

# maitland

city council

## **PLANNING PROPOSAL**

### **AMENDMENT TO THE MAITLAND LEP 2011**

(Lot 1 DP 721804)

19 Scotch Creek Rd, Millers Forest

Version 0.2

19/9/2022





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## INTRODUCTION

The planning proposal has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979. It explains the intended effect of, and justification for the proposed amendment to Amend Schedule 3 of the Maitland Local Environmental Plan 2011 (MLEP 2011) to enable the permissibility of the processing of sand and gravel for use by the water filtration industry.

The planning proposal is the result of discussion between Maitland City Council and the landowner where it was established that while this use was listed as an additional use of land within Schedule 3 of the MLEP 1993, a formal development application seeking consent for the use was never lodged. As part of the process involved with preparing the MLEP 2011, Additional uses of land within Schedule 3 of the MLEP 1993 which had not been acted upon were removed from the LEP. As such, the one approved additional use of 19 Scotch Creek Road Millers Forest was not translated to the current MLEP 2011

The planning proposal applies to Lot 1 DP 721804, 19 Scotch Creek, Millers Forest.

Delegation for making the local environmental plan will be issued to Council.



Figure 1: Subject Site

## **PART 1: OBJECTIVES OR INTENDED OUTCOMES**

The objective of this amendment is to enable with development consent the sand processing activities which have historically been undertaken on the subject site.

The intended outcome is an amendment to Schedule 1 of the Maitland LEP 2011 to permit with development consent gravel & sand processing activities at the site. It will also allow a development application to be then lodged and considered by Council to regularise the existing activities and upgrade the facility to achieve a more efficient and environmentally sustainable operation and meet health and safety requirements.

## **PART 2: EXPLANATION OF PROVISIONS**

The planning proposal seeks to include an Additional Permitted Use (APU) in Schedule 1 of the Maitland Local Environmental Plan 2011 (LEP) to facilitate the gravel & sand processing purposes as a light industry on part of the subject site as follows:

### **12 Use of certain land at 19 Scotch Creek Road, Millers Forest**

(1) This clause applies to Lot 1 DP721804, being 19 Scotch Creek Road, Millers Forest.

(2) Development for the purpose of light industry for the purpose of sand and gravel processing is permitted with development consent

## **PART 3: JUSTIFICATION FOR PROPOSED REZONING**

In accordance with the Department of Planning's 'Guide to Preparing Planning Proposals', this section provides a response to the following issues:

- Section A: Need for the planning proposal.
- Section B: Relationship to strategic planning framework.
- Section C: Environmental, social and economic impact; and
- Section D: State and Commonwealth interests.

### **SECTION A – NEED FOR THE PLANNING PROPOSAL**

#### **1. Is the planning proposal a result of any strategic study or report?**

No. The subject site was included within the Maitland LEP 1993's Schedule 3 – Additional Land Uses permitting the Processing of sand and gravel for use by the water filtration industry on the subject site. Due to a lack of understanding, the proponent was not aware that a development application then had to be lodged with Council to regularise the use at that time and continued to operate

No development application was lodged thus the provision into the current Maitland Local Environmental Plan 2011 (MLEP 2011) did not occur. The proponent recently sought to obtain

approval to upgrade the facility and it was revealed that the current use was now not a permitted land use under the current MLEP 2011, thus the need for a Planning Proposal to legitimise and existing facility.

## **2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

In order to achieve the objectives, which are to enable the proposed sand and gravel processing operation at the subject site to continue operating and allow Council to consider a development application to upgrade the facility and operations, the landuse needs to be made a permissible use. There are four options to amend the MLEP 2011 so as to ensure that the activities are permissible with consent at the subject site:

a) Amend the landuse table of the RU1 zone such that the activity becomes a permissible use with consent meaning either light industry or general industry become permissible uses with consent, or

b) Rezone the site to a landuse zone in which light industry and general industry are permissible landuses with development consent, or

c) Provide a new local provision under Part 7 of the LEP so that the proposed landuse is a permitted landuse activity, or

d) Include the site and landuse activity as an additional permitted use under schedule 1 which is then referenced via Clause 2.5 of the LEP. Option a) would have broad implications across the Maitland LGA and would not be in the public interest. Generally, such landuses are not suitably located in the RU1 zone.

