



IRF22/1568

Gateway determination report – PP-2022-847

Rezoning of Lots D and E DP33623, 1583 Burrendong Way, Mullion Creek from RU1 to R5 and change MLS from 100ha to 1ha.

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Acknowledgment of Country

The Department of Planning and Environment 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
PP Revised
Council Planning Proposal Report

1 Planning proposal

1.1 Overview

Table 2 - Planning proposal details

LGA	Cabonne
PPA	Cabonne Council
NAME	Rezone land from RU1 Primary Production to R5 Large Lot Residential and to change MLS from 100ha to 1ha (4 additional houses)
NUMBER	PP-2022-847
LEP TO BE AMENDED	Cabonne LEP 2012
ADDRESS	1583 Burrendong Way, Mullion Creek
DESCRIPTION	Lots D and E, DP 33623
RECEIVED	4/05/2022
FILE NO.	IRF22/1568
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known 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 rezone the land from zone RU1 Primary Production to R5 Large Lot Residential and change minimum lot size from 100ha to 1ha

Page 19 of the planning proposal outlines to the objectives of this proposal and they are clear and adequate.

This proposal will facilitate the subdivision of the land into 5 lots with a dwelling house thereon. One dwelling house exists on the land thus resulting in 4 additional dwelling houses.

1.3 Explanation of provisions

The planning proposal seeks to amend the Cabonne LEP 2012 per the changes below:

Table 3 - Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	R5 Large Lot Residential
Maximum height of the building	N/A	N/A
Minimum lot size	100ha	1.0ha
Number of dwellings	1	Total 5 – 4 additional dwelling houses
Number of jobs	N/A	N/A

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

1.4 Site description and surrounding area

The subject land is located on the western side of Burrendong Way and is approximately 1.5 kilometres south of Mullion Creek village and about 15 kilometres north of Orange. The subject land is described as Lots D and E DP 33623, 1583 Burrendong Way, Mullion Creek (Refer to Figure 1).

The subject land (about 8.9ha) is currently zoned RU1 Primary Production under the provisions of the Cabonne Local Environmental Plan 2012 (LEP). The surrounding development pattern consists of:

- land that is zoned RU1 Primary Production to the north, south, east and west.
- further to the east, on the opposite side of the railway line is land zoned R5 Large Lot Residential.
- Burrendong Way (zoned SP2 Classified Road) forms the eastern boundary of the subject land.



Figure 1 – Locality map (source: page 4 of planning proposal)

1.5 Mapping

The planning proposal includes mapping showing (Figures 2 – 5) the proposed changes to the Cabonne LEP 2012 LEP maps. These maps are suitable for community consultation purposes.

The proposal will change LEP Maps LZN_004C and LSZ_004C. No other provisions of the LEP will be changed and therefore this will be a map amendment only.



Figure 2 - Current zoning map and site detail (source: page 10 planning proposal)

