

8.2 Planning Proposal Lot 2 DP 1079362, 134 Lions Drive, Burrundulla - Post Exhibition

REPORT BY THE MANAGER, STRATEGIC PLANNING
TO 03 NOVEMBER 2021 ORDINARY MEETING
GOV400088, LAN900104

RECOMMENDATION

That Council:

- A. receive the report by the Manager, Strategic Planning on the Planning Proposal Lot 2 DP 1079362, 134 Lions Drive, Burrundulla - Post Exhibition; and
- B. exercise its delegation in the preparation of the amendment to the Mid-Western Regional Local Environmental Plan 2012 in relation to rezoning to B5 Business Development, change the minimum lot size to 2000 square metres and map / overlay a 25 metre 'no development' buffer area fronting the Castlereagh Highway subject to the Opinion issued by Parliamentary Counsel.

Executive summary

At Council's 16 September 2020 meeting, Council resolved to support the Planning Proposal and rezone the entire site (5.37 hectares) at 134 Lions Drive, Burrundulla and to forward it to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway Determination. A conditional Gateway Determination was granted on 28 October 2020. A copy of the Gateway Determination is provided as Attachment 1.

The staff recommendation at Council's 16 September 2020 meeting was to provide initial support for the rezoning of 2.8 hectares of the site to B5 Business Development with a minimum lot size of 2000 square metres and map a 25 metre wide 'no development' buffer fronting the Castlereagh Highway with the inclusion of a corresponding clause to exclude development within this area, to facilitate the development of the Bunnings store.

The reason for the staff recommendation to rezone only part of the site (2.8 hectares) to B5 Business Development was due to the visual significance of the site on the main entrance corridor and at the gateway to Mudgee and due to the current sufficient supply of employment land.

Conditions 1 (a) – (d) of the Gateway Determination required that prior to the commencement of community consultation the Planning Proposal be updated. The amended Planning Proposal was submitted and approved by Department of Planning Infrastructure and Environment – Western Region (DPIE) on 1 July 2021.

The Planning Proposal was placed on public exhibition on Friday 30 July 2021 and concluded Wednesday 1 September 2021 in accordance with 6.5.2 of A Guide to Preparing Local Environmental Plans (Department of Planning and Environment, 2018), Council's Community Participation Plan 2019 and Gateway Determination Condition 2. Five submissions were received. Copies of these submissions are provided as Attachment 2. The matters raised in the submissions are summarised and a staff comment provided in a table contained in the body of the report.

The Planning Proposal was referred to Transport for NSW (TfNSW) in accordance with Gateway Determination condition 3. A response from TfNSW was received on 19 October 2021, a copy of this response is provided as Attachment 3.

The proponent provided two written responses to the matters raised in the submissions, these responses are provided as Attachment 4. The responses clarified the position of the proponent.

The purpose of this report is to provide Council with a post exhibition report and to seek Council's approval to exercise its delegation in finalising the Planning Proposal.

Disclosure of Interest

Nil.

Detailed report

Planning Proposals

Planning Proposal is a term used to describe the process of rezoning or making an amendment to a Local Environmental Plan (LEP). A Planning Proposal application is a document that explains the intended effect of the LEP amendment and provides a strategic justification for doing so. DPIE has issued A Guide to Preparing Planning Proposals, to provide guidance and information on the process for preparing planning proposals.

The Gateway Process

DPIE is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in DPIE's A Guide to Preparing Local Environmental Plans.

Gateway Timeline

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan 2012 (MWLEP 2012) and the progress of the current Planning Proposal through the various stages.

Stage	Completed	Comment
Preparation of a Planning Proposal		
Planning Proposal lodged with Council	✓	February 2020, further information received 20 August 2020.
Staff Undertake Initial Assessment	✓	February 2020 – September 2020
Council Decision to Support Proposal	✓	16 September 2020 meeting.
Issue of Gateway Determination		
Council Requests Gateway Determination	✓	24 September 2020.
DP&E Issues Gateway Determination	✓	28 October 2020.
Gateway Conditions Satisfied	✓	1 July 2021.
Consultation		
Consultation with Relevant Agencies	✓	30 July 2021 – 1 September 2021.
Public Exhibition	✓	30 July 2021 – 1 September 2021.
Post-Exhibition Report to Council	✓	3 November 2021.
Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		
Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

GATEWAY DETERMINATION

A conditional Gateway Determination was received on 28 October 2020 and included seven conditions.

