

10.5 PROPOSED AMENDMENT TO THE MAITLAND LEP 2011 - REZONING OF GILLIESTON HEIGHTS SOUTH

FILE NO:	RZ 14/002
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Planning Proposal (Western Precinct) (under separate cover) 2. Planning Proposal (Eastern Precinct) (under separate cover) 3. Locality Plan 4. Hydro Kurri Kurri Rezoning Master Plan 5. DPIE Letter 2.11.2020 6. Agency Consultation Tables 1 & 2
RESPONSIBLE OFFICER:	<p>Matthew Prendergast - Group Manager Planning & Environment</p> <p>Andrew Neil - Manager Strategic Planning</p> <p>Claire Swan - Coordinator City Planning</p>
AUTHOR:	Carolyn Maginnity - Strategic Planner
MAITLAND +10	Outcome 7. Diverse and affordable housing
COUNCIL OBJECTIVE:	7.2.1 To ensure land and housing choice is consistent with forecast demographic demand

EXECUTIVE SUMMARY

Council resolved on 24 November 2015 to progress a planning proposal for land at Gillieston Heights South. The planning proposal (the current planning proposal) sought rezoning to facilitate residential development on land east and west of Cessnock Road. It also considered land to the west of South Maitland Railway for environmental conservation purposes.

The purpose of this Council report is to provide an update regarding the current planning proposal and seek a Council resolution to submit two (2) revised planning proposals for the land east and west of Cessnock Road to the Department, seeking new Gateway determinations. This will enable the two (2) revised planning proposals to proceed to public exhibition in a timely manner. The land to the west of South Maitland Railway will no longer be included, as it is likely to be subject to a future biodiversity stewardship agreement.

Council received correspondence from the Department, on 2 October 2020, advising of a focused work program to finalise planning proposals that have been under consideration for four (4) or more years. This is part of the recently announced Planning System Acceleration Program. The current planning proposal is identified as one of these proposals and as such, is required to be finalised by 31 December 2020, consistent with the Department's advice.

In order to finalise the current planning proposal there are outstanding matters to address, including public exhibition. It is not possible to finalise the planning proposal by 31 December 2020 due to the outstanding matters. The Department has advised Council to submit a revised

planning proposal to the Department, seeking a new Gateway determination. The Department has assured Council that the new Gateway determination will recognise the work undertaken to address the conditions of the original and altered Gateway determination and enable the revised planning proposals to proceed to public exhibition. The Department has indicated to Council that the Minister will only discontinue the current planning proposal once new Gateway determinations have been issued. This is anticipated to occur before the 31 December 2020.

The current planning proposal includes approximately 470 hectares of land on the western side of Cessnock Road (western precinct) which is owned by Hydro Aluminium Kurri Kurri Pty Ltd (Hydro), as well as approximately 43 hectares of land on the eastern side of Cessnock Road (eastern precinct). The eastern precinct comprises five (5) separately owned land parcels.

Agency consultation for the current planning proposal identified a number of outstanding matters for resolution that are different for the eastern and western precincts. The variation in timeframes to address these outstanding matters may result in possible delays in the rezoning process. For these reasons, separating the current planning proposal into two (2) revised planning proposals is considered appropriate.

Planning Proposal (Western Precinct) and Planning Proposal (Eastern Precinct) are provided as Attachments 1 and 2 to this report for Council's consideration.

OFFICER'S RECOMMENDATION

THAT:

- 1. Pursuant to Section 3.34(1) of the *Environmental Planning and Assessment Act 1979*, Council submit two (2) revised planning proposals, Gillieston Heights South Planning Proposal (Western Precinct) and Planning Proposal (Eastern Precinct), to the Department of Planning, Industry and Environment, seeking new Gateway determinations.**
- 2. Following issue of the new Gateway determinations, Council undertake consultation with the community and relevant government agencies in accordance with Section 3.34 and Schedule 1 of the *Environmental Planning and Assessment Act 1979* and the conditions of the Gateway determinations.**
- 3. A further report be presented to Council following public exhibition of Planning Proposal (Western Precinct) and Planning Proposal (Eastern Precinct) to consider any submissions received during the community consultation process.**

