

8.6 Planning Proposal - Removal of Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1

REPORT BY THE MANAGER STRATEGIC PLANNING
TO 20 MARCH 2024 ORDINARY MEETING
GOV400105, LAN900187

RECOMMENDATION

That Council:

1. receive the report by the Manager Strategic Planning on the Planning Proposal - Removal of Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1 and removal of mapping reference 'Area C' of the *Mid-Western Regional Local Environmental Plan 2012*;
2. provide initial support for the Planning Proposal to amend *Mid-Western Regional Local Environmental Plan 2012* and submit to the NSW Department of Planning, Housing and Infrastructure via the NSW Planning Portal seeking a Gateway Determination, in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*;
3. advise the NSW Department of Planning, Housing and Infrastructure that Council's General Manager (or delegate) will be the nominated Local Plan Making Authority for this proposed amendment; and
4. undertake community consultation as outlined in any approved Gateway determination.

Executive summary

Council at its meeting, held on Wednesday, 21st February 2024, resolved:

'That Council prepare an LEP amendment to delete Clause 4.1C of the LEP – which allows no minimum lot size to occur within 100m of zone MU1 - this clause only applies to Caerleon, called Area C.'

The review has been undertaken and a Planning Proposal prepared, which seeks to amend the *Mid-Western Regional Local Environmental Plan 2012* (MWRLEP 2012) by removal of Clause 4.1C Exception to the minimum subdivision lot sizes around Zone MU1 and corresponding Area C on the lot size mapping.

The Planning Proposal is to provide for a 450m² minimum lot size for the area within 100 metres of the Zone MU1 Mixed Use. The current provision, providing no minimum lots size is considered to facilitate the creation of small, constrained lots, with minimal frontage. Dual occupancy and multi-dwelling housing and subsequent subdivision to 300m² remains permissible within the subject area.

The staff recommendation is to provide support for the Planning Proposal and forward to the Department of Planning Housing and Infrastructure (DPHI) with a request for a Gateway

Determination to allow for community consultation to be undertaken. If the staff recommendation is supported, the Planning Proposal along with the Council resolution will be forwarded to the DPHI.

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. DPHI has issued the *Local Environmental Plan Making Guideline*, to provide guidance and information on the process for preparing Planning Proposals and making the amendment to the LEP.

The Gateway Process

DPHI is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in the *Local Environmental Plan Making Guideline* (August 2023).

Gateway Timeline

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan (LEP) and the progress of the current Planning Proposal through the various stages. The below table demonstrates the Planning Proposal is within the initial stage of the process.

Stage	Completed	Comment
Preparation of a Planning Proposal		
Planning Proposal prepared by Council	✓	February/March 2024
Council Decision to Support Proposal	✓	The Planning Proposal is being reported to the 20 March 2024 meeting
Issue of Gateway Determination		
Council Requests Gateway Determination		
DP&E Issues Gateway Determination		
Gateway Conditions Satisfied		
Consultation		
Consultation with Relevant Agencies		
Public Exhibition		
Post-Exhibition Report to Council		
Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		
Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

PROPOSAL CONTEXT

The objective of the Planning Proposal is to amend the MWRLEP 2012 to remove *Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1* and allow the mapped 450m2 subdivision minimum lot size to prevail. The amendment will include the subsequent removal of 'Area C' from the lot size mapping.