UPDATED PLANNING PROPOSAL

The Gateway Determination required the planning Proposal to be updated with the following prior to public exhibition:

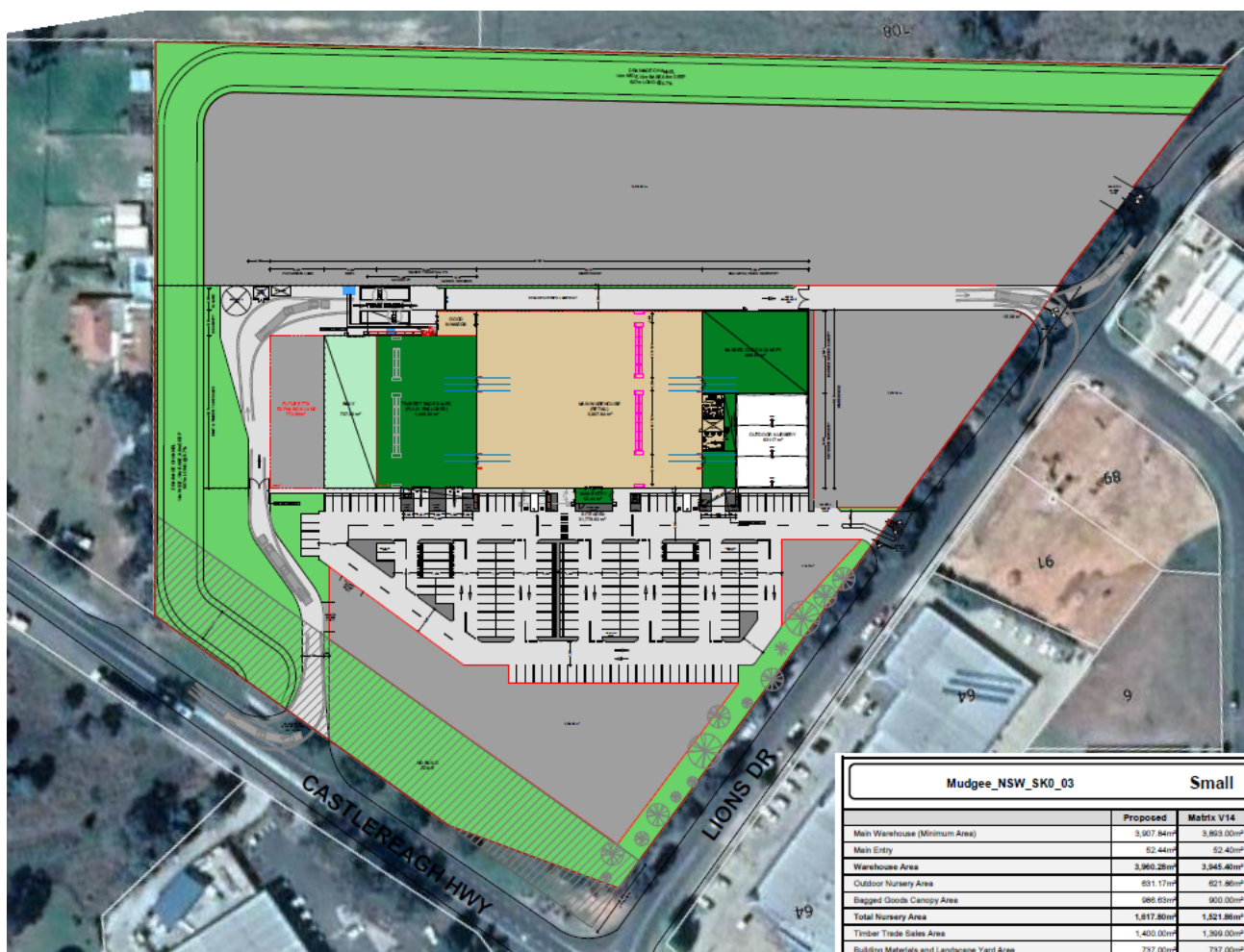
(a) Consultation with Department of Planning, Industry and Environment – Biodiversity, Conservation and Science regarding flooding and addressing inconsistency with section 9.1 Direction 4.3 Flood Prone Land.

Consultation undertaken, discussed below. Section 9.1 Direction 4.3 Flood Prone Land updated in the Planning Proposal.