COUNCIL RESOLUTION

THAT:

1. Pursuant to Section 3.34(1) of the *Environmental Planning and Assessment Act 1979*, Council submit two (2) revised planning proposals, Gillieston Heights South Planning Proposal (Western Precinct) and Planning Proposal (Eastern Precinct), to the Department of Planning, Industry and Environment, seeking new Gateway determinations.
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Moved Cr P Garnham, Seconded Cr B Whiting

CARRIED

For:	Cr R Aitchison	Against:
	Cr L Baker	
	Cr D Ferris	
	Cr P Garnham	
	Cr M Griffin	
	Cr S Halliday	
	Cr H Meskauskas	
	Cr B Mitchell	
	Cr N Penfold	
	Cr K Ranadive	
	Cr B Whiting	
	Cr M Yarrington	

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PROPOSED AMENDMENT TO THE MAITLAND LEP 2011 - REZONING OF GILLIESTON HEIGHTS SOUTH (Cont.)

planning proposal to the Department, seeking a new Gateway determination. The Department has assured Council that the new Gateway determination will recognise the work undertaken to address the conditions of the original and altered Gateway determination and enable the revised planning proposals to proceed to public exhibition. The Department has indicated to Council that the Minister will only discontinue the current planning proposal once new Gateway determinations have been issued. This is anticipated to occur before the 31 December 2020.

The current planning proposal includes approximately 470 hectares of land on the western side of Cessnock Road (western precinct) which is owned by Hydro Aluminium Kurri Kurri Pty Ltd (Hydro), as well as approximately 43 hectares of land on the eastern side of Cessnock Road (eastern precinct). The eastern precinct comprises five (5) separately owned land parcels.

Agency consultation for the current planning proposal identified a number of outstanding matters for resolution that are different for the eastern and western precincts. The variation in timeframes to address these outstanding matters may result in possible delays in the rezoning process. For these reasons, separating the current planning proposal into two (2) revised planning proposals is considered appropriate.

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- 3. A further report be presented to Council following public exhibition of Planning Proposal (Western Precinct) and Planning Proposal (Eastern Precinct) to consider any submissions received during the community consultation process.**

BACKGROUND

Council resolved to progress the current planning proposal to rezone land at Gillieston Heights South for the purposes of facilitating residential development and protecting environmental values. The current planning proposal relates to land east and west of Cessnock Road. The lands to the west of Cessnock Road are owned by Hydro Aluminium Kurri Kurri Pty Ltd (Hydro) and are referred to as the western precinct. This includes the

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lands to the west of South Maitland Railway. The lands to the east include five (5) separately owned parcels and are referred to as the eastern precinct. The current planning proposal seeks to specifically amend the MLEP 2011:

- land zoning map to rezone land from RU2 Rural Landscape to R1 General Residential,
- minimum lot size map to apply a minimum lot size of 450 square metres to land zoned R1 General Residential, and
- urban release area (URA) map to identify land as an extension of the Gillieston Heights URA.

A Locality Plan showing the land subject to the current planning proposal is included as *Attachment 3*.

Strategic intent

The intent of the current planning proposal is to facilitate development of the eastern and western precinct for urban purposes. The land has been identified in the *Maitland Urban Settlement Strategy 2012* as Category 1 Residential land. The Category 1 land accounts for the remaining developable land in the Gillieston Heights locality. In addition, the current planning proposal includes approximately 400 hectares of land west of the rail corridor which is currently zoned RU2 Rural Landscape and E2 Environmental Conservation. This land is not proposed to be rezoned for urban purposes. Part of this land to the west was originally intended to be rezoned for environmental purposes. However, as it will likely be the subject of future biodiversity outcomes as part of a potential Biodiversity Stewardship Agreement (BSA), it will not be included in the revised Planning Proposal (Western Precinct).

Gateway Determination

A Gateway determination was issued by the Department of Planning, Industry and Environment (the Department) to progress the current planning proposal on the 23 March 2016. It includes the agency consultation and exhibition requirements for the current planning proposal.