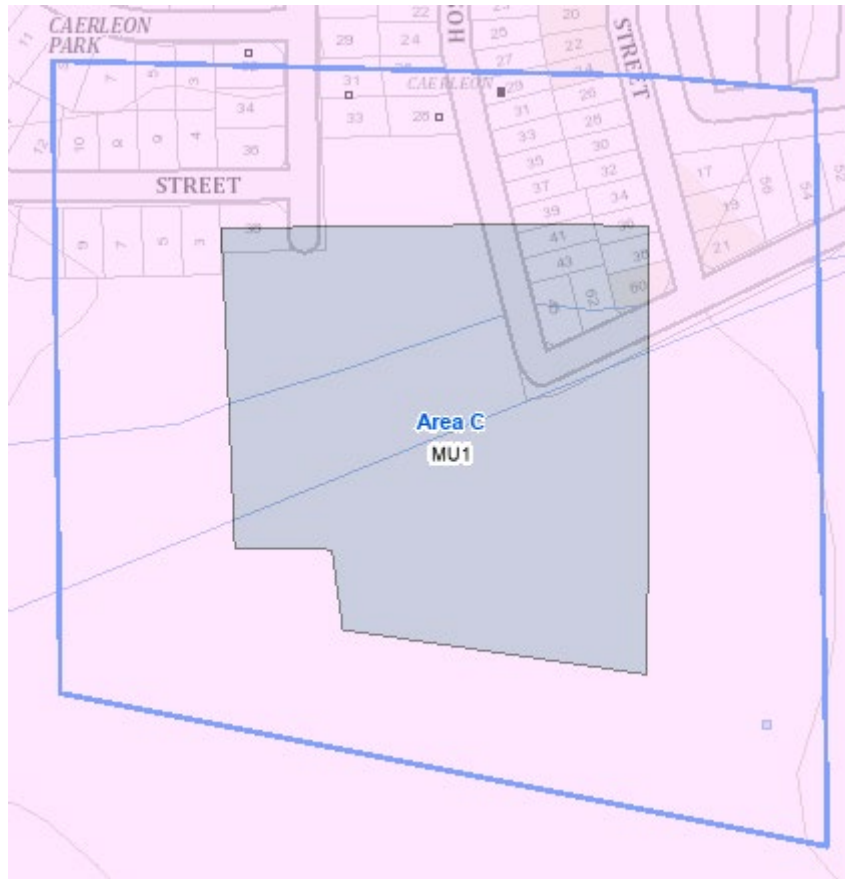


Figure 1: Planning Proposal subject area – area within blue line (Source: adapted from the NSW Planning Portal)

The land to which the Planning Proposal applies (subject area) is the 'Area C' as identified on the lot size mapping.

INTENDED OUTCOMES

The intended outcomes of the Planning Proposal is to amend the MWRLEP 2012 to remove *Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1* and allow the mapped 450m² subdivision minimum lot size to prevail. The amendment will include the subsequent removal of 'Area C' from the lot size mapping.

JUSTIFICATION

The DPHI *Local Environmental Plan Making Guideline* (August 2023) outlines questions to consider when demonstrating the justification. The questions most pertinent in consideration of this Planning Proposal are discussed below.

Is the planning proposal a result of an endorsed local strategic planning statement, strategic study, or report?

No. The Planning Proposal is not the result of an endorsed LSPS, strategic study or report however, it is consistent with the recommendations, goals and priorities of the *Our Place 2040 – Mid-Western Regional LSPS*. Specifically Planning Priority 2 *Making available diverse, sustainable, adaptable, and affordable housing options through effective land use planning*.

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

The Planning Proposal is the best and only means of amending MWRLEP 2012 and achieve the intended outcomes and objectives of the Planning Proposal.

The proposed amendment will be further supported by a future review of the applicable provision of Mid-Western Regional Development Control Plan 2013, Appendix C Caerleon.

Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) and SEPPs?

The Planning Proposal is generally consistent with all the Ministerial Directions and State Environmental Planning Policies (SEPPs).

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

The proposal to remove *Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1* and allow the mapped 450m² subdivision minimum lot size will not have any direct adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats. Site specific constraints will be considered during the assessment of any future development applications within the subject area.

Has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal will facilitate the delivery of residential lots of a size consistent with the adjoining locality.

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

The views of authorities and government agencies will be sought post Gateway. The Gateway determination will stipulate which authorities or government agencies are required to consult with.

NEXT STEP

If Council supports the recommendation, the next step would involve forwarding the Planning Proposal and a Council resolution of initial support to the DPHI seeking a Gateway Determination.

Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Respect and enhance the historic character of our region and heritage value of our towns

Strategic implications

Council Strategies

Mid-Western Regional Local Strategic Planning Statement, Our Place 2040

Council Policies

The forwarding 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 provide initial support for the Planning Proposal, Council may resolve not to proceed with the Planning Proposal.