Option b) has no strategic merit as it would create an isolated parcel of industrially zoned land that would also enable other potentially undesirable landuse activities within what is otherwise a rural agricultural setting.

Option c) would only be required in the event that controls were sought to be placed on the operation or extent of any approval granted. Consequently, it is option d) that would be the best means to achieve the objectives in this instance, which is a similar provision to which was introduced for the site in 1991 under the MLEP 1986. By using schedule 1, the specific business activity of sand and gravel processing can be made permissible with consent in the context of the relevant land use definition being light industry.

## **1. Is there a net community benefit?**

No net community benefit test has been undertaken as part of this planning proposal.

## SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

### 2. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

#### *Hunter Regional Plan 2036*

The Hunter Regional Plan 2036 is a 20-year blueprint for the future of the Hunter and provides the overarching strategic framework to guide development, investment and planning within the Hunter region to 2036. The vision is to create a leading regional economy in Australia, with a vibrant metropolitan city at the heart.

This vision will be delivered through four goals, as follows:

- a leading regional economy in Australia
- a biodiversity-rich natural environment • thriving communities
- greater housing choice and jobs.

The Planning Proposal is conducive with the objectives of the HRP in that it will enable a successful industry that supports potable water supply and other industries within the Hunter to continue to operate and improve production techniques.

#### Goal 1: Leading Regional Economy Direction 8:

Promote innovative small business and growth in the service sectors O'Donohue Sand and Gravel processing is a highly specialised sand and gravel processing business which has serviced the Hunter Region for the better part of 30 years. The business services many industries including Hunter Water providing vitally important sand for water filtration purposes which is significant in providing the region with a potable water supply source. It is also important in providing sand and gravel for the building industry, another significant industry in the Hunter.

#### Direction 13: Plan for greater land use compatibility

This direction has a focus on ensuring that there is no conflict between new housing and agricultural and resource industries. The business is a product of the resource industry in the Hunter, and it has been operating in its current location for over 30 years without impact on adjoining rural properties and adjoining agricultural landuses. Further, the area is subject to flooding and therefore will not be used in the future for housing.

#### *Maitland Local Strategic Planning Statement (LSPS) 2040+*

The Maitland Local Strategic Planning Statement 2040+ sets out a 20-year land use vision for the Maitland Local Government Area (LGA) and outlines how this growth and change will be sustainably managed into the future. The Maitland LSPS 2040+ seeks to achieve its vision through 18 Local Planning Priorities across 4 themes.

The Planning Proposal is aligned with Planning Priority 7 - Strengthen our local economy through attracting investments, creating jobs and fostering innovation, in that it aligns with the need to

regularise the innovative and unique business that is O'Donohue Sand and Gravel processing. The O'Donohue Sand and Gravel processing operations are innovative and highly specialised. Being a successful and unique business within the Maitland LGA, this Local Planning Priority is relevant in that it is considered an innovative business which is worthwhile fostering and supporting through the local planning framework. Regularising the existing Sand and Gravel processing operations through the proposed amendment of the MLEP 2011 is considered an appropriate and effective way of achieving this priority and ensuring the business' continued operation

#### *Greater Newcastle Metropolitan Plan*

The Greater Newcastle Metropolitan Plan 2036 (the Metropolitan Plan) sets out the strategies and actions that will drive sustainable growth across the five (5) Local Government Areas of Cessnock, Lake Macquarie, Newcastle City, Port Stephens and Maitland, which make up Greater Newcastle.

The Metropolitan Plan aims to achieve the vision set out in the Hunter Regional Plan 2036 – for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart. This proposal will assist in meeting the objectives of the Metropolitan Plan. The proposal is consistent with the strategies and actions in the Metropolitan Plan, as it will support local business, indirectly support the provision of potable water supply to the region and the sustainable use of natural resources. Indirectly, the proposal also supports the local construction industry through the provision of various gravel and sand-based products used in the construction process.