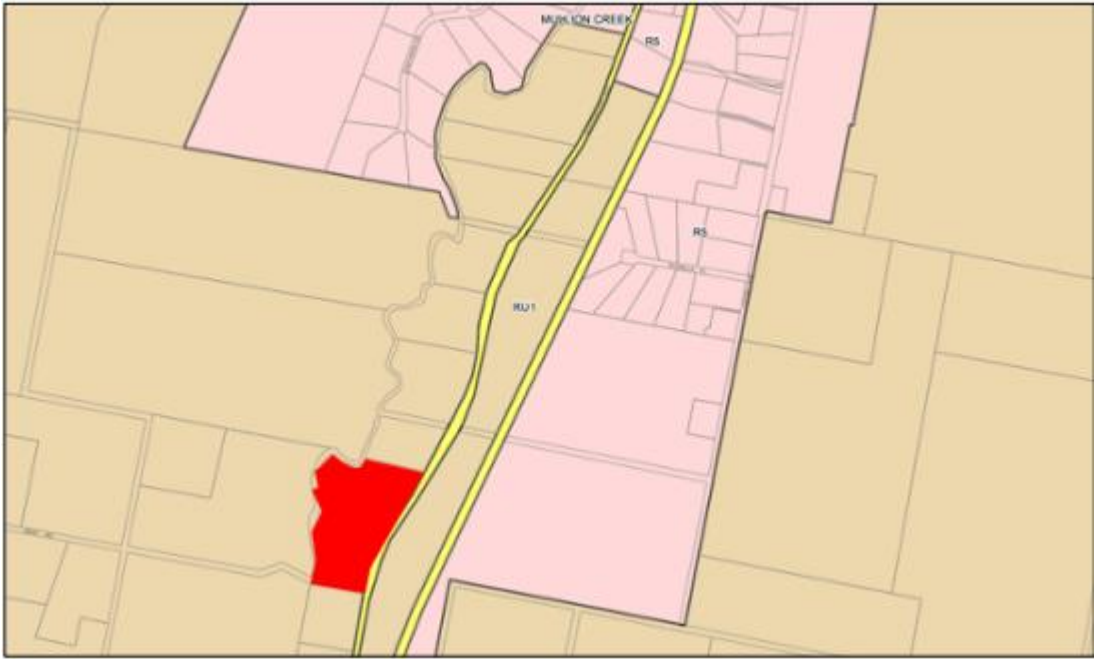


Figure 3 - Surrounding land zoning (source: page 12 planning proposal)

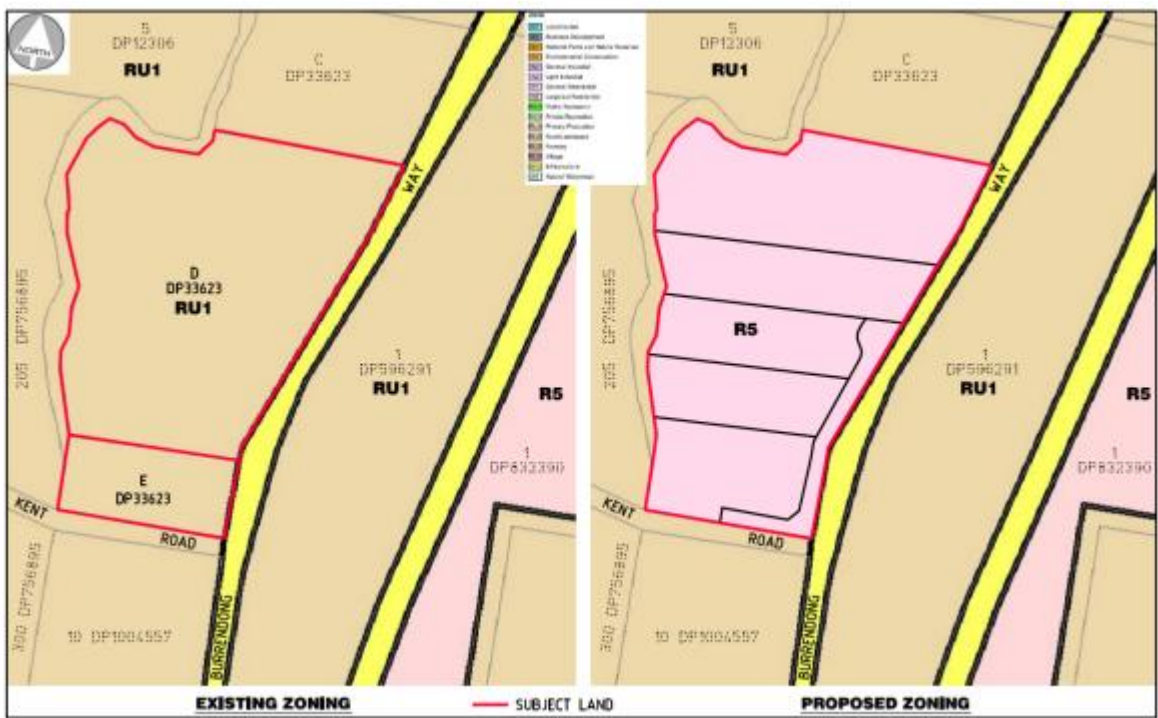


Figure 4 - Existing and proposed zoning (source: page 19 planning proposal)