SARAH ARMSTRONG
MANAGER STRATEGIC PLANNING

ALINA AZAR
DIRECTOR DEVELOPMENT

5 March 2024

Attachments: 1. Planning Proposal.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



*Looking After
our Community*

PLANNING PROPOSAL
CLAUSE 4.1C
EXCEPTIONS TO
MINIMUM SUBDIVISION
LOT SIZES

5 MARCH 2024

MID-WESTERN REGIONAL COUNCIL
STRATEGIC PLANNING

 TOWARDS 2030



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CLAUSE 4.1C EXCEPTIONS TO MINIMUM SUBDIVISION LOT SIZES

Version	Date	Notes
V001	March 2024	Draft PP reported to Council – March 2024

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Overview

Introduction

The Planning Proposal seeks to amend the Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012) by *remove Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1*. The Planning Proposal explains the intent of, and justification for, the proposed amendments to MWRLEP 2012.

The Planning Proposal is to remove the following clause from the MWRLEP 2012:

4.1C Exception to minimum subdivision lot sizes around Zone MU1

(1) The objective of this clause is to enable medium density housing on a range of lots around land in Zone MU1 Mixed Use.

(2) Despite clause 4.1(3), there is no minimum subdivision lot size for the subdivision of land identified as "Area C" on the Lot Size Map and within 100 metres of land in Zone MU1 Mixed Use, if the subdivision is for the purposes of residential accommodation.

The Planning Proposal will remove the 'Area C' on the Lot Size Map.

The intent of the Planning Proposal is to provide for a 450m² minimum lot size for the area within 100 metres of the Zone MU1 Mixed Use. The current provision, providing no minimum lots size is considered to facilitate the creation of small, constrained lots, with minimal frontage.

The 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, Housing and Infrastructure (Department), *Local Environmental Plan Making Guideline*, August 2023.

Background

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.

The subject area is part of the Caerleon locality. Council resolved to endorse the Planning Proposal in May 2012 and provided for an opportunity for an additional 900-1400 residential lots (dependant on resultant lot size). The Caerleon Development Control Plan was endorsed for public exhibition in August 2012 and was subsequently exhibited concurrently with the Planning Proposal. An objective of the Planning Proposal was *'to allow for a variety of lot sizes, ranging from 450m² up to 2 + hectares'* page 13 of the Planning Proposal, April 2012. The site was rezoned in March 2013.

Part 1 – Objectives or Intended Outcome

Objectives

The objective of the Planning Proposal is to amend the MWRLEP 2012 to remove *Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1* and allow the mapped 450m² subdivision minimum lot size to prevail. The amendment will include the subsequent removal of 'Area C' from the lot size mapping.

Intended Outcomes

The intended outcomes of the Planning Proposal is the removal of:

4.1C Exception to minimum subdivision lot sizes around Zone MU1

(1) The objective of this clause is to enable medium density housing on a range of lots around land in Zone MU1 Mixed Use.

(2) Despite clause 4.1(3), there is no minimum subdivision lot size for the subdivision of land identified as "Area C" on the Lot Size Map and within 100 metres of land in Zone MU1 Mixed Use, if the subdivision is for the purposes of residential accommodation.

The Planning Proposal will result in the removal of 'Area C' of the Lot Size Map. Area C is detailed below.

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Land to which the Planning Proposal applies

The land to which the planning proposal applies (subject area) is the 'Area C' as identified on the lot size mapping.

