegetation buffers to protect rivers, streams, wetlands, lakes and estuaries and other sensitive landscapes.
- Action SP7: include minimum lot sizes, maximum building heights and site coverage controls, such as maximum floor space ratios, as separate overlays in the new LEP.
- Action SP10: the existing boundaries of urban settlements as defined in structure plans and

including land zoned for urban expansion are to be retained in the new LEP.

- Action SP13: vacant urban residential land within and adjacent to Batemans Bay, Moruya and Narooma structure plan areas is given high priority for release. Vacant urban land in or adjacent to isolated villages and hamlets is of low priority for release.
- Action SP16: deficits in dwelling needs in the northern and central district are to be addressed through increased housing densities in appropriate locations as identified in structure plans for Batemans Bay and Moruya.

Council considers with the preparation of the new Local Housing Strategy underway, that will identify actions to increase diversity and affordability, it is premature to pre-empt and potentially undermine the findings and recommendations of the work by any support to a draft Planning Proposal of this scale.

## Proponent view

The proposal is reasonably consistent with the aims of the Eurobodalla Settlement Strategy 2006-2031 as it will:

- Conserve and improve biodiversity,
- Respect our diverse cultural background by forming partnerships with the local indigenous community, and
- Stimulate economic and community development with the advent of cluster housing in an agricultural neighbourhood.

The proponent considers:

- Council's settlement strategy adopted in 2006 is now outdated.
- The proposal is unconventional and will provide for development that will not result in:
  - conventional ribbon settlement along a main access road to Broulee,
  - conventional large scale subdivision that can erode the compact footprint and natural setting of Broulee, and
  - large scale buildings that will detract from the settlements' relationship to geographic location, views, and vistas of the surrounding natural environment.

## Consistency with State Environmental Planning Policies (SEPPs)

### Council view

The proposal is inconsistent with the following SEPPs -

- SEPP – Primary Production (2021) – Council considers the development will cause land use conflict between urban and rural uses.”
- SEPP Transport and Infrastructure (2021) – Council considers the proposed form of housing is urban in character and development will require significant infrastructure investment, the feasibility of which is uncertain. The proposal will divert the necessary critical infrastructure, funding, staging, sequencing and delivery of housing away from the existing nominated growth areas and is therefore not in the public interest and may have potential contamination impacts, which are unknown.
- SEPP Biodiversity and Conservation (2021) – Council considers the development will have adverse effect on the biodiversity and conservation of threatened species, ecological communities and their habitats.
- SEPP Resilience and Hazards (2021):
  - Council states bushfire asset protection zones should be within public road reserves and not within riparian areas or on trails and the proposed fire trails may not be accessible by the RFS.
  - Council has concerns regarding transport accessibility for future residents, and

connectivity of cycleways, pathways and open space areas from the new development to the existing areas of Broulee.

- Council has raised concerns regarding potential contamination impacts on the site which are unknown.

## Proponent view

- SEPP Primary Production (2021) – The planning proposal achieves a balance between rural needs, including farming, and development while reducing the risk of land use conflict and rural land fragmentation.
- SEPP Transport and Infrastructure (2021) – The PP and the applicant's statement does not mention this SEPP.
- SEPP Biodiversity and Conservation (2021) - A Biodiversity Report accompanies this proposal and identifies how the proposal will protect environmental values of the site.
- SEPP Resilience and Hazards (2021) - Background research indicates a history of the site being used for residential and farming uses with no indication of contamination.

## Issue 2 – Site Specific Merit

### Environmental Impacts

#### Council view

The proposal (including additional information requested from the applicant) does not adequately address the following:

- How Category 1 streams are to be avoided, managed, impacted and/or offset,
- Demonstrate that development will not significantly impact on the adjacent wetlands and environmental buffer areas,
- Identify potential impacts on Yellow-bellied gliders,
- Prepare a Biodiversity Development Assessment Report, or minimum Biodiversity Assessment Methodology stage 1-2 assessment,
- Investigate the location of heritage buildings likely to occur on site and, where required, prepare an archaeological plan,
- The information provided on flooding or water cycle and stormwater management is inadequate, particularly impacts on nearby wetland, Illawong Nature Reserve and first order waterways across the site.
- The proposal states it will be a carbon negative community, however how this will be achieved is unclear.

#### Proponent view

The preliminary ecological assessment has identified the following key outcomes:

- the bulk of the subject land (68 ha) is relatively unconstrained by biodiversity values given historic clearing and pasture improvement.
- a change of use of the subject land that promotes ecologically sustainable development has the potential for significant biodiversity benefits both on the subject land and locally.
- there is considerable scope for ecologically sustainable residential development that protects and enhances the significant biodiversity values.

The proponent considers the proposal will significantly enhance the existing environment, particularly in relation to management of the existing wetlands and providing greater community access. There are no

other likely environmental effects of the planning proposal that require to be managed that have not already been addressed in the detailed reports that accompany this application.

