

8.2 Planning Proposal Tourist and Visitor Accommodation - Post Exhibition

REPORT BY THE MANAGER STRATEGIC PLANNING
TO 16 AUGUST 2023 ORDINARY MEETING
GOV400103, LAN900151

RECOMMENDATION

That Council:

1. receive the report by the Manager Strategic Planning on the Planning Proposal Tourist and Visitor Accommodation - Post Exhibition; and
2. request the Department of Planning and Environment to draft and finalise the amendment to the *Mid-Western Regional Local Environmental Plan 2012* to include a provision requiring the land on which tourist and visitor accommodation occurs to satisfy Clause 4.2A erection of dwelling houses and dual occupancies on land in certain zones.

Executive summary

At Council's 14 December 2022 ordinary meeting, Council resolved to support the Planning Proposal and to forward it to the NSW Department of Planning and Environment (DPE) for a Gateway Determination. The Planning Proposal seeks to include an additional LEP provision for consideration in the assessment of development applications for tourist and visitor accommodation, of the Mid-Western Regional Local Environmental Plan 2012 (LEP).

The additional provision will require land subject of a development application for tourist and visitor accommodation to satisfy *Clause 4.2A erection of dwelling houses and dual occupancies on land in certain zones* of the Mid-Western Regional Local Environmental Plan 2012.

Clause 4.2A erection of dwelling houses and dual occupancies on land in certain zones of the LEP, requires the land to measure the mapped minimum lot size or have a dwelling entitlement subject to the various subclauses for the erection of a dwelling.

A conditional DPE Gateway Determination was granted on 6 April 2023. A copy of the Gateway Determination is provided as Attachment 1.

The Planning Proposal was placed on public exhibition on Friday 23 June 2023 until Thursday 20 July 2023, in accordance with Condition 2. No submissions were received during the exhibition period. Council consulted with Destination in accordance with Condition 3, no response was provided.

The purpose of this report is to provide Council with a post exhibition report and to advise DPE to progress to Stage 6 Finalisation of the LEP making process.

Disclosure of Interest

Nil

Detailed report

Planning Proposals

Planning Proposal is a term used to describe the application and 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. DPE has issued *Local Environmental Plan Making Guideline*, dated September 2022, to provide guidance and information on the process for preparing planning proposals.

The Gateway Process

DPE is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in DPE's *Local Environmental Plan Making Guideline*.

Gateway Timeline

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

| Stage | Completed | Comment |
|--|-----------|--|
| Preparation of a Planning Proposal | | |
| Staff prepared the Planning Proposal | ✓ | November 2022 |
| Council Decision to Support Proposal | ✓ | 14 December 2022 |
| Issue of Gateway Determination | | |
| Council Requests Gateway Determination | ✓ | January 2023 |
| DPE Issues Gateway Determination | ✓ | April 2023 |
| Gateway Conditions Satisfied | ✓ | June 2023 |
| Consultation | | |
| Consultation with Relevant Agencies | ✓ | Agency consultation with: - Destination NSW |
| Public Exhibition | ✓ | 23 June - 20 July 2023 |
| Post-Exhibition Report to Council | ✓ | Planning Proposal Post Exhibition is being reported to 16 August 2023 meeting. |
| 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 6 April 2023 and included six standard conditions. The Planning Proposal was amended in accordance with Condition 1. The amended Planning Proposal is provided as attachment 2.

CONSULTATION

Community Consultation

Condition 2 of the Gateway Determination required Council to undertake community consultation with a public exhibition period of 20 days. During the public exhibition no submissions were received.

Agency Consultation

In accordance with Condition 3, the Planning Proposal was referred to the Destination NSW. No response was received.

FINALISATION OF PLANNING PROPOSAL

The recommendation of staff is to proceed to Stage 6 - Finalisation. Stage 6 is the last stage in the LEP making process.

Community Plan implications

| Theme | Looking After Our Community |
|----------|---|
| Goal | Vibrant towns and villages |
| Strategy | Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning |

Strategic implications

Council Strategies

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 DPE accordingly.