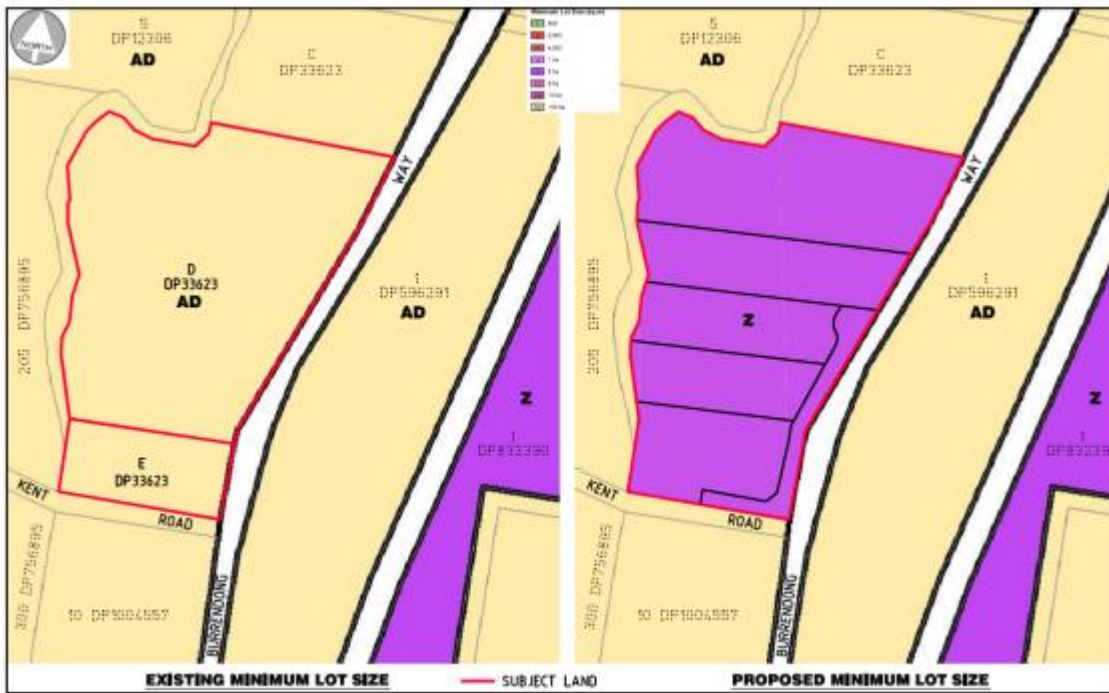


Figure 5 - Existing and proposed minimum lot size (source: page 20 planning proposal)

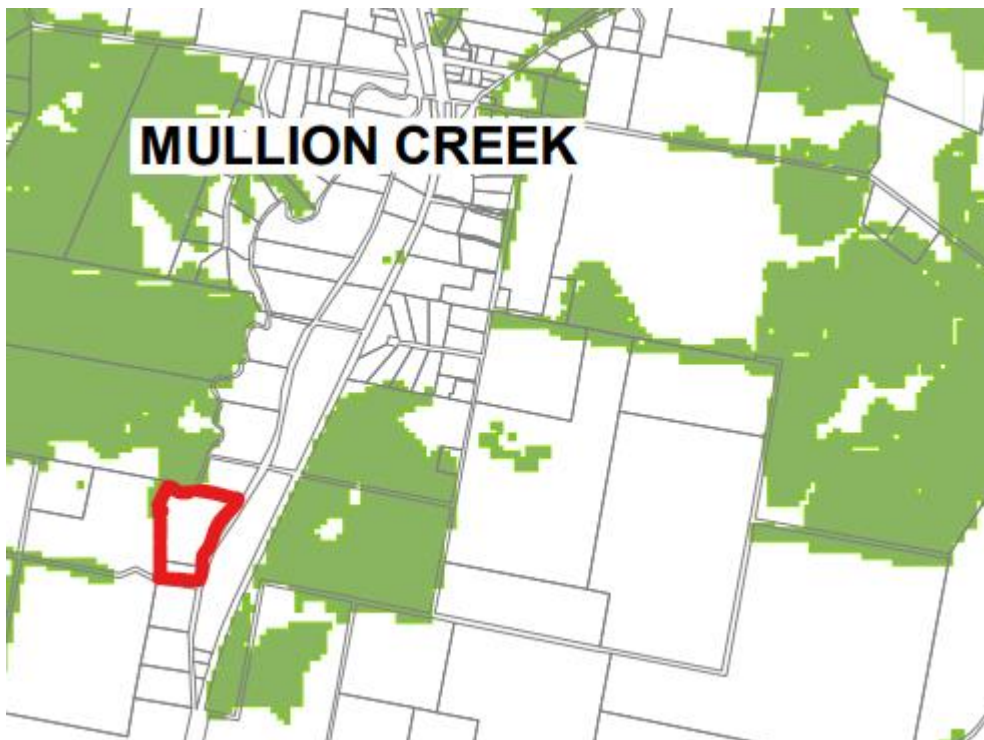


Figure 6 - Extract Biodiversity Map (Cabonne LEP 2012)



Figure 7 - Extract Riparian Land, Watercourse and Groundwater Vulnerability Map (Cabonne LEP 2012)



Figure 8 - Proposed Torrens Title and Community Title Subdivision (source: Pages 14 and 16 Planning Proposal) – subject to Development approval

1.6 Background

Cabonne Council resolved to support the proposal at a meeting on 26 April 2022.