### **3. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

#### Maitland +10 (Community Strategic Plan)

Council has prepared and adopted the Maitland +10 Community Strategic Plan (the Community Strategic Plan) in line with the Integrated Planning and Reporting legislation and guidelines. The Community Strategic Plan was last reviewed in 2018. The Planning Proposal is considered consistent with the vision and objectives of the Community Strategic Plan as it supports local business and employment and indirectly supports the housing industry which provides housing supply to the LGA.

#### Maitland Urban Settlement Strategy (MUSS)

The MUSS provides the broad direction for future urban growth in the Maitland LGA. The Strategy aims to provide both flexibility and certainty by maintaining a generous supply of land for residential growth on several development fronts throughout the Maitland LGA. The proposal is not located within an identified future urban release area and is situated in the established rural precinct of Maitland with a focus on turf industry.



#### 4. Is the planning proposal consistent with applicable state environmental planning policies?

An assessment of the planning proposal against the relevant SEPPs is provided in the table below.

RELEVANCE	CONSISTENCY AND IMPLICATIONS
State Environmental Planning Policy (Biodiversity)	N/A
State Environmental Planning Policy (Industry & Employment)	N/A
State Environmental Planning Policy (Precinct Eastern Harbour)	N/A
State Environmental Planning Policy (Precinct Western City Parkland)	N/A
State Environmental Planning Policy (Precincts Regional)	N/A
State Environmental Planning Policy (Precincts Western Sydney)	N/A
State Environmental Planning Policy (Primary Production)	CONSISTENT The site is not identified as State significant agricultural land. The proposal is therefore consistent with the aims of this policy as it is enabling the orderly and economic use of the land
State Environmental Planning Policy (Resilience & Hazards)	CONSISTENT The south-eastern corner of the subject site is located within the Coastal Environment Area Map. Continuation of the subject site for Sand and Gravel processing purposes will not impact the area of the site to which the Coastal Environment Area Map applies. The site is Bushfire Prone land but is considered very low risk and would not impede the continuation of the operation.
State Environmental Planning Policy (Resources & Energy)	N/A
State Environmental Planning Policy (Transport & Infrastructure)	CONSISTENT Nothing in this Planning Proposal impacts upon the aims or provisions of this SEPP. Traffic – The traffic Impact Assessment prepared by Intersect Traffic shows that the landuse for which this Planning Proposal relates is considered a low traffic generating development, generating up to 6 vph during

**RELEVANCE****CONSISTENCY AND IMPLICATIONS**

peak operating hours and will not impact on the local or regional road network.

Table 1: Relevant State Environmental Planning Policies.

**5. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan making?**

**DIRECTION****CONSISTENCY AND IMPLICATIONS****Focus Area 1: Planning Systems**

1.1 Implementation of the Ministers Planning Principles

N/A – Principle Deleted

1.2 Implementation of Regional Plans

The Hunter Regional Plan 2036 applies to the subject site and triggers consideration of this direction.  
CONSISTENT  
Refer section 4.2.1.1 of this report.

1.3 Development of Aboriginal Land Council land

N/A - CHECK

1.4 Approval and referral requirements

CONSISTENT

1.5 Site Specific Provisions

UPDATE

The objective of this Planning Proposal “is to facilitate the continuing use of 19 Scotch Creek Road, Millers Forest for sand and gravel processing purposes.” Consequently, consideration of this Direction is triggered.

CONSISTENT

The Planning Proposal is consistent with (4)(c). The Planning Proposal is seeking to amend the MLEP 2011 to include sand and gravel processing as a light industry at 19 Scotch Creek Road Millers Forest as an additional Permitted Use within Schedule 1. The Planning Proposal does not propose the imposition of any development standards or requirements beyond those existing within the MLEP 2011.