The Gateway determination specified a thirty-six (36) month timeframe for the completion of the local environmental plan (LEP), with completion due March 2019. In January 2019, Council wrote to the Department requesting an extension of time in which to complete the LEP. The Gateway determination was subsequently altered on 10 September 2019, to amend the Gateway determination conditions and extend the timeframe for completion of the LEP by 23 December 2020.

The current planning proposal has progressed consistent with the conditions of the original and altered Gateway determination. There are outstanding issues for resolution requiring further information and consideration prior to the finalisation of the planning proposal process.

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Alignment with Cessnock City Council's adjoining Planning Proposal

The western precinct includes part of the wider land holding of the former Kurri Kurri Aluminium (Hydro) Smelter and surrounding buffer lands. The northern extent of the Hydro site is situated within the Maitland LGA. The remainder of the site (approximately 1,300 hectares) is located in the Cessnock LGA and is subject to a separate Planning Proposal with Cessnock City Council, to give effect to the Hydro Rezoning Masterplan. The proposed rezoning of the former Hydro site has been submitted as a joint Planning Proposal. The approach to assessment, milestone delivery and consideration of cross-boundary impacts for both Maitland and Cessnock Council's planning proposals is intended to align wherever possible.

Outstanding issues

The current planning proposal is complex, with multiple site constraints, various developers involved in the planning over time, updates in agency feedback, and legislative amendments. In resolving the complex issues associated with the site, the current planning proposal has experienced delays in progressing through the planning process. The current planning proposal has required (and in some cases, requires further) consideration of agency and stakeholder input, including Transport for NSW (TfNSW), the NSW Biodiversity Conservation Division (BCD) of DPIE and private landowner, South Maitland Railways, whose land traverses the Hydro site. The complex issues are detailed below.

Need for Comprehensive Flood Study & Flood Free Access Strategy

A detailed investigation of flooding was required in order to adequately address conditions 1(a) and 1(b) of the original Gateway determination. In the absence of accurate baseline data, a comprehensive flood study, outlining the full range of flood behaviour and associated consequences within the study area, was required. Maitland City Council (in partnership with Cessnock City Council) commissioned the work using grant funding obtained through the State Floodplain Management program managed by the former Office of Environment and Heritage (OEH) and engaged WMA to undertake the *Wallis and Swamp-Fishery Creek Flood Study* in March 2017.

The study took approximately two (2) years to complete and involved extensive hydrologic and hydraulic modelling across three (3) catchments to define flood behaviour for a range of design flood events including the 1% AEP. The flood study was publicly exhibited in October 2018 and was formally adopted by Council on 26 March 2019. The findings of the study address the original Gateway determination conditions in relation to flooding impacts and the provision of a flood free access strategy for the proposed residential development and have informed the revised planning proposals for both the eastern and western precincts.

Biodiversity Legislation Reforms

Hydro intend to apply for biodiversity certification across the western precinct in parallel with the rezoning process and is currently finalising a Biodiversity Certification Assessment Report (BCAR) to accompany a standard biodiversity certification application to BCD.

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In August 2017, the *Biodiversity Conservation Act 2016* and amendments to the *Local Land Services Act 2013* commenced, as part of a major overhaul of the land management and biodiversity conservation framework in NSW. These Acts repealed the *Threatened Species Conservation Act 1995* (TSC Act) and *Native Vegetation Act 2003* (NV Act) and introduced the Biodiversity Assessment Method (BAM) 2017. As part of the reforms, transitional provisions were introduced for existing biodiversity certification proposals that had been prepared under the TSC Act. The Hydro rezoning was nominated as a proposal subject to these provisions.

Hydro originally intended to proceed under the transitional provisions. However, in August 2019, a decision was made to proceed under the new legislation. In accordance with the BAM 2017, BCD would not accept field surveys older than five (5) years. Accordingly, Hydro were required to undertake additional targeted seasonal surveys over the course of 2019-2020. Hydro intend to complete this survey work and incorporate the results into a final BCAR to be submitted to BCD with a standard biodiversity certification application prior to finalisation of the planning proposal process. In accordance with the provisions of the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*, Council will be given 42 days in which to provide formal comment on the BCAR. There will also be a formal public exhibition process. This is anticipated to occur prior to the finalisation of the revised planning proposals.