The subject land is identified in the Blayney, Cabonne and Orange City Sub Regional Rural and Industrial Land Use Strategy, 2008 (BCO), as part of a future investigation area as a release area for lifestyle development. The area, identified in the BCO as Strategy Area (SA 5A), is located 1.5km south of the Mullion Creek settlement area and 15km north of Orange. A revised draft revised BCO has been prepared with Blayney and Cabonne Councils adopting their sections and awaiting Orange City Council to adopt its section. Council advises this proposal is consistent with the draft revised BCO.

Council advise that the proposal is consistent with the Cabonne Settlement Strategy 2021-2041 (CSS). The CSS has not been endorsed by the Department.

Council considered the planning proposal and has determined that strategic and site specific merit has been demonstrated.

The applicant states that the proposed rural residential development of the subject land would comprise the following:

- Two Torrens lots
- Five community title lots and community property created under the Community Land Development Act 2021
- Construction of a private access road
- Identification of building envelopes
- Fencing of all lots
- On site effluent disposal
- Water supply via rain water tanks.
- Lots available for large lot residential development will range from 1.1ha to 3ha.

A conceptual development plan has been prepared as part of the planning proposal noting the final lot layout may vary depending on the requirements of the development assessment process and relevant design criteria. It is proposed that the development be released in two stages. (refer to page 3 of the Council report).

2 Need for the planning proposal

Council advise that the planning proposal is consistent with the BCO that was endorsed by the Department on 30 June 2011 and consistent with the draft revised BCO and CSS.

The proposal is the only means to achieve the proposed outcomes to rezone the land to R5 and change MLS to 1ha that will allow the land to be subdivided with 4 additional dwellings to be erected on the land.

3 Strategic assessment

3.1 Regional Plan

The Central West and Orana Regional Plan 2036 (CWORP) identifies the following priorities for the Cabonne LGA.

- Maintain and enhance the economic diversity of Cabonne’s towns, villages and commercial centres.
- Support villages to attract appropriate development.
- Support the mining and agribusiness sectors and associated businesses through land use planning policies.
- Protect agricultural land from encroachment from residential development.
- Support the connectivity of the local, regional, and state transport network.
- Leverage opportunities from the Local Government Area’s rural character to diversify the economy in areas such as tourism.

As discussed in Section 5.10 of this report, the proposal is considered to be consistent with the directions and priorities of the CWORP.

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2036.

Table 4 - CWO Regional Plan 2036 assessment

Regional Plan Objectives	Justification
Direction 1 Protect the region's diverse and productive agricultural land	While rural land is being rezoned the proposal is based on and justified by strategic planning through the BCO, draft revised BCO and CSS
Direction 13 Protect and manage environmental assets	The proposal identifies and has regard to environmental assets. The proposal is therefore consistent with this direction. Consultation with relevant agencies will be required to ensure the environmental assets are protected.
Direction 14 Manage and conserve water resources of the environment	The proposal identifies and has regard to groundwater and the watercourse that traverses the land. The proposal is therefore consistent with this direction. Consultation with DPE Water will be required to ensure the water resources are protected.
Direction 25 Increase housing diversity and choice	The proposal is consistent with this direction providing the choice of housing near Orange and the settlement of Mullion Creek. The proposal is based on and justified through the BCO, draft revised BCO and CSS strategic planning process.
Direction 28 Manage rural residential development	The proposal is consistent with this direction providing the choice of housing near Orange and the settlement of Mullion Creek. The proposal is based on and justified through the BCO, draft revised BCO and CSS strategic planning process.

Table 5 - Draft CWO Regional Plan 2041 assessment

Regional Plan Objectives	Justification
Objective 9 Manage rural residential development.	The proposal is consistent with this objective having regard to proximity to existing settlement of Mullion Creek and is based on and justified through the BCO, draft revised BCO and CSS strategic planning process.