SARAH ARMSTRONG
MANAGER STRATEGIC PLANNING

ALINA AZAR
DIRECTOR DEVELOPMENT

31 July 2023

Attachments: 1. Gateway Determination.
2. Planning Proposal.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



Department of Planning and Environment

Gateway Determination

Planning proposal (Department Ref: PP-2023-90): to amend the Mid-Western Regional Local Environmental Plan 2012 to require land subject to a development application for Tourist and Visitor Accommodation to comply with clause 4.2A for the erection of dwelling houses.

I, the Director, Western Region at the Department of Planning and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Mid-Western Regional Local Environmental Plan 2012 to require that Tourist and Visitor Accommodation to be permitted on certain lands on which a dwelling house is permitted under clause 4.2A should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be amended to address the following matters:
 - a) Amend the Project Timeline to reflect the Gateway determination of the proposal and subsequent milestones for finalisation in six (6) months.
 - b) Consider inclusion of development consent consideration criteria for environmental impact matters for Tourist and Visitor Accommodation (e.g. biodiversity, bushfire, contamination, flooding & visual impacts etc.) similar to clause 5.24(4) of the Standard Instrument.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2022) and must be made publicly available for a minimum of twenty (20) working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2022).
3. Consultation is required with Destination NSW under section 3.34(2)(d) of the Act. Destination NSW is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the gateway determination;

- (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. The LEP should be completed within six (6) months of this Gateway determination.

Dated 6th day of April 2023.



Garry Hopkins
Director, Western Region
Local and Regional Planning
Department of Planning and Environment

Delegate of the Minister for Planning and
Public Spaces



*Looking After
our Community*

PLANNING PROPOSAL
GENERAL
AMENDMENT 2022/23
TOURIST & VISITOR
ACCOMODATION

1 JUNE 2023

MID-WESTERN REGIONAL COUNCIL
STRATEGIC PLANNING

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| Version | Date | Notes |
|---------|---------------|---------------------------------------|
| V001 | November 2022 | PP reported to December Council |
| V001 | June 2023 | PP updated prior to public exhibition |

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Overview

Introduction

The Planning Proposal Mid-Western Regional Local Environmental Plan General Amendment (the Planning Proposal) explains the intent of, and justification for, the proposed amendment to the *Mid-Western Regional Local Environmental Plan 2012* (MWRLEP 2012).

The Planning Proposal is to implement the following changes to the MWRLEP 2012:

Include an additional MWRLEP 2012 provision for consideration in the assessment of development applications for tourist and visitor accommodation.

The additional provision will require land subject of a development application for tourist and visitor accommodation to satisfy Clause 4.2A erection of dwelling houses and dual occupancies on land in certain zones of the Mid-Western Regional Local Environmental Plan 2012.

The Planning Proposal has been prepared in accordance with Section 3.32 and 3.33 of the Environmental Planning and Assessment Act 1979 (the Act) and the relevant Department of Planning and Environment, Local Environmental Plan Making Guideline, December 2021.

Background

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012) came into effect on 10 August 2012. MWRLEP 2012 is the consolidation of the previous planning controls into one local environmental plan. It is also a translation of those controls into the NSW Government's Standard Instrument Principal Local Environmental Plan.

Under the MWRLEP 2012 and previous environmental planning instruments, various types of dwellings and tourist and visitor accommodation are, and have been permissible in the rural areas (including land currently zoned R5 Large Lot Residential).

Due to the range of permissible dwellings and tourist and visitor land uses, it is necessary to move the requirement for dwelling entitlement from the Mid-Western Regional Development Control Plan 2013 (DCP 2013) into the MWRLEP 2012 to provide increased clarity for the community and weight when assessing a development application.

The following requirement is in Council's DCP 2013 and has been consistently applied since the commencement of the plan:

6.4 Tourist and Visitor Accommodation

Location

(a) Must comply with the MLS map or demonstrate compliance with Clause 4.2A of the LEP 2012.

(b) All tourist and visitor accommodation has a residential component and therefore Council will not consider the establishment of any tourist and visitor accommodation on land on which a single dwelling is not permissible in the LEP 2012.