(b) Address and resolve the details and consistencies with section 9.1 Direction 6.3 Site Specific Provisions.

The site specific provision of mapping and drafting a corresponding clause is the Site Specific Provision. The ‘no development’ buffer area and reference to the corresponding clause was detailed in the Planning Proposal.

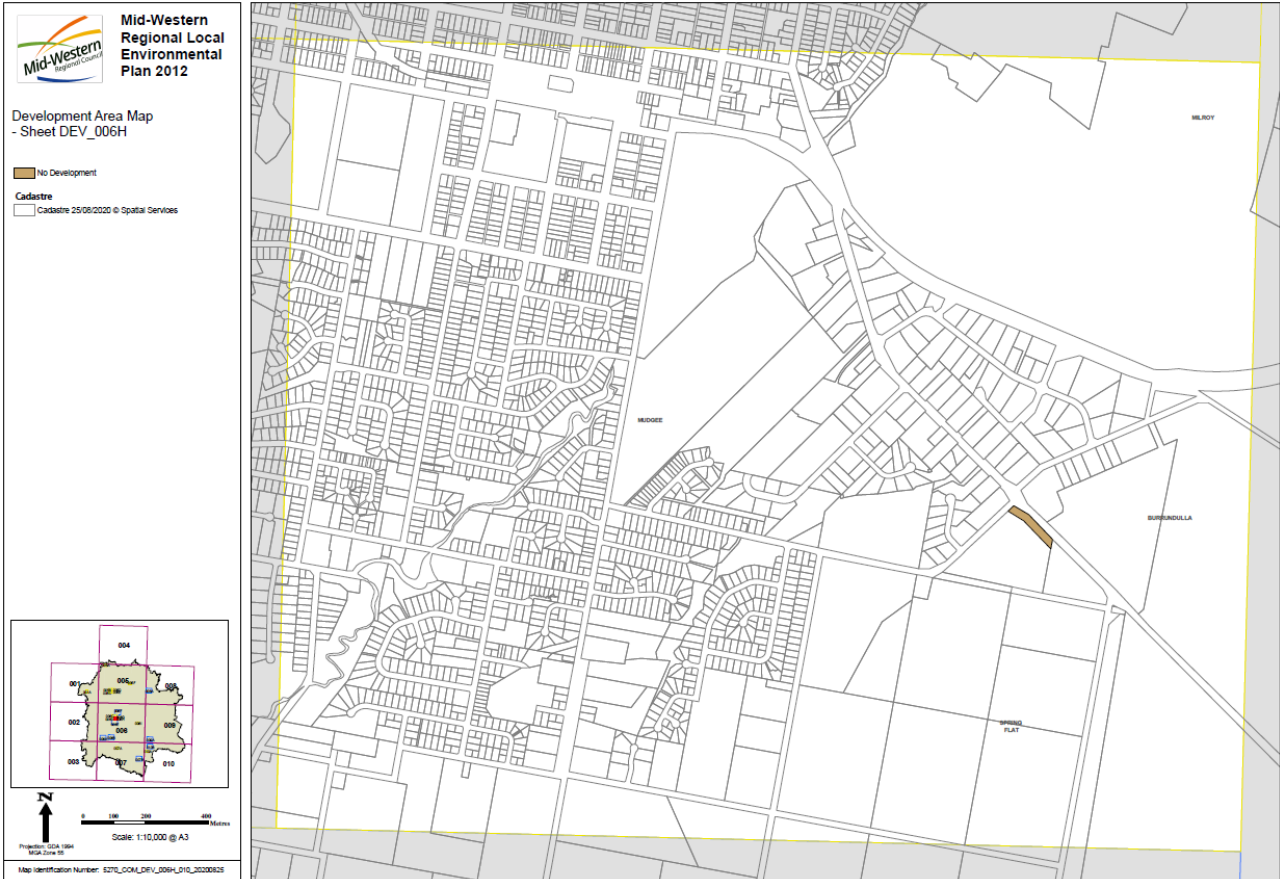
The concept plan was updated to reflect the ‘no development area’. However, the driveway access from the Castlereagh Highway is detailed on the concept plan. The intended outcome of the proposed ‘no development’ corresponding clause is that development and works such as, business identification sign; drainage; earthworks; landscaped area and roads are not allowed within that area. Therefore, for any future development application to comply with the clause, no such development or works will be located within the ‘no development’ area.