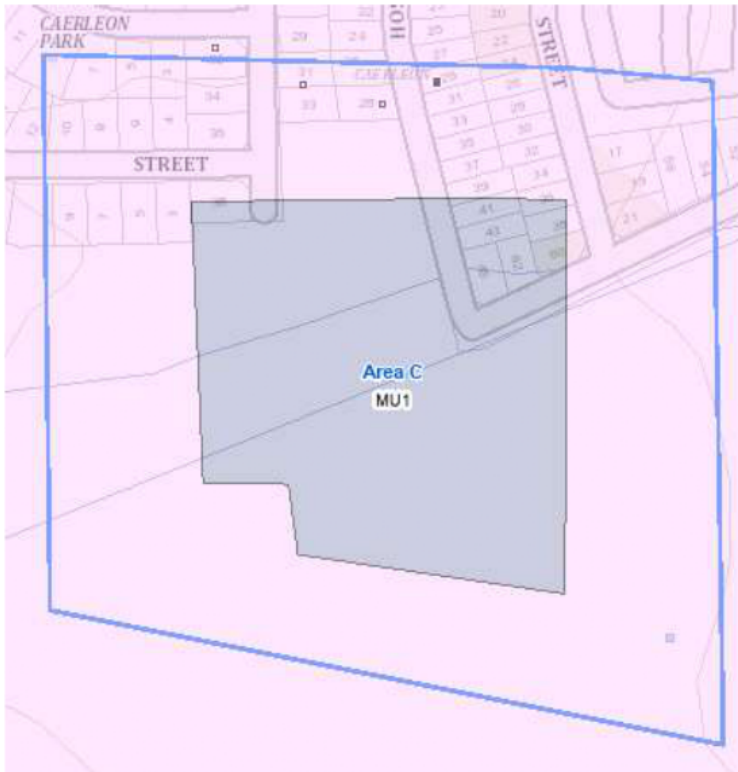


Figure 1: Planning Proposal subject area – area within blue line (Source: adapted from the NSW Planning Portal)

Site context and setting

Mudgee is nominated as a 'strategic centre' in the Central West and Orana Regional Plan 2041, Careleon provides a residential land supply for Mudgee. The subject area, Area C is located within the locality of Caerleon around the MU1 Mixed Use zoning. The total area of the original Caerleon estate measures 310 hectares. The site has been developed from the Hill End Road frontage of the site. Three hundred and three lots have been developed up to the area of the Caerleon site zoned MU1 Mixed Use.

Part 2 – Explanation of Provisions

The objectives and intended outcomes as described in Part 1 will be achieved by removing Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1 and removing 'Area C' from the Mid-Western Regional Local Environmental Plan 2012, Lot Size Map – Sheet LSZ_006, Map Identification Number: 5270_COM_LSZ_006_160_20220412.

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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?

No. The Planning Proposal is not the result of an endorsed LSPS, strategic study or report however, it is consistent with the recommendations, goals and priorities of the Our Place 2040 – Mid-Western Regional LSPS. Specifically Planning Priority 2 *Making available diverse, sustainable, adaptable and affordable housing options through effective land use planning.*

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

The Planning Proposal is the best and only means of amending MWRLEP 2012 and achieve the intended outcomes and objectives of the Planning Proposal.

The proposed amendment will be further supported by a future review of the applicable provision of Mid-Western Regional Development Control Plan 2013, Appendix C Caerleon.

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?

Yes, the Planning Proposal will give effect of the Central Western and Orana Regional Plan 2041.

STRATEGY	DIRECTION/ACTION/OBJECTIVE - COMMENT
Central West and Orana Regional Plan 2041	<i>Objective 14: Plan for diverse affordable, resilient and inclusive housing.</i> The Planning Proposal will provide for a minimum lots size of 450m ² across the R1 General Residential zoning of Caerleon. Under the current controls, lots can be crested at a minimum of 300m ² . An attached dual occupancy can be considered on lots measuring 600m ² , the LEP provision allows for the subdivision of these dual occupancy, resulting in 300m ² lots.

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 is consistent with Council's Toward's 2040 and Our Place 2040, Local Strategic Planning Statement. Specifically **Planning Priority 2** *Making available diverse, sustainable, adaptable and affordable housing options through effective land use planning.*

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

The Planning Proposal is minor in terms of broader State and regional strategies. Whilst no studies or strategies specifically relate to the Planning Proposal, there is nothing that the Planning Proposal is inconsistent with.

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 (Sustainable Buildings) 2022	Yes - The Planning Proposal is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP. Future development application would need to address the SEPP.
SEPP (Exempt & Complying Development Codes) 2008	Yes - The Planning Proposal is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP.
SEPP (Housing) 2021	Yes – The Planning Proposal is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP
SEPP (Industry and Employment) 2021	Yes - The Planning Proposal is consistent with the SEPP and 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 is consistent with the SEPP and 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 is consistent with the SEPP and 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 is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP.
SEPP (Resilience and Hazards) 2021	Yes - The Planning Proposal is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP. Contamination and remediation to be considered at the development application stage with the consideration of specific sites.
SEPP (Resources and Energy) 2021	Yes - The Planning Proposal is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP.
SEPP (Transport and Infrastructure) 2021	Yes - The Planning Proposal is consistent with the SEPP and will not impede the ongoing implementation of the provisions of the SEPP.