Part 1 – Objectives or Intended Outcome

The objective of the Planning Proposal is to implement the following:

| | PROPOSED AMENDMENT | LAND TO WHICH IT APPLIES | OBJECTIVE/OUTCOME |
|----|---|--|--|
| 1. | An additional provision will require land subject of a development application for tourist and visitor accommodation to satisfy <i>Clause 4.2A erection of dwelling houses and dual occupancies on land in certain zones.</i> | All land zoned RU1 Primary Production, RU4 Primary Production Small Lots, RU5 Village, R5 Large Lot Residential and E3 Environmental Management. | Tourist and visitor accommodation established on land that satisfies <i>Clause 4.2A erection of dwelling houses and dual occupancies on land in certain zones.</i> |

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Part 2 – Explanation of Provisions

The objectives and intended outcomes as described in Part 1 will be achieved by the following:

| PROPOSED AMENDMENT | EXPLANATION OF PROVISIONS |
|-----------------------|---|
| 1. Additional clause. | Inclusion of either a miscellaneous and additional local provision that states tourist and visitor accommodation must not be granted on land unless a dwelling house is permitted to be erected under 4.2A. |

Part 3 – Justification

Section A - Need for the Planning Proposal

Q1: Is the planning proposal the result of an endorsed LSPS, strategic study or report?

Yes, Council's Comprehensive Land Use Strategy (CLUS) outlines the importance of sustainable rural settlement, minimising rural land fragmentation and minimising the proliferation of dwellings on undersized lots.

To provide for rural lifestyle opportunities, a constraints and opportunity mapping exercise was undertaken and identified the location of future rural lifestyle opportunities.

Accordingly, the requirement for tourist and visitor accommodation to be located on land with a dwelling entitlement is consistent with the approach of the CLUS.

Q2: Is the planning proposal the best means of achieving the objectives or outcomes, or is there a better way?

The requirement for tourist and visitor accommodation to be located on land with a dwelling entitlement is currently in the DCP 2013.

Including this requirement in the MWRLEP 2012 provides the appropriate weight when assessing a development application for tourist and visitor accommodation in the Region.

Section B - Relationship to Strategic Framework

Q3: Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy?

| STRATEGY | DIRECTION/ACTION/OBJECTIVE - COMMENT |
|---|--|
| Central West and Orana Regional Plan 2036 | <p><i>Direction 12: Plan for greater land use compatibility</i></p> <p><i>Action 12.2 Identify and protect important agricultural land in local plans.</i></p> <p>The Planning Proposal will assist in protecting important agricultural lands by continuing to limit the number of tourist and visitor accommodation in the rural areas.</p> <p><i>Action 12.3 Create local strategies to limit urban and rural housing development in agricultural and extractive resource areas, industrial areas and transport corridors.</i></p> <p>Council's Comprehensive Land Use Strategy supports limiting tourist and visitor accommodation in rural areas.</p> <p><i>Action 12.4 Amend planning controls to deliver greater certainty of land use.</i></p> <p>The control is currently in Council's DCP 2013, including the control in the MWRLEP 2012 provides both greater certainty for landowners, Council and the community at large.</p> |

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| | <p><i>Direction 28: Manage rural residential development</i> Council identifies future opportunities and rural residential zones adjoining urban settlements at a minimum lot size from 2 – 5 hectares and with 5 – 10 kilometre radius around the towns within the region.</p> |
| Draft Central West and Orana Regional Plan 2041 | <p><i>Objective 13: Protect agricultural production values and promote agriculture innovation, sustainability and value-add opportunities.</i></p> <p>The Planning Proposal will assist in protecting important agricultural lands by continuing to limit the number of tourist and visitor accommodation in the rural areas.</p> <p><i>Strategy 13.1: Protect agricultural land and industries from land use conflicts and fragmentation.</i></p> <p>The development of dwelling and tourist and visitor accommodation places pressure on proposed subdivision, resulting in fragmentation. Continuing to limit the establishment of dwelling and tourist and visitor accommodation will minimise fragmentation and land use conflict.</p> <p><i>Strategy 13.1: maintain and protect agricultural land and industries from land use conflicts and fragmentation, especially those lands identified as important such as those identified as Class 1-3 using the NSW land and capability mapping, biophysical strategic agricultural land, those currently developed for irrigation, or other special use lands that support specialised agricultural industries.</i></p> <p>Land mapped as Class 1-3 will be further protect with this Planning Proposal.</p> <p><i>Strategy 13.2: Strategic and local planning should maintain and protect the productive capacity of agricultural land in the region.</i></p> <p>The Planning Proposal is consistent with this Strategy item.</p> |