**Focus Area 1 Planning System – Place Based**

1.6 Parramatta Road Corridor Urban Transformation Strategy

N/A



DIRECTION	CONSISTENCY AND IMPLICATIONS
1.7 Implementation of Northwest Priority Growth Area Land Use and Infrastructure Implementation	N/A
1.8 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A
1.9 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan.	N/A
1.10 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A
1.11 Implementation of the Western Sydney Aerotropolis Plan	N/A
1.12 Implementation of Bayside West Precincts 2036 Plan	N/A
1.13 Implementation of Planning Principles for the Cooks Cove Precinct	N/A
1.14 Implementation of St Leonards and Crow's Nest 2036 Plan	N/A
1.15 Implementation of Greater Macarthur 2040	N/A
1.16 Implementation of the Pyrmont Peninsula Place Strategy	N/A
1.17 North West Rail Link Corridor Strategy	N/A
<b>Focus Area 2: Design and Place</b>	To be determined
<b>Focus Area 3: Biodiversity and Conservation</b>	
3.1 Conservation zones	N/A
3.2 Heritage conservation	N/A
3.3 Sydney Drinking Water Catchments	N/A
3.4 Application of C3 and C4 and Environmental Overlays in the Far North Coast LEP	N/A
3.5 Recreation Vehicle Area	N/A
<b>Focus Area 4: Resilience and Hazards</b>	
4.1 Flooding	<p>The subject site is classified as flood prone land. The inclusion of an additional permitted use provision into the MLEP 2011 triggers application of this direction.</p> <p>NOT CONSISTENT</p>



The subject site is flooding prone land and the Planning Proposal proposes to create a provision that affects the land. The Planning Proposal does not contain provision required by clause (4). The MLEP 2011 contains Clauses 5.21 & 5.22 from the standard LEP instrument which are consistent with these guidelines. This Planning Proposal does not propose to alter these provisions.

**CONSISTENT**

The Planning Proposal does not propose to rezone land.

The MLEP 2011 already contains Clauses 5.21 & 5.22 from the standard LEP instrument which is consistent with these guidelines. This Planning Proposal does not propose to alter these provisions. Consequently, the inconsistency is of no significance.

The subject site is not a within a floodway. MCC have advised that use of the subject site for sand and gravel processing purposes will have no impact on flood patterns. The Planning Proposal does not permit residential accommodation in high hazard areas. The Planning Proposal does not permit any increase in the development and/or dwelling density of the land. The Planning Proposal does not permit development for the purpose of centre based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing. The Planning Proposal does not permit development to be carried out without development consent

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4.2 Coastal Management

**CONSISTENT**

The Planning Proposal is consistent with the objects of the Coastal Management Act in that no impacts will be made upon the area of the site to which the Coastal Environment Area Map applies. If required, a condition can be enforced through the DA process which restricts the area where sand and gravel processing operations can occur to ensure



**DIRECTION****CONSISTENCY AND IMPLICATIONS**

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**4.3 Planning for Bushfire Protection**

protection of Coastal Environment area land. The Planning Proposal does not conflict with the provisions of the NSW Coastal Management Manual and associated Toolkit, the NSW Coastal Design Guidelines. There is no relevant Coastal Management Program applicable to the subject site.

The subject site is mapped as bushfire prone land and therefore triggers application of this direction.

**CONSISTENT**

The planning authority will need to consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.

**CONSISTENT**

Future development applications will need to address the Planning for Bushfire Protection 2019 guidelines. Given the nature of this development as a sand and gravel processing facility, the proposal can operate consistent with these guidelines.

The subject site is not a hazardous area from a bushfire planning perspective. The Planning Proposal does not prohibit bushfire hazard reduction within the APZ.

**CONSISTENT**

The subject site and development enabled by this Planning Proposal are capable of complying with these provisions where applicable, noting that this is a sand and gravel processing facility on a rural zone parcel of land surrounded by grazing land.

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**4.4 Remediation of Contaminated Land**

N/A

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**4.5 Acid Sulphate Soils**

The subject site contains Class 2 & 3 Acid Sulphate Soils. The inclusion of an additional permitted use provision into the MLEP 2011 triggers application of this direction.