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

These directions apply to planning proposals lodged with the Department 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 1: Planning Systems	
1.1 – Implementation of Regional Plan	Consistent with Regional Plan as detail above.
1.2 - Development of Aboriginal Land Council land	Not applicable.
1.3 - Approval and Referral Requirements	The proposed amendments do not include the requirements for approvals or referrals.
1.4 - Site Specific Provisions	Not applicable, as the proposed amendments are not site specific.
1.4A – Exclusion of Development Standards from Variation	Not applicable.
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.
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 Pyrmont 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.
1.18 – Implementation of the Macquarie Park Innovation Precinct	Not applicable.
1.19 – Implementation of Westmead Place Strategy	Not applicable.
1.20 – Implementation of Camellia-Rosehill Place Strategy	Not applicable.
1.21 – Implementation of South West Growth Area Structure Plan	Not applicable.
1.22 - Implementation of Cherrybrook Station Place Strategy	Not applicable.
Focus area 2: Design and Place	
-	
Focus area 3: Biodiversity and Conservation	
3.1 - Conservation Zones	Not applicable.

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DIRECTION	PLANNING PROPOSAL CONSISTENCY
3.2 - Heritage Conservation	Not applicable.
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	Not applicable.
3.6 - Strategic Conservation Planning	Not applicable.
3.7 - Public Bushland	Not applicable.
3.8 - Willandra Lakes	Not applicable.
3.9 - Sydney Harbour Foreshore and Waterways	Not applicable.
3.10 - Water Catchment Protection	Not applicable.
Focus area 4: Resilience and Hazards	
4.1 - Flooding	Consistent
4.2 - Coastal Management	Not applicable.
4.3 - Planning for Bushfire Protection	Consistent
4.4 - Remediation of Contaminated Land	Consistent
4.5 - Acid Sulfate Soils	Consistent
4.6 - Mine Subsidence and Unstable Land	Consistent
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	Not applicable.
5.4 - Shooting Ranges	Not applicable.
Focus area 6: Housing	
6.1 - Residential Zones	Consistent
6.2 - Caravan Parks and Manufactured Home Estates	Not applicable.
Focus area 7: Industry and Employment	
7.1 - Business and Industrial Zones	Consistent
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
Focus area 9: Primary Production	
9.1 - Rural Zones	Not applicable.
9.2 - Rural Lands	Consistent
9.3 - Oyster Aquaculture	Not applicable.
9.4 - Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.

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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?

The proposal to to remove *Clause 4.1C Exception to minimum subdivision lot sizes around Zone MU1* and allow the mapped 450m2 subdivision minimum lot size will not have any direct adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats. Site specific constraints will be considered during the assessment of any future development applications within the subject area.

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 Department's *Local Environmental Plan Making Guideline* (August 2023), 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?.

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 as the intent is not to increase the intensity or density of development in the subject area.

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

The views of state and federal public authorities and government agencies were not sort prior to Gateway determination due to the nature of the Planning Proposal.

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Part 4 – Mapping

The Planning Proposal is a text and map amendment. Maps submitted to the Department post Gateway determination will be consistent with the Department's *Standard Technical Requirements for Spatial Datasets and Maps*.

The following map will be subject to amendment:

Lot Size Map – Sheet LSZ_006, Map Identification Number:
5270_COM_LSZ_006_160_20220412

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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 Department's *Local Environmental Plan Making Guideline* (August 2023) and requires a public exhibition period of 20 days.

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

CLAUSE 4.1C EXCEPTIONS TO MINIMUM SUBDIVISION LOT SIZES

Part 6 – Project Timeline

The Planning Proposal is a minor amendment to the *Mid-Western Local Environmental Plan 2012* and should be able to be achieved within 6-9 months of the date of the Gateway Determination.

Proposed Timeline

MILESTONE	DATE
Gateway Determination	March 2024
Completion of Technical Information	N/A
Agency Consultation	April 2024
Public Exhibition	April 2024
Consideration of Submissions	May 2024
Legal Drafting & Opinion (incl Mapping)	May 2024
Finalisation	June 2024