(c) Clear details of the proposed 25m wide “no development buffer” and the 2000m2 minimum lot size development standard proposed. Clarification is to be provided on the intent of the 25m “no development buffer” area including consideration of options to achieve the intended outcome.

The 'no development' buffer area and reference to the corresponding clause was detailed in the Planning Proposal.

The below 'no development' map was placed on public exhibition.



(d) Details of the timeframes to complete the LEP amendment.

The timeframes were updated in the Planning Proposal.

CONSULTATION

Community Consultation

Condition 2 of the Gateway Determination required Council to undertake community consultation with a public exhibition period of 28 days. The community consultation was undertaken in accordance with DPIE A Guide to Preparing Local Environmental Plans. Five submissions were received. Four submissions were received from the community and one from the proponent. The matters raised in the submissions have been summarised in the table below and a staff comment provided.

Matter/comment raised in the Submission	Staff comment
Community Submissions	
<p>Visual Impact</p> <p>Concern regarding the impact the future development of the site will have on the entry to Mudgee was raised in three of the five submissions.</p>	<p>The Planning Proposal will facilitate the future development of the subject site. The subject site is visually significant as it is located on the main entrance corridor and located at the Mudgee town gateway. In response staff recommended the creation of a 'no</p>

	<p>development' area to provide a visual buffer to the future development of the site to assist in maintaining the gateway to Mudgee.</p> <p>In addition, staff recommended the inclusion of a 2000 square metre minimum lot size (no minimum lot size was proposed by the proponent) to assist in minimising the visual impact of future development.</p>
<p>Demand for additional B5 Business Development</p> <p>Three submissions questioned the need for additional B5 Business Development land and the need for Bunnings to have highway frontage.</p>	<p>The proponent submitted an Economic Assessment with the lodgement of the Planning Proposal and supplementary information (letters dated 7 July and 20 August 2020, provided in the 16 September 2020 Council report).</p> <p>To determine the demand for additional land, the proponent considered the take up over the last 20 to 30 year period. Council reviewed recent trend data, and determined it appropriate to consider the take up rates of the last 10 years, in doing so, staff made the recommendation to rezone 2.8 hectares of land rather than the 5.37 hectares.</p>
<p>The need for highway frontage</p> <p>One of the submissions questioned the need for Bunnings to have a highway frontage.</p>	<p>The concept plan provided with the Planning Proposal details a proposed Bunnings, but Council cannot ensure the site will be developed with a Bunnings. Accordingly, Council has to consider the suitability of a B5 Business Development zoning for the subject site with highway frontage. A Zone Objective of the B5 Business Development zoning is <i>'To promote a visually attractive entry point into Mudgee from the south east'</i>. This Zone Objective supports the choice in zoning for the site to assist in maintaining the visual significance of the setting.</p>
<p>Mudgee Character</p> <p>One of the submissions raised the concern that the future development of the site will have a detrimental impact on the Mudgee Character.</p>	<p>The 'no development' area is designed to create a visual buffer to the future development of the site. Screening the future development of the site will assist in maintain the existing gateway that plays a role in the character of Mudgee.</p>
<p>Permissibility of future land uses</p> <p>Three of the five submissions raised concern regarding future permissible land uses for the site. Specific concern was raised regarding the following land uses: takeaway food and drink premises – McDonalds, Hungry Jacks, agricultural produce industries – commercial process of pet food, flour mill, cannery etc., timber yard, car truck and tractor sales, warehousing and distribution, hardware and building supplies, any number of light industries.</p>	<p>The uses outlined in the submissions will be permissible land uses should the site be rezoned.</p> <p>Additional land uses may become Exempt or Complying development under the NSW DPIE Codes SEPP Planning Reforms.</p>