The revised Planning Proposal (Western Precinct) identifies the need for further detailed assessment of biodiversity constraints and potential biodiversity impacts of the development, following completion of Hydro's biodiversity study encompassing the entire Hydro site (being undertaken as part of the biodiversity certification process). In the absence of this information, Council is unable to determine whether there is 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.

At its meeting of 23 August 2016, Council resolved to endorse the application of the biodiversity certification process and align the standard biodiversity certification application and the BCAR with the planning proposal process wherever possible.

BCD, in their response to Council's initial agency consultation, have also indicated their preference to review the applicable planning proposal and the standard biodiversity certification application concurrently, to ensure a consistent approach for conservation and development outcomes over the site. However, the biodiversity certification application has not yet been lodged with BCD. It is expected that BCD will provide detailed comment on the revised Planning Proposal (Western Precinct) when Council undertakes further agency consultation as a result of the new Gateway determination.

The land in the eastern precinct is not intended to be included in the above biodiversity certification application. A detailed flora and fauna assessment was carried out by Anderson Environment & Planning in August 2017 in respect of this land. BCD has reviewed the flora and fauna assessment report and raised no issues in terms of its adequacy for rezoning purposes.

Contamination

Given the nature of the former Hydro industrial land use, potential contamination has been an issue in determining the suitability of the site for its intended residential development. Council should be satisfied the level of investigation is adequate to fulfill the statutory requirements under *Ministerial Direction 2.6 – Remediation of Contaminated Land*. The work completed to date has included a Phase 2 Environmental Site Assessment, Remedial Action Plan, Validation Report, Site Audit Report and Site Audit Statement.

Council officers have reviewed the above documents and raised concerns in relation to the adequacy of the sampling carried out across the proposed residential land. The proponent has been advised further soil sampling is required to address the requirements of the Ministerial Direction. The sampling is to be undertaken in accordance with the EPA's sampling guidelines across the site, with laboratory analysis for all potential contaminants, including those that would normally be associated with previous rural/agricultural uses of the site, coal mining and the existence of the coal train line. This is to satisfy Council that the land proposed to be rezoned is suitable for all uses permitted in the R1 General Residential zone.

It is Council's understanding that this additional soil sampling and analysis is yet to be undertaken. The results of the additional sampling will need to be provided, in order to satisfy Council that the land proposed to be rezoned to R1 General Residential is suitable for all uses permitted in the zone, prior to finalisation of the revised Planning Proposal (Western Precinct).

A Phase 1 contamination assessment has been carried out in respect of land within the eastern precinct. Based on the site history and site observations, several Areas of Environmental Concern (AECs) were identified relating to a former commercial poultry farm and potential burial pits, septic tanks and associated trenches, storage of waste and farm materials and fill of unknown quality and origin. Based on the findings of the Phase 1 assessment, a Phase 2 contamination investigation (including sampling of surface soils, fill stockpiles and surface water), will be required prior to finalisation of the revised Planning Proposal (Eastern Precinct).

Voluntary administration of Flow Systems

In the early stages of the rezoning process, Flow Systems Pty Ltd, a multi-utility provider of recycled water and wastewater services, entered into an agreement with Hydro to purchase their land and subsequently developed a masterplan for the site to be known as Loxford Waters. However, all progress made in relation to the Loxford Waters proposal became redundant in December 2018, when Flow Systems Pty Ltd entered into voluntary administration and ceased progression of the Loxford Waters proposal. In January 2020, Hydro announced that they had signed a new agreement for the sale of the site to the McCloy/Stevens Group. Since that time, the McCloy/Stevens Group, as the future developers of the land, have been involved in joint meetings between both Councils, the proponent and the Department in a concerted effort to progress the current planning proposal. The McCloy/Stevens Group have submitted a revised version of the original

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Hydro Kurri Kurri Rezoning Master Plan for Council's consideration, a copy of which is provided as *Attachment 4*.

TfNSW Main Road 195 Corridor Strategy

Condition 1(i) of the altered Gateway determination requires agreement from TfNSW for proposed intersections and upgrades to Cessnock/Main Road (MR 195) between the New England Highway and the Hunter Expressway, including staging and development thresholds for upgrades and funding mechanisms to deliver the agreed upgrades.