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 6 - Local strategic planning assessment

Local Strategies	Justification
Cabonne Council Local Strategic Planning Statement (LSPS)	The information provided in the planning proposal (pages 31-33) demonstrates the proposal is consistent with the relevant LSPS planning priorities 1, 4, 5, 6, 7, 8 and 9. Council is supportive of the planning proposal
Blayney Cabonne Orange – Sub-Regional Rural and Industrial Land Use Strategy (BCO) and draft revised BCO	<p>The subject land is identified in the BCO as part of a future investigation area for lifestyle development. The area, identified in the sub regional strategy as Strategy Area (SA 5A), is located 1.5km south of the Mullion Creek settlement area.</p> <p>The information contained in the proposal, and supported by Council, demonstrates that proposed land use change has strategic and site specific merit.</p>
Cabonne Settlement Strategy 2021-2041 (CSS)	<p>The proposal is consistent with this work contained in the CSS that identifies this land as a growth area in the short term. The CSS has not been endorsed by the Department.</p> <p>The CSS identifies the land may be affected by the railway line and within the Clergate Quarry buffer. In terms of the railway line there is adequate separation available. In terms of the quarry buffer Council advised that the quarry is used intermittently. The land is separated from the quarry by the railway and Burrendong Way. Council advised it will consult with the quarry operator during community consultation period and reassess impacts.</p>

3.3 Section 9.1 Ministerial Directions

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

The information provided in the planning proposal (pages 34-63) demonstrates consistency with the relevant Directions.

Table 7 - 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	<p>Refer to section 4.2 of the planning proposal (pages 30 and 63- 65) and section 3.1 of this report where consistency with the Central West and Orana Regional Plan 2036 has been discussed and demonstrated.</p> <p>The draft CWO RP has been on exhibition and the proposal is consistent with the objectives of the draft Plan at this time.</p> <p>No further work is required in regard to this Direction.</p>

4.3 Planning for Bushfire Protection	No	The land is identified as being bushfire prone. The proposal (pages 79 – 90) has provided a preliminary assessment of bushfire impacts that indicates that compliance with Planning for Bushfire Protection 2019 can be achieved. In terms of the Direction consultation with the NSW RFS is required
4.4 Remediation of Contaminated Land	No	The planning proposal relied on visual inspection in relation to contamination impacts. In terms of the Direction insufficient information has been provided to demonstrate consistency at this time. Prior to community consultation Council should demonstrate that it is satisfied that the land is not potentially contaminated and is or can be made suitable for living purposes.
6.1 Residential Zones	Yes	The proposal is consistent with this Direction as additional and variety of living options are being proposed. No further work is required in regard to this Direction.
8.1 Mining, Petroleum production and Extractive Industries	Yes	There is no change to the permissibility of mining, petroleum production and extractive industries as such uses are permitted under SEPP (Resources and Energy) 2021 where agriculture is permitted. Extensive agriculture is permitted without consent in zone R5 under the Cabonne LEP 2012. Consultation with Mining, Exploration and Geoscience (MEG) in relation to the impact of the existing Clergate quarry.
9.1 Rural Zones	No – but justified	In terms of the Direction the proposal is consistent as it is consistent with the original BCO that has been approved by the Department and the draft revised BCO and CSS which have been adopted by Council but not approved by the Department. No further work is required in regard to this Direction.
9.2 Rural Lands	No – but justified	In terms of the Direction the proposal is consistent with this Direction as it is consistent with the CWORP 2036, LSPS, BCO, draft revised BCO and CSS. No further work is required in regard to this Direction.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

The information provided in the planning proposal (page 33) demonstrates consistency with the relevant SEPPs.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Vegetation in non rural areas Koala Habitat Protection 2020. Koala Habitat Protection 2021	Yes	There is some biodiversity identified on the land. Rezoning from RU1 to R5 will enable Chapter 2 of the SEPP to apply to land for any low impact, clearing of biodiversity values which does not require development consent. Any proposed clearing for the subdivision and erection of dwellings is beyond Chapter 2 of this SEPP and needs to be assessed by Council at the DA stage Cabonne is an LGA to which the Koala Habitat Protection (KHP) chapters of this SEPP apply. Rezoning from RU1 to R5 changes which KHP chapter applies and enables Chapter 4 KHP 2021 to apply to the land. Part 4.2 of the Chapter will apply to any future development consent issued on the land, to ensure any impact on Koala Habitat is appropriately assessed.
SEPP (Resilience and Hazards) 2021	Remediation of land	No	Inconsistent at this time - further assessment required by Council.
SEPP (Transport and Infrastructure) 2021		N/A	Note that there will be no additional access to Burrendong Way – a classified road
SEPP (Primary Production) 2021		Yes	Justified by consistency with CWO RP, LSPS, BCO, draft revised BCO and CSS.