**CONSISTENT**

The MLEP 2011 already contains Clause 7.1 from the standard LEP instrument which is

DIRECTION	CONSISTENCY AND IMPLICATIONS
	<p>consistent with these guidelines. This Planning Proposal does not propose to alter these provisions. There are to be no physical works carried out on the site associated with the Planning Proposal that may disturb, expose or drain acid sulphate soils and cause environmental damage. As such, the planning authority can be satisfied that the Planning Proposal is consistent with the ASS Model &amp; ASS Planning Guidelines.</p>
4.6 Mine Subsidence and Unstable Land	N/A
<b>Focus Area 5: Transport and Infrastructure</b>	
5.1 Integrating Land Use and Transport	N/A
5.2 Reserving land for Public Purpose	N/A
5.3 Development near Regulated Airports and Defence Lands	N/A
5.4 Shooting Ranges	N/A
<b>Focus Area 6: Housing</b>	
6.1 Residential zones	N/A
6.2 Caravan parks and Manufactured Home Estates	N/A
<b>Focus Area 7: Industry and Employment</b>	
7.1 Business and Industrial zones	N/A
7.2 Reduction in non-hosted short-term accommodation	N/A
7.3 Commercial and retail development along the Pacific Highway, North Coast	N/A
<b>Focus Area 8: Resources and Energy</b>	
8.1 Mining, Petroleum Production and Energy	N/A
<b>Focus Area 9: Primary Production</b>	
9.1 Rural Zones	CONSISTENT
	<p>The proposal does not seek to rezone the RU1 Primary Production zone of the site or increase density so is consistent with this direction.</p>



DIRECTION	CONSISTENCY AND IMPLICATIONS
9.2 Rural Lands	<p data-bbox="810 264 975 293">CONSISTENT</p> <p data-bbox="810 338 1390 443">The subject site is zoned RU1 Primary Production, so the Planning Proposal triggers this provision.</p> <p data-bbox="810 488 1390 949">As set out in section 4.2.1, this Planning Proposal is consistent with the Hunter Regional Plan and the Newcastle Metropolitan Strategy. The Planning Proposal will not impact on agricultural production. The Planning Proposal does not impact on any land with environmental values. The Planning Proposal is to support an existing business which is unencumbered by natural and physical site constraints. The Sand and Gravel processing facility is a productive, diversified, innovative and sustainable rural economic activity.</p> <p data-bbox="810 994 1390 1240">The Planning Proposal will not impinge on the rights of adjoining landholders to farm their land. The Planning Proposal supports an existing business that has co-existed with landuses for 30+ years with no evidence of landuse conflict. The subject land is not classified as State significant agricultural land.</p>
9.3 Oyster Aquaculture	N/A
9.4 Farmland of Regional and State of Significance on the Far North Coast NSW	N/A

Table 2: Ministerial Directions

## SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

6. 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 land subject to this Planning Proposal is clear of native flora and fauna that may be impacted by the continued use of the subject site for sand and gravel processing purposes. Trees along the southern boundary of the site were planted 30+ years ago to reduce visual and noise impacts of the road on the subject site. This land is not recognised as having high biodiversity value. The remaining surrounding land is predominantly cleared for agricultural purposes. As such, continued use of the site is not anticipated to have any impacts on ecological communities or their habitats.

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

Flooding

While the subject site falls within the flood planning area, the ongoing use of the site for sand and gravel processing purposes will have no impact on flood behaviour. Planning Proposal | 19 Scotch Creek Road, Millers Forest. The proposal has been assessed against the relevant Planning for Flooding Guidelines and is not inconsistent with the aims and objectives of the guidelines.



Figure 2: Flood Prone Land

Bushfire

The subject site is mapped as “Bushfire Prone Land – Vegetation Category 3” Use of the site for sand and gravel processing purposes is not considered to increase the bushfire hazard on the site or increase the potential for bushfires to threaten human life or property.