In issuing the altered Gateway determination, the Department acknowledged that TfNSW is currently undertaking a Corridor Strategy for this section of MR 195, the purpose of which is to:

- Identify the timing for duplication of MR 195; and
- Assess location points for future connections and / or restrictions or upgrades to existing intersections, including identifying the type of intersection controls to meet the needs of residential growth within the corridor over the next twenty (20) years.

Condition 1(i) also requires the proponent to undertake a detailed Traffic Impact Assessment (TIA) that considers the impact of the development on the local road network and responds to the need to consolidate access points along the length of Cessnock/Main Road and identify preferred intersection locations.

The Department and TfNSW have acknowledged that the outcomes/findings of the Corridor Strategy will largely address the requirements of Gateway condition 1(i) and in an effort to minimise the overlap in the scope of works between the TfNSW Corridor Strategy and the TIA being prepared by the proponent, TfNSW have offered to share the results of their microsimulation modelling and other relevant traffic data with the proponent and Council, if required.

Work associated with the Strategy commenced in November 2019, with finalisation of the Strategy scheduled for August 2020 but for various reasons, including the impact of Covid 19, the project has been significantly delayed and is now not expected to be finalised until late December 2020. This has meant that the proponent has been unable to undertake the required TIA or finalise various aspects of their master-planning for the site.

TfNSW recently advised the Department there is no objection to the revised planning proposals proceeding to public exhibition. The Department subsequently wrote to Council on the 6 November 2020 to advise the Department is satisfied the planning proposals should proceed to public exhibition (refer to *Attachment 5*).

It is expected that the new Gateway determinations will require the revised planning proposals to be consistent with the findings and recommendations of the impending MR 195 Corridor Strategy. This is relevant for the revised Planning Proposal (Western Precinct) and Planning Proposal (Eastern Precinct).

AGENCY CONSULTATION

In accordance with the original and altered Gateway determination, Council undertook preliminary consultation with relevant Government agencies in February 2020 regarding the western precinct. In June 2020, Council undertook a further round of agency consultation specifically in relation to the eastern precinct. The issues raised by Government agencies and Council's comments are summarised in Tables 1 and 2, included as *Attachment 6*.

RECENT CORRESPONDENCE

On 2 October 2020, Council received correspondence from the Department (refer to *Attachment 5*) advising of the recently announced *Planning System Acceleration Program* to reform the NSW planning system. A key part of the reform program involves delivering improved processes for determining and finalising planning proposals more efficiently to reduce the time taken to finalise rezoning decisions by 33%. To ensure the new system achieves these outcomes, the Department intends to first clear the backlog of planning proposals that have remained under consideration for an extended period, namely more than four (4) years, and assist councils to finalise these proposals by 31 December 2020. The current planning proposal is one of these long-standing proposals.

It will not be possible to finalise the current planning proposal by 31 December 2020 as a result of outstanding matters, including public exhibition being required and not yet completed. Therefore, the Department has advised Council to submit the current planning proposal to the Department seeking a new Gateway determination. The Department has assured Council that the new Gateway determination will recognise the work already undertaken to address the conditions of the original and altered Gateway determination and enable the proposal to proceed to public exhibition. The Department has indicated to Council that the Minister will only discontinue the current planning proposal once a new Gateway determination has been issued, this is expected to occur before 31 December 2020.

The Department advised, on 6 November 2020, that it is satisfied the current planning proposal can be publicly exhibited as soon as practicable, irrespective of the outstanding issues that need further consideration, particularly relating to traffic and transport related issues. Cessnock and Maitland Councils, the Department and TfNSW will continue to work together to align the progression of the respective planning proposals to ensure these issues are adequately addressed.

It is anticipated the Department's draft Hunter Expressway (HEX) Strategy and TfNSW draft Main Road 195 Corridor Strategy will be exhibited concurrently with the revised planning proposals. The draft BCAR and associated biodiversity certification application will be lodged with BCD and publicly exhibited prior to the finalisation of the revised planning proposals. The associated draft Development Control Plan and likely development contributions plan will be prepared in parallel with the progression of the revised planning proposal and most likely publicly exhibited after the finalisation of the revised planning proposal.