4 Site-specific assessment

4.1 Environmental

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

Table 9 - Environmental impact assessment

Environmental Impact	Assessment
Watercourse and Biodiversity	A watercourse traverses the land and a small amount of biodiversity land is near the proposal. The proposed concept plan identifies these matters and undertakes a preliminary assessment that is adequate for the planning proposal stage to demonstrate that impacts can be managed. Consultation with the relevant agencies should be required to seek advice for future development. The proposed subdivision and dwelling houses will be assessed in detail at the Development Application stage.
Groundwater vulnerable	The land is identified as being groundwater vulnerable. On site effluent disposal will be required. There is adequate information provided to indicate that impacts from the proposed subdivision and dwelling houses can be managed. Detailed assessment will be provided at Development Application stage for Council approval.
Bushfire	Refer to Section 3.3, Table 7 and Ministerial Direction 4.3 Planning for Bushfire
Quarry Buffer	The CSS identifies the land within Clergate Quarry buffer area. Council advise it will consult with the quarry operator during community consultation period and reassess impacts. Consultation with MEG is also required.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 - Social and economic impact assessment

Social and Economic Impact	Assessment
Variety of housing	The proposal provides for four (4) additional dwelling houses, on community title lots in close proximity to Mullion Creek and Orange. This will result in a positive social and economic impact for living opportunities. The proposal is strategically consistent with the CWORP, LSPS, BCO, draft revised BCO and CSS.
Economic	The proposal will provide a positive economic benefit for the local community in terms of opportunities for local builders, consultants, services and building material suppliers.

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 - Infrastructure assessment

Infrastructure	Assessment
Access	Access is proposed via Kent Road and not directly to Burrendong Way (Classified Road) by way of private community property. This will be addressed at Development Application stage. The existing dwelling house will retain the existing access to Burrendong Way. No direct additional access points to Burrendong Way are proposed which is consistent with preliminary advice from Transport for NSW.
Sewer	On site effluent disposal will be provided to Council requirements. The proposal contains adequate information to demonstrate this can be undertaken.
Water	Council confirm that water supply will be by water tank supply as required by Council DCP requirements and this is adequate.
Electricity and communication	As required by relevant supply authority.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The proposal is categorised as a “standard” proposal under the LEP Making Guideline and a 20 working day exhibition is appropriate. A 28 day consultation period is acceptable.

5.2 Agencies

The proposal and the Council do not identify agencies to be consulted.

The subject land has frontage to a classified road – Burrendong Way- and preliminary consultation has been undertaken with Transport for NSW. The concept design provided indicates that additional direct access is not proposed to Burrendong Way. Therefore no consultation with Transport of NSW is required.

While there is adequate information provided in the proposal to address bushfire impacts the terms of section 9.1 Ministerial Direction 4.3 Planning for Bushfire Protection consultation with NSWRFSS is required.

The land has some biodiversity values and consultation with BCS is recommended.

A watercourse traverses the land and consultation with DPE – Water is recommended.

Consultation with MEG is also required.

6 Timeframe

Council does not propose a timeline. The proposal is categorised as a “standard” proposal under the LEP Guideline.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination to amend the proposal to identify the project timeframe.

7 Local plan-making authority

As the site/planning proposal is a private development consistent with the Regional Plan, LSPS and endorsed BCO, draft revised BCO and CSS strategy 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 is consistent with the CWO RP and draft CWORP, Cabonne Council LSPS, BCO, draft revised BCO and CSS.
- The proposal provides adequate strategic and site specific merit to enable a conditional Gateway determination to be granted

As discussed in the previous sections 4 and 5, the proposal should be updated prior to community consultation to:

- Insert a timeframe to reflect a 9 month finalisation period
- Potential contamination assessment

9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection and 4.4 Remediation of Contaminated Land are unresolved at this time and will require justification prior to finalisation and community consultation respectively.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to community consultation to:
 - address contamination prior to community consultation
 - Include a project time frame of 9 months
 - Consultation is required with the following public authorities:
 - NSW RFS

- BCS
 - DPE Water
 - MEG
2. The planning proposal should be made available for community consultation for a minimum of 28 days
 3. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
 4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.

Noted



_____ (Signature)

6 June 2022

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