Q4: Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The Planning Proposal to continue to conserve agricultural land is consistent with Council's LSPS Our Place 2040.

Q5: Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The Planning Proposal is consistent with the Department of Primary Industries – Agriculture, various studies regarding minimising land fragmentation and dwellings on agricultural land.

Q6: Is the planning proposal consistent with applicable SEPPs?

Yes. An analysis of the applicable State Environmental Planning Policies (SEPP's) is included in the following table.

| SEPP TITLE | PLANNING PROPOSAL CONSISTENCY |
|---|---|
| SEPP (Biodiversity and Conservation) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP Building Sustainability Index (BASIX) 2004 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |

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|--|--|
| | Future development applications would be required to determine at development application whether the BASIX is applicable. |
| SEPP (Exempt & Complying Development Codes) 2008 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Housing) 2021 | Yes – The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Industry and Employment) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP No 65 – Design and Quality of Residential Apartment Development | Not applicable. |
| SEPP (Planning Systems) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Precincts – Central River City) 2021 | Not applicable. |
| SEPP (Precincts – Eastern Harbour City) 2021 | Not applicable. |
| SEPP (Precincts – Regional) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Precincts – Western Parkland City) 2021 | Not applicable. |
| SEPP (Primary Production) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Resilience and Hazards) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Resources and Energy) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |
| SEPP (Transport and Infrastructure) 2021 | Yes - The Planning Proposal will not impede the ongoing implementation of the provisions of the SEPP. |

Q7: Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?

These directions apply to planning proposals lodged with the Department of Planning and Environment on or after the date the particular direction was issued and commenced.

Detailed in the table below are the directions issued by the Minister for Planning to relevant planning authorities under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*.

| DIRECTION | PLANNING PROPOSAL CONSISTENCY |
|---|--|
| Focus area: Planning Systems | |
| 1.1 – Implementation of Regional Plan | Not applicable. |
| 1.2 - Development of Aboriginal Land Council land | Not applicable |
| 1.3 - Approval and Referral Requirements | The proposed amendment does not include the requirements for approvals or referrals. |
| 1.4 - Site Specific Provisions | Not applicable, as the proposed amendments are not site specific. |
| 1.5 - Parramatta Road Corridor Urban Transformation Strategy | Not applicable. |
| 1.6 - Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan | Not applicable. |
| 1.7 - Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Not applicable. |
| 1.8 - Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Not applicable. |
| 1.9 - Implementation of Glenfield to Macarthur Urban Renewal Corridor | Not applicable. |
| 1.10 - Implementation of the Western Sydney Aerotropolis Plan | Not applicable. |