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REVISED PLANNING PROPOSALS

The current planning proposal has progressed, with work undertaken over the last four (4) years to address the conditions of the original and altered Gateway determination. The current planning proposal has been separated into two (2) revised planning proposals representing the western and eastern precincts. This was considered appropriate following preliminary consultation with relevant Government agencies which identified outstanding issues that differentiated the eastern and western precincts. The variations in timeframes to address these outstanding issues may possibly delay the planning process if the revised planning proposals were considered as one.

A summary of the revised proposal is provided below.

	Planning Proposal (Western Precinct)	Planning Proposal (Eastern Precinct)
Applicable Land	Lot 1, 2, 5 and 8 DP456946 Lot 3, 4, 7, 9 and 10 DP 456946 (part of these lots that are east of South Maitland Railway) Lot 54, 55, 69, 70 and 71 DP975994	Lot 1 and 2 DP 302745 Lot 1 and 2 DP 601226 Lot 1 DP311179
Landowner	Hydro Aluminium Kurri Kurri Pty Ltd	Various
Land size	Total 69.4 Ha	Total 43.55 Ha
Current Zone	RU2 Rural Landscape	RU2 Rural Landscape E2 Environmental Conservation
Proposed Zone	Portion of the precinct to be zoned R1 General Residential with the remainder staying RU2 Rural Landscape	Portion of the precinct to be zoned R1 General Residential and E3 Environmental Management with the remainder staying E2 Environmental Conservation
Applicable Minimum Lot size	R1 General Residential – 450 sqm MLS RU2 Rural Landscape - 40 Ha MLS	R1 General Residential – 450 sqm MLS E3 Environmental Management - 40 Ha MLS E2 Environmental Conservation – 40 Ha MLS
Map amendments	LZN Map 004B amended to identify R1 General Residential land MLS Map 004B amended to amend the minimum lot size for the residential portion of land to 450 sqm URA Map 004B amended to identify the applicable land as Gillieston Heights South URA.	LZN Map 004B and Map 005 amended to identify R1 General Residential land and E3 Environmental Management MLS Map 004B and Map 005 amended to amend the minimum lot size for the residential portion of land to 450 sqm and the environmental portion to 40 Ha URA Map 004B and Map 005 amended to identify the applicable

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	Planning Proposal (Western Precinct)	Planning Proposal (Eastern Precinct)
		land as Gillieston Heights South URA.

A locality map and copies of the proposed zoning, minimum lot size and URA maps are provided in Part 4 of the revised planning proposals, included as *Attachments 1* and *2* to this report.

CONCLUSION

Council continues to support rezoning of Gillieston Heights South (western and eastern precincts) and recognises the strategic merit of the revised planning proposals, given the overall consistency with the NSW Government's *Hunter Regional Plan 2036*, *Greater Newcastle Metropolitan Plan 2036* and Council's adopted Local Strategic Planning Statement and Urban Settlement Strategy.

It is recommended that Council submit the revised planning proposals to the Department and seek two (2) new Gateway determinations to enable the proposals to proceed to public exhibition.

RISK IMPLICATIONS

Should Council decide not to submit the revised planning proposals to the Department seeking a new Gateway determination before the 31 December 2020, there will be implications for the finalisation of the current planning proposal in accordance with the original and altered Gateway determination timeframe. This would be contrary to the Department's requirements for clearing the backlog of planning proposals, the consequences of which are unclear.

FINANCIAL IMPLICATIONS

If Council is unable to finalise the planning proposal by 30 June 2021, its application for \$3 million of funding under the NSW Public Spaces Legacy Program may be at risk. To ensure Council is awarded this grant funding, it is essential that Council obtain a new Gateway determination to enable the planning proposals to proceed to public exhibition as soon as is practicable.

POLICY IMPLICATIONS

This matter has no specific policy implications for Council.

STATUTORY IMPLICATIONS

This report has regard to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

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As this matter is covered by the definition of a “planning decision” under Section 375A of the *Local Government Act 1993*, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose, a division must be called when a motion in relation to the matter is put to a meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.