## Impacts on Infrastructure and Services

### **Council view**

The planning proposal and supporting documentation has not adequately considered any environmental investigations, geotechnical limitations, community engagement or cost estimates associated with servicing the development with water and wastewater.

### **Proponent view**

- Water and sewer services adjoin the site.
- Earlier consultation with Council has identified that:
  - The Tomakin Wastewater Treatment Plant is schedule for an upgrade in 3 years and could theoretically service the proposed development.
  - Eurobodalla's existing water treatment supply network will require updating.
  - The proponent is committed to making substantial investment to provide the site with water and wastewater infrastructure.

## Social Impacts

### **Council view**

- The planning proposal does not identify expected dwelling occupation or population estimates and how this may affect expected demand for schools and open space.
- It is unclear whether this is an acceptable increase in demand for community facilities.
- The issue of housing affordability is not clearly addressed by the proposal.
- The proposal does not demonstrate the strategic merit of this site for more housing because Eurobodalla has adequate land zoned for future residential development to at least 2041, and development approvals are meeting projected population growth requirements.
- There is insufficient detail of how key worker housing and affordable housing would be delivered and there is no evidence of collaborating with community housing providers.
- There are inconsistencies in the justification for the proposal from a community perspective, for example:
  - A 50% dwelling target for downsizers (one to two people) but the planning proposal documentation suggests smaller dwellings with two to three bedrooms.
  - Over 55s are proposed to be over 50% of the future population however, the proposal does not include seniors living, which is prohibited in the C4 Environmental living zone.
  - The proposed zoning of C4 Environmental Living would be inappropriate given the urban characteristics of this proposal. The character of the housing component does not meet the desired future character sought by the objectives of the zone, particularly Objective 4 to "ensure that development in the area does not unreasonably increase the demand for public services or public facilities."
  - The proposal suggests the model is a 'compact, mixed-use, walkable community' however this is not evident in the concept plan. The proposal does not address active transport and how pedestrians/cyclists will be catered for particularly around crossing of George Bass Drive to the services like schools, medical facilities and shops in Broulee, or the potential for public transport to elsewhere in Eurobodalla.

- The potential impacts of walking and bike trails though threatened ecological community to Carroll College have not been adequately assessed in the planning proposal.

## Proponent view

The Planning Proposal (social impacts) has the following intended outcomes:

- Provides for overall health & well-being.
- Creates distinctive and unique community.
- Enhances the existing environment.
- Increased diversity of housing types to address affordability and first home buyers.
- Provides education in partnership with local organisations, schools, TAFE and local indigenous groups.
- Creates a unique planned community that integrates agriculture into a residential neighbourhood.
- Creates a community that is uniquely sustainable.

## Economic Development Employment Potential

### Council view

- The proposal (and additional information) does not address the loss of agricultural land. Whilst the site may not currently be farmed to its potential, this is not justification for a change in use for future needs.
- The proposal does not address potential land-use conflicts of urban housing interspersed with agriculture (e.g impact of noise, odour, spraying, truck movements, etc, on residential amenity) or how they would be managed.
- The proposal suggests partnerships with an Aboriginal-owned construction company which may provide employment opportunities for Aboriginal people, however, it is likely that all construction companies would likely benefit from the proposal.

### Proponent view

The Planning Proposal (economic impacts) has the following intended outcomes.

- Improve the local economy around local employment opportunities, indigenous employment opportunities and increased tourism.

## Issue 3 – Legal Issues

### Council view

- The permissibility of the proposed land uses of the village hub and dwelling types in the C4 Environmental Living zone is unclear.
- Some proposed uses, such as a café, childcare centre, business premises, ‘discovery centre’ and villa/terrace housing are not permissible in the proposed C4 Environmental Living zone.
- The proponent has indicated the permissibility of the proposed housing mix and commercial uses in the proposed C4 Environmental Living zone will be confirmed in a site-specific Development Control Plan. However, a DCP cannot allow a land-use that is prohibited in a Local Environmental Plan.

### Proponent view

The additional information submitted by the applicant dated 9 April 2024 that responded to Council’s reason for refusal did not provide any comment on the legal issues raised in the Council report.

# Rezoning Review – Briefing Report

PP-2023-1734



## Attachments

<b>Attachment A</b>	Planning Proposal
<b>Attachment B1</b>	Rezoning Review application.
<b>Attachment B2</b>	Application Receipt
<b>Attachment B3</b>	Applicant's covering letter 9 April 2024
<b>Attachment C1</b>	Council Report
<b>Attachment C2</b>	Council Minutes
<b>Attachment C3</b>	Council email 22 March 2024
<b>Attachment D1-D13</b>	Supporting studies with planning proposal.

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15/5/2024

George Curtis

A/Manager, Southern, Western and Macarthur Region

A handwritten signature in blue ink, appearing to read 'Graham Towers'.

17/5/24

Graham Towers

A/Director, Southern, Western and Macarthur Region

## Planning officer

Graham Judge

Senior Planner, Southern, Western and Macarthur Region

6229 7906

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