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|---|--|
| 1.11 - Implementation of Bayside West Precincts 2036 Plan | Not applicable. |
| 1.12 - Implementation of Planning Principles for the Cooks Cove Precinct | Not applicable. |
| 1.13 - Implementation of St Leonards and Crows Nest 2036 Plan | Not applicable. |
| 1.14 - Implementation of Greater Macarthur 2040 | Not applicable. |
| 1.15 - Implementation of the Pymont Peninsula Place Strategy | Not applicable. |
| 1.16 - North West Rail Link Corridor Strategy | Not applicable. |
| 1.17 - Implementation of the Bays West Place Strategy | Not applicable. |
| Focus area 2: Design and Place | |
| - | |
| Focus area 3: Biodiversity and Conservation | |
| 3.1 - Conservation Zones | Consistent. |
| 3.2 - Heritage Conservation | Consistent. |
| 3.3 - Sydney Drinking Water Catchments | Not applicable. |
| 3.4 - Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs | Not applicable. |
| 3.5 - Recreation Vehicle Areas | Consistent. |
| 3.6 - Strategic Conservation Planning | Not applicable. |
| Focus area 4: Resilience and Hazards | |
| 4.1 - Flooding | Not applicable. |
| 4.2 - Coastal Management | Not applicable. |
| 4.3 - Planning for Bushfire Protection | Consistent, the Planning Proposal is not site specific. |
| 4.4 - Remediation of Contaminated Land | Consistent, the Planning Proposal is not site specific. |
| 4.5 - Acid Sulfate Soils | Consistent, the Planning Proposal is not site specific. |
| 4.6 - Mine Subsidence and Unstable Land | Consistent, the Planning Proposal is not site specific. |
| Focus area 5: Transport and Infrastructure | |
| 5.1 - Integrating Land Use and Transport | Not applicable. |
| 5.2 - Reserving Land for Public Purposes | Not applicable. |
| 5.3 - Development Near Regulated Airports and Defence Airfields | Consistent, the Planning Proposal is not site specific. |
| 5.4 - Shooting Ranges | Consistent, the Planning Proposal is not site specific. |
| Focus area 6: Housing | |
| 6.1 - Residential Zones | Not applicable. |
| 6.2 - Caravan Parks and Manufactured Home Estates | Not applicable. |
| Focus area 7: Industry and Employment | |
| 7.1 - Business and Industrial Zones | Not applicable. |
| 7.2 - Reduction in non-hosted short-term rental accommodation period | Not applicable. |
| 7.3 - Commercial and Retail Development along the Pacific Highway, North Coast | Not applicable. |
| Focus area 8: Resources and Energy | |
| 8.1 - Mining, Petroleum Production and Extractive Industries | Consistent, the Planning Proposal is not site specific. |
| Focus area 9: Primary Production | |
| 9.1 - Rural Zones | The Planning Proposal does not facilitate the rezoning of the land. |
| 9.2 - Rural Lands | Consistent – the minimum lot size is not changing. The Planning Proposal to ensure tourist and visitor accommodation occurs on land with dwelling entitlement supports this Direction. |
| | The Planning Proposal does not relate to a rural residential land supply. |
| 9.3 - Oyster Aquaculture | Not applicable. |

| | |
|--|-----------------|
| 9.4 - Farmland of State and Regional Significance on the NSW Far North Coast | Not applicable. |
|--|-----------------|

Section C - Environmental, Social and Economic Impact

Q8: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Site specific constraints will be considered during the assessment of any future development applications for tourist and visitor accommodation.

Q9: Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As set out in Local Environmental Plan Making Guideline, the purpose of this question is to ascertain the likely environmental effects that may be relevant. The nature of the planning proposal is such that no technical information is required.

Q10: How has the planning proposal adequately addressed any social and economic effects?

Not applicable.

Section D - State and Commonwealth Interests

Q11: Is there adequate public infrastructure for the planning proposal?

Not applicable as the Planning Proposal will not trigger an upgrade or reliance on public infrastructure.

Q12: What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Not applicable due to the nature of the Planning Proposal.

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Part 4 – Mapping

No change to mapping required as part of this Planning Proposal.

Part 5 – Community Consultation

Community consultation has not been carried out prior to the preparation of the Planning Proposal.

The Planning Proposal is considered 'standard' in accordance with the Local Environmental Plan Making Guideline and requires a public exhibition period of 20 days.

Public exhibition will be undertaken in accordance with any issued Gateway Determination.

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Part 6 – Project Timeline

The Planning Proposal is a housekeeping amendment to the *Mid-Western Local Environmental Plan 2012* and should be able to be achieved within 3 - 6 months of the date of the Gateway Determination.

Proposed Timeline

| MILESTONE | DATE |
|-------------------------------------|-----------------------|
| Gateway Determination | April 2023 |
| Completion of Technical Information | N/A |
| Agency Consultation | June/July 2023 |
| Public Exhibition | June/July 2023 |
| Consideration of Submissions | August 2023 |
| Legal Drafting & Opinion | August/September 2023 |
| Finalisation | September 2023 |