<p>In addition concern was raised regarding the NSW DPIE Codes SEPP Planning Reform allowing additional land uses as Exempt and Complying Development.</p>	
<p>Provided Concept Plan</p> <p>Three of the submissions questioned, will the site be developed as detailed on the concept plan.</p>	<p>Council cannot ensure the site will be developed or subdivided in accordance with the submitted and exhibited concept plan. Any future development application will be assessed in accordance with the B5 Business Development Zone Objectives and other relevant controls.</p>
<p>Height of Future Development</p> <p>One submission highlighted that fact that there is no maximum height proposed which means no limit of the bulk and scale of any development anywhere across the site. And also stated, under a proposal by the NSW DPIE to the Codes SEPP as outlined in the Building Business Back Better Explanation of Intended Effect, all new buildings in a B5 zone up to 10,000m² and 5 stories (where there are no height controls in the LEP) will be able to be Complying Development.</p>	<p>The subject site is identified on Height of Buildings Map - Sheet HOB_006H as having no height control.</p> <p>If the Codes SEPP proposed changes come into effect, a building of that scale may be considered as Complying Development.</p>
<p>Planning Pathway</p> <p>One submission outlined the avenue for a proponent to seek a review.</p>	<p>If Council were to resolve not to proceed with the Planning Proposal, the proponent's avenue for a review would be with DPIE/Regional Planning Panel.</p>
<p>TfNSW Comments</p> <p>One submission stated that any TfNSW comments on the proposal should be incorporated into the Planning Proposal before progressing.</p>	<p>The Gateway Determination states consultation with TfNSW is to occur during the public exhibition period, therefore there is no opportunity for TfNSW to be included in the Planning Proposal.</p>
<p>Groundwater Vulnerability</p> <p>One submission stated that groundwater vulnerability should have been better considered in the Planning Proposal.</p>	<p>The Planning Proposal specifically identifies the hydrological functions of the groundwater systems. When the specifics of the future development application are known, further consideration can be given to potential depletion and contamination of groundwater.</p> <p>Clause 6.4 Groundwater Vulnerability of the Mid-Western Regional Council Local Environmental Plan 2012 will ensure the constraint will be considered in the assessment of any future development application.</p>
<p>Flooding</p> <p>Four submissions raised concern regarding flooding of the site and one of the four raised specific concern regarding flooding</p>	<p>As required by the Gateway Determination, prior to public exhibition Council consulted with the Department of Planning, Industry and Environment – Biodiversity,</p>

<p>impact on their property.</p> <p>The drainage channel proposal does a 90 degree turn on the southern/eastern corner of the lot in question and our concern and question to council is what guarantees do we have that water collected in the drainage channel will be contained within the channel and not spill over onto our land -particularly in times of excessive and high rainfall periods.</p>	<p>Conservation and Science. They reviewed the submitted Flood Constraints Assessment and stated that the final hydraulic design will be essential to determine the necessary minimum floor levels in the main warehouse building parking lot and deliveries laneways. This detailed will be appropriately provided at development application stage.</p> <p>The Flood Constraints Assessment was considered by Council's Development Engineer, who highlighted the need for the developer to create appropriate easements to drain stormwater over downstream properties. It was also highlighted that any future development application would need to control the rate of runoff, water quality and detention of runoff.</p>
<p>Amenity</p> <p>One of the submissions raised the concern that the impact on the amenity of the existing and future locality should have been better considered. Specifically, a Land Use Conflict Risk Assessment should have been prepared, in accordance with the Department of Primary Industries Guide Factsheet 2011, to address any potential impacts on adjoining land uses.</p>	<p>The primary focus of the Land Use Conflict Risk Assessment is on conflicts affecting existing or proposed agricultural developments. It is acknowledged the subject and adjoining sites are currently zoned RU4 Primary Production Small Lots. However, the subject and adjoining sites were identified for 'urban' land uses in the Comprehensive Land Use Strategy 2010. Accordingly, Council acknowledged at that time the agricultural value of the land will be lost.</p>
<p>Mudgee Retail Strategy 2005</p> <p>One submission states the Strategy has already been reasonably actioned and implemented, and therefore it is not reasonable to justify the Planning Proposal based on the Strategy.</p>	<p>Staff considered the Strategy in the 16 September 2020 report, specifically in relation to the designation of a bulky goods precinct. Staff determined that due to an adequate supply it is not currently necessary for Council to designate a bulky goods precinct.</p>
<p>Ministerial Directions</p> <p>One of the submissions stated the Planning Proposal was inconsistent with the below Directions:</p> <p>1.2 Rural Lands - A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>4.3 Flood Prone Land – further detailed required.</p> <p>6.3 Site Specific Provisions - The concept plan shows development/works located within this "no development area"- being the access road for articulated delivery trucks and the 14-metre wide channel designed to implement flood mitigation for the development.</p>	<p>The Planning Proposal is inconsistent with this Direction. However, Council's Comprehensive Land Use Strategy identifies this site for a future 'urban' opportunity.</p> <p>As detailed above the Department of Planning, Industry and Environment – Biodiversity, Conservation and Science were satisfied with the Planning Proposal and highlighted what is required at the development application stage.</p> <p>The purpose of the 'no development area' is to create a visual buffer to any future development. The inclusion of business identification sign; drainage; earthworks; landscaped area; road within this area goes against the intended outcome of the clause. The development/works detailed on the concept plan will not be permissible under the future clause.</p>