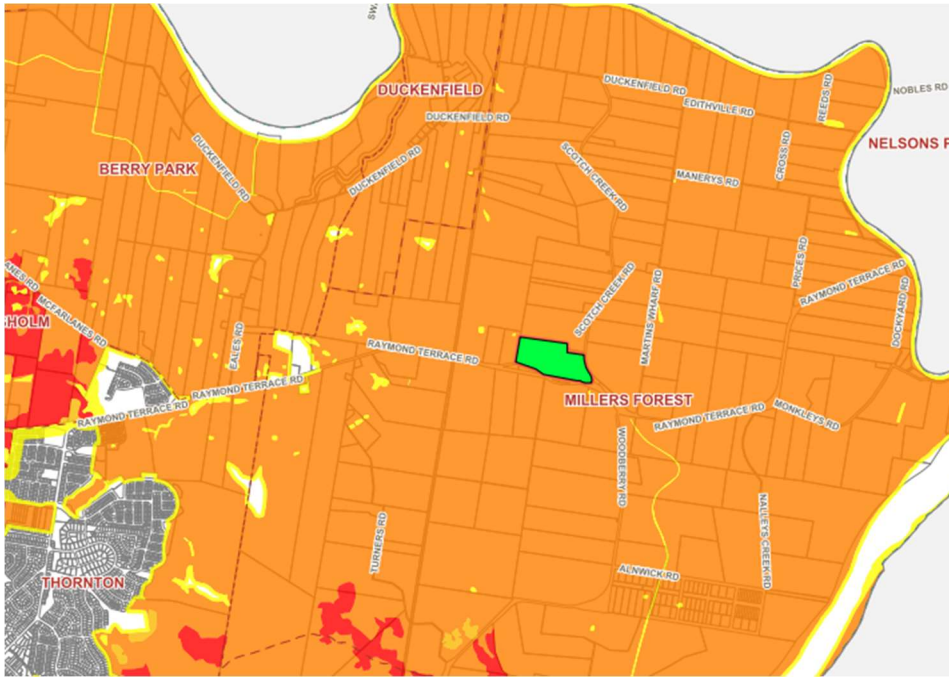


Figure 3; Bushfire Prone Land

8. **The site contains no critical habitats or threatened species as it is a hard surface urban parcel of land that forms part of an existing car park/access lane.**
9. **The subject site does not contain any critical habitats or threatened species.**
10. **How has the planning proposal adequately addressed any social and economic effects?**

The subject site is an employment generating development albeit small scale servicing the local community and economy by way of sand resource to the surrounding areas and beyond. The establishment employs four (4) staff and wishes to modernise the operations in the future. A development application will proceed the making of this Plan.

## **SECTION D – STATE AND COMMONWEALTH INTERESTS**

11. **Is there adequate public infrastructure for the planning proposal?**

A Traffic Impact Assessment has been undertaken to determine the suitability of the existing road network and the impacts of the existing development. The conclusion from the assessment recommended that the proposal is supported from a traffic impact and management perspective as there is excess capacity to cater for the facility. The proposed development complies with all existing Maitland City Council (MCC), Australian Standards and TfNSW requirements associated with traffic generation and car parking requirements.

12. **What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?**

To be determined by the conditions outlined in the Gateway Determination to be issued for this proposal. It is anticipated that Transport for NSW (TfNSW) would be required to be consulted in the process.

## **PART 4: DRAFT LEP MAPS**

The following Draft LEP maps support the proposal:



## **PART 5: COMMUNITY CONSULTATION**

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, and section 29 of the Local Government Act 1993, community consultation must be undertaken by the local authority prior to approval of the planning proposal.

In accordance with Council's adopted Community Engagement Strategy (March 2009), consultation on the proposed rezoning will be undertaken to inform and receive feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the Hunter Post newspaper;
- Exhibition material and relevant consultation documents to be made available at all Council Libraries and Council's Administration Building;
- Consultation documents to be made available on Council's website;
- Notices published on Council's social media applications, for public comment.
- Consultation with any relevant committee or reference groups?

At the close of the consultation process, Council officers will consider all submissions received and present a report to Council for their endorsement of the planning proposal before proceeding to finalisation of the amendment.

The consultation process, as outlined above, does not prevent any additional consultation measures that may be determined appropriate as part of the Gateway Determination process.

## **PART 6: TIMEFRAMES**

<b>PROJECT TIMELINE</b>	<b>DATE</b>
Anticipated commencement date (date of Gateway determination)	September 2022
Anticipated timeframe for the completion of required studies	September 2022
Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination) (21 days)	October 2022
Commencement and completion dates for public exhibition period	10 October – 11 November 2022
Dates for public hearing (if required)	NA
Timeframe for consideration of submissions	November 2022
Timeframe for the consideration of a proposal post exhibition	November 2022
Anticipated date RPA will forward the plan to the department to be made (if not delegated)	February 2023
Anticipated date RPA will make the plan (if delegated)	March 2023
Anticipated date RPA will forward to the department for notification (if delegated)	March 2023