<i>Proponent Submission</i>	
<p>No Development Area</p> <p>The proponent made a submission and stated <i>'any provision proposed to be incorporated into the MWLEP 2012 in relation to the no development area should enable the following form of development within the 25m Castlereagh Highway frontage buffer:</i> <i>business identification sign; drainage; earthworks; landscaped area; road'.</i></p>	<p>The purpose of the 'no development area' is to create a visual buffer to any future development. The inclusion of business identification sign; drainage; earthworks and roads within this area goes against the intended outcome of the clause.</p> <p>The term 'landscaped area' is defined in the MWLEP 2012. The establishment of landscaping is consistent with the intended outcome of the Clause and therefore will be included as an appropriate use for that buffer area.</p> <p>However, business identification signage; drainage; earthworks; and roads will not be permissible in the 'no development' area. The future LEP clause will be drafted to ensure this.</p>

Agency Consultation

Department of Planning, Industry and Environment – Environment, Energy and Science

The Department of Planning, Industry and Environment – Environment, Energy and Science was consulted with in accordance with Gateway Determination condition 1(a). A copy of the submission is provided as Attachment 5.

Transport for NSW

Transport for NSW (TfNSW) was consulted with in accordance with Gateway Determination Condition 3. The submission is provided as Attachment 3. The submission states the Traffic Impact Assessment is deficient and details what is required to be provided. The updated Traffic Impact Statement is to be provided with any future development application.

Additionally comments are made in the submission, of note are the following two:

When considering the access arrangements for the proposed the proponent and consent authority should assess possible access form a road other than a classified road where it is safe and practicable to provide access as per Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007.

The consent authority should consider funding mechanisms from developers for the upgrading of the intersection to a roundabout as per the TIA and the Traffic Management Study 2014 for the Lions Drive, Burrundulla Road and Castlereagh Highway intersection.

FINALISATION OF PLANNING PROPOSAL

The recommendation of staff is to proceed with the finalisation of the Planning Proposal. This will involve drafting LEP provisions.

Draft LEP

Included, as part of the Gateway Determination is a written Authorisation to Exercise Delegation of the Minister's functions under Section 3.36 (previously Section 59) of the *Environmental Planning and Assessment Act 1979*. The documentation will be forwarded to the Office of Parliamentary Counsel to draft the amendment to the LEP and seek an Opinion that the plan may be made. A

copy of the request will be forwarded to DPIE – Western Region. Following the receipt of the Opinion, a request that the LEP amendment be notified will be made.

Community Plan implications

Theme	Building a Strong Local Economy
Goal	A prosperous and diversified economy
Strategy	Support the attraction and retention of a diverse range of businesses and industries

Strategic implications

Council Strategies

Mid-Western Regional Local Strategic Planning Statement, Our Place 2040.
Mid-Western Regional Comprehensive Land Use Strategy, August 2010.

Council Policies

The steps involved towards the notification of the Planning Proposal will not require any change to relevant policies.

Legislation

The Planning Proposal has been considered in accordance with Division 3.4 Environmental Planning Instruments - LEPs (previously Division 4) Local Environmental Plans of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Local Environmental Plan 2012*.

Financial implications

Nil.

Associated Risks

If Council does not wish to proceed with finalisation of the Planning Proposal, it can withdraw its support at this stage in the Gateway Process. Council would be required to formally resolve not to proceed with the Planning Proposal and advise the various landowners and DPIE accordingly.

SARAH ARMSTRONG
MANAGER, STRATEGIC PLANNING

JULIE ROBERTSON
DIRECTOR DEVELOPMENT

21 October 2021

Attachments:

1. Gateway Determination. (separately attached)
2. Submissions. (separately attached)
3. TfNSW Response. (separately attached)
4. Response to Submissions. (separately attached)
5. DPIE Biodiversity, Conservation and Science Response. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER